

6-2016

Litigants Without Lawyers: Measuring Success in Family Court

Marsha M. Mansfield

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal



Part of the [Law Commons](#)

Recommended Citation

Marsha M. Mansfield, *Litigants Without Lawyers: Measuring Success in Family Court*, 67 HASTINGS L.J. 1389 (2016).

Available at: https://repository.uchastings.edu/hastings_law_journal/vol67/iss5/8

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.

Litigants Without Lawyers: Measuring Success in Family Court

MARSHA M. MANSFIELD*

As thousands of litigants access our court systems without lawyers, the debate whether these litigants receive procedural and substantive justice has intensified. Nationwide, eighty percent of those accessing the court system in a family law matter do so without the assistance of a lawyer. As the numbers continue to increase exponentially and access to free or low cost legal services diminishes, courts, lawyers, legal service organizations, and law schools throughout the country continue to experiment with alternates to full-scale representation that can provide self-represented litigants with adequate legal assistance.

Although some researchers have analyzed the overall success ratio for cases where legal representation has been offered or provided in contrast to limited scope or no legal assistance, little measurement has been undertaken to quantify the success of these courthouse clinics over self-representation. The project described in this Article is an attempt to measure that success.

This Article describes the legal landscape for family law litigants across the nation and efforts to provide access to justice for self-represented litigants. The Article then explains a study of self-represented family law litigants in Dane County, Wisconsin. Two groups of cases are analyzed: family law cases processed through the Dane County court system during 2010 where neither party was represented by counsel, and cases, during the same time period, where self-represented litigants received legal assistance from students at the University of Wisconsin Law School's Family Court Clinic. A survey of those users was undertaken to determine whether the services provided enabled self-represented litigants to successfully complete the legal task for which they sought assistance.

The Article then discusses methodologies and reforms that may better address the needs of self-represented litigants. This study has implications for restructuring legal practice as well as for improving self-help initiatives.

* Marsha M. Mansfield, Clinical Professor, University of Wisconsin Law School.

TABLE OF CONTENTS

INTRODUCTION.....	1390
I. FAMILY LAW LITIGANTS IN TODAY’S COURT SYSTEM.....	1391
II. ADDRESSING THE JUSTICE GAP: A VARIETY OF APPROACHES	1393
III. STUDIES OF SELF-REPRESENTED LITIGANTS	1396
IV. STUDYING UNBUNDLED LEGAL ASSISTANCE IN WISCONSIN.....	1397
A. THE FAMILY COURT CLINIC.....	1398
B. FAMILY LAW CASES IN DANE COUNTY, WISCONSIN	1400
V. SURVEY RESULTS	1404
A. ANALYSIS OF RESULTS FROM THE CCAP CASES.....	1404
B. FAMILY COURT CLINIC CASES	1407
C. RESULTS	1408
1. <i>Case Information</i>	1408
2. <i>Case Review Results</i>	1411
3. <i>Satisfaction with the Court Process</i>	1412
4. <i>Program Satisfaction</i>	1413
VI. DISCUSSION	1414
CONCLUSION	1416
APPENDIX.....	1418

INTRODUCTION

As thousands of litigants without lawyers access our court systems every day, the debate over whether these litigants receive procedural and substantive justice has intensified. The numbers continue to increase exponentially¹ but access to free or low cost legal services is diminishing.² Thus, courts, lawyers, legal service organizations, and law schools throughout the country continue to experiment with alternatives to full-scale representation that can provide self-represented litigants adequate legal assistance.³

1. See generally *Self-Representation Resource Guide*, NAT’L CTR. FOR ST. CTS., <http://www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/Resource-Guide.aspx> (last visited May 29, 2016) (linking to reports from several localities). The American Bar Association’s (“ABA”) 1994 Comprehensive Legal Needs Study reported that fewer than three in ten of the legal problems of low-income households were brought to the justice system. ROY W. REESE & CAROLYN A. ELDRED, AM. BAR. ASS’N, *LEGAL NEEDS AMONG LOW-INCOME AND MODERATE-INCOME HOUSEHOLDS: SUMMARY OF FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY* 22 (1994). Only four in ten moderate-income households brought their legal problems to the courts. *Id.* More recent surveys have documented similar trends. See, e.g., REBECCA L. SANDEFUR, *ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY* 9–13 (2014).

2. See ALAN W. HOUSEMAN & LINDA E. PERLE, CTR. FOR LAW & SOC. POLICY, *SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES* 41 (2007).

3. Deborah J. Chase, *Pro Se Justice and Unified Family Courts*, 37 *FAM. L.Q.* 403, 404–06 (2003); Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal*

Recognition of the need to provide equal access to justice for low- and middle-income individuals and families has long been the focus of scholarship, law school conferences, and news coverage.⁴ No one contends that all people accessing the court system need lawyers. Every day people successfully navigate the court system. They file and complete their divorce actions. They initiate and complete small claims and probate matters. It has been demonstrated that in many instances, paralegal or other nonlegal professionals can help people enter and exit the legal system successfully.⁵ The question therefore becomes, when is a lawyer necessary? Are there instances where changes to court processes and procedures can promote efficiency while enhancing litigants' ability to obtain a result that is substantively and procedurally fair?

This Article describes a comparative study of all family law cases processed through the Dane County, Wisconsin court system during a one-year period during which neither party was represented by counsel, and cases, during the same time period, where self-represented litigants received legal assistance from law students at the University of Wisconsin Law School's Family Court Clinic. The study focuses on outcomes achieved in both sets of cases as well as on additional data gleaned from a Family Court Clinic survey administered to users of the clinic.⁶ This Article then discusses methodologies and reforms that may better address the needs of self-represented litigants. This study has implications for restructuring legal practice as well as for improving self-help initiatives.

I. FAMILY LAW LITIGANTS IN TODAY'S COURT SYSTEM

Across the country more than one-half of those accessing the court system do so without a lawyer. In family law matters, at least one party appears without a lawyer in almost eighty percent of the cases.⁷ Although

Services, 18 GEO. J. ON POVERTY L. & POL'Y 453, 459 (2011); Nina Ingwer VanWormer, *Help at Your Fingertips: A Twenty-First Century Response to the Pro Se Phenomenon*, 60 VAND. L. REV. 983, 985–86 (2007); Richard Zorza, *An Overview of Self-Represented Litigation Innovation, Its Impact, and an Approach for the Future: An Invitation to Dialogue*, 43 FAM. L.Q. 519, 522 (2009).

4. See generally CTR. FOR AM. PROGRESS, CLOSING THE JUSTICE GAP: HOW INNOVATION AND EVIDENCE CAN BRING LEGAL SERVICES TO MORE AMERICANS (2011) (presenting several articles that discuss the inequalities of access to justice); BRUCE D. SALES ET AL., A.B.A., SELF-REPRESENTATION IN DIVORCE CASES (1993); see also Sande L. Buhai, *Access to Justice for Unrepresented Litigants: A Comparative Perspective*, 42 LOY. L.A. L. REV. 979, 983 (2009).

5. For a listing of programs, see ABA *Affordable Legal Services: Innovative Programs to Help People of Modest Means Obtain Legal Help*, A.B.A., http://www.americanbar.org/groups/delivery_legal_services/resources/programs_to_help_those_with_moderate_income.html (last visited May 29, 2016).

6. To review the FCAP Survey, see *infra* Appendix.

7. Russell Engler, *And Justice For All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 2047 n.263 (1999); VanWormer, *supra* note 3.

others have written about the reasons for this increase,⁸ self-representation is a reality in today's justice system. Since full-scale representation seems unachievable in today's legal landscape, many have questioned how successful self-represented litigants are in accomplishing the purpose for which they accessed the court system, what outcomes are reached, and how satisfied the litigants are with their experiences in handling their cases.

Research has shown that many self-represented litigants will forfeit important legal rights if not provided legal assistance.⁹ Studies examining family law cases have shown that those who are unrepresented in family law matters often give up claims for important resources such as maintenance and child support.¹⁰ Furthermore, unlike other areas of the law, family law litigants cannot resort to nonlegal means to resolve their problems. Involvement in the court system is mandatory; whether it is a simple divorce, a paternity matter, or a post-judgment modification of an order. This is quite different from other areas of the law where litigants can avoid court involvement entirely through prelitigation settlement or other nonadversary proceedings.

Furthermore, family law litigants must use court forms to access the court system, some of which are required in certain jurisdictions, and court approval is mandated, even when the parties themselves agree to the substance of an order. To some litigants, "access to justice" may simply mean successfully completing the court process, regardless of the ultimate outcome as well as the litigant's perception of the "fairness" of the justice system. Thus litigants proceeding through the family law system without

8. See, e.g., Drew A. Swank, *The Pro Se Phenomenon*, 19 *BYU J. PUB. L.* 373, 379 (2005); see also PATRICIA A. GARCIA, A.B.A., *LITIGANTS WITHOUT LAWYERS: COURTS AND LAWYERS MEETING THE CHALLENGES OF SELF-REPRESENTATION* (2002).

9. As Engler has noted, unrepresented litigants routinely waive significant rights, possibly due to bad legal advice, poor explanations, or as a result of manipulation and threats from opposing counsel. Engler, *supra* note 7, at 2024. Engler's argument for the need to revisit how unrepresented civil litigants are treated and should be treated in the justice system has often been echoed since his words were written over fifteen years ago.

10. *Id.* at 2049 (citing Caroline Kearney, *Pedagogy in a Poor People's Court: The First Year of a Child Support Clinic*, 19 *N.M. L. REV.* 175, 176 (1989)). Little has changed since this article noted that a significant barrier to economic self-sufficiency was the inability of large numbers of women to afford counsel in order to establish and collect support. *Id.* at 2050 n.273; see also Daniel Golden, *Probate Plaintiffs at Risk Without Lawyers*, *BOSTON GLOBE*, Nov. 27, 1995, at 1 (reporting that, according to judges and other legal observers of the Massachusetts Probate and Family Courts, "without attorneys, [unrepresented female litigants] run more risk of losing their children, paying excessive support, being pressured into an unfair settlement—or even making themselves vulnerable to batterers"). This is the basis of the *Civil Gideon* movement that advocates for appointment of counsel when basic needs are at stake. See Howard H. Dana, Jr., *Introduction: ABA 2000 Resolution on Civil Rights to Counsel*, 15 *TEMP. POL. & C.R. L. REV.* 501, 501 (2006); Debra Gardner, *Pursuing a Right to Counsel in Civil Cases: Introduction and Overview*, 40 *CLEARINGHOUSE REV.* 167 (2006); Symposium, Leigh Goodmark, *A Right to Counsel in Civil Cases: Civil Gideon in Maryland and Beyond*, 37 *U. BALT. L. REV.* 1 (2007); Paul Marvy, *Advocacy for a Civil Right to Counsel: An Update*, 41 *CLEARINGHOUSE REV.* 644 (2008).

lawyers provide the context for this Article's study of whether they can adequately access procedural and substantive justice.

II. ADDRESSING THE JUSTICE GAP: A VARIETY OF APPROACHES

Varied approaches to addressing the justice gap have been suggested and analyzed by those delivering legal services as well as those studying its delivery and the implications for lawyers and law schools. These include the Civil *Gideon* movement,¹¹ designing programs to deliver unbundled legal services,¹² increasing pro bono representation, and experimenting with alternate delivery models by nonlawyers.¹³

Programs have been developed in almost every jurisdiction to assist self-represented litigants.¹⁴ Some are very innovative and others are controversial. Self-help centers are the most common. A recent study by the ABA's Standing Committee on the Delivery of Legal Services reported that nearly 3.7 million people use court-based legal self-help centers at over 500 locations nationwide.¹⁵ The most common area where assistance is provided is family law.¹⁶ These centers supply forms, document assistance, and web-based information.¹⁷ Less commonly

11. "Civil *Gideon*" has become the label for the effort to provide legal counsel for people who cannot otherwise afford an attorney in civil legal matters. See Dana, *supra* note 10; Gardner, *supra* note 10; Goodmark, *supra* note 10; Marvy, *supra* note 10. These publications all contain papers and articles explaining and commenting on the civil *Gideon* efforts. See also AM. BAR. ASS'N, RECOMMENDATION 112A (2006).

12. The self-help clinic model developed over thirty years ago as the numbers of self-represented litigants accessing the court systems increased. As Forrest Mosten was advocating for unbundled services, others in the civil justice system were also examining alternatives to full-scale representation. Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L.Q. 421, 426 (1994); Bruce D. Sales et al., *Is Self-Representation a Reasonable Alternative to Attorney Representation in Divorce Cases?*, 37 ST. LOUIS U. L.J. 553, 561-66 (1992). One of the first such clinics was developed in Maricopa County, Arizona in 1995. The "Self-Service Center" program distributed simply written, court-approved forms, samples, and instructions available at the courthouse and through Internet access. Michael Millemann directed an unbundled family law clinic in the mid 1990s. See Michael Millemann et al., *Limited-Service Representation and Access to Justice: An Experiment*, 11 AM. J. FAM. L. 1 (1997).

13. See *infra* notes 23, 25.

14. Programs include brief advice clinics, hotlines, websites, and lawyer for a day programs. John Greacen has compiled an extensive listing of resources available to self-represented litigants. See generally JOHN M. GREACEN, RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE "STATE OF THE ART" (2011) (reporting on current programs, policies, and services provided by state court to pro se litigants).

15. AM. BAR ASS'N., STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., THE SELF-HELP CENTER CENSUS: A NATIONAL SURVEY (2014).

16. *Id.* at 15. The survey indicates that eighty-nine percent of the centers provide services in family law, followed most closely by help for child support and domestic violence cases.

17. Most clinics provide general information about the law, procedure, and practice to litigants or prospective litigants who typically have common legal issues. Margaret Martin Barry, *Assessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1879, 1883 (1999). The goal is to provide sufficient information to allow participants to understand and access the type of pleadings required,

provided services include in-person workshops, interactive web-based forms, web or videoconferencing workshops, video or online tutorials, e-mail or online responses, and referrals to pro bono attorneys and attorneys providing unbundled services.¹⁸ Other states have developed programs to address the needs of self-represented litigants that take advantage of the recent Internet-based developments. Examples include Illinois,¹⁹ Tennessee,²⁰ Michigan,²¹ and New York,²² all of which have developed online approaches to providing information, assistance with forms, and legal information to those with the ability to access the Internet. Entities such as LegalZoom²³ charge consumers for basic document preparation in substantive areas including divorce, DUI/DWI, name change, prenuptial agreements, financial power of attorney, health care power of attorney, and real estate. Other non-profit entities, such as CALI,²⁴ are encouraging law school clinics to develop opportunities where students create and implement technology solutions to legal problems facing low- and middle-income people. Thus, a plethora of approaches have evolved to address unmet legal need.

An innovative and controversial approach involves the use of nonlawyer advocates who can assist litigants in specified areas and cases. For example, in 2012, Washington State became the first state to adopt a Limited License Legal Technician (“LLLT”) Rule (APR 28).²⁵ The new LLLT rule authorizes nonattorneys who fulfill certain requirements to advise and assist clients in approved practice areas of law.²⁶ The purpose

basic rules such as service of process, basic information that the court will require to render a decision, and a sense of the available options. *Id.*

18. *Id.*

19. See ILL. LEGAL AID, <http://www.illinoislegallaid.org/> (last visited May 29, 2016).

20. See ONLINE TENN. JUST., <http://www.onlinetnjustice.org/> (last visited May 29, 2016). Indiana has replicated the Tennessee model for providing pro bono assistance online. IND. LEGAL SERVS., INC., www.indianalegalservices.org (last visited May 29, 2016).

21. See MICH. LEGAL HELP, <http://michiganlegalhelp.org/> (last visited May 29, 2016); see also WASHINGTONLAWHELP.ORG, <http://www.washingtonlawhelp.org/> (last visited May 29, 2016).

22. See LAWHELPNY.ORG, <http://LawHelp.org/NY> (last visited May 29, 2016).

23. LEGALZOOM, <http://www.legalzoom.com> (last visited May 29, 2016). For examples of additional form suppliers, see USLEGAL, <http://www.uslegalforms.com> (last visited May 29, 2016) and ALLLAW.COM, <http://www.alllaw.com> (last visited May 29, 2016).

24. “The Center for Computer-Assisted Legal Instruction (CALI) is a 501(c)(3) non-profit consortium of law schools, law libraries and related organizations. In keeping with our Mission Statement, CALI conducts applied research and development in the area of computer-mediated legal education and creates tools that increase access to justice.” *About CALI*, CALI, www.cali.org/content/about-cali (last visited May 29, 2016).

25. *Washington Limited License Legal Technician (LLLT) Research Guide*, U. WASH., <https://lib.law.washington.edu/content/guides/llltguide> (last visited May 29, 2016) (describing the rule and its history is more fully); see also Jessica Dixon Weaver, *Overstepping Ethical Boundaries? Limitations on State Efforts to Provide Access to Justice in Family Courts*, 82 *FORDHAM L. REV.* 2705, 2718–19 (2014).

26. *Washington Limited License Legal Technician (LLLT) Research Guide*, *supra* note 25; Weaver, *supra* note 25, at 2718–19.

is to increase access to legal assistance and the first area of concentration is family law.²⁷

Of course, many law school clinics across the country attempt to meet some of the need in a variety of legal arenas including, family law, housing, consumer law, government benefits, and immigration. While these clinics are primarily focused on representation of those least able to afford attorneys, the limited available resources, as well as the structure of these clinics, results in vigorous screening of cases as well as small numbers of cases where representation is made available.

Thanks to efforts by those such as Richard Zorza, judges, clerks, and others involved in the court system are much more attuned to the needs of self-represented litigants.²⁸ Several states have adopted changes to their judicial codes meant to facilitate the ability of self-represented litigants to understand the court process and to be fairly heard.²⁹

Nonetheless, Professor Margaret Martin Barry noted two major obstacles to effective access that remain a concern today.³⁰ First, important legal rights can be overlooked with self-represented litigants taking as “gospel” the kind of generalities that are offered through limited scope representation or nonattorney professionals.³¹ More importantly, “[n]either information nor [limited legal] advice is likely to prepare [self-represented] litigants to pursue fully their legal rights.”³² One of self-

27. Weaver, *supra* note 25, at 2718–19.

28. Zorza, *supra* note 3; see also RICHARD ZORZA, NAT'L CTR. FOR ST. CTS., THE SELF-HELP FRIENDLY COURT: DESIGNED FROM THE GROUND UP TO WORK FOR PEOPLE WITHOUT LAWYERS (2002). Additional publications can be found at www.zorza.net.

29. As part of the revisions to the A.B.A. Model Code of Judicial Conduct, the ABA adopted Rule 2.2(4) “Impartiality and Fairness” and a comment to that rule addressing self-represented litigants. Rule 2.2 provides that “[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” *Rule 2.2: Impartiality and Fairness*, A.B.A., www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_2impartialityandfairness.html (last visited May 29, 2016). Comment 4 states that “[i]t 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.” *Comment on Rule 2.2*, A.B.A., www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_2impartialityandfairness/commentonrule2_2.html (last visited May 29, 2016). To date, twenty-five states and the District of Columbia have amended their codes to address self-represented litigants, and at least two other states are in the process of doing so. CPR POL'Y IMPLEMENTATION COMM., A.B.A., *Comparison of ABA Model Judicial Code and State Variations* (Dec. 11, 2015), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2_2_authcheckdam.pdf.

30. Barry, *supra* note 17, at 1889–90.

31. *Id.* at 1889; see also Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 L. & SOC'Y REV. 419, 426–29 (2001).

32. Barry, *supra* note 17, at 1890; Buhai, *supra* note 4, at 979. A recent study showed that unrepresented litigants who sought help at a self-help center were just as likely to lose their cases as those who did not seek such help. Gary Blasi, *Framing Access to Justice: Beyond Perceived Justice for Individuals*, 42 LOY. L.A. L. REV. 913, 943 (2009).

represented litigants' most critical needs is information about the law and how the court process works.

In addition, criticism has been leveled at programs that provide less than full-scale representation for reasons that range from the difficulty of measuring their effectiveness to the sweeping conclusion that litigants without lawyers fare worse than those with representation.³³ The most recent criticism has focused on the lack of empirical research that justifies directing resources to those who self-represent.³⁴

III. STUDIES OF SELF-REPRESENTED LITIGANTS

As others have noted, social scientists or legal professionals have undertaken minimal evaluation of the alternatives described above.³⁵ There still are very few studies that measure outcomes of self-represented litigants seeking to resolve their legal matters in the court system although recent studies have focused on comparing outcomes for litigants with representation with those who did not have counsel.

One of the first studies, by Carroll Seron and others, sought to analyze the success of tenants facing eviction, comparing those who received representation with those in a control group who did not receive representation.³⁶ The results revealed that low-income tenants with legal representation obtained more beneficial outcomes than those who did not have legal representation, independent of the merits of the case.³⁷ Although initially the researchers attempted to distribute the cases for full-scale representation, legal advice from an attorney, or paralegal assistance, the researchers abandoned this aspect of the study because it was impossible to distinguish “normatively a case that required a lawyer from a case that required a lesser level of intervention.”³⁸

However, Professor Michael Millemann at the University of Maryland did conduct a study that touched upon the variation in legal needs. Over a seventeen-month period, family law litigants were provided

33. Buhai, *supra* note 4, at 983–84 (“We should consider the possibility, however, that a system that only works when every party is represented by competent and equal counsel is not a system worth saving.”).

34. Jeffrey Selbin et al., *Service Delivery, Resource Allocation, and Access to Justice: Greiner and Patanayak and the Research Imperative*, 122 *YALE L.J. ONLINE* 45, 50 (2012).

35. *Id.* at 48. The studies undertaken have ranged from evaluating the provision of limited legal services in various contexts to full-scale representation, but there is little quantitative research to help measure the effectiveness of technology, court-based self-help centers, and nonattorney legal services providers. Jessica Steinberg’s study of landlord tenant cases facing eviction in a single California trial court provides a good example. See Steinberg, *supra* note 3.

36. Seron et al., *supra* note 31, at 426.

37. *Id.*

38. *Id.* at 423–25.

limited legal services by law students under lawyer supervision.³⁹ The study divided legal problems into three categories: (1) those that could be solved with largely a mechanical approach, such as filling out forms for an uncontested divorce; (2) those that required the exercise of limited legal judgment and discretion such as custody cases where one parent had disappeared; and (3) cases requiring substantial legal judgment and discretion.⁴⁰ Litigants were then surveyed about their level of satisfaction with the legal services received at various stages in a case. The results indicated highest satisfaction when the problem was of a mechanical nature and declined somewhat as the case complexity increased.⁴¹ One reason advanced for litigant satisfaction was the development of standardized forms that enabled litigants to more easily access the court process. As a result of their study, the authors joined the chorus of those advocating for limited scope or unbundled services to enable those of modest means to access the court system effectively.⁴²

More recently, a study in Utah examined the impact of services provided to family law litigants by a family law clinic operated jointly by the Utah State Bar, the LSC-funded legal services organization, and the University of Utah College of Law Pro Bono Initiative.⁴³ Clinic participants were surveyed regarding their satisfaction with the assistance provided by attorneys and law students.⁴⁴ Demographic information as well as information regarding the clients' legal concerns was gathered through administration of a survey tool and follow-up telephone interviews.⁴⁵ This study, however, did not measure whether the clients were able to successfully navigate the court process or their beliefs regarding procedural or substantive fairness of the proceedings.

IV. STUDYING UNBUNDLED LEGAL ASSISTANCE IN WISCONSIN

Dane County is Wisconsin's capital city and one of its largest urban areas, with a population of approximately 500,000.⁴⁶ Dane County's racial

39. Millemann et al., *supra* note 12, at 3; see also Michael Millemann et al., *Rethinking the Full-Service Legal Representation Model: A Maryland Experiment*, 30 CLEARINGHOUSE REV. 1178, 1178 (1997) [hereinafter Millemann et al., *Rethinking the Full-Service Legal Representation Model*]. The students provided basic legal information, referrals, and advice to approximately 4400 self-represented litigants. *Id.* at 1181.

40. Millemann et al., *supra* note 12, at 5.

41. *Id.* at 7.

42. *Id.* at 1–3.

43. Linda F. Smith & Barry Stratford, *DIY in Family Law: A Case Study of a Brief Advice Clinic for Pro Se Litigants*, 14 J. L. FAM. STUD. 167, 180 (2012).

44. *Id.* at 182.

45. *Id.* One interesting finding was that clients felt more empowered immediately after exiting the clinic but felt more pessimistic when interviewed at a later time. *Id.* at 198.

46. *Quick Facts: Dane County, Wisconsin*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/55/55025.html> (last visited May 29, 2016).

mix is approximately 86% White, 5% African American, 6% Asian, and 6.2% Latina or Hispanic.⁴⁷ Approximately 13% of the population is below the federal poverty level.⁴⁸

A. THE FAMILY COURT CLINIC

The Family Court Clinic (“FCC”) is a clinical offering at the University of Wisconsin Law School located in Dane County.⁴⁹ The FCC is an experiential learning program, incorporating substantive family law and theory with actual experience handling family law matters. The students run a walk-in clinic at the Dane County Courthouse in Madison, as well as a community law office, located in an economically challenged area of Madison. They provide information, forms, and guidance to self-represented litigants who seek assistance in all areas of family law, from a simple divorce, to a jurisdictional problem or a paternity matter.⁵⁰ The FCC will also provide legal information and limited legal assistance where appropriate. Most of the assistance provided is “information only.” Each student staffs the clinic for one three-hour shift each week. One-hour appointments are scheduled and walk-ins are accepted if a student is available.⁵¹

The students provide more in-depth service than provided by the typical walk-in clinic and will meet with a consumer as many times as requested to complete the process. The assistance is comprehensive and usually includes identifying the litigant’s legal issues, locating the necessary forms, explaining to the litigant the process for completing the form, actually working with the litigant to complete the form, and, in most instances, walking the litigant through the filing and service process. The Internet is accessible to obtain information for the litigants, as well as to access other available resources. Brochures, videotapes, and other explanatory materials can be provided as well.

The students work full time during the summer, which allows for intensive instruction on the family law process and substance. Initially they observe a range of court hearings.⁵² They also observe their supervising attorney conducting intake appointments with litigants before they conduct interviews under the close supervision of the

47. *Id.*

48. *Id.*

49. The name of the clinic has changed to the Family Court Clinic. It formerly was called “The Family Court Assistance Project.”

50. The only cases the clinic does not handle are adoptions, those involving children in need of protective services (abuse or neglect) and, relatedly, termination of parental rights.

51. The FCC operates an intake line at the law school staffed by undergraduate volunteers who conduct a limited intake and schedule appointments for the law students.

52. These hearings range from temporary hearings in a divorce held before a court commissioner, to a contested custody or placement case before a judge.

supervising attorney. Once the students become more independent, they are encouraged to bring problems they encounter back for discussion with their peers or their supervising attorney when they encounter a question or issue that they cannot immediately address. They will conduct necessary research and follow up with a litigant to provide an answer or more information, typically through a telephone call within a week of the litigant's appointment.

People find the FCC through a variety of sources: clerk of courts office, the courthouse law library, attorneys, social service providers, judges, and court commissioners. Not only does the FCC assist people who want to initiate an action, but all court personnel, from clerks to judges, refer litigants to the FCC at various times in the process and often a social service provider will accompany a consumer to make sure that assistance is obtained. Thus, while some litigants will choose the FCC's services, others are directed to attend the clinic before further action is taken in their case.

Although the local bar association also operates a family law clinic, it is a walk-in only clinic, open one day each week for two hours. While litigants can obtain basic information and forms from volunteer attorneys, the level of assistance is minimal, most often comprised of supplying the correct form for the problem identified by the consumer. In contrast, the FCC students meet each consumer for up to an hour at a time and will meet with the consumer as often as necessary to assist the person through their legal matter. The FCC program operates approximately twelve to twenty hours per week⁵³ and appointments typically are filled weeks in advance.

The litigants who walk through the FCC's doors have cases that range from simple divorces, involving little property or income and no children, to obtaining permission to travel where the unmarried parental partner has been deported to Mexico, or modifying child support for a serial payor. Students engage in a diagnostic interview⁵⁴ followed by an explanation of the necessary forms, the process, and the next steps needed to complete the matter. In some cases the students will enter into a limited service agreement to draft a letter or a pleading, but most forms required in Wisconsin family law cases can be found on the state court's website⁵⁵ or the local county court website.⁵⁶ Following the brief service,

53. In the summer the students work in pairs during their shifts but during the school year, the clinic hours vary depending on student schedules.

54. Millemann et al., *Rethinking the Full-Service Legal Representation Model*, *supra* note 39, at 1182.

55. The Wisconsin court system, through its Forms Committee, created a multitude of standardized forms that self-represented litigants can utilize to access the court system. Persons with access to a computer can simply download the necessary forms, many of which are accompanied by instructions for completion and filing. See *Circuit Court Forms*, Wis. Cr. Sys., www.wicourts.gov/forms1/circuit/index.htm (last visited May 29, 2016).

students complete an intake form and a time sheet where they describe the services provided to the person with whom they met. A file is then created for each intake with the intake information and the time sheet.

Since full-scale representation is impossible in today's legal system, many have questioned how successful self-represented litigants are in completing the court process and in achieving their desired outcomes, and how satisfied litigants are with their experiences in handling their cases. Since the FCC program tracks the cases in which students provide assistance, data was available that could be analyzed to answer those questions.

B. FAMILY LAW CASES IN DANE COUNTY, WISCONSIN

Studying family law cases presents challenges due to the variety and nature of the court proceedings. Every case filed in a Wisconsin state court is assigned a case number that is entered on the state's Circuit Court Access website ("CCAP").⁵⁷ According to the CCAP website, "the information displayed is an exact copy of the case information entered into the . . . case management system by court staff in the counties where the case files are located."⁵⁸ All cases, with the exception of cases involving minors and those where paternity has not yet been adjudicated, can be accessed on the website.⁵⁹ Each type of case is assigned an individual case classification code.⁶⁰ For family law, thirteen separate case codes are assigned to the following types of cases: Divorce; Support/Maintenance; Annulment/Legal Separation; UIFSA⁶¹-Incoming; UIFSA-Outgoing; Paternity; Paternity Acknowledgement; Action to Modify-Enforce Judgment; Domestic Abuse-Restraining Order/Injunction; Child Abuse-Restraining Order/Injunction; Harassment-Restraining Order/Injunction; Combined Action/Domestic Abuse; Harassment; and Unclassified.⁶² Thus, it is possible to sort and examine the types of cases filed in a given year by type.

56. *Court Forms*, DANE COUNTY CLERK CTS., <https://courts.countyofdane.com/prepare/forms> (last visited May 29, 2016). In Dane County, form packets can also be purchased at the courthouse library.

57. Wisconsin's Circuit Court Access System is a computerized database that reflects the events that occurred on the case. *Access to the Public Records of the Wisconsin Circuit Courts*, WIS. CT. SYS., <http://wcca.wicourts.gov> (last visited May 29, 2016).

58. *Id.*

59. *Id.*

60. *Circuit Courts: Fees and Filing*, WIS. CT. SYS., <http://www.wicourts.gov/courts/circuit/circuitcodes.htm> (last updated Feb. 5, 2013).

61. UIFSA is the acronym for the Uniform Interstate Family Support Act, a model act, (adopted in Wisconsin as ch. 769) that provides for enforcement of child support orders entered in other states. See *Interstate Child Support Enforcement Case Processing and UIFSA*, OFF. CHILD SUPPORT ENFORCEMENT (Dec. 28, 1999), www.acf.hhs.gov/programs/css/resource/interstate-child-support-enforcement-case-processing-and-uifsa.

62. *Circuit Courts: Fees and Filing*, *supra* note 60.

For this study all online records were examined for civil family law cases in Dane County, Wisconsin, except paternity cases, where both parties involved in the action did not have an attorney.⁶³ The year 2010 was picked for the survey because family law cases typically take between two and eight months to reach resolution and it was believed that most people would have completed their case approximately one year following their contact with the FCC but would still remember details regarding their experience.

The CCAP records for 2010 show that over 3000 family law cases in Dane County had some sort of court activity where both of the parties did not have an attorney. There were 2684 new cases filed, of which 1664 (eighty percent) were filed by self-represented litigants.⁶⁴ In the 2012 ongoing cases (that is, cases filed prior to 2010), a motion or other action was filed—the oldest dating back as far as 1967⁶⁵—or some other administrative action was taken in the case that was noted as an “activity” in the CCAP record.

New case filings can be broken down into categories. Of the 1664 new cases filed, approximately 828 (almost fifty percent) were divorces, forty-seven were legal separations (or annulments, which utilize the same form), and sixty-four were Voluntary Paternity Actions.⁶⁶ The child support office initiated the remaining 725 cases as paternity or support actions.

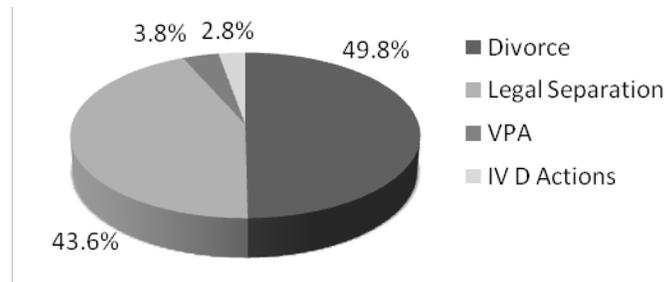
63. Paternity cases are not made public until paternity is adjudicated. Often the file is not recorded on CCAP even after the adjudication so reliable records could not be obtained. Cases where one party had an attorney also were not included.

64. The extensive library of online forms makes it very easy for people who wish to file a family law matter to obtain the necessary forms as well as directions for completion, filing, and service. This percentage is consistent with national averages.

65. According to the records provided by the Office of Court Operations.

66. In Wisconsin, the parties may sign a Voluntary Paternity Acknowledgement form in the hospital that establishes parentage but not custody, placement, or child support. Therefore, when the parties are no longer living together or have a dispute regarding any of these issues, an action must be filed in court to have an order entered.

FIGURE I: 2010 NEW COURT FILINGS



The approximately 2000 cases that had documented court activity in 2010 were much more varied in type and nature of case.⁶⁷ The child support agency initiated the activity in the vast majority of the cases (1392 cases or sixty-nine percent) where case activity was recorded.⁶⁸ This activity included dismissals (when the parties moved, married, or did not want support and government benefits were not involved⁶⁹); contempt motions; motions to set support, modify support, issuance of warrants; and other administrative matters. Five hundred sixty-eight cases were support/maintenance actions where the child support office initiated the activity, requesting either that support be established, for review of an on-going support order or where it filed a motion for contempt (including requests that arrest warrants be issued).

There were 114 UIFSA cases involving registration of foreign orders, dismissal of pending actions, contempt or other enforcement efforts or administrative activity such as an address change. Five hundred seventy-seven cases were Paternity Acknowledgement Cases, and in 415 of those cases the “activity” was instituted by the child support agency. The remaining cases involved a motion filed by one of the parties or a stipulation and order that was submitted and signed by a court official.

In 2010, 663 divorce or legal separation/annulment cases reflected activity on CCAP. Of those, 367 were cases that had been filed in a previous year but were completed in 2010. Twenty-eight cases were dismissed. The child support agency brought a motion (either to set support, change

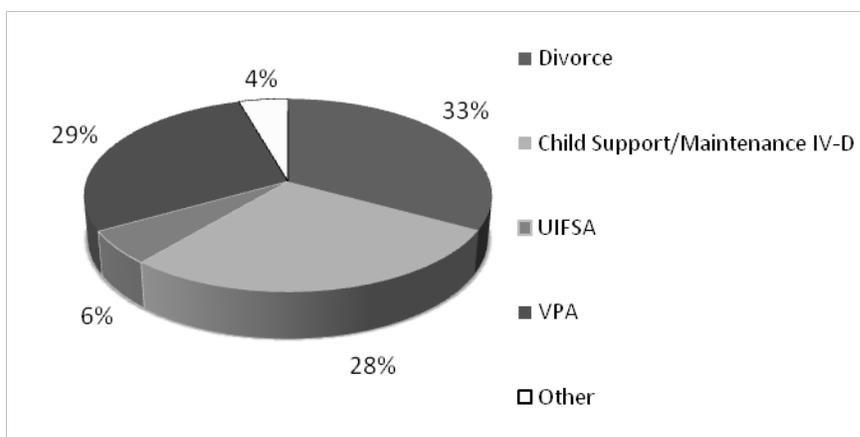
67. Eighty-seven cases could not be found on CCAP, so they are not included in the study. It is unknown why these cases did not show up on the public records but courts have the authority to seal records in certain cases.

68. Participants in these hearings are rarely represented by counsel except for the state who initiates the proceeding, thus raising other questions of procedural and substantive fairness that were not addressed in this study.

69. The Dane County Child Support Agency is responsible for establishing and enforcing support orders for children. DANE COUNTY CHILD SUPPORT AGENCY, www.danechildsupport.com/default.aspx (last visited May 29, 2016). The agency is statutorily authorized to initiate support actions when one of the parties receives government assistance.

support, or enforce a support order) in 128 cases. The remaining cases involved administrative matters (that is, they showed up on CCAP as having activity but the “activity” was limited to change of address, entry of a qualified domestic relations order, or other administrative matter such as termination of support due to a child reaching the age of majority, or a paternity judgment where a child was born during marriage but was not a child of the marriage). Others involved a statutory review of child support and an adjustment to an ongoing court order. Some divorce cases began as support actions. Upon completion of the divorce, an order was entered consolidating the two cases.⁷⁰

FIGURE 2: 2010 CASES WITH ACTIVITY



70. There were several cases where a party wrote a letter to the court commissioner asking that a change be implemented. The commissioner would write a letter requiring the party to file the correct motion that followed in some cases and not in others. These cases were not included if the party did not file the paperwork until 2011. In sixty-six cases, the parties simply submitted a stipulation and order that was reviewed and signed by the court commissioner. Since there was no other court action initiated and it was unclear who initiated the activity, these cases were not considered.

V. SURVEY RESULTS

A. ANALYSIS OF RESULTS FROM THE CCAP CASES

TABLE 1: DIVORCE (828 CASES)

Number of Cases (Percent)	Result
715 (86%)	Action Completed
111 (13%)	Divorce dismissed
2 (1%)	Change of Venue

Of the cases dismissed, fifty-eight were a result of reconciliation, or because of a non-appearance of the parties or failure to prosecute, which also could indicate reconciliation occurred. The entry for forty-one cases was simply “dismissed” with no reason provided. The remaining cases were dismissed for failure to effect service, for jurisdictional reasons, or in one case, because a party was deceased.

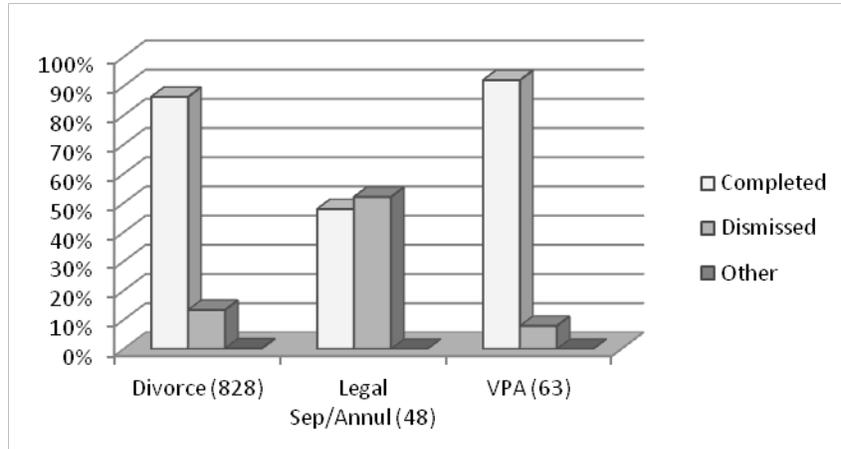
TABLE 2: LEGAL SEPARATION OR ANNULMENT (48 CASES)

Number of Cases (Percent)	Result
23 (48%)	Action Completed
25 (52%)	Dismissed (17 due to reconciliation or no appearance)

TABLE 3: PATERNITY ACKNOWLEDGMENT (63 CASES)

Number of Cases (Percent)	Result
58 (92%)	Action Completed
5 (8%)	Dismissed

FIGURE 3: 2010 CASE COMPLETIONS (938 CASES)



Of the 2012 cases with activity in 2010, 260 cases (thirteen percent) involved a party (rather than the state) filing some sort of motion. Forty-two cases were dismissed or the motion was denied and six cases were adjourned or held open with no further action noted. Twenty-seven cases were dismissed because the moving party did not show up at the hearing, and only two were dismissed due to lack of service. In the vast majority of the cases (204 or seventy-eight percent of the cases) an order was entered. Records indicated that only six cases were filed where nothing other than the filing appeared on CCAP. The breakdown of this data is presented in Tables 4 and 5.

TABLE 4: MOTIONS FILED BY UNREPRESENTED LITIGANTS

Type of Motion Filed	Number Filed
Motion to change support	108
Motion to change custody/placement/support	131
Contempt	14 (4 combined with another motion)

TABLE 5: CASE OUTCOMES

Number of Cases	Result
160	Orders were entered
20	Orders were entered pursuant to a stipulation
23	Motions were denied after hearing
14	Contempt motion (3 including modification motions as well) <ul style="list-style-type: none"> • 11 cases reached a resolution, 2 were held open, and 1 was dismissed.
108	Motions regarding child support (including 1 to change the tax exemption): <ul style="list-style-type: none"> • 25 females filed and 3 were dismissed. In all other cases an order was entered. • 83 males filed: 26 were dismissed or denied; 2 motions were withdrawn; 8 entered into a stipulation; and orders were entered in 38 cases.⁷¹
2	Convert legal separation to divorce

The striking conclusion from the record review is the large percentage of cases where the individual who filed the action or brought the motion was successful in filing, serving, and prosecuting his or her motion. In eighty-six percent of the divorce cases filed in 2010, the litigant was able to successfully complete her case.⁷² In seventy-eight percent of the cases where one of the parties brought a post-judgment motion, that person was able to obtain a result, and only eleven percent were dismissed or denied by the court.⁷³ These results differ starkly from those found in a 2000 study by the National Center of State Courts where, in the five jurisdictions studied, dismissal rates were much higher in family law cases if neither party was represented.⁷⁴

Furthermore, the complexity of the case did not seem to weigh heavily in the outcome. This might be due to two factors. First, the child support standards are applied somewhat mechanically. Thus there is little room to argue for a variation unless the placement schedule has changed significantly. Second, most custody or placement disputes are referred to

71. In some circumstances, the outcome was unknown or could not be determined from the CCAP.

72. Although the court records reviewed were cases where an attorney was not involved, it is unknown how many of these litigants accessed the once-per-week walk-in clinic prior to or during their action as the clinic has been in existence for many years.

73. Due to the variation in CCAP entries the basis of a dismissal or denial often was unclear. In many instances the only entry was "order entered" leaving it unknown whether the litigant was successful.

74. Paula Hannaford-Agor & Nicole Mott, *Research on Self-Represented Litigation: Preliminary Results and Methodological Considerations*, 24 JUST. SYS. J. 163, 171 (2003).

Family Court Services (“FCS”), a court-based service providing mediation and evaluation to all parties involved in a placement or custody dispute.⁷⁵ Attorneys have little involvement with the FCS process and parties are generally required to attend mediation with a counselor, where compromise and agreement are vigorously promoted.

Thus, if “success” is defined as case completion, the overwhelming majority of self-represented litigants were able to complete their cases. Unfortunately, little is known about these litigants other than what could be gleaned from the online records. However, more information was available for those persons who accessed the FCC.

B. FAMILY COURT CLINIC CASES

Approximately 415 litigants who accessed the court system in 2010 received assistance through the FCC.⁷⁶ These included litigants starting an action, responding to an action, filing a motion in an ongoing case, or just getting information. Survey data was collected for each litigant who accessed the clinic.⁷⁷ The survey was comprised of thirty-four questions.⁷⁸ Of those, twelve could be answered by reviewing the individual intake files that are completed for every intake as well as by reviewing the CCAP record. The remaining questions were administered in interviews with litigants who were personally contacted by a trained project assistant⁷⁹ and asked a series of questions directed at the litigant’s satisfaction with the court process as well as of the FCC’s services. The interviews occurred approximately two years after completion of the court action for most individuals.

Thirty-four individuals were successfully contacted for telephonic interviews (eight percent). The primary reason for the inability to make more in-person contacts was the mobility of the persons who utilized the FCC’s services, most of whom are low- or moderate-income individuals. In the year or more since they received services, people moved or phone numbers changed. Others simply did not answer their phone or refused to participate in the survey. However, as more fully discussed below, the

75. *Services Provided*, DANE COUNTY FAM. CT. SERVS., www.countyofdane.com/familycourt counseling/services.aspx (last visited May 29, 2016).

76. The FCC only operates when school is in session. Thus there are periods of time (from December to January and May to June) when the clinic is not operating.

77. Each person accessing the FCC has a file opened containing an intake form, a waiver signed by the consumer, and an activity log, where the student enters the work performed on the case. These cases were followed on CCAP to obtain information about the outcome for each case surveyed. All available files were reviewed but some files were incomplete so the same data could not be mined for each intake.

78. *See infra* Appendix.

79. Project assistants were required to complete an Institutional Review Board training and were provided with an interview protocol.

findings from those interviews are striking when considering the impact that the FCC's services had on those cases.

Although the clinic is open to anyone who seeks FCC's services, and income data is not sought from those who access the clinic, it was clear from the limited interviews, as well as from reviewing the files maintained for each contact, that the vast majority of persons seeking the FCC's assistance are not in a financial position to hire an attorney. It only takes a few minutes of conversation with a litigant to understand her financial circumstances. Further, in the vast majority of the cases the students assisted the litigant to complete a fee waiver form so that fees for filing and service were waived.⁸⁰

C. RESULTS

1. Case Information

The age range of the thirty-four individuals who were interviewed was eighteen to sixty years. The majority were between the ages of thirty and forty (42%). Of the total surveyed, 42% were male and 58% were female. The ethnic breakdown revealed a greater use of FCC services by minorities than are reflected in the general population. Of 201 cases examined, 52% were White, 22% were African American, 20% were Hispanic or Latino, and 6% were a variety of other ethnic groups.⁸¹

When the FCC was initially designed, it was thought that people would continue to access services until their court action was complete. However, statistics reveal that the majority of people only came one time for service. In only twenty percent of 194 cases did visits occur more than once, demonstrating that people look more for assistance during the initial stages of their proceedings than closer to or at the time when they are scheduled for a court hearing, the exception being a simple divorce where people frequently returned for assistance in completing the necessary forms.⁸² This is supported by a review of the type of assistance

80. Fees are presumptively waived for persons receiving government services, as well as for those that can demonstrate through a financial disclosure form that they lack the resources to pay court and service fees. *See* WIS. STAT. § 814.29 (2016).

81. An important aspect of the clinic's services is that it can offer interpreters during clinic hours, allowing Spanish speaking consumers access to the FCC's services.

82. In divorce cases most people sought assistance with the initial filing (44%). Others sought help with the final agreement (13%), titled "Marital Settlement Agreement" in Wisconsin, while others wanted help with the required financial disclosure statement (9%) or had questions about service of process (8%). Of course many of these issues are also addressed when helping the litigant with the initial filing, but they are more focused upon in other appointments. When a litigant is further along in the divorce process, the students will address the final divorce hearing proceeding and the necessary paperwork required with the litigant.

typically provided. Table 6 presents the types of cases where assistance was sought.⁸³

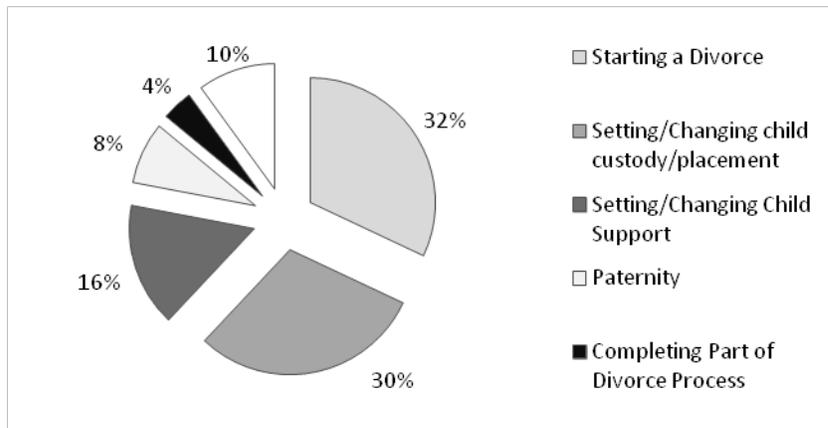
TABLE 6: TYPES OF CASES WHERE THE FCC PROVIDED ASSISTANCE

Type of Case	Percent	Frequency
Starting a divorce	32.38%	68
Setting or changing child custody or placement	30.00%	63
Setting or changing child support	15.71%	33
Paternity	8.10%	17
Completing part of the divorce process	4.29%	9
Other	3.33%	7
Third-party visitation	2.86%	6
Maintenance questions or issues	1.90%	4
Voluntary paternity acknowledgment petition	1.43%	3
Temporary order hearing	0.00%	0
Total	100%	210

83. Of the thirty-four individuals interviewed, ten sought help with a motion to change child support, six sought help with the divorce process, including starting an action, and others sought placement or other assistance.

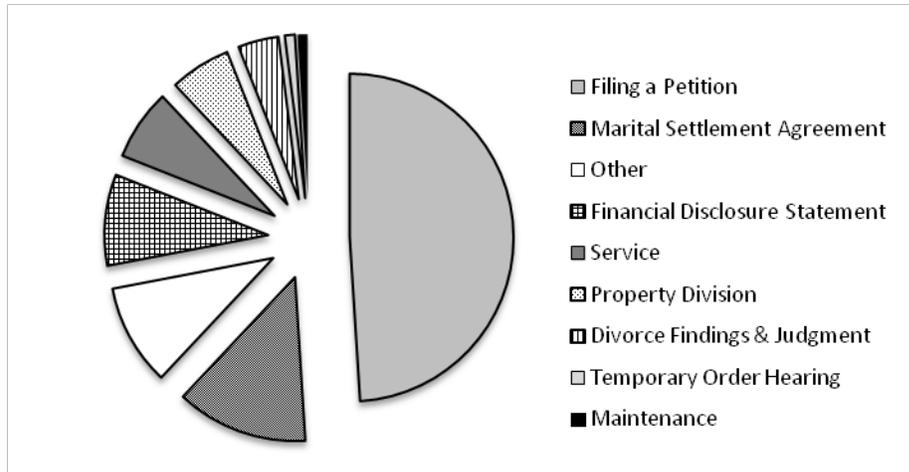
Figure 4 provides a visual illustration of this data to show how the majority of cases involved either initiating a divorce or modifying custody or placement.

FIGURE 4: TYPES OF CASES



The assistance provided by the students varied widely within those categories. Students assisted with simple divorces and legal separations, including explaining the difference between the two and assisting with completion of forms. They addressed complicated jurisdictional and service of process issues as well as service by publication, contempt, and relocation issues. Students also could explain what would occur at a hearing and described the types of documentation that should be brought to the hearing. There were infrequent requests for assistance with modifying maintenance (alimony), the annulment process, guardianships, or requests for assistance with cases that were initiated in another jurisdiction. Since the majority of cases involved a divorce action, Figure 5 breaks those cases down further.

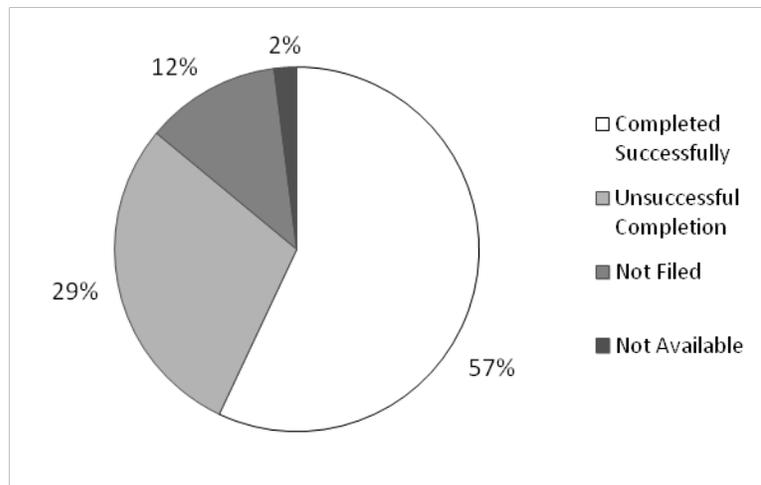
FIGURE 5: FCC ASSISTANCE IN DIVORCE CASES



2. Case Review Results

It is impossible to make a direct comparison of the persons helped by the FCC with those who accessed the court system on their own because many of the litigants seeking FCC assistance were facing an attorney on the other side and these cases were not contained in the records provided by court operations. Furthermore, many of those that came to the FCC for assistance did not proceed with a court action. Others were simply looking for guidance in an ongoing matter.

FIGURE 6: COURT OUTCOMES (415 CASES)



Of the FCC cases reviewed on CCAP, 85% of the litigants were successful in filing either a motion or a petition in their case. Of these cases, almost 58% had a successful outcome, 2% did not file, 12% were unsuccessful, and the outcomes in 29% of the cases were unable to be determined based upon the online court records.

Comparatively, out of the 868 family law cases filed in Dane County without an attorney or the assistance of the FCC, a surprising 86% proceeded to completion. While these statistics alone cannot demonstrate success in the broader realm of access to justice, they do demonstrate the ability of self-represented litigants to successfully initiate (or respond to) an action, complete the court process, and receive a result in a surprising number of cases. This is impressive where, as in a divorce or VPA action, the case is heavily form dependent. Further research could tease out the length of time that these cases took to be processed to completion as well as the number of divorce cases that went to trial or that involved custody and placement disputes.⁸⁴

3. *Satisfaction with the Court Process*

The survey included additional research questions. The first concerned the post-hearing perceptions of litigants. Building on the research in the area of procedural justice,⁸⁵ litigants were asked how satisfied they were with their court experience, regardless of the outcome and whether they believed the process to be procedurally fair.

The litigants' satisfaction with the court system was striking. Almost 57% of the litigants interviewed stated that they believed the fact finder (judge or court commissioner) was "very fair" and another 40% believed the fact finder to be "somewhat fair." This correlates with the result obtained as 57% of those interviewed received a favorable outcome in their court proceedings.

Most litigants articulated that the successful outcome was the basis for their belief that the fact finder was fair, with sixteen litigants expressing a positive outcome and seven expressing a negative or neutral outcome. Only three litigants addressed the process, one commenting that the judge understood her circumstances, another noting that the judge reviewed the case equally, and the third stating that she got what she wanted, but the process "wasn't as fair as it could have been."⁸⁶ However, all of those interviewed believed they were either very successful or somewhat successful in presenting their case and almost

84. These outcomes can be determined by examining the data already collected.

85. Nourit Zimerman & Tom R. Tyler, *Between Access to Counsel and Access to Justice: A Psychological Perspective*, 37 *FORDHAM URB. L.J.* 473, 478 n.11 (2010). See generally EDGAR ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988) (reviewing theory and research on procedural justice in the 1980s).

86. Statements on file with Author.

everyone believed that they were given the opportunity to speak by the judge or court commissioner. Only one person expressed a belief that the judge or court commissioner was unfair because the litigant felt she was being ignored by the fact finder. These results correspond with research findings that demonstrate the importance of “voice” to litigant satisfaction with the court process.⁸⁷

4. *Program Satisfaction*

The results of those interviewed, while limited to the thirty-four people successfully contacted, reflects the importance to litigants of individual assistance in their cases. Almost 50% felt that law students answered questions, helped complete forms, and helped them understand the court procedures. About 44% expressed the need for additional assistance. In fact, the most important facet of the assistance provided was the ability to get questions answered and forms completed (42%), with help understanding the court process (9%) next in significance.

Almost 90% of the litigants interviewed believed that the services provided by the FCC students made a difference in the outcome of their case. When asked the basis for that belief, 46% (of the thirty-four people interviewed) responded that they had a successful court experience and 35% responded that their questions were answered and they knew what was going to happen in their case. Sixty-four percent of the respondents said that they understood the next step in their case “very well,” and almost 33% said they “somewhat” understood the next step. Almost 90% of those responding said that they were able to complete the next step in their case.

Of those interviewed, 88% ranked their satisfaction with the program as “very satisfied” (44%) or “somewhat satisfied” (44%). Of the thirty-four individuals responding to the interviews, people stated that the ability to obtain answers to questions and help completing the necessary forms were the most helpful parts of the experience. The explanations that the students provided gave people confidence and satisfaction with the process. As one individual put it, “They gave me someone who could speak my language and also they made it easy to access and question any parts of my case.” Another stated, “I came in completely clueless and they made things simple to the point where I could understand every single procedure and also every single step of the process of getting a divorce.”⁸⁸

Although Wisconsin has a plethora of online forms that people can use for the variety of issues arising in a family law matter, many of which

87. Zimmerman & Tyler, *supra* note 85, at 486–87.

88. Statements on file with Author.

are accompanied by lengthy directions, people still expressed satisfaction that they were able to sit down with someone who took the time to explain the process and answer any questions posed by the litigant. Over ninety percent of those interviewed said that the FCC's services made a difference in the outcome of their case. Several people also commented that the assistance helped them overcome a perceived imbalance in their case, either because their spouse was represented by counsel or simply because of the knowledge gained about the proceeding. Since the law students provide more in-depth information and guidance than is ordinarily available at a courthouse clinic, the level of assistance and time involved with each litigant might help her feel better prepared for subsequent court action and more positive about the entire experience.

VI. DISCUSSION

As Selbin and others point out in their recent article, well-designed research that provides objective and credible evaluation is necessary in order to compare different representational models.⁸⁹ Nonetheless, while focused studies can concentrate on isolated aspects of the legal system,⁹⁰ it is difficult to envision how an empirical study of self-represented litigants in family law matters can account for the number of variables presented across cases without devoting a level of resources not available to most researchers, particularly those clinicians that are actually directing unbundled clinics.

Family law cases can be sorted into general categories: those with low stakes and few permanent consequences, where parties are not interested in an adversarial process, and those where the parties have an adversarial relationship, either because of lack of trust, guilt, or anger, and/or where there are significant interests at stake that would be significantly affected by an adverse outcome, such as financial matters or relationships with children. While most litigants can avoid a court hearing by entering into a stipulated agreement (and the summary dissolution process has been implemented in several states to allow parties without children and few assets to process their divorce without ever going to court), the challenge of identifying which case fits which category makes it difficult to design a more efficient and substantively fair system.

Looking at the assortment of issues presented in the small percentage of cases that were the subject of the FCC survey, the

89. Selbin et al., *supra* note 34, at 55; see also Laura K. Abel & Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 SEATTLE J. SOC. JUST. 139, 155-57 (2010). Abel and Vignola argue that both outcome and process-based metrics are necessary to determine the efficacy of access to justice interventions. *Id.* at 156-58.

90. Blasi, *supra* note 32, at 914.

spectrum of individuals, problems, and assistance provided is striking. Furthermore, how can the complexity of a case be determined? In Wisconsin, as in many states, a simple divorce case involves navigating through a minimum of six forms, some of which are challenging to complete thoroughly, in addition to understanding and completing service of process.⁹¹ However, it also is a process where a judge or court commissioner can easily ensure that the correct forms are completed, and in the vast majority of cases (which are typically uncontested) reaching a successful result (completing the divorce process) is relatively easy.

In contrast, a motion to modify child support, custody, or placement requires that only one simple form be completed.⁹² However, this type of litigation is much more sophisticated—requiring more comprehensive knowledge in order to successfully navigate through the hearing process. For example, these litigants need to understand the standard for modification that will be applied by the judge to the facts of their case as well as the nature and scope of evidence that should be presented to succeed. Each judge’s approach to the case is unique. How can the success of these types of cases be compared? How can it be determined whether a litigant has obtained a “fair” hearing if metrics other than client satisfaction are required?⁹³ Outcomes can be analyzed by breaking down tasks into understandable steps and determining a litigant’s success at accomplishing those tasks.⁹⁴ It is quite another analysis, however, to account for and measure the variables that are evident in every case.⁹⁵ A simple divorce without children may still involve issues such as locating an absent spouse or dividing a retirement account that make that case

91. Self-represented litigants must complete a summons and petition (unless filing jointly), a financial disclosure statement, a marital settlement agreement (if the parties are in partial or total agreement), a certificate of divorce (for filing with the state registrar), and the Findings of Fact, Conclusions of Law, and Judgment of Divorce following the final hearing. An affidavit or admission of service form also must be filed if the parties do not file jointly.

92. In Wisconsin, one form can be used to address changing custody, placement, maintenance, or child support. See *Family Court Forms*, DANE COUNTY CLERK CTS., www.countyofdane.com/court/prepare/formFamily.aspx (last visited May 29, 2016). The moving party might also be required to complete an income and expense statement if financial issues are involved.

93. See Am. Bar Ass’n, *Report to the House of Delegates*, 15 TEMP. POL. & C.R. L. REV. 507, 518 (2006) (asserting that the test for adequacy of representation is whether a litigant can obtain a fair hearing without being represented by a lawyer); cf. Blasi, *supra* note 32, at 944 (“Poor people should expect the same from any system promising access to justice. They are not as well situated, however, to know whether they have received effective assistance and a fair result that is consistent with the facts, the law, and the results achieved by others with greater means.”).

94. Abel & Vignola, *supra* note 89.

95. As Engler noted, depending on factors such as the type of case, assets involved, or the extent of conflict between the parties, cases might become quite complex, suggesting that assistance programs will need to have the capacity to go beyond increased information and technical assistance. Engler, *supra* note 7, at 2047–48 (citing Sales et al., *supra* note 12, at 561–66).

unique.⁹⁶ The numerous variables involved in many family law cases impedes the effective measurement of substantive or procedural success.

The FCC has operated for approximately ten years. Although only 400 records were closely examined and approximately thirty persons interviewed, the survey findings are consistent with the nature of assistance sought from the clinic's students since its inception. Although the forms for completing the divorce process are numerous and sometimes complicated, this is the area where most people seek assistance. The survey did not answer the question why more people seek assistance in this type of case than any other, but the measured success indicates that these types of cases might be exactly the type of cases that most benefit from unbundled assistance.

CONCLUSION

The reasons often advanced in support of unbundled legal clinics are supported by the study's results. A review of case results reveals that most people are able to complete the legal action that they initiated. Although litigants might initially lack an understanding of the court process or are unaware of their burden to organize and present their case to the trier of fact, the clinic setting can provide a level of understanding that allows the litigant to complete the task successfully, while feeling satisfaction with the process. Of those interviewed for the survey, everyone felt they left the FCC understanding the next steps needed in their case and felt that they were successful in presenting their case in court. Most people expressed satisfaction with the court system. The FCC program helped them reach a satisfactory resolution of their legal problem.

In the recent ABA Self-Help Center study, respondents were also asked to estimate how many customers need full representation and would benefit from limited scope representation.⁹⁷ Eighty-six percent indicated that at least some of their customers would benefit from limited scope services, and twenty-one percent indicated that a very high proportion of their customers (eighty-one percent to one hundred percent) would benefit from such assistance.⁹⁸ The FCC study suggests that many litigants can be successful when such assistance is provided.

96. A study of self-represented litigants in Waukesha County, Wisconsin, compared case files of divorces in which lawyers appeared with those in which the litigants were self-represented. The data suggested that lawyers are most utilized to deal with the more complex aspects of divorce, in particular when maintenance or complex property divisions are involved and might be less necessary for the routine procedural matters that many clients handle themselves. Judith G. McMullen & Debra Oswald, *Why Do We Need a Lawyer?: An Empirical Study of Divorce Cases*, 12 J.L. & FAM. STUD. 57, 58-59, 82-83 (2010).

97. AM. BAR ASS'N STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., *supra* note 15, at 19.

98. *Id.*

The conclusions reached by surveying the users of the FCC support the need for providing limited scope services in the family law arena.

APPENDIX

FCAP SURVEY

Administrative Details

Fill these details out before calling the client. Verify the address and last appointment date. Check CCAP to verify the Case Number and County and to get details about the case. **DO NOT PUT THE NAME OR ADDRESS ON THE SURVEY IN THE DATABASE. USE THE ASSIGNED NUMBER.**

Name:

Survey Number:

Address:

Age:

Gender (Circle)

Male
Female

Race (Circle)

White
Black/African American
Spanish/Latino/Hispanic
Asian
Prefer not to answer
Other:

Circle: Appointment or Walk-In

Case No Pull from Contact Sheet or Activity Log:

County (Leave blank if not known):

More than one appointment? YES NO (circle)

How many times did the person come to FCAP?

Last Appointment Date Month/Date/Year:

Type of Case (circle)

- Starting a divorce
- Completing part of the divorce process
- Temporary Order Hearing
- Setting or Changing Child Support
- Maintenance questions or issues
- Setting or changing child custody/placement
- Third Party Visitation
- Paternity
- Voluntary Paternity Acknowledgment Petition
- Other:

If Divorce Case, FCAP helped with (circle all that apply):

- Filing a petition
- Service
- Financial Disclosure Statement
- Temporary Order Hearing
- Property division
- Marital Settlement Agreement
- Maintenance
- Findings of Fact, Conclusions of Law and Judgment
- Other:

What help was requested?*

*If more than one visit, list date and help requested:

Date:

Assistance FCAP Provided*:

*If more than one visit, list date and help provided for each date:

Date:

Was a motion or petition filed? Find the case on CCAP and review the record to determine what was filed only if it relates to the assistance provided.

What was the outcome? The CCAP record will show the outcome.

TELEPHONE SURVEY:

I am calling from the Family Court Assistance Project at the University of Wisconsin Law School . You visited our project (when) to get help with:

Would you mind answering some questions regarding your experience so that we can evaluate how helpful our program is to people who go to court without a lawyer. NEED CONSENT.

Question 1. How satisfied were you with your overall experience with FCAP's services?

Very satisfied
Somewhat satisfied
Neutral
Somewhat dissatisfied
Very dissatisfied

If "dissatisfied," what was unsatisfactory?

Question 2. What was the most helpful part of your FCAP experience?

Question 3. How helpful were FCAP's services in making a difference in the outcome or what happened in your case?

Very helpful
Somewhat helpful
Somewhat unhelpful
Not helpful at all
Not sure

Question 4. (If FCAP was helpful) How do you think going to FCAP made a difference?

Question 5. (If FCAP was unhelpful): In what way was FCAP unhelpful?

Question 6. Would you recommend FCAP to other people with family law issues?

Yes No
Why or why not?

Question 7. When you left FCAP how well did you understand the next step you needed to take in your case?

- Very well
- Somewhat
- Not very well
- Not at all

Question 8. Were you able to complete the next step in your case?

Yes No N/A

If yes, what did you do to complete the next step in your case?

If no, why did you not complete the next step?

NOW I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THE HELP THAT THE FCAP STUDENT PROVIDED TO YOU.

Question 9. Did the FCAP student provide you with court forms?

Yes No

Question 10. Did the FCAP student help you complete the forms?

Yes No

If not, were you able to complete the forms on your own?

Yes No

Why were you not able to complete the forms?

Question 11. Did the FCAP student provide information to you about court procedures (e.g. how and where to file forms, information about hearings)?

Yes No

If yes, how helpful was this information?

Very helpful
Somewhat helpful
Not helpful

NOW I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT USING THE WEB TO GET INFORMATION AND FORMS.

Question 12. Have you used the court website to access information about your case?

Yes No

Question 13. Have you downloaded and used any court forms from the court website?

Yes No

Question 14. (If yes) Did you complete the forms that you downloaded from the court website?

Yes No

If no, why didn't you complete the forms you downloaded from the court website?

Question 16. Did you have any assistance filling out the forms that you downloaded from the court website?

Yes No

If yes, who helped you fill out the forms?

Question 17. How easy were the forms to understand?

Very Easy
Somewhat Easy
Difficult

If “difficult,” what difficulties did you have with the forms?

Reading?
Filling them out?
Filing the forms?

Question 18. Do you remember if any instruction sheets came with the forms?

Yes No

Question 19. (If yes,) were the instruction sheets helpful?

Yes No

Question 20. Did you file the court forms you downloaded?

Yes No

If no, why didn't you file the court forms?

Question 21. Have you used other free legal resources besides FCAP such as:

Family Law Assistance Center
Court Resource Center
Court Website
Other:

Question 22: How helpful were these other legal resources?

Very helpful
Somewhat helpful
Not helpful

Why or why not?

Question 23. Have you had a hearing since your FCAP appointment?

Yes No

I WOULD LIKE TO ASK YOU A FEW QUESTIONS ABOUT THE HEARING THAT YOU HAD.

Question 24. How impartial do you believe the judge or court commissioner was at your hearing?

Very fair
Somewhat fair
Not fair

Can you explain why you believe this?

Question 25. How successful were you in presenting your case to the judge or court commissioner?

Very successful
Somewhat successful
Not successful

Question 26. Do you think the judge or court commissioner gave you a chance to speak?

Yes No

Question 27. Did the judge or court commissioner listen to what you had to say?

Yes No

Question 28. Do you believe the outcome of your case was fair?

Yes No

Why or why not?

Do you have any other comments about how your court proceeding went?

Question 29. Do you think the outcome of your case would have been different if you had a lawyer?

Yes No

Why or why not?

Question 30. Is there anything you wish you had known before your court date?

Question 31. What has been the hardest part of working through the court system?

Question 32. If you had the choice would you have hired an attorney to assist you with this matter?

Yes No

Question 33. Did you at any point hire an attorney for this matter?

Yes, I had one, but couldn't afford her any more
Yes, I hired one after meeting with the FCAP student
No

If not, why didn't you hire a lawyer?

I thought an attorney would be too expensive
Tried to find an attorney, but found out that it was too expensive
Would rather not work with an attorney
The matter was simple enough to do on my own
Other:

IF YOU DON'T MIND, COULD YOU SHARE WITH ME YOUR estimated yearly income when you came to FCAP? If joint, specify amount in Other.

less than \$20,000
\$20,000-\$25,000
\$25,000-\$32,000
\$32,000-\$40,000
\$40,000-\$60,000
\$60,000 or more
Other:

Question 34. Do you have any other recommendations or information to share about FCAP?
