

Self-Represented Litigation Network

Courtroom Communications Research Project

Understanding and Improving Judge-Litigant Interaction in Self-Represented Litigant Cases

Project objective

Training materials to inform judges how self-represented litigants react to judges' verbal and nonverbal behavior and to provide them with tools to improve their ability to maximize the litigants' perception of:

- Interpersonal respect – persons in the court are treated with dignity and respect and their rights are protected;
- Neutrality – judges are honest and impartial decision makers who base decisions on facts;
- Participation – parties have the opportunity to express their views to decision makers, directly or indirectly; and
- Trustworthiness – judges are benevolent; they are motivated to treat all persons fairly, are sincerely concerned with the needs of the parties, and consider their sides of the story.

Project deliverables

1. A methodology for reviewing with judges and litigants videotapes of relatively short hearings to identify what they intended by their communications and how those communications were perceived by the other party;
2. Application of the methodology to thirty hearings;
3. A report analyzing the data gathered on the thirty hearings;
4. A judicial training videotape including clips of judge behavior and litigant behavior and how it is interpreted by judges and self-represented litigants; and

5. An instructor's guide and participant materials to accompany the judicial training videotape.

Discussion

This is exploratory research. It is based on the following perceptions

- Frequently reported litigant lack of understanding of court proceedings
- Legal concepts and legal vocabulary are not understood by litigants
- Litigant wants to vent; judge wants to hear only what is relevant to a legal issue
- Minneapolis research pointing to improved satisfaction from judicial effort to explain ruling

The objective is to understand the extent to which litigant/judge communications are and are not effective in conveying the information and meaning intended.

The project includes videotaping and analyzing a small number of hearings. It will not be possible in that small number of hearings to include a representative sample of judges or of litigants. The project plan is to videotape the hearings that are conducted at the time the project staff are present in the court.

Hearings will be limited to those that

- are contested;
- include only self-represented parties;
- take between 5 and 15 minutes to conduct;
- include the taking of testimony and evidence; and
- result in a court ruling or order.

The judge and the parties will be debriefed privately following the hearing. Each participant will be asked, for each identifiable communication segment;

- if s/he was the communicator, what s/he was intending to convey, or
- if s/he was the one to whom the communication was transmitted, what s/he perceived the communicator's intention to be and what s/he got from the communication.

The project plan envisions five major personnel components:

- John Greacen, who will manage the project and conduct eight hearing debriefings;
- Diddy Greacen, who will provide administrative and editing support for the project;
- Richard Zorza, who will be the principal reviewer for the project, who will participate in the initial test of the methodology, and who will train the Harvard Law School volunteers;
- two consultants who will provide hypotheses concerning verbal and nonverbal communication to inform the research, be involved in the methodology test, and be involved in the review of the project's products; and
- Harvard Law School volunteers, who will conduct ten hearing debriefings in the Boston area.

We anticipate that hearing debriefings will be conducted in courts in Arizona, California, Maryland, Massachusetts, and Minnesota.

Suggested Refined Research Methodology

November 15, 2006

Our two communications consultants included a number of ideas for strengthening the research methodology in their expressions of interest in working on this project. Those ideas lead me to suggest the following refined methodology for the research project.

Our basic research process is to videotape contested court proceedings involving two self-represented litigants. We will then use the tapes to “debrief” the participants. We will use the tape of the judge to debrief the self-represented litigants. We will use the tape of the petitioner to debrief the judge. Each tape will have its own microphone, which will pick up the voices of the other participants. So, the other participants’ words will be heard as “voice over” on the tape we are watching. If we were to use the tape of person we are debriefing, the subject might focus too much on his or her own performance and not on the questions of interest to us. We will also tape the debriefings, to reduce the pressure on the debriefer to make judgments and record information on the spot.

Bonnie Hough and I met last week with a video producer on the staff of the California AOC. We identified our equipment needs – three digital video cameras, tripods, and microphones, a playback monitor and a “deck” used to play the tape to the monitor. Bonnie is looking into purchasing the needed equipment for her AOC unit. The video producer is looking into equipment purchase and rental options. He has agreed to assist us the week of December 4th to work out the courtroom equipment set up issues.

The debriefer will set up the equipment in the courtroom and be present during the hearing. The judge will instruct the litigants to remain seated so that we will not need camera operators. The debriefer will give the judge a litigant observation form prior to the commencement of the hearing and ask the judge to fill it out while the debriefer is breaking down the taping equipment. A draft form is attached. The debriefer will note on the bottom of the litigant observation form any disagreement s/he may have with the judge's characterization of the hearing outcome.

The debriefing of the litigants will take place in a jury room or other private space within the courtroom. It will begin with a short questionnaire containing a series of basic questions concerning the fairness of the hearing and their satisfaction with the process and the outcome. A draft form is attached. The debriefing of the judge will begin with a similar questionnaire containing series of basic questions about self-represented litigants. A draft form is attached. If several hearings are taped in which the same judge presides, the judge will complete this form only once. These questionnaires are administered before the debriefing so that they will not be influenced by the debriefing process.

The debriefings will then proceed to go through the hearing on a communication by communication basis. The debriefer will have to make judgments about the composition of a "communication." But the basic idea is to break the hearing into "chunks" of communication for purposes of analysis. For instance, the judge's introductory statement to the litigants may comprise multiple communications, or it may be treated as a single communication. So, too, a litigant's presentation of his or her story may be composed of several pieces. Exchanges between the judge and a litigant will be treated as separate communications.

After what the debriefer considers to have been a "communication" has been viewed, s/he will stop the tape and ask the subject either what he intended to convey by that statement or group of statements (if the subject was the speaker) or what he believes the speaker intended to convey if one of the other two participants was speaking. The debriefer will also ask the subject to state his or her views about what the person on the tape is expressing through gestures or facial expressions. The debriefer will attempt to stop the tape at the same place for all three debriefings arising from the same hearing. The communications rating form will facilitate this by identifying the "communications."

Using the tapes of the debriefings, we will assign a score to each communication – not to the communicator – from 5 to 1, with 5 signifying that the communication was fully effective (in that both other participants got the complete message and purpose behind the message that the sender intended), 4 signifying that one of the participants got the complete message and the other got part of the message, 3 signifying that one of the participants got the complete message and the other got a different message, 2 signifying that one participant got part of the message and the other got a different message, and 1 signifying a failed communication (both recipients got something different from what the sender intended). A communications rating form is attached.

We will also assign a nonverbal communication score to each participant. The consultants will devise a rating system that the debriefer can apply to rate the effectiveness of the judge's nonverbal behavior in conveying calmness, interest, caring, respect and evenhandedness and in each litigant's effectiveness in conveying calmness, confidence, truthfulness, interest, and respect. A nonverbal behaviors rating form is attached. The consultants will have to devise a protocol that the debriefer can use to assign a single score to each participant for the hearing as a whole.

We will analyze all of this data to test the following hypotheses:

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

We will use the videotapes of the proceeding and of the debriefings in the judicial training DVD to demonstrate fully effective communications, failed communications, and partially effective communications. We will also demonstrate effective and ineffective judicial nonverbal behaviors.

Self-Represented Litigation Network
Courtroom Communications Research Project
Judge Courtroom Observation Form

Case number _____
 Judge name _____

Petitioner name _____			Respondent name _____			
Yes	Some what	No	Behavior	Yes	Some what	No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Had documents prepared correctly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Had needed evidence or witnesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Followed court procedural rules	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Participated effectively in the proceedings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Was able to “tell his or her story” effectively	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Had realistic expectations about the likely outcome	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Appeared to understand the court’s ruling(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Outcome <input type="checkbox"/> Petitioner prevailed <input type="checkbox"/> Respondent prevailed <input type="checkbox"/> Both parties prevailed in part <input type="checkbox"/> Neither party prevailed <input type="checkbox"/> Taken under advisement <input type="checkbox"/> No decision because the matter was continued						

Self-Represented Litigation Network
Courtroom Communications Research Project
Litigant Hearing Feedback Form

Case number _____

Litigant name _____

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

	5	4	3	2	1
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
1. The way my case was handled was fair.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. The judge listened to my side of the story before he or she made a decision.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. The judge had the information necessary to make good decisions about my case.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. I was treated the same as everyone else.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5. The judge treated me with respect	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6. The judge cared about my case.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7. I am satisfied with what happened during my hearing today	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8. I understood the words used by the judge and other persons in the courtroom.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9. I am clear about exactly what the judge decided.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10. The outcome of the hearing was favorable to me.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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Courtroom Communications Research Project
Judicial Feedback Form

Case number(s) _____
 Judge name _____

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

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

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Communications Rating Form

Case number _____

Description of communications segment	5 Fully Effective	4 Mostly Effective	3 Partly Effective	2 Mostly Ineffective	1 Failed
1.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Speaker's intention					
Hearer 1's perception					
Hearer 2's perception					
2.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Speaker's intention					
Hearer 1's perception					
Hearer 2's perception					
3.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Speaker's intention					
Hearer 1's perception					
Hearer 2's perception					
4.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Speaker's intention					
Hearer 1's perception					
Hearer 2's perception					
5.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Speaker's intention					

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Nonverbal Communications Rating Form

Case number _____

Participant	5 Highly Effective	4 Mostly Effective	3 Partly Effective	2 Mostly Ineffective	1 Ineffective
Judge	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Petitioner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Respondent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Scoring protocol to be developed