

Evaluation Tool Summary: In-Court Observation Process

by Ken Smith and John Tull

1. Tool Description

A sample of project-assisted clients is observed in court by people who understand the court process (for example, law student volunteers). Observers record salient aspects of the litigant’s performance in court using a standardized protocol. A “blind sample” of unassisted litigants may also be observed to gather comparative data on their level of preparation and their performance in court.

Toolkit: Models and Elements of This Tool					
a. Type of Legal Aid Project	b. Benchmark Model/ Champion	c. Instruments	d. Tool Elements		
			(1) <i>Sample Output</i>	(2) <i>Method Description</i>	(3) <i>Evaluation Report</i>
<i>Pro per assistance project</i>	Andrea Agloro, Exec. Director Self Help Assistance Center, Sonoma County Legal Aid Santa Rosa, CA	Exhibit 1	Exhibit 3	Tab 13*	Tab 13*
<i>Pro per assistance project</i>	James Mensing Research Staff Center for Children, Family and the Courts Administrative Office of the Courts San Francisco, CA	Exhibit 2**			
<p>* For copies of the SHAC evaluation report and method description, see the hard-copy Toolkit at Tab 13 or the Legal Aid Association of California web site at www.pic.org.</p> <p>** Model instrument containing a more extensive list of questions that can be adapted to most pro per assistance projects.</p>					

2. What The Tool Measures

This tool is designed to help a program measure the in-court effects of its pro per services. It measures any or all of the following aspects of a litigant's appearance in court:

- What the litigants actually did or did not do, such as showing up for court on time and having the proper paperwork to present to the judge.
- What happened as a result of the hearing and why.
- Whether the litigants were represented by attorneys.
- Demographics -- gender, ethnicity, age, language spoken, etc.
- Attire.
- Whether the client used an interpreter.

The first of the two examples is an instrument used by a pro per project in a program-owned evaluation that calls for the observer to make a number of judgments. The second focuses more on specific factual questions, attempting to minimize observations that might be influenced by individual value judgments or presuppositions. This form also allows the observer to track the performance of both plaintiffs and defendants.

This tool can be applied prior to the institution of a self-help project to identify the need for services and/or get a baseline measure of how unassisted litigants do in court. After the self-help project has begun operation, those results can be compared with subsequent observations to measure whether there has been any improvement in pro per performance.

3. Comment

This tool provides an opportunity to assess the practical impact of a project's services by comparing the measured performance of assisted and unassisted litigants. Practical difficulties in collecting this data include no-shows and courts' getting behind schedule, resulting in a lower-than-hoped-for number of observations being completed.

This is a labor-intensive process requiring large amounts of time by observers who have the training and experience necessary to understand the court process. Law student volunteers or interns are especially good candidates for this role.

4. Project Type(s)

- Courthouse self help assistance project
- Other self help assistance projects (e.g., pro per clinic)

5. Guidelines for Using this Tool

Please see next page.

Guidelines for Using the In-Court Observation Process

By John Tull

Edited by Ken Smith

General considerations. Court observations can serve several evaluative purposes related to clients assisted by a self help center or other similar entity, as indicated in the table below.

Research or Management Purpose	Evaluation questions
A. Examine whether assisted clients are adequately prepared to represent themselves effectively in court	<ol style="list-style-type: none"> 1. Are assisted clients well prepared substantively for their hearing? 2. Are they sufficiently familiar with court procedure to proceed effectively? 3. Is the litigant dressed in a manner appropriate for court? 4. Is the litigant following appropriate courtroom procedure by appearing on time, speaking or not at appropriate points and the like? 5. Has the litigant prepared and brought the appropriate paperwork? 6. Was the litigant able to present the necessary evidence? 7. Did the litigant have any assistance in court?
B. Examine the degree to which factors such as educational level, language capability, culture and other factors affect clients' effectiveness representing themselves;	<ol style="list-style-type: none"> 1. Is there a correlation between key demographic indicators and how well assisted clients are able to represent themselves in court? 2. What language is the litigant comfortable communicating in?. 3. How many and what type of litigants need or use interpreters? 4. Who provides interpreters?
C. Assess whether assisted clients are treated the same as other litigants, including those represented by an attorney or other advocate.	<ol style="list-style-type: none"> 1. Are self represented litigants assisted by the project able obtain the relief to which they are entitled, given the facts and the law in their case? 2. Are results more favorable for represented litigants?
D. Assess outcomes of cases of self-represented litigants	<ol style="list-style-type: none"> 1. What was the substantive outcome of the hearing? 2. What was the procedural outcome of the hearing? 3. What are the likely next steps for the litigants following the hearing?

Court observation can be an invaluable tool for evaluating a pro per assistance project, for there is no other way to objectively determine how self-represented litigants perform in the court environment. Yet collecting this type of data can be labor-intensive and difficult. In addition to the time that must be invested in training the data collectors, substantial time is also needed by the observers to attend court sessions, some of which may not yield much data because of no-shows, courts' getting behind schedule or simply little of interest happening.

Other considerations are whether the effect of the program's service will really manifest itself during court hearings, and whether the same information could be obtained more efficiently through other means. For example, if the primary pieces of information concern the number of continuances and the types of orders entered, a different evaluation tool -- review of court records -- might be more appropriate.¹

Evaluations that use this tool are often comparative (though they do not have to be). Two kinds of comparisons that can be made are (a) how a comparison sample of other self-represented litigants fare who did not have help from the project, and (b) how a sample of persons who are represented by an attorney fare. A further comparison that can be made is to compare the outcome of the court appearance with an attorney's or expert panel's judgement of what a person should be entitled to under the law in similar circumstances encountered by the client.

For management purposes, the objective may be to assess whether clients are able to achieve a favorable outcome in the matters in which they are representing themselves. Many factors beside their own preparation may affect the results achieved by self represented litigants, including the law being unfavorable to them or the court failing to apply the law properly to their situation. A consistent failure of assisted clients to accomplish the intended results may indicate a flaw that needs to be addressed by altering how clients are assisted (Do they need to be schooled more in a specific aspect of the process? Or, do they need to be called back for a round of coaching before actually going to court?), or by adopting a different strategy to reinforce the effectiveness of the self help assistance (Do we need to meet with the Chief judge regarding the patterns we are seeing?).

Administering the method. The instrument for this tool is a form that identifies the areas for which observations are relevant (see model instrument, Exhibit 2). Principal steps in administering this method are:

4. Deciding when and what to communicate with the court about the evaluation
5. Selecting and training the court observers.
6. Selecting the sample of litigants to be observed.
7. Tracking and managing the data collection process
8. Analyzing the data

1. Communicating with the court. If the intent is to measure the effectiveness of the litigants (how well prepared, how comfortable, how knowledgeable about the law and appropriate procedure), it may be important to communicate that purpose to the court in the initial stages of the evaluation. On the other hand, it is also legitimate to examine whether the court treats represented and unrepresented litigants differently. Such an evaluation needs to be approached carefully, but may result in data that would be useful in approaching the Chief Judge, or otherwise addressing the matter with the court.

2. Selecting and training the observers. The courtroom observation instrument should be used only by an observer who has some legal background or training, or otherwise is familiar with how courts and the legal system function. (Law student volunteers or interns have performed well in this role.) The more that the purpose of a courtroom observation is to measure the ability of assisted clients to obtain appropriate outcomes, the more the courtroom observers must have substantive knowledge to make the judgment -- e.g., legal aid attorneys or pro bono attorneys might serve as the observers.

¹See the "Court File Review" tool package for details about this tool.

It is very important that the observer undergo some period of training or pilot testing using this instrument, before collecting the study data. This can be accomplished by having someone experienced in observational studies work with the observers. It can also be accomplished by having two or three trainee observers record the same court session, and then compare their results. A good rule-of-thumb is to have at least 80 percent agreement between observers before beginning data collection.

3. *Selecting the sample of people to be observed.* Useful results for management can be obtained by observing a very small sample -- for example, ten persons -- but if the purpose of the evaluation is to assess the impact of factors such as level of education on outcomes, a larger sample will be needed.

A small sample can provide useful information about simple things like whether clients are showing up dressed appropriately for their court appearance, or whether they are respectful of the judge. If they are not, adjustments can be made in the project itself to better prepare clients for their court appearance.

Larger samples may be needed for a more ambitious evaluation. Many factors will influence how self-represented litigants fare in court or in an administrative hearing, including each person's level of education, language ability and self confidence. It is important, therefore, that the sample be sufficiently large to see if there are common results, or to discern if there are differences that relate to key demographic factors such as age, language ability, culture and education. A consultant or survey research group at a local college should be able to provide useful advice on sample sizes needed for deriving statistically significant conclusions about the impacts of multiple variables.

4. *Tracking and managing the data collection process.* Because self-represent litigants are likely to schedule their own hearing, it can be difficult to identify those who will be observed. The percentage of persons who appear before the court who have been assisted by a self help project will affect the relative difficulty of identifying appropriate subjects of the observation. A court sponsored clinic in a relatively small court jurisdiction may lead to a fairly large percentage of self-represented litigants having been assisted by the project. In such circumstances, simply picking specific days for the observation may generate a significant sample of persons to observe.

In larger jurisdictions, it may be more difficult as the percentage of litigants who are "clients" of the project may be relatively small. There are, however, ways to identify for observation litigants who have been assisted by a self help clinic. Persons assisted can be asked to notify the clinic when they intend to go to court, so that an observer can be assigned during the evaluate period. Checking the court docket periodically against the names of persons who attended a self help clinic may enable evaluators to schedule observations at appropriate times. Some courts may schedule persons who are part of a self help project for a particular time period on the same day of the week.

5. *Analyzing the data.* At the simplest level, tables can be produced displaying the percentages of clients who were rated at various levels -- see Exhibit 3 for an example. More complex analyses can be performed if larger sample sizes and scientific sampling methods are used. Assistance from an evaluation consultant or "coach" may be useful for getting more out of the data than simple tabulations.

Limitations of the tool. Courtroom observation will not provide data which explains the cause for what is observed. If self represented litigants are consistently struggling in the courtroom, for instance, there is not likely to be clear evidence of why. It is important, therefore, not to rely on the instrument to accomplish more than it is designed to do. It is principally designed to record and judge behavior. It is

appropriate, therefore, to limit the data collection to a few questions that are most germane to the purpose of the evaluation.

Programs should exercise caution when interpreting the meaning of this outcome measurement with regard to whether litigants received a substantial benefit from their appearance. For example, while it is generally a good thing for a litigant to prevail, an unlawful detainer litigant may well "lose" a case in the sense that an order for eviction is issued, but still "win" in the sense that they obtained more time to locate alternative lodging than they would have gotten without an effective court appearance. Or, they may "win" in the sense of avoiding eviction but "lose" in getting less than they were entitled to in terms of repairs, rent rebates or compensatory damages from a negligent landlord. These are issues that need to be considered in the design of the evaluation, and indeed, the project.

Exhibit 1
SHAC Court Observer Checklist

Client: _____

Date: _____

Observer: _____

Judge: _____

Family/Housing
(circle one)

Complete an observation form for each litigant observed today.

	Yes	Some what	Not much
Was litigant generally well prepared for court?	1	2	3
Did litigant appear confident?	1	2	3
Did litigant appear confused?	1	2	3
Was litigant able to "tell their story" clearly and convincingly?	1	2	3
Did litigant have the required documentation to present to the judge?	1	2	3
Was litigant respectful to the Judge and other court personnel?	1	2	3
Was a determination made in the case?	1	2	3
If yes, was litigant successful?	1	2	3
Was case set for another hearing?	1	2	3

date for follow-up: _____

General observations and comments:

(What would have helped the litigant present their case more effectively)

Observer: _____

Case number: _____

Case type: _____

Date: _____

Judge: _____

Approx. duration of hearing (min): _____

Exhibit 2: Model In-Court Observer Form

Prepared by AOC Researcher James Mensing

Plaintiff/Petitioner			Defendant/Respondent					
Name: _____			Name: _____					
Present ' Yes ' No			Present ' Yes ' No					
1. Self-Represented ' Yes ' No ' No, but attorney not present			1. Self-represented ' Yes ' No ' No, but attorney not present					
2. Sex: ' Male ' Female			2. Sex: ' Male ' Female					
3. Attire (check one from each column) ' Formal (suit) ' Casual (dress pants & shirt) ' Very casual (t-shirt & jeans)			3. Attire (check one from each column) ' Formal (suit) ' Casual (dress pants & shirt) ' Very casual (t-shirt & jeans)					
4. Interpreter: ' Did not need one ' Litigant brought own interpreter ' Litigant had a court appointed certified interpreter ' Litigant needed interpreter but did not bring one to court (if case was not continued, please note who interpreted:_____)			4. Interpreter: ' Did not need one ' Litigant brought own interpreter ' Litigant had a court appointed certified interpreter ' Litigant needed interpreter but did not bring one to court (if case was not continued, please note who interpreted:_____)					
Please note language interpretation provided in:_____			Please note language interpretation provided in:_____					
Yes	Some what	No	5. Litigant Behavior			Yes	Some what	No
'	'	'	Showed up on time for hearing			'	'	'
'	'	'	Came forward when case called			'	'	'
'	'	'	Judge or clerk mentioned missing documents			'	'	'
'	'	'	Judge or clerk mentioned forms not properly completed			'	'	'
'	'	'	Judge mentioned need for evidence or witnesses			'	'	'
'	'	'	Needed proof of service			'	'	'
'	'	'	Brought proof of service			'	'	'
'	'	'	Properly filled out proof of service			'	'	'
'	'	'	Was able to answer the judge's questions			'	'	'

Observer: _____

Case number: _____

Case type: _____

Date: _____

Judge: _____

Approx. duration of hearing (min): _____

Yes	Some what	No	5. Litigant Behavior Cont'd	Yes	Some what	No
'	'	'	Needed clarification of legal terms	'	'	'
'	'	'	Judge clarified terms	'	'	'
'	'	'	Brought support person to hearing: _____	'	'	'
'	'	'	Litigant presented documents, evidence etc. that Judge would not look at	'	'	'
'	'	'	Judge told litigant to be quiet/stop talking	'	'	'
'	'	'	Reprimanded by judge during hearing	'	'	'
6. Outcome ' Judge ruled ' Litigant prevailed ' Litigant prevailed in part ' Litigant lost ' Other (explain _____) ' An order was made ' No order was made (explain: _____) ' Litigant received a copy of the order ' The matter was continued ' no proof of service ' paperwork problems ' need additional information ' matter set for long case calendar ' judge ran out of time ' at the request of the parties ' parties need to go to family court services ' The matter was dropped ' moving party was a no-show ' inability to serve properly			6. Outcome ' Judge ruled ' Litigant prevailed ' Litigant prevailed in part ' Litigant lost ' Other (explain _____) ' An order was made ' No order was made (explain: _____) ' Litigant received a copy of the order ' The matter was continued ' no proof of service ' paperwork problems ' need additional information ' matter set for long case calendar ' judge ran out of time ' at the request of the parties ' parties need to go to family court services ' The matter was dropped ' moving party was a no-show ' inability to serve properly			
7. Litigant referred by judge or clerk to another service (before, after or during hearing)? ' Yes (explain: _____) ' No			7. Litigant referred by judge or clerk to another service (before, after or during hearing)? ' Yes (explain: _____) ' No			

Exhibit 3:
Sample Output
From Sonoma County Legal Aid
Self-Help Access Center Evaluation

The Self Help Access Center improved the performance and prospects of people representing themselves.

Assisted *in pro per* litigants were better prepared than unassisted litigants. Court clerks indicated that SHAC-assisted litigants filed better papers, understood the filing process better, were less confused and required less time to process than unassisted litigants. Overall, they reported that the existence of the Center made their lives easier in dealing with people coming into the courts without the assistance of a lawyer.

SHAC-assisted litigants present themselves in court more effectively than unassisted litigants. Both clients and court observers who watched them perform in court reported that SHAC-assisted clients were better prepared, more confident, less confused, more convincing and generally better able to present their cases than they would have been without the assistance they received.

SHAC-assisted litigants felt SHAC helped them to do better than they could have on their own. Clients felt they understood the system better, were able to make better decisions about their cases, had better opportunities to make their case and did better than they could have on their own.

Court Clerk Interviews:
“SHAC’s services make the system work better.”

Percentage of Court Clerks who felt that SHAC-assisted litigants...

- ! Filed better papers than unassisted litigants 83%
- ! Understood the filing process better than unassisted litigants 83%
- ! Were less confused than unassisted litigants 92%
- ! Required less time to process papers 83%
- ! Made life easier for clerks 92%

Client Interviews:
“I was able to do better than I could have on my own”

Percentage of clients who felt SHAC’s help enabled them to...

- ! Understand the system better 86%
- ! Make better decisions about case 85%
- ! Have a better opportunity to make case 80%
- ! Do better than they could have on their own 100%

Court Observation Results:
SHAC-assisted clients perform better in court.

Performance Observed in Court	SHAC-Assisted	Un-Assisted
Well-prepared	67%	44%
Confident	78%	33%
Confused	11%	44%
Convincing	67%	56%
Had documentation	78%	44%
Respectful	100%	89%