

2014 NACM Annual Conference  
EMBRACING THE COURTS OF THE FUTURE:  
Blueprint for Action

# **Educational Self-Help**

**Creating Access to Justice in a Multi-Cultural Community**

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# Integration of Educational Self-Help as a Core Court Component IS the Court of the Future



# What is Self-Help?

- First, what it is not:
  - It is not representation
    - It is not Civil Gideon
    - It is not shadow representation
    - It is not ghost-writing
  - It is not advocacy
    - It is not strategic advise

# So what is Self-Help?

- The hyphenated word "self-help" often appeared in the 1800s in a legal context, referring to the doctrine that a party in a dispute has the right to use lawful means on their own initiative to remedy a wrong.
  - Not the same as vigilante, unlawful means

# So what is Self-Help?

- Webster's Seventh New Collegiate Dictionary, 1969, defines self-help as the act or an instance of providing for or helping oneself without depending upon others.

# So what is Self-Help?

- Wikipedia defines **Self-help**, or **self-improvement**, as a self-guided improvement — economically, intellectually, or emotionally — often with a substantial psychological basis



## **National Center for State Courts website says:**

- A self-help program is a service or coordinated group of services that assist self-represented litigants by providing them with legal resources and information that would otherwise not be available. ... Delivery models include self help websites, courthouse desks or offices, telephone or internet based programs, clinics and workshops, courtroom and caseflow services, collaborations with law libraries or public libraries, and partnerships with law schools or universities.

- Self-Help is providing people with tools and information that assist them in advocating for themselves
  - This can take many forms
    - Websites
    - Software Programs
    - Printed Handouts
    - One-on-one
    - Workshops/clinics...
- Any of these formats can provide merely document assembly or can be genuinely educational



# Premise

- Educational Self-Help provides the greatest benefit to the Court, as well as to self-represented litigants,  
  
and
- Educational Self-Help is the only real self-help

# Why Educate?



- rather than just provide mechanical assistance with the completion of forms, and basic filing and procedural instructions?

## Why Educate?

- **Self-Represented Litigants:**

- > Don't know how to start a case
- > Don't know court procedures & rules
- > Don't know how to get case into court
- > Don't know what paperwork is required
- > Don't know how to complete documents
- > Don't know how to serve other party
- > Don't even know other party has to be served
- > Don't know how to get a hearing
- > Don't know how to proceed in hearing
- > Don't know its their responsibility to move their case along
- > Don't know they have to file more papers to move their case along
- > Don't know they have to do anything else after filing a Petition in order to get divorced, or to get a judgment in their case
- > Don't know about options to negotiate and stipulate
- > Don't know they have to write up the orders or judgments after trial
- > Don't even take notes as court orders are made
- > Don't know how to finish a case
- > Don't understand legal basis for the Court's findings and orders

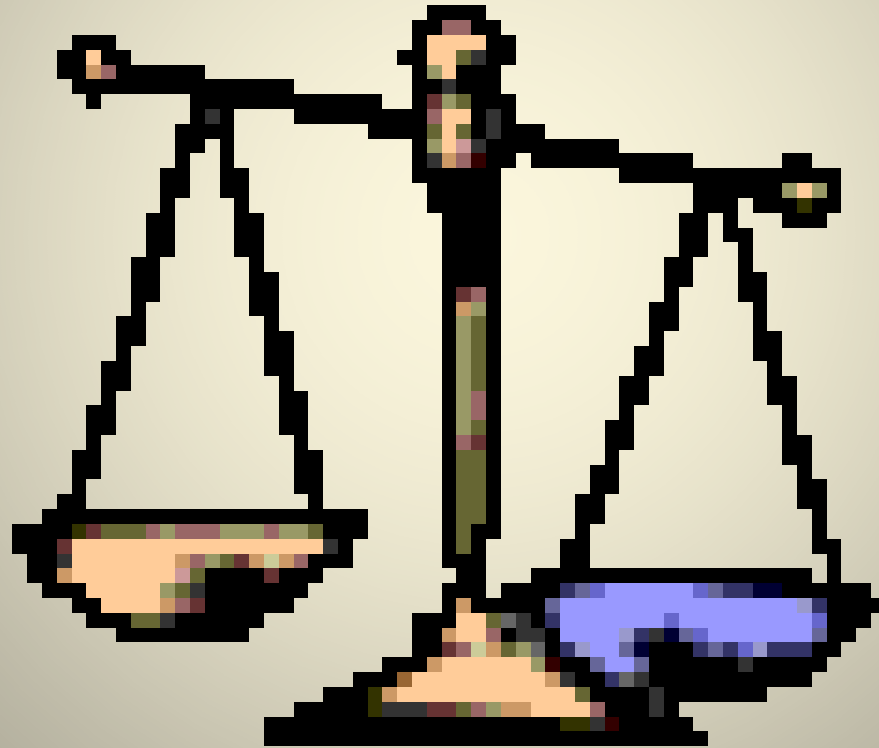


# Why is Educational Self-Help a Core Function of the Court?



- What is the most basic purpose of the Court?  
➔ The establishment or determination of rights according to the rules of law or equity, as a neutral arbiter of disputes

Why does the Court need to  
act as a neutral arbiter ?



- What if courts were not seen as fair and impartial?
- What if only the rich seem able to win in court?
- What if people did not trust the court to be fair?



Without trust in a neutral arbiter,  
people resort to violence to settle disputes

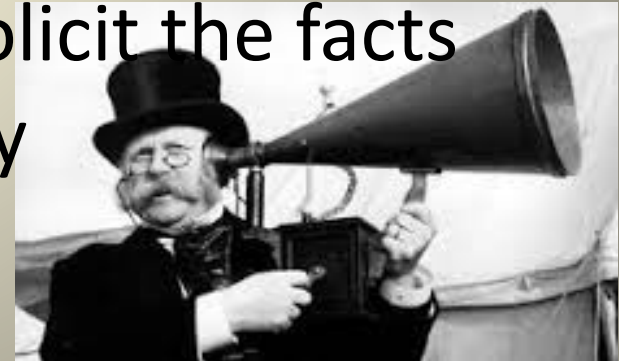


# What Is Required to Have a Neutral Arbitrator?

- Needs to hear the facts/stories of both sides
  - which requires each side understand what needs to be presented and how to present it
  - which requires at least some understanding of legal concepts and burdens of proof



- Judges can be engaged to solicit the facts without sacrificing neutrality



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	Engaged	Passive
Neutral	<p>Creates an environment in which all the relevant facts are brought out, Engages the parties, <i>as needed</i>, to bring out these facts, and their foundation</p> <p>Ensures neutrality by making sure that each side gets their side fully out</p>	<p>Leaves it to the parties to get their evidence and foundations before the court,</p> <p>Does not engage the parties, but rules on motions and objections,</p> <p>Relies on the balance of the system to ensure neutrality</p>
Non-Neutral	<p>May intervene to deter or prevent one side getting story before court</p> <p>May also allow bias to cloud how evidence is seen.</p>	<p>Acts as above but allows bias to cloud whether and how evidence is admitted and seen.</p>

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“Ethics Issues” 2/20/2004 National Conference on Community Based Access to Justice

- Similarly, court staff in the courtroom and clerk's office can, and should:

“serve the public by providing accurate information about court processes that is as helpful as possible without taking one side over the other, or appearing to favor one side of a case”\*

\*Tenet Seven of the CODE OF ETHICS  
FOR THE COURT EMPLOYEES OF CALIFORNIA

However,  
Absent Educational Self-help, the  
Demand on the Courtroom and  
Clerk's Office Can Become  
Detrimental to Efficiency



# The Court of the Future Requires the Integration of Educational Self-Help into Court Operations

- Why?



# What's in it for Court Operations?

- Clerk's office...
- Courtrooms...
- Case Flow Management...

# Designing a Self-Help Model for Your Court

- First determine your Court's priorities for self-help,
- and then assess your resources

# Assessing Your Court's Priorities

- Court based self-help should be based on your court's priorities, not on your legal aid community's priorities
- *(Not necessarily at odds, but there will be differences!)*

# Community characteristics

- Mobility/Transiency
- Language
- Education/Literacy rates
- Availability of technology
- Distances/size

# Litigation Types

Statutory focus of decision

Single vs multiple decisions

Complexity of legal argument

Outcome for litigants

Duration

Affiliation between parties

Representation

Understanding of legal system

# Example: UD's

Element/Factor	Unlawful Detainer (UD)/Eviction
Statutory focus of decision	Viable argument for eviction or defense
Single vs multiple decisions	One decision/final
Complexity of legal argument	Unless defense is in habitability, limited focus
Outcome for litigants	Winner/Loser
Duration	Instant response needed/ limited time to educate
Affiliation between parties	Generally No relationship between parties/contact ends when case ends
Representation	Usually landlord is attorney represented, Usually tenant is self-represented
Understanding of legal system	Varies, but often very little understanding by the tenant



# Example: Family Law

Element/Factor	Family Law: Child Custody
Statutory focus of decision	Best interest of child(ren)
Single vs multiple decisions	Ongoing/Many decisions
Complexity of legal argument	Many factors to consider, including states, case law, and psycho-social factors
Outcome for litigants	No clear winner: Ongoing Negotiation even w/o stipulation
Duration	Months or years
Affiliation between parties	Intimate partners/Ongoing relationship/Resolution must be relationship preserving
Representation	Varies re rep/in balance
Understanding of legal system	Full spectrum of sophistication and capacity to understand

# Contrasting Litigation Types

Element/Factor	Unlawful Detainer (UD)/Eviction	Family Law: Child Custody
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Affiliation between parties	Generally No relationship between parties/contact ends when case ends	Intimate partners/Ongoing relationship Resolution must be relationship preserving
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# Drawing on Community Resources

- Outside expertise
- Often funding & volunteers are more easily obtained by legal aid agency partners for certain services, ie: re Domestic Violence
  - But ... the Court must balance any restrictions:
    - to assist only one side
    - low income litigants only
    - legally documented residents only
    - geographical restrictions re residence of parties

- Court must maintain control of priorities for courthouse-based self-help services
- Court must be vigilant to ensure that community partners operating in court-based self-help comply with standards of neutrality
- Overall administration of self-help services should be the responsibility of the Court, with community partners providing specifically agreed upon services

# Example of Successful Collaboration

- Bet Tzedek Legal Services
  - Established expertise serving elderly and care-givers
- Court prioritized assistance for families needing to establish conservatorships
- Collaborative discussions between supervising judge, Bet Tzedek, court administration, and court self-help management, led to partnership with Bet Tzedek operating conservatorship clinics in court-operated self-help centers

# Court Employees Providing and Managing Educational Self-Help



**It works!**