Paper Seven:

The Role of Technology in the Access Solution

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I. Introduction

This paper is prepared for the Summit on Self-Represented Litigation, planned for late March 2005, and funded by the State Justice Institute. It addresses the critical role that technology solutions can play in lowering the barriers that self-represented litigants face in our justice system. As is evidenced by the groundbreaking Technology Initiative Grant (TIG) program at the Legal Services Corporation and similar technology investments by a number of state courts, there is a growing realization among courts, the legal services community and the larger legal community that we *must* invest in technology-based access solutions due to the huge numbers of self-represented litigants (SRLS).   Millions of low- and moderate-income people cannot find a lawyer to represent them. And, there is no real hope in the foreseeable future that increased pro bono or legal services funding will fill this gap.[2] Because the size of the SRL population is so large, technology must be a big part of any solution. It uniquely offers the capacity to reach millions of people in cost effective ways with education and information about their rights and the processes that they must navigate in order to exercise those rights.

The authors believe that we have entered a period during which innovative technological applications have the potential – if properly implemented, evaluated and funded -- to significantly increase access to justice and also provide tremendous new tools for lawyers, judges and court staff who are faced with serving ever-increasing numbers of SRLs. Those who work with technology are refining daily how they harness this power of communicating with people on a vast scale by developing smarter and better ways to use technology to present information, to improve legal literacy, to reach isolated audiences, to reduce costs, to increase efficiency, to increase the productivity and effectiveness of lawyers, provide convenience – in other words: to improve access to justice.

Our excitement regarding the potential of new technology-enabled systems is, however, balanced by some of the lessons learned and challenges that are presented by these new delivery systems. For example, we have learned, as has the private sector, that developing innovative technology can be expensive and risky. How public sector organizations – like courts and government-funded legal services programs – continue to innovate in smart and efficient ways is important.

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[1]   The authors would like to than Chief Justice Karla Gray of Montana and Lisa Colpoys from Chicago-Kent College of Law for their input.

[2]   A recent study of one state reported last year that only 12% of low income people obtained the legal help they need, and the situation is hardly better for middle income people, *The Washington State Civil Needs Study*, Task Force on Civil Equal Justice Funding of the Washington State Supreme Court (2003), page 25, http://www.courts.wa.gov/newsinfo/CivilLegalNeeds%20093003.pdf.

Equally important is figuring out how to learn – through evaluation and other means -- which innovations work, and then scaling those approaches across an entire state court system or even nationally. Finally, technology is merely a new means of delivering information or "content" to SRLs. Creating and maintaining high quality content tailored to SRLs is, however, complex: many SRLs are elderly, have low literacy levels, do not speak English and/or have little comfort using technology. If technology will achieve significant gains, the challenges of delivering up-to-date, high-quality, accessible content via the new technology must be addressed by courts, the legal services community and their respective funders.

This paper provides a brief history of how the use of technology has developed, reviews some current applications and highlights key lessons learned and challenges that we recommend guide future developments. [3]

II. The Early Years

When talking about technology as part of the access solution, what we are really talking about are techniques for managing information. During the last decade, courts and legal services programs have experienced two major changes that have not only enabled, but more importantly required, new techniques to manage information. The web, high-speed Internet connections, fast and cheap PCs, telecommunications software, and others are the changes that enabled new techniques for managing information; but the social and financial upheaval amongst the litigants and the institutions serving them are what has required – and made so particularly urgent and difficult – the development of new techniques to manage information. Before the mid-1990s, the mission of courts was limited to providing and managing a forum for people to have their legal matters heard, and the mission of legal services programs was limited to providing representation to poor people. But, by the mid-1990s, funding for legal services programs had been decimated and courts were faced with increasing numbers of do-it-yourselfers, who were either middle class yet unable to afford legal representation, or poor for whom a legal services lawyer was no longer available. In response, the institutions began to recreate themselves using technology as their sword.

A. The Early 1990s and Before: Doing What We Had Always Done

In the early 1990s, most courts simply did not distribute legal information to the public.[4] On the legal services side, while their programs were historically primarily in the business of

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[3] This paper limits its discussion to how state courts and legal services have used and thought about technology in their combined efforts to help self-represented litigants. The reader should not forget that the federal court system has embraced an incredibly sophisticated use of technology in its everyday business, and that numerous commercial vendors use technology to provide information and perform services.

[4] John Greacen's seminal article "No Legal Advice From Court Personnel What Does That Mean?," 34 *The Judges Journal* 10 (Winter 1995), laid the groundwork for courts to examine whether it was possible for them to give meaningful and responsive information to SRLs. By 2001, many courts had developed training programs for their staff to do just that. Legal information vs. Legal Advice— Developments during the last five years, by John Greacen, 84 *Judicature* 198 (January-February 2001), www.ajs.org/prose/pro_greacen.asp. For a discussion of the history, impact and operation of a pro se assistance program see "The Self Represented Resource Center," by Judge

representation, for many years they had been providing legal education through community talks; distributing pamphlets on legal issues, rights, responsibilities, and self-representation; sending out pro se booklets with forms; conducting clinics to help people better understand the court process; and giving advice in person to those who came in for advice and brief service. There are many limitations to this approach to assistance, the main one being that it is a high energy process that is inefficient, inconvenient to many, and often ineffective. For example, talks to community groups only provide help to those who come to the lecture, and are unlikely to be addressing people when they need the help the most. People want to learn how to do a guardianship for their grandchildren when they need it, not when the program is being presented. Similarly, pro se clinics can be time intensive, expensive to run, and limited to a relatively few number of people.

B. The Mid-1990s: the Possibilities Begin to Reveal Themselves

By the mid-1990s, both courts and legal services programs could see that the web offered an unparalleled opportunity to communicate with the public, but early approaches to using technology for assisting pro se litigants were essentially to do what had been done for years but to use technology to deliver it differently. This was particularly apparent with the evolution of web sites. Early sites were little more than online brochures. Visitors to court and legal services sites would find information on office or court location, hours of operation, and copies of the brochures from waiting rooms or clerk's offices that had been converted to PDF or HTML and posted. The next step was to take simple court forms and convert them to PDF so that visitors could print the forms, and then fill them out by hand or with a typewriter. In this early stage, all that transpired was that we moved from handing out packets to distributing them over the web.

C. The Late 1990's: Exploring Applied Technology, Funding Opportunities, and New Staffing Patterns

By the late 1990s, innovators saw the greater potential for technology and started working on more intelligent systems, such as the Domestic Violence Court Preparation System, which did an onscreen interview with users who typed in the answers to their questions, then received printed copies of completed forms ready to file in court. These were presented to users at kiosks in the courthouses and had information for the users (including videos by the judges) on what to expect in court and what was expected of them in court.

By the late 1990s, many courts had demonstrated that they could provide legal information and other resources to SRLs and not compromise their neutrality. In California, federal Title IV-D funds provided experienced attorneys to serve as family law facilitators in every court to provide self-help assistance with child support issues. Many courts allocated other sources of funds to expand the services of the facilitators to provide help with other family law matters. On the legal services side, a new initiative, through LSC's Technology Initiative Grant Program (TIG),

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William C. Birdsall, Judge Grant L. Foutz, Gregory T. Ireland, Court Administrator.www.ajs.org/prose/pdfs/11th_District.pdf

pumped millions of dollars into the states for legal services programs and their partners to develop ways of making technology work for them and their clients.

III. Current Applications and Experiments

Today, there are numerous experiments underway in every state – both within the legal services sector, in courts, in government and in the private sector – in how best to use technology to serve people. In many cases, these experiments grew from grassroots initiatives by an individual court or legal services program. In other cases, the innovations have been seeded by centralized funding and planning. In addition, in a growing number of cases, these projects involve significant public/private/nonprofit collaborations. What follows is a summary of some of the most useful and promising applications and approaches. In most instances, the full efficiency and functionality of a particular type of technology is only realized when it is used in conjunction with other technologies. Thus, as we discuss a particular project, you will often see that each combines components of other projects.

A. **Case Management Systems and Network Communications: Increasing Efficiency within Institutions**

The last decade has seen remarkable progress in database management systems, which has in turn allowed courts and legal services programs to develop increasingly sophisticated case management systems (CMS) to improve information sharing and streamline operations.

For courts, these CMS projects pave the way for enhanced public access to information and electronic filing, reduce clerical burdens, and provide the data necessary to assess workloads and the allocation of resources. The internal advantages of CMS projects are exponentially enhanced once the databases are combined with the public reach of the Internet. Some of the applications of this synergy that have resulted in not only decreased workload for the court, but also greater convenience and even safety for the public include:

❖ On-line payment of parking tickets, fines or restitution;

❖ Real time information sharing between courts of multiple jurisdictions, as well as law enforcement regarding domestic violence protection orders;

❖ Web based court registries allowing the public and judicial officers to determine whether parties have multiple cases

Legal services programs have also benefited from the evolution of case management system. These systems helped facilitate the massive reorganization of many programs throughout the country as they developed centralized intake systems. Intake workers can do program-wide conflicts checks and record intake notes that are available to all staff. These innovations have not only streamlined the intake process, which benefits clients, but also saved valuable staff time since the systems include reporting features that have simplified in-house reporting requirements that were historically very cumbersome and time consuming. Finally, just as the court captured an impressive synergy by connecting the reach of the Internet to their case management systems, legal services programs turned to the telephone and took advantage of advances in

telecommunications software to develop centralized statewide legal hotlines that could realistically work only because of network based computer access to the new case management systems that included centralized intake and conflict checks. Hotline desk books are done in electronic form so that they are readily available and instantly updateable. Referral information is maintained electronically so that it is always up-to-date on intake hours and case priorities. Form letters are printed directly from the CMS so that all callers can receive hard copies of the advice they have been given. We expect this kind of integration to only improve with time.

B. Legal Hotlines: Brief Advice through the Telephone

In the late 1990s, legal hotlines came into their own. Advances in telecommunications software allowed programs to queue and route callers, as well as dispense information through elaborate phone trees. A state can have a single toll free number that is routed to different locations for intake depending upon the caller's service area. Intake workers can log into the system to show they are available to take calls and even what types of calls, such as housing issues in Spanish. VOIP, voice over Internet protocol, systems can route callers to intake workers at any office without incurring toll charges, allowing intake workers to be anywhere. And as mentioned earlier, CMS advances and network communications mean that all program and client records can be maintained simultaneously with the call.

For legal services programs, these capabilities have the potential to revolutionize program efficiency and reach. A qualified poor person seeks to receive help for a legal services program by applying for services through the intake process. Until the advent of telephone intake (hotlines), typically legal services programs set "intake days" and then scheduled callers with an appointment to see an attorney. If there were eight interview slots available on "intake day", as soon as those eight slots were filled, callers were told to "Call back next week." Getting in to see an attorney was much like a lottery.

Once an applicant got in to see an attorney, even if the program could not take the case for full representation, it could give advice or brief services. This advice might involve educating the person on the law in his or her problem area and then dispensing advice on helping themselves. The brief services offered might be to assist them by helping them fill out the forms they needed to proceed to court.

This system was woefully inefficient and inconvenient for the potential clients. Most callers were not screened for eligibility until they came in for the appointment. They might drive 50 miles to find out they were "over-income." If someone missed his appointment, that slot went unused that day and no one was served. The advent of hotline-based intake overcame many of these inefficiencies.

For courts, hotlines also offer tremendous efficiencies, especially when combined with web-based resources. Today, the vast majority of court-based self-help services function on a walk-in or appointment model. However, increasingly, programs are also offer telephone and computer chat based assistance. For example, the California Courts Self-Help Center includes a link to "Ask the Librarian," a program sponsored by California Public Law Libraries. In an Ask the Librarian chat session, a self-represented litigant can ask questions and get answers from a

librarian. The librarian can also show the litigant web pages that provide relevant information. LSC recently funded a new project called "LiveHelp" that will allow users of the LawHelp web sites in Montana and Iowa initiate live assistance with navigation of the web resources from distant volunteers. These volunteers will be able to interact with the user either via telephone or online chat. In Alaska, where the state's enormous size drove the design of the court's self-help center, the court runs a statewide toll-free helpline that provide 80% of its pro se services. This helpline is backed up by a comprehensive web page, which SRLs are often co-browsing while talking with facilitators.

C. Public Access Computers: Overcoming the Digital Divide

Concomitant with the recognition that technology could be a tremendous tool in the access solution, there was also a recognition that none of this would work if the public did not have access to the technology itself. Numerous projects have blossomed across the country to ensure that someone who wants access to a computer for a legal matter can get it.

Likewise, in the legal services community, the American Association of Retired Persons has experimented with Self Help Office (SHO) projects that are now being replicated (and evolving) in other parts of the country. These offices have staff and computers available so that SRLs can get legal information on a variety of subjects so that they may assist themselves with their legal problems. In Georgia, one SHO is mobile, moving from community to community in rural areas to reach more people. In Alaska, the court and the legal service program teamed up to place computer work stations in seven courts around the state. While these workstations are unstaffed, they do include a pre-programmed phone that allows the user to talk with their legal services attorney or the court's self-help staff while working on the computer.

D. Interactive Web Pages: Creating Clearly Marked Pathways to Information

Web pages provide an unbelievably cost efficient means of providing huge amounts of information to the public, and, when well designed, are unparalleled in their value to the access solution. And, as noted throughout this paper, they often become the synergistic element in making another technological tool successful.

In some instances, web pages are simply stand alone libraries of information that the public accesses without assistance,

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such as FindLaw.com,[5] Nolo[6] and Cornell's Legal Information Institute.[7]

In the legal services sector, the Legal Services Corporation, IOLAs and a number of private foundations like the Open Society Institute through the nonprofit organization Pro Bono Net have invested heavily in the development of a national network of statewide web portals.

Each statewide portal involves participation by an array of access-to-justice stakeholders in each state including courts, legal services, groups and bar associations. These sites guarantee that every state has a solid floor of information freely available to the public. These sites are also designed to increase pro bono participation by the private bar in each state.
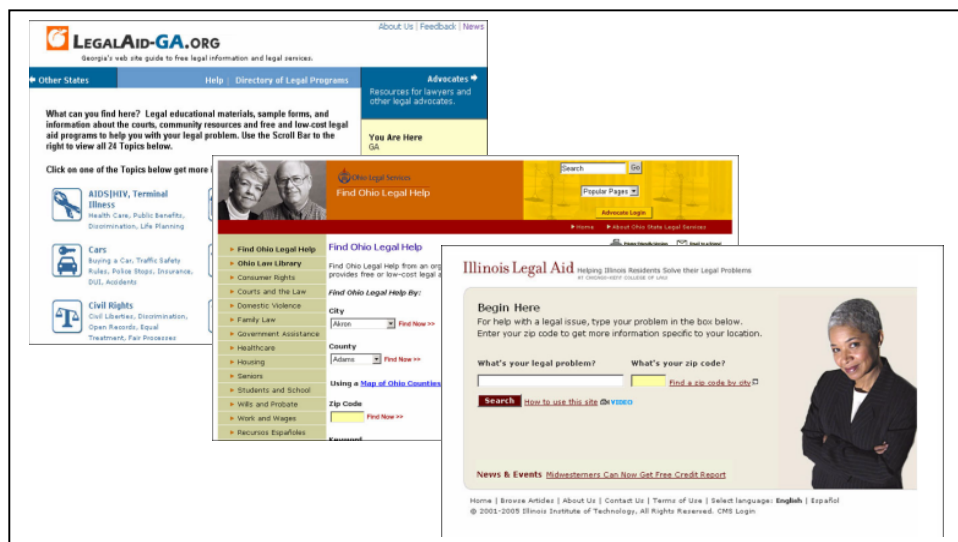
Courts throughout the country have also used the web to create varying levels of legal information, court forms and other services.

In other instances, web portals are designed in a manner to specifically encourage (or in the case of commercial vendors, entice[8]) SRLs to connect via telephone, e-mail or real time chatting to specially trained staff standing by. For instance LiveJustice.org,[9] operated by the Legal Assistance Corporation of Central Massachusetts, encourages income-eligible people to submit on-line questions to an attorney or paralegal who is standing by to assist. In Alaska, the court's self-help web page was specifically designed to guide the public's navigation and to facilitate co-browsing while talking on the helpline.

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[5] http://public.findlaw.com/

[6] http://www.nolo.com

[7] http://www.law.cornell.edu/

[8] The quality and value of these types of pages varies tremendously. In addition to entities such as Nolo Press, http://www.nolo.com/lawcenter/ency/index.cfm, that have been dedicated to helping SRLs for years, numbers of new, and possibly unscrupulous vendors pop up a daily basis. While there is rarely a specific action we can take to protect SRLs from the unscrupulous ones, it is important for us to be mindful of the existence of commercial vendors as we develop products and marketing plans. In the eyes of the public the private vendor is a very real option, and we are beginning to hear stories of free court forms being "sold" through on-line services.

[9] http://www.livejustice.org/

E. Computer Kiosks: ATMs for Legal Information

In the early 1990s, there was significant experimentation with computer kiosks that would contain information for SRLs. The impetus for many of these experiments was the growing use of ATMs in banks across the country, a technology that prior to the worldwide web was familiar to many people, especially low-income people. The goal of these early kiosks was to provide information to SRLs at a low cost that would help them navigate the courthouse and certain proceedings within the courthouse.

The Arizona Supreme Court funded the first generation of legal kiosks resulting in the QuickCourt project. QuickCourt was free to the public, and provided general information on small claims, judgments, landlord/tenant rights, alternative dispute resolution, and an overview of the state court system. QuickCourt provided referral information on bar association services and legal services offices throughout the state. It also guided users through the completion of forms necessary to file for divorce, and calculated child support payments. The system printed the completed court-approved forms ready for signature and filing with the court. The public and the court embraced the kiosks, and soon many similar projects emerged throughout the country. [10] However, the program was disconnected when it moved to a model of charging users for its use – it could not support itself.

With the advent of the Internet, kiosks began to evolve significantly. For example, approximately five years ago, the Legal Aid Society of Orange County launched what has become the award winning I-CAN! Project.[11] I-CAN! now has projects underway throughout California and has gone national developing modules for Colorado, Massachusetts, Minnesota, Oklahoma, and New York. In Colorado, I-CAN! is partnering with CourtLink to add e-filing capability. In Minnesota, I-CAN! is being configured so that it will be able to populate HotDocs templates, making the creation and upkeep of forms easier and less expensive. I-CAN! EIC is available throughout the nation, helping users in all states to file their federal (and some state) tax returns and receive their earned income tax credits.

While I-CAN! started as a kiosk-based program, it is becoming Internet-based. This allows for its usage in many more locations – courts, libraries, legal services offices, shelters, child support offices – potentially anywhere there is a computer with access to the Internet. This allows much broader use of the system at much lower cost. Partnerships can be developed to encourage

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[10] A kiosk is a small enclosed structure containing computing and communications equipment, input devices such as card readers, keyboards, and touch screen monitors, output devices such as printers, and audio and video players. For more about kiosk development, see http://www.oig.lsc.gov/tech/tecpak.htm.

[11] For more information see http://secure.icandocs.org/newweb/index.html

provision of legal services throughout the community. Research on the project indicates that the system is easy to use for many persons, but it requires a dedicated staff person at the kiosk site to encourage its use and deal with computer problems or it is not utilized. I-CAN! is experimenting with providing live assistance to help people having problems with the computer through the telephone and its hotline program.

One of the benefits of I-CAN! and other forms completion programs is that they pose great opportunities for serving non-English speaking persons as they can ask "check the box" questions in languages other than English that can then print onto English forms. I-CAN! also provides a video of a person speaking the text that is written. This helps persons with limited literacy.

F. Web-Based Document Preparation and E-filing

Another promising area in technology development today is web-based document preparation and the related possibility of e-filing these electronic documents. For courts, which face static or diminishing resources in the face of increasing numbers of filings from the public, developing systems that pave the way for electronic transmission of information is crucial.

In addition to the I-CAN! solution mentioned above, another solution is a product that began in California called EZLegalFile that has been enthusiastically embraced by many courts.[12] It helps self-represented litigants complete form pleadings by asking questions, the answers to which populate the required forms. Providing services in the areas of domestic relations, domestic violence, small claims, landlord-tenant, and guardianship, this web-based interactive program helps SRLs fill out the forms necessary to request or respond to papers. In certain counties, e-filing has also become a reality though this program.

One of the lower tech options is simply to use web-based PDF forms that are fillable online, and form sets.[13] This solution gives the public a user friendly way to complete complicated form sets, but it does not pave the way for e-filing.

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[12] The vendor has expanded and now provides services in Michigan and Florida. The California portal is http://www.ezlegalfile.org/index.jsp, and other states can be reached through http://www.turbocourt.com/index.jsp .

[13] Examples include divorce in Arizona, http://www.supreme.state.az.us/selfserv/formdwc.htm , and fillable court forms in California, http:www.courtinfo.ca.gov/forms/.

One of the most exciting and promising projects is the National Legal Services Document Assembly Server. The server allows legal services organizations to post programs for low-income people who can't afford to pay for legal assistance, and their non-profit advocates. The programs can be as simple as one to help a user to write a letter to a creditor or as complex as a program to conduct diagnostic interview. The server has also been used for programs that help litigants prepare agreements and court pleadings, as well as fill out, court forms.

G. Personal Web Spaces for SRLs: Providing Unbundled Services Online

A few years ago the National Center for State Courts provided a grant to Chicago-Kent College of Law to study innovative approaches for providing help for SRLs. One of their approaches was to provide SRLs with their personal web sites. With their unique user name and password, SRLs could not only read legal information and fill in forms, but could store the results of these searches, keep the forms, and then return later as their cases progressed. In addition, they might be linked to attorneys who could review their pleadings and give them legal advice over the web. This could be done with pro bono lawyers or for fees paid to lawyers providing unbundled legal services.

This idea of an SRL having a personal web space to help manage their case continues to evolve in developing projects in Maryland and Michigan. In the Maryland project, instead of getting help in real time, a program is being developed so that questions can be posited to pro bono attorneys or to a member of a reduced fee panel who reviews pleadings and answers questions for a reduced or fixed fee. Then users log back in to receive the advice and to make any corrections to their forms before they are filed. Another is a Michigan experiment where users will be able to ask questions anonymously of pro bono attorneys via the web site.

Some ideas for the future are modeled on health insurance providers who are setting up systems to provide policy holders with personal case managers so that their course of treatment is a coordinated effort stewarded by one person. Building on the personal web space, we could envision having staff or volunteers whose job it is to be the case manager for SRLs. This case manager could review the progress of the SRL through the system, giving advice and assistance as needed. This advice may not include legal advice, but be limited to helping the SRL through the process steps.

H. Video Conferencing: Overcoming Geographic Divides

Video conferencing is widely embraced by courts and increasingly legal services programs. For courts, video conferencing saves time and money and reduces security risks that are inherent in

prisoner transport. The most common proceeding in which video conferencing is used include arraignments and bail hearings.[14] Self-help centers in California have also used videoconferencing to conduct child custody mediation, conduct workshops in several locations at once, and manage a regional self-help center. In legal services programs, video is being used to improve the effectiveness of pro se clinics. In their Oahu office, the Legal Aid Society of Hawaii has had great success with clinic participants finishing their cases because they follow up with them and provide continued assistance. In order to reach more people, they used video connections to provide this assistance to clients from the other islands by connecting them to the pro se coordinated over video connects to their other offices. In Illinois, clinics themselves are being presented remotely so that participants do not all have to be in the same location as the presenter. And clinics are being recorded and presented at any time using streaming video over the web.[15] In Montana, they allow a legal services attorney in one location to make appearances on behalf of clients who are appearing in a remote court.

IV. The Future: Challenges and Potential

The future of technology as part of the access solution is very exciting and offers much promise. It certainly does not replace representation[16] and in fact promises to greatly expand the effectiveness and quantity of full-service representation by advocates, both legal services and pro bono. Legal services groups using Pro Bono Net are using technology to recruit many more volunteer attorneys, match them with cases and then support them, all via the web. It can create a system that allows access in a way we could not conceive of a decade ago. Being successful will require that we remain mindful of the challenges, do not forget the lessons learned, and continue to build strong supportive networks for all of the interested parties.

A. Addressing Concerns in the Legal Service Community about Technology

While support for technology to augment services to clients has grown a great deal in the legal services community in the last 10 years, there is still no consensus on its value. Before addressing ways that we can improve our delivery of services to self-represented litigants, we need to address these issues. Those who have doubts about the utility of hotlines and web sites with self help materials point to two concerns that they have: perceived deficiencies in the services delivered to low-income clients through hotlines and web based pro se; and the perception that technology-based efforts drain resources from more worthy pursuits such as full service representation and impact representation.

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[14] To read more about the courts' use of video conferencing, see http://www.ncsconline.org/WCDS/Topics/topic1.asp?search_value=Videoconferencing. (in development)

[15] (http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=3407)

[16] We should not overlook the difficult tension that arises on the legal services side as evidenced in the Summer '03 issue of the MIE Journal, in which executive directors expressed concern about "McJustice" and suggested that legal services should provide those lucky enough to get into the system with the best service possible and ignore the rest. They argued that it is better to achieve the "optimal outcome" for ten clients than to obtain "favorable outcomes" for one hundred clients.

The first assertion is that technology-driven approaches such as hotlines and pro se mechanisms do not serve all – or even many – clients well. They point to the lack of personal attention that is inherent with a web site that cannot interact on a human level and cannot offer empathy or support. They suggest that many clients would be helped more by full representation, and note that some clients will get little or no help from a hotline or from a web site. This may be due to a combination of any of the complex nature of the case, limits in the person's ability to process and utilize the information received, and the relative lack of receptivity of the forum to pro se litigants.

In addressing these perceived shortcomings of hotlines and intake, the first point to note is that before they were available, many parties who are now assisted did not get any assistance. The intake system of yore turned down many applicants that are now afforded a consultation and supporting materials. Before pro se was available at kiosks and on web sites, it was not available in many places at many times. Now, advice and brief service helps clients in many situations: those who need advice about their status in a legal situation; those who can avoid a legal issue by getting legal status information that prevents a litigated matter; those who can handle a matter on their own with advice on how to proceed, such as how to assert a right or take advantage of a statutory remedy; and those whose matters are resolved by brief service contact with the adverse party. Even where access to the courts and to administrative venues is necessary, advice and counsel and/or pro se assistance may be sufficient for many persons. This is not to say that proponents of these delivery strategies are writing off clients who aren't fully served. The following two sections include many strategies to ascertain who needs what and to provide safety nets for those situations where brief service or pro se assistance isn't enough. It is most important that we continue to work to refine our strategies to address those who are not helped by classic pro se tools.

The second assertion of the skeptics is that technology approaches drain resources that should and could be used for full individual representation and for "systemic advocacy cases." It is asserted that hotline intake diminishes the program's ability to identify legal issues that are related to the client's apparent problem and diverts management energy and creativity from more important delivery.[17] The first answer is that the resources that hotlines and technologically enhanced pro se efforts take are in lieu of the considerable resources that have been devoted to traditional intake and to even to traditional pro se efforts. The amount of resources that a program chooses to devote to these efforts is up to the program. Several hotline proponents note that they run the hotline and handle more cases through it than they did with traditional intake and that they have more resources for full representation than they had under the traditional model. And, as noted above, the positive value of brief service and of pro se tools should not be lost in focusing on what it doesn't do as well as full representation. Even a leading skeptic asserts that he would not "eliminate as valuable a tool as our hotline" to remedy what he sees as limitations of the tool.[18] Nor is systemic impact foreign to hotline and pro se approaches. Allowing self-represented litigants into the court house and fashioning an environment that is friendly to them is a very valuable systemic change that was brought about by those who

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[17] Victor Geminiani, "Accessing McJustice" MIE Journal, p. 50.

[18] Id.

developed pro se tools in partnership with the judiciary. Turning domestic violence protection from a tool available to the few to a more accessible remedy is a systemic change. Getting millions of dollars in earned income credit funds to low income persons who need it is significant economic development.

The voice of the skeptic is, nonetheless, a helpful one. It bids us to keep in mind the truth that full representation is necessary in many situations – including those where it is currently not available. And, it emphasizes the need to evaluate the usefulness of pro se approaches and to build strategies for dealing with shortcomings of current pro se efforts.

B. Building A Smarter, More Integrated System

The challenges for the future include:

- designing a coordinated and integrated system that triages SRLs;[19]

- facilitating those who can help themselves into the available tech-based systems and providing them with the help they need to use the systems;[20]

- improving staff efficiencies in working with SRLs; and

- developing meaningful alternatives for people who are unable to help themselves.[21]

To do these things, we must prioritize to be sure that, for the areas where it is realistic that users can represent themselves, the tools they need are there. And, most importantly, we must foster the innovative and creative approaches that have to date permeated every aspect of this work.

Courts are likely to meet these challenges by:

1. developing more web based programs that allow SRLs generate form letters, fill out court forms and manage their cases, as well as triage programs, videos and canned information modules that help people move step-by-step through their case;

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[19] Triage, whereby the level and type of service an SRL requires is determined, occurs through the interview process, which can be with a human being in-person, over the telephone or on a video conference. Triage can also be unassisted through a smart web-based or kiosk-based program that guides a person depending on their answers to individual questions.

[20] The most significant innovation that we are beginning to see is that we are developing tools whereby the SRLs manage their own information. And while this is a very exciting development, we must maintain appropriate expectations. For a fully literate individual who is receiving unbundled or full representation, personal web spaces show great promise. But for the many marginally literate individuals who are navigating the court without any assistance, court based self-help centers will need to employ strategies that allow for a discrete task to be fully completed, as well as a process that guides people step-by-step to the completion of their case.

[21] Advocacy services may or may not include legal representation, but they definitely include connecting people unable to successfully use technology with someone who can help them use web based resources such as programs to generate form letters, information videos or question and answer based document assembly programs. This is also the piece of the puzzle in which we must be sure to design coordinated systems that make appropriate referrals between courts, legal services programs, shelters, mental health providers and all relevant community resources.

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2. improving self-help center staff efficiencies by giving them smart programs that enable them to help customers more quickly;

3. working closely with CMS managers to develop form orders that are available to judicial staff on the bench so that every person leaves the court room with an order; and

4. combining phone and Internet services to improve staff efficiency and public convenience.

Legal services programs are likely to meet these challenges by:

1. developing personal web spaces;

2. growing and enhancing web based services document assembly services so that they are available nationally;

3. deploying kiosks and computer workstations in locations that bring access to the public; and

4. developing increasingly sophisticated integration between hotlines and web-based resources, to include general information, consultation with an attorney, or a live video link to the hotline lawyer.

As we work together to build these systems, we need to recognize the different roles these institutions play. Courts are focused on process. In other words how does one move increasing numbers of people through a system with static or diminishing resources, yet provide sufficient resources that justice can be rendered and due process can be protected? Legal services programs are made up of lawyers whose tradition is to represent people, and in the absence of full representation, using technology to help people better manage their cases through personal web pages and smart programs that help assess legal claims or explore hypothetical strategies.

C. **Making Sure that the Technology Works and is Truly Accessible for SRLs**

It is clear that, for this technology to succeed, there needs to be dedicated staff people encouraging litigants to try out these solutions, helping them deal with technical problems and providing personal support. Courts and legal services cannot assume that they can make an investment in computers and web pages and that they will be used. Some other important lessons we have learned include:

*   User testing both court forms and web page navigability is critical for success;

*   We must design materials and approaches that take into account that 50% of the American people function at or below the 5th grade reading level;[22]

*   Self-help center and hotline staff give us the real world feedback we need to design functional solutions, and

*   As an access issue, we must maintain a paper option.

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[22] See information: http://www.transcend.net/at/index.html

D. Capitalizing on Improved Access Opportunities for Disabled Persons

In addition to the many efficiencies that technology brings to service delivery, it also creates many opportunities to provide disabled persons meaningful access to information, as well as to the courtroom.[23] For instance, screen readers allow visually impaired persons to read or hear web pages. No longer do people have to rely on a friend's kindness to read them information packets about how to file a case; now they can simply navigate a court's web page on their own at their own convenience. Hearing impaired people can read real-time transcriptions of proceedings and type their responses, or perhaps use e-mail to communicate with the court on procedural matters. While the web is certainly the most liberating tool for many disabled persons, video conferencing is another example of a powerful tool. For example, video conferencing can be used to provide a sign-language interpreter to a rural court without such local resources, thereby literally opening the courtroom door to a hearing impaired person.

As with all aspects of technology, the key to capitalizing on these opportunities is to think creatively about possible applications. Once we see the possibilities, we must then design systems that will allow disabled persons to take full advantage of the assistive technologies currently available. The challenging part is being mindful of these issues, the actual adaptation necessary to ensure accessibility can usually be made fairly easily and without little or no impact on the overall visual "look and feel" of a site. Fortunately there are many resources available to help web designers regarding these issues, but it is a challenge of the future to make sure that courts and legal services programs avail themselves of these resources.[24]

E. Making Sure That We Sustain These Programs

The projects that we described today are in many cases still in their infancy. Like infants, they have tremendous potential but require significant care and feeding over a number of years to mature. Among the factors that must be addressed to make sure that these projects continue and continue to improve are:

1. Continued funding for innovative new applications of technology;

2. Continued and increased support for evaluations;

3. Support for the development of the specialized content that is required by these systems; and

4. Support for the necessary people to conduct education, outreach and training within the courts and legal services groups, but also in the larger access-to-justice and social services arenas.

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[23] According to the U.S. Department of Education, roughly 10% of the general population has disabilities that can interfere with their use of the Web, for example blindness, low vision (low acuity, tunnel vision, central field loss, clouded vision), color blindness, deafness, mobility impairments, learning disabilities, injuries such as a broken hand or repetitive stress disorder. However, thoughtful web design can address many of the challenges.

[24] For more information about these issues and design guidance please see the Department of Education's *How Do Individuals with Disabilities Use the Web* found at http://www.ed.gov/policy/gen/guid/disability-awareness.doc.

Because millions of dollars of investment will be needed over an extended period of time, it is essential that the major stakeholders coordinate and collaborate as much as possible. In particular, in any given state, the courts, legal services community, and organized bar must work together as much as possible. The private legal technology sector must also be brought in as a partner where possible. Shared investments in the technology, content and even staff must be made. Duplication of efforts must be avoided as much as possible; sharing of best practices is absolutely essential.

Of course, as this conference itself demonstrates, there are already exciting building blocks in place for these joint efforts. Several years of collaborative efforts have produced this conference including among legal services and court groups and their respective funders. Sites like www.selfhelpsupport.org are also examples of ongoing collaborations. These efforts, however, must be deepened and expanded. Coordination and collaboration requires hard work and staff. Best practices must be shared. Evaluations must be completed and disseminated.

V. In Conclusion

The most significant lesson that courts and legal services programs have learned in providing tools for SRLs is that many need assistance more than just the technology itself. As mentioned, Legal Aid Society of Hawaii found their pro se clinics to be successful only because of the follow-up assistance they were able to provide to those who attended. Much of I-CAN!'s success has come from being located at the court facilitators' offices in the courthouse. Ideally, as technology improves, our systems will be able to help more people without outside assistance, but we do not have a Pollyanna view of the situation. We understand that technology alone will not be enough for everyone.

The key is that we develop online systems for persons who are able to help themselves, then get them into the systems and provide them with the help they need to use the systems. To do this, we must prioritize to be sure that, for the areas where it is realistic that users can represent themselves, the tools they need are there. We also need to build systems to support the courts in obtaining the information they need to make a decision, and to help the SRL navigate through the case.

And the systems must be more complete than just getting them in court with the right forms. The work done by Chicago-Kent College of Law funded by the National Center for State Courts shows how all encompassing these systems could be. We could build a system that helps a prospective litigant decide if their case has merit. Another would walk them through the process of how to prepare a case, teaching them about witnesses and exhibits. Another would allow the court to fully access information about their case and prepare an order or final judgment. Other tools would then help them to enforce or collect it.

In summary, we need to build a system for areas of law where proceeding pro se is feasible. We need to triage callers so that those that can help themselves, either alone or with case managers, are directed to these systems. We need to do this as a unified system where legal services programs, the courts, the private bar, and community providers all provide assistance. And these systems must include help with more than just getting into court. They must help the SRL from

start to finish, with people available to assist them at every step. And they must also help the court to understand and process the SRL's case as efficiently and effectively as possible to ensure that the systems support the court to ensure that the result is as just as possible.