

USING TECHNOLOGY TO ENHANCE ACCESS TO JUSTICE

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I. INTRODUCTION (JOHN GREACEN)¹

The federal government has provided funding for the delivery of legal services to poor persons throughout the United States since 1964.² Those services, which have been administered by the Legal Services Corporation (“LSC”) since 1974, are intended to increase the quantity and quality of legal services available to the poor.³

LSC estimates that no more than 20% of poor persons with civil legal needs are able to get assistance.⁴ But new technology may enable the provision of more and better legal assistance. Technology has

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2. See *History of Civil Legal Aid*, NAT’L LEGAL AID DEFENDER ASS’N, http://www.nlada.org/About/About_HistoryCivil (last visited Dec. 22, 2012).

3. *Id.*

4. *Background*, LEGAL SERVICES CORP., <http://tig.lsc.gov/about-us/background> (last visited Dec. 22, 2012).

revolutionized the delivery of services throughout the public and private sectors of the United States and the world. Can the use of modern technology increase the capability of the civil legal services community to meet the legal needs of poor persons in this country, even if funding levels remain constant?

In 1998, LSC conducted the first summit on the use of technology to improve access to justice. The attendees represented courts as well as legal services organizations. Over two days, the participants drew on a series of white papers prepared in advance of the summit to develop an ambitious plan that led to the creation of LSC's Technology Initiative Grant ("TIG") program in 2000.⁵

By 2012, TIG had provided over \$40 million in grants to courts, legal services agencies, and nonprofit organizations to develop and implement technologies to enhance access to justice in this country.⁶ TIG funding has supported the development of websites to provide information about civil legal issues in every state.⁷ It has also helped create document assembly applications that assist legal services staff in preparing legal documents for their clients quickly and effectively.⁸ These document assembly applications are also used by self-represented litigants ("SRLs").⁹

Technology has changed dramatically since LSC's 1998 summit, bringing about the development of web-based business processes, the widespread use of smartphones, and the rise of social media. In recognition of these changes, LSC began planning a second summit in 2011 — the Summit on the Use of Technology to Expand Access to Justice. An advisory committee consisting of representatives of legal services organizations, courts, the organized bar, and governmental entities decided to hold the Summit in two sessions. The first session focused on developing a new vision for the use of technology to enhance access to justice, and the upcoming second session will focus on developing a plan for implementing that vision.

The mission statement for the Summit states the advisory committee's vision for the events:

The Summit on the Use of Technology to Expand Access to Justice will explore the potential of technology to move the United States towards providing [assistance] to 100 percent of those persons with a

5. LEGAL SERVS. CORP., REQUEST FOR PROPOSALS FOR CONSULTANT SERVICES IN CONNECTION WITH TECHNOLOGY SUMMIT 2 (2011), available at http://www.docstoc.com/docs/document-preview.aspx?doc_id=82015019.

6. *Id.*

7. See *TIG's Impact*, LEGAL SERVICES CORP., <http://tig.lsc.gov/about-us/tigs-impact> (last visited Dec. 22, 2012).

8. See *id.*

9. See *id.*

legal need. . . . The Summit will bring together selected technology experts, academics, private practitioners, and representatives of legal services programs, courts, and governmental and business entities to develop a technology vision for the future and to develop strategies that will promote the development and widespread deployment of the identified components of the technology vision.¹⁰

The first session of the Summit took place in Silver Spring, Maryland on June 21–22, 2012. Roughly fifty lawyers, judges, and technology developers and providers attended.¹¹ The participants focused on developing a vision of how new technology can expand access to courts and legal services for poor persons. As of the publication of this Article, the Summit is in the process of analyzing the ideas developed during the first session. The second session of the Summit, scheduled for early 2013, will develop a plan for implementing some of the highest-priority ideas.

This Article comprises six papers prepared for the first session of the Summit. Part II of this Article summarizes successful efforts made over the past few years by legal services organizations using the Internet to deliver information and services related to access to justice. Part III discusses barriers to implementing new technologies that enhance access to justice and identifies impediments that new technologies may create for poor or unsophisticated persons. Part IV explains how legal services organizations are taking advantage of mobile technology to enable poor persons to access legal services. Part V describes current e-filing systems and proposes that open technical standards be used to facilitate development of applications for SRLs. Part VI addresses the potential use of technology to match individual litigants' needs with the services most appropriate for their cases. Part VII discusses financial, managerial, personal, and ethical impediments to the adoption of automated legal services applications.

10. *Mission Statement*, LEGAL SERVICES CORP., <http://tig.lsc.gov/summit-mission-statement> (last visited Dec. 22, 2012).

11. *Attendee List*, LEGAL SERVICES CORP., <http://tig.lsc.gov/summit-attendee-list> (last visited Dec. 22, 2012).

II. WEB-BASED LEGAL SERVICES DELIVERY CAPABILITIES (JANE RIBADENEYRA)¹²

A. Improving Access to Justice Through Technology

When Congress authorized funding for TIG grants in 2000,¹³ the digital revolution had already brought about great changes in society, but a significant “digital divide” kept low-income people from accessing information available on the Internet.¹⁴ While the divide has not been eliminated, it has narrowed significantly in subsequent years. Today, 62% of low-income adults have access to the Internet, compared to 78% of all adults.¹⁵ The narrowing of the digital divide presents an opportunity to examine past and present web-based legal services delivery strategies and to consider future online solutions that could significantly increase the provision of civil legal assistance to low-income people.

Since 2000, access to legal resources and information specifically targeted to low-income people has grown tremendously. Every state now offers a statewide legal aid website, where legal services providers collaborate with other access to justice organizations to provide a portal for self-help resources and a public entry point for intake and referrals to specific organizations that offer assistance.¹⁶ Statewide legal aid websites are also used to coordinate pro bono attorneys and volunteers, provide training materials, and enable advocates to privately collaborate and share resources. As one leading designer of web-based access to justice programs observed:

It is difficult to overestimate the importance of these statewide Web sites as foundational building blocks for transformational delivery changes. These sites

12. Jane Ribadeneyra is a Program Analyst for the Technology Initiative Grants program at the LSC. The author would like to acknowledge the contributions to this Part by David Bonebrake, Program Counsel at LSC; Abhijeet Chavan, Chief Technology Officer at Urban Insight; Bonnie Hough, Managing Attorney with the California Administrative Office of the Court's Center for Families, Children & the Courts; Snorri Ogata, Chief Technology Officer with the Superior Court of California, Orange County, California; and Alison Paul, Executive Director with the Montana Legal Services Association.

13. See *Background*, *supra* note 4.

14. See AMANDA LENHART, PEW INTERNET & AM. LIFE PROJECT, WHO'S NOT ONLINE: 57% OF THOSE WITHOUT INTERNET ACCESS SAY THEY DO NOT PLAN TO LOG ON 5 (2000), available at http://pewinternet.org/~media/Files/Reports/2000/Pew_Those_Not_Online_Report.pdf (stating that in 2000, just 31% of individuals in households with income less than \$30,000 had access to the Internet, while 78% of individuals with household income over \$75,000 had access).

15. KATHRYN ZICKUHR & AARON SMITH, PEW INTERNET & AM. LIFE PROJECT, DIGITAL DIFFERENCES 4-5 (2012), available at http://pewinternet.org/~media/Files/Reports/2012/PIP_Digital_differences_041312.pdf.

16. See LAWHELP.ORG, <http://lawhelp.org> (last visited Dec. 22, 2012).

provide the Internet framework on which to hang new services and new approaches to collaboration. Their authenticity and interface consistency make these sites viable platforms for information and service delivery innovation across the country.¹⁷

Courts, facing increasing numbers of SRLs, are creating self-help centers and websites to provide forms, videos, and legal information. Some courts have partnered with legal aid programs on self-help websites. For instance, Illinois Legal Aid Online “works with courts and libraries across Illinois to establish technology-based legal self-help centers that assist lower-income residents who cannot afford a lawyer.”¹⁸ By 2012, 77 of 102 counties in Illinois had centers in local public libraries and county courthouses with computer terminals that SRLs could use to access Illinois Legal Aid Online.¹⁹ Other examples include New York CourtHelp²⁰ and the California Courts’ Online Self-Help Center.²¹

We envision a world in the near future where access to justice means that a potential litigant can easily find legal information about her rights, apply for legal aid electronically, talk to a legal aid attorney over her tablet computer, find and complete the forms she needs to file in court, access the court’s e-filing system to file her response and check on the progress of her case, and communicate over the Internet with a lawyer in a larger city if her case becomes complicated.

We discuss current best practices, limitations, and potential future solutions for providing the most effective online assistance to low-income persons with civil legal problems, and recommend effective practices for the design and implementation of Internet-based resources that will make the world described above a reality for low-income people everywhere.

B. Recent Technological Innovations in Access to Justice

Below, we provide a brief overview of different technologies legal aid providers across the country have adopted to help serve clients with limited access to the courts.

17. Ronald W. Staudt, *All the Wild Possibilities: Technology that Attacks Barriers to Access to Justice*, 42 LOY. L.A. L. REV. 1117, 1126 (2009).

18. *Our Current Projects*, ILL. LEGAL AID ONLINE, <http://www.illinoislegalaidonline.org/index.php?projects> (last updated May 24, 2012).

19. *See id.*

20. NEW YORK COURTHelp, <http://www.nycourts.gov/courthelp> (last visited Dec. 22, 2012).

21. *Online Self-Help Center*, JUD. BRANCH OF CAL., <http://www.courts.ca.gov/selfhelp.htm> (last visited Dec. 22, 2012).

1. Court and Legal Aid Websites

When court and legal aid websites were first created, they mostly contained static information about their services, electronic versions of paper flyers and brochures, and links to resources. Over the last decade, as these sites have grown to include thousands of pages of increasingly interactive material, legal aid organizations have developed a number of tools for dealing with the increase in content. Statewide legal aid websites created using TIG funds are required to tag material using the National Subject Matter Index (“NSMI”), a centralized, comprehensive taxonomy of topics for the legal aid community by which documents and data can be indexed.²² Most statewide websites now use robust content management systems, enabling non-technical staff to easily add and update content. These systems include LawHelp²³ by Pro Bono Net and Drupal for Legal Aid Websites²⁴ (“DLAW”) by Urban Insight, Inc.

As noted in a recent report prepared by John Greacen for the Michigan State Bar Foundation, a growing number of court systems offer resources to assist litigants on their websites.²⁵ That report includes an analysis of state court websites as of December 2010 and points out the variety of creative solutions that courts are using to provide information.²⁶

Some court and legal aid websites have been redesigned to create content that is optimized for search engines, making it easier to find.²⁷ Multimedia content, including videos, podcasts, and interactive quizzes, is available.²⁸ Some legal aid organizations now have mobile apps to deliver information to smartphones and other mobile devices.²⁹ Despite the progress made on some legal aid and court websites, others are still in need of updating to increase their usability and to make the information they provide more relevant and current.

22. *Statewide Websites: TIG Nuts and Bolts*, LEGAL SERVICES NAT’L TECH. ASSISTANCE PROJECT, <http://lsntap.org/book/export/html/2519> (last visited Dec. 22, 2012).

23. LAWHELP.ORG, *supra* note 16.

24. OPENADVOCATE, <http://openadvocate.org> (last visited Dec. 22, 2012).

25. JOHN GREACEN, RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE “STATE OF THE ART” (NATIONAL EDITION) 7 (2011), *available at* <http://www.msbf.org/selfhelp/GreacenReportNationalEdition.pdf>.

26. *See id.*

27. *See SEO and Internet Marketing Webinar: Key Points and Additional Resources*, LEGAL SERVICES NAT’L TECH. ASSISTANCE PROJECT (Aug. 3, 2012), <http://lsntap.org/node/3946>.

28. *E.g.*, *Consumer Law Resource Center*, ARK. LEGAL SERVICES PARTNERSHIP, <http://www.arlegalservices.org/consumerlaw> (last visited Dec. 22, 2012); GEORGIALEGALAID.ORG, <http://www.georgialegalaid.org> (last visited Dec. 22, 2012).

29. *E.g.*, *Illinois Legal Aid App*, GOOGLE PLAY, <https://play.google.com/store/apps/details?id=org.ilao.LegalAidApp#> (last visited Dec. 22, 2012).

2. Interactive Resources and Remote Assistance

One promising development in web-based delivery of legal services is the provision of more interactive resources and remote assistance capabilities. Some legal aid organizations and courts are using instant messaging programs and remote access software to assist users in navigating their websites to find available self-help resources. For example, LawHelp/NY uses bilingual volunteers to staff its LiveHelp program, offering assistance to both English- and Spanish-speaking users.³⁰ Visitors to a website using LiveHelp can click a button to open an instant messaging session with a trained specialist. The specialist can answer questions and provide links to relevant resources on the site. If a specialist is unavailable, visitors can leave messages and receive information later via e-mail.³¹ In situations where legal advice may be needed, the specialist will inform visitors about how they can apply for legal services or contact a lawyer referral service.³²

The Minnesota courts' Self-Help Center provides remote assistance to SRLs using TeamViewer software.³³ Instead of trying to describe which links to click over the telephone or by instant message, a staff person can request permission to take remote control of a visitor's computer and show her how to navigate the website.

Legal Services of Northern Michigan has implemented an online system for eligible low-income people to submit questions that are then answered by volunteer attorneys.³⁴ The Internet Representation Project ("IRP") first screens clients for eligibility. If the client qualifies, the program allows her to post questions to a private messaging system, which are answered by private attorneys volunteering their time.³⁵ An IRP client can "check the system for answers at any time or schedule a real time chat session with an attorney. Both the client and the attorney remain anonymous to [e]nsure complete privacy."³⁶

30. See LAWHELP.ORG/NY, <http://www.lawhelp.org/ny> (last visited Dec. 22, 2012) (featuring a Spanish language version of its site, which connects the user to a Spanish-speaking LiveHelp agent). LiveHelp is an online, real-time chat service available on the LawHelp platform. Liz Keith, *LiveHelp: Increasing Access to Legal Information Online*, THE YOUNG LAW., Jan. 2010, at 3, available at http://www.americanbar.org/publications/young_lawyer_home/young_lawyer_archive/yld_tyl_jan10_digital.html.

31. Keith, *supra* note 30.

32. *Id.*

33. See *Self-Help Center*, MINN. JUD. BRANCH, <http://www.mncourts.gov/selfhelp> (last visited Dec. 22, 2012).

34. *About Legal Services of Northern Michigan's Internet Representation Project!*, LEGAL SERVICES OF N. MICH.'S INTERNET REPRESENTATION PROJECT, <http://www.lsnmirp.org/client.php/about> (last visited Dec. 22, 2012). A similar service is the Legal Services of Northwest Minnesota's Legal Information Online Network. *Legal Information Online Network*, LEGAL SERVICES OF NW. MINN., <https://www.lsnmlaw-lion.org/client.php> (last visited Dec. 22, 2012).

35. *About Legal Services of Northern Michigan's Internet Representation Project!*, *supra* note 34.

36. *Id.*

This system allows private attorneys to provide pro bono assistance at a convenient time and promotes access in rural areas where it is difficult to recruit pro bono attorneys.

In a similar project, The Tennessee Alliance for Justice has partnered with the Tennessee Bar Association to create OnlineTNJustice.org, a web portal that allows low-income people to post legal questions and receive brief advice from pro bono attorneys.³⁷ Potential clients answer a series of questions to screen for eligibility and agree to the site's user agreement.³⁸ If qualified, they can create a user account and post a question to be answered by a private volunteer attorney.³⁹ The volunteer attorneys receive continuing legal education ("CLE") credit for the time they spend researching and answering questions.⁴⁰ The system is created to act like a virtual legal clinic that provides more flexibility for both the volunteer attorneys and the clients.

The Judicial Council of California has also recognized the need to address the increasing number of SRLs⁴¹ by providing additional resources, including an Online Self-Help Center "to help its users navigate the court system and acquire realistic expectations about the legal system."⁴² It is also important for courts to ensure that inexperienced litigants can access information about their cases by providing a user-friendly case management system such as the My Court Case website developed by the Contra Costa Superior Court.⁴³

The Sacramento Superior Court's family law facilitator answers a growing number of self-help questions via e-mail.⁴⁴ Courts are also using the web to allow litigants to schedule appointments at self-help centers.⁴⁵ The Orange County Superior Court gives litigants a homework assignment to fill in the information for a declaration for a court

37. *About*, ONLINE TENN. JUST., <http://www.onlinetnjustice.org/Home/About> (last visited Dec. 22, 2012).

38. *Id.*

39. *Id.*

40. *OnlineTNJustice.org*, JUST. FOR ALL: A TENN. SUPREME CT. INITIATIVE, <http://www.justiceforalltn.com/i-can-help/onlinetnjustice> (last visited Dec. 22, 2012).

41. *See* TASK FORCE ON SELF-REPRESENTED LITIGANTS, JUDICIAL COUNCIL OF CAL., STATEWIDE ACTION PLAN FOR SERVING SELF-REPRESENTED LITIGANTS 1 (2004) [hereinafter STATEWIDE ACTION PLAN], available at <http://www.courts.ca.gov/documents/selfreplitsrept.pdf>.

42. JUDICIAL COUNCIL OF CAL., PROGRAMS FOR SELF-REPRESENTED LITIGANTS FACT SHEET 3 (2009), available at <http://www.courts.ca.gov/documents/proper.pdf>.

43. *See My Court Case*, CONTRA COSTA COUNTY SUPERIOR CT., <http://icms.cc-courts.org/tellme> (last visited Dec. 22, 2012).

44. *See Family Law Facilitator's Office e-Correspondence System*, SACRAMENTO COUNTY SUPERIOR CT., <https://services.saccourt.ca.gov/flfoecorrespondence> (last visited Dec. 22, 2012) (registration required).

45. *See, e.g., Self-Help Online Workshop Registration*, JUD. BRANCH OF CAL., <http://www.courts.ca.gov/2282.htm> (last visited Dec. 22, 2012).

hearing on their type of case.⁴⁶ This can save a significant amount of time, allowing the self-help center to assist more people.

3. Document Assembly

Instead of finding static court forms online to download, print, and complete by hand, litigants can now use interactive A2J Guided Interviews, created with A2J Author, which walks the user through the litigation process step-by-step.⁴⁷ As litigants answer a series of questions, a form is assembled in the background using HotDocs document assembly software.⁴⁸ There are over 2300 HotDocs templates stored on the national LawHelp Interactive (“LHI”) server for the use of advocates, pro bono volunteers, and SRLs through legal aid and court websites.⁴⁹ In 2011, more than a half-million interviews were conducted using LHI, generating over 300,000 documents.⁵⁰

Another tool developed to help SRLs complete court forms is the Interactive Community Assistance Network (“I-CAN!”) program.⁵¹ Developed by the Legal Aid Society of Orange County (“LASOC”) and currently used in seven states, almost 200,000 pleadings have been created since the system was developed in 1999.⁵² LASOC has also used the technology underlying I-CAN! to create a new online service called Legal Genie.⁵³ Legal Genie asks simple questions and inserts responses in the correct places. The forms are then reviewed by an attorney from the California State Bar-certified Lawyers Referral Service (“LRS”), which also provides up to thirty minutes of telephone consultation to inform litigants about the court process and give

46. ORANGE CNTY. SUPERIOR COURT, SELF-HELP CTR. FLYER, *available at* <http://www.occourts.org/media/pdf/Self-Help-Center-Flyer.pdf> (last visited Dec. 22, 2012).

47. *About A2J Author: A Brief History*, A2J AUTHOR COMMUNITY WEBSITE (Feb. 2, 2008), <http://www.a2jauthor.org/drupal/?q=node/123>. A2J Author was created in 2004 by Chicago-Kent College of Law’s Center for Access to Justice and Technology in partnership with the Center for Computer-Assisted Legal Instruction. *Id.* A2J Author uses branching logic to build customer-friendly interfaces for web-based guided data collection and document assembly. *Id.*

48. *See About A2J Author: A2J Author, HotDocs and the “National Server”*, A2J AUTHOR COMMUNITY WEBSITE (Feb. 4, 2008), <http://www.a2jauthor.org/drupal/?q=node/125>.

49. LawHelp Interactive is a project of Pro Bono Net, a nonprofit committed to increasing access to justice with technology, in cooperation with Ohio State Legal Services Association. LAWHELP INTERACTIVE RESOURCE CENTER, <http://www.probono.net/dasupport> (last visited Dec. 22, 2012).

50. Registered users can view LHI’s National Usage Reports. *Id.*

51. I-CAN! LEGAL, <http://www.icandocs.org> (last visited Dec. 22, 2012).

52. *See Usage Reports*, I-CAN! LEGAL, <https://secure.icanefile.org/usagereports/ican.aspx> (last visited Dec. 22, 2012) (registration required); *Sample Document Automation Programs for Legal Services*, LEGAL SERVICES NAT’L TECH. ASSISTANCE PROJECT, <http://lsntap.org/?q=node/1407> (last visited Dec. 22, 2012).

53. *Partner General Information*, LEGAL GENIE, <http://www.legalgenie.com/partner-general-information> (last visited Dec. 22, 2012).

brief advice.⁵⁴ The fees for this service range from \$199 to \$799, depending on the complexity of the forms.⁵⁵

Smart legal forms are also becoming more commonplace, especially for SRLs. Smart forms get their “smarts” by being interactive — such as by providing data validation, calculations, and checks for completeness — and are stateless, meaning the forms can be worked on and saved whether or not the person preparing the form is connected to the Internet.⁵⁶ Smart forms, such as those created with Adobe LiveCycle, are XML-based, so the form data is tagged in a way that enables integration with other court systems.⁵⁷ They are also e-filing-enabled. While there are many benefits to the filers, with convenience at the top of the list, courts are adopting smart forms for operational cost savings. A well-designed smart form provides better accuracy because the entered data is validated and all required fields are completed. It also reduces the burden on the court, as it can be e-filed — eliminating the clerk’s data entry work — and can be automatically integrated with the court case and document management systems. These benefits reduce continuances caused by missing, incomplete, or inaccurate forms. By extending the “smarts” into court workflows, courts can save themselves and litigants both time and money.

While smart forms and document assembly projects using HotDocs and A2J Author provide helpful resources for SRLs, technologies like these require significant technical expertise, staff time, and funding resources. Smart forms also require ongoing maintenance as laws are changed and forms need to be updated. The challenge, given the current fiscal climate of reduced funding for court systems and legal aid programs across the country, is to show how these online systems can help save court clerk time, increase the efficiency of the court system, and provide increased court access for litigants who cannot afford an attorney.⁵⁸

4. E-Filing

Many courts allow litigants to electronically file documents with the court. Some courts use a third-party intermediary called an Electronic Filing Service Provider (“EFSP”), while other courts have built

54. *Id.*

55. Press Release, Legal Aid Soc’y of Orange Cnty., Legal Genie Recognized by the American Bar Association for Excellence in eLawyering (Mar. 29, 2011), http://www.legalgenieapps.com/file/Legal%20Genie%20Selected%20for%20American%20Bar%20Association%202011%20James%20I_%20Keane%20Award.pdf.

56. AM. LEGALNET, INC., SMARTFORM BENEFITS IN THE COURTS 2 (2009), available at <http://www.americanlegalnet.com/marketing/Smart-Forms-White-Paper.pdf>.

57. *See id.* at 1–2.

58. LEGAL AID OF NEB., TIG 10047 FINAL EVALUATION REPORT 5–6 (2012), available at [http://tig.lsc.gov/sites/default/files/TIG/TIG 10047 Nebraska Automated Docs.pdf](http://tig.lsc.gov/sites/default/files/TIG/TIG%2010047%20Nebraska%20Automated%20Docs.pdf).

web portals to facilitate e-filing transactions directly. One of the EF-SPs for e-filing with the Superior Court of Orange County is LASOC.⁵⁹ LASOC has channeled operational savings created by the e-filing system back into courthouse Self-Help Centers to provide even better service to filers.⁶⁰

Some of the e-filing systems being implemented require the filer to be a licensed attorney, registered with a username and password.⁶¹ This has the potential to enlarge the access to justice gap in the long run, as low-income pro se litigants are excluded from these systems. Some courts are starting to look into how to include pro se e-filers, but such a change would raise complex issues, and in light of recent budget cuts, addressing these issues may not be a high priority.⁶²

The e-filing software used at different courthouses is not always fully compatible. Later in this Part, we address the problems this raises, and the promising future that could be provided through greater interoperability.⁶³

5. Web Services

A web service is a piece of software that enables two systems to interact and readily share information. Other software, or websites, can then take advantage of the service to deliver new online capabilities. For example, Google Translate is a web service that allows a website to dynamically translate text between different languages.⁶⁴ Many courts now make case information available via web services.⁶⁵

The kinds of data that can be accessed via the e-filing web service of the Superior Court of Orange County, California include:

- Person (all persons/parties associated with a case);
- Org (all organizations, agencies, and law firms associated with a case);
- ROA (provide the register of actions on a case);
- Events (show future and past events);

59. *Small Claims E-Filing*, I-CAN! LEGAL, <http://www.icandocs.org/ca/sc.html> (last visited Dec. 22, 2012).

60. Memorandum from Alan Carlson, Chief Exec. Officer, Orange Cnty. Superior Court to Snorri Ogata, Chief Tech. Officer, Orange Cnty. Superior Court (Feb. 23, 2012) (on file with author).

61. *E.g.*, *Account Registration*, FLA. CTS. EFILING PORTAL, <https://www.myflcourtagency.com/Common/UIPages/Register.aspx> (last visited Dec. 22, 2012).

62. *See* D. Todd Smith, *5th Circuit Gets E-Filing, Texas Appeals Court to Follow*, 26 TEX. LAW. 17, 17 (2010), available at Factiva, Doc. No. TEXASL0020100405e6450000f.

63. *See infra* Part V.

64. *Google Translate API*, GOOGLE DEVELOPERS, <https://developers.google.com/translate> (last updated Apr. 20, 2012).

65. *E.g.*, CLARK COUNTY CTS. RECS. INQUIRY, <https://www.clarkcountycourts.us/Anonymous/default.aspx> (last visited Dec. 22, 2012).

- Summary (share basic case information);
- Case (share all cases based on certain criteria); and
- Title (provide the official title of a case).⁶⁶

With a library of web services, a court or legal aid office could assemble applications for a variety of platforms (website, mobile phones, iPads, etc.) with minimal effort.

6. Social Media Tools

In addition to operating standalone websites for legal aid programs, self-help centers and courts, a significant number of these organizations now also maintain a presence on commercial social media sites such as Facebook, Twitter, and YouTube.⁶⁷ In the broader non-profit community, 93% of organizations report some presence on a commercial social media platform.⁶⁸ Legal aid organizations and courts can use social media to expand their outreach to the community by posting information about the availability of legal clinics, as well as videos, self-help resources, court information, and online intake programs. Having an active presence on social media sites allows courts and legal aid organizations to provide an alternative way for people to find information and resources, as well as to ask questions. Arguably, this type of communication also provides another means of building support and confidence in a legal system that is often confusing for (and mistrusted by) low-income and minority populations.⁶⁹

Videos posted to websites like YouTube and Vimeo can help litigants learn how to complete forms, prepare for court, and understand their legal rights.⁷⁰ Videos can be produced inexpensively using photographs, animations, and voice-overs, and such videos can be more visually appealing and instructive than ones that use actors or talking heads. Additionally, videos that use graphics and voice-overs can be

66. SUPERIOR COURT OF CAL., CNTY. OF ORANGE, E-FILING “CASE DATA” WEB SERVICE 8-13 (Oct. 2, 2012) (providing an overview of the web service provided to e-filing vendors for retrieval of case data from the court’s case management system).

67. See *Legal Aid on Social Media*, LEGAL SERVICES NAT’L TECH. ASSISTANCE PROJECT (Apr. 2010), http://lsntap.org/Legal_Aid_Social_Media_List.

68. COMMON KNOWLEDGE ET AL., 4TH ANNUAL NONPROFIT SOCIAL NETWORK BENCHMARK REPORT 15 (2012), available at <http://www.NonprofitSocialNetworkSurvey.com> (registration required).

69. NAT’L CTR. FOR STATE COURTS, HOW THE PUBLIC VIEWS THE STATE COURTS 14, 23 (1999), available at <http://contentdm.nesconline.org/cgi-bin/showfile.exe?CISOROOT=/ctcomm&CISOPTR=17> (finding that low income level is correlated with distrust of public institutions, and that African-Americans hold significantly more negative views of courts than whites or Hispanics).

70. See *Q&A with NJP’s Sue Encherman and Daniel Ediger, Educating the Public via Video*, PRO BONO NET (Aug. 7, 2012), <http://www.connectingjusticecommunities.com/qa-with-njps-sue-encherman-daniel-ediger-educating-the-public-via-videos/2012/08>.

translated for individuals with limited English proficiency and updated when a law is changed more easily than other types of videos.

Good examples of social media use include the websites of the Superior Court of Arizona,⁷¹ the South Carolina Access to Justice Commission,⁷² and Lone Star Legal Aid.⁷³

7. Online Learning Tools and Trends

Another important web-based delivery tool widely used by legal aid programs, courts, and access to justice organizations is online meeting and training software. Through the LegalMeetings program, legal aid organizations have adopted online web meetings and webinars as important collaboration and training tools for their staff, board members, advisory groups, community partners, and pro bono attorneys.⁷⁴ Some programs have also implemented videoconferencing systems, although bandwidth and maintenance requirements have limited the use of videoconferencing among legal aid programs.⁷⁵ Courts have had more success implementing videoconferencing systems to provide remote assistance⁷⁶ and hearings.⁷⁷ Legal aid programs can use low-cost web-based videoconferencing platforms like GotoMeeting and WebEx to host training sessions, meetings, and legal clinics, and for co-counseling.⁷⁸

Some universities are making their courses available for free, such as MIT through its OpenCourseware initiative.⁷⁹ Independent

71. JUD. BRANCH OF ARIZ., MARICOPA COUNTY, <http://www.superiorcourt.maricopa.gov> (last visited Dec. 22, 2012); *Superior Court of Arizona in Maricopa County*, FACEBOOK, <https://www.facebook.com/SuperiorCourtofArizona> (last visited Dec. 22, 2012).

72. S.C. ACCESS TO JUST., <http://www.scattj.org> (last visited Dec. 22, 2012); *South Carolina Access to Justice*, TWITTER, <https://twitter.com/scattj> (last visited Dec. 22, 2012).

73. LONE STAR LEGAL AID, <http://www.lonestarlegal.org> (last visited Dec. 22, 2012); *Lone Star Legal Aid*, FACEBOOK, <https://www.facebook.com/LoneStarLegalAid> (last visited Dec. 22, 2012).

74. *Nonprofit Firm Helps 80 Legal Aid Programs and Courts with GoToMeeting*, CITRIX, http://www.citrix.com/site/resources/dynamic/customerStory/LSNTAP_GoToMeeting_case_study.pdf (last visited Dec. 22, 2012).

75. *See Costs of Video Conferencing*, LEGAL SERVICES NAT'L TECH. ASSISTANCE PROJECT, <http://lsntap.org/?q=node/980> (last visited Dec. 22, 2012) (describing the high costs of videoconferencing systems for legal aid programs).

76. *E.g.*, ADMIN. OFFICE OF THE COURTS, JUDICIAL COUNCIL OF CAL., BUTTE CNTY.: REGIONAL COLLABORATION MODEL 55, http://www.courts.ca.gov/partners/documents/Self-Help_ch2.pdf (last visited Dec. 22, 2012).

77. *See* RICHARD ZORZA, LEGAL SERVICES NAT'L TECH. ASSISTANCE PROJECT, VIDEO CONFERENCING FOR ACCESS TO JUSTICE: AN EVALUATION OF THE MONTANA EXPERIMENT 3 (2007), available at http://lsntap.org/sites/all/files/TIG_03693_MLSA_Final_Video_Conferencing_Evaluation_Report.pdf.

78. *Web & Video Conferencing Alternatives*, LEGAL SERVICES NAT'L TECH. ASSISTANCE PROJECT, <http://lsntap.org/blogs/web-video-conferencing-alternatives> (last visited Dec. 22, 2012).

79. MIT OPEN COURSEWARE, <http://ocw.mit.edu> (last visited Dec. 22, 2012).

efforts such as the Khan Academy,⁸⁰ Coursera,⁸¹ and Udacity⁸² offer free online courses in science and technology. The e-learning models being implemented could be used to build similar repositories for legal services learning materials. Additionally, the Center for Computer-Assisted Legal Instruction recently offered a free online course for law students and law faculty on Topics in Digital Law Practice that could serve as a model for the delivery of online courses focused on legal aid issues.⁸³

C. Conclusion

Legal aid organizations and courts have made great strides in the development and use of web-based delivery models, including websites, interactive resources, remote assistance, document assembly, e-filing, web services, and social media and online learning, for the delivery of legal services to low-income people. However, progress is not universal across all states. Even where online information is available, it can be difficult for the targeted low-income population to find and understand. Website usability needs to be improved and complicated legal information needs to be translated into plain language. Therefore, while replication of successful delivery models and continued innovation should be encouraged, attention and resources must also be allocated to improving accessibility and usability.

III. LET'S NOT MAKE IT WORSE: ISSUES TO CONSIDER IN ADOPTING NEW TECHNOLOGY (BONNIE ROSE HOUGH)⁸⁴

A. Introduction

TECHNOLOGY PERMEATES ALMOST EVERY ASPECT OF OUR PERSONAL AND PROFESSIONAL LIVES, OFTEN PROVIDING MORE EFFICIENT WAYS TO ACCOMPLISH A VARIETY OF TASKS. THE PUBLIC HAS ADOPTED THESE SERVICES TO CONDUCT ACTIVITIES SUCH AS ONLINE BANKING, TRAVEL RESERVATIONS, SOCIAL NETWORKING, AND SHOPPING. THESE TECHNOLOGIES CAN SIMILARLY HELP PEOPLE ACCESS COURT SERVICES. IN THE PAST DECADE . . . TECHNOLOGY INITIATIVES HAVE PRESENTED OPPORTUNITIES TO ADMINISTER JUSTICE MORE

80. KHAN ACADEMY, <http://www.khanacademy.org> (last visited Dec. 22, 2012).

81. COURSERA, <http://coursera.org> (last visited Dec. 22, 2012).

82. UDACITY, <http://udacity.com> (last visited Dec. 22, 2012).

83. *About, TOPICS IN DIGITAL LAW PRAC.*, <http://tdlp.classcaster.net/about-cal-topics-in-digital-law-practice> (last visited Dec. 22, 2012).

84. Bonnie Rose Hough is the Managing Attorney for the Center for Families, Children & the Courts of the California Administrative Office of the Courts. The focus of her work is on assisting courts to meet the needs of SRLs. Special thanks to Richard Zorza, Self-Represented Litigation Network; John Greacen, Greacen Associates; Glenn Rawdon, LSC; Linda Kim, OneJustice; and Karen Cannata, Deborah Chase, Harry Jacobs, Jamel Jones, Diane Nunn, Patrick O'Donnell, and Christopher Smith from the California Administrative Office of the Courts for their enormous help in writing about and discussing this topic.

EFFICIENTLY AND TO A LARGER COMMUNITY OF COURT USERS. . . .
NOW MORE THAN EVER, IT IS IMPERATIVE THAT ACCESS REMAINS A
CENTRAL FOCUS IN THE DESIGN, DEVELOPMENT, AND DEPLOYMENT
OF COURT TECHNOLOGY SOLUTIONS.⁸⁵

In an age of cutbacks in funding for legal services and courts, the increased use of technology is often identified as a source of savings and efficiency.⁸⁶ But this also raises the specter of a digital divide that institutionalizes a two-tiered system incapable of delivering appropriate justice to low-income persons.⁸⁷ One can envision a system where all persons are required to use complicated e-filing systems that charge parties for access without providing fee waivers or access to support staff.

In order to more fully identify and avoid these barriers, the California Administrative Office of the Courts (“AOC”), the staff agency of the Judicial Council that makes policy for the state court system,⁸⁸ commissioned OneJustice (then known as the Public Interest Clearinghouse) to survey California legal services providers and self-help center staff to identify potential benefits and barriers that increased use of technology posed for low-income persons.⁸⁹ Based on these findings and ongoing discussion and review, the Judicial Council’s Court Technology Advisory Committee (“CTAC”) developed a proposal, which the Judicial Council approved after comments on August 31, 2012.⁹⁰

These guiding principles are intended to establish a set of considerations for court technology decision-makers rather than to function as a mandate.⁹¹ They articulate the fundamental values that should underlie future use of technology in the courts.⁹² The author, a staff member who helped develop these principles, describes how they provide guidance to courts and court partners in avoiding barriers to access to justice.

85. COURT TECH. ADVISORY COMM., JUDICIAL COUNCIL OF CAL., ADVANCING ACCESS TO JUSTICE THROUGH TECHNOLOGY, GUIDING PRINCIPLES FOR CALIFORNIA JUDICIAL BRANCH INITIATIVES 1 (2012) [hereinafter GUIDING PRINCIPLES], available at <http://www.courts.ca.gov/documents/jc-20120831-itemA.pdf>.

86. See *supra* Part II.

87. For other discussion of the digital divide, see generally Julia R. Gordon, *Legal Services and the Digital Divide*, 12 ALB. L.J. SCI. & TECH. 809 (2002).

88. *Administrative Office of the Courts*, CAL. CTS., <http://www.courts.ca.gov/policyadmin-aoc.htm> (last visited Dec. 22, 2012).

89. See GUIDING PRINCIPLES, *supra* note 85, at 2.

90. California Judicial Council, Minutes of Meeting of August 30–31, 2012, at 7, available at <http://www.courts.ca.gov/documents/jc-20120831-minutes.pdf>.

91. GUIDING PRINCIPLES, *supra* note 85.

92. *Id.*

*B. First Two Principles: Ensure Access and Fairness
and Include SRLs*

The first and fundamental principle set forth by the committee was to “Ensure Access and Fairness.”⁹³ CTAC noted that technology should be used to “allow all court users to have impartial and effective access to justice.”⁹⁴ Electronic means of communicating with the court have many benefits for litigants. Online resources allow litigants to conduct legal business remotely at any time, day or night.⁹⁵ Litigants therefore no longer have to miss work to fill out legal forms; the requisite information can be entered from a computer at home.⁹⁶ That being said, equal access requires courts and their partners to keep in mind the unique needs of certain groups of litigants. The principles thus identify several groups that may face particular challenges as technologies are deployed.⁹⁷

CTAC considered the challenges SRLs face to be so important that it made them the subject of the second principle: “Include Self-Represented Litigants.”⁹⁸ This group is discussed below, along with other groups for whom electronic court access may prove particularly challenging.

1. Self-Represented Litigants

The first group that CTAC identified as facing barriers to electronic access to courts are those who represent themselves.⁹⁹ An estimated 4.3 million Californians use the courts without attorneys.¹⁰⁰ Many of the cases involve traffic violations, family law, small claims, domestic violence, landlord/tenant disputes, and guardianship.¹⁰¹

These court customers, understandably unfamiliar with court business practices, require additional support and attention. The use of technology can be of great assistance in providing outreach, information, and support to those navigating the courts for the first time.¹⁰² And, if designed properly, these solutions also can provide reassur-

93. *Id.* at 3.

94. *Id.* at 4.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 3.

99. *Id.*

100. STATEWIDE ACTION PLAN, *supra* note 41, at 2.

101. *Id.* at 13.

102. See PHIL MALONE ET AL., BERKMAN CTR. FOR INTERNET AND SOC’Y, BEST PRACTICES IN THE USE OF TECHNOLOGY TO FACILITATE ACCESS TO JUSTICE INITIATIVES: PRELIMINARY REPORT 6–7 (2010), available at http://cyber.law.harvard.edu/publications/2010/Best_Practices_Technology_Access_to_Justice.

ance to SRLs by giving them instant access to case information or the current status of filings or case events.

CTAC noted that “[b]ecause so many cases now involve self-represented parties, technology must be implemented in ways that benefit those with or without legal representation so that all parties have equal access to the courts.”¹⁰³ Until the fall of 2012, the California Code of Civil Procedure authorized courts to require electronic filing and service only in complex civil cases.¹⁰⁴ Representation is almost universal for these difficult cases.¹⁰⁵ Today, however, the law provides that, upon adoption by the Judicial Council of uniform rules for mandatory electronic filing and service for specified civil actions, any superior court may, by local rule, implement mandatory electronic filing subject to certain requirements and conditions.¹⁰⁶ The statute requires statewide policies on, among other things, unrepresented parties, parties with fee waivers, and reasonable exceptions to e-filing.¹⁰⁷

CTAC also recommended that courts take into account aspects of usability and access unique to SRLs.¹⁰⁸ SRLs are likely to access court systems using public terminals, which may be available at libraries, legal aid offices, and court self-help centers.¹⁰⁹ Thus, special precautions must be made to protect SRLs’ private information.¹¹⁰

Well-designed e-filing solutions that involve document assembly can also be extremely helpful to both the public and the courts. In 2003, the Orange County Superior Court and LASOC collaborated to create I-CAN!, which consisted in part of thirteen interactive modules addressing legal issues SRLs frequently face.¹¹¹ These modules would generate the appropriate forms for filing.¹¹² By 2012, I-CAN! had generated nearly 182,000 pleadings in California,¹¹³ and the Orange County Superior Court had accepted over 12,000 small claims e-

103. GUIDING PRINCIPLES, *supra* note 85, at 6.

104. *Id.*

105. *Id.*

106. 2012 Cal. Stat. 320.

107. *Id.*

108. GUIDING PRINCIPLES, *supra* note 85, at 7.

109. *Id.*

110. *Id.* For instance, the Sacramento courts use encrypted forms and secure protocols to protect litigants’ information. See *Tenant e-Filing Frequently Asked Questions*, SUPERIOR CT. OF CAL., COUNTY OF SACRAMENTO, <http://www.saccourt.ca.gov/ud/e-filing-faq.aspx> (last visited Dec. 22, 2012).

111. I-CAN! (*Interactive Community Assistance Network*), CAL. CTS., <http://www.courts.ca.gov/2252.htm> (last visited Dec. 22, 2012). This was not, however, the first e-filing solution in a California superior court. The Sacramento Superior Court implemented a similar solution in 2000. See Lorraine D. Herbon, *Recent Changes in Sacramento Superior Court*, SACRAMENTO LAW. (Mar. 2001), https://www.sacbar.org/pdfs/saclawyer/mar01/court_news.html.

112. I-CAN!, *supra* note 111.

113. *Total I-CAN! Pleadings Created*, I-CAN! LEGAL, <https://secure.icandocs.org/stats/statsbytotal.asp> (last visited Dec. 22, 2012).

filings.¹¹⁴ Orange County judges noted that they could help six I-CAN!-assisted litigants in the time it typically took to assist a single SRL.¹¹⁵ I-CAN! also allowed legal aid attorneys to assist SRLs in rural areas.¹¹⁶

It is also essential that court technology implementers strive to ensure that technology solutions improve not only access to justice, but also the appropriateness and neutrality of substantive outcomes. It is critical that the legal work be done thoughtfully and comprehensively and that litigants are encouraged to get additional help to understand concepts and review their documents prior to submitting them to the court.

Courts and legal aid providers should also be looking at hybrid legal services systems that integrate human and automated assistance. For example, legal services and court programs in California have had great success using LHI, which is an Internet-based application.¹¹⁷ LHI applications have been designed to support domestic violence clinics and help litigants submit pleadings in eviction proceedings.¹¹⁸ The applications substantially reduce the time needed to complete court forms.¹¹⁹ Self-help centers are, as a result, able to focus on more significant matters, such as educating litigants on important legal concepts and the legal process, answering questions, and assisting in the preparation of litigant declarations.¹²⁰ The programs ensure that the proper facts are gathered and inserted into the court forms.¹²¹ Illinois' success with LHI has proven that online forms can be updated continuously to ensure compliance with the most current law and court policies and procedures.¹²²

Developers must recognize that the same features that make an application friendly for unsophisticated users may make it unfriendly for those who use the application more frequently.¹²³ For instance, unsophisticated users are best served by an application that leads them step-by-step, whereas more frequent users are best served by an application that allows the fastest and most efficient data entry possible.¹²⁴ Arguably, a user-account based system may benefit repeat players like

114. *Orange County Small Claims E-Filings*, I-CAN! LEGAL, <https://secure.icandocs.org/stats/statsbyfile.asp> (last visited Dec. 22, 2012).

115. *I-CAN!*, *supra* note 111.

116. *Id.*

117. See Claudia Johnson, *Online Document Assembly Initiatives to Aid the Self-Represented*, in *INNOVATIONS FOR SELF-REPRESENTED LITIGANTS* 97, 105 (Bonnie R. Hough & Pamela C. Ortiz eds., 2011).

118. *Id.* at 118.

119. *Id.* at 105–06.

120. *Id.* at 105.

121. *Id.*

122. *Id.* at 117.

123. *GUIDING PRINCIPLES*, *supra* note 85, at 9.

124. *Id.*

attorneys, but one-time access should still be available for SRLs. Certain systems, such as the I-CAN! program, are designed explicitly for those with limited computer experience. I-CAN! goes through screens one question at a time and includes an audio component where each question is read aloud to assist those with limited literacy.¹²⁵ This can be very slow and frustrating for regular computer users; thus, two or more versions of an application may be required to meet the reasonable needs of both types of users.

In designing a system, one must consider the locations at which an application will be used. For instance, while many tenants might choose to use a computer located in the courthouse to prepare an answer to an unlawful detainer action, a legal aid or private attorney would not find this to be an acceptable way to prepare pleadings. For them, an application would have to be accessible from their offices. Persons filling out financial disclosure declarations in dissolution actions will need to refer to their tax returns and other personal financial records — a process that would be extraordinarily awkward at a kiosk-type facility. In general, systems should be designed to allow parties to complete necessary forms in a location other than the court, and should anticipate that there will be little on-site support for the computer user.

2. Rural Residents

The issue of rural barriers to access to justice is critical. Over 30% of the five million Californians that live in rural areas are eligible for legal aid services.¹²⁶ Moreover, low wages and limited employment opportunities in rural areas contribute to higher poverty rates and lower education levels than in urban areas.¹²⁷ Legal aid programs in rural areas face even greater challenges than those in urban areas as there are fewer traditional sources of pro bono legal work and fewer funding resources.¹²⁸ Other challenges involve travel time and costs for the client to reach legal aid offices and the difficulty of recruiting staff to serve in rural areas.¹²⁹

Technology offers many options for the largely underserved rural population. It can assist those who do have web access by providing legal information online and allowing litigants to access court files, pay fines and fees, and file documents remotely. Legal aid programs have also succeeded in using videoconferencing to reach rural resi-

125. *Id.*

126. CAL. COMM'N ON ACCESS TO JUSTICE, IMPROVING CIVIL JUSTICE IN RURAL CALIFORNIA 7 (2010) [hereinafter IMPROVING JUSTICE], available at <http://calbar.ca.gov/LinkClick.aspx?fileticket=wBD9dBjuIm4=&tabid=216>.

127. *Id.*

128. *See id.* at 9.

129. *Id.* at 12.

dents.¹³⁰ Videoconferencing and telephonic appearance procedures are also making it possible for rural residents to participate in some court proceedings without incurring the cost of traveling to the courthouse.¹³¹

The Self-Help Assistance Regional Project (“SHARP”) uses videoconferencing equipment to link four court-operated self-help centers in California’s Butte, Glenn, and Tehama counties.¹³² The SHARP technology allows one supervising attorney and minimal support staff to provide self-help assistance through workshops and individual support to more than 1200 customers per month.¹³³ This equipment also allows staff members and volunteers to provide language services in all connected locations.¹³⁴

However, a solution like SHARP is not possible in all areas because of significant technological challenges. Indeed, many rural service providers do not have access to high-speed Internet connections, some lack cell phone reception, and others have little nearby access to fax machines.¹³⁵ In addition, rural areas have high levels of illiteracy, which limits the value of text-based information.¹³⁶ For these reasons, courts and legal aid providers must maintain traditional services even as they expand into new technological frontiers.

3. Persons with Disabilities

Technology can be particularly helpful in providing disabled persons meaningful access to information and the courtroom. For instance, screen readers allow visually impaired persons to use the

130. See JULIA GORDON, PROJECT FOR THE FUTURE OF EQUAL JUSTICE, EQUAL JUSTICE AND THE DIGITAL REVOLUTION: USING TECHNOLOGY TO MEET THE LEGAL NEEDS OF LOW-INCOME PEOPLE 17–18 (2002), available at http://www.clasp.org/admin/site/publications_archive/files/0110.pdf (describing Pine Tree Legal Assistance’s use of videoconferencing to enable remote representation in Maine).

131. See, e.g., *Rural Judges Turning to Video Technology*, JOURNALSTAR.COM (May 27, 2012), http://journalstar.com/news/state-and-regional/govt-and-politics/rural-judges-turning-to-video-technology/article_63c7b812-8f0f-5d11-9323-49370b790c37.html (noting that Nebraska has been expanding the use of video technology to make courts more efficient and less expensive); Press Release, Cisco, Texas County Implements Video Conferencing in Its Courts 3 (2011), http://www.cisco.com/web/strategy/docs/gov/case_study_bexar_county.pdf (discussing use of videoconferencing to allow inmates to participate in court hearings remotely).

132. ADMIN. OFFICE OF THE COURTS, JUDICIAL COUNCIL OF CAL., MODEL SELF-HELP PILOT PROGRAMS 6, 25 (2005) [hereinafter MODEL SELF-HELP PILOTS], available at http://www.courts.ca.gov/documents/Self-Help_full.pdf.

133. *Id.* at 23, 32–33.

134. See *id.* at 23.

135. IMPROVING JUSTICE, *supra* note 126, at 38; KB, *Skype: The Future of Rural Lawyering?*, LEGAL RURALISM (Sept. 26, 2011, 11:17 PM), <http://legalruralism.blogspot.com/2011/09/skype-future-of-rural-lawyering.html>.

136. IMPROVING JUSTICE, *supra* note 126, at 38.

Internet by reading a website's text aloud.¹³⁷ Thus, a person no longer has to rely on a friend's kindness to read her information about how to file a case; now she can simply navigate to a court's web page on her own. Videoconferencing is a powerful tool for hearing impaired people when used to provide sign language interpreters in rural courts.¹³⁸

It is critical, however, that technological solutions do not add to the barriers faced by persons with disabilities, particularly when they involve the deployment of new websites for SRLs. For example, the Department of Education estimated that, in 2006, nearly 10% of Americans had disabilities involving vision, hearing, mobility, or learning, all of which have the potential to impair their ability to use the Internet.¹³⁹ Additionally, only 54% of adults living with a disability use the Internet, compared to 81% of adults without a disability.¹⁴⁰ Further, up to 2% of adults may be unable to use the Internet at all because of disability or illness.¹⁴¹ However, thoughtful web design can address many of the challenges and resources are available to help web designers overcome these issues.¹⁴² Courts and legal services programs must follow developments in this area and avail themselves of these resources.

4. Persons with Limited English Proficiency

Not only do more than 40% of Californians speak languages other than English at home,¹⁴³ but language skills create an effective barrier to court access for nearly seven million Californians.¹⁴⁴ The dense language used in court documents and websites can make it difficult to convey legal concepts clearly and accurately.¹⁴⁵

137. See *Screen Readers*, AM. FOUND. FOR THE BLIND, <http://www.afb.org/prodbrowsecatresults.asp?catid=49> (last visited Dec. 22, 2012).

138. Pilot programs providing American Sign Language interpretation via videoconferencing are being operated in six California counties. *California Pilot Video Program*, DEAF NEWS TODAY (Dec. 26, 2011), <http://deafnewstoday.blogspot.com/2011/12/california-pilot-video-program.html>.

139. U.S. DEP'T OF EDUC., HOW DO INDIVIDUALS WITH DISABILITIES USE THE WEB? 1 (2006), available at www2.ed.gov/policy/gen/guid/disability-awareness.doc.

140. ZICKUHR & SMITH, *supra* note 15, at 2.

141. *Id.*

142. See, e.g., WEBAIM: WEB ACCESSIBILITY IN MIND, <http://webaim.org> (last visited Dec. 22, 2012).

143. *State & County QuickFacts: California*, U.S. CENSUS BUREAU (Sept. 18, 2012) <http://quickfacts.census.gov/qfd/states/06000.html>.

144. CAL. COMM'N ON ACCESS TO JUSTICE, LANGUAGE BARRIERS TO JUSTICE IN CALIFORNIA 1 (Sept. 2005), available at <http://calbar.ca.gov/LinkClick.aspx?fileticket=79bAIYydnho%3D&tabid=216> ("Nearly seven million Californians . . . cannot understand pleadings, forms or other legal documents, and cannot participate meaningfully in court proceedings without a qualified interpreter.")

145. Charles M. Grabau & Llewellyn Joseph Gibbons, *Protecting the Rights of Linguistic Minorities: Challenges to Court Interpretation*, 30 NEW ENG. L. REV. 227, 255-60 (1996). It should also be noted that Spanish-speakers may be less likely to have Internet access. One

Machine translation, a form of computer-automated translation, is becoming more widespread and of higher quality, allowing for a greater distribution of resources.¹⁴⁶ However, machine translation is still not as accurate as human translation.¹⁴⁷ Courts cannot simply rely on this automated method of translation and expect to get a product that is legally accurate.¹⁴⁸

Videoconferencing, Skype, and similar technologies can also be used for remote interpretation and bilingual assistance.¹⁴⁹ However, courts again must recognize that there will be real challenges with simultaneous interpretation and the lack of personal contact. This may not only compromise the accuracy of the translation, but also the trust and confidence that the non-English speaker has in the legal process.

C. Other Critical Principles

CTAC adopted other principles similarly designed to provide greater and more equal access to the court system while introducing technological solutions.¹⁵⁰ Several of these principles are described below.

1. Preserve Traditional Access

To address the very real concerns about access for these underserved populations, CTAC proposed to preserve traditional access to courts for those persons challenged by technology.¹⁵¹ This critical principle pushes courts to develop systems that will truly work for all persons — it encourages technological solutions, but does not mandate them as a general rule.

2. Provide Education and Support

The principles note that training is critical not only to encourage effective use of technology, but also to speed its adoption by reassuring litigants that the system is user-friendly.¹⁵² They also note that

survey found that participants who responded in Spanish were among the “least likely adults to have [I]nternet access.” ZICKUHR & SMITH, *supra* note 15, at 2.

146. See Paul Rubens, *Building Babel: Lost in Machine Translation*, BBC (Mar. 6, 2012), <http://www.bbc.com/future/story/20120306-lost-in-machine-translation/1>.

147. *Id.*; see, e.g., *Machine Translations*, ULTRA TRANSLATE, <http://www.ultratranslate.com/services/machine.html> (last visited Dec. 22, 2012).

148. See Mathias Winther Madsen, *The Limits of Machine Translation 12–15* (Dec. 23, 2009) (unpublished master’s thesis, University of Copenhagen), available at [http://www.math.ku.dk/~m01mwm/The%20Limits%20of%20Machine%20Translation%20\(Dec.%2023,%202009\).pdf](http://www.math.ku.dk/~m01mwm/The%20Limits%20of%20Machine%20Translation%20(Dec.%2023,%202009).pdf).

149. See, e.g., MODEL SELF-HELP PILOTS, *supra* note 132, at 23.

150. GUIDING PRINCIPLES, *supra* note 85, at 1.

151. *Id.* at 8.

152. *Id.* at 10–11.

education and training cannot be a one-time occurrence since so many persons coming to court are there for the first time or will use the system infrequently.¹⁵³

The principles suggest various ways of training users and recommend that such training be adapted to the “complexity of the system and the sophistication of the intended users.”¹⁵⁴ Indeed, the court could even ask large law firms or legal aid societies to provide training programs.¹⁵⁵

3. Secure Private Information

Facilitating public access to information may infringe on individual privacy. This is a particular problem with court documents, which often contain personal and confidential information. California has already taken some steps to protect litigants’ privacy in certain situations, such as providing for confidentiality in parentage cases.¹⁵⁶ California’s Rules of Court provide that electronic access should not be available outside of the courthouse for a variety of cases including family law, juvenile court, guardianship and conservatorship, mental health, and criminal proceedings.¹⁵⁷ The policy motivations that underlie this rule and others like it may require greater protection of court records as they are made available online. Litigants who are seeking work may not want a prospective employer to have access to their family law case.

Litigants may also expose themselves to privacy risks by using public or shared computers to access court information.¹⁵⁸ Identity theft committed with data in court documents poses a particular threat to low-income people. Although low-income people are targeted less often than those with higher incomes, they can suffer greater financial harm.¹⁵⁹ The principles emphasize that these individuals should be informed of both the existence of and ways to mitigate such risks.¹⁶⁰

153. *Id.* at 10.

154. *Id.*

155. *Id.*

156. CAL. FAM. CODE § 7643 (West 2012).

157. CAL. R. CT. 2.503 (West 2012).

158. GUIDING PRINCIPLES, *supra* note 85, at 12.

159. Christopher Maag, *After a Decline, Identity Fraud Rose in 2011*, CREDIT.COM (Feb. 23, 2011), <http://blog.credit.com/2012/02/after-a-decline-identity-fraud-rose-in-2011> (noting that “[i]hose in the lowest income brackets are subjected to the most detrimental types of fraud: account takeover fraud and new account fraud” and that people making below \$15,000 paid \$898 on average after identity theft, in contrast with the average of \$82 paid by high-income consumers who “are much more likely to have their identities stolen by way of their credit cards, which have significant protections against fraud”).

160. GUIDING PRINCIPLES, *supra* note 85, at 12.

D. Moving Forward

Technology is a great asset and courts and legal services providers need to move forward with technological solutions to address the needs of the public they serve. But not everyone will be able or willing to use the technology when it is first deployed. It is critical that courts never unfairly disadvantage a party because of new technology.¹⁶¹

When LSC and state courts began their statewide self-help websites, of the half of American adults without Internet access, 57% did not wish to gain access.¹⁶² Yet the digital divide was never a sufficient reason not to make maximal use of the Internet for persons who did have access to it. The percentage of Americans who use the Internet has continued to rise, reaching nearly 80% in 2011.¹⁶³ Today, virtually everyone has some means of obtaining online access — whether through her own computer, through that of a relative or neighbor, or through a public access computer at a court or public library.¹⁶⁴

Courts and legal services providers should adopt principles such as those described in this Part while remaining aware of technological developments. They must recognize that some technologies may raise barriers to justice and think through the challenges posed by the increased use of technology in the legal system.

161. *Id.* at 4.

162. LENHART, *supra* note 14, at 2.

163. ZICKUHR & SMITH, *supra* note 15, at 7.

164. *See, e.g.*, JOHN CARLO BERTOT ET AL., INFO. INST., FLA. STATE UNIV., PUBLIC LIBRARIES AND THE INTERNET 2008: STUDY RESULTS AND FINDINGS 1 (2008), available at <http://www.ii.fsu.edu/content/view/full/15153> (“100 percent of rural, high poverty [library] outlets provided public Internet access, a large jump from 85.7 percent last year.”).

IV. MOBILE STRATEGIES FOR LEGAL SERVICES (ABHIJEET CHAVAN)¹⁶⁵

A. Introduction

AMERICANS DESERVE A GOVERNMENT THAT WORKS FOR THEM ANYTIME, ANYWHERE AND ON ANY DEVICE. BY MAKING IMPORTANT SERVICES ACCESSIBLE FROM YOUR PHONE AND SHARING GOVERNMENT DATA WITH ENTREPRENEURS, WE ARE GIVING HARD-WORKING FAMILIES AND BUSINESSES TOOLS THAT WILL HELP THEM SUCCEED.¹⁶⁶

— PRESIDENT BARACK OBAMA

President Obama recently directed all major federal agencies to make two key government services available to mobile devices within the next twelve months.¹⁶⁷ The White House expects that by 2015, “more people will be accessing the Internet via mobile phones than via traditional desktop computers.”¹⁶⁸

Today, the term “mobile” is used to refer to a variety of new technologies. These include mobile networks that provide voice, text messaging, and data services; smaller portable computing devices such as smartphones and tablet computers with touch interfaces; and mobile apps (small, downloadable applications) that extend the functionality of devices. Today’s mobile computing devices have the following characteristics:

(1) Multi-function: Tablets and smartphones can access the Web, send and receive e-mail, communicate using instant messaging, and run apps.

(2) Intuitive: Many modern mobile devices use a touchscreen interface. A user can place her fingers on the screen to interact with the device, which makes the device more intuitive and easier to use than desktop computers.

(3) Always-connected: Mobile devices can connect to the Internet using cellular data networks or available wireless networks.

(4) Location-aware: Mobile devices are capable of identifying their location via Global Positioning System (“GPS”) and other services. Location information can be used to personalize the information that the devices access.

165. Abhijeet Chavan is the Chief Technology Officer of Urban Insight, Inc. The author would like to acknowledge the contributions of Bill Jones, Center for Pro Bono at the American Bar Association; Snorri Ogata, Superior Court of California Orange County; Jane Ribadeneyra, LSC; and Richard Zorza, National Self-Represented Litigation Network.

166. Press Release, Obama Administration Launches Sweeping Shift to Mobile (May 23, 2012), <http://www.whitehouse.gov/the-press-office/2012/05/23/obama-administration-launches-sweeping-shift-mobile>.

167. *Id.*

168. *Id.*

(5) Recording: Smartphones and tablets can take pictures, videos, and audio recordings and store this information on the phone or in the cloud (on a remote storage service accessed over the network).

(6) Cloud-connected: Mobile devices increasingly store personal user data in the cloud instead of on the device itself. This allows the data to be accessed from multiple devices and provides backups.

(7) Personal: Mobile devices, especially smartphones, are private devices, unlike landline phones that are shared by an entire family.

In a February 2012 survey, the Pew Research Center found that only 12% of American adults do not have mobile phones.¹⁶⁹ This year, the number of adults who have smartphones (46%) surpassed the number who have only ordinary cell phones (41%).¹⁷⁰

Younger Americans increasingly choose smartphones as their communication devices. A January 2012 survey found that 66% of Americans ages twenty-five to thirty-four own smartphones.¹⁷¹ A 2009 study by the National Center for Health Statistics revealed another trend: nearly one-fourth of American households have no landline and use mobile phones instead.¹⁷² A recent study by web browser maker Opera found that more than half of its mobile users access the web exclusively via mobile devices.¹⁷³

Mobile computing may already be having an impact on the “digital divide” — the gap between those who have access to information technologies and those who do not. A survey by the Pew Research Center released in April 2012 found that:

Groups that have traditionally been on the other side of the digital divide in basic [I]nternet access are using wireless connections to go online. Among smartphone owners, young adults, minorities, those with no college experience, and those with lower household income levels are more likely than other

169. AARON SMITH, PEW RESEARCH CTR., 46% OF AMERICAN ADULTS ARE SMARTPHONE OWNERS 2 (Mar. 1, 2012), available at http://pewinternet.org/~media/Files/Reports/2012/Smartphone_ownership_2012.pdf.

170. *Id.*

171. *Survey: New U.S. Smartphone Growth by Age and Income*, NIELSEN WIRE (Feb. 20, 2012), <http://blog.nielsen.com/nielsenwire/?p=30950>.

172. STEPHEN J. BLUMBERG & GULIAN V. LUKE, WIRELESS SUBSTITUTION: EARLY RELEASE OF ESTIMATES, NATIONAL HEALTH INTERVIEW SURVEY, JULY-DECEMBER 2009, at 1 (2010), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.htm>.

173. Scott Gilbertson, *Opera: Over Half of Mobile Users Are Mobile-Only*, WIRED.COM (Apr. 30, 2012), <http://www.webmonkey.com/2012/04/opera-over-half-of-mobile-users-are-mobile-only>.

groups to say that their phone is their main source of [I]nternet access.¹⁷⁴

Americans are increasingly turning to mobile devices to access information and conduct transactions. This Part discusses how organizations that provide legal services are implementing mobile technologies.

B. Mobile Use in Legal Services

Many legal aid programs must serve large geographic areas with few attorneys. For instance, the Montana Legal Services Association (“MLSA”) has twelve attorneys¹⁷⁵ to cover a service area of over 145,000 square miles.¹⁷⁶ Legal aid programs have turned to innovative uses of technology to overcome these geographic challenges. These approaches have included self-help kiosks, websites that use LiveHelp to answer questions and find appropriate resources for website visitors, and videoconferences that connect remote advocates and clients.

1. Mobile Self-Help Centers

Rural Californians face difficulties in accessing legal services; rural areas of California have fewer private or legal aid lawyers than urban areas.¹⁷⁷ To address this need, Lassen Superior Court created a Mobile Access Center (“MAC”) that allows real-time entry of case information into the court systems.¹⁷⁸ The court can provide legal information to SRLs who receive filings, accept payments for fines, and schedule mediation services. Ventura County went mobile in 1999 with the “Winnebago of Justice,” a self-help center modeled after a bookmobile that traveled to senior centers, homeless shelters, and social service programs to provide computers, video stations, and a small library of legal information and court forms.¹⁷⁹ Fresno estab-

174. ZICKUHR & SMITH, *supra* note 15, at 2.

175. Chris Bernard, *Culture in the Cloud: The Case of Montana Legal Services*, NONPROFIT TECH. NETWORK (Sept. 22, 2012, 8:09 AM), <http://nten.org/case-studies/2012/culture-in-the-cloud-the-case-of-montana-legal-services>.

176. *Profile of the People and Land of the United States*, NAT’L ATLAS OF THE U.S., http://www.nationalatlas.gov/articles/mapping/a_general.html#one (last visited Dec. 22, 2012).

177. IMPROVING JUSTICE, *supra* note 126, at 5.

178. *Id.* at 43.

179. See Sharon Lerman, *Winnebago of Justice Serves Those on the Road Less Traveled*, CAL. B.J., July 2001, at 32, 32, available at <http://archive.calbar.ca.gov/calbar/2cbj/01jul/page32-1.htm>.

lished a similar program, but both Ventura and Fresno's programs have been cut due to funding issues.¹⁸⁰

Given the expenses of maintaining a mobile center, including gas and staff time, current technology offers alternative solutions that are more cost-effective. Laptops and tablets with video cameras can be used to connect rural clients to staff in urban offices. Central California Legal Services ("CCLS") received a 2010 TIG grant from LSC for a project to enable urban law students to staff virtual law clinics for low-income clients using laptop computers with webcams.¹⁸¹ CCLS will set up laptop computers in various locations in its service region, including law libraries, senior centers, and community centers to hold intake, advice, and brief service clinics. The law students will conduct intake and advice sessions through online video chats with the clients under the supervision of legal services attorneys located elsewhere.

In some cases, mobile lawyers literally go out into the field to support rural farm workers with laptops, printers, and wireless hotspots. For example, the Missouri Association of Trial Attorneys ("MATA") provided pro bono assistance to tornado survivors in Joplin, Missouri.¹⁸² When the Red Cross disaster center was present in Joplin, MATA's Emergency Response Team ("ERT") installed a wireless Internet hotspot with laptops, tablets, and printers to deliver legal assistance.¹⁸³ After the disaster center closed, MATA continued visiting Joplin with this equipment and providing legal assistance by phone.¹⁸⁴

2. Mobile-Optimized Websites

Americans across all income levels are buying smartphones. Among individuals in households with incomes of less than \$30,000, smartphone ownership grew from 22% to 34% from 2011 to 2012.¹⁸⁵ Websites are beginning to see increased web traffic from mobile devices. A 2011 study by WalkerSands Communications found a 102% increase in web traffic from mobile devices between the fourth quarters of 2010 and 2011.¹⁸⁶ In May 2012, 50% of Facebook's users used mobile devices to access their accounts compared to only 13% in

180. IMPROVING JUSTICE, *supra* note 126, at 43.

181. 2010 Awarded TIG Projects, LEGAL SERVICES CORP. (Feb. 15, 2011), [http://tig.lsc.gov/sites/default/files/TIG/2010_TIG_Awards\[1\].pdf](http://tig.lsc.gov/sites/default/files/TIG/2010_TIG_Awards[1].pdf).

182. See William Jones, *Disaster Response and Legal Technology*, GP SOLO, Jan.–Feb. 2012, available at http://www.americanbar.org/publications/gp_solo/2012/january_february/disaster_response_legal_technology.html.

183. *Id.*

184. *Id.*

185. Smith, *supra* note 169, at 4.

186. *Mobile Web Grows in Importance as Annual Traffic Increases by 102%*, SIMPLYZESTY (Feb. 1, 2012), <http://www.simplyzesty.com/mobile/mobile-web-grows-in-importance-as-annual-traffic-increases-by-102>.

2009.¹⁸⁷ Smartphone owners “under the age of 30, non-white smartphone users, and smartphone owners with relatively low income and education levels are particularly likely to say that they mostly go online using their phone.”¹⁸⁸

To serve the increasing numbers of low-income people who access websites primarily using cell phones, statewide legal aid websites are creating mobile-optimized versions of their sites. In 2008, Pine Tree Legal Assistance (“PTLA”) was awarded a TIG grant to create the Maine Legal Aid Mobile Web.¹⁸⁹ Anyone visiting www.ptla.org using a mobile browser is now redirected to that site.¹⁹⁰

As part of the process of optimizing content for mobile devices, legal aid and self-help programs also need to consider the medium through which information is relayed. Given the limited screen size on mobile devices, content delivered through video and audio files provides a good alternative to written content.

In 2011, Legal Services of Delaware launched the first mobile-optimized statewide website built on the DLAW platform, followed by Idaho Legal Aid, Native Legal Net, and Rhode Island Legal Services.¹⁹¹ The DLAW platform¹⁹² uses a “responsive design” approach that automatically adapts to the type of device used to access it. For example, a website page that displays three columns of information on a desktop monitor or laptop might display two columns on a tablet device and one column on a smartphone. In 2012, MLSA launched the first mobile-optimized version of a statewide website built on the LawHelp platform.¹⁹³

187. Luke Wroblewski, *Data Monday: How Long to a Mobile Majority?*, LUKEW (July 9, 2012), <http://www.lukew.com/ff/entry.asp?1581>.

188. AARON SMITH, PEW INTERNET & AM. LIFE PROJECT, 35% OF AMERICAN ADULTS OWN A SMARTPHONE 3 (2011), available at http://pewinternet.org/~media/Files/Reports/2011/PIP_Smartphones.pdf.

189. 2008 TIG Grants, LEGAL SERVICES CORP., http://lsntap.org/sites/all/files/2008_TIG_Grants.pdf (last visited Dec. 22, 2012).

190. PINE TREE LEGAL ASSISTANCE, <http://m.ptla.org> (last visited Dec. 22, 2012).

191. See LEGAL SERVICES CORP. OF DEL., INC., <http://lscd.com> (last visited Dec. 22, 2012); IDAHO LEGAL AID SERVICES, <http://www.idaholegalaid.org> (last visited Dec. 22, 2012); NATIVE LEGAL NET, <http://www.nativelegalnet.org> (last visited Dec. 22, 2012); R.I. LEGAL SERVICES, <http://helprilaw.org> (last visited Dec. 22, 2012).

192. DLAW 2.0 is an open source website management system for legal aid websites. DLAW, developed and maintained by Urban Insight, is built using the Drupal content management framework. See *Drupal for Legal Aid Websites*, OPENADVOCATE, <http://www.openadvocate.org/dlaw> (last visited Dec. 22, 2012).

193. Note that the LawHelp.org template, built by Pro Bono Net, allows legal aid programs to create statewide websites to help clients find free legal aid programs and information in their communities. See *Our Mission and Programs*, PROBONO.NET, <http://www.probono.net/about/item.Mission> (last visited Dec. 22, 2012).

3. Mobile Apps

Given the extent of interest in accessing the PTLA mobile site from smartphone operating systems, PTLA and its partner, Illinois Legal Aid Online, developed some of the first mobile apps for legal aid in 2011. Illinois Legal Aid Online launched the Illinois Legal Aid app and the Illinois Pro Bono app, and PTLA launched the Legal Aid News App and the Legal Aid Finder App, available for Android, Apple iOS, and as a web app.¹⁹⁴ The Illinois Legal Aid app, designed for lower-income residents who need legal assistance, offers plain-language legal information and Illinois-specific referrals to courthouse legal self-help centers and legal aid agencies. The Pro Bono app provides legal professionals with “a volunteer opportunity search tool, a calendar of upcoming legal events, including [CLEs], and comprehensive legal resource guides in the most common pro bono practice areas.”¹⁹⁵

The Arkansas Access to Justice Foundation developed the iProBono app for the iOS platform. Launched in January 2012, the interactive app allows licensed Arkansas attorneys to view available pro bono opportunities to “represent[] low-income Arkansans, sort through those cases based on legal topic and county, and request cases with a push of a button.”¹⁹⁶ Other examples of legal aid apps include the Force for Good app developed by the Public Counsel Law Center, the nation’s largest pro bono law firm, to provide an easy way for volunteer attorneys to give the Center routine updates on cases they accept,¹⁹⁷ and the OpenAdvocate platform, built with DLAW, which includes both iOS and Android apps.¹⁹⁸

Mobile apps for the delivery of legal aid services are in their nascent stage of development and usage. The healthcare industry has been using mobile strategies to address hard-to-serve populations for a longer period. In a grant-funded project run by San Francisco State University, the healthcare community conducted a study to determine whether an app platform could impact low-income teens and young adults managing obesity.¹⁹⁹ The app helped teens and young adults monitor observations of daily living to provide data back to “health

194. See *Pine Tree’s National Legal Aid Apps*, PINE TREE LEGAL ASSISTANCE, <http://www.ptla.org/pine-trees-legal-aid-apps> (last visited Dec. 22, 2012).

195. See *Our Current Projects*, *supra* note 18.

196. See *Arkansas Access to Justice Launches iPhone App for Pro Bono Attorneys*, ARK. LEGAL SERVICES PARTNERSHIP (Jan. 30, 2012), <http://www.arlegalservices.org/iprobonolaunch>.

197. *Get Started with Public Counsel*, PUB. COUNS. LAW CENTER, <http://www.publiccounsel.org/pages/?id=0053> (last visited Dec. 22, 2012).

198. See OPENADVOCATE, *supra* note 24.

199. See *iN Touch*, PROJECT HEALTHDESIGN, http://www.projecthealthdesign.org/projects/current_projects/intouch (last visited Dec. 22, 2012).

coaches and clinical care teams in order to help set health goals, track their progress, and ultimately improve their health.”²⁰⁰ The target population for this project included “individuals with low income and education levels, limited access to computers, and possibly unstable housing situations.”²⁰¹ Legal services providers may be able to learn from such case studies to develop mobile apps that provide legal tools and information.

Current legal aid apps provide links to resources, information, and videos for users to absorb, but this technology has yet to provide an easy way for programs to interact directly with legal aid clients and SRLs. For instance, many legal aid and court self-help websites provide access to court forms and other automated documents to address various legal issues that clients may be able to address on their own. However, current hardware limits a user’s ability to complete a lengthy interview or court form with a mobile device. Two of the most popular self-help software programs in the nonprofit legal aid community, A2J Author²⁰² and I-CAN! Legal,²⁰³ are not currently optimized for mobile devices. Future development will need to consider how to address the challenges associated with low-income individuals who need to use mobile devices to complete forms, to e-mail and print them, and to submit them for e-filing.

4. Quick Response Codes

Quick Response Codes (“QR codes”) are graphic barcodes consisting of square dots arranged in a square pattern.²⁰⁴ Though they are similar to the familiar UPC barcodes seen on items in stores, QR codes can carry much more data than standard UPC barcodes and can be read by mobile devices such as smartphones.²⁰⁵ They can be displayed on printed materials and posters. Users can point a smartphone at the code, scan the code, and retrieve data such as the address to a website.²⁰⁶

The Superior Court of Fresno County uses QR codes for juror summons.²⁰⁷ Each juror summons is printed with a unique QR code including an address for a web page that contains juror information.

200. *Id.*

201. See PROJECT HEALTHDESIGN, ODLs VIA MOBILE PLATFORMS FOR YOUTH WITH OBESITY AND DEPRESSION 3 (2012), available at <http://www.projecthealthdesign.org/media/file/SFSUProp.pdf>.

202. See *Welcome to the Access to Justice Author Community Board*, A2J AUTHOR COMMUNITY WEBSITE, <http://www.a2jauthor.org/drupal> (last visited Dec. 22, 2012).

203. See I-CAN! LEGAL, *supra* note 51.

204. See *QR Codes*, WIKIPEDIA, http://en.wikipedia.org/wiki/QR_code (last visited Dec. 22, 2012).

205. *See id.*

206. *See id.*

207. A copy of a juror summons containing a QR code is on file with the author.

This allows a user to scan the QR code at any time with a mobile phone app to check the status of her jury duty without needing to type in any information. This technology eliminates the need for a user to call into the court's voice response system or use the court's online web interface, both of which require the user to enter data. QR codes are also used for Courtesy Notices. The QR codes take users to specific URLs, allowing them to make payments on the web. Printed materials produced by courts and legal service providers could include a QR code so that those in possession of the printed material can easily access additional information online.

5. Text Messaging

While the growing number of low-income people with access to smartphones will present future opportunities to provide better access to legal services and information using these devices, text messaging, or Short Message Service ("SMS"), offers a form of communication that is ubiquitous to cell phone owners and an untapped resource for the delivery of legal services to this population. A 2011 survey showed that "83% of American adults own cell phones and three-quarters of them (73%) send and receive text messages."²⁰⁸ In addition, a program that provides free and low-cost cell phone plans to eligible low-income people now includes free text messaging.²⁰⁹

Healthcare organizations have been using text messaging to reach their target populations. For example, text4baby is a free service that sends three text messages a week to pregnant women and new mothers.²¹⁰ The content, available in English and Spanish, is tailored to the timeline of the mother's pregnancy or the child's first year; it includes reminders about prenatal check-ups and advice and resources about nutrition, exercise, car seat safety, breastfeeding, and other topics.²¹¹ In another model, Text 4 Teens is a mental health initiative offered in certain areas that uses live counselors and text messaging to provide support to teens on issues such as drugs and alcohol, depression, suicide, and bullying.²¹² These examples of using text messaging to push personalized information to those who need it may serve as a model for legal services organizations.

208. See PEW INTERNET & AM. LIFE PROJECT, AMERICANS AND TEXT MESSAGING 2 (2011), available at [http://pewinternet.org/~media/Files/Reports/2011/Americans and Text Messaging.pdf](http://pewinternet.org/~media/Files/Reports/2011/Americans%20and%20Text%20Messaging.pdf).

209. See ASSURANCE WIRELESS, <http://www.assurancewireless.com> (last visited Dec. 22, 2012).

210. See Press Release, text4baby, ACOG Announces Partnership with text4baby (Feb. 23, 2012), <http://text4baby.org/index.php/news/190-acogpressrelease>.

211. *Id.*

212. See *Text 4 Teens*, NAT'L ALLIANCE ON MENTAL ILLNESS N.C., <http://naminc.org/support-and-education/text-4-teens> (last visited Dec. 22, 2012).

An early example of text messaging in the legal services community comes from CitizenshipWorks, a project of the Immigration Advocates Network, the Immigrant Legal Resource Center, and Pro Bono Net. By texting “citizenship” (“ciudadania” in Spanish) to 877877, users “receive the location and contact information of nearby legal services providers” as well as information about the naturalization process.²¹³

One barrier to access to justice for low-income clients is long queues on legal aid telephone hotlines. Potential clients may have to hang up due to limited cell phone minutes or other time constraints.²¹⁴ Legal information via text message could provide an alternative access point for low-income people, particularly those with limited cell phone voice plans but unlimited text messaging. Such a service could also free up overloaded telephone lines and increase efficiency of hotline staff by allowing the use of pre-formulated responses, a practice that has been successfully implemented in LiveHelp chat protocols for statewide websites.²¹⁵

Once a client completes the intake process and gets an appointment to receive additional legal assistance, some clients fail to show up for the appointment, or they show up without critical paperwork that advocates need to review. Legal aid programs and courts could ask clients if they prefer to be contacted by text message and build the capability into their case management systems to send reminders about appointments, court hearings, and other important information.

C. Recommendations

The capabilities and limitations of the new mobile medium means that the legal aid community will need to develop new mobile strategies for content, functionality, and design.

1. Content

Research has shown that users scan text on the web rather than reading it.²¹⁶ Therefore, web content should be easy to scan and concise: it should use bulleted lists, fewer words, and convey one idea per

213. Press Release, CitizenshipWorks, New Service Puts Legal Help in the Hands of Immigrants Seeking to Naturalize (Mar. 7, 2012), <http://www.prweb.com/releases/prweb9257775.htm>.

214. Ellie Crosby Lanier, *Experienced HL Manager Dialogue*, LEGAL HOTLINE Q., Spring/Summer 2008, at 2, 2, available at http://legalhotlines.org/files/08Spring_Summer.pdf.

215. See RICHARD ZORZA, LIVEHELP PILOT PROJECT FINAL EVALUATION 21 (2007), available at http://lsntap.org/sites/all/files/LiveHelp_Pilot_Project_Final_Evaluation.pdf.

216. See Jakob Nielson, *How Users Read on the Web*, USEIT.COM (Oct. 1, 1997), <http://www.useit.com/alertbox/9710a.html>.

paragraph. Reading and comprehending content on a mobile device is twice as difficult as it is on a desktop computer.²¹⁷ Thus, writing for mobile devices needs to be even more focused and brief.²¹⁸ Legal services websites should rewrite and restructure content so that it is suitable for reading on mobile devices.

Adobe's Flash format has been used to deliver interactive content, video, and animation on the web. However, experts advise against using Flash.²¹⁹ Also, Apple's iOS does not support Flash and recommends the use of modern formats such as HTML5 for delivering interactive content instead.²²⁰ Some efforts are already underway. For example, the A2J Author software that generates Flash-based interactive legal aid forms is in the process of replacing Flash with HTML5.²²¹

Usability expert Jakob Nielsen has long noted that documents in PDF are not ideal for reading on a screen.²²² Reading PDFs that were designed for an 8.5x11" layout on smaller devices such as smartphones is even more challenging.²²³ Legal services organizations should avoid the use of PDFs and convert content to HTML format instead. For long-form content such as reports and books, they should consider using the ePub format, which is used for e-books.²²⁴

2. Functionality

The characteristics of mobile devices offer legal services programs opportunities to provide services to their clients with new functionality. For example, the legal services community could explore ideas such as offering an online check-in before coming for an in-person visit at a legal aid self-help center. Mobile devices could also

217. See Jakob Nielsen, *Mobile Content Is Twice as Difficult*, USEIT.COM (Feb. 28, 2011), <http://www.useit.com/alertbox/mobile-content-comprehension.html>.

218. See Jakob Nielsen, *Mobile Content: If in Doubt, Leave It Out*, USEIT.COM (Oct. 10, 2011), <http://www.useit.com/alertbox/mobile-writing.html>; Jakob Nielsen, *Defer Secondary Content When Writing for Mobile Users*, USEIT.COM (Aug. 1, 2011), <http://www.useit.com/alertbox/mobile-content.html>.

219. See Mark Fratto, *Four Sins of Mobile Website Design, and How to Avoid Them*, NETWORK COMPUTING (May 17, 2012), <http://www.networkcomputing.com/wireless/four-sins-of-mobile-website-design-and-h/240000554>.

220. See Steve Jobs, *Thoughts on Flash*, APPLE (Apr. 2010), <http://www.apple.com/hotnews/thoughts-on-flash>.

221. See John Mayer, *Teaching Law Students 21st Century Practice Skills Through Coding with A2J Author*, SOME ASSEMBLY REQUIRED, CALI CONF. FOR LAW SCHOOL COMPUTING, <http://conference.cali.org/2012/sessions/teaching-law-students-21st-century-practice-skills-through-coding-a2j-author> (last visited Dec. 22, 2012).

222. See Jakob Nielsen, *Avoid PDF for On-Screen Reading*, USEIT.COM (June 10, 2001), <http://www.useit.com/alertbox/20010610.html>.

223. See *Reading PDFs on your SmartPhone*, TECHWRITE'S BLOG (Mar. 31, 2011), <http://blog.techw.com/?p=11>.

224. See *EPUB vs PDF — Who is the Winner?*, TECHWRITE'S BLOG (Sept. 6, 2011), <http://blog.techw.com/?p=287>.

be used to provide the latest personalized information at the user's fingertips, such as the status of a case, updates on wait time at courts or jury duty, or alerts about the next action required on a legal case. These devices could also bridge the physical and digital worlds: QR codes on printed materials or building signage could link to more detailed data on the web or help users navigate a building. Mobile apps could also provide legal fee calculators or audio instructions for filling out legal forms. However, legal aid programs should not completely rely on new mobile technologies. Since not everyone has mobile Internet access, it is vital that services continue to be offered via traditional means.

3. Design

Website designers must consider the limitations of mobile devices and cellular data networks when creating content for a mobile audience.²²⁵ Content needs to be readable on a variety of devices — from small smartphones to large tablets. Arguably, websites that take a long time to load are less effective. Since cellular data networks are slower than the broadband networks typically used by home computers,²²⁶ websites should be optimized to load quickly.

Designers of mobile websites need to take into account the fact that many users interact with their devices through a touch-screen interface.²²⁷ As the number of people using mobile devices is expected to skyrocket in the coming years, some advocate a mobile-first design process that starts with the needs of mobile users and then adds functionality for desktop and laptop users later.²²⁸

While it is possible to create a separate website just for mobile devices, the approach recommended by Google and others is to use a design strategy called responsive design.²²⁹ Responsive design is a technique for building a single website that looks different on different device sizes.²³⁰ Using a flexible grid layout and modern web standards such as HTML5 and CSS3, responsive websites adapt to the

225. See Luke Wroblewski, *Mobile First*, LUKEW IDEATION + DESIGN (Sept. 7, 2012), <http://www.lukew.com/presos/preso.asp?26>.

226. Bert Markgraf, *3G Compared to Broadband*, SALON, <http://techtips.salon.com/3g-compared-broadband-20651.html> (last visited Dec. 22, 2012).

227. See Chris Kemm, *Designing for Touch Screen*, WHAT!? WE LIKE TO TALK ABOUT (June 30, 2010), <http://www.whatcreative.co.uk/blog/tips/designing-for-touch-screen>.

228. See Wroblewski, *supra* note 225.

229. See Pierre Far, *Recommendations for Building Smartphone-Optimized Websites*, GOOGLE WEBMASTER CENT. BLOG (June 6, 2012), <http://googlewebmastercentral.blogspot.ch/2012/06/recommendations-for-building-smartphone.html>.

230. See Kayla Knight, *Responsive Web Design, What It Is and How To Use It*, SMASHING MAG. (Jan. 12, 2011), <http://coding.smashingmagazine.com/2011/01/12/guidelines-for-responsive-web-design>.

device on which they are being viewed, scaling and reorganizing content for better readability and interaction on mobile devices.²³¹

D. Conclusion

Mobile devices and networks are expected to become a primary means of accessing information in the near future. The legal services community needs to develop new strategies to continue to deliver content and services to their clients using these new mobile technologies. The advent of the mobile age offers new opportunities for providing legal services and aid to those who need it.

V. ACCESS TO JUSTICE INTEGRATION WITH EMERGING COURT TECHNOLOGIES (JAMES E. CABRAL & THOMAS M. CLARKE)²³²

A. Introduction

Courts have now been accepting e-filings for two decades.²³³ The business processes, technical requirements, and funding models for e-filing are now well understood. The reduction or elimination of the long-term storage and maintenance of paper records has motivated many courts to implement e-filing.²³⁴ Advantages include fewer delays in filing, more convenient access to court documents, and more reliable court records.²³⁵ By mandating the use of e-filing by attorneys in most district courts, the federal courts have managed to increase access by supporting twenty-four hour filing while reducing the cost and time of scanning by the clerk.²³⁶

Online access to court records is now an expected service of federal and state courts. While the convenience of remote access to court

231. Far, *supra* note 229.

232. James E. Cabral, Senior Manager, MTG Management Consultants, LLC and Chair of the OASIS LegalXML Electronic Court Filing Technical Committee and Thomas M. Clarke, Ph.D., Vice President of Research and Technology, National Center for State Courts. The authors would like to acknowledge the contributions of John Greacen, Greacen Associates; Snorri Ogata, Superior Court of California, Orange County; Jim Waldron, U.S. Bankruptcy Court, District of New Jersey; and Joseph D. K. Wheeler, MTG Management Consultants, LLC.

233. See FED. R. CIV. P. 5 advisory committee's note to 1993 amendment (noting that the rules were modified to accommodate electronic filings).

234. James McMillan, *Electronic Documents: Benefits and Potential Pitfalls*, in FUTURE TRENDS IN STATE COURTS 2010, 180, 180 (Carol R. Flango et al. eds., 2010), available at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/tech&CISOPTR=767>.

235. See *id.*

236. See ADVISORY COMM. ON E-FILING IN FAMILY COURT, N.Y. STATE UNIFIED COURT SYS., ELECTRONIC FILING IN FAMILY COURT ARTICLE THREE AND ARTICLE TEN PROCEEDINGS 5, 10 (2012), available at http://www.courts.state.ny.us/publications/pdfs/eFile_FamilyCourt_Final_web.pdf.

records at all hours has benefited both attorneys and SRLs, access to e-filing has not been universal. In a 2009 survey of state and local courts, only 41 of the 107 courts participating in the survey supported any form of e-filing.²³⁷ Most e-filing programs have initially focused on high-volume, expert users — primarily private attorneys.²³⁸ Without e-filing, SRLs would have to physically visit a legal aid office and the court to prepare and file legal documents.²³⁹ Courts would have to accept the documents as paper filings and scan them for entry into their electronic document management systems.²⁴⁰ Today, multiple vendors and nonprofit organizations provide document assembly solutions and simplified forms for SRLs such as HotDocs,²⁴¹ Adobe LiveCycle,²⁴² I-CAN! Legal,²⁴³ LHI,²⁴⁴ and Intresys TurboCourt.²⁴⁵ To increase adoption of these solutions, however, we must make them easier and less costly to implement.

We propose using open technical standards to foster and support an application ecosystem for e-filing. This ecosystem strategy would create a competitive marketplace for legal assistance applications, similar to a smartphone application store. Once the technical interface requirements are published, anyone would be free to build an application that supports e-filing and could work in tandem with applications built by other groups. The following section discusses SRL e-filing in the federal and California courts before suggesting an approach for more universal e-filing through the use of open technical standards. It concludes with a vision of future electronic court processes enabled by wide adoption of the standards.

237. *2009 E-filing Survey*, NAT'L CENTER FOR ST. CTS. (2009), <http://www.ncsc.org/services-and-experts/areas-of-expertise/technology/2009-e-filing-survey.aspx>.

238. Ronald W. Staudt, *Self-Represented Litigants and Electronic Filing*, NAT'L CENTER FOR ST. CTS. (2003), http://www.ncsconline.org/d_tech/ctc/showarticle.asp?id=68.

239. See, e.g., *id.*; *Customers Are Saying*, TURBOCOURT, <http://www.turbocourt.com/quotes.jsp?id=173933125> (last visited Dec. 22, 2012) (“I went online yesterday afternoon and this morning my claim was filed with a court date immediately. Your online service saved me a trip to the court house.”).

240. See *Frequently Asked Questions*, PACER, <http://www.pacer.gov/psc/efaq.html> (last visited Dec. 22, 2012) (select “CM/ECF” tab, then the “Case-Related” subtab, and expand the heading “Can I view appellate pro se filings through CM/ECF and PACER?”).

241. HOTDOCS, <http://www.hotdocs.com> (last visited Dec. 22, 2012).

242. *Adobe LiveCycle Forms ES3*, ADOBE, <http://www.adobe.com/products/livecycle/forms> (last visited Dec. 22, 2012) [hereinafter *Adobe Forms*].

243. I-CAN! LEGAL, *supra* note 51.

244. LAWHHELP.ORG, *supra* note 16.

245. TURBOCOURT, <http://www.turbocourt.com> (last visited Dec. 22, 2012).

B. Existing E-Filing Systems

1. The Federal Court Experience: New Jersey and Pro Se Pathfinder

Because of the complex nature of bankruptcy, federal bankruptcy courts strongly recommend that prospective debtors seek legal counsel.²⁴⁶ Despite this warning, the number of SRLs in bankruptcy courts has increased since 2006.²⁴⁷ Even though the courts had moved to e-filing, they were still burdened with a large number of SRLs filing documents in paper form.²⁴⁸ This meant that handwritten bankruptcy petitions were still coming to the courts, which inevitably led to mistakes in transcription and bad data.²⁴⁹ Therefore, the Bankruptcy Court for the District of New Jersey began a project to develop services for SRLs known as the New Jersey Pro Se Initiative (“Pro Se Initiative”) in 2007.²⁵⁰

The Pro Se Initiative provided a “way of making [SRLs] aware of what it takes to file a petition while improving the accuracy of the data they submit in their petitions.”²⁵¹ Attempting to make the process as simple as possible, the Pro Se Initiative began by using fillable forms with pop-up instructions that directed an SLR to enter the appropriate data.²⁵² As the SRL answered the questions, the information would populate a data-enabled form.²⁵³ The actual form could then be submitted to the court for filing using the same interface.²⁵⁴ However, because of interoperability issues, the courts were unable to port the

246. *Filing for Bankruptcy Without an Attorney*, U.S. CTS., <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/FilingBankruptcyWithoutAttorney.aspx> (last visited Dec. 22, 2012).

247. *By the Numbers — Pro Se Filers in the Bankruptcy Courts*, THIRD BRANCH (Oct. 2011), http://www.uscourts.gov/News/TheThirdBranch/11-10-01/By_the_Numbers--Pro_Se_Filers_in_the_Bankruptcy_Courts.aspx.

248. *IN-DEPTH: Leveling the Playing Field: Help for Self-Filers*, THIRD BRANCH (July 2011), http://www.uscourts.gov/News/TheThirdBranch/11-07-01/INDEPTH_Leveling_the_Playing_Field_Help_for_Self-Filers.aspx.

249. *See Top Ten Filing Errors by Self-Represented Parties*, U.S. BANKR. CT., DISTRICT OF MD., <http://www.mdb.uscourts.gov/content/top-10-filing-errors> (last visited Dec. 22, 2012) (listing submitting illegible handwritten documents as one of the most common errors SRLs make).

250. E-mail from Jim Waldron, Clerk of the U.S. Bankr. Court, Dist. of N.J., to Jeanne Naughton, Staff Attorney for the U.S. Bankr. Court, Dist. of N.J. (Oct. 10, 2012, 7:11 PM EST) [hereinafter Waldron E-mail] (on file with author); E-mail from Jeanne Naughton, Staff Attorney for the U.S. Bankr. Court, Dist. of N.J., to Jim Cabral, MTG Mgmt. Consultants, Inc. (Oct. 23, 2012 5:00 PM EST) (on file with author).

251. *IN-DEPTH*, *supra* note 248 (quoting Bankruptcy Clerk Jim Waldron).

252. Waldron E-mail, *supra* note 250.

253. E-mail from Jeanne Naughton, Staff Attorney for the U.S. Bankr. Court, Dist. of N.J. to James Cabral, Senior Manager, MTG Management Consultants (Dec. 11, 2012, 8:00 AM EST) [hereinafter Naughton E-mail] (on file with author). The federal courts’ current data-enabled form standard is available online. *Data Enabled Form Standard*, U.S. DEP’T OF JUST. (Mar. 1, 2012), <http://www.justice.gov/ust/eo/bapcpa/defs/index.htm>.

254. Naughton E-mail, *supra* note 253.

data from the forms directly into the federal judiciary's current case management and electronic filing system, CM/ECF.²⁵⁵ Therefore, court staff had to enter the data by hand into CM/ECF fields for filing.²⁵⁶

The program resulted in more successful SRL cases and fewer case dismissals.²⁵⁷ New Jersey's experience gave federal courts valuable insight into some of the pitfalls and hurdles in developing an e-filing program for SRLs. However, it also demonstrated the difficulty of integrating different e-filing systems.

While the Bankruptcy Court for the District of New Jersey was implementing its system, the Administrative Office of the United States Courts began to develop and test a parallel project, the Pro Se Pathfinder ("PSP"), in the pilot district courts of New Jersey, New Mexico, and the Central District of California.²⁵⁸ This national product is meant to be fully integrated with the federal courts' new case management and electronic filing system, NextGen, which will eventually replace CM/ECF.²⁵⁹

Moving from the Pro Se Initiative to the PSP was not easy for the New Jersey Bankruptcy Court. Indeed, the Pro Se Initiative was much simpler to implement because it only involved a data upload to specified fields in CM/ECF.²⁶⁰ The PSP takes a more structured approach to data collection, which will facilitate integration with outside systems as well as NextGen.²⁶¹ The nationwide PSP will also have to accommodate the differences between all of the federal bankruptcy courts.²⁶² It must also incorporate the language simplification recently developed by the Forms Subcommittee of the Advisory Committee on

255. Waldron E-mail, *supra* note 250.

256. Naughton E-mail, *supra* note 253.

257. See New Jersey Pro Se Submission Status Report, U.S. Bankruptcy Court, District of New Jersey (Oct. 9, 2012) (on file with author).

258. U.S. BANKR. COURT, CENT. CAL., ACCESS TO JUSTICE IN CRISIS: SELF-REPRESENTED PARTIES AND THE COURT 20 (2011), available at <http://ecf-ciao.cacb.uscourts.gov/Communications/prose/annualreport/2011/ProSeAnnual%20Report2011.pdf>.

259. "Herculean Effort" to Create Next Generation of CM/ECF Makes Progress, THIRD BRANCH (Sept. 2010), http://www.uscourts.gov/News/TheThirdBranch/10-09-01/quot_Herculean_Effort_quot_to_Create_Next_Generation_of_CM_ECF_Makes_Progress.aspx; Pro Se Pathfinder Scope Statement 1 (Mar. 2, 2011) (on file with author).

260. See Pro Se Pathfinder Scope Statement, *supra* note 259; Waldron E-mail, *supra* note 250.

261. Pro Se Pathfinder Scope Statement, *supra* note 259.

262. Scott F. Norberg & Nadja Schreiber Compo, *Report on an Empirical Study of District Variations, and the Roles of Judges, Trustees, and Debtors' Attorneys in Chapter 13 Bankruptcy Cases*, 81 AM. BANKR. L.J. 431, 431 (2007) ("It is a truism that, while bankruptcies throughout the United States are governed by the same Bankruptcy Code and Rules of Bankruptcy Procedure, there are wide variations across federal judicial districts and divisions in how the law works in practice.").

Federal Rules of Bankruptcy Procedure.²⁶³ Though they present initial challenges, these factors should eventually make the forms more user-friendly and accurate.²⁶⁴

2. The State Court Experience: California Courts

Unlike the federal courts, which have shared, integrated systems for case management and e-filing (currently CM/ECF, and soon NextGen as well), state and local courts use a variety of systems and have limited resources for custom software development.²⁶⁵ Rather than developing custom solutions, the Orange County Superior Court used off-the-shelf products to provide document assembly and e-filing solutions for SRLs in family law, landlord/tenant, and small claims cases.²⁶⁶ In Orange County, SRLs can use I-CAN! Legal to generate forms or file them electronically.²⁶⁷ I-CAN! Legal is a free online application that will fill out and, depending on the type of case, either print or e-file court forms for SRLs.²⁶⁸ The SRL signs up with I-CAN!, establishes an account, and completes an online interview.²⁶⁹ For family and landlord/tenant matters, I-CAN! generates the standard court form for the litigant to print and file.²⁷⁰ For small claims cases, I-CAN! provides the ability to e-file the matter.²⁷¹

The Orange County Superior Court also supports court document generation and e-filing using Adobe LiveCycle smart forms for SRLs filing small claims and family law matters.²⁷² The application uses a form template that is completed by the SRL.²⁷³ Once the forms are completed, the application produces a PDF.²⁷⁴ For family law cases,

263. See *Key Studies, Projects and Programs*, U.S. CTS., http://www.uscourts.gov/annualreport_2011/Key_Studies_Projects_And_Programs.aspx#kspp_17 (last visited Dec. 22, 2012).

264. See *id.*

265. The National Center for State Courts maintains a list of third-party software vendors. *Vendors by Product/Service Category: Electronic Filing*, NAT'L CENTER FOR ST. CTS., http://www.ncsconline.org/d_tech/vendorlist/vendbyproduct.asp?id=18 (last visited Dec. 22, 2012). Some state courts have had to shut down their custom e-filing systems in favor of third-party systems due to budget restraints. *EZLegalFile to Cease Operations Effective July 1, 2011*, SUPERIOR CT. OF CAL., COUNTY OF SAN MATEO, <http://ezlegalfile.org> (last visited Dec. 22, 2012).

266. *E-Filing*, SUPERIOR CT. OF CAL., COUNTY OF ORANGE, <http://www.occourts.org/directory/small-claims/efiling.html> (last visited Dec. 22, 2012).

267. *Id.*

268. I-CAN! LEGAL, *supra* note 51.

269. *Id.*

270. *I-CAN! Legal Modules*, I-CAN! LEGAL, <http://www.icandocs.org/ca/modules.html> (last visited Dec. 22, 2012).

271. *Small Claims E-Filing*, *supra* note 59.

272. See *Smart Forms: Family Law & Small Claims*, SUPERIOR CT. OF CAL., COUNTY OF ORANGE, <http://www.occourts.org/media/pdf/smartforms-fact-sheet.pdf> (last visited Dec. 22, 2012).

273. See *id.*

274. *Id.*

the court directly accepts the forms and data generated by Adobe LiveCycle into the court's custom family law case management system.²⁷⁵ For small claims matters, the SRL may choose to e-file by using an e-filing service provider who collects fees as appropriate.²⁷⁶ The provider prepares the filing in accordance with California's Second Generation E-Filing Standards ("2GEFS") and e-files it with the court's e-filing application.²⁷⁷ The court has deployed several forms²⁷⁸ and plans to make this service available for all judicial council-approved family law forms.²⁷⁹

C. Universal E-Filing with OASIS LegalXML Electronic Court Filing

While e-filing according to CM/ECF and 2GEFS specifications is widely supported in the federal and California courts, respectively, the use of these specifications is not common outside the jurisdictions for which they were developed.²⁸⁰ To enable e-filing broadly by SRLs, courts and legal aid providers must work together to define universal standards that both document assembly solutions and court record systems support. The OASIS LegalXML Electronic Court Filing technical standard²⁸¹ provides a starting point for this approach. It defines a number of technical interfaces for application modules that perform the functions required for an e-filing system.²⁸² There is no requirement that conformant application modules be part of a single application or that they be written or operated by a single organiza-

275. *See id.*

276. *E-Filing General Information*, SUPERIOR CT. OF CAL., COUNTY OF ORANGE, <http://www.occourts.org/online-services/efiling/efiling-general-questions.html> (last visited Dec. 22, 2012).

277. ADMIN. OFFICE OF THE COURTS, SECOND GENERATION ELECTRONIC FILING SPECIFICATIONS (2GEFS) 1 (2004), available at http://www.e-court-filing.org/Documents/Library01/2GEFS/2GEFSFactSheet_Ver0_4_2004_11_01.pdf.

278. *Create Court Forms*, SUPERIOR CT. OF CAL., COUNTY OF ORANGE, <http://www.occourts.org/self-help/resources/shcreatecourtforms.html> (last visited Dec. 22, 2012).

279. *Smart Forms: Family Law & Small Claims*, *supra* note 272.

280. Use of CM/ECF is currently limited to U.S. federal courts. *See Local Court CM/ECF Information Links*, PACER, <http://www.pacer.gov/cmecf/ecfinfo.html> (last visited Dec. 22, 2012). The 2GEFS specification was specifically developed for and licensed by the California courts. *See* ADMIN. OFFICE OF THE COURTS, *supra* note 277.

281. *OASIS LegalXML Electronic Court Filing TC*, OASIS, https://www.oasis-open.org/committees/tc_home.php?wg_abbrev=legalxml-courtfiling (last visited Dec. 22, 2012).

282. OASIS ELECTRONIC COURT FILING VERSION 4.01 COMMITTEE SPECIFICATION DRAFT 02 / PUBLIC REVIEW DRAFT 02, 15 (2011) [hereinafter OASIS ELECTRONIC], available at <http://www.oasis-open.org/committees/download.php/43732/ecf-spec-v4.01-csprod02.zip>. In an e-filing system, modularization allows courts and vendors to choose the services that they will support. *Id.* The LegalXML ECF specification defines modules for Filing Assembly, Filing Review, Court Record, and Legal Service. *See id.*

tion. This would allow for a standards-based application ecosystem²⁸³ in which multiple organizations, including legal services providers, can host such modules and use them to transmit case data to courts.²⁸⁴

This approach is especially useful if a court wants to collaborate with a legal services provider or other organization to build a virtual assistance portal for SRLs. Based on information about the filer and the case, the portal may triage SRLs into different channels of assistance.²⁸⁵ The most accurate triage decisions are necessarily evidence-based; this evidence can be extracted from the form-based filings themselves.

Once this standards-based application ecosystem exists, it is a short step for courts or other organizations to create modules that specialize in certain types of filings. For example, one module might help litigants determine if they are eligible to request a simple no-fault divorce decree, assemble it, and file it. Such a module could also receive the resulting order from the court electronically. All of this could occur without the filer ever setting foot inside a physical court.

In many jurisdictions, multiple organizations depend on the same set of information, yet do not share information in a way that would increase efficiency of the system as a whole. For example, many courts maintain their own identity management systems to authenticate attorneys that practice in a court; yet attorneys who practice in multiple courts must maintain their credentials separately in each court. Thus, in spite of what are often complementary services, this lack of integration prevents such services from being as useful to litigants as they could be. It also results in redundancies and wastes resources.²⁸⁶

In contrast, the ecosystem approach emphasizes reuse. Not only can application modules based on open technical standards be easily integrated, they also can be reused readily in different jurisdictions at low cost. Thus, the ability to significantly leverage ever-scarcer resources to rapidly scale useful solutions is a critical feature of the ecosystem.

283. See *Court Technology Framework*, NAT'L CENTER FOR ST. CTS. (Apr. 15, 2010), http://www.ncsconline.org/wikis/ctf/images/1/15/CTF_definitions_rev_15-Apr-2010.pdf (illustrating an overview of an ecosystem approach).

284. *Id.*

285. See *Self-Help Website*, SUPERIOR CT. OF CAL., COUNTY OF ORANGE, <http://www.occourts.org/self-help> (last visited Dec. 22, 2012) (listing self-help opportunities presented by Orange County for various legal matters); see also Richard Zorza, *The Access to Justice "Sorting Hat": Towards a System of Triage and Intake that Maximizes Access and Outcomes*, 89 DENV. U. L. REV. (forthcoming 2012) (suggesting unbundled informational systems for SRLs could be an important part of a new triage model of case management focusing on individual claimants' needs).

286. BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, REPORT OF THE NATIONAL TASK FORCE ON COURT AUTOMATION AND INTEGRATION xiv, 29–33 (1999), available at <https://www.ncjrs.gov/pdffiles1/177601.pdf>.

The ecosystem approach is also flexible, allowing each state to assemble the collective capabilities in a way that makes the best sense for it. For example, one state court may choose to provide SRL document assembly services while another state court may leave those services to legal aid providers. Despite the fact that different organizations provide these services, they remain integrated because they are based on the same open standards.

Perhaps the most significant hindrance to this vision is the current minimalist scope of the OASIS LegalXML ECF technical standard. It supports the bare minimum functionality required to actually file a document with a court, make necessary payments, and perform secondary service.²⁸⁷ There are now some additional supporting capabilities that litigants and courts typically desire, such as the ability to schedule hearings at the time of filing.²⁸⁸ However, as the application ecosystem expands, OASIS LegalXML ECF can be modified to support these additional features.

D. A Vision of the Future: Electronic Complaint, Answer, Discovery, and Settlement Negotiation

Adopting OASIS LegalXML ECF to create an application ecosystem will have many benefits. We describe some of these potential benefits below.

1. Electronic Complaint and Answer

While many courts currently use electronic forms for complaints, they are not being used to their fullest potential. Typically, data is entered into a document assembly application, generating a filing that can be filed manually or electronically.²⁸⁹ If the document is to be filed electronically, it is generated as a PDF. Some data concerning the document is entered into the e-filing application for the court to input into its case management system, but most of the information about the nature of the case is never transferred as raw data — only as a PDF filing.²⁹⁰

287. See OASIS ELECTRONIC, *supra* note 282, at 7.

288. See, e.g., *Reserve a Court Date*, SUPERIOR CT. OF CAL., COUNTY OF ORANGE, <https://ocapps.occourts.org/PublicRACD/Index.do> (last visited Dec. 22, 2012). The OASIS LegalXML ECF technical standard does not yet have this capability. See OASIS ELECTRONIC, *supra* note 282, at 7.

289. FERN A. FISHER & ROCHELLE KLEMPNER, DOCUMENT ASSEMBLY PROGRAMS BEST PRACTICES GUIDE FOR COURT SYSTEM DEVELOPMENT AND IMPLEMENTATION USING A2J AUTHOR: NEW YORK STATE COURTS ACCESS TO JUSTICE PROGRAM 1 (2011), available at http://www.nycourts.gov/ip/nya2j/pdfs/BestPractices_courtsystemdocument_assemblyprograms.pdf.

290. *Adobe Forms*, *supra* note 242.

In the future, both the complaint and answer processes will be completed electronically, using an application provided by the court that collects all relevant data about the case, enabling the automation of case management tasks, and reducing unnecessary data reentry.

We propose a process that would look something like that outlined in the following table:

Table 1: Electronic Complaint and Answer		
	Information Provided by Plaintiff (Complaint)	Information Provided by Defendant (Answer)
Plaintiff Party Name		
Address		
Telephone Number		
Address for Notification (E-Mail Address or Phone Number)		
Defendant Party Name		Accept/Agree Deny Correct
Address		Accept/Agree Deny Correct
Telephone Number		Accept/Agree Deny Correct
Address for Notification (E-Mail Address or Phone Number)		Accept/Agree Deny Correct
Case Type/Cause of Action (from dropdown menu)		Accept/Agree Deny Correct
Basis for Court's Jurisdiction (from dropdown menu)		Accept/Agree Deny Correct

Factual Allegations ²⁹¹		Accept/Agree Deny Correct
Relief Requested ²⁹²		Accept/Agree Deny Correct
Other Information		Accept/Agree Deny Correct

The plaintiff or petitioner will complete the second column. After she submits the information, the court’s case management system will accept the information and assign a case number and a judge.

The defendant or respondent will be notified of the initiation of the action and the case number both electronically and by traditional service of process. The defendant or respondent will then go to the court website and access the application using the case number. She will fill in the third column — agreeing to or accepting the information, denying it, or making changes. For instance, the defendant or respondent might provide a different address, state a different version of the facts concerning some aspect of the matter, suggest a different remedy, or offer to pay an amount different from the amount demanded.

The application will also allow the defendant or respondent to make a counterclaim against the plaintiff or petitioner or a crossclaim against a third party in which the roles and information provided by each party, as shown in the previous table, would be reversed.

2. Initial Service of Process

E-filing applications now routinely accomplish secondary service in proceedings where jurisdiction over the defendant has been established by initial service of process.²⁹³ In the future, initial service of process will be accomplished electronically in many cases. Statutes

291. The application displays different specifications for different case types. A divorce will require entry of information different from an eviction. Additionally, the information required for a divorce will change as the initiating party enters information into the application. For instance, entry of information about minor children or a request for spousal support will cause additional data entry fields for financial data to appear.

292. Data entry fields displayed will correspond to the case type/cause of action and factual allegations entered.

293. See *Process Servers and E-Filing*, LAWGICAL, <http://corp.lawgical.com/in-the-news/process-servers-and-e-filing> (last visited Dec. 22, 2012).

will be passed authorizing electronic service on registered agents of corporations and other businesses licensed by the state. After this process has proven feasible and fair — and survived due process challenges — states will begin authorizing service by publication or posting on an official court website created for that purpose. Public service announcements will notify the public that when persons filing lawsuits are unable to locate the opposing party for service, they will post notice of their lawsuits on an official website. However, changing the nature of service of process will require both modifications to existing court rules and time for people to adjust. While a handful of states and courts may be willing to test electronic service of process, widespread adoption of electronic service will require changes to the Federal Rules of Civil Procedure.²⁹⁴

3. Electronic Discovery

The application will also instruct the parties to attach all supporting documents or exhibits associated with each allegation. The application will automatically identify standard disclosures required for the particular case type. For instance, a landlord would have to attach the relevant lease, a record of rent payments, and the notice demanding that the tenant vacate the premises. Divorce litigants would be prompted to provide financial disclosure information including copies of tax returns. Most case types would require the identification of witnesses or experts expected to testify at a trial. The application will warn all participants that failure to make required disclosures could result in automatic judgment for the other side or in the judge barring the presentation of witnesses or evidence at the trial.

Paper copies of disclosures will be eliminated. Instead, initial and additional discovery will be part of the electronic system so that it may be tracked. A party seeking discovery outside of the disclosures required by the application will have to seek prior court approval, justifying the request and demonstrating that it is proportional to the nature and amount in controversy in the case.

Parties will be able to make changes to the allegations and demands during the life of the case and to add additional disclosures until a deadline related to the date of a trial. The parties will be required to make such changes when they learn of information inconsistent with their initial allegations. The application will automatically send a notice to the other parties in the case whenever such a change is made. These changes will include changes in the parties' demands or offers to settle the case.

294. FED. R. CIV. P. 5(b)(2)(E) (stating that electronic service of process requires the other party's written consent).

A jurisdiction could allow the filing of a case without attachment of all required documents and other disclosures. If that were the case, the application would send periodic electronic notices to each party with incomplete disclosures until a disclosure deadline arrived. At that point, the application would inform the judge of the party's failure to complete the required disclosures, perhaps automatically setting a hearing at which the party would have to explain why the disclosures had not been made and the judge would decide what sanction, if any, would be appropriate.

4. Automatic Scheduling of Events

A schedule of routine hearings will be created for each case based upon an automated categorization of the case derived from the information entered by the plaintiff in the electronic complaint.

The schedule will include routine hearings, such as an initial arraignment in a criminal case, a preliminary hearing in a felony case, a hearing in an eviction case, or an initial scheduling conference in a civil or family law case. The application will automatically generate electronic notices of these events. A party would be able to reschedule the event without interacting with a court clerk or judge, within parameters required by law, court rules, or court policies set within the application. For instance, the prosecution could reset the preliminary hearing in a felony case for the convenience of the arresting law enforcement officer, but only within the ten-day period following the initial arraignment. The defendant, on the other hand, could reset that hearing at a later date by waiving her right to a preliminary hearing within ten days of the arraignment. But the application would require the defendant to reset the preliminary hearing within twenty days of the date originally set by the case management system. Any party will be able to seek court approval of a setting outside the parameters.

When a court event has been scheduled, all parties will receive automatic reminder notices several days in advance of the hearing. These reminder notices will contain links to a court webpage setting forth the purpose of the event and the preparation required of each participant. Automatic reminder notices will be sent for events scheduled by the judge specifically for this case as well as for events automatically scheduled by the case management application. These messages would contain links to the court's scheduling order that set the upcoming event.

5. Proactive Messaging from the Court over the Life of the Case

A study conducted in San Diego asked SRLs with open family law cases why they had not taken the necessary steps to move their

cases to resolution.²⁹⁵ Sixty percent responded that they did not know how to proceed.²⁹⁶ Twenty percent stated that they did not realize there were additional steps to take.²⁹⁷ Seventeen percent of respondents thought they would have received further direction from the court.²⁹⁸ The case management system of the future will mitigate such confusion by automatically generating messages to each party over the life of the case. The messages will alert the party to the need or opportunity to take action. Although this information will be of particular interest and significance for persons proceeding without counsel, the same messages will also be sent to all attorneys.

Each party will be required to provide an e-mail address or phone number. Failure to provide such an address will mean that the party does not receive court-generated notices. The court will not provide these notices by traditional mail or by personal telephone call because of the increased cost involved in those forms of notice. The court will continue to send paper notices of formal court actions to parties without an electronic address. The widespread adoption of e-filing will reinforce the need for electronic addresses for all parties to court cases.

In a divorce action, the following messages could be sent:

- A message thirty days following initiation of the case explaining that a proof of service has not been filed, together with a link to an explanation of service of process and additional links to the sheriff's office and to a list of private process servers.
- A message to the respondent that she was served twenty-five days prior and that a response is due within five days, with notice that the petitioner will be entitled to apply for a default judgment if a response is not entered within five days. The message will also include a link to the complaint or answer application for that case number, as well as a link to general information about the response and default judgment processes.
- A reminder that the litigant is to appear in the local court's self-help center three days later, with a link to the information to bring to the appointment.
- A message setting the date of an initial status conference thirty days later, with a link to a description of the conference and the preparation required of each party.

295. GREACEN ASSOCS., LLC, DEVELOPING EFFECTIVE PRACTICES IN FAMILY LAW CASEFLOW MANAGEMENT 25 (2005).

296. *Id.*

297. *Id.*

298. *Id.*

- A reminder that the litigant's fee or fine payment is overdue with a link to the electronic payment application.
- A notice that a warrant has been issued for the litigant's arrest because the litigant has not made payments as required by a standing court order, with a link to information on how to appear in court and ask that the warrant be withdrawn.

These messages draw on multiple court and legal services departments, exemplifying the advantages of an integrated ecosystem approach.

6. Settlement Facilitation

The electronic petition and response process will have a built-in settlement feature. By displaying the parties' settlement offers, and providing a process for making counteroffers, the automated application will lead to settlement of many cases without court intervention. When the demand and offer match, the case management system will send a message asking one of the parties to submit a proposed consent judgment or a joint motion to dismiss.

For some case types, the case management system of the future will provide increased settlement assistance. Some courts today provide the parties with elaborate forms on which to record the terms of a parenting plan.²⁹⁹ Some courts have both parties complete them in every case involving one or more minor children to facilitate settlement and to identify areas of agreement and disagreement.³⁰⁰ That process will be automated in the future, with each party being required to propose a form of legal and physical custody and a detailed custody or visitation plan using a template like the complaint and answer process shown above. A party will begin by choosing from several available templates, such as an alternating week or week/weekend custody approach. The template will then call for details on times and places for pick-up and return of the children and arrangements for school vacations and holidays, which are the source of frequent disputes.³⁰¹ If the parties do not agree, the application will offer suggestions of typical compromises that other parents have entered into

299. See, e.g., *Court Forms: Parenting Plan/Residential Schedule Modifications*, WASH. CTS., <http://www.courts.wa.gov/forms/?fa=forms.contribute&formid=32> (last visited Dec. 22, 2012) (listing downloadable parenting plan forms for use in Washington courts).

300. See, e.g., FLA. COURTS., INSTRUCTIONS FOR FLORIDA SUPREME COURT APPROVED FAMILY LAW FORM 12.995(B), SUPERVISED/SAFETY-FOCUSED PARENTING PLAN (10/11) (2011), available at http://www.flcourts.org/gen_public/family/forms_rules/995b.pdf.

301. Liz Mandarano, *Summer Vacation and Child Custody Agreements*, HUFFINGTON POST (July 20, 2012, 3:35 AM), http://www.huffingtonpost.com/liz-mandarano/summer-vacation-and-child_b_1665820.html.

which reflect the ages of the children. These enhanced settlement facilitation features will settle many cases and provide judges, settlement facilitators, and mediators with information on the areas of agreement and disagreement as well as the options that the parties have already considered and rejected.

E. Conclusion

Court technology is no longer an island that is inaccessible to outside organizations and litigants. It is rapidly transforming from a manual, paper-based world to an electronic world. Some federal and state courts currently provide e-filing and document assembly solutions to enable SRLs to more easily participate in those courts. However, universal access to and interoperability between courts and legal aid providers will require the creation of an application ecosystem through the adoption of open technical standards for e-filing such as OASIS LegalXML ECF. This transformation to standards-based electronic systems will make it much easier for the courts to provide routine case support services to litigants in areas like noticing, scheduling, and service of process.

VI. TECH-SUPPORTED TRIAGE: THE KEY TO MAXIMIZING EFFECTIVENESS AND ACCESS (BONNIE ROSE HOUGH & RICHARD ZORZA)³⁰²

A. Why Triage?

It is a truism that courts, legal aid, and those in the bar serving low- and middle-income clients are overwhelmed with unmet legal need. It is also sadly true that these organizations lack sufficient funding to provide adequate services using the current delivery methods.³⁰³ The current delivery model — with its lack of coordination³⁰⁴ and misallocation of resources³⁰⁵ — is unacceptable.

302. Bonnie Rose Hough, Managing Attorney for the California Administrative Office of the Court's Center for Families, Children & the Courts and Richard Zorza, consultant on access to justice issues. Special thanks to I.V. Ashton, Ed Marks, Jim Waldron, and Paul Wieser, who made significant contributions to this Part — it was indeed a group effort. It should be noted, however, that there are substantial differences of perspective among the group regarding the risks, appropriateness, and challenges of the path here discussed. While the authors and contributors agree on the need to explore this approach further, not all necessarily agree on all details, or on the sufficiency of the risk minimization features proposed. Our discussions before and during the Summit have strengthened this Part significantly.

303. ALAN W. HOUSEMAN, CTR. FOR LAW & SOC. POL'Y, CIVIL LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2007, at 7–10 (2007), available at <http://www.clasp.org/admin/site/publications/files/0373.pdf>.

304. REBECCA L. SANDEFUR & AARON C. SMYTH, ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT 21 (2011), available at

We simply have to find a better way to triage legal services — to allocate the available services so they have the greatest impact on the greatest number of people. As we will show, technology provides the ability to gather data quickly and analyze patterns in outcomes to recommend cost-efficient choices.

We suggest a multi-component triage system that would be integrated with the present legal services delivery system. Full integration of the five kinds of triage we describe will require a technology-driven system, which we discuss below. Adoption of a fully integrated triage system entails both managerial difficulties and risks to litigants and clients; these challenges and risks must be more fully explored. Our ideas should be considered a starting point for discussion, not a fully realized plan or recommendation.

B. How People Enter the Access to Justice Triage System

Access to this triage system must be via data-gathering gateways, including the web, mobile apps, and voice systems. Ideally, every person would have an “access to justice” account, which would contain their basic information and a history of their prior interactions with the justice system. These accounts would also be able to import information from other systems, including information such as reported income, public benefits, employment history, and social service agency records. The data in this part of the system would be confidential and could only be released to other systems with the person’s permission.

After logging in through a secure portal, the person seeking access would answer some basic questions about her legal situation³⁰⁶ and the algorithms of the system would make recommendations and appropriate referrals.

A service provider’s triage system must effectively identify issues and available solutions, which will sometimes differ significantly from the stated problem that brought a client or applicant to the provider’s door. For example, a young parent may seek help with a child

http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf.

305. See Meehan Rasch, *A New Public-Interest Appellate Model: Public Counsel’s Court-Based Self-Help Clinic and Pro Bono “Triage” for Indigent Pro Se Civil Litigants on Appeal*, 11 J. APP. PRAC. & PROCESS 461, 463–464 (2011); Peter Salem et al., *Triaging Family Court Services: The Connecticut Judicial Branch’s Family Civil Intake Screen*, 27 PACE L. REV. 741, 743 (2007).

306. Often, litigants and potential litigants do not have a full or accurate understanding of the type of legal problem they face. It is critical that the questions be developed so they are responsive to the ways that litigants understand the issues. For example, rather than asking “Do you have a governmental child support case?” or “Is your case handled by a Title IV-D agency?” the system might ask, “Have you been to 455 McAllister?” (perhaps with a picture of the agency in question).

custody dispute. But it could be clear in a comprehensive triage system that the parent first needs help with a pending foreclosure to avoid housing instability that would create a strategic disadvantage in the custody case. Users would always be given the choice to explore only the specific issue that caused them to seek help in the first place. The comprehensive intake procedure exists to ensure users are aware of additional possible legal solutions or complications.

A triage system could deal with such situations through real-time links to the local court system. For instance, when a parent provided her name and address in a child custody dispute, the system could pull data from the court computer network to flag the pending case. The system could also use mathematical analysis of aggregated data to flag clients who meet demographic or geographic profiles that fit patterns of other known cases. The system could cross-check non-confidential data from other pending or closed cases to identify recurring opposing parties or other factors which might warrant an enhanced response to the new case.

The system should combine information from data sources with knowledge about which issues or fact patterns are more likely to correlate with certain common or predicted types of information likely to be provided by a user. These presumptions could be based on accumulated expertise or on data-mined patterns. For example, if experience or data shows that disabled applicants in a certain county are likely to have been given improper Medicaid denials, the system should ask questions designed to elicit the needed information even if the user is not yet aware of the problem. These presumptions should be regularly evaluated against actual case outcomes and altered as necessary.

C. The Five Triage Functions

Triage, as it relates to the delivery of legal services, can be broken down into five categories: self-triage, court track triage, litigant service triage, self-managed triage, and provider triage.

1. Self-Triage Function

In self-triage, individual litigants independently decide what assistance they need and what path they might take. Self-triage could be facilitated by web-based tools that litigants could use to determine whether they have an actionable legal issue and what, if anything, they might do about it. Such tools could be widely disseminated to social services providers, librarians, teachers, counselors, clergy, and other trusted resources where people naturally go with problems.

Such tools would be designed to help people understand when they might benefit from access to the legal system and provide advice regarding steps they might take to obtain this access. For example, a person who is alleged to owe a debt would benefit from a tool that would help assess whether there are reasonable defenses to the claims against her, such as statutes of limitations or lack of documentation of the debt. This would help the person assess whether she should file an objection to an action for enforcement by a creditor. The litigant's ultimate path would be decided in later triage steps. The web-based tool might also provide information about related problems if user testing indicated that such information would not be too overwhelming to litigants.

Self-triage, when used, is the first step following entry into the system, and must help the user move from a definition of the problem she is facing — i.e., needing child support — to a specific range of choices. These must include non-litigation and non-pursuit options. The system must also include information about the consequences of different options so a litigant can make a well-informed decision. For example, if the litigant's ex-spouse is not paying court-ordered child support, she may not want to file for contempt if she does not want her ex-spouse to go to jail. The relevance and appropriateness of each choice may also depend on other circumstances, such as welfare status or the relationship between the child's parents.³⁰⁷ This diagnosis must also consider the possibility that the specific legal issue the user seeks help with may be related to other legal problems. For instance, lack of child support may mean that the user also cannot pay rent.

Self-triage would in part be a branching, database-driven system of screens that needs to be supported by statistics. Statistical analysis should help provide the choice and outcome data and predictions needed to help users make choices about the type of legal services they require.

2. Court Track Triage Function

In court track triage, the court assesses how best to process an individual case. The core idea of court track triage is that cases should be routed through a system that splits into paths depending not only on the type of case, as courts do now, but also on the kinds of tasks

307. Many existing document assembly programs still fail to provide appropriate guidance, effectively requiring assistance from a knowledgeable person before they become fully useful. See Richard S. Granat, *Document Assembly over the Internet*, LAW PRAC. TODAY (Dec. 2011), http://www.americanbar.org/content/dam/aba/publications/law_practice_today/document-assembly-over-the-internet.authcheckdam.pdf (“Without legal advice and guidance, the consumer may be using these forms at their own peril, and there is no assurance that the created form will actually fit their individual circumstances. None of the benefits of using an attorney accrue to the users of self-help, automated legal forms.”).

the court will ultimately be required to perform.³⁰⁸ These tasks will depend on the parties, the complexity of the legal issues, the nature of the conflict between them, and the relief that is sought.

Some of the possible tracks and relevant court functions might include:

- Uncontested cases requiring no court involvement beyond court approval
- Uncontested cases requiring non-judicial court involvement to optimize agreement and decisions for fairness and finality
- Contested cases amenable to alternative dispute resolution
- Contested cases requiring a single final resolution between the parties
- Contested cases requiring extensive supervision of the pre-trial process, and
- Contested cases likely to require ongoing decision-making and compliance activity.

This triage function can be perfected through input screens, court databases, and data pulled from other institutions. The court's determination will depend heavily upon the litigation history of the parties, including but not limited to their relationship (particularly pending cases and the status of these cases), the power differential between them, and the particular facts and stakes in the case.

The choice of tracks must be dynamic; new facts, including procedural changes, might require a change in track. If a judge has not yet had contact with the parties, the track change might be made within the scheduling and tracking portion of the system. Such a track change would trigger automatic schedule and required event changes. If a judge had already been involved in the case, a track change would require judicial approval.³⁰⁹

Track choices will come to rely increasingly upon data provided by the litigant, information pulled from other databases, and the data-mined history of court experiences. For example, in a relatively simple divorce case involving no children, limited property, and a preliminary agreement, the court may determine that the case does not need judicial intervention unless an agreement and final papers are not filed

308. Thomas M. Clarke & Victor E. Flango, *Triage: Case Management for the 21st Century*, CT. MANAGER, 2012, at 16.

309. The question has been raised whether the litigants would also have to consent to the track change. Such a change might be viewed as a court processing matter that does not require consent. However, denial of access to a service already provided might require litigant consent.

within a certain timeframe. A case involving more serious issues might merit early judicial intervention to focus discovery, identify issues the parties agreed on, and encourage parties and their attorneys to resolve issues rather than exacerbate them. Such an approach can build generally on the Differentiated Case Management (“DCM”) systems created by many courts in the 1980s and 1990s.³¹⁰ DCM represented the first attempt to match case processes to case specifics, and was intended in large part to allow courts to control case timelines.³¹¹

The track choice and change algorithm should also reflect the availability of needed resources. Historical data can show the resource implications of track choices. Reporting should illuminate any mismatch between desired and available resources, as well as the consequences of the mismatch on court costs and case outcomes.

3. Litigant Service Selection Triage Function

In litigant service selection triage, the court helps litigants find appropriate options. This triage function manages all the services provided to litigants, including those provided by the courts, by legal aid programs, and by non-legal and community organizations. Litigants need to be directed to appropriate services, which can range from a website to full representation. This triage is analytically different from the initial triage in which the litigant decides if she wants to use the system or pursue non-legal or other approaches.

Litigant service selection triage systems will need to compare the task and service needs of litigants with the capacity of programs to meet those needs. They will require sophisticated systems for optimizing need and capacity, even when capacity is far below need. Such systems will need to complete the referral, hand off the litigant, and confirm that the handoff actually occurred. The triage should include referrals to services provided by the court, as well as those provided by outside organizations.

As a general matter, the allocation to a particular set of services is dependent upon the capacity of the litigant to perform the tasks required for satisfactory presentation and pursuit of the case. The litigant will be assigned to the mix of services that will enable her to participate appropriately in the presentation and resolution of the case at the lowest cost. Analysis should also consider whether each litigation task is needed, and how important the task is to the outcome of the case.

310. U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, FACT SHEET: DIFFERENTIATED CASE MANAGEMENT 1 (1995), available at <https://www.ncjrs.gov/pdffiles/dcm.pdf>.

311. Clarke & Flango, *supra* note 308, at 15.

The following two lists can be used to conceptualize the litigant service triage analysis. The first lists the kinds of tasks that must be completed for successful litigation, and the second lists the range of assistance available for each task.³¹²

Litigation Tasks

- Fill out online pleading forms
- Complete service of process
- Identify issues and needs
- Manage negotiation or mediation
- Request discovery
- Respond to discovery
- Prepare evidence
- Present case, including witnesses, documents, and other exhibits to the court
- Cross-examine witnesses
- Summarize evidence and make closing statement
- Prepare judgment
- Enforce judgment

Assistance available

- Litigant can perform task without assistance
- Litigant can perform task with online information or tools
- Litigant can perform task with available unbundled assistance
- Task requires full representation to perform

A review of these categories highlights the extent to which data about prior court and administrative agency experience would be highly relevant to determining a litigant's capacity to complete particular tasks.

The triage system must also consider that changes in resources could impact the types of services available to a new client. For example, if budget cuts or ballooning caseloads reduced the number of family law attorneys available to handle divorces in a particular jurisdiction, the triage system would need to direct a higher number of divorce applicants to local self-help clinics until additional resources were found. The system also might have to recognize geographic variations in available resources or changes in organizational capacities that occur due to mergers or closings of related service programs.

312. This list is drawn directly from the forthcoming *Sorting Hat* article in the University of Denver Law Review. See Zorza, *supra* note 285.

The problem of shifting resource constraints might be addressed through a task-based algorithm that determines the litigant's presumptive capacity to perform certain tasks. This algorithm would direct certain classes of litigants to self-help clinics when sufficient resources were not available, while reserving the remaining resources for other litigants less able to perform a particular task.³¹³

4. Self-Managed Support System Function

When litigants are allocated to self-help services, the triage system will need to develop tracking mechanisms to assess the status of a litigant's case and what she will need to do to successfully complete that case. SRLs will also need resources to help them interact optimally with the court; otherwise, they may become lost in the system. Examples of such resources include assistive forms that resemble an interview process by asking the litigant questions and assembling the appropriate forms at the end of the interview.³¹⁴

Comprehensive and easily understood explanations of court processes should be available to SRLs. Building from the processes described in earlier sections, software should translate a case lifecycle and caseflow data into an easy-to-understand timeline that can help the litigant make informed choices. That timeline should show the major events that typically occur in a given type of case. This timeline should be augmented by information such as the median duration for the type of case, the top and bottom decile duration for the type of case, and aggregated information about outcomes of similar cases. The timeline should also include information about fines, fees, and costs. Litigants should be able to simulate how the timeline may change depending on the outcome of particular events in the litigation process.

Finally, to enable greater impact from existing and future technology, e-mail and smartphone use should be encouraged as part of the litigation process. Paperless notification should be the norm. Litigants should receive proactive notifications concerning the status of their case and should have online access to their case file at all times.³¹⁵

313. One statutory example of triage is California's Sargent Shriver Civil Counsel Act, which sets out a variety of criteria for legal services agencies to apply when determining whether to take certain cases. CAL. GOV'T CODE § 68651 (West 2009). These factors are: the complexity of the case; whether the other party is represented; the availability and effectiveness of other means to resolve issues, such as self-help; language, literacy, and disability access issues; the possibility that providing legal services might help reduce social service costs; the merits of the case; and the nature and severity of potential consequences for the potential client if representation is not provided. *Id.*

314. For an in-depth discussion of different electronic legal forms, see *supra* Part II.B.3.

315. See *supra* Part IV.D.5.

5. Program Triage Function

In program triage, a legal services organization or community program takes on certain clients over others depending on the program's priorities. Legal services and community-based programs must retain some control over their caseloads in order to assure that they can effectively serve the litigants referred to them. Organizations may also need to prioritize cases to allow for a broader advocacy and policy role. In other words, legal services programs need tools to assess the relationship of particular cases to their program's overall goals.

In order to make rational triage decisions, a legal services program needs algorithms that assess the overall likely impact on not only the litigant, but also on the class to which the litigant belongs and the impact of the litigant's case on the program's overall strategy. Further, the algorithm needs to look for changing patterns, and thus potential impacts on the community.

In the case of a tenant facing eviction, the triage function systems described above might tell the integrated system that this is a case in which the litigant will only succeed in defeating the eviction with the comprehensive help of a lawyer. The problem is that there are not enough lawyers to provide help in all of these cases. Traditionally, there is no systematic way of making the decision as to which litigants to serve.

However, in an algorithm-driven situation, preference might be given to those cases in which the impact of a lawyer's assistance on the outcome of the case is likely to be the greatest, and to those cases in which the stakes are highest. A more sophisticated algorithm might also consider the impact of the case on reducing evictions in the neighborhood, by the particular landlord, against a particular tenant population, or in front of a particular judge. An even more sophisticated algorithm would identify cases that might have the greatest impact upon underlying poverty rates, or any other measurable outcome chosen by the legal services program.

D. Addressing the Risks of the Triage System

1. Multiplicity of Systems

The overall design of the triage system must be integrated so the user enters data only once and the subsystems then exchange data about the status of particular functions and the progress of the case. Litigants already face a bewildering array of systems, choices, and often highly fragmented services. If a triage layer was added to each of those existing systems, litigants would be faced with reentering the

same data, and then receiving inconsistent and duplicative referrals and intake offers.

The triage decisions also affect each other. If the court track triage function places the litigant into a complex decision-making track, this decision might cause a higher level of assistance to be selected in service selection triage. The program triage function might then give the case higher priority because the decision might have a broad impact, especially if appealed.

2. Litigant Privacy

The system must protect litigant privacy. Litigants must have the opportunity to control the information flow between agencies, ask questions without their information being saved, and delete any retained information. Litigants should be given the tools necessary to assess the risks of giving information or taking certain paths. For example, in many if not all jurisdictions, reporting abuse of one's child by a parent carries a significant risk of the reporting parent losing custody of that child for alleged failure to protect.³¹⁶

While information might be sent on to a variety of potential providers, a system should be developed that allows litigants to keep their information from reaching certain end users. One of the key functions of an attorney is to hear the client's entire story and identify those elements that should not be shared in order to present the most effective case.³¹⁷ Any triage system must provide some equivalent level of confidentiality if it hopes to collect sufficient information to conduct the type of triage envisioned.³¹⁸ For example, if a person who is unable to pay child support asks questions of the system and enters information about her financial situation, that information must be kept out of the court file and the child support enforcement agency's computer system, and must be maintained as confidential from the other party. Similarly, a party experiencing domestic violence must be able to ask and answer questions without fear that child protective services will receive the answers to these questions, or that any responsive violence by an accused abuser will be triggered by the system.³¹⁹

316. PETER G. JAFFE ET AL., *CHILD CUSTODY AND DOMESTIC VIOLENCE* 147–148 (2003) (discussing problems with “failure to protect” theory).

317. See PAUL R. RICE, *ATTORNEY-CLIENT PRIVILEGE IN THE UNITED STATES* § 2:3 (2012).

318. If the triage system is operated by legal aid programs, this confidentiality will be easier to build into the system without statutory changes, as legal aid attorneys are bound by the attorney-client privilege.

319. See Joan Zorza, *Protecting the Children in Custody Disputes When One Parent Abuses the Other*, 29 *CLEARINGHOUSE REV.* 1113, 1115 (1996) (“[Domestic violence] almost always escalates when the batterer discovers or believes that the victim is about to leave him or actually has left him.”).

3. Dehumanization

Even initial discussions of the tech-based triage system envisioned in this section will be greeted with significant anxiety. The idea that machines might be making decisions about who gets which services — decisions that might well be determinative of legal outcomes — will be the focus of understandable opposition. This opposition presents a particular challenge because these systems can only be made viable if they are tested and improved through the results of that testing.

In order to best protect litigants, the gateway, data collection, and user interfaces must make every use of the latest knowledge about how users from a variety of backgrounds can best be served. The design must take into account the special needs of populations that often struggle with technology, such as the elderly, the poor, those living with disabilities, and those in rural areas with less access to technology.³²⁰

Whatever the system looks like, and whatever gateways to the system are established, the fact that technology is used cannot be a barrier to access to the system. Therefore, human assistance must be available to those navigating the system, and that assistance must be fully sufficient to enable all to have the same access to the system that a tech-savvy user has. Similarly, appeal to a human must be available from any decision made in the tech-driven triage system.

4. Transparency

The system should also be transparent, so that litigants can trace their answers to learn why they have been given particular results, especially if these results differ from what the user anticipated. For example, why did the system determine the user did not require or was not eligible for legal help? The problem is that without disclosure, litigants do not understand why choices are made. This goal is consistent with general principles of judicial system transparency.³²¹

E. What Is Needed to Build the System

The above is an algorithm-driven system. It must have the capacity to take data and find the underlying patterns in real-world behavior, derive protocols for how the institutions that make up the system should behave, and then apply these protocols. The process of devel-

320. For further discussion of design considerations to better promote access by people of diverse backgrounds, see *supra* Part III.B.

321. Lynn M. LoPucki, *Court-System Transparency*, 94 IOWA L. REV. 481, 494–513 (2009).

oping the protocols can be human-driven, technology-driven, or a combination of both.³²² To build the triage system, the partners involved need to agree on the types of data and on methods of interpreting that data that are likely to lead to actionable and measurable results.³²³ This will require technical compatibility between data formats if multiple database systems are involved.

Demographic data should be organized in formats that do not produce ambiguous or conflicting results. For example, if one system identifies senior citizens as fifty-five or older, but another only applies that designation to applicants sixty or older, those differences must be resolved. Other specialized data, such as legal problem codes, court case numbers, and the like should be collected according to agreed-upon protocols.³²⁴ Outcomes should be vigorously evaluated for non-causal correlations or other factors that could lead to false interpretations.

Legal services providers should also look to other disciplines outside of the legal system to evaluate whether correlations with medical issues, educational attainment, mental health factors, or other factors can enhance the predictability of whether a particular legal problem is likely to arise, or whether a particular type of assistance is likely to produce positive results. For example, if case data shows that a high number of children living in substandard housing in a particular zip code suffer from mold-induced asthma, then the triage system might automatically ask all applicants from that zip code whether their household includes any children who have asthma. A positive response would warrant follow-up questions about the family's housing, even if the reason for which the applicant contacted the service provider was entirely unrelated.

The mix of issues will differ depending on variations in the service area. Questions for rural applicants may differ from those asked of urban applicants. Questions in high unemployment areas may vary from those asked of applicants from communities where unemployment is relatively low. The goal is to reduce reliance on one-size-fits-all triage methods and to use the power of adaptable data processes to better guide resource allocation and advocacy decisions.

322. For a discussion of data mining and the development of such protocols, see generally IAN H. WITTEN, EIBE FRANK & MARK A. HALL, *DATA MINING: PRACTICAL MACHINE LEARNING TOOLS AND TECHNIQUES* (3d ed. 2011).

323. There will surely be very significant differences in perspective between partners on issues of outcome, roles, etc. However, it should be somewhat simpler to agree on descriptions of data measures.

324. For a discussion of the National Subject Matter Index, which helps legal services organizations exchange information in compatible formats, see LEGAL SERVS. OF S. CENT. MICH., NATIONAL SUBJECT MATTER INDEX REVIEW PROJECT — OPINION LEADER INTERVIEWS, USER RESEARCH AND TAXONOMY REVIEW REPORT 10–13 (2006), available at http://lsntap.org/sites/all/files/NSMIStudy_0.pdf.

F. First Steps to Get the Triage System Moving

(1) Statement of Principles: Given the fears and complexities that triage raises, there must be some basis for moving forward, and some set of principles to which all individuals can refer when there are disagreements. Such principles need to be driven by values and norms, rather than legal or technical requirements.³²⁵

(2) Pilots: Pilots should be developed. The State Justice Institute has funded the National Center for State Courts and the Self-Represented Litigation Network in order to gather experts to design protocols for decisions about court track selection and service provision.³²⁶

(3) Research Knowledge: The legitimacy and accuracy of triage depends on validation of protocols. Such protocols will be dependent upon rigorous research. The fact that serious research into the relationship between triage, services, and outcomes is now being done makes this far more possible.³²⁷ In the long term, we will need a court and legal aid laboratory environment, in which a research platform is built into the institution and ongoing experiments concerning triage and outcomes can be conducted.

(4) Data Standards: As described above, such standards are the key to triage services.

G. Conclusion

Many of us believe that the development of appropriate triage is critical to moving towards full access to legal services.³²⁸ Deploying triage will be controversial and difficult. Confidentiality, the potential burden on litigants, and the different cultures of participating organizations raise critical challenges. But, in the end, there is no other way to take the data about outcomes, and about litigants' capacities and needs, and make sure that people get what they need to obtain access to justice. We propose that the court and legal aid communities, to-

325. For an example of a draft set of such triage principles, see Richard Zorza, *A New Cut at Triage Principles*, RICHARD ZORZA'S ACCESS TO JUST. BLOG (Feb. 28, 2012 2:08 PM), <http://accesstojustice.net/2012/02/28/a-new-cut-at-triage-principles>.

326. The State Justice Institute funded the National Center for State Courts and the Self-Represented Litigation Network through Strategic Initiative Grants ("SIG"). *SJI Board Awards Strategic Initiative Grants on Self-Represented Litigation and the State Courts*, ST. JUST. INST., http://www.sji.gov/articles.php?pg=SIG_awards_SRL (last visited Dec. 22, 2012).

327. See, e.g., D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118 (2012).

328. Richard Zorza, *Access to Justice: The Emerging Consensus and Some Questions and Implications*, 94 JUDICATURE 156, 164-165 (2011).

gether with their partners, develop and engage in a multi-step triage development strategy.

VII. OVERCOMING BARRIERS TO ADOPTION OF EFFECTIVE TECHNOLOGY STRATEGIES FOR IMPROVING ACCESS TO JUSTICE (LINDA REXER & PHIL MALONE)³²⁹

A large and growing number of technology tools that can facilitate access to justice now exist. Many have been in use by legal aid providers, courts, and others, but new tools appear frequently. Adoption of the best tools is sporadic, and their use is far from widespread. This Part examines a number of barriers to adoption of effective technology strategies for improving access to justice and suggests possible solutions for overcoming or mitigating some of those barriers.

Significant barriers include:

- (a) Lack of uniformity, standardization, and simplification;
- (b) Perception that using technology is not full justice;
- (c) Resistance to change and planning for usability and quality;
- (d) Lack of top leadership support and impediments in large programs;
- (e) Lack of adequate and appropriately targeted funding;
- (f) Lack of guidelines for making technology decisions;
- (g) Lack of adequate policy framework and unauthorized practice of law; and
- (h) Fragmentation of the delivery system and lack of national support mechanisms.

This Part also illustrates that many of the barriers overlap or interrelate. For example, the ability to make good technology decisions may be negatively affected not only by a lack of guidelines but also by resistance to change, inadequate executive-level support for using technology, or the impact of a fragmented delivery system that has too

329. Linda Rexer, Executive Director, Michigan State Bar Foundation; and Phil Malone, Clinical Professor of Law, and Director, Cyberlaw Clinic, Harvard Law School. The authors would like to thank the following contributors for providing valuable content for this Part: Hon. Fern Fisher, Deputy Chief Administrative Judge of New York City Courts and Director of the New York State Courts Access to Justice Program; Bonnie Rose Hough, Managing Attorney, Center for Families, Children & the Courts, California Administrative Office of the Courts; William Jones, Technology, Information, and Content Coordinator, American Bar Association; and Paul Wieser, electronic filing and service consultant to courts. The authors also acknowledge valuable input from Richard Zorza (an attorney and independent consultant on issues of access to justice who serves as the coordinator of the national Self-Represented Litigation Network, www.selfhelpsupport.org) and helpful guidance and editing from John Greacen (an attorney and independent consultant to courts and other justice entities and Principal in Greacen Associates, LLC).

few common systems that help maximize resources. We hope that addressing key barriers in this Part will facilitate the development of ideas targeting those barriers and encourage thought about the dialectical relationship between the two and how some solutions could have a multiplier effect.

A. Lack of Uniformity, Standardization, and Simplification

The lack of uniformity in court forms is a barrier to the use of technology to further access to justice. Without uniformity in forms and procedures, developing more efficient centralized support through technology for programs assisting SRLs is challenging.

Forty-eight states and the District of Columbia offer some statewide court forms to SRLs at no cost.³³⁰ Most states require local courts to accept state-created forms.³³¹ However, anecdotal reports indicate that some courts promote the use of locally adapted forms over the standard forms.³³²

The level of simplification of forms also varies across the country, with California making particularly strong progress in this area.³³³ Simplifying forms so they are more understandable facilitates building resources to help SRLs complete forms online through centralized document assembly programs that could assist in bridging the access to justice gap.³³⁴ The simplification process for SRLs cannot happen in isolation; establishing a working partnership with the many courts already addressing this issue would be helpful.³³⁵

B. Perception that Using Technology Is Not Full Justice

A departure from the legal aid staff attorney full-representation model can create perceptions that low-income individuals are being

330. See Richard Zorza, *National Forms Availability [sic] Data and Talking Points*, RICHARD ZORZA'S ACCESS TO JUST. BLOG (Feb. 1, 2012), <http://accesstojustice.net/2012/02/01/national-forms-availability-data-and-talking-points>.

331. *Id.* (finding that thirty-seven states require courts to accept standardized forms); GREACEN, *supra* note 25, at 18 (finding that twenty-nine states require courts to accept standardized forms).

332. See, e.g., Memorandum from Chad C. Schmucker, Mich. State Court Adm'r to Chief Judges (June 23, 2011), available at <http://www.sostf.org/system/files/sostf/wgc/SCAO-AM2011-02.PDF>.

333. See ELKINS FAMILY LAW IMPLEMENTATION TASK FORCE, FAMILY LAW: ELKINS FAMILY LAW IMPLEMENTATION TASK FORCE INTERIM REPORT (2010), available at <http://www.courts.ca.gov/documents/20101214item17.pdf>.

334. See, e.g., MICH. LEGAL HELP, <http://www.michiganlegalhelp.org> (last visited Dec. 22, 2012) (providing examples of automation of simplified forms).

335. See Richard Zorza, *Judge Fern Fisher Testifies for Court Simplification as Access Solution*, RICHARD ZORZA'S ACCESS TO JUST. BLOG (Oct. 1, 2011), <http://accesstojustice.net/2011/10/01/judge-fern-fisher-testifies-for-court-simplification-as-access-solution> (giving examples of how differences in forms and filing requirements between courts make it difficult to advise SRLs).

provided less than full justice. Fully resolving some legal problems requires the help of a lawyer. However, easier problems may be handled by SRLs if there are tools to assist them, and some persons may ultimately have to represent themselves if they cannot afford to hire a lawyer when legal aid simply does not have the resources to assist. This means that technology-assisted tools for SRLs must be of high quality³³⁶ to engender trust in their effectiveness in the legal aid community and the courts. It also means that these tools must allow users to easily find a local lawyer when they need one.³³⁷

Those who are unable to obtain a lawyer may still be able to obtain a lawyer's help for crucial parts of the case through unbundling.³³⁸ Over forty states permit unbundling, otherwise known as limited scope representation, in which an SRL can handle part of the case herself and use a lawyer only for other discrete tasks.³³⁹

A recent survey conducted by the American Bar Association Delivery of Legal Services Committee indicated that most individuals are not aware of the concept of limited scope representation.³⁴⁰ When informed about what limited scope representation is, many were interested in availing themselves of such services as a way of limiting the cost of legal services.³⁴¹ Conducting a survey of LSC-eligible individuals about which technological services would be helpful when an attorney is not available might help legal aid organizations design their limited-service programs to address as many of their potential users' concerns as possible. Similarly, more studies should be conducted of how low-income litigants who have accessed technology-enabled services view the services — and how they fared — as this would be helpful both in demonstrating the value of such services and helping those planning the services to know where to best target limited resources.³⁴²

336. *E.g.*, MICH. LEGAL HELP WEBSITE QUALITY ASSURANCE PROTOCOLS, <http://www.sostf.org/system/files/sostf/resources/MLHQualityAssuranceProtocols.pdf> (last visited Dec. 22, 2012).

337. *See, e.g.*, *Find a Lawyer*, MICH. LEGAL HELP, <http://michiganlegalhelp.org/organizations-courts/find-lawyer> (last visited Dec. 22, 2012) (providing an example of an online attorney referral program for SRLs).

338. *See generally* AM. BAR ASS'N, UNBUNDLING FACT SHEET 1 (2011), *available at* http://www.americanbar.org/content/dam/aba/migrated/legalervices/delivery/downloads/20110331_unbundling_fact_sheet.authcheckdam.pdf (“Think of unbundling as an a la carte option for legal services, where, instead of handling an entire case from start to finish, a lawyer may handle only certain parts.”).

339. *Id.*

340. *See* AM. BAR ASS'N STANDING COMM. ON THE DELIVERY OF LEGAL SERV., PERSPECTIVES ON FINDING PERSONAL LEGAL SERVICES 19 (2011), *available at* http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/20110228_aba_harris_survey_report.authcheckdam.pdf.

341. *Id.*

342. *Cf.* D. James Greiner et al., How Effective Are Limited Legal Assistance Programs? A Randomized Experiment in a Massachusetts Housing Court (Mar. 12, 2012), *available at*

More incentives for the development and use of technology in bridging the access to justice gap will also be helpful in encouraging more positive acceptance by service providers and others. LSC's TIG grants have spurred some to jump into the development and use of technology. Additional incentives may motivate others to embrace technology-enabled assistance for SRLs and LSC clients. Discussion should be opened to the pros and cons of adding incentives to the basic field grants of programs that offer technology-assisted legal aid or SRL services. An essential element of any discussion should be how to encourage partnerships with courts and other key stakeholders to facilitate the ultimate goal of closing the access to justice gap.

Some also worry that by increasing technological solutions, such as form completion programs, the potential for users to be harmed by mistakes will be increased. One concern is insufficient triage to assess whether the identified solution is the right one for the user, if her situation may be too complicated to effectively address without the assistance of an attorney, or if the technology can facilitate needed referrals to additional legal and other help. They worry that mistakes, such as in identifying the grantor as the grantee on a deed, have huge legal ramifications that can be extremely detrimental to users.

While it is not clear why mistakes on electronic legal forms pose a greater danger than mistakes on traditional legal forms, the example above raises important questions for developers. Careful thought is needed about what information people require to complete legal forms. One idea is to identify places on the forms indicating other information needed by users and provide users with an easy way to get that information. Developers will also want to be thoughtful about the limited amount of time that any user is likely to want to spend on the program. User testing is critical in assessing methods to provide information. Self-help websites that use LHI applications provide a useful example of these features.³⁴³

Systems should be built in a way that encourages any user to have her work reviewed by an attorney or other qualified person. The program should make it easy for users to save their work online as well as to print it out so that they can go back and review its accuracy and highlight areas where they have questions to discuss with an attorney.³⁴⁴ The program should allow easy changes by the litigant and the

http://www.law.uchicago.edu/files/files/Greiner_Paper.pdf (unpublished paper) (demonstrating how a study of the effectiveness of legal aid services can be conducted).

343. See, e.g., *Our Current Projects*, *supra* note 18; MICH. LEGAL HELP, *supra* note 334.

344. The LawHelp Interactive software platform supports these features. For screenshots, see *Save and Review Data Screenshot*, MICH. ST. BAR FOUND., <http://www.msbf.org/selfhelp/MLH-SaveAndReviewDataScreenshot.pdf> (last visited Dec. 22, 2012); and *Highlight Areas to Discuss with Attorney Screenshot*, MICH. ST. BAR FOUND., <http://msbf.org/selfhelp/MLH-HighlightAreasToDiscussWithAttorneyScreenshot.pdf> (last visited Dec. 22, 2012).

reviewer so that if, for example, the identified grantor is mistakenly input as the grantee, that change can be made without having to reenter all the other information or go through all of the screens in the program a second time.

Another key issue for technology developers is how a program should screen someone out of a potential resource. For example, if a program is designed for a divorcing couple without children, it will be important to do an initial triage and give good referrals, including other online resources, for those couples with children. It would not be useful for litigants to feel as if the only way to resolve their problem is to not mention the children and risk the serious legal problems associated with that omission. Therefore, the program should go beyond saying that it cannot handle their problem; it should reflect carefully crafted messages that provide more information about the limitations of the program, the issues on which they will want additional help, and practical referrals.

C. Resistance to Change and Planning for Usability and Quality

It is understandably difficult for anyone to change the way they do their work. Resistance to change is certainly not limited to legal aid programs. In light of the limited resources available to legal aid organizations, a proposed change must show large enough efficiency gains and cost savings to overcome the initial resistance to investing time and money in implementing it. Incentives may hold promise for some areas, such as possible CLE credit for the time legal aid leaders and staff spend learning about implementing technology to assist services to clients and SRLs.

Other solutions to this challenge include incorporating existing technology into new areas of practice. For example, if a self-help center has not previously provided assistance with guardianship matters, staff may be much more willing to use new technology to provide this service rather than to change the way they provide other services. Ideally, once they learn the benefits of the guardianship technology and become comfortable with it, they will be more willing to use that program for their traditional service areas because they see the benefits and little additional training time is needed. Similarly, if training on innovative technology is given to new staff, it may be welcome since they will need training on many things in any event.

One strategy for increasing use of new technology includes providing small grants to those who pilot the new technology, ensuring that the technology works in a variety of settings and is as helpful and streamlined as possible. The grants should require grantees to perform a basic evaluation of the underlying technology and implementation efforts, and develop recommendations for dissemination of

the technology. The grantees can talk with their colleagues and help make the case for broader use of the product.

Stretching implementation grants over a period of time can allow new versions of the product to be developed based upon the feedback of the early adopters, and to encourage those who choose not to be on the cutting edge of technology or who only hear about the product from the early adopters to receive an incentive to try the program. Funding for developer time should continue to provide for improvement of the product and technical support to new implementers.

It might also be helpful for the technology developer or a separate evaluator to review the field after a period of time, e.g., two years, to assess the state of adoption of the technological solution and make recommendations for next steps. Is the program well-accepted and used by all or most of the potential users? If not, what are some of the barriers, and what can be done to address them? Has the solution been superseded by other solutions? Are there other changes that need to be made to the program to make it more effective? Is more education or piloting necessary? Or, does it make sense to move on and try something else?

Pro Bono Net provides free licenses for its HotDocs product to legal aid programs.³⁴⁵ Courts, however, must pay to use the product. Smaller courts may view the costs as high and may have concerns about being committed to a technology when longer term costs are unknown (i.e., how long the licenses will be available and how long the product will be affordable). Ideally the examples of the early adopter court systems should be evaluated and considered as part of next steps in dissemination of this technology. In the rapidly changing world of technology, it may be useful to scan the development of interactive forms technology every two or three years to see what solutions courts are finding most useful in particular jurisdictions and nationally.

D. Lack of Top Leadership Support and Impediments in Large Programs

Another barrier to deploying technology may be a lack of commitment to using technology by the top leadership of an organization. If an organization's leadership does not champion such a project, it sends a message that the project is not essential to the organization's mission and that it lacks critical buy-in from all members. Uncommitted leadership may defer a project for further study or decide that no one within the organization has the necessary skill set to complete the

345. *HotDocs Donates in Excess of \$2 Million Worth of Software to Nonprofit Legal Organizations*, HOTDOCS (Oct. 5, 2010, 12:00 AM), <http://www.hotdocs.com/press/hotdocs-donates-excess-2-million-worth-software-nonprofit-legal-organizations>.

project. A project may be completed and deployed thanks to a dedicated group of knowledgeable workers but still fail to achieve organization-wide acceptance because leadership has not provided the resources for training on the new system or because staff sense leadership's ambivalence about the importance of the technology.

There are several reasons why programs may lack managerial support. High-level managers and directors are highly skilled in traditional management techniques, but they may lack confidence and knowledge when presented with a technology project that will be costly and time-consuming and which has perceived risks. The project may also not have been properly presented to leadership in a way that allows them to appreciate all of its benefits and recognize the best strategies for implementing it. It would be helpful to develop educational programs to better inform leaders about what other organizations similar to theirs have been doing, what the base costs of implementing a technology are, who the knowledgeable consultants are, their rates, and what types of staff hires would be advantageous to the organization in advance of a major project.

LSC has begun to bring in legal aid program directors as participants in the annual TIG conference to become more familiar with the technology that can help them reach their goals. It is important that this outreach continue on an annual basis. It might also help if directors were able to receive brief executive summaries of specific technology projects, such as setting up a courtroom kiosk or doing an LHI online form. The summary might describe the technology and the goal it serves, identify several other organizations that are deploying or using it, and discuss costs, technology jargon, consultants used, and staff training and skills necessary to set it up. This type of executive summary would help leadership understand that other organizations have done the project successfully, that costs are not an unknown, and that there are resources to draw on, including a field of expertise available to them.

Directors should be encouraged to attend other appropriate technology training. For example, Legal Services National Technology Project ("LSNTAP")³⁴⁶ webinars and roundtables are a useful means of building up knowledge. LSNTAP also gathers the type of information that could be used in executive summaries. LSC might consider developing a project designed to keep directors and managers informed about useful technology projects and advances, including possible financial incentives to encourage participation by top leaders. Managers could also join the Nonprofit Technology Network ("NTEN"),³⁴⁷ which can be an alternate resource on how nonprofits

346. *Training Modules*, LEGAL SERVICES NAT'L TECH. ASSISTANCE PROJECT, http://lsntap.org/Training_Modules (last visited Dec. 22, 2012).

347. NONPROFIT TECH. NETWORK, <http://www.nten.org> (last visited Dec. 22, 2012).

are using technology to advance their missions. Attendance at events such as National Legal Aid & Defender Association's annual conference or the Equal Justice Conference would expose leaders to many workshops and other sessions devoted to technology.

Larger organizations often build slow decision-making structures to allow many stakeholders to have their say. This is good in many situations, but it may stand in the way of quick adoption of effective technology. If one has to go through several committees to decide whether the organization will have a Facebook page, blog, or Twitter account, it is likely to take considerably longer for the organization to adopt a customer relationship management system, document management system, or CMS that would help the organization effectively pursue its goals.

It is possible that even in a large organization, informed leadership, good technology consultants, and committed staff can achieve technology goals in a timely fashion. But leadership must understand that investment in a realistic technology project can be derailed if there is internal dissent or delay.

E. Lack of Adequate and Appropriately Targeted Funding

All projects have some cost; even free social media requires staff time. Technology projects have startup costs, maintenance costs, and training costs that have to be addressed in order to guarantee that the project is sustainable. Given budget constraints, managers may be reluctant to commit limited resources to new technology projects even though they might pay off in greater efficiency and furtherance of the organization's mission over time.

Having accurate information about the actual costs of developing a project would help administrators plan out their budgets with more confidence. Here, a pooling of information among organizations would be useful.

Upfront costs for many technology projects can be high, but ongoing support and maintenance costs are also relevant. It might be helpful to consider setting up a system that could advance technology loans to legal service organizations to cover both large upfront costs and maintenance expenses. Loans with low interest rates could help organizations upgrade their technology while managing their expenses in a predictable fashion.

Cost savings can be achieved by consolidating hardware and software for multiple organizations into shared, virtual servers. National servers might provide customized desktops through thin clients or provide robust video storage for many organizations. Hardware and software purchasing should be done through a central purchasing organization to achieve economies of scale.

Technology funding should be seen as iterative, rather than one-time, and funders should be mindful of the need for ongoing support and maintenance. It may be helpful to have model grant requests to show the elements that might be covered. Grantees and funders should both be open to considering future grants for improvements to even a recently installed system, updates and maintenance, and best practices concerning such maintenance and upgrades.

Unfortunately, the amount of funding available to support technology in general and new technology innovations in particular is inadequate, and there is great pressure to direct any available funding toward basic program operations given the reductions in funds for those purposes. Funders, including LSC, Interest on Lawyer Trust Account Programs, United Way, and the broader philanthropic community, should be educated about the benefits of investing additional dollars in technology to advance access to justice. Perhaps a short piece that describes these benefits could be prepared for use by programs seeking funds and a similar piece could be sent to other major funders or funder associations.

F. Lack of Guidance for Making Technology Decisions

The knowledge gap for top program staff was discussed above, but lack of knowledge about technology exists throughout organizations involved in advancing access to justice. For example, many courts and legal aid organizations now have years of experience developing, deploying, and evaluating a wide variety of access to justice technologies.³⁴⁸ As a result, a tremendous body of knowledge has developed around the strengths and weaknesses of particular technologies, strategies for choosing appropriate technologies, the challenges of effectively implementing and maintaining valuable technologies, and the effectiveness and return on investment of particular tools. To be most effective, courts and organizations deploying access to justice technologies need to be able to build on and leverage these experiences and best practices to design and implement their projects as state-of-the-art and integrated solutions, rather than reinventing the wheel and making avoidable mistakes.³⁴⁹ Beginning new projects from the strongest possible knowledge base prevents organizations from going down technology paths that end up conflicting with or excluding other valuable options and avoids wasteful mid-course corrections.³⁵⁰

Unfortunately, however, it can still be difficult for organizations or courts embarking on technology projects to take full advantage of this array of existing knowledge. To be sure, the major participants in

348. See GREACEN, *supra* note 25.

349. See MALONE ET AL., *supra* note 102, at 3.

350. *Id.*

access to justice technology development each provide access to large amounts of extremely helpful articles, overviews, documentation, training materials, and more. These include the National Technology Assistance Project (“NTAP”),³⁵¹ LHI,³⁵² the National Center for State Courts (“NCSC”) Information and Resources pages³⁵³ and annual Future Trends in State Courts reports,³⁵⁴ the Self-Represented Litigation Network³⁵⁵ and its selfhelpsupport.org collection of materials,³⁵⁶ and the LSC TIG grant program.³⁵⁷ A number of annual conferences also include sessions on access to justice technology topics, including the LSC TIG conference,³⁵⁸ NCSC’s Court Technology Conferences³⁵⁹ and e-Courts conferences,³⁶⁰ and portions of the ABA’s Equal Justice Conference.³⁶¹

In addition, a number of courts and legal aid organizations have developed extensive and successful uses of access to justice technologies, and there are many state-specific examples of collections of resources for technology best practices and lessons learned. One is the Kleps Award process in California’s courts, in which a committee of judges and court staff review and select innovations that improve court proceedings and have been evaluated in some way to assess effectiveness.³⁶² Highlights include SHARP, a self-help program that used videoconferencing to enable one attorney to serve four different self-help center locations in three counties,³⁶³ I-CAN!, the online doc-

351. See LEGAL SERVICES NAT’L TECH. ASSISTANCE PROJECT, <http://lsntap.org> (last visited Dec. 22, 2012).

352. See LAWHHELP INTERACTIVE RESOURCE CENTER, *supra* note 49.

353. See *Information & Resources*, NAT’L CENTER FOR ST. CTS., <http://www.ncsc.org/Information-and-Resources.aspx> (last visited Dec. 22, 2012).

354. See *Future Trends in State Courts*, NAT’L CENTER FOR ST. CTS., <http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home> (last visited Dec. 22, 2012).

355. See SELF-REPRESENTED LITIG. NETWORK, <http://www.srln.org> (last visited Dec. 22, 2012).

356. See SELFHELPSUPPORT.ORG, <http://www.selfhelpsupport.org> (last visited Dec. 22, 2012).

357. See LEGAL SERVICES CORP. TECH. INITIATIVE GRANTS, <http://tig.lsc.gov> (last visited Dec. 22, 2012).

358. See *Upcoming Conference*, LEGAL SERVICES CORP. TECH. INITIATIVE GRANTS, <http://tig.lsc.gov/conference/upcoming-conference> (last visited Dec. 22, 2012).

359. See, e.g., CT. TECH. CONF. 2011, <http://www.ctc2011.org> (last visited Dec. 22, 2012).

360. See E-COURTS, <http://www.e-courts.org> (last visited Dec. 22, 2012).

361. See, e.g., *General Information: Equal Justice Conference*, AM. BAR ASS’N, http://www.americanbar.org/calendar/2012/05/equal_justice_conference/general.html (last visited Dec. 22, 2012).

362. *Court Innovations—Kleps Awards*, JUD. BRANCH OF CAL., <http://www.courts.ca.gov/programs-innovations.htm> (last visited Dec. 22, 2012).

363. See *Self-Help Assistance and Referral Program*, JUD. BRANCH OF CAL., <http://www.courts.ca.gov/2261.htm> (last visited Dec. 22, 2012).

ument assembly program,³⁶⁴ and online registration for self-help workshop programs in the Monterey County Superior Court.³⁶⁵

While each of these resources contains a trove of valuable information for organizations considering or pursuing new technology initiatives, they remain separate and relatively fragmented. There is as of yet no clearinghouse of lessons learned and best practices developed and no comprehensive source or index of easily searchable resources on any given topic.³⁶⁶ As a result, a great deal of repetitive research often takes place, particularly in the early stages of the technology development process. Developing concrete mechanisms for better collection, curation, and dissemination of knowledge, experience, guidance, case studies, and best practices would be a valuable step toward lowering the knowledge barrier and promoting technology implementation that is holistic and strategic. Similarly helpful would be improved mechanisms for better information sharing among participants in technology projects, whether in legal aid organizations or courts. While the annual conferences mentioned above are a step in this direction, they are insufficient in providing opportunities for detailed, substantive exchanges of best practices.

In particular, greater cooperation and collaboration among all of the participants in the access to justice technology community would be valuable. LSC, Pro Bono Net, NCSC, SRLN, and others currently help to facilitate cooperation, but much more could be done. For example, law school clinics may have a useful role to play both in facilitating collaboration³⁶⁷ and in gathering and disseminating information

364. See I-CAN! LEGAL, *supra* note 51.

365. See *Self-Help Online Workshop Registration*, *supra* note 45. California courts are using a broader compilation of technological solutions. See *Technological Resources*, JUD. COUNCIL OF CAL., <http://www.courts.ca.gov/partners/51.htm> (last visited Dec. 22, 2012).

366. While some efforts have been made to pull together key lessons and case studies at a high level, they are extremely cursory in light of the wide range and quantity of available material. See, e.g., MALONE, *supra* note 102.

367. For example, the Columbia Law School Lawyering in the Digital Age Clinic has partnered with a Manhattan legal services organization to develop an automated rent calculator. See *Lawyering in the Digital Age: Using Technology to Win Tenants' Rights*, COLUM. LAW SCH., http://www.law.columbia.edu/focusareas/clinical/digital_age (last visited Dec. 22, 2012). This clinic has also partnered with the New York City Office of Administrative Trials and Hearings to develop an online process for contesting vehicle seizures. See *What to Do if the Police Take Your Car During an Arrest: A Guide to Krimstock Hearings in New York City*, COLUM. LAW SCH., <http://www2.law.columbia.edu/vehicleseizure/index.html> (last visited Dec. 22, 2012). Chicago-Kent's Center for Access to Justice is currently working with the Center for Computer-Assisted Legal Instruction to develop "Cyber Clinics" with the goal of having law students prepare actual A2J Guided Interviews and other content for legal aid websites. See *IIT Chicago-Kent to Develop ebook for National Cyber Clinic Pilot Program*, CHI.-KENT C. OF LAW ALUMNI ASS'N, <http://www.alumni.kentlaw.edu/s/815/index.aspx?sid=815&gid=1&pgid=252&cid=1717&cid=1717> (last visited Dec. 22, 2012).

on best practices.³⁶⁸

The following paragraphs and chart are based on a model developed for courts.³⁶⁹ This approach addresses potential difficulties, poses questions, and presents a system for evaluating potential technology investments. This model could be used by legal aid or other access to justice organizations to help answer questions and to achieve a level of portfolio management capability that may deliver better services more quickly and with more positive impact. Optionally, each factor or question noted can be given a different weight or multiplier in order to express additional preferences. Without such a tool, technology decisions are sometimes made on the basis of debatable opinions with very little relevant data to support the conclusions. Decisions are also made on the basis of lengthy, formal recommendations filed over many years by changing staff, consultants, and advisors who may have conflicting views. The model facilitates an entity's choice of technology and decision-making processes in a more coherent and timely manner.

The following factors are critical to making well-informed technology investments:

(1) Value for the stakeholders in general and the users of the technology in particular: The value should be factual. If determining the factual value is impossible, impractical, or too expensive, the expected value should at least be reviewed and validated by the intended beneficiaries.

(2) Capacity to absorb the new technology into the business of the organization and operate it sustainably: The term "capacity" denotes hardware, other technical capabilities, and people factors, such as project baggage and leadership ability.

(3) Dollar and time savings: The efficiency gains of using the technology and whether existing delivery systems can be downsized or eliminated thanks to the new technology.

(4) Tactical adjusters that express currently available skill sets and resources: This factor provides an input channel to reflect current strategic initiatives and express the relative desirability of initiatives in the current fiscal term or planning horizon.

Answering the following questions about each factor can help legal aid programs evaluate a potential investment in new technology. They may wish to assign a numerical score to each answer.

368. See Elaine McArdle, *Ramping Up New Ramps to Justice: Cyberlaw Clinic Helps Massachusetts with Access to the Courts*, HARV. L. BULL., Winter 2011, available at <http://www.law.harvard.edu/news/bulletin/2011/winter/online.php>.

369. The author would like to credit Paul Wieser for developing this model and chart to assess technology needs and to thank him for allowing its adaptation for use in this Article, including future commercial publications, reprints, excerpts, translations, and adaptations of this Article, and inclusion in electronic data retrieval systems and other electronic media.

Table 2: Evaluating Investments in New Technologies	
Factor	Question
Stakeholder Value	How many people or users will the application or project reach?
	To what extent does it improve their access to justice?
	To what extent have the above assumptions been validated?
Capacity	What reception is anticipated from internal stakeholder groups — judicial officers, court administrators, clerks?
	How taxing is the project on existing delivery systems (network, people, and processes)?
Cost and Risk	How large is the investment?
	How risky is the project, its implementation, and its operations?
	What existing delivery systems or technologies can be retired in favor of the new one?
Tactical Adjuster	What is the relative importance of this project to the organization right now?
	How experienced are the project sponsors and implementers? How strong are their skills?

G. Questions About Professional Obligations and Unauthorized Practice of Law

The deployment of technology to help deliver legal services more efficiently may be hindered by providers' uncertainty over ethical and professional responsibility obligations. Statutes, rules, and case law that specify such obligations were, for the most part, promulgated before the advent of current technologies and important questions may remain unresolved in some jurisdictions: May an attorney use cloud-based document or storage systems for client materials? What types of self-help content may legal aid providers post on websites for SRLs, and when might such content amount to the unlicensed practice of law? Would an anonymous Internet service in which pro bono attorneys answer questions posted online be ethical in one's own state? In particular, uncertainty about whether technological tools, such as A2J Author and other automated form creation software, might cross a line in some jurisdictions from the mere provision of legal information

into the practice of law may deter courts and legal services organizations from taking full advantage of these technologies.

Unfortunately, when trying to answer questions such as these, considerable uncertainty exists in some jurisdictions over where to draw the line between legal advice and legal information,³⁷⁰ confusion that one commentator calls “the central mystery of the legal profession.”³⁷¹ Each state decides what constitutes the unauthorized practice of law within its borders.³⁷² The ABA standard describes legal information as general in nature rather than tailored to the particular facts of the recipient’s situation.³⁷³ It is neutral in that it does not recommend particular actions based on the offering attorney’s judgment. It may describe the various options available to address a legal problem but not recommend a particular option for a particular recipient. For example, legal information might include a description of forms that are appropriate to use in general situations or the kind of information that should be included a statement of facts or a request for relief, but not recommend particular facts a specific recipient should include.³⁷⁴ Publishing a book for the public on how to deal with legal issues is normally considered to be legal information, not advice.³⁷⁵ Legal advice, on the other hand, is strategic guidance tailored to the unique facts and circumstances of the recipient.³⁷⁶

No court or state bar authority has formally addressed whether guided interview and document creation systems provided by legal aid organizations or courts constitute legal practice.³⁷⁷ The activities of

370. See, e.g., *In re Reynoso*, 477 F.3d 1117, 1125 (9th Cir. 2007) (“[Courts] have recognized too that ‘ascertaining whether a particular activity falls within this general definition may be a formidable endeavor.’” (quoting *Baron v. City of Los Angeles*, 469 P.2d 353, 358 (Cal. 1970))).

371. Catherine J. Lanctot, *Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law*, 30 HOFSTRA L. REV. 811, 811 (2002) (“[L]awyers have famously struggled for decades to define what it is that they do for a living, and it is the amorphous nature of the practice of law that makes inquiries into unauthorized practice principles so challenging.”).

372. *In re Reynoso*, 477 F.3d at 1125; see Lanctot, *supra* note 371, at 812. These definitions are codified in statutes, court rules, and case law. See ABA STANDING COMM. ON CLIENT PROTECTION, 2012 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES 1, available at <http://www.directlaw.com/clientprotectionsurveyupl.pdf>.

373. See AM. JUDICATURE SOC’Y, STANDARD 3.6 FOR THE PROVISION OF LEGAL INFORMATION 2, available at <http://www.ajs.org/prose/pdfs/Standard 3.6 on the Provision of Legal Information.pdf>.

374. *Id.*

375. See, e.g., N.Y. Cnty. Lawyers’ Ass’n v. Dacey, 234 N.E.2d 459, 459 (N.Y. 1967) (finding that the distribution of the book *How to Avoid Probate!* did not constitute the unauthorized practice of law, although the lower court found that the book was sold to the public at large and there was no direct relationship of trust or confidence between the author and purchasers).

376. AM. JUDICATURE SOC’Y, *supra* note 373.

377. There is general consensus that software that simply permits a user to fill out forms of their choosing — much like a human scrivener — does not cross the line into legal practice. See, e.g., *Real Estate Bar Ass’n for Mass., Inc. v. Nat’l Real Estate Info. Servs.*, 946 N.E.2d 665, 679 (Mass. 2011) (“[F]illing out standard government forms for others is not

commercial providers of legal form completion software, however, have been found by several courts and state bar associations to constitute the practice of law under the rules of those particular jurisdictions.³⁷⁸ The key question for the access to justice community is what significance these decisions and opinions have for the use of document preparation technology provided by legal aid organizations or courts.

In 2011, a district court in Missouri ruled that a reasonable jury could find that document creation services provided by LegalZoom constitute the unauthorized practice of law under that state's rules.³⁷⁹ LegalZoom offers software that asks customers a series of questions in a branching decision tree, similarly to the A2J Author software.³⁸⁰ The court found that incorporating human judgment about legal matters into computer software could constitute the practice of law.³⁸¹ The Ninth Circuit used similar reasoning in 2007 to find a seller of web-based bankruptcy software to be a "bankruptcy petition preparer" and therefore engaged in the unauthorized practice of law in California.³⁸² The court found that the business of providing this software, as a whole, went "far beyond providing clerical services" and constituted unauthorized practice of law under California law.³⁸³ A similar 1999 Texas decision concluded that the sale of Quicken Family Lawyer software constituted the unlawful practice of law, in part because the program went beyond "merely instructing someone how to fill in a

necessarily the practice of law."); Neb. *ex rel. Comm'n on Unauthorized Practice of Law v. M.A. Yah*, 796 N.W.2d 189, 196–97 (Neb. 2011) (selling "legal forms in any format, so long as they do not advise or counsel another regarding the selection, use, or legal effect of the forms" is not legal practice); *In re Thompson*, 574 S.W.2d 365, 369 (Mo. 1978) (en banc) ("do-it-yourself" kits that include blank legal forms and general instructions do not constitute the practice of law).

378. See *Lancot*, *supra* note 371, at 821 ("There is ample legal precedent to permit the conclusion that many online document providers are engaged in the unauthorized practice of law.").

379. *Janson v. LegalZoom.com, Inc.*, 802 F.Supp.2d 1053, 1065 (W.D. Mo. 2011).

380. *Id.* at 1055.

381. *Id.* at 1065 ("LegalZoom's branching computer program is created by a LegalZoom employee using Missouri law. . . . There is little or no difference between this and a lawyer in Missouri asking a client a series of questions and then preparing a legal document based on the answers provided and applicable Missouri law.").

382. *In re Reynoso*, 477 F.3d 1117, 1124, 1126 (9th Cir. 2007). The software allowed users, for a fee, to prepare bankruptcy petitions and schedules via dialog boxes that prompted customers to enter data such as personal information, debts, income, and assets. The software then used that data to generate a complete set of bankruptcy forms with specific schedules and exemptions selected. It "did not simply place the debtors' answers, unedited and unmediated, into official forms where the debtors had typed them on a screen; rather, it took debtors' responses to questions, restated them, and determined where to place the revised text into official forms." *Id.* at 1123 (quoting *Frankfort Digital Servs., Ltd. v. Neary* (*In re Reynoso*), 315 B.R. 544, 552 (9th Cir. B.A.P. 2004) (amended op.)).

383. *Id.* at 1125–26.

blank form” and, taken as a whole, functioned as practice in that jurisdiction.³⁸⁴

In addition to these decisions, LegalZoom and similar commercial document completion services have been found to constitute unauthorized practice under the particular rules of certain jurisdictions by several state bar regulatory bodies.³⁸⁵ In 2008, the North Carolina State Bar Authorized Practice Committee ordered LegalZoom to cease and desist unauthorized practice, observing that legal advice in that state “includes the selection of terms and clauses within a legal document as well as the selection of which template to use,” and rejecting a comparison of the program to a scrivener, ordinarily defined as “merely typing or writing the words dictated by another.”³⁸⁶ Online document assembly programs “inevitably engage[] in the practice of law by selecting the appropriate legal form or the most appropriate provisions/clauses for a legal form based on a consumer’s answers to online questions,” concluded an informal 2008 advisory opinion from the Ohio Board on the Unauthorized Practice of Law.³⁸⁷ An informal 2008 Connecticut Bar Opinion similarly concluded that document preparation services like LegalZoom go “well beyond mere stenographic completion of documents provided by a customer” and instead “design, craft, and select the documents based on legal research and legal experience, and hold the documents out as suitable to a par-

384. *Unauthorized Practice of Law Comm. v. Parsons Tech., Inc.*, 1999 WL 47235, at *6 (N.D. Tex. Jan. 22, 1999), *vacated*, 179 F.3d 956 (5th Cir. 1999). The software advised on its packaging that it will “interview you in a logical order, tailoring documents to your situation.” *Id.* at *4. The impact of *Parsons* in Texas, however, was short-lived. The Texas legislature overruled the decision by an amendment to the relevant statute, specifying that “the ‘practice of law’ does not include the design, creation, publication, distribution, display, or sale . . . [of] computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney.” TEX. GOV’T CODE § 81.101 (West 2011). No other state appears to expressly exclude form creation software from the definition of legal practice.

385. In 2010, LegalZoom agreed to an Assurance of Discontinuance with the Washington Attorney General that barred it from engaging in the unauthorized practice of law, “specifically, by providing individualized legal advice about a self-help legal form to Washington consumers.” See Assurance of Discontinuance, *In re LegalZoom.com, Inc.* (Wash. Super. Ct. Sept. 15, 2010), *available at* http://www.atg.wa.gov/uploadedFiles/Home/News/Press_Releases/2010/LegalZoomAOD.pdf.

386. Letter from Anthony S. di Santi, Chair, Authorized Practice Comm., N.C. State Bar, to Chas Rampenthal, Gen. Counsel, LegalZoom.com, Inc. (May 5, 2008), *available at* <http://www.directlaw.com/LegalZoom/20080326/LOC.pdf>. The North Carolina State Bar Authorized Practice Committee concluded that LegalZoom had “exercised legal judgment concerning the preparation of [legal] document[s]” because its program gathers information from customers “in an abstract form using responses to a questionnaire and [uses] that information to generate the completed legal document . . . even if the judgment is part of an automated software design system . . . designed in accordance with the judgment of LegalZoom.” *Id.*

387. Bd. on the Unauthorized Practice of Law of the S. Ct. of Ohio, Advisory Op. UPL 2008-03 (Dec. 12, 2008), *available at* http://www.supremecourt.ohio.gov/Boards/UPL/advisory_opinions/UPLAdvOp_08_03.pdf.

ticular customer's needs."³⁸⁸ The Pennsylvania Bar Unauthorized Practice Committee reached the same conclusion in 2010.³⁸⁹

Should these same conclusions apply to document assembly programs provided by legal aid organizations? A2J Author, I-CAN!, and similar programs have functions in common with the commercial programs involved in the above cases. They ask users a series of questions to gather information, they translate user data inputs into information placed into the correct fields of forms, they utilize branching decision trees that discard irrelevant areas and may delete unneeded clauses or fields, they sometimes choose appropriate forms, and they may provide glossaries and targeted help features.³⁹⁰ In some cases they go beyond mere clerical services by replicating human judgment in software operations.³⁹¹

At the same time, there are significant differences. The most obvious distinguishing factor is that access to justice technologies typically are deployed by nonprofit providers on a pro bono or modest fee basis whereas the services found to constitute unauthorized practice were all commercial and fee-based. The public interest nature of form completion programs and the vital public service mission of nonprofit legal service organizations provide strong public policy justifications for not treating nonprofit programs as the practice of law in the same fashion as commercial services. Creating and deploying pro bono automated forms can be seen as comparable to certain informational activities by personnel of nonprofit or court self-help services, which are exempted from the definition of the practice of law in some states.³⁹² Several jurisdictions have adopted a definition of the practice of law. Michigan's proposed definition specifically accommodates nonprofit technology-assisted self-help services,³⁹³ and legal aid advocates have a compelling case to make for expanding similar definitions to other jurisdictions.³⁹⁴

388. Conn. Bar Ass'n Comm. on the Unauthorized Practice of Law, Informal Op. 2008-01, available at <http://www1.ctbar.org/sectionsandcommittees/committees/UPL/08-01.pdf>.

389. Penn. Bar Ass'n Unauthorized Practice of Law Comm., Formal Op. 2010-01, available at <http://www.pabar.org/public/committees/unautpra/Opinions/2010-01Lgl DocumentPreparation.pdf>.

390. See FISHER & KLEMPNER, *supra* note 289.

391. *Id.*

392. See, e.g., FLA. FAM. L. R. P. 12.750; MINN. GEN. R. PRAC. 110.04; WASH. GEN. R. 24 (excluding from unauthorized practice of law rules court personnel acting in a "neutral capacity" providing information to the public and "courthouse facilitators" acting pursuant to "court rule").

393. See STATE BAR OF MICH., REPORT OF THE SPECIAL COMMITTEE ON DEFINING THE PRACTICE OF LAW AND THE PROPOSED DEFINITION OF THE PRACTICE OF LAW (2012), available at <http://www.michbar.org/professional/pdfs/SBMReferralletter.pdf>.

394. In a related direction, the Washington Supreme Court recently adopted a new "Limited Practice Rule for Limited License Legal Technicians" that will allow non-lawyers with certain training to provide limited assistance on simple legal matters such as informing clients of relevant procedures, selecting and completing court forms, identifying additional documents that may be needed in a court proceeding, and reviewing and explaining plead-

While A2J Author and other automated form creation programs are widely used by legal aid organizations and some courts across the country, and are heavily supported and facilitated by Pro Bono Net, TIG grants, and other initiatives, the uncertain application of unauthorized practice rules to software in nonprofit legal aid settings nevertheless poses a non-trivial risk of chilling the development and broader use of innovative technologies that could significantly improve access to justice for underserved populations.

Finally, concerns about not providing legal advice may be especially pronounced for courts using technology. Courts in particular see themselves as limited to providing only legal information, not legal advice, to the public and to SRLs due to their obligation to remain neutral and to avoid the appearance of favoritism toward particular parties or classes of parties.³⁹⁵ Given the lack of clarity around the line between legal information and legal advice, courts and court staff may be overly hesitant to give SRLs critical information or services that in fact they appropriately could provide, and may hesitate to provide their own online document assembly services and instead offer only blank forms that can be downloaded or filled out manually online. The good news is that courts in a number of states, including New York,³⁹⁶ Arizona,³⁹⁷ and California³⁹⁸ offer a range of common forms that can be completed online.³⁹⁹

ings. WASH. ADMISSION TO PRAC. R. 28. Much of the court's reasoning for adopting this rule also supports arguments for explicitly permitting the use of document assembly software and similar tools supplied by nonprofit legal aid providers. The court noted that the prevalence of large gaps in legal services for many litigants "places many of [them] at a substantial legal disadvantage We have a duty to ensure that the public can access affordable legal and law related services" In the Matter of the Adoption of New APR 28 — Limited Practice Rule for Limited License Legal Technicians, 12-13-063 Wash. Reg. 298141 (NS) (June 15, 2012), available at <http://www.courts.wa.gov/content/publicUpload/PressReleases/25700-A-1005.pdf> (order was not included in the Washington Register due to page count limitations).

395. Note, however, that this rigid adherence by courts to impartiality is not without its critics who suggest that the principle should be reconsidered and that courts should give needed help to both sides, which may mean more help to one party than another in cases where only one is represented. See Russell Engler, *And Justice for All — Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 2023–24 (1999). But see John Greacen, *Legal Information vs. Legal Advice: Developments During the Last Five Years*, 84 JUDICATURE, Jan.–Feb. 2001, at 198, 203.

396. *DIY Forms*, N.Y. COURTHelp, <http://www.nycourts.gov/courthelp/diy/index.html> (last visited Dec. 22, 2012).

397. *ezCourt Forms*, JUD. BRANCH OF ARIZ., MARICOPA COUNTY, <http://www.superiorcourt.maricopa.gov/ezcourtforms/index.asp?county=Maricopa> (last visited Dec. 22, 2012).

398. *Interactive Programs for Litigants Posted on the California Court's Self-Help Website*, JUD. COUNCIL OF CAL., <http://www.courts.ca.gov/partners/1507.htm> (last visited Dec. 22, 2012).

399. For a discussion of various court policies for staff providing legal information to the public and specific ethical rules governing such situations, see GREACEN, *supra* note 25, at 45–47.

H. Fragmentation and Lack of National Support

Providers often must make decisions about technology use and acquisition without the benefit of the knowledge and experience of others who have already been down a similar path. Greater centralization of support for making good technology decisions and for adequate implementation may hold promise for achieving economies of scale. For example, training to help top staff leaders manage technology decisions should not have to be reinvented in each locale. To the extent that national, regional, or web-based training is already available, making it affordable and accessible, possibly with incentives for participation, may make the difference in whether it is used.

Fragmentation is also an impediment because it results in courts and programs using many different technology systems that may not be interoperable. Investments made in technology locally impact the ability to change course for years because no funds remain to take advantage of advancements or change to different technology systems more compatible with those used by other stakeholders. When each court or access to justice program in a state chooses its own software, for example, it may be more costly and more difficult to collect statewide data, to achieve economies of scale with updates, or to smoothly adapt to new developments such as e-filing.

National organizations, such as LSC and the ABA, may be able to use their centralized organizational structures to assist in mitigating barriers. However, each also has limitations that may make it difficult to advance solutions such as those suggested in this article. The speed with which technology is changing the practice of law and causing new issues to surface demands a special focus that may not be a priority in their missions. Nonetheless, each may be able to contribute to some centralized need and help maximize resources available to the community.

Local programs are also appropriate for many reasons; the idea of greater coordination and centralized support does not have to be inconsistent with local priorities. Those priorities may even be strengthened by access to more centrally managed tools, which have been designed to help maximize resources and overcome common barriers to using technology for access to justice. In prior decades, national and regional backup centers staffed with experts eliminated the need for local legal aid programs to hire their own specialists in each area. The centers also provided cutting edge information about changes in the law and best practices. Many of these centers no longer exist, but the need for the coordination they supported continues.

It may be time to consider creating a national access to justice entity whose purposes include facilitating the development of technology solutions in the ways envisioned in this article. As noted above, the

benefits of less fragmentation and greater centralization offer mechanisms to access knowledge, experience and data about how technology can advance the delivery and planning needed to enhance access to justice for those in need. This is not at odds with local service priorities; indeed, coordination of information and tools has the potential to assist local programs in better assessing technology needs, targeting information to facilitate service delivery planning, and saving time and money by providing experts for local programs to call upon as needed and through participation in more standardized technology approaches. Such a national entity can provide tools that avoid the need for each locality to research best practices duplicate the expenditure of scarce resources to select, manage, and coordinate technology. This entity could itself use technology to promote dialogue among justice system partners across state lines about effective kinds and uses of technology. Moreover, the opportunity that a national entity has to engage top judicial and other leadership can help broaden support for the access to justice mission, perhaps resulting in more easily attracting funding for centralized technology support than small units could because a national network can demonstrate capacity building and economies of scale. A national entity could have a unique role in providing a place where creative thinkers can help each other solve problems, plan for emerging needs, and nurture innovation. In a time when need is increasing and funding is decreasing, pooling resources and creativity through a national mechanism may improve current effectiveness, harness opportunities, and manage the rapid changes likely to affect technology and access to justice in the future.