The Plural of Anecdote is Not Data: Teaching Law Students Basic Survey Methodology to Improve Access to Justice in Unemployment Insurance Appeals

Faith Mullen

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THE PLURAL OF ANECDOTE IS NOT DATA: TEACHING LAW STUDENTS BASIC SURVEY METHODOLOGY TO IMPROVE ACCESS TO JUSTICE IN UNEMPLOYMENT INSURANCE APPEALS*

Enrique S. Pumar** and Faith Mullen***

INTRODUCTION

This project has its origins at the University of the District of Columbia David A. Clarke School of Law (UDC). In March 2008, UDC hosted a meeting between the Pro Bono Committee of the District of Columbia Office of Administrative Hearings, and clinical professors and pro bono coordinators from several law schools in the District of Columbia. At that meeting, the Pro Bono Committee initiated a dialogue about how to better meet the needs of self-represented individuals who appear before the Office of Administrative Hearings (OAH) and extended an invitation to attend some OAH hearings. Professor Mullen accepted that invitation and between March and September 2008 attended more than forty hearings. Initially, the purpose of attending hearings was to identify case types that might be suitable for the law students enrolled in the General Practice Clinic at The Catholic University of America law school. It soon became clear to Professor Mullen that a large number of individuals who appear before the OAH are

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* Many people helped make this project possible. We are particularly grateful to Principal Administrative Law Judge Ann Yahner for her insights and practical assistance, to the administrative law judges who allowed us to observe their hearings and to better understand the issues around self-representation in UI appeals, to Administrative Law Judge Elizabeth Figueroa for all her assistance with project management, to the OAH Pro Bono Committee for their outreach efforts, and to the staff of the Office of Administrative Hearings, who graciously endured our intrusion into their work lives and made us feel welcome. This work could not have been completed without the resourcefulness and diligence of the students from The Catholic University of America Columbus School of Law (CUA) General Practice Clinic who drafted and administered the survey: Eric Berkley, Brynne Bisig, Erin Hughes, Laura Kakuk, and Catherine Knight. We also appreciate the assistance of other students who volunteered to help with the project when we most needed their help: Anna Bristle, Angus Crawford, Edward Bertram, and Nick Liapis. Special thanks are owed to Mark Herzog and Maureen Syracuse of the D.C. Bar Pro Bono Program, Professor Jeffrey Gutman of The George Washington University Law School, Courtney Chappell of the Employment Justice Center, Tonya Love of the Claimant Advocacy Program, and Charles Ray of the Employer Advocacy Program for sharing their expertise. We appreciate the able assistance of CUA Law Librarian Emily Black. Cara Swan provided invaluable editorial assistance. Finally, we are indebted to the Bellow Scholars Committee for selecting the project and for its emphasis on the use of empirical research to improve access to justice. Support for this research was provided by a CUA Summer Research Grant.

** Enrique S. Pumar, Ph.D., is an Associate Professor of Sociology and Faculty Fellow at the Institute for Policy, Research and Catholic Studies at The Catholic University of America.

*** Faith Mullen, J.D., is an Assistant Clinical Professor at The Columbus School of Law of The Catholic University of America.
self-represented, and that many of them would benefit from having legal representation or at least more legal information about the hearing process.

With the support of the OAH Pro Bono Committee and then-Chief Administrative Law Judge Tyrone T. Butler, Professor Mullen submitted a proposal to the Bellow Scholars Committee of the American Association of Law Schools Clinical Section. In January 2009, she was designated as one of four Bellow Scholars for her proposed work on access to justice at the OAH. These fellowships, named for Gary Bellow, a Harvard Law School professor and fierce advocate for social justice, are awarded to law school clinicians who “are embarking on important efforts to improve the quality of justice in their communities.”

This project is part of Professor Mullen’s larger Bellow Scholars research agenda, which concerns access-to-justice issues at the OAH more generally. This project tried to ascertain whether self-represented parties (both employees and employers) in unemployment insurance (UI) appeals perceive a need for more legal assistance. For three weeks in November of 2009, law students from The Catholic University of America administered a survey that asked self-represented parties in UI appeals whether, based on their experiences in the hearing, they perceived a need for more legal assistance and whether there were aspects of the hearings that they found particularly challenging. Initially Professor Mullen sought Professor Pumar’s expertise to ensure that the sample size was adequate and the survey methodology sound. As the project was initially conceived, Professor Mullen would draft the survey, Professor Pumar would review it, and law student volunteers would administer it. After an initial conversation, Professor Mullen and Professor Pumar decided that one significant component of the project should be to involve law students in all aspects of the survey process. So, while this project began as an effort to determine whether self-represented parties who appear before the OAH in UI appeals perceive a need for legal assistance, it evolved into something more—an interdisciplinary collaboration between a sociologist (Professor Pumar) and a lawyer (Professor Mullen) on educating law students about using survey methodology to improve access to justice. The hope was that the students would learn how to conduct empirical research, which might be valuable in their future careers. At a minimum, this research would make the law students better able to evaluate research they encounter post graduation.

This article details that collaboration and reports the results of the survey. Part I explains why the project was undertaken and examines the need for legal representation in UI appeals. Part II describes how the research was conducted, with

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3 The word “employee” is used interchangeably throughout this article with the term “claimant.”
an emphasis on the key role played by students in framing the research questions, and drafting, pretesting, and administering the survey. This section may provide a model for others who might wish to engage in similar law and sociology collaborations. Part III reports the findings. The final section offers conclusions about training law students to conduct empirical research and about the need for additional legal resources for parties in UI appeals and finishes with some recommendations.

I. Why Unemployment Insurance? Why Now?

The OAH was created in 2004 after the Council of the District of Columbia enacted legislation that removed the appeal function from many city agencies and created an independent administrative tribunal, or “central panel,” charged with adjudicating administrative litigation. When citizens disagree with agency decisions, their cases come before an Administrative Law Judge (ALJ) who is employed by an independent entity, rather than by the agency that made the initial decision. Central panels are designed to “give ALJs a certain amount of independence from the agencies over whose proceedings they preside.”

The Council created OAH to

[I]mprove the quality of administrative adjudication . . . by eliminating potential conflicts of interest for administrative law judges, promoting due process, bringing about an appropriate level of consistency and efficiency in the hearing process, increasing the professional qualifications of administrative law judges, and by expediting the fair and just conclusion of contested cases.

Independent administrative tribunals exist in twenty-seven states, one county, plus Chicago and New York City. While some central panels have jurisdiction over only a few agencies, the OAH has jurisdiction over more than twenty-five different agencies, boards, and commissions.

5 Id.
9 Id.
10 About the Office of Administrative Hearings (OAH), OFFICE OF ADMIN. HEARINGS, http://oah.dc.gov/oah/cwp/view,a,3,q,593400,oahNav,%7C33003%7C.asp (last visited Aug. 14, 2011). In addition to UI appeals, OAH has jurisdiction over appeals from such varied agencies as the Department of Consumer and Regulatory Affairs, the Department of Public Works, the Taxicab Commission, and the Metropolitan Police Department.
A. Importance of Unemployment Insurance Appeals

UI cases can have serious consequences for both employers and employees. Employers pay unemployment insurance taxes at rates that are ultimately based on their experience in the UI program.\textsuperscript{11} When employers first join the program, they pay at the standard contribution rate, which equals "the average rate of contributions paid by all employers during the preceding year, or 2.7 percent, whichever is higher."\textsuperscript{12} This rate remains in effect until the employer can be rated based on experience. A higher number of claims paid results in a higher contribution rate for the employer, so an employee's prevailing in a UI appeal can have an adverse effect on the employer's unemployment insurance tax rate.\textsuperscript{13} This consequence, which is built into the statute, gives employers an economic incentive to oppose claims that should not be paid.\textsuperscript{14}

The consequences of losing a UI appeal may be greater for individual employees than for employers. UI is an important safety-net program for employees,\textsuperscript{15} and losing a UI appeal may make it difficult for an employee to pay for necessities such as food and housing.\textsuperscript{16} UI benefits keep families from sinking below the poverty line, and "play a major role in preventing this catastrophic decline."\textsuperscript{17} The District of Columbia Court of Appeals has described the UI program as a "remedial humanitarian [program] of vast import," one that is designed to protect employees "against economic dependency caused by temporary unemployment" and "reduce the need for other welfare programs."\textsuperscript{18}

The availability of UI benefits takes on particular importance in the District of Columbia where, during the calendar quarter when the survey was conducted, the unemployment level exceeded eleven percent.\textsuperscript{19} This reflected an almost

\textsuperscript{11} Tax Rate Questions, DEPT OF EMPLOYMENT SERVICES (DOES), http://www.does.dc.gov/does/cwp/view,a,1232,q,537820.asp (last visited Mar. 12, 2011).
\textsuperscript{12} Id.
\textsuperscript{14} Maurice Emsellem & Monica Halas, Representation of Claimants at Unemployment Compensation Proceedings: Identifying Models and Proposed Solutions, 29 U. MICH. J.L. REFORM 289, 305 (1996).
\textsuperscript{16} Unemployment Insurance Benefits: Where Do We Go From Here? Before the S. Comm. on Finance, 111th Cong. 72 (2009) (statement of Beth Shulman, Chair, National Employment Law Project), available at http://www.finance.senate.gov/hearings/hearing/?id=d8211bce-e081-3f58-e37c-be9dc6b619ce8 ("Unemployed workers who did not receive UI benefits were twice as likely as those with benefits to be forced to skip meals in order to get by financially.").
\textsuperscript{17} Id. at 75.
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four-percentage-point jump in unemployment between 2008 and 2009.20 The District of Columbia Access to Justice Commission found that “[a]s more jobs are lost, unemployment benefits are an increasingly important source of income for low-income families. Unemployment disputes have generated a large number of appeals to the [OAH] where having a lawyer is often necessary to argue a complex legal issue.”21

Unemployment appeals make up a significant portion of the cases heard by the OAH. UI cases come to the OAH as appeals of decisions made by the Department of Employment Services (DOES), which administers the program.22 In fiscal year 2009, there were 3222 appeals.23 This represents approximately thirteen percent of all OAH filings in that year and makes UI appeals second only to Department of Public Works appeals in volume.24

There is reason to be concerned about the quality of decisions made by DOES. Between August 2009 and July 2010, the District of Columbia Office of the Inspector General conducted an evaluation of the Office of Unemployment Compensation (OUC) at the DOES. Based on this evaluation, the Inspector General released a report that revealed some problems at OUC including the lack of a procedure manual for processing claims,25 lack of formal job training,26 high level of employee turnover,27 lack of quality assurance,28 and an inability to generate key performance reports, such as the number of claims processed by each employee.29 When given the opportunity to respond to these concerns, DOES agreed with the findings.30 Against this backdrop of documented performance

24 Id. at 19.
26 Id. at 23.
27 Id. at 28.
28 Id. at 32, 34.
problems at DOES and high unemployment, the OAH serves an important role in ensuring the fair and efficient resolution of UI appeals.

B. Assessing the Desire for More Pro Bono Assistance

There is a strong sentiment among at least some of the ALJs who hear UI appeals that the parties, both employers and employees, benefit from having representation. Some studies of the outcomes in UI appeals in other jurisdictions suggest that employees prevail more often when they are represented. These cases can be difficult for both parties because "[c]ases involving employment separation issues are legally complex and very contentious." Despite the difficulty, the majority of parties in UI appeals are self-represented. Principal ALJ Ann Yahner estimates that between seventy-five and eighty percent of employers are self-represented and that eighty to eighty-five percent of employees are self-represented.

The District of Columbia Bar Pro Bono Program, which developed several court-based resource centers and provides pro bono representation in a variety of cases, identified UI appeals as a type of case where assistance provided on the day of the hearing could make a difference for parties, but wondered whether the need for representation was already being met by current legal service providers and whether parties in UI appeals even want representation. The Pro

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32 Emsellem & Halas, supra note 14, at 291-92. See also Russell Engler, Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed, 37 FORDHAM URB. L. J. 37, 61 (2010) (accounting for this difference in the effect of representation of employers and employees by theorizing, "that the representatives for [employees] might be more likely to accept cases with potential merit, whereas employers might be more likely to retain an outside representative in problematic cases . . . ." (citing HERBERT M. KRITZER, LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK 32 (1998))).
33 Emsellem & Halas, supra note 14, at 297.
35 E-mail from Ann Yahner, supra note 34.
37 There are two entities that provide representation pursuant to statute: The Claimant Advocacy Program (CAP), sponsored by the AFL-CIO, represents employees at no cost, while the Washington D.C. Area Chamber of Commerce represents employers as part of theEmployer Assistance Program (EAP). Claimant Advocacy Program, AFL-CIO: WASHINGTON DC METRO COUNCIL, http://www.dclabor.org/hrd/ProgramDetails/247/pid/536 (last visited Feb. 20, 2011); See also DC GOVERNMENT UNABLE TO FUND DC CHAMBER OF COMMERCE EMPLOYMENT ADVOCACY PROGRAM FOR REMAINDER OF
Bono Program is understandably reluctant to devote resources (staff time, trainings, materials, mentoring of advocates, etc.) absent evidence of pressing need.39

The UI statute authorizes funding for two organizations to provide free legal services to parties in UI appeals, one for employees and one for employers.40 The Claimant Advocacy Program (CAP), sponsored by the Metropolitan Washington Council, AFL-CIO, assists employees who have been “denied unemployment compensation in D.C. or whose benefit awards have been appealed by the employer.”41 The employer counterpart to the CAP program is the Employer Assistance Program (EAP), which provides free legal assistance to employers in UI appeals. The Washington Area Chamber of Commerce sponsors the EAP program.42 The EAP ran out of money in August 2009 and thus was not accepting cases when the survey was administered, but it resumed operations in March 2010.43 In addition to the EAP program, private counsel and some “third-party agents” represent employers in these appeals.44

Employees who seek legal representation turn to one of several legal service providers. CAP is the leading source of assistance, representing between 30 and 45 claimants in UI appeals each month.45 CAP has two full-time attorneys and estimates that it has the capacity to represent as many as 50 claimants per month. Of the average 250 appeals that are filed each month, CAP receives inquiries about representation from about 75 claimants.46 This means that more than two thirds of the employees who file UI appeals do not contact the CAP program.

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38 Telephone Meeting with Mark Herzog, Associate Dir., DC Bar Pro Bono Program, in D.C. (July 9, 2009).
39 Id.
40 D.C. CODE § 51-111(h) (2001). The OAH hearing notice includes information about both EAP and CAP in both English and Spanish, see also note 37.
41 AFL-CIO: WASHINGTON DC METRO COUNCIL, supra note 37.
42 DC CHAMBER OF COMMERCE, supra note 37.
43 The Employer Advocacy Program (EAP) is Back in Business!, DC CHAMBER OF COMMERCE (Aug. 27, 2010, 2:19 AM), http://www.cocunited.org/article/DC_Local_Chambers/DC_Chamber/The_Employer_Advocacy_Program_EAP_is_back_in_business/19108.
44 These representatives are typically non-attorneys employed by firms that represent employers in a variety of unemployment tax matters. OAH rules specifically permit non-lawyers who are employed by such firms to act as representatives in UI appeals. OAH rules provide, “[a]n authorized agent employed by a firm whose usual business includes providing representation in unemployment compensation cases may represent any party.” D.C. Mun. Regs. tit. 1, § 2982.1 (2010). The proposed rules were published in the D.C. Register on September 10, 2010, at 57 DCR 8198, and OAH extended the comment deadline in response to requests. The rules were published as a second proposed rulemaking on November 26, 2010, at 57 DCR 11223. The notice of final rulemaking was published at 57 DCR 12541, 12591 (December 31, 2010).
45 E-mail from Tonya Love, Attorney, Claimant Advocacy Program (CAP), to Faith Mullen (Feb. 28, 2011, 17:01:00 EST) (on file with authors).
46 Id.
The CAP program prefers that employees contact them during a brief window beginning when the hearing date is scheduled and ending five days before the hearing date. They make exceptions on a case-by-case basis but have concluded that this is the best way to allocate their services.\(^47\)

The Employment Justice Center (EJC) is a leading provider of free employment-related legal assistance to low-income employees in the District of Columbia. EJC attorneys and volunteers generally provide legal information and unbundled legal services (legal advice, guidance on preparing for a hearing, or assistance in drafting pleadings, for example). For help with UI appeals, however, they typically refer claimants to the CAP program. At this time, EJC does not provide representation before the OAH.\(^48\)

Several area law school clinical programs, including those at The George Washington University, The Catholic University of America, Georgetown University, and American University, represent employees in UI appeals.\(^49\) Individuals who come to the OAH are provided a list of legal service providers. When law schools are accepting UI cases, the clerks post a sign with the name and telephone number of a contact person. Combined, these programs represent fewer than 100 employees per year. Law school-based legal clinics can only provide periodic assistance, largely driven by the academic calendar. Even when law schools are in session, typically several weeks early in each semester pass before students are ready to represent clients. Neighborhood Legal Services\(^50\) and the Legal Aid Society\(^51\) have each represented claimants in appeals of OAH decisions before the District of Columbia Court of Appeals, and have represented individuals whose cases have been remanded to the OAH, but otherwise have not represented many claimants before the OAH. Bread for the City, another leading provider of civil legal services, does not represent parties in UI appeals.\(^52\) A quick tally of these numbers suggests that all of these legal service providers com-

\(^{47}\) Id.
\(^{48}\) E-mail from David Loda, Legal & Policy Associate, Employment Justice Center (EJC), to Faith Mullen (Feb. 25, 2011, 16:49 EST) (on file with authors).
\(^{50}\) E-mail from Heather Hodges, Pro Bono Counsel, Neighborhood Legal Service Program, to Faith Mullen (Mar. 21, 2011, 17:00 EST) (on file with authors).
\(^{51}\) E-mail from Jodi Feldman, Director of Pro Bono and Intake Programs, Legal Aid Society of the District of Columbia, to Faith Mullen (Mar. 21, 2011, 09:40 EST) (on file with authors). Since this project was completed, the Legal Aid Society has hired a staff attorney to represent claimants in UI cases.
\(^{52}\) E-mail from Vytas V. Vergeer, Legal Clinic Director, Bread for the City, to Faith Mullen (Mar. 29, 2011, 14:40 EST) (on file with authors).
bined represent fewer than 600 employees per year, when more than 3000 cases were filed in each of the last three fiscal years.53

One important question is whether legal service providers who currently represent parties in unemployment appeals have the capacity to provide legal assistance to everyone who needs it. The answer to the so called "capacity question" is important because it has a direct bearing on the willingness of other legal service providers and pro bono attorneys to represent parties in UI cases. If existing legal service providers can meet the demand for legal services, it would not make sense to direct additional resources toward UI appeals. The limited number of lawyers who actually appear before the OAH in UI appeals, coupled with the sheer volume of cases, strongly suggests that existing providers are not able to help everyone who needs representation.

II. TRAINING LAW STUDENTS IN BASIC SURVEY METHODOLOGY

This project was developed with an emphasis on "service learning," where coursework is designed to address community needs.54 This kind of community-based project "enhances learning outcomes as well as civic engagement, volunteering, political participation and intergroup relations."55 There is growing interest among legal educators in identifying projects that will engage law students who are enrolled in clinical programs in addressing legal issues beyond individual client representation.56 The challenge is to identify projects that are good vehicles for learning.57 Professor Katherine Kruse identified two elements that distinguish projects that offer students meaningful problem-solving experiences beyond casework: "students learn a skill best by having primary responsibility for employing that skill to accomplish a task that they can see from start to finish."58 Similar elements have been identified in the literature on service-learning: autonomy, competence, and relatedness.59 Projects should offer students the opportunity to be involved in the decision-making process (autonomy), to attain a sense

53 2010 ANNUAL REPORT, supra note 23.
58 Id. at 423.
59 Levesque-Bristol et al., supra note 55, at 210.
of mastery (competence), and to connect with faculty, other students, and community partners (relatedness). Community projects are believed to “constitute powerful and instructional ‘texts.’”

The students who worked on this project were enrolled in the General Practice Clinic at the Catholic University of America. By the time they administered the survey, they had three months of clinical legal education and all had some experience with individual client representation. All of them had expressed an interest in policy work. Between September and early November, Professor Pumar led a forty-five minute seminar once a week for six weeks. The seminar was held when students would otherwise have been in the clinic as part of their regularly scheduled office hours.

During this seminar, students learned how to implement a research process to gather empirical evidence, from conceptualization through data collection. As a result, they began to understand the interdependence of the different phases of a research enterprise. Students also learned how the length and design of questionnaires affect the rate of completed surveys. Students received instruction in research methods during the first two weeks of the seminar and then worked collaboratively on formulating the survey questionnaire and collecting data. Another topic of discussion in the seminar was the importance of devising measuring schemes to gather sufficient and persuasive data. As part of this exercise, the students were asked to formulate and bring to class questions they thought should be included in the survey. The students examined different strategies to manage the return rate of surveys. This aspect of the seminar was important for the success of the project because this measurement provides a reliable calculation of the validity of the survey findings. Finally, Professor Pumar instructed

60 Id.
61 Ira Harkavy & Matthew Hartley, Pursuing Franklin's Dream: Philosophical and Historical Roots of Service-Learning, 46 AM. J. COMMUNITY PSYCHOL. 418, 420 (2010).
62 Students enroll in the General Practice Clinic for six credits, with an option, under certain circumstances, to continue for three to six credits in subsequent semesters. They are expected to be present in the clinic for twenty hours per week. Students work in teams and represent two to five clients (depending on the scope or complexity of the cases) in civil matters including child support, special education, estate planning, consumer, and public benefit cases. Participation in this project counted as work on one case.
63 Ultimately, we did not discuss any arrangements to support the data analysis effort in our seminars because asking students to analyze the data would have required more expertise than the students possessed and would have interfered with their end of semester final examinations.
64 The rate of returns in surveys is the outcome of the division of the number of people who were asked to complete the survey by the actual number of those who completed the questionnaire. The rate of return measures the validity of surveys. If the questionnaire is too long, unattractive, inaccessible, or contains irrelevant questions, the population one asks to participate in the study is likely to decline to participate. Sufficient number of rejections, in turn, would affect the reliability of survey research because it undermines the general applicability of the questionnaire tool. See FLOYD J. FOWLER, JR., IMPROVING SURVEY QUESTIONS: DESIGN AND EVALUATION (Susan McElroy, ed., 1995).
students on how to conduct a pretest. Pretests provide an opportunity for a researcher to perfect the survey questionnaire and to test some of the methodological assumptions supporting the research process. The pretest provides the last opportunity to tweak any aspect of the research before it is fully implemented. At the conclusion of the survey, Professor Pumar analyzed the data. Asking students to analyze data would have interfered with their final examinations. To enhance their learning, students recorded their observations about their work on the survey and their thoughts about access to justice in administrative hearings.65

A. Framing the Research Question

The first step in framing the research question was for all the students and both faculty members to observe at least one UI appeal hearing in which the parties were self-represented. In these hearings, the ALJs routinely provided the parties with an overview of the hearing process and clarified procedural issues as they surfaced. Among ALJs there were slight variations, but most communicated the same basic information to parties—that the hearing would be recorded, the order of presenting the case, and the burden of proof. Even so, students noted that most self-represented parties seemed uncertain about the order in which things would occur during the hearing, what information would best prove their cases, and how to respond to the other party’s evidence. It was clear that this was the first time some parties had heard this information. One student wrote:

The employee seemed confused about her role and responsibilities in the hearing, basically tipping off to the Judge and the employer [about] her theories regarding the case and seeming to think that she had to make a long-winded statement in order to prevail. Most puzzling, she didn’t take any

65 Asking students to write about their experiences is consistent with best practices in legal education as well as consistent with the goals of service learning as articulated by Yi Lu who noted that “[h]y providing reflection opportunities, instructors facilitate students processing their values and goals and moving beyond individual experience to consider broader implications of their service.” (citations omitted) Yi Lu & Kristina T. Lambright, Looking Beyond the Undergraduate Classroom: Factors Influencing Service Learning’s Effectiveness at Improving Graduate Students’ Professional Skills, 58 C. TEACHING 118, 119 (2010). It is also consistent with best practices in legal education. See AM. BAR ASS’N: SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, MACCRATE REPORT: AN EDUCATIONAL CONTINUUM REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), available at http://www.americanbar.org/groups/legal_education/publications/maccrate.html#A.%20Reasons%20for%20a%20Statement. See also Marcy L. Karin & Robin R. Runge, Toward Integrated Law Clinics that Train Social Change Advocates, 17 CLINICAL L. REV. 563, 567-68 (2011). “The integrated approach to clinical education provides one of the best frameworks for creating optimal learning experience for law students by providing multiple, different opportunities to experience lawyering, to reflect on what happened or was done, to interpret the task or event and to see it in a larger context of social change lawyering, thereby enabling them to effectively apply their experience in the future.”
notes for much of the proceeding, even as management threw out numerous
dates and incidents in making its case.\textsuperscript{66}

In another hearing, an employer’s testimony made it unclear whether the em-
ployee had been fired for multiple acts of misconduct or for the one act of mis-
conduct that the employee had received notice of. This testimony complicated
the employer’s burden of proof.\textsuperscript{67} The parties had difficulty with objections and
cross-examination. As one student wrote, “the [employee] did not seem to under-
stand what she was allowed to object to, and why she could object to it. Even
though [she] would say ‘objection,’ she had a hard time formulating arguments,
and because of that evidence was admitted that would hurt her case.”\textsuperscript{68} In the
hearings we observed, parties were universally unsure about cross-examinations,
either using it as one more opportunity to testify or forgoing it altogether.\textsuperscript{69}

The need for an interpreter can further complicate the hearings. At the time of
the observations, the OAH relied on Language Line, a telephonic translation ser-
vie.\textsuperscript{70} Professor Pumar, who is fluent in Spanish, noted how inadequate Lan-
guage Line was for the purpose of conducting a legal proceeding.\textsuperscript{71} At more than
one point, the hearing foundered while the parties stared at either the table
before them or the ALJ, waiting for the interpreter, who in turn was waiting for
the ALJ.\textsuperscript{72} Eventually the hearing was continued to another date to allow the
employee time to locate proof that the hearing request was timely filed. Both
parties seemed baffled by the continuance.

Students left the hearings with the strong impression that, even with help from
the ALJs, most self-represented parties had difficulty presenting their cases. We
approached the research with two primary questions in mind: Do self-repre-
sented parties in UI hearings (based on their experience of participating in a

\begin{itemize}
  \item \textsuperscript{66} Memorandum from Eric Berkey, Law Student, Columbus Sch. of Law, to Authors (Dec. 3,
  2009) (on file with authors).
  \item \textsuperscript{67} Id.
  \item \textsuperscript{68} Memorandum from Catherine Knight, Law Student, Columbus Sch. of Law, to authors (Dec.
  2, 2009) (on file with authors).
  \item \textsuperscript{69} Professor Pumar (the only member of the research team not trained in law) suggested that
cross-examination should be abolished because it was wrong to make people who were already in a
stressful situation come up with questions to ask the other side. \textit{See} Paris R. Baldacci, \textit{A Full and Fair
Hearing: The Role of the ALJ in Assisting the Pro Se Litigant,} \textit{27 J. Nat’l Ass’n Admin. L. Judiciary
447} (2007).
  \item \textsuperscript{70} Since February, 2011 the OAH has an in-person Spanish interpreter two full days per week
and schedules all the cases that require a Spanish interpreter on Tuesday or Wednesday. If the OAH
is provided sufficient notice to schedule in advance, an in-person interpreter will be scheduled for
other languages on the first mutually convenient date (including American Sign Language and CART
(Communication Access Real-Time Translation)). If a party wishes to proceed on the day of the
hearing, the OAH will use Language Line. E-mail from Karim Marshall, Capital City Fellow, Office of
Admin. Hearings, to Faith Mullen (Feb. 25, 2011, 16:14:00 EST) (on file with authors).
  \item \textsuperscript{71} Observation of UI Hearing (Sept. 30, 2009 ) (notes on file with authors).
  \item \textsuperscript{72} Id.
\end{itemize}
hearing) wish they had legal representation? Second, are there aspects of the hearings that self-represented parties perceive as being particularly difficult? Based on our observations, our hypothesis was that they would benefit by being represented by an attorney and that most parties would prefer it. Mindful that the plural of anecdote is not data, we began the process of data collection.

B. Drafting the Survey

A reliable survey depends on asking the right questions. The process of developing those questions involves generating more questions than can or should be asked and then winnowing them down to ask the best questions.73 “Best” in this case means questions that are consistent with the purpose of the survey and also “best” in the sense of well-written, clear questions that are not misleading and that can be readily understood.74 As the students soon discovered, this was not as easy as it seemed.

One of the first steps was to obtain a copy of an OAH “Scheduling Order and Notice of In-Person Hearing” [hereinafter “hearing notice”] and the attachments that are routinely sent to parties.75 After reviewing these documents, students drafted several questions about whether the hearing notice was clear and whether it provided parties enough information to prepare for the hearing and to understand the proceedings. By this time the students had already observed at least one hearing and formed some preliminary ideas about the challenges self-represented parties face. Students wanted to find out what worried people most about the hearings in order to write questions that would address those concerns and see if they were pervasive. To accomplish this, students spent a morning talking to parties who were in the OAH waiting room, waiting for their hearings.

Meanwhile, the faculty members on the research team met with most of the ALJs who hear UI appeals.76 There were many things the ALJs were interested in learning from the parties: What did they understand about the hearing?; Was the information they received from the OAH in advance of the hearing useful?; How did they prepare?; What was the experience like for people who did not speak English?; Had they tried to obtain representation?; Did they feel they received a fair hearing? Dozens of questions emerged from this meeting, far too many to be included in a single survey. Of particular interest to the judges was the tension between giving parties a fair hearing but limiting digressions and extraneous materials. They described this problem as being particularly acute for

73 See EARL BABBIE, SURVEY RESEARCH METHODS (Serina Beauparlant et al. eds., 2d ed. 1990).
74 Id.
75 Redacted hearing notice and attachments. Letter from Holly Kirk, Staff Attorney, Office of Admin. Hearings, to Eric Berkey, Law Student, Columbus Sch. of Law (Sept. 29, 2009) (on file with authors).
76 Focus Group, supra note 31.
parties who do not understand anything about the hearing process before the hearing. The judges were also understandably interested in an assessment of their own performance, but the project was not designed to evaluate the performance of individual judges or even to gauge overall satisfaction with the hearing process.

To round out this stage of the research, one student contacted the D.C. Bar Pro Bono Program and, based on a conversation with the Associate Director Marc Herzog, developed a list of questions that the Pro Bono Program thought would be useful in assessing the need for more pro bono assistance for claimants in UI appeals.77 These included: Before your hearing were you aware of any free legal services available to help you?; If yes, what is the reason you chose not to use them?; If no, what would be the best way to communicate that legal services are available?; Would you have used a free lawyer if you could have?; Would you consent to a continuance if that was the only way for a lawyer to help you?; and Do you think having a lawyer help you with your case will get you a better result? Most of these questions were included in the final survey.

Students distilled all the questions they had come up with into two broad categories: questions about preparation for the hearing and questions about the parties’ experience at the hearing. This generated a list of more than 100 possible questions, ranging from whether the parties thought the hearing was fair to whether they brought a pen or pencil to the hearing (the latter question emerged because students observed that some parties did not take notes when the other side testified about disputed dates and dollar amounts). We then devoted time to deciding what should not be included in the survey.

In addition to limiting the total number of survey questions, students were mindful of several other constraints. First, we did not want to interfere with the hearings in any way. So, while it would have been useful to ask individuals before their hearings how they prepared, we were concerned that our very presence might cause parties going into a hearing to worry that they were inadequately prepared or should have obtained counsel. Second, we considered whether we could increase the response rate if we asked the ALJs to encourage people to participate, but concluded that people might somehow feel pressured to complete the survey or anxious that failing to do so could somehow affect the outcome of the case. In what may have been an excess of caution, we did not ask the ALJs to encourage people to complete the survey.

A third related concern was that we wanted to guarantee respondents that their answers would in no way affect the outcome of their hearing. The only way to accomplish this was to make the surveys anonymous. While it would have been informative to compare survey results with hearing outcomes, this could not be accomplished without identifying the parties, and we believed we would obtain

77 Telephone Interview by Brynne Bisig with Mark Herzog, Assoc. Dir., D.C. Bar Pro Bono Program (Oct. 7, 2009).
more candid answers if people were confident that their participation in the survey was anonymous.

Fourth, we excluded from the sample parties who were represented.\textsuperscript{78} We did not want to intrude into any party's relationship with his or her representative, and the survey was not designed to assess the quality of representation. But by excluding these parties we missed some potentially valuable information such as how those parties came to be represented and whether they felt they had an easier time at the hearing than self-represented parties did.

Fifth, we were mindful that this was not a customer satisfaction survey that would evaluate the performance of the OAH staff or ALJs. As a consequence, many of the questions that were of interest to the ALJs were not included in the final draft of the survey. Finally, students were persuaded that the survey would be easier to tabulate and the responses stronger if they kept open-ended questions to a minimum.\textsuperscript{79} With these constraints in mind, the students eliminated more than three quarters of the questions and winnowed them down to twenty-four.

C. Pretesting

Once the students had a serviceable draft, they returned to the OAH waiting room to pretest the survey.\textsuperscript{80} The role of pretesting in standard survey protocol is to identify any problems with the survey or its administration and to address those problems before collecting the data.\textsuperscript{81} Pretesting provides an opportunity for researchers to perfect the survey questionnaire and test some of the methodological assumptions that underpin the research process.\textsuperscript{82} Ultimately, pretesting enhances the survey results because it ensures that when the survey is administered it will not be necessary to change the survey questions or how they are asked.\textsuperscript{83} Pretesting functions as a sort of dress rehearsal for the survey instrument and for the individuals who will administer the survey.\textsuperscript{84} Students conducted pretesting for two days and then reconvened to discuss their experiences and to revise the survey before the start of data collection.

\textsuperscript{78} OAH rules permit representation by non-attorneys in UI appeals. D.C. MUN. REGS., supra note 44.


\textsuperscript{80} At the time this research was conducted, OAH held UI hearings in two adjacent buildings on North Capitol Street in the District of Columbia—one at 825 North Capitol and one at 941 North Capitol. For reasons that are described in more detail below, we selected the 941 North Capitol location as the site for the survey.

\textsuperscript{81} See Sheatsley, supra note 79.

\textsuperscript{82} \textit{id}.

\textsuperscript{83} \textit{id}.

\textsuperscript{84} \textit{id}.
As a result of the pretesting phase, students discovered that some of the questions in the draft survey were ambiguous. While the questions seemed clear when the students wrote them, people who took the survey during the pretesting phase expressed uncertainty about what some of the questions meant. Also, one respondent had difficulty with the way some of the questions were asked. The survey was designed on a four-point Likert scale that asked respondents to say whether they strongly agreed, agreed, disagreed, or strongly disagreed with a question. The draft survey also had a fifth column for "n/a" or "not applicable," but during the pretest one person checked "n/a" in answer to every question. We removed that choice from the survey and revised the survey so that every question applied to both employers and employees.

Students also learned the effect that the length and complexity of the survey questionnaire had on the rate of participation.\textsuperscript{85} Ideally, a survey should ask all the essential questions, but not be so long that it burdens respondents.\textsuperscript{86} After several people agreed to take the survey but left before finishing it, the students concluded that they needed to limit questions to one page and to make the survey more visually appealing and easier to complete. They also decided to change the order of the questions and group similar questions together.

One of the most important findings from the pretesting centered on the importance of finding a suitable place to administer the survey.\textsuperscript{87} The original plan called for inviting participants into an OAH conference room, off one of the hallways, near where hearings were conducted. The hope was that this room would offer participants privacy in which to complete the survey. Several problems immediately presented themselves: The conference room was near where the administrative assistants worked and was often in use. As one student noted, "[c]onducting the survey in the conference room might be misleading. I am afraid that if we do it in there, people might view us as an agent of the court system."\textsuperscript{88} Also, the conference room was situated either down the hall or across from the hearing rooms, and using it would have diverted at least some participants away from the exit, the direction they were heading at the conclusion of their hearings. Finally, there was no place for students to wait unobtrusively for a hearing to conclude.

These problems were obvious during the pretesting, so students attempted to administer the survey in the waiting room, a small area, with parties sitting in three rows of chairs. This arrangement was not conducive to students introducing themselves to parties and explaining their purpose or to intercepting parties as they left the hearings, and it afforded little privacy for completing the survey.

\textsuperscript{85}See Fowler, supra note 64.
\textsuperscript{86}Id.
\textsuperscript{87}Id.
\textsuperscript{88}Memorandum from Laura Kakuk, Law Student, Columbus Sch. of Law, to authors (Oct. 26, 2009) (on file with authors).
Although people warmed up once they learned that students were conducting research on the need for legal assistance in UI hearings, students were uncomfortable approaching people in the waiting room. Students reported that approaching people to conduct research seemed intrusive because the survey questions were distracting parties from their real purpose—to attend a hearing and resolve a legal problem. Students discovered the waiting room also presented some of the same problems as the conference room: “I felt that my positioning in that area might have given the impression that I was just another worker, or I was there for my own hearing. It did not allow me to set myself apart as an independent entity; because of this, I was largely ignored.”

Several useful ideas emerged from the pretesting phase of the project. It became clear that it was impractical to ask survey questions in the waiting room because it was awkward and because the people we most wanted to survey were not sitting in the waiting room, they were heading out the door after their hearings. Many of the questions were designed to ascertain how people felt about the hearing and whether there were points where they felt particularly unprepared. These were questions that could only be answered after the hearing, and pretesting demonstrated that parties were not inclined to linger after their hearings. These problems were solved when, with the permission of the Principal ALJ, Ann Yahner, the students brought a table from the law school and set it up in the hall outside the waiting room near a bank of elevators.

Because there were possibly two parties associated with every hearing, we concluded that the only chance to speak to both parties would be if students worked in pairs and one spoke to the employer, while the other spoke to the employee. Also, since hearings are conducted concurrently, there was a possibility that parties from several hearings would be leaving the OAH at the same time. Working in pairs also addressed this problem.

During the pretesting students discovered how important it was to display their affiliation with The Catholic University of America Law School and to reassure participants of the integrity and confidentiality of the study. One student noted, “[e]veryone checked our ID tags to make sure we were [authorized to be there], from security to the people we asked to take the survey.” This prompted students to create prominent badges that listed each student's name and the name of the university, with space for a university picture identification. Professor Mullen also wrote a letter to participants, on university letterhead, describing the research. Several copies, enclosed in plastic sheets, were available at the survey site for participants to review. The students also determined that it would

89 Id.
90 Id.
91 Appendix A. Several copies of this letter were available on the survey table to help explain the purpose of the survey and to reassure those who took the survey of its legitimacy.
be helpful to have clipboards so that participants would have something to write on.

At the same time the students were conducting the pretest, Judge Yahner circulated a draft of the survey among the ALJs who routinely hear UI cases. They offered helpful suggestions. One ALJ pointed out that the OAH does not use summonses. Another told us that few people read from prepared statements. We removed both of these questions from the survey. Some ALJs caught proofreading errors, others suggested ways to phrase the questions more clearly, and still others identified questions that might somehow mislead parties, including one that asked parties whether they would prefer to receive information about free legal services by mail, by internet, or by posting. One judge expressed concern that participants might mistakenly think that they were signing up for notices from the OAH. We agreed that, in the context of the other questions, this question might appear to be related to the hearing process or how OAH functions rather than to information about a separate legal services organization. We eliminated the question.

The ALJs raised some concerns that we were not able to address. One judge thought it was important to distinguish the participants' experiences with the Department of Employment Services (DOES) from their experiences with OAH, particularly the written material the participants receive from DOES and OAH. The clarification would have required more space than we could devote to it. Another judge questioned the need for some of the demographic information and wondered whether a zip code could be a surrogate for race or economic level. We concluded it could not. The judges suggested additional questions we were not able to incorporate. One thought we should ask questions about the parties' understanding of the law: whether they knew that the employer has the burden of proof and whether the opposing party was DOES or the employer. We declined to add the first question because we did not want to cause anxiety after the hearing by suggesting there was anything they should have known but did not. We decided not to include the second question because it was directed only toward employees, when all the other survey questions were directed to both employees and employers. Three other questions for parties—what materials they thought they would need; whether they had a general understanding of what was going to happen in the hearing; and whether they understood their rights—were not included because the first one was open-ended, the second too similar to another question, and the third too vague.

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The pretest and the review by the ALJs resulted in significant changes to both the survey questions and to how the survey was conducted.93 Students later identified pretesting as a valuable aspect of the survey process. As one student wrote:

The pretesting was one of the most important phases of the survey process. The purpose of pretesting is to make sure that everything in and about the survey is as good as it can possibly be. This phase addresses both the substantive survey itself (whether it is difficult for people to take, if people do not understand certain questions, if the survey was too long, if the survey was too intrusive, etc.) but also addresses the logistical end of conducting the survey.94

Finally, during the pretesting the students determined that, given the number of possible surveys we could administer and the limited time we had to collect the data, it was best to try to survey as many participants as possible. For this reason, we did not follow a particular sampling scheme. Rather, as described below, the teams of self-supervised students were present at the OAH in the morning until the midday recess.

D. Data Collection

In preparation for data collection, we dedicated time to the question of sampling.95 We knew from the start that we could not survey all the parties in UI appeals, because of the high volume of cases96 and because students involved in the project had other commitments. Sampling was further complicated by the fact that, at that time, UI appeals were adjudicated in two separate buildings located at 825 North Capitol Street and 941 North Capitol Street.97

Rather than devising a sampling scheme that would select some of the parties involved in all of the hearings, we decided to conduct the survey during the times and at the location where there were the greatest number of hearings and to survey as many self-represented parties as possible. With this strategy, we reached thirty-three percent of the parties involved in all the hearings conducted during the duration of our research. Our sampling strategy follows the well-known dictum in research methods that Joel Best summarizes as "the representativeness of a sample is far more important than the sample size."98

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93 Appendix B includes a copy of the survey used in the pretest. Appendix C includes a copy of the final survey.
94 Memorandum from Laura Kakuk, Law Student, Columbus Sch. of Law, to authors (Nov. 23, 2009) (on file with authors).
95 See LIE KISH, SURVEY SAMPLING (1995).
96 2010 ANNUAL REPORT, supra note 23.
After conferring with ALJs and other OAH staff, we selected 941 North Capitol Street between the hours of 9:30 a.m. and 12:30 p.m., Tuesday through Friday, as the location and times when the most hearings were conducted and when we were likely to secure the greatest survey participation. During the eleven days we conducted the survey (the District of Columbia government closed for Veteran's Day), OAH scheduled 149 hearings at two locations. At least one party appeared in 123 of these cases, 89 of which were scheduled at the location and time when students conducted the survey.99

Each morning during the course of the survey students set up a small table in the hallway outside the OAH waiting room. In addition to clipboards and pens, students set out copies of the letter describing the survey and a basket of fruit and chocolates for survey participants.100 Although the space did not afford participants much privacy in which to complete the survey, the consensus among students was that the location was superior to either the conference room or the waiting room where they had conducted the pretest. One student wrote, "[o]nce we established a table outside the OAH office, it became far easier for us to approach people about their cases and encouraged individuals to approach us as well."

As students completed the first week of survey administration, it became clear that it was taxing for them to staff the survey table four mornings a week and that they were daunted by the prospect of doing so for another two weeks. At that point, we enlisted the help of three more student volunteers. Each of them was paired with one of the five original students, who by that time had gained experience administering the survey.

During the second week of the survey, students made a large yellow sign to identify the project and to explain their purpose. Students reported that many people approached them seeking legal assistance. As one student wrote, "Many people thought we were there to provide legal services and were distraught when they found out we were only there giving out a survey. These people were desperate for help and guidance during their proceeding. Even if they couldn't fill out the survey, they would tell us about the tragedy they had suffered, and how they didn't know what to do, or what to expect, or how to prepare."102 This prompted the students to prepare a list of free legal service providers who handle UI case to distribute to people who asked for representation.103

99 E-mail from Ann Yahner, supra note 34.
100 Offering small tokens of appreciation for those who complete surveys is a widely used practice in research. The gifts are small in value, such as a campaign button or voting sticker. They are intended and understood as a thank you for the time dedicated to completing the survey.
101 Memorandum from Eric Berkey, supra note 66.
102 Memorandum from Catherine Knight, supra note 68.
103 The list included the Claimant Advocacy Program, as well as the D.C. Employment Justice Center, the Archdiocesan Legal Network, D.C. Law Students in Court, Legal Counsel for the Elderly,
III. Findings

The survey sought to answer two questions: first, based on their experiences of having participated in a hearing, whether the parties in unemployment appeals (both employers and employees) perceive a need for more legal assistance; and second, whether there are some aspects of a hearing that they thought were particularly challenging. The findings are detailed below.104

Table 1. Who is Most Likely to Appear in UI Appeals Before the OAH?

<table>
<thead>
<tr>
<th>Percentage (Rounded)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
</tr>
<tr>
<td>Female</td>
</tr>
<tr>
<td>African-American</td>
</tr>
<tr>
<td>White</td>
</tr>
<tr>
<td>Hispanic</td>
</tr>
<tr>
<td>Younger than 25 years old</td>
</tr>
<tr>
<td>Between 25 and 40 years old</td>
</tr>
<tr>
<td>Between 41 and 55 years old</td>
</tr>
<tr>
<td>Older than 55 years old</td>
</tr>
<tr>
<td>Primarily English-speaking</td>
</tr>
<tr>
<td>Primarily Spanish-speaking</td>
</tr>
</tbody>
</table>

The survey collected some basic demographic data.105 The typical self-represented individual who appears before the OAH in a UI appeal is an African-American between the ages of 26 and 40. Only a fourth of the participants identified themselves as Whites. Although the survey was offered to both employees and employers, twice as many employees as employers completed the survey.

The majority of participants spoke English as their first language, but approximately seven percent spoke primarily Spanish. This number is consistent with 2009 census data, which revealed that 8.8 percent of the population of the District of Columbia identified themselves as Hispanic, Spanish, or Latino.106 One student who was fluent in Spanish concluded that it would have been helpful to have

and Neighborhood Legal Services. We did not include George Washington University and the Catholic University of America on the list because the survey was conducted during the last weeks of the semester. Georgetown University and American University were not representing employees in these cases at that time. We would have included free legal assistance for employers, but the EAP was not operating at the time of the survey, and we were unaware of any other organizations that provide free representation to employers.

104 The completed surveys are on file with the authors.
105 See Church & Waclawski, supra note 92.
the survey available in Spanish because, "There were a few times when I think people were unable to fill out the survey because of language barriers. One man began to fill out the survey but then told us he did not have time. I think the real reason he did not complete the survey was because he felt uncomfortable speaking and reading English." Although our study was not longitudinal, it is fair to assert that with the projected growth of the Hispanic population in the Washington metropolitan region, there might be a greater need in the near future for administrative hearings to accommodate this segment of the population.

**Table 2. Level of Preparation Before the Hearing.** All numbers in the table represent percentages, and all percentages are rounded.

<table>
<thead>
<tr>
<th></th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Understood the purpose of the hearing</td>
<td>61</td>
<td>21</td>
<td>11</td>
<td>0</td>
</tr>
<tr>
<td>Knew enough about how the hearing would be conducted</td>
<td>29</td>
<td>22</td>
<td>36</td>
<td>11</td>
</tr>
<tr>
<td>Used documents to prove case</td>
<td>25</td>
<td>29</td>
<td>25</td>
<td>7</td>
</tr>
<tr>
<td>Prepared questions for cross-examination</td>
<td>11</td>
<td>18</td>
<td>43</td>
<td>18</td>
</tr>
</tbody>
</table>

While more than eighty percent of the participants thought that they understood the purpose of the hearing, only slightly more than half felt they knew enough about how the hearing would be conducted, and less than a third prepared questions beforehand for cross-examination. Only about half agreed or strongly agreed that they used documents to prove their cases. These data suggest that participants showed a low level of preparation before the hearing, even though they understood its purpose.

**Table 3. The Use of a Lawyer Before the Hearing.** All numbers in the table represent percentages, and all percentages are rounded.

<table>
<thead>
<tr>
<th></th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>I would use a free lawyer if I could have one</td>
<td>57</td>
<td>14</td>
<td>11</td>
<td>4</td>
</tr>
</tbody>
</table>

When asked whether they would have used the services of a free lawyer, the majority (seventy-one percent) of participants agreed and only a small number (fifteen percent) disagreed. This finding supports our initial hypothesis about the participants’ desire for legal representation.

107 Memorandum from Erin Hughes, Law Student, Columbus School of Law, to authors (Dec. 2, 2009) (on file with authors).

Table 4. Available Legal Services Before the Hearing. All numbers in the table represent percentages, and all percentages are rounded.

<table>
<thead>
<tr>
<th>Aware of Free Legal Services</th>
<th>Received Any Legal Coaching</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>39</td>
</tr>
<tr>
<td>Yes</td>
<td>X</td>
</tr>
<tr>
<td>Yes but decided not to use it</td>
<td>32</td>
</tr>
<tr>
<td>Yes but were unable to receive help</td>
<td>29</td>
</tr>
</tbody>
</table>

With respect to whether they were aware of free legal services, thirty-nine percent said no. Another twenty-nine percent said they had contacted a legal service provider but were unable to receive the assistance they needed. Another thirty-two percent were aware of free legal services but decided not to use them. Eleven percent said they received some legal coaching.

Whether an individual can obtain representation in a UI case may depend on timing. OAH notifies employees of the availability of free legal assistance in English and in Spanish when it sends out the hearing notice, and provides telephone numbers for EAP and CAP. The CAP prefers to be contacted after the hearing date has been scheduled but at least five days before the hearing is to be held to allow adequate time to prepare. Claimants who file their appeals in person may learn of the availability of free legal assistance at one of four DC law schools earlier in the process (when the claim is initially filed, rather than when they receive the hearing notice). Individuals who file their claims by mail might not learn about the law school programs at all.

Table 5. Impressions of the Hearing. All numbers in the table represent percentages, and all percentages are rounded.

<table>
<thead>
<tr>
<th></th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>I was able to tell my side of the story during the hearing</td>
<td>47</td>
<td>38</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>I understood the instructions</td>
<td>50</td>
<td>29</td>
<td>14</td>
<td>4</td>
</tr>
<tr>
<td>There were moments I wish I was better prepared</td>
<td>36</td>
<td>29</td>
<td>21</td>
<td>4</td>
</tr>
<tr>
<td>There were moments I wish I understood the law better</td>
<td>32</td>
<td>40</td>
<td>18</td>
<td>11</td>
</tr>
<tr>
<td>An attorney would have been helpful</td>
<td>54</td>
<td>21</td>
<td>18</td>
<td>4</td>
</tr>
<tr>
<td>The hearing met my expectations</td>
<td>36</td>
<td>40</td>
<td>11</td>
<td>14</td>
</tr>
</tbody>
</table>

Only eleven percent of participants felt they were not able to explain their side of the story during hearings, but seventy-five percent believed that representation by a lawyer would have been helpful. But with more detailed questions about how they conducted themselves, the picture changes: more than half (sixty-five percent) wished they had been better prepared; almost three quarters (seventy-
two percent) wished they had a better understanding of the law. One participant wrote, "I just didn't understand the process at all and I feel when I went before the judge I was not clear [about] everything. I think they should have someone to explain a little better for the first time unemployment clients."  

This picture of unrepresented and unprepared parties is counterbalanced by the efforts of the ALJs presiding over the hearings to make sure both parties understood instructions during hearings. This may be a significant factor in why eighty-five percent of the participants believed they were able to tell their side of the story and why seventy-six percent felt the hearing met their expectations.

**Table 6. The Hearing Notice.** All numbers in the table represent percentages, and all percentages are rounded.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>The instructions in the hearing notice were clear.</td>
<td>86</td>
<td>11</td>
</tr>
<tr>
<td>The hearing notice provided enough information to proceed without an attorney.</td>
<td>44</td>
<td>43</td>
</tr>
</tbody>
</table>

The survey also asked about the hearing notice. Some of the ALJs who met with the faculty members of the research team expressed concerns about whether both parties in the hearing were reading the notice carefully. There is some indication that the hearing notice was read prior to the hearing, with eighty-six percent reporting that they found the instructions clear. However, the legal and procedural information contained in the hearing notice is not a substitute for legal assistance. Participants were split down the middle when asked about whether the notice provided enough information to proceed without an attorney.

**Table 7. Willing to Postpone Hearing to Obtain Legal Assistance.**

All numbers in the table represent percentages, and all percentages are rounded.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would have agreed to postpone hearing to be helped by a lawyer.</td>
<td>86</td>
<td>11</td>
</tr>
</tbody>
</table>

The majority of participants would agree to postpone their hearing in order to be helped by a lawyer. But continuances have consequences. For employees who have been denied benefits, a continuance may translate into a delay in receiving benefits. For employers, a continuance may mean devoting more time to opposing a claim, with the accompanying cost and stress, and in cases where employees are receiving benefits, the difficulty of recouping benefits already paid. For OAH, continuances complicate the scheduling of hearings and may make it difficult to provide timely benefits when warranted to individuals who have lost their means

109 Completed UI Survey (on file with authors).
of support, and to adhere to strict federal timelines for the resolution of UI claims.\textsuperscript{110} The Department of Labor requires that sixty percent of cases be resolved within thirty days of filing an appeal, eighty percent be resolved within forty-five days, and ninety-five percent within ninety days.\textsuperscript{111} There is considerable pressure to meet these deadlines and “[f]ailure to comply weakens a state’s ability to provide [unemployment compensation], increases tax costs for the state’s employers, and places political pressure upon the state’s leaders.”\textsuperscript{112}

\textbf{Table 8. Levels of Preparation Among Those Who Agree or Strongly Agree They Would Have Used a Free Lawyer.} All numbers in the table represent percentages, and all percentages are rounded.

| Thought that they understood the purpose of the hearing | 60 |
| Thought that they knew enough about how the hearing will be conducted | 32 |
| Prepared questions for cross-examination | 11 |
| Used documents during the hearing | 29 |
| Thought that they understood the instructions | 57 |
| Wished they had been better prepared | 54 |
| Wished they understood the law better | 54 |
| Thought that an attorney would have been helpful | 66 |

The strongest evidence in support of the need for more legal assistance comes when one correlates key indicators of the levels of preparation with who agreed or strongly agreed they would have used the services of a lawyer. Again, the majority of this group thought they understood the general purpose of the hearing, but only thirty-two percent thought they knew enough about how the hearing would be conducted. Just eleven percent had prepared questions for cross-examination, and fewer than one third used documents during their hearing to support their case. Although they thought they understood the hearing instructions, half wished to have been better prepared or to have understood the law better. The majority of this group also thought attorney representation would have been helpful.

\textsuperscript{110} OAH has made progress in meeting federal standards by changing the way cases are processed, increasing the number of hearings scheduled, assigning additional ALJs to work part-time on UI appeals, and assigning ALJs and legal assistants to work in teams. \textit{Letter from Mary Oates Walker}, supra note 49, at 8.

\textsuperscript{111} \textit{Letter from Mary Oates Walker}, supra note 49, at 8.

CONCLUSION

A. Conclusions about the Desire for Legal Assistance

This project explored whether self-represented parties in UI appeals perceived a need for more legal assistance and whether there were aspects of the hearings that they found particularly challenging. After conducting a study with a fair representation of the number of UI appeals adjudicated by the OAH during the first three weeks of November 2009, we conclude that there is substantial need for more pro bono legal representation at the hearings and, for those who are unable to obtain legal representation, legal assistance to help them prepare before the hearing. This conclusion is supported by the findings discussed in this article.

While survey participants understood the purpose of the hearings, and the ALJs we observed were diligent about making sure instructions were clear, there is a degree of specialized legal knowledge that the parties in these cases do not possess. Participants reported lack of preparation for cross-examination, lack of information about how to use documentary evidence to support their claims, and lack of understanding of the hearing process. As one student wrote, “Most people who spoke with us came out of their hearings either befuddled, frustrated or a little of both. To no one’s surprise, almost all indicated a desire for legal services, including a fair number of employers too.”113 Based on the survey results, we conclude that most self-represented parties wish they had more legal assistance to help them prepare for a hearing.

B. Conclusions about Teaching Law Students Basic Survey Methodology

The decision to involve students in all aspects of the survey process offered students the opportunity to learn how to collect and assess empirical data. This provided a valuable academic experience that we hope will serve them well after graduation. As one student wrote:

Throughout the semester, the students who worked on this project learned a lot about the data collection process. We learned that it is not simply writing down questions and handing people a survey. In order for the data to be reliable, a much more detailed and meticulous process is necessary. . . . I am confident that, if in the future I am called upon to conduct some sort of data collection project, I will be able to replicate this process thereby obtaining trustworthy results.114

This project engaged students in service learning and offered them insights into access-to-justice issues from a perspective different from the one they de-

113 Memorandum from Eric Berkey, supra note 66.
114 Memorandum from Laura Kakuk, supra note 94.
velop in law school. By the time this survey was conducted, the students already had some experience representing clients. But working on this project, students encountered a different side of the need for pro bono representation. As one student wrote:

This experience really opened my eyes to the worries people face in legal proceedings, especially when they are without a lawyer, even though they tried to get one. These people aren’t choosing to attend these hearings pro se, in fact, many tried to find legal aid, but either didn’t know where to look, or were turned away.

Students benefited from interacting with ALJs, court personnel, self-represented parties, and other lawyers. In doing so, students had the opportunity to work with other professionals “to address the same problems from different perspectives.” These interactions informed their understanding of the need for more assistance for self-represented parties. One student wrote:

Based on our interactions and observations at OAH, there was a general consensus that more representation was needed. This conclusion is based on the reaction from pro se litigants and court employees. We had several pro se litigants ask if we were there to provide representation on the spot. This led us to believe they would have used counsel if they knew it was available. We speculate that [the OAH legal assistants] were enthusiastic about the [the prospect of] representation because it would have gone a long way to make their jobs easier. Based on the reactions of the pro se litigants and the court employees, it was obvious that more representation was desired.

Having been through the process of conducting survey research from start to finish, students gained insight into what worked well and what could be improved. Based on their experience, we offer the following advice to others who may want to engage law students in similar work:

First, all the students thought it was valuable to participate in the design of the survey. The process was more complex than anticipated. Students were surprised by how challenging it was to write clear questions and to organize them in a way that would enhance survey participation. Having participated at every step in the process, students were better able to administer the survey. As one wrote, “I think it was helpful for us to be involved in the drafting process because it ensured that we understood what it was we were doing and what we were looking for.” One change we recommend is to start the process a few weeks sooner so

\[ headnote:115 \] See Golden & Fazili, supra note 56. See also Srikantiah & Koh, supra note 56.

\[ headnote:116 \] Memorandum from Catherine Knight, supra note 68.

\[ headnote:117 \] Levesque-Bristol, supra note 55, at 210.

\[ headnote:118 \] Kruse, supra note 57, at 439.

\[ headnote:119 \] Memorandum from Laura Kakuk, supra note 94.

\[ headnote:120 \] Memorandum from Erin Hughes, supra note 107. 
that students can play a role in the data analysis. Although they completed the survey administration and were aware of the findings, the semester ended before we could discuss with them how the data could be combined and analyzed.

Second, pretesting was important. In addition to flagging problems with the survey or its administration, this step allowed students to assume ownership of the project, consistent with the goal of providing students a meaningful problem-solving experience. ¹²¹ While the idea of pretesting was unfamiliar to the students, they immediately saw its value. As one wrote, “The pretesting was one of the most important phases of the survey process . . . [It] addresses both the substantive survey itself . . . [as well as] the logistical end of conducting the survey.” ¹²²

Third, the students saw the value in interdisciplinary partnerships. The lawyers were able to provide insights into procedural and substantive issues, while the sociologist contributed expertise in survey methodology, including sampling, the importance of limiting the number of open-ended questions, and pretesting, as well as a fresh view of legal process that lawyers sometimes take for granted. Students benefited greatly from seeing how another professional approached problem solving, and it was valuable for them to see that other disciplines can contribute to the resolution of legal problems.

Fourth, students discovered that it is important to identify and collect data during the research. While students kept track of the completed surveys, they did not consider how important it would be to find out how many hearings were conducted and how many parties attended. While we were able to obtain this information later, doing so was more difficult. As one student wrote, “One thing I would advise students to do in the future is check with the clerks in the OAH office . . . [T]hey will tell you how many litigants are [self-represented] and how many UI hearings are scheduled for that day.” ¹²³

Fifth, students concluded it would have been useful to translate the survey into Spanish. ¹²⁴ We knew we were interested in language access but did not appreciate how useful it would have been to survey people who did not speak or read English and that some people would face the same problems taking the survey that they face in the hearings.

Finally, it is important to select a project with the right scope. We believe this was the right size project to enhance student learning because it offered “primary student control, a sense of ownership for the student, and the ability to see a project through from initiation to completion.” ¹²⁵ Because many law students will be new to survey design and data collection, the project does not need to

¹²¹ Kruse, supra note 57, at 406-07.
¹²² Memorandum from Laura Kakuk, supra note 88.
¹²³ Memorandum from Erin Hughes, supra note 107.
¹²⁴ Id.
¹²⁵ Kruse, supra note 57.
ambitious to be effective. In fact, a modest design may provide students a better experience and yield more reliable data.

C. Recommendations

The volume of UI appeals (more than 3000 in 2009) makes it impossible for every party in every case to be represented at a hearing.\textsuperscript{126} Other researchers have examined whether the experience of self-represented parties differs from those who have lawyers.\textsuperscript{127} There is a concern, expressed both by advocates and by ALJs, that the presence of more lawyers could complicate hearings and draw them out unnecessarily. A definitive answer to those questions is beyond the scope of this survey. What we can say with certainty is that most self-represented parties perceive a need for additional legal support. In the course of conducting the survey, several issues emerged that are worth further consideration.

What seems to be missing is a reliable mechanism to ensure that the parties who most need lawyers in UI appeals have them. There are parties whose personal circumstances—the novelty or complexity of their cases, mental or physical illness, lack of literacy, or lack of fluency in English—make it difficult or impossible for them to navigate the hearing process without more assistance than an ALJ can or should provide in a hearing. Many people stopped by the survey table asking for representation. It was such a frequent request that the students compiled and distributed a list of legal service organizations that provide free representation in UI cases. To the extent that there are lawyers available to represent parties in UI appeals, it does no good if parties are unable to find them. As one student wrote:

Going through the whole process, I learned how much of the problem a lack of information is. These parties want to be represented, and they don't want to risk losing because they don't understand the proceedings, but they don't know where to go to ask for help. However, educating people on how to get legal services doesn't solve the whole problem, there need to actually be legal services in place for them to benefit from.\textsuperscript{128}

To that end, we recommend an assessment of whether existing legal service providers do in fact have the capacity to provide legal assistance to everyone who needs it. Historically, the District of Columbia Bar Pro Bono Program has deferred to the statutory providers and their assessment of legal needs.\textsuperscript{129} Yet, the

\textsuperscript{126} 2010 Annual Report, supra note 23.
\textsuperscript{128} Memorandum from Catherine Knight, supra note 68.
\textsuperscript{129} E-mail from Mark Herzog, Assistant Dir., D.C. Bar Pro Bono Program, to Faith Mullen (July 9, 2009, 11:46:00 EDST) (on file with authors).
CAP program reports receiving calls from only seventy-five claimants per month, approximately thirty percent of the total number of appeals. In 2009 those numbers would have been 900 out of the more than 3000 UI appeals that were filed. The results from our survey coupled with the volume of cases suggest that the majority of parties in UI appeals are not receiving enough legal information or advice before the hearing.

Recent revisions to forms and the OAH rules go a long way to make the process more intelligible to self-represented parties. The next step is to consider how the revised forms and instructions could be supplemented in order to better address the needs of parties in UI appeals. The American Judicature Society recommends the development of "forms and notices that particularize the issues to be presented, which party bears the burden, what the standard of proof will be at the hearing, and the consequences of not appearing or meeting one's burden." While not every party needs or even wants legal assistance, most parties would benefit from a better understanding of the hearing process. The OAH has standardized the information presented to self-represented parties at the beginning of UI hearings. Nonetheless, it is difficult for parties to put this information to good use. As one ALJ said, for some parties the first introduction to what to expect at a UI hearing is at the hearing itself. When that happens, parties have little opportunity to use the information to shape their presentation at the hearing. For this reason, getting legal information to parties sooner is important. OAH is developing materials for self-represented parties and has already prepared an easy-to-read brochure on UI appeals. This brochure is available on the OAH website, and we recommend mailing it to parties along with the hearing notice.

Based on our research, we recommend that OAH develop additional materials for self-represented parties on preparing for the hearing, using documents, and conducting cross-examination. The American Judicature Society has emphasized

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130 See E-mail from Tonya Love, supra note 45.
131 2010 ANNUAL REPORT, supra note 23.
133 Baldacci, supra note 69, at 460.
134 Based on our observation of UI hearings and conversations with the ALJs, OAH has already incorporated some of the "best practices" to help self-represented parties. These include providing parties details about: (1) the order and protocols of an evidentiary hearing, (2) the elements necessary to prove or defend a claim, (3) the burden of proof, (4) the consequences of not demonstrating a necessary element, and (5) the kind of evidence that the ALJ will consider. Baldacci, supra note 69, at 459-60.
135 Focus Group, supra note 31.
136 The easy-to-read brochure is available on the OAH website at http://oah.dc.gov/oah/frames.asp?doc=Oah/lib/oah/pdf/information/ui_faqs.pdf. We hope OAH will also include a copy when they mail the hearing notice to parties. There is some indication that at least 86 percent of survey participants read the hearing notice, so inclusion of the brochure may be helpful to those individuals.
the importance of providing information that self-represented parties can "under-
stand, retain, and act on." Specifically, they suggest that self-represented par-
ties need help understanding

1. How to identify evidence relevant to prevailing on or defeating claims; 2.
   Procedures for obtaining such evidence; 3. The form that evidence may
   take; 4. What facts must be demonstrated to make that evidence admissible
   (i.e., foundation); 5. The main objections to admissibility (hearsay, best evi-
dence, etc.); [and] 6. The consequences of not having such evidence . . .
The new OAH resource center has the potential to provide much-needed legal
support to both parties in UI appeals.

In addition to materials for self-represented parties, it is important to develop
training materials for people who staff the resource center, as well as for new
advocates who are willing to represent parties in UI appeals. The cases where
advocates are most needed are complex and contentious, and advocates need
familiarity with both UI law and OAH procedures. Training for advocates should
emphasize "factual investigation and legal research of the statutory elements;
subpoenas of witnesses and documents; the orderly and logical presentation of a
client's story; the examination and cross-examination of witnesses including ex-
pert witnesses; the preparation and submission into evidence of relevant docu-
ments; and the presentation of legal precedents." Ideally, attorneys who
provide limited legal assistance in the resource center should have some experi-
ence representing parties in hearings. At a minimum, they should observe several
hearings.

As valuable as a resource center can be, it is not a substitute for individual
representation. Resource center staff is necessarily constrained in that they can
provide legal information and offer some legal assistance, but they cannot ad-
vocate for one side or the other. There must be some mechanism to link parties
with lawyers who can advocate for them, and that mechanism must be informed
by the federally mandated deadlines. As with the adjudication of other federal
benefit appeals, the OAH must "balance the demands of accuracy, fairness, and
timeliness in the adjudication of claims." Given the importance of UI benefits

137 Baldacci, supra note 69, at 460.
138 Id. at 461.
139 Letter from Mary Oates Walker, supra note 49.
140 Emsellem & Halas, supra note 14, at 297-303.
141 Id. at 298.
143 Emsellem & Halas, supra note 14, at 324 (observing that, absent special efforts, "the quick
   scheduling of [UI] hearings does not provide sufficient time for the [Volunteer Lawyer Program]
   coordinator to find an attorney.").
144 Jerry L. Mashaw, Unemployment Compensation: Continuity, Change, and the Prospects for
as a safety net program, UI appeals are necessarily on a fast track, and neither parties nor volunteer lawyer coordinators have much time to look for a lawyer.\textsuperscript{145} For that reason, it is important to ensure that lawyers are available when people need them. Slowing the adjudication of cases is also problematic in the face of strict U.S. Department of Labor standards that mandate the resolution of sixty percent of the cases within thirty days. A system that offers any kind of legal assistance in UI appeals must be designed to provide help quickly, ideally without the need for a continuance.

Finally, in order for the OAH to realize its statutory mandate to expedite “the fair and just conclusion of contested cases,”\textsuperscript{146} the Council of the District of Columbia must adequately fund the OAH. There has been a steady uptick in the number of UI appeals, and more generally in the scope of the OAH jurisdiction, but no commensurate increase in funding. The Council has acknowledged that, “[t]he Office of Administrative Hearings has traditionally been under-funded and under-staffed.”\textsuperscript{147} At the same time, D.C. is under considerable pressure from the Federal Department of Labor to meet statutory timelines. While the OAH made considerable progress in FY 2010 toward meeting federal standards,\textsuperscript{148} it did so in part by reassigning judges from other case-types to hear UI appeals.\textsuperscript{149} It may not be feasible or wise to continue to divert ALJs from other work to hear UI appeals.

We believe it is entirely possible for self-represented parties to obtain a fair hearing in a UI appeal, and the judges we spoke to and observed are deeply committed to this ideal. At the same time, parties in UI appeals overwhelmingly wish they had access to more legal assistance before the hearing. It is our hope that the OAH will continue to partner with the Access to Justice Commission, the District of Columbia Pro Bono Program, local legal service providers and law schools, and attorneys in private practice to put a system in place that will provide more legal assistance to parties in UI appeals.

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\textsuperscript{145} Emsellem \& Halas, \textit{supra} note 14, at 324.
\textsuperscript{148} E-mail from Ann Yahner, Principal Admin. Law Judge, Office of Admin. Hearings, to Elizabeth Figueroa, Admin. Law Judge, Office of Admin. Hearings (April 22, 2011, 12:06:00 EST) (on file with authors).
\textsuperscript{149} See Letter from Mary Oates Walker, \textit{supra} note 49, at 8. D.C. is not alone in failing to allocate sufficient funds to the adjudication of UI appeals: Generally, “funding tends to be inadequate to process claims in accordance with timeliness demands and that, because of the structure of the funding mechanism, funding always lags behind workload rather than anticipating it. Mashaw, \textit{supra} note 144, at 19.
Dear Sir or Madam:

We hope you will answer a short survey about your experiences in your unemployment insurance case. Law students from The Catholic University of America are researching whether self-represented parties in unemployment insurance cases are well prepared for their hearings and whether they use help from a lawyer. By filling out this survey, you will help us answer those questions.

This survey is part of a larger project that will try to improve the experience of self-represented parties before the Office of Administrative Hearings. While the Office of Administrative Hearings is allowing the law students to conduct this survey, it is not part of the survey process and will not see your individual answers. This survey is completely confidential, and your name will never be connected to your answers.

We appreciate your participation. If you have any questions or concerns, please call Professor Faith Mullen at (202) 319-6613.

Sincerely,

/s/
Faith Mullen
Assistant Clinical Professor
APPENDIX B

The purpose of this survey is to assess the need for legal representation during Administrative hearings. The Law Clinic of the Columbus School of Law at The Catholic University of America conducts this study. Your answers will be analyzed by students and faculty from the law school independently of the Office of Administrative Hearings and will be kept confidential and anonymous.

Section 1. Demography profile. Mark one answer.

1- Gender: male ______ female ______
2- Race: African-American____ White______ Hispanic_______ Other ______
3- In which Ward of the District do you reside? ________________
4- Are you (a) the employer ______ or (b) the worker ______

5- Age: younger than 20 ______ between 21 and 40 ______ older than 40 ______

Section 2. Preparation for your Hearing. This section asks about your level of preparation for your hearing. Mark the answer you agree more closely in each statement.

You:

<table>
<thead>
<tr>
<th>Understanding the purpose of the hearing</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Know the employer had the burden of proof before the hearing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Know you might win the appeal if you were present for the hearing and the employer was not</td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>Feel like you knew enough about how the hearing was conducted to be successful beforehand</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Obtained information about the process from anywhere else</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Gathered information about your former employment before the hearing</td>
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</tr>
<tr>
<td>Use all this information during the hearing in your case</td>
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</tr>
<tr>
<td>Had a prepared statement for the judge</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Had questions ready for the opposing party</td>
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<tr>
<td>Would have used a service of a free lawyer if could have one</td>
<td></td>
<td></td>
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<tr>
<td>Would consent to a continuance to be helped by a lawyer</td>
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</tbody>
</table>
Were you aware of any free legal services available to you before the hearing?
   ____ Yes, but I decided not to use it. (Skip the next question).
   ____ No, I was not. (Please answer the next question).

If you were not aware of any available legal services, what will be the best way to communicate the availability of legal services to you?
   _____ flyer  _____ over the internet  _____ via email  _____ a letter

Did you receive information from OAH by mail? Yes______  No______  I do not remember_____

   • If so, did you read through it before the hearing?
   • If so, did you feel that the information provided was enough to go forward with the hearing without an attorney?
   • If so, did you think the information provided was too complicated?

What documents were included in the notification of the hearing?

   • Summons
   • Instructions
   • What to expect at the hearing
   • Responsibilities as the party

Did you come prepared to the hearing (i.e. paper, pen, copies of documents needed)

Do you think you have a general understanding of the legal process?

Did you do any other type of research by yourself before the hearing?

Describe which type

________________________________________________________________________

Why not?

________________________________________________________________________
APPENDIX C

The Columbus Community Legal Services of The Catholic University of America is conducting this survey to assess the need for legal representation during administrative hearings. Your answers will be analyzed by students and faculty from the law school, independently of the Office of Administrative Hearings, and will be kept anonymous.

Section I. Demographics

1- Gender: Male _____ Female _____

2- Race: African-American_____ White_____ Hispanic_______ Other___________

3- Are you (a) the employer or representing the employer_________ or (b) the employee ________________

4- Age: 25 or younger ______ between 26 and 40 ______ between 41 and 55 ______ older than 55 ______

5- Primary language you speak at home: English _____ Spanish _____ Other ______

Section II. This section asks about your level of preparation for your hearing. Mark the answer you most closely agree with for each statement.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>I understood the purpose of the hearing</td>
<td></td>
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<tr>
<td>I knew enough before the hearing about how it would be conducted</td>
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<tr>
<td>I used documents during the hearing to prove my case</td>
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<tr>
<td>I prepared questions to cross-examine the opposing party</td>
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<tr>
<td>I would have used a free lawyer if I could have one</td>
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</tbody>
</table>

Were you aware of any free legal services available to you before your hearing
No, I was not _____ Yes, but I decided not to use them _____
Yes, but they were unable to help _____

Did you receive any coaching from a legal services provider before your hearing?
Yes and I used it ________ Yes, but I decided not to use it. ________
No, I did not__________

Would you have agreed to postpone hearing to be helped by a lawyer? Yes ________ No ________

**Section III. This section asks about your impressions of the hearing.**

<table>
<thead>
<tr>
<th></th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>I was able to tell my side of the story during the hearing</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>During the hearing, I understood the instructions</td>
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<tr>
<td>There were moments during the hearing I wished I had been better prepared</td>
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<tr>
<td>There were moments during the hearing I wished I understood the law better</td>
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<tr>
<td>I think an attorney would have been helpful</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The hearing met my expectations</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

Were the instructions in the hearing notice clear? Yes ________ No ________

Do you feel the hearing notice gave you with enough information to go forward without an attorney? Yes ________ No ________

If not, what other information did you need?

________________________________________________________

________________________________________________________

________________________________________________________

Thank you for your participation!