RACE, CLASS, AND ACCESS TO CIVIL JUSTICE

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ABSTRACT

After many years of inattention, policymakers are now focused on troubling statistics indicating that members of poor and minority groups are less likely than their higher-income counterparts to seek help when they experience a civil justice problem. Indeed, roughly three-quarters of the poor do not seek legal help when they experience a civil justice problem, and inaction is even more pronounced among poor blacks. Past work on access to civil justice largely relies on unconfirmed assumptions about the behavior patterns and needs of those experiencing civil justice problems. At a time when increased attention and resources are being devoted to questions of racial and socioeconomic access to civil justice, it is critical to understand the underlying causes of the disparities in justice utilization.

This Article uses original, empirical data to provide novel explanations for these puzzling inaction statistics. The data reveal previously undetected connections that are crucial for creating effective access to justice policy. The Article shows how negative past experiences with, and perceptions of, the criminal justice system play a crucial role in decision-making about seeking help for civil justice problems. Further, this Article is the first to explore racial differences in civil justice utilization among the poor, and to explain how degree of trust is a key explanation for these racial differences. Based on the findings, the Article proposes a paradigm shift in how to shape access to justice policy.

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INTRODUCTION

Tonya, a thirty-seven year-old mother of two children and a respondent in this study, was evicted by her landlord because she asked him one too many times to fix unsafe conditions in her apartment, including exposed electrical wires. Tonya was worried about the safety of her young children, and thus, she was persistent. After her third phone call, Tonya’s landlord informed her that he no longer wanted to rent to her because she was a “pain” and that she had one-and-a-half weeks to move out (until the end of the month). Tonya’s lease was valid for five more months, but her landlord refused to change his mind. Tonya pleaded and then argued with her landlord, even threatening legal action, but she never sought the advice of a lawyer or seriously considered bringing her landlord to court. Tonya’s landlord refused to return her security deposit, and she could not afford to pay another one, so she moved into cramped quarters with her mother until she got off the waitlist for public housing several years later.

Tonya’s decision not to seek help from the legal system is common. A national study by the American Bar Association found that among low-income individuals like Tonya, 47% were experiencing one or more legal needs at the time of the survey. Of those 47%, only about one-quarter\(^1\) sought legal advice.\(^2\) Nearly three-quarters shunned the justice system entirely, not even taking the first step of picking up the phone to find out what kind of legal help might be available.\(^3\)

In a society that many consider too litigious,\(^4\) these percentages are

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\(^1\) The total percentages add up to more than 100 percent because the survey allowed individuals to select more than one action.


\(^3\) Id. at 12.

staggering. Existing research shows that low-income individuals are significantly more likely to report experiencing civil justice problems than are their higher income counterparts, but that they are less likely to resolve civil justice issues through the law than are people of higher socioeconomic levels. Additionally, a recent survey found that non-Whites are significantly more likely than Whites to report experiencing civil justice problems.

What is unclear from existing research, however, is why people like Tonya are so unlikely to seek out legal help, even when they are aware free help is available. This Article is the first to show that negative past experiences with, and perceptions of, the criminal justice system are significant contributors to resistance to seeking out help from the civil justice system. This Article utilizes original, empirical data from a large-

This case and others like it sparked calls for reform, with the argument that Americans are overly litigious and will sue for anything just to make a quick buck. See, e.g., ABC News. “I’m Being Sued for What?” May 2, 2007.

A recent survey that randomly sampled residents of a Midwestern city found that almost 80% of low-income respondents were experienced, as compared to just over 60% of middle-income respondents and a similar number of high-income respondents. The authors tested the difference using statistical methods and found a significant difference (p<.001). REBECCA SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 9 (2014), available at http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa._aug._2014.

Miller & Sarat, supra note 4, at 551; Rebecca L. Sandefur, Access to Civil Justice and Race, Class, and Gender Inequality, 34 ANN. REV. SOC. 339, 347 (2008). These disparities in civil justice experiences and utilization are important because they can be engines in reproducing inequality. Sandefur, supra note 6, at 340, 346–47. How people respond to civil justice issues (through legal action or inaction) is associated with whether problems resolve or persist and whether the problems beget new ones, spiraling into cascades of trouble. Id.; H. Genn et al., PATHS TO JUSTICE (1999). Additionally, civil justice situations have documented negative impacts, and the consequences have been found to be more common and severe for low-income households. Sandefur, supra note 5, at 10. People in low-income households are most likely to report negative consequences for civil justice situations, and white people in high-income households are the least likely to report negative consequences. Sandefur, supra note 6, at 347. Thus, socioeconomic and racial differences in how people respond to civil justice problems may mean that the same initial event results in very different consequences for those in different social classes and of different races. Sandefur, supra note 6, at 347.

SANDEFUR, supra note 5, at 8.
scale qualitative interview study of 97 respondents\(^8\) to explore the

\(^8\) Several important studies in legal scholarship have been conducted using qualitative methods, a standard research technique in the social sciences. See, e.g., Catherine R. Albiston, *Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights*, 39 LAW & SOC’Y REV. 11 (2005) (drawing on twenty-four interviews with workers who negotiated contested leaves under the Family and Medical Leave Act to examine how social institutions influence workplace mobilization of rights under the Act, how rights under the Act operate in practice, and how rights under the Act interact with other normative systems to construct the meaning of leave); ROBERT C. ELLICKSON, ORDER WITHOUT LAW (1991) (using a combination of interviews and ethnography of cattle farmers in a county in California to challenge the assumptions of the Coase Theorem and to put forth a new theory of social norms and order); Lauren B. Edelman, Howard S. Erlanger & John Lande, *Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace*, 27 LAW & SOC’Y REV. 497 (1993) (utilizing semi-structured, in-depth interviews to examine businesses’ internal complaint handlers’ conceptions of civil rights law and the implications of those conceptions for their approach to dispute resolution); Angela K. Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers*, 86 TEX. L. REV. 451 (2008) (interviewing fifty low-income women about their experiences and preferences for usury regulations, and then using her findings and the suggestions of the women to advocate for modifications to credit cards that could serve the needs of both low-income women and creditors); Stewart Macaulay, *Lawyers and Consumer Protection Laws*, 14 LAW & SOC’Y REV. 115 (1979) (interviewing one hundred lawyers in Wisconsin to better understand the impact of consumer protection laws, finding that lawyers tend to know little about the precise aspects of consumer protection law and instead rely on general norms of fairness and incentives for themselves when handling cases, and discussing the implications of these findings for changes in the law); Ronald J. Mann, *Explaining the Pattern of Secured Credit*, 110 HARV. L. REV. 625 (1997) (utilizing interviews with more than twenty borrowers and lenders in various sectors of the economy to better understand how borrowers and lenders decide whether to engage in a secured or unsecured transaction); Calvin Morrill, Lauren B. Edelman, Karolyn Tyson & Richard Arum, *Legal Mobilization in Schools: The Paradox of Rights and Race Among Youth*, 44 LAW & SOC’Y REV. 651 (2010) (utilizing both quantitative methods and qualitative interviews to analyze ethnoracial patterns in youth perceptions and responses to rights violations and to advance a new model of legal mobilization).

Qualitative research is particularly useful in “explor[ing] micro-social phenomena . . . [and] the cultural understandings actors bring to social experience, interactions, and institutions.” MICHÈLE LAMONT & PATRICIA WHITE, NAT’L SCI. FOUND., WORKSHOP ON INTERDISCIPLINARY STANDARDS FOR SYSTEMIC QUALITATIVE RESEARCH 10 (2005), *available at* http://www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf. Further, qualitative methods are useful for “unraveling the mechanisms underlying causal processes.”
underlying cultural and cognitive mechanisms for this resistance. The data show that the majority of respondent families believed that seeking help from legal institutions would likely be futile, and based this conclusion largely on their perceptions of fairness in the criminal justice system. For most respondents, the criminal and civil justice system are one and the same, and injustices they perceive in the criminal justice system translate into their belief that the justice system as a whole is unjust; their most salient complaint was that the justice system is one in which justice is “bought.” They believe that if one does not have money to pay for an expensive lawyer, seeking out help from a free lawyer will be unlikely to resolve the problem.

Second, and related, many respondents indicated that their past experiences with public institutions (including the criminal justice system and benefit hearings they perceived to be criminal in nature) were negative. They felt “disrespected,” “pathetic,” “shameful,” “lost,” and unsure how to navigate the system. These past experiences directly affected their desire to “get involved” in any kind of formal legal proceeding. Taking no action to resolve their problem was more desirable than taking action that would result in similar negative feelings, even if inaction meant more financial and emotional stress directly related to the civil justice issue. Seeking out lawyers and going to court for civil justice issues would mean bringing themselves back into the claws of an institution that they do not understand and in which they feel lost, risking the very same feelings of shame and failure they wished to avoid.

Finally, in part as a way to make sense of their past perceptions of, and experiences with, the criminal justice system and other public institutions, many respondents developed personal narratives as self-sufficient citizens who take care of their own problems and stay “out of trouble.” Seeking help from the legal system was counter to this identity.

Existing research about racial differences in civil justice utilization is even less developed than research about socioeconomic differences; it is essentially non-existent. This the first Article to provide an analysis of racial differences in civil justice utilization. Black respondents were less

Id. Qualitative research also allows scholars to understand and gather data within social contexts in a way that traditional surveys do not. Id. For further discussion of the value of qualitative research, see infra notes 59-63 and accompanying text.

9 Infra Section III.C.
10 Id.
11 Infra Section III.D.
12 See infra note 27 and accompanying text.
13 This finding is consistent with existing research (outside of the civil justice context) about race and trust. See infra Part VI.
likely than white respondents to have sought, or consider seeking, legal help for their civil justice problems.\textsuperscript{14} These racial differences were primarily explained by racial differences in trust in institutions. Consistent with past research about race and trust,\textsuperscript{15} black respondents were more likely to distrust legal institutions than were white respondents. The majority of black respondents, when asked whether they trusted courts, answered the question in a generalized way, indicating they trust almost no one but themselves.\textsuperscript{16} White respondents were more likely to offer nuanced evaluations of their level of trust in legal institutions, often basing their conclusions on their own past experiences with institutions, or those of friends or family members. Blacks’ distrust of the legal system led them to be particularly resistant to seeking out help, and this distrust was a strong contributor to the self-sufficient narratives they constructed.\textsuperscript{17}

These findings are particularly ripe because after years of relative inattention to access to civil justice matters, there is a renewed energy and movement among policy makers to address access to justice disparities. For instance, in October 2010, President Barack Obama created a novel initiative housed in the United States Department of Justice (DOJ) called the Access to Justice Initiative.\textsuperscript{18} Subsequently, in September 2014, the incoming President of the American Bar Association made closing the “legal services delivery gap for [the] poor” his top priority\textsuperscript{19} and the National Science Foundation released an announcement noting its interest in supporting research about the “use and functioning of the civil legal justice system.”\textsuperscript{20}

Additionally, in the wake of the recent deaths of black men during

\begin{itemize}
  \item[14] \textit{Id.}
  \item[15] \textit{Id.}
  \item[16] \textit{Id.}
  \item[17] \textit{Infra Section VI.B.}
  \item[18] United States Department of Justice, Access to Justice Initiative, About the Initiative, http://www.justice.gov/atj/about-atj.html (last visited Oct. 21, 2013). The purpose of the initiative is to work with system stakeholders to “increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers.”\textsuperscript{18} When Attorney General Eric Holder discussed the program he said, “Today, the current deficiencies in our indigent defense system and the gaps in legal services for the poor and middle class constitute not just a problem, but a crisis. And this crisis appears as difficult and intransigent as any now before us.” Attorney General Eric Holder, Remarks at the Shriver Center Awards Dinner, (Oct. 14, 2010), available at http://www.justice.gov/atj/about-atj.html.
interactions with police officers, and the waves of protests that followed, new initiatives focused on criminal justice/community relations have developed. In September 2014, former U.S. Attorney General Eric Holder announced the launch of the Justice Department’s National Initiative for Building Community Trust and Justice. This initiative is tasked with “enhanc[ing] community trust and help[ing] repair and strengthen the relationship between law enforcement and the communities they serve.”21

While there is great interest in designing policy to increase access to justice for the poor and racial minorities, the lack of research available to inform policy reforms is striking, particularly concerning race. In recent years researchers have devoted considerable energy to studying the relationship between race and the criminal justice system,22 with important research emerging about racial sentencing disparities,23 race and mass imprisonment,24 and racial differences in perceptions of criminal injustice.25 By contrast, almost no attention has been paid to racial differences in civil justice utilization or outcomes.26 In the words of civil justice scholar Rebecca Sandefur:

No work from the contemporary national surveys has yet focused on measuring and explaining race differences in the incidence of problems, in disputing behavior, in how problems are handled. . . . Nor has work from these surveys yet explored race differences within socioeconomic groups. . . . No major qualitative study has focused expressly on race and disputing, justiciable problems, or contact with civil courts or staff.27

Notably, this Article makes previously undetected connections between experiences with the criminal justice system and utilization of the civil justice system that are vital to designing effective policy. Because these civil and criminal justice connections have not yet been documented, current policy initiatives do not address or capitalize on them.

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21 See www.ojp.gov/communitytrust.htm.
24 See, e.g., WESTERN, supra note 22.
25 See, e.g., J. Hagan et al., supra note 22; Wortley et al., supra note 22.
26 Sandefur, supra note 6, at 350.
27 Id.
Further, much of the existing scholarship on socioeconomic differences in civil justice utilization focuses on systemic resource constraints, such as long waitlists for free legal service lawyers, unrealistic ceilings for free legal services, and reductions in pro bono requirements in big law firms as the root of socioeconomic access to justice problems.\(^\text{28}\) Thus, targeted policy solutions tend to focus on these issues.\(^\text{29}\) There is no doubt that concern about a lack of available lawyers for those who seek help is warranted. Indeed, half of those who seek help from federally funded civil legal aid programs are turned away.\(^\text{30}\) This Article, however, shifts the focus to a different problem that is only beginning to receive attention: the decision of families like Tonya’s and the nearly three-quarters of poor households\(^\text{31}\) that do not even take the first step towards seeking legal help when they experience a civil justice problem, and why blacks are even less likely to seek help.

The remainder of this Article is organized as follows: Part I details existing approaches to access to justice scholarship, noting how this study can help address certain gaps in current understanding about access to civil justice. Part II then describes the methodology and data for this study. Next, Part III proceeds by describing the socioeconomic findings of the study. Part IV then introduces the existing literature on race and trust, and describes the race findings of this study. In Part V, the Article examines the potential policy implications of this work, and Part VI concludes.

I. EXISTING APPROACHES TO ACCESS TO CIVIL JUSTICE SCHOLARSHIP

Despite a great deal of interest among socio-legal scholars in studying race and class disparities in the *criminal* justice system,\(^\text{32}\) there has been relatively little work similar disparities in the *civil* justice system. This

\(^{28}\) See, e.g., DEBORAH RHODE, ACCESS TO JUSTICE (2004) 185-93; Colloquy, Deborah Rhode’s Access to Justice, 73 FORDHAM LAW REV. 841 (2004). Rebecca Sandefur’s work is an important exception to this focus on systemic barriers to access. Her small focus group study (29 people total attended four different groups) of low- and low- moderate-income residents in a Midwestern American city were asked about financial and housing problems with a focus on inaction. See Rebecca Sandefur, The Importance of Doing Nothing: Everyday Problems and Responses of Inaction, in TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112, 118 (PASCOE PLEASENCE ET AL. eds. 2007).

\(^{29}\) See, e.g., RHODE, supra note 28; Colloquy, Deborah Rhode’s Access to Justice, 73 FORDHAM LAW REV. 841 (2004).

\(^{30}\) United States Department of Justice, supra note 18.

\(^{31}\) See supra notes 2-3 and accompanying text.

\(^{32}\) See, e.g., WESTERN, supra note 22.
dearth of work is surprising because civil justice events touch on almost all facets of social life; such events are empirically frequent and can have profound consequences. The most commonly reported civil justice events involve housing and finances, issues that are routinely studied by scholars of inequality in non-legal contexts.

Indeed, access to justice issues should be at the forefront of socio-legal studies because existing research shows that civil justice experiences can be a significant engine in reproducing inequality and can have a profound impact not only on those who experience them, but also on their families, neighborhoods and communities. Additionally, as Rebecca Sandefur notes, the civil justice system is a major social institution in contemporary American society. Investigations into access to justice issues for different groups can provide a lens into how our civil legal institutions may aid in the reproduction of inequality, and also how different groups are integrated into and excluded from public institutions. There has been some work, however, that touches on relevant civil justice issues and this Article builds off of this existing work. Below, I detail several different approaches to studying civil justice, and discuss the gaps in the literature left by the existing literature that this Article seeks to fill.

A. Legal Consciousness Approaches

One approach that has contributed important insights to the literature is the legal consciousness approach. Broadly, legal consciousness scholars seek to understand the subtle ways in which the law affects the everyday lives of individuals and to articulate the various understandings of law/legality that people have and use to construct their understandings of the world. The idea is to study not only how people think about the law

33 Sandefur, supra note 6, at 340.
34 Id.
35 Sandefur, supra note 5, at 9-10.
36 Id.
37 Another important strand of the law and society work on the utilization of the law is referred to as “gap studies.” Gap studies attempt to understand if and why there are differences between formal law (constitutional or statutory) and law in action (what people’s actual experiences are with the area of law being studied). The essential question of gap studies is whether the law works in the way in which it was intended. Gap studies have found there are situations in which groups develop their own norms that are outside of (or contrary to) the law on the books: it is these norms, rather than formal law, that rule (e.g. ROBERT ELLICKSON ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1994); Stewart Macaulay, Non-Contractual Relations in Business: A Preliminary Study, 28 AM. SOC. REV. 1 (1963); Robert L. Kornhauser, Bargaining in the Shadow of the Law: The Case of
(consciousness of the law) but also how largely unconscious ideas about the law can affect decisions they make.\textsuperscript{38}

Ewick and Silbey\textsuperscript{39} argue that there are three different schemas that ordinary citizens use to understand the law. Under one of these schemas, people have an adversarial relationship with the law and view it as something to be resisted. While the authors state that marginalized groups tended to invoke the against the law/adversarial schema more often than non-marginalized groups,\textsuperscript{40} they did not confirm this empirically or claim to have analyzed their data with this in mind. Thus, while their work is helpful in understanding how people construct the law, we know little about how this may vary by socioeconomic (or racial) status and why different groups may evoke different schemas.\textsuperscript{41}

\textit{Divorce}, 88 Yale L. J. 950 (1979). There are a variety of explanations for the development and utilization of these ruling normative systems, ranging from Macaulay’s (1963) study finding that businessmen in contractual relations frequently settle their disputes without regard to the original contract in place or reference to potential legal sanctions because they believe that they can settle disputes better than their lawyers, to Ellickson’s (1994) study of ranchers and farmers in rural areas of California, finding that they settle disputes completely ignorant of their legal rights because most people in the area find the costs of learning about the law and submitting to formal resolution procedures to be so high that it is easier to fall back on norms. Unlike most of the previous norms studies, Ellickson makes some effort to theorize about norms more generally beyond the population he studied. He asserts that informal norms are most likely to develop in small, close-knit communities like the rural rancher community that he studied in California, and that people are more likely to use the legal system when they have fewer social ties to their community or to those with whom they have a dispute. Ellickson’s theory has yet to be tested.

Gap studies are important in that they show that in specific contexts, the formal law does not affect behavior in the manner previously assumed by legal thinkers. However, the existing gap studies do not compare gaps across groups and focus primarily on action outside of the formal law to resolve disputes, rather than inaction. Particularly among low-income communities, when it comes to civil justice issues, taking no action at all (formal or informal) is a common response, and it not explained by gap studies. Additionally, the behavior of low-income communities appears to be contrary to Ellickson’s assertion that people are more likely to use the legal system when they have fewer social ties to the communities or to those with whom they have a dispute.

\textsuperscript{40} \textit{Id.} at 236–37.
\textsuperscript{41} See \textit{id.}
Indeed, since Ewick and Silbey published their study, several researchers have faulted their lack of attention to different groups. For example, Levine and Mellema argue that Ewick and Silbey place too much emphasis on the law as being front and center to everyone’s consciousness and point out that even though Ewick and Silbey purport to have studied a range of people, they did not study marginalized populations. One subsequent study considered racial and gender differences in beliefs about offensive speech regulation. The study is useful to begin to understand group differences in legal consciousness, but it is specific to speech regulation and does not shed light on why some groups do or do not take action to combat legal problems—instead it shows differences in how they think the law should function.

B. Top-Down Approaches

Another important strand of access to justice scholarship is the “top-down” approach, which starts with legal institutions, and focuses on aspects of these institutions that may affect whether individuals or groups seek out remedies through them. Much of the top-down literature focuses on lawyers—their availability, affordability, and role as gatekeepers. In addition to Rhode’s work on access to civil justice, Macaulay’s classic study of consumer protection lawyers emphasizes the importance of the extent to which lawyers serve as gatekeepers, keeping different groups and types of claims out of the formal legal system. Macaulay found that lawyers view being a gatekeeper as part of their role, keeping out those who

42 Kay Levine and Virginia Mellema. Strategizing the Street: How Law Matters in the Lives of Women in the Street-Level Drug Economy, 26 LAW & SOCIAL INQUIRY 169 (2001). Levine and Mellema studied women who are involved in selling drugs on the street, and found that the law is neither a structural constraint nor a tool for empowerment in the lives of these women. Instead, the law comes second to other considerations that are more salient to their daily survival. Id.

43 Nielsen, supra note 38.

44 RHODE, supra note 28. Rhode argues that the poor are often left without counsel in civil matters due to structural constraints like long waitlists for free legal service lawyers, unrealistic ceilings for free legal services, reductions in pro bono requirements in big law firms, and an organizational structure in which plea deals and outside of the courtroom bargaining is rewarded for lawyers and judges, even in cases where it is not best for the client. Rhode also notes that in cases where the poor are provided with court-appointed lawyers, the incentive system is perverse because such lawyers do not need to focus on client satisfaction in order to stay in business. While these studies are important, they neglect the other side of access—the initial decision whether or not to seek out legal help.

45 Macaulay, supra note 8.
may unnecessarily (in their opinion) burden the system. Like Rhode, he found that economics of practice are a significant factor in how lawyers behave, and that low-income and poor clients are often penalized.\footnote{Id.} Top-down studies are also an important part of access research, but similar to most other existing studies on access to civil justice, they do not consider those who experience grievances but do not move to seek out help from the formal legal system to begin with, a gap in the literature this Article attempts to fill.

\textbf{C. Bottom-Up Approaches}

The existing scholarship most relevant to this study is often referred to as the “bottom-up” approach. This stand of research strives to explain “the process by which a legal system gets its cases,\footnote{Donald Black, \textit{The Mobilization of Law}, 2 J. of Legal Studies 125, 126 (1973); see also Sandefur, supra note 28, at 115.} or how events perceived as injurious become formal disputes engaged by the formal legal system.\footnote{Id.} Bottom-up scholars use, as a starting point, events that involve legal issues, but may or may not reach the point of a legal action. Such research may begin by studying grievances, defined as events or circumstances that people perceive as personally injurious and consider the fault of another party.\footnote{William L.F. Felstiner et al., \textit{The Emergence and Transformation of Disputes: Naming, Blaming, and Claiming . . .},” 15 L. \& SOC’Y REV. 631 (1980/81).} Several studies then track how grievances transform into claims for remedy, and, when these claims are denied, why and how the disputes are or are not taken to formal legal institutions for resolution.\footnote{See, e.g., id.; Marc Galanter, \textit{Reading the Landscape of Disputes: What We Know and Don’t Know (and Think We Know) About our Allegedly Contentious and Litigious Society}, 31 U.C.L.A. L. REV. 631 (1983); CAROL J. GREENHOUSE ET AL., \textit{LAW AND COMMUNITY IN THREE AMERICAN TOWNS} (1994); Richard E. Miller \& Austin Sarat, \textit{Grievances, Claims and Disputes: Assessing the Adversary Culture}, 15 L. \& SOC’Y REV. 525 (1981); Calvin Morrill et al., \textit{Legal Mobilization in Schools: The Paradox of Rights and Race Among Youth}, 44 L. \& SOC’Y REV. 651 (2010).}

One of the most well-known frameworks that employs this research method is the “naming, blaming, and claiming” study, which sought to explain how injurious experiences were noticed and identified (naming), and then causally attributed to second parties as grievances (blaming), and, sometimes, ultimately settled in a court of law (claiming).\footnote{Felstiner et al., supra note 49; Miller \& Sarat, supra note 50.} One of the key
findings of this study, was that higher-income households were more likely than lower-income households to seek a legal remedy for events considered to be a grievance.52 Further, the study found that these socioeconomic differences in civil justice utilization are likely explained by unequal distribution of resources that facilitate the law’s use, such as money and knowledge. This includes not just money to hire a lawyer, but also, additional expenses, such as the money to travel to a legal aid office or the knowledge that solutions exist.53

Since the naming, blaming, and claiming study, there have been a few other published studies that have furthered knowledge about how and why different groups may bring claims to the formal legal system. Most of these studies focused on either working class or upper-class neighborhoods.54

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52 Miller & Sarat, supra note 50, at tbl.2.
53 Sandefur, supra note 28, at 116. There have also been bottom-up studies that are more sociological in nature. In addition to Ellickson’s work, discussed infra note 37, several studies (e.g., GREENHOUSE, supra note 50; SALLY ENGLE MERRY, GETTING JUSTICE AND GETTING EVEN (1990)) have suggested that local context matters for how grievances are construed and handled. Greenhouse et al. (1994), for example, studied three American towns and found that insiders in the towns deride outsiders, who are poor, working class, and non-religious, as “sue-happy” and “out for a quick buck.” The authors argue that the small American towns they studied are built on a foundation of individualism that promotes not blaming others for one’s problems. Thus, when people sue small businesses, they are ostracized. However, there is contradiction because when the towns’ insiders wish to take their problems to court to defend their contracts or leases, they use the law successfully and feel that it is justified. Merry studied working class Americans in a small New England town and found that they have a strong belief in the law. It is only after they have invoked the law and are diverted, discouraged, or delayed by law clerks that they begin to lose faith in the law. Merry argues that they initially invoke the formal legal system to settle disputes because they have a sense of entitlement to the law that is rooted in the history of the working class in New England. Greenhouse et al. and Merry’s studies can be examined together to try to compare groups, but neither study focuses on how poor or low-income groups decide whether or not to take action against grievances.

54 Greenhouse and colleagues, for example, studied three American towns and found that insiders in the towns deride outsiders, who are poor, working class, and non-religious, as “sue-happy” and “out for a quick buck.” GREENHOUSE ET AL., supra note 50. The authors argue that the small American towns they studied are built on a foundation of individualism that promotes not blaming others for one’s problems. Thus, when outsiders sue small businesses, for example, they are ostracized. However, there is contradiction because when the towns’ insiders wish to take their problems to court to defend their contracts or leases, they use the law successfully and feel that it is justified. Id. Merry studied working class
Most recently, Rebecca Sandefur has been the leader in studying access to civil justice, and unlike most other scholars, she has considered the question of why most poor people do not seek out legal help for their civil justice problems. Sandefur has noted that existing sociological research about inequality and social class suggests that "people whose social position is near the bottom of an unequal structure will be less likely to take actions that might protect or further their own interests, whether those actions involve seeking information or advice, pressing claims with others seen as causing a problem, or attempting to mobilize third parties in the furtherance of their goals." Sandefur conducted a small focus group study to examine why poor and low-income people are resistant to seeking out help. However, because her sample is quite small, only 29 people spread over four focus groups in one Midwestern city, her findings specific to housing and money problems, and her book chapter quite concise, her data, analysis, and discussion section are limited. Sandefur’s work does provide the key insight that past experiences can play a role in low-income and poor people’s decision-making surrounding legal needs. However, Sandefur’s findings suggest that it is primarily past experiences with the specific parties or issues involved in the specific legal issue in question that affect decision-making. I find a much broader connection between past experiences and decisions about whether to pursue resolving legal issues, even when past experiences have little or no relationship to the civil justice issue at hand. Additionally, I find that past experiences and perceptions of Americans in a small New England town in the 1980s and found that they had a strong belief in the law. It is only after they invoked the law and were diverted, discouraged, or delayed by law clerks that they began to lose faith in the law. Merry argued that they initially invoked the formal legal system to settle disputes because they had a sense of entitlement to the law that is rooted in the history of the working class in New England. MERRY, supra note X. These studies are dated and focus on non-poor Americans and their relationships to the justice system.

55 Sandefur, supra note 28, at 117.

56 Sandefur finds that the following five reasons were most commonly invoked in decision-making about pursuing legal action: 1. Shame and embarrassment; 2. Unfavorable balance of power in relationship with person or organization with whom they have grievance; 3. Fear based on past experience with parties in the relationship with whom the grievance arose; 4. Gratitude towards party with whom grievance arose based on past experiences with party; and 5. Frustrated resignation about the ability to solve a problem based on past experiences of failure to solve a similar problem.

57 Data from a recent survey Sandefur has conducted is also relevant to this study, and was presented in the introduction. Sandefur has released a preliminary report from a random sample of adults in a middle-sized Midwestern American City that mirrors the 1994 American Bar Association study on civil justice needs.
criminal justice events and circumstances are a key factor in civil justice decision-making.

II. DATA AND METHODOLOGY

A. Qualitative Methods

Several prominent legal scholars including Robert Ellickson\textsuperscript{58} and Ronald Mann\textsuperscript{59} have made a significant impact by utilizing qualitative methodology to study questions about law and legal culture.\textsuperscript{60} In-depth interviews enable researchers to engage in “process tracking,” which helps to discern how processes emerge and evolve.\textsuperscript{61} They are seen as advantageous over surveys for questions for which it is helpful for researchers to understand the experiences of individuals within social contexts and to include subjective experiences and cultural sense-making.\textsuperscript{62} They enable researchers to gather data about the “cultural understandings actors bring to social experiences, interactions, and institutions.”\textsuperscript{63}

In-depth interviews are also an important methodology for gathering data that individuals may be reluctant to share. Interviews, particularly

\textsuperscript{58} ROBERT C. ELICKSON, ORDER WITHOUT LAW (1991) (using a combination of interviews and ethnography of cattle farmers in a county in California to challenge the assumptions of the Coase Theorem and to put forth a new theory of social norms and order).

\textsuperscript{59} Mann, supra note 8 (utilizing interviews with more than twenty borrowers and lenders in various sectors of the economy to better understand how borrowers and lenders decide whether to engage in a secured or unsecured transaction).

\textsuperscript{60} \textit{Id.} For further examples of such studies, see supra note 8.


\textsuperscript{62} \textit{Id.}

\textsuperscript{63} \textit{Id.}
those conducted in respondents’ homes, allow researchers to build rapport and trust with the participants during the interview. This may increase the chances of obtaining and understanding potentially embarrassing information, information respondents deem personal, or information respondents are concerned about sharing for fear of retaliation. Such information can be key to helping to explain behavior, which in turn can aid in improved policy design.\(^{64}\)

In this study, I sought to understand the social contexts and experiences that contributed to inaction among poor people when experiencing civil justice issues, a behavior large survey studies have indicated is common. In-depth interviews were the ideal methodology because the goal was to explain the social and cultural mechanisms behind behavior that existing survey data has already uncovered.\(^{65}\) The cognitive and cultural constraints raised by respondents in this study would have been difficult to capture in a survey. Many of the motivations and descriptions of behaviors required extensive explanations by the respondents. They would have been difficult for the respondents to whittle down to one or two sentences, let alone, a multiple-choice answer. Open-ended questions and answers and follow-up questions were needed to better understand respondents’ underlying cultural beliefs, attitudes, and resulting behaviors when faced with civil justice problems.

Additionally, several of the explanations that this study uncovered to explain inaction have been absent from existing access to justice literature and were unexpected. Thus, surveys that forced respondents to select a predetermined answer would not have captured the cultural explanations for respondents’ behaviors because it is unlikely such explanations would have been included in the survey. Finally, because of the sensitive nature of the questions asked, building trust between the interviewer and the respondent was vital to help insure complete explanations of behavior and beliefs. Indeed, some respondents were resistant to discussing issues of race and class, and sometimes waiting until the second half of the interview, when they presumably felt more comfortable with the interviewer, to do so. It is unlikely this study could have been done using conventional survey techniques.

\(^{64}\) See Angela K. Littwin, Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers, 86 TEX. L. REV. 451, 504 (2008) (discussing the means by which the author worked to build trust between the interviewer and the interviewee in order to obtain sensitive financial information).

\(^{65}\) See CONSORTIUM ON LEGAL SERVICES AND THE PUBLIC AMERICAN BAR ASSOCIATION, supra note 2.
B. Sample Selection

These data consist of transcripts and field notes from in-depth qualitative interviews with ninety-seven residents of public housing communities in Cambridge, Massachusetts. Interviews were conducted between 2007 and 2008. I sampled in public housing communities in order to insure that the sample was comprised of individuals who are poor (living below 80% of the area median income) and that the sample did not contain convicted felons.

I chose a heterogeneous non-random sampling technique because of concerns about reaching poor respondents and concerns about building rapport. Thus, I recruited participants in several ways, constructed to increase the likelihood that they would trust me and be forthcoming about their behaviors and motivations, as well as to increase the likelihood that they would follow through on completing the interview at the scheduled time and location. I initially contacted the main Housing Authority office in Cambridge, Massachusetts and requested access to public housing buildings and communities and permission to post fliers advertising my study in these communities. This office directed me to contact managers for each

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66 One of the limitations of qualitative research is that the sample is not a national random sample. When deciding where to sample for this research question, I considered several cities. For example, Boston was considered, but because it has a history of particularly tense community/police relations, it was ultimately rejected. Such tense relations may affect how respondents view the justice system as a whole. I also sought a city that did not have innovative civil justice programs such as community courts (Cambridge does not), and I sought a community where I had connections to city officials and thus more potential for access to respondents. Cambridge met these criteria.

67 Convinced felons are not permitted to live in public housing communities, and background checks are conducted. While convicted felons are an interesting subset to study, initial analysis suggests that criminal justice experiences and observations have a significant effect on civil justice utilization. Thus, convicted felons would likely be a group who may have special considerations when civil justice issues present themselves. This may be an interesting follow-up study, but for the purposes of this study’s research questions, convicted felons were intentionally left out of the sample.

68 See, e.g., Kathryn Edin & Laura Lein, Work, Welfare, and Single Mothers’ Economic Survival Strategies, 61 American Sociological Rev. 253, 254-55 (Noting difficulties in obtaining reliable information from poor respondents who had “no personal introduction to us,” and thus, in a later study, recruiting “welfare-reliant mothers by asking individuals from nongovernmental community organizations and local institutions to introduce us to welfare recipients with whom they established some rapport and testify to our trustworthiness.”).
I contacted the managers, all of whom ultimately gave me permission to recruit in their communities. I met with six of the managers in person, at their request. Some of them asked me extensive questions about confidentiality and any relationship I may have had to the police. I also contacted the heads of any tenant councils in individual communities. I met with five of them in person, all of whom promised to vouch for me and spread the word about my study. Additionally, I engaged in limited snowball sampling, a standard technique for sampling populations that are difficult to reach through randomized methods. The limited snowball sampling meant asking respondents if they had any friends (living in public housing) who might be interested in being interviewed. I paid respondents $10 for each referral, and I only allowed one referral per respondent. I did not ask respondents who were referred for further referrals.

The sample was limited to respondents eighteen to sixty-five year olds. I sought to interview roughly equal numbers of men and women, and also black and white respondents. I ultimately interviewed twenty-one self-identified black males, twenty-six self-identified white males, twenty-four self-identified black females, and twenty-six self-identified white females.

The final sample size of 97 interviews is large for an in-depth interview study. However, this analysis is not meant to prove or disprove existing theories about access to justice civil justice, but rather to given an in-depth account of behavior related to civil justice problems of a relatively

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69 See, e.g., Jean Faugier & Mary Sargeant, Sampling Hard to Reach Populations, 26 J. Advanced Nursing 790 (1997); Sarah H. Ramsey & Robert F. Kelly, Using Social Science Research in Family Law Analysis and Formation: Problems and Prospects, 3 S. Cal. Interdisciplinary L.J. 631, 642 (1994). For examples of research using snowball samples to study legal issues, see Littwin, supra note 64, at 504 (using a snowball sample of women living in public housing to obtain information about their credit card usage and behavior and their thoughts about credit cards); Mariano-Florentino Cuellar, Refugee Security and the Organizational Logic of Legal Mandates, 37 Geo. J. Int’l L. 583 (2006) (using a snowball sample to obtain one of three sets of interviews on “the legal, political, and bureaucratic dynamics affection refugees’ physical security”); Elizabeth Chambliss and David B. Wilkins, The Emerging Role of Ethics Advisors, General Counsel, and Other Compliance Specialists in Large Law Firms, 44 Ariz. L. Rev. 559 (2002) (investigating “the emerging role of compliance specialists in large law firms” using a snowball sample). For more discussion about the difficulty and expensive of reaching low-income populations for empirical works, see Michael S. Barr, Principal Investigator, Survey Research Center, Institute for Social Research, University of Michigan, Detroit Area Housing Financial Services Study (2006), http://www-personal.umich.edu/~msbarr and click “Detroit Area Study.”
heterogeneous (in terms of sex and race) group of poor public housing residents. The analysis will show that much of what the respondents say confirms existing knowledge that inaction is a common response of the poor to civil justice problems. The respondents’ accounts reveal motivations for inaction that existing approaches generally neglect, or only begin to address. The overall result is a complex set of personal accounts that can lend crucial qualitative grounding to other existing and future representative studies about access to civil justice for the poor. The results cannot be conclusively generalized, but can begin to uncover the mechanisms that lead to inaction and can promote further studies and policy hypotheses to be tested in larger randomized samples.

C. Data Collection

Interviews were conducted after phone contact with potential respondents to insure they qualified for the study. All respondents received $30 for a roughly 1.5-hour interview. If the interview went more than 30 minutes over the 1.5 hour predicted time, respondents received an additional $10 for their time. All but eight of the interviews were conducted in the respondents’ homes. Because of the sensitive nature of the data being collected, it was particularly important to conduct the interviews in non-public places to avoid fears that others would overhear the conversation. The interviews that were not conducted in respondents’ homes were conducted in recreation rooms in public housing buildings that were empty at the time of the interview.

I hired and trained a research assistant to help conduct some (twenty) of the interviews and to assist with general administrative tasks related to the project. I trained her in skills such as developing a rapport with respondents, probing for follow-up answers, and going through the consent form with respondents. The research assistant first attended two interviews conducted entirely by me. I then attended her first two interviews and gave her extensive oral and written feedback.70 It was not uncommon for respondents to ask us to stay for a meal, to cry when describing past experiences with the justice system or other institutions, or to refuse the interview compensation because the interview felt “therapeutic.”71

70 I have been an interviewer in several large-scale qualitative data studies and was trained as an interviewer by Dr. Kathryn Edin. Dr. Edin is The Bloomberg Distinguished Professor of Sociology at Johns Hopkins University and is renowned internationally for her research utilizing in-depth interviews.

71 Out of the 97 interviews, 16 of the respondents indicated that they did not want to accept the interview compensation. The research assistant and I insisted respondents accept the money, and all eventually did so.
At the beginning of each interview, respondents signed a consent form that, among other things, summarized the study and potential risks and benefits to the respondent, detailed the confidentiality measures taken to protect respondent identity, and allowed the interview to be recorded.\footnote{This study was approved by the Institutional Review Board (IRB) of Harvard University. The approval required strict confidentiality measures to be taken and all names and identifying information to be changed. Both of these measures have been taken for the data presented in this Article. Additionally, all data (voice recordings and transcriptions) were securely stored, as required by the IRB.}

The interviews began with a “warm-up” section, with questions inviting respondents to tell the interviewer about themselves, their family, their experiences with housing, and the general path and timeline of their life. Demographic data was collected in this section. During the course of the interview, respondents were asked about their experiences in their neighborhoods and about their interactions with and feelings about their neighbors and the police. Respondents were also asked about their experiences with and feelings towards lawyers, judges, and courts. Additionally, they were asked questions about their knowledge of courts and the justice system, as well as broad questions about their notions of justice and fairness.

Respondents were also asked about their past experiences with a variety of legal and non-legal institutions and programs, including, but not limited to, courts and the justice system. They were also asked about the past experiences of their family and friends, and about their reactions to these past experiences.

Further, respondents were asked a series of questions about their experiences with civil justice events. In the beginning of this section of the interview, each respondent was asked to either fill out a civil legal issues checklist or have the interviewer read it aloud and fill it out for him.\footnote{See Appendix A.} The checklist was the same one used by the American Bar Association’s quantitative survey study of access to justice that found socioeconomic disparities in civil justice utilization.\footnote{See CONSORTIUM ON LEGAL SERVICES AND THE PUBLIC AMERICAN BAR ASSOCIATION, supra note 2.} Respondents were asked about how they have handled civil justice problems, about what they believed their various options were, and about their decision-making process when handling such issues. Additionally, respondents were asked a series of hypothetical questions about civil justice situations. These questions were particularly useful for respondents who had experienced very few or no civil justice problems.
Respondents were also asked questions that were meant to elicit responses about trust, at first without my explicitly mentioning the word trust. Towards the end of the interview, I asked respondents questions about their childhood and trust, as well as the direct question, “Do you trust courts?” Knowing that the word “trust” can mean many things to many people, I also asked respondents to define what trust meant to them, and did not guide them in any one direction.

Finally, respondents were asked for their own policy recommendations for the justice system as a whole, and what, if anything, they would change about it.

D. Data Analysis

After the interviews, all recordings were transcribed word-for-word by a professional transcriber. The transcriptions were then loaded into a standard qualitative data analysis program (AtlasTi) and analyzed using content analysis, a form of qualitative analysis developed for examining data such as interviews. I developed a detailed codebook and then coded the transcripts into thematic fields. Thematic data, such as attitudes toward lawyers, judges, courts, and the law; past experiences with public institutions; past experiences with the court system; desires for self-sufficiency; attitudes about potential racism and classism in the justice system; attitudes about justice and injustice in the American court system; trust of institutions; and civil and criminal justice confusion were sorted into broad topical categories and further coded and analyzed using standard qualitative analysis techniques.75

75 The codebook included general rules, then broad topic modules. Once data had been coded, researchers could use Access to analyze information by type of code. For example, one code relevant to this Article was “FAMFRIEXP,” a subcode of the broader code focusing on past experiences with the justice system. FAMFRIEXP is described in the codebook as:

Any description of family or friend past experiences with the justice system, both civil and criminal included. Include all commentary on how this past experience has influenced respondent’s use and views of the justice system. Also include any commentary from respondent about the particular family member or friend and how this may have affected his or her experience.

A researcher could view all text coded as FAMFRIEXP and compare responses by different demographic factors. For example, a researcher could view all responses to this question from black respondents only, and compare these responses to those of the white respondents.
III. SHARED EXPLANATIONS FOR INACTION

A. “To Me It’s All Law and Courts and Bad”: Criminal and Civil Justice Confusion

During the first few interviews that I conducted, I noticed that even though my interview questions focused almost entirely on civil justice, respondents answered with examples from criminal justice experiences and perceptions. After a few more interviews, it became clear why: Most respondents did not know the difference between the criminal and civil justice systems, or even about the existence of two different systems with different players and processes. Respondents were asked a specific question about the differences between the civil and criminal justice system, and 78% of the respondents said they did not know. Responses such as the following were typical:

I’m not really sure. To me it’s all law and courts and bad. Stay away from the law, that is my MO. It’s good advice.

I think it has something to do with what the crime is, but it’s the same lawyers and judges and courts. It’s a sorting, but a sorting why? I’m not so sure.

It’s about all the same. They come up with fancy names and such so I can’t understand, but, um . . . it’s really the same. All the same.

One plausible explanation for this confusion was that respondents did, as a practical matter, understand the difference between the two systems of justice but just were not familiar with the term “civil” justice. However, asking follow-up questions confirmed that the confusion was not just around the word “civil.” Respondents were asked how they would go about finding a lawyer if they were being evicted, for example, and the majority of respondents said they would have to seek help from a public defender:

Well, if I really needed a lawyer against my landlord I could get one of those public defenders for free. I wouldn’t want one, but yes they are available and they are free. They have to take you. You’d just go right down there to that legal aid and get yourself a public defender.
I’m not in the business of going to lawyers, but if I needed to, there are public defenders available for free.

Scholars who study the legal system typically fall into one of two broad camps: those who study the civil legal system and those who study the criminal legal system. These two groups rarely if ever come together at academic conferences, rarely work together on research projects, and, for the most part, see themselves as studying two very distinct systems and bodies of law. While this may be true from a legal standpoint, for most poor respondents there is little, if any, difference between the two systems. Court is court. The law is the law. Lawyers are lawyers and judges are judges.

For most respondents, in fact, the majority of their experience with what they consider “the law” had been with the criminal justice system or with hearings that they considered criminal in nature. Even though many respondents had not been charged with criminal activity themselves, most had a close friend or family member who had been involved with criminal justice in one-way or another.

B. “More Money, More Justice”

The majority of respondents believed that they were entitled to a free lawyer for any legal problem they had, seeming to confuse the right to a criminal defense attorney, assuming income benchmarks are met, with the idea that one has the right to an attorney for any problem. Indeed, 72% of the respondents in this study believed that they could access a free lawyer to help them resolve any civil justice problem they had. The problem that other scholars and policymakers have identified of long waitlists and a lack of available legal aid lawyers was far from the forefront of most respondents’ minds. The problem, in their view, was not access to any

76 This is likely due to the sample selection of public housing residents. See supra note 67.
77 It is important to note that the respondents may not have had accurate views of their ability to access a lawyer. Half of the people who seek legal services help are turned away due to a lack of resources. United States Department of Justice, Access to Justice Initiative, About the Initiative, supra note 18. This paper does not argue that increasing funding for lawyers is not important. Instead, it argues that we need to expand how we think about access to justice policy and research to include people who never even seek out a lawyer but may benefit from some kind of help in addressing a civil justice problem.
78 See supra note 28 and accompanying text.
lawyer. The problem was that they did not have the money to hire a good lawyer. Hilda, a forty-four year-old respondent, repeated “more money, more justice” over and over again throughout her interview. She said:

More money, more justice. I mean it. More money, more justice. It is true. The more money you have for an attorney, whether you are a big case or not, the more justice. If you have more money, they have more time to do the paperwork, investigate, that kind of thing. Oh I can get an attorney, let me tell you. No problem at all. But it won’t be one of the good ones.

According to Hilda and most of the other respondents, no matter how much money went to legal aid to increase the number of lawyers available, it would not solve the problem. The issue is not getting a free lawyer; the issue is getting a high-quality lawyer, and that, most respondents believed, is only for the rich. The theme that free lawyers are not good lawyers presented in almost all of the interviews. Several of the respondents provided specific examples of cases in which they believed money for a private lawyer directly affected the outcome of the case, and all of the examples they used were from criminal cases:

Well, right now, I am a little on the side that if you have the money, you can get anything you want, even in a courtroom. [Interviewer question: What makes you say that?] Alex Pring-Wilson. His parents are both lawyers, and one of his parents is a district attorney in Colorado. And they have enough money and law experience to keep this going. . . .

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79 The case of Alexander Pring-Wilson received a great deal of attention in the local media. In April 2003, Pring-Wilson, a white Harvard graduate student, got into a fight with Hispanic male in Cambridge, Massachusetts. Pring-Wilson ultimately stabbed and killed the Hispanic victim. The exact course of events is debated, but Pring-Wilson was found guilty of voluntary manslaughter. The case has more recently been in the news again because a law that allows a victim’s background to be revealed in court was retroactively applied, and thus Pring-Wilson was released on bail and granted a new trial. The jury deadlocked on this trial (after this interview was conducted). For more information about this case, see, for example “Jury Deadlocks; DA Vows 3rd Trial for Pring-Wilson” in The Boston Globe, December 15, 2007 http://www.boston.com/news/local/articles/2007/12/15/jury_deadlocks_da_vows_3d_trial_for_pring_wilson.
The Pring-Wilson case, in which the murder defendant was a white Harvard graduate student with wealthy parents, came up in several interviews as an example of how money can buy justice:

In the Pring-Wilson case, the money of the parents bought that kid his freedom. Keeping it alive with their lawyers, who are Massachusetts lawyers. Well they were able to buy such good legal representation and enough legal representation to get the first overturned and now this one could be good. If he were represented by a public defender, he would probably be doing life. I’m not saying anything bad about public defenders. They are like social workers, yeah social workers. Department of, um, DSS workers. They have too many cases. In a way it is and in a way it isn’t their fault. It’s the system’s fault by not having enough money to hire enough social workers and public defenders. And then after a couple of years the good public defenders leave and go into private practice.

“Public pretenders” was a term used to describe public defenders in 35% of the interviews. Respondents were never asked about this term, but spontaneously used it themselves when describing lawyers. Many respondents discussed specific examples of injustices in the criminal system they or their families had experienced, and these instances reinforced the notion that free lawyers, public defenders, are inadequate. One respondent, Mary, said:

Two of my son’s friends. One of them had a public defender. One had a private lawyer. They both went in there for the same thing. But the public defender one got a lot of time, and the other one got no time. They got caught together, same charges. One got off. That proved it to me. First offense for both of them.

Another respondent, Nia, discussed her own experience with the criminal justice system:

Public pretenders, you mean? I was never contacted by my lawyer before my court case. Then, when I got there, he had the wrong file and thought I was someone else. They really suck because they’re not getting paid like a regular lawyer would be, so they don’t really care.
In contrast to the “bad” public defenders, some respondents, such as Travis, talked about the positive experiences they or their family members had with “good” lawyers who cost money:

They don’t spend enough time on it. I did have someone in my family with that. He didn’t have a public defender. They gave him four to twelve years. They didn’t want to give him any deal. The DA wanted murder one. And he, thank god he had money like that, because he ended up spending almost 5K. He would have gotten a lot more time. They came with something like manslaughter, I don’t know what it was. They went to trial. The lawyer was pretty good. As a matter of fact the lawyer is a judge now.

Respondents’ perceptions of the unjust criminal law system directly affected their use of the civil justice system. Kenyatha’s story is perhaps the best illustration of this. Kenyatha had been separated from her husband for 20 years. At the time of the interview, she had been living with another man and had not talked to her husband, with whom she had two children, in over five years. Because she did not file for divorce, she received no child support or alimony. I probed Kenyatha about why she had not filed for divorce and at first she avoided my questions, simply saying, “I just did not want to get involved” again and again. However, after further questioning she said:

Honey, to be honest, it pains me; I just could not face those public defenders. You may not believe it, but I just can’t. I looked into that divorce stuff myself, honey, it’s complicated. Pages and pages of writing, let me tell you. But seeing a public defender for help? Uh uh. No thank you very much. My brother went to jail because of those bastards. Uh uh no thank you. I’ll just keep on keeping on. For all I know, I’d go in for a divorce and come out in jail. Really, I’m not seeing no lawyer—ever. That is if I can avoid it. And I can so I will, honey, I can so I will. Maybe I gave up some of my rights regarding him, and some money, but I need to avoid them honey. That’s how it is. No use getting involved.

Kenyatha’s perception of the justice system is that for whatever problem she has, she would have to “face” a public defender, and seeing no lawyer is better than seeing a public defender. It was best to just avoid the
system at all costs.

Even for those respondents (46%) who did not have direct experience with the criminal justice system (either themselves or family), criminal justice was still what they spoke about when talking about “the law.” This may be in part because crime is such a common occurrence in their communities. However, another significant contributor to respondents’ perceptions of the justice system came from television coverage of sensationalized criminal trials and television shows such as *Law and Order*.

For example, the interview guide contained questions about the O.J. Simpson murder case toward the end of the interview. However, it turned out that the majority of respondents brought up Simpson before they were asked questions about him, using his case as an example of how money can buy freedom, even when one is guilty of a heinous crime.\(^\text{80}\) All of the respondents who brought up Simpson believed that he was actually guilty, but that his talented lawyers were the reason for the not-guilty verdict:

> I think everyone should have the right to good counsel. I mean look at O.J., he got off. I KNOW he did that. It’s not a black or white thing, it’s about right or wrong. I mean come on, beating her all those years? And I’m so glad he got caught for this thing. So now maybe he’ll pay. I think he got off because he paid, I mean he had a good lawyer. I mean if it was me, forget about it, I’d be in jail. I’d have one lawyer to do everything. That’s not fair.
> —Audrey

> Look at O.J. He did it. His lawyers is how he got off. . . If he had a public defender, he’d be in jail. Everyone should have lawyers like that.
> —Malcolm

> I’ll tell you one thing. And everyone of color hates me to say that. I knew O.J. was guilty. . . He was guilty as sin. But he had enough money. And, what did he do, he is a black American that did something that a lot of whites do. But I knew he was guilty. I don’t know why but I still feel that. But he got over it because he got the money. . . He was everything to everyone till they heard that phone call from his wife. . . . I’ve had these discussions and people feel

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\(^\text{80}\) Most of these interviews were conducted before OJ Simpson’s second trial for armed robbery and kidnapping (among other felonies) in which he was, indeed, convicted and sentenced to time in prison.
uncomfortable. No, say what you think.
— Sheri

Sensationalized trials such as the O.J. Simpson case only added to respondents’ perceptions that money could buy justice. One of the final questions respondents were asked was what, if anything, they would change about courts, and almost half of the respondents said that they would change the degree to which money influences outcomes:

All is free and equal. That we all get our fair share of justice. Not more for some than others. It should be equal for everyone. No matter how much money your parents have. If rich kids do something, they should be penalized. Not daddy go get his lawyer and bail him out. No.
— Clarence

The buying of justice or supposed justice. The buying of getting off, getting your way. Keep it equal. I mean, um, I don’t know if you saw the O.J. Simpson first trial. He had a battery of lawyers. He had a DNA lawyer, a blood lawyer, he had his own private lawyer, he had Johnnie Cochran, and two or three other lawyers. And they all had their own, um, niche. Thing that they did, and it was, at a point, it was bordering the ridiculous, where there were two prosecutors, and this battery of lawyers who you knew were actually going to batter these lawyers.
— Crystal

C. Past Experiences with Courts and Other Institutions

Even with a perception that money matters in the justice system, it is still not clear why respondents were so hesitant to pursue civil justice in cases where they would seemingly have little to lose. For example, if Tonya, the respondent discussed in the beginning of this Article who was being kicked out of her apartment by her landlord, had sought out free help from a lawyer, the worst case scenario would have been exactly where she ended up without the help of a lawyer: having to move out of her apartment. In many civil justice instances, respondents appeared to have little to lose and potentially a lot to gain by seeking out the help of a free legal services lawyer. Certainly the time it takes to contact a lawyer and potentially having to meet with a lawyer during work hours would be difficult for some
respondents, but the consequences of the civil justice problem would, in many cases, be even more difficult and potentially time-intensive. When probed further about resistance to seeking out help, it became clear that the decision to stay away from courts was more complicated than just the perception of a system in which money controls outcomes.

Weighing on many respondents were their past (and current) interactions with other public institutions, experiences that were some of the most difficult in their lives and made them feel shameful, inadequate, degraded, and confused. Thus, any situation (including civil justice problems) that even remotely looked like it had the potential to invoke such feelings was avoided. The past interactions that weighed so heavily on respondents were often public benefit hearings that were not actually criminal in nature, but felt, to respondents, criminal in nature and punitive (which they sometimes were). Indeed, some respondents thought that public benefit hearings were in fact experiences with the criminal justice system.

These experiences, sometimes with the public housing system, sometimes regarding Supplemental Security Income (SSI) (disability) benefits, sometimes with schools, or unemployment, or welfare—the list went on and on—contributed to respondents’ feelings that the “law” centered around criminal law. Most of the hearings they experienced surrounding these issues focused on whether a benefit would be taken away based on something they had done wrong, a child expelled from a school, and so on. It was not always clear during the interviews whether a respondent was describing an actual criminal case in court or some kind of hearing, because the descriptive words were so similar.

One respondent, Larissa, explained that she had never been in a court, but she had an experience when she was on welfare that felt close enough. She was not clear on all of the details, but she said she was accused of having a man live with her. If found “guilty,” she was going to have to pay back welfare money and lose all of her benefits. She had to attend a hearing on the matter, and her experience at the hearing led to a strong desire to avoid interactions with public institutions in general, especially anything that looked like a court:

They tried taking, f-ing me up that day. I had no idea, my foot from my hand from my mouth. I think I had a panic attack. I tried saying what I needed to say, but no one was listening. That was a low, a low low low. I hated it all, that welfare. Always in my business. No siree, no thank you. . . . Stay away from them courts and that kind of thing, let me tell you. That’s a one-way ticket to feeling like crap.
Many respondents reported they felt a similar loss of control and dignity, and several of them described these experiences as low points in their lives. Candy, a mother of four, described a welfare hearing (she called it a court appearance) in which she thinks she was “charged” with misrepresenting her income and was eventually made to pay back past welfare earnings. She said:

You know, after that time in court with welfare, and then another time too actually, keep me away. Uh huh. Worst day of my life. They were wrong. I’ll tell you that. I had all this documentation and papers and things with me, and no one cared. That guy, he used words I didn’t even understand. And I remember he asked me a question, but I couldn’t even tell he was speaking to me so I didn’t answer. And then he got angry. The nerve. Worst day of my life. Remind me never to do that again, no way, no way. Keep me away. . . . You know since I really haven’t needed help. I’ve made it on my own, and I can avoid things like that. I can and I have, you see how it is? It’s not fun. Not fun at all.

I asked Candy whether she was in court or had to go to an administrative hearing, but she said she was not sure:

Hmm, you know, I don’t exactly know. All I know is there was a mean guy asking me questions, and they didn’t even let me finish. I think he was a judge. Uh huh, I’m pretty sure he was a judge. He wasn’t wearing those black robes though, but he seemed like a judge so I think it was a court for criminals.

The words “scary,” “confusing,” and “afraid” were used consistently when respondents described their experiences with administrative hearings or meetings to determine eligibility or other issues:

I walked in there and man, I was scared. It was all formal and I felt like my life, my earnings, were on the line. They were not nice. Not nice at all, in fact. I honestly found it very confusing.

Other respondents said:

Not many things make me afraid, but that sure did. I
remember taking the train over there, and my stomach hurt. Had no ideas what to expect. I knew it would be bad. And it was. Confusing right from the get go about where to go, and only got worse. I had to wait, wait wait and then it was over in a jiffy. No chance to even talk. Wouldn’t want to do that again.

—Monique

I was scared, real scared. I didn’t know how to act, what to say. I tried to look real sweet, actually.

—Alberta

Fear. Honest to goodness fear. That’s how I felt. Fear of what would happen. What they would say. They were tearing apart my life and I wasn’t even allowed to talk. To defend myself. Honey, let me tell you, it was no fun. Keep me away from all of that. Keep me away.

—Mya

One respondent, Lily, described a meeting she had with the principal and several teachers at her son’s school as a turning point for her:

I felt helpless for me and for my son. Like I was on the witness stand and it wasn’t even me in trouble. I knew they were out to get us even before I got there, and sure enough, that’s how they acted. They can have it, they can take it. I want him out of that school, first chance I get and he will be. I know why my son acts out, if they make him feel like shit like they made me feel like shit with their snotty ways. You know, I think that’s just how it is. It’s just how it is when these kinds of things. The government, well, the government it is better to stay away from. I’m looking into programs to help him get help, money help, going to private school.

The experiences of the respondents in this study and their feelings about public institutions are consistent with the work of Lipsky, who studies street-level bureaucracy. Lipsky notes that people who are unable to purchase services in the private sector must seek them from the government, and thus poor people often end up having significant interactions with street-level bureaucrats through a range of services and
experiences. Further, “the experience of seeking service through people-processing bureaucracies is perceived by enough people as dehumanizing that the phrase ‘human services’ is often understood as ironic by all but those who work under that label.”

For respondents in this study, inaction was far more appealing than subjecting themselves to the feelings of dehumanization they had experienced in the past when dealing with street-level bureaucracy.

Some respondents described actual court experiences, and they described feeling lost because they could not follow what was happening. They felt like outsiders attempting to navigate a new, complex world. There were a different set of norms and a new language in this world, and no one was there to explain it to them. One, Chris, said:

It’s so confusing! I didn’t know who my lawyer was and I couldn’t understand nothing he was saying. I couldn’t even hear the judge. The case was over and I didn’t even get to say anything—I don’t know why to this day! It’s messed up.

Another, Betty, said:

It’s weird because it’s way different than TV. You know I’m a Law and Order freak. But it’s weird. It’s not the same. . . . [Interviewer question: What are the differences?] . . . In the real court, I really didn’t understand what they were saying. You know when they are talking, I don’t know who is the lawyer, who is the defense. And the judge is way back there, you know? Just going in there everyone is sitting back there waiting to be called. It was chaotic but it also seemed scary.

Whether respondents had experiences with actual court hearings or public benefit hearings, the feelings they described were the same – confusion, fear, and shame. All of these experiences were lumped together as experiences with the law, and justice, and for most of the respondents, they were negative. So negative, in fact, that they did everything they could to avoid experiencing such feelings again. This included avoiding any and all interactions with “the law,” no matter how different their present situation and their past experience might appear to be to an outsider.

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81 Michael Lipsky, Street-Level Bureaucracy 11 (2010).
82 Id. at 27.
D. “I’ve Made It on My Own, I Don’t Need No Lawyers or Courts”: Self-Sufficient Narratives

As discussed above, for many respondents in this study, past experiences with public institutions were the same, in their mind, as experiences with courts, particularly criminal courts. In fact, many respondents believed they had experienced a criminal justice court when most likely, from their description, what they experienced was a public benefits hearing. In general, respondents grouped courts and lawyers with other public institutions, and involvement with such institutions signaled failure; it meant asking for help, something they had had to do at vulnerable times in their lives and hoped they could avoid. Involvement with such institutions also signaled that they were in trouble and/or in need, a situation they actively sought to avoid. Respondents were quick to relate asking for public benefits help with asking for help with their legal problems. As one respondent, George, said:

I hated going and filling out all that paperwork for disability. I really needed it, I could hardly get up, my back was that shot. I got it, but they made me feel dumb. I resoluted there and then I’d get back on me feet. And I did. I do things for myself. . . . So if my neighbors stole something from me, I would handle the situation. I would look them in the eye and let them know I knew, and my look would tell it all.

Another respondent, Cece, said:

I haven’t needed much assistance in years, actually. Actually, I like to do things myself, solve my own problems. It works out better and I feel better. It makes me better. No going back to those days. Unneeded. So yes, I would solve the problem myself. That’s how I roll. In fact, that’s what I did when I had a problem with my landlord, years ago.

Cece equated seeking out a lawyer with getting “assistance” and said she did not want to go back to those days. Cece’s quote begins to show a narrative shared by the majority of respondents: she solves problems herself and she does not want to ask for help. When she does have to ask for help, it means negativity and shame, and she fights against such experiences. Terry described a similar narrative and resistance to going back to “the dark days:”
Dark days. Welfare is dark days. I’m a worker now and I take care of myself. That’s my MOA, my MOA. I take care of myself and I try to do this in all circumstances. I learned my lesson about how that feels. Someone always in your business. So I say, you have a problem, you take care of it yourself however you have to. That’s my MOA. I would only seek out a lawyer if I was in real trouble, you know, my life was in danger, that kind of thing. It’s against my MOA.

Being able to avoid lawyers and courts was consistent with a narrative of staying out of trouble, and people who are involved with the justice system are “people who go wrong.” Another respondent, Antonia, said:

Well, the lawyers themselves aren’t the reason not to go talk to them. I mean they suck, but if you are charged with murder one, they are better than nothing. If I really needed a lawyer, I’d go talk to them. I just don’t need a lawyer never, really. I stay out of trouble and stay my own path. Who needs lawyers? People who go wrong. That’s not me. I’ve had my share of needing help and it sucked. I’m done with that. So if someone do you wrong, there are two ways to deal with it. One is needing help and one is not. You take care of yourself. I take care of myself.

Tanisha, a young mother of four, first spoke passionately about the injustices associated with “poor persons’ lawyers.” However, when she was asked whether she would have pursued a civil justice issue she had previously described if she could afford an expensive lawyer, her response was:

No, no. I must say I really just am a self-solver. I don’t seek out others to solve my problems for me. I solve them myself. When other people get involved, it’s bad news. Do it myself or don’t do it at all, that’s what I’ve learned over the years. That’s my wisdom, honey, my wisdom at play. . . . Let the rich have them lawyers.

Tanisha’s response raises another narrative that was shared by many respondents: they justified not seeking “help” with problems through a narrative of self-sufficiency. They also created moral boundaries between themselves and “the rich” who, they believe, overuse lawyers. Indeed, many
respondents echoed Tanisha, remarking that they were not interested in lawyers, even privately paid lawyers, and that “rich” people are too quick to seek out help from lawyers:

Eh, I think those rich people overuse lawyers anyway. I solve my own problems. Me, me, me. I don’t need no help. I’d rather do it myself.

This sentiment was repeated over and over again: “Some people are sue-happy. I’m not;” “They [rich people] can take their expensive lawyers and stuff it. My Mama taught me how to do things for myself.” Another respondent, Rick, said:

I think there are some people in America, I’m just saying, who have too much time on their hands. And too much money. And so they go and they hire these people to take care of every last problem of theirs. Every last problem. That’s not me. I would only do it if I really needed it, even if I was a millionaire. Put your money to something good. Don’t give it to lawyers. You know? That’s just me though.

Notably, all of the respondents were living in public housing, so they were indeed receiving government assistance. Many of them were receiving assistance from the Supplemental Nutrition Assistance Program (SNAP) (also commonly referred to as “food stamps”), disability payments from Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) (welfare), and other forms of assistance. When asked follow-up questions that sought determine how these forms of assistance fit into their self-sufficiency narratives, respondents often acknowledged such assistance but noted ways that they had moved beyond other forms of assistance (often TANF/welfare) they had previously received. Respondents made it clear that the goal was to need less help, not more, and that seeking legal assistance meant moving in the wrong direction:

Yeah, I do in fact get food stamps and housing assistance. You know my rent is very low. But let me tell you, I was in a homeless shelter. . . . [N]ow that was bad. I’m making it on my own. Those programs help but I’m making it on my own and I’m going to make it on my own. I work for what I got and work to move on. Keep on moving on and up.

—Tia
I have some programs in place, but I’m done. Signed, sealed and delivered. The last thing I need is more government in my life. More lawyers, more paperwork, more trouble. I stay in my own business, and let others stay in theirs.

—Betty

The help of a lawyer signaled a failure in self-sufficiency as well as entrance into an institution that could, and in many cases had already, invoked feelings of inadequacy. For these respondents, increasing the availability of legal services lawyers would do little to help them resolve their civil justice issues. The ability to avoid seeking help and the potential shame and fear that may come with it usually trumped the far-off seeming ability to have the civil justice issue resolved in a favorable way.

IV. RACIAL DIFFERENCES IN CIVIL JUSTICE PERCEPTIONS AND UTILIZATION

For the most part, black and white respondents had similar perceptions of the justice system and similar explanations for their use or avoidance of formal law when faced with civil justice issues. However, when it came to trust and corruption, the views of black and white respondents diverged. The differences in level of trust played a key role in black respondents’ conceptions of themselves as self-sufficient citizens, and in turn, their resistance to seeking help when they experienced a civil justice problem. This Part will first provide an overview of the research that has already been conducted on racial differences in trust. Subsequently, this Part will discuss the results of this study as they relate to trust.

A. Existing Research on Race and Trust

In 1985, David Lewis and Andrew Weigert bought important attention to the conception of trust in the social sciences and spurred a large line of trust research. J. David Lewis & Andrew Weigert, Trust as a Social Reality, 63 SOCIAL FORCES 967 (1985).

Since Lewis and Weigert’s article, social scientists have studied trust using a variety of methods and in a number of different dimensions.

As this Part will discuss further, trust levels was a key difference between black and white respondents.
Both political scientists and sociologists have studied trust and confidence in government institutions using quantitative methods. These studies often use a scale that assesses evaluative orientations towards the national government. Specifically, theorists have measured “trust in government,” “confidence,” “political cynicism,” “disaffection,” and “alienation.” Several political scientists have argued that institutional trust and trust in the political process are important because trust encourages political participation and discourages engagement in system-challenging behavior.

Many researchers have examined differences in trust of institutions by race. According to the political scientist Uslaner, “Race is the life experience that has the biggest impact on trust.” Research shows that blacks are significantly less likely to trust than whites, that the racial differences between these two groups are the starkest, and that the black-white gap in trust “cannot be accounted for by class differentials.” In contrast, it has been found that after controlling for education level, Hispanic-white differences in trust decline to insignificance. Thus, a large majority of research on racial differences in trust (including this study) focuses specifically on blacks and whites.

One study found that while 51% of whites reported that most people are untrustworthy, 81% of blacks reported that most people were untrustworthy. Additionally, blacks are more likely than whites to report that most people are unfair (61% of blacks felt that way, verses 32% of whites). Further, Uslaner found that blacks were less likely to report generalized trust compared to whites, by between nine and twenty-two percentage points. Finally, the Pew Research Center’s report on trust reports that 41% of whites report high trust, whereas just 20% of blacks did, and that just 32% of whites reported low trust, compared to 61% of blacks.

There are several theories that have been invoked to explain the

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86 See TOM TYLER, TRUST IN THE LAW 104 (2002).
87 TOM TYLER, TRUST IN THE LAW 104 (2002).
88 See Margaret Levi and Laura Stoker, Political Trust and Trustworthiness, 3 ANNUAL REVIEW OF POLITICAL SCIENCE 475 (2000).
89 Id.
92 Id. at 456.
94 USLANER, supra note 90.
black/white disparity in trust. One line of research focuses on neighborhood-based social processes. Extensive work has been done on why and how blacks have ended up living, disproportionately, in neighborhoods with high disorder rates. Neighborhood disorder, both social and physical, provides the structural roots for pervasive fear and distrust. Researchers have found that “to the extent that trust assumes specific racial hues, it is because the social factors and processes that create and maintain durable tangles of neighborhood inequality that are stratified by race—specifically, blacks are disproportionately exposed to neighborhoods and communities of concentrated disadvantage.”

Another key explanation for ethnoracial differences in trust is historical and contemporary experiences of discrimination. Orlando Patterson argues that “political influence and attendant gains lead to a realistic perception of political effectiveness, which reinforces generalized trust, political trust, and the tendency to be more politically active. The opposite set of linkages operate with persons from lower SES groups.” African Americans are most disadvantaged by these linkages, “a finding that is disturbingly predictable given the incentives to distrust built into the history of slavery, semifeudal sharecropping, segregation, and disenfranchisement.”

Indeed, research shows that blacks experience discrimination across a variety of institutional contexts. Notably, blacks are more likely than whites to experience biased treatment in the judicial system. Groups who are targeted for discrimination are more likely to perceive that they are

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98 Smith, supra note 91, at 460.


100 Id. at 11.

discriminated against across multiple institutional contexts. Thus, because of blacks’ perception that they are treated poorly and unfairly, they distrust. Tyler & Huo conducted several studies about perceptions of fairness and procedural justice. Among other findings, they found that blacks were more likely to perceive that the quality of decision-making and the quality of the treatment they received (in court) were poor, and that they were less likely to understand the actions taken by legal authorities in their cases.

There is also evidence to show that black parents are more likely to prepare their children for bias. Preparing children for bias “reflects parents’ efforts to inform their children about the extent and nature of discrimination faced by members of their in-group, as well as strategies to effectively cope with discriminatory treatment.” Further, parents who receive bias socialization as children are more likely to prepare their own children for bias, and are also more likely to promote racial mistrust towards out-group members. Additionally, parents who perceive that their children receive unfair treatment by adults or other children because of race are more likely to promote mistrust in their children.

In addition to the roots of mistrust, there has been significant research about the consequences of different trust levels, including several qualitative studies. Though research has shown that high-trusters risk being taken advantage of by the untrustworthy, there are many risks associated with being a low-truster as well. Most relevant to this study is that low-trusters are more likely to be cautious when dealing with others and are less likely to take risks. As Sandra Smith notes, the predisposition of being a low-truster “sets in motion a vicious cycle. It reduces their willingness to engage in social interactions that might result in more rewarding, cooperative relationships, which might also improve their ability to distinguish accurately between the trustworthy and the untrustworthy.

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102 Smith, supra note 91, at 458.
103 Id., at 458.
105 See, e.g., Smith, supra note 91, at 462.
106 Id.
108 Id.
109 See supra note 91 (and accompanying text) and infra notes 112, 113, 115, & 116 (and accompanying text).
110 Smith, supra note 91, at 468.
111 Id.
eventuating in an inclination to trust and cooperate."  

Several researchers have used qualitative methodology to study trust in the black community. Gerald Suttles has found that African Americans were the most likely among any of the ethnic groups he studied to distrust each other. He notes that they “remain the most estranged from one another. Anonymity and distrust are pervasive, and well-established peer groups are present only among the adolescents.” Additionally, Elijah Anderson argues that widespread distrust among the black poor, particularly those who live in neighborhoods of concentrated poverty, has led to individualistic approaches to handling conflicts and gaining respect that are based on violence and retribution. This, he argues, has contributed to the high rate of violent crime in these areas. 

Further, in Frank Furstenberg’s ethnography, he finds that distrust among poor African American neighbors led to individual approaches to child-rearing in poor black neighborhoods. He finds that the more “successful” parents in these neighborhoods were those who sought social and institutional support outside of the neighborhood and isolated themselves from neighbors, whom they felt would have detrimental effects on their children. However, less successful parents also socially isolated themselves, but did not seek support outside of the neighborhoods.” Generally, distrust among parents in the neighborhood led to isolation and to individualistic approaches to parenting.

Finally, Sandra Smith’s study of distrust in the context of employment is particularly useful for understanding the behavior of respondents in this study. Smith’s ethnographic study of one hundred and five African American men and women in Michigan found that job-seekers and job-holders in these neighborhoods hold a mutual distrust that thwarts cooperation and contributes to the pervasive unemployment problem among poor African Americans. Job-holders were reluctant to refer their friends and relatives to job openings, noting that the job-seekers in their networks were unmotivated and potentially irresponsible on the job. Thus, they were concerned that they would jeopardize their own reputations with employers if they referred these people to jobs. These job-holders ranted about the importance of self-reliance and individualism, thus justifying their resistance to help others.

114 Id.
116 Frank Furstenberg, Managing to Make It (1999).
117 SMITH, supra note 112, at 22.
Additionally, a substantial number of job-seekers were reluctant to ask for help in finding a job from job-holders in their network because they feared falling short of expectations or being maligned by their contacts for being jobless in the first place. As a way of justifying their resistance to seeking help, job-seekers also embraced the idea of individualism (what Smith terms defensive individualism), and they utilized much less effective job search methods in order to be independent. The discourses of personal responsibility, self-sufficiency and moral shortcomings that surrounded them, and their knowledge of the negative perceptions others had of their joblessness, made them reluctant to ask for help and also distrustful of both themselves and intermediaries.\textsuperscript{118}

My work builds on the work of this existing research by examining another context—the civil justice system and its utilization—in which trust is a significant factor. I show how differences in trust levels of blacks and whites ultimately lead to differential behavior when faced with civil justice problems.

\textit{B. Race, Trust, and Use of Civil Courts}

There were clear racial differences between respondent groups when asked about trust of courts. Out of the fifty-two white respondents, all but thirteen said that they ultimately trusted courts (75\% of the white respondents trusted courts). One respondent said, “Well, you gotta trust them. They are courts of law. They go back to Abraham Lincoln, George Washington, all that. There’s a lot riding on them. Where would we be without them?”

A few white respondents said that they did trust courts, but added qualifications to their statements. For example, one fifty year-old white female respondent said, “Well, they’re not always fair, but in the end I trust them. They do a good job, as good as they can.” Another twenty-eight year-old white female echoed, “Yes, they are not perfect, but I do trust them. What is not to trust?” A sixty-two year-old white male said, “Yeah, I trust them overall. There are mistakes that are going to be made, but in the long run I have a feeling that the way that is it set up is as fair as it possibly can be. Except with O.J. Simpson.” One forty-two year-old white female stated that overall she trusted courts, but “I don’t trust them for people with money. Sometimes it works. Sometimes the system works but then sometimes they buy their freedom.”

The white respondents who said that they did not trust courts tended to focus on specific experiences in the court system—either their own or

\textsuperscript{118} Id.
those of family or friends. For example, one woman said, “No, I don’t know. I don’t trust the legal system. I’ve seen my friends go through a lot of stuff and get smoked for no reason.” Another respondent, who had been in front of a judge himself several years prior said, “Hells no. Excuse my language, but no. I saw how things operate there. Complete chaos. Awful. No one knows anything. Definitely don’t trust it. I’d do a better job than anyone there.”

In contrast to the primary ethos of trust in courts among white respondents, only ten, or 22%, of the forty-five black respondents that I interviewed said that they trusted courts. Not only did far fewer blacks than whites say they trusted courts, but black respondents also responded to the question with a different overall thought process about trust from most of the white respondents. Most white respondents focused specifically on courts, talking about why they ultimately did or did not trust courts, often drawing on past experiences or things that they had heard. Most black respondents, however, focused on trust as a broader topic. In response to the direction question, “Do you trust courts?,” one black male respondent, Chuck, said, “You can’t trust nobody or nothing today. You don’t know who will do what to you.” Another black respondent, Michelle, a twenty year-old female, said, “I don’t trust anybody. I trust me and that’s it.” A third black respondent, Taylor, put it bluntly:

You can ask me if I trust courts, the police, damn ask me if I trust my husband. The answer will be the same. No no no. I’ve gotten burned too many times by too many people. I’m very careful. My guard is up all day, every day. I am careful.

Several of the black respondents were straightforward about the roots of their distrust. One fifty year-old black woman, Elsa, said:

My mother was a strong woman, and she taught us from the start that the only person or thing we could trust is ourselves. She’d tell us to be careful. We weren’t allowed to say hi and goodbye to people we didn’t know. She didn’t let us do a lot of stuff with groups if she didn’t know who ran the group. She instilled a lot of that in us.

Another black woman, Krysta, also describing how her mother taught her to only trust herself, noted:

Even when we were at people’s homes who we knew, we had to sit there and be quiet and not ask for nothing like food
or drink because my mother said you never know what they put in there. Be careful, be careful, be careful, that’s what she always said.

When black respondents talked about their childhood and what their parents taught them, most of them noted, with pride, that their parents taught them how to be “careful.” White respondents gave more varied responses, but memories such as one from Carl, a sixty-two year-old white male respondent, were not uncommon:

I grew up in an Irish neighborhood. . . Did I trust the people? Of course, I had to. They knew who I was. Everybody knew us. For the first twenty-five years of my life, I don’t think a door was locked. In the doorway I lived in Washington Elm, it was all families. I could tell you the names of the families to this day. If my mother wasn’t home, one of the ladies on the second floor would come and check on us. She didn’t do it because she was asked, she just did it.

Other white respondents talked about an overall philosophy encouraging trust, but noted, like Eileen, that “they [her parents] did say to be wary of strangers and not take candy from them, you know, the normal stuff.”

The contrast in answers between black and white respondents when asked about trust in courts held in answers about other institutions as well. Before asking about courts, I also asked respondents if they trusted the police and if they trusted their neighbors. For the most part, black respondents’ answers to these questions were similar to their responses about court: invoking broad answers about trust in general, stating, for example, “I only trust myself.” Natasha’s answer to the question about whether she trusted her neighbors was typical:

Ha! Sweetie you don’t trust your neighbors. You just don’t. Hell, I don’t trust everyone in my family, why would I trust my neighbors. There are Godly neighbors, sure, and in the words of God I respect my neighbors because He tells me to. But trust them. Nah. I know to watch out. Watch my back.

White respondents mostly focused on the institution in question, and answered by drawing on past experiences with the same institution or group. Trust, for most white respondents, was something specific to individual people, organizations, and institutions, and for the most part they
did not have a general policy about trust in the way that many black respondents did. For example, when Colin, a white respondent, was asked whether he trusted his neighbors, he said:

It depends, of course. Some are good people, some are not. Now the [stricken], they are good people. I’ve asked them to help me out a few times. When my car broke down, [stricken] even gave me a ride to work. Good people. That couple who moved in next door. They are shady. I’m guessing drugs. People in and out of their apartment at all hours. I don’t look them in the eye. Don’t want to get involved.

When respondents were asked whether they trusted the police, their responses similarly varied by race. Most of the black respondents answered with the blanket statement that they did not trust the police, often in the context of advice (to the interviewer) that it is best not to trust anyone. Chantell said,

Honey, you are young. Let me give you some advice. It’s advice I was given when I was young, and it’s good advice. Don’t you think that just because the police are authority, that they have power that you should trust them. It’s the opposite. You keep your guard up. You don’t look at them, you turn the other way, but don’t be obvious. You are white, I’m black, but it still holds. Even the black police are no good. People with power are on a power trip. People make the mistake of thinking those with power you can make an exception, that they are trustworthy. But they are not. In fact, they are worse than those without power. They are shady.

Another black respondent, Charise, connected the police, courts, and neighbors. After she had been asked about trusting all three, she noted:

You can keep asking, and keep asking. But I’m not gonna tell you I trust no one or nothing. I don’t. I trust me, I trust my Mom. I trust my sister. That’s it, uh huh, that’s it. Not even my other sister. Other people, they are out to screw you. You keep your guard up. I’m in fact showing my kids that now. I don’t even let them go out for Halloween. You never know. So I buy them some candy the next day when it’s on sale. Safer. And they can get what they want.
Racism

Concerns about racism certainly contributed to black respondents’ mistrust of the legal system and other institutions. However, it was difficult to calculate exact percentages of black and white respondents who had concerns about racism in the justice system. Respondents of both races gave nuanced responses specific to individual situations.\footnote{It is important to note that in the criminal court context, studies have documented that blacks are indeed more likely to receive biased treatment than whites. \textit{See} \textit{WESTERN, supra} note 22; \textit{COLE, supra} note 101. Additionally, there is documented historical racism in the judicial system. \textit{Id.}; \textit{KENNEDY, supra} note 1.}

Many black respondents who said that they believed racism is a problem in the court system noted that it really depended on the individual judge and the individual jury. As one forty-two year-old female African American interviewee, Rhonda, said:

> It’s mostly men in court. They are mostly older and they are mostly white men. So when they grew up, it [racism] was okay. But the judge my kids had was a black woman. And she fought for them. Everything I was trying to tell them, she told them. She was a single mom, and she had two sons at home.

Other black respondents also emphasized that though they believed there was certainly racism in the court system, circumstances mattered:

> There is indeed racism in courts. And everywhere. Because there are racist people. But judges, juries, no more than anyone else. Sometimes I’ll get a black judge this time. A Spanish judge the next time. The jury may be black. Or I may get a white peace keeper. So yes, there is racism, like anywhere else, but not always.

Another black respondent Mia stressed that she thought that unfairness in court outcomes was caused by access to money and power more than by race, a sentiment several other black and white respondents shared:

> I think that who has power or not changes things. People who don’t have access to power get brought to court. People who have really good lawyers, it helps them. I mean it’s also acts of power. I think access to power matters a lot. And I
don’t think about it in terms of race, but access to power. But it’s connected.

For some black respondents, the O.J. Simpson murder case was front and center to their belief that money, more than race, was a significant factor in court outcomes. Several respondents noted that they had watched hours upon hours of the Simpson trial and had concluded that he was guilty. This case, they said, was striking to them and the root of many of their beliefs about courts and fairness. One black respondent, Ella, said:

For a very long time I thought racism explained it. Explained it all with police and courts and all that jazz. But look at O.J. He got away with murder and look at the color of his skin. Black black black. And the lady was even white. But I’ll tell you what he does have. Money. So, yes race matters, but money matters more. Money can make race, black skin, go away. What do you do with that? I’m not even sure.

There were certainly other black respondents who believed racism was a significant problem in courts, and a reason to avoid the legal system. As one respondent, Thomas, said:

There is racism because it’s the government. The government is racist, and courts are government. Same with the police. I know I won’t get a fair chance because of the color of my skin. You hear about it all the time. All white juries stacking it against blacks. It’s there. It’s definitely there.

Another black respondent, Walter, in response to what he would like to change about courts, said:

The fact that us blacks are never going to have it fair. Because of the color of our skin. For us jail, for other not. That is not fair, not fair.

The answers of white respondents were similarly mixed when considering racism in courts. One respondent summed of the beliefs of many of the respondents:

So, in fact, I am sure there is racism, just like there is classism, and sexism, gayism. . . . There are laws that are
supposed to make things fair, but sometimes those laws don’t work in terms of people. It’s all about people, as you know.

Another said:

Of course there is racism. You think we’ve moved beyond that. You have your head, well it’s not screwed on straight. You’ll find it with some people, not others. It’s not just courts. I, for one, don’t have a racist bone in my body. But some people do. It’s always a concern.

Both black respondents and white respondents believed that there is some degree of racism in courts. However, unlike their responses about trust, black respondents were more nuanced when answering questions about racism. They noted that there was a chance they could end up with a black judge, for example. One respondent, Tia, said, “It is sort of racism, but it goes deeper. Even if the judge is black, the jury is black, there is still a problem. Don’t trust anything or anyone.” Concerns about racism certainly factored into their decision not to seek out formal legal help, but just as Sandra Smith found in her study of blacks and employment,120 many black respondents do not trust other black people. A generalized lack of trust, even more than concerns about racism, seemed front and center to their decision to try to ignore civil justice problems.

C. Race, Corruption, and Use of Courts

Consistent with their distrust of courts, black respondents were more likely than white respondents to believe that there is widespread corruption in court proceedings. Just over half of the black respondents talked about their suspicion that courts are corrupt, whereas only six white respondents expressed a similar sentiment.

Both black and white respondents believed that money could “buy” justice. However, for many respondents, the idea that money could buy justice focused on whether one could afford a high quality lawyer—one that could give a case adequate time and preparation—instead of a public defender, described by most respondents as “bad” lawyers without enough time or concern for cases. The focus on the sentiment that money could “buy” justice was on the lawyers and their ability (or lack thereof) to effectively argue a case.

120 SMITH, supra note 112.
The idea of corruption, however, was more extreme. The respondents who talked about corruption believed that money was being used to “buy off” various parties (lawyers, judges, and/or juries), and/or that the system was specifically and purposefully rigged against certain people (in most cases, poor people were discussed, in a few cases, racial minorities). As one black woman respondent, Charise, said:

I don’t like crack, I don’t like heroin. They do damage to yourself and family. The courts, they are the problem. These aren’t the people who brought in the drugs. Go after the big people. But the courts, then again you have to keep the drugs because that is big money, that is big business. Keep drugs, it keeps feeding the bigger people. So that’s what the judges do. They want money, so they just keep the drugs in for the big rich guys who pay them off.

Another black respondent was similarly suspicious of judges:

Never trust a judge. They are human, like everybody else. If they are not getting anything from it. If they are not getting a pay raise they would take money. You may think this is silly but it is true.

When asked an open-ended question about one thing they would change about the legal system if they could, several black respondents focused their answers on changing corruption within the courts:

You know what, I never thought, I think there should be more cameras in the courtroom. [Interviewer question: Tell me more about that.] Because I’m watching everyone. I don’t know if you paid off a juror. I’m watching the expressions. Who is looking at who? I want the cameras watching everything. There is a lot going on. Who is paying who? Who is paying this juror? You know you may see a lot of TV is about courtrooms and who paid this and this. And it’s fiction. But there is a basis of truth. I want cameras watching everything. Who is making deals? Who is up for election? Who is this client? Who is going to benefit? And a camera tells a lot.

Another respondent suggested:
Independent monitors. People there to monitor judges and juries and lawyers. There is a false sense that what goes on is fair, and just. But in fact, it’s the opposite. They are trying people for doing something wrong, but I’m telling you those monitors would find something in every single case. The judge sleeping with this juror, or that juror. The lawyers in bed together. You never know, but it’s severe. There is inbreeding. And how those jurors get picked. I’m telling you it’s no mistake. It’s no chance. I was informed I had to go to court once to be considered for a jury. I sat there the whole damned day, then I was told I wasn’t needed. It’s not a coincidence. I didn’t have anyone to be in bed with, so I wasn’t needed. Ha. It’s a joke. So independent monitors, that would be a good change. A good one.

Several black respondents discussed the O.J. Simpson murder trial in the context of corruption. One black male respondent, for example, said:

I think he [O.J.] killed his wife and that man. If he didn’t get off, a lot of blacks would have been upset and it might have caused a race riot. So they stopped that from happening. They probably paid off the jurors. . . . [Interviewer: Who paid off the jurors?] . . . The government. The judge, maybe? Who knows.

A thirty-five year-old black female respondent, Lauren, said:

Take the O.J. case. Now that was a conspiracy if I’ve ever seen one. . . . [Interviewer: Tell me more about that.] . . . Well, I’m just saying. Something happened there. I watched every minute I could of that trial. Riveting. And guilty as hell. Something happened. Only God knows why, but it was a conspiracy. I can tell you that much. I feel for that lady Nicole and her poor children.

A few white respondents believed that there was widespread corruption in courts, but the majority did not bring up corruption unless prompted. When asked about corruption towards the end of the interview, Melanie’s response was typical of white respondents:

Nah, not really corruption. That’s things you see on TV, like made-for-TV movies. Money can get you places, but it’s
more about time than anything else. The lawyer having time for you, giving you the time of day. I’ve definitely seen movies about that, though.

Chris, a white man, said it can occasionally happen, but it is more the exception than the rule:

I mean judges are men of the law. Oh, and women too. I don’t think there is actual corruption or shady stuff going on. It’s unintentional but there. It’s about having the money to buy a good lawyer. A really good one like those celebs get. But even public defenders, it’s not that they are corrupt—they are not, well, not the brightest. I think a lightbulb is missing for a lot of them. That’s why they went into this line of work. They are good people, just not, just not who you want to put your life on the line with because they are not all there, their minds.

These fundamental differences in perception of trust and of corruption lead to different behaviors when poor blacks and whites are faced with civil justice issues.

D. Civil Justice Utilization Differences: Black and White Respondents

The most striking difference between black and white respondents was the degree to which they trusted courts. These differing trust levels led to differing behavior when respondents were faced with civil justice issues. Both black and white respondents were resistant to seeking out help from the formal legal system, as discussed above. My findings indicate, however, that whites were more open than blacks to seeking out help in some specific circumstances, particularly when self-help measures failed and the consequences of ignoring a problem were significant. Indeed, we know from existing survey data that when poor people were experiencing a civil justice problem, 29% did, in fact, turn to the formal legal system for help.\[121\] This percentage is low, but still significant. While there has not been a study that has broken this data down by race, my study suggests it is likely that the 29% of poor survey respondents who sought out legal help were disproportionately white.

Because my sample did not contain a group of people who had all experienced a similar civil justice issue, I asked a series of hypothetical

\[121\] CONSORTIUM ON LEGAL SERVICES AND THE PUBLIC, supra note 2, at 11.
questions: asking respondents to imagine themselves experiencing various civil justice problems and asking what (if anything) they would do first, second, and so on, to deal with the issue. It is important to acknowledge the disadvantage of hypothetical questions: respondents had not actually experienced the situation, so how they predict they would act may not be how they would actually act. However, as one of many tools in the interview, hypothetical questions allowed me to look for patterns in responses of action or inaction to the same potential legal problem.

When I outlined the civil issue the respondent should imagine him or herself experiencing, I did not ask the respondent if he or she would go to court to solve the problem, but instead laid out the scenario and then asked, generally, “what would you do?” One scenario was the following: The respondent was renting an apartment and in the middle of winter the heat stopped working. The respondent had contacted the landlord several times over a period of about two weeks, but the landlord ignored many of his or her calls and once mentioned that space heaters work well. During this two-week period, Boston was having a cold spell and the temperature was below freezing.

Almost all of the respondents, both black and white, said that they would initially invoke self-help to try to solve the problem. One white female respondent, Mary, said:

No heat and a child? I’d take care of it on my own. I have resources and smarts to do that; I don’t think I would need to seek legal help. First I would call an oil delivery man. Tell him my case, and if he said there was nothing he could do, the delivery man, Then I’d ask 1-800-ASK-JOE. That is free oil. [Interviewer asks what she would do if it were not a lack of oil problem, but rather a broken heating system problem.] If the heat was actually broken, I’d call someone to fix it, and I’d tell them we needed it fixed, and so I can’t pay you, you’re going to have to go to the landlord. And I would tell him if you need help collecting from the landlord, I’ll help you.

Similarly, Gloria, a black respondent, said:

I would not want to bother with rocking the boat, it’s just not how I operate. I would try to reason with him more. You know, make him feel bad for me get to his core. I’m very persuasive, myself. And I’d let him know it’s his responsibility. His job. His job.
Mary, the white respondent, qualified her statement by saying, “If that [her self-help remedies] didn’t work, I would pay for it. I’d pay for it in installments and say I want receipts and then I would take the owner to court and I would sue him. I hate that idea, really I do, but sometimes you have to do what you have to do.”

Gloria, however, had a very different course of action in mind if her self-help remedy did not work:

So I’ll withhold my rent, try to find another place, take all my belongings and move out [instead of going to court]. And he can have his apartment. I deal with things myself. It is just how I was raised. My mother taught it. Take care of what you need to. It’s a strong background.

Out of the forty-six black respondents I interviewed, only four suggested that they might bring the landlord to court. Instead, the majority of black respondents said they would ultimately move out of the apartment if they could not convince the landlord to fix the heat; fix it themselves, as some who were handy suggested they would try; or use space heaters and “rack up a big ole’ electric bill I couldn’t pay, but I would some how find a way to deal with.” Al, one of the black male respondents I interviewed, put it this way:

I would move out. I won’t tell ya what I might do to the guy though. Or what my friends might do. I’m kidding. I’m kidding. But I’m not going to no court, no way. Might as well ask for a rights violation, the way those courts are.

Another black respondent, Harris, when talking about the possibility of going to court over a complex employment issue he had experienced said, “Why would I waste my time in court. You never know who is paying off who. I’ll just take care of it myself. Why risk it?” The theme of “risk” was present in almost half of all black respondent interviews when they talked about the possibility of going to court to resolve an issue. The theme of risk was often combined with the self-sufficiency narrative that many respondents also invoked to explain not wanting to seek formal legal help. When the interviewer followed up with Harris, asking “tell me more about the risk of going to court.” Harris said:

You can’t trust it will be what you put in for. I may go in to sue my boss and come out in jail. They’ll find something to
hold against me, to get me for. Lots of behind the scenes stuff going on, my boss might pay someone off, might be friends with the judge. You can’t be too careful. Better to handle things yourself, anyway. My boss is a powerful man. You can end up screwed, and I mean royally screwed, not just losing your case. My case will turn into something else, that I guarantee.

Misty, a black woman, felt similar to Harris, as did many other black respondents. When talking about her decision to simply ignore a pressing civil justice problem, in her case a housing issue, Misty said, “It’s too big a risk making contact with the law. You never know what will happen, and you can’t trust it. I am someone who handles things myself. I don’t need the help, and I don’t want to risk the help.”

This finding is consistent with Sandra’s Smith finding of “defensive individualism” among African American job-seekers when it came to asking for help when finding a job, as discussed in Section IV.A. The findings in this Article suggest that this defensive individualism may be more pervasive and affect other aspects of help-seeking behaviors. The generalized distrust black respondents talked about when justifying their lack of action when it comes to civil justice problems may stem partly from defensive individualism. In the same way job-seekers were reluctant to seek help because of a fear of how they were viewed by others, and thus used individualism as a means of justifying this reluctance to seek help, black respondents in this study may have been concerned with how lawyers and other officials viewed the problems they had. Thus, a generalized identity of distrust and individualism may have been, in part, a way to avoid judgment and potential embarrassment when seeking help.

The white respondents in this study were more mixed than the black respondents about the potential to bring an issue to court. Out of the fifty-two white respondents I interviewed, when posed with the hypothetical question about the landlord who would not fix the heat, twenty-one (40%) said they would at least consider seeking legal advice or trying to bring the landlord to court. Only four of the twenty-one who said they would consider seeking legal advice said that they would immediately seek the advice of a lawyer—the remaining seventeen, like Mary (above), said they would only seek formal legal help after self-help measures failed. As Christine, another white respondent, put it, “With all my heart and all my soul I would avoid law. I always do with every problem I have. I am a selfer, a selfer with problems. But if it were freezing and I couldn’t afford to move, I might

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122 See supra note 112 and accompanying text.
have to call and find out what my options were. My legal options. I did something like this once before when I wasn’t getting my disability check for weeks on end. I do have rights and if I have to, I go after them.”

The percentages of each racial group that said they would seek formal legal help in the hypothetical landlord situation (9% of black respondents and 40% of white respondents) were consistent with the number of respondents who reported having sought legal advice in a (non-hypothetical) civil justice situation. Roughly 35% of white respondents had done so at some point in their lives, whereas only about 10% of black respondents had ever sought out formal legal help (for a civil justice issue).¹²³

An important question was what differentiated respondents of either race who either had, or were willing to, seek out formal legal help from those who did not? The major difference between respondents in my study, of both races, was whether they knew of, or had experienced, a positive example of the legal system. One black respondent who had sought out help from legal aid to potentially take action against a past landlord said:

Well see my sister, my sister had gone and gotten herself a lawyer when she was about to be evicted. Bless that lawyer’s soul. She worked so hard for my sister. I think those legal aid lawyers, they work hard for you, as long as you are a good person. My sister, she a good person. So am I. So I knew I would be taken care of. And I was.

A white respondent who said she would consider seeking legal help if self-help did not work said, “[M]y friend Trish, she actually did see one of those Harvard student lawyers. They were real nice, apparently. The hospital put her in touch, believe it or not. And they worked things out for her, believe it or not. So maybe they would for me. I would try them first.” While respondents were not specifically asked if they had family members or friends with positive experiences with the justice system, all four of the black respondents who had previously sought out legal help noted in their interviews that they had had family members or friends who had told them about positive experiences with the justice system. Three of the respondents specifically said that those stories had contributed to their decision to seek out help in their own situation. Out of the eighteen white respondents who had sought help from the legal system, eleven related positive experiences of family or friends as a contributing factor to seeking out help.

¹²³ These statistics do not include people who were sued by another party and then sought the advice of a lawyer for their defense. My focus was on people taking action to address a civil justice problem they were experiencing.
V. POLICY CONSIDERATIONS

The potential policy implications from this study are significant. By understanding the underlying mechanisms that contribute to the poor’s inaction on civil justice issues, we can better design policies that promote resolution but also fit the needs and desires of those experiencing civil justice situations. While a complete policy agenda is beyond the scope of this Article, there are several areas that may be beneficial to explore. As discussed infra in Part II.B, this study provides important grounding for further representative studies of disparities in racial and socioeconomic civil justice utilization and experimental studies of potential policy interventions.

Based on the findings, I offer policy hypotheses worthy of further consideration and study. First, the findings suggest that innovative programs aimed at resolving civil justice issues outside of the formal legal system may be beneficial to poor and minority communities. Allocating additional funding for programs that provide aid for self-help measures, for example, may be just as important an investment in poor and minority communities as increased funding for legal aid offices. Programs that play to the strengths of these communities, in particular their desire for self-sufficiency and self-help, may be effective in allowing problems to resolve without cascading into larger problems with undesirable consequences.

An important concern about such programs, however, is that self-help solutions might target the most capable of poor populations, and the neediest, those unable to read, those who do not have the tools to fill out paperwork and follow through, will be left without help. Most research is needed on how self-help programs are used by and affect a range of potential “clients.”

Current research is just beginning to shed light on specific civil justice problems for which a lawyer makes a difference in outcome, and those that, at least based on early empirical study, may allow for similar or even better outcomes when self-help in legal proceedings is used instead of a lawyer.124 Much more knowledge is needed, but a starting point that might help to increase the effectiveness of self-help strategies is tackling the unnecessary complexity of many civil justice laws and procedures. There have been calls for reform in specific areas of civil law, but the procedure

for change is slow and met with resistance (often by lawyers). However, a renewed push for simplifying laws in order to make the legal system more accessible would benefit the respondents in this study. The Department of Justice’s relatively new Access to Justice unit may be a good catalyst for such a campaign, though in many cases changes would need to be made state-by-state, issue-by-issue.

**Community Advice Corps**

Taking into concern that self-help programs may leave the neediest of the poor without help or the potential for help, I propose a program that would provide legal advice and assistance through trusted community institutions. Such a program could be called the “Community Advice Corps,” rather than Legal Aid. The name “Legal Aid” may invoke strong negative feelings for poor and minority individuals, particularly because for many of them, the word “Legal” is associated with negative experiences with, and perceptions of, the criminal justice system. The name Community Advice Corps would serve to “delegalize” the perception of help for civil justice issues, and make the process of seeking help feel less formal.

The respondents in this study grouped lawyers and the law in with other public institutions they did not trust and viewed as their adversaries. Thus, the Community Advice Corps would house legal services in community churches, for example, which could offer times (perhaps right after services) that lawyers would be available in recreation rooms for questions/advice (and potential referrals). Additionally, for some respondents, schools were seen as adversarial, but for others, they were seen as one of the few community institutions that helped their family. Perhaps a model of “community schools,” which was suggested as part of the “Human Renewal” programs of the 1960s in New Haven, Connecticut and other cities, could be reintroduced under different circumstances and with somewhat different ideals. The idea at the time was to increase the role of schools in the community and to make them not only places children received an education, but also resource centers for parents.\(^\text{125}\) Using that model as an example, schools could host clinics meant to provide parents with legal (and other social service advice), or they could in fact have community rooms devoted, full time, to providing such services. Other community organizations and buildings, such as those that host Head Start and job corps programs, could be considered as well. This type of program may not even require additional lawyers to be hired – Legal Aid offices could devote one of two lawyers to rotate between alternative locations. At

\(^{125}\) Opening Opportunities, New Haven’s Comprehensive Program for Community Progress 12 (1962).
the present time, Legal Aid offices do almost no outreach because they are already turning away so many clients. The concern the data in this Article raises, however, is that some of the most vulnerable potential clients are not even reaching out and making the first call to go through the intake procedure. Based on the data in this study, a program such as the Community Advice Corps might help to reach these populations—people like Tonya, who knew her landlord was violating the law but had no intention of even calling to determine what kind of formal legal help might be available to her.

VI. CONCLUSION

This study is the first, to my knowledge, to systematically study and document the confusion and connection between civil and criminal law among the poor. Indeed, it is not entirely surprising that the criminal justice system is at the forefront of the minds of the poor when they think about the law, courts, and lawyers, given that data tells us that they have a much higher rate of interaction with the criminal justice system compared to people of higher socioeconomic levels. Additionally, television tends to focus on the criminal justice system, whether through dramatic shows like Law and Order or around-the-clock coverage of real-life criminal trials.

Existing research suggests that poor people are less likely to seek help when they experience a civil justice problem than are higher income people, but there is little existing empirical research that explains this inclination towards inaction. Much of the existing scholarly work on access to justice focuses on the need to increase the availability and scope of legal services for the poor. The findings in this study, however, suggest that even if the breadth and depth of legal services were expanded, inaction would likely still be a common response to civil legal problems by the poor. By invoking sociological methods and theory, my work provides insights into the “why” of inaction, underlying explanations that may aid policy makers in designing programs to address this inaction. Indeed, my findings uncover the need to potentially expand the breadth of policy interventions aimed at increasing access to civil justice.

Respondents’ accounts revealed that they do not neatly compartmentalize civil justice situations as non-criminal in nature, as would be in line with most academic scholarship. Instead, respondents group seeking out civil justice help in the same category as seeking help from or

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126 See infra Introduction.
127 See WESTERN, supra note 22.
128 Supra note 28.
129 Id.
being involved with a variety of other public institutions. Their perceptions of the criminal justice system, and past experiences with courts and hearings that they perceived to be criminal in nature, led them to resist seeking help. Embedded in their rationale for inaction was a widespread misperception about the justice system—that in order to get help from a lawyer for a civil justice problem, they would need to seek out help from a public defender. Most respondents had little or no knowledge about the differences between the civil and criminal justice systems. They had primarily negative perceptions of the criminal justice system, some of them in fact referring to free lawyers, or public defenders, as “public pretenders.” Respondents had negative perceptions of public defenders, often based on the experiences of family members or friends.

The race findings of this study are consistent with the work of other social scientists, showing that blacks trust at a significantly lower rate than whites. For many of the black respondents, the word “trust” invoked a generalized negative response, deeply rooted in their upbringing. Most black respondents distrusted courts, and many of them believed that the legal system is corrupt, with various actors paying each other off and intentionally misapplying the law. For some black respondents, this distrust was connected to racism, but for many it was part of a broader concept of believing that one should only trust oneself (or oneself and very close allies), and that part of protecting oneself is to be suspicious of most everyone (and everything) else. Distrusting courts was not just about the potential for a negative outcome due to their race, but also about their own lack of power and the belief that others, no matter their race (or position), could not be trusted to act in accordance with the law.

Several white respondents also ultimately distrusted courts, but they tended to draw on their own personal experiences specific to courts, or those of their friends or relatives, to conclude that courts should not be trusted. Black respondents were more likely to connect their distrust of courts and other institutions to their self-sufficient narrative. They learned not to trust others, and part of embracing this lesson was to view themselves as self-sufficient citizens who could not and did not need to trust others for help.

Ultimately, the data from this study reveal that in order to begin to tackle the problem of access to civil justice, policy makers must consider the interactions of poor and minority communities with other public institutions, particularly the criminal justice system. At a time when community/police relations are particularly tense, but also the media and policymakers are focusing on these relationships, the conversation is ripe to include broader concerns about access to all types of justice, including civil justice.
APPENDIX A – CIVIL JUSTICE SURVEY
Has anyone in your household in the past 5 years experienced any of the following?

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<tr>
<th>Personal Finances/Consumer</th>
<th>YES</th>
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<tbody>
<tr>
<td>Problems with Creditors</td>
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<tr>
<td>Problems related to insurance</td>
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<td>Problems obtaining credit</td>
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<td>Tax Problems</td>
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<td>Bankruptcy-related problems</td>
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<td>Problems related to contracts</td>
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<td>Consumer fraud</td>
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<td>Problems collecting on a debt</td>
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<td>Problems with a landlord</td>
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<td>Problems with utilities</td>
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<td>Housing Discrimination</td>
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<td>Real estate ownership problems</td>
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<td>Problems with tenants</td>
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<td>Mobile home/park problems</td>
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<td>Environmental health hazards</td>
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<td>State intervention in family</td>
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<td><strong>Employment Related</strong></td>
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<td>Discrimination in hiring</td>
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<td>Problems with compensation</td>
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<td>Discrimination on the job</td>
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<td>Workers’ comp &amp; unemployment</td>
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<td>Charged with causing injury</td>
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<td><strong>Health/Health Care-related</strong></td>
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