



# Self-Represented Litigation Network

## Effectiveness of Courtroom Communication in Hearings Involving Two Self-Represented Litigants

### An Exploratory Study

Conducted by  
Greacen Associates, LLC

on behalf of  
the Self-Represented Litigation Network

**April 2008**

Copyright National Center for State Courts  
**For Reprint Authorization, go to:**

<http://www.srln.org/reprint>



This document was developed under a grant from the State Justice Institute (SJI-05-N-091-C06-1). Points of view and opinions stated in this document do not necessarily represent the official position or policies of the State Justice Institute. Nor do they represent those of the National Center for State Courts or any funders or participants in the Self-Represented Litigation Network.

Thanks also to the California and Maryland Administrative Offices of the Courts for their support.

## Executive Summary

Do persons who represent themselves in family law matters really know what is going on in the courtroom? This study, which took place in courts that have gone to considerable lengths to make both their courthouses and their courtrooms hospitable for self-represented litigants, found that almost all the litigants who agreed to participate in the study understood what transpired during short contested family law hearings, and indeed did so at a deep and nuanced level.

These litigants, each of whom had participated in at least one previous hearing, not only understood the issues raised during the hearing; they also understood the legal concepts at the heart of family law (such as joint physical and legal custody of minor children). Many of them were also able to make reasonable distinctions between issues that were critical to the hearing and issues that were tangential; they made conscious choices not to take up the time of the court with the latter.

These are the primary findings of an exploratory study of contested family law hearings involving two self-represented litigants in four courts from across the United States, conducted for the Self-Represented Litigation Network with funding from the State Justice Institute and the California and Maryland judicial branches. The research was performed in late 2006 and early 2007 by Greacen Associates, LLC, under a contract with the National Center for State Courts (which provides administrative support to the Network), with the assistance of Bonnie Hough of the Center for Families, Children & the Courts of the California Administrative Office of the Courts, Drs. David Givens and Laurinda Porter (specialists in nonverbal communication), and Richard Zorza, coordinator of the Network. We were assisted in one site by volunteer law students from Harvard Law School.

Research questions. The research was designed to shed light on the extent to which self-represented litigants in these hearings actually understand the proceedings, the legal concepts being discussed, and the judge's orders at the close of the hearings. The researchers were also interested in identifying judicial practices that contribute to or detract from litigant understanding.

Methodology. The research involved videotaping short, contested family law hearings involving two self-represented litigants, with the informed consent of the judge and litigants,<sup>1</sup> and then conducting post-hearing interviews with

---

<sup>1</sup> And the consent of personnel from the child support services agency who were present in some child support hearings.

each litigant and the judge. These interviews, which were also videotaped, involved showing the participants the videotape from the hearing and asking them to comment on their understanding of the issues that arose, the language used, and the judge's order resulting from the hearing. The interviews also explored how the litigants perceived and reacted to the behaviors of the judge. The post-hearing interviews with the judges explored their thought processes and perceptions as the hearings unfolded.

Having these candid reflections from all three participants in these hearings provided the researchers with a uniquely rich understanding of the underlying dynamics of the hearings, the extent to which the parties truly understood what each other meant, and the behaviors of the judges that contributed to or detracted from the understanding of the litigants and their satisfaction with the court proceeding.

We obtained complete videotape records of hearings and of post-hearing interviews of judges and both self-represented litigants from fifteen hearings in four courts from different regions of the United States. None of the hearings was the initial court appearance for the litigants; all were a review or subsequent hearing. The four courts are among the leaders in the nation in providing services to self-represented litigants.

The litigants completed satisfaction surveys before the post-hearing interviews took place; the surveys also contained demographic information about the litigants. Twenty-nine of the thirty self-represented litigants (97%) were members of minority groups. Half were male and half female. They tended to be older persons; 17 of the 29 for whom we have information were 35 years of age or older. 76% of them have an annual before tax income of \$36,000 or less. While 76% graduated from high school, only four had a bachelor's or graduate degree.

Ten judges participated in the study. The ten were volunteers; they were frequently nominated by the supervising judges of the family courts in which they sat. Six of the judges were female and four were male. Two were members of minority groups. The judges completed two surveys. The first asked about their experiences with self-represented litigants over the past year. The results from this survey showed that these judges recognize the need for judge assistance of self-represented litigants, agree that judges should explain the procedures that will be followed in a hearing, strongly agree that judges should ask questions in these hearings to obtain needed information, strongly disagree that self-represented litigants should be treated as if they were lawyers, and disagree with the notion that these cases take more court time than those involving represented litigants. These results reinforce our view that the four courts in which we conducted the

research are on the far end of a continuum of United States courts in the extent to which they accommodate the needs of self-represented litigants.

The second survey asked the judges to rate the courtroom performance of the litigants in these cases on seven factors and to record the outcome of the case. Judges and litigants perceived the court outcomes identically. The judges reported that 22 of the 30 litigants prevailed in whole or in part or were in hearings in which neither party prevailed. Twenty-two of the litigants reported that the outcome of the hearing was favorable to them or a draw.

Findings. The litigants were very satisfied with the way the hearings were conducted. In addition to asking about the outcome, we asked the litigants to rate the hearing on nine dimensions. We analyzed the results separately for petitioners and respondents. Of the 18 resulting average scores, 12 were 4.0 or above on a 5 point scale. The other 6 were between 3.5 and 4.0. Respondents were more likely than petitioners to report that the outcomes were unfavorable to them and reported somewhat lower (but still high) scores for the fairness of the hearing and their overall satisfaction with the process. However, respondents reported higher scores than petitioners on the four key procedural fairness indicators – the opportunity to be heard, equal treatment with others in the courtroom, respectful treatment, and a sense that the judge cared about his or her case. This finding is consistent with other studies showing that litigants are able to distinguish between the procedural fairness of a hearing and whether they won or lost.

We computed a communication effectiveness score for each hearing that rated each participant's performance in articulating and understanding each legally relevant issue involved in the hearing. The average communication effectiveness score for all fifteen hearings was 8.7 on a 10 point scale – an extraordinarily high number. It is from this analysis that we conclude that self-represented litigants, at least in these four courts that have all made a considerable investment in accommodating the needs of self-represented litigants, understand what is happening in family law hearings at a deep and nuanced level. These courts should be pleased that their investments have had a significant payoff in the comprehension of their processes by the self-represented litigants that we interviewed.

Success in communication in these cases derived from multiple factors. The judges in the study obviously cared about the litigants' understanding of the proceedings. They took the time required to explore and resolve each issue presented – giving both parties an opportunity to be heard on each issue – without allowing the hearings to consume a lot of court time. They spoke in plain English and avoided the use of legal jargon. When it was necessary to

use legal terms (such as joint physical and legal custody of a minor child), they took the time to make sure that the parties understood the meaning of the legal concept and explained it in lay terms if a party appeared hesitant about his or her understanding. They used a number of effective practices to structure the hearing so that it was understandable. The practices include framing the issues to be decided, asking questions to elicit information needed to make decisions, making rulings in open court as the hearing proceeds, summarizing the terms of the order at the close of the hearing, paying close attention to details of compliance with the court order, and setting the parties' expectations for future developments in the case, including future hearings.

Failures of communication included not only matters poorly explained or poorly understood, but also issues not dealt with by the judge. Examples of the latter include failure of the judge to specify when the non-custodial spouse was to begin paying a revised child support amount or failure of the judge to address the continuing effect of a criminal restraining order when the judge vacated a civil domestic violence restraining order in the case.

Three factors that impaired understanding were the use of legal terms by the judge or the child support attorney, interpretation into a language other than English, and low mental functioning by one litigant of the thirty studied. In the latter case, the judge's ability to perceive the low mental functioning was made more difficult by the fact that the case involved interpreters.

There was no difference between the communication effectiveness scores of hearings presided over by men and women judges. However, there was a considerable difference between the scores for hearings before full-fledged judges and those before commissioners, referees, or masters; scores for hearings before full-fledged judges averaged 9.7 out of 10 while those before other judicial officers averaged 8.2 out of 10.

One of our nonverbal communication experts scored the judge hearing tapes for the nonverbal effectiveness of the judge in each hearing. The average nonverbal effectiveness of the ten judges in the study was 77%. We conclude that the judges in these fifteen cases effectively use nonverbal skills. Male judges scored on average 9 percentage points higher than women judges on nonverbal effectiveness. The full-fledged judges scored slightly lower on this rating than the commissioners, referees, and masters.

Four of the judges presided over more than one hearing included in the study. Half of the judges with multiple hearings had highly consistent communication effectiveness and nonverbal effectiveness scores from hearing to hearing. Scores for the other two judges varied from hearing to hearing.

We conducted a number of statistical analyses of the data from the surveys and the computed communication and nonverbal effectiveness scores. The number of cases is quite small and it is therefore unlikely that we would find statistically significant relationships among the data. In addition, the litigant satisfaction scores are consistently high, providing little variation that would correlate with differences in communication effectiveness or judge nonverbal effectiveness scores. We did not find any statistically significant correlations among the factors that we analyzed. In particular, we did not find any relationship between the communication effectiveness score for a hearing and the judge's nonverbal effectiveness score. The data provide some reason to believe that litigants' satisfaction with a hearing is positively correlated with the communication effectiveness score.

Judges' ratings of the performance of the litigants in the hearings we observed were consistently higher than their survey responses concerning their experiences with self-represented litigants in general over the past year. The same seven questions were used in both instruments. Judges rated the litigants in the cases we observed more positively than self-represented litigants in general 64% of the time and lower only 14% of the time. This finding, along with the perception among these ten judges that self-represented litigants do not take more of their judicial time than represented litigants, is significant for judicial education. Judges, like the rest of us, tend to develop stereotypes based on their most memorable experiences, rather than on their typical experiences. Judges need to know that individual self-represented litigants actually perform more successfully in their courtrooms than judges think that self-represented litigants perform as a general rule. Self-represented litigants are also less of a drain on judges' time than judges perceive.

Effective practices. The study produced a number of additional findings arising from the observations of the researchers. In particular, we identified a series of effective practices for judges handling cases involving two self-represented litigants.

The practices, listed below, are described more fully in the body of the report.

- Framing the subject matter of the hearing
- Explaining the process that will be followed or guiding the process
- Eliciting needed information from the litigants by

- Allowing litigants to make initial presentations to the court
  - Breaking the hearing into topics
  - Obviously moving back and forth between the parties
  - Paraphrasing
  - Maintaining control of the courtroom
  - Giving litigants an opportunity to be heard while constraining the scope and length of their presentations, and
  - Giving litigants a last opportunity to add information before announcing a decision
- Engaging the litigants in the decision making
  - Articulating the decision from the bench
  - Explaining the decision
  - Summarizing the terms of the order
  - Anticipating and resolving issues with compliance
  - Providing a written order at the close of the hearing
  - Setting litigant expectations for next steps, and
  - Using nonverbal communication effectively

Suggestions. Several other issues came to our attention in the course of this study which judges handling cases involving self-represented litigants need to keep in mind.

- Frequently, one party asks the judge to rule on an issue that was not included in the moving papers and therefore is not as a legal matter properly before the court. We observed instances in which judges dismissed such requests out of hand, without explaining their reasons for doing so. When the judge has time on the calendar, and the other party provides informed consent to have a new matter resolved, it is often in the best interests of both the court and the parties to resolve such issues without requiring a party to file a new petition and hold an additional hearing. We also observed instances in which a judge heard and resolved such newly raised matters without obtaining the informed consent of the other party. Our report contains recommendations for ensuring that decisions to expand the scope of a hearing are accompanied by a knowing, voluntary and intelligent waiver of the responding party's right to prior notice of the issue.

- We observed in several instances that judges made judgments based on a litigant's non-responsiveness to a statement made by the other side. During the post-hearing interviews we learned that in some instances the litigants strongly disagreed with those statements but did not believe it appropriate to express their disagreement unless asked by the court. We suggest that judges seek explicit confirmation from litigants rather than reading into their body language (or lack of body language) consent or acquiescence to a statement of fact by the other party – if the court considers the matter to be important to its decision.
- We noted in several visitation cases that the hearing was taking place within the context of litigant fears and expectations of which the court was unaware. For instance, a series of demands and counter-demands might have been made in the course of mediation. The parties assumed that those demands established the context for the ensuing court hearing. The court was unaware of this background, operating from the request for relief contained in the original petition to modify visitation. This is simply a fact of life for judges. It is present in cases involving attorneys, where settlement negotiations have been underway but the parties do not feel that their interests would be served by disclosing the details of those discussions to the court. The best that the judge can do is to remain aware of the likely existence of these background factors of which s/he will never be aware.
- We were struck by the major role that court staff play in enhancing a judge's effectiveness in these cases. In the courtroom, bailiffs and courtroom clerks help to set the environment for hearings before the judge takes the bench. It is important that judges be aware of the messages that staff are giving to make sure that they are fully consistent with the atmosphere that the judge wants to create in the courtroom.

Mediators and self-help staff can enhance or detract from the judge's effectiveness. In one court, we observed very close alignment of the judges, commissioners, mediators and self-help center staff. They were all telling the litigants the same information about the court's basic policies with respect to visitation. When the case came before the judge, the parties were already prepared for and expecting the approach that the judge took towards the case. In another case, however, a mediator made a prediction about the judge's likely decision in order to pressure one of the litigants into agreeing to a

mediated settlement. This process was counterproductive for the judge, since the litigants came into the courtroom with an unflattering impression of the judge's decision making process and personal style.

- We observed numerous instances in child support cases in which the judge engages in legal discourse with the child support attorney in a courtroom with two self-represented litigants. In some instances they are not understood by self-represented litigants. It is understandable that judges and child support attorneys use legalese in these discussions. Legal language is more efficient to the purpose at hand. On the other hand, judges would be well advised to inform the parties at the beginning of a child support hearing that such discussions are likely to take place, that the judge will explain each such discussion to the parties when it is finished, and that either party should ask for an explanation if the judge forgets to make one.

Conclusion and recommendations. The report concludes with several recommendations for judicial education and further research.

The study presents a number of findings of importance for judicial practice and for judicial education, including information on effective nonverbal behaviors for judges, on effective practices in conducting hearings involving self-represented litigants, and on issues that judges do not necessarily deal with appropriately even in the most sophisticated courts.

Judges and court research units cannot themselves implement the research methodology that we used in this study because it involves *ex parte* communication with one party outside of the presence of the other party. However, we encourage its use by other researchers and organizations.

We urge further research on the relationship between judicial attitudes toward self-represented litigants and the performance of such litigants in their courtrooms.

The findings of our study might lead very naturally to the suggestion of a further study comparing litigant understanding in courts with a commitment to assisting self-represented litigants with litigant understanding in courts that have not made such a commitment. However, for practical reasons, we do not recommend such a study. We are skeptical that researchers would

be able to obtain access to conduct this sort of research in courts that lack such a commitment.<sup>2</sup>

We do, however, believe that it would be useful to conduct a further study to compare the level of understanding by self-represented litigants of the issues involved in contested family law hearings with that of represented litigants in the same types of hearings in the same courts.

Finally, we would note that the findings from this research, and particularly the suggested effective practices, have been incorporated in a video description of the research, with accompanying Guide, and in the multiple components of the *Curriculum on Access to Justice in the Courtroom for the Self-Represented*, prepared by the Self-Represented Litigation Network, and available online at [http://www.selfhelpsupport.org/library/folder.165143-Harvard Judicial Leadership Conference Nov 13 2007](http://www.selfhelpsupport.org/library/folder.165143-Harvard%20Judicial%20Leadership%20Conference%20Nov%2013%202007).

---

<sup>2</sup> Such information might be obtained in more general multi-court research into litigant understanding as impacted by a wide variety of factors, in which self-representation status, and the court's response to it, might be only two of a larger list of relevant factors.

# Table of Contents

Executive Summary.....	2
Table of Contents.....	11
Background.....	15
Statement of the Problem .....	15
Research Design.....	15
Hypotheses to Be Tested .....	17
Research Methods.....	18
Choosing an appropriate case type for study .....	18
Choosing sites for videotaping.....	19
Obtaining informed consent from judges, litigants and others .....	20
Human subjects review process.....	20
Honorarium.....	21
Consent forms.....	21
Obtaining consent of both litigants.....	21
Data gathering instruments .....	22
Videotaping hearings and post-hearing interviews with self-represented litigants.....	22
Technical process.....	22
The post-hearing interview .....	24
Data analysis .....	25
Communication effectiveness scoring .....	26
Judicial nonverbal effectiveness scoring .....	27
Overall difficulty of conducting this research .....	32
Project Personnel.....	32
The Fifteen Hearings.....	33
The courts .....	33
The cases.....	34
The judges.....	37
The litigants .....	38
Case summaries .....	41

Case 1.....	41
Case 2.....	44
Case 3.....	49
Case 4.....	53
Case 5.....	56
Case 6.....	59
Case 7.....	62
Case 8.....	65
Case 9.....	68
Case 10.....	70
Case 11.....	73
Case 12.....	77
Case 13.....	78
Case 14.....	81
Case 15.....	84
Research Findings .....	87
Testing the hypotheses with empirical data .....	87
That communication among judge and self-represented litigants is fully effective.....	88
That judges are effective in the use of nonverbal communication. ....	92
That hearings involving judges with higher nonverbal communication scores will have higher communication effectiveness scores. ....	93
That hearings with higher effective communication scores will have higher self-represented litigant satisfaction ratings. ....	93
That hearings with higher judicial nonverbal effectiveness scores will have higher self-represented litigant satisfaction ratings. ....	94
That hearings with higher effective communication scores will have higher self-represented litigant scores for understanding the words used by the judge. ....	94
That hearings with higher judicial nonverbal effectiveness scores will have higher self-represented litigant scores for understanding the words used by the judge. ....	94
That hearings with higher communication effectiveness scores will have higher self-represented litigant scores for being clear exactly what the judge decided. ....	94
That hearings with higher judicial nonverbal effectiveness scores will have higher self-represented litigant scores for being clear exactly what the judge decided. ....	95

That judges' ratings of the performance of specific self-represented litigants will be higher than their ratings of the performance of self-represented litigants in general.....	95
That judges with lower perceptions of self-represented litigant competence in general will have lower self-represented litigant satisfaction ratings for the hearings over which they presided. ....	96
Qualitative Research Findings.....	97
Effective Practices.....	97
Framing the subject matter of the hearing .....	97
Explaining the process to be followed or guiding the process .....	98
Eliciting needed information from the litigants .....	98
Engaging the litigants in the decision making .....	100
Articulating the decision from the bench.....	100
Explaining the decision .....	101
Summarizing the terms of the order .....	101
Anticipating and resolving issues with compliance .....	101
Providing a written order at the close of the hearing .....	101
Setting litigant expectations for next steps.....	102
Using nonverbal communication effectively.....	102
Additional Issues of Concern to the Researchers.....	103
Informed consent to waive notice of matters not formally before the court for decision.....	103
Assuming agreement from a litigant's lack of verbal or nonverbal response .....	104
Judges' lack of knowledge of litigants' underlying concerns and expectations.....	105
Importance of the roles of court staff.....	105
Avoiding misunderstanding of colloquies between judges and child support attorneys .....	106
Conclusions and Recommendations .....	107
Implications for Judicial Practice and Judicial Education.....	107
Suggestions for Further Research .....	107
Further use of the videotaping/post-hearing interview methodology.....	107
Further use of the materials collected on these fifteen cases .....	108
Topics warranting further research.....	108
Appendix.....	110
Consent forms.....	111
Data gathering forms .....	115



## **Background**

As with most exploratory research efforts, the design of this project has evolved somewhat during its course.

### ***Statement of the Problem***

All legal processes assume that the participants in a courtroom understand what is transpiring. When litigants are represented by lawyers, it is the lawyers who are expected to understand what is happening, and to explain it to their clients – usually after the proceeding.

When litigants are not represented by lawyers, the litigants themselves who must understand what is going on in the courtroom. The litigants' comprehension is essential for them to be able to provide information needed for an appropriate decision, to perceive the process to be fair, to understand the judge's ruling, and to comply with that ruling.

There is much anecdotal evidence that self-represented litigants do not, in fact, understand the hearings in which they participate. Lawyers and court staff regularly encounter litigants who state something like, "I don't have a clue what just happened in there," or whose questions disclose a fundamental lack of understanding of the hearing process or the outcome of a particular proceeding.

This exploratory study was designed to shed light on these two fundamental questions:

1. To what extent do self-represented litigants understand what is going on in a court proceeding in which neither side is represented by a lawyer?
2. What judicial behaviors and practices contribute to that understanding?

### ***Research Design***

This is the first study of its kind. In 1990, John M. Conley and William M. O'Barr published a study of how ordinary people relate to the legal system.<sup>3</sup> The study investigated the experience of small claims litigants in six sites. The researchers interviewed plaintiffs at the time they filed their complaints, observed and tape recorded court proceedings, and conducted follow up interviews with the plaintiffs roughly a month following the court proceeding. They encountered significant problems contacting litigants and obtaining complete information on specific cases. Their study cites previous research on litigant experience in courtrooms. The authors concluded that litigants and judges approach legal disputes from either a rule-based or a relationship-based orientation. Neither the Conley and O'Barr study nor the other research that it summarizes addressed the level of litigant comprehension of what transpires during court proceedings.

Rebecca L. Sandefer has conducted a meta-analysis of studies conducted to determine the impact of legal representation on case outcomes.<sup>4</sup> The seventeen studies she collected concluded that having a lawyer increases a person's chance of prevailing by anywhere from 1.24 times to 13.79 times. Most studies found that the likelihood of prevailing increased by two to four times when a party had counsel. Sandefer concluded that the advantage of having a lawyer depends on the procedural, not the substantive, complexity of the type of legal proceeding. It also varies significantly with the nature of the forum and the openness of the forum to self-representation. Only one of the studies she cited (the Sales study in Maricopa County<sup>5</sup>) focused on family law cases; that study used litigant satisfaction as the determinant of a successful outcome. The Sales study asked represented and unrepresented litigants if they understood the judge's ruling, finding that self-represented litigants reported a higher level of understanding. The Sales study was based entirely on litigant questionnaires and did not include any observational component.

Our research used videotaping of short, contested hearings in family law matters involving two self-represented litigants and immediate post-hearing interviewing of the two litigants (before they left the courthouses) and the judge, showing each of them individually the tape of the hearing and reviewing their understanding of what was going on at each significant point during the proceeding. The post-hearing interviews were also videotaped.

---

<sup>3</sup> Conley and O'Barr, *Rules Versus Relationships: The Ethnography of Legal Discourse*, University of Chicago Press, Chicago and London (1990).

<sup>4</sup> *Lawyers, Non-Lawyers and Pro Se Representation and Trial and Hearing Outcomes* (June 30, 2006) available at <http://papers.ssrn.com/abstract=913426>.

<sup>5</sup> Sales, Bruce D., Connie J. Beck, and Richard K. Haan. 1992. "Is Self-Representation a Reasonable Alternative to Attorney Representation in Divorce Cases?" *Saint Louis University Law Review* 37:553-605.

The videotapes were analyzed to determine the extent to which litigants and judges understood each other's statements and motivations, to determine the judge's effectiveness in nonverbal communication, and to identify judicial behaviors that appear to contribute to litigant understanding and satisfaction.

The videotapes were the principal data source produced by the project. They were supplemented with satisfaction surveys completed by the litigants prior to their post-hearing interview, by surveys completed by the judges to disclose their attitudes toward the performance of self-represented litigants in general and how judges should conduct proceedings involving them, and by observational questionnaires that the judges filled out at the close of the hearing, rating the performance of these particular litigants and recording the outcome of the hearing.

### ***Hypotheses to Be Tested***

The initial research design set forth nine hypotheses to be tested by analysis of the data to be collected. They were:

1. That judges' intended communications to self-represented litigants are fully effective.
2. That self-represented litigants' intended communications to judges are fully effective.
3. That judges with higher nonverbal communications scores will have more effective communications.
4. That cases with effective judicial communications and effective judicial nonverbal behaviors will have higher self-represented litigant satisfaction ratings for the hearing from both self-represented parties.
5. That cases with effective judicial communications and effective judicial nonverbal behaviors will have higher self-represented litigant scores for understanding the words used by the judge and others in the courtroom and for being clear exactly what the judge decided.
6. That litigants with higher communications effectiveness and higher nonverbal behavior scores will be more likely to prevail.
7. That judges' ratings of the performance of specific self-represented litigants will be higher than their ratings of the performance of self-represented litigants in general.

8. That judges with lower perceptions of self-represented litigant competence in general will have lower self-represented litigant satisfaction ratings for the hearing.

9. That cases in which judges give the litigants higher specific performance ratings will have more effective self-represented litigant communications effectiveness.

As noted later in this report, the research hypotheses were revised in the course of the project and replaced with eleven slightly different formulations. It should also be underlined that it was always understood that the scale of the research would only allow exploration of the questions, not final answers.

## **Research Methods**

This exploratory research effort involved a number of research methodology issues.

### ***Choosing an appropriate case type for study***

We chose to focus on contested, short family law matters involving two self-represented litigants.

Family law is the area in the general jurisdiction trial court that has experienced the greatest impact from self-represented litigants over the last decade. Court procedures for handling traffic, small claims, and lesser misdemeanor cases have always been designed for litigants who appear without lawyers. Procedural rules for family law matters, however, have been established with the expectation that all parties will be represented by lawyers. During the past decade, large numbers of family law litigants have begun to represent themselves. In large urban areas, from 60% to 90% of family law cases now involve at least one self-represented party.

It is also in the area of family law matters that most of the courts that have instituted special staff support services and courtroom accommodations have done so.

The choice to limit the research to contested hearings was straightforward. In uncontested matters, the court proceeding is perfunctory. There are significantly fewer issues of communication effectiveness in that context.

The focus on short hearings was a practical necessity but also a reflection of the reality of the family law process. As is true in criminal and general civil litigation, a trial is a rare event in family law – occurring in a very small percentage of all cases. To focus on contested short hearings would be to pay attention to the arena in which most family law cases are resolved. It was also a practical requirement. It would be impossible to get litigants and judges to spend the time required to review and debrief with the researchers trials that took hours or days.

We chose to focus on cases involving two self-represented litigants because these presented the communication issue in its clearest form. Cases involving one represented and one unrepresented litigant present special and different challenges; a lawyer is expected to play a critical role in one party's understanding of the proceeding. We chose to include child support cases even though they include the presence of an attorney for the child support services entity. The child support attorney represents the governmental interests in the case, but does not represent either of the parties.

### ***Choosing sites for videotaping***

We did not use a random process in selecting the four courts in which we conducted our research. Rather, we approached the courts that we thought would be most likely to agree to participate, based on their historical involvement in programs to assist self-represented litigants. We assembled a tentative list of roughly a dozen potential research sites and then approached the court leadership in the courts (or the states in some instances) that we thought most likely to agree to participate because of their national reputation for implementing programs to assist self-represented litigants. We used informal communication processes – in person discussions, emails, and telephone calls – to explain the videotaping and post-hearing interview process.

The courts we initially approached did not all agree to participate. Several expressed reluctance. The grounds of their reluctance varied: imposition on the time of already overworked family judges, vaguely articulated ethical issues perceived to arise from judges discussing their thoughts and rulings in a case with a researcher, and lack of direct benefit for the court. One court ultimately overcame its reluctance; another did not.

We ultimately chose one of the participating courts because of its proximity to Harvard Law School, which provided volunteer law students to conduct the videotaping and post-hearing interviews in that jurisdiction.

## ***Obtaining informed consent from judges, litigants and others***

A critically important part of the research involved obtaining the informed consent of the specific judges and litigants who would be videotaped and interviewed. The consent of the court to our presence was not sufficient. We needed the consent of the judge presiding over the hearing to having his or her image videotaped and having portions of that videotape used in a education video to be produced as a project deliverable. We also needed the informed consent of each litigant to participate in the post-hearing interview and to allow us to use his or her image in the education video. We gave each judge the right to review the proposed education video and to veto the use of any segment of his or her hearing proposed for inclusion. We did not give litigants that right.

During the course of the data gathering, we realized that we also needed the consent of the child support attorneys and staff who were videotaped during child support hearings because they sat at counsel table between the litigants. We did not encounter problems obtaining their consent. They were not involved in the post-hearing interview process.

## ***Human subjects review process***

After consultation with the researchers, the National Center for State Courts concluded that this research was exempt from its Protection of Human Subjects Policies and Procedures and therefore did not require review and monitoring by its Internal Review Board. That decision was based on the following proposed data gathering procedures and personal information privacy protection analysis:

1. The project will collect primary (original) data about individual human beings – videotape footage of hearings of litigants and judges, written answers to questions about perceptions of litigants and judges, videotaped statements from judges and litigants about what they intended to say or heard the other participants say during the hearing, and demographic information from litigants.
2. The population groups are judges and self-represented litigants in family cases – neither are special or sensitive population groups.
3. The hearings to be videotaped are public. The other information to be collected is not public.
4. The data collected will not be linked by identifiers to the individuals from which it is obtained. We will not record litigant names (although

we will obtain signed statements agreeing to participate in the project and to let us use the video footage in a judicial education DVD). We will not record court case numbers. We will identify each case with our own internal case identifiers (e.g., case 1 through case 40) and identify the participants as judge, petitioner and respondent. Consequently, our research database will not contain any identifier of the person (name, address or court case number).

5. The judge data will be obtained from elected or appointed public officials concerning their professional duties. However, we will not include any personal identifiers of the judges in our research database.

6. We will include video segments from the litigants in a judicial education DVD. However, it would be extremely difficult to trace an image to a particular litigant, because our written research report and the video will not disclose the cities in which we gathered data. We will give judges – who would be more easily identifiable – a veto in the use of a video segment including their image.

The research has adhered to these procedures.

### ***Honorarium***

As an incentive to participation, we paid each litigant \$100 for the time and effort involved in participating in the post-hearing interview – which often took as long as an hour. Knowing that the litigants were receiving this amount, some of the judges in child support cases took the payment into account in fashioning their orders.

The honoraria were paid in cash. The bills were placed in small white envelopes so that casual passersby would not observe cash changing hands.

We did not pay honoraria to the judges or to child support attorneys and staff who were videotaped.

### ***Consent forms***

The consent forms used for the project are contained in the Appendix.

### ***Obtaining consent of both litigants***

After obtaining the consent of the judge who would preside over a hearing, we approached the litigants – typically with a female researcher approaching the woman and a male approaching the man in the case. We explained the purpose of the research, the process that we would follow (including the time that would be required for the post-hearing interview), that we had the court’s consent to conduct the hearing, and, as the last consideration, that we would pay an honorarium of \$100 to participate.

We encountered roughly a fifty percent declination rate. Of course, if one party declined we could not proceed with the case. As a result we videotaped roughly one quarter of eligible cases.

While we did not ask for a reason why litigants chose not to participate, they were often volunteered. They included time problems preventing their remaining in the courthouse for the post-hearing interview, including babysitting, other appointments, or other court proceedings. A few litigants appeared emotionally overwhelmed by the court process and unwilling to extend it. In one instance, participation was vetoed by the litigant’s father who had accompanied him to court.

### ***Data gathering instruments***

The three additional data gathering instruments – the litigant satisfaction survey, the judge survey, and the judge courtroom observation form – are included in the Appendix. The litigant satisfaction form includes the demographic information on the self-represented litigants included in this report.

### ***Videotaping hearings and post-hearing interviews with self-represented litigants***

The project had to develop and fine tune the videotaping and post-hearing interview processes.

### **Technical process**

The process we ultimately developed involved at least two researchers, four video cameras and three tripods provided by the project<sup>6</sup> and two television monitors provided by the participating courts.

---

<sup>6</sup> The California Administrative Office of the Courts provided three video cameras and the three tripods for use during the project. This was of considerable help to the project and to its completion within the budget allotted.

Three cameras and tripods were used in the courtroom. One was placed behind the judge's bench focused on counsel tables to record the litigants. Two were placed behind counsel tables, usually immediately in front of the railing separating the well of the courtroom from the audience. These were focused on the judge. Two judge videotapes were made because we needed two judge tapes for the post-hearing interviews of the two self-represented litigants. There is no readily available mechanism for quickly duplicating a videotape.

We placed the cameras in the courtroom before a court calendar began, or during a short recess. In practice, the camera placements caused minimal disruptions or distractions. In most courts, court staff placed a notice outside the courtroom door announcing the videotaping and its purpose. Some judges drew the attention of the audience to the cameras and explained their purpose (and assured lawyers and litigants not participating in the project that their hearings would not be recorded on videotape).

All three cameras were placed on the same side of the courtroom midline, i.e., if one camera was to the judge's right, the other two would also be placed to the judge's right. This parallel placement is required if the two videos are to be combined – cutting from the judge to the litigants – to create a natural visual transition.

We experimented with the use of auxiliary microphones. The sound quality was inferior to that recorded by the camera's internal microphone. Researchers would activate the record function and verify the camera focus just before a hearing commenced. We found that proper operation of the video cameras is not a trivial matter. Although many of us now use these cameras for our personal enjoyment, we encountered a surprising number of instances in which the cameras were not focused correctly, or the recording function was not activated properly. This was most apparent with the volunteer law students who were not performing the function on a daily basis. Three of the four cases recorded by them had to be discarded because of incomplete or empty frame videotapes.

As soon as the hearing ended, the researchers would break down the three cameras and tripods and remove them from the courtroom, usually during a short pause or recess by the court. With practice, the breakdown process took no longer than two or three minutes.

The researchers then took the self-represented litigants and the video cameras and tripods to two nearby pre-identified small interview rooms. One camera in each interview room was linked to the television set and loaded with one of the tapes of the judge. A second camera in each

interview room was placed on a tripod and loaded with a blank tape to videotape the post-hearing interview. The litigants filled out the post-hearing questionnaire while the researchers assembled the equipment.

### **The post-hearing interview**

The post-hearing interviews were conducted with the tape that represented the litigant's or judge's perspective during the hearing. The litigants watched a tape of the judge; the judge watched the tape of the litigants. We did not want the participant's attention diverted to a critical assessment of his or her own visual image during the interview process.<sup>7</sup>

The researcher – usually maintaining the male researcher/male subject and female researcher/female subject pairings – would then give an introduction to the post-hearing interview and begin the process. The introduction stressed the confidentiality of the interview (particularly that nothing would be shared with the judge or court staff), noted that the researcher would stop the recording to ask questions. The litigant was urged to ask to pause the tape if s/he wished to make a comment. We focused the interview on the effectiveness of the communication in the courtroom and on the behaviors of the judge that enhanced or detracted from the process.

Later the same day, at a time convenient for the judge, the researchers jointly conducted the post-hearing interview with the judge. We included a special warning at the beginning of each judge interview advising the judge to avoid making any blanket characterization of either of the litigants that might express a prejudice against that party requiring the judge to recuse him or herself from hearing future matters in the case. The judge interview then followed the same pattern as the litigant interviews. The interviews usually took twice as long as the hearings, but only one went beyond an hour (which required the replacement of the tape in the camera recording the interview).

A number of the litigants and all the judges told the researchers that they found the post-hearing interviews interesting and worthwhile. We rarely have an opportunity to review and reflect on an experience like a court hearing. Some participants said that they picked up on points that they had not perceived during the hearing itself. Most litigants found it comforting to have an opportunity to review what had happened. Most concluded that they were pleased with their own performance during the hearing. Several

---

<sup>7</sup> In one case we did not have a litigant tape. We conducted the interview of that judge using the judge tape. This case involved a very experienced judge, who reported that she was not distracted by the process and found the viewing of her own performance to be helpful and reassuring.

judges noticed that they had skipped a step that they thought they performed in every case, such as summarizing the terms of the order at the close of the hearing. In one instance, a judge realized he had left a term out of his order and wrote a note to himself to prepare and mail an amended order in the case. However, the major benefit for the judges was the opportunity to be introspective about their own internal processes while a hearing is underway – how they react to different litigants, what inferences they draw from statements and nonverbal behavior of the litigants, how they develop a strategy for addressing and resolving the issues that arise during the hearing, when they begin to formulate a decision, how they maintain order, and how they involve the litigants.

A shortcoming of the research was that each researcher conducted the post-hearing interviews a little differently, tending to focus on different issues and aspects of the hearings. One lawyer/researcher was primarily interested in the participants' understanding of each other's verbal and nonverbal communication. Another human relations professional/researcher was primarily interested in the litigants' reactions to different verbal and nonverbal behavior of the judges – what made them more or less comfortable with the judge. The volunteer law students demonstrated considerable variance in approach, based on their personal interests. It is not possible to perform the interviews with a single researcher; the litigant interviews must be simultaneous or one of them will experience a significant unnecessary imposition on his or her time.<sup>8</sup>

Researchers replicating this process should take whatever time is needed to ensure that everyone engaged in the interviewing effort conducts the interviews with the same purpose and focus. It is not possible to work from a script in this process, because every hearing is different. And it is inevitable that different researchers will draw the litigants' attention to different aspects of the hearing, particularly if they come from different professional backgrounds. It would also be beneficial to minimize the number of persons conducting interviews.

### ***Data analysis***

---

<sup>8</sup> Our initial test of the videotaping methodology was conducted with borrowed equipment. We had only two cameras and therefore had to conduct the post-hearing interviews serially rather than simultaneously. While the litigants in those cases were gracious and patient, we felt that we had to go to considerable lengths to ensure that the second litigant did not leave the courthouse and that we were rushed in conducting the interviews. That experience led to the purchase of additional equipment to support simultaneous post-hearing interviews.

The data analysis process unfolded differently than originally envisioned. The original hypotheses assumed that the post-hearing interviews would enable the analyst to determine the effectiveness of each participant in presenting his or her own points during the hearing. This proved impossible. It is not theoretically sound: A participant may make a highly articulate statement but not be understood; the effectiveness of a communication is determined by the communicator and the receiver, not just by the communicator. And we did not collect sufficient data to have performed the analysis in that way, due to the variation among the researchers in their interviewing styles.

### **Communication effectiveness scoring**

One of the researchers – an attorney – performed all of the communication effectiveness scoring. The process used is shown at the end of the report on each hearing. The researcher, using his legal training, identified the legally relevant issues in the hearing on which understanding was necessary. The issues were entered into a matrix with boxes for each participant for each issue. The researcher then used a 10 point Likert scale to rate the effectiveness of the communication on each of the legally relevant issues. Complete understanding by all three participants of that issue was reflected by a score of 10 in each participant's box for that issue. A score of 10 reflected that the person presenting the information and the persons receiving the information understood it in the same way with respect to a specific legally relevant issue. Less complete understanding – either from less effective articulation of the information or less effective reception of it by others – was reflected by a lower score. If there was completely ineffective communication on an issue – either because the issue was not addressed by the judge or by the party with the responsibility to raise it or because a recipient of the information utterly failed to understand it – a score of zero was assigned to the appropriate box(es) in the matrix. If the interview tapes did not provide sufficient information to gauge a participant's understanding of a particular issue, no score was entered for that box in the matrix.

The communication effectiveness rating for the hearing as a whole is calculated by adding the scores for each of the boxes in the matrix and dividing by the number of boxes that contain a score. Missing values – where we did not have sufficient information to enter a score for a particular box in the matrix – are disregarded in this process. The result is a single communication effectiveness score for the hearing as a whole.

This process, like the process for rating the judges' nonverbal effectiveness, is subjective. Its reliability depends upon the ability of the researcher to

perceive accurately the information on the videotapes and to apply the same standard consistently across all litigants and all cases.

The results are sometimes surprising. In case 3, the case involving two certified interpreters and a male litigant who appeared to have impaired mental abilities, the analysis showed that the participants, including the one with apparently impaired faculties, nonetheless understood most of what went on during the hearing. The hearing therefore received an average score for communication effectiveness.

The communication effectiveness scores are discussed in the section on Research Findings.

### Judicial nonverbal effectiveness scoring

A different researcher – a national nonverbal communication expert – scored all of the judges’ nonverbal behavior. She reviewed a judge tape from each of the hearings, using a much more specific scoring protocol. The table on the next page shows the twelve factors she used and the weight she assigned to each factor.

#### Nonverbal effectiveness scoring protocol

Factor	Description	Maximum Points
<b>Eye contact</b>	Duration of eye contact with the litigants during the hearing compared to the length of the hearing	<b>10</b>
<b>Lip compression</b>	Number of compressions	<b>4</b>
<b>Head nods</b>	Number of head nods	<b>5</b>
<b>Body orientation</b>	Duration of hearing facing one or the other litigant compared to the length of the hearing	<b>6</b>
<b>Facial expression</b>	Blank, interested, critical, bored, frowning, smiling	<b>12</b>
<b>Posture</b>	Forward lean, straight, backward lean, slump, head in hand, open, dominant, rocking, shifting, closed, leaning to the side, restless	<b>12</b>
<b>Vocalics</b>	Speech volume, rate, pitch, tone, vocalized sound (just as laughter, cough, sign, yawn), interruptions, pauses, accent, deadwood, um-hmmm	<b>10</b>
<b>Appearance</b>	Formality of robe, skin tone, hair grooming, makeup	<b>5</b>
<b>Artifacts</b>	Arrangement of bench, jewelry, and other things used	<b>4</b>
<b>Gestures</b>	Emblems, illustrators, regulators, displays of affect, head tilts, head shakes, offensive gestures (such as pointing)	<b>10</b>
<b>Chronemics</b>	Pace, equal time to both litigants	<b>7</b>
<b>Overall impression</b>		<b>10</b>
<b>Maximum Total Score</b>		<b>100</b>

Here is a glossary of nonverbal communication terms and concepts prepared by the consultant who scored the judges’ nonverbal performance.

**Artifacts.** In the field of nonverbal communication, “artifacts” are the items a person brings with her or him (such as briefcase, purse, pen, coffee cup, folders, documents) or places in her or his surroundings (such as flower arrangements, stapler, clock, telephone, framed photographs).

**Posture and Body Orientation.** Body posture and orientation are important aspects of nonverbal communication. Through posture and orientation we communicate messages about our attitudes. Orienting the body toward someone, positioning oneself in symmetry with him or her, and leaning forward indicate an attitude of immediacy. The immediacy principle explained by researcher Albert Mehrabian is, “People are drawn toward persons and things they like, evaluate highly, and prefer; they avoid or move away from things they dislike, evaluate negatively, or do not prefer” (Mehrabian, *Silent Messages*, 1971, p.1). Nonverbal behaviors that indicate immediacy are those that will improve and encourage interpersonal communication.

We cannot always physically approach people or things we like or move away from things or people we don't like. However, we do communicate our feelings by leaning toward or away from someone, having much or little eye contact, etc. We use these “abbreviated forms” of approach or avoidance behaviors to indicate our attitudes. These abbreviated forms of nonverbal behaviors imply the degree of psychological closeness between people. The more forms of approach we use, the more we will be perceived as being immediate. The more we use avoidance-like behaviors, the more we will be perceived as being non-immediate.

We communicate an openness and willingness to communicate, along with a positive attitude, through exhibiting immediacy and relaxation in our postural positions. On the other hand, our posture can close out another person and shut off communication. Postural cues that reduce visibility and increase perceptions of distance will tend to discourage interaction, while cues that increase visibility and reduce perceptions of distance will enhance interaction.

**Gestures and Body Movements.** Gestures and body movements are classified as one of five types: emblems, illustrators, affect displays, adaptors, and regulators. [Facial expressions are usually included as a part of the category called gestures, but the above analysis assigns facial expressions its own category.] Gestures, body movements, and all other aspects of nonverbal communication are interpreted using schemes established by a person's cultural memberships. This analysis used the majority American scheme of interpretation, because the research was conducted in the U.S. However, many of the litigants in the study were people of color, some of whom were non-English speaking.

Emblems are gestures that substitute for verbal communication and are interpretable without it. An example of an American emblem would be holding up

the index finger instead of saying “one”. Another example of an American emblem would be holding up the right hand with the palm facing outward at the level of one’s head and moving the hand from side to side, instead of saying “hello”. A difficulty arises when the same gesture is interpreted differently by different cultures.

Illustrators are gestures that accompany verbal communication and serve to emphasize, indicate, explain, or accent the words being said. An example of an illustrator would be when someone is giving directions, and says, “Walk to the corner and turn right,” and accompanies these words with a hand and arm movement with the index finger pointing to the right.

Affect displays are manifestations of emotion, such as clenching the fists when angry, pounding a table when frustrated, cringing when afraid, shrugging the shoulders when exasperated, laughing when amused, etc.

Adaptors are gestures which only serve the purpose of making the gesturer more comfortable, such as scratching an itch, rubbing a painful joint or one’s forehead during a headache, smoothing back one’s hair from one’s face, chewing on the frames of one’s eyeglasses, changing position or stretching to relieve muscle tension, drinking coffee from a cup, etc. They are unintentional responses to stress, boredom, or negative feelings created by the situation in which one finds oneself.

Regulators are gestures used to control the flow of conversation. One example is when a teacher asks students to raise their hands when they wish to have a speaking turn, and then the teacher points to a student to indicate that the student now gets a turn; another example is when several people start talking at once and one of them holds up one or both hands with palms outward towards the speakers to indicate “stop”.

**Facial Expressions.** The area of the face, and particularly the area around the eyes, is the most significant area of the body for communicating nonverbal messages. The face is the main means for transmitting expressions of emotion. The face is important because it is usually visible during interaction. People find cues on the faces of those with whom they are communicating – cues that can provide accurate information about feelings toward self, others, and life in general. People also make judgments about personality characteristics by looking at the face and eyes of others. The face and eyes also help regulate our interactions with others, signaling disapproval, disbelief, or sincere interest in the messages of others. Our expressions can set the mood or tone of a conversation.

Cultures differ in the circumstances that elicit certain emotions, in the consequences that follow from certain emotional expressions, and in the display rules that their members must learn and that govern the use of facial behavior.

In North America, men are discouraged from expressing extreme sadness or happiness. They are expected to be more composed than women, who are allowed to be more emotionally expressive than men. In other cultures, the rules are often different. In Iraq, it is perfectly acceptable for men to be overcome with joy and excitement when meeting an old friend, or to weep openly when the occasion calls for it. In Japan and China, it is not acceptable to display any emotion that might cause discomfort to another person.

Cultural and social influences sometimes teach us to divorce our emotions from our facial behavior. Controlling our facial behavior appears to be learned early in life. Display rules taught by our culture tell us how to show our emotions in various social settings through the facial management techniques of intensification, deintensification, neutralization, and masking.

Intensification of our facial expressions is accomplished by exaggerating what we feel. Deintensification or deemphasizing our facial expression of a particular emotion occurs when we experience feelings that our culture has taught us are unacceptable. Neutralization is the elimination of any emotion from the face, especially at a time when expressing an emotion might be against our best interests. Masking involves repression of the facial expressions related to the emotion actually felt, and their replacement with expressions that are acceptable in the situation.

Judicial officers are frequently advised to deintensify or neutralize their expression of emotions in court, where it is felt by some people to be inappropriate for them to express the true extent of what they feel. Judicial ethics call for judges to be fair and impartial, and to avoid showing preference for one side or another through verbal or nonverbal means.

**Eye behavior.** This category of nonverbal communication includes everything the eyes do: make contact with the gaze of others, avoid contact with the gaze of others, glance sideways or up or down, roll, blink, stare, narrow, widen, close, etc.

Several types of eye behavior have been distinguished. Mutual looking or mutual gaze occurs when two people look in the direction of each other's faces. Eye contact is mutual gaze that is centered upon the eyes. A one-sided look is a gaze of one individual in the direction of another person's face, but the gaze is not reciprocated. Gaze aversion occurs when someone avoids looking at another person, even when the other is looking at him or her. Gaze omission occurs when one person does not look at another but is not intentionally avoiding eye contact.

Gaze aversion may signal lack of interest in what another person has to say. It may also function as a regulator, indicating that a person does not want to communicate any further. However, cultural training is an important aspect of

gaze aversion. In Asian cultures, people are taught not to look at higher status individuals, because to do so is disrespectful.

In the U.S., it is expected by white Americans and nonwhites who have fully assimilated to American culture that speakers and listeners will make eye contact with one another some or most of the time while interacting. Refusal or hesitation in making eye contact is interpreted by white and assimilated nonwhite Americans as suspicious behavior.

**Vocalics.** Vocalics is the study of information which relates to the voice: its volume, rate, pitch, expressiveness, tone, accent, use of nonfluencies, plus coughs, sighs, throat clearing, and so on. Anything the voice does other than the words it speaks is considered nonverbal communication.

**Deadwood.** “Deadwood” is a subcategory of vocalics which includes nonfluencies such as “ah”, “um”, “you know,” “I mean”, “like” etc. – words or sounds used to fill a space in a person’s message where he or she might be thinking of what to say next, trying to recall a word or name, or trying to keep his or her speaking turn. In the speech of many people, deadwood appears as a habit or tic of which they are unaware.

**Proxemics.** This category of nonverbal communication is concerned with the use of space and distance during communication. It includes the space that communicators keep among themselves, and the ways they place their furniture and arrange their rooms. Space and distance customs are culturally-based, and all judges would be advised to learn the appropriate distances to maintain with people of differing cultures, since judges perform weddings for people of many backgrounds, and interact with attorneys and litigants in their chambers.

In the U.S., four feet is the customary distance for strangers talking to one another. A closer distance would indicate a friendship, family relationship, or intimate relationship with someone. A greater distance would indicate a formal relationship or a hostile relationship.

**Tactilics.** Tactilics is the study of how touch is used in communication.

In human societies, touch can be used in a variety of ways including comforting, healing, fighting, asserting dominance, being submissive, giving affection, initiating sexual relations, providing medical services, performing religious rituals, bathing, feeding, etc.

There are laws, customs, and rules in every culture about who can touch whom, where on the body, when, in what circumstances, and for what length of time.

Cultures vary in their tolerance for touching. White American culture is rated as an extremely low-touch culture when compared to other cultures. High-touch cultures include Egypt, Syria, Saudi Arabia, Italy, India, and Mexico.

### ***Overall difficulty of conducting this research***

The research design anticipated being able to collect thirty completed hearings, including all of the post-hearing interviews, within a four week data gathering period. The project was only able to collect half that number of completed hearings – an average of less than one hearing per day. In the most productive location, the researchers were able to obtain seven completed interviews within five days on site.

Consequently, researchers and organizations contemplating replicating this process – which we highly recommend – should anticipate that the data gathering cost per hearing will be relatively high – more than the daily salary of two researchers for each hearing completed. The analysis process will also take substantial additional time, since the analyst will have to review every tape at least once – requiring a minimum of eight times the duration of the hearing itself. A more realistic estimate would be that analysis will take twelve to fifteen times the length of the hearings, taking into account the need for an analyst to develop his or her own norm for scoring.

On the other hand, this process provides researchers with a unique insight into the courtroom process and into the underlying issues involved in the resolution of family law disputes. It is an insight unavailable to a judge or court staff member; it would be unethical for them to conduct post-hearing interviews of a party out of the presence of the other party.

### **Project Personnel**

Many projects and organizations contributed to this project.

We are very grateful to the courts, judges and litigants whose participation made this project possible. Information privacy considerations make it impossible for us to name them. But they know who they are.

John Greacen served as project leader and principal investigator for the study. He collected data in three of the four sites, conducted the analysis of communication effectiveness, and prepared the final report. Diddy Greacen served as project administrator, participated as an on-site researcher in two

of the sites, and reviewed the final report. Wiggy Greacen entered all of the data and produced the statistical analyses using SPSS.

The project benefited from the substantial involvement of four other researchers and a group of law school volunteers. Bonnie Hough served as the liaison for the project with the California judicial branch. She helped develop the research methodology, participated in the data gathering in two of the project sites, and reviewed the project report and other deliverables. Richard Zorza, coordinator of the Self-Represented Litigation Network, also helped develop the research methodology, participated in the data gathering in two of the project sites (serving as the trainer for the volunteer law students from Harvard Law School), offered hypotheses as to effective judicial communication techniques and reviewed the project report and other deliverables. Dr. David Givens helped develop the project methodology, participated in the data gathering in one site, and reviewed the final report. Dr. Laurinda Porter helped develop the project methodology, participated in the data gathering in one site, conducted the analysis of judges' nonverbal behaviors, and reviewed the final report.

We are indebted to Jeanne Charn, director of the Bellows-Sacks Access to Civil Legal Services Project at the Harvard Law School, and her volunteer law students for gathering of data at one of the sites.

We are also indebted to the Education Division of the California Administrative Office of the Courts for preparing the judicial education video which is an additional product of this research.

Finally, we are indebted to the State Justice Institute and the California and Maryland Administrative Offices of the Courts for funding support for this study and to the National Center for State Courts and three of its staff – Madelynn Hermann and Greg Hurley who served as project director during the term of the project, Kathy Mays Coleman who served as special liaison to the project, and Rob Baldwin, vice president, who was the liaison for human subjects research issues.

## **The Fifteen Hearings**

### *The courts*

We videotaped fifteen hearings in four courts in three states in late 2006 and early 2007. We agreed not to identify the specific courts or states in order to protect the identity of the litigants.<sup>9</sup>

All four courts have invested significant resources in programs to assist self-represented litigants. The courts should therefore be considered as sophisticated in their approach to cases involving self-represented litigants. Our observations of hearings, our discussions with judges and court managers in these courts, and the judges' responses to a survey pertaining to their attitudes towards self-represented litigants bear out that characterization.

Important Cautions. It is imperative to couch the findings of this research within the context of the level of sophistication of the courts in which it was conducted and the self-selection process used to identify judges and litigants to be videotaped. It would not be fair, for instance, to interpret the findings to mean that self-represented litigants throughout the United States understand court proceedings at a deep and nuanced level. Rather, the findings should be limited to courts – like the four participating courts – that have taken steps to assist and accommodate self-represented litigants, and to judges and litigants who are willing to agree to participate. In the executive summary, we characterize the finding of deep and nuanced understanding by even these litigants as the “payoff” of years of effort made by these courts to ensure that their courthouses are hospitable to self-represented litigants. It is also significant that all litigants had participated in at least one prior court hearing in their case; for none of the participants was this a first court appearance.

### ***The cases***

We spent roughly one week on site in each of the four locations.<sup>10</sup> The court staff in all locations were extremely helpful in providing us with calendars noting cases meeting our criteria – relatively short contested family law hearings involving two self-represented litigants. Researchers first obtained

---

<sup>9</sup> Litigants' names are necessarily stated on the videotapes. We agreed not to record them in writing and not to refer to the litigants by name in our written report. However, the images of the litigants may appear in education videos using footage from the project. Curriculum developers have edited out the names of litigants and judges from the video segments they have used. However, concealing the identity of the locations at which the videotapes were made was an element of the privacy protection for the litigants agreed upon at the commencement of the project.

<sup>10</sup> We actually spent four days in one site, five in each of two sites, and four days (spread out over a month) in the fourth.

the consent of the judge in the case to participate in the process. That consent usually included all cases on the judge's calendar.

We then obtained the consent of both litigants, and the child support agency personnel, if any, to participate.

Many of the cases failed to materialize. One or more parties failed to appear or the parties reached agreement prior to the hearing so that the hearing was no longer contested. One of the parties declined to participate in roughly half the cases. The researchers (often having no hearings to videotape) observed many of the hearings in which parties declined to participate in the research. We observed no systematic differences between these cases and the ones we videotaped.

None of the hearings we observed was a first appearance in the underlying cases. All were all subsequent proceedings. The subject matters included child custody, visitation, and child support. Several of the cases had outstanding civil and criminal domestic violence restraining orders. Most of the hearings were at the instance of a party seeking a change in the terms of an existing court order; a few were review hearings scheduled by the court to hear a report from the parties on how an existing custody and visitation schedule was working.

In most but not all of the hearings, the parties were sworn. However, none of the hearings involved the taking of evidence in a traditional manner with a witness taking the stand. We did not observe any full blown trials; they would not have met our limitation to relatively short proceedings.

The hearings took from less than six minutes to thirty-one and a half minutes. The average hearing length was eighteen and a half minutes.

Several cases were discarded from the study for technical reasons. In one case, a litigant left the courthouse immediately following the hearing and was therefore not available for the post-hearing interview. In two other cases, because of problems with the videotaping we failed to obtain tapes of the judge or of one of the post-hearing interviews. These problems were particularly marked in the location where the process was conducted by supervised volunteer law students. We ended up with only one usable hearing from that location. We obtained three hearings in the second court, four in the third, and seven in the fourth.

We believe it is fair to characterize these hearings as typical family law proceedings – the “stuff” of family law calendars throughout the United States. The cases were not chosen by a random sampling process. Instead

they included all cases scheduled on the days we were present in the participating courts. We attempted to recruit the participants in every qualifying case. While many cases dropped out of the process, it appeared to the researchers to be a relatively random process. It is very possible that we tended to see less hotly contested, emotionally charged hearings because of the reluctance of litigants to subject themselves to the additional strain of the videotaping and post-hearing interview processes. However, the researchers are only aware of two instances in which that appeared to be the situation.

Not observing full blown evidentiary trials left us without the experience of such proceedings. However, they are relatively rare in family law and even rarer with two self-represented litigants (although it is less unusual for a trial to have one represented and one self-represented litigant).

We collected information on the outcomes of the hearings from the judge observation questionnaires completed at the close of each hearing. In eight of the fifteen proceedings, the judge reported that both parties prevailed in part. In an additional three cases, the judge felt that neither party had prevailed. In two cases, the judge felt that the petitioner had prevailed and in one the respondent prevailed. The final case was taken under advisement, so the judge did not know the outcome. In sum, from the judges' perspective twenty-two litigants prevailed.

The litigant survey results (in answer to the statement "The outcome of the hearing was favorable to me.") were virtually identical. As shown in the table below, only six petitioners and one respondent thought the results were unfavorable to them, five petitioners and nine respondents felt the results were favorable, and three petitioners and five respondents responded with a neutral rating. In sum, twenty-two litigants reported that the outcome was favorable or a draw.

**Litigant Responses to "The outcome of the hearing was favorable to me."**

	<b>Strongly Agree</b>	<b>Agree</b>	<b>Neutral</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
<b>Petitioners</b>	5		3	2	4
<b>Respondents</b>	3	6	5		1

We are frankly surprised at the consistency of the judge and litigant outcome ratings. In the custody and visitation cases, the parties often had undisclosed fears, objectives, or expectations against which they measured the outcome of the proceeding. In the child support modification cases, the outcomes were, surprisingly, also nuanced. Mothers tended to look to the reality of whether they were more or less likely actually to receive support payments than to the amounts of monthly support awards. The fathers

were sometimes more upset that the court did not decide an issue than they were about an unfavorable decision made.

Nonetheless the judges, who were not privy to those undisclosed litigant fears and desires, made virtually the same assessment of the outcomes in the cases, suggesting that they were very much in tune with the feelings of the litigants in their courtrooms.

### ***The judges***

Ten judges participated. Four of them were general jurisdiction trial judges. The other six were commissioners, referees, or masters. We do not make any distinction in this report between the former and the latter – except in the statistical analysis of possible differences in the performance of the two groups. Four of these judicial officers presided over more than one hearing. One conducted three and the other three all conducted two hearings that were included in the study.

Three of the four general jurisdiction trial judges were male. Only one of the commissioners, referees, and masters was male. Eight of the ten judicial officers were Caucasian. Two of the commissioners, referees, and masters were of Asian descent and spoke with what non-Asians might view as a mild accent.

We asked the judges to complete a questionnaire concerning their experience with self-represented litigants who had appeared in their courtrooms over the course of the past year. The questions we asked and the judges’ average scores are set forth in the table below.

**Attitudes of Participating Judges Concerning Self-Represented Litigants in General  
Scale – 5 = Strongly Agree; 4 = Agree; 3 = Neutral, 2 = Disagree; 1 = Strongly Disagree**

<b>Question</b>	<b>Average Score</b>
1. Self-represented persons generally have realistic expectations about the likely case outcome	<b>2.50</b>
2. Self-represented persons generally appear to understand the court’s rulings	<b>3.70</b>
3. Self-represented persons generally have documents prepared correctly	<b>2.20</b>
4. Self-represented persons generally have the necessary evidence and witnesses	<b>1.70</b>
5. Self-represented persons generally follow procedural rules	<b>2.40</b>
6. Self-represented persons generally participate effectively in court proceedings	<b>3.10</b>
7. Self-represented persons generally “tell their stories” effectively	<b>3.00</b>
8. Self-represented persons generally need the court’s assistance to complete a hearing	<b>4.00</b>
9. Self-represented persons generally take more of my time than represented persons in similar cases	<b>2.90</b>
10. A judge should conduct a hearing involving self-represented litigant(s) exactly as if they were lawyers	<b>1.50</b>
11. Before a hearing involving self-represented litigants, a judge should explain how the	<b>3.80</b>

hearing will proceed	
12. A judge should ask whatever questions are needed to elicit the information needed for a fair decision	<b>4.30</b>
13. Unless there is objection, a judge should accept any evidence proffered –giving it the weight it deserves – regardless of a self-represented litigant’s ability to comply with the rules of evidence	<b>2.70</b>

Their answers to questions 8 through 13 demonstrate that these judges are strongly disposed to assist self-represented litigants in the courtroom. They agree that these litigants need their assistance, that the judge should explain how the hearing will proceed, and that the judge should ask whatever questions are needed to elicit the information needed for a fair decision. They emphatically disagree with the statement that these cases should be handled as if the litigants were lawyers. They also disagree with the notion that these cases take more court time than those involving represented litigants.

The participating judges hold slightly positive views about the ability of self-represented litigants to participate in court proceedings and are neutral on their ability to “tell his or her story” effectively. They strongly agree that these litigants understand the court’s rulings. However, their view of self-represented litigants is not one dimensional. They give quite negative ratings to self-represented litigants’ performance in having necessary evidence and witnesses, followed by their ability to prepare documents properly, their ability to follow procedural rules, and their having realistic expectations about the likely case outcome.

These survey results reinforce our view that the judges in the hearings we videotaped are sophisticated in how they deal with self-represented litigants. They represent the extreme end of a continuum throughout the United States concerning how deeply judges are engaged with self-represented litigants as they handle these cases in the courtroom.

### ***The litigants***

To our astonishment, all but one of the thirty self-represented litigants who participated in the study<sup>11</sup> reported that they were members of minority groups. The breakdown was two American Indian or Alaska Native, two mixed Black/American Indian, fifteen Black or African American, nine Hispanic or Latino, one White, and one Mixed Race. While all urban areas in the United States are racially and culturally diverse, we did not anticipate

---

<sup>11</sup> We failed to collect or lost the feedback questionnaire from one of the petitioners; however, it is clear from the videotapes that he is Black.

that this overwhelming proportion (97%) of the self-represented litigants we would videotape would be members of minority groups.

Half of the litigants were male and half female. Every case had one male and one female party. The missing survey is from one of the male litigants.

The self-represented litigants were older than we had anticipated. Four litigants reported their age to be between 18 and 24, eight were between 25 and 34, eleven were between 35 and 44, five were between 45 and 54, and one was between 55 and 64. None were younger than 18 or older than 65.

The litigants reported a very wide range of monthly household income before taxes, as shown in the table on the next page. Twenty-two of them (76%) reported making \$36,000 per year or less. One reported making more than \$96,000 per year.

**Litigant Reported Monthly Household Income Before Taxes**

Income level <sup>12</sup>	Number of Litigants Reporting This Income Level
\$500 or less	5
\$501 to \$1,000	3
\$1,001 to \$1,500	2
\$1,501 to \$2,000	4
\$2,001 to \$2,500	5
\$2,501 to \$3,000	3
\$3,001 to \$3,500	4
\$4,001 to \$5,000	1
\$5,001 to \$6,000	1
Above \$8,001	1

Most of the litigants (76%) had graduated from high school. Two reported no more than an 8<sup>th</sup> grade education. Five reported 9<sup>th</sup> to 11<sup>th</sup> grade educations. Eight had some college, one had an associate's degree, three had a bachelor's degree, and one a graduate degree. From the standpoint of formal education, the self-represented litigants were by and large unsophisticated persons.

---

<sup>12</sup> No participant checked the categories \$3,501 to \$4,000, \$6,001 to \$7,000, or \$7,001 to \$8,000.

Even though none of these hearings was an initial hearing, three of the litigants reported that this was their first time in this courthouse. Ten reported coming to the courthouse once a year or less. Fifteen came several times a year. One reported being a “regular” courthouse visitor.

We asked each judge to rate the performance of the litigants during the hearings we videotaped. The criteria on which we asked the judges to rate their performance and the scores for petitioners and respondents are shown on the next page.

The judges gave slightly higher ratings to the petitioners than they did to the respondents, except for having needed evidence or witnesses. These small differences are consistent with the role of the petitioner in bearing the burden of persuasion in the hearing. They are more likely to take more court time to present their case; they have the burden of producing evidence and witnesses. With the exception of the scores for correct preparation of documents and presentation of evidence or witnesses, the ratings are all positive. The judges gave particularly high ratings to litigant understanding of the court’s ruling(s).

**Judge Ratings of Litigant Performance During the Hearings Videotaped**

**Scale – 5 = Strongly Agree; 4 = Agree; 3 = Neither Agree Nor Disagree; 2 = Disagree; 1 = Strongly Disagree**

<b>Criterion</b>	<b>Average Rating for Petitioners</b>	<b>Average Rating for Respondents</b>
1. Litigant had realistic expectations about the likely outcome	3.53	3.33
2. Litigant appeared to understand the court’s ruling(s)	4.07	4.07
3. Litigant had documents prepared correctly	2.75	2.67
4. Litigant had needed evidence or witnesses	2.62	2.92
5. Litigant followed court procedural rules	3.53	3.47
6. Litigant participated effectively in the proceedings	3.67	3.53
7. Litigant was able to “tell his or her story” effectively	3.50	3.43

We also asked the litigants to rate their satisfaction with various aspects of the proceeding. The questions posed and litigants’ average ratings are set forth below. Although some of the questions in the survey were stated in the negative, for ease of understanding of the results we have stated them all in the positive and converted the scores to the appropriate positive value.

**Average Litigant Ratings of Various Aspects of the Hearing**

**Scale – 5 = Strongly Agree; 4 = Agree; 3 = Neutral, 2 = Disagree; 1 = Strongly Disagree**

<b>Criterion</b>	<b>Average Rating by</b>	<b>Average Rating by</b>
------------------	--------------------------	--------------------------

	<b>Petitioners</b>	<b>Respondents</b>
1. The way my case was handled was fair.	<b>4.20</b>	<b>3.79</b>
2. The judge listened to my side of the story before he or she made a decision.	<b>3.47</b>	<b>4.07</b>
3. The judge had the information necessary to make good decisions about my case.	<b>4.00</b>	<b>3.93</b>
4. I was treated the same as everyone else.	<b>4.00</b>	<b>4.29</b>
5. The judge treated me with respect	<b>4.33</b>	<b>4.36</b>
6. The judge cared about my case.	<b>4.13</b>	<b>4.36</b>
7. I am satisfied with what happened during my hearing today.	<b>3.87</b>	<b>3.50</b>
8. I understood the words used by the judge and other persons in the courtroom.	<b>4.47</b>	<b>4.21</b>
9. I am clear about exactly what the judge decided.	<b>4.29</b>	<b>4.29</b>
10. The outcome of the hearing was favorable to me.	<b>3.73</b>	<b>3.00</b>

The litigants' scoring of their courtroom experience was extremely positive. It is interesting that respondents tended to view the case outcomes as less favorable to them, were somewhat less satisfied with the hearing, and did not rate the fairness of the hearing as highly as petitioners did. The latter two ratings are still distinctly positive. However, respondents rated their experience during the hearing higher than the petitioners did on the four key procedural fairness indicators – the opportunity to be heard, equal treatment with others in the courtroom, respectful treatment, and a sense that the judge cared about his or her case.

The litigants reported very high levels of comprehension of the words used in the courtroom and of the judge's decision. Their personal assessments match our conclusions based on our analysis of the hearings and of our post-hearing interviews.

### ***Case summaries***

We summarize each of the hearings, including the issues raised in the hearing, ambiguities in the proceeding, and our principal findings from the post-hearing interviews with the litigants and judges.

Following each case is our analysis resulting in a communication effectiveness score for the hearing.

#### **Case 1**

##### Summary

White female judge and two Hispanic litigants. The hearing lasted 7 minutes.

A year or two ago, the court had entered a restraining order against the father, giving the mother sole legal and physical custody, and giving the father one hour per week visitation with their infant daughter. The father petitions for joint legal and physical custody of the now two year old child, for 50/50 visitation with no set schedule, and for dissolution of the protective order.

The judge gets the moving papers wrong at first but then corrects herself. The mother nodded her head agreeing with the judge's original mischaracterization of the proceeding, knowing that it was wrong but also knowing that the judge was looking through the papers and would figure it out. The judge does not fully understand the history of the case until she reviews the file closely after the hearing is over.

Even though the motion has been brought by the father, the judge turns to the mother to obtain an understanding of the agreement that the parties have reached. From the call of the calendar, she understands that the mother speaks better English; she believes that she can get a better understanding by speaking first with the mother and then verifying her understanding with the father.

The judge asks if the parties were talking with each other to reach an agreement, noting the existence of the restraining order. The mother responds that they were "not exactly" talking, realizing that she did not want to admit that they were violating the restraining order. The judge realizes that they have been disregarding the restraining order.

The judge learns from the mother that they wish to have joint legal and physical custody, that they do not want the court to create a specific parenting plan, and that they want to dissolve the restraining order.

The judge confirms those understandings with the plaintiff.

The judge asks about the threats and violence that led to the restraining order. Both parties state that the violence is a thing of the past. The father says that the violence occurred when he was 17; now he is 23. He smiles and he is open. The judge decides that they are being candid about the lack of recent violence.

The judge warns that an open-ended visitation agreement will lead to disputes and such disputes cannot be resolved by violence. Both agree, and understand that they can come back to court if there are problems. The

court will prepare an agreement embodying the terms discussed and the judge will sign it so that it becomes an order of the court.

Ambiguities

The judge does not summarize the terms of the order, leaving some doubt in the minds of the litigants about whether the restraining order has been vacated.

She states that their agreement will be made an order of the court, which will be enforceable. Neither litigant understands the term “enforceable.”

The mother is confused because the judge had previously told her that they would have to go to the criminal court to get the criminal restraining order vacated. There was no mention of that issue during this hearing and the court order appears to vacate the civil restraining order without taking any action with respect to the criminal restraining order. The parties, however, appear likely to proceed as if there is no restraining order in place.

Observations

The parties clearly understand the legal concepts of joint legal and physical custody. They understand when the judge is initially confused about the procedural posture of the case. They understand and appreciate her advice concerning the likelihood of disagreements with an open-ended custody agreement and appreciate her admonition that those disputes cannot be resolved by violence or threats of violence.

**Computation of communication effectiveness score for Case 1**

Issue	Petitioner’s articulation/understanding	Respondent’s articulation/understanding	Judge’s articulation/understanding
The purpose and scope of the hearing	10 Despite initial confusion	10 Despite initial confusion	10 Despite initial confusion
The bearing of the restraining order on the parties’ talking with each other	10	10	10
Meaning and operation of joint legal and physical custody	10	10	10
Desirability and consequences of a flexible custody/visitation arrangement	10	10	10
Desire of the parties to cancel the restraining order	10	10	10
Terms of the court’s order and the meaning of	7.5	7.5	7.5

"enforceable"			
---------------	--	--	--

Hearing communication effectiveness score 172.5/18 = 9.6

**Case 2**

Summary

White female judge and two Hispanic litigants. The hearing lasted 14 and a half minutes.

This case presents many learning examples and opportunities. It is an excellent example of how – even in the context of a case involving domestic violence – an effective judge can move the parties not only to agreement on matters currently in dispute, but toward greater long-term harmony in their relationship.

The father was convicted of domestic violence and was incarcerated as a result of the conviction. The mother had regular contact with the father’s parents during the period of his incarceration, leaving the child with them for extended periods. When the father was released, his parents refused at one point to return the child to the mother, requiring her to obtain the assistance of the police and the child abduction service to get his return. At that point, the mother initiated a family domestic violence proceeding to obtain further protection from the father, but also to resolve custody and visitation issues associated with the one year old son.

The court imposed a five year restraining order and gave the mother sole legal and physical custody. In response to the mother’s obvious distrust of the father, the court allowed only eight hours per week visitation to the father – at the home of the father’s parents, under their supervision, and with them providing transportation for the child to and from the mother’s home (to protect the mother from the father’s knowing where she lives).

This is a review hearing established by the court three months after the initial domestic violence order hearing resulting in the above order. It was preceded by a mediation session with Family Court Services. Under this state’s law, mediation is mandatory in all cases in which custody or visitation is in dispute. In this court, mediation is confidential. If mediation does not produce agreement, the judge may receive a report from the mediator summarizing the positions of the parties, if the parties consent. But the

mediator makes no report and no recommendations concerning custody and visitation. The court may order a separate custody evaluation, which is conducted by a different court staff member.

This case takes place within the context of the mandatory mediation process. First, the mediators and the court (as well as the family law facilitator's office) are highly aligned in their approach to custody and visitation issues. It is evident from talking with the parties that the mediator gave them a clear sense of the likely course that this case will take – that the court favors the involvement of both parents in a child's life (if this can be done safely for the child and the parents) and that the court will gradually move in that direction by increasing the visitation of the non-custodial parent, if circumstances warrant. In particular, the mother is aware that overnight visitation will be authorized sometime in the future if the father's behavior warrants it. Consequently, she focuses her arguments on the circumstances under which it will occur, not on preventing such visits.

Second, the parties perceive that the court case is a continuation of the mediation. At mediation the parties never saw each other, because of the existence of the restraining order. However, the mediator made each party aware of the other's requests and positions. The father sought three to four overnights with his son every other week in his own home. The mother opposed any change in the current visitation arrangement. The mediator let both parties know that they would not be likely to succeed in convincing the court to accept their positions. The parties assumed that the court would know what those positions were. Hence – the mother thought that the issue would be whether the father could have his son overnight in his own home. The father thought the issue would be whether he got to have any overnights with his son. The judge was unaware of any of this background.

The review hearing is held before the same judge who issued the restraining order three months before. She remembers well the appearance and demeanor of the parties – particularly the mother's disdain for and mistrust of the father.

The judge recites the terms of the earlier order, asking the parties to confirm each aspect of the order. The father notes that the mother has not been present on some occasions when his parents returned the child. He questions whether the mother actually lives at that location and questions the safety of leaving the child with strangers. The mother notes that the father's previous apartment was vandalized by gang members and raises concerns about the safety of her son in that environment.

The judge gives each party an opportunity to address the other's concerns – by giving testimony on the record (from counsel table). Both express satisfaction with the other's answers. The mother bolsters her statement that she in fact lives at the place where the child is picked up and delivered by stating that child protective services visited the home and dismissed the complaint that brought them there. The father stated that his father's therapist had reported an episode of diaper rash to child protective services. The judge tells the parties that diaper rash is to be expected with babies.

The father reports to the judge the positive steps that he has taken to get his life in order. He has a job (delivering medical marijuana to quadriplegic patients and working in a medical marijuana club). He has taken a drug test. He is taking anger management classes.

The judge asks the father about the number of visitations; he states that they have taken place as scheduled – at least ten times since the order was entered. The judge asks the mother about the nature of the father's interactions with the child. Although the mother says that she has no knowledge of the way in which they interact, she does support her son's development of a relationship with his father.

The father initiates the topic of overnight visitation. The judge skillfully engages both parties in negotiation with each other over that topic, arriving at an agreement that the father will be able to have his son from 10:00 am on Saturday through 6:00 pm on Sunday, at his parents' house under the existing terms of supervised visitation and parental transportation. The judge's technique is to get the parties to suggest the terms to each other. The mother first states that overnight visitation would be agreeable to her if it were at the parents' home. The father suggests the schedule ultimately agreed upon. The mother agrees to it. The judge confirms the agreement with both parties and with the father's parents, who are present in the courtroom.

The judge alerts the mother to the likelihood that the father will, in the future, be seeking overnight visitation in his own home (just as the mediator foretold). She also notes that the issue is not for now, but for the future.

The judge does not summarize the terms of the order at the close of the hearing. She gives the parties the option of obtaining a copy of the written order by mail or before they leave the courtroom.

### Ambiguities

The judge misinterprets the mother's non-responsiveness to the father's testimony as conveying her acquiescence in it. In fact, the mother disagrees strongly with the father's statement about leaving his son with strangers – stating during the interview that he knows very well that the roommate is the child's godmother. But, the mother does not believe that disputing that statement openly would be appropriate or "very relevant to the matter at hand." And she does not, in fact, dispute any other part of the father's testimony.

At the end of the father's testimony about the steps he is taking to get his life in order, the judge smiles. The father interprets the smile as confirmation of the judge's satisfaction with his progress and encouragement of further success in these endeavors. The mother interprets it as a sign of skepticism on the judge's part – she may not fully believe the father's testimony.

During the interview, the mother disclosed that the CPS complaint dealt with more than diaper rash – with contentions that she was taking Oxycontin and that the child had suspicious bruises. She also discloses that her concern about the gang presence may be insincere. She states that because the apartment was in her name, the landlord asked her to come to the apartment and take pictures of the damage. It was severe. She secretly suspects that the father did the damage in retaliation for being evicted.

The father is unclear at the close of the hearing whether he will be getting the overnight visitation every week, or every other week as he had requested during mediation. The written order provides for weekly overnights.

### Observations

It is obvious that the parties have different expectations and a different context for the hearing than the judge has as a result of the mediation process. They perceive the hearing to be taking place within the context of the requests and positions that they had staked out during mediation. The judge has no knowledge of them. On the other hand, the parties have been educated during mediation to the overall policy orientation of the court, which paves the way for the judge's success in bringing the parties together during the hearing.

This case also illustrates the challenges facing the parties and the court in cases involving domestic violence restraining orders (when the parties are in fact complying with them). The parties are unable to communicate in any

way – even during mediation. They do obtain some information about each other through the father’s parents. But it is only in the courtroom that they are able to see, hear, and speak with each other – through the good offices of the judge. In this case, the judge self-consciously functions as a conduit for such communication – using the hearing as a way for the father to try to convince the mother that he has become more trustworthy, and drawing out the mother so that she is able to articulate her concerns about gang behavior and her son’s safety.

In fact, the judge has been successful in ways well beyond her ken. Both the father and the mother state to the researchers that the judge’s ability to resolve the issues raised by the parties contributed to the mother’s willingness to agree to the overnight visitations. The father also discloses that the hearing has changed fundamentally his view of the mother. He previously hated her, believing that he was keeping her son from him merely to hurt him. Her statement that she believes that her son should have a relationship with him brings closure and hope that they will be able to work things out in the future.

The judge’s approach in responding to the specific issues raised by the parties is in distinct contrast to the style of some other judges observed – who take the view that the court cannot be expected to address all of the issues that arise between the parties. Perhaps because the parties are unable to resolve matters, she makes sure that each matter is addressed to the satisfaction of the party raising it. In fact, this approach leads to the atmosphere of trust that develops – which in turn produces the agreement between the parties and starts them on a far deeper road toward closure and an effective long term relationship.

The judge is relatively informal. She refers to the parties as mom and dad. She refers to his parents as grandma and granddad. She asks questions about the child’s nap schedule as part of the discussion of pickup time on Saturday. Her clear focus on the child is not lost on the parties.

Both parties tell the researchers that the opportunity to review and discuss the tape has been important. The father is obviously emotionally impacted by being able to hear the mother’s voice on the tape, but it helped him to remember the hard times and to reach a sense of closure about their relationship. The mother is further reassured about the outcome of the hearing – although she is not entirely comfortable with it, she can live with it – and reassured concerning her own performance during the hearing.

**Computation of communication effectiveness score for Case 2**

Issue	Petitioner’s articulation/understanding	Respondent’s articulation/understanding	Judge’s articulation/understanding
-------	---	---	------------------------------------

The purpose and scope of the hearing	10	10	10
Resolution of the mother's residence	10	10	10
Resolution of the father's gang encounter	10	10	10
Judge's perception of the mother's acceptance of the father's testimony		8	8
Background of the CPS visit	3	3	3
Judge's perception of mother's acceptance and relief at the terms of the agreement	10		10
The terms of the judge's order on overnight visitation	10	8	8

Hearing communication effectiveness score 161/19 = 8.5

### Case 3

#### Summary

White female judge and two Spanish-speaking Hispanic litigants, each with his or her own certified interpreter (provided by the court). The hearing lasted 27 minutes.

The court has previously entered both criminal and civil restraining orders in this case. The parties have two children, one 3 and one 15. The father was physically violent with the mother and older son during their relationship. The son is in therapy to deal with the issues arising out of his relationship with his father.

The parties have agreed during mediation that the father will have visitation with the younger child from 3:00 pm to 6:00 pm every Monday, with the father picking the boy up from preschool at the Holy Family Center and returning him to the mother at a local police station. The mediation agreement also provides that both parents support the older son's establishment of a relationship with his father, but leaves to the son the decision whether to go with the father on any particular visit.

In his memo to the judge (which the parties approved), the mediator reports that the mother has concerns about the father's interference with her physical custody of the children and that the father does not want to turn over the children after a visit to anyone other than the mother.

The hearing begins with the judge's recitation of the terms of the mediation agreement, obtaining confirmation from both parties to each term.

The judge then turns to the issue of greatest concern to her – whether the mother will encourage the older son to maintain contact with his father. The judge and the mother have great difficulties communicating on this topic. The mother misspeaks and tells the judge that she does not want her son to see his father. That is not her position. In fact, she does hope that the son develops a relationship with his father. However, she is fearful that the judge will force the son to see the father – which she strongly opposes. While the judge never seems to appreciate fully the mother's concern over the possibility of forced visits, the mother does come to understand the judge's concern. During the interview, she discloses a creative way she has thought to get them together – to urge her son to visit her husband's relatives (whom he likes) where the father may be present.

The mother had brought the older son to court with her so that he could participate in this discussion. The bailiff, at the judge's direction, excluded the child from the courtroom and the judge told the mother that the son should not be party to discussions about the terms of his custody and visitation.

The judge then turns to the mother's concern about the father's interference with her parenting decisions. She describes an incident in which the father encounters the younger son on the street in the company of one of the mother's male friends. The mother has arranged for this friend to pick up the child from his preschool. The father and the friend get into an argument when the father challenges his right to have the child. The child cries. The father calls the police. The father describes a different incident in which a similar confrontation took place when one of the mother's friends picked up the younger son from the preschool. The mother contends that the father knows these men. The father contends that they are strangers; in the interview he discloses his fear of child abduction and abuse as coming from news media reports of such incidents.

The judge assumes from the mediator's report that the issue is limited to visitation exchanges – that the father will not relinquish the children to anyone other than the mother. She obtains the mother's agreement to be the person picking up the children on Monday evenings. The mother expresses concern that emergencies may arise, or that she may get a job, which could prevent her from picking up the children. The judge asks her to be there, fearing that the father will not turn over the children to anyone else.

When the mother finally convinces the judge that the issue goes well beyond the visitation exchanges – that the father interferes whenever he comes upon the children unsupervised or in the custody of someone other than the mother – the judge points out to the father that the criminal restraining order prohibits his contact with the children except for court-approved visitation. She instructs him that he should notify child protective services or the police if he believes his children are in danger, but not attempt to intervene or to contact the mother himself.

The judge concludes the hearing by noting that there is no need for further orders – the stay away orders are in place, the parties have a visitation agreement, and the mother has agreed to pick up the children following the father's visitations.

### Ambiguities

It is not at all clear that the father comprehends the legal issues, court orders, or discussion in the courtroom. He introduces extraneous facts during the hearing – that the police told him to submit reports at a particular police station and that he has pieces of paper recording a time that the children were across the street from their home and the license plate of a car parked there. During the interview, the father exhibited multiple examples of unresponsive answers and comments – he did not know that he had a restraining order, that he should not have signed the mediation papers because he cannot read and he did not understand them, that because the mother has custody he “can't say anything.” When asked to explain the latter statement, he reported that his younger son likes to see him on Monday afternoons and asks if he will be back on Tuesday. He stated at one point that he did not know where his son went to school or where to pick him up; it may be that this statement refers to the older son, because the father explicitly acknowledged that he understood where his younger son went to preschool and when he was to pick him up on Monday afternoons. The court interpreter spoke privately with the researchers to make sure that we realized that the father did not understand what was going on – the problem was not with her translation; it was with what he was thinking and saying.

On the other hand, the father answered a number of questions cogently – for instance about the Monday visitation arrangement. He ended the interview with the statement that he would not turn over the children at the close of his visitation to anyone other than the mother.

This comprehension problem was masked during the hearing by the language issues. If the father had been an English speaker, it would have

been more likely that the judge would have identified his lack of comprehension and taken steps to address it.

A number of specific ambiguities arose during the hearing:

- the misunderstanding between the judge and the mother concerning the mother's attitude toward her older son's visits with this father; this was resolved by the end of the hearing;
- where the father's interference with the mother's parenting decisions took place – only at the visitation exchanges or more broadly; this, too, was resolved by the end of the hearing;
- the end time of the father's Monday visitation – during the hearing the judge began to refer to this time as 8:00 pm when the agreement of the parties called for the visits to end at 6:00 pm. It appears unlikely that this will create a long term problem for the parties because the 6:00 pm time appears in writing in the mediation agreement;
- the inability to translate idioms – the judge asked the mother to give her older son some "sign" that she approved of his spending time with his father; that word was not understood by the father. The judge also said to the mother that she would give the father "rope" to freely call the police to address issues that he observed in the way she was caring for the children; that term did not translate well for either party.

### Observations

The judge faced almost insuperable barriers in her attempt to speak with the mother about the importance of her conveying to her older son her support for his visiting his father. The concept is a highly nuanced one. The mother's fear that her son would be forced to see his father over his objection made it difficult for her to hear the judge's point. And the language barrier complicated the situation extraordinarily. It is to the credit of both the mother and the judge that they achieved a mutual understanding on the issue. However, the judge had no way to know that she had gotten her point across.

The father's lack of comprehension is a serious issue. He is an example of numbers of self-represented litigants who – for a number of possible reasons – lack the capacity to comprehend the legal concepts and discussions which serve as the basis of court proceedings. It is important for persons in this situation to obtain special help from someone – perhaps but not necessarily

a lawyer – who can help them grasp the issues and marshal the facts needed to participate in a meaningful way in a legal proceeding or to comply with the court rulings that emanate from it. The comprehension scores set forth for the father are based on our best guess of the degree of his understanding of specific issues. Where we are unsure of his level of comprehension, we do not include a score.

Language barriers extend the time of legal proceedings and greatly increase the likelihood of miscommunication.

**Computation of communication effectiveness score for Case 3**

Issue	Petitioner's articulation/understanding	Respondent's articulation/understanding	Judge's articulation/understanding
The terms of the mediation agreement regarding visitation	10	10	10
The mother's obligation to encourage, but not force, her son to visit his father.	10		10
The mother's agreement to be the person picking up the children following the father's visitation	10	10	10
The father's obligation to turn over the children to a person other than the mother designated by her to pick them up in an emergency	10	0	8
The father's obligation not to contact the children except during court approved visitation	10	5	10
The father's remedy of contacting the police or child protective services to report a situation of concern to him regarding the children	10	5	10

Hearing communication effectiveness score  $148/17 = 8.7$

**Case 4**

Summary

White male judge and one Black and one Black/American Indian self-represented litigant. It was a short hearing lasting less than six minutes.

The issue is a court order setting temporary child support. The case is brought by the custodial parent, not by the child support agency. The parties met with family services to mediate the issue prior to the hearing, but the father would not agree to the mother's demands.

Both parents claim no income on their financial statements. The mother refers to a payment of \$125 per week, and says he has not made a payment since January. She points out that the father rents a car and pays insurance on the car. She also refers to a number of criminal arrests that suggest his income does not come from standard employment.

In answer to questions from the judge, the father reports on his last job, saying that he quit some time ago. In answer to the judge's question how he meets his daily living expenses, he answers that he is looking for a job. Later, he answers that his family is helping him out. He admits to paying roughly \$200 a month for his car and an equivalent amount for insurance.

The judge orders child support of \$100 per week and enters a job search order requiring father to make ten job applications per week, to report to the probation department every Tuesday at 10:00 am to present evidence of the applications, and to inform probation when he obtains employment. He explains the possibility of criminal contempt for failing to obey the job search order. A further hearing will be set when father obtains employment. Father is told to wait in the courtroom to meet with probation to make arrangements for monitoring of the job search order.

### Ambiguities

The judge did not state a date on which the child support payments would begin or address petitioner's concern about arrearages.

The judge asked the mother if anyone had explained a job search order to her. She began to explain her own search for employment. The judge stopped her and redirected her attention to the implications of a job search order for the father.

The judge explained in detail the possibility of criminal contempt arising from failure to comply with the job search order. He did not address contempt for failure to pay support. Both of the litigants made additional assumptions – the father that he would be jailed if he did not get a job, and the mother that the father could be jailed for failure to pay the ordered child support.

### Observations

The judge explained his preference for calling the case and administering the oath (rather than having the clerk do those tasks) to establish some rapport with the litigants.

He also chose to begin questioning the respondent rather than the petitioner, because the petitioner's need was obvious. The father noted that the hearing did not address the issue of the child's actual well-being and the adequacy of her support.

The judge is clear that he cannot take the criminal charges reported by the mother into account, because there have been no convictions. But he uses the father's own admissions about the car payments and insurance payments as the basis for a child support order.

The father would have liked to have a chance to make a statement of his own rather than merely answer the judge's questions.

Both litigants demonstrated surprising sophistication about the process. Mother noted that the litigants often bring the court into their personal disputes. Father explained the best interests of the child rationale and how that warranted imposing personal hardship on non-custodial parents to go through the job search process.

**Computation of communication effectiveness score for Case 4**

Issue	Petitioner's articulation/understanding	Respondent's articulation/understanding	Judge's articulation/understanding
The purpose and scope of the hearing	10	10	10
Petitioner's desired amount of child support and arguments in favor of that amount – car rental, insurance, criminal earnings	10	9.5 Not clear that he caught the criminal charges point	10
Respondent's financial situation	10	10 He knew exactly what he was doing in attempting to minimize his apparent income	10
Terms of child support order	7.5 No starting date or arrearages terms	7.5 No starting date or arrearages terms Father has no objection to the amount of the award	7.5 Judge fails to state starting date and arrearages decisions. He picks up on father's lack of concern about the amount of the award.
Terms of job search order	10	10	10
Application of criminal contempt	7.5 Lack of distinction between job search and child support orders	7.5 Lack of distinction between job search and child support orders	7.5 Judge does not articulate application of contempt to child support order
Next steps	10	10	5

	Both understood that the amount of support awarded at a subsequent hearing would reflect father's income	Both understood that the amount of support awarded at a subsequent hearing would reflect father's income	Judge does not explain the purpose of a subsequent hearing
--	--	--	--

Hearing communication effectiveness score 189.5/21 = 9

## Case 5

### Summary

White female judge and two Hispanic litigants. The hearing lasted 27 minutes.

The father seeks to expand his visitation time with the three children, two of whom are teenagers. The mediator brought in the two older children (ages 17 and 15); they asked for alternating weeks with each parent. The mediator told the father that the judge would not grant that amount of time because he had failed to get a drug and alcohol evaluation as ordered by the court. The father was taken by surprise, thinking that the drug abuse issue had been resolved at the previous hearing because he is randomly tested at his truck driving job. He arranges for an evaluation but cannot get it prior to the hearing. During mediation, the parties agree to add Thursday evenings to the time the children are with the father and to have the children stay with him from Thursday evening until Sunday evening on the father's alternating weekends.

The father begins the hearing by stating that he was pressured to sign the agreement and that it is not what he wants – which is the 50/50 time share, alternating weeks arrangement that the older children want. He notes that the children are having discipline problems at home and at school and his belief that he could make a difference by having more time with them.

The mother expresses concerned about the father's drug abuse, stating that he used and sold drugs (crank) during their marriage and that he was fired from two jobs for drug abuse. The father denies having a problem with either drugs or alcohol, saying that he has only an occasional drink on social occasions.

The judge explores the details of the agreement (why transfer the kids at 7:00 pm on Sunday rather than having father take them to school on Monday), ultimately deciding to leave the situation as it has existed.

The judge explores the drug testing at the father's work, learning that he has not been tested for ten months. She explains to the parties that the alcohol and drug abuse evaluation merely involves a social worker's asking about substance abuse; it does not include any testing. She suggests – and the parties agree – to random drug testing twice a month for two months. The parties and the judge discuss who will pay for the tests, ultimately settling that he will front the fees for the testing, but that she will reimburse him for half of the costs. The mother rejects the alternative suggested by the judge that she pay for the tests if the results are negative and that the father pay the costs if the results are positive.

The judge enters a temporary order embodying the terms of the agreement reached during the mediation. She sets a further hearing for 60 days, and records the mother's objection to any further change of visitation after such a short period.

The father notes that his child support was reduced at an earlier hearing but that his wage withholding has not changed to reflect it. The judge tells him to get the self help center to prepare an amended wage assignment.

The father asks that the court to further reduce the amount of child support to reflect the further change in visitation included in the temporary order. The judge refuses to address child support without a motion placing the matter before the court.

### Ambiguities

Both parties asked for clarification about the visitation schedule during the interim before the next hearing. The judge stated three times that she was ordering the terms of the agreement reached during mediation.

### Observations

The judge pointed out that litigants in short cause matters are entitled to have a court reporter provided at court expense, if they make a request in advance. Self-represented litigants do not make such a request. Consequently, there is no official record of these hearings.

The father did not raise two additional issues that were of concern to him – the mother's boy friend's disciplining of his children and his smoking when the children were present. The latter issue was raised in the report of the mediator; the judge was aware of the existence of the issue but neither she nor the father raised it.

When the petitioner asserted that the mediator had pressured him into an agreement, the judge understood exactly what had happened in the mediation and stated her belief during the interview that he had in fact been pressured inappropriately to reach an agreement. She nonetheless chose to enter the “agreement” as her order in the case.

**Computation of communication effectiveness score for Case 5**

Issue	Petitioner’s articulation/understanding	Respondent’s articulation/understanding	Judge’s articulation/understanding
The purpose and scope of the hearing	10	10	10
Petitioner’s desired time sharing arrangement and his supporting arguments	10	10	10
The mediator’s coercion of the petitioner during the mediation session by predicting the judge’s reaction to his failure to attend an alcohol and drug evaluation	10	10	10
Petitioner’s drug and alcohol abuse	10 Despite the factual disagreement, both parties presented their evidence and the judge obtained all the evidence available on the issue	10 Despite the factual disagreement, both parties presented their evidence and the judge obtained all the evidence available on the issue	10 Despite the factual disagreement, both parties presented their evidence and the judge obtained all the evidence available on the issue
Nature and contents of an alcohol and drug evaluation	10	10	10
Terms of temporary order, including visitation, drug testing and payment for drug testing	10	10	10
How to get father’s wage assignment changed to reflect previous child support change	10	10	10
Father’s request for a further child support modification and the judge’s refusal to entertain it without the filing of a motion	10	10	10
Purpose of and potential changes that could occur at the next hearing	10	10	10

Hearing communication effectiveness score 270/27 = 10

## Case 6

### Summary

White female judge and two Hispanic litigants. The hearing lasted 24½ minutes.

The father seeks to reduce the amount of his child support payments because he has been injured on the job and is getting worker's compensation rather than his previous wages. He has also been suspended from his job for nine months. So he is concerned about what child support he would have to pay if his worker's compensation runs out before he is reinstated on his job.

The issues on which the hearing focuses are what to use of the father's income, obtaining information about the deductions allowed by law (including insurance – the father used to provide health insurance for the child through his employment; he is no longer doing that so mother has taken out an emergency policy), the effective date of any order, the time share (the child is a teen ager who does not want to spend the night with his father), verification of various amounts in controversy, arrearages, and future hearings.

The judge frames the hearing. She asks questions to elicit the information she needs. She maintains effective control of the hearing. She articulates for the parties the factors and amounts that she is using in the child support calculation. She summarizes her order. She sets a future hearing date and explains the purpose and scope of that hearing. She provides both parties with a minute order recording the terms of her decision. She tells the father how to get the self help center to draft a formal order embodying the terms of the minute order.

After getting the mother's perspective on what is likely to happen, the judge makes the child support order on the assumption that the father will remain on worker's compensation until his job suspension is over. The child support payment drops from \$740 to \$656 per month.

The mother reports that she has opened a case with the Department of Child Support Services and the judge takes that into account in determining the future course of action for the case.

### Ambiguities

The father asks for clarification concerning the purpose of the next hearing. The judge provides it.

The father does not understand the legal term "arrears;" however, he fully understands his obligation to pay back amounts owed. He did not pay because he did not know how much he was supposed to pay. Now that he knows, he will make the payments to her.

The mother believes that the judge did not address when he was supposed to start paying the revised amount. However, she did explicitly state when the order would take effect and the father understands the difference between the date of the accident and the change in his income and the date on which he filed his motion. He understands that the latter is the date when his child support obligation changes.

### Observations

The mother is disappointed that the judge does not personally verify the information provided by the father. For instance, she does not look at the letter the father brought to court to verify the amount of worker's compensation he is receiving. Nor does she personally look at the receipt showing the amount of his health insurance payments. Instead, the judge requires the father to show those documents to the mother. The mother does not understand the notion that the judge is relying on her to raise any issue that she perceives concerning the reliability of the information that the father is presenting. But the mother wishes that the judge would look at the documents herself rather than accepting the father's oral statements.

The mother also feels that the father (and the father's mother, who served the motion on the mother) committed perjury in their return of service in which they say that they served attachments that were not actually included. She wonders why the judge does not take the father to task for committing perjury.

Both litigants demonstrate considerable knowledge of the factors that go into child support calculations. Both use the name of the computer program used to calculate the amount owed under the state child support guidelines during their interviews with the researchers.

Both litigants also demonstrate sophistication in their decisions about when to use the court and what arguments to make in court – recognizing the limited time available and the need to focus on the most important issues.

The mother notes that self-represented litigants don't know the rules concerning how they are expected to behave in the courtroom – what they can ask and what they can't. But, she says, by the end of the hearing she had learned a lot about that. She expresses reluctance to "burn her bridges with the judge" by arguing issues that the judge might consider extraneous. But she clearly learns that it is alright for her to ask questions and raise issues.

Two issues she never raises – but which bother her – are:

- why the father (who has obtained interim health insurance coverage through his union to cover himself while he is suspended from his job) cannot be expected to get interim health insurance coverage for the child as well.
- the father's failure since 2002 to pay his share of deductibles and other unreimbursed medical expenses for the child. She speculates with the researcher that this issue was not raised in the motion papers (it was his motion for a reduction of child support) and that if she has failed to demand payment in the past she has given up her rights under the divorce decree. Both are valid legal points of view.

Note: The judge treats the mother as the petitioner and the father as the respondent because of their designation in the underlying case, even though the father is the party who initiated this particular hearing.

**Computation of communication effectiveness score for Case 6**

<b>Issue</b>	<b>Petitioner's articulation/understanding</b>	<b>Respondent's articulation/understanding</b>	<b>Judge's articulation/understanding</b>
The purpose and scope of the hearing	10	10	10
Petitioner's income	10	10	10
The amounts of health insurance paid by both	10	10	10

parties and how the child's health insurance is being covered			
The effective date of the reduced amount of child support	10	10	10
Payment of back child support amounts	5 She is left wondering about when she will be paid back child support amounts and thinks that she will have to wait for the next hearing for that to be sorted out.	9.5 He does not know what "arrearages" means but he plans to pay the back amounts and understands the effective date of the reduced obligation.	5 The judge does not instruct the father to make the back child support payments.
The time share calculation	10	10 He does not like the outcome but he fully understands it.	10
All the factors used in the child support calculation	10	10	10
Purpose of next hearing	10	10	10

Hearing communication effectiveness score  $229.5/24 = 9.6$

## Case 7

### Summary

White male judge and two Black litigants. The hearing lasted 15 minutes.

This is a complicated child support case involving two relatively sophisticated, and well prepared, self-represented litigants.

The father filed a motion to reduce child support following a court order awarding him joint physical custody of his daughter and a half time share of her visitation time. Prior to the hearing, the child support agency, using income and other amounts provided by the parties, calculated the amount of guideline support. The amount was \$90 (plus \$54 towards arrearages), which was reduced from the previous award of \$267.

At the beginning of the hearing, the judge obtained agreement from both the mother and the father to this new amount.

The father then raised the issue of the current arrearages which amounted to between \$1500 and \$1600. He had come to court prepared to show the judge that he had paid all or most of the claimed arrearages to the mother directly. The judge noted that this issue was not included in the father's motion, but that he "was willing to talk about it if everyone else was willing to talk about it." As they began that discussion, there was immediate disagreement between the parties concerning the detailed amounts and dates of the direct payments. The judge established that there was no disagreement that some amounts had been paid. The child support attorney pointed out that arrears did not begin to accrue until April 2005 because the family had been intact prior to that time. The judge offered to set another hearing in a month at which the child support agency could present a revised audit of back child support owed, taking into account the amounts of direct payments reported to the agency by both parties within the next few days.

The father pointed out that the full amount of the current arrears would be withheld from his federal tax refund for 2006 under the tax intercept program. The judge explained how the intercept program worked, telling the father that, indeed, that amount would be withheld by the IRS (and that nothing could be done about that at this date) but that the child support agency would return it to him, based on the order of the court at the next hearing.

The mother made a statement that she came to court prepared to accept zero support. The judge interpreted the statement to apply only to the balance of the arrears. The father interpreted it to apply to ongoing child support payments as well. The child support attorney reported that arrears were "assigned" in part to the county to reimburse it for welfare payments of over \$71,000 made on behalf of the child. (To this extent, the mother could not waive the father's responsibility for payment of the back support owed.) The mother said that she had not received any welfare for this child, except perhaps for medical insurance. The father interjected that he paid for the child's medical insurance. The mother suggested that the welfare payments had been made on behalf of a different child. The judge instructed the child support agency to sort out these issues in the course of its audit.

The father asked when the new child support amount would go into effect. The judge gave the mother the choice to have it become effective on either December 1 or January 1. She chose January 1. The child support services attorney pointed out that it would take it a few days to prepare a modified wage assignment order to send to the employer. The judge pointed out to the father that he could take a copy of the minute order to his employer and have the change made before the wage assignment order arrived.

The judge recited the terms of his order, including that he was joining the mother as a party to the action so that any disputes between the parties could be raised at the next hearing.

### Ambiguities

The meaning of the mother's statement that she was willing to accept zero child support was never clarified. During the interview with the judge, he admitted that after rehearing the mother's statement, he did not know whether she meant it to apply to current support, back support, or both.

The father did not understand the meaning of the legal term "assigned" or its implications for the calculation of back child support.

The father did not understand why the judge gave the mother the option when the new child support amount would take effect. The father's motion was filed on December 13<sup>th</sup>. The child support agency likes support revisions to take effect on the first of a month. Therefore, the earliest date the new award amount could take effect would be January 1, unless the mother waived her right not to have the effective date earlier than December 13<sup>th</sup>. Hence the decision was hers – would she waive her rights and allow it to take effect on December 1?

### Observations

This case involved the issue of waiver of notice when the father sought to have the judge resolve the issue of the amount of arrearages owed. The father wished to have the court rule on a matter not mentioned in the motion which served as the basis for the hearing. The court could not address the matter unless the mother waived her right to notice. The judge phrased the issue as "I am willing to talk about it if everyone else is willing to talk about it." He never explicitly asked the mother if she waived notice of the issue of back child support. Fortunately, she was well versed in the issue – having encountered it in earlier hearings before other judges and was quite pleased with the judge's willingness to entertain a matter not formally before him.

The hearing also presented the issue of the child support agency lawyer's using legalese with the judge that is not understood by the litigants. In this case, the judge reported that he purposefully communicated with the child support attorney using legal shorthand to save time in obtaining the information he wanted. He intended to then explain it to the parties. He never did.

**Computation of communication effectiveness score for Case 7**

Issue	Petitioner's articulation/understanding	Respondent's articulation/understanding	Judge's articulation/understanding
The purpose and scope of the hearing	10	10	10
Agreement on the amount of the new child support order	10	10	10
Waiver of notice to hear the issue of back child support owed	10	10	5
The mother's willingness to accept "zero child support"	0	0	0
The operation of the IRS tax intercept program and its impact on father's tax refund	10	10	10
The "assignment" of arrearages to the county	0	10	5
Why the mother was entitled to set the effective date of the new child support order	0	0	0
Use of the minute order and a modified wage assignment order to change the amount withheld from the father's check	10	10	10
Addition of the mother as a party to the action	10	10	10
Plans for the hearing on the child support audit based on the parties' direct payment reports	10	10	10

Hearing communication effectiveness score  $220/30 = 7.3$

**Case 8**

Summary

White male judge, two Black litigants. The hearing lasted 22 minutes.

The mother filed a motion to modify child support. One of the father's children by a different mother had turned 18, so his hardship deduction should decrease. The department of child support services has calculated that child support should go up by \$400 per month – from \$617 to \$1014.

The department's attorney reports to the judge at the commencement of the hearing that there is no agreement between the parties and that the issues are the father's exercise of visitation rights and his hardship factor.

The judge asks the father how many nights the children have been with him over the past year. The answer is none, but the father doesn't say that, stating instead that it has not been possible for him to see the children because of their basketball programs, the difficulties associated with his driving from a nearby town to the city to see them, and their spending the summer in Texas.

Father complains about exchanging the children at Burger King. The judge suggests the principle that the parent receiving the children be responsible for picking them up. Both parents agree with this approach.

The father states that he is not working because he has arthritis in his left hand. He regularly pays his child support. The judge attributes income to him as the court has done in the past.

The father argues with the judge about getting credit for support provided to his two adult children. The father is providing for children from three different mothers. The judge points out that the father may choose as an emotional matter to give money to his adult children but that he has no legal obligation to do so and therefore his contributions to them have no effect on this child support obligation to the minor child at issue in the case.

The judge reports that he has run the child support numbers and that the amount of support does not change. He mentions the factors that have changed (income is now self employment – which reduces the amount of income because of withholding of social security; tax status is married filing separately; wife's income is not included [which would reduce his income because it would put him in a higher tax bracket]), but does not explain them. He does not say that he is keeping the time share at 14% even though the father has not seen the children in a year.

The judge announces that he will bring the parties back in three months to see if anything has changed. By that he means that he intends to give the father an opportunity to begin exercising his visitation rights and that if he does not he will eliminate the time share and recalculate the support amount. But he does not say that either.

The father complains about the amount of child care expenses, stating that he does not believe what mother reports and that he does not have the ability to look into the child care provided. The judge agrees that he should have joint legal custody of the children so that he can have access to information concerning them without having to obtain the mother's permission. He asks the mother if she is willing to agree to give him joint

legal custody. Mother, feeling coerced, agrees – although she knows that at a prior hearing a judge granted him the right to obtain this information without giving him joint legal custody.

The judge explains how the father should get the self help center to prepare an order embodying the terms of the minute order. (The judge later remembers that he did not include the new transportation terms in the minute order; he will amend the minute order and mail it to the parties.)

He orders the mother to provide documentation concerning child care expenses to the father.

### Ambiguities

The parties understand the matters that the judge discloses to them. They do not grasp those that he does not disclose. For instance, both understand the concept of attributed income and both understand joint legal custody. But neither understands that the judge has given the father credit for his time share even though he has not exercised it. Neither understands the purpose of the next hearing because the judge has not articulated it.

In sum, lack of understanding arises exclusively from the judge's failure to articulate his decisions, not from the parties' inability to understand the process or his rulings or language.

### Observations

The judge allowed the hearing to encompass matters going well beyond the child support modification which was the subject of the motion. The court entertained discussion of those issues – and entered orders on them – without obtaining a waiver of notice. His rationale was that the parties consented to his suggested changes to the previous custody and visitation orders.

The judge assumed that the issue of joint legal custody had never been addressed, although these parties had been to family court services for mandatory mediation six times and to the court even more frequently. The mother reported to the researchers that the issue had been addressed and decided previously by another judge to whom the case had been assigned.

The judge did not frame the hearing, explain his decisions, summarize his order, nor explain the purpose of the next hearing.

**Computation of communication effectiveness score for Case 8**

Issue	Petitioner's articulation/understanding	Respondent's articulation/understanding	Judge's articulation/understanding
The purpose and scope of the hearing	2.5 Petitioner knows what she originally sought but feels helpless as the judge allows the hearing to encompass whatever the respondent wishes to raise.	2.5 Respondent has no concept of the scope of the hearing and is allowed to raise most of the issues that are on his mind at any moment.	0 Judge makes no effort to state or enforce a limitation on the scope of the hearing
The father's income	10	10	10
The father's time share	0 The judge does not disclose how he resolved this issue.	0 The judge does not disclose how he resolved this issue.	0 The judge does not disclose how he resolved this issue.
The father's hardship deduction	10	10	10
Principle that the parent getting the children at any moment is responsible for transportation	10	10	10
Right to restrict scope of hearing to the issues raised in the motion on which it is based	0	0	0
Father's joint legal custody over the children	10	10	10
Mother's responsibility to document child care costs	10	10	10
Timing and purpose of next hearing	5	5	5
How to obtain a written court order	10	10	10

Hearing communication effectiveness score 200/30 = 6.7

## Case 9

### Summary

Asian female judge and two Black litigants. The hearing lasted almost 20 minutes.

The father filed a motion to reduce child support, to stay the accrual of interest on arrearages, and to reinstate his driver's license. His motivation was receiving notice of the request by the child support services agency to suspend his driver's license for non-payment of child support in this case. His principal argument is that it is very hard for a person with a felony record to get a job, given heightened security concerns raised by the war on terror.

The father has filed three previous motions to reduce child support. The most recent was denied in November; the judge in that case found that there are multiple job opportunities for convicted felons, found that he had failed to provide any information concerning his attempts to obtain employment, and consequently ruled that he was voluntarily unemployed. The county attorney opens the hearing with a report that he once again has brought no documentation of his job search, asking the court to dismiss the motion summarily and to impose sanctions because of the recent denial of a motion for the same relief. The father has three other child support cases on today's calendar relating to three additional children by three different mothers; none of those mothers appeared for their hearings.

The maternal grandmother is the custodian of the fourteen year old boy. She is receiving a cash grant for the boy's care. The amount of that grant is not affected by the amount of child support that the father is assessed or pays. She has no interest in the proceeding. Her only question is whether she is required to continue to come to court for these proceedings. (The court informs her of the process to appear by telephone.)

The child support attorney questions the father about his past employment, why he left previous jobs, and what efforts he has made to obtain employment, especially since November when his last motion was denied. He answers the questions, giving no answer to his current income (which he says is derived from serving as a bouncer in bars on weekends and from picking up cans for recycling).

The judge notes that she ordered him to an employment assistance program (which among other things seeks to find employment for persons with felony records) in 2002. That referral resulted in a year of employment at Jiffy Lube. She asks if he is willing to go back to the program. He gives a half-hearted answer of yes.

The judge orders him to attend the program, rules that his driver's license will not be suspended if he pays \$100 (the amount of our honorarium for participating in the videotaping process) in child support within one week, and sets a review hearing in three more months. She takes no action on the remainder of his motion (nor on the child support attorney's motion for sanctions).

### Ambiguities

The petitioner understood clearly the terms of the court's order. He understood what documentation is required to verify his job search activities.

He did not understand the concept of sanctions. The issue was not discussed in the hearing. The term was mentioned only once during the child support attorney's opening presentation.

### Observations

The respondent had no interest in this proceeding, other than the desire to avoid having to continue to come to the courthouse.

The petitioner had no interest in our videotaping process. He yawned, stretched, and closed his eyes during the replaying of the hearing and never volunteered any observations on the process. Nevertheless, he responded clearly and accurately when asked questions about what happened in the course of the hearing.

#### **Computation of communication effectiveness score for Case 9**

<b>Issue</b>	<b>Petitioner's articulation/understanding</b>	<b>Respondent's articulation/understanding</b>	<b>Judge's articulation/understanding</b>
The purpose and scope of the hearing	10	10	10
Purpose of the county attorney's questioning	10		
Meaning of the county attorney's request for sanctions	0		
The terms of the judge's order	10	10	10

Hearing communication effectiveness score  $60/7 = 8.6$

### **Case 10**

#### Summary

White female judge and two Black litigants. The hearing lasted 17 minutes.

The father petitioned for a reduction in the amount of child support when he lost his job as a restaurant manager. The case has been continued four times. He submitted pay stubs to the child support attorney and called to confirm the hearing last week, but announces to the court that he was just fired from his last job because "things were not working out."

The hearing began with an esoteric colloquy between the child support attorney and the judge concerning the previous order as a "per child order" and how the child support amounts were loaded into the agency computer. The agency had recently changed from having a separate file for each child to having a separate file for each obligor. No one explained the discussion to the litigants because the judge assumed that they were not interested.

The hearing proceeded by initial questioning by the child support attorney, followed by supplemental questions from the judge – first to the petitioner, then to the respondent, and finally to the child support agency representative.

Questioning clarified the number of children of each of the parties. Questioning of the father focused on why he lost his most recent job, his job history, his training and education in restaurant management, whether he had applied for unemployment compensation, his current living arrangement and transportation, and his employment prospects.

Questions for the mother focused on her current school schedule, her field of study, when she planned to graduate, and medical coverage for her children.

A central issue in the hearing was whether the judge would make a child support ruling or continue the matter for a few months to give the father a chance to obtain employment so that the child support order would be based on actual, rather than expected, income. The father asked for a further hearing; the mother asked for a child support order to be entered without the need for a further hearing.

The judge took the case under advisement. The parties left the hearing with no indication of the likely outcome.

### Ambiguities

The father was greatly concerned about the legal discussion at the beginning of the hearing. He did not understand it, and was fearful that it would have continuing consequences for him. The judge misread his attitude as disinterest.

The father expressed great anxiety about the hearing. He did not know what the issues were and why different questions were being asked.

Ironically, the larger self-portrayal that he was trying to make turned out to be exactly what the judge was looking for – directness of answers, non-evasiveness, non-defensiveness, and respect for the court.

It is hard to test the parties' understanding of the proceeding because the judge did not make any rulings.

The father misunderstood the judge's actions in admitting his pay stubs and information sheet into evidence. He interpreted her action to mean that she had decided to base his child support on his rate of pay at his last job.

### Observations

This is a case in which the parties understood the proceeding at a superficial level – they understood each of the questions posed to them and were able to answer them straightforwardly. The judge and child support attorney understood the answers given. The parties felt they had been able to provide most of what they wanted the judge to know. The father felt that he had not conveyed the full extent of his financial straits – he did not say that he needed to find a new place to live as well as a new job (he is living in the basement of the home of the woman who is in the process of divorcing him).

However, in a larger sense, they did not understand the legal context of the proceeding. They did not know what issues the judge would be resolving in the case – basically whether income should be imputed to the father because he chose to be unemployed or underemployed. The father did not know how the information he was asked to provide related to that underlying legal issue.

The case also presents the problems associated with taking cases under advisement. The parties left the courtroom without any inkling of the likely outcome. They did not know if there would be a ruling or merely a further hearing. They had no opportunity to ask questions to clarify their understanding of the ruling. They had no opportunity to contest the judge's factual determinations underlying a child support ruling, if one were to be made. The judge wanted more time to review the file to see if there was a pattern of quitting jobs on the eve of a support hearing. To an outside observer, it appeared that the judge could have made that determination during the hearing – by glancing through the file and by seeking the perspective of the child support attorney on that issue. It seems likely that the judge will postpone the matter for a future hearing; that decision could have been made and communicated in the courtroom.

**Computation of communication effectiveness score for Case 10**

Issue	Petitioner's articulation/understanding	Respondent's articulation/understanding	Judge's articulation/understanding
The purpose and scope of the hearing	10	10	10
Whether the parties had any interest in the colloquy concerning the "per child order"	0		0
Parties' ability to present the facts of their situations	10	10	10
Significance of judge's acceptance of matters into evidence	0		0
Positions of the parties concerning the desirability of postponing a decision until a future hearing	10	10	10
The terms of the judge's order	0	0	0

Hearing communication effectiveness score 90/16 = 5.6

**Case 11**

Summary

Asian female judge and one Black Somali male and one Black African American female litigant. The hearing lasted 31 and a half minutes. It was our longest hearing.

This is a very high conflict case. It involves a three year old boy. The mother, who has another child by her current fiancé, had a relationship with the father (resulting in the son at issue in the case) while her previous boy friend was in prison. She returned to the previous boy friend – who is now her fiancé – following his release. The father has gotten married and is expecting a child soon. The father wants to raise his son in his own culture, his own language, and his own Muslim religion. The mother agrees that the son needs a relationship with his father, and, while demeaning the father's actual devotion to his culture and religion, does not actively oppose her son's exposure to it.

The hearing was the second or third review hearing arising from the father's motion to increase his parenting time. At the last hearing, the judge issued a detailed order denying the father's request and specifying exchange locations – in an attempt to reduce the level of conflict between the parties.

The father wants to see his son every day and does not understand why he cannot pick him up from day care and spend time with him daily. He does not understand why he cannot have the child whenever he is off work, even if these are not his custody days. The mother (and the judge) insists that the child needs a regular, dependable schedule of time with the two parents – resulting in the current parenting plan order that gives the child to each parent on designated days.

Both parties initially report that the situation has improved since the last hearing. Then they address a series of issues that demonstrate the contrary:

- the mother insists that the father buy a new car seat because the child has outgrown the one that he has; the father resents the mother's intrusion into the details of his life, disagrees that the current car seat is too small, but ultimately agrees to buy a new one after the judge asks if the mother would be willing to buy it subject to reimbursement;
- the mother says that the father objects to providing basic necessities for the child at the father's home because he is paying child support to the mother which should pay for them; there is no discussion of this issue, other than the judge's general statement that she cannot resolve every little issue that arises in their relationship;
- the father reports that his work schedule has changed and asks to modify the parenting plan accordingly; the mother agrees to add Wednesdays to the father's parenting time, but refuses to add Tuesdays and Thursdays, when the child is in a day care program that is helping him to develop speech (and teaching him colors and numbers);
- the father objects to the mother's refusal to give him information about the day care program and states his disbelief that it exists; this is simply the mother's ruse to deny him additional parenting time. The judge rules that the father – under their joint legal custody agreement – is entitled to know about the day care program. The mother then discloses its name and location;
- the father argues that he should be able to accompany his son to the day care program when he is off work on Tuesdays and Thursdays; this is unacceptable to the mother;

- the mother contends that the father will now attempt to withdraw the child from day care; the judge makes clear that she will require the day care program in her order;
- the father contends that mother is repeatedly late for exchanges, but denies him his parenting time if he is late by a minute;
- the mother discloses that she is facing criminal charges for assaulting the father during one of these instances.

The judge points out to the parties that the level of conflict in their relationship is not acceptable for the welfare of the child and warns them that if it has not diminished by the next review hearing she will, on her own motion, reopen the joint physical custody term of the decree and order court services to conduct a custody evaluation to determine what form of custody would be in the best interests of the child, including the possibility of supervised visitation for one parent.

The judge sets the date for the next review hearing and announces that she will issue a written order and mail it to the parties.

### Ambiguities

There was little detail presented about the domestic violence incident and its current status. The judge chose not to inquire into the matter; the fact that their relationship included physical violence, in the presence of the child, was sufficient.

The judge did not state the terms of her order, merely informing the parties that they would receive an order in the mail. The mother expressed doubt, following the hearing, whether the father would now have the child every Wednesday or on alternating Wednesdays. The judge discussed specific hours for exchanges with the parties, but did not make clear what her order would contain. The terms concerning day care were also left unclear – to be stated in the written order.

### Observations

Although the father speaks heavily accented English, both parties are articulate and knowledgeable about the process. The father, during the post-hearing interview, discloses his awareness of his ability to bring a motion seeking a finding that the mother is in contempt of court for violating the terms of the parenting plan. He is also aware of the process for

obtaining a restraining order against the mother’s fiancé. Both parties are aware that they may need to obtain lawyers to represent their interests.

The positions taken by both parties are objectively reasonable. It is clear, however, that they are unable to resolve them amicably. The judge is considering the possibility of appointing a guardian ad litem for the child who would serve as a formal referee for the parents’ disputes.

This case also presents the issue of absence of legal notice to the parties of the proposed changes to the parenting plan or of other issues that the parties raise in the course of the hearing. The judge proceeds on the understanding that a review hearing presents the opportunity to address and revise all terms of the parenting plan. However, she seeks the consent of the parties to specific changes and keeps in mind the possibility that a separate hearing will be needed to address one or more issues.

The joint legal and physical custody order in the case arose from the agreement of the parties. There has never been an evidentiary hearing concerning custody or parenting time. Both parties wish that the judge would address all of their detailed complaints about the other, believing that if the judge understood the case at that level of detail she would see the obvious merit of his or her position. Interestingly, this court does not swear the parties for a review hearing; consequently, the court is not in a position to take testimony to address any of the issues raised; nor does the court want to proceed in that fashion – preferring instead to use a court custody investigator to uncover the underlying facts if a detailed review of the current custody provision proves necessary.

**Computation of communication effectiveness score for Case 11**

<b>Issue</b>	<b>Petitioner’s articulation/understanding</b>	<b>Respondent’s articulation/understanding</b>	<b>Judge’s articulation/understanding</b>
The purpose and scope of the hearing	10	10	10
Resolution of the issue concerning the father’s car seat	10	10	10
Resolution of the father’s request for a change in the parenting plan. The parties appeared to agree on the addition of Wednesdays for the father and the elimination of alternating Mondays for him.	9	5	9
The mother’s duty to disclose the name and address of the day care program	10	10	10

The judge's intention to prohibit the father's removal of the child from day care	7.5	7.5	7.5
The possibility that the judge will order a custody evaluation at the next hearing	10	10	10
The terms of the judge's order	2.5	2.5	2.5

Hearing communication effectiveness score  $173/21 = 8.2$

## Case 12

### Summary

White male judge, one Black female and one mixed race (part Vietnamese) male litigant. The hearing lasted 11 and a half minutes.

A year ago, the mother filed a motion for sole legal and physical custody when the father was spending long periods of time in Vietnam. The judge entered a temporary order awarding her sole custody and also awarding her child support, setting a review hearing to see how that arrangement was working out. This was the review hearing.

The judge began by confessing that his memory of the prior hearing was not very clear, summarizing his understanding and inviting the parties to correct him. His summary was accurate. The parties reacted differently to his candor – one finding it disconcerting and the other responding with empathy.

The mother summarized her position that she either wanted the father to participate in parenting of their daughter or to give her sole custody and child support. She reported that the father had returned from Vietnam, found a job, was looking for a house, and was doing his share of the parenting of their daughter.

The father agreed that his plans were to stay in this country, though he retained the option of leaving at some future date. He offered to give the mother the right to claim the daughter as a dependent for tax purposes permanently. The father took an academic, long-winded approach to most issues; the mother was very concise, matter-of-fact, and articulate.

The judge paraphrased what he has heard and then summarized the terms of his order – vacating the temporary order, returning the custody

arrangement to its original status, and giving the mother the tax benefit, noting that either party could return to court if circumstances changed again.

The court prepared the order following the hearing.

Ambiguities

Neither party had been clear about enforcing the temporary child support order. The father did not pay and the mother did not take steps to force him to do so. She is sufficiently well off that she does not need his support and he did not remain in Vietnam long enough for it to be worthwhile to institute an enforcement proceeding.

Observations

The parties were sophisticated – she a professional person and he a perennial graduate student.

Unlike most family law litigants, both of them erred in favor of the other party in their testimony. She stretched the facts in stating that he had custody half of the time. He insisted that she get the tax benefit even though he was entitled to it in alternating years.

**Computation of communication effectiveness score for Case 12**

Issue	Petitioner's articulation/understanding	Respondent's articulation/understanding	Judge's articulation/understanding
The purpose and scope of the hearing	10 Despite initial confusion	10 Despite initial confusion	10 Despite initial confusion
The father's current circumstances and willingness and ability to fulfill his parenting obligations	10	10	10
Handling of the tax deduction	10	10	10
Terms of the court's order	10	10	10

Hearing communication effectiveness score 120/12 = 10

**Case 13**

Summary

Asian female judge and two Native American litigants. The hearing lasted 14 minutes.

This may well be our most interesting case.

The mother filed a motion to increase child support for the older of her two sons. In its initial statement of the case, the child support attorney pointed out that there was a second open child support case involving the second son. In her opening statement the mother said that she was seeking \$150 per week from the father to pay for braces for the younger son. It was immediately apparent to the judge and to the child support attorney that the mother was seeking the wrong remedy in the wrong case – she was seeking the father’s contribution towards unreimbursed medical expenses (not an increase in child support) for the younger son (although she had filed the motion to increase child support in the older son’s case).

The judge asked the father his response to the request. He expressed willingness to pay for the braces. The judge then asked if he waived the defects in the mother’s court filings and explained what that meant. The father said yes.

The child support attorney asked whether the son was covered under the county medical assistance program dental plan. “Yes, but the plan does not cover the costs of braces,” the mother answers.

Is the mother seeking a contribution towards the cost of braces (\$4000), or asking the father to pay the complete cost for them? Father answers, “The whole cost.” Is father willing to pay the whole cost? Father answers, “Yes, so long as he does not have to pay it all at once.” How much can the father afford to pay per month? “\$400,” father says.

At this point the court has obtained agreement to the central issues in the case. However, the hearing continues to address three other issues – how will the actual cost of the braces be established? will the county enter a wage withholding order to collect that amount? and will the county pay the orthodontist directly? Each of these issues is discussed in legalese by the judge with the child support attorney and the child support agency representative. It is determined that the mother will obtain an actual invoice from the orthodontist which will trigger a wage withholding order. The child support agency does not have a mechanism for paying the orthodontist directly; the money will have to go to the mother who will then pay the orthodontist. The court orders the mother to make a monthly statement to the child support agency showing that the orthodontist’s bill is being paid down.

The judge characterizes the litigants as “not very sophisticated” litigants. She does not believe that the parties understand these conversations and summarizes the terms of her order without discussing them explicitly. She tells the parties that they will receive the written order in the mail.

During the post-hearing interview with the father, it becomes clear that he understands:

- the waiver of the defects in the mother’s filings;
- the discussions concerning his agreement to pay the whole amount of the cost of the braces and his agreement to pay \$400 per month;
- that the \$400 will be withheld from his pay check (he uses the term “garnishment”);
- why the mother must submit the monthly statement concerning the orthodontist’s bill (for verification that it is being paid); and
- why the judge dismissed the mother’s motion to increase child support.

The mother, too, understands that she filed her motion in the wrong case and asked for the wrong thing.

### Ambiguities

There was a great deal of opportunity for ambiguity in this case. The judge and child support attorney used legalese to discuss legally intricate matters. Neither made any attempt to explain the discussions to the litigants. Nonetheless they understood those discussions and their implications for the way in which the money for the braces would be collected and disbursed.

### Observations

The judge successfully conveyed to the father the issue of waiver of procedural defects. The judge went to some lengths to put in place collection and payment mechanisms that would ensure that there would be no ambiguity in the way in which the order for payment of unreimbursed medical expenses would be carried out.

#### **Computation of communication effectiveness score for Case 13**

Issue	Petitioner’s articulation/understanding	Respondent’s articulation/understanding	Judge’s articulation/understanding
-------	---	---	------------------------------------

The purpose and scope of the hearing	10	10	10
Waiver of procedural defects	10	10	10
The father's assumption of full responsibility for payment of the costs of the braces	10	10	10
The mother's obligation to obtain an invoice from the orthodontist	10	10	10
The wage withholding order	10	10	10
The mother's responsibility to certify payment of the orthodontist's bill	10	10	10
The terms of the judge's order	10	10	10

Hearing communication effectiveness score 210/21 = 10

## Case 14

### Summary

White male judge and two Black litigants. The hearing lasted 12 minutes.

This was a hearing on the father's compliance with the purge conditions on the stay of his order of contempt for failure to pay child support. He has \$29,000 in child support arrears. He was ordered to pay \$2440.80 by the date of the hearing, representing the amount due for November, December, and January. He paid only \$450.00, but came to court with a list of five closings scheduled to take place within the next ten days. His employer, who was present in court, offered to withhold the amount due from his next pay check and have it delivered to the court. The child support attorney agreed to this proposal and obtained the mother's agreement as well. So, the hearing began with the child support attorney's articulation of the proposed agreement.

The court assured that the parties understood the agreement and agreed to its terms. The father stated that he had only had two closings since the last court hearing in November. One of those was just before Christmas and he used the proceeds to buy Christmas gifts for the children. He stated that he understood that if he did not pay the full amount by the date in the agreement that he would be sent to jail. He disputed whether the amount of the payment covered November, December and January or December, January and February; the court ruled – based on the wording of its prior order – that the last payment had covered only October and not November.

The mother replied that she understood the agreement and that she “had no choice” but to go along. The judge told her that she did indeed have a choice – that the purge hearing could be held as scheduled today. The mother replied, after some thought, “I’ll wait.”

After consulting with the child support attorney and the employer, the judge made detailed rulings concerning how the payment would be made on the agreed date. The child support attorney asked for clarification on the length of the contempt sentence if the payment were not made. The original sentence entered was 180 days. The child support attorney suggested 30 days instead and the judge accepted that recommendation. After consulting the child support attorney, the court also set a further purge conditions review hearing for a month after the agreed payment date to ensure that the father made his February and March payments on time.

The judge informed the father that the court had not received a motion to modify child support. He said that he was not advising the father to file such a motion, but that he wanted him to be aware that he had the right to do so. The father told the judge that he and his “legal advisor” (who was also present in the courtroom) were getting his tax returns together to support such a motion. The judge suggested that it be held at the next hearing.

The county attorney also asked to clarify the amount owed on agreed date. It was only \$1990 rather than the full \$2440 originally due, given the payment of \$450. This action was prompted by the father, who whispered in the child support attorney’s ear that the judge was using the wrong amount in his order.

The court prepared an order for the respondent to sign promising to appear at the next two hearings. The judge announced that an order would be prepared in advance of the agreed date, requiring that the payor report to jail in the event the full amount due had not been paid.

The judge ended the hearing with words of encouragement for the father.

### Ambiguities

The judge was very aware that the father had violated the purge conditions by choosing to spend money on Christmas gifts for the children rather than to pay his child support obligation. He chose to overlook it.

The father and the judge disagreed about whether he had previously paid for November. However, there was no misunderstanding of the issues involved in the disagreement.

## Observations

This case took place within the context of a recent change in the court's approach to enforcement of child support orders. The court had been very lax in its enforcement of contempt orders and had resolved to change that policy – to put teeth into the enforcement of child support orders.

On the other hand, to be able to enforce its child support orders, the court had to ensure their reasonableness. Consequently, the judge had no qualms ensuring that the father understood that he had the right to ask the court to reduce the amount of child support, given his difficulty in making payments at the current amount.

The judge was very aware that the parties were self-represented and that he had an obligation to ensure that they understood their rights – the right of the father to seek to modify the amount of child support, and the right of the mother to ask the court to hold the purge hearing as scheduled, even though the child support attorney had asked the court to postpone it.

The negotiations in this case occurred outside the courtroom. The role of the hearing was confined to ensuring that all parties understood and agreed to the postponement of the payment date for two weeks, that this agreement was reasonable, and that the details for further orders and court hearing dates were clear.

This is the only case in our sample in which one of the litigants obtained legal assistance from a lawyer. The father was accompanied in the courtroom by his father's family attorney, who is now teaching law rather than engaging in private law practice. However, the lawyer has continued to advise his former client's son and prepare his legal documents for him. The existence of the "legal advisor" in the case was not considered a matter of significance by anyone involved in the proceeding.

These litigants appear particularly knowledgeable about court processes. The father whispered in the child support attorney's ear that the court was using the wrong payment amount in its order, rather than presenting the argument to the judge himself. This strategy worked. The mother thinks carefully before deciding not to ask the judge to hold the purge hearing immediately.

### **Computation of communication effectiveness score for Case 14**

<b>Issue</b>	<b>Petitioner's articulation/understanding</b>	<b>Respondent's articulation/understanding</b>	<b>Judge's articulation/understanding</b>
The purpose and scope of	10	10	10

the hearing			
Understanding of the terms of the agreement	10	10	10
Handling of November child support payment	10	10	10
Terms of the court's order	10	10	10

Hearing communication effectiveness score 120/12 = 10

## Case 15

### Summary

White female judge and one Black and one Black/American Indian litigant. The hearing lasted almost 28 minutes.

The father filed a motion to reduce the amount of his current child support obligation (\$231/month), to cease the accrual of interest on the amount of arrears (roughly \$20,000 – \$15,000 owed to the mother and \$5,000 owed to the county), and to reinstate his driver's license. The grounds of the motion were that he was unable to pay because he was unemployed, partly as a result of an automobile accident more than a year ago that left him with back pain.

The hearing had been continued once for failure to effect service. The record showed that the father had not yet completed service. At the beginning of the mother's case, the judge explained the defect and asked if she was willing to waive it. She was.

At the hearing it became clear that the father's driver's license had been restored some time ago, that he had recently begun a new job, that he was willing to have his child support be based on his income from the new job, and that he did not contend that his back pain prevented him from working at the new job.

The judge allowed the father to present his case, asking general and specific questions to elicit his reasons for believing that his child support amount should be reduced. The judge then turned to the mother and heard her arguments. At the close of her questions of each party, the judge allowed the child support attorney to ask questions. The bulk of the hearing was taken up by the child support attorney's questions – which added little to the factual basis for the judge's decision.

Extraneous matters pursued were the date of the father's accident, whether he was pursuing a personal injury lawsuit, why he lost his last job, the nature of his job search since then, how he paid his bills, where he was living and with whom (he was separating from his current girl friend), the nature of his contributions to his daughter's welfare, and the past history of the case (the mother had asked to lower the original child support amount so that she could receive consistent payments). The questioning by the judge was perceived as a neutral search for information. The questioning by the child support attorney was perceived as cross-examination – putting the parties on the defensive.

The mother did not consent to elimination of the accrual of interest on the arrearages. She told the judge that she needed the father to pay for dental work for the daughter. The judge told her to speak with the child support agency about obtaining the father's contribution to those expenses. The judge reasoned that the matter was already covered in the existing order; the mother merely lacked an understanding of how to enforce that provision; and the issue had not been placed before the court for decision at this hearing.

The guidelines calculation produced an amount of \$306 for a current monthly child support payment. The judge found that the father had not provided evidence that his current child support obligation of \$231 per month should be decreased. At the request of the child support agency, the court added additional payment amounts of \$22.50 representing the father's obligation to contribute to his daughter's health insurance (provided by the mother through her employment) and a "payment plan" amount including an additional 20% toward the reduction of the arrearages owed to the mother and to the county in order for the father to retain his driver's license. The total amount due was therefore increased to \$304.20.

At the close of the hearing the father asked when the payments were due. The judge responded that the new amount took effect immediately, in accordance with the terms of the original order. The father then asked if his arrearages related to the time that he was living together with the mother and daughter. The judge did not understand the question and gave a general answer saying the current order was entered in 1997.

The court prepared the order following the hearing.

### Ambiguities

The only ambiguities related to the "payment plan" and the father's last question. The legal basis of the payment plan was to short circuit the

process for suspending the father’s license for non-payment in the future and having a payment plan established then as part of a reinstatement process. The parties did not know those legal intricacies, but fully understood the nature of, and the basis for, the increased payment amount.

The father had always felt it unfair for him to be paying back child support for the five years during which he, the mother, and the daughter had lived together. In all likelihood, his child support obligation did not cover that period, but he was not able to get an answer to his question.

Observations

The judge handled the waiver of service issue in a highly professional, straightforward manner. It is curious that she reserved the issue until the father’s presentation. If the hearing were to fail for lack of service, it would have made more sense for it fail at the beginning rather than after most of the testimony had been taken.

Both parties realized that they had collateral issues that they wanted, as an emotional matter, to interject into the hearing. They also understood that those matters were not relevant to the issue of child support (one of them actually characterized them as “irrelevant”) and that they “would be there all day” if they tried to present or argue them.

The father expressed the common need to demonstrate that he is involved in the life of his daughter and that he is not a “dead beat dad.”

**Computation of communication effectiveness score for Case 15**

Issue	Petitioner’s articulation/understanding	Respondent’s articulation/understanding	Judge’s articulation/understanding
The purpose and scope of the hearing	10	10	10
Waiver of lack of service	10	10	10
The father’s current employment circumstances and income	10	10	10
Mother’s lack of consent to waive the accrual of interest on the arrearages and the court’s denial of the request	10	10	10
Terms of the court’s order	10	10	10
Effective date of the order	10	10	10
Father’s question whether his arrearages included support for the five year period in which he, the mother and the daughter lived together	0	0	0

Hearing communication effectiveness score  $180/21 = 8.6$

## Research Findings

The findings from this exploratory study are indeed rich.

We report first the findings from the empirical data.

### *Testing the hypotheses with empirical data*

The nine original research hypotheses are listed in the discussion of the research design. As is usually the case in exploratory research, the data actually obtained are different from what we contemplated when the nine hypotheses were formulated. In particular, the information obtained during the post-hearing interviews and the approach taken to analyzing the data caused us to focus on the litigants' and judges' overall understanding of each of the issues raised during the hearings – producing a single communication effectiveness score for the hearing as a whole. We did not produce separate communication effectiveness scores for each of the actors in the hearing. That being the case, the hypotheses have been altered as shown in the following table.

Original Hypotheses	Refined Hypotheses
1. That judges' intended communications to self-represented litigants are fully effective.	1. That communication among judges and self-represented litigants is fully effective.
2. That self-represented litigants' intended communications to judges are fully effective.	2. That judges are effective in the use of nonverbal communication.
3. That judges with higher nonverbal communications scores will have more effective communications.	3. That hearings involving judges with higher nonverbal effectiveness scores will have higher communication effectiveness scores.
4. That cases with effective judicial communications and effective judicial nonverbal behaviors will have higher self-represented litigant satisfaction ratings for the hearing from both self-represented parties.	4. That hearings with higher effective communication scores will have higher self-represented litigant satisfaction ratings. 5. That hearings with higher judicial nonverbal effectiveness scores will have higher self-represented litigant satisfaction ratings.

<b>Original Hypotheses</b>	<b>Refined Hypotheses</b>
5. That cases with effective judicial communications and effective judicial nonverbal behaviors will have higher self-represented litigant scores for understanding the words used by the judge and others in the courtroom and for being clear exactly what the judge decided.	6. That hearings with higher effective communication scores will have higher self-represented litigant scores for understanding the words used by the judge. 7. That hearings with higher judicial nonverbal effectiveness scores will have higher self-represented litigant scores for understanding the words used by the judge. 8. That hearings with higher communication effectiveness scores will have higher self-represented litigant scores for being clear exactly what the judge decided. 9. That hearings with higher judicial nonverbal effectiveness scores will have higher self-represented litigant scores for being clear exactly what the judge decided.
6. That litigants with higher communications effectiveness and higher nonverbal behavior scores will be more likely to prevail.	
7. That judges' ratings of the performance of specific self-represented litigants will be higher than their ratings of the performance of self-represented litigants in general.	10. That judges' ratings of the performance of specific self-represented litigants will be higher than their ratings of the performance of self-represented litigants in general.
8. That judges with lower perceptions of self-represented litigant competence in general will have lower self-represented litigant satisfaction ratings for the hearing.	11. That judges with lower perceptions of self-represented litigant competence in general will have lower self-represented litigant satisfaction ratings for the hearings over which they presided.
9. That cases in which judges give the litigants higher specific performance ratings will have more effective self-represented litigant communications effectiveness.	

It should be noted that these hypotheses were articulated for the purpose of exploration. We did not anticipate clear, unambiguous answers to them.

**That communication among judge and self-represented litigants is fully effective.**

For the judges and litigants who participated in this study, this hypothesis is strongly supported by the data gathered during the study.

The table below sets forth the communication effectiveness scores for the fifteen hearings. The derivation of the communication effectiveness score is explained in the discussion of data analysis above.

<b>Hearing</b>	<b>Communication Effectiveness Score</b>
<b>1</b>	<b>9.6</b>
<b>2</b>	<b>8.5</b>
<b>3</b>	<b>8.7</b>

Hearing	Communication Effectiveness Score
4	9
5	10
6	9.6
7	7.3
8	6.7
9	8.6
10	5.6
11	8.2
12	10
13	10
14	10
15	8.6

The mean and median scores for communication effectiveness in these hearings are both 8.7. In our opinion, these scores are very high. There was virtually no difference in the average scores for hearings presided over by male and female judges (8.7 and 8.6 respectively).

This finding is significant, establishing a basis for confidence among judges and court professionals that self-represented litigants do comprehend what is going on in their family court hearings, when a court has gone to the effort to ensure a hospitable and helpful environment for self-represented litigants in the courthouse and in the courtroom.

This overall finding should serve as incentive for those courts that have not yet created such an environment of one potential benefit of doing so. (Of course, this finding should neither be interpreted as concluding that litigants in courts without such programs do not understand the proceedings at a high level, or that every litigant in courts with such programs do understand the proceedings at a high level. We had no "non-committed" courts in our study. And we reiterate, as well, that we did not observe any first appearance hearings; all of the litigants we interviewed had been in court previously on this case and, in some instances, in other cases as well. We simply feel the responsibility to limit our findings to the environments in which we encountered them.)

As shown in the fifteen case descriptions in the study, these litigants' understanding of the hearings usually went beyond their surface understanding of the matters discussed and resolved during the hearing to more subtle issues of the appropriateness of raising and arguing different matters. For example, litigants frequently reported that they chose not to contest statements made by the other side because they were not central to the issues to be decided and were not worth the time that would be required

to debate them. In all instances, we believe their judgments were reasonable.

Four of the judges presided over more than one of the hearings included in the study. There was considerable variation for communication effectiveness for two of these judges from hearing to hearing.

**Range of Communication Effectiveness Scores for Judges With Multiple Hearings**

Highest Score	Lowest Score
9.6	8.5
10	9.6
7.3	6.7
10	8.6

Interestingly, hearings presided over by judges rather than by commissioners, masters or referees had significantly higher communication effectiveness scores. Hearings with judges had average scores of 9.7; those with other judicial officers averaged 8.2. It is possible that this is a mere coincidence arising from the judges having easier hearings with fewer issues. This might be true in three cases but not in the fourth.

Success in communication appeared to derive from multiple factors. These judicial officers we observed obviously cared about the litigants' understanding of the proceeding. They took the time required to explore and resolve each issue presented – giving both parties an opportunity to be heard on each issue. They spoke in plain English and avoided the use of legal jargon. When it was necessary to use legal terms (such as joint physical and legal custody of a minor child), they took the time to make sure that the parties understood the meaning of the legal concept and explained it in lay terms if a party appeared hesitant about his or her understanding. They used a number of effective practices to structure the hearing so that it was most easily understood. We describe those general practices later in this report. They include framing the issues to be decided, asking questions to elicit information needed to make decisions, making rulings in open court as the hearing proceeds, summarizing the terms of the order at the close of the hearing, paying close attention to details of compliance with the court order, and setting the parties' expectations for future developments in the case, including future hearings.

Failures of communication included not only matters poorly explained or poorly understood, but also issues not dealt with by the judge. Examples of the latter include failure of the judge to specify when the non-custodial spouse was to begin paying a revised child support amount or failure of the judge to address the continuing effect of a criminal restraining order when the judge vacated a civil domestic violence restraining order in the case.

Three factors that impaired understanding were the use of legal terms by the judge, interpretation into a language other than English, and low mental functioning by one litigant of the thirty studied. In the latter case, the judge's ability to perceive the low mental functioning was made more difficult by the interpretation process.

We observed that litigants were surprisingly able to understand most legal terms. But some terms stumped them. For example, in one hearing neither litigant understood the term "enforceable" when the judge, after summarizing the contents of a custody and visitation order stated that it was "enforceable."

Other terms that litigants were not able to understand were "sanctions" for filing a frivolous petition when sought by the child support attorney, child support "arrear," the distinction between contempt for failing to pay child support and contempt for failing to comply with the terms of a job search order, and "assigned" referring to the payment of child support amounts to a public entity rather than to the custodial parent to reimburse the costs of welfare payments on behalf of the child.

Interpretation from English to Spanish created a serious barrier to effective communication in Case 3, the one interpreted hearing in the study. The hearing involved two Spanish speaking litigants and two certified court interpreters. The judge did not significantly change her communication style or her language; as a general matter, she spoke as fast as with other litigants and did not significantly simplify the construction of her speech. The judge had difficulty explaining the difference between the mother's telling her son to spend time with his father and the mother's encouraging him to spend time with his father. This is a subtle distinction. It is a great credit to the judge, litigant, and interpreter that the communication was ultimately clear. However, it took a long time during the hearing to reach that result and the judge was never sure that she had been able to get her point across. Even though the judge made no special effort to proceed more slowly with this hearing, it was the longest one we observed. Courts and judges need to allocate significant additional time for cases requiring interpreters.

In this case, moreover, the father appeared to the researchers to have mental problems. He confused events and locations. His comprehension problems transcended the language barrier. These issues only became clear to the researchers during the post-hearing interview. The interpreter made a point of approaching the researchers out of the presence of the litigant to convey her sense of discomfort with the interview – the litigant's statements

to the interpreter did not make sense to the interpreter. This was the only instance in the fifteen hearings in which one of the litigants appeared to us to have a mental problem interfering with his ability to participate effectively in the hearing. His disability or lack of understanding was not apparent during the hearing itself. It only became apparent during the post-hearing interview as we probed for his understanding of different parts of the hearing. On the other hand, the litigant nonetheless appeared to grasp most of the issues presented during the hearing.

**That judges are effective in the use of nonverbal communication.**

The judges' nonverbal effectiveness scores in these hearings are shown in the table below. They averaged 77%; the median score was 78%. These also are high scores. We believe that they support the hypothesis for this group of judges.

Hearing	Nonverbal Effectiveness Score
1	83%
2	87%
3	78%
4	66%
5	90%
6	72%
7	93%
8	86%
9	61%
10	73%
11	82%
12	80%
13	76%
14	73%
15	63%

The scores ranged from a high of 93% to a low of 61%. There clearly were judges in the study whose nonverbal effectiveness could be improved.

There was a difference between male and female judges. Male judges averaged 79.6% nonverbal effectiveness and female judges averaged 70.2%. On the other hand, the second highest score was for a female judge and the third lowest score was for a male judge.

The judges with multiple hearings did not score consistently from hearing to hearing. There were four judges with more than one hearing. The variation in their nonverbal effectiveness scores is shown below.

**Range of Nonverbal Effectiveness Scores for Judges With Multiple Hearings**

Highest Score	Lowest Score
87%	78%
90%	72%
93%	86%
76%	61%

Unlike the communication effectiveness scores, judges did not perform better than commissioners, masters or referees on the nonverbal effectiveness score. The four judges scored an average of 76% while the six other judicial officers scored an average of 78%.

**That hearings involving judges with higher nonverbal communication scores will have higher communication effectiveness scores.**

For this population of effective judges, courts and litigants, this hypothesis was not confirmed by the data. There was, in fact, a small negative relationship (-.098) between these two scores for the fifteen hearings. The relationship was not statistically significant at the  $p < .05$  level.

We do not conclude from this result that there is no relationship between effective courtroom communication and effective nonverbal behaviors by the judges. The data for the small number of cases involved in this study simply does not show any such relationship. It may well be that a study of generally effective and less effective judges would also show that those judges who are more effective verbally are also more effective non-verbally.

For the next six analyses, we had 29 rather than 15 data points, treating each litigant, rather than each case, as a separate data point. (As noted earlier, we failed to obtain or lost one litigant satisfaction survey form.) It should be noted that the failure to obtain statistically significant correlations in the results reported below may well result from the consistently high scores in every category – communication effectiveness for hearings, nonverbal effectiveness for judges, and satisfaction and other self-reported scores for litigants. When each data set contains little variation, and there are relatively few data points within each set, it is unlikely to find statistically significant relationships among the data sets.

**That hearings with higher effective communication scores will have higher self-represented litigant satisfaction ratings.**

The data provides limited support for this hypothesis. There was a relatively low positive correlation (+.361) between the communication effectiveness score for a hearing and the litigants' reported overall satisfaction with the

hearing ("I am satisfied with what happened during my hearing today.") This correlation was almost statistically significant.<sup>13</sup>

**That hearings with higher judicial nonverbal effectiveness scores will have higher self-represented litigant satisfaction ratings.**

There is no support for this hypothesis in the data. There was a small negative correlation (-.118) between judicial nonverbal effectiveness and the litigants' overall satisfaction with the hearing ("I am satisfied with what happened during my hearing today.") The correlation was not statistically significant.

**That hearings with higher effective communication scores will have higher self-represented litigant scores for understanding the words used by the judge.**

There is no support for this hypothesis in the data. There was a small positive correlation (+.257) between the communication effectiveness score for a hearing and the litigants' reported understanding of the words used by in the courtroom. Because the question posed in the survey was in the negative ("I did not understand the words used by the judge and other persons in the courtroom"), the correlation would have to be negative to support the hypothesis. The correlation was not statistically significant.

**That hearings with higher judicial nonverbal effectiveness scores will have higher self-represented litigant scores for understanding the words used by the judge.**

There was no support for this hypothesis in the data. While the correlation was negative, it was very small (-.099) and not statistically significant.

**That hearings with higher communication effectiveness scores will have higher self-represented litigant scores for being clear exactly what the judge decided.**

There was minimal support for this hypothesis in the data. The correlation between communication effectiveness score and the litigants' reported clarity concerning the judge's ruling in the case ("I am clear about exactly what the judge decided") was positive but small (+.257) and not statistically significant.

---

<sup>13</sup> P=.054. The generally accepted threshold for statistical significance is  $p < .05$ .

**That hearings with higher judicial nonverbal effectiveness scores will have higher self-represented litigant scores for being clear exactly what the judge decided.**

There was minimal support for this hypothesis in the data. The correlation between the judge’s nonverbal effectiveness score and the litigants’ clarity concerning the judge’s ruling was positive but small (+.103) and not statistically significant.

**That judges’ ratings of the performance of specific self-represented litigants will be higher than their ratings of the performance of self-represented litigants in general.**

This hypothesis is strongly supported by the data. There were ten judges involved in the study. These judges presided over from one to three hearings. We compared the scores they gave on the judicial survey form asking about their experience with self-represented litigants over the course of the last year with the average scores they gave both litigants on the identical questions from the judge observation forms. The seven questions that were duplicated on the two forms were:

Judicial Feedback Survey Questions	Judge Courtroom Observation Survey Questions
1. Self-represented persons generally have realistic expectations about the likely case outcome	Litigant had realistic expectations about the likely outcome
2. Self-represented persons generally appear to understand the court’s rulings	Litigant appeared to understand the court’s ruling(s)
3. Self-represented persons generally have documents prepared correctly	Litigant had documents prepared correctly
4. Self-represented persons generally have the necessary evidence and witnesses	Litigant had needed evidence or witnesses
5. Self-represented persons generally follow procedural rules	Litigant followed court procedural rules
6. Self-represented persons generally participate effectively in court proceedings	Litigant participated effectively in the proceedings
7. Self-represented persons generally “tell their stories” effectively	Litigant was able to “tell his or her story” effectively

This process produced 66 points of comparison between the judge’s report of how self-represented litigants “generally” perform and how the self-represented litigants performed in the hearing or hearings involved in the study. There were four instances in which a judge did not rate litigant performance on an item, negating the possibility of a comparison on that item. Of the remaining 66 comparisons:

Actual performance was higher than “general” performance in 42 (64%) of the comparisons  
 Actual performance was the same as “general” performance in 15 (23%) of the comparisons  
 Actual performance was lower than “general” performance in 9 (14%) of the comparisons

Four of the instances of lower actual performance ratings were for one judge who presided over only one hearing involved in the study.

In sum, in 57 of 66 comparisons (86%), litigants actually performed as well or better than the judge’s generally reported experience of such litigants. In 64% of the comparisons the litigants’ actual performance was higher than the judge’s general experience.

This finding, along with the perception among these ten judges that self-represented litigants do not take more of their judicial time than represented litigants, may be significant for judicial education. Judges, like the rest of us, tend to develop stereotypes based on their most memorable experiences rather than on their typical experiences. In self-represented cases, those memorable experiences are apparently often negative. Judges need to know that individual self-represented litigants frequently perform more effectively in their courtrooms (based on their own observations) than the same judges think self-represented litigants do in general. It also appears likely that self-represented litigants are less of a drain on the judge’s time than judges perceive. These finding may well serve to reduce judicial resentment against the influx of unrepresented litigants in family law cases and make more likely the broader development of the positive environment already found in our four project sites.

**That judges with lower perceptions of self-represented litigant competence in general will have lower self-represented litigant satisfaction ratings for the hearings over which they presided.**

This hypothesis is also weakly supported by the data gathered for the study. The table below shows the judges’ average ratings for all seven self-represented litigant general performance ratings questions and their average actual ratings for the litigants that appeared before them.

Judge’s Average Rating for the Performance of Self-Represented Litigants “Generally”	Judge’s Average Rating for the Performance of Self-Represented Litigants Appearing Before Them in Hearings Involved in the Study
1.57	2.30
1.71	3.25

1.85	3.04
2.14	3.61
2.85	3.21
2.85	3.57
3.14	2.71
3.28	3.93
3.42	4.80
3.71	3.50

The three judges with the lowest perception of the performance of self-represented litigants in general include two of the three lowest average scores for actual self-represented litigant performance. The three judges with the highest perception of self-represented litigant performance had two of the three highest average scores for actual self-represented litigant performance.

However, the correlation coefficient for these scores is  $+0.565$  – a positive but not extremely high correlation. And it is not statistically significant.<sup>14</sup> Consequently, what appears as a strong relationship from a review of the data does not appear as significant when subjected to statistical analysis.

## Qualitative Research Findings

We feel uniquely privileged to have been given access to the thoughts and perspectives of the judges and litigants who participated in these hearings and post-hearing interviews. Being able to observe the fifteen hearings, interview the participants, and then review in detail both the hearings and the interviews has provided us with a rich set of findings grounded in our observations and professional experience. They go well beyond the statistical results reported above.

### *Effective Practices*

We observed a number of judicial practices that we believe contribute significantly to effective courtroom communication and to high litigant satisfaction with the court system.

### **Framing the subject matter of the hearing**

Judges should begin every hearing with a brief statement of the reason for the hearing and the issues that are presented for decision. This review may

---

<sup>14</sup>  $p = .089$ .

include a recitation of recent hearings in the case and the orders resulting from them.

An example might be as simple as, "This case is before the court this morning on Mr. Jones' request that this court increase his visitation with your four year old daughter Daphne from two hours supervised visitation to one night per week unsupervised visitation. The current supervised visitation program was included in an order of this court issued at the close of a hearing three months ago and we agreed to review how it is working out at this time. You were not able to reach an agreement on additional visitation for Mr. Jones during mediation. The mediator recommends that the court allow some unsupervised visitation but not yet on an overnight basis. I will want to hear from both Mr. Jones and Ms. Smith about how the current supervised visitation is going, from Mr. Jones about his twelve step program and why he feels that it is in Daphne's best interests for her to spend more time with him, and from Ms. Smith about her feelings about that same question."

The framing process clarifies for litigants what the hearing will be about and why they are here. During post-hearing interviews, litigants universally appreciated judges creating this context for the hearing.

### **Explaining the process to be followed or guiding the process**

Judges in the hearings we videotaped usually swore the witnesses and guided the litigants through the process by asking questions of them. Occasionally they reminded the parties that they were not to interrupt each other because they would both have their turn to speak. In a few instances a court attendant played a short videotape or Powerpoint presentation before the judge took the bench providing more background information on the type of proceeding that would be held (for instance explanation of the procedures for domestic violence restraining orders). The cases we observed were all subsequent hearings, not initial hearings; the litigants had all been to court before if not before the same judge. Judges might provide more of a procedural introduction at the beginning of an initial hearing.

### **Eliciting needed information from the litigants**

All judges we observed proactively sought information from the litigants on the topics the court was being asked to decide, using the following techniques:

a. Allowing litigants to make initial presentations to the court – Judges we observed frequently turned to one of the litigants – usually but not always

the moving party – to begin the hearing. This was often done in conjunction with a framing statement, such as, “Mr. Jones, I have read your petition. Is there anything that you want to add?” Litigants given this opportunity did not tend to abuse it, but made the arguments they wanted the court to consider. The judge then turned to the other party and asked for his or her point of view. The judge used these initial statements to identify the issues for discussion and resolution.

b. Breaking the hearing into topics – Judges appear to have been particularly effective when they, in effect, created an agenda or outline for the hearing – letting the litigants know that judge understood the issues that the litigants considered important and that they would be addressed in a particular order.

c. Obviously moving back and forth between the parties – In leading the discussion on each issue, judges made certain that both parties had an opportunity to address each of the topics before announcing the court’s resolution of the issue.

d. Paraphrasing the testimony and arguments of the litigants – Judges would frequently summarize very briefly the position of a party, using language such as, “I understand you to be saying \_\_\_\_\_, Ms. Smith. Is that correct?” “Mr. Jones, what is your position on that?” Judges would use this technique to let a party know gently that they had heard enough information or argument on a point.

e. Maintaining control of the courtroom – Notwithstanding the common refrain from judges around the country that self-represented litigants are hard to control in the courtroom, the judges we observed had no difficulty with this issue. In fact, judges rarely had to say anything to stop a litigant from interrupting the other party or from running on. In the latter instance, the judges would often gently interject themselves by saying something like, “Let’s not get into that just yet. I would like to hear Ms. Smith’s views on X first.”

f. Giving litigants an opportunity to be heard while constraining the scope and length of their presentations – The judges we observed found it easy to limit the longwinded litigant by making it clear from the beginning of the hearing that the judge would be actively involved – that it would be more like a discussion involving three parties than a debate involving two parties. By paraphrasing what a party had said in seeking the other party’s point of view, the judge made it clear to the first party that the judge understood his or her argument. There was no need to reiterate it. We also did not encounter instances of combative litigants who attempted to reargue

matters the court had decided. If a litigant appeared ready to launch into such an argument, the judge would simply say, "Ms. Smith, I have already listened to your point of view and made up my mind. Let's move on."

g. Giving litigants a last opportunity to add information before announcing a decision – Most of the judges paused before making a ruling, turning to each litigant in turn and asking if there was anything that they had not said that they wanted to add before the court made its decision. The judge did not ask, "Is there anything else that you would like to say?" S/he asked, instead, "Is there anything that you have not already said that I need to hear before making my decision?" While in the hearings we observed this proved to be merely a courtesy to the parties, the litigants appreciated the courtesy. During the post-hearing interviews, judges reported that such questions on occasion bring forth highly relevant considerations that a litigant has overlooked from nervousness.

### **Engaging the litigants in the decision making**

We observed one judge in particular who was very adept at engaging the litigants in creating the specific terms of visitation orders. She would turn to a litigant and say, "And an overnight would be acceptable to you if . . .? Please put it in your own words." The judge was able to mediate the dispute in the courtroom, or at least to give the parties the opportunity to agree on the details after the judge had indicated how she intended to rule on a major issue.

### **Articulating the decision from the bench**

We only observed one judge who did not announce a decision from the bench. While it may be that there are emotionally charged hearings in which the judge may have a realistic apprehension of violence or intensification of tension between the parties if s/he announces the ruling from the bench, these situations appear to be rare. In all the cases we observed, the process was enhanced for the litigants when the judge announced the decision at the close of the hearing. The judge was able to ensure that the losing party knew that the court had heard and considered his or her arguments in ruling the other way. The judge was able to use nonverbal behavior to present the ruling in a way that showed that s/he cared about both litigants – by moving eye contact and focus between the parties. And the parties had an opportunity to seek clarification of points in the order that the judge may have overlooked or that one of the litigants did not understand, such as the effective date of a modified child support order.

## **Explaining the decision**

A written order after hearing merely states the decision. The judge may not have time in the written decision to recite the reasons for the different parts of the decision. We observed judges announcing and explaining their decisions piecemeal as they worked through each of the issues identified. By the end of the hearing both parties knew what the judge had decided and how the various parts of the order were related to each other.

The judge's ultimate goal, particularly in family law matters, is for the litigants to comply with the court's orders and to begin to resolve matters between themselves without having to return to court. Explaining briefly but clearly the court's rationale for its decisions provides the parties with examples of principles they can apply between themselves in resolving future disputes.

## **Summarizing the terms of the order**

Judges who had announced their rulings in the course of the hearing found it helpful to summarize the terms of the order at the close of the hearing – providing the courtroom staff as well as the parties with an opportunity to review and confirm all of the terms and conditions to be included in the court's order.

## **Anticipating and resolving issues with compliance**

These cases do not have lawyers to help the parties work through the details of complying with a court order. The judge must anticipate and resolve those issues. Cases 13 and 14 provide good examples of the judge's thinking through with the parties all of the details needed to implement the decisions made during the hearing. In case 7, the judge carefully set up the process by which the parties would present information on direct payments from the noncustodial parent to the custodial parent to the child support agency so that the court could determine the amount of arrearages at the next hearing. He also went through the process for the father to obtain from the child support agency the amount that will be withheld from his federal tax refund check because of the arrearages current appearing to be due.

## **Providing a written order at the close of the hearing**

Except in the one instance in these fifteen hearings in which the judge took the matter under advisement and did not render a decision from the bench, the court provided the litigants with a written minute order or final order at

the close of the hearing, or gave them the option of waiting for an order to be prepared or receiving it in the mail. When the court prepared only a minute order and not a final order, the judge gave the prevailing party instructions to take the minute order to the self help center for preparation of a formal order for the court's signature. In no instance did one of these courts require one of the self-represented litigants to prepare a written order for the judge's signature.

### **Setting litigant expectations for next steps**

Judges frequently set next hearings in the cases we observed to review how the visitation terms ordered were working out. In each case, the judge provided clear expectations for the parties about the issues that would be considered at that next hearing and any preparation that would be required.

In some instances, the judge prepared the litigants for further developments in the case. In case 1, the judge reminded both parties that they could come back to court if their unstructured custody and visitation plan did not work. In case 2, the judge informed the mother that the father would be seeking unsupervised overnights sometime in the future. In case 11, the judge notified the parties of her intention to order a child custody investigation if the conflict between the parents continued. In case 14, the judge alerted the father to his right to file a motion to reduce the amount of child support and announced that it would be considered at the next hearing, if such a motion had been filed and served.

### **Using nonverbal communication effectively**

We observed many instances of effective judicial nonverbal communication such as:

- maintaining eye contact,

- orienting the body to each litigant in turn,

- nodding with the head to signify understanding (the litigants stated during the post-hearing interviews that they knew such gestures conveyed only that the judge understood, not that he or she necessarily agreed with what was being said),

- using hand gestures to postpone or invite a litigant's speaking,

smiling, and

maintaining pleasant and open facial expressions.

It should be noted that litigants from other cultures may not interpret nonverbal behavior the same way that persons from the dominant United States culture would. It should also be noted that judges, like most persons, are generally unaware of their nonverbal behaviors. Videotaping one's own hearings and viewing them with others, including nonverbal behavior experts if they are available, can provide an opportunity for recognizing behaviors of which we are usually unaware. They may present sources of satisfaction or opportunities for improved performance.

### ***Additional Issues of Concern to the Researchers***

Judges handling cases involving self-represented litigants might find it helpful to keep in mind several other issues which came to our attention in the course of this study.

#### **Informed consent to waive notice of matters not formally before the court for decision**

As noted in the hearing summaries, we observed a variety of, in our view, inappropriate ways of dealing with a request by one party to present for decision an issue that is not formally before the court.

One judge, in case 5, summarily refused to adjust a child support order to reflect a change in visitation she had just ordered. In the post-hearing interview, she stated that she does not have the authority to address an issue not properly raised in the papers serving as the basis for the hearing. This appears not to reflect governing law and practice, since we observed a judge in the same court routinely accepting jurisdiction of such matters and saw many similar examples in other courts. The litigant was quite upset with the requirement to file additional papers and to come to court again when the matter could easily have been resolved at the hearing at which the new visitation order was put in place.

On the other hand, we also observed a judge (in case 7) who treated such issues very casually – announcing that he [the judge] would be “willing to talk about it if you [the parties] want to talk about it.” He assumed that lack of objection by the other party to that statement was a waiver of the right to object to lack of notice. In another case (case 8), the judge made an order concerning an issue not before the court (in this case a change from sole legal custody to joint legal custody) by asking the mother if she would agree

to the change. If both parties consented to a change of custody, the judge reasoned that the court did not have to obtain a waiver of notice that the matter would be heard. In this instance, the mother reported feeling that she did not have a choice in the matter; the judge expected her to agree even though she was strongly opposed to the change. Both of these approaches, in our view, deprive the responding party of the right to make an informed choice about waiving notice of a matter that the initiating party asks the court to consider at the time of the hearing.

In case 13, the judge handled the procedural issue appropriately, asking the other party if he were willing to waive the defects in the initiating papers so that the matter could be heard that day. When the litigant expressed a lack of understanding of the question, the judge explained it in layperson's terms and the father quickly agreed because he did not want to come back to court another time to resolve the matter. The father in that case did indeed make a knowing, voluntary and intelligent waiver of the procedural defects.

In our view, when a party asks a judge to decide an issue not raised in the papers that serve as the foundation for the hearing, the judge should first decide whether s/he has time on the calendar to entertain and resolve the new issue. If time is available, the judge should immediately turn to the other party and explain that the moving party has asked to have a new matter resolved, explaining that the court is willing to entertain it but that the responding party has the right to decide whether or not the matter will be heard, since s/he has the right to be put on notice that an issue will be considered in a court, and may need time to consider how to respond or to gather evidence on the new issue. If s/he wants to have the matter decided, the court will decide it today without the need to return to court. If s/he chooses not to allow it to be heard today for any reason, the matter will not be heard until the moving party raises it in another court filing. This suggested process will ensure that a litigant gives knowing, voluntary and intelligent waiver of notice consent with basic principles of due process of law.

### **Assuming agreement from a litigant's lack of verbal or nonverbal response**

We observed in several instances that judges were making judgments based on a litigant's non-responsiveness to a statement made by the other side. In case 2, the judge told the researchers that, "I looked out of the corner of my eye at mother to see if she was shaking her head, frowning, or otherwise expressing her disagreement with what father was saying. She was just sitting there smiling so I concluded that what father was saying was probably credible." In speaking with the mother following the hearing, we learned that she strongly disagreed with what father was saying at that point

but that she was making a tactical decision not to dispute his statements – because they were not central to the issue at hand and she believed that arguing them would be a waste of the court’s limited time.

We suggest that judges seek explicit confirmation from litigants rather than reading into their body language (or lack of body language) consent or acquiescence to a statement of fact by the other party – if the court considers the matter to be important to its decision.

### **Judges’ lack of knowledge of litigants’ underlying concerns and expectations**

We noted in several visitation cases that the hearing was taking place within the context of fears and expectations of which the court was unaware. In case 2, for instance, the parties perceived that the hearing was a continuation of the mediation session they had had a few weeks before. During that session the parties had laid out demands and counter-demands. Both perceived the hearing to be taking place within the context of those most recently articulated positions, not based on the request that the moving party had made in the original court filing. The court was unaware of this background. The parties were not willing to inform the court of the other party’s position because that might plant the seed for a court decision that they would not favor. But it was those demands that framed the hearing – principally the mother’s fear that the father would get unsupervised overnights with the child. When the hearing focused on a single supervised overnight per week she was greatly relieved. The judge, on the other hand, was surprised that she agreed to the proposal so quickly.

This is simply a fact of life for judges. It is present in cases involving attorneys, where settlement negotiations have been underway but the parties do not feel that their interests would be served in disclosing the details of those discussions to the court. The best that the judge can do is to remain aware of the likely existence of these background factors of which s/he will never be aware.

### **Importance of the roles of court staff**

We were struck by the major role that staff play in enhancing a judge’s effectiveness in the courts that we studied.

#### **a. Inside the courtroom**

In some courtrooms, the bailiff routinely gave an introductory speech to the parties in the courtroom before the judge took the bench, covering the basic procedural rules that the parties must follow. Done well, this sets the stage for the judge's appearance and relieves him or her of the need to cover the same topics. Done poorly, it creates expectations among the litigants that may be contrary to the atmosphere that the judge wants to create. The judge should observe such introductions from time to time to make sure that they are consistent with the tone s/he wants to set in the courtroom.

Bailiffs and courtroom clerks are invaluable sources of information for litigants both before court convenes and after it adjourns – to learn what to do, to get questions answered, and to clarify their understanding of the judge's ruling.

Bailiffs are also the last resort for ensuring order in the courtroom. By simply moving into a self-represented litigant's line of vision, a bailiff can convey the message that the litigant is taxing the court's patience.

#### b. Outside the courtroom

Mediators and self-help staff can enhance or detract from the judge's effectiveness. In one court, we observed very close alignment of the judges, commissioners, mediators and self-help center staff. They were all telling the litigants the same information about the court's basic policies with respect to visitation. When the case came before the judge, the parties were already prepared for and expecting the approach that the judge took towards the case. This observation is discussed more fully in the summary of case 2.

On the other hand, case 6 presents a counter-example – where a mediator makes a prediction about the judge's likely decision in order to pressure one of the litigants into agreeing to a mediated settlement. This process was counterproductive for the judge, since the litigants came into the courtroom with an unflattering impression of the judge's decision making process and personal style.

#### **Avoiding misunderstanding of colloquies between judges and child support attorneys**

We observed numerous instances in child support cases in which the judge engaged in legal discourse with the child support attorney in a courtroom with two self-represented litigants. In one instance, in case 13, the parties had a remarkable grasp of the topics they discussed. In another instance, in

case 10, the father was very anxious because of his lack of understanding of a truly tangential legal discussion between the attorney and the judge.

It is obviously difficult for judges and child support attorneys to use ordinary English in these discussions. Legal language may well appear more efficient to the purpose at hand. On the other hand, judges would be well advised to inform the parties at the beginning of a child support hearing that if any such technical discussions take place, the judge will explain them to the parties so that they can provide input into any decision based on them. The judge should also emphasize that either party should ask for an explanation if the judge forgets to make one.

## **Conclusions and Recommendations**

### ***Implications for Judicial Practice and Judicial Education***

As already noted in this report, the findings of this study have significant implications for judges and courts. Courts and judges that have created a hospitable environment for self-represented litigants in the courthouse and in the courtroom can reasonably assume that these litigants, in fact, understand most of what is going on in court hearings in family law matters.

The study presents a number of findings of importance for judicial practice and for judicial education, including information on effective nonverbal behaviors for judges, on effective practices in conducting hearings involving self-represented litigants, and on issues that judges do not necessarily deal with appropriately even in the most sophisticated courts.

The finding that judges tend to hold a lower opinion of the performance of self-represented litigants than is warranted by these litigants' day-to-day performance in their courtrooms is also an important topic for discussion in judicial education programs.

### ***Suggestions for Further Research***

We make the following suggestions for further research.

#### **Further use of the videotaping/post-hearing interview methodology**

We encourage other researchers and organizations to use the research methodology that we developed in the course of this study to learn more about the dynamics of courtroom hearings – involving self-represented and represented litigants and family law and other legal case types. This

technique could, for instance, be used productively in studying how well small claims courts are operating from the standpoint of ensuring the meaningful participation and full understanding of all litigants.

We note that this methodology is not appropriate for court staff or court research units because of the *ex parte* discussions involved. It must be conducted by independent, outside entities.

In this study, no attempt was made to determine whether there was any systematic difference between the cases in which both litigants agreed to participate in the videotaping/post hearing interview process and the cases in which one or both of the parties declined. Based on our observations (we observed a number of the hearings that we did not videotape) we do not believe that there were any such systematic differences in the cases in which the litigants agreed and declined to participate in the study. We perceived no difference in the nature of the cases, the emotional level of the proceedings, the complexity of the issues, or the behavior of the judges and litigants. However, future research might attempt to gather data to test that assumption – such as by asking judges to complete hearing observation questionnaires on the hearings in which one of the parties declined to participate as well as on those actually videotaped.

In addition, courts can use videotaping of judges during hearings for the judges' own use in improving their performance. We were struck by how useful the judges in the study found the video review and discussion process. Several courts have used videotaping in this way.

### **Further use of the materials collected on these fifteen cases**

The videotapes obtained during this research are being used to produce a companion video report on the research for presentation to judges. The insights and some of videotaped segments have been included in the SJI-supported *Curriculum on Access to Justice in the Courtroom for the Self-Represented*. That curriculum includes 80 best practice segments.

### **Topics warranting further research**

We note that while we identified many highly effective judicial techniques and best practices for self-represented cases, there remains much to be done to understand the dynamics of judge-litigant interaction. The research technique developed here has much potential for uncovering further insights.

We also urge further research on the relationship between judicial attitudes toward self-represented litigants and the performance of such litigants in

their courtrooms. We believe that the potential implications of a cause and effect relationship between these two factors could be of great importance in judicial education and in court administration generally.

We also note that the findings concerning the depth of litigant understanding of the issues arising in the hearings we studied in courts with positive environments for self-represented litigants cry out for comparison to less supportive court environments. It would be very useful to compare the results from these courts that have been working to improve their services to self-represented litigants with results from courts that have not taken those steps. On the other hand, we doubt that researchers would be able to obtain the cooperation of court leaders in those courts to videotape court hearings, because the fundamental research hypothesis would be that the performance of those courts is inferior to that in the four courts involved in the current study. We encountered significant resistance to this research project even in the courts that have been leaders in providing services for self-represented litigants. The barriers to access in courts that have been less sympathetic to the needs of these litigants would, we believe, be insurmountable.

Finally, we believe that it would be fascinating to compare the level of understanding by self-represented litigants of the issues involved in contested family law hearings with that of represented litigants in the same types of hearings in the same courts. We suggest as a working hypothesis for exploration that represented litigants leave the courtroom with less understanding of the proceedings than self-represented litigants have. Judges and lawyers make little effort to use layman's terms in those proceedings and use none of the effective practices described and recommended in this report to enhance the understanding of laypersons concerning the courtroom process and the issues being decided. One of the emerging themes from the assessment of innovations introduced to deal more effectively with cases involving self-represented litigants is that they should be applied to cases involving represented litigants as well.

## **Appendix**

## ***Consent forms***

# Agreement to Participate in Communications Research Project - Judge

I agree that Greacen Associates, LLC or its contractor may record video and audio of my hearing in the \_\_\_\_\_ court on \_\_\_\_\_ and subsequently record my comments about that hearing.

I agree to complete a questionnaire about the hearing and about myself, with the understanding that Greacen Associates, LLC will use this information exclusively for a research study to learn about judge-litigant communications in the courtroom.

I agree that Greacen Associates, LLC may use video or audio footage from this hearing and interview in a video prepared to train judges in courtroom communication skills, provided that I have the right to view the proposed use of any video clip of me, within the proposed context of the judicial training video, and to veto that use.

The videotape of my comments and my answers to the questionnaire will be confidential. My identity will not be recorded in the research database and will not be disclosed in the research report or in the judicial training video.

I grant to Greacen Associates, LLC, the National Center for State Courts, and the Self-Represented Litigation Network, its agents and employees all rights to exhibit any resulting work in video or DVD form publicly or privately and to market and sell copies. I waive any rights, claims or interest I may have to control the use of my likeness in the video, except as provided above, and agree that it may be used without additional compensation to me.

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Witness for Greacen Associates, LLC:** \_\_\_\_\_

**Greacen Associates, LLC  
HCR 78 Box 23  
Regina, New Mexico 87046  
505-289-2164**

# Agreement to Participate in Communications Research Project

I agree that Greacen Associates, LLC or its contractor may record video and audio of my hearing in the \_\_\_\_\_ court on \_\_\_\_\_ and subsequently record my comments about that hearing.

I agree to complete a questionnaire about the hearing and about myself, with the understanding that Greacen Associates, LLC may use this information in a research study to learn about judge-litigant communications in the courtroom.

I agree that Greacen Associates, LLC may use video or audio footage from this hearing and interview in a video prepared to train judges in courtroom communication skills.

None of my comments will be communicated to the judge in any form. My identity will not be recorded in the research database and will not be disclosed in the research report or in the judicial training video.

I will receive \$100 for my participation in this research project.

I grant to Greacen Associates, LLC, the National Center for State Courts, and the Self-Represented Litigation Network, its agents and employees all rights to exhibit any resulting work in print and electronic form publicly or privately and to market and sell copies. I waive any rights, claims or interest I may have to control the use of my likeness in the video and agree that it may be used as described above without additional compensation to me.

I am at least 18 years of age, have read and understand this agreement, and am competent to execute it.

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Witness for Greacen Associates, LLC:** \_\_\_\_\_

**Greacen Associates, LLC  
HCR 78 Box 23  
Regina, New Mexico 87046  
505-289-2164**

# Agreement to Participate in Communications Research Project – DCSS Attorney

I agree that Greacen Associates, LLC may record video and audio of my hearing in the \_\_\_\_\_ court on \_\_\_\_\_.

I agree that Greacen Associates, LLC may use video or audio footage from this hearing in a video prepared to train judges in courtroom communication skills.

My identity will not be recorded in the research database for the project and will not be disclosed in the research report or in the judicial training video.

I grant to Greacen Associates, LLC, the National Center for State Courts, and the Self-Represented Litigation Network, its agents and employees all rights to exhibit any resulting work in print and electronic form publicly or privately and to market and sell copies. I waive any rights, claims or interest I may have to control the use of my likeness in the video and agree that it may be used as described above without compensation to me.

I am at least 18 years of age, have read and understand this agreement, and am competent to execute it.

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Witness for Greacen Associates, LLC:** \_\_\_\_\_

**Greacen Associates, LLC  
HCR 78 Box 23  
Regina, New Mexico 87046  
505-289-2164**

## ***Data gathering forms***

# Self-Represented Litigation Network

## Courtroom Communications Research Project

### Litigant Hearing Feedback Form

Greacen Associates case number \_\_\_\_\_  
Petitioner/Respondent

Please state your agreement or disagreement with the following statements about your experience in court today

	5 Strongly Agree	4 Agree	3 Neutral	2 Disagree	1 Strongly Disagree		
1. The way my case was handled was fair.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>		
2. The judge did not listen to my side of the story before he or she made a decision.		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
3. The judge had the information necessary to make good decisions about my case.			<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. I was not treated the same as everyone else.	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
5. The judge treated me with respect	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
6. The judge did not care about my case.			<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. I am satisfied with what happened during my hearing today	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
8. I did not understand the words used by the judge and other persons in the courtroom.	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
9. I am clear about exactly what the judge decided.	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
10. The outcome of the hearing was favorable to me.	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Please provide the following information about yourself.

<p>11. How often are you typically in this courthouse? (Choose the closest estimate)</p> <p><input type="checkbox"/> First time in this courthouse</p> <p><input type="checkbox"/> Once a year or less</p> <p><input type="checkbox"/> Several times a year</p> <p><input type="checkbox"/> Regularly</p>	<p>12. What is your gender? (Check one)</p> <p><input type="checkbox"/> Male</p> <p><input type="checkbox"/> Female</p>	<p>13. How do you identify yourself? (Check one)</p> <p><input type="checkbox"/> American Indian or Alaska Native</p> <p><input type="checkbox"/> Asian</p> <p><input type="checkbox"/> Black or African American</p> <p><input type="checkbox"/> Hispanic or Latino</p> <p><input type="checkbox"/> Native Hawaiian or other Pacific Islander</p> <p><input type="checkbox"/> White</p> <p><input type="checkbox"/> Mixed Race</p> <p><input type="checkbox"/> Other</p>
<p>14. What is your age?</p> <p><input type="checkbox"/> under 18</p> <p><input type="checkbox"/> 18-24</p> <p><input type="checkbox"/> 25-34</p> <p><input type="checkbox"/> 35-44</p> <p><input type="checkbox"/> 45-54</p> <p><input type="checkbox"/> 55-64</p> <p><input type="checkbox"/> 65 and over</p>	<p>15. What is your total monthly <u>household</u> income (this includes all income sources including child support) <u>before</u> taxes?</p> <p><input type="checkbox"/> \$500 or less</p> <p><input type="checkbox"/> \$501 to \$1,000</p> <p><input type="checkbox"/> \$1,001 to \$1,500</p> <p><input type="checkbox"/> \$1,501 to \$2,000</p> <p><input type="checkbox"/> \$2,001 to \$2,500</p> <p><input type="checkbox"/> \$2,501 to \$3,000</p> <p><input type="checkbox"/> \$3,001 to \$3,500</p> <p><input type="checkbox"/> \$3,501 to \$4,000</p> <p><input type="checkbox"/> \$4,001 to \$5,000</p> <p><input type="checkbox"/> \$5,001 to \$6,000</p> <p><input type="checkbox"/> \$6,001 to \$7,000</p> <p><input type="checkbox"/> \$7,001 to \$8,000</p> <p><input type="checkbox"/> above \$8,001</p>	<p>16. What is the highest level of schooling you completed?</p> <p><input type="checkbox"/> 4<sup>th</sup> grade or below</p> <p><input type="checkbox"/> 5<sup>th</sup> to 8<sup>th</sup> grade</p> <p><input type="checkbox"/> 9<sup>th</sup> to 11<sup>th</sup> grade</p> <p><input type="checkbox"/> High school /GED</p> <p><input type="checkbox"/> Some college</p> <p><input type="checkbox"/> Associates degree</p> <p><input type="checkbox"/> Bachelors degree</p> <p><input type="checkbox"/> Graduate degree</p>

Thank you very much.

**Self-Represented Litigation Network**

**Courtroom Communications Research Project**

**Judicial Feedback Form**

Greacen Associates case number(s) \_\_\_\_\_

**Based on your experience with self-represented litigants in your courtroom over the course of the past year, please state your agreement or disagreement with the following statements**

	5 Strongly Agree	4 Agree	3 Neutral	2 Disagree	1 Strongly Disagree
1. Self-represented persons generally have realistic expectations about the likely case outcome	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. Self-represented persons generally appear to understand the court's rulings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Self-represented persons generally have documents prepared correctly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. Self-represented persons generally have the necessary evidence and witnesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. Self-represented persons generally follow procedural rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. Self-represented persons generally participate effectively in court proceedings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. Self-represented persons generally "tell their stories" effectively	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. Self-represented persons generally need the court's assistance to complete a hearing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. Self-represented persons generally take more of my time than represented persons in similar cases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**The following statements reflect my view of the proper role of a judge in a hearing involving self-represented litigant(s)**

	5 Strongly Agree	4 Agree	3 Neutral	2 Disagree	1 Strongly Disagree
10. A judge should conduct a hearing involving self-represented litigant(s) exactly as if they were lawyers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11. Before a hearing involving self-represented litigants, a judge should explain how the hearing will proceed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12. A judge should ask whatever questions are needed to elicit the information needed for a fair decision	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13. Unless there is objection, a judge should accept any evidence proffered –giving it the weight it deserves – regardless of a self-represented litigant's ability to comply with the rules of evidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Self-Represented Litigation Network**

**Courtroom Communications Research Project**

**Judge Courtroom Observation Form**

Greacen Associates case number \_\_\_\_\_

Plaintiff/Petitioner					Defendant/Respondent					
Strongly Agree	Agree	Neither	Disagree		<b>Behavioral Statement</b>	Strongly Agree	Agree	Neither	Disagree	Strongly Disagree
Strongly Agree			Agree	Nor		5	4	3	2	1
Disagree		Disagree								
5	4	3	2	1	Litigant had realistic expectations about the likely outcome	<input type="radio"/>				
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Litigant appeared to understand the court's ruling(s)	<input type="radio"/>				
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Litigant had documents prepared correctly	<input type="radio"/>				
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Litigant had needed evidence or witnesses	<input type="radio"/>				
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Litigant followed court procedural rules	<input type="radio"/>				
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Litigant participated effectively in the proceedings	<input type="radio"/>				
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Litigant was able to "tell his or her story" effectively	<input type="radio"/>				
<b>Outcome</b>										
<input type="checkbox"/> Plaintiff/petitioner prevailed										
<input type="checkbox"/> Defendant/respondent prevailed										
<input type="checkbox"/> Both parties prevailed in part										
<input type="checkbox"/> Neither party prevailed										
<input type="checkbox"/> Taken under advisement										
<input type="checkbox"/> No decision because the matter was continued										