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Help at Your Fingertips: A Twenty-First Century Response to the Pro Se Phenomenon

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Help at Your Fingertips: A Twenty-First Century Response to the Pro Se Phenomenon

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I. INTRODUCTION

In July 2001, Aventis Pharmaceuticals, Inc. fired Susan Hudock, an award-winning sales representative suffering from shingles.¹ Angered and frustrated, Ms. Hudock retained an attorney and filed suit against her former employer, alleging that the company violated the Americans with Disabilities Act by failing to make “reasonable accommodations” that would enable her to perform certain job-related functions.² After incurring over \$18,000 in legal fees over two years and with no end in sight, Ms. Hudock decided to take a drastic step: she fired her attorney and proceeded with her case *pro se*.³

Despite being warned by her former attorney that she would “never survive summary judgment,” Ms. Hudock did just that, largely through the aid of legal resources she found on the Internet.⁴ When her trial finally began in June 2005, Ms. Hudock rose from the sole chair at the plaintiff’s table and began her opening statement by telling the jury, “I have to tell you, I’m terrified.”⁵ Nevertheless, she forged ahead with her case, struggling with evidentiary procedures,

1. Kara Scannell, *In Phoenix Court, Sales Rep Battles Aventis on Her Own*, WALL ST. J., Aug. 9, 2005, at A1.

2. *Id.* The Americans with Disabilities Act (ADA) prohibits employers from discriminating against an otherwise-qualified individual solely on the basis of his or her disability. Americans with Disabilities Act § 102(a), 42 U.S.C. § 12112(a) (2007). The term “discriminate” is defined to include “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such [employer] can demonstrate that the accommodation would impose an undue hardship on the operation of the business of [the employer].” *Id.* § 12112(b)(5)(A).

3. Scannell, *supra* note 1, at A1. A *pro se* litigant is “[o]ne who represents oneself in a court proceeding without the assistance of a lawyer.” BLACK’S LAW DICTIONARY 1258 (8th ed. 2004).

4. Scannell, *supra* note 1, at A1. For instance, Ms. Hudock found the full text of the Americans with Disabilities Act through a Google search and wrote briefs with the aid of downloaded legal-writing software; as she prepared for trial, she used an online guide to writing opening statements and watched the television show *Law & Order: Trial by Jury* to learn about courtroom procedures. *Id.*

5. *Id.*

witness examination, and general trial strategy; her well-represented adversary had no such difficulties.⁶ Although the jury ultimately found for Aventis, Ms. Hudock remains undeterred.⁷ She plans to represent herself again on appeal.⁸

Ms. Hudock's experience has become increasingly common in recent years, with both state and federal courts seeing a marked increase in pro se civil litigation. In the federal district courts, nonprisoner pro se litigants filed over twenty thousand cases in a recent one-year period; the federal appellate courts saw a twentypercent increase in pro se appeals between 1993 and 2004.⁹ Though the trend shows no signs of abating,¹⁰ not all members of the legal community have welcomed it. Both scholarly and practical debates have centered on the appropriate balance between an individual's right to represent himself¹¹ and the need for judicial efficiency.¹²

In response, courts, state bar associations, and other institutions have developed programs designed to help self-represented litigants navigate through their local court systems. For instance, many state courts sponsor programs and clinics that aid pro se litigants with their cases.¹³ Moreover, several state bars have adopted "unbundling" rules that allow lawyers and law firms to carry out discrete legal tasks, rather than provide full representation, for their clients.¹⁴ In recent years, the Internet has also played an increasingly significant role in providing pro se litigants with guidance and access to legal authorities; many jurisdictions, private

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. See 28 U.S.C. § 1654 (2007) ("In all courts of the United States the parties may plead and conduct their own cases personally.").

12. See, e.g., Tiffany Buxton, Note, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 CASE W. RES. J. INT'L L. 103, 114-17 (2002) (enumerating specific problems associated with pro se litigation); Drew A. Swank, Note and Comment, *The Pro Se Phenomenon*, 19 BYU J. PUB. L. 373, 384 (2005) (explaining that pro se litigants are likely to require more time and assistance throughout the litigation process due to their unfamiliarity with courtroom procedures); see also *infra* Part II.C (detailing various unique challenges created by pro se litigation).

13. See, e.g., John M. Stanocb, *Working with Pro Se Litigants: The Minnesota Experience*, 24 WM. MITCHELL L. REV. 297 (1998) (discussing Minnesota's judicially-sponsored responses to the pro se phenomenon); see also *infra* Part III.A (describing and analyzing various forms of institutionally sponsored pro se clinics).

14. See *infra* Part III.B (discussing and analyzing the dynamics of providing unbundled legal services). See generally Bradley A. Vauter, *Unbundling: Filling the Gap*, 79 MICH. BUS L.J. 1688 (2000) (explaining the "unbundling" concept).

organizations, and even individuals now make such resources available to anyone able to access the Internet.¹⁵

While others have commented on the pro se trend and these various assistance programs in isolation, this Comment presents a comprehensive analysis of the impact of these various efforts on pro se civil litigants and on the civil judicial system as a whole.¹⁶ At the same time, it seeks to evaluate whether any of these resources, or some combination thereof, can reconcile the competing values of self-representation and judicial economy. Part II provides background information and data on the right to self-representation as well as the growing popularity of and challenges associated with proceeding pro se. In Part III, the various approaches offered by courts, bar associations, and technological resources to assist pro se litigants will be presented, and the impact of these initiatives on both pro se litigants and the court systems in which they pursue their claims will be analyzed. Part IV proposes a framework for an integrated, Internet-based pro se assistance program and explains why such an approach is best positioned to balance the needs of pro se litigants with the principles of judicial economy and efficiency. Finally, Part V offers conclusions and recommendations on the practical application of pro se assistance programs and the future of pro se representation.

II. ORIGINS, DYNAMICS, AND CHALLENGES OF THE PRO SE BOOM

A litigant's ability to represent himself before a court is a right deeply rooted in the American legal system. This Part briefly discusses the history and sources of pro se litigation in the United States before examining the growing popularity of proceeding pro se in both state and federal courts. A presentation of the various problems associated with pro se litigation concludes the discussion.

A. Origins of Pro Se Litigation

Federal and state criminal defendants are guaranteed the right to counsel—and the inverse right to refuse counsel—by the Sixth Amendment of the U.S. Constitution.¹⁷ This constitutional guarantee,

15. See, e.g., Legal Information Institute, <http://www.law.cornell.edu> (last visited Mar. 5, 2007); FindLaw, <http://www.findlaw.com> (last visited Mar. 5, 2007); The Pro Se Law Center, <http://www.pro-selaw.org> (last visited Mar. 5, 2007); see also *infra* Part III.C (providing background and analysis on Internet resources designed to aid *pro se* litigants).

16 While criminal defendants can also proceed pro se, this Note focuses exclusively on civil pro se litigants and does not consider their criminal counterparts.

17. The Sixth Amendment guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” U.S. CONST. amend. VI.

however, does not extend to civil litigants. Thus, the source of the right to proceed pro se in civil cases must be found elsewhere.

1. Pro Se Litigants in the Federal Courts

The right to represent oneself in the federal courts can be traced to medieval England. In 1215, the Magna Carta raised the possibility of self-representation, announcing that “[t]o no one will we sell, to no one will we refuse or delay, right or justice.”¹⁸ Since the American legal system preserved much of the British common law system, it is unsurprising that the ability to proceed pro se was established early in U.S. history. The Judiciary Act of 1789 proclaimed “[t]hat in all courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively.”¹⁹ Congress ultimately incorporated the right to proceed pro se into the United States Code, adopting much of the language of the Judiciary Act of 1789.²⁰ Thus, federal civil litigants have a statutory right to pursue their claims either individually or with the assistance of counsel.²¹

2. Pro Se Litigants in the State Courts

Since state court civil litigants are not guaranteed the right to counsel—or to refuse counsel—by the U.S. Constitution,²² states must specifically bestow these interconnected rights upon their citizens. Some states have established the right to proceed pro se in their state constitutions.²³ For instance, the Georgia Constitution provides that “[n]o person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person’s own cause in any of

18. MAGNA CARTA art. XL (1215). For more information on the evolution of pro se representation in Great Britain, see Buxton, *supra* note 12, at 107-08.

19. JUDICIARY ACT OF 1789 § 35 (1789), available at http://www.constitution.org/uslaw/judiciary_1789.htm.

20. 28 U.S.C. § 1654 (2005).

21. *Id.*

22. See *supra* note 17 and accompanying text (explaining that while criminal defendants have a federal constitutional right to counsel, no such right exists for civil litigants).

23. See ALA. CONST. art. I, § 10 (“[N]o person shall be barred from prosecuting or defending before any tribunal in this state, by himself or counsel, any civil cause to which he is a party.”); MISS. CONST. art. 3, § 25 (“No person shall be debarred from prosecuting or defending any civil cause for or against him or herself, before any tribunal in the state, by him or herself, or counsel, or both.”); UTAH CONST. art. I, § 11 (“[N]o person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.”); WIS. CONST. art. I, § 21(2) (“In any court of this state, any suitor may prosecute or defend his suit either in his own proper person or by an attorney of the suitor’s choice.”).

the courts of this state;"²⁴ similarly, the Michigan Constitution bestows upon "[a] suitor in any court of this state . . . the right to prosecute or defend his suit, either in his own proper person or by an attorney."²⁵ Many other states, such as Connecticut, Florida, and Oregon, have interpreted state constitutional provisions providing for a general right to redress of injuries to include the right to be heard.²⁶ Still other states afford their citizens the right of self-representation via statute.²⁷ Thus, while they use various mechanisms to do so, states widely recognize civil litigants' right to proceed pro se.

B. *The Recent Increase in Pro Se Litigation*

In recent years, both state and federal courts have seen a marked increase in pro se litigation. This Section presents recent data on this rising trend before discussing several factors that may explain the self-representation movement.

1. Statistics on Pro Se Litigation

Although the ability to proceed pro se is long-standing in state and federal courts, both systems have seen significant increases in the number of self-represented civil litigants in recent years. In the federal district courts, nonprisoner pro se litigants filed 21,615 cases between October 1, 2004 and September 30, 2005.²⁸ The appellate docket has also been affected by self-representation, as pro se appeals

24. GA. CONST. art. I, para. XII, § 1.

25. MICH. CONST. art. I, § 13.

26. CONN. CONST. art. I, § 10 ("All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."); FLA. CONST. art. I, § 21 ("The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."); OR. CONST. art. I, § 10 ("No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation."); Arkansas, Delaware, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, New Hampshire, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, West Virginia, and Wyoming also provide for self-representation in the context of the right to redress of injuries. Helen B. Kim, Note, *Legal Education for the Pro Se Litigant: A Step Towards a Meaningful Right to Be Heard*, 96 YALE L.J. 1641, 1641 n.2 (1987).

27. *E.g.*, 42 PA. CONS. STAT. § 2501(a) (2005) ("In all civil matters before any tribunal every litigant shall have a right to be heard, by himself and his counsel, or by either of them."); WASH. REV. CODE § 2.48.190 (2005) ("[A]ny person may appear and conduct his or her own case in any action or proceeding brought by or against him or her, or may appear in his or her own behalf in the small claims department of the district court.")

28. Scannell, *supra* note 1, at A1.

currently comprise a significant portion of all federal appeals filed.²⁹ For instance, nonprisoner pro se litigants consistently accounted for approximately thirteen to fourteen percent of all civil federal appeals filed annually between 1997 and 2004;³⁰ nonprisoner civil pro se litigants filed between twenty-two and twenty-six percent of the total civil pro se appeals made in these years.³¹ Additionally, a recent study of federal litigation reported that “pro se litigants appeared in thirty-seven percent of all cases, with the number of pro se litigants in federal appeals courts having increased by forty-nine percent in a two-year period.”³² Clearly, pro se litigants have a significant presence in the federal courts.

Unfortunately, empirical data on pro se civil litigation in state courts is relatively scarce.³³ This is largely due to the fact that many states do not track such statistics; of the states that do monitor pro se

29. The federal courts first began tracking federal pro se appeals in 1993. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, JUDICIAL FACTS AND FIGURES: MULTI-YEAR STATISTICAL COMPILATIONS OF FEDERAL COURT CASELOAD THROUGH FISCAL YEAR 2005, tbl.2.4 (2006), <http://www.uscourts.gov/judicialfactsfigures/Table204.pdf>. In 1995, pro se litigants were responsible for 19,973, or 39.9%, of the 50,072 federal appeals filed. *Id.* In 2004, pro se litigants filed 26,800, or 42.7%, of the 62,762 total appeals. *Id.*

30. See The Federal Judiciary—Judicial Business of the United States Courts 2004, <http://www.uscourts.gov/judbus2004/contents.html> (showing that nonprisoner pro se litigants filed (a) 4563 of the 33,075 total civil appeals made from the district courts in 2004 and (b) 4641 of the 34,390 total civil appeals made from the district courts in 2003); The Federal Judiciary—Judicial Business of the United States Courts 2002, <http://www.uscourts.gov/judbus2002/contents.html> (showing that nonprisoner pro se litigants filed (a) 4606 of the 35,499 total civil appeals made from the district courts in 2002 and (b) 4603 of the 36,046 total civil appeals made from the district courts in 2001); The Federal Judiciary—Judicial Business of the United States Courts 2000, <http://www.uscourts.gov/judbus2000/contents.html> (showing that nonprisoner pro se civil litigants filed (a) 4918 of the 35,780 total civil appeals made from the district courts in 2000 and (b) 4927 of the 36,680 total civil appeals made from the district courts in 1999); The Federal Judiciary—Judicial Business of the United States Courts 1998, <http://www.uscourts.gov/dirrpt98/> (showing that nonprisoner pro se civil litigants filed (a) 5316 of the 37,522 total civil appeals made from the district courts in 1998 and (b) 4946 of the 35,414 total civil appeals made from the district courts in 1997).

31. See The Federal Judiciary—Judicial Business of the United States Courts 2004, *supra* note 30 (showing that nonprisoners made (a) 4563 of the 19,093 total pro se civil appeals filed in 2004 and (b) 4641 of the 20,108 pro se civil appeals filed in 2003); The Federal Judiciary—Judicial Business of the United States Courts 2002, *supra* note 30 (showing that nonprisoners made (a) 4606 of the 20,660 pro se civil appeals filed in 2002 and (b) 4603 of the 20,415 pro se civil appeals filed in 2001); The Federal Judiciary—Judicial Business of the United States Courts 2000, *supra* note 30 (showing that nonprisoners made (a) 4918 of the 19,945 pro se civil appeals filed in 2000 and (b) 4927 of the 19,922 pro se civil appeals filed in 1999); The Federal Judiciary—Judicial Business of the United States Courts 1998, *supra* note 30 (showing that nonprisoners made (a) 5316 of the 20,400 pro se civil appeals filed in 1998 and (b) 4946 of the 19,171 pro se civil appeals filed in 1997).

32. Swank, *supra* note 12, at 377.

33. JONA GOLDSCHMIDT ET AL., MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS 9 (1998).

trends, many do not keep precise records. For instance, forty-five states participated in the 1999 National Conference on Pro Se Litigation. More than ninety-five percent of the participants stated that they had seen a general increase in the number of pro se litigants in their courtrooms; most characterized the increase as moderate, but twenty percent called the increase “dramatic.”³⁴ However, the report conceded that these data were necessarily rough statistical estimates because most of the participating states did not keep precise or detailed statistics on pro se litigation.³⁵ Similarly, the Minnesota Conference of Chief Judges Committee on the Treatment of Litigants and Pro Se Litigation recently issued an extensive report on the status of pro se litigation but stated only that there was “an increasing number of pro se litigants in Minnesota state courts.”³⁶

However, some states have recently begun to collect and publish data on the incidence of self-representation in their courts. In 2004, Montana reported that self-represented, nonprisoner litigants filed 9.4% of all civil cases in the state trial courts and that 32.3% of all pro se litigants were nonprisoners in that year.³⁷ The New Hampshire Supreme Court Task Force on Self-Representation similarly reported a high incidence of pro se litigants in the state judicial system, with “one party [proceeding] pro se in 85% of all civil cases in the district court and 48% of all civil cases in the superior court.”³⁸ Self-representation at the local level, such as the New Hampshire district court system, is also prevalent. In Chicago, for instance, twenty-five percent of all civil cases were filed by pro se litigants in 1995.³⁹

34. Beth Lynch Murphy, *Results of a National Survey of Pro Se Assistance Programs: A Preliminary Report* (American Judicature Society 2000), http://www.ajs.org/prose/pro_murphy.asp (last visited Mar. 5, 2007).

35. *Id.* at n.2.

36. GOLDSCHMIDT ET AL., *supra* note 33, at 9.

37. Montana Supreme Court Case Load Statistics: 2004 Pro Se Statistics 1, http://courts.mt.gov/clerk/stats/04stat_info.asp (last visited Mar. 5, 2007).

38. State of New Hampshire Judicial Branch, *Challenge to Justice: A Report on Self-Represented Litigants in New Hampshire Courts* 8 (2004), <http://www.courts.state.nh.us/supreme/prosereport.pdf> (last visited Mar. 5, 2007). In New Hampshire, district courts are “community courts” that exist state-wide in cities and towns. Judicial Branch of New Hampshire—District Court, <http://www.courts.state.nh.us/district/index.htm> (last visited Mar. 5, 2007). The state superior courts have “jurisdiction over a wide variety of cases, including criminal, domestic relations, and civil cases, and provide[] the only forum in [the] state for trial by jury.” Judicial Branch of New Hampshire—Superior Court, <http://www.courts.state.nh.us/superior/index.htm> (last visited Mar. 5, 2007).

39. GOLDSCHMIDT ET AL., *supra* note 33, at 9; *see also* Patricia Manson, *Help Is on the Way For Pro Se*, CHI. DAILY L. BULL., Dec. 30, 2005, at 1 (noting that pro se parties filed 913 cases in federal court in Chicago in 2003 and 1000 in 2004).

Comparative annual statistics are also limitedly available but often show an increase in the prevalence of pro se litigants in recent years. For example, Colorado's Committee on *Pro Se* Parties and Civil Justice Reform reported that pro se, non-domestic violence civil cases comprised 30.3% of the state trial court docket in 1997; by 1999, that figure had risen to 32.3%.⁴⁰ In Colorado domestic relations cases, the proportion of pro se litigants rose from 52.2% to 55.7% over the same time period.⁴¹ Significantly, these pro se increases were higher than the overall increase in the total number of cases filed.⁴² Thus, while empirical data is rather rare, it is clear that pro se parties are common litigants in state courts as well as the federal judicial system.

2. The Choice to Proceed Pro Se

Since it is commonly said that "one who is his own lawyer has a fool for a client,"⁴³ it may seem surprising that litigants have increasingly decided to represent themselves in both state and federal courts. However, scholars and pro se litigants themselves have identified several rational, well-considered reasons for deciding to do so. While the increasing cost of legal representation is often cited as the most significant factor in choosing to proceed pro se,⁴⁴ a host of psychological and social reasons have also been identified as contributing to the trend.⁴⁵

For instance, many people harbor a mistrust of the legal system or lawyers in general.⁴⁶ These litigants may feel that the presence of a lawyer will have no significant impact on the outcome of their case, leading them to prefer low-cost self reliance over expensive professional representation they perceive to be useless.⁴⁷ At the other

40. Report of The Committee on *Pro Se* Parties and Civil Justice Reform of the State of Colorado (2000), <http://www.state.co.us/cjrtf/report/report4.htm> (last visited Mar. 5, 2007).

41. *Id.*

42. *Id.*

43. *Faretta v. California*, 422 U.S. 806, 852 (1975) (Blackmun, J., dissenting).

44. *See, e.g., Swank, supra* note 12, at 378 ("Popular opinion holds that the reason for the increase in *pro se* appearances is the high cost of attorneys and litigation. Furthermore, the common belief is that all '*pro se* civil litigants want counsel to represent them . . .,' and that no person would choose to be *pro se.*") (quoting Candice K. Lee, *Access Denied: Limitations on Pro Se Litigants' Access to the Courts in the Eighth Circuit*, 36 U.C. DAVIS L. REV. 1261, 1265 (2003)). However, one study indicated that less than a third of pro se litigants have been "forced" to represent themselves due to the prohibitive cost of professional legal assistance, while nearly one-half chose to proceed pro se based on their belief that their case was "simple" and did not require a lawyer. *Id.*

45. *Id.* at 378-79.

46. *Id.* at 379.

47. *See* PATRICIA A. GARCIA, AM. BAR ASS'N, LITIGANTS WITHOUT LAWYERS: COURTS AND LAWYERS MEETING THE CHALLENGES OF SELF-REPRESENTATION 8 (2002) ("Another factor

end of the spectrum, some parties believe "that litigation has been simplified to the point that attorneys are no longer needed."⁴⁸ Others may idealize the judicial system, believing that the court will do what is "right" regardless of whether a party has legal counsel.⁴⁹ For some, the pro se choice may also be strategic: litigants may seek to gain a procedural advantage or hope that a court or a jury will be more sympathetic to a self-represented party at trial.⁵⁰

Broader societal factors, such as rising literacy rates and growing ideas of consumerism and individualism, may also contribute to litigants' choice to represent themselves by fostering a sense of empowerment and an increased belief in their personal abilities.⁵¹ Significantly, the plethora of both dramatic and "reality" legal television shows "has created a growing sense among the populace that it is simple to represent oneself in a courtroom."⁵² The Internet also offers myriad resources for pro se litigants; statutory and case law, rules of practice and procedure, legal forms, and "how-to" guides can be found by anyone able to conduct basic Internet research.⁵³ Though the exact factors influencing any particular litigant to proceed pro se may be complicated or unknowable, these enumerated factors are likely contributors to the increase in pro se litigation seen by courts in recent years.

contributing to the *pro se* trend is the anti-lawyer sentiment among many people and their growing lack of trust in the justice system. Some who have chosen to represent themselves point to problems finding a lawyer, trusting a lawyer, or communicating with a lawyer as reasons for going it alone.").

48. Swank, *supra* note 12, at 379.

49. *Id.*

50. *Id.*

51. *Id.* at 378-79.

52. GARCIA, *supra* note 47, at 8; see also Peter L. Murray & John C. Sheldon, *Should the Rules of Evidence Be Modified for Civil Non-Jury Trials?*, 17 ME. BAR J. 30, 32 (2002) (citing "the popularity of Judge Wapner-like television programs" as a factor behind the increase in pro se litigation); *supra* note 4 (discussing a pro se civil litigant's reliance on the television drama *Law and Order: Trial by Jury* when trying to learn courtroom procedures and strategy).

53. See, e.g., Legal Information Institute, *supra* note 15 (providing access to court opinions, constitutions and codes, state and federal statutes, and an introduction to basic legal citation); FindLaw, *supra* note 15 (offering information about various legal topics, such as personal injury, products liability and employee rights, as well as access to legal forms and state laws). In preparing to represent herself, for instance, Susan Hudock used a popular Internet search engine to find more information about the Americans with Disabilities Act, on which her claim was based. Scannell, *supra* note 1, at A1. Through her searches, she was able to find websites, including FindLaw and the Legal Information Institute, that gave her access to court opinions, rules of evidence, downloadable legal writing software, and a guide to writing opening statements. *Id.*

C. Problems Associated with the Pro Se Boom

Though the pro se phenomenon is a reality for many court systems, not all have openly welcomed it. Proceeding pro se poses many challenges not just for individual litigants, but also for the court systems that must absorb them. Pro se litigants' unfamiliarity with court rules and customs can result in delays detrimental to judicial efficiency; judges' and court officials' inability to compromise their impartiality by aiding the pro se litigants appearing before them can further exacerbate this problem. Moreover, there is a great deal of judicial uncertainty and inconsistency regarding the proper standards to which self-represented parties should be held at various stages of litigation. Finally, pro se litigants in general often face obstacles from the public, which may perceive them as ignorant or wasteful of judicial resources. Each of these issues will now be explored in turn.

1. Interactions Between Pro Se Litigants and Trial Judges

Since pro se litigants generally have minimal or no experience with the judicial system, they are often unprepared for and unfamiliar with the intricacies of civil procedure and judicial custom. Consequently, the self-represented "are more likely to neglect time limits, miss court deadlines, and have problems understanding and applying the procedural and substantive law pertaining to their claim"⁵⁴ in the initial stages of litigation. Even when they succeed in bringing their cases to trial, pro se litigants can still face significant obstacles; for instance, they may fail to meet the requisite burden of proof due to their unfamiliarity with the rules of evidence.⁵⁵ They also risk falling prey to the trial strategy of opposing counsel, who may take advantage of pro se litigants' inexperience by commandeering the process.⁵⁶ Throughout litigation, pro se litigants are likely to take up more time both in the courtroom and the clerk's office as they struggle to comply with legal customs, leading some to label them "unduly burdensome on judges, clerks, and court processes."⁵⁷

Further compounding the problem of judicial economy is the inability of judges and other court officials to offer legal advice to pro se litigants. The Supreme Court has never "directly addressed the

54. Buxton, *supra* note 12, at 114.

55. *Id.*

56. *Id.* at 114-15. The "additional time spent by the judge explaining the terms and their import to the *pro se* litigant," *id.* at 115, may also create an unfavorable impression on jurors in a jury trial.

57. Swank, *supra* note 12, at 384.

question of whether courts owe *pro se* civil litigants a duty to assist them throughout the entire trial process,"⁵⁸ so only general prudential guidelines are available. For instance, judges cannot offer excessive help to *pro se* litigants appearing before them; to do so would risk compromising the impartiality of the tribunal and thus the integrity of the adversary system as a whole.⁵⁹ The balance between impartiality and assistance is even more complicated with regard to court clerks and other personnel, who are often a *pro se* litigant's first—and most significant—point of contact within the judicial system.⁶⁰ Since these officials are not lawyers, they are prohibited from giving "legal advice" to litigants.⁶¹ Although clerks can offer "legal information," the line between these two forms of aid can be a hazy one, and it may vary by jurisdiction.⁶² Since responding to basic, common questions such as "how do I file?" and "what should this motion look like?" can arguably be construed as giving legal advice, clerks often must choose between disregarding the rules or being essentially useless to *pro se* litigants.⁶³ Coming full circle, however, clerks' lack of legal training may lead them to give inaccurate or incomplete information to a querying

58. Edward M. Holt, Student Commentary, *How to Treat "Fools": Exploring the Duties Owed to Pro Se Litigants in Civil Cases*, 25 J. LEGAL PROF. 167, 168 (2001). The Supreme Court has, however, spoken to the relationship between the court and a *pro se* litigant in a *criminal* trial, holding that a *pro se* defendant "does not have a constitutional right to receive personal instruction from the trial judge on courtroom procedure[, n]or does the Constitution require judges to take over chores for a *pro se* defendant that would normally be attended to by trained counsel as a matter of course." *McKaskle v. Wiggins*, 465 U.S. 168, 183-84 (1984).

59. See Julie M. Bradlow, Comment, *Procedural Due Process Rights of Pro Se Civil Litigants*, 55 U. CHI. L. REV. 659, 668 (1988) ("The judge who unduly aids the *pro se* litigant . . . is, it is argued, wrongfully acting as an advocate for one side of the dispute."); Holt, *supra* note 58, at 170 (explaining that although jurisdictions may define "legal advice" differently, the core principle underlying the rule is that "clerks are not lawyers and therefore should be prohibited from practicing law").

60. Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 1992-93 (1999).

61. *Id.* (noting that some jurisdictions establish this restriction by statute, while others encompass it by prohibiting clerks from "practicing law" and mandating their impartiality); see also Holt, *supra* note 58, at 170 ("While the definition of 'legal advice' varies among jurisdictions, the fundamental reasoning behind the rule is that clerks are not lawyers and therefore should be prohibited from practicing law.").

62. For instance, clerks in some jurisdictions cannot aid *pro se* litigants by helping them with forms or giving them sample pleadings, while other jurisdictions permit such assistance by classifying it as outside the scope of "legal advice." Engler, *supra* note 60, at 1994.

63. Holt, *supra* note 58, at 170-71 (citing Engler, *supra* note 60, at 1996); see also Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics A Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1879, 1890 (1999) ("Some have tried to capture the distinction by describing information as responding to 'how do I do' questions and advice as responding to 'should I' questions; the distinction is not generally that helpful because questions are not neatly phrased in this manner.").

litigant.⁶⁴ Thus, pro se litigants are largely left to their own devices when navigating through both the pre-trial and trial stages of their cases.

2. The Standards to Which Pro Se Litigants Should Be Held

A further challenge to pro se litigants is the widespread judicial uncertainty over the proper standards to which pro se litigants should be held throughout the litigation process. Although self-represented parties may hope for, or even expect, lenient treatment due to their lack of substantive and procedural legal training, they rarely receive it. The Supreme Court has only addressed procedural standards for pro se litigants in the pleadings context.⁶⁵ In *Haines v. Kerner*, Haines was a state prisoner who filed a pro se civil rights claim against prison officials.⁶⁶ In his complaint, he (rather broadly) alleged that he was placed in solitary confinement without due process and was subsequently injured while so confined.⁶⁷ In reversing the lower courts' dismissal of the complaint for failure to state a claim upon which relief could be granted under Federal Rule of Civil Procedure 12(b)(6), the Supreme Court held that "the pro se complaint . . . [is held] to less stringent standards than formal pleadings drafted by lawyers."⁶⁸

Since this explicit, lenient standard applies only to pleadings, considerable judicial discretion exists in dictating the standards of conduct and procedure for the self-represented. In general, courts seem to require strict procedural compliance beyond the pleadings stage. The D.C. Circuit, for instance, has held that "[d]istrict courts do not need to provide detailed guidance to *pro se* litigants but should supply minimal notice of the consequences of not complying with procedural rules" but that this assistance "does not constitute a license for a plaintiff filing *pro se* to ignore the Federal Rules of Civil Procedure."⁶⁹ Similarly, the Seventh Circuit has noted that "[a]lthough civil litigants who represent themselves . . . benefit from various procedural protections not otherwise afforded to the attorney-

64. Engler, *supra* note 60, at 1997.

65. *Haines v. Kerner*, 404 U.S. 519 (1972).

66. *Id.* at 519-20.

67. *Id.* at 520.

68. *Id.*

69. *Moore v. Agency for Int'l Dev.*, 994 F.2d 874, 876 (D.C. Cir. 1993) (internal citations omitted).

represented litigant, . . . *pro se* litigants are not entitled to a general dispensation from the rules of procedure or court imposed deadlines.”⁷⁰

Unfortunately, this standard is imprecise at best and frequently varies in application. In the summary judgment context, for example, some jurisdictions allow courts to provide “particularized instruction” to *pro se* litigants, while others hold them to the same standards as represented parties.⁷¹ Combined with *pro se* litigants’ relative ignorance of legal substance and procedure, such variation in standards at different stages in the civil litigation process can create great confusion and uncertainty for the self-represented, further compounding the difficulties they face in pursuing their claims.

3. Negative Public Perceptions of Pro Se Litigants

A misinformed and judgmental public may also contribute to the problems facing *pro se* litigants. Stemming from Justice Blackmun’s famous assertion that “one who is his own lawyer has a fool for a client,”⁷² the public often negatively perceives litigants who “choose” to represent themselves.⁷³ Those who participate in and take notice of the judicial system frequently characterize *pro se* litigants as “pests, nuts, [and] an increasing problem” and describe them as “underprivileged, uneducated, and almost certainly lack[ing] . . . both the skill and knowledge adequately needed to prepare their defense.”⁷⁴ The pressures placed by *pro se* litigants on judicial efficiency and economy may also compound the public’s negative opinion. As previously mentioned, self-represented parties often clog the clerk’s office and slow down courtroom proceedings due to their ignorance of court rules and procedures.⁷⁵ Additionally, some judges and lawyers suspect that the choice to proceed *pro se* may sometimes be motivated by a desire to gain a strategic advantage over represented parties by seeking to draw on the court’s sympathies and thus evade compliance with court procedures and customs.⁷⁶ Consequently, the public is likely to be unsympathetic to *pro se* litigants, making it more difficult

70. *Jones v. Phipps*, 39 F.3d 158, 163 (7th Cir. 1994).

71. *Holt*, *supra* note 58, at 169.

72. *Faretta v. California*, 422 U.S. 806, 852 (1975) (Blackmun, J., dissenting).

73. However, since there is no constitutional guarantee to the right to counsel in civil cases, the decision to proceed *pro se* may be one of financial necessity rather than a true “choice,” as it may be in criminal cases. *See supra* Part II.A (providing further information on the origins of the ability to proceed *pro se* in both federal and state courts).

74. *Swank*, *supra* note 12, at 384 (internal quotation marks and citations omitted).

75. *Id.*

76. *Id.*

for the self-represented to call attention to the challenges they face so as to effect reforms in the system in which they must litigate.

D. Summary

The right to proceed pro se is a deep-seated American legal tradition that is currently being exercised to an unprecedented extent nationwide. Despite the increasing popularity and prevalence of self-representation, many obstacles and disadvantages still besiege pro se litigants. Significantly, although the self-represented are untrained in the procedural and substantive intricacies of the law, they are often held to the same standards as members of the bar.⁷⁷ Against such substantial hurdles, it is not surprising that many pro se litigants feel “embittered”⁷⁸ at the close of their court experience; after all, the “right to be heard has little value . . . to those who lack the knowledge to exercise their right in a meaningful or skillful way.”⁷⁹ It is clear, then, that leaving pro se litigants wholly to their own devices in navigating the court system is undesirable from the litigants’ standpoint. However, it is also detrimental to efficient administration of the judicial system as a whole, as pro se litigants place inordinate scheduling and ethical demands on judicial officials.⁸⁰ Consequently, both courts and extra-judicial sources have devised various means of helping pro se litigants, which is the subject of the next Section.

III. THE CURRENT STATE OF PRO SE ASSISTANCE

This Part discusses and analyzes the three forms of assistance currently most available and beneficial to pro se civil litigants: institutional programs and clinics, unbundled legal services, and Internet-based resources. While myriad sources offer aid to the self-represented—from “represent yourself” books⁸¹ to hotlines⁸² to

77. See *supra* Part II.C.2 (discussing the various, often inconsistent, standards to which pro se litigants are held in different jurisdictions).

78. Jona Goldschmidt, *How Are Courts Handling Pro Se Litigants?*, 82 JUDICATURE 13, 18 (1998) (internal citations omitted).

79. Kim, *supra* note 26, at 1641.

80. See *supra* Part II.C.1 (detailing pro se litigants’ unfamiliarity with court rules as well as judges’ and court officials’ struggle to maintain impartiality when interacting with the self-represented).

81. *E.g.*, PAUL BERGMAN & SARA J. BERMAN-BARRETT, REPRESENT YOURSELF IN COURT: HOW TO PREPARE & TRY A WINNING CASE (Lisa Guerin ed., 4th ed. 2003).

82. See Buxton, *supra* note 12, at 124 (describing two Maryland hotlines, one providing free legal information and references to “social service programs, publications or a lawyer referral service” to low-income residents and one offering procedural advice that is available to all pro se litigants).

commercially-sold videotapes⁸³ and legal forms⁸⁴—these three types of services arguably have the greatest potential to reach, and be of most use to, a large segment of the pro se population. An in-depth look at each of these forms of assistance exposes their efficacy and future potential, but a close analysis also demonstrates that there is much room for improvement and innovation.

A. Institutional Pro Se Assistance Programs

1. Background

That the courts have played a prominent role in the development of pro se assistance programs is unsurprising given courts' interaction with self-represented parties.⁸⁵ Directly faced with the challenges of the pro se boom, many court systems have engaged in comprehensive, systemic reviews of their ability to meet the needs of pro se litigants. For example, the Minnesota Conference of Chief Judges established the Committee on the Treatment of Litigants and Pro Se Litigation, which conducted a year-long assessment of pro se litigants' prevalence and needs and examined the impact of the pro se boom on judges, court personnel, and parties represented by counsel.⁸⁶ The Committee then issued recommendations, including:

1. creation of a committee to "standardize, update and create forms, brochures and videos relating to areas of law and issues of interest to *pro se* litigants"⁸⁷ as well as self-help books and easy-to-use technological resources to aid pro se litigants and reduce the burden on court staff in helping the self-represented with forms and procedural requirements,⁸⁸
2. appointment of a pro se service coordinator in all state judicial districts,⁸⁹ and
3. development of a statewide "standard judicial protocol for handling hearings involving *pro se* litigants."⁹⁰

83. See Goldschmidt, *supra* note 78, at 15 (mentioning a commercial website "advertising 'The Video Library for Self Litigation' ('You Can Be A Pro Se Litigant' for only \$79)").

84. *Id.*

85. See Buxton, *supra* note 12, at 117 (suggesting that judges may be more receptive to programs aiding *pro se* litigants because such assistance may ease courtroom time pressures and reduce the risk that judicial impartiality will be compromised).

86. Stanoch, *supra* note 13, at 298.

87. *Id.* at 300.

88. *Id.* at 300-01.

89. *Id.* at 301.

Additionally, the Committee recommended that judges help recruit and encourage lawyers to provide pro bono services and that court personnel be given continuous training on issues related to pro se litigation.⁹¹ When court systems engage in this form of comprehensive analysis, they are better able to understand both the needs of pro se litigants and the practicalities of efficient judicial administration, enabling them to devise and implement pro se programs tailored to their jurisdiction's needs.

Even in jurisdictions that have not undertaken such a thorough self-evaluation, courts and judicial personnel have become increasingly cognizant of the special problems and needs associated with pro se litigants. For instance, in a 1996 national survey of judges and court managers conducted by the American Judicature Society and the Justice Management Institute, forty-five percent of responding jurisdictions indicated that they had created a court-sponsored pro se program.⁹² In general, there are three principal types of judicially-sponsored programs: provision of generic information and form pleadings, pro se clinics, and technology-based services.⁹³ These programs tend to vary according to their comprehensiveness, with generic information being rather rudimentary and pro se clinics having the greatest potential for providing extensive aid to the self-represented.⁹⁴ Generic information programs are popular due to their low cost and ease of maintenance.⁹⁵ In fact, the general help desk is the most common legal educational tool offered to pro se litigants.⁹⁶ For instance, the Denver District Court's Information and Referral Office provides instructional brochures and videotapes, as well as pre-packaged kits containing relevant information and court forms; it also offers basic paralegal assistance in order to complete the forms.⁹⁷ However, such basic services are inherently limited—they provide pro se litigants with the appropriate forms to initiate their cases but offer minimal assistance as the litigation process progresses.

More comprehensive are pro se clinics and programs, which are the "second most common educational tool" offered to self-represented

90. *Id.*

91. *Id.* at 300-01.

92. Goldschmidt, *supra* note 78, at 20.

93. See Buxton, *supra* note 12, at 119-25 (describing these types of programs in detail). For a more detailed discussion of technology- and Internet-based resources, see *infra* Part III.C.

94. Goldschmidt, *supra* note 78, at 20-21.

95. Buxton, *supra* note 12, at 119.

96. *Id.* at 122.

97. *Id.* at 119.

litigants.⁹⁸ Such clinics vary in form, but they tend to focus on the procedural issues related to a specific area of law.⁹⁹ In general, these programs offer pro se litigants attorney-, law student-, or paralegal-led instructional sessions on court procedures and documents related to the topic at issue;¹⁰⁰ some even offer evening sessions to facilitate greater attendance and assistance.¹⁰¹ In Ventura, California's Family Law Pro Per¹⁰² Clinic, for instance:

[t]he session includes an orientation regarding the operations of the family court, followed by instructions for filling out forms presented through the use of an overhead projector by an attorney hired by the court. . . . Those who need no individualized assistance are directed to self-help binders that contain appropriate forms and further instructions, and are assisted by volunteer family law attorneys, law students, and paralegals. A court clerk is available to review and file completed pleadings, eliminating the need for another trip to the courthouse during the workday.¹⁰³

Other pro se clinics offer "bazaar-style," as opposed to issue-specific, assistance.¹⁰⁴ In the courthouse of New Mexico's District Court in the Eleventh Judicial District, such a "bazaar" takes place three evenings each week, from 5:00 p.m. to 8:00 p.m.¹⁰⁵ Various court and county officials set up booths to provide court forms and facilitate their filing, assist parties in serving process, and offer other practical information.¹⁰⁶ For instance, the clerk's office booth distributes standardized, court-sponsored forms on various topics, including divorce, small claims, and landlord-tenant issues,¹⁰⁷ while the Department of Motor Vehicles booth offers information on how to obtain a new driver's license or transfer automobile titles to parties involved in divorce proceedings.¹⁰⁸ This and related programs offer a broader variety of services than issue-oriented clinics, enabling the court to assist a segment of the pro se population wider than just the portion thereof facing a specific legal issue.¹⁰⁹

98. *Id.* at 122.

99. See Barry, *supra* note 63, at 1883 (noting that regardless of form, the basic goal of pro se clinics "is to provide sufficient information to allow participants to understand and access the type of pleadings required, basic rules such as service of process, basic information that the court will require to render a decision, and a sense of the range of remedies available").

100. Buxton, *supra* note 12, at 122.

101. Goldschmidt, *supra* note 78, at 21.

102. "Pro per" is a synonym for pro se. BLACK'S LAW DICTIONARY 1258 (8th ed. 2004).

103. Goldschmidt, *supra* note 78, at 21.

104. Buxton, *supra* note 12, at 123.

105. Barry, *supra* note 63, at 1908.

106. Buxton, *supra* note 12, at 123.

107. Barry, *supra* note 63, at 1908.

108. *Id.* at 1909.

109. See Buxton, *supra* note 12, at 123 (noting that the New Mexico program "makes a greater attempt, than programs such as Ventura's Family Law Clinic, to provide pro se litigants with all the tools they may need to participate successfully in the court system").

Still other pro se clinics are operated by bar associations and law schools.¹¹⁰ For instance, the Catholic University of America Columbus School of Law offers a clinic entitled “Families and the Law.” Students enrolled in the clinic “assist victims of domestic violence in obtaining temporary and permanent restraining orders, as well as representing domestic violence clients in general domestic relations litigation.”¹¹¹ However, such clinics tend to be less prevalent and accessible than court-sponsored clinics. Significantly, many law school-based clinics only offer aid to impoverished local community members; thus, they may not be available to all pro se litigants in a jurisdiction, lessening their potential impact on the problems associated with pro se litigation.¹¹²

2. Analysis

The utility of a particular program may vary according to the needs of the individual pro se litigant. Depending on the litigant’s situation, he or she may find more intensive, issue-specific instruction more helpful and relevant to his or her situation than a broad, bazaar-style program, or vice versa. Moreover, “a court’s choices about what services to offer may also reflect one of several competing philosophies about how best to assist the pro se litigant.”¹¹³ For instance, some courts believe that a pro se program centered on self-help, such as a generic information provision service, will empower the self-represented to “take charge of their cases and bring them to a conclusion with a minimum of direct guidance or assistance from court staff.”¹¹⁴ Other courts, however, find that providing more comprehensive assistance to the self-represented helps both the

110. *Id.* at 123-25.

111. The Catholic University of America Columbus School of Law, *Families and the Law Clinic*, http://law.cua.edu/clinics/cle/clinics_families.cfm (last visited Mar. 5, 2007). For more information on the Families and the Law Clinic, see Barry, *supra* note 63, at 1920-22.

112. See Buxton, *supra* note 12, at 125 (noting that law school clinics’ “means and staff are often limited in the number of litigants they can assist”). Legal aid services are frequently similarly limited to extreme low-income segment of the population. In Pennsylvania, for instance, a family of four is only eligible for legal aid if its combined gross income does not exceed \$23,000. David Narkiewicz, *A 21st Century Blueprint for Providing Legal Services to the Middle Class*, PA. LAW., Aug. 26, 2004, at 20, 22. In general, “[l]egal service providers are mandated to serve only those below federal poverty guidelines ([in 2002,] approximately \$12,000 - \$14,000 annual income for a family of four).” GARCIA, *supra* note 47, at 8.

113. GOLDSCHMIDT ET AL., *supra* note 33, at 68.

114. *Id.*; see also Fern Fisher-Brandveen & Rochelle Klempner, *Unbundled Legal Services: Untying the Bundle in New York State*, 29 FORDHAM URB. L.J. 1107, 1112 (2002) (“Some advocates contend that a litigant is more likely to successfully complete a matter with limited help than with none at all.”).

litigant and the court system as a whole by reducing drains on judicial and staff time later in the litigation process.¹¹⁵

The widespread recognition and acclaim received by the Self-Service Center of the Superior Court of Maricopa County in Phoenix, Arizona, which embraces a comprehensive approach to pro se assistance, seems to substantiate the latter philosophy. The goal of this program, initiated in 1995,¹¹⁶ is to provide court services to anyone who needs them, regardless of the individual's ability to afford an attorney.¹¹⁷ To do so, the Center employs eight full-time staff members¹¹⁸ and provides to its users court forms, instructions, and information that can be accessed in person, on the Internet,¹¹⁹ or through an automated telephone system.¹²⁰ Additionally, the Center maintains directories of local social service agencies, attorneys, and mediators for pro se litigants needing additional or extra-legal help.¹²¹ The Self-Service Center's customers, of whom there are roughly 400 daily,¹²² have reported high levels of satisfaction with its services, finding its staff helpful and approachable, its setup easy to use, and the information it provides relevant to their cases.¹²³

When compared with such comprehensive pro se clinics as Maricopa County's Self-Service Center, the philosophy of merely providing minimal assistance to pro se litigants falters somewhat. Though such programs can be of valuable assistance to pro se litigants at the outset of their cases, they may offer limited or no support as a case proceeds beyond the pleadings stage. Thus, it seems that their ultimate result amounts to little more than role-shifting: the gains from the program accrue primarily to the court clerk, whose workload

115. GOLDSCHMIDT ET AL., *supra* note 33, at 68.

116. Barry, *supra* note 63, at 1892.

117. GOLDSCHMIDT ET AL., *supra* note 33, at 73. In fact, a 1996 survey of the Self-Service Center showed that sixty percent of customers had some college education and that the median household income of all users was between \$25,000 and \$45,000. *Id.* at 74.

118. This number was current as of 1998. *Id.*

119. Superior Court of Arizona, Maricopa County, Self-Service Center, <http://www.superiorcourt.maricopa.gov/ssc/sschome.html> (last visited Mar. 5, 2007).

120. GOLDSCHMIDT ET AL., *supra* note 33, at 73.

121. *Id.*

122. Barry, *supra* note 63, at 1892-93.

123.

Users gave staff high marks for being helpful, well informed, and friendly, and for providing assistance within a reasonable time. More than 80 percent of the respondents . . . indicated they believed they had obtained what they had come for and were leaving with information needed to proceed with their case. Ninety percent of respondents found it 'somewhat' or 'very' easy to use the Self-Service Center.

GOLDSCHMIDT ET AL., *supra* note 33, at 74.

is reduced by the re-direction of pro se inquiries. Seeking help from a very limited pro se clinic rather than the court clerk, however, has minimal positive impact on pro se litigants, who should also benefit from such programs.

Although proponents of limited-assistance programs may argue that “something is better than nothing,” such systems do little to address the many of the problems often associated with pro se litigation. Without ongoing assistance throughout the litigation process, self-represented parties remain likely to struggle with courtroom procedures and standards of proof, thus continuing to place burdens on the efficient administration of court dockets.¹²⁴ At best, the potential of such limited assistance programs to aid meaningfully pro se litigants is very limited; at worst, such systems risk giving pro se litigants a false belief of competence early in the litigation process, only to leave them guideless as their cases progress. While not a panacea, comprehensive programs that provide ongoing assistance offer both pro se litigants and court systems a more effective, efficient means of ensuring fairer access to justice and alleviating the burdens of the pro se boom.

B. Unbundled Legal Services

1. Background

While court-, bar-, and school-sponsored pro se assistance programs have become increasingly available, many in the legal community feel that there should also be a role for lawyers in addressing the self-representation situation.¹²⁵ In response to this growing sentiment, at least nine states have adopted rules allowing lawyers to “unbundle” their litigation services.¹²⁶ Simply put, “unbundled legal services” involve the “provision of discrete legal services or individual legal tasks by an attorney, on behalf of and at

124. See *supra* Part II.C (discussing at length the most common problems associated with pro se litigation).

125. See Thomas F. Garrett, *Access to Justice: Unbundling Legal Services*, 30 VT. B.J., Summer 2004, at 30 (“As the number of people who want to represent themselves has increased, so has the need for legal assistance that provides information, discusses alternatives, helps plan strategies, and coaches clients on how to appear in court without triggering the costs, in time and money, of full representation.”).

126. Leonard Post, *Firms Find New Revenue in ‘Unbundling’: Limited Role in Pro Se Suits Grows*, NAT’L L.J., July 4, 2005, at 1. These states are: Alaska, California, Colorado, Florida, Maine, Nevada, New Mexico, Washington, and Wyoming. *Id.* New Hampshire and Utah are changing their rules; Iowa, Illinois, and Ohio are also planning to adopt unbundling rules; and Connecticut has begun to consider such rules. *Id.*

the request of a client.”¹²⁷ By way of analogy, unbundled services clients order “a la carte” instead of from the “full-service menu.”¹²⁸ For instance, the Vermont Rules of Professional Conduct provide that an attorney “shall abide by a client’s decisions concerning the objectives of representation” and “may limit the objectives of the representation if the client consents after consultation.”¹²⁹ Unbundling thus permits a lawyer to aid a client with specific portions of the litigation process, rather than obligating the attorney to handle *all* matters arising throughout the duration of a client’s case.¹³⁰

The services provided by unbundling lawyers can include advising the client, performing legal research, gathering facts, assisting in discovery or negotiation, drafting documents, and making limited court appearances.¹³¹ Clients may choose one or a combination of these services. As one commentator has noted, the role of the attorney in an unbundled relationship is that of a coach:

[The attorney] bring[s] experience and knowledge about the legal system, the court system, and the proper procedure that will render the client more effective. As coach, [the attorney] can offer the client an assessment of the legal strengths and weaknesses in the case. [The attorney’s] ability to identify and explain these strengths and weaknesses will help the client formulate positions for negotiations or court hearings. Clients can learn what to ask for without looking foolish and undermining their credibility by making ludicrous demands.¹³²

For example, one Maine lawyer who provides unbundled legal services to clients involved in domestic relations cases “advises [them] of their rights, and helps them fill out legal forms that they can pick up for themselves at the court for [five dollars] a packet.”¹³³ Under this and other unbundled arrangements, litigants are able to obtain

127. Vauter, *supra* note 14.

128. Fisher-Brandveen & Klempler, *supra* note 114, at 1108.

129. VT. RULES OF PROF’L CONDUCT R. 1.2(a), (c) (2004), available at <http://www.vermontjudiciary.org/PRB1.htm>; see also ME. R. CIV. P. 11(b) (2006) (“To the extent permitted by the Maine Bar Rules, an attorney may file a limited appearance on behalf of an otherwise unrepresented litigant.”); ME. B. RULES R. 3.4(i) (2006) (“A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client provides informed consent after consultation.”); MODEL RULES OF PROF’L CONDUCT R. 1.2(c) (2002) (“A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”). It is important to note that the “unbundling” concept is not new to the legal profession as a whole. For several decades, business lawyers have provided discrete services, such as advising clients before they enter negotiations and drafting individual documents. Fisher-Brandveen & Klempler, *supra* note 114, at 1108-09. What is new, however, is the use of unbundled services by litigators. *Id.* at 1109.

130. Vauter, *supra* note 14.

131. FORREST S. MOSTEN, AM. BAR ASS’N, UNBUNDLING LEGAL SERVICES: A GUIDE TO DELIVERING LEGAL SERVICES A LA CARTE 1, 5 (2000).

132. *Id.* at 22.

133. Post, *supra* note 126.

professional, substantive advice without committing themselves to the time, expense, and seeming relinquishment of control associated with full representation by an attorney.

Of course, unbundling represents a profound shift from the traditional model of full-service lawyering, prompting some members of the legal community to question whether such an arrangement is ethical or advisable. Though lawyers remain bound to use “reasonable diligence” in the execution of the discrete services they provide,¹³⁴ unbundling may raise concerns about client independence and competence, privilege and confidentiality, disclosure to the court, and continuity of representation.¹³⁵ Proponents of unbundling, however, point out that risks of malpractice or questionable ethics can be mitigated by carefully screening potential unbundling clients¹³⁶ and having accepted clients sign a “limited representation agreement” that clearly and fully describes the role, topics, and services to be served by the lawyer.¹³⁷

Beyond ethical concerns, professional and academic opinions on the utility and efficacy of unbundled legal services are also divided. Some perceive unbundling as a substantial step toward providing equal access to justice and improving courtroom efficiency.¹³⁸ Others, however, decry unbundling as adding little practical value to the judicial system and heightening the risk of attorney malpractice and courtroom confusion. As one senior federal district court judge colorfully articulated, “[i]t is ludicrous . . . to suggest that in the present system, a layperson armed with a few discrete sticks from the advocate’s bundle can emerge from the trial thicket unscathed or that others will not be put to unnecessary expense.”¹³⁹

134. Garrett, *supra* note 125, at 33; see MODEL RULES OF PROF’L CONDUCT R. 1.3 (2002) (“A lawyer shall act with reasonable diligence and promptness in representing a client.”).

135. Fisher-Brandveen & Klempner, *supra* note 114, at 1115.

136. See Vauter, *supra* note 14 (recommending that lawyers should only agree to offer unbundled services if they believe the client can ably represent himself in the rest of the matter).

137. Fisher-Brandveen & Klempner, *supra* note 114, at 1116. Such an agreement emphasizes the contractual nature of the attorney-client relationship in unbundling situations and should adhere to freedom of contract principles. See *id.* (“As contractual parties, the lawyer and client should be able to determine the scope of their relationship.”).

138. *Id.* at 1111; *Papers from the National Conference on Unbundling: The Changing Face of Legal Practice: Twenty-Six Recommendations from the Baltimore Conference: A National Conference on ‘Unbundled’ Legal Services October 2000*, 40 FAM. CT. REV. 26, 28 (2002).

139. Fisher-Brandveen & Klempner, *supra* note 114, at 1112, 1113 (internal quotation marks omitted).

2. Analysis

While the argument advanced by opponents of bundling is valid in that it will be impossible to endow laypersons with the skill of trial lawyers simply by having lawyers give them discrete assistance, unbundling can nonetheless have a positive impact on pro se litigants.¹⁴⁰ As with pro se clinics,¹⁴¹ it seems intuitive that “a litigant is more likely to successfully complete a matter with limited help than with none at all.”¹⁴² What makes unbundling unique is the high level of control it provides to the client: when contracting with an unbundling lawyer, it is the client who determines how—and to what extent—the lawyer will be involved in the case.¹⁴³ Thus, the ability to seek discrete services can be highly advantageous to pro se litigants. In particular, unbundling saves money by eliminating high retainer fees and lowering total costs since less work translates into lower fees; its limited nature may also help focus lawyers on clients’ top priorities.¹⁴⁴

Consequently, unbundling may be especially appealing to middle-income litigants who decide to represent themselves. Regardless of dedication or education, “self-help litigants do not usually understand all the workings of the court, and some lack the communication skills required to present an organized and appropriate recitation of facts to the court.”¹⁴⁵ For those able to afford them, unbundled legal services may significantly improve pro se litigants’ ease in navigating the judicial system. Moreover, unbundled legal services may also provide economic and efficiency benefits to court systems in general.¹⁴⁶ However, low-income pro se litigants may

140. In the criminal context, the Supreme Court has noted that “[e]ven the intelligent and educated layman has small and sometimes no skill in the science of law. . . . He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one.” *Powell v. Alabama*, 287 U.S. 45, 69 (1932).

141. See *supra* Part III.A (discussing pro se clinics in detail).

142. Fisher-Brandvein & Klempner, *supra* note 114, at 1112.

143. MOSTEN, *supra* note 131, at 9-10; see also *id.* at 2 (“The unbundled client specifically contracts for the following:

- Extent of services provided by the lawyer
- Depth of services provided by the lawyer
- Communication and decision control between lawyer and client during the unbundled engagement”).

144. *Id.* at 8-9.

145. Vauter, *supra* note 14.

146. See *id.* at 1689 (“Benefits also accrue to the legal system as a whole, since greater preparation and precision by self-help litigants results directly in a reduction of errors in documents and procedures, reduced demands on court personnel, and [alleviation of] crowded dockets.”); Garrett, *supra* note 125, at 31 (noting that unbundling can facilitate the judicial

be negatively affected if unbundling services are relied upon so heavily that traditional pro se and legal aid services are ignored or discontinued. Thus, the provision of unbundled legal services is “not a complete panacea.”¹⁴⁷ Nonetheless, with proper precautions in place, unbundling has great potential to provide fairer access to the court system than that available under traditional, full-service legal representation. As long as appropriate safeguards are enacted and unbundling is not relied on to the point of excluding the pro se poor from receiving assistance with their cases, unbundling can enhance pro se litigants’ skills and help reduce courtroom congestion.

C. Internet Sources of Pro Se Assistance

1. Background

In the twenty-first century, individuals increasingly rely upon the Internet for information, communication, and education. Not surprisingly, myriad websites devoted to pro se litigation now exist and are accessible to anyone possessing Internet access and the ability to perform a simple search engine query. These sites range in content and professionalism from the commercial¹⁴⁸ to the jurisdiction specific¹⁴⁹ to the non-professional.¹⁵⁰ For example, one website offers compact discs and access to online tutorials on subjects including evidence, motions and hearings, “legalese,” rules of court, and legal forms for fees ranging from five to over two hundred dollars.¹⁵¹ Several such websites are court-sponsored, providing online access to court forms, filing information, and attorney and mediator directories for a specific jurisdiction.¹⁵² Still others appear to be created by individuals disillusioned with the judicial system or disgruntled by past court

process and “increase[] the likelihood that the judge has all the relevant facts to make the right decision”).

147. Vauter, *supra* note 14.

148. See Buxton, *supra* note 12, at 125 (“Commercial sites offer everything from video libraries on self-litigation, to document services, to legal software ready for home use.”).

149. See *id.* at 120-21 (noting that “[a]s part of its access initiative, the Florida Supreme Court maintains an Internet Self-Help Center that offers a large number of books, brochures, and forms explaining state law and provides step-by-step instructions for *pro se* litigants”).

150. See *infra* note 153 and accompanying text.

151. Jurisdictionary – Step-by-Step Legal Self-Help, <http://www.jurisdictionary.com> (last visited Mar. 5, 2007).

152. *E.g.*, Superior Court of Arizona, Maricopa County, *supra* note 119 (providing online access to court forms, filing information, and attorney and mediator directories for the Superior Court of Arizona, Maricopa County).

experiences.¹⁵³ As is true of the Internet in general, some pro se assistance websites appear more comprehensive, reliable, and informative than others. Thus, the pro se litigant must exercise care and good judgment in relying on the Internet for procedural and substantive legal guidance to avoid being misled by inaccurate or useless information.

Ironically, it appears that the most comprehensive pro se-oriented websites are designed for the edification of lawyers and the judicial community, not for pro se litigants themselves.¹⁵⁴ For instance, the American Bar Association's Standing Committee on the Delivery of Legal Services website provides an "unbundling resource center" and a listing of jurisdiction-specific self-service resources, as well as a listing of articles, books, reports, cases, court rules, and ethics opinions dealing with pro se litigation.¹⁵⁵ However, the site specifically states that it is designed to "help *lawyers, bar leaders, the judiciary, court administrators, scholars and the media* better understand and critically analyze the issues involved in self-representation and unbundled legal services," and that it "is not intended to assist individuals with their particular legal problems."¹⁵⁶ Despite the wealth of information available on such sites, their professional orientation may render them of minimal value to individual pro se litigants.

Of more potential use to the pro se population seem to be generic legal information websites, such as the well-known Legal Information Institute¹⁵⁷ and FindLaw.¹⁵⁸ These free resources provide extensive access to information on procedural and substantive legal issues for both legal professionals and the general public. The Legal Information Institute site, for instance, makes available state and federal constitutions, statutes, and case law; it additionally provides a guide to legal citation and enables users to access information by

153. *E.g.*, Pro Se Resource Center, <http://www.legalfreedom.com/prc/> (last visited Mar. 5, 2007) (providing general information on pro se litigation and links to Internet sources of assistance as well as pro se tips, inspiration and success and "horror" stories, but containing an explicit disclaimer that its creator is not an attorney).

154. *E.g.*, Self Help Support, <http://www.selfhelpsupport.org/index.cfm> (last visited Mar. 5, 2007) (stating that the website is designed to support "courts, community and legal aid self help practitioners").

155. American Bar Association Standing Committee on the Delivery of Legal Services – Pro Se/Unbundling Resource Center, <http://www.abanet.org/legalservices/delivery/delunbund.html> (last visited Mar. 5, 2007).

156. *Id.* (emphasis added).

157. FindLaw, *supra* note 15.

158. *Id.*

jurisdiction.¹⁵⁹ Alternatively, FindLaw organizes its legal information topically, enabling users to browse according to a specific, substantive legal issue, such as accidents and injuries, employee rights, family law, products liability and real estate.¹⁶⁰ FindLaw also provides access to standard forms, contracts and other legal documents as well as a searchable, geographic database of lawyers for those desiring to consult with counsel.¹⁶¹

2. Analysis

Not surprisingly, this plethora of Internet sites has the potential to be both a boon and a hindrance to pro se litigants. Perhaps most significantly, the Internet can be a highly impersonal medium. Unlike pro se clinics or unbundled legal services, Internet resources do not provide pro se litigants with the opportunity to interact physically or consult with specialized personnel. Moreover, while greater access to information is generally considered a positive development leading to increased knowledge and empowerment, the growing availability of Internet resources can raise important concerns over accuracy and relevance due to the medium's inherent openness. Websites are notoriously easy to create, raising the possibility that an individual can create a site that is professional in appearance yet inaccurate or misleading in its content.¹⁶² Such deception may induce reliance on misinformation that can have severe negative consequences for a pro se litigant's case.

Even with professionally-created, organizationally-sponsored websites, increased access to information does not always lead to higher degrees of understanding or ability. By and large, websites offering legal assistance to pro se litigants are either procedural or substantive in content, not both. For instance, the judicially sponsored Self-Service Center website of Maricopa County, Arizona, is highly instructive but only provides procedural information,¹⁶³ in contrast, the extensive FindLaw and Legal Information Institute websites are

159. Legal Information Institute, *supra* note 15.

160. FindLaw, *supra* note 15.

161. *Id.*

162. See BERGMAN & BERMAN-BARRETT, *supra* note 81, at 1/8 (cautioning pro se litigants "that the risk of inaccuracy and miscommunication may be greater when [they] communicate over the Internet than when [they] seek legal assistance face-to-face").

163. Superior Court of Arizona, Maricopa County, Self-Service Center, *supra* note 119; see also *supra* text accompanying note 119 (providing more information on the Self-Service Center of the Superior Court of Arizona, Maricopa County).

almost entirely substantive in nature.¹⁶⁴ Pro se litigants need to master both procedural requirements and the relevant substantive law in order to succeed. The available Internet resources, however, do a poor job of integrating these two elements or providing a central clearinghouse from which both can be accessed.

D. Summary

In conclusion, several sources of aid exist for civil litigants choosing to represent themselves in court, including court-, bar-, or law school-sponsored pro se assistance programs,¹⁶⁵ “unbundled” professional legal services in many jurisdictions,¹⁶⁶ and a variety of Internet sites offering access to both procedural and substantive legal information.¹⁶⁷ As the foregoing analyses indicate, however, current pro se clinics, unbundled legal services, and Internet-based informational resources are inherently limited. The narrow, isolated nature of such resources may render them inaccessible, irrelevant, or incomprehensible to many of the individuals they are intended to aid. Consequently, pro se litigants may continue to clog court caseloads, further exacerbating problems of judicial inefficiency and negative public perceptions of pro se litigation. Thus, a broader, more accessible and understandable system of pro se assistance is needed if pro se litigants are truly to have “equal access to justice”¹⁶⁸ and court systems are to efficiently administer their dockets.

IV. SOLUTION: EMPOWERING PRO SE LITIGANTS AND EASING COURTROOM CONGESTION VIA AN INTEGRATED RESOURCE SYSTEM

In recent years, significant progress has been made in addressing the pro se phenomenon. As the foregoing analysis indicates, however, more innovation is needed if pro se litigants are to have genuinely fair and easy access to the judicial system and the courts are to justly hear both pro se and represented parties' cases in a timely manner. Thus, this Part begins by analyzing several previously proposed solutions to the pro se boom before proposing an integrated,

164. FindLaw, *supra* note 15; Legal Information Institute, *supra* note 15; *see also supra* notes 157-61 and accompanying text (providing more information on the types of substantive law accessible through the FindLaw and Legal Information Institute websites).

165. *See supra* Part III.A

166. *See supra* Part III.B.

167. *See supra* Part III.C.

168. Spencer G. Park, Note, *Providing Equal Access to Equal Justice: A Statistical Study of Non-Prisoner Pro Se Litigation in the United States District Court for the Northern District of California in San Francisco*, 48 HASTINGS L.J. 821, 849 (1997).

technology-based framework designed to empower pro se litigants and ease the judicial congestion created by their growing presence in the courtroom.

A. Potential Solutions

As early as the late 1980s, scholars and commentators began noticing and proposing measures to address the increasing prevalence of pro se litigants. Legal education seemed to be the most commonly-offered “solution” to self-representation. As one commentator proposed:

Attorneys or paralegals can educate prospective *pro se* litigants through classroom instruction in which legal problems common to the community are addressed and explained. Classroom instruction can help the *pro se* litigant understand and effectively present her legal position in court. Armed with general knowledge of the relevant substantive and procedural law, as well as standardized legal documents, the *pro se* litigant can more successfully present her claims or defenses before a court.¹⁶⁹

Many courts and bar associations have embraced this solution by creating pro se clinics and resource centers.¹⁷⁰ As previously discussed, however, the current methods of pro se instruction have significant shortcomings.¹⁷¹ Moreover, “classroom instruction” may become increasingly inconvenient or impractical in light of the technological alternatives becoming available as the twenty-first century progresses.¹⁷²

Other proposed responses to the pro se trend have focused on court systems, rather than on self-represented litigants themselves. For instance, one scholar suggested that courts adopt a discretionary, sliding scale to determine the procedural treatment of individual pro se litigants.¹⁷³ Under this arrangement, courts would balance “the values of private interests and procedural reform against the value of the government’s interest in preserving the status quo” on a case-by-case basis to determine the amount of process appropriate under the particular circumstances.¹⁷⁴ With this balancing test, courts would make an individualized determination as to the degree of procedural

169. Kim, *supra* note 26, at 1643.

170. See *supra* Part III.A.

171. See *supra* Parts III.A.2, III.B.2, III.C.2.

172. Of course, the early emphasis on “classroom instruction” may have largely been due to the fact that such proposals were first made in the late 1980s, well before the Internet or other computer-based resources became commonplace. See *e.g.*, Kim, *supra* note 26, at 1643, 1651-54 (advocating classroom instruction in 1987).

173. Bradlow, *supra* note 59, at 660.

174. *Id.* at 682.

protections necessary to ensure that the pro se litigant's due process rights are not violated.¹⁷⁵

Many commentators have advocated the relaxation of certain rules of evidence for pro se litigants in certain situations.¹⁷⁶ Proponents of such a scheme have argued that strict adherence to many of the rules of admissibility can "add unnecessary complexity, delay, and cost to the judicial process [and] frustrate ever-increasing numbers of *pro se* litigants by restricting their ability not simply to prove their cases, but sometimes even to be heard."¹⁷⁷ Consequently, they argue, many evidentiary rules should not be applied in most civil non-jury trials.¹⁷⁸ In particular, rules regarding hearsay, character evidence, authentication, and originality should be inapplicable in such situations because judges will easily be able to filter the relevant information from the body of evidence presented.¹⁷⁹ At least one jurisdiction has moved toward such a system. In January 2006, family courts in Arizona implemented streamlined, simplified rules of procedure; under the new system, unverified copies of various documents, such as student report cards and school and medical billing statements, are now admissible.¹⁸⁰

Under these proposed regimes, however, the pro se litigant remains predominately at the mercy of the court system. Additionally, any discretionary procedural system may further exacerbate pro se litigants' difficulties. If a litigant does not know the standards to which he will be held before commencing litigation, it may be impossible for him to adequately or efficiently organize his case and present it to the court. While such "solutions" may theoretically benefit pro se litigants by holding them to lower procedural or evidentiary standards than represented parties, it may in execution further slow courtroom administration as the self-represented struggle to comprehend and adapt to changes during the litigation

175. See *id.* at 660, 676 (explaining that "the sliding scale offers pro se litigants only the guarantee that judges will endeavor to give such leniency and special attention as the particular case merits," with the result being that "some litigants will require very great procedural protections; others will require no protection; and the vast majority will receive an amount of protection somewhere in between"). The requirements of procedural due process are beyond the scope of this Note; for a detailed explanation and application of this constitutional requirement, see *id.* at 677-79.

176. See generally Murray & Sheldon, *supra* note 52 (discussing the potential relaxation of the Maine Rules of Evidence for *pro se* litigants in civil, non-jury trials).

177. *Id.* at 35.

178. *Id.*

179. *Id.*

180. Margaret Graham Tebo, *Flying Under the Radar: These Little-Noticed Legal Developments Could Be Making News This Year; Arizona Makes Family Courts User-Friendly*, 92 A.B.A. J., at 34, 38-39 (Jan. 2006).

process. Thus, court-focused solutions to the pro se phenomenon may be of little actual utility to pro se litigants who must rely on these systems' inherently unpredictable and uncertain natures.

B. A Framework for Integrated, Accessible Pro Se Assistance

Through the establishment of pro se clinics, the adoption of unbundling rules, and the creation of Internet resources, much has been accomplished in recent years to help pro se litigants navigate and comprehend the judicial system. Nevertheless, they still may face substantial difficulties in efficiently accessing and understanding such information, leaving them at a significant disadvantage in pursuing their cases. Various sources of procedural¹⁸¹ and substantive¹⁸² legal information are available, but they currently exist largely in isolation of one another. For instance, court-sponsored pro se clinics help self-represented litigants understand the procedural aspects of litigation but provide little guidance in terms of researching and understanding the applicable substantive law.¹⁸³ Conversely, substantive sources such as FindLaw and the Legal Information Institute offer minimal practical procedural information.¹⁸⁴ Moreover, the sheer breadth of potentially relevant legal information—particularly on the Internet—can be daunting to a novice pro se litigant. Thus, the current sources of pro se assistance, while instructive and useful, are far from all-inclusive, efficient, or easy to digest.

Consequently, a centralized system of pro se assistance that provides access to both procedural and substantive legal information is needed to more effectively aid pro se litigants with their cases. A comprehensive, valuable pro se assistance system must incorporate elements of all three of the most commonly-used current sources of aid: institutionally-sponsored pro se clinics, unbundled legal services, and the Internet. Specifically, such a program should be primarily Internet-based, as the Internet's relative ease of navigation and accessibility currently offers the greatest potential for reaching the widest possible segment of the pro se population. The system must also include a limited physical manifestation, however, in order to be fully comprehensive. Providing pro se litigants with the opportunity to consult with legal personnel and access lawyers who provide

181. See *supra* Part III.A (discussing pro se clinics)

182. See *supra* Part III.B (discussing unbundled legal services); Part III.C (discussing internet-based *pro se* resources).

183. See *supra* Part III.A.

184. FindLaw, *supra* note 15; Legal Information Institute, *supra* note 15; see also *supra* Part III.C.

unbundled legal services will reduce the impersonality associated with the Internet medium; the physical plant will also enable those pro se litigants without personal Internet access to utilize the Internet-based resources. The remainder of this Section provides a detailed explanation and justification of each component of the proposed system.

1. The Internet Component

The basic framework for such a system is relatively straightforward: the broad reach and easy accessibility and navigability of the Internet should be used to develop a jurisdiction-specific, Internet-based system that provides access to both procedural and substantive legal information and assistance. Specifically, each jurisdiction's system should:

- be explicitly and prominently endorsed by the jurisdiction,
- provide access to court rules, forms, and rules of civil procedure,
- offer a directory of pro bono services and attorneys willing to provide unbundled legal services,
- contain links to the relevant substantive law of the jurisdiction, and
- incorporate features of both topic-specific and bazaar-style pro se clinics to provide general information on the judicial process as well as more focused education on the areas of substantive law of greatest relevance to pro se litigants.¹⁸⁵

The net effect of these various features is to create a centralized clearinghouse of a jurisdiction's procedural and substantive law that pro se litigants can access from remote locations at their own convenience. In the procedural section, for instance, the jurisdiction should include printable forms necessary to initiate a case and make motions, as well as instructional materials related to the filing of such forms, the introduction of evidence, and other courtroom formalities. Likewise, the substantive law portion of the Internet site should organize the jurisdiction's law under subject headings so that pro se litigants can readily access authorities relevant to them.

Perhaps the most crucial ancillary feature of the Internet component is the endorsement requirement. Each jurisdiction-specific

185. For more information on the various types of pro se clinics currently available to self-represented, see *supra* Part III.A.

website should plainly indicate that it was developed by, and is supported by, that court system; the endorsement should always be visible on the webpage, and users should be notified when a link will lead them to an external, non-endorsed resource. Such an endorsement will afford pro se litigants an additional measure of confidence in the reliability of the information contained therein. Currently, pro se litigants must expend considerable time and effort wading through the plethora of potentially relevant Internet sources of legal information. With the knowledge that a jurisdiction-specific website is licensed and therefore reliable, they can instead concentrate their energies on digesting the relevant law and conforming their motions and trial strategies to the appropriate procedural formats. Court sponsorship will also virtually eliminate the possibility that pro se litigants will be harmed by inaccurate or misleading information. By pointing self-represented parties in the right direction at the outset, court systems may reap significant efficiency gains later in the process as a result of better-educated and more-skilled pro se litigants.

2. The Physical Component

Such a system, however, may not be effective without some physical, clinical manifestation. Although the Internet is rapidly becoming ubiquitous, not all households are able to afford or have access to the Internet; this may be particularly true of the low-income segment of the pro se population. Moreover, some self-represented parties may be unsure of their Internet research skills or the information they retrieve, and still others may be unwilling to rely on online information, regardless of a jurisdictional endorsement. In-person reassurance and resources may therefore help alleviate many of such litigants' concerns.

Accordingly, jurisdictions should also maintain a limited physical pro se resource center. Such a location would serve three main functions:

- offer Internet connections to pro se litigants unable to access it elsewhere,
- enable all pro se litigants to directly pose questions to a court representative and/or attorneys offering pro bono or unbundled legal representation, and
- provide a physical, print library of the jurisdiction's procedural and substantive law.

While the precise contents of the physical facility would likely vary from jurisdiction to jurisdiction, these three minimum

requirements would ensure that each pro se litigant could access the offered resources in the format he or she prefers.

3. Benefits of an Integrated System

Integrating procedural and substantive law has several advantages for both pro se litigants and the jurisdictions sponsoring such programs. Most importantly, such a system will empower pro se litigants and increase courts' ease of administration due to self-represented parties' greater understanding of courtroom procedures and substantive law. At the same time, however, such a system will not overindulge pro se litigants so as to equal a "lawyer-substitute."¹⁸⁶ Pro se litigants will still be required to invest a great deal of time and energy in their self-representation; thus, this form of assistance will not encourage people who would otherwise retain counsel to pursue their claims pro se. Likewise, it will not lead to a flood of frivolous litigation due to overly-easy access to the courts, risking the further bogging down of court dockets. Such a system will, however, significantly aid those litigants who must, or want to, proceed pro se.

Moreover, such an integrated, multi-modal approach is likely to be well-received by pro se litigants because it focuses on them, instead of the court systems in which they must litigate.¹⁸⁷ By providing pro se litigants with increased access to all types of information relevant to their claims, a solution that emphasizes the role and abilities of pro se litigants complements many of the commonly-cited rationales surrounding the pro se boom, such as increased literacy rates and sentiments of individualism and consumerism.¹⁸⁸ Many of today's pro se litigants choose so to proceed because they feel empowered and confident in their abilities rather than because they are unable to afford a lawyer.¹⁸⁹ This sense of empowerment and capability can be furthered by an integrated, comprehensive assistance system.

In addition to striking an ideological balance, such a system will have additional practical results for both pro se litigants and court systems. Society's increasing reliance on the Internet for communication, information and education has led to widespread,

186. Juliet L. Kaz, *Legal Document Services: Dangerous Alternatives to Attorneys?*, 2 J. LEGAL ADVOC. & PRAC. 122, 122 (2000).

187. See *supra* Part IV.A for further discussion and analysis of court system-based responses to the pro se phenomenon.

188. See *supra* Part II.B.2 (explaining that the increase in pro se litigation can be attributed to a variety of financial, societal, and psychological factors).

189. See *id.*

relatively inexpensive Internet access throughout the country.¹⁹⁰ Since pro se litigants would be able to access the system at any time, rather than being constrained to specific operating hours, an Internet-based system is thus likely to be more accessible to a greater segment of the pro se population than traditional, facility-based programs.

Implementing an Internet-based pro se assistance framework is also unlikely to unduly burden court systems' budgets. Much of the information proposed to be incorporated into such a program already exists in electronic form; it merely needs to be organized and centralized in one virtual location. Increased reliance by pro se litigants on the Internet medium may also reduce the need for extensive personnel and operating hours at a traditional physical facility. Finally, many court-sponsored pro se programs frequently hold "bazaars" and classroom education sessions.¹⁹¹ By videotaping and uploading one of each topical and general session onto the Internet, where pro se litigants can access them at their discretion, court systems can avoid incurring the expenses associated with organizing and executing such programs. This combination of technological and physical access to information would reduce the impersonality often associated with the Internet medium. At the same time, such an arrangement would reduce the operating expenses of providing pro se assistance; the physical facility could be maintained with more limited personnel and space since pro se litigants could also access the program's resources from alternate locations.

Finally, providing centralized access to procedural and substantive law would not violate any ethical prohibition on the unauthorized giving of legal advice by non-lawyers.¹⁹² The mere provision of access to substantive law cannot be said to equal "legal advice"; instead, it amounts merely to providing "legal information" in a readily accessible location and form. Pro se litigants would still be required to independently research and process the available information. Should they require "legal advice," the system would provide them with the names of attorneys willing to provide unbundled or pro bono legal services.

190. For instance, many public libraries offer free Internet access and Internet training courses to community residents who do own computers or cannot afford Internet access at home.

191. See *supra* Part III.A.

192. See *supra* Part II.C.1 (examining various potential ethical issues raised by pro se assistance programs, including the unauthorized practice of law).

C. Summary

By providing pro se litigants with easy, understandable, and reliable access to both procedural and substantive law, court systems can uphold their mandate to impartially administer justice to all, while at the same time increasing the efficiency with which they can manage their dockets. As society comes to increasingly rely on the Internet, so too should court systems harness this medium's power to aid both themselves and their litigants.

V. CONCLUSION

As a pro se litigant, Susan Hudock struggled with matters of legal procedure and substance in her Americans with Disabilities Act lawsuit against her former employer.¹⁹³ In an ideal system, Ms. Hudock—indeed, all civil litigants—would always have access to easily affordable legal representation. Given present realities, however, it is likely that pro se litigation will continue to constitute a significant portion of civil court dockets as the twenty-first century progresses. Regardless of the strength of programs designed to assist them, pro se litigants face many challenges in representing themselves in a strict system dominated by trained lawyers and procedural formalities. Thus, viable, valuable pro se assistance programs must be developed if the self-represented are to have meaningful access to—and the courts are to efficiently administer—the civil justice system.

Pro se clinics, unbundled legal services, and Internet-based resources have positively impacted the ability of pro se litigants to successfully pursue their claims. However, a common feature of such programs is their insular focus on *either* procedural or substantive assistance, forcing pro se litigants to double their efforts to educate themselves adequately on both these essential aspects of litigation. In contrast, an integrated, highly-accessible system that incorporates the best procedural and substantive attributes of all three of these types of systems has practicable potential to help pro se litigants successfully navigate the judicial system while simultaneously easing some of the time and efficiency problems courts have experienced as a result of the pro se phenomenon. As Ms. Hudock stated in her closing argument, a lack of representation should not impact the outcome of litigation, for “no matter how big you are . . . we’re equal in the eyes of the law.”¹⁹⁴ If

193. Scannell, *supra* note 1, at A1; *see also supra* Part I (detailing Ms. Hudock's pro se case against Aventis Pharmaceuticals, Inc.).

194. Scannell, *supra* note 1, at A1.

implemented conscientiously, an integrated pro se assistance program can markedly further this fundamental goal of the American legal system.

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