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TRAVELING JUSTICE: PROVIDING COURT BASED PRO SE ASSISTANCE TO LIMITED ACCESS COMMUNITIES

Tina L. Rasnow*

INTRODUCTION

A soft morning mist rises from the citrus orchards along the road. Just a hint of fall chill brushes the Ventura County Superior Court's Mobile Self-Help Center as it winds its way to the career center in Santa Paula, California. Located fifteen miles from the main courthouse in Ventura, Santa Paula is separated from the county government seat by more than Santa Clara Valley and the ring of mountains dividing it from the coastal communities. The 28,598 residents of this 126-year-old community are also separated by time, language, culture, and a lack of public transportation. Providing access to court and related services is a challenge for California courts, as changing demographics and economic conditions create greater access needs even as legal aid funding decreases.

Recent surveys conducted by the National Center for State Courts¹ and the American Judicature Society² have found a discon-
certing lack of public confidence in the court system. Lack of equal access to the justice system was found to significantly contribute to this decline in public trust. What services should a court provide to help ensure equal access? How does the expanded role of courts impact issues of impartiality, independence, and public trust in the judicial system? Courts grapple with these questions in seeking to provide court access to communities that are marginalized through geography, language, culture, and poverty. This article focuses on one Southern California court's attempt to provide greater access to underrepresented litigants in a mixed urban and rural county northwest of Los Angeles. It will explore Ventura County Superior Court's outreach program designed to increase court access through pro se self-help services, educational outreach, specialty courts, and collaboration with social service organizations.

I. ACCESS TO THE COURT

A. Right to Counsel in Criminal Cases

Our adversarial justice system is based on the premise that each side has competent legal counsel. Trained professionals present evidence within a complex system of rules. Ideally, the trier of fact decides the case based strictly on statutory law and case precedent. That one needs expertise to navigate this complex system has long been recognized by the courts. Legal precedent ensures that those charged with violating the law where the penalty may result in the loss of liberty are entitled to court appointed legal counsel if they cannot afford to hire a private attorney. The Due Process Clause of the United States Constitution has been interpreted by the Supreme Court as requiring that court appointed counsel be provided to indigent criminal defendants, and that any waiver of the right to counsel by an accused must be knowingly made and understood.

The right to court appointed counsel for the indigent has been extended to dependency cases, where parents face the potential

5. Id.
6. Id.
8. U.S. Const. amend. V.
loss of parental rights due to allegations of abuse or neglect.\textsuperscript{10} Again, the Due Process Clause has been interpreted to protect the right to parent one’s children.\textsuperscript{11} Those faced with a loss of that right are assigned court appointed counsel if they cannot afford an attorney.\textsuperscript{12}

B. Right to Counsel in Civil Cases

A more difficult question arises in civil matters where a party cannot afford to hire legal counsel. To what extent should counsel be appointed? For the most part, courts have not appointed legal counsel in civil matters. A possible exception involves the placement of minors in probate or guardianship proceedings where the judge thinks the minor should be represented by his or her own attorney.\textsuperscript{13} Dicta in some civil cases has recognized the need for court appointed counsel where the party could not appear on his or her own behalf, such as in child support and paternity cases\textsuperscript{14} or cases where the civil plaintiff or defendant is incarcerated.\textsuperscript{15} For the most part, however, courts and legislatures have been reluctant to mandate court appointed counsel in civil cases. This is largely because of the potential cost to the system.

Some civil forums are specifically designed for pro se litigants, such as small claims court. Many disputes, however, are not suited for resolution in such forums. The amount in controversy or the injunctive relief sought is often beyond the court’s limited jurisdiction.\textsuperscript{16} Self-represented litigants in a formal court setting find themselves in a minefield of complex rules and procedures. Add to this a power and equity imbalance when one side is represented by counsel and the other is not.\textsuperscript{17} Yet, traditionally courts have been reluctant to intercede on behalf of unrepresented litigants.\textsuperscript{18}

As a result of the surge in the number of unrepresented litigants, courts have begun to take a more proactive role in assisting those

\begin{footnotes}
\item[15] Id.; e.g., Payne v. Superior Court, 553 P.2d 565, 579 (Cal. 1976).
\item[18] Id.
\end{footnotes}
without legal counsel. Ventura County Superior Court’s innovative approach recognizes that having competent legal counsel in adversarial proceedings is the best way to achieve justice. Court-run self-help programs, however, remain a key to expanding people’s access to justice.

II. EVOLUTION OF VENTURA COUNTY SUPERIOR COURT’S SELF-HELP PROGRAMS

A. Family Law Assistance

In 1996, Ventura County Superior Court opened its first Family Law Pro Se Clinic to assist pro se litigants in family law cases. This early clinic operated one evening a week and depended entirely on volunteer attorneys and court staff willing to assist people after the close of court business. The clinic operated in the courthouse’s jury assembly room and children’s waiting room. Assistant executive officer Florence Prushan was initially concerned that people would not come to the clinic. Her fears were quickly dispelled, however, when 200 people came seeking assistance. The clinic soon had to limit the number served each Tuesday evening to the first seventy-five people to arrive, causing people to queue up early, often while the court was still conducting its regular business for the day.

In 1996 California enacted Family Code section 10002. The law established an Office of the Family Law facilitator in all fifty-eight counties. The law also mandated that each trial court develop a family law facilitator program to assist pro se litigants with child support issues. Eleven million dollars per year in state funding was allocated for this purpose. Some courts limited their family law facilitator program to child support enforcement matters. Ventura used the funding to expand its volunteer evening clinic to a

21. Id.
22. Id.
23. Id.
24. California Assembly Bill 1058; Stats. 1996, Ch. 957; California Family Code § 10002.
25. Engler, supra note 17.
26. The majority of California courts initially limited their facilitator services to child support matters.
day program that operates during regular court hours. Unlike many courts, Ventura does not limit its assistance to child support matters. It assists with all areas of family law including legal separation, divorce, child custody, spousal support, annulment, paternity, and grandparent visitation. Additionally, Ventura assists with civil harassment and domestic violence restraining orders. As a result of the Family Law Self-Help Center, family law reported a significant reduction in the time it took them to hear the pro se calendar because the litigants were appearing in court better prepared. Court processing clerks and document examiners also reported a marked improvement in the quality of the pleadings filed by self-represented litigants, resulting in fewer rejections of papers due to procedural errors.

B. Court Assistance With Non-Family Law Matters

A young father comes into the Ventura County Superior Court clutching a summons and complaint in an unlawful detainer case. He was served with the papers over the weekend and needs to know what to do to prevent the eviction. He urgently explains to the court clerk that his child has leukemia and that he was recently laid off. If he loses his housing he is out on the street. The clerk gently assures the young man that he can get help in the court’s Self-Help Legal Access Center. Upon arrival at the Center the father is greeted and asked to complete an intake form to identify the nature of his legal matter. He then reads and signs a disclosure acknowledging that there are no confidential communications with staff attorneys and that no legal advice is given in the Center. After he completes the intake form, Center staff provide him with court forms and step-by-step instructions, in case he chooses to file a response to the complaint. Staff also provide information about substantive landlord/tenant law so he can understand that personal hardship may not be a legal defense to an eviction based on failure to pay rent. The staff, however, provides the young father with referral information to other community programs that may be

28. Id.
29. Id.
able to provide the back rent and persuade the landlord to accept it, or in lieu thereof, to help locate alternative housing.\(^{31}\)

Soon after the Family Law Pro Se Clinic opened, the court expressed concern that pro se litigants in matters other than family law had difficulty accessing forms or understanding procedures involving guardianship of minors, name changes, step-parent adoptions, and unlawful detainers.\(^{32}\) Adding these areas of law to the overburdened family law self-help program would detract from the program's purpose. The Honorable Charles Campbell, presiding judge, concluded that in order to provide assistance to the public in other civil areas, a new program would have to be segregated from the family law program. Otherwise, the overwhelming demand for help with family law matters would defeat attempts to provide assistance in other fields.\(^{33}\) Thus, in 1997 the court hired a full time senior attorney to coordinate its first Self-Help Legal Access Center for matters other than family law. The SHLA (pronounced "Shéila" after the court's executive officer Sheila Gonzalez) Center opened its doors on January 5, 1998 in a space that used to be the court's collection department.\(^{34}\) Located adjacent to the court's main lobby and jury assembly room, the SHLA Center is convenient for those with matters pending in the court. The information and assistance provided by the Center helps people navigate complex legal procedures. Cases that are too complicated for a pro se litigant, such as those involving malpractice, product liability, or government torts, are referred to the local bar association's State Bar Certified Lawyer Referral and Information Service.\(^{35}\) Defense of contract-based actions or unlawful detainers where there is no statutory or contractual provision for the recovery of attorneys' fees are generally referred to the local bar association's pro bono program.\(^{36}\)

\(^{31}\) This description is drawn from an actual case.

\(^{32}\) JUDICIAL COUNCIL OF CAL., supra note 19.

\(^{33}\) The Honorable Charles Campbell received the 2001 Benjamin J. Aranda Access to Justice Award for his support of the Self-Help Legal Access Center and the development of the court's self-help programs.

\(^{34}\) JUDICIAL COUNCIL OF CAL., supra note 19.

\(^{35}\) The Ventura County Bar Association's LRIS program, certified by the State Bar of California, regulates local bar association lawyer referral programs throughout the state. A $30.00 fee is charged in most cases for a thirty-minute consultation. The lawyer volunteers his or her time to meet with the potential client for the half-hour, and the fee goes to the bar association to cover its overhead costs for operating the public service program.

\(^{36}\) Pro bono services are reserved for the following: those who can demonstrate evidence of a meritorious defense; those who lack the ability to present their defense, and those whose income falls below the federal poverty level guidelines adhered to by
The SHLA Center developed step-by-step instructional materials to assist unrepresented litigants in defending unlawful detainer and breach of contract claims and petitioning the court for appointment of a guardianship of the person, name change, or step-parent adoption. The instructional materials were written at the fifth grade level and broken into step-by-step booklets modeled after those used by the pro se assistance center in Maricopa County, Arizona. These materials were created to help people become self-sufficient in handling their own cases, as well as to help ensure a uniform method of information transmission.

The SHLA Center also developed a training manual for volunteers that explains the difference between legal information and legal advice. Borrowing heavily from the writings of John Greacen, the manual explains what types of information courts can provide without compromising impartiality or crossing the "legal advice" line. The training manual also helps to ensure consistency of service as it identifies the type and manner of information transmitted by student interns, community volunteers, and attorneys.

Through a partnership with a local cable television company, the SHLA Center produced a series of videotapes about legal issues affecting the community. The topics included landlord/tenant law, consumer law, labor and employment law, court procedures in civil cases, traffic infractions, and other subjects of common interest to viewers. The videos were produced at no cost to the court and aired on local cable channels throughout the county. SHLA Center staff attorneys also conducted classes in the community on preventative law, including the rights and obligations of landlords.


38. Infra Part III.


40. SUPERIOR COURT, COUNTY OF VENTURA, SELF-HELP LEGAL ACCESS CENTER TRAINING MANUAL FOR VOLUNTEERS (2001).

41. Currently, a biweekly talk show entitled Law Talk is produced by the Ventura County Bar Association. The show is aired on local cable channels throughout Ventura County. Free copies of the videotapes are available at SHLA Centers and public libraries throughout the county.

42. Id.
and tenants, how to read consumer contracts, and how the court system works. SHLA Center staff attorneys also held classes to train volunteer attorneys in areas of the law where there was a lack of access to pro bono counsel, including unlawful detainer and consumer law. The SHLA Center worked with the Ventura County Bar Association’s Volunteer Lawyer Services Program Committee and the Barristers to create a mentoring program in which more experienced attorneys mentor new admittees on how to represent litigants in contested evictions. This legal training was provided free of charge and conferred continuing legal education credits as long as the participants agreed to take one pro bono case in the following twelve-month period. As a result of the training, the Ventura County Bar Association increased the number of attorneys willing to accept pro bono cases by fifteen, and many of those have accepted multiple pro bono referrals.

Despite the court’s many outreach programs and extensive library, a large number of people did not seek help. This was likely due to distrust of government institutions, language and cultural barriers, and transportation obstacles. This led the court to consider opening an off-site SHLA Center to serve those who had difficulty coming to the court for help.

C. Opening a Self-Help Center Off-Site

The Oxnard SHLA Center receives a frantic telephone call from the office of the Mexican consul. A local pastor, caring for a critically ill child in need of an organ transplant, has located an organ donor. The pastor, however, has no legal authority to authorize medical treatment for the minor. The minor’s parents are in Mexico, and there is no time to locate them and obtain their authorization. The consul wants to know if the SHLA Center can help the pastor complete the forms to file a guardianship petition. Center

43. Classes were held at community centers, job and career centers, and local community colleges. They were offered in response to requests from community organizations. These organizations had perceived a need to educate people about the law and how to avoid the problems that often bring people to court.
44. The new attorneys are afforded the opportunity to get trial experience and build their resumes while getting the support of more experienced counsel. The program was run through the Ventura County Bar Association’s Volunteer Lawyer Services Program.
45. CAL. CR. R. 958 (1956).
46. Interview with Steve Henderson, Executive Director, Ventura County Bar Association in Ventura, Cal. (June 21, 2000); Interview with David Shain, Program Committee Chair, Volunteer Lawyer Services in Ventura, Cal. (June 28, 2000).
47. JUDICIAL COUNCIL OF CAL., supra note 19.
staff assist the pastor, and he is able to go before a judge the same day to get temporary letters issued that allow him to authorize the transplant operation and save the child's life.\(^4\)

In December 1998, the Ventura County Superior Court opened its first off-site SHLA Center in the Colonia neighborhood of Oxnard.\(^4\) Located only a few miles from the main courthouse, Oxnard has a population of 207,803, sixty-three percent of whom identify as Hispanic or Latino.\(^5\) Oxnard's immigrant population is several times higher than the national average,\(^5\) and many of these immigrants do not speak English.\(^5\) The Colonia neighborhood is a gateway community of 8200 recent immigrants in "mixed households" with a low homeowner turnover rate.\(^5\) Many of these households include recent immigrants joining family members who have already obtained citizenship. Approximately eighty percent of these families live in single-family units, many of which are owned outright.\(^5\) The Colonia also has some multi-family units and approximately 430 public housing units.\(^5\) The Colonia was identified as a favorable location for an off-site SHLA Center because of its reputation as a gateway community, and because of the sense of belonging it imparts not just to its residents, but to other immigrant populations seeking integration into the community.

The Oxnard SHLA Center is located in a multipurpose building owned by the City of Oxnard, which also leases space to the local housing authority and a small children’s library. The coordinating

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48. Interview with M. Carmen Ramirez, Senior Attorney Coordinator, Ventura County Superior Court’s Oxnard SHLA Center in Oxnard, Cal. (Oct. 19, 2001).
49. JUDICIAL COUNCIL OF CAL., supra note 19.
51. Genaro C. Armas, Immigration on Rise, Census Report Shows, ADVOCATE, Aug. 6, 2001, at 2-A. The U.S. CENSUS BUREAU, PROFILE OF GENERAL DEMOGRAPHIC CHARACTERISTICS (2000) identifies eleven percent of the total United States population of 273.4 million to be foreign-born. Between 1990 and 2000, more than 13.3 million immigrants settled in the United States, pushing the total foreign-born population to 30.5 million. Id. Although the number of foreign-born residents of Oxnard has not yet been tabulated from the 2000 census, Karl Lawson, Compliance Services Manager for the City of Oxnard, estimated that forty-one percent of the local population was foreign-born, based on data extrapolated from the April 1, 1990 census. See U.S CENSUS BUREAU, supra note 50.
52. Id. The 1990 U.S. Census of General Demographic characteristics for Oxnard estimated that twenty-six percent of the local population spoke no or almost no English based on data extrapolated from the April 1, 1990 census. Id.
53. Id.
54. Id. Many of the homes were purchased outright or through mortgages that have since been satisfied leaving title unencumbered.
55. Id.
senior attorney and staff are bilingual. The center devotes Wednesdays to family law matters, with the remaining days allocated to other issues.56

Finding an attorney coordinator for the Oxnard SHLA Center with strong community ties was imperative. Unlike the SHLA Center in the court, an off-site center does not have court clerks, bailiffs, and judges in the same building. Giving referrals is not as easy as sending people downstairs. People will need to be referred to the center from other community organizations and programs until its reputation has been developed through word-of-mouth.57 M. Carmen Ramirez, then president of the local bar association and long-time executive director of the county's legal aid program, was hired by the court to develop the Oxnard SHLA Center. Her strong community ties and reputation in the legal profession made her ideal for the job.58

D. Taking the SHLA Center on the Road

A middle-aged man who suffers from clinical depression and is under the care of the county mental health department stops his car (also his home) next to the Mobile Self-Help Center parked at the Salvation Army in South Oxnard. The man reports that the local housing authority will not allow him to move into housing designated for the mentally ill because his two dogs are slightly larger than the size allowed within the housing project. Rather than give up his pets, he is living with them in his car. He shows the staff attorney a letter from his therapist attesting to the need for him to keep his pets because they help with his clinical depression. He wants to know what he can do to get into the housing project with his pets.59 The staff attorney shows him the law on disability rights60 and refers him to the county bar association's Volunteer Lawyer Services Program. Several months later the man returns to the Mobile Self-Help Center to report that he is living in the housing project with his dogs and to thank the staff attorney for showing him the law and referring him to the volunteer lawyer program.

56. JUDICIAL COUNCIL OF CAL., supra note 19.
57. Id.
58. Id.
59. This was an actual case as recounted by M. Carmen Ramirez, senior attorney coordinator for the Oxnard SHLA Center, at Oxnard, Cal. (Oct. 19, 2001). The SHLA Center also provides general information about the courts and representing oneself in court. Contact information is available at http://vcbc.org/clinics.htm.
60. 42 U.S.C.S. § 3604 (West 2002) (addressing discrimination in the sale or rental of housing and other prohibited practices).
He explains that the volunteer attorney helped him to draft a demand letter to the housing authority, organize his evidence, and present a convincing legal argument to the administrative body. The attorney did not represent the man, but successfully coached him in how to represent himself.

The success of the Ventura and Oxnard SHLA Centers prompted other communities and cities to request satellite self-help centers. It was fiscally impossible, however, to establish permanent centers in multiple locations throughout the county. The court, with the visionary leadership of its executive officer and assistant executive officer and the support of its presiding judge, developed the mobile self-help center. Similar to a bookmobile, the mobile center is designed to take court self-help services to outlying communities. Funding for the purchase of the thirty-five-foot custom-built motor home came from a private foundation, and the court paid the balance from its operating funds. The Mobile Self-Help Center (Mobile Center) carries a small legal library of user-friendly books designed for pro se litigants, materials and forms developed in the SHLA Center, computers for accessing legal information and court records via the internet and satellite connection, and a video library with television monitors for viewing tapes on legal topics.

The court found that serving the community via a Mobile Center posed unique challenges. First, without any permanent location, signage, or presence, it was difficult to inform the public about the services offered. Second, the populations the Mobile Center was trying to reach often worked during the day and could not afford to take time off from work. Third, many people in rural farming areas were fearful of seeking assistance from a court program that

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62. Sheila Gonzalez was the court's executive officer; Florence Prushan was the assistant executive officer; and the Honorable Charles Campbell was the presiding judge. SUPERIOR COURT, COUNTY OF VENTURA, HISTORY OF MOBILE SELF-HELP CENTER, OVERVIEW OF SELF-HELP PROGRAMS (2001).
63. The anonymity of the private foundation grantor was a condition of the grant.
65. Sharon Lerman, Winnebago of Justice Serves Those on the Road Less Traveled, CAL. ST. B.J., July 2001, at 32, http://calbar.org/zebj/01jul/page32-1.htm. For example, copies of Law Talk, the Ventura Court Bar Association's biweekly television program, are provided free of charge to the SHLA Center and the Mobile Center.
66. Infra Part VI.
67. The Mobile Center went to many communities with large migrant farm worker populations and other low wage earners who could not get leave from their employers.
they erroneously assumed worked with the Immigration and Naturalization Service. It took extensive community outreach and collaboration with numerous social service agencies, non-profit organizations, and community programs to build enough public trust so that those most in need of help could access it. In the process of collaboration, the court learned more about the needs of the communities it serves, and how to better incorporate those needs in its strategic planning.

III. SPECIAL CHALLENGES FACED BY COURT BASED PROGRAMS IN MAINTAINING NEUTRALITY

It is a Tuesday morning and the Mobile Center staff is setting up in the parking lot at the intersection of Fox Street and Ojai Avenue in the City of Ojai. A small group of day laborers is gathered at the bus stop seeking a day’s work. This isolated community is located twenty-five miles from the main courthouse in Ventura. It has hidden pockets of poverty amidst a well-established artists’ colony and affluent ranches and estates. Because of its isolation, few services for the poor come to Ojai. The community has drawn on itself to develop programs to assist the indigent, particularly seniors, who live in this quiet valley where summer temperatures often top 100 degrees. An elderly woman being sued by a credit card company for charges she insists that she paid is waiting for

to seek help. See generally Wilson, supra note 64 (describing the Mobile Center’s target population as including the rural poor).

68. Infra Part VI.


70. As part of the Ventura County Superior Court’s strategic planning, the court convened a number of community based focus groups to provide input regarding 1) what the participants expected of the court; 2) what they like about the court; 3) what they do not like about the court; 4) what the court needed to improve; 5) the trends that might affect how the community interacts with the court during the next five years; 6) the information they would like to know about the court. The focus groups were convened in response to the California Judicial Council’s Community-Focused Court Planning Initiative, which seeks to have each court system strategically plan for its future with the active involvement of the court’s community. The initiative began at the May 1998 Statewide Conference and continues to the present. As of February 2001, fifty-seven of California’s fifty-eight trial courts had completed a trial court strategic plan based on community input. Cal. Judicial Council, Court Community Planning, at http://www.courtinfo.ca.gov/programs/community/court_planning.htm (describing the Community-Focused Court Planning initiative, providing model trial court strategic plans and summaries of efforts to date).

71. HELP of Ojai, Inc. has extensive programs to serve the needy, but does not provide legal services. Specifically, HELP of Ojai, Inc., seeks to meet the needs of youths and the elderly through social service programs. HELP of Ojai, at http://www.helpofojai.org.
assistance from the Mobile Center staff. "I sent them back their credit card several years ago," she explains, "when they kept billing me for all kinds of charges I did not make. They told me they would correct the problem, but then I got served with this lawsuit. What should I do?"

While legal aid attorneys or private practice counsel can readily answer such a question, court-based self-help staff cannot dispense legal advice or advocate on behalf of the people they see. In fact, the people who use the self-help centers cannot be referred to as clients because once an attorney/client relationship is created then conflicts must be checked. This would allow only the first person on one side of the case to get help, denying the other based on a conflict of interest. Despite their inability to advise this woman, the Mobile Center staff can explain her options, what forms are available to respond to the complaint, what a bill of particulars is and how it can be used to get detailed information about the alleged debt for which she is being sued, and the time frame in which such cases generally proceed through the court. A private attorney could recommend a course of action for this woman, but the Mobile Center staff can only explain her options. Once she has decided on her own (or upon consultation with a private attorney through the LRIS or a similar program) how to proceed, staff can explain the necessary steps to accomplish her stated purpose.

The line between dispensing legal information and dispensing legal advice is a fine one, but one that can be drawn. Generally, if one asks if they can do something, or how to do it, only neutral information can be provided. If they ask whether they should pursue a particular course of action, the answer constitutes advice.

72. CAL. BUS. & PROF. CODE § 6068(e) (West 2002); CAL. R. OF PROF’L CONDUCT R. 3-310.
73. Id.
74. CAL. CIV. PROC. CODE § 454 (West 2002).
75. CAL. RULES OF COURT RULES 209-27.
76. In this case, the staff showed her how to file an answer and notified her of the requirement that any defenses must be included in her answer. CAL. CIV. PROC. CODE § 431.30(b)(2) (West 2002).
78. Id.
IV. RETHINKING THE ROLE OF COURTS IN CONFLICT RESOLUTION AND PROBLEM SOLVING

The social worker from the Community Assistance Program (CAP) meets with staff at the Mobile Center when it arrives at its regularly scheduled Friday morning stop in Ventura. Serving a primarily homeless population in the area, the Ventura Avenue location is minutes from the courthouse but years away from bridging the expansive divide created by homelessness. The social worker wants to check the court status of one of her clients, a middle-aged man with a twenty-eight year history of homelessness, mental illness, and chronic alcoholism. Her client struggles with an advanced stage of Hepatitis C that limits his ability to perform physical work and aggravates his mental depression. The staff checks the status of his outstanding citations, most of which are for sleeping or drinking in public. Since his participation in the Ventura County Superior Court's Homeless Court Pilot Project, he has been taking his medication regularly, which in turn has reduced his dependence on alcohol to self-medicate, which has reduced his contact with law enforcement. The social worker reports that, for the first time, her client has been able to keep a bicycle for over a month, an astounding accomplishment given his chronic alcoholism and homelessness. With the donated bicycle, he is able to show up for appointments for his medication and has even been able to help in the CAP office with minor tasks. Though homeless court cannot remedy his homelessness or cure his liver disease, it can help him gain self-respect and improve the quality of community life.79

Courts have traditionally been called upon to resolve civil disputes and criminal proceedings by applying the law to the facts in a given case.80 A court reaches its decision based on legal precedent applied within the confines of the facts of the case. A court does not necessarily consider the implications of decisions on the litigants and their families beyond the narrow legal issues raised.81 In confining their role to interpreting and upholding the law, courts are often forced to ignore human frailties and social needs outside their purview. When asked to make special consideration for fi-

81. See, e.g., Salve Regina Coll. v. Russell, 499 U.S. 225, 231-232 (1991) (noting that "trial judges often must resolve complicated legal questions without benefit of extended reflection [or] extensive information" (citation omitted)).
nancial hardship or special circumstances, jurists commonly remark that “the court is not in the social work business.”

For example, in unlawful detainer cases, it is generally not considered the court’s role to concern itself with what happens to dispossessed tenants when the law supports their eviction from the landlord’s property. In addition, courts generally are not concerned with a homeless person’s ability to pay the fines and fees assessed for sleeping in public. As the economic gap between the rich and poor widens, and society seeks solutions to poverty, displacement, and community fragmentation, greater emphasis is being placed on the role of courts as problem-solvers, not just as dispensers of legal precedent.

Helping to ensure access to the court is an important step in helping people resolve problems. Court-based pro se assistance programs play an integral role in the process. Government funded legal aid programs, pro bono legal services, lawyer referral and information services, limited means panels, and “unbundled” legal services all serve vital needs. Realistically, however, there

82. The author has heard this statement more than once from judges in Southern California courts.

83. CAL. CIV. PROC. CODE §1179 (West 2002) (“In no case shall the application [for relief from forfeiture] be granted except on condition that full payment of rent due, or full performance of condition or covenants stipulated, so far as the same is practicable, be made.”).

84. CAL. PENAL CODE § 1202.4(c) (West 2002) (“A defendant’s ability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine.”); People v. Sandoval, 254 Cal. Rptr. 674, 677 (Ct. App. 1989) (ability to pay restitution fine was “not relevant”).


87. For example, the Idaho Supreme Court’s Committee to Increase Access to the Court began planning a Court Assistance Office Project (CAOP) in 1998 in response to the increasing numbers of pro se litigants involved in civil matters. The Justice Management Institute in Denver, Colorado evaluated the CAOP in January 2000, following the end of its pilot project period. The final evaluation report, Self-Represented Litigants in Idaho: An Evaluation Report on the Idaho Court Assistance Office Project was published in July 2000. The results indicated that the CAOP was successful in delivering the services for which it was designed. The committee concluded that “court assistance offices were an effective and efficient way to provide assistance to self-represented litigants.” Court Assistance Offices Project, at http://www2.state.id.us/cao.

88. “Unbundled” is a term coined by Forrest S. Mosten for what is also referred to as “task-by-task,” “limited task,” “limited scope” or “discrete task” representation. See generally CAL. JUDICIAL COUNCIL’S LTD. REPRESENTATION COMM., PRELIMINARY REPORT ON LIMITED SCOPE LEGAL ASSISTANCE (2001); Forrest S. Mosten, Unbundling of Legal Services and the Family Lawyer, 38 FAM. L.Q. 421 (1994).
are not enough resources to help all who need legal assistance. Furthermore recent trends indicate a lack of political will to allocate sufficient resources to address this demand. If courts are to remain relevant to people, they need to consider innovative measures to address the problems that bring people to court. Many courts around the country use specialty courts that integrate concepts of restorative or therapeutic justice. Courts are working with other community partners to find new ways to solve public safety problems in neighborhoods plagued by crime and disorder in initiatives described as “community justice.”

V. Use of Specialty Courts to Address Underlying Social Problems

A group of men and women have already gathered outside the Salvation Army’s multi-purpose room in Ventura, California when the Mobile Center arrives. Donated coffee and donuts are provided to homeless court litigants as they wait their turn to meet with their public defender. The judge, judicial assistant, and prosecutor will arrive later when court convenes at 11:00 a.m. Most of the people waiting for homeless court are trying to resolve outstanding citations for violations related to their homelessness, such as sleeping or drinking in public. Some have violations related to their vehicles—which often serve as homes as well as transportation—such as expired registrations or lack of insurance. Homeless court allows those who meet the federal definition of homelessness to resolve their outstanding infractions and some misdemeanor offenses through community service in lieu of fines or fees. Without homeless court most citations would remain unresolved and result in warrants being issued for the offender’s failure to appear in court. Eventually the homeless are arrested on the warrants, held in jail for several days, and then brought to court and released after being given credit for time served. 

90. Drug courts, youth or peer courts, domestic violence courts, and homeless courts are all forms of restorative or therapeutic courts. For statistical information on the benefits of drug courts, see DR. STEVEN R. BELENKO, NAT’L CTR. ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIV., RESEARCH ON DRUG COURTS: A CRITICAL REVIEW 2001 UPDATE 19-51 (2001).
92. This is because many offenses committed by the homeless as a result of their homelessness, such as sleeping, drinking, or urinating in public, are charged as infractions. Infractions are not penalized by incarceration. It is the failure to appear in
TRAVELING JUSTICE provides a mechanism for those who want to resolve their citations, but have no income. In certain circumstances, substance abuse, mental illness, or debilitating physical illness renders people unable to perform basic tasks. In those situations, credit is given for attending substance abuse classes, enrolling in a treatment program, or taking prescribed medication to help alleviate the symptoms of mental illness.\textsuperscript{93}

\section*{A. Development of Drug Court and Other Restorative Justice Models}

In recent years, both federal and state laws have been enacted that increase penalties for many types of offenses, most notably, drug offenses.\textsuperscript{94} Different classes of offenders also face tougher sanctions today, especially adult and juvenile repeat offenders.\textsuperscript{95} The long-term price for incarcerating such a large population for such long periods has yet to be fully realized. Any assessment of that price must include the social costs: supporting the children, parents, and spouses of those who are incarcerated; the decreased court to handle the infraction that results in the warrant issued for the arrest of the homeless defendant.

93. Homeless court operates in collaboration with social workers. The social workers make recommendations to the court about the type of alternative sentence to impose on their clients. These recommendations include the nature and extent of community service their clients can perform, and whether commitment to a treatment program is necessary to address underlying substance abuse issues.


95. As Vincent Schiraldi of the Justice Policy Institute writes, “America has certainly gotten tougher on its youth. In 1986, nearly at the height of the drug war, 31 out of every 100,000 youth were admitted to state prisons for drug offenses. In 1996, 122 youth per 100,000 were entering prison on drug convictions. This represents a 291\% increase in the rate at which young people were incarcerated because of drug involvement.” Beatty et al., supra note 94. The California “Three Strikes Initiative” was passed by voters in 1994, imposing a mandatory twenty-five years to life sentence for a “third strike” offense even if the third offense is a minor one, such as stealing food. Cal. Penal Code §§ 667, 1170.12 (West 2002). In addition, California passed Proposition 21 in 2000 making it easier for prosecutors to try juveniles as adults. Patrick Band, Overbearing Proposition 21, 2 SOLID, at, http://solidmag.org/issue2/overbearing_prop21.shtml.
earning capacity of ex-felons; and the likelihood that they will require some type of public assistance in their retirement years.\footnote{96}{Since inmates do not contribute to social security or private pension plans while incarcerated, they are unable to financially plan or prepare for their retirement years. Thus, not only are the years of incarceration wasted in terms of individual productivity, but society loses by reduced contributions into social security, and by an increased likelihood that ex-felons will require public support in their elder years.}

The drug court movement was developed to offer non-violent drug related offenders an opportunity to get treatment instead of incarceration.\footnote{97}{\textit{Supra} note 94.} By treating drug addiction, the underlying cause of the criminal act, drug courts help heal people’s lives, reinforce community and family relationships, and reduce recidivism.\footnote{98}{\textit{Id.}} The taxpayer is saved the cost of incarcerating the drug addict, as well as supporting the drug addict’s children. By staying in a treatment program instead of jail, addicts are often able to continue parenting while recovering from addiction, thereby saving the children from having to enter the foster care system.\footnote{99}{\textit{Id.}} Courts can condition an alternative “therapeutic” sentence upon successful completion of substance abuse programs, parenting classes, anger management courses, or other programs that can help people to cope with their life circumstances, while teaching them the skills they need to raise their children, hold a job, or manage their finances.\footnote{100}{\textit{Reginald Fluellen et al., Vera Inst. of Justice, State Sentencing and Corrections Program, Do Drug Courts Save Jail and Prison Beds?} (2000), available at http://www.vera.org/publication.pdf/drugcourts.pdf.}

Youth or peer courts are another therapeutic or restorative justice model. Young offenders are sentenced—and in some youth court models, tried—by a jury of their peers who determine the appropriate sentence for certain low level offenses.\footnote{101}{\textit{Tracy M. Godwin, Am. Prob. and Parole Ass’n, The Role of Restorative Justice in Teen Courts: A Preliminary Look} (2001); \textit{Tracy M. Godwin et al., U.S. Dep’t of Justice, Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs} (1986); \textit{Office of Juvenile Justice and Delinquency Prevention, Youth Courts: A National Movement} (1998).} A component of many peer courts is the requirement that the youth offender serve on the jury in other youth cases. The concept of peer courts is to make the youth offender part of the solution to juvenile crime and integrate the youth into responsible society in a meaningful way.\footnote{102}{\textit{See generally Godwin, supra} note 101.}
Ventura County Superior Court started its teen court program in 1995 under the leadership of Justice Steven Perren.\textsuperscript{103} Besides providing an opportunity for youth offenders to have constructive sentences decided by a jury of their peers, teen court allows students to participate in the justice system in a meaningful way, teaching them valuable civics lessons and preparing them to take their place in adult society.\textsuperscript{104} Through its teen court program the Ventura County Superior Court has built partnerships with local schools that host teen court. Other Ventura County school and court partnerships include “Taking the Courthouse to the Schoolroom,” a multidimensional educational program that introduces primary and secondary school students to the justice system.\textsuperscript{105}

Some jurisdictions now have domestic violence courts to address the underlying problems of domestic violence.\textsuperscript{106} Like drug courts, domestic violence courts impose treatment programs in lieu of incarceration, requiring offenders to take anger management and/or parenting classes to try to break the cycle of domestic violence. As courts develop therapeutic models they increasingly depend on community collaboration to address the underlying causes of crime and community disintegration. In expanding court access to limited access communities and populations, creative solutions need to be explored, including therapeutic and restorative justice models that invest the community in solutions to local problems.

**B. Evolution of Ventura County Superior Court’s Homeless Court Program**

Ventura County Superior Court began its Homeless Court Pilot Project\textsuperscript{107} in conjunction with the annual Stand Down for homeless

\textsuperscript{103} Prior to his elevation to the California Court of Appeal, Second District, Division Six, Justice Perren was the supervising juvenile judge in Ventura County Superior Court. He spearheaded many innovative programs for youth offenders, including teen court. \textit{CLU to Host California Court of Appeals Justice, ACORN, Feb. 1, 2001, at} \url{http://www.toacorn.com/News/2001/0201/Bulletin_Board/49.html}.

\textsuperscript{104} \textit{GOODWIN, ET AL., supra note 101; see also GOODWIN, supra note 101; OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, supra note 101.}

\textsuperscript{105} The “Taking the Courthouse to the Schoolroom” website is \url{http://www.rain.org/courthouse}.

\textsuperscript{106} Ventura County Superior Court started its domestic violence court in 2001. Probation is conditioned upon successful completion of anger management classes in an effort to reduce recidivism. Classes are available for both offenders and victims.

\textsuperscript{107} In May 2001 the judges of the Ventura County Superior Court voted to make the Homeless Court Pilot Project into a specialized court program, including a drug court, teen court, and domestic violence court. \textit{Press Release, Superior Court of California, Ventura County, Homeless Court Becomes an Official Court Program (June 12, 2001), \url{http://courts.countyofventura.org/hoelessctpr.pdf}.}
veterans. Homeless court is a special superior court session that enables the homeless to resolve outstanding minor offenses and warrants arising out of the condition of homelessness, such as sleeping or drinking in public. Homeless courts have been found to reduce court and jail costs, build community collaboration, improve access to court, and assist the homeless in finding needed services and jobs. Improving access to court for the homeless is accomplished by bringing the court to the community. Court sessions are held at local shelters or agencies that serve the homeless. Part of the cycle of homelessness is frequent contact with police, and many of the homeless have received multiple citations for loitering and illegal lodging. They fear going to court because they know they are without the means to resolve their cases, and often cannot due to mental health issues. Court, however, is the only place to resolve these matters and is a necessary prerequisite to reintegration into society. When court is held at homeless shelters or service agencies, it helps build trust and confidence for the population being served.

Homeless courts in other jurisdictions have confirmed that many homeless people do not attend court until the court comes to them. Homeless court builds on partnerships between the court, businesses, local shelters and service agencies, law enforcement, and the offices of the district attorney and public defender. It attempts to resolve community problems created by homelessness.

108. Stand Down is an annual event started in San Diego, California, and now held in cities throughout the country, where homeless veterans can access many services in one location, usually over the course of a weekend. These services generally include court hearings to resolve outstanding warrants for failures to appear on low level offenses. The defendants are given the opportunity to perform community service at the Stand Down to clear their outstanding citations. Stephen R. Binder, The Homeless Court Program: Taking the Courts to the Streets, 65 FED. PROBATION 14 (2001) (describing the history and structure of Stand Down programs).

109. Several jurisdictions in California have instituted homeless courts, most notably San Diego County which originated the first California homeless court in 1989. Id. at 16.

110. Id. at 17.

111. The homeless voluntarily sign up in the shelters or agencies that provide services to them, asking to take responsibility for their offense and make reparations in the form of community service work. See generally id.

112. Steven R. Binder, deputy public defender with the Office of the Public Defender of San Diego County and founder of California's first homeless court, reports that San Diego County Superior Court schedules court sessions at shelters run by San Diego Vietnam Veterans and St. Vincent de Paul. The concept of taking the court to the people originated at Stand Down events where it was found that homeless veterans were either unable or reluctant to come to court to resolve outstanding citations for fear of being taken into custody. Id. at 16.
with practical solutions. Initial referrals to homeless court originate with the shelters and service agencies. The prosecution and defense review the cases before the court hearing to make sure the offense is eligible for disposition through homeless court and to institute alternate sentencing. Alternate sentencing substitutes volunteer work and agency counseling programs for fines and custody. Homeless court is designed for efficiency to have cases heard, resolved, and sentenced all in one hearing.  

Homeless court helps the community by engaging the homeless in productive activity. This removes them from the doorways, parks, and gathering places where they are unwanted and prone to arrest. It helps the homeless lead productive lives because the sentence is often participation in a work and counseling program, which helps them overcome social problems, enhance their job seeking skills, and locate employment opportunities. Referrals to specialized alcohol and drug treatment programs or mental health services help the community tackle the problem of homelessness in a meaningful and practical way. Allowing defendants who lack shelter or employment to account for their wrongful behavior by performing community service serves the interests of both the court and society.

Ventura Superior Court's adult and juvenile drug courts, domestic violence court, teen court, and homeless court were each established to better handle a discrete population or problem, to look at alternatives to traditional forms of criminal sanctions, to reduce recidivism, and to solve underlying problems that contribute to a defendant's unlawful behavior. These specialized courts have greatly improved the ability of populations that face unique obstacles to get access to justice. Still, many challenges remain.

VI. CHALLENGES OF TAKING THE COURT TO THE PEOPLE

A Spanish speaking man timidly approaches the staff attorney at the Oxnard SHLA Center. He is distressed because his children's dog died while in the care of a local branch of a national pet care chain. He insists the dog's death was the result of negligence by

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113. Id. at 16-17.
114. In the words of Charles Campbell, past presiding judge of the Ventura Superior Court, "Other than providing temporary housing, incarceration of the homeless does nothing to benefit the homeless or the community."
115. California Chief Justice Ronald M. George, State of the Judiciary Address (Sept. 8, 2001), http://www.courtinfo.ca.gov/reference/soj0901.htm (discussing the perception that "the administration of justice in our state is threatened by the erosion of public confidence caused by lack of access").
the chain's veterinarian, and wants to know what he can do about it. His frustration and despair are evident as he describes his children trying to deal with the loss of their pet. The staff attorney expresses sympathy for his loss and explains to him that absent willful misconduct by the veterinarian, the measure of damages for the loss of the pet may be limited to its market value.\textsuperscript{116} Because the dog was a mixed breed, it had no significant market value, but its sentimental value to the family was priceless.\textsuperscript{117} Explaining to people that not all losses are monetarily compensable is one of the educational components of the SHLA Center. The gentleman who lost the pet can sue in small claims court for damages, but the amount he may recover is limited by the law. Many people do not understand the limits of what is recoverable under the law. In addition to providing small claims forms and instructions in Spanish, the staff attorney also provides a copy of a sample "demand" letter so the gentleman can see how to write a letter to the store expressing his loss. The staff attorney further gives the gentleman a brochure for the Ventura County Bar Association’s Lawyer Referral and Information Service so he can get a thirty-minute private consultation with an attorney to assess the merits of filing a civil case.\textsuperscript{118}

The existence of self-help centers in the courthouse provides litigants with an easily accessible service. Not everyone needing assistance, however, knows they can get help from the court. In a preceding example, the priest did not know what to do or where to go, so he called the Mexican consul to try and locate the minor’s parents.\textsuperscript{119} Because the consul knew about the self-help center and the services it provides, she knew to direct the priest to the center, and called the center to alert it to the emergency. This type of community partnership is essential when taking court based services to the community.\textsuperscript{120}

Cost and security also must be considered. In the Ventura County Superior Court, the cost of establishing self-help centers throughout the county was prohibitive, thus the reason for the Mobile Center.\textsuperscript{121} Security at the Mobile Center is minimal. The

\textsuperscript{116} Dreyer v. Cyriacks, 297 P. 35 (1931).
\textsuperscript{117} C.f., Nichols v. Sukaro Kennels, 555 N.W.2d 689 (Iowa 1996) (recognizing that a pet owner may have a legitimate claim for emotional distress following the death of a pet although the court did not uphold such an action in the case).
\textsuperscript{118} JUDICIAL COUNCIL OF CAL., supra note 19.
\textsuperscript{119} Text accompanying note 48.
\textsuperscript{120} Supra part II; JUDICIAL COUNCIL OF CAL., supra note 19.
\textsuperscript{121} JUDICIAL COUNCIL OF CAL., supra note 19.
Center is staffed with a driver and a court attorney, or a volunteer attorney from the private bar. No money is handled in the Mobil Center for security reasons, even though there is a cellular phone on board, and the Mobile Center parks near other facilities from which help can be sought. Therefore, while people can obtain court forms and instructions for their completion, they cannot file their court papers or pay traffic citation fines in the Mobile Center. Although costs and security issues are important considerations, there are other challenges in taking the court to the community that are less obvious.

States, counties, and cities are facing new challenges of meeting the needs of their populations, many of which come from diverse cultures and languages. Geographic barriers can further isolate those whose language and culture places them on the margin of mainstream society. Physical access to the court may not be a problem in urban areas with adequate public transportation. In many rural communities and urban areas without adequate public transportation, however, simply getting to court can be a hardship. A court, if it is to be community focused, must take into account these geographic obstacles and devise ways to overcome them, whether through Internet services, off-site self-help centers, or partnerships with other community programs.

122. Many of the people who receive assistance from the SHLA Centers have incomes below the federal poverty line and qualify for fee waivers. Nevertheless, it was felt that equal services had to be provided to all, whether they were indigent or not. It would degrade the court's impartiality to allow those who qualify for fee waivers to file their court papers on board the Mobile Center, or in an off-site facility, while requiring those who must pay a filing fee to go to the courthouse. For this reason no off-site facility accepts court papers for filing.

123. Approximately 26.3 million immigrants now live in the United States, the largest number recorded in the nation's history. STEVEN A. CAMAROTA, CTR. FOR IMMIGRATION STUDIES, IMMIGRANTS IN THE UNITED STATES-1998 A SNAPSHOT OF TODAY'S FOREIGN-BORN POPULATION (1999)

124. The I-CAN program in Orange County, California is an example of such a service.

125. The SHLA Centers collaborate with numerous community partners including the local bar association and its different sections and committees, particularly the Lawyer Referral and Information Service and Volunteer Lawyer Services Program Committees; legal aid services; local law schools, colleges and universities that place student interns in the SHLA Centers; paralegal and legal secretary professional associations whose members volunteer at the centers; public libraries that offer adult literacy programs; cable companies that help to produce educational videos; the district attorney's office's victim services unit; the public defender's office; the law library; foreign consul offices; local service clubs; advocacy groups for the disabled; kinship family support groups; faith-based and secular charitable organizations; social service agencies; alternative dispute resolution programs; public health and mental health agencies; civil rights organizations; and a host of other programs, services,
When taking court services to the community, it is important to identify who the community is. What are the needs of seniors with limited mobility? Of recent immigrants? Of migrant farm workers? Of domestic violence victims? Of the disabled? Of the homeless? Of the working poor? These questions and others must be addressed if the court is to provide access to the entire community. To answer these questions, courts must turn to social service agencies and non-profit organizations that work with the different populations courts must reach.\footnote{126}

\section*{A. Language and Cultural Barriers}

All court forms used to have to be typed in English in order to be filed. If the party to a civil case could not read or write in English, and type their forms, they would have to find someone who could translate and prepare their forms for them.\footnote{127} One of the easiest ways for courts to improve access to those with limited means is to allow hand-printed forms, so long as they are legible.\footnote{128} Recently the California Judicial Council approved for statewide use, for the first time, form pleadings in languages other than English.\footnote{129} At a time when many state and local governments are enacting “English only” statutes, California courts are leading the way in language access, working to ensure that sufficient numbers of competent interpreters are available to translate the 100 languages spoken in the state courts on any given date.\footnote{130} The influx of immigrants in the last decade from regions in Mexico where...
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digenous languages are spoken has increased the need for court interpreters conversant in Mixteco, Zapoteco, and other indigenous languages. Often courts assume that a Mexican national speaks Spanish and assign a Spanish language interpreter, not realizing that the indigenous language spoken by the individual may be completely different. The problem is often compounded by many immigrants' reluctance to request assistance from government. Immigrants may arrive in the United States having fled from oppressive regimes where the courts are a part of a corrupt system. In these situations, more than a language interpreter is needed to explain how our courts work. For those who never had a jury system in their country of origin, simply translating the word "jury" into their language may not suffice if the accused or civil litigant has no means of comprehending what a jury actually does.

Language and cultural barriers extend beyond the spoken word. Gestures, eye contact, and other non-verbal communication can vary vastly between cultures. For example, in many cultures it is inappropriate for a "lower class" person to look a "higher class" person in the eye when speaking to him or her. It would be considered the height of ill manners to make eye contact with one who is seen as a social or class superior. Yet in the United States much emphasis is placed on eye contact as a sign of veracity. One who avoids eye contact is often viewed as being dishonest, evasive, or "trying to hide something." Applying the standard of our culture is only appropriate when judging someone raised in the same culture. Ignorance of cultural differences can cause assumptions to

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130. In many countries "justice" can literally be bought, and in others, there is no clear delineation between law enforcement, the military, and the courts.

131. California Chief Justice Ronald M. George, in his 2001 State of the Judiciary Address, noted that "Every day, individuals who have no familiarity with our system of justice appear in our courts. Supra note 115.

132. In many Latin American and other cultures with strict class differentials, it is customary for one in a lower socio-economic class to avert his or her eyes when speaking to one who is considered to be of a higher socio-economic class. Lawyers who question witnesses are often perceived as being in a higher socio-economic class than the testifying witness. Therefore, it is not unusual for a witness coming from a culture where averting eye contact is considered polite to refrain from "looking the interrogator in the eye," thereby giving the appearance, based on western culture, that he or she is being less than candid. Lourdes González Campbell, Everything is Subject to Interpretation, presented to the Ventura County Trial Lawyers Association (Jan. 26, 1999).

133. Id.

134. Id.

135. Id.
be made on vital evidentiary issues, especially witness veracity. If courts are to ensure equal access, they need to be aware of cultural differences so as to avoid unwitting bias or prejudice based on false stereotypes or invalid assumptions. This can be accomplished through staff training, judicial education, continuing legal education, and community partnerships with culturally diverse programs that help teach our workers about different cultures.

B. Distrust of Courts Based on Historical Experience

Like immigrants, racial minorities are often distrustful of courts. For many, their historical experience with the courts has not always resulted in justice. In *The Pig Farmer's Daughter and Other Tales of American Justice*, Mary Francis Berry recounts episodes of racism and sexism in United States courts from 1865 to the present. Many of the cases Dr. Berry describes have been buried in the closed files of courts and the annals of history. Others, such as the *Dred Scott* decision or *Plessey v. Ferguson*, are still taught in constitutional law classes. Viewing these cases as if they are a remnant of the past with no relevance to the present blinds us to the legacy these decisions have had on those who bore the brunt of these rulings. Courts need to be sensitive to the legacy of injustice that minority groups have experienced, just as they need to be aware of racial profiling and the disparate treatment of racial minorities in the charging and sentencing of offenses.

In 1999 the American Bar Association and the National Bar Association co-published a report in their respective journals summa-

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136. Marc Mauer, the Crisis of the Young African American Male and the Criminal Justice System, Address delivered to the U.S. Civil Rights Commissions (April 15, 1999), http://www.sentencingproject.org/pubs/civilrights.pdf (discussing the status of African American males within the criminal justice system). Comedian Richard Pryor, when referring to the large percentage of African-American males in the criminal justice system, joked that the reason the system is called “justice” is because it is “just us.” Dorothy Gilliam, *Sentencing vs. Sociology*, WASH. POST, March 15, 1997, at D1. His humor reflected the overall sense of a two-tiered system experienced by people of color.


139. Plessy v. Ferguson, 163 U.S. 537 (1896).


rizing the findings of a poll of lawyers on the subject of racial bias in the courts.\textsuperscript{142} The poll found sharp contrast in perceptions of bias in the justice system as between black and white lawyers.\textsuperscript{143} A 1999 National Center for State Courts National Poll showed a majority of the public at large, not simply members of minority groups, believe that minorities and non-English speaking individuals are treated less fairly by the court system.\textsuperscript{144} Recent studies indicate that while drug use is equal to or higher among whites than blacks, blacks are arrested for drug offenses at approximately five times the rate of whites.\textsuperscript{145} Two-thirds of the men of color in California were arrested at least once between the ages of nineteen and thirty.\textsuperscript{146} Among juvenile drug offenders, black youths are significantly more likely than whites to be sentenced to juvenile prison.\textsuperscript{147}

Courts may not be directly responsible for whom law enforcement officers choose to stop, cite or arrest, or whom prosecutors choose to prosecute. But courts are in the best position to note racial disparities in terms of the numbers of minorities appearing in traffic court or in the criminal justice system in comparison to their overall numbers in the community.\textsuperscript{148} Once notice is taken of disproportionate numbers of minorities being cited or charged, investigations can be undertaken as to the cause. If racial profiling is found to be the cause, remedial action can be ordered by the court, including training to eliminate bias.\textsuperscript{149}

If people who suspect they have been singled out by law enforcement for disparate treatment on the basis of race come to court to find most other defendants are of color and are being tried by a white bench and jury, what are they to think? It is unrealistic to


\textsuperscript{143} Id.

\textsuperscript{144} \textit{Supra} note 1.

\textsuperscript{145} \textsc{Marc Mauer et al.}, \textit{The Sentencing Project, Young Black Americans and the Criminal Justice System: Five Years Later} (1995); Jamie Fellner, \textit{Punishment and Prejudice: Racial Disparities in the War on Drugs}, \textsc{Human Rights Watch}, May 2000.

\textsuperscript{146} Id.

\textsuperscript{147} Poe-Yamagata \textit{supra}, note 141, at 11.

\textsuperscript{148} Id.

\textsuperscript{149} In 1993, the California Judicial Council published the findings of a two-year series of public hearings on racial and ethnic bias in the California court system. See \textsc{Erica Drewes}, \textsc{Cal. Judicial Council Advisory Comm. on Racial and Ethnic Bias in the Courts, 1991-92 Public Hearings on Racial and Ethnic Bias in the California State Court System} (1993) (showing that as a result of the findings, the Judicial Council imposed mandatory continuing legal education and judicial training on the elimination of bias for attorneys and judges, respectively).
expect people to separate the actions of law enforcement officers from those of prosecutors and the sentencing court. The defendant views them both as a single continuum.\textsuperscript{150} Any loss of faith in the fairness of the system as a result of racial profiling and disparate treatment by law enforcement will directly translate into a loss of faith in the fairness of the court. No amount of educating people about the independence of the court will eradicate that belief.

When taking court-based services to the community, it is essential to know the language, culture, and historical perspectives of the people being served. Community partnerships can help courts learn about the unique needs and perspectives of diverse populations, and in so doing, make the courts more relevant to those being served.

\section*{VII. Benefits of Court-Based Pro Se Assistance With Community Collaboration}

An elderly couple arrives at the Mobile Center in Ojai. They are distressed because they cannot see their grandson. They show letters from the minor stating how much he misses them. They explain that a family court order has awarded custody of their grandson to his mother and she will not let them see him anymore. They think she will understand how much her son misses them, if she could just see his letters.\textsuperscript{151} The staff attorney explains how grandparents can petition in a family law case for visitation rights.\textsuperscript{152} The grandparents, however, do not want to go to court to try to get a visitation order because they fear it would further aggravate the strained relationship with their daughter-in-law. The staff attorney informs the grandparents about a local community-based, non-profit mediation program that might be of help.\textsuperscript{153} The attorney explains how mediation works and gives the grandparents a brochure about the program. They express relief that they have

\textsuperscript{150} SHLA Center staff hear many complaints about "the system"—usually relating to people's negative experiences with law enforcement. When staff tries to explain the difference between law enforcement and the courts, people often reject the differentiation, seeing bailiffs and other law enforcement personnel as part of the court system.

\textsuperscript{151} An actual case as recounted by M. Carmen Ramirez, senior attorney coordinator of the Oxnard SHLA Center.

\textsuperscript{152} \textit{Cal. Fam. Code} § 3103 (West 2002).

\textsuperscript{153} The Ventura Center for Dispute Settlement is a community based non-profit alternative dispute resolution provider that charges fees on a sliding scale.
options and overwhelming appreciation for the informational assistance.¹⁵⁴

We are fortunate in California to have a visionary chief justice who has made access to justice a priority:¹⁵⁵

Courts, to be successful in performing their mission of providing fair and accessible justice, must be sensitive to the public they serve and its diverse make-up and needs. . . . For our system of justice, that means at a minimum that our courts must be open and accessible to all the constituent parts of our state’s population. And that requires a cooperative, collaborative approach to improving the administration of justice and a broader view of what courts must do to accommodate those needing their services.¹⁵⁶

In addition, we have the benefit of innovative court consultants like Richard Zorza, whose groundbreaking technological work with the community courts of lower Manhattan made it possible for courts around the country to rethink how they can better work in partnership with their communities.¹⁵⁷ There are many worthwhile programs courts can “borrow” from to help devise meaningful programs tailored to local needs and available services.

Providing meaningful access to the courts means addressing all segments of the community, all resources that may better resolve disputes than courts,¹⁵⁸ and all aspects of court access, from initial filing through final disposition of the case. Even if self-help programs can assist self-represented litigants to file appropriate pleadings and “get their day in court,” if at the time of the trial or hearing the judge refuses to ask foundational questions of the pro

¹⁵⁴. Users of the SHLA Centers are asked to complete an exit questionnaire that asks them to rate the quality of service and make recommendations for improvement. Rating choices are “very helpful,” “somewhat helpful,” and “not helpful.” Completed questionnaires overwhelmingly rate the services as “very helpful.”

¹⁵⁵. In 1994 California Chief Justice Ronald M. George appointed an Access and Fairness Advisory Committee to monitor issues related to access to the judicial system and fairness in state courts. The advisory committee’s charge is consistent with the council’s long-range strategic plan, in which access and fairness are primary goals.


¹⁵⁸. Alternative dispute resolution programs are often better for resolving disputes between family members, business partners, close friends, or neighbors. People rarely feel more neighborly toward each other after litigating for a year.
By working with schools, courts can help educate young people about the role of the justice system and the rights and obligations that go with citizenship. The public is skeptical about the executive and legislative branches of government because of those branches' dependence on powerful moneyed interests. This has already seriously eroded faith in our government institutions. The judicial branch is the last remaining branch of government in whose independence the public can have faith. However, that independence is now threatened by political intrusions into the selection, election, and retention of judges. By engaging young people early on, through youth courts and programs such as "Take the Courthouse to the Schoolroom," we can better prepare them to participate in our democracy, including serving on juries and voting. Increasing the number of voters helps ensure a future government "made for the people, made by the people, and answerable to the people."

CONCLUSION

Justice is a cornerstone of our democracy. Without justice there can be no peace in a community, nation, or indeed the world. Justice is the core of the values we hold most dear. Court-based pro se assistance programs certainly help improve access to justice, but

159. SHLA Center staff received complaints that sometimes self-represented tenants could not present evidence in eviction cases where the landlord was represented by counsel. The tenant would come to court with photographs of defects in the dwelling unit and certified copies of official reports from government inspectors. When the tenant would try to show these to the judge, the landlord's attorney would object on the basis of "no foundation" or "hearsay." Rather than ask the tenant foundational questions to determine whether the evidence was relevant and reliable, the judge would leave the tenant to argue a response to the objection. If the tenant failed to establish a foundation on his or her own, the court declined to consider the evidence.


161. Id.


163. Supra Part V.A.


165. "We the people of the United States, in order to form a more perfect union, establish justice..." U.S. Cont. pmbl.
they cannot do it alone. Many people will continue to need competent legal counsel to represent them. Others will need services beyond those provided by courts. Court-based assistance programs are but one spoke in the wheel. Without the other spokes (legal aid programs, pro bono services, social services, and affordable mediation programs, among others) the wheels of justice cannot turn. Without adequate funding for legal aid and related programs, they will continue to fall short of meeting the needs of the hundreds of thousands who rely on our court system to resolve what may be life-threatening or life-altering disputes.

This article has provided a glimpse into one court’s attempt to improve access. My intention was to inspire others to try creative methods to improve access in their jurisdictions. The programs described in this article are works in progress. Just as communities change, so do times and circumstances. Programs viable in one context become irrelevant in another. The challenge for those of us who work in the courts and in the legal profession is to constantly examine the ways we serve the public, identify where we fall short, and do everything in our power to assure equal access and equal justice under the law.

166. Many countries provide greater funding for civil legal services than the United States. For example, England spends twice as much on legal services as we do, for one-fifth the number of people as in the United States. The European Convention on Human Rights recognizes governments’ affirmative obligation to provide fair and equal access to courts. Over 300 million people, in over 30 countries, have the right to legal counsel in civil cases even if they cannot afford to hire an attorney. See Comments of the Hon. Earl Johnson, Jr., California Court of Appeals, Second District and Vice-Chair, California Access to Justice Commission, at the New York State Unified Court System Access to Justice Conference, Albany, N.Y. (Sept. 12, 2001).