

CHAPTER 5

EDUCATING THE JUDICIARY ON SELF-REPRESENTED LITIGANT ISSUES

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INTRODUCTION

“The ever-rising tide of self-represented litigants is a national phenomenon, a growing national crisis for state courts In addressing this new challenge, we not only need to adjust course but we also need to change attitudes and perceptions.”¹

The overwhelming increase of self-represented litigants using courts throughout the country was unanticipated, but is now a well-entrenched phenomenon. Yet, courts have been ill-prepared to change course to respond to the needs of litigants who appear without lawyers. The justice system is an adversarial system dominated by lawyers. As a result, judges, non-judicial court staff and attorneys have all been challenged in responding to self-represented litigants, who do not know the rules of the system and are not trained in adversarial tactics. Many self-represented litigants appear in bread and butter cases, affecting the basic human condition,

such as evictions, foreclosures, divorces, child support, or custody disputes. Many of these litigants have court cases occurring at critical times in their lives and are ill equipped to respond to another crisis. Numerous self-represented litigants have limited reading or language capability, respond uniquely to the justice system due to culture, or are mentally or physically challenged. Courts must educate the judiciary regarding the necessity of handling the cases of self-represented litigants with consideration to their vast individual differences. How can the judiciary sensitize judges to the problems of self-represented litigants? What innovations and resources might assist judges in making changes in their courthouses and courtrooms to create court cultures that better meet the needs of self-represented litigants? This chapter suggests ways courts can aid judges to be more responsive to these litigants' needs.

HOW SHOULD CHANGE CONTINUE IN THE JUSTICE SYSTEM?

As early as the 1980s, courts began to recognize and respond to the phenomenon of self-representation.² In some state court systems, the awakening was led by the chief judge or judges of the state's highest tribunal. In other states, trial judges realized the increasing presence of the self-represented first and became the catalysts for change. A local judicial or non-judicial administrator may have spotted the area of concern or an access to justice commission finally defined the challenge.

In 2000, the State Court Administrators recognized the issue.³ At the 24th Midyear Meeting of the Conference of Chief Justices, all of the nation's chief justices affirmed that "...judicial leadership and commitment are essential to ensuring equal access to the justice system...." The resolution further called for expanded assistance to self-represented litigants and removing barriers to access to justice.⁴ As the nation's chief justices grasped the need for change, it became incumbent upon local supervising judges, or policy-making judges, to implement systemic court policy changes. Unless the local supervising judge is on board, trial judges are reluctant or unable to implement many changes. Leadership from local supervising and policy-making judges is key to moving trial judges to change. Trial judges, the front line in dealing with litigants, are in a visible and immediate posi-

tion to make changes readily apparent to litigants forging their way through the justice system. Trial judges are just as important as supervising and policy-making judges in effectuating tangible change.

WALKING IN DIFFERENT SHOES: ENCOURAGING JUDICIAL UNDERSTANDING OF SELF-REPRESENTED LITIGANTS, CULTURAL COMPETENCY AND POVERTY

Self-represented litigants are diverse in gender, race or ethnicity, educational and economic background and abilities. The composition of state judiciaries is changing to include judges that increasingly mirror that diversity. Some judges now have prior employment experience with exposure to diverse populations. However, some court systems are slower to diversify, resulting in judges who are less than familiar with some of the problems diverse self-represented litigants experience. Who the litigant is, and the litigant's ethnicity or culture, may affect how the litigant experiences the court system.⁵ Many judges are unaware of those issues. In addition, the legal education and professional training of some judges actually impedes their understanding of how self-represented litigants are faring in their courtrooms. A judge spends many years training to think, speak and write like a lawyer. It is difficult to shift gears to speak and write for non-lawyers. Addressing how to sensitize judges to the lives of self-represented litigants and ensuring that each judge understands the need to have a culturally competent courtroom is a first step to opening the minds of judges to responding to self-represented litigants.⁶

How litigants tell their stories in court and how they perceive the fairness of the process is affected by their economic and cultural backgrounds and their ability to understand the process. Conversely, a judge's perception of a litigant can be affected by their own lack of exposure to diversity and their own biases. A judge who handled eviction cases once indicated to an African-American judge that she did not understand why African-American women wasted their rent money on getting braids put in their hair. Her lament indicated that her bias may be affecting how she determined the outcome of motions to obtain more time to make rent payments, but also reflected a lack of cultural sensitivity and awareness. The African-American judge explained in response that it was often the least expensive

way for a woman of color to groom her hair. This exchange led to the inclusion in New York of a session on cultural competency issues for judges at a summer educational seminar at the New York State Judicial Institute.⁷ In the seminar, judges explored their biases and resultant assumptions through exercises and lectures.

Another way to approach the issue of unintentional bias is to provide information to judges on the emerging research on neuroscience and decision-making that shows how brains naturally stereotype groups. There are two online videos produced by the California Courts in collaboration with the National Center for State Courts, which interview experts in judicial ethics and brain function, to help explain this phenomenon. The videos give concrete suggestions for training oneself to become aware of this unintentional stereotyping and take steps to avoid it.⁸

In addition to cultural differences, judges face the challenge of understanding litigants who are living in poverty and how they experience life and the justice system. Thirteen percent of Americans live in poverty, and the spiraling economy's effects are reflected in increasing numbers of the impoverished. The number of food stamp participants has increased since 2007 by more than two million people. Today, there are more than 28 million participants. It is estimated that the program serves only two-thirds of eligible persons, which means that it is likely that there are more than 35 million people eligible for food stamps.⁹ Accordingly, there are now more impoverished persons who come into contact with courts. It is important to recognize that people experiencing poverty are not unidimensional. Experts describe different categories of poverty: generational, working class poverty, situational poverty (temporary due to events), immigrant and depression era.¹⁰ Individuals in each of these categories experience the world differently.¹¹ In particular, litigants who are a product of generational poverty face more challenges and have a far different response to the world than other categories of the impoverished.¹² His or her survival skills are far different from that of a middle class litigant who is experiencing temporary poverty.¹³ Therefore, the judge cannot assume, first, that the litigant standing before the bench is poor. Secondly, a judge should not assume that all impoverished persons can be related to in the same way.

The implications of the differences in litigants may be apparent in how they communicate, view relationships or how they view time. For example, a litigant who is the product of generational poverty will more frequently have problems saving rent money, locating records and getting to court on time. Due to the

nature of their lives, these litigants often live in the moment, have trouble seeing the future, are disorganized, and often live in cluttered homes.¹⁴ Families characterized by generational poverty are more likely to communicate orally than in print.¹⁵ Communicating in print versus in writing is characteristic of two distinct learning styles.¹⁶ Therefore, to ensure that a litigant understands court procedures and outcomes, a judge may need to provide oral as well as written court rules or decisions.

It is imperative to utilize a variety of methods to ensure culturally competent courts and to educate judges on the implications of culture and poverty affecting self-represented litigants. Addressing bias and widening individuals' views on culture is not an easy task. Supervising judges and court educators should consider varied approaches to this issue.

Suggested Judicial Education Techniques on Culture and Poverty

1. Seminars or lectures with exercises to explore cultural differences and biases
2. Handbooks and materials on various cultures¹⁷
3. Walking tours by judges with community members of diverse communities¹⁸
4. Speakers from different cultural groups¹⁹
5. Speakers who can speak about poverty²⁰
6. Poverty simulations²¹
7. Workshops on unintentional bias

EDUCATING JUDGES ON COMMUNICATING PLAINLY AND EFFECTIVELY WITH SELF-REPRESENTED LITIGANTS

Some litigants respond and understand through oral communication and some are comfortable with written communication, whereas some need both forms of communication to reinforce their understanding. Judges should be educated in both oral and written plain language. Further, judges should be assisted in understanding effective communication through appropriate body language, demeanor and temperament.

Many judges do not realize how their body language is received by persons

before them. We are often unaware of our facial expressions or gestures. A scowling face, rolled eyes, arms folded tightly while conversing, or lack of eye contact can be intimidating to a litigant who is already afraid to be in court. Raising the level of one's voice or using harsh tones may have a similar effect on a litigant. By exchanging familiar pleasantries with the counsel opposing the self-represented litigant, a judge may foster a belief that it is impossible for the litigant to have fair treatment in the courtroom. A judge's choice of words can also be disconcerting to a self-represented litigant. For example, one judge consistently referred to female litigants as "Madame" in a very formal tone. Female litigants were afraid and some thought he was calling them a prostitute. After numerous complaints, the litigants' perception of this practice was brought to the judge's attention. The judge stopped using the salutation.

Some judges need an "aha moment." Seeing oneself on film speaking to a self-represented litigant is often that moment. In New York, judges were filmed speaking to a self-represented litigant played by an actor. Afterwards, the judge then watched the video with a communication specialist. Many judges had eye-opening experiences. Judges can also watch a film of judges role-playing and critique what they see that may be inappropriate when speaking to a litigant.²² Communication specialists can also point out word usage that may be too sophisticated or unclear to litigants. If budgetary constraints make it difficult to bring in a communication specialist, a graduate student in the field might be a good option. The National Judicial College in Reno, Nevada, offers a webcast on communicating with self-represented litigants, which may be offered as an alternative.²³

Most judges write like lawyers and many litigants do not understand legal writing. Reading levels vary among litigants, but generally the levels are not high enough to understand legal writing. In 2002, the National Center for Education Statistics reported that "between 40 to 44 million adults nationwide demonstrated skills in the lowest literacy rate defined," which is level 1.²⁴ This literacy level includes individuals who range from being able to "read relatively short pieces of text to find a single piece of information" to individuals who are unable to enter personal information onto a document or "locate the time of an event on a form."²⁵ This means that many litigants will fall way below the ability needed to understand legalese. Therefore, plain writing is essential to written communication with self-represented litigants. Experts even urge plain writing when communicating with lawyers.²⁶ Getting judges to give up a style of writing that they have tried to per-

fect for years, both as lawyers and on the bench, is no easy task. To reach almost all litigants, written decisions, rules and materials would have to be written on a 5th grade reading level.

It can be helpful for judges to remember that they use a special vocabulary by reminding them of the experience of working with a professional in a different field, such as a physician, or of trying to communicate with a computer technician about a software problem. Most fields have developed shorthand to communicate with other experts, but it is seldom effective with non-professionals.

One helpful exercise to illustrate the complexity of legal writing is to show judges a decision written first in legal writing, and then rewritten by a plain language specialist. Examples include can be found at <http://www.transcend.net/at/proof.html> and <http://www.transcend.net/at/exempt.html>. Judges can also be given a writing exercise involving writing in plain language. The writing can then be assessed for reading level. Judges can also be shown how to use the feature contained in most word processing programs to identify the grade level of the writing. Group exercises can include trying to explain legal concepts to others using plain language and sharing ideas on how to do that most effectively.

Suggestions for Educating Judges on Plain and Effective Communication

1. Film each judge role-playing and then review with the judge
2. Review a video of an actor playing a judge and have judges or a communication expert critique the judge's communication with the litigant
3. Use a communication specialist to assist with communication exercises, or use a graduate student in communication studies
4. Use webcasts from the National Judicial College
5. Engage judges in plain writing exercises
6. Provide judges with materials or books on plain writing²⁷

OVERCOMING JUDGES' CONCERNS ABOUT ETHICAL ISSUES IN SELF-REPRESENTED LITIGANTS' CASES THROUGH EDUCATION

Many judges have indicated to me that they have not or will not change course in their courtrooms and courthouses because of the belief that judicial ethics will not permit change. Judges may be concerned that they may face judicial ethics complaints, or be challenged when facing reappointment, reelection or promotion, if they extend greater deference to or appear to be favoring the self-represented. Although constrained by the ethical obligations of their profession, judges must also ensure their courts fulfill the promise of equal justice for all. To ensure self-represented litigants equal access to justice, judges may need to take an active but neutral role in settlements, hearings and trials. In some jurisdictions, there is emerging caselaw affirming that judges should be more proactive in asking self-represented litigants pertinent questions to get the facts they need to decide cases on the merits. Judges can enhance the experience of the self-represented in a variety of ways without compromising their neutrality by directing litigants to legal assistance resources, explaining elements of cases and procedures, construing pleadings liberally and allowing liberal amendments, and asking questions to elicit facts and clarify evidence.²⁸ Judges may resist suggestions of change. The perception that steps to assist the self-represented litigant are non-neutral and unethical can be ingrained not only in one judge in a jurisdiction, but in numerous judges. In this regard, local judicial administrators and judicial ethics educators may need to be the instruments of change.

Ethics experts have addressed the issue of the judicial role when dealing with self-represented litigants. Generally, there is support for the position that judges may play an active role in ensuring access to justice for self-represented litigants in settlements and trials or hearings.²⁹ Judges should be educated and assured of what judicial ethics codes and decisions or opinions allow them to do in their courtrooms with regard to self-represented litigants. Judges are best assured by hearing from experts in ethics. In New York, an entire afternoon in 2008 was devoted in the summer judicial education seminars to self-represented litigant topics. Two law professors addressed judicial ethics as part of that program.

In thinking about who should give these presentations, courts may want to make sure that the presenters understand the issues facing trial court judges with

self-represented litigants. For law professors, trial court judges who are in complex civil areas, or many appellate justices, the issues often seem remote and they may not have thought beyond the standard adage that people acting as their own attorneys are held to the same standard as attorneys. It is clear in review of case law on this point that there is tremendous judicial discretion in this area and that issues of fairness and access to the court generally dictate that appellate courts will support judges in efforts to get the information they need to make a decision on the merits of the case. The suggestions in the box below may assist in addressing the ethical concerns of judges.

Suggestions for Addressing the Judicial Ethics Concerns of Judges

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| <ol style="list-style-type: none"> 1. Ask ethics experts who are sensitive to these issues to provide lectures and articles to judges 2. Ask for advisory opinions from ethics commissions or advisory bodies on unsettled issues 3. Develop videos of actors role-playing scenarios that raise ethical issues 4. Distribute <i>Handling Cases Involving Self-Represented Litigants: A Benchguide for Judicial Officers</i>, | <ol style="list-style-type: none"> which has an ethics section³⁰ 5. Distribute <i>Reaching Out or Overreaching</i>, which is focused on these ethical issues and potential solutions³¹ 6. Give judges an opportunity to have a conversation about different scenarios with ethical experts present 7. Use Judicial Curriculum developed for Conference at Harvard on ethics issues³² |
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PROVIDING JUDGES GUIDELINES AND SUGGESTIONS ON LAW AND PROCEDURE AFFECTING SELF-REPRESENTED LITIGANTS

Supervising judges walk a tenuous line both with court users and judges when addressing legal issues and court procedures affecting self-represented litigants.

Judicial administrators are responsible for implementing policies and directives in courthouses. They are also charged with facilitating other systemic changes and with guiding judges. Often change is not popular, particularly if those arguing for one side of an issue are perceived as the beneficiaries. For example, in New York, changes in the Housing Court were perceived by some property owners and their attorneys as benefiting self-represented tenants. The same was true when changes were made with the handling of default judgments in consumer credit cases.³³ An attorney representing debt collection agencies complained to me that it was unfair that we were implementing new policies to assist self-represented litigants. The attorney complained that he paid good money for his legal education and that litigants should either go to law school or get an attorney. Local judicial administrators who have the support of their chief judges will find it easier to implement systemic changes. Convincing supervising judges of their role in encouraging trial judges to implement change is crucial to making major change in court systems. Educating judicial administrators should be continued on the national level through forums that allow judges and administrators to communicate with one another on common issues and concerns. Jurisdictions can learn from each other and find support for making change through efforts that are occurring nationally.³⁴

Supervising judges and administrators must encourage change in judges under their watch so that laws are enforced and procedures are adopted that will assist self-represented litigants to achieve just outcomes. This effort has to be accomplished without overstepping the boundaries of judicial independence. Supervising judges and administrators typically do not have much authority to enforce policies unpopular with the judges they supervise. They do not have the same enforcement abilities as supervisors in other professions.³⁵ Therefore, supervising judges must effect change through creative and persuasive leadership. All of the tools and resources discussed in this chapter should be considered. If one effort does not seem to work, another avenue should be tried.

As an initial matter, ensuring that judges take an active role in applying laws in cases involving unknowledgeable self-represented litigants is the most sensitive area in which to effect change. Judicial interpretation of laws and case law will vary. Judges must be free to interpret laws independently and should not be directed on interpretation. Encouraging judges to ensure that self-represented litigants have access to understanding what laws affect their cases, and what they have to prove in order to prevail, does not infringe on a judge's interpretation of the

law. In this respect, it may be effective to persuade judges to start cases with explanations to all parties on what each must prove to prevail.³⁶ In some instances, when judges are overlooking laws or case law, advising judges on prevailing law and case law can be appropriate.³⁷ Self-represented litigants are most often unable to present the law in their cases. Attorneys for adversaries of self-represented litigants may not be forthcoming on laws or case law that has a negative impact on their cases. Therefore, sometimes judges are not aware of legal developments in an area of law. Regardless of circumstance, it is inappropriate for any supervising judge to direct a judge on legal issues. Here, discussion and advice are the only methods available to supervisors to encourage judges on substantive legal issues. Judicial seminars or discussion groups can provide opportunities to discuss laws and case law with judges. Some jurisdictions have adopted or issued advisory notices on law or case law developments. Others provide broadcast updates on changes in the law, and encourage email updates by judges to their colleagues.³⁸

The second area requiring change in the handling of self-represented litigant cases involves courtroom procedures used by judges in settlements, hearings, and trials.³⁹ Many judges will consider suggestions on how they handle their cases as

**Suggestions for
Encouraging Supervisory
and Trial Judges to Enforce
Laws and Implement
Procedural Changes
Affecting Self-Represented
Litigants**

1. Ensure that supervising judges maintain communication with other court systems and stay in tune with national developments. Supervising judges should be encouraged to attend national conferences, join national listservs, and utilize informational websites
2. Supervising judges should receive training in self-represented litigant issues and leadership skills on influencing those that they supervise⁴⁰
3. Encourage trial judges to enforce laws and make procedural changes through discussion groups and seminars
4. Issue information, guidelines or advisory notices concerning laws, case law and courtroom procedures affecting self-represented litigants to trial judges

an interference with their judicial independence. Since most suggestions of reform in courtroom procedures are not just ministerial, supervising judges cannot mandate the necessary changes. Advisory notices and/or suggested guidelines can be useful to encourage change. In New York, Housing and Civil Court judges were advised to review and explain court agreements to ensure that self-represented litigants understand what they sign, but also to ensure that their claims and defenses are addressed.⁴¹ Massachusetts issued guidelines for judges on conducting hearings involving self-represented litigants.⁴² A few other jurisdictions have also adopted guidelines.⁴³ Again, leadership through education and persuasion is required to get judges on board.

METHODS, TOOLS AND RESOURCES AVAILABLE TO EDUCATE JUDGES ON SELF-REPRESENTED ISSUES

There are many methods available to educate judges on self-represented litigant issues. One or more methods may be useful in conveying ideas and suggestions to judges. For many judges, self-represented litigant issues are not perceived as important, or are considered too warm and fuzzy for judicial consideration. Supervisory and judicial educators have to be creative and flexible in their approach to tackling this area. While written materials should be used, reliance on written communication alone will not ensure that judges have bought into the concepts. Judges have to first be interested in the topic and also feel that they will not be alone in making changes in their approaches to self-represented litigants' cases. Educating judges in group settings allows for the exchange of experiences and ideas. In group settings, judges can hear from others what they are doing in their courtrooms. Interactive exercises maintain interest and engage judges in the topic.⁴⁴ Finally, all state courts are overwhelmed with cases, leaving judges little time to participate in educational efforts. Therefore, education through technology can be useful. Below are suggestions for written educational materials, interactive exercises or activities, and education using technology. Also offered are suggestions of websites and conferences that may provide support for supervising judges in leading their courts in making needed change.

Written Educational Materials

Self-Represented Litigation Network Curriculum

The Self-Represented Litigant Network (SRLN) is a group of organizations dedicated to fulfilling the promise of a justice system that works for all, including those who cannot afford lawyers and are therefore forced to go to court on their own.⁴⁵ The SRLN has developed a curriculum to educate judges on self-represented litigant issues. That curriculum was showcased at a national conference held at Harvard Law School in November, 2007.⁴⁶ It was attended by judges from thirty states, the District of Columbia, the Commonwealth of Puerto Rico and one United States territory.

The program includes three curricula entitled:

1. Curriculum on Access to Justice in the Courtroom for the Self-Represented (short and long version)
2. Curriculum on Judicial Leadership in Access to Justice for the Self-Represented
3. Access to Justice in the Courtroom for the Self-Represented: An Introduction for Prospective Presenters and Organizers

These curricula can be used as is without making changes, or customized by each court system. Included in each curriculum are faculty notes, activity materials, resource materials and a video showing judges in the courtroom engaging self-represented litigants using best practices.

Wisconsin, California and New York are examples of states that have used the curricula. Wisconsin announced their intention to adopt the curricula shortly after the Harvard Leadership Conference.⁴⁷ Wisconsin has indicated that parts of each curriculum have been used and are well-received by judges. Support for the use of the curricula and all efforts in the self-represented area emanates from the very top in Wisconsin, Chief Justice Shirley S. Abrahamson.⁴⁸

In New York, the curricula were adapted into a program used for training at three separate summer seminars offered to judges. Almost a full day was devoted

to self-represented litigant issues. Other course offerings were kept to a minimum to encourage attendance. In the morning, a keynote speaker addressed the judges, followed by a presentation by a law professor on ethical issues involving self-represented litigants. Judges were broken into smaller groups where the SRLN curriculum including some of the videos and activities were used. Included in the afternoon was also a presentation on plain writing. The keynote speakers served to inspire the judges and to open their thinking. The discussions on ethics topics resolved some of the judges' concerns. Both the keynote speaker and the ethics discussion and presentation set the stage for the presentation of the course that followed. The small sessions were well attended, and participation was interactive. Parts of the curriculum have also been used to train judges' law clerks, who interact often with litigants.

The National Bench Guide

In 2007, the California Administrative Office of the Courts, Center for Children and Families produced a bench guide for judicial officers on handling self-represented cases.⁴⁹ The guide addresses numerous topics relating to self-represented litigants and provides sample scripts. The first of its kind, this bench guide served as the model for the national version, *Handling Cases Involving Self-Represented Litigants: A Benchguide for Judicial Officers*,⁵⁰ which was developed by Richard Zorza, of Zorza Associates, and a leader on self-represented litigant issues, the Self-Represented Litigant Network, the National Judicial College, the National Center for State Courts and the American Judicature Society.⁵¹ The National Bench Guide provides tools and techniques for judges in dealing with self-represented litigants. The guide is generic and able to be used in any jurisdiction, but can be supplemented with information specific to a jurisdiction by each state. In New York, the guide was distributed to judges statewide. Based on comments, some sections are being updated to include New York Law.⁵² Similarly, in Montana the National Bench Guide was adapted to the state's needs by adding Montanan information throughout the guide.⁵³

Some jurisdictions have experienced budget restrictions making it difficult to print the National Bench Guide.⁵⁴ The distribution of hard copies of the Bench Guide is optimum to ensure all judges have a copy. Offering a version online for judges is a cost-saving measure and will, at a minimum, reach judges who have an

interest in the subject.

Exercises and Activities

Using Technology to Educate

Most court systems are experiencing budget tightening, resulting in cutbacks on judicial training seminars. In addition, having judges travel to a training site can be time-consuming and takes away from the time that judges are in their courtrooms handling cases. By using online training programs, webinars, webcasts, or podcasts, expense and judicial time can be conserved. Judges can remain in their courthouses or at their desks in chambers to receive information.

Online training allows for the provision of an entire course of training online through a written presentation. Judges can be provided access to statutes and case law as part of the training. In addition, pop-up windows can be used to highlight aspects of the training that should be brought to a judge's attention.⁵⁵ Online training may be favored by judges who prefer to learn through written media. The use of this form of training makes it easier to offer a written course without the cost of distribution or copying. In addition, judges can choose a convenient time to take the training. The California courts have developed online training modules for judges on handling cases with self-represented litigants, as well as on substantive legal topics.

Webinar is the short for the term web-based seminars that allow information to be transmitted through the Internet. Seminars and presentations can be given using webinars. The webinar allows some limited interactive participation by participants.⁵⁶ New York has used the webinar format to introduce judges to new do-it-yourself interactive computer programs developed for self-represented litigants to assist them in filling out court forms and learning more about legal topics. During webinars, judges sit at their desks, and utilize their computers and a telephone.

Webcasts allow for the transmission of live or pre-recorded video via the Internet similar to a television. Universities are using this medium for online classes. This medium does not allow for interaction by participants.⁵⁷ However, arrangements can be made for participants to submit questions in advance or to transmit questions by email or fax to the presenters during live webcasts.

Organizations, Websites and Conferences that May Be Helpful to Supervising Judges and Judges

National Center For State Courts, www.NCSC.org, is an independent, nonprofit court improvement organization that works closely with the Conference of Chief Justices and the Conference of State Court Administrators. It serves as a clearinghouse for information, provides research, education, and consulting services for courts.

American Judicature Society, www.AJS.org, is a national non-partisan organization that is interested in the administration of justice. The organization seeks to maintain an independent court and to increase public understanding of the justice system.

American Bar Association Delivery of Legal Services Committee, www.abanet.org/legalservices/delivery/home.html, is devoted to access to justice issues involving moderate income individuals.

American Bar Association Standing Committee for Legal Aid and Indigent Defense "SCLAID," www.abanet.org/legalservices/sclaid/atjresourcecenter/atjmainpage.html, examines issues relating to the delivery of civil legal services to the poor, and criminal defense services to indigent persons.

Self-Represented Litigant Network, www.SRLN.org, is a grouping of organizations and working groups dedicated to fulfilling the promise of a justice system that works for all, including those who cannot afford lawyers and are therefore forced to go to court on their own. The Network brings together courts and access to justice organizations in support of innovations in services for the self represented.

SelfHelpSupport.org is a site that is designed to be a virtual meeting place for people involved with providing pro se assistance or directing pro se and self-help programs. Through the site, the members can access the over 2,000 documents in the virtual library, as well as take advantage of several groups or listservs, receive a monthly newsletter, and network with other professionals through their extensive roster, network calls, and webinars.

Equal Justice Conference is sponsored by the American Bar Association, www.abanet.org. The Equal Justice Conference focuses attention on the growing need for improving access to justice for all Americans and attracts lawyers, judges and advocates representing all aspects of the civil justice system.

California offers webcasts that can be accessed by judges when they have the time to watch.⁵⁸ New York uses video conferencing during lunchtime to offer judges seminars while they eat their lunch. These seminars, called “Lunch and Learn,” are quite popular.

Podcasts allow for the transmission of digital files of audio or video via an iPod or similar digital MP3 player. Some universities are beginning to use this medium as a method of education. This medium may have potential to be used by court systems in the future.

CONCLUSION

The face of democracy is mirrored by the justice system. Lack of confidence in the justice system, when it does not respond to stressed unrepresented litigants with life-affecting cases, results in lack of trust in government. The justice system and court cultures must change to respond to the needs of the self-represented litigant. The path to change begins with judges who make policy for court systems and handle these cases. The time to address these critical issues is now.

APPENDIX

To access this chapter’s appendix, go to http://www.afccnet.org/resources/resources_professionals.asp.

Appendix: Self-Represented Litigation Network Introduction to Judicial Education Curricula; Guide to Materials

NOTES

1. John T. Broderick Jr., State of New Hampshire, Supreme Court Chief Justice, Remarks to the National Association of Court Management (March 10, 2009) (transcript available at <http://www.courts.state.nh.us/press/CJ-Brodericks-March-10-2009-speech-to-NACM.pdf>).
2. See Jona Goldschmidt et al., *Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers*, 1998 American Judicature Society. See also Dixon, Kathleen

and Little, Margaret, "Self-Help centers—The Approach of the Los Angeles Superior Court," *supra* at 51.

3. See Conference of State Court Administrators, *Position Paper on Self-Represented Litigants* (Aug. 2000), at <http://cosca.ncsc.dni.us/WhitePapers/selfreplitigation.pdf>.
4. See Conference of State Court Administrators, *Resolution 23*, at <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol23Leadership.html>.
5. See David B. Rottman, Ph. D., *Trust and Confidence in the California Courts: A Survey of the Public and Attorneys, Part I: Findings and Recommendations*, 6 (2005), at http://www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf (providing that "African-Americans tend to perceive the highest levels of outcome unfairness for Latino/Hispanic Americans, African-Americans, and low-income people").
6. See John A. Martin et al., *Becoming a Culturally Competent Court, Part II* (Mar. 20, 2007), at <http://www.courtinfo.ca.gov/programs/equalaccess/documents/selfrep07/FromFirst/CultComp.pdf> (discussing why culture matters in becoming a culturally competent court).
7. <http://www.nycourts.gov/ip/judicialinstitute/index.shtml>.
8. The Neuroscience and Psychology of Decisionmaking: A New Way of Learning. <http://www2.courtinfo.ca.gov/cjer/aoctv/dialogue/neuro/index.htm>.
9. See Coalition on Human Needs, *2000-2007 State-by-State Total Poverty Rates, American Community Survey* (Aug. 26, 2008), at <http://www.chn.org/pdf/2008/ACStotalpov.pdf>. See Food Research and Access Center, *Current News and Analyses* (2008), at http://www.frac.org/html/news/fsp/2008.05_FSP.htm (estimating that, "[f]or June 2008, the maximum food stamp allotment for a family of four was 8.5 percent or \$46.20 short of the amount the government estimates is needed to purchase even the minimally adequate diet outlined in the Thrifty Food Plan market basket"); see also Food Research and Access Center, *Hunger in the U.S.* (Sept. 2008), at http://www.frac.org/pdf/hunger_resource.pdf (setting forth the definition of the "Thrifty Food Plan" as "the USDA's estimate of what it costs to purchase a minimally adequate diet" and "the basis for the amount of food stamp allotments").
10. See Donna M. Beegle, *Breaking Barriers: Concrete Communication Tools for Working With People in Poverty*, at http://www.nhchc.org/Com_tools_working%20w_%20pov.pdf.
11. See Donna M. Beegle, *Overcoming the Silence of Generational Poverty*, 15 *Talking Points* 1, at 17 (Oct./Nov. 2003).
12. *Id.*
13. See Communication Across Barriers, *Generational Poverty Skills*, at <http://www.combarriers.com/SurvivalSkills>.
14. See Stacy Vogel, *Families in Generational Poverty Form Their Own Culture* (August 25,

- 2008), at <http://gazettextra.com/news/2008/aug/25/families-generational-poverty-form-their-own-cultu/>.
5. See Donna Beegle, *Oral and Print: Two Distinct Communication/Learning Styles* (2006), at <http://www.oregonread.org/Beegle/OralPrintHandoutforORA.pdf>.
 6. *Id.*
 7. See Workplace Spanish for Judges: A look at the Language and Culture 2007, Workplace Spanish For Judges 2005, Commonwealth of Massachusetts Judicial Institute.
 8. Some judges have never been to the communities their decisions affect or have had no exposure to diverse litigants.
 9. For example, in the New York City Housing Court, a representative of a Muslim women's group spoke to the judges about how Muslim women uniquely experience the court.
 10. The New York State Unified Court System invited Dr. Donna Beegle, an expert on the topic of poverty, to speak to judges about generational poverty and communication styles. Dr. Beegle's biography is available at <http://www.combarriers.com/WomansJourney>. Ruby K. Payne, Ph.D., author of *A Framework For Understanding Poverty* (4th ed., aha Process, Inc. 2005), is also a distinguished expert on poverty issues.
 11. The New York City Housing Court sponsored a poverty simulation for 50 judges and their law clerks, using a program called the Community Action Poverty Simulation (CAPS) developed by the Missouri Association for Community Action. The judges participated in role-play and experienced the lives of low income persons and families. Learn more about CAPS at <http://www.communityaction.org/Poverty%20Simulation.aspx>.
 12. See Self-Represented Litigation Network, *Judicial Education Curriculum Project Report and Evaluation*, at http://www.selfhelpsupport.org/library/item.259761-Judicial_Education_Curriculum_Project_Report_and_Evaluation.
 13. See <http://www.judges.org/certificatedispute.html>.
 14. See National Center for Education Statistics, *Adult Literacy in America: A First Look at the Findings of the National Adult Literacy Survey* (April 2002), § I, at 16, at <http://nces.ed.gov/pubs93/93275.pdf>.
 15. *Id.*
 16. See Richard C. Wydick, *Plain English for Lawyers* (5th ed., Carolina Academic Press 2005).
 17. As part of preparation for the bench, the New York State Unified Court System provides new judges with a copy of the book *Plain English for Lawyers* (See Wydick, *supra* note 26).
 18. See Cynthia Gray, *Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants*, American Judicature Society and State Institute (2005), at <http://ajs.org/prose/pdfs/Pro%20se%20litigants%20final.pdf>. See also Self-Represented Litigation Network, *Handling Cases Involving Self-Represented Litigants: A National Bench Guide for Judges* (2008), at

- http://www.selfhelpsupport.org/library/folder.223112-Documents_Created_by_the_SRLN, Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality When Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications*, 17 *Geo. J. Legal Ethics* 423 (2004).
29. See Gray, *supra* note 28; See also New York County Lawyers' Association, *Best Practices For Judges In The Settlement And Trial Of Cases Involving Unrepresented Litigants in Housing Court* (Aug. 2008), at http://www.nycla.org/siteFiles/News/News59_2.pdf; see also Self-Represented Litigation Network, *supra* note 28.
 30. Available at: http://www.courtinfo.ca.gov/reference/documents/benchguide_self_rep_litigants.pdf.
 31. Available at: <http://www.ajs.org/prose/pdfs/Pro%20se%20litigants%20final.pdf>.
 32. See this chapter's appendix at http://www.afccnet.org/resources/resources_professionals.asp for a summary of the Harvard curriculum.
 33. See New York City Civil Court, *Civil Court Directive* (Dec. 24, 1997), at <http://www.courts.state.ny.us/courts/nyc/civil/directives/DRP/drp150.pdf>; See also New York City Civil Court, *Directive and Procedures DRP-182* (May 13, 2009), at <http://www.nycourts.gov/courts/nyc/civil/directives/DRP/drp182.pdf>; 22 NYCRR § 208.42 (i). In New York City Housing Court, 90% or more of tenants are self-represented. Conversely, more than 80% of owners are represented. Similarly, more than 98% of consumers in consumer debt case are self-represented, while all of the plaintiff debt collectors are represented.
 34. See Self-Represented Litigation Network, *supra* note 22.
 35. In some court systems, non-judicial personnel handles judicial education, making effectuating change by judges on legal issues and procedures even more sensitive.
 36. See Gray, *supra* note 28.
 37. See New York City Civil Court, *Advisory Notices*, at <http://www.nycourts.gov/courts/nyc/civil/directives.shtml#advisorynotices> (addressing topics, including allocutions of stipulations in landlord tenant cases, settlements in proceeding involving a Guardian Ad Litem, default judgments in proceeding involving a Guardian Ad Litem and consumer debt cases).
 38. *Id.*
 39. See Gray, *supra* note 28; See also New York County Lawyers' Association, *supra* note 29; Self-Represented Litigation Network, *supra* note 28.
 40. Civil Court of the City of New York, *Advisory Notice AN-1* (April 6, 2007), at <http://www.courts.state.ny.us/courts/nyc/civil/directives/AN/allocutions.pdf>.
 41. The Massachusetts Court System Judicial Institute, *Judicial Guidelines for Hearing Involving Self-Represented Litigants* (Aug. 2006), at http://www.mass.gov/courts/admin/ji/judguideselfrep_intro.html.

42. Idaho, Minnesota, and Iowa have adopted guidelines for judges. Kansas intends to issue guidelines. See Susan Valdez, *Addressing the Pro Se Litigant Challenge in Kansas State Courts*, *The Journal of the Kansas Bar*, at 25 (April 2009).
43. See Self-Represented Litigation Network, *supra* note 22.
44. The training sessions for new judges of the New York State Unified Court System involve an exercise designed to open up discussion about self-represented issues. One group of judges receives a question with an answer code that assists in determining the answer. Another group of judges receives just the same question without the answer code. The judges are then instructed to raise their hands when they obtain the answer. The group with the answer code raise their hands within minutes, while the other half of the room is unable to figure out the answer. When told that the other side had an answer code, judges without fail indicate that the game is not fair. The session is then opened with me welcoming the judges into the world of the self-represented litigant in which most often the adversary in the case has an attorney who knows the rules and the non-attorney litigant does not. The exercise begins to challenge judges' feelings about justice received by litigants who do not have lawyers.
45. SRLN is hosted by the National Center for State Courts. The website is www.SRLN.org.
46. See Self-Represented Litigation Network, *supra* note 22, at 1.
47. <http://wicourts.gov/news/thirdbranch/current/prose3.htm>.
48. Email from Ann Zimmerman, State Pro Se Coordinator, State of Wisconsin Supreme Court, to Emily Morales, Deputy Chief Counsel to the Deputy Chief Administrative Judge of the New York City Courts, (Feb. 23, 2010, 12:10:00 EST) (on file with the author).
49. Judicial Council of California/Administrative Office of Courts, *Handling Cases Involving Self-Represented Litigants: A Benchguide for Judicial Officers* (January 2007), at <http://www.nlada.org/DMS/Documents/1176151729.08/CA%20pro%20se%20Benchbook.pdf>.
50. http://www.selfhelpsupport.org/library/folder.42614-Curriculum_Training_Materials.
51. Self-Represented Litigation Network, *supra* note 28.
52. There was particular concern that the ethics section reflect New York developments.
53. Email from Beth McLaughlin, Court Services Director, The State of Montana, to Emily Morales, Deputy Chief Counsel to the Deputy Chief Administrative Judge of the New York City Courts, (Feb. 26, 2010, 11:25:00 EST) (on file with author).
54. Some jurisdictions indicated this difficulty in conversations or emails with author.
55. For examples of online training, visit <http://www2.courtinfo.ca.gov/protem/index.htm>.
56. To learn more about webinars, visit <http://www.webopedia.com/term/w/webinar.html>.
57. To learn more about webcasts, visit <http://www.webopedia.com/TERM/W/Webcast.html>.

58. To view a California webcast, visit <http://www2.courtinfo.ca.gov/cjer/aocvtv/dialogue/neuro/index.htm>.