

DIVORCE MEDIATION WITH AND WITHOUT LEGAL REPRESENTATION: A FOCUS ON INTIMATE PARTNER VIOLENCE AND ABUSE

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A large number of litigants in family court are proceeding without legal representation and placing a significant burden on court personnel and judges. It is unclear whether this trend toward self-representation is also true for litigants in family mediation and whether these clients also place a significant burden on mediation programs. Given concerns about mediating with violent couples, another important question is whether the type of representation differs between nonviolent couples and couples experiencing intimate partner violence and/or abuse. This article is an exploratory study of litigants in mediation in Arizona and Indiana, two very different jurisdictions. We provide descriptive statistics concerning the types of representation of clients entering mediation in these jurisdictions and the number of sessions attended by attorney-represented versus pro se clients. We also provide descriptive statistics concerning the levels and types of violence and/or abuse reported by pro se versus represented litigants. We then explore the relationship between representation, violence and abuse, and reaching agreement in mediation. Implications of the findings for mediation are considered.

Keywords: *pro se representation; divorce mediation; intimate partner violence*

Divorcing parents with children face a tremendous number of decisions concerning the future of their children. These decisions can include physical and legal custody arrangements, vacation and holiday schedules, medical care, education, and religious affiliation. Generally, these decisions are made during a time when parents are under extreme pressure, emotionally and financially. If couples cannot agree about these issues, increasingly jurisdictions can require that couples attempt mediation (or may allow judges to order couples to attempt mediation on a case-by-case basis) prior to setting a court hearing. The reason for doing so is that traditional adversarial court processes, with lawyers representing both parties, are feared to produce acrimonious interactions between spouses and entrench existing conflicts (Beck & Sales, 2001; Milne, Folberg, & Salem, 2004; Emery, Sbarra, & Grover, 2005). Ongoing conflict between parents is one of the most consistent predictors of poor outcomes for children, in terms of mental and physical health (Amato, 2001; Hetherington & Kelly, 2003; Peeples, Reynolds, & Harris, 2008) and in many other areas (e.g., educational attainment, social relationships, emotional self-regulation) (Amato, 2001).

Although mediation has the potential to increase positive outcomes for children, the nature of clients seeking mediation might affect the process of mediation. For example, many family law clients, including those entering mediation, are not represented by attorneys; instead, a large number of litigants in family court are now proceeding without legal representation (Feitz, 2008; Sales, Beck, & Haan, 1993; Swank, 2005). There are concerns regarding whether parents in such cases have adequate legal information to benefit from mediation, but very little data are available comparing represented and unrepresented cases. Another concern is whether couples experiencing intimate partner violence and/or intimate partner abuse¹ may be inappropriate for mediation, as possible power imbalances in abusive and/or violent couples could lead survivors to enter agreements that are not in the best interest of themselves or their children. This may be a particular concern among pro se parties, as they do not have an attorney to ensure that the potential importance of relationship violence and/or

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abuse is considered during the mediation. While some data exist on the relationship between violence and abuse and mediation (Beck, Walsh, Mechanic, & Taylor, 2009; Beck, Walsh, & Weston, 2009), almost no research has examined the potentially more complex issue of the relationship between intimate partner violence and/or abuse and self-representation in mediation (see Ballard, Holtzworth-Munroe, Applegate, & D'Onofrio, in press, for a recent exception).

SELF-REPRESENTED LITIGANTS

The self-represented (pro se) litigant is argued to be the single most important issue facing family courts today (Schepard, 2002) and the second most frequently cited problem by judges and court staff who process divorce cases (Goerdt, 1992). The number of these cases is substantial, though it varies across jurisdictions and types of proceedings. Studies have indicated that the range of family court cases that have at least one pro se client is 55 to 90 percent (Feitz, 2008; McEwen, Rogers, & Maiman, 1995; Sales et al., 1993; Staudt & Hannaford, 2002).

There are several reasons why litigants represent themselves. Some litigants, particularly lower-income litigants, state that they cannot afford to hire attorneys. Others believe their case is simple and they can do it on their own (Sales et al., 1993). Additionally, there is widespread distrust of lawyers' motives in family law cases (Berenson, 2001; Sales et al., 1993). Litigants and law scholars have voiced strong concerns that lawyers needlessly create adversarial interactions between spouses to increase their fees to finalize a divorce (American Bar Association, 1994; Berenson, 2001; Pearson, 1997).

However, learning to frame problems and responses to legal issues in the correct format in legal documents is difficult even for the most educated. Issues such as laying a proper foundation for admission of evidence or navigating hearsay exceptions can create tremendous difficulties for the pro se litigant. Basic procedural requirements such as statutory time deadlines or understanding the procedural requirements for conducting court hearings (e.g., subpoenaing witnesses) are confusing. Evaluating the reliability of evidence and the advantages and disadvantages of various options is probably the most important factor in a divorce case and is the most difficult for pro se litigants (Snukals & Sturtevant, 2007; Staudt & Hannaford, 2002). Unless legally trained, pro se litigants are at a significant disadvantage in this regard.

More specific to divorce mediation, couples with children negotiate significant long-term legal decisions in mediation, with the vast majority of couples resolving issues related to physical custody (primary residence), legal custody (major decisions concerning medical/mental health care, daycare, religious affiliation, education, and extracurricular activities) and parenting time of their children (holiday and vacation schedules, weekly parenting time). In some jurisdictions, financial issues are also mediated. Some but not all mediation programs have as part of their procedures to explain the relationships between financial issues (i.e., child support) and parenting time. Thus, proceeding without representation in mediation could significantly handicap those who are not informed by mediators or not informed through their own research of the long-term legal ramifications of the decisions made there. It could also increase the cost and time of obtaining a divorce.

COUPLES WITH INTIMATE PARTNER VIOLENCE AND/OR ABUSE IN MEDIATION

Another important issue for couples in mediation is intimate partner violence and/or intimate partner abuse. For decades, advocates have argued that victims of violence should not be ordered into mediation due to the power imbalances in such relationships and the risk that the victims would make agreements that were not safe for them or their violence-exposed children (Fischer, Vidmar, & Ellis, 1993; Grillo, 1991; Hart, 1990; Pagelow, 1990; Treuhart, 1984). In recent years, the debate has evolved and a more nuanced approach to considering whether victims of violence and certain forms of abuse are appropriate for mediation is emerging (Kelly & Johnson, 2008; Ver Steegh & Dalton,

2008), based in part on evidence that violence and abuse appear in many different forms (Johnston et al., 2009; Kelly & Johnson, 2008; Stark, 2007). This approach rests on the mediators' ability to accurately screen for and identify specific type(s) of violence and abuse and to know what to do given the type(s) of violence and abuse identified, an assumption that is questionable (see Pearson, 1997; Salem, Kulak, & Deutsch, 2007; Johnson, Saccuzzo, & Koen, 2005).

In many jurisdictions, victims of intimate partner violence can be exempted from attending mediation. But, in practice, couples reporting violence are rarely screened out of mediation (Beck et al., 2009; Pearson, 1997). Importantly, there is almost no research concerning the number of pro se litigants with violence or abuse in mediation (see Ballard, Holtzworth-Munroe, Applegate, & D'Onofrio, in press, for an exception), the types of violence and/or abuse among pro se cases, and the possible correlations between type of violence and/or abuse and the types of agreements reached, if any. Violence and/or abuse may be of particular concern in pro se cases because the parties (particularly the victims) do not have a legal advocate ensuring that clients understand the importance of honestly disclosing the violence and/or abuse so that mediators are aware of it.

PRO SE LITIGANTS WITH INTIMATE PARTNER VIOLENCE AND/OR ABUSE IN MEDIATION

This article is an exploratory study that examines litigants in mediation in two very different jurisdictions, Arizona and Indiana. Because there are few studies of these issues and because of the exploratory nature of the study, we do not try to equate these two jurisdictions, we do not offer hypotheses, and we do not draw sweeping generalizations from our analyses. Rather, we carefully describe each sample and examine any substantial similarities or differences between them. A major strength of the study is that these are two very different samples. If consistencies are found between the two sites, then it strengthens the findings; differences found highlight areas where more information will be needed to better understand the issues.

We first provide descriptive statistics concerning the types of representation of clients entering mediation in these jurisdictions, to identify percentages of pro se versus attorney-represented cases. We then consider possible differences in the demographic characteristics of pro se versus attorney-represented clients. Without making specific predictions, we present other descriptive information comparing pro se clients in mediation to those represented by an attorney on such variables as the number of mediation sessions attended and agreement rates. We also provide descriptive statistics concerning the levels and types of violence and/or abuse reported by pro se versus represented litigants.

METHOD

PARTICIPANTS IN ARIZONA AND INDIANA

In Arizona, data were gathered in an urban area in the Southwest, where couples who disputed custody or parenting time (or both) were mandated by a local court rule to attempt to mediate their dispute before they were allowed to set the case for a court hearing. The participants in the study were all couples who chose to attend the court's no-cost, in-house mediation program, rather than hiring a private mediator, between May 1998 and January 2001. The sample was limited to couples attending mediation for the first time as a result of a pending legal divorce ($N = 1,015$ cases). This sample was restricted to cases in which both partners had completed the majority of items on the intimate partner violence and/or abuse assessment measure. The final Arizona sample was 852 couples (1,704 individuals).

Participants in Indiana were recruited from two mediation clinics that served a small Midwestern city and surrounding rural areas: the Indiana University Maurer School of Law Viola J. Taliaferro Family and Children Mediation Clinic (Law School Clinic) and the Monroe County Family Court

Project Mediation Clinic (County Clinic). Parties were generally ordered to mediation at the discretion of the judge. All parties mediating at the Law School Clinic between February 2008 and August 2009 and all parties mediating at the County Clinic between August 2008 and August 2009 were asked to participate in research. Of those asked to participate, in 117 cases both parents agreed to participate (68.8 percent), in 43 cases (25.3 percent) only one parent agreed, and in 10 cases (5.9 percent) neither parent agreed. The final sample is restricted to cases in which both parties agreed to participate in the study and completed research forms. Differing from Arizona, this sample includes cases involving either an initial divorce or separation (paternity case) or a modification of a divorce or separation. One parent in three of the cases in which both parties agreed to participate did not report type of representation so these cases were excluded from the analyses. The final Indiana sample included 114 couples (94 from the Law School Clinic and 20 from the County Clinic; 228 individuals).

The demographics for the two samples are shown in Table 1. Relative to the Arizona sample, those in the Indiana sample were more likely to be White and tended to be on average somewhat younger. Neither sample reported high levels of education or income, although most were employed.

Table 1
Demographics of the Samples

	<i>Arizona Sample</i>		<i>Indiana Sample</i>	
		<i>Range</i>		<i>Range</i>
Age Father, years (mean and SD)	37 / 8	19–71	33 / 9	19–61
Age Mother, years (mean and SD)	34 / 7	17–54	31 / 8	18–51
First Marriage for Father	734 (86%)	0–4	84 (75%)	0–4
First Marriage for Mother	726 (85%)	0–3	84 (74%)	0–3
Number of Children per Household (mean and SD)	2 / 0.94	1–6	2 / 1.3	0–7
<i>Education Completed</i>	<i>Arizona Sample</i>		<i>Indiana Sample</i>	
0–12 years	176 (10%)		38 (17%)	
High school graduate	630 (37%)		83 (36%)	
Some college	490 (29%)		74 (33%)	
College graduate (AA, BA/BS or more)	316 (19%)		33 (14%)	
Not Answered	92 (5%)		0 (0%)	
<i>Employment</i>	<i>Arizona Sample</i>		<i>Indiana Sample</i>	
Father reporting employment	688 (81%)		91 (90%)	
Mother reporting employment	551 (65%)		93 (82%)	
<i>Income</i>	<i>Mean/SD</i>	<i>Range</i>	<i>Mean/SD</i>	<i>Range</i>
Father reported yearly income (mean and SD)	\$25,230 / \$23,913	0–\$215,520	\$25,796 / \$16,664	\$5,000–\$70,000
Mother reported yearly income (mean and SD)	\$12,286 / \$13,486	0–\$109,200	\$16,283 / \$12,225	\$5,000–\$50,000
<i>Ethnicity</i>	<i>Arizona Sample</i>		<i>Indiana Sample</i>	
Caucasian	60%/n = 1021		92%/n = 210	
Hispanic	30%/n = 502		2%/n = 4	
African American	2%/n = 39		4%/n = 9	
Asian American	0.80%/n = 14		0.4%/n = 1	
Native American	0.80%/n = 14		0.9%/n = 2	
Biracial	0.60%/n = 5		0.9%/n = 2	
Other	0.40%/n = 7			
Not Answered	6%/n = 102			
	N = 852 couples; N = 1704 individuals		N = 114 couples; N = 228 individuals	

MEDIATORS AND MEDIATION PROGRAMS IN ARIZONA AND INDIANA

In Arizona, this study included all first-time divorce cases from all mediators ($N = 12$) employed at the mediation service during the study period. Ten of the mediators were full-time employees of the clinic. All had at least a master's degree in social work, counseling, or psychology, and eight had over 10 years of experience. All the mediators had extensive training in assessing intimate partner violence and/or abuse and many of the mediators periodically conducted trainings in violence and abuse awareness and partnered with local divorce attorneys in conducting information sessions for victims at local shelters.

In Indiana, at the Law School Clinic, second- and third-year law students were trained and registered as domestic relations mediators and generally co-mediated cases under the supervision of the Clinic Director (author Applegate). At the County Clinic, all cases were mediated by an experienced attorney-mediator. To be a registered domestic relations mediator, the mediator must attend the state-approved 40-hour training, which includes a minimum of 4 hours of training on psychological issues in mediation, including training in assessing intimate partner violence issues. Students were also taught to obtain intimate partner violence screening information in multiple ways (e.g., directly from the court, searching court records and databases of other court cases involving the parties, calling parties in advance of mediation to check on issues that may affect the mediation, and conducting intakes asking about comfort with mediation, concerns about mediation, and how relationship conflict is handled) and to discuss intimate partner violence discovered at any point with the Clinic Director. As described below, they later used standardized interview or questionnaire screening measures of intimate partner violence. Note that, in the Indiana sample, intimate partner violence was assessed. This assessment did not include a measure of intimate partner abuse.

DATA COLLECTION MATERIALS IN ARIZONA

A portion of the data was abstracted from existing documents assembled for the mediation service and the Superior Court divorce case files and entered directly into a database referenced by research case identification numbers. After being stripped of identifiers, the mediation program staff also provided additional key variables (e.g., whether or not agreement was reached) from databases maintained by the program.

Contact Record. The contact record detailed demographic information (i.e., participant ages, income, previous marriages, education, and ethnicity).

Measure of Intimate Partner Violence and/or Abuse. In the individual meeting with the mediator, the litigant completed the Relationship Behavior Rating Scale (RBRS; Beck, Menke, O'Hara Brewster, & Figueredo, 2009), a 41-item revised version of the Partner Abuse Scales (Attala, Hudson, & McSweeney, 1994). The participants were asked to rate how often they had experienced different forms of violence and/or abuse, as perpetrated by their spouse, on a scale of 0–6 (0 = none of the time, 1 = very rarely, 2 = a little of the time, 3 = some of the time, 4 = a lot of the time, 5 = most of the time, 6 = all of the time).

For analyses concerning intimate partner violence specifically and for purposes of comparison of data across the two sites, we matched Arizona data to the intimate partner violence measures available in the Indiana data. That is, we constructed the same 19-item physical violence subscale used in the long RBRS form in the Indiana sample. If either party endorsed any of these items, the case was classified as having intimate partner violence (see *Measures of Intimate Partner Violence* for Indiana below and Table 2).

For additional intimate partner violence and/or abuse analyses of the Arizona data, we used the same 19-item measure of violence, taking the mean of the items as a scale score (rather than just the presence or absence of reported violence). The Arizona participants' responses were also clustered into two additional theoretically derived types of intimate partner abuse: *psychological abuse* and

Table 2
Reliability Estimates for Physical Violence Measures in Both Samples

		Indiana		Arizona		
Physical Violence Measures	# of Items	Illustrative Items	% Agreement and Kappa when two mediators reported independently ($n = 16$)		N/A	
Mediator Report ($n = 37$)	1 item	Do you believe or suspect there was domestic violence in this case? Yes/No/Unsure	75.0% agreement Kappa = 0.57 ($p < .01$)		N/A	
			Cronbach's Alpha (mother's report)	Cronbach's Alpha (father's report)	Cronbach's Alpha (mother's report)	Cronbach's Alpha (father's report)
Short RBRS ($n = 33$)	10 items	Pushed or shoved; hit or punched; hurt me so badly I had to seek medical help	.791	.779	.824	.782
DOVE ($n = 44$)	4 items	Physically assaulted by partner; called police because partner assaulted you.	.655	.337	N/A	N/A
Long RBRS ($n = 44$)	19 items	Pushed or shoved; hit or punched; hurt me so badly I had to seek medical help	.836	.989	.878	.847

RBRS, Relationship Behavior Rating Scale; DOVE, Domestic Violence Evaluation.

Table 3
Reliability Estimates for Intimate Partner Violence and/or Abuse Categories in Arizona Sample

Category	# of Items	Illustrative Items	Cronbach's Alpha (mothers)	Cronbach's Alpha (fathers)
Psychological Abuse	7	put me down; insulted or shamed me in front of others	0.91	0.90
Coercive Control	10	demanding I obey; controlled how much money I could have or how I spent it; controlled my coming and going	0.85	0.80
Violence	19	pushed or shoved; hit or punched; bit or scratched; broke one or more of my bones; choked; strangled; suffocated; threatened me with or used a weapon against me; physically forced sex	0.91	0.87

Note: One item regarding resolving issues peacefully was not used.

coercive control, based on prior research (Dutton & Goodman, 2005; Figueredo & McCloskey, 1993; Kelly & Johnson, 2008; Tanha, Beck, Figueredo, & Raghavan, in press) (see Table 3 for subscale example items and reliability). For these analyses, we also distinguished between the mother as victim (reported by the mother) and the father as victim (reported by the father).

DATA COLLECTION MATERIALS IN INDIANA

Mediating parties who agreed to participate in the studies in Indiana completed research forms immediately prior to the start of their mediation session. These forms collected basic demographic information. In Indiana, income was assessed using categories. Thus, to keep data consistent with Arizona data for study data analyses, each income category was assigned a midpoint value (i.e., income between \$20,000 and \$40,000 was assigned the value \$30,000).

Parties also agreed to allow researchers access to the mediation case files, which contained information on whether the parties reached a full, partial, or no agreement.

Measures of Intimate Partner Violence. Data from several studies are used in these analyses, and the measures of intimate partner violence varied across these studies. In 37 cases, the only information on intimate partner violence was the mediator's determination of intimate partner violence made by searching databases and court records and asking parties questions about concerns and conflict, but without behaviorally specific intimate partner violence questionnaire or interview screens. In 33 cases, parties completed a shortened version of the RBRS with 10 questions that dealt specifically with physical violence. If either party endorsed any of these 10 items at any level of frequency, the case was classified as having intimate partner violence. Finally, in 44 cases, mediators screened parties with both the full RBRS and the Domestic Violence Evaluation (DOVE; Ellis & Stuckless, 2006). If either party endorsed any of 19 physical violence items on the RBRS and/or any of the 4 physical violence items on the DOVE, the case was classified as having intimate partner violence. See Table 2. Unlike in Arizona, data on partner psychological abuse and coercive control were not available for many cases, so were not included in study analyses.

RESULTS

We first examined descriptive information on types of case representation; see Table 4. Substantial differences were found in the rate of pro se representation between the two sites. In Arizona, the majority of cases had attorney representation for both parties. In contrast, pro se litigants were the vast majority of clients seen in the Indiana clinics. Mixed-representation cases are those where one party has hired an attorney while the other proceeds pro se. An interesting pattern found in the Indiana sample was that very few of the mixed representation couples had the father having an attorney when the mother was pro se.

DEMOGRAPHIC AND DESCRIPTIVE VARIABLES

We then compared pro se cases to attorney-represented cases on a series of demographic variables and other variables of exploratory interest, such as number of mediation sessions attended and whether or not an agreement was reached.

Income. In both samples, individuals who were represented by an attorney reported higher incomes than those who represented themselves. For Arizona, the mean yearly mother income for those with an attorney was \$18,290 ($SD = \$14,331$), while the mean yearly mother income for pro se cases was \$12,065 ($SD = \$9,553$), $F(1,849) = 32.49$, $p < .001$. The mean father income for those with an attorney was \$35,812 ($SD = \$27,280$), while the mean father income for pro se cases was \$22,474 ($SD = \$13,796$), $F(1,849) = 44.50$, $p < .001$. For Indiana, the mean yearly mother income for those

Table 4
Breakdown of Representation in Both Samples

Type of Representation	Arizona Results	Indiana Results
Both Pro Se	107 (13)	156 (68)
Both Attorney Represented	563 (66)	34 (15)
Mother Pro Se, Father Attorney	88 (10)	6 (3)
Father Pro Se, Mother Attorney	94 (11)	32 (14)

Note: Arizona sample $n = 852$; Indiana sample $n = 228$. Numbers in parentheses are percentages.

with an attorney was \$22,121 ($SD = \$13,637$), while the mean yearly mother income for pro se cases was \$13,875 ($SD = \$10,790$), $F(1,111) = 11.64$, $p < .01$. The mean father income for those with an attorney was \$33,250 ($SD = \$15,413$), while the mean father income for pro se cases was \$24,193 ($SD = \$16,538$), $F(1,111) = 5.05$, $p < .05$.

Education. Results were similar across sites for education, with stronger findings for mothers in both samples. In Arizona, 66 percent of fathers with less than a high school education had attorney representation, compared to 87 percent with a college degree, $\chi^2(3, N = 805) = 18.76$, $p < .001$. Half of all mothers who had less than a high school education had representation by an attorney, but 92 percent of college-educated mothers had representation, $\chi^2(3, N = 807) = 57.23$, $p < .001$. In Indiana, 14 percent of mothers with less than a high school education were represented, while 50 percent of college-educated mothers were represented, $\chi^2(4, N = 114) = 14.39$, $p < .01$. However, there was no statistically significant association between education and type of representation for fathers; 4 percent of the least-educated fathers were represented and 20 percent of college-educated fathers were represented, $\chi^2(4, N = 114) = 4.21$, $p = .38$.

Age. Results concerning the relationship of age to type of representation were similar across samples. In Arizona, the average age for mothers who self-represented was 31.7 years ($SD = 6.7$), and it was 35.2 ($SD = 7.3$) for those who were attorney represented ($F = 35.8$, $p < .001$). The average age for self-represented fathers was 34.1 years ($SD = 7.8$) and for attorney-represented fathers, it was 37.4 ($SD = 8.15$) ($F = 26.66$, $p < .001$). In Indiana, for both fathers and mothers, there was a trend toward individuals of older age being more likely to have attorney representation. Represented mothers were, on average, 32.8 years old ($SD = 8.43$), and unrepresented mothers were 29.7 years old ($SD = 7.42$) ($F(1,112) = 3.87$, $p < .10$). Attorney-represented fathers were 35.8 years ($SD = 9.07$) and unrepresented fathers were 32.1 years ($SD = 8.52$) ($F(1,112) = 3.12$, $p < .10$).

Number of sessions. In Arizona, attorney representation was related to a higher number of mediation sessions, $\chi^2(6, N = 852) = 15.758$, $p < .05$. Cases in which both parties were represented had an average of 2.15 sessions ($SD = 1.12$) and a range of 1 to 8. Twenty-nine percent of cases had only one session, 72 percent had two or fewer, and 91 percent had three or fewer sessions. For cases in which one party had an attorney, the average number of sessions was 1.96 sessions ($SD = 1.10$) with a range of 1 to 8 sessions. Thirty-seven percent of cases had only one session, 81 percent had two or fewer, and 92 percent had three or fewer sessions. For cases in which neither party had an attorney, the average was 1.84 sessions ($SD = .83$) with a range of 1 to 5 sessions. Thirty-six percent of cases had only one session, 84 percent had two or fewer, and 97 percent had three or fewer sessions.

In Indiana, 90 percent of mediation cases had only one session (although that session was not restricted to a certain number of hours).² When the number of sessions was dichotomized to one or more than one, there was no association between attorney representation and number of mediation sessions, $\chi^2(2, N = 104) = 1.81$, $p = .41$.

Agreement reached. There were differences across sites regarding clients reaching agreements. See Table 5. In Arizona, there was no difference between attorney-represented and mixed-representation or pro se couples in terms of whether agreement was reached (Odds Ratio (OR) = 1.5, Confidence Interval (CI) = .39–5.81, $p = .56$). In Indiana, however, attorney representation is associated negatively with agreement rates ($\chi^2(4, N = 109) = 20.16$, $p < .001$). Cases in which both parties were pro se were more likely to reach full agreement than those in which both parties were represented by attorneys (OR = 5.19, CI = 1.65–16.26, $p = .005$).

INTIMATE PARTNER VIOLENCE

In Indiana, the measure of intimate partner violence was available per case/couple (not per person).³ In other words, for that sample we could only compare violent couples (in which either or

Table 5
Types of Agreements by Types of Representation in Both Samples

<i>Arizona Representation</i>	<i>Full agreement</i>	<i>Partial agreement</i>	<i>No agreement</i>
Arizona Both Pro Se ($n = 105/844$)	69 (65.7)	8 (7.6)	28 (26.7)
Arizona Mixed Representation ($n = 180/844$)	98 (54.4)	21 (11.7)	61 (33.9)
Arizona Both Represented ($n = 559/844$)	299 (53.5)	80 (14.3)	180 (32.2)
Indiana Representation			
Indiana Both Pro Se ($n = 74/109$)	56 (75.7)	8 (10.8)	10 (13.5)
Indiana Mixed representation ($n = 19/109$)	9 (47.4)	0 (0)	10 (52.6)
Indiana Both Represented ($n = 16/109$)	6 (37.5)	4 (25)	6 (37.5)

Numbers in parentheses are percentages.

Arizona ($\chi^2(4, N = 844) = 6.90, p = .141$)

Indiana ($\chi^2(4, N = 109) = 20.16, p < .001$)

both parties were violent) to nonviolent couples (in which neither party was violent). Therefore, for descriptive comparison purposes, for the Arizona sample we constructed and used a similar measure of couple-level violence, as described above.

Intimate Partner Violence and Income. Given that type of representation is likely related to income level (pro se parties may not be able to afford to hire an attorney), we also examined whether there was a difference between violent and nonviolent cases in income level. If so, such a difference could account for any differences found between violent and nonviolent cases in type of representation. There was no statistically significant difference in the Arizona sample, for either fathers' or mothers' income level, between those who reported violence in the relationship and those who did not. In Indiana, there was a trend (but not statistical significance) toward lower income for mothers in the violent group ($M = \$14,100, SD = \$8,788$) compared to the mothers in the nonviolent group ($M = \$18,015, SD = \$14,214$), $F(1, 111) = 2.91, p = .091$. The association between income and violence was not significant for fathers, $F(1, 111) = .002, p = .97$. The mean of the violent group was $\$25,727 (SD = \$15,257)$, and the mean for the nonviolent group was $\$25,862 (SD = \$17,994)$. Thus, across both samples, there was not a statistically significant relationship between violence and income.

Intimate Partner Violence and Type of Representation. There were similar results across samples. There was no significant difference in couple-level reports of intimate partner violence by types of representation.⁴ For Arizona, some indication of violence was detected in 78 percent of the both pro se group, 84 percent of the group in which only one party had attorney representation, and 82 percent of the group in which both parties had representation, $\chi^2(2, N = 852) = 1.72, p = .42$. For the Indiana sample, there also was no significant difference among the three representation groups, $\chi^2(2, N = 114) = 2.16, p = .340$. Some indication of violence was detected in 59 percent of the both pro se group, 63 percent of the group in which only one party had attorney representation, and 41 percent of the group in which both parties had representation.⁵

Intimate Partner Violence and/or Abuse and Type of Representation. For the Arizona sample, we were able to examine the relationship between type of representation and intimate partner abuse as well as intimate partner violence. We constructed variables based on mothers' reports of victimization and on fathers' reports of victimization. The correlations among intimate partner violence and the two types of abuse measured in the Arizona sample (psychological abuse and coercive control) range from a low of .53 (between physical violence and psychological abuse reported by mothers) to a high of .79 (between psychological abuse and coercive control reported by mothers) (see Table 6).

Table 7 presents the results of the analyses of violence and abuse in the Arizona sample. There is some indication of a relationship between representation type and some types of intimate partner violence and abuse reported by fathers. Post hoc analyses showed higher levels of reported

Table 6
Correlations of Intimate Partner Violence and/or Abuse in Arizona Sample

<i>IPV/A Categories</i>	<i>Psychological Abuse</i>	<i>Coercive Control</i>
Mother Victim		
Psychological Abuse		
Coercive Control	.785	
Physical Violence	.534	.551
Father Victim		
Psychological Abuse		
Coercive Control	.757	
Physical Violence	.562	.586

Note: $N = 851$ – 852 due to missing items. All correlations significant at $p < .001$.

Table 7
Intimate Partner Violence and/or Abuse by Victim and Representation in Arizona Sample

<i>Representation Categories</i>	<i>Psychological Abuse</i>	<i>Coercive Control</i>	<i>Physical Violence</i>
Mother Victim			
	$F(2,848) = 1.18$ $p = .31$	$F(2,848) = 1.51$ $p = .22$	$F(2,849) = .493$ $p = .61$
Both Attorney Represented	3.09 (1.49)	2.43 (1.04)	0.37 (0.57)
Mixed Representation	2.92 (1.46)	2.24 (1.33)	0.42 (0.67)
Both Pro Se	2.92 (1.70)	2.31 (1.47)	0.40 (0.58)
Father Victim			
	$F(2,848) = 4.57$ $p = .01$	$F(2,848) = 2.47$ $p = .09$	$F(2,848) = 3.00$ $p = .05$
Both Attorney Represented	2.51 (1.38)	1.94 (1.15)	0.36 (0.42)
Mixed Representation	2.69 (1.38)	2.00 (1.11)	0.46 (0.49)
Both Pro Se	2.18 (1.56)	1.7 (1.17)	0.40 (0.63)

Note: Numbers in parentheses are standard deviations.

psychological abuse by fathers in mixed-representation couples than for those where both parties are pro se; and higher levels of physical violence reported by fathers in mixed-representation couples than those where both parties are attorney represented. When we disaggregate the mixed-representation group into mother attorney-represented/father pro se and father attorney-represented/mother pro se, differences in reports of psychological abuse remained, $F(3, 847) = 3.08$, $p = .03$, with post hoc analyses indicating that fathers who retain attorneys when the mothers are pro se report higher levels of psychological abuse ($M = 2.73$, $SD = 1.41$) than do those in couples where both parties are pro se ($M = 2.18$, $SD = 1.56$). Differences in reported levels of physical violence were not statistically significant at this level of disaggregation.

DISCUSSION

Although the self-represented litigant is argued to be the single most important issue facing family courts today, little is known about self-represented litigants within the family mediation context. A tremendous number of clients in mediation report intimate partner violence and intimate partner abuse. It is generally unknown whether these violence and/or abuse victims are attempting mediation unrepresented by counsel or, if they are, the effects the lack of representation might have on their mediation. Pro se litigants place considerable burdens on the family court system due to both their sheer numbers and their lack of legal knowledge (substantive and procedural). It is unclear if pro se mediation clients also place burdens on mediation programs. Because of the dearth of data concerning pro se clients in mediation, this study focused on describing self-represented litigants in two very different jurisdictions.

Results from this study indicate that overall rates of pro se representation in mediation can vary greatly across mediation programs. In regard to demographic variables that relate to pro se representation in family mediation, in general the litigants who are older, have higher incomes, and are more highly educated hire attorneys at a higher rate. These litigants likely have more disposable income to pay attorney fees and more assets at stake; therefore, it is not surprising that this group hires attorneys. Gender differences also occur in regard to representation. In this study, a higher percentage of mothers than fathers in mixed-representation cases hire attorneys and a higher percentage of college-educated mothers hired attorneys than did college-educated fathers. An interesting issue for further investigation would be to ascertain which parent was instigating the pending action with the court. Traditionally, mothers file for divorce with higher frequency than do fathers (Brinig & Allen, 2000). It may be that, when mothers are filing for, as opposed to responding to, an action in court, they want the advice and assistance of an expert.

Concerning the potential burden pro se clients place on mediation programs, across the study sites the data showed that pro se clients place equal or less burden on mediation programs than do attorney-represented clients, as measured by number of mediation sessions attended. This finding could be an artifact of the manner in which we measured the potential burden on the mediation programs. For example, both in Arizona and in Indiana, mediation sessions are variable in length, so an accurate assessment of hours of mediation could yield different results than mediation session counts. In addition, in Indiana, 90 percent of the cases participated in only one session. The sessions could be longer than those in the Arizona site and thus explain the difference in number of sessions across sites. It will be important for future researchers to consider other measures of system burden and to track hours spent in mediation, rather than number of sessions.

Regarding agreement rates and type of representation, the results were inconsistent across study sites. A higher percentage of pro se clients than attorney-represented clients in Indiana reached agreements; whereas in Arizona, there were no differences in agreement rates by type of representation. In considering why this difference occurred, it may have to do with the institutionalization of mediation in Arizona. The Arizona mediation program was (and is) a large, long-standing, free, court-based program with 12 full-time mediators. Mediation has been conducted there since the mid-1980s. Many of the judges and local attorneys rely on the mediation program's work with the parents on custody/parenting time issues. Thus, attorneys may strongly encourage their clients to reach an agreement in mediation. By contrast, family mediation was slower to take hold in Indiana, and the frequency of court referrals to mediation varies widely by location, court, and judge. There may be reluctance, legitimate or otherwise, on the part of some attorneys to have their clients reach agreements in mediation. An additional possibility is that in Arizona attorneys do not attend mediation sessions with their clients whereas in Indiana they can and often do. Attorney presence in the mediation sessions is one possible explanation for differences in agreement rates in Arizona and Indiana. Future researchers should investigate the role, actions, and effects of attorneys who do attend mediation sessions with their clients in jurisdictions that allow attorneys to do so.

Across samples, pro se clients in both samples were no more likely to report physical violence in their relationship than were attorney-represented clients. This finding is heartening in that victims of physical violence are not disproportionately attempting to self-represent in the divorce process.

When the types of intimate partner violence and intimate partner abuse were separated into categories and then examined more closely in the Arizona sample (where the data were available), there is some suggestion of a relationship between some types of violence and/or abuse and type of representation. There was a significant relationship between psychological abuse and physical violence and type of representation for fathers. To better understand which type of representation (both pro se, both attorney represented) was driving the significant finding, we then disaggregated the data into the different types of representation. For psychological abuse, this post hoc analysis remained significant. In mixed cases (father attorney/mother pro se), fathers report more psychological abuse. It may be that psychological abuse drives the father's decision to hire an attorney. In the case of physical violence, however, when the finding was investigated in terms of which specific types of representation were related to physical violence, the results were inconclusive. Because it was not

possible to ascertain for which type of representation the significant finding pertains, we must remain cautious in the interpretation of these results.

All instruments which measure intimate partner violence and/or abuse have limitations, particularly regarding the context and motivation for specific behaviors. The instruments used in this study are no different. Self-report data provided at one point in time do not provide a complete picture of overall family functioning. Violence and/or abuse is also dynamic overtime; therefore, additional research, which includes repeated measures of frequency of the specific behaviors, is needed. From the research perspective, obtaining corroborating reports of violence and abuse from collateral informants (e.g., friends and family, medical records) and from area law enforcement would be helpful in lending support to self-reported violence and abuse in this context.

To more fully understand why litigants self-represent, research is needed to more closely examine litigants' expressed reasons for choosing to represent themselves rather than hire attorneys, particularly those who also report violence and/or abuse. Also important will be to assess if problems occur for pro se litigant victims of violence and/or abuse in mediation and over time with agreements when reached in mediation (e.g., problems framing issues, negotiating with their abuser, assessing advantages and disadvantages of options; evaluating the reliability of evidence). Additional variables are needed to assess the perceived fairness of the mediation for pro se litigants and in particular for victims of violence and/or abuse (e.g., mediator's and the parties' opinions regarding the fairness of the mediation process, the agreements reached, and the durability of the mediation agreements over time). These variables will provide a fuller picture of why clients self-represent, the problems they encounter (if any), the perceived fairness of the mediation process and outcomes, and how these relate to the durability of agreements over time. With this information, mediators may be able to assist pro se litigant victims in considering potential issues that may come up post-mediation with agreements reached in mediation.

It might be instructive to conduct research using additional methods. Reviewing court case files and observing and coding participant interactions during mediation sessions could assist researchers in determining if any litigants engage in additional forms of abuse using the dispute resolution process itself. Anecdotally, these forms of abuse have been identified; it could be helpful to obtain empirical evidence to determine the scope of the problem. For example, reviewing court case files could determine if abusers file multiple motions against victims in which victims do not respond effectively. In content coding mediation sessions, researchers could assess if abusers derail the process by hiding financial information, refusing to negotiate or agree to anything, or making agreements only to then renege on them later in the mediation session.

In closing, while it is clear that rates of pro se representation vary significantly across jurisdictions, pro se litigants are appearing in mediation and in some jurisdictions in significant numbers. Future research is needed to fully ascertain the impact of self-representation on victims of intimate partner violence and/or abuse to determine if these victims are at a significant disadvantage in mediation.

NOTES

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1. For this study, the term Intimate Partner Abuse includes psychological abuse (insult/shame in front of others be mean or rude, treat like stupid), and coercive control (restricts access to money, friends, relatives, work, school). The term Intimate Partner Violence includes physical violence (kick, scratch, punch), escalated or threats of escalated violence (threaten to kill, choke, strangle, break bones), and sexual violence (forced to have sex, injured genitals). By usual definition, intimate partner abuse also includes stalking; however, it was not measured in this study. Only intimate partner violence was assessed in the Indiana sample.

2. The Law School Clinic now routinely schedules two sessions: one for an intake and one negotiation session, with the possibility of more sessions as needed.

3. This precaution was instituted to protect the parties from potential self-incrimination.
4. These amounts are not directly comparable because in Indiana there were three samples and intimate partner violence was measured using three separate variables (mediator call, short form RBRS and long form RBRS). Thus, the level of violence is less than in the Arizona sample where only the long form of the RBRS was used. For comparison, when using a mediator call of intimate partner violence, in Arizona violence was detected in 60% of the both pro se group, 64% of the group in which only one party had attorney representation, and 58% of the group in which both parties had representation. $\chi^2(2, N = 852) = 2.34$, $p = .311$. Using the short form of the RBRS, violence was detected in 76% of the both pro se group, 80% of the group in which only one party had attorney representation, and 79% of the group in which both parties had representation, $\chi^2(2, N = 852) = .804$, $p = .669$.
5. In both samples, however, more intimate partner violence was detected when using a behaviorally specific screening tool than when using only the mediator's call of whether the case included violence or not.

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