

Summit on the Future of Self-Represented Litigation

Paper Nine:

Evaluation of Innovations Designed to Increase Access to Justice for Self-Represented Litigants

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I. Introduction

Thoughtful evaluations offer enormous possibilities for improving the way the court system works for self-represented litigants. A body of research is developing that clearly demonstrates the efficacy of self-help services. This research helps not only funders and managers assess the effectiveness of various programs, but provides guidance for the programs themselves on ways to improve their services. The first major effort to develop consistent tools and methodology to evaluate programs has recently concluded and we are in the process of evaluating them, sharing the findings, and discussing next steps. This paper is an initial analysis of these efforts, identification of key findings, principles for research in this field, and suggestions for future research directions.

Services to help prepare people to represent themselves in court are relatively new and are often perceived as inadequate and/or threatening to attorneys providing full-service representation. Hence, relative to their age and maturity, there has been a significant amount of research into these programs. This is in contrast to other forms of access to justice services. For example, we have found few evaluations of the effectiveness of full-service representation, and few tools with which to judge that work other than general standards for legal services providers.² While there is a body of case law on malpractice, there is little guidance to the general provision of day-to-day high quality representation.

II. A Brief History of Evaluation Efforts

Many courts and access to justice groups have conducted early evaluations of the initial self-help efforts. These include work conducted on the Maricopa Superior Court, an evaluation of rural self-help projects conducted by the American Judicature Society, analysis of a model family law project conducted by Michael Milleman in Maryland, evaluations of various self-help programs in California and work by the National Center for State Courts on five innovative courts. An analysis of the 33 evaluations available as of June 2002 is found in a report by John Greacen entitled “Self-represented Litigants and Court and Legal Services Responses to Their Needs – What We Know.”³ That paper

¹ I am heavily indebted to the work of my colleagues at the AOC: Deborah Chase, Charlene Depner, Harry Jacobs, James Mensing, Lee Morhar, Deana Piazza and Don Will for their continual guidance and suggestions for future research. Much of this work is theirs. Special thanks are due to Bristow Hardin, Judge Juanita Bing Newton, Glenn Rawdon, Jim Woodward, Pam Casey, Richard Zorza and John Greacen for helpful comments on previous drafts of this paper.

² The work of Jeanne Charn at the Hale & Dorr Legal Services Center of Harvard Law School is a notable exception to this general lack of assessment of effectiveness of full representation programs.

³ This paper and other works cited are available at www.courtinfo.ca.gov/programs/equalaccess/evaluation and on www.selfsupport.org.

Summit on the Future of Self-Represented Litigation

identified key outcomes being sought by self-help programs and collected the various individual evaluations' conclusions with respect to those outcomes. One of the conclusions noted in his paper was that each program had developed its own data collection instruments, making it was difficult to compare outcomes between programs.

In response to this insight, and in order to develop additional bases for comparison, two projects then worked concurrently using the same instruments to analyze the effectiveness of self-help activities. These efforts strive to be more rigorous and broader in scope than some of the initial efforts in the field with the goal of building on and improving our research instruments and understanding.

The first of these projects was an evaluation of five pilot self-help centers conducted by the California AOC with the support of a social science research firm. This process involved a major commitment of funds – approximately \$400,000 for a series of site visits and interviews with key respondents, analysis of intake, service tracking and customer satisfaction data, interviews with self-represented litigants, case file reviews, and other data collection strategies. This evaluation provided detailed guidance on the five pilot programs that were designed to test models for addressing specific issues facing courts in serving self-represented litigants.⁴ This evaluation began in the fall of 2002.

The second project began shortly thereafter by the Trial Court Research Improvement Consortium (TCRIC), a group of leading courts and court consultants who developed a process for a “quick and clean” assessment of programs to assist self-represented litigants. The process uses an Executive Program Assessment Tool, seven survey instruments which mirror the California instruments and a process involving a paid consultant and a volunteer from another court to gather and analyze data, assess program effectiveness, and make recommendations for improvement in a court's program. This project received SJI funding to test that Executive Program Assessment Tool in nine programs in five states to determine how it would work in practice.⁵ The process was generally quite successful and relatively inexpensive (approximately \$10,000 per court). It became clear during the experiment that an all-volunteer approach is not viable. The participation of a consultant is critical to the success of the project since organizing and preparing the report involves a significant commitment of time and expertise.

Other efforts during the last three years include evaluations of self-help centers operated by legal services agencies in partnership with California courts. These “Partnership Grants” funded by the state's Equal Access Fund all conducted some level of evaluation

⁴ The models were: rural coordination (3 small rural courts using one attorney to provide services to all three courts), urban collaboration (working to increase collaboration between the court and all self-help providers in a large urban community), technology, Spanish-speaking and multi-lingual services.

⁵ The project was conducted by the Maryland Administrative Office of the Courts on behalf of TCRC. The participating programs were the Family Law Self-help Program for the state of Alaska, the Fourth Judicial District Court in Hennepin County, Minneapolis, Minnesota, five courts in Maryland – the Circuit Courts for Baltimore City and Harford, Montgomery, Prince Georges, and Worcester Counties, the Maricopa County Superior Court, Phoenix, Arizona, and the Eleventh Judicial District Court in Miami/Dade County, Florida.

Summit on the Future of Self-Represented Litigation

and a report on their activities is being published by the Judicial Council of California March 1, 2005. To assist the programs in their self-evaluation, a “Tool Kit” of evaluation strategies was designed based upon previous evaluations and was made available to all legal services programs and is available on-line (<http://www.pic.org/toolkits.htm>).

The Legal Services Corporation has been working for the last three years on tools to evaluate their Technology Innovation Grant funded projects as well as on outcome measurements and other methods to ensure high quality services.

The Hotline Outcomes Assessment Study produced in November 2002, was a major study of the effectiveness of brief assistance provided by legal services hotlines. This study conducted interviews with 2,034 randomly selected callers three to six months after they had contacted five legal services hotlines eliciting their general reaction to the hotlines and general outcomes of their cases. Experienced attorneys reviewed the assessments based the case files, interview notes and the clients responses.

California’s AOC also produced a report on three pilot “Family Law Information Centers” which included customer satisfaction forms from over 1,600 litigants as well as focus groups and interviews with judges and court staff and review of service data. The AOC has also maintained major data collection efforts for services provided by Family Law Facilitators, who are attorneys working for the court to provide self-help assistance with child support. It also has a longitudinal database of persons served by Family Court Services mediation services to help resolve custody and visitation issues. This database demonstrates an increasing number of self-represented litigants, demographic trends, and customer satisfaction regarding the mediation process for those litigants.

These evaluations have led to useful changes in the programs themselves. For example, one legal services program found in its surveys that court staff did not think highly of the quality of services offered. This prompted a serious discussion between the program manager and court staff, and specific problems were identified and corrected. Those discussions led to a much more collaborative working relationship and significant expansion of the program. Another program reviewed case files and determined that litigants using its services did not consistently raise appropriate defenses in eviction cases. The program is using that information to change its workshops and provide more information about possible appropriate defenses.

III. Lessons Learned from Evaluations Thus Far

A. *Self-Help Centers Are Heavily Used*

The numbers of litigants using court-based self-help centers is truly stunning. One example is in Los Angeles where family law judges interviewed prior to the establishment of the family law facilitator program in Los Angeles indicated that they didn’t think that there was a “pro per problem,” (to use the California nomenclature.) Within 3 months of being started, the facilitator program was serving over 3,000 people per month – litigants were lining up at 5 a.m. to get help. This experience has been borne out throughout the country – particularly in family law cases. Indeed, much of the

Summit on the Future of Self-Represented Litigation

research on self-help assistance has been done of family law services – as this is the area that has commanded attention in recent years. As such it is likely to reflect a population that is younger, poorer and more female than self-represented litigants in other areas of the law. The Family Law Information Center evaluation found that over 45,000 persons per year were served in the three pilot courts. This number is in itself staggering, but particularly instructive in that the legislature defined success for that project as serving 100 persons per year.⁶

B. Self-Help Programs Increase Access To Justice – But Are Far From Filling The Gap

It appears clear that self-help centers are serving a large number of persons who are unable to afford an attorney and would, in many situations, simply be unable to solve their problem through the court system. Over 90% of the litigants served by the three direct service self-help programs in the model self-help pilot program in California make less than \$2,000 per month in a state where the average rental cost for a two bedroom unit is \$1,104.

It is equally clear, however, that many self-represented litigants are not obtaining those services. In family law matters, many more petitioners than respondents are served. Most programs do not provide assistance in a wide variety of civil cases. Most programs do not have bilingual staff. Not all persons self-representing use the self-help center. Few programs provide outreach to areas that are underserved. This is generally because programs are overwhelmed by the requests for service they already receive. One important tool may be to track those persons who are turned away by the program to identify the need for additional resources or areas of service.

We are very early in our understanding of the need for legal assistance. Much of our work has been based on trying to identify key priorities to limit services based upon desperately inadequate funding. One fascinating development of the court-based self-help centers has been identifying groups that have seldom been identified as needing help. For example, a court's concerns about neutrality forced a legal services program to offer assistance to low-income landlords as well as tenants. To the surprise of many, there turned out to be a large number of low-income landlords – often senior citizens who had rented a room or allowed someone to live in their home rent-free – and now found the only way to get them out was an eviction.

We also have only studied those self-represented litigants who come to court. This only represents a part of the picture and indeed may be a very small portion of the population in need of services—particularly in immigrant and rural communities. We do not know enough about litigants who default, nor those who do not file cases due to lack of knowledge, fear, finances or other reasons. Legal needs surveys help us understand some

⁶ See *A Report to the California Legislature - Family Law Information Centers: An Evaluation of Three Pilot Programs* for the statutory definition of success for this pilot project.
<http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/FLICrpt.htm>

Summit on the Future of Self-Represented Litigation

of those issues, but as we it is clear that we continue to uncover expand providing resources, we will learn much more about what other services are necessary.

C. Customer Satisfaction For Self-Help Centers Is Extremely High

Customer satisfaction is so high in most family law programs that the most useful method of determining whether a program needs to be improved is to concentrate on those who are merely “satisfied” versus those who are “highly satisfied.” Most programs receive over 90% highly satisfied in many categories. It appears from the evaluation of three programs that provide assistance in civil matters than customer satisfaction in non-family law matters, while still very positive may not be as high. As we have more programs providing a variety of services, it will be helpful to explore this distinction.

In addition, the model self-help pilot program asked a number of customer satisfaction questions designed to identify procedural justice related questions as well as assessments of different types of services. These questions included whether the litigants understood their situation better, were less worried about their situation, less confused about how the court works, and knew what to do next.

D. Self-Help Programs Help The Court Become More Efficient And Effective

When self-represented litigants are better prepared for court, have accurate paperwork and supporting documents, and have a better understanding of the court process, court employees and judicial officers report that the court is less likely to have to continue a case or make a decision based on incomplete information. Less courtroom time is spent responding to requests for help from self-represented litigants, and judicial officers report that having a place to send litigants to get their questions answered helps them maintain their appearance of neutrality on the bench.

A number of courts in California appear to be redeploying court clerk staff to work at self-help centers under the supervision of attorneys to help those persons who need more assistance and allow staff at the filing window to focus on more ministerial duties. Additional research on the cost-efficiency would be helpful to assist in making these staffing decisions.

IV. Key Directions For The Future

A. Applaud Programs that Identify their Own Weaknesses and Work to Correct Them

The funding community needs to support evaluation – and honest self-reflection on strengths and weaknesses of programs. It needs to champion those programs that conduct evaluations. It needs to send the message that reporting on weaknesses will not stop funding – as long as there are sufficient positive aspects of the program. It needs to encourage programs to try to correct weaknesses and evaluate the success of those corrections. We need to champion those programs that use evaluation to improve and highlight their efforts. Sometimes the need for change can reflect professional

Summit on the Future of Self-Represented Litigation

considerations for the legal staff – which cases are not appropriate for self-representation, which cases required individual assistance, which ones are suitable for workshops, and other considerations. It has been important to programs that evaluators are knowledgeable about the content of the services offered, the way the courts operate, and are sensitive to the professional concerns of the legal staff.

B. Share Results Of Evaluation And Work On Making Evaluations More Easily Comparable

We need to make evaluations available for review by other programs to learn from each other. This may be most effectively done on selfhelpsupport.org. It is only by seeing a body of evaluations that we will be able to understand the programs, and how they succeed in different ways. As more evaluations become available, it would be incredibly valuable to develop ways to sort and analyze them – for example, separating out family law from civil programs, comparing results of customer satisfaction, and analyzing surveys of key stakeholders. It will be important to place these analyses within the context of their own jurisdictions and assessing which factors within jurisdictions, including laws and procedures, affect the way the programs operate. This will also help determine the degree to which comparisons can be valid.

C. Measure What The Program Is Trying To Achieve (Outcomes)

It is important that any evaluation measure what the program is actually trying to achieve. We need to work with the programs that are being evaluated to ensure that the staff has a clear vision of what they're trying to achieve and then make sure that the tools that are used matched that proposed outcome. This will, of course, be driven by funders requirements, and other institutional needs – but, if they are to be effective, evaluations must measure what people are trying to achieve. Developing measurable outcomes within a legal context can involve a myriad of complicated factors within the local justice community. Program evaluation will proceed far more smoothly if these considerations are identified from the beginning.

D. Recognize That This Is A Field That Is Changing Rapidly

We need to recognize that the knowledge about how to provide effective services is growing rapidly. Programs are exploring workshops, written instructions, use of technology including forms preparation programs, video and videoconferencing as ways to better convey information. They are developing role-plays to prepare for court, in-court assistance and after-court follow up to improve services. They are exploring mediation, referral protocols, and other tools to try to provide the most effective assistance possible. We need to continue to develop reliable methods to evaluate these efforts.

E. Carefully Describe Services Being Evaluated

We need to be careful about how we describe the services that we're evaluating. For example, workshops might include step-by-step guidance on completing forms, general

Summit on the Future of Self-Represented Litigation

information about a topic, or tips from a judge on how to appear in court. There are different learning objectives and proposed outcomes. We cannot just describe those services as “workshops” and try to compare them – or think that we’re being helpful to others interested in duplicating successful services. It is critical that programs actively participate in evaluations so that essential specificity not be overlooked or inadvertently misrepresented.

F. Expanding Resources For Evaluation

We need to build ties with law schools, universities, and research groups to expand the courts capacity for evaluation of these programs. In addition to law, many different disciplines are needed to fully understand how we can be more effective – economists, statisticians, anthropologists, sociologists, psychologists, and others all have important perspectives on the operation of our court system. We need to work in close partnership to ensure that those conducting research in the courts have the legal background and understanding of the court system to make their research useful.

G. Develop And Promote More Standardized Tools

A number of evaluation tools have been tested in recent years and are themselves in the process of being evaluated for their usefulness and usability. The concept of a “Toolkit” of effective, tested evaluation instruments should be continued and expanded to allow programs to build on the enormous amount of work put into developing these instruments. Additionally, these instruments must be updated and modified as more information about reliability becomes available. We need to make the process of evaluation commonplace, as easy to do as possible, and to allow some basis of comparison between programs to identify various factors that affect the success of programs.

H. Develop An Integrated Research Agenda

Any research agenda should be developed collaboratively among program service providers, lawyers, and researchers. Research within the courts is new, and it is specialized. It requires a participatory approach. As we try to identify what solutions will work most effectively for different types of self-represented litigants with a variety of legal problems, we can expand our knowledge base most rapidly by developing an integrated research agenda where information from a variety of programs can be identified and shared. We need to expand our research beyond evaluation of projects to larger questions about self-represented litigants and the problems they face.

One way to consider the research strategy so that findings have relevance across jurisdictions, is to be guided in general by the Trial Court Performance Standards. Those Standards describe optimum court performance in five key areas that touch vital interests of all court users, and could be used as organizing principles. Research in therapeutic jurisprudence and procedural justice also helps frame these issues in a broader court context.

Summit on the Future of Self-Represented Litigation

V. Key Research Questions

A. *Increased Compliance With Court Orders*

Family law facilitators and other self-help center staff report that they think that the assistance that they provide increases the compliance with court orders. They identify a number of factors that would appear to improve compliance:

- they assist the litigant to provide information to the court that allows the court to create an order that is more reflective of the facts and law in the case;
- they increase the trust and confidence that the litigant has in the court system by listening to them, letting them know the factors that will be considered in a court decision, and assuring them that the system will work for them; and
- they encourage parties to comply with orders.

We have little information about compliance with court orders and the factors that enhance compliance, including such potential variables as assistance in managing expectations before court, changes in courtroom processes that may improve the losing parties attitude to the order, use of forms of negotiation to create a “compliance-friendly” order, courtroom processes designed to obtain information that will make compliance easier to obtain, as well as post-order assistance. This is particularly key in child support and domestic violence cases, but is truly a critical area for the court system as a whole. We have not identified a way to determine compliance from court files in California, and believe that this is an area that merits significant research.

B. *Effective Techniques For Judicial Officers*

Most research has focused on self-help centers and little attention has been provided to how judicial officers interact with self-represented litigants and identify ways that they can function more effectively – getting the information they need to make a decision and to communicate it in a way that is likely to be understood and complied with. In-court observations coupled with case file review and litigant interviews are being piloted now and should be explored to provide judicial officers with information to help them maximize their effectiveness. Proposals for a “court laboratory” that would systematically test court process innovations should be seriously explored.

C. *Extent Of Cost Savings*

The research conducted to date indicates that self-help centers provide great cost savings to the courts – particularly in time saved by court clerks and judicial officers. In general this time is used to minimize backlog and reduce calendar size or allow litigants in court more time before the judge. These outcomes have proven difficult to quantify – particularly as it is difficult to sort out the many factors at play. These factors include budget cuts, changes in procedure, judges with different requirements and changes in the law. Since most programs are designed to encourage previously disenfranchised litigants from participating in the court system, it is likely that there will be impact on the courts from increased numbers of litigants. It would be valuable to continue to explore these

Summit on the Future of Self-Represented Litigation

competing factors and particularly to identify savings to the entire society in diminished law enforcement expenses, social services costs, and other costs in order to obtain additional funding and to encourage court administrators to redeploy resources to self-help centers.

D. Impact Of Systems Changes

Some of the more intangible work of the self-help centers has been to identify problems or issues in the processing of cases involving self-represented litigants and to open up lines of communication with judicial officers, clerks, and other court staff. These changes result in overall benefits to self-represented litigants and court operations extending beyond the self-help centers and their customers. Systems changes such as these deserve closer examination.

E. Extent To Which Self-Help Centers Help Avoid Or Minimize Litigation

One key service that many self-help center staff report providing is helping litigants obtain more reasonable expectations about their legal problem. This includes learning what is likely to happen under the law as well as the requirements of different legal processes. Litigants interviewed after court indicated that they were less likely to be surprised at the result of the hearing. One landlord/tenant program measured changed expectations and found that they had a major impact in providing more accurate information to litigants about reasonable settlements. We also have not been able to explore the extent to which cases are being kept out of court or filings are being reduced as a result of the self-help centers. The education that centers provide may lead litigants to realize that their case does not have merit or that they have other options, such as alternative dispute resolution, to resolve their issues.

F. Extent To Which Self-Help Centers Improve The Quality Of Justice

Interviews with judicial officers regarding the benefits of having comprehensible, complete paperwork and prepared litigants support the belief that self-help centers improve the quality of justice. There has been some review of case files, but has not yet provided clear answers regarding improved paperwork. It becomes very difficult to tease out the various factors at play in effectiveness of court pleadings including different judicial officers, other services in the community including paralegals, and possible differences between persons using self-help assistance and those not receiving assistance.

Happily, it did appear that the litigants assisted in the Spanish self-help center's paperwork was as effective if not more complete than those who did not come to the self-help center who most likely spoke English.⁷ Additional research into the extent to which self-represented litigants are able to achieve appropriate results is important – and methods to determine this information in a less time-consuming method than case file review should be explored.

⁷ California's court files do not indicate the primary language of the litigant unless an interpreter is requested

Summit on the Future of Self-Represented Litigation

G. Optimization Of Integration Of Technology And Its Cost Effectiveness

There are a wide variety of projects using technology to try to expand and enhance services. Most of them have been in “proof of concept” phase where the research indicates that they can work effectively. However, it is unclear at this point how often these solutions are actually used, who uses them and how we can integrate them effectively into our delivery systems. We need to observe projects that have been able to incorporate websites, forms completion programs, videoconferencing and other technologies into their service delivery mechanisms and understand why that’s been successful in order to help maximize the utility of these innovations.

H. Continuing Identification Of Factors That Make Self-Help Unrealistic

As self-help programs evolve, they are coming to provide an increased range of services more effectively. However, there are many situations where most observers would agree that full representation is essential – these often include situations where the litigant faces personal challenges such as illiteracy, limited English proficiency, or inability to comprehend legal procedures. They also include certain types of substantive cases that are inherently complex, and others in which the law may be simple, but the particular factual situation makes effective self-representation impossible. The ability to do effective and fair triage and identify all these cases on a group and individual basis will become critical in providing access to justice for all, and research and evaluation on how to do this is vital to progress.

A key factor to consider is that self-help centers generally serve anyone who needs assistance with presenting his or her case to the court – as long as it is not totally without merit. Given limited resources, most full representation legal providers only take cases that are “winners.”

I. Linguistic And Cross Cultural Dynamics

The evaluations of projects serving non-English speakers in California indicate that self-help assistance can be very effective with many kinds of problems – particularly those that don’t involve court appearances. Self-help center assistance clearly needs to be coupled with interpreter services if the litigant must appear in court. These services generally take longer to provide than those to English-speaking persons due to the challenges of interpretation and need for explanation of legal concepts that may be different than those in the litigant’s native country. It will be important to learn how to most effectively reach out to those underrepresented groups and identify the most efficient and effective ways to provide basic information and assistance to them.