Journal of the National Association of Administrative Law Judiciary

Volume 29 | Issue 1 Article 3

3-15-2009

Self-Represented Litigants and the Access to Justice Revolution in the State Courts: Cross-Pollinating Perspectives Toward a Dialogue for Innovation in the Courts and the Administrative System

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Self-Represented Litigants and the Access to Justice Revolution in the State Courts: Cross-Pollinating Perspectives Toward a Dialogue for Innovation in the Courts and the Administrative Law System[1]

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He writes and speaks broadly on access to justice and ethics issues, including an article on judicial neutrality in self-represented litigant cases in the Georgetown Journal of Legal Ethics. He coordinated the National Judicial Conference on Self-Represented Litigation held at Harvard Law School in November of 2007 and the launching conference of the Court Leadership Package on Self Represented Litigation, held as part of the Court Solutions Conference in the fall of 2008. He is the recipient of the 2008 American Judicature Society Kate Sampson Access to Justice Award. Opinions are personal to the author.

1. This paper is based, in part, on a presentation by the author at the 2008 annual meeting of the National Association of Administrative Law Judges. The Self-Represented Litigation Network is an open and growing grouping of organizations and working groups dedicated to fulfilling the promise of a justice system that works for all, including those who cannot afford lawyers and are therefore forced to go to court on their own. The Network brings together courts, bar, and access-to-justice organizations in support of innovations in services for the self-represented. Participants in the Network include a broad range of organizations, from the Conference of Chief Justices to the State Justice Institute, and from the National Association for Court Management to the Legal Services Corporation. The Network is hosted by the National Center for State Courts. Additional information is available at www.srln.org (organizations information) and www.selfhelpsupport.org. Many of the materials referenced in this paper are available on this 2,000 document resource site. Membership is available to a broad range of access to justice professionals including, of course, administrative law judges and agency staff. The site is maintained by the National Center for State Courts as part of the Center's support of the Self-Represented Litigation Network.

By Richard Zorza, Esq.*

I. INTRODUCTION

In the last ten to fifteen years, state courts have responded to a tidal wave of self-represented litigants[2] with a wide range of innovations that are fundamentally transforming the courts. These innovations impact the whole system and range from new ways of accepting cases into the system to innovative courtroom procedures and management practices, and from a more proactive process of managing the flow of cases to innovations that help make sure that the parties comply with the court's orders. Indeed, the Self-Represented Litigation Network, a national network of groups working for access to justice for the self-represented, has identified a total of forty-two such "Best Practices" based on these innovations.[3]

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2. Statistics on this dramatic increase are far less comprehensive than one would hope. The National Center for State Courts has compiled available data. National Center for State Courts, *Pro Se Statistics Memorandum* (2006), http://www.ncsconline.org/wc/publications/memos/prosestatsmemo.htm. For example, 4.3 million court users in the state of California are self-represented. Judicial Council of California, *Statewide Action Plan for Serving Self-Represented Litigants,* at 2, http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/Full_Report.pdf.

3. Self-Represented Litigation Network, *Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources* (2008), *available at* http://www.selfhelpsupport.org/library/item.223550-2008_edition_of_Best_Practices_in_CourtBased_Programs_for_the_SelfRepresent , [hereafter *Best Practices*]. It should be noted that each of the forty-two best practice listings includes a description of the practice, a listing of desired attributes for deployment of the practice, issues that need exploring for the future, specific examples, and listings of resources and contacts including names and e-mails. In short, it is an indispensable manual for deployment. *See also* RICHARD ZORZA, SPREADING AND ADOPTING BEST PRACTICES FOR COURT-BASED PROGRAMS FOR THE SELF-REPRESENTED (2008), *available at* http://www.selfhelpsupport.org/library/item.223596-Spreading_and_Adopting_Best_Practices_for_CourtBased_Programs_for_the_Self R.

Most importantly, state courts are transforming themselves from being just "case deciding" institutions to institutions with a broader access-to-justice mission. They are moving from a focus on the number of decisions and the quality of those individual decisions in the context of the information placed before them, to a focus on the extent to which, as institutions, they are accessible to those seeking justice. Thus, state courts are focusing more on the quality of decisions *relative to the underlying facts of the case*, rather than just the papers that might in the past have been presented to the forum.[4]

During this time, however, there has been relatively little cross-pollination of ideas between the courts and the administrative law system on issues of access to justice. This paper describes these court-based innovations and is intended to begin discussions of their specific and general implications for the administrative law system, and more importantly, to lay the groundwork for a broader dialog

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4. For example, this view is implicit in a recent speech by Chief Justice John Broderick of the New Hampshire Supreme Court to the gathering of Chairs of Access to Justice Commissions. The Chief Justice said:

> The single biggest challenge confronting the state courts in America . . . is the rising number of self-represented litigants. The self-represented are no longer just the poor, but their ranks now include more members of the middle-class and a rising number of small businesses. The vast majority of the self-represented enter our courthouses without lawyers because they can't afford one, not because they don't want one. It's not their fault and the justice system in America has an obligation to respond.

Speech by Chief Justice John Broderick of New Hampshire Supreme Court (May 9, 2008), *available at* http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/Broderick_ATJ_Speech.pdf. The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) have noted the increase in the self-represented, and the need for the courts to respond. Conference of Chief Justices and Conference of State Court Administrators, *Joint Resolution 31: In Support of a Leadership Role for CCJ [Conference of Chief Justices] and COSCA [Conference of State Court Administrators] in the Development, Implementation and Coordination of Assistance Programs for Self-Represented Litigants (2002)*), *available at* http://ccj.ncsc.dni.us/resol31AsstPgmsSlfLitigants.html. Approximately half of the states now have some form of access to justice commission dedicated to a collaborative approach to solving this problem. American Bar Association, *Guidance on State Access to Justice Commission and Structures* (2009), http://www.abanet.org/legalservices/sclaid/atjresourcecenter/atjmainpage.html.

between the court and administrative agency worlds, with a view to sharing ideas, building a joint perspective, and developing a more comprehensive joint access to a justice agenda.[5]

II. The Relationship Between Court Access Innovation and Administrative Law Innovation

It is, of course, fundamental that the administrative law system developed out of an awareness of the inadequacy of the traditional court system to decide certain kinds of cases and deal with certain kinds of litigants. The insight was that administrative judges could bring a higher substantive level of knowledge to the resolution of highly technical matters, and that less formal procedures could make the process more accessible and less expensive. As a general matter, since the beginning of the 20th century, the creation of new substantive rights has often been accompanied by the creation of administrative processes to adjudicate and enforce those rights (with rights of more limited appeal in the traditional court system).[6] Compared with the courts, these administrative systems are more closely embedded in the larger systems that they regulate, and have a greater obligation to correct the errors of the systems that they regulate.[7] Therefore, while in some ways courts are taking on more of the responsibilities that administrative agencies traditionally

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5. It should also be noted that, in an additional and complimentary approach, the legal aid community, with the support of the American Bar Association, is attempting to solve the most dramatic of the "access to justice" problems by arguing for an expansion of the right to counsel for civil cases dealing with key issues such as food and shelter. American Bar Association, Resolution 112A, http://www.abanet.org/legalservices/sclaid/downloads/06A112A.pdf. While a full discussion of this proposal is beyond the scope of this paper, it should be noted that there is no inconsistency between supporting an increase in legal resources in those cases most in need of such assistance, and advocating for changes in the system that will reduce the number of cases that fall into that category. Indeed, many scholars believe that it is only by reducing the number of cases that need full representation, and thereby reducing the potential cost of such proposals, that the ABA proposals have any realistic chance of adoption.

6. *See* Richard Pierce et al., Administrative Law and Processes 22-23 (2d ed. 1992).

7. This is not to say that courts have no responsibility to correct error. It is rather that courts are not currently structured to deal with errors that are not presented to them.

assume, the differences in mission between the two systems will continue to place an even greater affirmative duty of engagement upon administrative law judges and the administrative law system.[8] In addition, there are still great differences between the two systems in the amount of pressure judges feel to conform.

Review of the court-based innovations should seek not only ideas that can be immediately imported into the administrative adjudication system, but also those ideas that might be extended or more comprehensively applied

Review will also be suggestive of additional potential partners in such innovation. In part because of dedicated congressional funding to the Legal Services Corporation (LSC) for technology for access to justice, there has been extensive cooperation in many states between courts and legal aid programs in developing access programs in the technology area.[9] There should be equivalent cooperation between administrative agencies and legal aid, because the administrative agencies and legal aid serve low-income individuals.[10] Indeed, it should be noted that legal aid is going through a parallel innovation process, re-orienting itself to the needs of the whole community, not

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8. Paris E. Baldacci, *A Full and Fair Hearing: the Role of the ALJ in Assisting the Pro Se Litigant*, 27 J.NAALJ 447, 448 (2007) (comparing the more expansive view of administrative agency engagement with that of the judiciary). While Professor Baldacci notes the "envious" view that analysts of the needs of litigants in the courts take towards the flexibility of administrative agencies, this writer would emphasize that more recent analysis of the ethical rules governing courts has tended to find that the rules are less inhibiting than might at first appear. Rather it is a constrained and traditional view of those rules that inhibits innovation, not the rules themselves, in either their formal wording or the values that underlie them. *See supra* note 31 (providing an analysis with respect to clerks and court staff); *see supra* note 39 (providing an analysis with respect to judges); *see also supra* note 28 (providing an analysis with respect to the delivery of legal representation services).

9. *See Legal Services Corporation and SJI Finalize Third Year Partner Grant,* E-SJI NEWS, Sep. 2008, at 2-3, *available at* http://www.sji.gov/PDF/Newsletters/9-08.pdf (discussing history of $1.9 million of partner grants for technology for access to justice).

10. The website for the LSC Technology Initiative Grants Program (TIG) is http://tig.lsc.gov/. While grants can only be made to current LSC grantees, LSC encourages partnerships with other "access to justice" organizations, and administrative agencies surely would be considered appropriate partners.

just those lucky enough to make it through the client selection filter.[11]

Finally, it must be emphasized by way of invitation to others that a perspective on agency innovations similar to the agency-oriented perspective offered here on court innovations will provide assistance and perspective to the courts, as well as suggest the potential for cooperation between the courts and agencies.

III. COURT INNOVATIONS DESIGNED TO IMPROVE ACCESS TO THE SYSTEM ITSELF

A. Overview of Access to System Innovations

The first area of innovations deals with providing access to the court system itself. The core idea of these innovations is for courts to deploy programs that assist litigants to prepare and file in person or electronically, dependent upon what is needed to present the litigant's case to the forum and to prepare for the hearing. These programs include standardized plain English forms, self-help centers that provide assistance in completing forms and complying with procedural requirements, Internet-based information and document completion software, and staff training in the appropriate role. These innovations increase the efficiency of the court system by reducing wasted time in the courtroom, and reducing returns to court.

Because, traditionally, the ultimate court hearing, itself, has been structured to be led by the litigants, and is not structured to be exploratory (as it often is in the administrative context), it is all the more important in the court context that the laying out of the issues in the filing is as comprehensive as possible. Moreover, given the anxiety often experienced by the self-represented, and the difficulty they have in presenting facts and materials in court, those initial pleadings are often the main way the litigant tells their story to the court.

The "accessing the system" innovations discussed below have a broader impact. They not only provide the forum with a comprehensive picture of the claim, but they also give the litigant

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11. The LSC TIG program has played a major role in this change, because it is focused on the self-represented. *See supra* notes 9 and 10.

himself a fuller understanding of the claim, and of what will be of significance in the hearing, thereby making the hearing more efficient and more comprehensive. They save time in the courtroom and, by giving litigants a greater stake in the process, appear to increase compliance.

B. Innovations in Detail

1. Self-Help Centers

Many courts across the country have established self-help centers. These programs use court staff[12] to provide neutral information of the kind described above to litigants about the underlying processes and procedures, as well as provide appropriate forms. The Self-Represented Litigation Network has identified over 130 such centers, varying from those serving one court and dealing with only one topic, to those providing technology-assisted services statewide on a variety of topics.[13] There are also a wide range of actual services provided, including: drop-in counter information; detailed clinics; assistance completing forms; referrals to brief attorney-client consultation; and mediation and other alternative dispute resolutions options, many of which can assist in preparing the litigant for hearing, even if they do not result in an agreement. The centers represent the hub of services, and are becoming the focal point for needs assessment. An extension of these services is the provision of caseflow management services in which the process of the case is monitored, and additional information is provided to litigants (often by bringing them in to the courthouse) if needed to keep the case moving.[14]

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12. Legal aid or library programs under a contract with the courts operate some centers. *See, e.g.* Maryland Administrative Office of the Courts, *Family Law Self Help Centers* http://www.courts.state.md.us/family/selfhelp.html (listing all family court centers, including those operated by legal aid).

13. National Center for State Courts, *Directory of Court-Based Self-Help Programs* (2006), http://www.ncsconline.org/WC/Publications/ProSe/contents.htm.

14. A variety of best practices for services provided by these centers are laid out by the Self-Represented Litigation Network. *Best Practices*, *supra* note 3, at 1-43. Detailed information on starting and operating such a Center is in a PowerPoint developed for the Leadership Package developed by the Self-Represented Litigation Network. Self-Represented Litigation Network, *Module 2:*

These programs have very high consumer satisfaction levels (often well into the 90s)[15] and are generally agreed to have a significant impact on the overall operations of the court. In part, this is because the directors of the programs become informal ombudsmen, and they are able to deal directly with judges and court administrators on matters of general concern.

2. Forms Innovations

These centers have found the obvious – the self-represented have almost no access to the system unless forms are available for litigants to use to present their cases. Centers have found the need for a comprehensive statewide forms program covering the main types of cases and the most frequent procedural situations in these cases. That is consistent with the experience of administrative agencies, which also often have staff complete the forms for the applicant. It is critical that, whenever possible, the forms be accepted statewide.

Establishing and Operating a Court-Based Self-Help Center (2008), http://www.selfhelpsupport.org/library/item.208584-Power_Points_for_Module_2_Establishing_and_Operating_a_CourtBased_SelfHelp. This PowerPoint presentation is part of a set of fifteen modules, each of which includes leadership notes for the slides, resource materials, suggested activities, Program Profiles and, for the majority of the Modules, video on a DVD obtainable from the National Center for State Courts. The Modules have been designed to foster leadership engagement with the innovations described, and to provide the concrete tools needed to make deployment possible. All fifteen Modules are described in more detail in Self-Represented Litigation Network, *Introduction to the Leadership Modules* (2008), *available at* http://www.selfhelpsupport.org/library/item.208576-Introduction. The argument for the establishment of these centers is also described in Self Represented Litigation Network, *The Case for Self-Help Centers* (2007), *available at* http://www.selfhelpsupport.org/library/item.223574-The_Case_for_SelfHelp_Programs. This is one of a series of six short advocacy explanations of a variety of these innovations. The case flow management innovation is described in *Module 8: Case flow Management for Access* (2008), http://www.selfhelpsupport.org/library/item.208589-Power_Points_for_Module_8_Caseflow_Mangement_for_Access.

15. John M. Greacen, *Self Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know* 15-19, *available at* http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/SRLwhatweknow.pdf.

Any other system is highly expensive to maintain and makes it much harder to deliver services to a broad area.[16]

There have been two important additional sets of innovations building on this foundation in the courts. The first is the movement to so called "plain English" in which the forms are redesigned for comprehensibility and ease of use. The Self-Represented Litigation Network, in cooperation with the LSC, has conducted a training aimed at improving the comprehensibility and forms design skills of court and legal aid staff responsible for forms. There is now a whole body of knowledge on how to make forms easy to use, and on what process a court should go through to achieve this goal. The process of simplifying forms is as much common sense as it is technical, and the skills can be shared with relative ease. While some judges and lawyers may fear that simplification will result in "dumbing down," as a practical matter this fear can be avoided by careful attention to the substance of what needs to be communicated. The set of skills to develop such forms should transfer easily into the administrative agency context.[17]

In addition, using one of a variety of available technologies, the State Justice Institute (SJI) and LSC have cooperated to create and

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16. The argument for such forms is laid out in Self-Represented Litigation Network, *The Case for Court-based Forms and Instructions Programs* (2007), http://www.selfhelpsupport.org/library/item.223570-The_Case_for_CourtBased_Forms_and_Instructions_Programs. An interesting proposal that would make the use of such forms less critical, and would lessen the burden on those appealing agency determinations, would be to place the burden of proof at the hearing on the agency rather than the challenger, Lisa Brodoff, *Lifting Burdens: Proof Social Justice, and Public Assistance Administrative Hearings* 32 N Y. U.. Review of Law and Social Change, 131 174-185 (2008).

17. Self-Represented Litigation Network, *Module 6: Developing and Deploying Plain Language Forms* (2008), http://www.selfhelpsupport.org/library/item.208587-Power_Points_for_Module_6_Developing_and_Deploying_Plain_Language_Forms. This includes a detailed step-by-step guide to developing a forms program, as well as activities designed to assist in developing the skills needed to make forms accessible. Additional general resources on such forms are available online. *See* Self-Represented Litigation Network, http://www.selfhelpsupport.org/library/folder.123113-Forms; *see also Best Practices*, *supra* note 3, at 43-53, which covers forms programs and provides details for what a good form should look like and how a forms program should be established and organized.

support a national capacity for online automated forms. When a court or legal aid program takes their forms and programs them using this capacity, litigants can then go online, answer questions about the case, and obtain completed forms that meet the appropriate court's requirement. These forms are much easier and more efficient for the courts to process, as well as more effective at telling the litigant's complete story to the court. The use of branching logic in the questions saves time for the litigants and focuses them on the relevant issues; thus, it also saves time in the courtroom. Furthermore, this technology could be applied with great ease in the administrative law context.[18]

3. Technology for Access

Additional access technologies include webpages carefully built to provide maximum information about the law, the courts, and the procedural steps litigants need to take to protect their rights. In addition to what might be called "traditional" webpages,[19] courts and legal aid programs have taken the lead in such technologies as document assembly;[20] user-friendly electronic filing;[21] online chat, in which volunteers or staff help users find the information they need; video conferencing,[22] which allows self–help center staff to provide services to remote locations; and online video segments explaining law and procedure. [23] These innovations require significant investment, but then provide services at very low per user marginal cost. They also facilitate access for those who live in rural areas, or for those who for other reasons are unable to come to court easily.[24]

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18. ProBono.Net, *Courts' Use of Document Assembly is On the Rise*, Vol. 6.3 (2008), *available at* http://www.news.probono.net/e_article001221220.cfm?x=b11,0,w.

19. *See Best Practices, supra* note 3, at 4.

20. *See Pro Se Statistics Memorandum, supra* note 2, at 46.

21. *See id.* at 50.

22. *See id.* at 25.

23. *See id.* at 4.

24. Detailed information on these technology programs is in a PowerPoint developed for the Leadership Package developed by the Self-Represented Litigation Network. Self-Represented Litigation Network, *Module 13: Distance Services for the Self-Represented,*

They must, however, be deployed with care and with sufficient human support.[25]

4. Staff Training on Access

One of the greatest impacts on the court experience of the self-represented has come from the adoption of guidelines and rules in many states on what court staff can and cannot do to help litigants. While administrative agency staff are often less reluctant than court staff to provide the information that litigants need, the experiences of courts in clarifying what is appropriate can be of great use in introducing similar improvements into the administrative agency system.

In particular, the emphasis of these guidelines,[26] and the staff training based on them, is to clarify the appropriateness of the "information-providing role" described in more detail below. Staff find these guidelines and programs empowering, since without them they have often been frustrated by their perceived inability to provide information that is so clearly needed by the people in crisis in front of them.

The programs allow information about the options available to a litigant, information about the range of choices available to a court under the law, and information about what forms should be filed. The programs, however, do not allow advice about the choices the litigant should make, predictions about what a judge might actually do, and they cannot tell them the specifics of what to say in the forms.

As courts have gained experience with these programs, they have found that a greater level of fact-based engagement with the litigants

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http://www.selfhelpsupport.org/library/item.208593-Power_Points_for_Module_13_Distance_Services_for_the_Self_Represented. *See also*, Katherine Altenader *et al.*, Summit on the Future of Self-Representation, *The Role of Technology in the Access Solution* (2005), *available at* http://www.selfhelpsupport.org/library/item.77129-The_Role_of_Technology_in_the_Access_Solution.

25. ATJ Web, *Technology Principles*, http://atjweb.org/principles (last visited Feb. 6, 2009) (detailing a set of guidelines for how technology can appropriately be deployed to enhance access). The Washington State Supreme Court put these principles into law in October 2004. ATJ Web, *Supreme Court Order*, Access to Justice, http://atjweb.org/court-order/online.

26. *See Best Practices*, *supra* note 3, at 23.

is appropriate without putting the court on the side of the litigant. It is appropriate, for example, for staff to pull a file, explain the procedural situation, and discuss what is needed to get the case moving.[27]

5. Discrete Task Representation (Unbundling)

An important innovation that can improve the entire process is the establishment of Discrete Task Representation, also known as "unbundling" programs. In "unbundling programs" the litigant and the lawyer agree that the lawyer will handle a part of the case, such as perhaps the hearing or all tasks related to a particular issue, such as child custody, while the litigant will self-represent on the remaining matters.

Such programs sometimes are established by the private bar, and at other times are set up by the courts to facilitate pro bono participation. Some state courts have played a major role by setting up rules to authorize the practice,[28] by regulating such matters as making sure that the attorney is not forced by the judge to stay in the case after the end of the task for which attorney participation has been agreed, and by dealing with issues such as service and communication.[29]

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27. A "train the trainer" PowerPoint Module was developed as part of the Court Leadership Package. Self-Represented Litigation Network, *Module 5: Ethical Guidelines for Clerks and Court Staff: Legal Information versus Legal Advice* (2008), http://www.selfhelpsupport.org/library/item.208596-Power_Points_for_Module_5_Staff_Ethics. This includes substantial detail on the approaches, and examples of guidelines that have been successfully deployed.

28. The ABA Rules of Professional Conduct were modified as part of the Ethics 2000 reforms to make explicit that such representation is appropriate, provided that there is informed consent. *See* Model Rules of Prof'l Conduct R. 1.2(c), *available at* http://www.abanet.org/cpr/mrpc/rule_1_2.html. *See also* Model Rules of Prof'l Conduct R. 6.5 (2000), *available at* http://www.abanet.org/cpr/mrpc/rule_6_5.html (liberalizing conflict checking rules in certain such non-profit contexts).

29. A "train the trainer" PowerPoint Module was developed as part of the Court Leadership Package. Self-Represented Litigation Network, *Module 11: Discrete Task Representation* (2008), http://www.selfhelpsupport.org/library/item.208597-Power_Points_for_Module_11_Discrete_Representation. *See Best Practices, supra* note 3, at 64 and 76 (providing best practices for such training programs are in

C. The Neutrality Issue

In establishing all these programs, the core issue has been how to set the programs up as neutral, that is, how to provide concrete and engaged assistance without violating the court's core neutrality value or being perceived as doing so. For years the governing intellectual paradigm was outcome driven – if the court did anything that impacted the outcome, then it was violating neutrality. Of course such a test proves too much. If the court accepts a document, that document might impact the case, but accepting the document does not violate court neutrality. On the contrary, to refuse to accept the document would do so. Rather the test is whether the activity, *described and followed at a general level*, puts the court, or is perceived as putting the court, on one side or another.

Obviously, accepting papers for filing passes this test. In addition, providing information to all litigants who seek information about appropriate options for forms to file or about the current procedural context of their case also passes the test.

The tests are neutrality and universality. The question to ask is whether the policy or innovation can be described in neutral and general terms. The test does *not* hinge on the impact of the policy – it is obvious that a policy of providing information to all helps those who do not have lawyers. Such a policy is fully neutral, although it has a disparate impact in ensuring access to justice for those with low incomes. A policy of assisting only tenants (or landlords, or domestic violence victims), however, would be non-neutral in both its articulation and its impact.[30]

Practice 23, Limited Scope Representation, and *Practice 28, Rules or Clarifications in Support of Limited Scope Representation*); *see also* SelfHelpSupport.org, http://www.selfhelpsupport.org/library/folder.39778-Unbundling_Limited_Scope_Representation. (Note that at this point the name "discrete task representation," is often preferred to "limited scope," as appearing less restrictive).

30. In the view of this writer, the test is not the *generality* of the information, although it is absolutely correct that accurate and general information will almost always be neutral. Information about the current procedural situation of a case, and even how to move it forward, may be highly specific and individualized, but giving out that information is not non-neutral at all, provided that equivalent information is available to all.

At the individual level, the point is that the assistance given to a litigant cannot prejudice the opposing party. The giving of inside information or advice about strategic direction, or the facilitation of an ex parte communication are obviously prejudicial, and are thus forbidden, but these are all very different from the giving of routine information, the provision of a form, or even informational assistance in filling it in. [31]

These same tests are likely to prove helpful to administrative adjudication systems as they move to assist the self-represented.

D. The Implications and Lessons of These Programs for Administrative Agencies

These innovations, and their broad successes, offer a number of important lessons for administrative agency reform.

1. There is No Inconsistency Between the Neutrality of a Forum and the Providing of Detailed and Engaged Informational Assistance to the Parties.

Thus, provided the engagement by the agency or its staff does not result in prejudicial harm to the opposing litigant (i.e., the communication to one side but not the other of a particular administrative judge's way of seeing the world) the agency staff can provide detailed, fact-specific information about the law, the procedure, the options, and how information might be presented to a decision maker.

This information can be provided over the web, in agency forms, in public one-on-one sessions or group clinics, or in video. It can and should be the subject of detailed guidelines, rules, and training for agency staff. Furthermore, it can be provided by dedicated staff in a special program, or day-to-day in the routine processing of a case,

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31. A somewhat different expression of the neutrality issue is more formally laid out in John M. Greacen, *Legal Information vs. Legal Advice—Developments During the Last Five Years*, 84 JUDICATURE 198 (Jan.-Feb. 2001); *see also* John M. Greacen, *No Legal Advice from Court Personnel, What Does That Mean,* JUDGES JOURNAL (Winter 1995). *See Pro Se Statistics Memorandum, supra* note 2, at 93-94 (providing best practices for such training programs).

provided, of course, that those who give the information can do so accurately.

2. Technology Can Provide Very Significant Assistance in Making this Information Available, but it Should Always be Deployed with Sensitivity to the Human Needs of Those Involved.

Technology is highly cost effective when it works. After significant upfront investment, the marginal costs of getting another form completed, another litigant informed of the procedural steps he should take, or given information on how to enforce a decision are almost zero.

All too often the technology is deployed without sensitivity to human needs. Often adjudicatory systems forget that users come on a one-time basis. People make the effort to learn how to use an ATM or an iPhone because they will use it and repeatedly gain from its capacities. They do not plan to get divorced again, complain about a cab driver again, or file unemployment again in the near future.

Agencies, as well as courts, have to deploy human support, and they have to train their staff to encourage the use of the technology. This is crucial, not just to get the litigant away from the desk, but to help the user become self-reliant.[32]

3. Self-Represented Litigation Cases Require Very Different Management Techniques in Order to Keep Cases Moving

Compared to courts, administrative agencies have taken greater responsibility in making sure that cases keep moving. They take responsibility for scheduling, and require little of the parties to keep the case moving to decision. (They do not, as many courts do, require the parties to submit proposed orders and judgments.)

As courts have moved closer to agency practice in managing scheduling, they have also learned to engage in a proactive assessment of whether litigants have provided the information needed to decide the case, and courts have developed ways of providing detailed assistance to litigants in providing that information. They

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32. *See* SelfHelpSupport.org, http://www.selfhelpsupport.org/library/folder.32175-Technology (providing additional resources dealing with deployment of technology in this context).

often bring in outside resources such as legal aid, pro bono attorneys, and sometimes, social service agencies to help the process.

While what is needed will vary with the kind of case, and will vary based on the party's situation, it is the agency that must put itself in the party's place and identify what needs to be done to keep the case moving.[33]

4. Managers and Innovators Must Learn to Look at the Whole System from the Point of the Litigant, Not Just Making it Easy for the Agency's Staff.

Court innovators recommend a "walk through" in which a non-expert literally walks through the steps and stages of a case and reports to those responsible what they experience. Just setting up this exercise sensitizes forum management to the realities that users face in terms of signage; forms; locations; expectations; and hidden barriers of language, skill, and knowledge.[34]

A similar process would work with any institution with which the general public has to deal.

5. Innovations at the Front End of the System Have a Major Impact Throughout the Whole Process.

Innovators are often asked where in the system energy should be focused. While the answer often depends more on the politics of the organization and its potential partners, as a general matter, we urge that getting the front end of the system right is often most effective in sensitizing all those involved to broader changes that need to be made. Thereby, increasing pressure for change.[35]

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33. *See* SelfHelpSupport.org, Module 8: Caseflow Management for Access, http://www.selfhelpsupport.org/library/item.208589-Power_Points_for_Module_8_Caseflow_Management_for_Access.

34. SelfHelpSupport.org, Tour Guide: A Self-Guided Tour of Your Courthouse from the Perspective of a Self-Represented Litigant, http://www.selfhelpsupport.org/library/item.202475-Court_Self_Assessment_Materials_Tour_Guide (providing materials to assist in setting up a walk through).

35. *See generally* Richard Zorza, *The Self-Help Friendly Court* (2002) http://www.zorza.net/Res_ProSe_SelfHelpCtPub.pdf.

IV. HEARING RELATED INNOVATIONS

A. Overview of Hearing Related Innovation Issues and Research

The second major area of innovation concerns the processes of the courtroom itself. As a result of research conducted into courtrooms with self-represented litigants, we now have a much deeper understanding of what hearing processes are most effective in helping litigants get their story out, and in making sure that judges get the information that they need to make the best decisions. The research supports and is consistent with modifications to the ABA Model Code of Judicial Conduct.[36] Best practices that reflect these insights can improve the efficiency of the courtroom and save time for litigants and judges, and even for lawyers who are waiting for their cases to be called. It may well be that many of the practices discussed in this section are already being followed by many administrative law judges, who are faced with the same practical need to keep cases moving. In addition, trial court judges have much to learn in this area from their administrative siblings.[37]

The problem, as perceived by generations of state court judges and administrative law judges, is that judges are simultaneously meant to make the best decision possible, and to stay aloof and above the fray. While generally administrative law judges feel themselves able – and indeed often obliged – to ask questions, state court judges

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36. In 2007, the ABA changed the Model Code of Judicial Conduct to add the following language to Comment 4 to (renumbered) Rule 2.2, Impartiality and Fairness: "It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard." ABA Model Code of Judicial Conduct, Rule 2.2 Impartiality and Fairness (2007), *available at* http://www.abanet.org/judicialethics/approved_MCJC.html; *see also* American Bar Association CPR Policy Implementation Committee, Comparison of ABA Model Judicial Code and State Variations, http://www.abanet.org/cpr/code/2_2.pdf (providing state adoption status under Rule 2.2).

37. *See, e.g.,* Morrel Mullins, *Manual for Administrative Law Judges,* 78 (2001), http://www.ualr.edu/malj/malj.pdf (quoting Cruz v. Schweiker, 645 F.2d. 812, 813-14 (9th Cir. 1981)) ("When a [Social Security] claimant is not represented by counsel, the administrative law judge has an important duty 'to scrupulously and conscientiously probe into, inquire of, and explore for all relevant facts' and he must be 'especially diligent in ensuring that favorable as well as unfavorable facts and circumstances are elicited'" (citations to omitted)).

often take the perceived prohibition on engagement so literally that they feel they can not even ask questions. One state court judge recently explained her fear to the author, explaining that asking any question might be considered "advocacy."

Administrative law judges, while more flexible, still feel acutely constrained both as individuals and as part of a quasi-judicial collegium.[38] In addition, they are not generally the beneficiaries of research or training on how to deal with this perceived tension. The good news for both state and administrative law judges is that the perceived tension is in fact artificial.

Judges do not face the choice between being aloof and neutral, on the one hand, or engaged and non-neutral on the other. On the contrary, the aloof to engaged, and the neutral to non-neutral dimensions are different. Some judges are aloof and neutral, but others are aloof and non-neutral (aloofness does not guarantee neutrality, merely the appearance of neutrality). The concept of "engaged neutrality" is that some judges are both engaged and neutral – this is ideal from the "access to justice" point of view.[39]

The task of the research was to identify the techniques that judges of all kinds could use to be simultaneously engaged and neutral, so that they could find the facts they needed, while being truly free from bias or taint. Almost equally important, they also had to find the ways of conducting themselves in the hearing so that they appear to be neutral.

The research, based on extensive preliminary discussions among judges and experts, was conducted with funding from the State Justice Institute and the California and Maryland Administrative Offices of the Courts in four varied courts around the country. (An important caveat: the courts, the individual judges, and the litigants

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38. *See* Baldacci, *supra*, note 8 at 458 (providing a collection of authorities discussing and governing neutrality in the administrative hearing context).

39. *See generally,* Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality when Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications*, 17 GEO. J. LEGAL ETHICS 423 (2004) (hereinafter *Disconnect*). *See also*, Cynthia Gray, *Reaching out or Overreaching: Judicial Ethics and Self-Represented Litigants,* 27 J.NAALJ 97 (2007) [hereinafter *Reaching Out*]; Rebecca Albrecht *et al.*, *Judicial Techniques for Cases Involving Self-Represented Litigants*, 42 JUDGES 16 n.1 (Winter 2003) [hereinafter *Judicial Techniques*].

all agreed to participate in the research, and the courts and judges had worked hard to be friendly to the self-represented.)

Fifteen family law cases, all with self-represented litigants on both sides, were videotaped with informed consent, and both the litigants and the judges debriefed what they were trying to say, and what they perceived the others to be saying. These debriefing sessions were themselves videotaped and then analyzed. The conclusion, at least for this population, showed high levels of communication.[40]

More important than this general conclusion, however, was the list of techniques that seemed most effective in obtaining this encouraging result. Many of these are probably, as a practical matter, already used in a less systematic way by many administrative law judges, particularly those hearing cases involving high numbers of self-represented litigants.[41] Many of these techniques resonate with

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40. Self Help Support, *Effectiveness of Courtroom Communication in Hearings Involving Two Self-Represented Litigants: An Exploratory Study* (2008), http://www.selfhelpsupport.org/library/item.223587-Effectiveness_of_Courtroom_Communication_in_Hearings_Involving_Two_SelfRepr [hereinafter *Judicial Communication Report*].

41. *Judicial Communication Report, supra* note 40, at 103-08 (providing these best practices). They are also described in the Curricula developed by the Self Represented Litigation Network. SelfHelpSupport.org, *Introductory Curriculum on Access to Justice for the Self-Represented,* http://www.selfhelpsupport.org/library/item.196177-Introductory_Curriculum_on_Access_to_Justice_for_the_Self_Represented; *see also,* SelfHelpSupport.org, *Curriculum One: Access to Justice in the Courtroom for the Self Represented*, http://www.selfhelpsupport.org/library/item.167142-Curriculum_One_Access_to_Justice_in_the_Courtroom_for_the_Self_Represented (contributing a more comprehensive version which includes 191 power point slides). For accompanying activity and resources, *see* SelfHelpSupport.org, http://www.selfhelpsupport.org/library/folder.169512-CURRICULUM_RESOURCE_MATERIALS. Also available, but only for judicial educational purposes, from the National Center for State Courts are two DVDs on this topic. One is a narrated video that describes the research and findings, including limited courtroom examples. SelfHelpSupport.org, http://www.selfhelpsupport.org/library/item.202483-Judicial_Communication_Materials_User_Guide_to_the_DVD_improving_Courtroom [hereinafter *DVD Guide*]. The other DVD is a set of 80 video clip examples of these and related best practices, designed for use with the Curricula. SelfHelpSupport.org, *Best Practices in Self-Represented Litigation in the Courtroom: Videos for the Courtroom Curriculum*,

those suggested in prior writings.[42] These techniques, however, have the benefit of being supported by research.

B. Identified Hearing Best Practices

1. Framing Subject Matter of Hearing—Setting the Stage

The researchers found that the most effective judges had developed ways of routinely framing the subject matter of the hearing. Usually they very briefly summarized prior proceedings, the issues of the present day's proceeding, and gave the litigants the opportunity to correct the judge (as is sometimes necessary). Following this process reassures the litigants that the matters they care about will be addressed, and helps them focus their presentations.

2. Explaining Process That Will Be Followed

Equally important is a summary of the process that is to be followed. Often this includes an explanation of the order of issues, whether the judge will lead off the process, and the steps included in the hearing.

Judges have found that using this opportunity to make clear that they will be asking questions and perhaps probing for additional details is reassuring to litigants both at this moment and when the questions are in fact asked. The prior warning makes clear that the questioning does not in any way indicate any predisposition on the part of the judge. On the contrary, the questions are asked because the judge needs to know the answers to make a comprehensive and accurate decision.

3.Eliciting Needed Information with Varied Techniques

Utilizing varied techniques to elicit information is the key to the whole hearing. While every judge develops their own personal style,

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http://www.selfhelpsupport.org/library/item.196188-Best_Practices_in_SelfRepresented_Litigation_in_the_Courtroom_Videos_for_th.

42. *Reaching Out*, *supra* note 39 at 111-59; *Judicial Techniques*, *supra* note 39, at 45-48; Baldacci, *supra* note 8, at 24-27.

and uses varied sub-techniques in different combinations, all of the following techniques have all been found helpful in getting the needed information out on the table:

• Allowing litigants to make initial presentations to the court if desired. Whether this is useful depends on the litigant and the issue.

• Breaking the hearing into topics and making these topics clear. This division often means that time is used much more effectively.

• Asking questions. This is standard behavior in the administrative context, and is only now becoming accepted in the state courts. Questions should be asked in such a way so as to make clear that the purpose is to get information, rather than justify a prior decision.

• Probing for detail. Often to obtain the necessary information, a person needs more than one question. When litigants are warned that this may happen, they do not draw inferences of hostility or support, only of interest. Much of their reaction can depend on wording and tone of the questions. This may include looking for weight and admissibility, if thee issues are applicable. For state court judges bound by the rules of hearsay and the requirements of foundation for evidence, issues of weight and admissibility are often troubling. Probing for detail, however, provides the decision maker with enough information to decide what weight to give testimony, without a hyper technical attention to issues that are only triggered by objection.

• Moving back and forth between the parties. This is obviously critical in making sure all sides are heard. Moving back and forth regularly with the self-represented helps maintain focus on each issue.

• Maintaining control of the courtroom. If one side is dominating, then it is hard for the judge to get the facts. A combination of firmness and openness seems to be most effective, but every judge has to find their own persona.

• Giving litigants an opportunity to be heard, while constraining the scope and length of their presentations. Again, explaining in advance any narrowing to litigants is usually effective. Litigants generally need to be refocused, rather than cut off.

• Giving litigants a last opportunity to add information before announcing a decision. This is highly effective at giving a sense of openness and signals the end of the focus on the particular issue.

4. Involving the Litigants in the Decision Making

This, of course, depends on the kind of issue, and particularly whether the decision is one that will impact the parties in an ongoing way. Some judges have found it useful to directly inform the litigants about the range of possible outcomes, and their practicality and impact on the parties. Where appropriate this can have a significant impact on the long-term viability of the decision.

5. Articulating the Decision or Order from the Bench

While not always appropriate, the research confirmed that litigants greatly appreciate an immediate decision or order. Immediacy provides closure, makes it easier for any time-sensitive corrections to be made, and allows for any ambiguities or uncertainties to be resolved. This finding is likely inconsistent with much of the practice of administrative agencies, which in many areas has traditionally been to issue written decisions, sent in the mail.

6. Explaining and Summarizing Decisions

Equally important is explaining the decision, both as to its detail and its rationale. Litigants who understand the reasoning behind a decision are more likely to comply. Among agencies, as among courts, there is a need for greater focus on the comprehensibility and cultural appropriateness of the wording of decisions.

7. Identifying and Resolving Barriers to Compliance

Similarly, giving an opportunity to litigants to inform the decision maker of any barriers to reasonable compliance with the order is a

simple practical common sense way of dealing with such barriers before they create problems.

8. Providing a Written Order or Decision

This seems obvious, and is usually done in the administrative context, although not necessarily immediately.

9. Preparing Parties for Next Steps and Outcomes

This is one that surprised the researchers. They found that effective judges were taking care to prepare the litigants for what was coming down the line, not only in terms of future hearings and orders, but also in terms of potential long term directions and ultimate resolutions. They found that providing information about such steps helped the litigants adjust their expectations and their lives. In addition, it helped focus on the information that might be needed in determining these future steps.

10. Using Non-Verbal "Open" Behaviors

Body language is a powerful tool in managing the courtroom. Waving a finger back and forth to control who is speaking, nodding to show attention, or using hands to signal someone to wait are all effective uses of non-verbal communication. Moreover, careful attention to body language can communicate to litigants that the judge is paying full attention.[43]

43. *See DVD Guide*, note 41 (providing visual examples of these non-verbal behaviors, which are also explained and detailed in the Curricula listed in the note).

C. The General Implications and Lessons of this Research and this Development of Best Practices for Similar Challenges Facing Administrative Agencies

1.The Need for Research

The research in this area has had a huge impact on perceptions of the judicial role. Very serious consideration should be given to conducting equivalent research for administrative hearings.[44]

2. The Need for Best Practices

With or without such research – but preferably with – an administrative law judges organization should issue Best Practices in this area. If the resources are not available to conduct the research, then the best practices could be developed based on discussions among the most highly respected administrative law judges. It is hard to overestimate the impact on judicial culture of the integration of research and best practices. In November 2007 over thirty states sent teams to a conference at Harvard Law School to launch a curriculum that was based on the research and best practices. The attendees, organized in state teams that included five chief justices, learned not only about the best practices, but also learned about how to be educational leaders in the use of the curriculum and the materials. It is estimated that approximately 5,000 judges are being trained using these or other derived materials.[45]

3. The Utility of the Specific Suggestions

Similarly, in the absence of materials developed specifically for the administrative hearing context, those developed for state courts

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44. *See Judicial Communication Report, supra* note 40, at 18-33 (laying out how the research was organized).

45. *See* SelfHelpSupport.org, http://www.selfhelpsupport.org/library/folder.165143-Harvard_Judicial_Leadership_Conference_Nov_13_2007 (providing materials from this conference). Included are PowerPoint presentations, resource materials, activity materials, a customizable Bench Guide and descriptions of the best practice video materials. *See supra* note 41.

can be used for training. The materials developed include detailed curricula, as well as two DVDs, one of which was linked to the curriculum and contained about 80 illustrative segments. One of the other DVDs is a report on the research and includes examples of the recommended practices.

4. The Appropriateness of "Engaged Neutrality" for Judges

As described above, the general concept behind the research and the recommendations is the concept of "engaged neutrality." As previously explained, this concept may be defined as the idea that a judge can be fully neutral while fully engaged. This important idea carries over to the administrative context with full force.[46]

5.Towards a Synthesis of Approach

This concept of "engaged neutrality" may help transcend the apparent tension between the *status quo* of relative disengagement and the proposal for an inquisitorial approach recommended by some commentators.[47] These techniques, and the philosophy behind them, make it possible for judges trained in the adversarial system to become comfortable with an engaged and questioning style designed to get the facts out in the open, without asking judges to adopt an unfamiliar model whose very name can evoke discomfort. Rather than asking judges to become "inquisitors," this approach asks them to become engaged with the litigants. Furthermore, it offers concrete ways to do so without violating the traditional and central norms of judicial neutrality. The growing broad acceptance of this approach is testimony to its effectiveness.

D. Non-Judicial Courtroom Innovations

A second series of courtroom innovations focuses on staffing the courtroom to increase efficiency and access. Some courts have put attorneys in the courtroom to assist judges in preparing for the

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46. Zorza, *supra* note 39.

47. *See, e.g.,* Baldacci, *supra* note 8, at 482-493; *see also* Jona Goldschmidt, *The Pro Se Litigant's Struggle for Access to Justice*, 40 FAM. CT. REV. 36, 45-51 (2002).

hearing, and to provide litigants with the information that they need to move the cases forward. Court staff can also help with the preparation and issuance of orders and decisions, in completing of forms, and by ensuring that the litigants know what they have to do next.[48]

V. The Beginnings of Innovations to Facilitate Compliance and Enforcement

A brief note should be made of the beginnings of similar innovations designed to enhance compliance. These notes should include: provisions of detailed assistance information to those who must comply with and those who seek enforcement of orders; changes in the issuance of orders to make sure that the parties understand and accept what is expected of them (particularly for those with limited English proficiency); and the consequences of noncompliance. The long-term direction is to have the court take greater responsibility for ensuring compliance, rather than leaving it for the litigants.[49]

VI. Long Term and Short Term Implications for the Administrative Adjudicatory System

Taken as a whole, these innovations have a number of long term and short-term potential implications for the administrative adjudicatory system.

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48. *See* SelfHelpSupport.org, http://www.selfhelpsupport.org/library/item.208591-Power_Points_for_Module_10_Courtroom_Staffing_and_Services_for_Access (providing a leadership module dealing with this approach).

49. *See* SelfHelpSupport.org, http://www.selfhelpsupport.org/library/item.208595-Power_Points_for_Module_15_Access_Innovations_to_Increase_Compliance (contributing an approach and examples laid out in Module 15).

A. Use These and Similar Innovations to Ease Entryway into the System

Those responsible for the administrative hearing system should consider stepping back and reassessing the front end of the system, just as court leaders currently do. In addition to considering adopting and advancing the innovations described above, those responsible should consider how software, the web, and differently trained staff might make it much easier for people to enter the system, and to present their claims.

Part of this process will be a rethinking of the relationship between the software that is used by agency staff to decide and record cases, and the software used by those who are unhappy with the agency's decisions. Unlike the state court situation, the fact that the party challenging an agency decision can already file their challenge online should make it easier for innovators to create a system that will help the party focus their challenge or appeal.

In simple terms, when a party seeks to challenge the agency's findings or rulings, they should be given the option of using an interactive menu that makes it easy to focus on the particular element to be challenged and the options and potential reasons to challenge it. The structured document that is created by this software will allow judges to easily focus on the disputed issues. Thus, the software will make it easier for judges to structure a productive hearing.

The fact that agencies have traditionally assisted litigants with the articulation of their initial claim (often by oral interview) should mean that the culture of the organization will be more open to more intensive forms of assistance, including greater staff-based assistance and information. Further research into this process may assist courts in gaining perspective on potential changes in the court intake process.

B. Use an Approach Similar to that Described in this Paper to Change the Processes of the Hearing Itself.

There is urgent need for research into how effective administrative law judges achieve their results, and how the parties feel about the techniques used by administrative judges.

The author recommends focus group discussions with administrative judges, video taping hearings and debriefings, and an

attempt to identify and obtain consensus on best practices. Additionally, he suggests that there is likely broader agreement among judges than might at first appear to be the case. The judicial best practices already developed and described above may provide a model upon which comment can be sought. Such a process is also likely to lead to generalizations that are of use in the next generation of court hearing innovation.

C. Develop Systems for Ongoing Self-Assessment and Modification.

Those responsible for the system should design a "walk through" or other ways to assess the way the system is effectively used by its users. They should also develop more objective data on potential outcomes, and on the relationship between the functioning of the system and those outcomes. Furthermore, they should consider using focus groups and user satisfaction surveys to obtain ideas on system improvement.

Unless the system develops a "feedback loop" for self-assessment and modification, it will fail to function appropriately.[50] Both the courts and the agencies would greatly benefit from this "looped" process for enhanced self-assessment.

D. Build Better Links Between Managers and Innovators in the Two Systems

The administrative law and state court systems function in ways that are becoming more and more similar. Therefore, the two systems have much to learn from each other. Both systems need to find ways to quickly adapt and absorb the lessons each other's systems have learned. What might once have been aloofness on the part of the courts is evaporating. The courts now realize how much

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50. *See* SelfHelpSupport.org, http://www.selfhelpsupport.org/library/folder.202448-SJI_Network_Grant_Materials (self-assessment materials); *see also* SelfHelpSupport.org, Represented Litigation Network, *Guide To Self-Assessment of Court Programs*, http://www.selfhelpsupport.org/library/item.202471-Court_Self_Assessment_Materials_Guide_to_Self_Assessment_of_Court_Programs.

they can learn from the many decades of experience the administrative law system has had with self-represented litigants.

It is hoped that this paper will assist in the fostering of such a dialog. As both courts and agencies increasingly adopt the view that they are primarily "access to justice" institutions, such a dialog will become both easier and more fruitful.

E. Seek Cooperation with "Access to Justice" Partners

Many of the innovations described here have been deployed because of close collaboration between the courts, nonprofits, and bar partners. Administrative agencies should seek similar cooperation with the aforementioned players. Such cooperation is particularly helpful in the technology area, due to its high upfront cost, but it can also be helpful in educational programs, outreach programs, staff training, research, and system simplification analysis.

VII. CONCLUSION

In a time of increased demand, economic crisis, and scarcer resources, cooperation between the courts and the agencies can be transformative in building access to justice through both the court and administrative agency systems.[51]

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51. Frank Broccolina and Richard Zorza, *Ensuring Access to Justice in Tough Times,* 92 JUDICATURE 124 (Nov.–Dec. 2008), *available at* http://www.selfhelpsupport.org/library/item.224854-Ensuring_Access_to_Justice_in_Tough_Economic_Times (discussing the impact of the then evolving economic crisis upon court access to justice innovation, and the need to remain focused on improving the system notwithstanding resource pressures. The paper identifies a number of innovations that are relatively low cost, yet can have a very significant impact on access).