En$uring access to ju$tice in tough economic times

by FRANK BROCCOLINA and RICHARD ZORZA

Courts are facing perhaps their greatest challenge in a generation or more. As we enter what will be at best a time of great economic uncertainly, we will experience great pressure on budgets at the very time that demand for court services will increase, and in which lack of financial resources will further increase the percentage of those who come to court without lawyers. Unless appropriately addressed, not only will this result in greater backlogs, more crowded calendars, and a potential loss of public trust and confidence, but it will put court staff and judges under great stress, leading to a vicious spiral further reducing the effectiveness and efficiency of the courts.

Seven specific suggestions for the beleaguered but visionary court leader

Faced with these realities, court leaders really have no alternative. Leaders at the state, local, and national level have to find zero or very low cost innovations that will break this vicious spiral, and make our courts more efficient, more effective, more accessible, and perhaps most importantly on a day to day basis, more enjoyable and rewarding places to work and judge.

The good news is that access to justice innovators have developed and tested a number of innovative approaches that achieve all these goals, while requiring relatively small or easily found upfront investment and minor ongoing expenditures, at least relative to most transformative new programs. These innovations include training for staff on how they can be helpful to litigants, educational programs for judges on managing the challenges of a courtroom filled with the self-represented, partnering with law libraries and universities so that they speed court processes by assisting litigants to prepare, and creating, through the establishment of attorney discrete task representation programs, a new, financially rewarding role for attorneys that also helps the court run more smoothly.

Many of these innovations, such as educational programs and use of law libraries, can be put in place by taking advantage of existing staff, structures, and programs; others make extensive use of bar and volunteer participation to minimize both upfront and ongoing costs. (In some cases, the programs will be most effective with dedicated staff, but can be launched, and can demonstrate impact, with volunteers, or as part of existing initiatives such as access to justice groups.) What is most exciting about these innovations is that they all help with every aspect of the court, speeding cases, making the work of staff easier, giving judges more of a sense that they make a difference, convincing the public that the court is accessible, and reconnecting attorneys to a financially viable role in the courthouse.

While much of the initial work of developing, testing, improving, and assessing these evaluations focused first on self-represented litigants, one of the most encouraging and fascinating findings has been the extent to which, when deployed, they not only work for all litigants, including the represented, but also make it easier for people to obtain lawyers, for lawyers to obtain clients, and for staff and judges to enjoy their work in all kinds of cases. In other words, the impact is on the whole system.

Because all the suggestions described below have been tested and have succeeded in the real world of the courts, they are supported by already available models, resources, general cost analyses, and even recommendations on the best steps to implementation.

Low-cost innovations

The Self-Represented Litigation Network website, www.selfhelpsupport.org, has created a special library of resources to go with this article. The link is http://www.selfhelpsupport.org/library/folder.223114-Low_Cost_Innovations. This folder is dedicated to the seven described innovations in assisting the self represented public that can be implemented at nominal cost. It will be kept up to date.

Selfhelpsupport.org is a free membership site, open to court and other access to justice practitioners. People who access the above link will be prompted for a username and password. If they have not previously registered and do not have this login information, they will have the opportunity to fill out a membership application. Membership applications are reviewed for authorization daily.

One: Staff and clerk training

Generations of court clerks and staff have been trained to turn away requests for assistance with the mantra that "Clerks cannot provide legal advice." The result is that litigants become irritated or angry, and often have no choice but to file incomplete or inaccurate papers. Clerks can hardly feel good about the interaction, but worst of all is that judges end up being forced to try to decide cases based on confused and incomplete paperwork after hearing from litigants who have no idea what the process is about.

The experience of approximately one third of the states, from Florida to Utah and from Missouri to Idaho, has been that establishing clear, principled guidelines and training on how clerks and staff can provide appropriate information while maintaining the neutrality of the court has a dramatic impact on the operation of the courts, reducing wasted time and litigant and staff frustration.

A California JusticeCorps volunteer assists a litigant. JusticeCorps, first launched in Los Angeles, uses college students as a helping presence in the courts.

JUDICIAL COUNCIL OF CALIFORNIA — ADMINISTRATIVE OFFICE OF THE COURTS

The guidelines and training list specific kinds of questions that staff can answer, such as what procedures and documents are appropriate for particular situations, as well as what questions are not appropriate for staff to answer, such as what choices a litigant should make, or what they should say in the forms. Trainings include opportunities for discussion and role play. These receive highly positive responses from trainees.

Such guidelines and trainings require almost no additional investment. Well developed national models can be reviewed and modified for state and local use. If travel costs are an issue, train the trainer materials are available at www.selfhelpsupport.org. There are no ongoing costs. Nor, as a general matter, is there any evidence that trained staff will take more time handling cases; on the contrary, the whole process moves more smoothly.

Recommended steps include the development of a stakeholder committee to review the existing models for guidelines and training, and to develop a dissemination and training strategy using existing gatherings and distribution systems wherever possible.

Developing staff skills and changing expectations and culture, and the savings of time achieved, will lay the groundwork for possible future reassignment of staff to litigant assistance roles, with or without additional resources, including ultimately possibly the establishment of self-help centers.

Two: Forms and Plain English

Many states and courts have had forms for a generation, finding them indispensable for efficient processing of cases, easy relations between court staff and users, and meaningful access to the courts. Other states still have no standardized forms. Even those states that have forms in place are finding that applying the often-common-sense science of Plain English to forms and instructional materials helps move cases, reduces confusion and frustration, and improves the quality of information getting to the judge.

Needless to say, the additional cost of these programs is relatively low. Redesign of existing forms takes staff and volunteer time (in many states the bar has contributed significant volunteer time to this process). Consultants can be hired, but they are not critical, since much of the process involves applying common sense and a lay non-technical view. An early focus on the most frequently used forms that are required to resolve otherwise difficult situations will maximize the impact on court operations, while reducing the undeniable upfront and maintenance costs. (While the costs of such small focused programs are low, many courts have in fact found that in the long term investments of significant dedicated staff pay off in terms of long term broad impact.)

For states that have not had standard forms before, printing costs can be covered by charging for form packets, and forms can be loaded online at low cost, often in cooperation with local legal aid groups. (While document assembly software, a more sophisticated option, requires an initial investment, total costs are radically reduced by the availability of the LSC-SJI capacity and support operated by ProBonoNet).

States with forms and Plain English success stories report that keys to success include establishing a broad stakeholder and volunteer committee, initially targeting areas of highest need, and getting bar and judicial buy in. Travis County, Texas, has been particularly effective at launching a low-cost forms program. As a statewide matter, it is more important to establish by court rule that every court must accept standardized forms than it would be to mandate that they are used in all circumstances. A plethora of well designed forms is available at the www.selfhelp-

support.org clearinghouse.

Three: Discrete task representation

As financial pressures intensify, and just as more and more people are being forced into court to deal with their problems, many of those who have previously been able to afford counsel may find themselves less able to do so. Therefore, for both courts and the bar, it is critical to find models that will make it easier for lawyers to expand their ability to continue to provide services. Many states have found that so-called Discrete Task Representation, also known as Limited Assistance Representation, or, more colloquially, as unbundling, when encouraged by the courts and the organized bar, and supported by training, risk management materials, and court rules and forms, provides just such a tool.

The core concept is simple — litigant and lawyer agree that the lawyer will handle part of the case, and the litigant will self-represent on the rest. The model can support fee-for-service representation, generating significant and easy to manage income for attorneys, or pro bono representation, such as attorney for the day programs in which the lawyer's risk of exposure to ongoing demands is minimized. In either case, the innovation depends upon the court's respecting the agreement made between the litigant and the attorney. When courts, by rule, standing order, or custom, do so, they make it possible for attorneys to appear and thus assist the court in moving the cases forward.

The cost to the courts of establishing such programs is minimal. Volunteers are usually willing to assist in the drafting of rules, the design of training programs, and the promotion of the concept. While ongoing pro bono programs may incur managerial costs, there are existing systems in place to manage such initiatives. Some of the most effective private attorney programs have been in Massachusetts and California, and such a pro bono program exists in New York. Once again, model rules, court forms, promotional, and training materials are available for customization. Successful states have established committees, usually in formal or informal collaboration between court and bar.

Four: Enforcement and compliance

As innovators move forward with successful improvements of court operations, they are finding a new need to focus on the ultimate outcome – compliance. They are discovering that an accessible and efficient process is largely pointless if the court's decision is not implemented. The good news for those seeking zero or low cost improvements in outcomes is that often the most effective way of improving outcomes is not to create a new compliance program (although those can certainly be effective) but rather to make relatively small changes in the earlier stages of the case, so that the case is better positioned for compliance and enforcement when an order or judgment is ultimately issued.

Among the approaches that appear effective are providing detailed information on compliance and enforcement early in the process, having judges engage litigants in much greater detail both about the specifics of the situation and thus the ultimate order, as well as the consequences of non-compliance, and providing information about the detailed steps that need to be taken to comply or obtain compliance. Ventura County, California, has been a national leader in this effort.

These do not require significant investments, although they do require thought, planning, and the development of materials. While there are fewer pre-existing models in this newer area of innovation, they do exist, and can easily be modified for use in other states and courts. Deployment of these innovations will lay the groundwork for the addition of appropriate compliance-enhancing services, such as staff focusing on compliance support, or the development of software tools for litigant use, when resources for such additions become available.

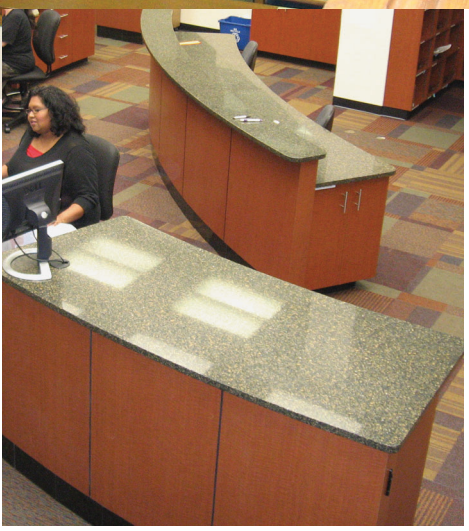
AMERICAN ASSOCIATION OF LAW LIBRARIES/ ALEXANDRA SIEK

Pace University Law Library in White Plains, New York.

Five: Law libraries as a partnering resource

In many courts and states, law libraries are a great underutilized resource. They have extensive informational resources and knowledgeable staff used in playing a helping role. As technology advances, the role of these libraries is changing dramatically, often making it possible for them to refocus and provide much greater direct services to the self-represented. This provides an enormous opportunity for the forward looking court leader to engage the law library and jointly shape an informational program that can dramatically increase the ability of litigants to navigate the court and present their information to the judge. The availability of this resource will reduce the stress and strain on clerk staff, both because a referral will be available, and because litigants will be better informed and less tense. (Some law libraries are refocusing their acquisitions policies so that the materials are in place to assist the self-represented.)

There are now many models around the country of this model,



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A librarian works a reference shift at the University of New Mexico School of Law Library in Albuquerque. Law libraries are a great underutilized resource. The forward looking court leader can engage the law library and jointly shape an information program that can dramatically increase the ability of litigants to navigate the court system.

including Travis County, Texas, and King County, Washington. The job descriptions, staff training materials, referral sheets, and promotional materials are all available. Recommended first steps include meetings with law library leadership and development of protocols and training.

Six: Students and volunteers – JusticeCorps

When resources are tight, attention always shifts to the possibilities of volunteers and pro bono. Some courts have found the practical time investment not justified by the return. However, a new model of college student service, the California JusticeCorps, launched first in Los Angeles, shows how a well run program, leveraging both student worker time and federal resources, can transform a court. While, unlike the other suggestions in this article, this one does require some local investment, it is so small relative to payback that it is included here. The JusticeCorps program is built upon the structure and funding provided to AmeriCorps programs operating around the country in a multitude of arenas. An AmeriCorps grant provides a stipend and/or an "educational award" to college student volunteers to work 300 to 1,700 hours in a year in the court, assisting the self-represented navigate the system.

To be successful, the program requires one designated court staff person to work with one or more identified local universities to recruit, coordinate trainings, and oversee JusticeCorps members (student volunteers) in service. The members have clearly defined job descriptions and are supervised on site by designated court staff or contracted court partners. AmeriCorps funds can pay for the court staff running the program, for training expenses, and the stipends and education awards. For programs that don't use an AmeriCorps grant, an in-kind donation of one court staff person can operate a smaller program (20-30 students recruited and placed). San Diego, for example, started a 22-student program without AmeriCorps funding.

The value of the program is not only the expanded services provided to litigants, but also the overall change in the culture of the court that is achieved when there is a new, unified, enthusiastic, and engaged helping presence. Almost without exception, litigants are aware and appreciative of the extra help they get from the young people "in the blue shirts" (members wear a uniform), and judges and court staff are enthused and energized with the change of pace that comes with mentoring and inspiring future law professionals. Key to the JusticeCorps members' impact is the fact that they are recruited, trained, and serve in a cohort. Members develop a sense of camaraderie and their supervisors develop a sense of pride in the success of "their kids."

The California Administrative Office of the Courts is happy to share AmeriCorps and other grant application models and advice (www.courtinfo.ca.gov/programs/justicecorps). Or you can go to the federal AmeriCorps agency web site to learn more about AmeriCorps in your own state: http://www.americorps.gov/. This idea has the potential to become a national network of federal support for access to justice and court innovation.

Seven: Judicial education and ethics clarification

In the last couple of years there has been a dramatic re-conceptualization of the role of judges in the courtroom—particularly when dealing with the self-represented. Independent courtroom research, changes in the ABA Model Code of Judicial Conduct, the development of a national curriculum launched at Harvard Law School in 2007, and a wave of judicial training across the country from Nebraska to New York and from Utah to Ohio, reflect a new understanding that judges can be more engaged with litigants in the courtroom without threatening their neutrality. The research and curriculum, together with a state-customizable Bench Guide, provide educational materials, best practices, video examples, and suggested activities to assist states and courts in spreading these ideas.

What the research shows is that when judges use best practices, as illustrated in the video, to develop their own neutral and engaged courtroom personas, they are able to communicate better with litigants, and the cases run more smoothly, with more information available for the judge to use in making the deci-

sion. The result is higher public trust and confidence, happier staff, and judges who feel that they are making a difference. Given that all states, and many local jurisdictions, have resources for judicial education, these programs can be put on at very little cost indeed, and the impact can be enormous when the judicial culture changes.

All the materials described above are available without charge from www.self-helpsupport.org, except the Best Practice and Research Report videos, which are limited to judicial educational use, and which must be obtained from the Knowledge and Information Service of the National Center for State Courts.

Conclusion

The innovations suggested in this article vary in their costs. Some cost almost nothing beyond routine management cost, and others will require upfront planning and management attention. Yet individually and together, they are transformative. They mean that all cases will move more efficiently—not just the self-represented—because the systems will be more responsive and because staff and judicial resources will not be wasted trying to keep control of difficult situations.

Significant additional detail on these and other just as cost effective—but more resource intensive—investments are available in the Self-Represented Litigation Network's publication, *Best Practices in Court Based Self-Represented Litigation Innovation*, available at www.selfhelpsupport.org. These Best Practices include a description of the concept, its key attributes for success, examples of the practice on the ground, and resources and individuals to contact for practical information. In addition, Modules of the Leadership Package developed by the Network and launched during a special track of the National Center for State Courts Court Solutions Conference, held in Baltimore, Maryland, in September of 2008, provide PowerPoints (including presentation notes), resource materials, video, program profiles, and activities to assist in promoting and deploying each of these innovations. These are available on www.selfhelsupport.org, with the exception of the video, which is available to courts from the Knowledge and Information Service at the National Center. Finally, the working groups of the Self-Represented Litigation Network, as well as the resources and listservs of www.self-helpsupport.org are available for ideas, resources, and support.

Even in the toughest of times, these practical and supported innovations can be used by an innovative leader to make the court a place that is accessible, efficient, and effective, and in which the staff want to come to work because they know they are making a difference in a positive environment.

FRANK BROCCOLINA
is State Court Administrator, State of Maryland.
(Frank.Broccolina@mdcourts.gov)

RICHARD ZORZA
is Coordinator, Self-Represented Litigation Network.
(richard@zorza.net)