

**Meeting Courage with Courage:  
Eliciting and Responding to the Experiences of the Self-Represented**

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Malika S. needed to communicate with the court on a matter concerning her custody case. After her lawyer withdrew from the case, she found it difficult to secure another attorney. Her case was pending and she realized she needed to take some action. She wrote the judge a letter. In fact, she wrote the judge several letters. "I'm foreign born and I don't know the legal system." In her country, she said, you can write to the judge and it's okay. "I didn't know that was a mistake. I didn't know I wasn't allowed to do that." She feels today that her lack of knowledge of the justice system, and her lack of counsel, had a significant impact on the outcome of her case. At one point, opposing counsel recommended a custody evaluation. She refused to consent, believing that, if opposing counsel was recommending it, it must be to her disadvantage. Today she recognizes that a custody evaluation could have worked to support her position. "Basically, it was difficult. It's impossible. If you don't the game, you don't know how to ask the question. You don't know how to organize yourself. You don't know what to ask for."

Malika S. took the opportunity to share her experience with the Maryland court system at "Tell Us What You Think: An Access to Justice Listening Event," held in 2009. This was one of a series of ten regional "Listening Events." These events are part of a year-long public inquiry process launched by the Maryland Access to Justice Commission, to garner input from self-represented litigants, court users, advocates and stakeholders, about the State's civil justice system. The Commission has been especially interested in the experience of self-represented court users, like Malika S., because they help the Judiciary, legal services providers, the Bar and other justice system partners put a face on the phenomenon of self-representation.

Litigants in family cases face a range of obstacles when they encounter the system without the assistance of counsel. Forms, legal content websites, and online materials can help litigants navigate the pleadings phase of litigation, but do not offer the strategic guidance that an attorney can provide. Many litigants do not know where to begin, and feel they could benefit from a general overview of the process. Tekyia B., a self-described "very smart" and literate woman, sought to enforce an out-of-state child support order without counsel, having spent considerable sums litigating the initial case. Still, she felt she would have benefited from having an advocate, "to explain what the steps are." Online information can allow court users to "read through and reread again" the information they need. "What do I need to do? What do I need to bring? What is the

experience going to be like?” “I felt almost blindsided,” she said, despite her prior court experiences and educated self-confidence.

When such materials are available, they need to be delivered through media that is accessible to all. In an interview conducted in conjunction with a recent Listening Event, Melissa Riccobono, Executive Director of the National Federation of the Blind, noted that, “Right now pro se representation is not possible for the blind because the documents are not accessible.” PDF documents and other files cannot be read with the types of screen reading software used by the blind, unless those documents are carefully formatted. Websites that use photos or videos to illustrate information need to tag those media with text files, or provide audio versions of the same material. Senior advocate Jennifer Goldberg, of the Maryland Legal Aid Bureau, notes that court notices and documents often use small typefaces. Such notices should be provided with larger fonts and sufficient contrast to improve readability. Date stamps and key information can often be too light for seniors or the visually impaired.

Crowded dockets, chaotic courtrooms and expedited procedures can intimidate those without counsel, and make it more likely that litigants will miss hearing their case called, or will fail to understand what is going on around them. Litigants can also be quite upset to learn that their family case, where intimate matters may be discussed, will be heard in open court in full view of others. “Before going to court . . . I needed to know that my case before the master would be held in front of several other clients waiting with me inside the master’s chamber. There was no privacy as details of my life and my child’s life were openly discussed in front of strangers. And I’ll never forget feeling like part of a herd of sheep going through the courthouse,” testified Tekyia B. Advocates and litigants alike urge courts to rethink and restructure the courtroom experience to better serve the uninitiated.

Victims of domestic violence are particularly vulnerable when unassisted by counsel. With an increasing emphasis on mediation and settlement in family courts, these litigants may feel pressured to resolve their case by consent. This may require negotiating with an intimate partner and his or her attorney, despite a history of abuse. Advocate Eugene Morris of the Montgomery Co. Abused Persons’ Program, and President of the Board of the Maryland Network Against Domestic Violence, pointed out that the ability to request an interim protective order after-hours has been a benefit, but victims do not have recourse to advocates and other resources available during the day. The location and environment can be quite intimidating. “We hear stories of individuals that come to file [after hours] and then just leave,” said Morris.

Court users report with frustration their many attempts to obtain legal assistance. The self-represented find themselves going to court unaided despite their best efforts to secure counsel. This dovetails with reports by legal services providers who note they are not even close to being able to meet the demand for their services. Since the economic downturn began in late 2008, the Maryland Legal Aid Bureau has reported a 64% increase in demand, and a 73% increase in the number of prospective clients they are unable to serve. The cost of counsel remains out of reach for many. In written testimony

to the Commission, one Western Maryland resident put it this way: “Unemployment in Washington County is . . . above 9%. Should the families here in Hagerstown and surrounding areas have to choose food on their table or attorney’s fees?” Advocates and court users alike continue to call for increased funding for civil legal services, to ensure access to counsel for those whose cases are inappropriate for self-representation.

Chief Justice John Broderick of New Hampshire challenged members of the Maryland Access to Justice Commission in his keynote address at the Commission’s first meeting in Fall, 2008. He urged the Commission to consider “re-designing the courts from the front door to the judge's bench.” Recognizing that our own perspective on that view, as insiders, was insufficient to the task, Chief Justice Broderick urged the Commission to hear from others.

Through these Listening Events, the Maryland Judiciary and its justice system partners have an opportunity do just that. These shared experiences provide an insight into how the civil and family justice system is perceived. It is these experiences that color the public’s trust and confidence in the courts. If courts truly want to enhance that trust and confidence, they must be willing to listen and respond. As Tekyia B. noted, “[A]t first I was nervous about sharing my private life. . . but I think it is important for the public to know that there are changes that can be made to the system and that unless we speak up as regular people who have been in the system and through difficult challenges, no one’s going to stand up for us.” Courts can honor the valor these individuals exhibit in coming forward, by having the courage to change.