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Attorney for the Day: Measuring the Efficacy of In-Court Limited-Scope Representation

ABSTRACT. Limited-scope representation is on the rise. But the efficacy of helping a client for only part of a case has been called into question. This Note is the first published work to find that limited-scope clients receive significantly better outcomes than those without counsel. The focus of the study is the Attorney for Short Calendar program ("ASC") run by the Mortgage Foreclosure Litigation Clinic (now known as the Housing Clinic) at Yale Law School. To evaluate the ASC program, I studied case files for more than twelve hundred foreclosure-related motions from October 2015 through January 2017. The study includes all such motions in New Haven Superior Court at which defendants appeared pro se or with limited-scope counsel. To measure the efficacy of ASC, I compared outcomes for ASC's limited-scope clients against outcomes obtained by pro se homeowners—both rulings on that day's motions and the eventual resolution of each case.

The benefits of ASC were profound. ASC clients received about forty-eight more days of lawful possession than did pro se homeowners. Indeed, the effects of ASC were significant enough that I could control for selection bias: regardless of whether a homeowner interacted with ASC, coming to court on a day when ASC occurred correlated with a significantly better outcome on that day's motion. Furthermore, the beneficial effects of limited-scope representation persisted: at a case's end, even after ASC's involvement had long passed, ASC clients were more likely to keep their homes than those who came to court on non-ASC days.

Based on this evidence, this Note recommends that all states permit attorneys to appear in court on a limited-scope basis in a manner consistent with existing ethical requirements. Furthermore, this Note proposes that legal aid clinics, law school clinics, and law firm pro bono departments consider implementing limited-scope representation programs, including in-court programs, to meaningfully assist litigants who would otherwise lack counsel.

AUTHOR. Yale Law School, J.D. 2017. I am incredibly grateful to J.L. Pottenger, Jr. and Jeff Gentes, whose vision and supervision led to the launch of the Attorney for Short Calendar program. I am also deeply indebted to the students of the Mortgage Foreclosure Litigation Clinic (part of the Jerome N. Frank Legal Services Organization at Yale Law School), whose dedication to their clients inspired me to conduct this research. Thanks to Allison Drutchas for overseeing the Clinic's effort to persuade the Rules Committee that limited-scope advocacy should be permitted in Connecticut, and to Wesleigh Anderson, Allan Bradley, and Nathan Nash for their efforts to ensure the ASC program launched successfully. J.L. Pottenger, Jr. and Jeff Gentes offered detailed and insightful comments throughout the development of this Note. Ted Janger provided helpful suggestions concerning study design. I am grateful to many colleagues for conversations on the Note and related topics, from legal ethics to selection bias. I could not name them all, but I am especially grateful for feedback and suggestions from Scott Levy, Nathan Nash, Lizzy Pierson, Solange Hilfinger-Pardo, and Anderson Tuggle. Finally, thanks to the editors of the *Yale Law Journal*, and especially to Samir Doshi, for outstanding editorial suggestions.

NOTE CONTENTS

"But the mere truth won't do . . . . You must have a lawyer."
– Dr. Woodcourt, CHARLES DICKENS, BLEAK HOUSE[1]

"I felt much better not being alone today."
-Anonymous ASC Client, Exit Survey[2]

INTRODUCTION

When Franklin O'Neil came to court, much of his body was encased in plastic.[3] He was undergoing treatment for eczema, and at the same time, he was fighting to save his home. Mr. O'Neil filed an appearance shortly after the lawsuit began, but due to a clerical error it was never recorded. The court defaulted him for failing to appear, and by the time he came to court in October 2016, the bank had taken title to his home and was about to evict him. In a last-ditch effort, he filed a four-sentence, handwritten motion asking the court to reopen the judgment. But Mr. O'Neil couldn't afford counsel. When he walked into court, he thought he would need to face the judge, and the bank's lawyer, alone.

Like Mr. O'Neil, millions of American litigants are unable to afford counsel in civil cases.[4] Legal aid clinics and pro bono attorneys are sharply limited in the number of people they can effectively represent.[5] In response to these trends, clinics are increasingly turning to limited-scope representation, in which attorneys represent clients for only a portion of a case. While limited-scope appearances respond to a pressing need for legal representation, they are new[6] and

1. CHARLES DICKENS, BLEAK HOUSE 659 (Barnes & Noble Books 2005) (1853).
2. On file with the Mortgage Foreclosure Litigation Clinic at Yale Law School.
3. Clients' names and some clients' genders have been changed to protect their anonymity.
4. Memorandum from Lisa Wood, Chair, ABA Standing Comm. on Legal Aid and Indigent Defendants, to Fin. Comm., Bd. of Dirs., Legal Servs. Corp. 2 (June 2, 2014) (reporting a "trend toward involuntary self-representation" and collecting statistics).
5. Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. ON POVERTY L. & POL'Y 453, 453 (2011); *Expanding Access to Justice, Strengthening Federal Programs: First Annual Report of the White House Legal Aid Interagency Roundtable,* WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE 9 (2016) [hereinafter *Expanding Access to Justice*], http://www.justice.gov/atj/page/file/913981/download [http://perma.cc/92BA-TYAE].
6. The rules change that made the Attorney for Short Calendar program lawful in Connecticut took effect in 2016, one month prior to the program's launch. *See infra* note 44 and accompanying text.

somewhat controversial.[7] Commentators have questioned whether such a small dose of legal advocacy makes a difference for clients.[8]

This Note focuses on the effectiveness of limited-scope representation. In doing so, it fills a scholarly gap left by existing empirical research. Prior to this Note, there has been little published quantitative assessment of the efficacy of limited-scope representation. The few academics to write on the topic, including a small number with empirical studies on out-of-court limited-scope representation,[9] have expressed skepticism as to whether it leads to better outcomes for clients. This Note is the first publication to quantitatively assess in-court limited-scope representation, and it is the first to find that limited-scope representation improves client outcomes.

This study covered more than twelve hundred foreclosure-related motions that were heard at the New Haven Superior Court short calendar hearings from October 2015 through January 2017. The short calendar hearings were weekly sessions during which the court addressed all pending motions in foreclosure cases except those motions that were complicated enough to merit their own scheduled hearing. On about half of the days when these short calendars took place, all homeowners who arrived in court without counsel were invited by the court clerk to speak with volunteers from the Attorney for Short Calendar program ("ASC"), a pro bono initiative run by the Mortgage Foreclosure Litigation Clinic at Yale Law School (now known as the Housing Clinic) and the Connecticut Fair Housing Center. All who requested help from ASC received at least advice, and most received in-court limited-scope representation. Even for those represented in court, the attorney-client relationship generally lasted for no more than three hours.[10]

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7. This Note focuses on litigation. In transactional work, by contrast, limited-scope representation has long been uncontroversial. *See* Rochelle Klempner, *Unbundled Legal Services in New York State Litigated Matters: A Proposal To Test the Efficacy Through Law School Clinics*, 30 N.Y.U. REV. L. & SOC. CHANGE 653, 654 (2006) ("Outside the courtroom, unbundled legal services are commonplace, as a client may seek a lawyer's advice before negotiating an agreement, or ask a lawyer to draft a document based upon an agreement reached without the lawyer's assistance, or bring an agreement prepared by an opposing counsel to the lawyer for review. In each of these scenarios the lawyer performs a discrete legal task instead of handling the entire matter. The concept is far less established and common in the litigation context.").

8. *See id.*

9. *See id.*; *see also* D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901 (2013); Steinberg, *supra* note 5.

10. On occasion during the study period, after ASC, the Mortgage Foreclosure Litigation Clinic agreed to represent an ASC client on a full-scope basis.

To measure the program's efficacy, I reviewed the dockets, the orders, and, when necessary, the underlying filings for all relevant motions scheduled for argument on a day during the study period. Cases were excluded if the defendant never filed an appearance or was represented by a traditional, full-scope attorney. I also read dozens of roll call transcripts, which recorded whether parties were present for each case, to assemble a control group of cases from non-ASC days. This control group and the large sample sizes at issue allowed the data to be refined to control for selection bias.[11]

Those data show that when the judge ruled on short calendar motions, he or she awarded clients represented in court by the Attorney for Short Calendar program 48.3 more days in their home, on average, as compared to pro se homeowners.[12] Furthermore, the benefits of this small dose of representation persisted: when the case reached final disposition, often months later, ASC clients were more likely to win the case—that is, to remain in their home.[13] Homeowners who received in-court ASC representation ultimately kept their homes in 51.8% of cases. By contrast, the success rate for pro se homeowners that never had in-court limited-scope counsel was only 28.6%.[14] In these cases, limited-scope representation was a net benefit for homeowners, which suggests that this novel form of representation might alleviate some of the systemic inequities in legal representation.

Given the potential of limited-scope representation and the crisis of adequate legal counsel, legislatures and courts in states that prohibit in-court limited-scope representation should modify their laws. Such representation should be permitted whenever a limited-scope attorney can ethically represent his client, following the Rules of Professional Conduct. Likewise, legal aid clinics nationwide should consider limited-scope representation when trying to most efficiently deploy their resources.[15]

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11. *See infra* Section IV.C.

12. *See infra* Figure 1.

13. *See infra* Figure 3.

14. The result is statistically significant ($p < 0.001$). However, this finding cannot be controlled for selection bias as robustly as the findings concerning motions decided on the day of the program. *See infra* Section IV.C.

15. I do not claim to be a disinterested commentator. As a Student Director in the Mortgage Foreclosure Litigation Clinic, I led the program's implementation—organizing and attending meetings with judges and administrative personnel, drafting our internal documents and protocols, and conducting trainings for clinic students. This provided me with unique insights into the creation and operation of limited-scope representation programs. I was able to observe the program, including dozens of in-court arguments by pro se homeowners and by limited-scope advocates. And I was able to gather data and measure the program's effectiveness from its inception.

This Note begins by discussing limited-scope representation's place in American legal history and its recent rise in Part I. Part II reviews the existing literature on limited-scope representation, summarizing procedural, ethical, and substantive concerns. That Part focuses especially on the few quantitative studies that have been conducted on the efficacy of limited-scope representation. Part III summarizes the aspects of Connecticut foreclosure law that are most relevant to ASC's limited-scope representation and then describes the day-to-day operation of ASC. Part IV provides empirical conclusions. Part V offers recommendations to legislatures and judicial rules committees. By focusing on the features of the ASC that may make its variety of limited-scope representation particularly effective, that Part also offers advice to clinics interested in adopting the ASC model.

I. BACKGROUND: THE RISE OF LIMITED-SCOPE REPRESENTATION

Limited-scope representation seems unusual today because it is assumed that an attorney will represent her client for the entirety of a case. But limited-scope representation is consistent with long-standing principles of legal ethics. In early America, to the extent that lawyers agreed on any ethical underpinning for the profession,[16] "a lawyer's primary responsibility was assumed to be to the community and society at large."[17] This public-service model was motivated, in part, by lawyers' prominence in politics.[18]

In the nineteenth century, lawyers' conception of their ethical responsibilities gradually evolved, as the profession's importance to industry protected it against populist forces.[19] By 1908, when the ABA adopted the Canons, the old public-service model had been eclipsed by a new theory of lawyers' ethics in which a

16. Richard A. Corwin, *Ethical Considerations: The Attorney-Client Relationship*, 75 TUL. L. REV. 1327, 1328 (2001) ("[I]t was not until 1878, when the ABA was founded in Saratoga Springs, New York, that any association attempted to speak with one voice for the profession."). The Association of the Bar for the City of New York was founded just eight years earlier. *About Us*, NEW YORK CITY BAR, http://www.nycbar.org/about [http://perma.cc/RCK2-9JJJ].

17. Corwin, *supra* note 16, at 1329.

18. Alfred S. Konefsky, *The Legal Profession: From the Revolution to the Civil War*, *in* 2 THE CAMBRIDGE HISTORY OF LAW IN AMERICA 68, 75 (Michael Grossberg & Christopher Tomlins eds., 2008) ("Through their active participation in the founding of the nation, lawyers had worked hard to institutionalize the insights of republican theory as well as to situate themselves as public representatives of it.").

19. *E.g.*, David R. Papke, *The Legal Profession and Its Ethical Responsibilities: A History*, *in* ETHICS AND THE LEGAL PROFESSION 29, 35 (Michael Davis & Frederick A. Elliston eds., 1986) (noting that influential lawyers like George Sharswood of Philadelphia, whose writings formed the basis for the American Bar Association's first Canons, asserted "that professional morality was entirely compatible with arguing any and every case").

lawyer's primary duty is to his client.[20] This model emphasized the virtues of zealous advocacy.[21] Current rules of legal ethics continue to center on an attorney's duties to her client. Specific requirements of legal ethics are couched within a more general ideal: "As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."[22]

In any individual case, the primacy of client service is sensible.[23] Writ large, however, the current model for the attorney-client relationship has failed to live up to that earlier ethical principle—that lawyers serve the needs of the public. Today, an estimated 75 to 80% of civil litigants represent themselves.[24] The need is acute across the country, even in large cities with higher concentrations of lawyers. For instance, although New York City has more than twice the national average concentration of lawyers,[25] "99% of New York City tenants in eviction cases were self-represented."[26] As another example, among all debt collection

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20. *See, e.g.*, CODE OF PROF'L ETHICS Canon 15 (AM. BAR ASS'N, Proposed Official Draft 1908) ("The lawyer owes 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,' to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied.").

21. *Id.* ("In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense.").

22. MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 2 (AM. BAR ASS'N 2016). Some have recently objected to the word "zealous," emphasizing that lawyers' obligations to their clients are circumscribed by other ethical rules and broader moral considerations. *See, e.g.*, Allen K. Harris, *The Professional Crises—The "Z" Words and Other Rambo Tactics: The Conference of Chief Justices' Solution*, 53 S.C. L. REV. 549, 568-74 (2002). Nevertheless, these objections do not alter the modern thrust of legal ethics, as evinced by the opening words of the Model Rules: "A lawyer, as a member of the legal profession, is a representative of clients . . . ." MODEL RULES OF PROF'L CONDUCT pmbl. ¶ 1 (AM. BAR ASS'N 2016).

23. Still, even before introducing the idea of limited-scope representation, this "traditional" model is complicated in modern times. Theodore Schneyer identifies five categories of people to whom a lawyer owes client or client-like duties: (1) prospective clients, (2) quasi-clients (e.g., his client's ward), (3) nonclients with confidential relationships (e.g., members of a client trade organization that furnish information to that organization), (4) secondary clients (new clients whose interests are subordinated to old ones), and (5) primary clients. *See* Theodore J. Schneyer, *Searching for New "Particles" in the Law of Lawyering: Recent Developments in the Attribution of "Clienthood,"* 1 J. INST. STUDY LEGAL ETHICS 79, 79 (1996).

24. *Expanding Access to Justice*, *supra* note 5, at 9.

25. *See Occupational Employment and Wages, May 2016*, BUREAU LAB. STAT. (Mar. 31, 2017), http://www.bls.gov/oes/current/oes231011.htm [http://perma.cc/6X7N-SKM7] (indicating that the metropolitan area containing New York City has more than twice the national average concentration of lawyers: 8.94 per thousand jobs).

26. *Expanding Access to Justice*, *supra* note 5, at 9 (citing *FY 2017 Budget Request*, LEGAL SERVS. CORP., http://www.lsc.gov/media-center/publications/fy-2017-budget-request [http://perma.cc/G4VF-Z28B]).

cases in New Jersey's lower level court in 2013, 97% of defendants were unrepresented.[27] And in Hawaii, a 2017 report noted that "96% of tenants in landlord-tenant cases and 80% of homeowners in foreclosure cases do not have legal representation."[28] Because of resource constraints, legal aid organizations must turn away about half of those who seek their help.[29] The dearth of representation in civil cases is alarming.

In contrast to criminal cases, needy litigants in civil matters have no right to counsel.[30] This is true even in life-altering civil cases: domestic violence matters that pose imminent bodily harm, public benefits cases that threaten to terminate a litigant's income, landlord–tenant or foreclosure actions that threaten to eject a person from her home, and immigration cases that threaten to expel someone from the country. In all of these instances, litigants frequently face daunting legal problems without the aid of counsel. Some commentators recommend "civil *Gideon*" programs, which would provide government-funded lawyers for low-income litigants in certain critical categories of cases.[31] Civil *Gideon* programs remain uncommon, though there have been promising first steps.[32] A potentially

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27. Paul Kiel, *So Sue Them: What We've Learned About the Debt Collection Lawsuit Machine*, PROPUBLICA (May 5, 2016, 7:57 AM), http://www.propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine [http://perma.cc/HKY5-NZUN].

28. *Expanding Access to Justice, supra* note 5, at 9 (citing *FY 2017 Budget Request*, LEGAL SERVS. CORP., http://www.lsc.gov/media-center/publications/fy-2017-budget-request [http://perma.cc/G4VF-Z28B]).

29. *Id.* app. A at 53.

30. *See* Gideon v. Wainwright, 372 U.S. 335 (1963). Though the right to criminal defense counsel is long-established, criminal public defenders face crises of their own. *See generally* John D. King, Symposium, *Lamentations, Celebrations, and Innovations:* Gideon *at 50*, 70 WASH. & LEE L. REV. 835, 835 (2013) ("No observer of the criminal justice system today would argue that the right to appointed counsel works well. As the country's criminal justice system has exploded in size and scope in the half century since *Gideon*, the systems of indigent criminal defense have failed entirely to keep pace.").

31. *See, e.g.*, George Schatzki, *The Survival of Legal Services for the Poor in Connecticut*, 70 CONN. B.J. 313, 313 (1996) ("Chief Justice of the Connecticut Supreme Court Ellen Ash Peters . . . began by pointing out that the rationale of [*Gideon*] made as much sense in the civil arena as it did in *Gideon's* own context, a criminal case. That reasoning was self-evident: without recourse to competent legal assistance, legal rights are an empty shell. Legal assistance is essential to alleviate human misery on a micro-scale; to protect individuals from being evicted unlawfully from their homes, to assure that a marriage dissolution is accomplished with equity and concern for human needs, or to defend individuals' rights from overreaching by the powerful or from indifference of administrators.").

32. For instance, New York City is implementing a program to provide all low-income New York City tenants with free legal representation in eviction proceedings by 2022. *See* N.Y.C., N.Y., Administrative Code §§ 26-1301 to -1305 (2017); *Mayor de Blasio Signs Legislation To Provide*

more feasible alternative, at least in the short term, is limited-scope representation.[33]

Limited-scope representation involves an attorney–client relationship for less than a full case. Such representation can range from providing only advice and counsel—informational clinics, know-your-rights presentations, or conversations in a courthouse hallway—to advocating on a client's behalf. The former might be called "limited-scope advice" and the latter "limited-scope advocacy."[34] This distinction between in-court representation and out-of-court advice is central to understanding the operation of ASC: every homeowner who asked for assistance was given advice, but only some were represented in court.

Low-Income New Yorkers with Access to Counsel for Wrongful Evictions, CITY OF NEW YORK (Aug. 11, 2017), http://www1.nyc.gov/office-of-the-mayor/news/547-17/mayor-de-blasio-signs-legislation-provide-low-income-new-yorkers-access-counsel-for [http://perma.cc/TF7N-C2GS] ("[Mayor de Blasio said,] 'New York City will be the first city in [the] country to ensure anyone facing an eviction case can access legal assistance thanks to this new law. New Yorkers should not lose their homes because they cannot afford a lawyer and stopping wrongful evictions from happening makes both ethical and economic sense.'").

33. *See, e.g.*, *First Annual Report*, ACCESS TO JUSTICE COMM'N, CONN. JUDICIAL BRANCH (Oct. 12, 2012), http://www.jud.ct.gov/committees/access/ATJ_AnnualReport.pdf [http://perma.cc/S4L5-5XXR] (providing a list of recommendations to the Judicial Branch). In its second recommendation, the Commission encouraged limited-scope representation as one response to access to justice concerns: "The Judicial Branch should continue to work with bar groups on limited scope representation proposals, which would both make lawyers more affordable to litigants currently unable to afford any legal representation and increase the number of lawyers volunteering for pro bono service in key aspects of cases." *Id.* at 7.

34. Sometimes, limited-scope representation can occupy a gray area in the middle, as when an attorney ghostwrites but does not sign a client's pleading or motion. This Note is primarily concerned with limited-scope advocacy in which the attorney's identity is known to all parties. As other observers have noted, ghostwriting is an ethically contentious form of limited-scope representation. *See, e.g.*, Fern Fisher-Brandveen & Rochelle Klempner, *Unbundled Legal Services: Untying the Bundle in New York State*, 29 FORDHAM URB. L.J. 1107, 1116-17, 1117 n.73 (2002) (describing the practice of ghostwriting and collecting cases where judges have chastised lawyers for ghostwriting); Jona Goldschmidt, *In Defense of Ghostwriting*, 29 FORDHAM URB. L.J. 1145 (2002) (arguing that ghostwriting should be permitted in certain circumstances); John L. Kane, Jr., Guest Editorial, *Debunking Unbundling*, 29 COLO. LAW 15, 15-16 (Feb. 2000) (arguing against ghostwriting); Salman Bhojani, Comment, *Attorney Ghostwriting for Pro Se Litigants—A Practical and Bright-Line Solution To Resolve the Split of Authority Among Federal Circuits and State Bar Associations*, 65 SMU L. REV. 653, 679 (2012) (recommending that courts "require[e] ghostwriting attorneys and pro se litigants to disclose that the legal document was 'prepared with the assistance of counsel,'" without disclosing the attorney's identity); Blake George Tanase, Note, *Give Ghosts a Chance*, 48 GA. L. REV. 661 (2014) (same).

Even before limited-scope representation in litigation began to gain acceptance,[35] legal aid organizations were doing it "in the hallways outside of courtrooms, in mediation sessions, and even in court colloquies and motion arguments."[36] The general trend has been towards allowing lawyers to assist clients for only part of a civil case, if accompanied by appropriate safeguards of diligence and disclosure. In line with this trend, the Model Rules of Professional Conduct permit limited-scope representation "if the limitation is reasonable under the circumstances and the client gives informed consent."[37]

Limited-scope advice is a more frequent practice than limited-scope advocacy,[38] but states increasingly permit the latter as well. For instance, in Connecticut, effective January 1, 2016, "[a]n attorney is permitted to file an appearance limited to a specific event or proceeding in any family or civil case [but not in criminal or juvenile cases]."[39] Following the practices set by the ABA, limited-scope *advice* in Connecticut is permitted so long as: (i) it is "reasonable under

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35. *See* MODEL RULES OF PROF'L CONDUCT r. 1.2(c) (AM. BAR ASS'N 2002) (permitting limited-scope representation, when reasonable, with a client's informed consent).

36. Molly M. Jennings & D. James Greiner, *The Evolution of Unbundling in Litigation Matters: Three Case Studies and a Literature Review*, 89 DENV. U. L. REV. 825, 826 (2012). Jennings & Greiner examine precursors of limited-scope representation in three states — Colorado, Massachusetts, and Alabama — through conversations and interviews with members of the bar involved in each state's "unbundling" movement:

> [I]n all three states, unbundled representation had been actively practiced, in the context of litigation matters, by legal aid providers (joined in some cases by pro bono attorneys) years before a recognizable movement toward mainstreaming of unbundling began. In some instances, these legal assistance programs were highly visible, in that they included providing representation to eligible clients in the hallways outside of courtrooms, in mediation sessions, and even in court colloquies and motion arguments.

Id. Nevertheless, all agreed that "the lessons drawn from [such] efforts were limited" because of a disconnect between legal services and pro bono programs on the one hand and private attorneys, judges, and leaders of the bar on the other. *Id.* at 827. "[T]he previous experiences of those in legal services and pro bono programs were not considered sufficient to persuade." *Id.*

Jennings & Greiner also note that in all three states, an important step in the development of limited-scope representation was judges' willingness to cede control over whether an attorney could withdraw. Allowing limited-scope attorneys to withdraw as of right was an essential step in all three states. *Id.* So too in Connecticut.

37. MODEL RULES OF PROF'L CONDUCT r. 1.2(c) (AM. BAR ASS'N 2002).

38. *See, e.g.*, Jennings & Greiner, *supra* note 36, at 826 (noting that in the three studied states, limited-scope advice was offered for "years before a recognizable movement toward mainstreaming of unbundling began").

39. CONN. RULES FOR THE SUPERIOR COURT § 3-8(b) (2017).

the circumstances" and (ii) the "client gives informed consent."[40] But for limited-scope *advocacy*, Connecticut provides an additional, more specific protection: "A limited appearance may not be limited to a particular length of time or the exhaustion of a fee."[41] Under that rule, the boundaries of a limited-scope representation are defined functionally, not because the client cannot pay for full representation.[42] More than merely authorizing such programs, some states have actively supported them, such as by setting up help desks in courthouses.[43]

In Connecticut, for instance, judicial branch officials were very supportive of ASC. When ASC was first contemplated, limited appearances were not generally authorized in Connecticut civil cases. In 2014, students in the Mortgage Foreclosure Litigation Clinic ("MFL") researched the issue and submitted testimony to the Rules Committee of the Superior Court. The students argued that limited appearances would help Connecticut homeowners by improving access to justice. The Rules Committee adopted a modification to the Connecticut Practice Book,[44] and, effective January 1, 2016, attorneys have been permitted to file limited appearances in civil cases in Connecticut.

In Fall 2015, MFL students met with stakeholders from the judicial branch to discuss the idea of an attorney for the day program. The team explained how the program would benefit Connecticut homeowners and increase access to justice, emphasizing that ASC would make the foreclosure process more efficient and transparent. Before ASC, as I observed firsthand, judges had regularly given guidance to pro se homeowners from the bench, while simultaneously disclaiming their ability to give legal advice. Sometimes, a judge would send plaintiff's counsel into the hall with instructions to "explain what happened" to the homeowner, a challenging role that blurred the adversarial relationship and threatened to lull the homeowner into trusting that the opposing counsel had his best in-

40. CONN. RULES OF PROF'L CONDUCT r. 1.2(c) (2017).

41. CONN. RULES FOR THE SUPERIOR COURT § 3-8(b) (2017).

42. It's reasonable that additional duties should attach to the attorney who represents a client on court papers or in courtroom appearances. For instance, Connecticut's rule that such representation be limited purposively, not financially or temporally, protects all parties—the client, the opposing party, and the court—by preventing a limited-scope representation from ending unexpectedly (e.g., through the exhaustion of a fee).

43. *See* Brenda Star Adams, Note, *"Unbundled Legal Services": A Solution to the Problems Caused by Pro Se Litigation in Massachusetts's Civil Courts*, 40 NEW ENG. L. REV. 303, 304-05 (2005) ("Arizona and Minnesota have set up self-service centers in several of their courthouses to deal specifically with pro se litigants. These centers provide unbundled legal services catered to the states' poor, uneducated, and disadvantaged self-represented litigants." (citations omitted)).

44. CONNECTICUT PRACTICE BOOK § 3-8(b) (COMM'N ON OFFICIAL LEGAL PUBL'NS 2017).

terests at heart. By contrast, ASC would provide homeowners with an unconflicted advocate and counselor — someone who would advance their interests, explain what happened, and counsel them on next steps without needing to consider the adverse interests of a client.

Judicial branch officials were supportive. They agreed to provide ASC with access to an office in the courthouse for use when interviewing clients, and they agreed that the clerk would announce ASC during the calendar call, inviting homeowners to speak with ASC volunteers immediately prior to their arguments.[45]

With the rise of such programs, the efficacy of limited-scope representation is paramount. Several authors have begun to address this question, but the literature remains sparse and underdeveloped. And the dominant narrative questions the efficacy of limited-scope representation. This Note offers a new take.

II. PRIOR STUDIES ON THE EFFICACY OF LIMITED-SCOPE REPRESENTATION

ASC is far from the first program to offer in-court limited-scope representation. Similar programs are currently operated by the New York City Bar ("Volunteer Lawyers for the Day in Housing Court") and the Boston Bar Association, in conjunction with Harvard Law School ("Lawyer for the Day in Housing Court"), among others.[46]

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45. Here is a typical announcement:

> [A]ny of you who are self-represented . . . Connecticut Fair Housing is here as well as the Yale Law Clinic. There are students and the attorneys here. They may be willing to take your case . . . . [I]t is a volunteer program on their end. What I'm going to ask that you do when I call your case, if you would like to take advantage of the program, please let me know.

Foreclosure Calendar Call, Judicial District of New Haven (Conn. Sup. Feb. 29, 2016) (announcement of clerk) (transcript on file with MFL).

46. *See Volunteer Lawyer for the Day Program–Housing*, N.Y. STATE UNIFIED CT. SYS. (Oct. 13, 2013), http://www.nycourts.gov/courts/nyc/housing/vlfd_housing.shtml [http://perma.cc/XB4A-BJNF]; *Lawyer for the Day Programs in Housing Court*, MASS. JUD. BRANCH (2017), http://www.mass.gov/courts/programs/legal-assistance/lfd-hc.html [http://perma.cc/MC4L-HFWX]; *see also, e.g.*, Alicia M. Farley, *An Important Piece of the Bundle: How Limited Appearances Can Provide an Ethically Sound Way To Increase Access to Justice for Pro Se Litigants*, 20 GEO. J. LEGAL ETHICS 563, 582–83 (2007) (describing the use of limited-scope representation in Washington, D.C. landlord-tenant disputes); Greiner et al., *supra* note 9, at 913 ("Despite the prevalence of such programs, to our knowledge there has been no rigorous evaluation of the effect limited assistance has on the clients or the court systems those programs are intended to serve.").

Still, many lawyers remain uneasy with limited-scope representation. Concerns fall within three categories. The first is procedural, that attorneys' short bursts of involvement in a case cause unnecessary delays, externalizing costs onto courts and opposing parties.[47] The second is ethical, that lawyers will abandon litigants part-way through an action and harm clients.[48] The third is substantive,

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47. *See, e.g.*, Kane, *supra* note 34, at 16 ("Proponents claim that unbundling legal services is a cost-reducing method of providing access to justice. In this context, however, 'access' to the justice system is more accurately described as 'insertion' into it. It is ludicrous to suggest that in the present system, a layperson armed with a few discrete sticks from the advocate's bundle can emerge from the trial thicket unscathed or that others will not be put to unnecessary expense." (citation omitted)).

It is true that limited-scope representation may set litigation in motion, slowing down cases regardless of the merits. But such a delay may be necessary to vindicate the legal rights of the poor. After all, "uncontested" does not mean "legally sound." If the pro se party in these cases has a valid claim or defense, a delay could provide the time to mount a legal defense that vindicates a legal right. Further, even in a case where the pro se party will not win on the merits, a delay may harm private litigants but serve the public interest. The spillover effects from having both parties represented reach beyond the merits of the case to the ways in which symmetrical negotiations can facilitate optimal outcomes. For example, tactics that admittedly delay the proceedings might incentivize parties to bargain and reach a mutually agreeable result, like modifying or reinstating a mortgage. This is consistent with Connecticut's expressed public policy, which favors mutually agreeable resolutions that avert foreclosure. *See* CONN. GEN. STAT. § 49-31(k)(7) (2016) ("'Objectives of the mediation program' means[, inter alia,] a determination as to whether or not the parties can reach an agreement that will avoid foreclosure by means that may include consideration of any loss mitigation options available through the mortgagee . . . ." (numbering omitted)).

48. Some have written about systems to address ethical challenges unique to limited-scope representation. For instance, Professor Struffolino described one jurisdiction's approach to regulating limited-scope representation. Attorneys who completed field-specific training were placed on an online list of approved limited-scope advocates, increasing their visibility with potential clients. Only lawyers on the list had permission to unilaterally withdraw on completion of a limited-scope appearance; others had to request court authorization. Michele N. Struffolino, *Limited Scope Not Limited Competence: Skills Needed To Provide Increased Access to Justice Through Unbundled Legal Services in Domestic-Relations Matters*, 56 S. TEX. L. REV. 159, 201 (2014).

Others have raised more fundamental ethical objections. *See, e.g.*, Kane, *supra* note 34, at 16 (arguing that limited-scope representation is a "negation of the advocates' essential role"); Michele N. Struffolino, *Taking Limited Representation to the Limits: The Efficacy of Using Unbundled Legal Services in Domestic-Relations Matters Involving Litigation*, 2 ST. MARY'S J. LEGAL MALPRACTICE & ETHICS 166, 166 (2012) ("[T]he use of unbundled services in domestic-relations matters has caused difficulties for litigants, attorneys, and the courts. For these domestic-relations cases in particular, full service representation is crucial. To provide full satisfaction for their clients and to fulfill their ethical duty, domestic-relations attorneys must provide complete representation.").

It is true that limited-scope representation is inconsistent with one traditionalist view of the lawyer's role: that "[i]n the judicial forum the client is entitled to the benefit of any and

that limited-scope advocacy is too short-lived to offer significant benefits to clients. This Note centers on the third concern. Still, it also speaks to the procedural and ethical advantages of limited-scope representation: if limited-scope representation is not effective, then any procedural or ethical issues are more acute.

Limited-scope representation in litigation has been the subject of commentary in the academic literature,[49] yet very few examples exist of quantitative measurements of the efficacy of limited-scope representation in litigation.[50] Commentators have noted this lack of data. For instance, after interviewing members of the bar for a qualitative study on unbundling in three states, Molly Jennings and James Greiner concluded that "no one we interviewed knew whether unbundling worked."[51]

every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense." CODE OF PROF'L ETHICS CANON 15 (AM. BAR ASS'N 1908). But for some people, like the clients of ASC, limited-scope representation is the only representation available. It is unrealistic to argue that limited-scope representation would deprive them of a "lawyer [who will] assert every such remedy or defense" when no such lawyer is forthcoming. *Id.*

49. *See generally* Jennings & Greiner, *supra* note 36, at 849-50 (providing an excellent bibliography of relevant articles).

50. *See* Steinberg, *supra* note 5, at 456 ("[T]he threshold question of the efficacy of unbundled legal aid has not been the focus of significant attention by scholars and practitioners. Very little is known about how unbundled aid affects clients and cases, and whether it advances justice — however one might define it — for low-income litigants. Despite rapid proliferation of unbundled legal services programs in every state across the nation, unbundling has rarely been subject to empirical analysis to test whether it is effective in producing outcomes that are more just or favorable than its recipients could otherwise have achieved on their own. To be sure, unbundling permits legal aid providers to provide assistance to thousands of additional low-income individuals. Yet, is the mere delivery of aid a success in and of itself? Even delivery of simple advice or brief services requires an enormous output of scarce attorney resources. Before states and the federal government standardize unbundled aid as the primary mechanism for meeting the vast legal needs of the indigent, it is critical to carefully assess how litigants armed with just 'a little lawyering' fare in court.").

51. Jennings & Greiner, *supra* note 36, at 827-28 ("That is, no one knew whether the movement to legitimize unbundling in litigation matters (which has consisted primarily of making and advertising changes to ethical rules, judicial guidelines, and rules of civil procedure) had any serious effect on the way in which the private bar conducted business, on the number or percentage of litigants who self-represented in court hearings or during other phases of litigation, or on any discernible aspect of access to justice. Although some with whom we spoke cited [anecdotes], and some cited the value of easily-limited representation as a recruitment tool for pro bono groups, no one could point to (nor did our independent research unearth) a credible study or evaluation purporting to assess the effect of a statewide movement or of an individual program that offered unbundled representation.").

The most groundbreaking study on the efficacy of limited-scope representation was published in 2013 by Greiner, Cassandra Wolos Pattanayak, and Jonathan Hennessy.[52] These authors partnered with a legal aid organization to perform a randomized controlled trial related to unbundled legal services in housing cases: when legal aid attorneys selected a case for the study, clients received limited-scope advice, and then "[the authors] randomized cases to treatment, meaning an offer of full representation by a [clinic] staff attorney, or to control, meaning no further assistance."[53] The randomized nature of the Greiner et al. study is ambitious; ethical opportunities to randomize offers of legal assistance are rare. For this reason, the study provided unique insights and significantly advanced the literature on the efficacy of limited-scope representation.

The authors concluded that those who received a pro bono offer of traditional full-scope representation (an offer taken by 97% of offerees) experienced superior case outcomes, as compared to those who received only limited-scope representation.[54] Full-scope clients were about twice as likely to remain in their homes,[55] and in "cases with nonpayment of rent or serious monetary counterclaims," full-scope clients saved significantly more — an average net of seven-and-a-half months' rent.[56] Therefore, the study casts doubt on the efficacy of limited-scope representation — at least, as compared to full-scope representation.

While its conclusions are noteworthy, the study views the limited-scope representation issue through a different lens than this Note. As the authors explain, questions about the efficacy of limited-scope representation can be framed in two ways. One approach is, "what does a potential client 'lose' when referred to a limited assistance program as compared to receiving an offer of a traditional attorney-client relationship . . . ?"[57] This comparison between limited- and full-scope representation is the one the authors address. Of course, as the authors admit, "the idea of a potential client's 'losing' something assumes that there was a realistic possibility that he or she would actually receive an offer of a full attorney-client relationship," but "this assumption is not currently realistic for broad classes of persons in need."[58] Thus, while the Greiner et al. study speaks to an

52. *See* Greiner et al., *supra* note 9, at 918.

53. *Id.*

54. *Id.* at 908.

55. *Id.*

56. *Id.* at 908, 930.

57. *Id.* at 906 (citation omitted).

58. *Id.* at 906 n.13.

important issue—that we should provide full-scope representation where possible—it does not address the far more common dilemma of providing limited-scope representation or nothing at all.

This Note addresses that second question about the efficacy of limited-scope representation: "[H]ow much benefit does a potential client receive by being offered limited legal assistance as compared to being compelled (for lack of an alternative) to pursue unassisted self-representation?"[59]

In addition to exploring a distinct question, this Note's data builds upon the findings of Greiner and his colleagues by considering *in-court* limited-scope representation. The Greiner et al. study offered limited-scope representation that was only partially tailored to individual clients' cases and involved no interactions with the opposing counsel or the court. In essence, the limited-scope attorneys offered advice but not advocacy. About 70% of study participants were invited to attend a "two- to three-hour instructional session[] . . . . includ[ing] overviews of the summary eviction process and individualized assistance in filling out pleading and other forms," especially "checkbox" answer and discovery forms.[60] Because the approach was didactic rather than representational, the study's conclusions on limited-scope representation may be useful for those interested in offering know-your-rights-style presentations, but their conclusions are less generalizable to those who, like the ASC program, offer advocacy as well as advice.[61]

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59. *Id.* at 906. In fairness to Greiner, Pattanayak, and Hennessy, pursuing this second question using their randomized study design would likely have been unethical. As they explain: "[W]hen providing at least some (perhaps minimal) form of assistance costs little, and there is only a small chance that the assistance could have harmful side effects . . . there may be ethical concerns in studying the [] question" that compares limited-scope representation to no representation. *Id.*

The same holds true for the ASC program. Before the program was launched, the organizers briefly considered such a randomized approach but dismissed it as unethical. Fortunately, features unique to ASC provide a convincingly close estimate of true randomization: a natural experiment in which those in the control group differ from those in the treatment group based only on which day the relevant motion happened to appear on the calendar. This Note's experiment leverages that unique empirical baseline to test whether limited-scope representation makes a meaningful difference vis-à-vis no representation at all.

60. Greiner et al., *supra* note 9, at 917-18.

61. This Note also avoids a design limitation of the Greiner et al. study. The authors appear to categorize some litigants as having received limited-scope assistance, despite not having received any aid. Roughly 30% of the study participants never "attended an instructional clinic." *Id.* Some of these participants were referred by judges; others approached one of the three practitioners involved in the study (or a paralegal) in the courthouse. Practitioners only "assisted an undetermined number of these litigants with filling out answer and discovery

In another article measuring the efficacy of limited-scope representation, Jessica Steinberg studied an unbundled legal services program that the Legal Aid Society of San Mateo County offered to tenants facing eviction.[62] She reviewed all 401 residential eviction cases filed in San Mateo County during a period of slightly less than three months in 2009, as well as twenty cases handled by students and supervising attorneys at the Stanford Community Law Clinic from fall 2007 through spring 2009.[63] The Legal Aid Society "operated three half-day housing clinics each week,"[64] providing services to everyone who requested them.[65] Each client consulted with a volunteer lawyer, often for an hour or more, and then the lawyer drafted a responsive pleading for the tenant to file.[66] Legal Aid Society lawyers also stood in the housing court hallways on approximately half of the court's settlement conference days. If a prior attendee of the clinic appeared for a conference, Legal Aid Society lawyers sometimes negotiated on her behalf with landlords.[67]

Thus, Professor Steinberg's study groups consisted of the following: 96 tenants who received limited-scope assistance (ghostwriting and, for some tenants, hallway negotiation assistance); 20 tenants who received full-scope representation by the Stanford Clinic; and 305 unrepresented tenants.[68] Recipients of unbundled legal services did slightly better than unrepresented tenants on some metrics and slightly worse on one metric, but these differences were not statistically significant.[69] Recipients of traditional representation fared markedly better

forms." *Id.* Thus, an undetermined number of this 30% of study participants received no limited-scope assistance at all, but the authors nevertheless categorize them in the limited-scope assistance group.

62. *See* Steinberg, *supra* note 5.

63. *Id.* at 481.

64. *Id.* at 477.

65. *Id.*

66. *Id.* Of the three clinics each week, one was located at the courthouse and two were not. For the courthouse clinics, tenants were required to sign documents indicating that they were not clients. For the other two clinics each week, tenants were required to sign a limited-scope retainer. It does not appear that this resulted in any substantive difference in the services offered. *See id.*

67. *Id.* at 478.

68. *Id.* at 480.

69. Specifically, recipients of unbundled legal services fared better than unrepresented tenants at retaining possession, *id.* at 483 tbl.1, days until move out if not retaining possession, *id.* at 484 tbl.2, and tenant's payment to landlord, if any, *id.* at 486 tbl.4. But recipients of unbundled legal services were more likely than unrepresented tenants to have agreed to pay the landlord. *Id.* at 485 tbl.3.

and the results were statistically significant.[70] Professor Steinberg concluded that the "unbundled legal services program was successful in furthering procedural justice, but that its impact on substantive case outcomes was quite limited."[71] That is, while enhancing clients' voices in the proceedings was itself valuable, it did little to alter the ultimate result.

Professor Steinberg's study is impressive for its scope and detail but is limited in its generalizability. First, selection bias could have influenced the success of those who received traditional full-scope assistance: the Stanford Clinic chose its own clients. Although it is likely that the Clinic's representation enhanced client outcomes, it is also possible that the Clinic chose those cases most likely to prevail.[72] Furthermore, Professor Steinberg's control group (unrepresented tenants) is different from her limited-scope group in an essential way: the tenants receiving limited-scope assistance had to make the effort to attend a housing clinic.[73] This would skew the data if those likely to seek out a housing clinic were not representative of the general population of eviction defendants.[74]

This Note provides a counterpoint to Professor Steinberg's study. First, this Note offers some measures that control for selection bias. As explained in Section IV.C, during the yearlong study period, ASC took place on about half of all short calendar days. On the other days, homeowners were not offered limited-scope assistance. It is highly unlikely that homeowners were capable of consciously manipulating their motions so as to deliberately have them calendar on ASC or non-ASC days.[75] Thus, whether a homeowner happened to have the opportunity to seek ASC assistance or not was a near-random event. This is unlike the

70. Specifically, recipients of traditional representation retained possession far more often, *id.* at 483 tbl.1, achieved more days until move out if not retaining possession, *id.* tbl.2, and never agreed to pay the landlord money, *id.* tbl.3.

71. *Id.* at 457.

72. Steinberg acknowledged that "the clinic screened cases to ensure they were pedagogically appropriate for students to manage." *Id.* at 479; *see also id.* at 479 n.119 ("[I]f the Clinic determine[d] a case [wa]s fully lacking in merit during the course of representation, the client would be counseled accordingly.").

73. *Id.* at 477.

74. On the one hand, seeking out a housing clinic might correlate with initiative; this might suggest that those who attend such a clinic would do better than others. On the other hand, seeking out a clinic might correlate with being a repeat player, such as someone who has already undergone a prior eviction; this might suggest that those who attend such a clinic would do worse than others. In any event, the point is that Professor Steinberg's groups were not randomized; there are a host of confounding variables that could distinguish those who attended the clinics and those who did not.

75. Clients are asked to complete anonymous exit surveys after being represented by ASC, *see infra* Section IV.E, and in response to the question, "How did you hear about [ASC]?", nearly

Steinberg study, in which study participants affirmatively sought out the housing clinic. Moreover, the legal advice provided by the San Mateo Clinic differs from the services provided by ASC, which represents homeowners in court. A comparison between the Steinberg study and this study may therefore help address whether limited-scope advocacy may be more effective than limited-scope advice.

One final, unpublished study was conducted by the Empirical Research Group at the UCLA School of Law.[76] The study focused on a Self-Help Legal Access Center in the Van Nuys Courthouse, which was funded by Los Angeles County.[77] The self-help center offered free limited-scope advice on family law and landlord-tenant issues.[78] The study compared outcomes in landlord-tenant cases (50 recipients of limited-scope advice, 266 others)[79] and concluded that those receiving limited-scope advice had outcomes broadly similar to those receiving no advice.[80] The authors commented that the finding was consistent with the nature of the cases at issue: "when the eviction notice resulted simply from failure to pay rent, there is very little chance of prevailing[, and o]ur observations of court trials indicate that most defendants [are accused simply of not paying rent]."[81]

The UCLA study, then, supports the findings of the Greiner et al. and Steinberg studies—that limited-scope advice in landlord–tenant cases may produce no significant change in substantive outcomes. This Note's focus on foreclosure defense provides a useful point of comparison, allowing an early inquiry into whether some categories of cases may be more suited to limited-scope representation than others. Though the complaint in a foreclosure case may simply have resulted from a failure to pay one's mortgage, programs that offer mortgage

every client chose "announcement in court." Since clients were not aware of ASC in advance, they could not have strategically timed their motions to try to get them to calendar on an ASC day. Occasionally, ASC clients who needed to return were advised by ASC volunteers on how to strategically time their motions so that their *next* appearance would be on an ASC day, but this does not impact this study because such people had already come to ASC once and so would be classified as ASC clients regardless. *See supra* note 59 and accompanying text.

76. *See Evaluation of the Van Nuys Legal Self-Help Center: Final Report*, UCLA L. SCH. EMPIRICAL RESEARCH GRP. 1 (Aug. 30, 2001), http://www.courts.ca.gov/partners/documents/Final_Evaluation_Van_Nuys_SHC2001.doc [http://perma.cc/ALV8-9MRJ].

77. *Id.*

78. *Id.*

79. *Id.* at 12 tbl.4.

80. *Id.* at 12.

81. *Id.*

modifications make successful defense much more plausible than in landlord–tenant failure-to-pay cases.[82]

III. THE ATTORNEY FOR SHORT CALENDAR PROGRAM

The Attorney for Short Calendar program assists defendants in foreclosure actions. As the previous Part detailed, the design of the program provides a unique sample from which to study the effects of limited-scope representation. This Part begins with a summary of procedures unique to Connecticut foreclosure suits.[83] Then, in order to both catalog the distinctive features of ASC and to provide a roadmap for other programs, the Part describes a typical day for the program.

A. The Motions Argued at ASC

This study concentrates on the motions argued at ASC, so understanding the study requires a bit of background on those motions.

Petitions for Inclusion and Reinclusion. One common set of motions argued at ASC relates to the Foreclosure Mediation Program (FMP), in which a court-appointed mediator assists the parties in resolving the case, thereby temporarily removing the case from active litigation.[84] One of ASC's most effective

82. In addition to these quantitative studies, others have taken a qualitative approach. For example, one study examines a pilot attorney for the day program in New York City Housing Court. It concludes that the program was effective based on interviews, focus groups, and a review of the case files of the 50 clients involved, but it does not provide any control group. Fern A. Fisher et al., *Volunteer Lawyer for a Day Project Report: A Test of Unbundled Legal Services in the New York City Housing Court*, OFF. ADMIN. JUDGE CIV. CT. CITY N.Y. ET AL. 1-2 (Feb. 2008), http://www.courts.state.ny.us/courts/nyc/housing/pdfs/vlfdreport_0208.pdf [http://perma.cc/YDH8-MBUT].

83. *See generally* 1 DENIS R. CARON & GEOFFREY K. MILNE, CONNECTICUT FORECLOSURES: AN ATTORNEY'S MANUAL OF PRACTICE AND PROCEDURE (5th ed. 2011) (discussing Connecticut foreclosure law and practices).

84. Successful mediation sessions generally result in the lender reviewing the homeowner for some alternative to foreclosure, such as a loan modification. Naturally, a modification benefits the homeowner. Less intuitively, it may benefit the lender as well. Often, when the homeowner has a steady stream of income, a lender is better off agreeing to a modification with lower monthly payments than foreclosing on a home and selling it at a steep discount. Typical modification formulae take the lender's interest into account and only permit modifications when the modification is expected to be at least as good for the lender as foreclosure would be.

For example, the federal Home Affordable Modification Program (HAMP) applied a net present value (NPV) test. *See* Making Home Affordable, *Net Present Value (NPV)*

strategies to magnify the effect of limited-scope representation was to argue that a case should be placed in mediation. When a judge accepted ASC's argument, mediation allowed a neutral third party (the mediator) to guide the homeowner, helping him navigate the process long after ASC's involvement in the case.

From July 1, 2013 through December 31, 2016, the FMP yielded significant successes for foreclosure defendants: "Of the 9,166 cases that completed mediation, mortgagors in 6,700 of those cases were able to stay in their homes. This represents a 73% home retention rate."[85] Notably, success in the FMP was often possible without an attorney: during the same period, 74% of the homeowner participants in the FMP statewide, as well as 74% of the participants in New Haven, were pro se.[86] As such, attempting to place cases in the FMP, and to keep them there, represented an important task for ASC.

At the outset of a foreclosure case, homeowners generally must be placed into the FMP if they so request, so long as they file the request within 15 days of the lawsuit's return date.[87] But many ASC clients either did not know to request mediation, and so had never been in the FMP, or had their mediation terminated.

Calculator, U.S. DEP'T TREASURY & U.S. DEP'T HOUSING & URB. DEV., http://www.makinghomeaffordable.gov/get-answers/pages/get-answers-tools-NPV.aspx [http://perma.cc/53TC-BXPZ] ("For the Home Affordable Modification Program . . . mortgage companies/lenders compare the NPV of the mortgage with a HAMP modification to that of the mortgage left 'as is.' If the NPV with the modification is higher than, or within a specified range of, the NPV of the mortgage without the HAMP modification, HAMP servicers are required to provide the HAMP modification for eligible mortgages (subject to investor restrictions[])."); *see also* 12 U.S.C. § 5219a (2012) (requiring the use of NPV and authorizing the creation of the web-based calculator and the promulgation of the methodological documents cited *supra*); Making Home Affordable, *Home Affordable Modification Program: Base Net Present Value (NPV) Model v7.0 Model Documentation*, U.S. DEP'T TREASURY & U.S. DEP'T HOUSING & URB. DEV., http://www.hmpadmin.com/portal/programs/docs/hamp_servicer/BaseNPVModelDocumentationv7.pdf [http://perma.cc/PK5V-VPTH] (providing a detailed explanation for the model used).

HAMP was launched alongside the Troubled Assets Relief Program in 2009, when many homeowners' payments had become unaffordable due to the sub-prime lending crisis. HAMP was allowed to sunset at the end of 2016. Stacy Cowley, *Prevention Returns to the Unknown*, N.Y. TIMES (Jan. 25, 2017), http://www.nytimes.com/2017/01/25/business/dealbook/foreclosure-prevention-mortgage-lending.html [http://perma.cc/X5LS-73CJ]. In 2017, it was replaced with the Flex Modification Program. *See Fact Sheet: Fannie Mae Flex Modification* FANNIE MAE (Dec. 14, 2016), http://www.fanniemae.com/content/fact_sheet/fanniemae-flex-modification-fact-sheet.pdf [http://perma.cc/PP4Z-D97B].

85. Office of the Chief Court Adm'r., *Foreclosure Mediation Program: Report to the Banking Committee of the General Assembly*, CONN. JUD. BRANCH 47 & tbl.35 (2017) [hereinafter *FMP Report*], http://www.jud.ct.gov/statistics/fmp/FMP_Report_bank_2017.pdf [http://perma.cc/4Q9F-JS8V].

86. *Id.* at 12 tbl.5.

87. CONN. GEN. STAT. § 49-31*l*(b)(2) (2017).

To place a case into the FMP late, or to have a case restored to the FMP after mediation was terminated, ASC must successfully argue a Petition for Inclusion or Reinclusion in the FMP (referred to collectively as "Petition for Reinclusion").[88] The statutory standard for reinclusion is flexible: "good cause . . . including, but not limited to, a material change in financial circumstances or a mistake or misunderstanding of the facts by the mediator."[89] For example, the homeowner may have gained an additional source of income since mediation was terminated. ASC volunteers' task was to use their knowledge of the relevant standard to distill clients' stories into compelling narratives of "good cause," conveying them to the judge as justifications for reincluding the client, and to use their understanding of mortgages to explain to the judge how mediation might lead to an alternative to foreclosure.

For example, in one ASC case, Alma Sanchez had participated in mediation, but the mediation was terminated because she had very little income, so no mutually agreeable resolution could be reached. After Ms. Sanchez learned that she would soon receive a settlement for an injury she sustained on the job, she repeatedly called and wrote to her mortgage servicer, but her calls were often not returned and, when they were, employees gave her inconsistent instructions on how she should request a loan modification. Based on the equity in the property and the fact that she now had a steady income, ASC volunteers argued that a loan modification would be possible. The judge granted Ms. Sanchez's Petition for Reinclusion.

Defending against Motions for Judgment. Apart from mediation, homeowners (and ASC) are rarely involved in cases during the liability phase of the lawsuit. Generally, plaintiffs prevail as to liability through a default judgment.[90] Then, they are required to file a Motion for Judgment of Strict Foreclosure or a Motion for Judgment of Foreclosure by Sale (collectively, "Motion for Judgment"). Such a motion asks for the judge to set a "sale date,"[91] when the property

88. *FMP Report*, *supra* note 85, at 46 tbl.34 (indicating that only 61% of cases completed mediation and that the remainder were terminated by the judge or the mediator).

89. CONN. GEN. STAT. § 49-31*l*(c)(4) (2017) (Petition for Reinclusion); *see also* CONN. GEN. STAT. § 49-31*l*(b)(3) (2017) (adopting a similar "good cause" standard for Petitions for Inclusion).

90. The case is stayed for eight months, as long as the case is in the FMP. CONN. GEN. STAT. § 49-31*l*(c)(6)(B) (2017). If mediation is terminated, the homeowner has fifteen days from that date to file an answer and special defenses. *Id.* Typically, defendants do not file an answer, so the court enters a default judgment against them. If the defendant does file an answer, the court decides liability on a motion for summary judgment. Trial is extremely rare. In reviewing more than twelve hundred court interactions on the property short calendar, I identified no foreclosure case that went to trial.

91. The court has discretion to set either a sale date or a law day. CONN. GEN. STAT. § 49-24 (2017). In my experience, a sale is the norm when a property has equity—i.e., when the value

will be sold to the highest bidder, or a "law day,"[92] when title to the property will pass to the plaintiff.

Defending against Motions for Judgment is by far the most common ASC activity.[93] It is rare for a foreclosure defendant to contest the entry of judgment itself. The plaintiff typically has little difficulty proving that the defendant owes the debt and that the debt is secured by a valid mortgage. ASC volunteers, then, are generally not contesting the entry of a judgment; instead, they are asking for time.[94] Granting more time before a law day or sale date allows homeowners to negotiate an alternative to foreclosure like a loan modification or a short sale. ASC volunteers have significant success in securing this crucial time.

Motions To Extend, Reset, or Stay Ejectment. A third class of critical motions involves determining how much time the homeowner will remain in lawful possession. Motions to Open Judgment and Extend the Law Day (or Sale Date) ("Motions to Extend") ask the judge to allow the homeowner more time before title passes to another party.[95] Due to features of Connecticut procedure, judges

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of the property is greater than the total amount owed by the homeowner. A sale date is required when there is a federal tax lien. 28 U.S.C. § 2410(c) (2012).

92. For simplicity, I refer to a singular law day, but there are often multiple law days. When referring to *the* law day, I always mean *the first* law day, which is *the homeowner's* law day. This is the homeowner's last chance to retain the property by paying off the entire mortgage. Subsequent law days essentially offer other commercial entities with an interest in the property (e.g., a bank that holds a second mortgage) the opportunity to purchase the property by paying off all senior claims (e.g., the first mortgage).

93. *See infra* Section IV.A.1 and Appendix.

94. That said, ASC volunteers have, on occasion, offered such a compelling case that a judge refers the case to mediation and marks "off" indefinitely the motion for judgment. *See infra* Section IV.A.2.

95. Pro se homeowners are able to file these motions, and frequently do. The judicial branch provides a pre-printed form on which homeowners may explain why they need additional time. A free online guide by the Connecticut Fair Housing Center provides advice on the form, *see Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners*, CONN. FAIR HOUSING CTR. 16 (8th ed. 2013), http://www.ctfairhousing.org/wp-content/uploads/CFHC-ForeclosMan-Repr8-R1.pdf [http://perma.cc/428D-JSAW], and the clerk's office helps explain the procedural requirements. In New Haven, the Motion to Extend may be filed as late as the law day itself. The New Haven court agrees to hear these motions as "write-ons," adding them to the short calendar and hearing them that same day. The accessibility of the pre-printed forms, the willingness of clerks to explain the meaning of the law day, and the New Haven court system's practice of permitting them to be argued as write-ons are all essential to ASC, since ASC usually does not intervene until the parties have already filed these motions and have appeared in court to argue them.

are often required to extend the law day by at least twenty days when a homeowner asks.[96] In practice, judges are likely to extend the law day by forty-five to sixty days. Similarly, Motions to Reset the Law Day (or Sale Date) ("Motions to Reset") occur after the homeowner declares bankruptcy. Bankruptcy stays the case, preventing law days and sale dates from going forward, but once the bankruptcy stay has expired, the plaintiff may continue to pursue foreclosure by asking the court to set a new law day or sale date. As with Motions to Extend, the primary dispute concerns how much time the homeowner will have before the law day or sale date. Finally, Motions for Stay of Execution of Ejectment ("Mo-

96. Title to the property vests the day after the last law day if no party has exercised the equity of redemption, so there is no delay for an appeal period after the law day. Therefore, the judicial order that constitutes an appealable final judgment is the order entering the judgment of strict foreclosure, or the last ruling on a Motion to Extend, whichever is later. This means that if a judge denies a Motion to Extend, she must nevertheless extend the law day by at least twenty days to allow the appeal period to run so that this order can be appealed before title passes. *See* First Conn. Capital, L.L.C. v. Homes of Westport, L.L.C., 966 A.2d 239, 249 (Conn. App. Ct. 2009) (refusing to allow approval of a sale during an appellate stay, even one created by defendant's own motion, noting that "[a]s presently enacted . . . our rules of practice permitted the perpetual motion machine employed by the defendant in the present case"). To curb abuses, after the judge denies a *third* Motion to Extend, there are limitations on the requirement that the judge extend the law day further, though these provisions are rarely necessary. *See* CONNECTICUT PRACTICE BOOK § 61-11(g) (COMM'N ON OFFICIAL LEGAL PUBL'NS 2017) (providing that, except when the motion is uncontested or the defendant certifies under oath that she has good cause, "no automatic stay shall arise upon the court's denial" of a Motion to Extend, if it has already denied two such motions by the defendant).

Though it forms the basis for this mandatory twenty-day extension, the statement that law days are final is subject to exceptions. *See, e.g.*, New Milford Sav. Bank v. Jajer, 691 A.2d 598, 603 (Conn. App. Ct. 1997) (permitting the retroactive modification of a foreclosure judgment to correct a clerical error by the plaintiff). Title may be retroactively restored when the court lacked personal or subject matter jurisdiction. This occurred in the one ASC case during the study period that MFL later took on in a full-scope capacity. *See* Webster Bank, N.A. v. Grella, No. NNH-CV16-6059927-S (Conn. Super. Ct. Apr. 17, 2017), http://civilinquiry.jud.ct.gov/CaseDetail/PublicCaseDetail.aspx?DocketNo=NNHCV166059927S [http://perma.cc/FL2S-N93D] (granting motion to open and vacate judgment, without written opinion, after evidentiary hearing regarding whether defendant had been served). Title may also be restored when equity so requires, as when a plaintiff failed to provide the defendant with a court-ordered notice but claimed it had done so, *see* Wells Fargo Bank, N.A. v. Melahn, 85 A.3d 1, 4 (Conn. App. Ct. 2014), or when the foreclosure judgment was premised on a default judgment entered after a clerk's error allegedly caused an appearance form not to be docketed. *See* Fla. Capital Bank Mortg. v. Nunley, No. NNH-CV16-6059999-S (Conn. Super. Ct. Oct. 27, 2016), http://civilinquiry.jud.ct.gov/CaseDetail/PublicCaseDetail.aspx?DocketNo=NNHCV166059999S [http://perma.cc/T6EQ-TE6C]. In the latter case, the judge restored title after a law student's argument at ASC. *See generally* Bank of N. Y. Mellon v. Caruso, No. NNH-CV12-6031454-S (Conn. Super. Ct. Aug. 21, 2015), http://civilinquiry.jud.ct.gov/CaseDetail/PublicCaseDetail.aspx?DocketNo=NNHCV126031454S [http://perma.cc/3KLC-RQ95] (discussing legal requirements for restoration of title after law day).

tions to Stay Ejectment") are filed after the law day or sale date passes. In a Motion to Stay Ejectment, a homeowner requests additional time before the plaintiff, who now owns the property, may seek to have the homeowner expelled from the home.

When arguing Motions to Extend, Motions to Reset, or Motions to Stay Ejectment, homeowners must explain to the judge why they need more time; equitable principles govern. For example, a homeowner named Chole Santera had a law day scheduled for February. She filed a Motion to Extend, explaining that she was trying to sell the home herself. ASC volunteers mentioned this to the judge, but they recognized that such an argument might not be persuasive because selling the property on such short notice during the winter would be a challenge. Based on experience, the volunteers knew to focus on something else: Ms. Santera had school-age children who would be burdened by the need to change schools in the middle of the year. The judge extended the law day to late June, after the school year was over.

In all of these motions, ASC volunteers leverage rudimentary legal knowledge and oral advocacy skills to craft compelling narratives, an ability that lay clients often lack.

B. A Typical Day at ASC

Based on the foregoing discussion of Connecticut foreclosure law and procedure, the importance of arguable motions like the Motion for Judgment, Petition for Reinclusion, and Motion to Extend should be clear. But the homeowner is generally unaware of how to handle arguments in front of a judge. If the homeowner is present, the judge will inquire if there is anything the homeowner wishes to say; sometimes, a judge will specifically ask if the homeowner has anything to say about how much time he or she needs. Homeowners' responses vary. Some express shock or confusion. Some explain that they have spoken with the lender's customer service agents and are trying to work something out. Some ask for more time. Some ask the judge for advice. But few treat the moment the way a lawyer would—that is, as a chance for the homeowner to make a legal and equitable argument before the judge makes a very important decision.[97] That is where ASC comes in.

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97. There are certainly exceptions. Relative to other areas of law, motions in foreclosure cases often turn on the facts and on considerations of equity, so prepared and articulate homeowners can persuade a judge. Indeed, the relative accessibility of foreclosure law is one reason why a limited-scope representation program with student participants is effective in this area. *See infra* Part V.

On a typical ASC day during the study period, at the end of the clerk's calendar call, ASC volunteers gathered defendants interested in the program and ushered them upstairs to the ASC office. The number of defendants who expressed interest varied during the study period from one to eight per day. If there were more interested defendants than student volunteers, the supervising attorney or an experienced student triaged the cases. Some cases were more urgent and had to be handled first,[98] and some were likely to result in ASC declining to represent the defendant in court.[99] Based on these factors, as well as the apparent complexity of the case and student experience levels, students were paired with potential clients.

The potential client would then sign a waiver that informed her that an attorney-client relationship had not yet formed. After the waiver was signed, a student conducted an interview which covered basic questions about the client's family, as well as the client's goal for that day's motion and for the case as a whole. Sometimes the student also reviewed the docket and filings.

The student spoke with the supervising attorney and made a recommendation regarding whether the Clinic should represent the homeowner. If the Clinic declined representation, the student and supervising attorney almost always[100] provided some additional advice to the homeowner on what to say to the judge and what her next steps should be,[101] and then sent her back to the courtroom.[102]

In most cases (66%),[103] ASC volunteers did enter into a limited-scope representation relationship. Conferring with the supervising attorney as appropri-

98. For example, ASC volunteers are respectful of opposing counsel's time. Most foreclosure matters are handled by repeat players. These attorneys will be at the courthouse for several hours and are not inconvenienced by arguing cases out of order. But some cases involve opposing counsel with only a single matter on that day's calendar. ASC handles these cases first.

99. *See infra* notes 100-102 and accompanying text.

100. The only situation that comes to mind in which ASC volunteers would decline to provide any advice at all is the vanishingly rare situation in which a would-be client has already retained an attorney, the attorney did not show up in court, and that fact escaped the clerk's notice so the person was nevertheless asked whether he wished to speak with the ASC volunteers.

101. Therefore, although the ASC volunteers take the position that no attorney-client relationship was formed, the provision of advice may generally be conceptualized as "unbundled" legal services at least as individualized and detailed as what was provided in the Steinberg study and the Greiner et al. study. *See supra* Part I; *see also* Greiner et al., *supra* note 9, at 917-18; Steinberg, *supra* note 5, at 480.

102. Before launching, ASC emphasized to the regularly sitting foreclosure judges that a decision not to represent someone could be made for myriad reasons and should not be taken as an indication that the case lacks merit.

103. *See infra* Table 2 (Appendix).

ate, the student then reviewed the facts and prepared an outline for oral argument. If necessary, the student drafted and filed a last-minute motion—generally, a Petition for Reinclusion. Then, the student and attorney returned to the courtroom. Sometimes, they negotiated with opposing counsel in the hallway; ASC students often secured agreements extending a client's time in the home or allowing the client to enter or re-enter mediation. Then, they argued the case in court. After the judge ruled, the student explained the judge's decision and completed additional paperwork with the client, including an action plan for the client's next steps.[104] The entire representation typically lasted for less than three hours.

By representing clients in court on arguable motions, ASC targeted representation to the most important points of a foreclosure case. These decision points—the case going into mediation or the homeowner getting a few more months to try to save the home—had a lasting influence.

IV. THE EFFICACY OF LIMITED-SCOPE REPRESENTATION AT ASC

This Part presents the results of the ASC study. The two most important metrics that the study measured were (1) for each motion in the sample, the amount of additional time a homeowner was granted in his home when the judge ruled on that motion; and (2) for each case in the sample, whether the homeowner ultimately won. The study's principal findings were (1) for motions, homeowners with in-court limited-scope representation received significantly more time; and (2) for cases, homeowners who received in-court limited-scope representation at any point in their case were significantly more likely to win the case in the end. The first conclusion can be robustly controlled for selection bias; the second can be controlled for selection bias, albeit not as robustly.

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104. The procedure described above was altered in a few ways on days when Connecticut Fair Housing Center (CFHC) attorneys, rather than MFL students and faculty, were present (or on days when MFL and CFHC were both present). The process was slightly more efficient for CFHC, since its attorneys can make decisions about representation and litigation strategy without needing to consult with a supervisor. A second difference was that CFHC attorneys exhibited a tendency to stretch the limited-scope representation format, keeping their limited-scope representations open for a longer period of time. For example, CFHC attorneys occasionally filed additional documents after the ASC day, or returned on a future day to argue a related motion; MFL volunteers sometimes did this, as well, but it was rare. This tendency may illustrate the extent to which the traditional full-scope, attorney-client model is embedded in our legal culture. It may also lead to better outcomes for those who CFHC represents, though the sample size is too small to draw any conclusions: excluding work by an attorney who was both a CFHC and MFL employee, CFHC was involved in only three of the thirty-one ASC days during the study period.

The Sample. To collect the sample used in this study, I reviewed the lists of scheduled motions for all foreclosure short calendars in the New Haven Superior Court from October 5, 2015, through January 23, 2017. A set of objective criteria was used to select a subset of these motions as an initial study sample. Most importantly, these criteria excluded motions if the homeowner never filed an appearance in the case; an appearance is the first document filed, so in such cases the homeowner never had any interaction with the court. Using this initial set, I reviewed every docket and, if necessary, the underlying filings. The initial set was further culled based on this review; most importantly, if the homeowner had a full-scope attorney at the time of the argument, the motion was removed. This left a final set of 841 motions (808 court interactions, including 33 at which two motions were granted together) in 536 cases. Finally, I ordered transcripts from the court reporter of approximately half of the short calendar roll calls during the study period.[105] Reviewing these transcripts revealed which homeowners showed up in court on non-ASC days, providing a control group. A complete explanation of the methodology is provided in the Appendix.

The Independent Variable. Motions were classified into groups. These groups serve as independent variables against which outcomes can be measured. These italicized abbreviations are used in the discussion that follows.

- "*Clients*": ASC clients who received limited-scope representation in court
  - "*Non-Clients*": a meta-group used for some analyses; includes every homeowner except *Clients*
- "*Advice*": homeowners who received limited-scope advice from ASC but not in-court advocacy
- "*Declined*": homeowners who declined ASC assistance, though present in court on ASC days
  - "*ASC*": a meta-group used for some analyses; includes all homeowners who came to court on ASC days, regardless of whether they were represented; i.e., *ASC* consists of *Clients*, *Advice*, and *Declined*
- "*Control*": homeowners who came to court on non-ASC days
- "*No Show*": homeowners with motions on either ASC or non-ASC days who did not show up in court
- "*Unknown*": homeowners with motions on non-ASC days for whom it is unknown whether they showed up in court

Dependent Variables. The dependent variables included the outcome of each motion (e.g., the amount of time the judge allowed the homeowner to remain in

105. In addition to reviewing transcripts for control group days, I reviewed transcripts for a few ASC days to confirm the accuracy of the ASC program notes used to group homeowners into *Client*, *Advice*, *Declined*, and *No Show*.

his home) and the outcome of each case (i.e., whether the homeowner won or lost). Developments were recorded for pending cases in the study set through January 26, 2018, more than a year after the end of the study period. A case was considered a "win" for the homeowner if it reached final resolution without the homeowner losing her home.[106]

Selection Bias. While it is addressed more thoroughly in Section IV.C, understanding these results requires a basic understanding of selection bias. When the process used to group participants in a study is non-random (as the ASC process for selecting clients is), the difference between the groups might be attributable to this selection process, rather than to the phenomenon being studied (here, ASC). There are two potential sources of selection bias in this study. First, ASC clients must necessarily have come to court, but not everyone in the sample set did. One might expect that those who came to court were, on average, more likely to succeed than those who did not, and the data support that conclusion. Therefore, when comparing *Clients* to *Non-Clients*, one would expect that *Clients* would do better, even if ASC had not made a difference, because *Clients* came to court.

A second potential source of selection bias relates to the manner of selecting ASC participants. The perfect way to assess whether limited-scope representation is effective would be to select clients randomly—but, for ethical reasons, ASC does not do that. Rather, homeowners are offered the chance to speak with ASC volunteers. Some decline. Others ask to speak with ASC but are offered only advice, not representation. Both aspects of this selection process could, in theory, lead to stronger cases winding up in the ASC program. If this were true, one would expect *Clients* to do better than *Non-Clients*, even if ASC were not truly making a difference.

The most powerful way to address selection bias is to restructure the study in a near-random way. To do this, some analyses below compare homeowners who showed up in court on non-ASC days (*Control*) with all homeowners who showed up on ASC days, regardless of whether they sought and received representation. This meta-group is called "*ASC*" and includes *Clients*, *Advice*, and *Declined*. Therefore, if there is a difference in outcomes between *ASC* and *Control*, then that difference is almost certainly a true effect caused by the ASC program, rather than mere selection bias.

106. To be more precise, I considered a case to be a "win" for the homeowner if the case reached resolution without the homeowner's equity of redemption being extinguished. The equity of redemption is extinguished when a law day passes, or when a sale is approved by the court.

A. Limited-Scope Representation at ASC Improved Client Outcomes on That Day's Motion.

ASC significantly improved clients' outcomes on the motions that it argued. First, for motions that involved a judge determining how much time the homeowner would have in his home, ASC clients got significantly more time than others. Second, on Motions for Judgment, ASC clients were significantly more likely to have the judge defer entering judgment against the homeowner. Third, ASC volunteers were significantly more likely to request mediation than pro se homeowners, and ASC clients were slightly more likely to win mediation-related motions.

1. ASC Won Clients Significantly More Time in Their Homes.

As explained in Part III, when ruling on Motions for Judgment, Motions to Extend, Motions to Reset, and Motions to Stay Ejectment, judges must decide how long a defendant will be able to remain in her home. These motions together constituted the vast majority of all motions considered in the study (88%).[107] Because all of these motions have a temporal output, they can be analyzed together to assess, in general, how long a defendant may remain in lawful possession[108] of her home after the judge's order.

The first question that the study answers is whether, when the judge rules on the motions before him, those who receive in-court limited-scope representation (*Clients*) receive significantly more time in their homes than all others (*Non-Clients*). As Figure 1 illustrates, they do.[109] On average, *Clients'* motions resulted in 122.1 days of lawful possession; *Non-Clients'* motions resulted in 73.8 days. That means that as a result of that day's motion, those represented in court

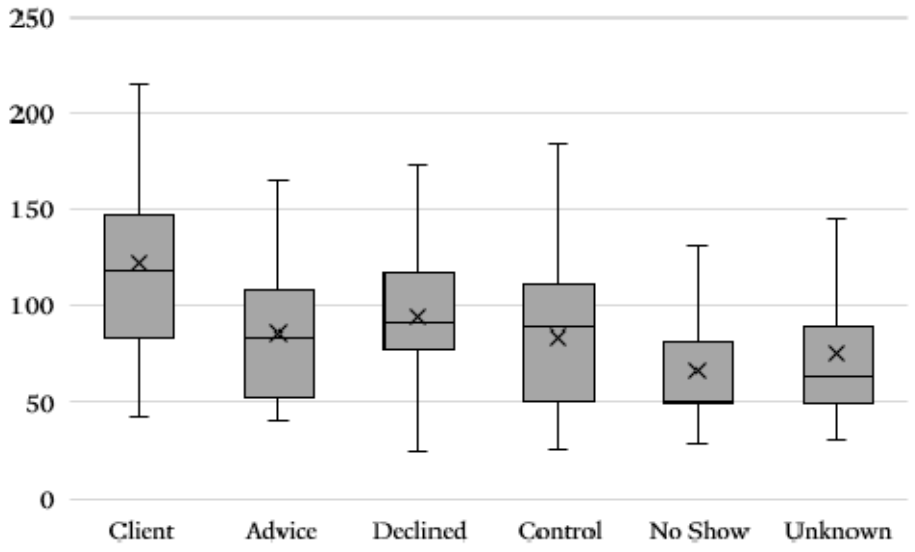
107. *See infra* Table 2 (Appendix) (summarizing the motions argued by group).

108. Time in lawful possession was measured as follows: for a Motion for Judgment or a Motion to Reset, the number of days from the judge's order until the law day or sale date; for a Motion to Extend, the number of days from the old law day or sale date to the new law day or sale date; and for a Motion to Stay Ejectment, the number of days from the judge's order until the stay expired.

109. This is a box-and-whisker plot. The "box" encloses the middle fifty percent, from the lower quartile to the upper quartile. The horizontal line through the middle of the box is the median. The small x is the average. The "whiskers" represent the range, with outliers not depicted.

got 48.3 more days of lawful possession, on average. Differences are statistically significant ($p<0.001$).[110]

FIGURE 1.
DAYS IN HOME BASED ON THAT DAY'S RULING



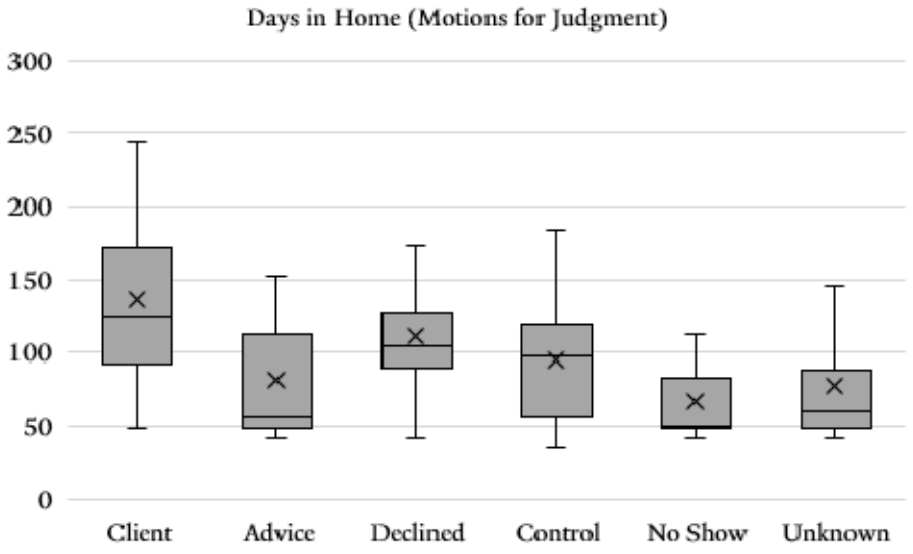
N = 67 (Client); 13 (Advice); 47 (Declined); 53 (Control); 254 (No Show); 171 (Unknown)

To expand on the data provided in Figure 1, Figure 2 illustrates how ASC performed on each of the time-related motions it argued: Motions for Judgment, Motions to Reset, and Motions to Extend. (Motions to Stay Ejectment cannot be effectively graphed because of the small sample size.)

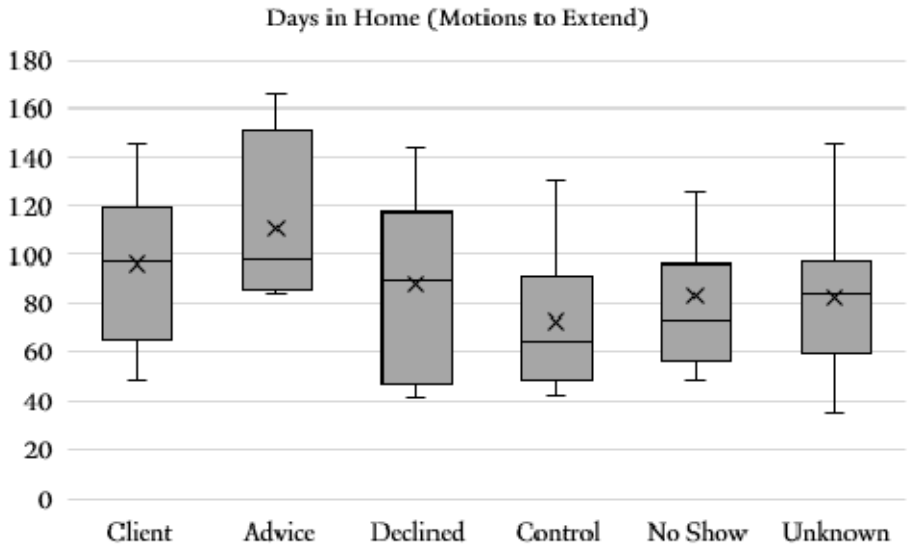
110. When comparing raw numbers, as here, tests for statistical significance are based on a single-factor analysis of variance. When comparing proportions, tests for statistical significance are based on a z-test.

This result remains statistically significant, even after robust controls for selection bias. *See infra* Section IV.C.

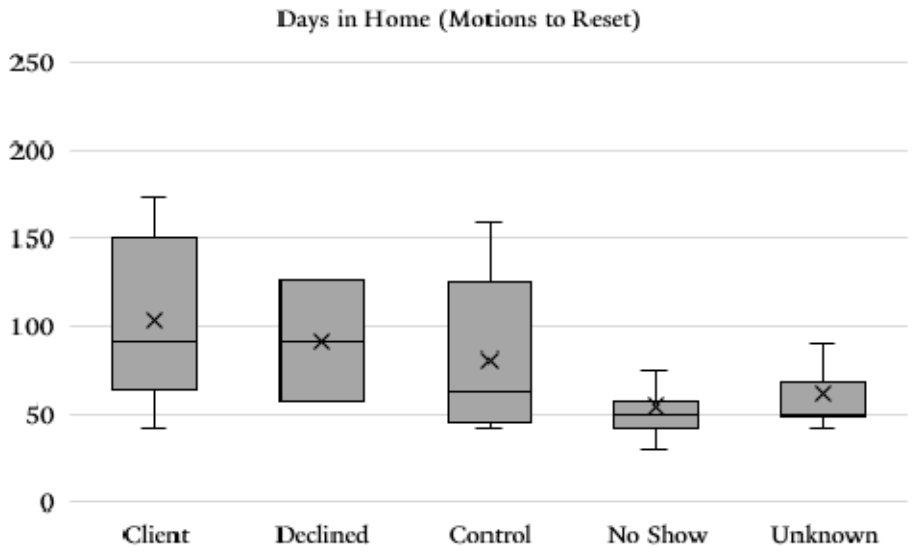
FIGURE 2.
DAYS IN HOME BASED ON THAT DAY'S RULING BY MOTION



N = 42 (Client); 7 (Advice); 24 (Declined); 28 (Control); 204 (No Show); 118 (Unknown)



N = 16 (Clients); 4 (Advice); 14 (Declined); 18 (Control); 18 (No Show); 29 (Unknown)



N = 5 (Clients); 0 (Advice); 2 (Declined); 5 (Control); 29 (No Show); 18 (Unknown)

On the whole, Figure 2 supports the finding that ASC clients outperformed others. *Clients* did significantly better with respect to Motions for Judgment ($p<0.01$) and Motions to Reset ($p<0.01$). *Clients* did not do significantly better with respect to Motions to Extend ($p>0.10$) or Motions to Stay Ejectment ($p>0.10$), but given the small sample sizes, this may not be particularly meaningful.

How did ASC make a difference on these motions? For one thing, ASC gave voice to its clients in some cases when clients could not effectively speak for themselves. Consider Sara Kapoor, an immigrant from India who became an ASC client. Volunteers struggled to communicate with Ms. Kapoor, but after a lengthy conversation with her—and a phone call with a friend who had been assisting her—the volunteers learned that she was already in the process of modifying her mortgage. In fact, she had completed a three-month trial modification and had mailed the mortgage servicer her signed agreement to permanently modify the mortgage. Her home should no longer have been in foreclosure. But she did not have the paperwork with her, and it is very unlikely that she could have stood up in court and effectively argued this point.

Once the ASC volunteer understood the situation, however, he was able to deliver a powerful argument. There's an air of credibility that comes with having an advocate stand up and say, "My client represents to the court that she submitted a signed modification." In my experience, when a homeowner makes such a representation herself, it's simply not as persuasive. And volunteers know the

correct way to couch such arguments—in this case, the volunteers weren't asking for the case to be thrown out; they merely wanted time for the client to work with the servicer to get the paperwork issue straightened out. The judge agreed, awarding Ms. Kapoor a significant amount of time.

Some clients aren't going to be able to save their home, but with ASC's assistance they can gain more time to make a less abrupt transition. One example was the Bells. This couple did not have the money to save their home, and they knew it. But they were very sympathetic defendants: both had physical disabilities that prevented them from working and made it difficult to find a suitable new residence. On their own, they likely would not have realized that, based on these factors, they could ask for more time. The ASC volunteers presented the Bells' situation in the most sympathetic light possible and requested six months. The judge was persuaded and granted the Bells three months of additional time in their home, with a further three-month extension if they returned to court with medical documentation for their disabilities.

While clients represented in court by ASC, like Ms. Kapoor and the Bells, saw significantly improved outcomes on the day's motion, Figure 1 illustrates that limited-scope advice was less effective. First, *Clients* outperformed those who received only *Advice* (122.1 days versus 86 days). This difference is statistically significant ($p<0.05$). Second, surprisingly, those who *Declined* ASC assistance did slightly better than those who received only *Advice* (94.0 days versus 86.0 days). This difference is not statistically significant ($p>0.10$), but this still suggests that advice alone was relatively ineffective in improving clients' outcomes on that day's motion. This is consistent with the existing literature on limited-scope representation.[111] As Part V explores more fully, this suggests that organizations looking to make a difference through limited-scope representation should seriously consider in-court advocacy.

2. ASC Clients Were Significantly More Likely To Have the Judge Defer Ruling on a Motion for Judgment.

Motions for Judgment were by far the most commonly argued short calendar motion in this Note's data set, representing 60% of all motions.[112] By the time a judge considered a Motion for Judgment, the plaintiff had prevailed as to liability (generally through default). Unsurprisingly, then, it was vanishingly rare for

111. *See supra* Part II.

112. See *infra* Table 2 (Appendix).

the court to deny a Motion for Judgment. During the study period, which catalogued more than 500 Motions for Judgment, such a motion was denied only once, and that was for a trivial technical violation.[113]

Despite nominally "losing" every Motion for Judgment that it argued, ASC was able to make a difference on these motions in two ways. The first was already illustrated in Figure 2: when the judge granted a Motion for Judgment against the client, ASC volunteers persuaded her to award a longer period of time prior to the law day or sale date.

The second way that ASC made a difference on these motions was by sometimes persuading the judge not to rule on the motion at all. Because the entry of a foreclosure judgment requires the exercise of equitable discretion, ASC volunteers sometimes persuaded judges to defer entering judgment. This happened far more often in ASC cases than in others, providing further evidence for the effectiveness of limited-scope advocacy: ASC volunteers achieved an indefinite deferral on 8 of the 43 Motions for Judgment that they argued for clients (18.6%); unrepresented homeowners achieved this result in only 23 of 451 motions (5.1%).[114] This difference is statistically significant ($p<0.01$).

Consider Ken Metley, a homeowner who became an ASC client soon after the program's launch. He was in court on the plaintiff's Motion for Judgment. After speaking with Mr. Metley, an ASC volunteer learned that he had recently obtained a new source of income. In court, he argued that the parties could resolve the dispute through a loan modification. He requested that the court place Mr. Metley's case in the FMP. When the judge indicated that he was amenable to placing the case in mediation, the volunteer also pointed out that if the judge ruled on the Motion for Judgment and set a law day, then mediation would likely not have enough time to proceed. The result would be inefficient: the parties would have to return to the courtroom to repeatedly argue Motions to Extend. The judge was persuaded; he ordered the parties into the FMP and marked off the Motion for Judgment without ruling. In this way, Mr. Metley received time and breathing room to negotiate with the bank.

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113. In that case, the plaintiff had erroneously requested strict foreclosure (a law day instead of a sale date), and the judge in denying the motion noted that the "[p]laintiff may file the appropriate Motion for Foreclosure by Sale." Order, JPMorgan Chase Bank, Nat'l Ass'n v. Hedvig, No. NNH-CV-15-6055626-S, Docket No. 107.10, http://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=9520573 [http://perma.cc/7MDL-2MZA].

114. This calculation excludes temporary deferrals, in which Motions for Judgment were merely marked "over" to a later week. This happened for a variety of reasons—e.g., the plaintiff's attorney was waiting for paperwork or had a scheduling conflict—and was not generally attributable to advocacy. *Clients* were not significantly more likely to receive these temporary deferrals than *Non-Clients*.

3. ASC Volunteers File, Argue, and Win Mediation-Related Motions More Often Than Pro Se Homeowners.

There remains one major category of motions argued at ASC: Petitions for Reinclusion. On these motions, too, ASC achieved success for its clients—primarily because ASC volunteers were more likely to request mediation. Table 1 summarizes the success rates for Petitions for Reinclusion filed during the study period.

TABLE 1.
SUCCESS RATE FOR MEDIATION-RELATED MOTIONS

	Def. Won[115]	**No Ruling**	**Def. Lost**
Client	27	5	0
Non-Client	26	4	7

Of the motions that were decided, *Clients* won more often (100%) than *Non-Clients* (78.8%). The result is statistically significant ($p<0.05$). However, as the table indicates, the judge sometimes did not rule. Counting undecided motions as losses for the defendant (because no ruling means no mediation), *Clients* still won more often than *Non-Clients* (84% versus 70%). However, this result is not statistically significant ($p>0.10$).[116] This means that, while ASC volunteers did slightly better at persuading the judge to place their clients into mediation, the effect was not strong and could be attributable to random chance. Pro se homeowners who took the initiative to file Petitions for Reinclusion were relatively successful on their own.

However, while pro se homeowners obtained similar levels of success in *arguing* these motions, few pro se homeowners *filed* such motions in the first place. In this context, the difference between ASC clients and those proceeding pro se is stark. Although ASC client interactions comprised only 66 of the 808 interactions in my sample (8%), 32 of the 69 mediation-related motions were argued

115. This category includes one partial victory—an interaction in which the court limited relief to only one mediation session.

116. Intriguingly, during the study period, the court never once denied a mediation-related request during an interaction with an ASC advocate, though the court failed to rule in a few such cases. Some ASC volunteers choose to strategically "withdraw" requests for mediation in appropriate circumstances. This accounts for some of the decisions that were never ruled on. Since the study period ended, the court has denied some of ASC's mediation-related motions.

by ASC (46%). Put simply, ASC volunteers understood the value of mediation and initiated such motions much more frequently than their pro se counterparts.

Given that ASC only became involved in a case after the homeowner appeared in court, how did ASC initiate all these mediation-related motions? The answer is that ASC volunteers often bypassed the usual process, filing a last-minute Petition for Reinclusion, serving it on opposing counsel, and arguing it in court shortly thereafter. Of the 56 mediation-related motions that were decided on any short calendar day within my sample,[117] 24 were argued and decided on the same day that they were filed. Of these 24, ASC filed 19; pro se homeowners only used this tactic 5 times.

Strictly speaking, the court is not required to hear these late-filed Petitions for Reinclusion. However, ASC volunteers were very successful at persuading opposing counsel and the judge to allow the motion to go forward. Otherwise, the motion would have been set down for a later short calendar date, requiring the parties to return—an unnecessary inefficiency. Moreover, judges were often sympathetic to the fact that ASC volunteers were operating on a limited-scope basis and would not be able to assist with such motions unless the court agreed to hear them the same day.

As these data illustrate, while homeowners who filed Petitions for Reinclusion were generally successful on their own, ASC volunteers made a difference by initiating far more mediation-related motions than pro se homeowners.

B. ASC Clients Stayed in Their Homes Significantly More Often.

The previous Section demonstrates the promise of in-court limited-scope representation.[118] The additional 48.3 days, on average, that ASC secured for its clients gave them more time to try to save their homes or, at least, to make the transition to another living arrangement less abrupt and disruptive. And requesting mediation ensured that the homeowner had a fair chance to negotiate a resolution other than foreclosure. By itself, this evidence fills a void in the literature and shows that limited-scope representation can be effective.

But many clients hoped for more than just time. Did these deferred judgments, mediation sessions, and longer law days translate into greater success in the end, as measured by homeowners actually keeping their homes? Or were

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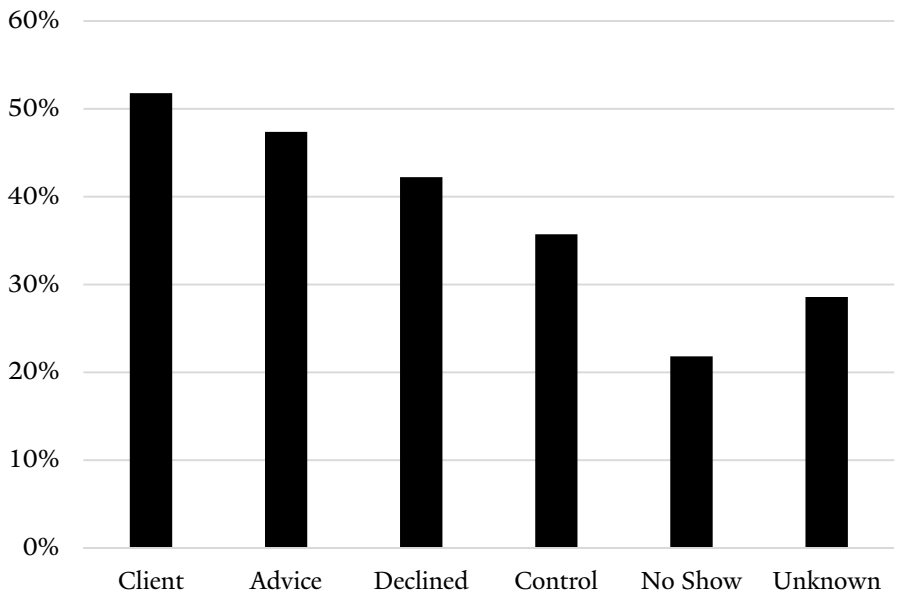
117. This excludes nine motions that were never ruled on and four that were not ruled on from the bench.

118. In a gloomier light, the result is troubling. It shows, to return to the epigraph, that "the mere truth won't do . . . . You must have a lawyer." DICKENS, *supra* note 1, at 659. When even a limited-scope attorney makes a significant difference in the outcome of a motion, it is troubling that many indigent people lack counsel.

ASC clients just losing more slowly? This concern matters to clinics considering the limited-scope representation model. If ASC clients were just losing more slowly, volunteers' time might be better spent in traditional, full-scope representation for a smaller number of clients where they can actually win the case.

Remarkably, the data suggest that ASC clients were more likely to win their cases.[119] Figure 3 depicts the win rate of each group. This calculation excludes the few cases for which the first court interaction involved a Motion to Stay Ejectment because in such cases the former homeowner's equity of redemption had already been extinguished; she had already "lost."

FIGURE 3.
PERCENTAGE OF HOMEOWNERS WHO WON THEIR CASES



N = 76 (Client); 19 (Advice); 56 (Declined); 47 (Control); 217 (No Show); 124 (Unknown)

119. As discussed in the Appendix, under my definition a homeowner "loses" when the equity of redemption is extinguished and "wins" when the case terminates without it being extinguished. For these calculations, two cases are omitted from the sample because a clerical error (e.g., listing the wrong year in the law day) makes it unclear whether title validly passed to the plaintiff.

Clients were almost twice as likely to win as *Non-Clients* (51.8% versus 28.6%). The sample sizes are robust (n=539 disposed cases in total, including 76 disposed *Client* cases), and the result is statistically significant ($p<0.001$).[120]

There are several explanations for how a few hours' worth of ASC representation translates into success for the case as a whole. As Section IV.A illustrated, ASC advocacy gets homeowners significantly more time, and ASC volunteers are more likely to succeed in having the case placed in mediation. Both of those results allow the homeowner to work with the plaintiff toward a mutually agreeable solution. Additionally, ASC may allow clients to observe effective advocacy, and thus replicate such advocacy in their own proceedings.

Indeed, sometimes explaining that the client has a chance is enough to inspire the client to persevere. One example of this was Caroline Slusher. When Ms. Slusher and her boyfriend came to ASC, her foreclosure case had already been going on for three years. She had already tried mediation, without success; then, she declared bankruptcy, which stayed the case but did not resolve it. When she met with an ASC volunteer and explained her financial situation, he believed that she and her boyfriend had the income to negotiate a modification. He encouraged her to file a Petition for Reinclusion. The judge granted the plaintiff's Motion for Judgment, but he also granted the Petition for Reinclusion. The ASC volunteer made sure that Ms. Slusher understood what she had to do—work diligently in mediation and return to the court to file Motions to Extend every time her sale date approached. She came back to court many times over the next year, securing additional extensions and additional mediation sessions. In the end, against the odds, she kept her home. Without that crucial moment of encouragement from an ASC volunteer, she would likely not be in her home today.

As the data demonstrate, ASC's effects persist even after the judge rules on the particular motion, leading to improved outcomes at all stages of clients' cases.

C. The Benefits of ASC Remain Even After Controlling for Selection Bias.

As noted in the examination of the existing literature,[121] selection bias is a serious concern for studies measuring the efficacy of limited-scope representation. This Section describes how selection bias could infect the results and analyzes the data in new ways to account for it.

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120. This finding can be controlled for selection bias, albeit not as robustly as the findings in Section IV.A. *See infra* Section IV.C. An additional caveat worth mentioning is that ASC clients have significantly more cases still pending (26%, as compared to 14% for all other cases; $p<0.01$). Perhaps ASC's win rate will go down as some of these cases reach a final disposition. Still, based on the data available, ASC clients win significantly more often.

121. *See supra* Part II.

Sources of Selection Bias. This study faces two possible sources of selection bias. First, ASC clients came to court, and that fact alone correlates with success. The data demonstrate that this is a true source of selection bias. As Figure 1 illustrates, *No Shows* received only 66.4 days of lawful possession, on average, as compared with 83.7 days for those who came to court on non-ASC days (*Control*). The *Unknown* group — who had motions scheduled on non-ASC days but for whom it is unclear whether they came to court — were in the middle, receiving 75.4 days, on average. This supports the intuitive conclusion that those who come to court do better on their motions than those who do not.

This form of selection bias could only be addressed in this study because the short calendar roll calls were on the record. By reviewing transcripts from non-ASC days, I determined which homeowners showed up in court, creating the *Control* group. Comparing *Clients* (or *Advice* or *Declined*) to *Control* eliminates this source of selection bias because everyone in these groups came to court.

The second potential source of selection bias was ASC's own process for selecting clients, which proceeded in two steps: (1) when asked by the clerk whether they wished to speak with volunteers, the homeowners had to say yes; then, (2) after speaking with volunteers, ASC had to offer to represent them in court. Either the client's self-selection or ASC's decision concerning whom to represent could have filtered out some people with weaker cases — making ASC clients more likely to succeed, on average, independent of whether they received assistance.

ASC declined to represent someone in the following circumstances:

- the litigant already had an attorney;
- the Clinic had a conflict of interest;
- the litigant insisted upon making an argument that the student or attorney believed unsupported by the law or facts;
- the litigant was willing to move out and sought only uncontroversial relief (e.g., 60 days to find a new apartment);
- the litigant was very prepared and would be able effectively to argue himself;
- the litigant wished to make a plausible but legally dubious argument that might receive a more favorable hearing if made by a homeowner pro se rather than by an advocate; or
- the motion on the calendar would require more investigation than would be possible in a limited-scope representation (e.g., a Motion for Summary Judgment).

These factors — especially declining to represent a homeowner who insisted on making a legally or factually dubious argument — support the conclusion that the homeowners that ASC agreed to take on were more likely to succeed in their motions.

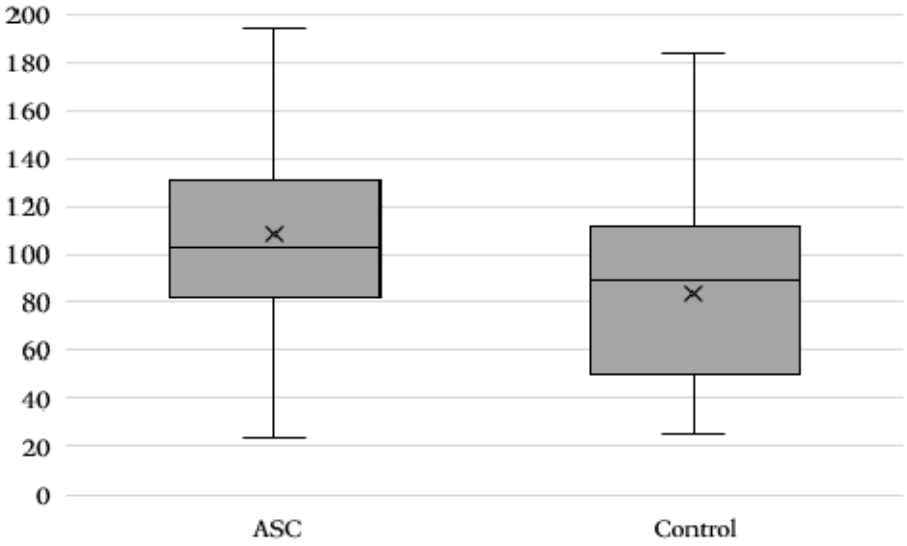
In many limited-scope representation studies, this source of selection bias would be insoluble. Compare the Steinberg study[122]: limited-scope clients had self-selected by making the effort to attend a housing clinic, and full-scope clients had been selected by the Stanford clinic. Even if Steinberg had concluded that limited-scope representation was effective, that conclusion would have been subject to doubt; selection bias could have been the true source of any difference.

However, the breadth of this ASC study makes it possible to control for selection bias. Rather than grouping motions into *Clients*, *Advice*, and so forth, an alternative analysis uses only two groups: the first group, *ASC*, includes every motion for which a homeowner showed up in court on an ASC day. Crucially, this includes everyone who was offered a chance to speak with ASC, regardless of whether they agreed to do so, and regardless of whether ASC ultimately assisted them. The second group, *Control*, includes every motion for which a homeowner showed up on a non-ASC day. These people would have had an opportunity to speak with ASC, if their motions had been scheduled for an ASC day. Therefore, the only difference between a member of *ASC* and a member of *Control* is what day his or her motion happened to be scheduled for argument. This is quite close to random selection, so it ameliorates concerns of selection bias. If there was a significant difference in outcomes as between *ASC* and *Control*, that difference must be attributable to the ASC program.

Time Awarded as a Result of That Day's Motions. As to the motions argued that day, there was a difference between ASC and the Control group. Motions in the ASC group resulted in more days of lawful possession than motions in the Control group (108.0 days, as compared to 83.7 days), as Figure 4 illustrates. The difference is statistically significant ($p<0.01$).

122. *See* Steinberg, *supra* note 5, at 477.

FIGURE 4.
DAYS IN HOME BASED ON THAT DAY'S RULING



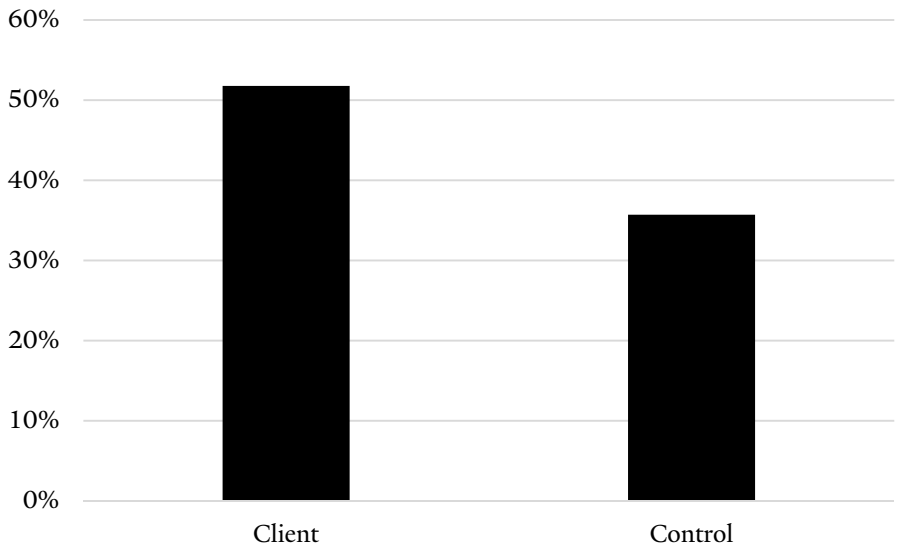
N = 127 (ASC); 53 (Control)

This finding is remarkable. Controlling for selection bias in this way dilutes the effects of ASC by placing folks who never received limited-scope advocacy (*Advice* and *Declined*) into the treatment group—but still, the effect remains. Put another way, ASC was so effective that merely showing up on a day when ASC occurred, as opposed to a non-ASC day, correlated with a significantly higher amount of time in one's home.

The Resolution of the Case. The finding of Section IV.B—that ASC clients were significantly more likely to keep their homes in the end—is more difficult to control for selection bias.

First, to control for the selection bias attributable to coming to court, Figure 5 compares *Clients* to *Control*.

FIGURE 5.
PERCENTAGE OF HOMEOWNERS WHO WON THEIR CASE

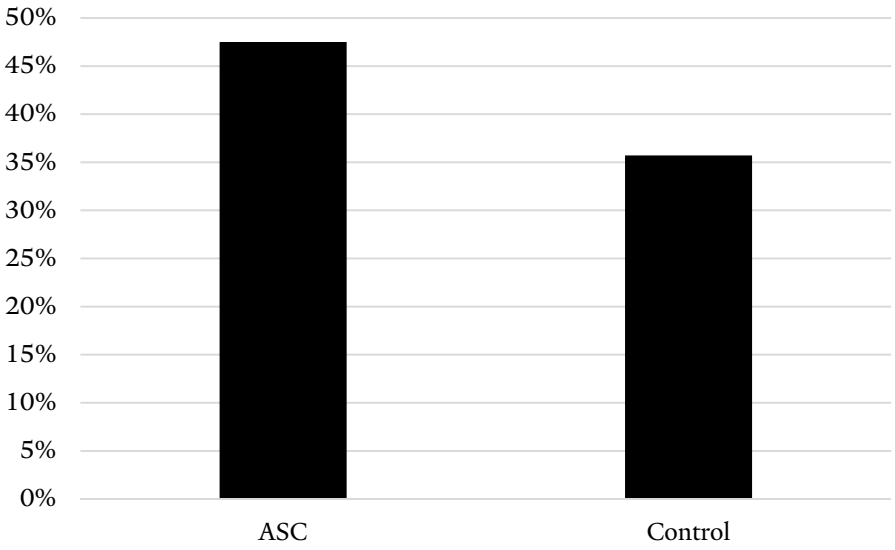


N = 76 (Client); 47 (Control)

ASC *Clients* kept their home in 51.8% of cases, compared to just 35.7% for homeowners in the *Control* group. This difference is statistically significant at the 90% level ($p<0.10$). Therefore, one can be confident that the increased performance seen for ASC clients is not merely caused by the fact that ASC clients came to court.

Second, to control for both forms of selection bias (coming to court and being selected for representation), Figure 6 compares *ASC* to *Control*.

FIGURE 6.
PERCENTAGE OF HOMEOWNERS WHO WON THEIR CASE



N = 151 (ASC); 47 (Control)

Homeowners in the *ASC* group kept their home 47.5% of the time. Homeowners in the *Control* group kept their home 35.7% of the time. This suggests that the effects of ASC were so strong that merely showing up on an ASC day correlated with an 11.8% higher likelihood of keeping one's home. However, the difference is not statistically significant ($p>0.10$). This means that one cannot reject the possibility that the improved outcomes in ASC clients' retention of their homes was due to random chance.

While the possibility of random chance should not be discounted, an 11.8% improvement in performance for those who came to court on ASC days, as opposed to non-ASC days, seems noteworthy. As a basis for comparison, this is only a bit smaller than the 14.1% difference between homeowners in the *Control* group (35.7% success rate) and homeowners in the *No Show* group (21.8% success rate) (not graphed).

In sum, though showing up on an ASC day correlated with being more than 10% more likely to keep one's home, one cannot conclusively eliminate the possibility that this result was due to random chance. Given the dilution that occurs when attempting to control for all forms of selection bias simultaneously, it is perhaps unsurprising that robust controls for every kind of selection bias were not possible.

When looking at the day's motion alone, the data demonstrate that showing up on an ASC day led to decisively superior outcomes; random chance is not the explanation. Therefore, there is powerful evidence that in-court limited-scope representation helps clients with that day's motion. Additionally, there is some, albeit weaker, evidence that ASC's effects persisted throughout the case.

D. Other Independent Variables Do Not Correlate with Significantly Different Outcomes.

As further evidence of ASC's efficacy, some other independent variables—variables that one would intuitively expect to correlate with a difference in the outcome of motions or cases—had no significant effect.

Take first the case's age. An obvious intuition is that judges are less likely to grant a lot of additional time if a case is especially old; by that point, the homeowner has generally not paid the mortgage for many years and there have already been mediations or bankruptcy stays. If a case is more than a year or two old, plaintiffs' attorneys regularly open their oral arguments by emphasizing the age of the case.

But the age of the case was not an especially significant factor in the amount of time awarded on that day's motion. New cases from 2016 were, predictably, given more time, but older cases were treated rather uniformly. Comparing across all groups, the differences were not statistically significant ($p>0.10$). The age of the case also did not play a significant role in whether the homeowner retained his home.

Similarly, outcomes did not vary significantly based on the ruling judge. One might think that, with the amount of equitable discretion involved in these cases, a judge's legal philosophy or personal predispositions might affect his rulings. But there was no significant difference in outcome by judge ($p>0.10$).

Given the long-term, case-specific guidance offered by the mediator, one might think that homeowners in the FMP would be more likely to keep their homes. In this study, however, no statistically significant difference existed in case outcomes when comparing cases that participated in the FMP at some point with cases that never did ($p>0.10$).[123]

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123. One might wonder how this finding can be squared with ASC volunteers' frequent reliance on the FMP to improve client outcomes. The answer is that ASC volunteers seek to place their clients in mediation when they have a realistic shot at retaining their home. However, most FMP participants are not placed into the program in this way. As discussed in Section III.B, residential homeowners can unilaterally request mediation, so long as they do so within fifteen days of the return date of the lawsuit against them, regardless of whether mediation has

The relative insignificance of these other independent variables makes ASC's efficacy more striking by comparison.

E. ASC Enhanced the Fairness of the Process and Helped To Make Homeowners Feel Heard.

The core contribution of this Note is to provide quantitative support for what is an intuitive idea: any amount of representation is beneficial for clients. Still, pure numerical success only tells a part of the story. Beyond the empirical results documented above, surveys of ASC clients show that participating in the program enhanced clients' sense of procedural fairness and trust of the legal system.

ASC clients agree that ASC was a positive part of their case. At the end of each ASC interaction, homeowners were asked to fill out anonymous exit surveys to provide feedback on ASC.[124] One question was: "[w]ould you recommend the Attorney for Short Calendar Program to other people?" Homeowners were asked to circle "Yes," "No," or "Not Sure." Every homeowner who filled out a survey during the study period circled "Yes."

The surveys also offered an opportunity to provide "comments or suggestions about your experience with this program." Homeowners gave glowing feedback:

- "It was perfect. I have never had an experience this positive with a paid lawyer."
- "Without them my house would be in foreclosure and I would be out on the streets."
- "I am very happy with the outcome of the services provided by the program."
- "My experience was very helpful which also gave me some hope of keeping my home."
- "Excellent help would highly recommend."
- "Courteous and kind."
- "I'm honored by their dedication to help others."
- "The men and women of this program helped me to the fullest letter of the law."
- "My Representative was very good. Asked appropriate question to provide substance to the Court."

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a chance at success. CONN. GEN. STAT § 49-31*l*(b)(2). Therefore, while some homeowners on the margin (including many ASC clients) do benefit from the FMP, many others request mediation without any realistic chance at success.

124. On the three ASC days when there were no Yale student volunteers—when CFHC attorneys were the only volunteers present—homeowners were not provided with exit surveys.

- "My appointed student attorney was very helpful and knowledg[e]able."

Further underscoring the dignitary value of ASC, other clients indicated that having a limited-scope attorney made the judicial process more comfortable and navigable:

- "I felt much better not being alone today."
- "I have a better understanding of the process."
- "It's a little relieving just by sitting and discussing my case."

Finally, those with suggestions uniformly asked for the program to be expanded:

- "This program should be advertised to public—not just in courtroom."
- "They should have this kind of program in all courts."
- "I think anyone don't have money like [me] should use this program."[125]

These responses buttress the empirical observations above. Clients appreciate counsel. They appreciate being heard. They appreciate having someone on their side. And clients believe that in-court representation is the most important thing a lawyer can do for them.[126] Independent of any statistics regarding efficacy, what I have seen from limited-scope clients leads me to believe that in our adversary system, when monetary limitations make full-scope attorneys for all impossible, those with limited-scope representation in court find the judicial process to be more transparent and more just.

ASC has become a part of the fabric of the New Haven foreclosure court process, which in turn has enhanced that process's fairness. Judges will occasionally refer homeowners to ASC, sending them to receive advice even though they did not request assistance. Once, I observed an interaction in which plaintiff's counsel, an attorney who regularly appears opposite ASC volunteers, noted for the court that the homeowner had arrived late and therefore had missed the invitation to speak to volunteers. He wanted to make sure she had that opportunity if she wanted it. This organic merger of ASC into New Haven foreclosure court provides a systemic benefit merely by reminding all involved to consider the needs of the unrepresented homeowner. This, in turn, increases the accuracy of litigation—the adversarial system, after all, is based on the premise of vigorous advocacy from both parties.

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125. There was one troubling comment, which leaves some ambiguity about whether this homeowner fully understood the limited-scope nature of the representation: "This volunteer attorney help[ed] me so much, without them I don't know what to do they were such a big help to me. Its seem God send them to me. *I hope they can continue help me* to save my home. Thanks so much." (emphasis added).

126. *See, e.g.*, Farley, *supra* note 46, at 569 (citing reports that clients believe that in-court representation is what they need most).

In my experience, the mere presence of defense counsel in the room also improved the optics for homeowners. Prior to ASC, the plaintiff's attorneys were repeat players, as were the judge and clerk. But the homeowners were typically new arrivals to the courtroom. Consequently, homeowners were concerned about the seeming chumminess of these repeat players, especially when the repeat advocates were all on one side of the aisle. Opposing counsel would sit at the front of the room, chatting or joking with the clerk before court opened and during the roll call. This left many homeowners feeling like outsiders, and it made some homeowners wonder whether they were being given a fair shake. By introducing repeat players on the defense side—people who are similarly friendly with the clerk, the judge, and opposing counsel—ASC ameliorates that problem.

Similarly, limited-scope representation also ensures that participants in the judicial process do not need to step out of their assigned roles. It allows judges to act as neutral arbiters, rather than forcing them to explain to pro se defendants the nature of the proceedings as they occur. It also forces sophisticated parties' attorneys to act with more care, knowing that what they say may be challenged by opposing counsel with knowledge of the law. In one notable ASC case, the judge lambasted plaintiff's counsel after investigation by an ASC student forced plaintiff's counsel to admit that he had been mistaken in a crucial representation that he had made to the court.[127] By keeping everyone honest, limited-scope representation increases not only the quality of outcomes for clients, but also the fairness and transparency of the judicial process.

V. IMPLICATIONS FOR LIMITED-SCOPE REPRESENTATION

The data and observations in this Note demonstrate that in-court limited-scope representation can be an effective way to address systemic underrepresentation, at least in foreclosure actions. In light of this conclusion, two reforms are desirable to leverage this powerful tool to protect defendants' legal rights. First, legislative bodies should permit in-court limited-scope representation. Second, direct service organizations should consider limited-scope representation in crafting their overall approach to ameliorating access to justice issues.

127. *Citibank v. Quinones, Superior Court Case Look-up*, ST. CONN. JUD. BRANCH (May 31, 2017), http://civilinquiry.jud.ct.gov/CaseDetail/PublicCaseDetail.aspx?DocketNo=NNHCV136036657S [http://perma.cc/CF36-8X94].

A. In-Court Limited-Scope Representation Should Be Permitted

The strongest conclusion evinced by the results of this Note is that legislatures and courts should permit in-court limited-scope representation in appropriate cases. While some have raised objections to limited-scope representation, these objections are unsound, as ASC illustrates.

As this study demonstrates, in many circumstances, having a limited-scope attorney is better for the litigant than having no attorney at all. This fact should demonstrate to a legislature that limited-scope representation is a preferable alternative for many litigants. Consequently, legislatures should remove the legal barriers to limited-scope representation. It should be up to a lawyer and a client to determine whether limited-scope representation could serve the client's needs.

In addition to objections about efficacy, some have raised procedural or ethical objections to limited-scope representation. While such objections are largely outside the scope of this Note, ASC illustrates why some such objections are wrong.

Consider the claim that limited-scope lawyers will clog the courts.[128] In truth, the delay in such cases is attributable not to frivolous lawyerly activity; instead, lawyers are helping clients assert statutorily-provided procedural and substantive rights. The fact that lawyers are able to more effectively assert those rights — and, thus, that lawyers cause more delay — is no reason to deny litigants access to lawyers. If anything, it suggests a need to reform the procedures employed in court itself. Ensuring that litigants — especially unrepresented litigants — have a chance to present their position, even at the cost of some delay, is consistent with longstanding principles of due process.[129] And the benefits of empowering litigants to assert their rights, even if it comes with some delay, are apparent from ASC.

Furthermore, the ethical concerns surrounding limited-scope representation are overstated.[130] If providing every litigant with a full-scope lawyer were an option, one might reasonably argue that limited-scope representation would fail to live up to the lawyer's proper role. But full-scope representation is often not a reasonable alternative. Many litigants are poor; in some categories of cases — evictions, foreclosures, debt collections — they are poor almost by definition. Some states have fee-shifting laws designed to ensure that lawyers will take on

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128. *See supra* note 47 and accompanying text.

129. *See* Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . . The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.").

130. *See supra* note 48.

meritorious cases, even for clients who cannot pay, but these laws are often interpreted stringently.[131] Given the constraints of the legal market, and the fact that in addition to a duty of zealous advocacy a lawyer also has a duty to serve the public, allowing limited-scope representation is consistent with first principles underlying lawyers' ethics.

Of course, limited-scope representation might be unethical in some circumstances. But the ordinary requirements of the Model Rules ameliorate these concerns. For example, limited-scope representation should only be permitted when it is consistent with the lawyer's duty of competence. As with ASC, limited-scope representation programs should decline representation if competent representation would require discovery or extensive investigation into the facts or the law that cannot be done within the scope of the contemplated limited-scope relationship. Moreover, as the Model Rules require, limited-scope attorneys must always ensure that clients understand the nature of the attorney-client relationship — including its limited duration.[132]

These criticisms of limited-scope representation ring hollow on their own terms, and, as this Note has showed, are outweighed by the benefits of limited-scope representation. More people are in their homes today as a result of ASC, the program did not unduly burden the courts or opposing parties, and litigants felt more secure in the fairness and efficacy of the adjudicatory process. Other states should permit, if not encourage, similar programs.

B. Clinics Should Consider Limited-Scope Representation

Legal aid clinics should consider limited-scope representation, especially in-court limited-scope advocacy. While recognizing that what worked at ASC may not work for other organizations, this Section hopes to provide assistance to other organizations that are trying to decide whether limited-scope representation might work for them by identifying some background features that made ASC's success possible.

Equity. One way that ASC volunteers improved client outcomes was to ensure that clients' favorable facts were highlighted by adding clarity and structure to clients' oral submissions. Motions for time and for mediation are largely eq-

131. This is due, in part, to the fact that such laws are interpreted inconsistently with their purposes. *See* Nathan Nash, Solange Hilfinger-Pardo & James Mandilk, Comment, *The Tarnished Golden Rule: The Corrosive Effect of Federal Prevailing-Party Standards on State Reciprocal-Fee Statutes*, 127 YALE L.J 1068, 1083-84 (2018).

132. *See supra* note 37.

uitable proceedings, and law students and lawyers are well-versed in making arguments that rely on equity. Moreover, the proceedings at ASC were largely oral, and law students and lawyers receive training in oral advocacy.

This suggests that in-court limited-scope representation programs may be more effective when the relevant law vests judges with equitable discretion. The equitable nature of foreclosure proceedings in Connecticut—as compared to the more rigid, legal nature of landlord-tenant law—may partially explain the difference in efficacy for ASC as compared to the Greiner et al., Steinberg, and UCLA studies.[133]

Procedural Advantages. ASC volunteers were also able to improve clients' outcomes on a given day's motion by using procedural maneuvers to their advantage. For example, ASC volunteers recognized that placing a party into mediation creates breathing room: the mediator needs time to get up to speed, so the court cannot feasibly place the parties in mediation without also granting the homeowner more time. Similarly, ASC volunteers recognized that, in some circumstances, Connecticut law requires the court to grant a homeowner's Motion to Extend.

Of course, successfully using these procedural advantages is only possible because Connecticut law offers them. This suggests an intuitive, but important, factor for those considering limited-scope representation—namely, does the relevant area of law offer tools that a lawyer can use?

Home-Field Advantage. A third way in which ASC volunteers made a difference on that day's motion was through knowledge of the repeat players. Because the same judge presided over most arguments and because other judges and opposing counsel regularly returned, ASC volunteers learned how to interact with each. For instance, a volunteer could make an educated guess as to whether a plaintiff's attorney would agree to set a moderately long law day or to permit a mediation-related motion to go forward without objection. A volunteer might also have an informed intuition about whether a given judge would be particularly sympathetic to elderly homeowners or to claims of lender misconduct, for example.[134]

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133. *See* Greiner et al., *supra* note 9, at 918; Steinberg, *supra* note 5; *Evaluation of the Van Nuys Legal Self-Help Center: Final Report*, *supra* note 76, at 1.

134. My intuition that certain judges are more susceptible to certain types of arguments is in slight tension with the finding, *see supra* Section IV.D, that the identity of the judge does not significantly influence the outcome of the motion. But the two can be reconciled. For example, it may be that judges' rulings are comparable on average, while nevertheless varying in certain categories of cases (e.g., the first judge is more likely to be lenient for a family with children and the second is more likely to be lenient for an elderly homeowner, but these differences average out).

This home-field advantage is a relevant factor for clinics to consider. Sometimes, it is necessary to spread one's resources so as to reach as many people as possible. But if a limited-scope representation program can concentrate its resources on a smaller area, the advantage that accompanies familiarity with the repeat players may enhance the program's effectiveness.

Hope and a Fighting Chance. Perhaps most importantly, effective limited-scope representation can inspire. At ASC, after the judge ruled, the student returned to the office with the client to explain her next steps, such as what to bring and what to say in mediation, how and when to file a Motion to Extend, how to seek a loan modification, or how to file a complaint with the Consumer Finance Protection Bureau. This forward-looking advice is a crucial way to ensure that the positive effects of the limited-scope representation persist: when clients are informed and prepared for the next step in the process, they reap the benefits of counsel long after the brief representation is complete.

Of course, what makes these counseling sessions so effective is that, at ASC, clients often had a fighting chance to save their homes. Foreclosure cases may offer defendants a more realistic chance to "win" than other areas of law. At first glance, a landlord-tenant case—the setting for the prior literature on limited-scope representation—and a foreclosure case might seem similar: a consumer has not paid her monthly payment to a commercial party, and so she may be forced to leave. But the unique political and legal setting of foreclosure cases offers homeowners a chance to win the seemingly unwinnable case. [135] Though the homeowner has indeed fallen behind, she could remain in her home by negotiating a modification with the bank, and the existence of modification programs—compared with the paucity of rent-modification programs in the landlord-tenant arena—makes it more likely that additional time will translate into retention of the defendant's residence. Unsurprisingly, then, one of the most significant factors contributing to ASC's efficacy was that when ASC clients came into the courthouse they still had a shot.

However, it is important to remember that the benefits of limited-scope representation extended beyond winning the case. Even if features of the law and facts make eventual success less likely, smaller victories (like more time in one's home) might be a significant benefit for the client. And increasing procedural fairness is a good all its own. Even for those who were not able to retain their homes, limited-scope representation gave ordinary citizens a voice and increased

135. *E.g.*, CONN. GEN. STAT. § 49-31(k)(7) (2018) ("'Objectives of the mediation program' means[, inter alia,] a determination as to whether or not the parties can reach an agreement that will avoid foreclosure by means that may include consideration of any loss mitigation options available through the mortgagee." (numbering omitted)); *see also supra* note 84 (describing federal modification programs).

the legitimacy of the adjudicatory process. That said, these values can be promoted through limited-scope advice as well as limited-scope advocacy. This suggests that clinics may want to consider clients' likelihood of success when deciding whether to invest in launching an in-court, limited-scope representation program.

CONCLUSION

The data and observations provided in this Note should offer encouragement for direct services organizations that are considering diverting part of their manpower to limited-scope representation. Similarly, it should demonstrate to lawmakers the value of authorizing, and perhaps funding, such programs. Additional research questions remain. For instance, this Note does not compare the relative efficacy of full- and limited-scope representation. Additional research on that question could inform clinics making difficult resource-allocation decisions.

To an extent the inherent tradeoff clinics face in allocating resources between full-scope and limited-scope representation is value-driven and not amenable to quantitative study. Organizations must decide whether their missions would be better served by providing some help to many people or a lot of help to a few people. But as they make their decisions, such organizations should consider that even a few hours of help can bend the arc of a client's case.

Recall Franklin O'Neil, who came to court with large portions of his body encased in plastic because of his recent eczema treatment. When he filed his handwritten, four-sentence motion he thought he would have to stand alone. The house was already in the bank's name; eviction was almost a sure thing.

But Mr. O'Neil came to court on an ASC day. Volunteers interviewed him and learned that his income was sufficient to realistically pursue a mortgage modification. It was a long shot, but the supervisor recalled an opinion in which a Connecticut trial judge had reopened and vacated a foreclosure judgment, even though title had already vested in the bank, based on what the court called an "equitable exception."

When Mr. O'Neil returned to the courtroom, he was not alone. The ASC volunteer showed the judge a printout of the "equitable exception" case and argued that, in light of the clerk's error in failing to record Mr. O'Neil's appearance, the court should do something similar in this case. The judge was persuaded. He restored the case to the docket and ordered the plaintiff to reconvey title to Mr. O'Neil. Today, Mr. O'Neil is in the Foreclosure Mediation Program and recently applied to have his mortgage modified. Without ASC, I am confident that he would not be in his home.

Today's attorneys should continue to represent each client with the "warm zeal" that has characterized the profession since the 1908 Canons. But, as ASC

demonstrates, such zeal is not limited to the traditional attorney-client relationship. Limited-scope representation allows attorneys to provide valuable help to those who would otherwise not get any. Attorneys should consider authorizing, funding, launching, or participating in such programs. To do so answers the call of lawyers' eighteenth-century forebears: "a lawyer's primary responsibility [is] to the community and society at large."[136]

136. Corwin, *supra* note 16, at 1328.

APPENDIX: RESEARCH METHODOLOGY

This Appendix provides the research methodology in greater detail. To start, I compiled a universe of relevant motions. Attorney for Short Calendar volunteers assist homeowners at the property short calendar for the New Haven Judicial District,[137] a weekly session in which a judge hears most motions pending in foreclosure cases in the district. Motions heard outside of short calendar are particularly complex or contentious—which almost always means counsel is involved on both sides. Accordingly, and because ASC operates only at the short calendars, the study was limited to motions that were listed on one of these short calendars. The study period was October 5, 2015, through January 23, 2017. This includes four months of interactions prior to ASC's launch, as a baseline, combined with one year of interactions after ASC launched. During the studied period, the short calendar ranged in size from roughly 100 to 150 motions per week.[138]

First, a judicial branch employee provided printouts of all the relevant short calendars. Each short calendar included all matters regularly scheduled for decision that day, as well as "write-on" matters that were added late—often last-minute Motions to Extend. The printouts also included clerks' clarifying notes (not publicly accessible), a list of which attorneys had appeared in the case, and an indication of whether parties had appeared pro se.[139]

In total, the 65 New Haven short calendars during the studied period listed more than 7,000 motions. I reviewed the short calendars and culled a preliminary set of motions, using the following criteria:

(1) Only motions that were marked "ready" by the movant were included.[140]

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137. There are thirteen judicial districts, organized geographically. *See About Connecticut Courts: Organization of the Courts*, ST. CONN., JUDICIAL BRANCH, http://www.jud.ct.gov/ystday/orgcourt.html [http://perma.cc/XZ7Q-WWLR].

138. The short calendar also includes a handful of exotic property cases, such as suits for partition of a parcel, though I do not include such cases in my set.

139. Appearing requires filing a one-page form providing contact information for the court. In many cases, homeowners do not file appearances. A defendant must file an appearance before filing any other document, so a failure to file an appearance indicates a lack of participation in the case.

140. In a process that frequently trips up pro se homeowners, the movant must mark a motion "ready" online or by calling the clerk's office on the Tuesday through Thursday before the relevant short calendar. Motions to Extend filed on the law day are permitted to go forward, regardless of whether they have been marked properly. Such motions are nevertheless captured in my set because they become write-ons, which the clerk retroactively marks for the homeowner. For other motions, especially Petitions for Reinclusion, a homeowner sometimes files the motion, fails to mark it "ready," but nevertheless appears in court. And on some such

(2) Motions were included only if a defendant filed a self-represented appearance at some point during the case.[141]

(3) A motion was excluded if, on its face, it appeared uncontested.[142]

(4) Motions for summary judgment, motions that strongly suggested that the case was a commercial foreclosure, and particularly unusual motions were excluded.[143]

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occasions, the opposing counsel is in court and the homeowner is allowed to proceed anyway. In this rare circumstance, such cases might have slipped through my sample because on the short calendar printouts the relevant motion was not marked "ready." However, most would still have been caught, for one of two reasons. First, in these situations, usually the reason the homeowner is in court despite not marking is because she received notice of a different motion, which has been marked "ready," triggering inclusion in my set. Second, on ASC days, if the person requested assistance, she made it into my set through my reviewing volunteers' notes. Because of these two safeguards, it is unlikely that many such motions were not included.

141. The printouts included appearances as of the date they were printed in mid-February 2017. This means that the set may not include a motion if the motion was argued pro se by a homeowner who later retained an attorney, and that later attorney filed her appearance in lieu of the homeowner's pro se appearance. However, based on this study and a discussion with practitioners with more than a decade's experience representing foreclosure defendants in Connecticut, this under-inclusiveness is negligible because attorneys rarely file appearances in lieu of their clients. This makes sense: as long as the self-represented appearance is on file, the homeowner will receive a copy of all filings in the case. Also, a graceful exit is easier; if counsel later were to file a Motion for Permission to Withdraw Appearance, the attorney could exit, with the judge's permission, without leaving her client with no appearance on file.

In rare cases, filing an appearance in lieu of one's client might be warranted: for instance, (1) when a limited-scope appearance attorney switches to a full-scope appearance and wants to emphasize that fact; or (2) when a client expresses confusion or annoyance at receiving court notices, especially in cases of extensive motions practice. Some such cases may have been excluded from the study set.

142. For instance, when a plaintiff-lender filed a Motion to Extend — or a Motion to Open and Vacate the Judgment — this motion was generally excluded as nonadversarial. This frequently occurs when the parties have successfully negotiated an alternative resolution, or when mediation or out-of-court discussions are progressing effectively towards such a resolution. Plaintiffs Motions to Open Judgment were included in the data set, however, if title had already passed. Restoring the equity of redemption requires the consent of all appearing parties, not only the plaintiff, so I presumed that all such motions were potentially adversarial.

143. This decision regarding which classes of motions to exclude tracks ASC volunteers' approach in deciding whom to represent. Motions for summary judgment were excluded because they are fact-bound, and fact-bound motions do not lend themselves to limited-scope advocacy. The limited time available is generally insufficient to adequately familiarize oneself with the entirety of the pleadings, and without at least such familiarity it is difficult to make an argument about the facts. This removed from the set one ASC case from very early in the program's existence in which a volunteer represented a homeowner in opposing summary judgment.

Commercial motions were excluded because they, too, would require too much time for ASC to have gotten involved. A few other unusual motions were excluded because, though a

These short calendars were cross-referenced with internal documents furnished by the ASC program and with notes taken by participating students and attorneys to ensure that no cases were missing.[144] When more than one motion was set for argument on the same day in the same case, these were combined into a single "interaction." A total of 1,205 interactions fit these criteria.

Within this initial set of 1,205, each docket was reviewed and coded. 397 of these interactions were excluded from the final set. For the most part, these were cases that entered the initial set because there was a pro se party, but that did not ultimately meet the study's criteria because at least one natural person was represented by counsel. This occurred, for instance, when one divorced party was pro se and the other represented.[145] This left 808 interactions in the final set (841 distinct motions, 538 distinct cases).

For each of the 808 interactions in my final set, in addition to the docket sheet I reviewed the judge's order on the relevant motions and, when necessary, the underlying filings. For about two-thirds of the interactions, the judge's order and the relevant filings were accessible online.[146] To access the remainder, I went to the courthouse. For each interaction, the following information was recorded, among other things: the judge who ruled that day; the result(s) of the motion(s); whether the case had ever been involved in the Foreclosure Mediation Program; whether the pro se defendant was, at any other time in the case, represented by full-scope counsel; and the case's status as of March 15, 2017. For cases that were still pending as of March 15, 2017, their statuses were updated as of January 26, 2018.

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handful might have benefitted from ASC assistance, these were too few to create generalizable data.

144. Though I reviewed privileged documents, all references herein to specific cases rest on publicly available information.

145. To be specific, the 397 interactions in the initial set but excluded from the final set were as follows. For 260, at least one natural-person defendant had an attorney for the entire case (e.g., because Divorced Spouse One filed a pro se appearance; though the case was included in the initial set, it was excluded after review of the docket because Divorced Spouse Two had an attorney). Sixty involved motions that, on further inspection, were not the sort of motions in my set (e.g., the motion was uncontested, fact-bound, etc.). For 40, though the homeowner was pro se for part of the case, he had an attorney on the relevant date. Sixteen cases were inaccessible, suggesting a clerical error or that the case had been sealed. Ten involved homeowners who filed pro se appearances at some point but did not have pro se appearances filed by the date of the interaction. Seven were included on the short calendar in error, or at least never appeared to go forward. Four had been transferred to a different judicial district.

146. *See* ST. CONN., JUD. BRANCH, http://www.jud.ct.gov [http://perma.cc/ZMB7-H6LG]. To access the filings, use the Civil Case Locator on the left side of the judicial website and enter the case's docket number.

Case statuses were recorded as follows. First, a case was classified as a victory for the homeowner if the case had come to a resolution and the equity of redemption was not extinguished. The categories of homeowner victory were cases that were dismissed,[147] withdrawn,[148] or resolved by a satisfaction of judgment on or before the homeowner's law day.[149]

A case was classified as a loss for the homeowner if the case had come to a resolution and the equity of redemption had been extinguished (and never restored), meaning that another party took title to the property. The categories of homeowner loss were the following: the title passed to another, but the defendant may still have possession; the title passed to another who appears to have taken possession without requesting ejectment;[150] the title passed to another who appears to have taken possession through threatening, or using, ejectment;[151] or the case was resolved by satisfaction of judgment after the homeowner's law day.[152]

The remaining cases were still pending as of January 26, 2018. These cases belong to the following categories: an appeal is pending;[153] the sale date has

147. The only example of this in the sample were two dismissals for lack of personal jurisdiction, based on improper service of process. ASC volunteers spotted the issue in both instances.

148. Generally, the plaintiff withdrew the action based on an alternative resolution like a loan modification. Often, mediation facilitated this resolution.

149. For smaller suits, like when the plaintiff was suing on a water lien or tax lien, given sufficient time, the homeowner was often able to satisfy the judgment by paying the entire amount. When this failed, another defendant (usually the mortgagee) often agreed to pay the small amount owed on behalf of the homeowner, tacking it on to the mortgage.

150. Cases were classified in this category when the law day had passed, plus an additional three months — or when the sale had been approved and title had passed, plus an additional two months — without any indication that the defendant remained in the property.

151. Cases were classified in this category when the law day had passed or the sale was approved and became final; the plaintiff or buyer was issued an execution of ejectment by the court; and either (a) another month had passed without indication that the defendant remained in the home, or (b) the execution of ejectment was returned satisfied by the sheriff, indicating that the sheriff personally removed the defendant. Note that even in these cases, actual bodily ejectment was quite rare, occurring in only two cases in my sample.

152. Very rarely, a commercial defendant allowed the homeowner's law day to pass and then redeemed by paying off all superior liens on the commercial defendant's own law day. In these cases, title passed to the redeeming defendant, the equity of redemption was extinguished, and the homeowner had to leave the home. Accordingly, such cases count as losses for the homeowner.

153. These few cases were waiting rulings by the Appellate Court. No defendants in the sample sought certification by the Connecticut Supreme Court.

passed, but no sale has (yet) been approved;[154] judgment has entered but the law day or sale date not yet passed;[155] judgment has entered but has been stayed by bankruptcy;[156] a motion for judgment is pending;[157] a motion for judgment has been stayed by bankruptcy; none of the above applies, but a bankruptcy stay is in place; some other motion is pending;[158] or the case is dormant.[159]

To measure the efficacy of ASC, each interaction was classified into a group. Interactions were first sorted into three broad groups depending on which day the relevant interaction took place. "A" is for interactions on an ASC day, "B" is for interactions on a day before ASC launched, and "C" is for interactions on a non-ASC day after ASC launched. Next, the A group was further divided using court records, roll call transcripts, and notes from the ASC program indicating who had sought and who had received assistance.[160] "A-1" denotes ASC clients represented in court, "A-2" denotes those who received advice from ASC but were not represented, "A-3" denotes those who did not receive ASC assistance, though they were present in court, generally because they declined, and "A-4" denotes all other interactions on ASC days (i.e., those who had filed a pro se appearance but did not physically appear in court). After sorting interactions into groups, cases were sorted similarly: if the case had only one interaction during the relevant time period, it was grouped into the category of that interaction. If the case had more than one interaction, it was grouped as follows: if it had any A-1 interactions, A-1; if not, but if it had any A-2 interactions, A-2; etc. If the case

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154. Cases were classified in this category when the sale date had passed but title had not yet passed to the buyer, either because the sale had not yet been approved, or because the twenty-day appeal period had not yet run. In such a case, though unlikely, the homeowner may still retain the home by, for instance, filing a bankruptcy petition.

155. Cases were classified in this category when a judgment of foreclosure had been entered but the law day or sale date had not yet passed. In such a case, there was still a chance that the defendant would retain his home. Because of the frequency with which loans are modified after judgment, judgment is not a reliable indicator that title will pass.

156. These cases went to judgment, but prior to the law day or sale date the homeowner declared bankruptcy, staying the case.

157. In these cases, the plaintiff had filed a motion for judgment of strict foreclosure, or a motion for judgment of foreclosure by sale, but the judge had not yet ruled on the motion. Note that if the motion was more than three months old, I disregarded it unless a party had recently filed a "reclaim," placing the motion on another short calendar.

158. This miscellaneous category covered cases in which prejudgment motions were pending.

159. One might say that these cases were in limbo. There was no entry of judgment, and there were no pending motions. (If a pending motion was more than three months old, it was disregarded, unless the motion was set for argument.) Often, these cases were in mediation or involved negotiations outside of court that might result in a modification or other resolution favorable to both parties.

160. Although I relied on ASC notes, the classification of homeowners is a matter of public record.

had no A interactions, it was grouped into B if it had any B interactions; otherwise, into C.[161]

For some purposes, the interactions and cases in groups B and C were further divided: B-1 and C-1 represented cases in which the homeowner showed up in court; B-4 and C-4 represented cases in which the homeowner did not; and B-? and C-? represented cases in which I did not know whether the homeowner appeared in court. This occurred because I only had roll-call transcripts for about half of the non-ASC days.

To make these categories more digestible for the body of this Note, they were grouped into the descriptive categories that are listed at the opening of Part IV. "A-1" became *Clients*; "A-2" became *Advice*; "A-3" became *Declined*; B-1 and C-1 were combined into *Control*; A-4, B-4, and C-4 were combined into *No Show*; and B-? and C-? were combined into *Unknown*.

Table 2 shows the frequency with which various motions were argued at ASC and on control days during the study period.

161. Cases were classified in A-1 if, during the study period, they were ever represented by ASC. This permits one to measure whether a single ASC interaction has an effect on the case as a whole; thus, it does not matter how many non-A-1 interactions a person has in the study period. The same rationale applies to the other "A" categories.

The decision whether to group a case into B or C was arbitrary. This did not matter, though, because ultimately, the data did not illustrate any significant difference between cases in B versus cases in C, so I merged them in the analyses in the body of this Note. This lack of a significant difference means that those who appeared in court on non-ASC days after the program was launched did about as well as those who appeared in court prior to ASC's launch.

TABLE 2.
MOTIONS ARGUED[162]

	Mediation	Extend	Judgment	Reset	Dismiss	Misc.	StayEj	Vacate	Total
A-1	33	16	52	5	1	1	4	3	**115**
A-2	1	7	13	0	0	1	2	1	**25**
A-3	10	19	33	3	2	1	8	1	**77**
A-4	5	22	155	22	2	5	5	2	**218**
B-1	5	11	28	4	0	0	2	0	**50**
B-4	0	3	39	7	0	0	1	0	**50**
B-?	2	21	60	6	0	1	3	2	**95**
C-1	2	9	9	2	0	0	1	1	**24**
C-4	1	1	33	4	0	0	0	1	**40**
C-?	10	26	84	13	3	3	6	2	**147**
Total	**69**	**135**	**506**	**66**	**8**	**12**	**32**	**13**	**841**

162. The columns represent, from left to right: Petitions for Reinclusion (and other mediation-related motions), Motions to Extend, Motions for Judgment, Motions to Reset, Motions to Dismiss, miscellaneous motions, Motions to Stay Ejectment, and Motions to Open and Vacate the Judgment.