Reaching for Justice with Pro Se Litigants: 
Featuring Original Interviews with Judges

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Introduction

Popular articles, academic publications, and legal journals indicate that judges face growing pro se representation in courts across the United States. In 2010, the ABA Coalition for Justice released its “Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts.” The nation-wide survey revealed (1) an increase in pro se representation and (2) an agreement amongst judges that pro se representation causes worse outcomes for the unrepresented litigants. Drawing on opinions from 986 judges on the impact of pro se representation on outcome, 62% (611 judges) opined that pro se parties are negatively impacted, 37% (365 judges) indicated that outcomes are the same, and a mere 1% (10 judges) thought pro se parties are positively impacted. When asked how parties are negatively impacted, judges indicated that “parties are hurt by failure to present necessary evidence, suffer procedural errors, are ineffective when examining witnesses, and fail to properly object to evidence.”

Academic and legal journals publish frequently on the “rise of the pro se problem,” the struggles and limitations that pro se litigants face, and the various proposals to “solve” the problem. Oftentimes, academic articles draw information from general surveys and observations

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3 Id. at 3 (“The judges were asked if they had seen a change in representation in their courts in 2009 civil matters. Sixty percent (60%) of the judges stated that fewer parties were being represented.”).
4 Id. (“The judges were asked how the lack of representation impacts the parties. While 37% said there was no impact, and 3% said that outcomes were better, 62% of all judges said that outcomes are worse.”).
5 Id. at 10-11.
6 Id. at 11.
7 See, e.g., Jona Goldschmidt, The Pro Se Litigant’s Struggle for Access to Justice: Meeting the Challenge of Bench and Bar Resistance, 40 FAM. CT. REV. 36, 36 (2002) (“Just as the growth of pro se litigation is a challenge for the courts, so, too, is the bench and bar’s resistance to pro assistance programs and policies a challenge to court reformers seeking to improve access to justice.”); Beverly W. Snukals & Glen H. Sturtevant, Jr., Pro Se Litigation: Best Practices From a Judge’s Perspective, 42 U. RICH. L. REV. 93 (2007) (offering “ways the legislature, judiciary,
This paper offers a fresh perspective. It presents the thoughts and opinions of five current and former judges who sit or have sat in federal and state courts, spanning from housing and probate, to juvenile courts.

This paper is directed at two audiences—judges and pro se litigants—and investigates (1) why litigants proceed pro se; (2) what judges find to be the greatest struggle in the interplay between judges and pro se litigants; (3) how judges view and act when facing pro se litigants; and (4) the difficulties that arise when a pro se litigant faces a represented litigant. Preceding this central discussion, this paper offers as background: the history of representation in American litigation, the judicial rules binding clerks and judges, and judicial views of pro se litigants from literature. Following the primary investigation, this paper speaks directly to pro se litigants.

Part I reviews the history of representation in American litigation, beginning with the constitutional foundations for pro se representation, followed by the evolution of representation and the current challenges facing pro se litigants today.

Part II provides a summary of judicial rules for serving pro se litigants that guide clerks and judges.

Part III offers judicial views of and interactions with pro se litigants, culled from literature and original interviews with state and federal judges sitting in courts of limited and general jurisdiction. Directed at pro se litigants, Part IV offers information about resources available to pro se litigants including mediation, pro

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8 See, e.g., Richard W. Painter, Pro Se Litigation in Times of Financial Hardship—A Legal Crisis and Its Solutions, 45 FAM. L.Q. 45 (2011); Landsman, supra note 1, at 440-47.
9 See discussion infra Part III.b.
10 See discussion infra Parts I.c, III.a, III.b.
11 See discussion infra Parts I, II, III.a.
12 See discussion infra Part IV, V, VI.
13 See discussion infra Part I.
14 See discussion infra Part II.
15 See discussion infra Part III.
se clinics, unbundled legal services, and Internet-based information services. Part VI concludes.

I. History of Pro Se Representation in American Litigation

Legal representation in American litigation is elemental to the adversarial nature of the American judiciary.18 The Judiciary Act of 1789, when “establish[ing] the Judicial Courts of the United States,”19 in the same breath declared, “[t]hat in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law. . . .”20 Thus, in federal courts, this statute established both the right of self-representation and representation by counsel.21 Similarly, in state courts, the various states granted defendants the right to represent themselves in criminal cases through state constitutions and state court decisions supporting the right through the U.S. Constitution.22

a. Constitutional Foundations for Pro Se Representation

The Constitution guarantees the right of pro se representation.23 While the Sixth Amendment famously and explicitly protects the right to a speedy and public trial, the right to an impartial jury, the right to confrontation, and the right to assistance of counsel, it does not

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16 See discussion infra Part IV.
17 See discussion infra Part V.
18 See infra text and accompanying notes 19-22.
19 1 Stat. 73, 73.
20 1 Stat. 73, 92 (“And be it further enacted, That in all courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein.”).
21 Id.
22 Faretta v. Cal., 422 U.S. 806, 813-14 (1975) (“With few exceptions, each of the several States also accords a defendant the right to represent himself in any criminal case. The constitutions of 36 States explicitly confer that right. Moreover, many state courts have expressed the view that the right is also supported by the Constitution of the United States.”).
23 Id. at 819 (“The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. . . . Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—is thus necessarily implied by the structure of the Amendment.”); see U.S. CONST. amend VI.
explicitly declare the right of pro se representation. Nevertheless, *Faretta v. California* makes clear that “the right of self-representation—to make one’s own defense personally—is . . . necessarily implied by the structure of the Amendment.”

*Faretta* grounds the right in the logical interpretation of the Sixth Amendment and the Sixth Amendment’s roots in English history and American colonial legal history. Justice Stewart explained that the rights guaranteed in the Sixth Amendment are granted to the accused, not to the counsel of the accused. Just as the Amendment guarantees that the *accused* “be informed of the nature and cause of the accusation,” that the accused “be confronted with the witnesses against him,” and that the accused “have compulsory process for obtaining witnesses in his favor,” the Amendment therefore must give “the right to defend . . . directly to the accused; for it is he who suffers the consequences if the defense fails.”

Justice Stewart supported this logic with a review of British jurisprudence. He observed that “[a]t one time, every litigant was required to appear before the court in his own person and conduct his own cause in his own words.” Even as English legal procedure evolved to eventually permit court appointment of counsel, the accused retained the traditional right of self-representation, the right “to make what statements he liked.”

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24 See U.S. CONST. amend VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence [sic]”).

25 422 U.S. 806 (1975).

26 Id. at 819.

27 See infra text accompanying notes 28-35.


29 Id.

30 Id.

31 Id.

32 Id. at 823 (quoting 1 F. POLLAND & F. MAITLAND, THE HISTORY OF ENGLISH LAW 211 (2d ed. 1909)) (internal quotations omitted).

jurisprudence also protected a right of self-representation.\textsuperscript{34} As manifested in colonial charters and declarations of rights, the “Founders believed that self-representation was a basic right of a free people.”\textsuperscript{35}

b. **Evolution of Legal Representation and the Challenges Facing the Pro Se Litigant in the Modern Legal System**

The right to self-representation possesses strong roots in English and American history.\textsuperscript{36} Indeed, in the early days of the British courts, self-representation was much more common than representation by counsel.\textsuperscript{37} Through the sixteenth and seventeenth centuries, the assistance of counsel was specifically forbidden in felony and treason cases.\textsuperscript{38} The Treason Act of 1695, which marked the beginning of Britain’s reform to its criminal procedure rules, explicitly granted the defendant a right to counsel.\textsuperscript{39} It also gave the court the power to appoint counsel, but only if the defendant agreed.\textsuperscript{40} Over time, the ban on the assistance of counsel for felons began to gradually deteriorate in courts, and by 1836, it was finally lifted by statute.\textsuperscript{41} Nevertheless, self-representation remained common, and the right to an attorney was “viewed as guaranteeing a choice between representation by counsel and the traditional practice of self-representation.”\textsuperscript{42}

Colonial America had a similar—perhaps even stronger—belief in the right of self-representation.\textsuperscript{43} In early colonial days, “the right to counsel was clearly thought to supplement the primary right of the accused to defend himself.”\textsuperscript{44} From the country’s early days, the right to

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\textsuperscript{34}See infra text accompanying note 35.
\textsuperscript{35}Faretta, 422 U.S. at 830 n.39.
\textsuperscript{36}Id. at 821-32.
\textsuperscript{37}Faretta, 422 U.S. at 823-25.
\textsuperscript{38}Id. at 823-24.
\textsuperscript{39}Id.
\textsuperscript{40}Id. at 825.
\textsuperscript{41}Id.
\textsuperscript{42}Id.
\textsuperscript{43}Id.
\textsuperscript{44}Faretta v. Cal., 422 U.S. 806, 829-30 (1975).
\end{flushright}
self-representation has been respected and even prominent due to its English roots, a distrust of attorneys, and a commitment to the American ideals of self-reliance and equality.\textsuperscript{45} The right was embodied in multiple state constitutions and, as noted above, in the 1789 Judiciary Act.\textsuperscript{46} Thus, the right to self-representation has remained a fundamental aspect of the American legal system for centuries.

c. **Current Status: Abundance of Pro Se Litigants**

While the right to represent oneself has existed since the foundation of our republic, state and federal courts have seen a dramatic rise in the number of pro se litigants over the last several decades, particularly in housing and family courts.\textsuperscript{47} One study of federal courts determined that 37\% of all cases included at least one pro se party, and that the number of pro se litigants in federal appeals courts increased by 49\% over a two-year period in the mid-1990’s.\textsuperscript{48} From 2011 to 2012, federal appeals involving pro se litigants rose 7\%, to a total of 29,075 appeals involving pro se litigants in 2012.\textsuperscript{49} These self-represented litigants accounted for 51\% of appeals in U.S. Appeals Courts in 2012.\textsuperscript{50}

State courts similarly face high rates of self-represented parties, particularly in family and housing courts.\textsuperscript{51} Housing, probate, and consumer law courts typically face the highest number of pro se litigants.\textsuperscript{52} While clear data is harder to come by for state courts, some studies suggest that 80-90\% of family or domestic relations law cases have at least one self-represented

\textsuperscript{45} Id at 826; Drew Swank, *The Pro Se Phenomenon*, 19 BYU J. PUB. L. 373, 374 (2005).
\textsuperscript{46} *Faretta*, 422 U.S. at 832.
\textsuperscript{48} Swank, *supra* note 45, at 377.
\textsuperscript{50} Id.
\textsuperscript{51} See *infra* text accompanying notes 52-59.
\textsuperscript{52} Engler, *supra* note 47, at 2019-20.
litigant.\textsuperscript{53} Researchers estimate that in at least one third of all cases, a pro se litigant must face a represented litigant.\textsuperscript{54} Several states offer illustrative examples of the increase in pro se litigation over the last half-century.\textsuperscript{55} In California, for example, only 1\% of litigants in divorce cases in 1971 proceeded without an attorney.\textsuperscript{56} The rate surged to 47\% by 1985, and stood at nearly 75\% by the 2000’s.\textsuperscript{57} In Colorado’s domestic relations courts, the proportion of pro se litigants increased from 52.2\% to 55.7\% from 1997-1999.\textsuperscript{58} The recent economic recession only intensified the problem, as it led to additional numbers of pro se litigants in housing, family, and consumer courts.\textsuperscript{59}

What accounts for the rise in pro se litigants? Academics and lawyers highlight numerous causes, but foremost among them is the increasingly high cost of lawyers and litigation.\textsuperscript{60} Several factors account for the rising cost of representation, particularly for individual plaintiffs.\textsuperscript{61} First, over time, attorney have devoted an increasingly large share of their time to businesses, at the expense of individuals; in 1967, 55\% of lawyer time was devoted to individuals (and 39\% to businesses), but by 1995, attorneys devoted 64\% of their time to businesses, and only 29\% to individuals.\textsuperscript{62} Additionally, contingency fees have been reduced in numerous states through caps on pain and suffering, which reduces incentives for attorneys to take on cases in certain areas,

\textsuperscript{53} Swank, \emph{supra} note 45, at 376.
\textsuperscript{54} \textit{Id.} at 377.
\textsuperscript{55} \textit{See infra} text accompanying notes 56-59.
\textsuperscript{56} Swank, \emph{supra} note 45, at 376.
\textsuperscript{57} \textit{Id.} at 376.
\textsuperscript{58} VanWormer, \emph{supra} note 47, at 991.
\textsuperscript{59} Terry Carter, \textit{Judges Say Litigants Are Increasingly Going Pro Se—At Their Own Peril}, ABA \textsc{Journal} (July 12, 2010), http://www.abajournal.com/news/article/judges_say_litigants_increasingly_going_pro_se--at_their_own_/.
\textsuperscript{60} Landsman, \emph{supra} note 1, at 443-44.
\textsuperscript{61} \textit{See infra} text accompanying 62-64.
\textsuperscript{62} Landsman, \emph{supra} note 1, at 444.
particularly medical malpractice. Research indicates that 80% of poor people and 60% of the middle class are unable to get the legal assistance they need.

Beyond finances, several other factors have led to the rise in pro se litigation. Many pro se litigants chose to forgo representation even if they can afford it. Researchers speculate that this may be due to America’s “do it yourself” culture and the availability of information on the internet. Other explanations may be a prevailing “anti-lawyer sentiment,” and “the breakdown of family and religious institutions that formerly resolved many disputes that are now presented to courts instead.”

Unfortunately, the rise in the number of pro se litigants has coincided with an increasingly difficult legal landscape for self-represented parties. In the past sixty years, legal services “have become more of a necessity and less of a luxury when compared to the past.” Federal and state legislatures have enacted complicated evidentiary and procedural rules that may be difficult for a pro se litigant to follow. As laws and regulations have become increasingly numerous and complex, lawyers have become more specialized, and thus litigants increasingly must hire counsel with specialized knowledge to achieve their desired results.

The bankruptcy courts offer an illustrative example of the current situation. Until the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 passed, litigants could

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63 Id.
64 Id.
65 Id.
66 Id. at 445-46.
67 Id. at 445-46.
68 Id. at 37 (2002).
69 Swank, supra note 45, at 377.
70 Swank, supra note 45, at 377 (quoting Tiffany Buxton, Foreign Solutions to the U.S. Pro Se Problem, 34 CASE W. RES. J. INT’L’L. 103, 111 (2002)).
71 See, e.g., FED. R. EVID; FED. R. CIV. P.
72 Goldschmidt, supra note 7, at 36.
73 Help Offered For Pro Se Filers and Bankruptcy Courts, UNITED STATES COURTS (Dec. 2007), http://www.uscourts.gov/News/TheThirdBranch/07-12-01/Help_Offered_for_Pro_Se_Filers_and_Bankruptcy_Courts.aspx
navigate a bankruptcy filing without assistance of counsel. The new act, with “its many technical requirements . . . [is] really a minefield for pro se filers,” Bankruptcy Judge S. Martin Teel, Jr. (D.D.C.) noted. Despite the act’s complexities, the number of pro se litigants actually increased after its enactment. Chief Bankruptcy Judge Judith Wizmur (D.N.J.) speculated that the increase may have occurred because “attorneys who dabbled in bankruptcy filings were driven out of the field, deterred by the complexities and the greater impositions the law placed on attorneys.” This dual effect increased pressure on the courts, who responded by releasing online guides for pro se litigants and hiring additional clerks.

This difficult situation—in which laws have become increasingly complex and the number of self-represented litigants continues to increase—has led many to refer to the high rates of pro se litigants as the “pro se crisis.”

d. Effects of the Pro Se Crisis

The abundance of pro se litigants in the legal system presents numerous problems: it causes delays in the already-overburdened judicial system, threatens the judge’s neutrality, and disadvantages pro se litigants.

Pro se litigants, unfamiliar with court procedures and often inadequately prepared for trial, frequently cause delays in the court system. Unrepresented litigants are “more likely to neglect time limits, miss court deadlines, . . . have problems understanding and applying

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74 Id.
75 Id.
76 Id.
77 Id.
78 Id.
79 Id.
81 Id. at 307-08.
procedural and substantive law pertaining to their claim,” and to file unneeded motions. Pro se litigants demand more time from court staff than represented parties. All of these factors may contribute to overloaded dockets and additional delays in the court system.

Additionally, judges may struggle to remain neutral when confronted with a pro se litigant, particularly if he is facing a represented party. A judge must seek to attain a just verdict while ensuring that he does not provide the unrepresented litigant with legal advice or too much assistance. In a recent ABA survey, forty-two percent of state trial judges indicated that a court may be forced to “compromise its impartiality to avoid injustice” when managing a pro se litigant’s case.

The decision to try a case without representation may negatively affect trial outcomes for that party. Pro se litigants may fail to present necessary evidence or to object to the opposing party’s evidence. They may have an ineffective cross-examination of witnesses or fail to make proper legal arguments. All of these issues, combined with an inadequate grasp of procedural rules, can negatively affect a pro se litigant’s trial outcome. According to the ABA survey, sixty-two percent of trial judges said that “lack of effective representation” negatively affects trial outcomes. Additionally, a pro se litigant may be forced to negotiate with an experienced

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82 Id. at 306-07 (quoting Tiffany Buxton, Foreign Solutions to the U.S. Pro Se Phenomenon, 34 CASE W. RES. J. INT’L L. 103, 114 (2002)).
83 Painter, supra note 8, at 46.
84 Adams, supra note 80, at 306.
85 Id.
86 Id.
87 Id.
88 Id. at 46.
89 Id.
90 Id.
91 Id.
attorney, and feel compelled to agree to an unfair or hasty settlement out of a desire to avoid trial.\footnote{Adams, supra note 80, at 312-13.}

Studies suggest that pro se litigants may emerge from their courtroom experience with feelings of frustration, unfairness, and distrust of the legal system.\footnote{Landsman, supra note 1, at 451} Litigants may suffer from heightened expectations and be surprised by procedural matters that they did not anticipate; they also proceed without the “reality” check a seasoned attorney may provide in terms of expectations. This dissatisfaction, combined with the fact that most pro se litigants do not plan to have repeated interactions with court personal, can even lead to volatile, emotional, or even violent litigants.\footnote{Id.}

II. Judicial Rules for Pro Se Litigants

Rules binding the clerks and judges when facing pro se litigants are general and advisory.\footnote{See infra text and accompanying notes 99-121.} Clerks may not give legal advice.\footnote{See infra text and accompanying notes 100-101.} However, considering the ambiguous definition of “legal advice,” this prohibition, while still restrictive, is flexible in the day-to-day interactions between clerks and pro se litigants.\footnote{See infra text and accompanying notes 101-105.} Judges exercise individual discretion and flexibility in their conduct with pro se litigants.\footnote{See infra text and accompanying notes 111-121.}

a. Rules for Clerks

Clerks are functionaries who assist the court by processing paperwork and directing litigants.\footnote{Interview with The Hon. Jeffrey M. Winik, Associate Justice, City of Boston Hous. Court, in Bos., Mass. (Apr. 9, 2013) [hereinafter Winik Interview].} The primary binding rule for clerks working with pro se litigants is that “clerks may
not give legal advice.”100 Yet, behind this simple rule lurks ambiguity, as clerks may struggle to determine exactly what constitutes “legal advice.”101 The lack of clarity behind the instruction becomes even more important when one considers that the clerk’s office is often “the first line” for a pro se litigant.102 For example, a pro se litigant may appear at the courthouse unsure of what forms he needs, or the legal terms for his issue.103 The clerks’ office must listen to the pro se litigant’s explanation and determine what forms or steps can best help him achieve his goals. Some jurisdictions allow clerks to assist the pro se litigant in the “‘routine’ filling out of forms,” while others prohibit clerks from completing the forms themselves.104 A clerk may struggle to help the pro se litigant feel that his needs have been met while resisting the urge to provide him with legal guidance.105

Clerks and pro se litigants sometimes have an antagonistic relationship.106 Studies have shown that clerks may display “bias and hostility” towards pro se litigants.107 Similarly, a pro se litigant may take his frustrations or anxieties out on the clerk, behaving in a manner that he would not in front of or to a judge.108 Complicating the relationship is the fact that the interactions between clerks and unrepresented litigants often occur when the judge is not present.109 A judge will thus have difficulty managing this relationship from afar.110

100 Engler, supra note 47, at 2012 (“The primary restriction on the ability of the clerks to provide information is that clerks may not give legal advice.”).
101 Id. at 1994 (“[O]ne clerk’s candid assessment resonates from jurisdiction to jurisdiction: ‘We have been told here . . . not to give ‘legal advice’ but I have never heard this term defined so I do struggle with what to tell [pro se litigants] . . . because sometimes this can be a fine line.’”).
102 Interview with The Hon. Katherine A. Field, Associate Justice, Bristol Probate and Family Court, in Wellesley, Mass. (Apr. 6, 2013) [hereinafter Field Interview].
103 Id.
105 Id.
106 Id. at 1997-98.
107 Id.
108 Field Interview, supra note 102.
109 Id.
c. **Rules for Judges**

The fundamental rule binding judges when facing pro se litigants is the same when judges face all litigants: judges must be impartial and fair. Judges are not advocates.

Judges in both federal and state court exercise individual discretion and flexibility in their conduct with pro se litigants. This is not to say that judges are completely at liberty and unbound by rules. Various judges pointed to guidelines that have written on the topic. For federal trial judges, the Federal Trial Handbook: Civil offers a short section titled, “dealing with the pro se litigant.” However, most of the section merely reminds the judge of the “substantial discretion” that the court is afforded. State judges reference similar handbooks and guidelines. Another source of potential authority is from the chief judge or chief justice of the bench. However, at both the state and federal level, many judges are left to their own discretion because chief judges do not emphasize rules surrounding pro se litigation.

The 2007 ABA model code recognizes the complex balance that judges must strike with pro se litigants in its comments accompanying Rule 2.2: “It is not a violation of this rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.”

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110 Id.
111 Winik Interview.
112 Engler, supra note 47, at 2012 (“Judges must remain impartial and neutral. Judges should be fair and provide substantial justice.”).
114 See infra text accompanying notes 115-120.
117 Id.
118 Winik Interview, supra note 99.
119 Young Interview, supra note 115.
120 Id.
III. Judicial Views of and Interactions with Pro Se Litigants

Legal scholarship offers both critical and defensive reports on the role of judges when working with pro se litigants.\textsuperscript{122} Interviews with current and past judges shed additional light on the judicial role.

a. From Literature

Much has been written on the role of judges and the courts when working with pro se litigants.\textsuperscript{123} Some reports are critical;\textsuperscript{124} some are defensive.\textsuperscript{125} Many offer insights and potential solutions to the pro se crisis.\textsuperscript{126}

Critics of the role of judges in pro se litigation argue that "pro se litigants have a right to receive — and judges have an obligation to provide — reasonable judicial assistance."\textsuperscript{127} Proposals for reform in this camp call for explicit rules granting judges clear authority to provide assistance to pro se litigants.\textsuperscript{128} Such assistance might include "extensive questioning,\textsuperscript{129} calling crucial witnesses,\textsuperscript{130} and even "conduct[ing] . . . investigations [on its own] and gather[ing] evidence for the record.\textsuperscript{131} Acknowledging that this clashes with the "traditionally passive role of the adversarial judge," supporters argue that this assistance presents "only a modest

\textsuperscript{122} See infra text and accompanying notes 127-137.
\textsuperscript{123} See infra text and accompanying notes 127-139.
\textsuperscript{124} Goldschmidt, supra note 7.
\textsuperscript{125} Swank, supra note 113.
\textsuperscript{126} Snukals & Sturtevant, supra note 7, at 100-105.
\textsuperscript{127} Goldschmidt, supra note 7, at 36.
\textsuperscript{128} Id. at 48.
\textsuperscript{129} Id. at 49 ("Expressly permitting the court to engage in extensive questioning, by way of court rule or otherwise, will avoid the problems attendant to a pro se litigant who has difficulty formulating a proper question during direct examination or cross-examination.").
\textsuperscript{130} Id. ("What if a crucial witness is not present, perhaps as a consequence of a pro se litigant’s lack of understanding of the proper method of issuing a subpoena? If it finds, for example, that lack of such procedural knowledge was the reason why the witness is not present, the court itself should have the subpoena issued and continue the matter for a further hearing.").
\textsuperscript{131} Id.
expansion" of the judge’s role and that judges in various states already have explicit authorization to provide such assistance.\textsuperscript{133}

The defensive proponents argue that judges, when faced with pro se litigants, must maintain the traditional role of strictest judicial neutrality.\textsuperscript{134} The logic goes: "If a judge is going to help one party, he or she must be willing to help all parties equally, whether represented or not."\textsuperscript{135} Then, "[
\textit{j}ust as it would be fundamentally wrong for a judge to assist only women and not men, . . . it is likewise fundamentally wrong for a judge to choose to only help parties based on their representation status."\textsuperscript{136} Thus, a judge in upholding strict judicial neutrality must be blind to representation status in reaching out for justice.\textsuperscript{137}

Calls for reform in the interaction between judges and pro se litigants range from explicit rule changes, which would allow for more active judges, to improving education and information programs.\textsuperscript{138} These reforms seek to solve the pro se crisis by strengthening and developing better access to resources like mediation, pro se clinics, unbundled legal services, and internet-based information services.\textsuperscript{139} These resources are often available to pro se litigants and are reviewed in Part V.c.\textsuperscript{140}

\textsuperscript{132} \textit{Id.} at 48 ("It is common knowledge that judges often assist attorneys by suggesting the correct form of a question, a certain line of inquiry not being pursued, or the manner of properly offering a document or other item into evidence. This proposal would, therefore, authorize similar assistance to pro se litigants. It may seem to radically change the traditionally passive role of the adversarial judge, but it is really only a modest expansion of that role.").

\textsuperscript{133} \textit{Id.} ("The point is that judges should have—and in some states already do have—explicit authorization to engage in question asking and witness calling and to embark on a limited independent investigation to ensure substantial justice.").

\textsuperscript{134} Swank, supra note 113, at 1583.

\textsuperscript{135} \textit{Id.} at 1583-1584.

\textsuperscript{136} \textit{Id.} at 1584.

\textsuperscript{137} \textit{See supra text accompanying} 134-36.

\textsuperscript{138} Goldschmidt, supra note 7; Swank, supra note 113.

\textsuperscript{139} \textit{See, e.g.}, Snukals & Sturtevant, supra note 7, at 100-105.

\textsuperscript{140} \textit{See discussion infra Part V.c.}
b. From Interviews

1. Why Do Pro Se Litigants "Go Pro Se"?

Judges opined that pro se litigants represent themselves for a variety of reasons. The chief reason is economic: many litigants cannot afford an attorney. These individuals are not sufficiently indigent to qualify for free services, but do not have enough money to hire an attorney. Other reasons included being obstructionist, “trying to make some kind of point to somebody,” and being unable to find a lawyer for the case. Some litigants chose to represent themselves after an unsatisfying experience with an attorney. Further, because of the proliferation of information available through the internet, some litigants who can afford counsel nevertheless decide to proceed without an attorney because they believe that Internet resources serve as a worthy (and less expensive) substitute to counsel. Unfortunately, these Internet resources rarely provide enough guidance to form as the basis for a legal, just agreement. Some litigants may suffer from mental health problems and do not or cannot rationally consider their situation. While they may decide to tackle a case without a counsel for a variety of resources, most pro se litigants share a lack of understanding of the disadvantage that they commit themselves to by proceeding without counsel.

141 See infra text and accompanying notes 142-.
142 Field Interview, supra note 102; Interview with The Hon. Isaac Borenstein, Associate Justice, Superior Court, Commonwealth of Mass., Bos., Mass. (Apr. 2, 2013) [hereinafter Borenstein Interview]; Winik Interview, supra note 99 (“They can’t find the money.”); Young Interview, supra note 115 (“Most pro se are pro se because of money.”).
143 Borenstein Interview, supra note 142 (observing that there is “a large middle ground” between those who do not have enough money to qualify for public defense and those who have enough to hire an attorney).
144 Interview with The Hon. Peter Coyne, Associate Justice, Juvenile Court, Suffolk County, Bos., Mass. (Apr. 2, 2013) [hereinafter Coyne Interview].
145 Winik Interview, supra note 99 (“Or, they can’t find a lawyer [willing to take the case].”).
146 Borenstein Interview, supra note 142.
147 Field Interview, supra note 102.
148 Coyne Interview, supra note 144; Young Interview, supra note 115; Winik Interview, supra note 99.
149 Coyne Interview, supra note 144.
2. Preservation of Fairness for Pro Se Litigants

The greatest struggle in the interplay between the judge and a pro se litigant is the preservation of fairness,\textsuperscript{150} which hearkens back to the fundamental rule for judges addressed in Part II.b that judges must be impartial and fair.\textsuperscript{151}

While the ordinary citizen without legal education may be fully functional in the world at large, she may be "at such a disadvantage"\textsuperscript{152} representing herself in the courtroom.\textsuperscript{153} Pro se litigants frequently lack knowledge of the rules of procedure and of the substantive law relevant to the litigation.\textsuperscript{154} Pro se litigants also may have little or no higher education and may lack practiced oral or written communication skills.\textsuperscript{155} Even if they do possess these skills, the foreign nature of the courtroom with its special, unfamiliar rules can make even the calmest pro se litigant intimidated, nervous, and less composed.\textsuperscript{156}

When confronted with these sympathetic and situationally handicapped pro se litigants, a judge must nevertheless be impartial and fair.\textsuperscript{157} Pro se litigants gain “no greater rights” by being self-represented.\textsuperscript{158} Justice Jeffrey M. Winik of the City of Boston Housing Court preserves fairness to both sides by always ensuring that each "litigant in court [is] afforded a fair opportunity to be heard meaningfully."\textsuperscript{159} Justice Peter M. Coyne of the Suffolk County Juvenile Court frames it as "preserving respect for due process."\textsuperscript{160}

\textsuperscript{150}Winik Interview, supra note 99; Borenstein Interview, supra note 142 (discussing the tension between the obstacles that unrepresented litigants face in court and the undeniable fact that “The law cannot bend to accommodate a pro se litigant. . . . The law is the law.”).
\textsuperscript{151}See discussion supra Part II.b.
\textsuperscript{152}Young Interview, supra note 115.
\textsuperscript{153}See infra text and accompanying notes 154-156.
\textsuperscript{154}Winik Interview, supra note 99.
\textsuperscript{155}Id.
\textsuperscript{156}Id.; Borenstein Interview, supra note 142.
\textsuperscript{157}See infra text and accompanying notes 158-160.
\textsuperscript{158}Winik Interview, supra note 99.
\textsuperscript{159}Id. (“Always bring it back to: is the litigant in court afforded a fair opportunity to be heard meaningfully.”).
\textsuperscript{160}Coyne Interview, supra note 144 (opining that “preserving respect for due process” is one of the greatest challenges for a judge).
3. **A Spectrum: Passive to Active**

Multiple judges attested to the spectrum of how active a judge is when working with a pro se litigant. Passive judges will allow proceedings to continue without judicial action or interference while active judges will intervene, explain, or question litigants, usually with the goal of preserving fairness.

On one end, some judges will be passive or silent, perhaps out of fear of becoming an advocate for the litigant or, even worse, being perceived as becoming an advocate. A “passive judge” might think: “The law cannot bend to accommodate a pro se litigant. The law is the law.” Imagine that counsel for plaintiff introduces twenty-eight exhibits filled with inadmissible hearsay. The unrepresented defendant does not know what the definition of hearsay is or how to object to the hearsay. Is it the judge's role to step in and object? Or imagine that a pro se plaintiff tries for half an hour to tell his story of what he thinks was an unreasonable search and seizure by a police officer. If the plaintiff does not say that the officer reached into the plaintiff's back pocket without reasonable suspicion, should the judge interrupt and ask the plaintiff if the officer did so? The answers to these questions vary quite dramatically amongst judges.

On the other end, some judges will be "more active." An active judge may explain a rule and the reasoning of that rule in plain language so a litigant can offer his narrative. If a pro se litigant has trouble explaining his case, an active judge might begin with general questioning,

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161 Winik Interview, supra note 99; Young Interview, supra note 115; Borenstein Interview, supra note 142.
162 See infra text and accompanying notes 164-69.
163 See infra text and accompanying notes 164-166.
164 Borenstein Interview, supra note 142 (discussing the tension between the obstacles that unrepresented litigants face in court and the undeniable fact that “The law cannot bend to accommodate a pro se litigant. . . . The law is the law.”).
165 Coyne Interview, supra note 144.
166 Young Interview, supra note 115.
167 Winik Interview, supra note 99.
then use more specific follow-up questions, following a model of "flexibility within a construct of fairness." While judges might feel that “more justice is done” when he is more active, the great danger is that the judge may be assuming the role of an advocate, whether in fact or only in appearance.

Judges opined about patterns and factors correlated to how active a judge may be before pro se litigants. Three clear factors emerged: type of court, experience, and comfort working with pro se litigants. Judges sitting in courts that see more unrepresented litigants may be more active. Probate and housing court judges see many more pro se litigants than juvenile courts or courts of general jurisdiction. Since these judges must move through their dockets, they will, by necessity, be more active and less restrained by “the rigidity of the rule.” Next, judges who are more experienced may be more active on the bench. This is because with more experience, “a judge will have a better sense of where intervention is appropriate.” Finally, judges who are comfortable before pro se litigants or comfortable due to a belief in the procedure are more likely to be comparatively active on the bench. Naturally, these qualitative factors influence each other. For example, a probate court judge may gain greater confidence and more comfort as he or she resolves more cases involving pro se litigants.

4. Guiding Principles and Strategies

Clearly then, judges must strike a delicate balance: they must conduct the proceedings in accordance with the procedural and substantive rules of the court, but also attempt to ensure a

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168 Winik Interview, supra note 99.
169 Id.
170 See infra text and accompanying notes 171-177.
171 See infra text and accompanying notes 172-177.
172 Winik Interview, supra note 99.
173 Coyne Interview, supra note 144; Young Interview, supra note 115.
174 Winik Interview, supra note 99.
175 Id.
176 Id.
177 Young Interview, supra note 115.
fair outcome for all involved parties. How do judges achieve this balance? Interviewees described several principles and strategies that they have developed through experience with pro se litigants.

i. **Remain Focused on the Issues**

Pro se litigants are often far more emotionally invested in the case than an attorney would be. This is particularly true in probate court, where the issues—such as child custody or divorce agreements—impact the litigant on a very personal level. An attorney typically is responsible for handling his clients’ emotions. In a pro se case, however, this responsibility falls to the judge. As a result, judges must constantly “rein in” emotional litigants and force them to focus on the disputed issues. A judge can force the litigant to focus on the pertinent issues by asking specific, directed questions.

ii. **Adjust Communication Styles**

During the case, a judge may adjust her language to make sure that her instructions and questions are clear to the pro se litigant. Judge Field noted that she sometimes re-phrases questions or statements three different ways to make sure the litigant understands. She may ask a litigant to repeat a statement or question back to the judge to ensure that the litigant understands. Further, when delivering an order, Field takes time to clearly and comprehensively explain her decision. Judge Coyne speaks in general terms to offer more

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178 See discussion supra Part III.b.2, III.b.3.
179 Borenstein Interview, supra note 142 (explaining that aside from the direct personal effects of the litigation, pro se litigants may be naive to reasonable outcomes or even "achievable outcomes"); Field Interview, supra note 102.
180 Field Interview, supra note 102.
181 See infra text accompanying notes 182-184.
182 Field Interview, supra note 102.
183 Id.
184 Id.
information that may be helpful yet is not, strictly speaking, “legal advice.” Neither judge will provide legal advice. This may lead to confusion or resentment on the litigant’s part.

iii. **Set Realistic Expectations**

Typically, an attorney will explain the various settlement options or trial scenarios to his client, and provide a realistic assessment of what the litigant can expect to gain from trial. However, when a litigant proceeds without representation he may, as mentioned above, arrive at trial with unrealistic expectations. In these circumstances, a judge may carefully explain the litigant’s options and attempt to temper his expectations.

As she issues orders from the bench, Judge Field takes great pains to explain the orders and the rationale behind each one. If litigants have unrealistic expectations, she attempts to reframe their expectations by explaining the situation and detailing possible steps for a litigant to take going forward. For example, Judge Field recently oversaw custody case in which the father of a six-year-old boy wanted joint custody with the child’s mother. Unfortunately, the father had not seen his son for several years, so the likelihood of a judge granting primary custody in this situation was very small. A parent cannot simply “go from zero to sixty” in this situation. The judge clearly explained that she could not allow the father’s request at this time.

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185 *Coyne Interview, supra* note 144.

186 See *MODEL RULES OF PROF’L CONDUCT R. 1.4* (2012) (“(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”).

187 *Borenstein Interview, supra* note 142.

188 *Field Interview, supra* note 102.

189 *Id.*

190 *Id.*

191 *Id.*

192 *Id.*
because he had contact with his son for years.\textsuperscript{193} However, she then provided both parties with expectations for the situation going forward.\textsuperscript{194} The father, she explained, could make a specific number of visits per year with his son to develop a relationship.\textsuperscript{195} If, over time, he built and maintained a relationship, he could return to court to try to readjust the custody arrangement.\textsuperscript{196} She also instructed the child’s mother that if the father completed a number of successful visits and remained in the son’s life, he would likely attain more time with the child if he did return to court for a readjustment.\textsuperscript{197} In sum, the judge delivered an order, explained her rationale, and gave both parties a clear sense of next steps and expectations going forward.\textsuperscript{198}

Similarly, in juvenile court, Judge Coyne realistically aligns expectations of pro se litigants by delivering a colloquy.\textsuperscript{199} The colloquy states that “neither the prosecutor nor I [the judge] is your attorney,” and warns that by proceeding without representation, “you [the litigant] run the risk that the result may not be what you expect and you may overlook some defense or future consequence an attorney might have seen for you.”\textsuperscript{200} While setting these expectations, Judge Coyne emphasizes that the litigant "ha[is] an absolute constitutional right to represent [him]self in [the] matter if [the litigant] choose[s]."\textsuperscript{201}

iv. Embrace Flexibility

Judges must be sensible and reasonable in maintaining flexibility for pro se litigants.\textsuperscript{202} In addition to adjusting his or her communication style, a judge may also be slightly more flexible when dealing with evidentiary or procedural issues. Judge Field may give a pro se litigant a bit

\textsuperscript{193} Field Interview, supra note 102.
\textsuperscript{194} Id.
\textsuperscript{195} Id.
\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{198} See supra text accompanying notes 188-197.
\textsuperscript{199} See infra text accompanying notes 200-201.
\textsuperscript{200} Coyne Interview, supra note 144.
\textsuperscript{201} Id.
\textsuperscript{202} Borenstein Interview, supra note 142.
more latitude to deliver testimony in a custody dispute, for example, because it is extremely important to accurately determine what custody arrangement is best for the child’s well-being.\textsuperscript{203} Several judges described how they may, within reason, be more willing to intervene on behalf of a pro se litigant who is facing an aggressive attorney.\textsuperscript{204} While the judge will not intervene to the extent that he becomes the unrepresented party’s lawyer, he may become more active on the bench to prevent the attorney from harassing or taking advantage of the pro se litigant.\textsuperscript{205} A simple reminder to the attorney that the judge is aware he may be trying to take advantage of the situation will suffice; the reminder may take the form of a knowing glance or a clear, “counsel, really?”\textsuperscript{206} The point at which a judge should intervene will vary depending on the case, and experienced judges understand that no clear rule can dictate the level of their involvement.

v. **Appear Fair**

Judges stress the importance of ensuring that pro se litigants feel that they have been heard and that their trial was adjudicated fairly.\textsuperscript{207} Because this may be one of, if not the, only time a pro se litigant will be in a courtroom, judges go to great lengths to ensure that litigants leave the court with the feeling that the system found a just resolution. Judge Borenstein described a four-part maxim that he followed as a judge: “1) do not jump to conclusions; 2) be patient and fair; 3) appear patient and fair; 4) listen.”\textsuperscript{208}

vi. **Utilize Pre-Trial Conferences, Mediation, and Other Alternatives**

Many issues involving pro se litigants can be solved through mediation or pretrial conferences. Particularly when both parties are representing themselves, they may be so

\textsuperscript{203} Field Interview, supra note 102.  
\textsuperscript{204} Borenstein Interview, supra note 142; Field Interview, supra note 102.  
\textsuperscript{205} Borenstein Interview, supra note 142; Field Interview, supra note 102.  
\textsuperscript{206} Winik Interview, supra note 99; Borenstein Interview, supra note 142; Field Interview, supra note 102/  
\textsuperscript{207} Field Interview, supra note 102; Borenstein Interview, supra note 142.  
\textsuperscript{208} Borenstein Interview, supra note 142.
“entrenched” in their positions that they simply need an impartial observer to break the gridlock. A mediation session or pretrial conference may provide such an opportunity. Pro se litigants will naturally feel more at ease discussing the issues in away from the formality of a courtroom.

5. When a Pro Se Litigant Faces a Represented Litigant

The most difficult situation for a judge in the context of pro se litigation is presented when one side is represented by counsel while the other is not. When a judge faces two pro se litigants, proceedings may continue more informally because both sides may be unfamiliar with procedural rules and substantive law. In these cases, neither side is unfairly disadvantaged. However, when a judge faces a represented party against a unrepresented party, she faces a dilemma. Because a pro se litigant will be at a disadvantage, as discussed above, a judge may “feel the need to intervene more on behalf of the pro se [litigant].” A judge will try to hold both sides to the same standards, but simply cannot. For example, a judge may give a pro se litigant more leeway on evidentiary issues. Lawyers in this situation “are not hostile to the notion of making it easier for a litigant to speak,” but lawyers will not like a judge who assumes an advocacy role. Indeed, lawyers often believe that pro se litigants “operate under a different set of rules” and chafe at what they perceive as more lenient treatment for pro se litigants.

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209 Field Interview, supra note 102.
210 Borenstein Interview, supra note 142; Field Interview, supra note 102.
211 Winik Interview, supra note 99; Field Interview, supra note 102.
212 Field Interview, supra note 102.
213 Borenstein Interview, supra note 142; Id.
214 Id.
215 Field Interview, supra note 102.
216 Winik Interview, supra note 99.
217 Field Interview, supra note 102.
Judge Field described the difficulty of conducting a pretrial conference when only one side has the assistance of counsel.\textsuperscript{218} During these conferences, which are designed to bring about settlement, the judge provides feedback on the case to the parties.\textsuperscript{219} When the judge speaks to two represented parties, the attorneys understand that the judge is simply providing feedback on their briefs.\textsuperscript{220} Yet, when one pro se litigant attends the conference, the judge must choose her words carefully, emphasizing to the pro se that she is not providing him with legal advice or describing the legal odds of the case.\textsuperscript{221} She repeatedly reminds the pro se that he has a right to a trial and that she does not know how the trial will come out.\textsuperscript{222}

IV. Message to Pro Se Litigants

Pro se litigants in the modern world must work to overcome their disadvantage in pursuing litigation with their unfamiliarity and inexperience.

a. To Overcome the Disadvantage

Simply put, pro se litigants are \textquotedblleft at such a disadvantage.\textquotedblright\textsuperscript{223} Judges acknowledge that, while impossible, in the ideal situation, both sides are represented.\textsuperscript{224} To overcome the disadvantage, pro se litigants must be well-informed so that they may be heard meaningfully.\textsuperscript{225} As judges’ behavior towards pro se litigants falls along a broad spectrum, pro se litigants should not expect that a judge will intervene to support unrepresented parties simply because they are unrepresented.\textsuperscript{226} To become more informed, pro se litigants should review the resources available (described below): mediation, pro se clinics, unbundled legal services, and internet-
based information.\textsuperscript{227}

b. **Demeanor**

Judges observed that most pro se litigants are “very respectful” to the judge.\textsuperscript{228} Sometimes, pro se litigants may be too respectful to the point of being meek.\textsuperscript{229} Alternatively, pro se litigants may become emotional, especially because they are personally invested and have unrealistic expectations.\textsuperscript{230} To ensure the highest chance of success, pro se litigants should be respectful but confident, and try to discuss the legal issues as clearly and calmly as possible.

c. **Resources Available**

Resources available to pro se litigants vary depending on whether the litigant is in federal or state court and depending on the type of court the litigant is in.

1. **Mediation**

Numerous judges mentioned the value of mediation in resolving disputes involving pro se litigants.\textsuperscript{231} Justice Winik believes that mediators provide superior results,\textsuperscript{232} while Judge Field described the efficacy of mediation in resolving divorce and custody cases.\textsuperscript{233}

Mediation offers a discussion between parties, as opposed to a structured presentation between adversaries in a formal courtroom before a judge.\textsuperscript{234} Since mediation is more of a conversation between the parties and the neutral mediator, the process is less threatening and more familiar than the courtroom, encouraging a fair and deliberate resolution.\textsuperscript{235}

\textsuperscript{227} See discussion infra Part IV.c.
\textsuperscript{228} Winik Interview, supra note 99; Young Interview, supra note 115.
\textsuperscript{229} Borenstein Interview, supra note 142.
\textsuperscript{230} Field Interview, supra note 102.
\textsuperscript{231} Winik Interview, supra note 99; Field Interview, supra note 102.
\textsuperscript{232} Winik Interview, supra note 99.
\textsuperscript{233} Field Interview, supra note 102.
\textsuperscript{234} Winik Interview, supra note 99.
\textsuperscript{235} Id.
Mediation is particularly effective for pro se litigants, who may have lacked an arbitrator throughout their disagreement. “Often,” Judge Field notes, “the parties are just so entrenched in their positions that they need someone to come in as an impartial observer.”\textsuperscript{236} Compared to a trial, mediation offers a lower-cost, quicker alternative, benefitting both judges and litigants who would prefer a quick resolution to the dispute. Many pro se disputes are resolved through mediation.\textsuperscript{237}

2.  Pro Se Clinics

Pro se clinics offer information sessions and instructional programs provided by legal specialists like lawyers, law students, or paralegals.\textsuperscript{238} In addition to being a condensed, practical "people's law school" with instruction on specific court processes and procedures, pro se clinics may offer instructional programs directed at selecting and filling out forms.\textsuperscript{239} Judge Winik notes that pro se clinics can be very helpful, especially with filing papers, submitting answers, and conducting discovery.\textsuperscript{240} However, while this may be efficient and cause fewer mistakes, the pro se litigant often does not understand exactly what he checked on the form.\textsuperscript{241}

3.  Unbundled Legal Services

Unbundled legal services unpack the full "bundle" of legal services an attorney provides so that a client contracts only for a limited set of discrete tasks.\textsuperscript{242} For example, a client might hire an attorney only for conducting legal research and the drafting pleadings and motions, and

\textsuperscript{236} Field Interview, supra note 102.
\textsuperscript{237} Id.
\textsuperscript{238} Snukals & Sturtevant, supra note _, at 103.
\textsuperscript{239} Id. ("Such clinics could offer court orientation sessions, instructional programs, and clinics on court procedures as well as 'how to select, fill out, and file court forms.'").
\textsuperscript{240} Winik Interview, supra note 99.
\textsuperscript{241} Id.
\textsuperscript{242} Snukals & Sturtevant, supra note _, at 100 ("'Unbundled' legal services is the concept of providing limited legal services where an attorney performs, and the client pays for, only those discrete tasks the client requests.'").
choose to conduct the rest of the trial herself.\textsuperscript{243} The major benefit of unbundled legal services is that the client enjoys the advice and work product of a knowledgeable and experienced attorney who is focusing only on specific aspects of her case, but she avoids incurring the high costs of paying counsel for a full trial.\textsuperscript{244}

Despite these benefits, unbundled legal services present challenges as well. For example, an attorney may not agree to provide a limited slate of his services for fear of violating competency requirements with his limited representation.\textsuperscript{245} The ABA Model Rules of Professional Conduct Rule 1.1 provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."\textsuperscript{246} An attorney who agrees to provide only a few tasks may be concerned with providing such limited representation that he would be deemed to have provided incompetent representation.\textsuperscript{247} Additionally, there are concerns with the control of the litigation and whether such representation is properly compensated (i.e., whether taking on such an assignment is "worth the time"). Finally, judges may be uncomfortable with unbundled legal services if the client in court hides the fact that she has hired an attorney for her formal legal arguments.\textsuperscript{248}

\textsuperscript{243} See id. ("Examples of individual tasks an attorney might be hired for include: (1) providing legal advice, (2) conducting legal research, (3) gathering facts, (4) conducting discovery, (5) engaging in negotiations, (6) drafting and preparing pleadings, motions, and other court documents, (7) providing limited representation in court, (8) making 'referrals to expert witnesses or other counsel,' and (9) providing 'standby telephone assistance during negotiations or settlement conferences.'").

\textsuperscript{244} See discussion Part III.b.1. Because the chief reason pro se litigants proceed pro se is economic, opening the opportunity to lower legal costs would permit many pro se litigants to hire an attorney for limited representation.\textsuperscript{245} Snukals & Sturtevant, supra note _, at 101 ("As currently written and understood, Rule 1.2 of the Rules of Professional Conduct is a roadblock to the widespread use of unbundling because of ethical concerns. Comment 7 of Rule 1.2 states in part, 'the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1 [requiring competent representation].' Attorneys, therefore, are reluctant to provide limited legal services to a client who can only afford a few discrete tasks for fear that such limited representation will be found to violate the competency requirement when viewed in contrast to traditional, full-fledged legal representation.").

\textsuperscript{246} MODEL RULES OF PROF'L CONDUCT R. 1.1 (2012).

\textsuperscript{247} Snukals & Sturtevant, supra note _, at 101.

\textsuperscript{248} Young Interview, supra note 115.
4. **Internet-based Information**

Internet-based information services are the most modern incarnation of the "people's law school." These services offer information on court processes, procedures, and expectations of conduct. Ideally, these services are written in plain language and are subject-matter specific.

The major benefit of Internet-based information services is that the information is available publically, twenty-four hours a day, and to anyone with Internet access. Judge Borenstein and Judge Young opined that offering Internet-based information services is a viable system to support pro se litigation.

V. **Conclusion**

The history of American legal representation shows the strong and established roots of the right to self-representation. Yet, as the role of judges and the law evolved over time, so too did legal representation, leading to the rise of representation by counsel. In recent years, the number of litigants proceeding without representation has increased as a result of financial necessity and the "do it yourself" aspect of American culture. As courts and judges see more pro se litigants, judges should become comfortable with working with unrepresented parties.

This paper sought to investigate why litigants choose to proceed pro se; what judges see as the greatest struggle in the interplay between judges and pro se litigants; and how judges view and act when they encounter pro se litigants. Pro se litigants proceed without representation primarily because of economic reasons. One judge noted that there is a wide middle ground

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249 Borenstein Interview, supra note 142; see Snukals & Sturtevant, supra note __, at 103.
250 Snukals & Sturtevant, supra note __, at 102-03 (explaining that Internet-based information systems like self-service centers can teach "court processes and procedures as well as courtroom codes of conduct").
251 Id. at 102 ("To be most effective, the materials provided should be subject-matter and case specific. They should explain court processes and procedures as well as courtroom codes of conduct. Importantly, they should be written in plain English to update and remove archaic terminology.").
252 Id. at 103 ("Finally, developing Internet-based information systems would offer the capability of making the resources mentioned above available to pro se litigants twenty-four hours a day, seven days a week.").
253 Borenstein Interview, supra note 142; Young Interview, supra note 115.
between those who do not have enough money to qualify for public assistance and those who have enough money to hire an attorney. Many in this middle ground will choose to go to court without an attorney. Judges find that the greatest struggle in the interplay between judges and pro se litigants is the preservation of fairness: the balancing of the tension between allowing inexperienced and sympathetic litigants to be heard meaningfully while remaining impartial and fair. This paper also explored the spectrum of judicial behavior, ranging from passive judges who may remain silent regardless of the litigant’s struggles, to active judges who may intervene in the proceedings when appropriate. The various interviews with federal and state judges revealed important guiding principles and strategies for working with pro se litigants, including: remaining focused on the issues, setting realistic expectations, appearing fair, and embracing flexibility.

Finally, this paper offers information to pro se litigants regarding resources such as mediation, pro se clinics, unbundled legal services, and Internet-based information services. Each resource has its benefits, but also its dangers, as elucidated by judicial commentary.

The meeting between a pro se litigant and a judge is a meeting of extremes. On one end, there is a humble citizen seeking to move the power of the state to right a wrong, or, alternatively, a citizen exercising his legal right to defend himself in court and before the world. On the other, there is an experienced, trained public official, the closest human incarnation of justice and power, sitting to adjudicate the dispute. It is in this meeting that the citizen rises with his claim or defense and the judge rises to reach out for justice.