

Procedural Fairness and Effective Court Practices in Small Claims Cases

Study overview

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Small claims courts were created to resolve civil disputes involving relatively small amounts of money without the challenges posed by conventional court procedures or the cost to litigants of hiring an attorney to represent them. In contrast to other types of civil litigation, small claims court involves informal procedures as well as relaxed rules and standards of evidence. Litigants are not allowed to employ an attorney to represent them in court – although they may consult an attorney prior to their hearing – and judicial officers often take a more active role in questioning and engaging directly with litigants during what is usually a single, brief hearing.

Even before the recent surge in the number of self-represented litigants in other civil case types, litigants in small claims cases took on the primary responsibility for filing, preparing, and presenting their cases in court. And in recognition of the challenges that this can present, the California state judiciary has sought to assist these self-represented litigants by simplifying court forms, developing web sites to provide information useful to the preparation of small claims cases, as well as creating self help centers, whose staff include legal advisors who may provide legal information and guidance at no charge.

The Study of Procedural Fairness and Effective Court Practices in Small Claims examines the experiences of litigants in small claims cases. In part the study was designed to be descriptive because very little is known about the details of small claims litigants: the types of cases they bring to court, the legal knowledge and resources that they have, or the challenges they encounter. In addition, the study seeks to understand how the experiences these litigants report affect their perceptions of the court. To the extent that self-represented litigants in other types of civil cases encounter challenges similar to those of parties in small claims cases, this study may provide insight into how courts can assist self-represented litigants more generally.

This is the first of four summary reports on this study and focuses on the background characteristics of small claims litigants: their age, race and ethnicity, gender, educational background, income, the types of disputes in which they are engaged, and previous experience that they may have had in small claims court. Subsequent reports on this study will cover the sources and types of information that litigants seek in preparing their cases, the challenges that they encounter in preparing their cases and representing themselves in court, and the links between these experiences and perceptions of court fairness and performance.

The findings reported below are drawn from telephone interviews of over 900 litigants in small claims cases in three large, urban courts in northern California. A detailed description of the methodology employed in the study can be found in the appendix of this report. It is important to note at the outset that detailed data on small claims litigants are not generally collected or analyzed on a regular basis. As a result, it is impossible to say whether the sample is representative of the demographic characteristics of small claims litigants in these courts or in California more generally. However, the size of the sample should allow us to make generalizations regarding perceptions of procedural fairness and the influence of different factors on those perceptions that we report on in subsequent *DataPoints*.

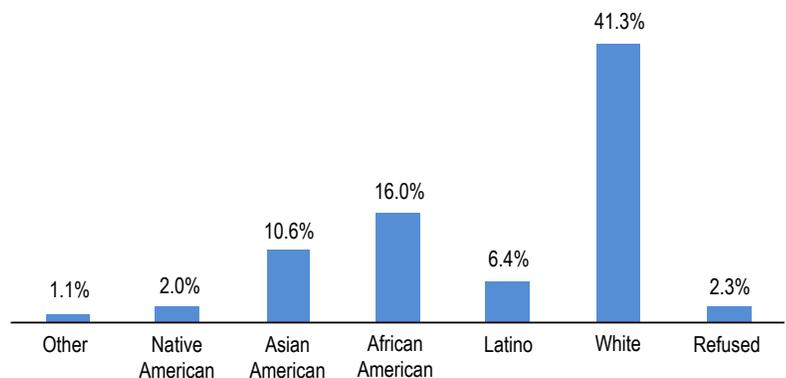
BACKGROUND CHARACTERISTICS OF LITIGANTS

Ethnic group background: Small claims courts in the three counties studied appear to serve a diverse community. The composition of the English Language sample, however, is somewhat different from the racial/ethnic makeup of the counties from which the sample was drawn. Self reports of group membership among the English language litigants participating in this study show that African Americans are overrepresented while Asians and Latinos are underrepresented.

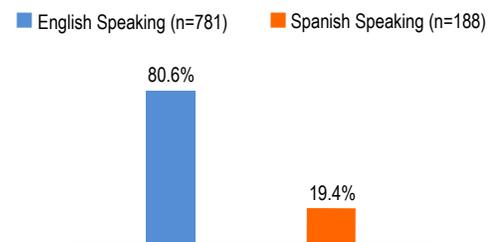
African Americans make up almost 10 percent of the population of the three counties from which the sample was drawn but comprise 16 percent of the English language sample. In contrast, Asians make up almost one quarter of the population of the counties while accounting for only one-tenth of the sample. Latinos represent approximately 20 percent of these counties' populations but are only six percent of the English language sample.¹

In addition to the English Language sample, a separate sample of Spanish Language speaking participants in small claims cases was drawn to capture information on the challenges facing non-English speaking litigants. Although we find differences across groups in the pool of English-language respondents, frequently those differences are minor compared to the differences between the English language sample and the sample of Spanish speaking litigants.

RACE / ETHNICITY OF ENGLISH SPEAKING SMALL CLAIMS LITIGANTS (n=781)



ENGLISH AND SPANISH SPEAKING LITIGANTS (n=969)



Educational background: The educational backgrounds of English and Spanish speaking litigants in the study are quite different. English speaking litigants in the sample are better educated on average, with over 50 percent indicating they are college graduates and a sizeable fraction within this group having earned graduate or professional degrees. Among Spanish speaking litigants 30 percent report not having finished high school and another 38 percent report that their formal education ended with a

¹ US Bureau of the Census, Quick Facts: <http://quickfacts.census.gov/qfd/states/06000.html>

high school diploma. It is important to note that limited education by itself may create serious difficulties in reading and understanding court forms and paperwork regardless of the primary language of the litigant. Problems of this kind are likely to be greatly compounded for less well educated litigants who are not fluent in English.

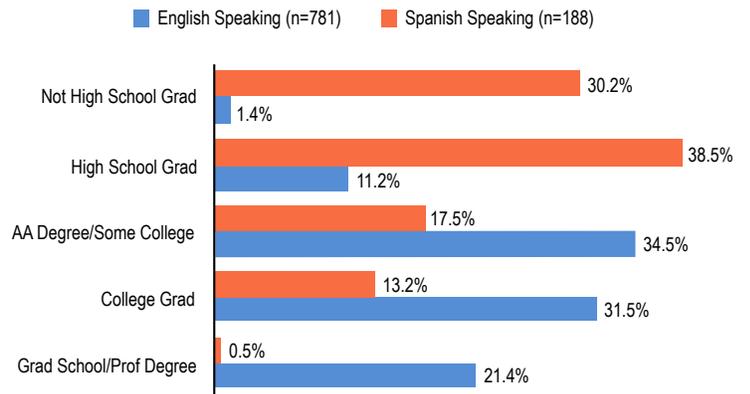
Among different groups within the English language sample, education levels varied mostly in the upper range of educational attainment. For example, about one quarter of Asian and white litigants had graduate degrees while only 17 percent of African Americans and less than five percent of Latino litigants possessed graduate degrees.

In addition to the lower rates of college and graduate education among Latinos in the English language sample, higher percentages of Latinos did not complete high school or ended their formal education with a high school degree. Nonetheless, the English speaking Latinos still show considerably higher levels of educational attainment than the Latinos in the Spanish language sample.

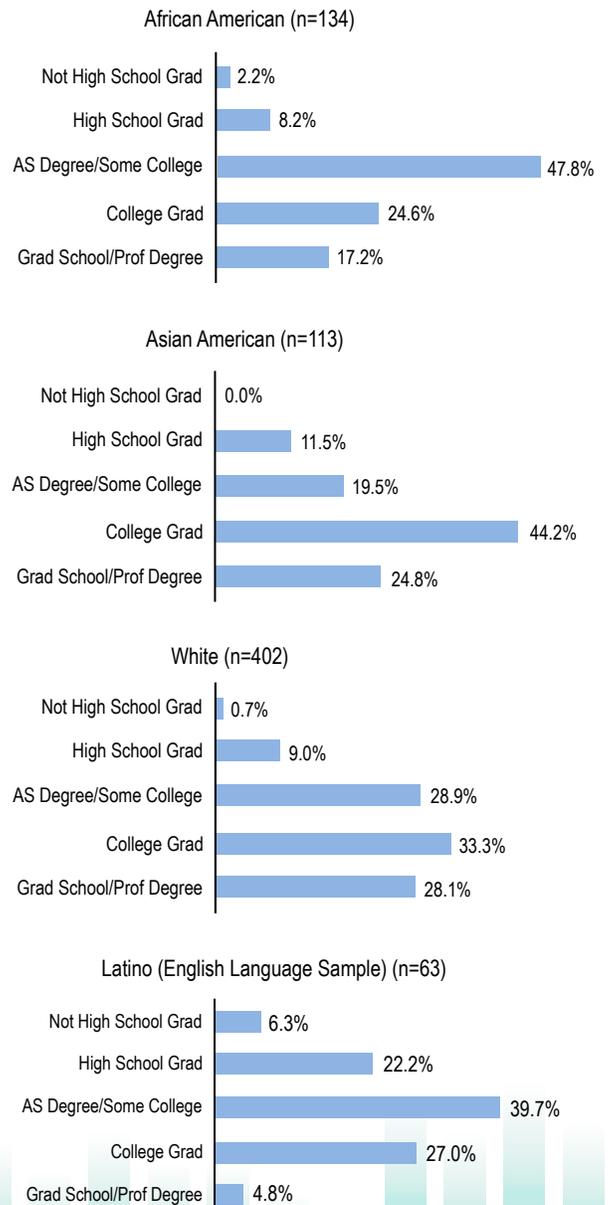
Household income: Because of the close correlation between income and education, it is not surprising to see that income levels follow the same pattern as educational differences just noted: Spanish speakers reported household incomes well below those of their English speaking counterparts. More than 75 percent of litigants from English speaking households reported average annual income greater than \$30,000 with more than 40 percent of the sample reporting average annual income greater than \$60,000. In contrast, more than 60 percent of Spanish speaking litigants in the sample reported average annual income below \$30,000 with just over 10 percent reporting annual incomes greater than \$60,000.

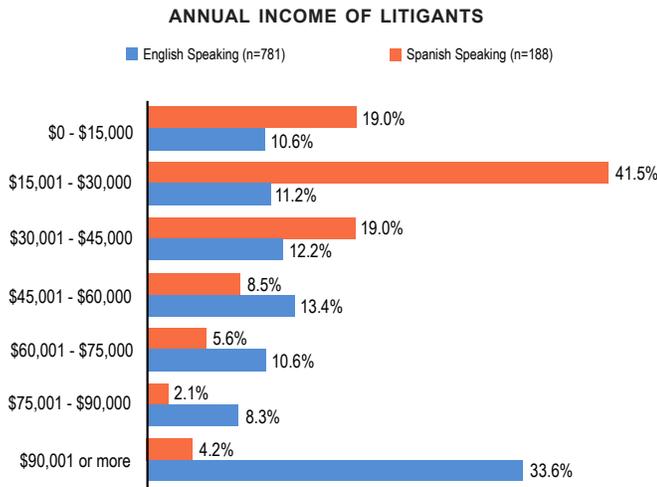
As with the differences in education, the differences in annual income are much greater between the Spanish language and English language samples than they are across groups within the English language sample.

EDUCATIONAL BACKGROUND OF ALL LITIGANTS



EDUCATIONAL BACKGROUND OF ENGLISH SPEAKING LITIGANTS



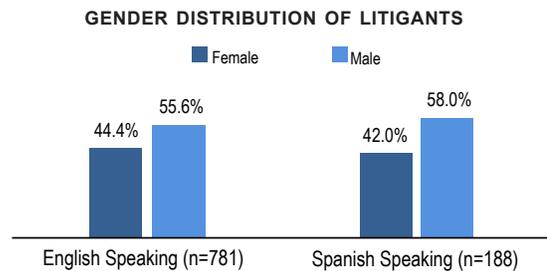


The limited resources available to many of the Spanish language speaking litigants may pose additional challenges entirely apart from the language barrier. Poorer litigants may have jobs that are less flexible and make it more difficult to take time off from work, they may find it more difficult to arrange transportation to the courthouse during the preparation phase of their cases and on court hearing dates, and may struggle to secure child care if small children are present in the household. All of these challenges are likely to increase proportionally if multiple appearances are required for the preparation and presentation of the case.

Age range: Both English and Spanish speaking litigants in the sample vary widely in age. English speaking litigants are somewhat more evenly represented across the entire age range of 18 to 89 years, with about half indicating that they are 50 or older.

Spanish speaking litigants report ages ranging from 20 to 83 years. Members of this group are younger by 5 years on average than the English speaking sample with over 70 percent of Spanish speakers younger than 50.

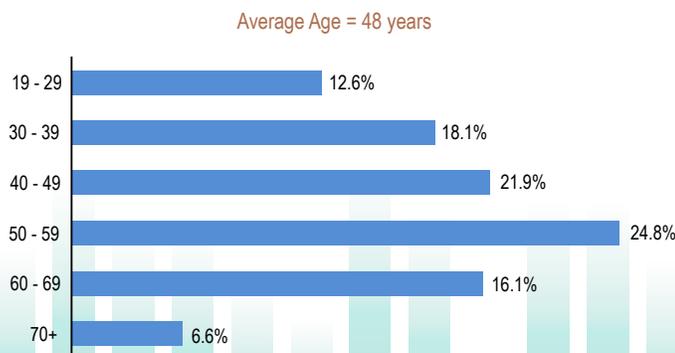
Gender distribution: Female and male litigants are well represented in both the English and Spanish language samples although male litigants are the majority in both groups.



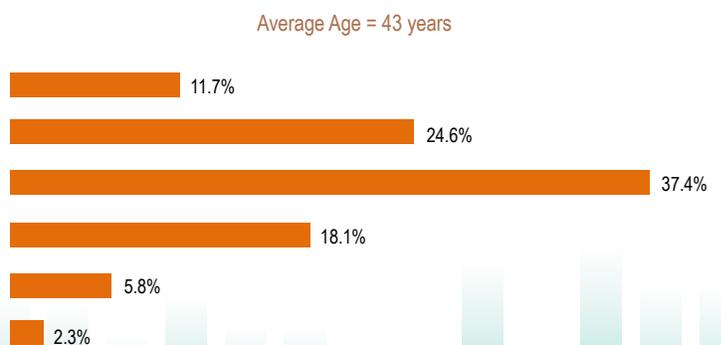
Prior experience in small claims cases: The majority of the respondents participating in this study indicate that they have had no prior experience in small claims cases. Over 55 percent of the sample of English speaking litigants indicated that they have not previously participated in a small claims case and over 75 percent of the Spanish speaking litigants indicated that they have no prior experience.

Lack of prior experience in small claims may have a number of important implications for litigants. For example, it may increase their difficulty identifying the type of dispute in which they are involved, make it harder to identify and collect relevant evidence and more generally prepare their cases for court, or even understand the specific requirements of effective participation

AGE DISTRIBUTION OF ENGLISH-SPEAKING LITIGANTS (n=759)



AGE DISTRIBUTION OF SPANISH-SPEAKING LITIGANTS (n=171)



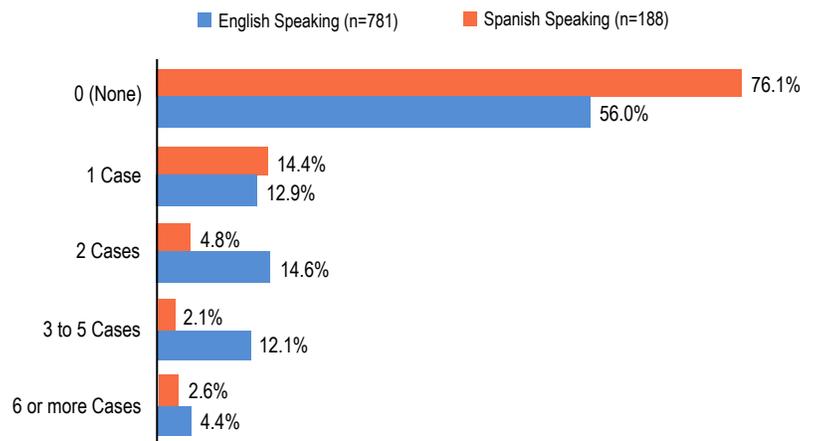
in the courtroom hearing.² Court hearings in small claims tend to be relatively fast-paced, with the average hearing length reported to last about twenty minutes. The hearing tends to be highly interactive, often requiring brief statements of fact and explanation by litigants, as well as focused responses to the judicial officer's questions as he or she works toward identifying the type of dispute that is in play and the legal facts that are relevant to the dispute.

Prior to the hearing litigants will need to have prepared their evidence and argument in ways that reflect the nature of these hearings and the speed with which they tend to unfold. In brief cases like these physical evidence and other forms of documentation need to be focused on the legal points at issue if the judicial officer is to have time to fully review this information.³ We would expect case preparation to present an even greater challenge for inexperienced litigants who are not fluent in English.

Case types: Small claims litigants report being involved in a wide variety of different types of cases and the principal case types reported by English and Spanish language speaking litigants were similar. For English speaking litigants, landlord/tenant disputes, collection of debt, and breach of contract cases were the most common. For Spanish speaking litigants, collection of debt, breach of contract, and auto repair disputes were the most common.

A large proportion of the litigants in both samples, however, chose not to fit their dispute into one of the pre-defined categories. This result had not been anticipated because the twelve case types that were included in the interview protocol were developed in consultation with small claims experts and are thought to compose a large majority of the cases heard in small claims courtrooms in California.

PRIOR PARTICIPATION IN SMALL CLAIMS CASES



Subsequent review of the open ended responses provided by litigants who selected “other case type” indicated that most fell within the existing categories in the interview protocol. Often the dispute was described using a more general term or in a longer sentence or phrase that may have had more narrative appeal to litigants. For example, a common legal dispute found in the other category was “auto accident,” which might be specified as “property damage,” “personal injury” or both. In other instances, litigants using the “other case type” category indicated that their opponent “did not pay me” which suggests a dispute involving either the “collection of a debt” or “breach of contract.”

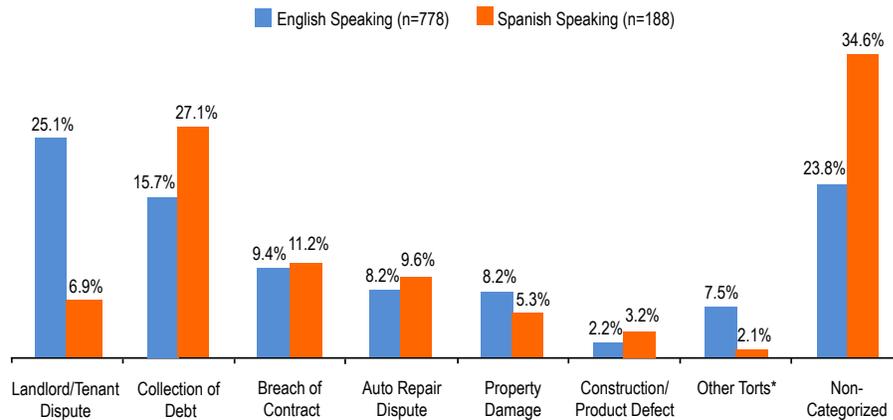
The large percentage of litigants who chose not to use one of the pre-defined categories may reveal yet another challenge for small claims litigants. These litigants may not have a clear sense of the legal characteristics of the dispute in which they are involved.

Regardless of whether the litigant speaks English or Spanish, being able to identify the type of dispute has important implications for how to prepare the case, the type of evidence that is relevant and the arguments that should be made.

² See Moorhead, R. & Sefton, M. (2005). Litigants in person: Unrepresented litigants in first instance proceedings. Research report prepared for the Department for Constitutional Affairs, Cardiff University, London.

³ According to one judicial officer interviewed in preparation for this study, litigants appear to understand the demands of small claims cases only after they have been involved with three or more cases. One piece of data that supports this assertion is that litigants with more prior experience in small claims cases were more likely to be able to identify the type of legal disputes they were involved in (see the discussion below on case types).

CASE TYPES IN WHICH LITIGANTS WERE INVOLVED



* Other torts include: personal injury, defamation, professional negligence and malpractice, and breach of warranty

SUMMARY

The background characteristics of litigants participating in this study suggest that small claims courts are serving Californians from most major ethnic and socioeconomic groups. The litigants in the sample also vary widely in terms of their ages, educational levels, and household incomes, with male and female respondents represented in relatively similar numbers in the study sample.

Among the English speaking sample, however, it appears that the racial/ethnic makeup of small claims litigants differs in some important ways from the general population of the counties from which the sample was drawn: Asians and Latinos are substantially underrepresented while African Americans are somewhat overrepresented. The levels of education and income of the litigants in the English language sample also appear to skew toward a better-educated, higher-income population than the populations of the counties from which the sample was drawn.

Because the sample was not selected entirely at random, we should be somewhat cautious in interpreting the demographic makeup of the sample. That said, the education and income levels of the sample do suggest that lower-income, less-educated Californians from these communities are bringing cases to small-claims court in numbers lower than we would expect.

When we compare the English and Spanish language samples, it appears that the Spanish language speakers face substantially greater challenges in bringing their cases to court even apart from the language barrier. On average, Spanish language speakers reported lower levels of education, lower incomes, and less prior experience in small claims court.

Regardless of language, lack of prior experience in small claims court may pose a number of important challenges for litigants. Less experienced litigants may have more difficulty identifying the legal dispute they are involved in, may have a more limited understanding of the requirements for preparing a case for court, and may lack the knowledge and experience to effectively present their cases.

Many parties to small claims cases in the study appear unable to identify their legal disputes with much specificity. This may have important implications for the effectiveness with which these litigants prepare their cases including identifying and gathering pertinent evidence, as well as for the arguments they will need to develop and make in court.

In the next report in this series we review the sources of information that litigants rely on when initiating and

preparing their cases, as well as the types of difficulty they report when filling out court forms and other paperwork. That report will also review the levels of access litigants report having to different forms of legal assistance, and their ratings of the usefulness of this assistance. Subsequent reports will look at litigants' experiences preparing and presenting their cases as well as their perceptions of court fairness and performance.

APPENDIX: Research Design & Methods

This research project employed both qualitative and quantitative methods.

Survey development: Interviews were conducted with small claims court staff and judicial officers, as well as legal advisors in court-sponsored self-help centers to identify issues that were thought critical to the challenges self-represented litigants face when bringing their small claims cases to court. Some limited courtroom observation of small claims cases was also undertaken. This preliminary work was used to develop focus group questions and interview protocols in English and Spanish.

English and Spanish language focus groups were convened with litigants who had recently been involved in a small claims case. The focus groups were conducted in English and Spanish, with the Spanish language interviews including only Latino litigants who were not fluent in English.

The findings from the focus groups as well as the interviews with court staff, small claims judicial officers, and other small claims experts were used to develop survey questions and an interview protocol in English. The questions and protocol were intended to gather information on the litigants' legal dispute including their efforts to prepare and present their cases and their perceptions of court fairness and performance.

This interview protocol was field tested and revised, with the Spanish language version then developed to parallel

the form and content of the English language protocol. The Spanish language protocol was then field tested, and both survey instruments were finalized.

Surveys were then undertaken through phone interviews across Alameda, Sacramento, and San Francisco counties using the protocol just described. The survey sample was drawn from lists of recent small claims litigants provided by participating courts. Over 960 English and Spanish speaking respondents were interviewed during this phase of the study.

The survey data was then reviewed, cleaned, and prepared for analysis. Because the sample was intentionally drawn to include sufficient numbers of certain types of litigants for analysis – e.g., those whose case was contested – weights were developed for the English language sample so that the findings do not over-represent certain groups relative to their actual proportions in the population of small claims litigants. The characteristics that required weighting are shown in the table on page 8.

After the survey data had been initially analyzed preliminary findings were shared with judicial officers and legal advisors to assist with the interpretation of the findings. Additional interviews were conducted along with observations of courtroom hearings at this time.

Sampling: The sampling methodology used to select the litigants interviewed by phone in this study concentrated on parties who were appearing as individuals or as owners of small businesses, and whose cases had reached a final decision.

The English speaking sample was balanced on litigant and case characteristics described below. Because court records do not provide information regarding the race, ethnicity or other demographic and socioeconomic characteristics of litigants, it was not possible to use these factors in the sampling of respondents. However, additional effort was invested in interviewing a relatively large group of Spanish speaking litigants to help us better understand the experiences and challenges that litigants may encounter when they are not fluent in English.

The target sample of English speaking litigants is shown in the first column of the table below followed by the actual sample's characteristics in the second column.

The survey sample was designed to ensure adequate representation of litigants with a variety of small claims experiences including: plaintiffs and defendants; winners and losers; cases that were contested and uncontested, and; the court jurisdiction in which cases were heard. A little over 79% of the English speaking litigants invited to participate in the survey agreed to do so and completed their interviews.

To ensure adequate representation of non-English language speaking litigants, a random sample of Spanish

speaking litigants was developed from existing small claims case lists. Latino respondents who might exclusively speak Spanish were initially identified through the use of US Census defined list of Latino/Hispanic names.

Interviewers who were fluent in Spanish and English then contacted a random sample of litigants with these surnames and whose cases had reached a final judgment to invite them to participate in the study. For those members of this group who were identified as being fluent only in Spanish, an invitation was extended to participate in the study. A little over 86% of those Spanish speaking litigants invited to participate in interviews agreed to do so and completed their interviews.

FULL SAMPLING FRAME AND ACTUAL SAMPLE CHARACTERISTICS

Full Sampling Frame of Individual Litigants	Actual Sample Characteristics
Plaintiffs = 50.7%; Defendants= 49.3%	Plaintiffs = 53.2%; Defendants= 46.8%
Winners = 46.2%; Losers = 53.8%	Winners = 52.0%; Losers = 48.0%
Contested = 63.5%; Uncontested =36.5%	Contested = 76.2%; Uncontested =23.8%
Litigant by Court: Alameda=39.7%; Sacramento = 40.5%, San Francisco = 19.9%	Litigant by Court: Alameda=34.0%; Sacramento = 33.5%, San Francisco = 32.5%

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