FROM LECTURES TO LITIGATION: A Law Student's Perspective on Pro Se Litigants, Gender, and Access to Justice

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Class: Legal Problems of the Poor

SUMMARY of PAPER

This paper explores the disconnect between constitutional promises and courtroom realities through the lens of a law student who has also experienced the system as a pro se litigant. It examines how structural and procedural barriers disproportionately impact self-represented individuals in family court, particularly women and mothers of color. While law school teaches doctrines of due process and equal protection, the lived experience of navigating family court without representation reveals a system that too often favors those with resources. Constitutional protections promise equal treatment and due process, but the sad reality is that pro se litigants—and especially women representing themselves—face several structural hurdles. This has been documented by researchers and has been reflected in my personal experiences as well. Drawing on case law, legal theory, and firsthand vignettes, the paper calls for systemic reform, including simplified procedures, trauma-informed training for judges, and expanded access to affordable legal support. Without such changes, the gap between the ideals of justice and its practice will continue to leave the most vulnerable behind.

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I. The Illusion of Access: Pro Se Litigants in a System Built for Lawyers

She sat in the back row of her evidence class, her laptop open, but untouched. The professor lectured on hearsay exceptions, but her mind was in another courtroom—one where she wasn't just learning the rules, she was living under them. That morning, she wore the same blazer to class that she had worn to court. She wasn't a lawyer—at least not yet—but she clutched a yellow legal pad like a lifeline as the judge made a ruling. The courtroom was cold. So was the justice received.

From classroom to courtroom, I've experienced firsthand how legal theory falls short of courtroom reality. As law students, we are taught that due process and equal protection are essential principles, but in family court, those ideals often give way to the realities of economic hardship, procedural complexity, and limited resources. The legal system claims to be open and accessible, yet the overwhelming presence of pro se litigants suggests otherwise. In some jurisdictions, over 80% of family law cases involve at least one self-represented party.[1] Legal aid remains underfunded and limited to individuals far below the poverty line. Private attorneys remain unaffordable for most middle-income families. This creates a significant gap in access—a "middle-class justice gap"—that excludes families who earn too much for aid but too little for meaningful representation.[2]

I had an attorney until days before a major hearing. The law firm withdrew, citing unpaid fees, even though I had already paid thousands. The motion misstated facts, but the court granted it. I only had minutes to argue against it. I had no choice but to represent myself--cross-examining witnesses, making objections, and trying to follow rules I barely understood. Afterward, I still received invoices. It felt less like representation and more like punishment.

The "middle-class gap" represents one of the most significant challenges within the access to justice crisis. Middle-income families may appear stable on paper, but in the context of family

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[1] IAALS, *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (2016), available at https://iaals.du.edu/publications/cases-without-counsel-research-experiences-self-representation-us-family-court

[2] Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* (2017).

court, their status often means they must choose between legal representation and basic needs. In family law, the consequences of that decision are particularly severe. These cases involve fundamental constitutional rights such as parenting, custody, and family integrity that directly impact the most vulnerable members of society. Yet litigants without counsel are expected to prepare legal documents, present evidence, follow deadlines, understand rules of evidence, and speak before a judge—tasks that even trained law students find challenging. *Mathews v. Eldridge* makes clear that due process requires procedures that account for private interest, risk of error, and government role.[3] In family court, these standards are often unmet.

I've seen two types of people walk into court. One is represented by an attorney—confident, prepared, and speaking the language of litigation. The other stands alone; often a mother, a student, a worker, armed only with printed forms, borrowed books, sleepless nights, and determination. They didn't choose this path. It chose them the day justice became too expensive to afford.

This imbalance reflects a two-tiered justice system. Represented litigants benefit from legal expertise, while pro se parties are left to navigate complex systems alone. Procedural missteps—missed deadlines, improperly admitted evidence, incorrect formatting—can result in serious losses: custody, visitation, or financial support. In this environment, outcomes can be dictated less by legal merit and more by access to representation.

There comes a point when survival outweighs pride. When attorney invoices stack higher than relief, and legal aid says you're not "poor enough," you find yourself alone in a system never designed for people like you.

The report, *Cases without Counsel: Experiences of Self-Representation in U.S. Family Court*, confirmed what many already know. Financial hardship is the leading driver of self-representation. Nearly 60% of self-represented respondents with annual incomes under $20,000, about 50% earning between $20,000-$40,000, and 40% earning $40,000-$100,000 cited financial

[3] *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (establishing the three-part test for procedural due process requiring consideration of private interest, risk of erroneous deprivation, and government interest).

barriers as a key reason for appearing without counsel.[4] This is not just a poverty issue, but a widespread structural problem.

She studied the local court rules until 2:00 am, cross-referencing statutes and case law, trying to understand why her motion had been denied on a technicality. The opposing counsel's brief was thirty pages of legal jargon that seemed designed to confuse her rather than clarify. Her handwritten response felt inadequate, but it was all she could manage between law school classes and life.

The system is designed for lawyers, not laypeople, and often remains inflexible, penalizing good faith mistakes. Pro se litigants lack the procedural understanding necessary for effective court participation. The resources available to self-represented parties are often inadequate, generic, or outdated. Filing requirements, evidentiary standards, and courtroom decorum function as gatekeeping mechanisms that punish rather than protect. Consider the seemingly simple task of filing a motion. An attorney knows how to check local rules, confirm service requirements, include proper headers, attach required certificates, and follow precise formatting guidelines. A pro se litigant might prepare a substantively strong argument but have it dismissed because they used the wrong font size or failed to include a certificate of service. These procedural barriers create a system where technical compliance matters more than substantive justice.

The clerk handed back her filing noting seventeen different errors. "Wrong form," they said, pointing to a sign listing dozens of different forms for different situations. She had been using Form A when she needed Form A-1. The difference was unclear, but the consequences were real, another week lost, another hearing delayed.

The challenges go beyond procedural complexity. Institutional bias compounds the problem. Many judges and court personnel are not trained to interact with pro se litigants in a trauma-informed, accessible manner, further alienating already vulnerable parties. Studies show that pro se litigants are given less time to speak, are subject to greater judicial scrutiny, and face

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[4] IAALS, *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (2016), available at https://iaals.du.edu/publications/cases-without-counsel-research-experiences-self-representation-us-family-court.

negative assumptions regarding their demeanor or credibility.[5] Some judges and court staff exercise more patience with attorneys than self-represented individuals, sometimes misinterpreting pro se individuals' emotional expressions as instability or their basic confusion as incompetence.[6]

This is particularly concerning as the study confirmed that unrepresented litigants often abandon legitimate claims due to confusion, fear, or procedural barriers.[7] In turn, litigants risk losing their cases not for lack of merit, but because they do not know how to effectively present their arguments. When parents are denied a meaningful chance to defend custody or support claims because they can't afford legal help, courts fail to provide equal protection and meaningful due process under the Fourteenth Amendment.[8]

She sat in the public library, trying to navigate the court's electronic filing system on a computer that froze every few minutes. The system timed out just as she was about to submit her response, erasing an hour of work. Around her, other pro se litigants faced similar struggles—some asking librarians for help with basic computer functions, others printing documents after document because they couldn't figure out how to save files.

The digitization of court systems, accelerated by the COVID-19 pandemic, has created new barriers for pro se litigants. While electronic filing was intended to increase efficiency and access, it often excludes those without reliable internet, updated devices, or digital literacy skills.[9] Many pro se litigants are older adults, low-income individuals, or people with limited formal education. Populations that may struggle with complex online systems. Courts have largely failed to account for these realities. Many offer minimal technical support, assume universal computer access, and provide limited alternatives for those who cannot navigate digital systems. The promise of

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[5] Jona Goldschmidt, *The Pro Se Litigant's Struggle for Access to Justice: Meeting the Challenge of Bench and Bar*, 40 FAM. CT. REV. 36, 40-42 (2002).
[6] Drew A. Swank, *The Pro Se Phenomenon*, 19 BYU J. PUB. L. 373, 390-95 (2005).
[7] IAALS, *Cases Without Counsel*, supra note 5, at 22-25.
[8] See *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996) (holding that due process and equal protection require waiver of court fees for indigent parents in parental rights termination proceedings).
[9] https://www.pew.org/en/research-and-analysis/reports/2021/12/how-courts-embraced-technology-met-the-pandemic-challenge-and-revolutionized-their-operations

increased access through technology becomes hollow when technology itself becomes a barrier to justice.

II. The Treatment of Women in Family Court: When Gender Meets Justice

She wasn't just pursuing a degree. She was fighting for a future where she wouldn't need anyone else to speak for her. In the courtroom, her hands trembled—not from fear but from sheer determination. She embodied countless women who enter family court with only their voices and the weight of their children's futures.

As both a law student and a pro se litigant, I've observed that the law we study in books often bears little resemblance to the justice dispensed in family court. Family court can impose greater burdens on women, particularly mothers of color. I've seen how legal standards meant to be neutral are applied through lenses shaped by gender, poverty, and race.

Civil procedure is designed to create fairness through uniform rules. However, the very rules we dissect in class become problematic when judges apply them rigidly, without acknowledging the lived realities of pro se women trying to protect their rights while navigating a complex and unfamiliar legal system. Women are often expected to prove their competence, credibility, and composure to a higher standard than their male or represented counterparts.

Family court was never designed for her. It operates under assumptions of equal resources, equal representation, and fairness—conditions that research shows exists in fewer than 30% of family law cases nationwide.[10] Yet the system continues to operate as if these conditions are the norm rather than the exception.

Mathews v. Eldridge teaches that due process demands consideration of private interest at stake, the risk of erroneous deprivation, and the government's interests.[11] However, in family courts, where parental rights are at stake, those private interests are at their highest—and yet the system can fail the very people it claims to protect. Courts claim to apply the "best interests of the child" standard, but that seemingly neutral principle is sometimes filtered through implicit biases.

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[10] IAALS, *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court (2016).*
[11] *Mathews v. Eldridge, 424 U.S. 319, 335 (1976).*

Mothers face different expectations than fathers. Poverty can be mistaken for poor parenting. A father who shows up once may be praised for effort. A mother, doing the daily work, is scrutinized for anything less than perfection.

In one hearing I observed, a father's attorney presented a PowerPoint accusing the mother of poor parenting. The evidence? Photos of dishes in the sink, mismatched socks on her daughter, a screenshot of her Facebook post where she said, "Exhausted. Single mom life is hard." Meanwhile, the father—who had missed multiple school events and lacked prior engagement—was praised for his "newfound commitment to fatherhood." The mother, with only a manila folder of handwritten notes, tried to present academic records and proof of care.

Professor Martha Fineman's concept of "derivative dependency" illustrates this imbalance.[12] Fathers' minimal presence becomes evidence of commitment, while mothers' consistent involvement is expected or criticized as "over-involvement." This bias contradicts the principle in *Craig v. Boren* that gender-based classifications must serve important governmental objectives and be substantially related to those objectives.[13] However, It's difficult to see how penalizing primary caregivers serves any legitimate governmental interest, particularly when the stated goal is protecting children's welfare.

Perhaps most troubling is how poverty becomes weaponized in custody proceedings. Instead of being seen as a structural barrier, poverty is too often interpreted as personal failure. Despite what Evidence law teaches us—that evidence should outweigh prejudice—I've witnessed judges allowing economic hardship to color perceptions of parental fitness. Mothers are penalized for living in small apartments, working multiple jobs, or lacking reliable transportation—circumstances often resulting from systemic inequalities rather than personal failings.

One mother I worked with was criticized for missing a hearing due to car trouble. Despite providing documentation and attempting to call the court, her ex-husband's attorney argued that this demonstrated "a pattern of unreliability" that endangered their child.

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[12] Martha Albertson Fineman, *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies* 161–84 (1995).
[13] *Craig v. Boren*, 429 U.S. 190, 197 (1976).

This aligns with research on the "scarcity mindset," which shows that poverty drains mental bandwidth, making small errors more likely.[14] But courts may interpret these mistakes as evidence of negligence. Professor Dorothy Roberts' work on the "punitive child welfare" reinforces that poor women, especially women of color, are over-surveilled and penalized.[15] This results in what I call "double jeopardy": procedural disadvantages from self-representation and substantive bias due to gender and poverty. Together, they violate both due process and equal protection by creating barriers to meaningful participation based on socioeconomic status that disproportionately affects women.

She brough receipts, school records, medical appointment summaries, and detailed calendars documenting years of primary caregiving. He brought an attorney and confident demeanor. The judge spent more time listening to his attorney's arguments than reviewing her evidence. When she tried to speak, she was told to "keep it brief" and "stick to the facts"—as if her lived experience was somehow less factual than legal rhetoric.

Credibility is central to family law. Yet women of color face also face what studies call a "credibility deficit." Women work harder to establish trustworthiness while more likely having their testimony questioned or dismissed. They must walk a fine in the courtroom between being assertive and deferential.[16] Cry, and you're unstable. Stay calm, and you're cold. Challenge procedure, and you're combative. Stay quiet, and you lack initiative. This "performative impossibility" means there is no right way for women to behave that doesn't trigger some form of negative characterization.[17] Men face no equivalent double bind.

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[14] Sendhil Mullainathan and Eldar Shafir, "Scarcity: Why Having Too Little Means So Much" (2013).

[15] Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* 8–21 (2002).

[16] Chris Chambers Goodman, Nevertheless She Persisted: From Mrs. Bradwell to Annalise Keating, Gender Bias in the Courtroom, 24 Wm. & Mary J. Women & L. 167 (2017), https://scholarship.law.wm.edu/wmjowl/vol24/iss1/7

[17] Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gende*, 1991 DUKE L.J. 365, 380–88 (1991). - Devon W. Carbado & Cheryl I. Harris, *Intersectionality at Thirty: Mapping the Margins of Anti-Essentialism, Intersectionality, and Dominance Theory*, 132 HARV. L. REV. 2193, 2201-03 (2019).

Professor Paulette Caldwell describes this dynamic as "intersectional invisibility": women of color are hyper-visible as threats, but invisible as credible advocates.[18] The differences are not anecdotal. The Federal Judicial Center found that pro se women face greater procedural penalties and receive less judicial patience than their male counterparts.[19] Judges are more likely to explain procedures to fathers while showing impatience with mothers.[20] Courts have a duty to ensure that self-representation doesn't result in disparate treatment.

III. The Path to Reform: When Courtroom Realities Expose Systemic Failures

She walked out of the courthouse that day knowing that her fight wasn't over, not just for her own case, but for every person/woman who would walk through those doors after her. Law school had taught her to think like a lawyer, but the courtroom had taught her to feel what it meant to seek justice in an unjust system.

Access to justice should not be a privilege reserved for the wealthy. It is a constitutional right rooted in the principles of due process and equal protection. Yet in courtrooms across the country, these rights are experienced very differently depending on whether a litigant can afford legal representation. This unequal access undermines the legitimacy of the entire system. The idea that justice is blind crumbles when navigating court is dependent on the ability to hire an attorney.

Addressing the pro se crisis requires more than pamphlets, legal portals, or notices tacked to courthouse walls. It demands real, systemic reform. Courts need to build infrastructure that acknowledges and responds to the challenges faced by those without legal representation. This means providing on-site support staffed by trained personnel who can assist with procedural questions—individuals who understand how to help without crossing into the territory of unauthorized legal advice. Help desks run by paralegals or supervised law students could offer

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[18] *Id.*

[19] Fed. Judicial Ctr., *Pro Se Litigation in Federal District Courts* 12–15 (2011).

[20] See generally Jona Goldschmidt, *How Are Courts Handling Pro Se Litigants?*, 82 JUDICATURE 13, 16-18 (1998).

vital assistance with navigating complex processes like service of process, drafting basic motions, and preparing for hearings. These supports would not replace lawyers, but they would make the court system more navigable for people who have no choice but to go it alone.

Simplifying legal forms is another critical reform. These forms should be written in plain language, translated into multiple languages, and supplemented with visual aids or instructional videos where appropriate. Courts should also consider restructuring dockets to accommodate pro se litigants by giving them extended time slots or holding separate calendars where the judge can move at a slower, more explanatory pace.

On the state level, funding should be allocated for limited-scope services that allow attorneys to assist with specific tasks without taking on an entire case. This is especially useful in high-stakes family law proceedings where even small bits of legal help can change the trajectory of a case. In addition, sliding-scale legal services should be expanded for working and middle-class families who fall between legal aid and private counsel.

More importantly, judges must receive specialized training to better serve pro se litigants. Trauma-informed practices, procedural patience, and awareness of implicit bias are essential. Court staff, from clerks to bailiffs, often serve as the first (and only) points of contact for pro se litigants. The way they respond can either empower or silence someone seeking justice.

The woman in the Evidence class wasn't just preparing for exams—she was preparing to defend her rights in real time. She didn't want to rely on anyone else to speak for her, but she needed the law to make space for her voice.

Due process is not an abstract principle. It is the difference between being heard and being dismissed. Studying law while experiencing its real-world application has re-shaped my understanding of justice. Law school taught me how to brief cases, apply standards, and recite doctrine. But it was in court, standing alone before a judge, that I learned what the Fourteenth

Amendment feels like in practice. I no longer see cases simply as doctrines. They are lived experiences of real people, often women, caregivers, doing the best they can in a system that was never built for therm. Pro se litigants are not rare exceptions. They are everywhere. They could be our classmates, our neighbors, and our future clients where the courtroom is not neutral ground. For many, it is hostile, disorienting, and stacked against them from the start. The burden of navigating it should not fall on the most vulnerable while the rest of us recite constitutional doctrine in class. Systemic change cannot wait for personal transformation. Courts must gather data on outcomes by race, gender, and representation to expose and address disparities. Without this transparency, we cannot hold the system accountable to its own ideals. Equal protection and due process mean little if they aren't equitably applied.

The path forward requires the courage to acknowledge that our current system fails too many people, the courage to implement meaningful reforms, and the courage to recognize that access to justice is not a privilege to be earned but a right to be protected. Until we take that path, courts will continue to be places where justice is rationed by economic status rather than dispensed according to legal merit.

She closed her laptop in the back of the evidence class, but her education was far from over. The real learning happened in courtrooms; where theory met reality, where constitutional principles confronted human needs, and where the promise of equal justice under law was tested one case at a time. She would graduate soon, but she would never forget what it felt like to need justice and find only process, to seek fairness and encounter barriers, to fight for her family in a system that seemed designed to defeat her. That memory would make her a better lawyer, and maybe, just maybe, it would help her create a more just system for the individual who would follow in her footsteps.