

CONSUMER CENTRIC DESIGN: THE KEY TO 100% ACCESS

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I. INTRODUCTION

According to Richard Susskind, one of the world's leading legal futurists, access to justice is the greatest problem in Western democracies because most people cannot afford to pay for a lawyer to assist them with legal problems.³ Susskind also suggests that to address this problem, revamping the way we have always provided legal services will not work in the future, and that we must find innovative new ways that increase efficiencies, liberalize who can provide legal help, and maximize new technologies.⁴

The authors agree. Like many others who have worked on improving access to justice for those in need, we have spent a good share of our careers trying to sustain or tweak the current system so it can provide help to more low-income people. That system was built on the idea that all or most client needs must be handled by lawyers, mainly in nonprofit agencies dependent on grant funding, but there has never been sufficient funding to add enough public interest lawyers in nonprofit civil legal aid agencies to provide such services to all clients who need them. In fact, 80% of the civil legal needs of the poor go unmet each year. In Michigan, for example, there is one lawyer for about every 300 persons in the general population but only one legal aid lawyer for every 13,000 eligible poor persons.⁵ Similar to national data,⁶ Michigan legal aid

3. Richard Susskind & Oxford Internet Institute, *OII Lectures. 4: The Internet and the Administration of Justice*, YOUTUBE (Nov. 2, 2010), <https://www.youtube.com/embed/JY7wE4TpmQ>.

4. RICHARD SUSSKIND, TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE 3-14 (2013) [hereinafter SUSSKIND, TOMORROW'S LAWYERS].

5. Letter from Robert Mathis to the Pro Bono Initiative State Bar of Michigan (Nov. 27, 2013), available at http://www.michbar.org/programs/pdfs/probono13_report.pdf.

6. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEED OF LOW-INCOME AMERICANS (2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf; See also *LSC Releases Updated Report on the Justice Gap in America*, LEGAL SERVS. CORP. (Sept. 30, 2009), <http://www.lsc.gov/media/press-releases/lsc-releases-updated-report-justice-gap-america>.

agencies turn away half of those who seek their help due to lack of resources to assist them.⁷

These authors, like many in the justice sector, believe this is a unique time and that, through the integration of key innovations, we will move towards 100% access, which we define as a system in which we can provide some form of effective legal assistance to all people facing civil legal issues. However, these innovations will only be successful if they offer a consumer-centric approach in which consumers can be efficiently and effectively directed to the type and level of help they need. This article focuses on consumer-centric design through maximizing the following four areas:

- self-help services,
- building connections with providers,
- simplification, and
- minding the digital divide.

The authors also hope that exploring the key aspects of these areas will lend a perspective on how consumer-concentric design can maximize many emerging developments such as non-lawyer practice, enhanced unbundled legal services, Alternate Dispute Resolution (ADR) and online dispute resolution (ODR), remote legal services, and other innovations that give promise to a robust and integrated justice system.⁸

II. CONSUMER CENTRIC DESIGN: CONSENSUS FOR COORDINATION

The distinguishing characteristic of the current access to justice environment is the growing consensus that the delivery innovations of the bar, legal aid, and the courts must be coordinated to offer an integrated system capable of differentiating services for people with legal issues.⁹ This is a huge shift from the historically fragmented system of overwhelming complexity built for expert users only to an integrated and differentiated system that has the potential of allowing expert (lawyers and other licensed legal professionals) and non-expert (consumers and lay persons trained to assist them) users to navigate together.

7. STATE BAR OF MICH., DOCUMENTING THE JUSTICE GAP IN MICHIGAN UPDATE (2014), available at <http://www.michbar.org/programs/ATJ/pdfs/JusticeGap.pdf>.

8. See SUSSKIND, TOMORROW'S LAWYERS, *supra* note 4, at 100-102.

9. Richard Zorza, *Access to Justice: The Emerging Consensus and Some Questions and Implications*, 94 JUDICATURE 156 (2001), available at <http://www.zorza.net/Judicature-Consensus.pdf>.

Technology increases the potential of this approach by offering on demand, standardized delivery systems via web-based information, online document assembly systems, or client portals to help consumers at the time and place of their choosing.¹⁰ In addition, court leaders are increasingly exploring the idea of simplification, which demands a new scrutiny of forms, procedural rules, and case management techniques from the vantage point of the consumer.¹¹ Bar Associations and others are refining unbundled legal practice and referrals to provide limited assistance where needed. For example, as a way to expand who can provide selected legal services, Washington state is testing the waters with the development of Limited License Legal Technicians, and New York City has a pilot project involving non-lawyers serving as court

10. In late 2011, LSC convened a summit of leaders to explore how best to use technology in the access-to-justice community. The group adopted the following mission for the Summit: “to explore the potential of technology to move the United States toward providing some form of effective assistance to 100% of persons otherwise unable to afford an attorney for dealing with essential civil legal needs.” LEGAL SERVS. CORP., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE I (2013), available at http://www.lsc.gov/sites/lsc.gov/files/LSC_Tech%20Summit%20Report_2013.pdf [hereinafter LEGAL SERVS. CORP., SUMMIT ON THE USE OF TECHNOLOGY]; see also James E. Cabral, Abhijeet Chavan, Thomas M. Clarke, John Greacen, Bonnie Rose Hough, Linda Rexer, Jane Ribadeneyra & Richard Zorza, *Using Technology To Enhance Access To Justice*, 26 HARV. J.L. & TECH 241 (2012). By 2014, when Glenn Rawdon, Program Counsel at the Legal Services Corporation, spoke at the White House Forum on Increasing Access to Justice, the consensus of the sector welcomed his characterization of the current climate as a “moment of convergence” that could lead to access to some form of effective assistance for everyone, anytime, anywhere. Glenn went on to say:

I want to home in on the phrase “some form of effective assistance.” This doesn’t mean a lawyer for everyone for every matter; that’s just not realistic. What it does mean is not turning anyone away with no assistance at all, which is what happens all too often today. How do we achieve this? By providing three different levels of assistance:

- Information – for those whose problem lends itself to self-help and who have the ability to do it themselves if they have the right tools and information
- Advice – for those who can still help themselves but need guidance and advice to get there
- Representation – for those who, because of the nature of the case, the stakes, and their circumstances, need a lawyer

Video of this speech is available at LEGAL SERVS. CORP., *Glenn Rawdon’s Speech at the White House Forum on Increasing Access to Justice* (Apr. 15, 2014, 4:12 P.M.), <http://tig.lsc.gov/glenn-rawdons-speech-white-house-forum-increasing-access-justice> [hereinafter LEGAL SERVS. CORP., *Glenn Rawdon’s Speech*].

11. See *Rule and Process Simplification*, CTR. ON COURT ACCESS TO JUSTICE FOR ALL, <http://www.ncsc.org/microsites/access-to-justice/home/Topics/Rule-and-Process-Simplification.aspx> (last visited Mar. 8, 2015).

Navigators.¹² All providers are actively discussing the impact of triage protocols to better match the consumer with the appropriate level of legal and practical assistance.¹³

As recognized in this article, we are increasingly developing the necessary elements to support a legal access portal such as proposed by the LSC Technology Summit.¹⁴ But a single-point-of-entry legal-access portal does not mean that consumers only receive online services or only enter the system through one “door;” rather, the portal will point in many directions and be a bridge that links different resources to help get people to where they need to go (both online and in person). It also serves as a powerful systems design hub to support integration of a variety of services.

In a consumer-centric approach, we cannot embrace solely a supply-side paradigm that presumes decreasing barriers to information will necessarily put the information into the people’s hands. Nor can we assume everyone seeking legal information will ultimately find themselves in a courtroom. We need to pay close attention to the recently released research by Rebecca Sandefur and the American Bar Foundation, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study (CNSS)*.¹⁵ Professor Sandefur found a much higher incidence of legal problems than previously thought – an average of 2.1 problems per person per year compared to a 1992 ABA study reporting one problem per person over twelve months.¹⁶

12. See *Limited License Legal Technicians*, WASH. STATE BAR ASSN., <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians> (last visited Mar. 8, 2015); see also *Court Navigator Program*, N.Y. CITY Hous. COURT, http://www.courts.state.ny.us/courts/nyc/housing/rap_prospective.shtml (last visited Mar. 8, 2015).

13. Triage in the legal context is distinctly different than in the medical context. It does not prioritize resources to some over others, with some left untreated. Rather, it is a process of rational distribution of resources based on consumer need and case complexity to assure all consumers have equal access to justice. In other words, triage allows us to create a consumer-centric approach of resource allocation to assure some form of effective legal assistance for all, thereby resulting in a massive expansion of forms of service, reductions in unit costs, and the creation of a sustainable 100% access system. See generally TOM CLARKE, RICHARD ZORZA, & KATHERINE ALTENEDER, *TRIAGE PROTOCOLS FOR LITIGANT PORTALS: A COORDINATED STRATEGY BETWEEN COURTS AND SERVICE PROVIDERS* (2013); 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. 859 (2012), available at <http://www.zorza.net/Sorting-Hat.pdf>.

14. See LEGAL SERVICES CORP., *SUMMIT ON THE USE OF TECHNOLOGY*, *supra* note 10.

15. REBECCA L. SANDEFUR, *ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY* (2014), available at <http://ssrn.com/abstract=2478040>.

16. *Id.*

Moreover, consumers generally did not identify their problems as legal needs.¹⁷ When they did, the respondents mostly employed self-help strategies to address legal problems.¹⁸ When consumers engaged third-party assistance, they typically used family and friends.¹⁹ Of the situations selected for in-depth follow-up, only 8% involved a court or other tribunal.²⁰ Of the matters featuring some kind of court involvement, respondents sought the services of a lawyer in 42% of the cases, but when legal problems did not include active court involvement, respondents sought the assistance of lawyers in only 5% of cases.²¹ When asked why they did not seek legal assistance, the responses were, in order of priority: no need for advice, wouldn't make any difference, too expensive, don't know where/how, and too stressful.²²

Taken together, these findings have enormous implications for the entire justice community as one in which the majority of people approach diagnosis and prognosis on their own using a self-help strategy. The CNSS report helps us better understand the untapped market for consumer-friendly, on-demand online legal self-help tools and can inform the design conversations supporting the varied and active work of technologists wrestling with the challenges of developing online and mobile triage systems.²³ One model for addressing these factors is the Dutch Legal Aid Bureau's Rechtwijzer project, a technologically advanced online process that is designed to help people diagnose their situation, explore their options, structure and frame a problem-solving dialogue, and organize transparent professional interventions that include out-of-court resolutions.²⁴

In creating systems that recognize the consumer is in complete control of whether or not he or she even attempts to get help, each of the four areas of focus in this article -- self-help services, connecting consumers and providers, simplification, and minding the digital divide—is examined below as a pressure point that can support a consumer-centric design.

17. *Id.* at 12.

18. *Id.* at 11.

19. *Id.*

20. *Id.* at 12.

21. *Id.*

22. *Id.*

23. See *Triage and Expert Systems in Legal Aid: New Tools to Assist People in Need and the Advocates that Serve Them*, LEGAL SERVS. NAT'L TECH. ASSISTANCE PROJECT (July 23, 2014), <https://www.lsnatp.org/blogs/triage-and-expert-systems-legal-aid-new-tools-assist-people-need-and-advocates-serve>.

24. See generally RECHTWIJZER, <http://www.rechtwijzer.nl> (last visited Mar. 8, 2015).

III. FOUR CONSUMER CENTRIC PRESSURE POINTS

A. Self-Help Service Centers: The Essential Foundation

Self-help services comprise a range of information and assistance, from interactive websites to self-help clinics to paper forms and instructions to walk-in self-help centers. All of these resources have value, particularly when coordinated, but on the path toward consumer-centric design, court, bar, independent, and legal aid-sponsored self-help service centers, as described below, have become the sine qua non of service options because they are nonprofit, free, neutral, open to all, include local procedure and practices, link to and help patrons use online tools, collaborate with local community legal and non-legal resources, and are subject to significant quality control mechanisms. For the justice sector, such self-help service centers are also often the engine behind reform, innovation, and new business practices as we learn more about consumer abilities, needs, and preferences, which ultimately allow for improved efficiency and increased public trust and confidence in the courts.²⁵ Self-help service centers have evolved into a variety of models, with an equal variety in terms of substantive focus and extent of information provided.²⁶

1. Court Based Self-Help

Examples of some of the most established and multi-faceted programs have their roots in the courts and include the predominantly brick and mortar operations that are found in California, Maryland, New York, Colorado, Connecticut and Minnesota, as well as phone-internet

25. See generally JOHN GREACEN, THE BENEFITS AND COSTS TO ASSIST SELF-REPRESENTED LITIGANTS (2009), available at http://www.courts.ca.gov/partners/documents/Greacen_benefit_cost_final_report.pdf; see also PROCEDURAL FAIRNESS FOR JUDGES AND COURTS, <http://www.nesc.org/Sitecore/Content/Microsites/Procedural-Fairness/Home/> (last visited Mar. 8, 2015).

26. JOHN GREACEN, RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS A FIFTY-STATE REVIEW OF THE "STATE OF THE ART" (2011), available at <http://www.worldcat.org/title/resources-to-assist-self-represented-litigants-a-fifty-state-review-of-the-state-of-the-art/oclc/755030512>; see also SELF-REPRESENTED LITIGATION NETWORK, BEST PRACTICES IN COURT BASED PROGRAMS FOR THE SELF REPRESENTED: CONCEPTS, ATTRIBUTES, ISSUES FOR EXPLORATION, EXAMPLES, CONTACTS, AND RESOURCES (2008), available at http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/best_practices_7_08.authcheckdam.pdf [hereinafter SELF-REPRESENTED LITIGATION NETWORK].

virtual operations found in Alaska and Utah.²⁷ Court-based self-help centers have been closely observed, and the Self-Represented Litigation Network maintains a comprehensive Best Practices document that sets out forty-two best practices.²⁸ The document does not recommend that every state adopt every best practice, but rather recognizes that the local ecosystem will support its own unique mix of services. The following four elements are generally believed to be particularly essential to support the vision of an integrated delivery system.

a. Supervised by an Experienced Attorney

Self-help service centers appear most effective when they are supervised by an experienced attorney.²⁹ This is especially true in maximizing the use of self-help centers as a hub for directing consumers to the level and type of help they need because attorneys are uniquely trained to spot issues, analyze the law, and develop comprehensive triage mechanisms to sort consumers to the most appropriate level of legal assistance.³⁰ Attorney supervision is also a key element for quality control, ensuring staff are engaging in a neutral way, and can support a creative and responsive approach to program innovation.³¹ Attorney involvement is also key in simplification efforts, as is discussed later in this article.

b. Managed by a Director with a Recognized Leadership Role Within the Court Administration

It has long been recognized that a court's response to the challenges of self-represented litigants (SRLs) will improve when there is a senior staff position with the responsibility to monitor developments in the field and manage responsive tactics and strategies within a court regarding

27. This is by no means an exhaustive list; in the spring of 2013, the American Bar Association was able to document more than five hundred court-based self-help centers in the United States, estimated to serve 3.7 million people annually. AM. BAR ASS'N, THE SELF-HELP CENTER CENSUS: A NATIONAL SURVEY (2014), available at http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/lself_help_center_census.authcheckdam.pdf.

28. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 26.

29. *Id.* at 8.

30. *Id.* at 8-9.

31. *Id.* See also ADMINISTRATIVE OFFICE OF THE COURTS, GUIDELINES FOR THE OPERATION OF SELF-HELP CENTERS IN CALIFORNIA TRAIL COURTS 4 (2008), available at http://www.courts.ca.gov/partners/documents/self_help_center_guidelines.pdf.

SRL issues.³² However, as we move towards an integrated system, this position takes on a new significance.

In the recently-released ABA Census of Self-Help Centers, which compiled data from court-based and other self-help centers, 7% of respondents indicated that they had no director whatsoever, and of the remaining centers, only 38% reported that the director dedicated more than 75% of their time to center matters.³³ Every moment of every day in a self-help center provides feedback that can be used by a court to improve the administration of justice. An integrated system cannot squander this critically important feedback loop.

A director with a leadership role within the court administration can actively assess the outcomes of the court's initiatives and share that information with court administrators and judges. With a prevailing cultural concern for ex parte contact, courts, by historical design, are closed systems. However, the director of a self-help center can operate as an ethically appropriate bi-directional clearinghouse of information between the community and the court.

In addition to playing a critical role with court administrators and judges, self-help center attorney directors are uniquely situated to share real time information about SRL characteristics with other legal professionals, including Access to Justice Commissions, Court Rules Committees, legal aid organizations, and the private bar. In an integrated system, each of these stakeholders plays a crucial role in sorting and deploying resources and would benefit tremendously by having the attorney self-help center director sitting on their various committees. Without a keen understanding of self-represented litigants' behavior and needs, we risk designing systems that will miss the mark and be unused by the consumer.

c. Actively Engaged with the Development of Forms and Technology

Simple, easy-to-use forms are the cornerstone of self-help, allowing litigants to prepare legally sufficient pleadings more often, understand the system better, and complete the process faster and more frequently. Without forms, there is no meaningful way for the self-represented to proceed. When forms are available and used, courts run more efficiently and effectively and parties can present better data to decision makers,

32. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 26, at 89; *see also* ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 31, at 7.

33. AM. BAR ASS'N, *supra* note 27, at 7.

who in turn can decide disputes on the merits more often.³⁴ Moreover, the drafting of forms offers an unparalleled opportunity for courts to examine procedure and identify opportunities for simplification and other systems improvements.³⁵

Forms also ensure consistent, vetted information is provided by staff and offer the greatest protection for a self-help center to maintain neutrality.³⁶ In drafting forms, two of the most important principles are writing in plain language and performing user testing to confirm whether consumers can effectively complete the form and make appropriate use of the form to pursue their desired outcomes.³⁷ Self-help centers are well positioned to serve as a proving ground for new forms and, as such, should be actively engaged in their development. As we move towards a technology-enabled integrated system that includes document assembly and e-filing, both of which are form-driven processes, it is essential that self-help centers play an active role in the development, testing, and deployment of these new technologies.³⁸ As discussed below, minding the digital divide is essential to maintaining equal access for all consumers.

d. Designed for Remote Access

An integrated, on-demand system is, by definition, available at any time of the day or night. Therefore, tomorrow's ideal self-help center would offer some level of in-person services (whether directly or through third party partnerships as done in Alaska and discussed below), as well as remote services via phone, webpage, e-mail, chat, text, video, and mobile applications. The remote services offered by a self-help center would be ideally integrated into a statewide legal portal as envisioned by the LSC Tech Summit.³⁹ We must recognize that there very well may be parallel development among different stakeholders, but it is essential that courts maintain a commitment to self-represented litigant access by investing in the many recognized best practices.⁴⁰ Finally, web based

34. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 26, at 43.

35. *Id.*

36. See generally NAT'L CTR. FOR STATE COURTS, ACCESS BRIEF 2: FORMS AND DOCUMENT ASSEMBLY (2012), available at <http://ncsc.contentdm.oclc.org/utills/getfile/collection/accessfair/id/264/filename/265.pdf>; see also SELF-REPRESENTED LITIGATION NETWORK, *supra* note 26.

37. Maria Mindlin & Katherine McCormick, *Connecting Writers of Legal Documents with their Audience*, TRANSCEND TRANSLATIONS (June 2012), <http://www.transcend.net/library/html/focusGroups.html>.

38. NAT'L CTR. FOR STATE COURTS, *supra* note 36.

39. LEGAL SERVS. CORP., *supra* note 10.

40. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 26.

resources should comport with responsive design features and be available across all platforms, with a particular focus on mobile access.⁴¹

2. Independent Nonprofit-Supported Self-Help Services

Another developmental path for self-help services can be found in Illinois, where the statewide technology-driven program, Illinois Legal Aid Online, anchors self-help and also links to local legal service providers and self-help centers.⁴² This project was created by a coalition of technologists and access to justice leaders in 2001, whose prescience in understanding the value and potential of an interactive, user-friendly online approach is being realized today as they begin to integrate legal aid program intake with the self-help services.⁴³ The Illinois Legal Aid Online program has also supported the development of walk-in self-help centers in some 100 counties, assuring that online legal aid and self-help centers can all work together.⁴⁴ The Michigan Self-Help program, which used the Illinois experience as one of its models, is profiled in more detail below. Independent self-help entities can and do use the best practices learned in court-based centers as relevant guides for their work; they are often working very closely with courts, bars, libraries and other justice system leaders to assure broad use and high quality.

3. Legal Aid-Supported Self-Help Services

Legal aid programs, nonprofit law firms throughout the country that represent low-income people, also are actively developing a range of self-help materials, which are often deployed in some technology-enhanced way. In 2000, the Legal Services Corporation launched the Technology Initiative Grant (TIG) program that has invested more than \$40 million throughout the country to support technology innovation to expand the reach of its grantees.⁴⁵ TIG has become one of the most important drivers of self-help services innovation and infrastructure

41. Pew Research Center's Internet and American Life Project reports that as of January 2014, 90% of Americans had mobile phones and 58% had smartphones. *Mobile Technology Fact Sheet*, PEW RESEARCH CTR., <http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/> (last visited Mar. 9, 2015).

42. See ILLINOIS LEGAL AID ONLINE, <http://www.illinoislegalaidonline.org>.

43. See ILLINOIS LEGAL AID ONLINE, *Our History* (Feb. 2, 2015), <http://www.illinoislegalaidonline.org/index.php?ourhistory>.

44. *Id.*

45. *Id.* For more details on the impact of TIG, see *Technology Initiative Grants' Impact*, LEGAL SERVS. CORP, <http://tig.lsc.gov/about-us/tigs-impact> (last visited Mar. 9, 2015).

building, most notably by advancing the vision that every state have a statewide legal website to serve low-income individuals, as well as in many jurisdictions supporting the development of document assembly systems that use A2J Author⁴⁶ and HotDocs⁴⁷ in conjunction with LawHelp Interactive⁴⁸ to generate court forms. In recent years, New York and Minnesota have become the first states to enable self-represented litigants to use this document assembly system to electronically file court documents.⁴⁹

4. The Power of Collaboration: Michigan – A Case Study

This evolution of self-help services during the first decade of the century was of tremendous benefit to Michigan when, in 2010, then Michigan Supreme Court Chief Justice Marilyn Kelly, now Distinguished Jurist in Residence at Wayne State University Law School, appointed the Solutions on Self-Help Task Force.⁵⁰ Justice Kelly charged the Task Force with implementing actions to promote greater centralization, coordination, and quality of support for self-represented persons. In addition to the wide variety of self-help service center approaches to consider, the experiences in other jurisdictions made clear that a collaborative model that engaged all stakeholders was essential to building a sustainable program that would also be able to provide

46. A2J Author[®] is a software tool to assist and support consumers as they navigate legal forms. *See generally* *A2J Author*, IIT CHICAGO-KENT COLL. OF LAW, <http://www.kentlaw.iit.edu/institutes-centers/center-for-access-to-justice-and-technology/a2j-author> (last visited Mar. 9, 2015).

47. HotDocs is a document assembly system. It is not necessary to use HotDocs with A2J Author[®]. That said, users of A2J Author[®] for document assembly need to use A2J Author[®] in conjunction with either HotDocs or another document assembly program. Using A2J Author[®] with any other program, whether it is for the purpose of document assembly, case management system data collection, or e-filing, requires that the answer file generated by A2J Guided Interviews[®] be translated using an XSL transform. *See* HOTDOCS, <http://www.hotdocs.com/solutions/industries/legal> (last visited Feb. 1, 2015). *See also* A2J AUTHOR CMTY., <http://www.a2jauthor.org/groups/do-i-need-hotdocs-use-a2j-author%C2%AE> (last visited Feb. 1, 2015).

48. *See generally* LAW HELP INTERACTIVE, <https://www.lawhelpinteractive.org/> (last visited Feb. 1, 2015).

49. Claudia Johnson, *LawHelp Interactive is Making a Big Difference for Domestic Violence Survivors*, CONNECTING JUSTICE COMMUNITIES (Oct. 23, 2014), <http://www.connectingjusticecommunities.com/lawhelp-interactive-is-making-a-big-difference-for-domestic-violence-survivors/2014/10/>. For an in-depth report on the New York program, *see* N.Y. STATE COURTS, NEW YORK STATE COURTS ACCESS TO JUSTICE PROGRAM 12-15 (2014), available at http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2014report.pdf.

50. One of this article's authors, Linda Rexer, served as co-chair of the SOS Task Force.

statewide and local services and build a foundation of partners critical to even more future integration.

The task force and its subgroups involved over 100 persons, one-third from the courts and others from libraries, bars, legal aid, government, and existing self-help centers.⁵¹ Because of this broad range of players from the beginning, the effort remains collaborative and widely-supported four years later. A key outcome was the creation of The Michigan Legal Help (MLH) Program, which consists of the Michigan Legal Help website⁵² and affiliated local Self-Help Centers, which use trained non-lawyers to help users navigate the website, make their way through local procedures, and find other local legal and community resources. A recent evaluation of the MLH Program is referenced in the conclusion to this article.

MLH is managed by a nonprofit legal aid agency, the Michigan Poverty Law Program.⁵³ MLH is directed by lawyers and has lawyer staff charged with web content development and providing training and support for local self-help centers affiliated with the MLH Program.⁵⁴ The centers also each have program committees that include local leaders such as lawyers and judges.⁵⁵ While the MLH self-help centers are not directly “owned” by the courts, the courts in Michigan have meaningful “ownership” having been actively involved in all aspects of the Michigan Legal Help Program.⁵⁶

The partnership has also led to the development of curricula for judges, clerks, and court administrators that the State Court Administrative Office (SCAO) uses to help court personnel learn best

51. C.J. MARILYN KELLY, MICHIGAN SOLUTIONS ON SELF-HELP (SOS) TASK FORCE (2010).

52. MICHIGAN LEGAL HELP, <http://www.MichiganLegalHelp.org> (last visited on Feb. 1, 2015); *see also* MICH. LEGAL HELP, *MLH Flyer & FAQs*, available at <http://www.msbf.org/futuresandatj/MLH-Flyer.pdf> (last visited Mar. 9, 2015).

53. *About Us*, MICH. LEGAL HELP <http://www.michiganlegalhelp.org/about-us> (last visited Mar. 9, 2015).

54. *Id.*

55. *Id.*

56. MLH staff works collaboratively with the State Court Administrative Office (SCAO) on simplification of forms and other information that MLH uses. Additionally, MLH staff helps to assure that there is a feedback loop from judges, clerks, and others about which forms are working, and what could work better. Representatives from MLH currently sit on every form review committee at SCAO, and the two organizations worked together in the early days of MLH to create the first ever SCAO-approved divorce and custody forms for self-represented litigants. SCAO has been very responsive to requests by MLH to adjust forms to make them more accessible for self-represented litigants. The two organizations worked closely together in 2014 to assure that MLH was a key way to support the new Limited English Proficiency court rules.

practices in handling self-represented litigants.⁵⁷ A similar curricula was also launched by the SOS Task Force to train public librarians to help library patrons navigate the MLH website.⁵⁸ Librarians were also key contributors to planning MLH and assuring a system in which libraries in Michigan use MLH as a resource.⁵⁹

The State Bar of Michigan has also been a partner with staff and bar leaders participating in the SOS Task Force and afterward including MLH leaders in its exploration of many related topics. That included the State Bar's groundbreaking Judicial Crossroads Task Force Report.⁶⁰ The Report promoted development of self-help services and more recently the State Bar's process to examine the future of legal services,⁶¹ which, like its American Bar Association counterpart,⁶² specifically examines self-help and other topics of importance to access to justice. The growth of bar-related efforts to look at the future of legal practice may offer many states a new platform to look at innovations such as those described in this article.

All of these partners have provided information and insights to assure the high quality of MLH. As important, their ongoing involvement is a ready-made broad base for exploring and implementing other innovations that can be linked to MLH, once again maximizing the collaboration toward building integrated consumer-centric systems.

Already, through MLH, users can get to hundreds of community organizations, self-help centers, legal aid, and private lawyers. As MLH continues to grow, consumers will benefit as Michigan works toward joining the other 30 states that have special rules and tools to effectively use unbundled legal services as part of its overall integrated legal services delivery system.⁶³ The success⁶⁴ and collaboration that produced

57. SOLUTIONS ON SELF-HELP (SOS) TASK FORCE, FREQUENTLY-ASKED QUESTIONS ABOUT MICHIGAN'S SOLUTIONS ON SELF-HELP (SOS) TASK FORCE 1 (2012), *available at* <http://sostf.org/system/files/sostf/resources/SOSTFFAQs04-12.pdf>.

58. *Id.*

59. *Id.*

60. JUDICIAL CROSSROADS TASK FORCE, REPORT AND RECOMMENDATIONS (2011), *available at* <http://www.michbar.org/judicialcrossroads/JudicialCrossroadsReport.pdf>.

61. *Michigan Legal Community Leaders to Discuss Future of Legal Services*, STATE BAR OF MICH. (Nov. 10, 2014), http://www.michbar.org/news/releases/archives14/11_10_14_futurelegalsrvcs.cfm.

62. THE COMM'N ON THE FUTURE OF LEGAL SERVS., http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html (last visited Mar. 9, 2015).

63. ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE SELF-REPRESENTED LITIGANTS – A WHITE PAPER (2014), *available at* http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_white_paper_2014.authcheckdam.pdf.

Michigan Legal Help has resulted in more than new resources helping additional self-represented persons; it has fostered an understanding among the stakeholders of the importance of centralized and coordinated systems to assure quality and link many resources. This is a solid example of the value of bringing key players to work together in a manner that can sustain those partnerships as additional elements and best practices are built toward an even more consumer-centric integrated system.

B. Making Necessary Connections: Legal and Non-Legal Providers

The justice sector is on an impressive trajectory when it comes to enriching and diversifying self-help resources. Models abound, and the work on self-help is now about ensuring that consumers in every jurisdiction have access to a range of high quality services. By contrast, very little progress has been made in building connections between self-help services and other legal and non-legal resources that are critical for consumer success. Building these connections is critical because, for some consumers, self-help may not go far enough on its own.

1. Self-Help Service Centers as the Pipeline to Legal Representation

Lawyers, whether they are in a legal aid organization, pro bono, or private practice, and whether they provide full or limited scope representation, would do well to consider self-help centers as the ideal client pipeline. Many self-help centers report that patrons with more complex needs who initially believe self-help is appropriate often leave

64. See generally MICH. LEGAL HELP, MICHIGANLEGALHELP.ORG AT A GLANCE 1 (2014), available at <http://www.msbf.org/futuresandatj/MLH-At-a-Glance-11-3-14-and-Auto-Docs-Toolkits.pdf>. MLH employs interactive plain English interviews. Users answer simple questions that the program then uses to populate the court forms or other necessary documents. MLH also has FAQs, checklists, toolkits, articles, LiveHelp, and videos to help users learn how to handle their own legal matter. In just over two years of operation, it has also added seven local self-help centers (with more planned), in both urban and rural communities, and provided training for non-lawyer self-help center navigators and others. Several of these centers are located in courts and others are located in libraries. All the centers use the MLH web content and tools. As discussed later in this article, self-help centers add an important level of assistance and triage beyond the website itself. However, the success and growth of the website itself should be noted. Despite intentionally not having major publicity (to avoid creating expectations in the public that MLH might not meet at the outset while regularly adding content), MLH has vaulted to producing the fourth highest number of automated documents in the country among states with similar systems. In November 2014, some 14,000 persons per week were visiting the website and about 135 persons completed sets of (multiple) forms per day.

the center understanding the benefits of having a lawyer and how to find one.⁶⁵ MLH reports that “find a lawyer” (whether legal aid, pro bono, or a private lawyer) has been among the top “hits” on the website since its inception.⁶⁶ By the time consumers have availed themselves of the offerings of a self-help center, they are equipped with forms, procedural information, and likely some insight about the complexity of the matter. In addition, they are primed for receipt of legal advice toward resolution of their issue.

According to the 2013 ABA Census on Self-Help Centers, only 15% of the nearly 500 self-help centers surveyed indicated that their community has a formal limited scope (unbundling) lawyer referral panel.⁶⁷ Historically, bar-sponsored lawyer referral panels were the only option available to the public.⁶⁸ However, because these are premised on the idea of full-representation, they are not ideal for people who are in need of limited assistance. As was made clear by the ABA Census, the overwhelming majority of self-help centers in the survey indicated that customers would benefit from limited scope services for help with specific obstacles such as, “what exhibits should I bring and how do I get them admitted?” or “what are the consequences of my decisions now?”⁶⁹

While the majority of states have paved the way for unbundling,⁷⁰ there are few states that have developed a coordinated strategy to train attorneys and facilitate the matching of clients to attorneys. Alaska is one of the only states where the state bar has taken a lead on developing a stand-alone referral mechanism through an Unbundled Section,⁷¹ while

65. AM. BAR ASS'N, *supra* note 27.

66. MICH. LEGAL HELP, *supra* note 64, at 1.

67. AM. BAR ASS'N, *supra* note 27, at 23.

68. *Become a Panel Attorney*, GRAND RAPIDS BAR ASS'N (Feb. 1, 2015, 9:41 PM), <http://www.grbar.org/?page=19>.

69. AM. BAR ASS'N, *supra* note 27, at 22.

70. Ten years ago, the attorney ethics rules of many states might have said that it was impossible for a client to buy legal services on an a la carte basis. This is not the case today; most states have changed their rules or recognized that existing rules pose no barrier to providing unbundled or limited scope representation, and many states have adopted special rules to encourage and facilitate unbundled practice. The challenge we face today is one of systems design and relationship building. Bar associations and courts must work together to help lawyers realize a new and viable business model and to give the self-represented litigant access to unbundled lawyers via a referral mechanism that can be used by the court-based self-help center. *See* ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., *supra* note 63, for a detailed state-by-state analysis.

71. *Unbundled Legal Services*, ALASKA BAR ASS'N (Dec. 5, 2013), https://www.alaskabar.org/servlet/content/Unbundled_Legal_Services_atty_list.html [hereinafter ALASKA BAR ASS'N, *Unbundled Legal Services*]. The Alaska Bar Association offers the most robust and transparent approach for the consumer with a page dedicated

Montana and Minnesota have included unbundled services as a substantive area in their online lawyer directories.⁷² For the most part, bar associations have not integrated unbundling panels into their referral networks, or if they have done so, it is not easy to find on their website. For example, in Massachusetts, the court serves as the locus of the referral system.⁷³ North Carolina is somewhat unique in offering an unbundled attorney referral list through their legal aid sponsored SelfServe Center.⁷⁴ At this stage, for most consumers around the country, a Google search including the terms “unbundled lawyer” or “limited scope services” will give more information than lawyer referral systems. There is clearly great unrealized opportunity for bar associations in this area.

In designing systems, it is critically important to recognize that where unbundling does not succeed, it is not because the public does not understand what unbundling is. Rather, other factors are involved, such as the information reported by the Sandefur research that when a consumer has a legal problem, they rarely even identify it as such,⁷⁵ and when they have identified a legal problem, the average consumer has no meaningful strategy to find a lawyer other than “asking around.” Unbundled stumbles because clients cannot connect with lawyers, lawyers do not understand how to incorporate unbundled legal services into their business process, bar associations have not yet devised systems of support and quality controls, and triage-based referral mechanisms are not in place. However, as the results of the ABA Census suggest, capitalizing on the natural synergy between self-help centers and the local bar may be the key to new successful business models for the practice of law and a great win for access to justice for the consumer.

to explaining the services and a list of attorneys across the state who provide such services.

72. See, e.g., *Lawyer Referral Information Service*, STATE BAR OF MONT., <http://www.montanabar.org/> (last visited Mar. 9, 2015) (open dropdown menu under “Need Legal Help?” tab and choose “Lawyer Referral;” then follow “View all practice areas” hyperlink). Limited Scope lawyers are listed as a substantive area within the Lawyer Referral Information Service.

73. See *Ltd. Assistance Representation (LAR)*, MASS. COURT SYS. (Feb. 1, 2015, 7:55 PM), <http://www.mass.gov/courts/programs/legal-assistance/lar-gen.html>.

74. See SELF-SERVE CTR., <http://nc.legal-aid.com/legal-help/help-finding-an-attorney/unbundled-attorneys/> (last visited Mar. 9, 2015).

75. SANDEFUR, *supra* note 15, at 3.

2. *Making the Self-Help Center – Unbundled Connection: Alaska - A Case Study*

A promising model of capitalizing on the synergy between self-help centers and unbundling comes from Alaska. The Alaska Family Law Self-Help Center operates as a statewide telephone hotline, staffed by non-attorney facilitators who are trained to carefully parse a caller's situation and help identify what aspects are legal information and what aspects are legal advice.⁷⁶ The facilitator provides the legal information and then explains to the caller what questions could benefit from legal advice and why, concluding with a recommendation that the caller consult an attorney on the discrete legal issue and providing the state bar-sponsored list of unbundled attorneys.⁷⁷

The now informed consumer is prepared to call a lawyer with their specific legal question or problem. For example, if the consumer only had \$500 to spend on legal services, they could contact a lawyer on the list and say, "I've spoken to the Self-Help Center and have the form for divorce and understand the court process, but I need some legal advice about my move away plans so maybe we do not have to come back to court next year." Most lawyers, even those who do not specifically provide unbundled services, are willing to consult with a client. When the client is able to frame the issue this way, the lawyer is willing to assist because he or she can explain the basics of the law related to moving away for \$500; yet, had the client approached the lawyer with "I need help with my divorce and I have \$500," most lawyers would politely decline.

In the Alaska experience, the self-help center is the key to the success of the unbundled services in the state. Nearly every customer of the self-help center receives the Unbundled List, which is also linked on the Family Law Self-Help Center's website.⁷⁸ The state bar-sponsored Lawyer Referral Service is also provided to self-help center callers, and, as part of the integrated referral system, has evolved into the de facto

76. See generally *About the Family Law Self-Help Center*, ALASKA COURT SYS., <http://courts.alaska.gov/shc/about.htm#1b> (last visited Mar. 9, 2015).

77. In Alaska, the unbundled list was first developed by the Family Law Section, and then, as its popularity grew, the Alaska Bar Association established a standalone Unbundled Law Section that serves the dual purpose of maintaining a referral list for members and providing ongoing education, training, and peer support for the ethical provision of unbundled services. See generally *Unbundled Law*, ALASKA BAR ASS'N, https://www.alaskabar.org/servlet/content/unbundled_law.html (last visited Mar. 9, 2015).

78. *Unbundled Legal Services*, ALASKA BAR ASS'N, *supra* note 71.

referral service for consumers seeking full representation but who are not eligible for help through a local nonprofit legal aid agency.⁷⁹

3. Integrating Non-Legal Referral & Collaboration Networks

When people face legal problems, they typically also face many practical problems involving areas of basic security such as housing, food, medical care, transportation, employment, and the like. Not surprisingly, self-help projects strive to maintain non-legal referrals that can help the consumer address the many non-legal challenges they may be facing. These are notoriously difficult lists to maintain, but shared platform technology is beginning to offer some promising solutions. For instance, East Bay Community Law Center uses Evernote⁸⁰ to allow staff and law students to confirm and update service provider contact and intake information with the convenience of their own smartphone. As noted earlier in this article, MLH includes a community services section on their website, which is maintained by staff who post updated descriptions regularly.⁸¹ As we move towards an integrated system, particular attention will need to be paid to building these community connections and engaging technology to automate the maintenance of up-to-date information.

In a consumer-centric system, we must also think about how we can help the consumer build the support system to complete their court case or follow through with whatever is needed. Historically, court based self-help centers viewed in-person service as a necessary minimum standard of service, with remote services being considered sub-standard. The rationale behind this position was grounded in the fact that self-represented litigants are confused, scared, and overwhelmed by court and that without the calming hand of the provider, effective communication would be impossible. Moreover, with the heavy concentration of forms work, it was seen as impossible to effectively guide a consumer through the myriad of forms often needed for the simplest of matters.

However, as remote services develop (e.g., through the phone, internet, video, chat, mobile, or apps), providers are not only learning techniques of how to provide effective technology-assisted distance services but also recognizing people do need a helper in a time of crisis.

79. *Lawyer Referral Serv.*, ALASKA BAR ASS'N, <https://www.alaskabar.org/servlet/content/111.html> (last visited Mar. 9, 2015).

80. Evernote is an app that provides a single workspace accessible across multiple platforms. See EVERNOTE, <https://evernote.com/> (last visited Mar. 9, 2015) for more information.

81. See generally *Organizations and Courts*, MICH. LEGAL HELP, <http://michiganlegalhelp.org/organizations-courts/community-services> (last visited Mar. 9, 2015).

Yet how is it possible to provide ongoing support to ensure a consumer follows through with the multiple steps required to complete a court case?

One key to consumer support is to identify other helpers, whether they be friends and family who are “good at paperwork” or social service providers who can help with the many practical issues people face related to housing, food, safety, health, transportation, budgeting, or childcare, to name a few. For example, the Alaska Family Law Self-Help Center, offering only phone and Internet services, has developed sophisticated strategies and protocols to ensure that each caller in need of ongoing help identifies a third-party helper, whether that be a friend or a social service provider in the local community.⁸² Self-help staff know all too well how these practical challenges can completely undermine the chances of a person moving forward with their case; therefore, the staff must become familiar with non-legal resources in the community, and, ideally, should conduct outreach and share information.⁸³

In addition to referral networks for services and support, in the integrated system, when doing intake, providers will collect information to assess the potential value of non-lawyer⁸⁴ and alternative dispute resolution options.⁸⁵ Devising ways to fully integrate non-legal and

82. See generally *Alaska Family Law Self-Help Center*, ALASKA COURT SYS., <http://www.courts.alaska.gov/selfhelp.htm> (last visited Mar. 9, 2015). Similarly, for many years, “navigators” have been available to help seniors research and identify information. See e.g., VIRGINIANAVIGATOR, <http://www.virginianavigator.org/vn/home> (last visited Mar. 9, 2015). The medical industry has used navigators to assist patients in many circumstances. The recognition of the significance of help in navigating complex technical and emotional situations is also illustrated by the decision to fund Navigators under the Affordable Care Act in order to support consumers as they make health insurance decisions. 78 FR 42823.

83. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 26, at 157-58.

84. As has been recognized by New York Chief Judge Jonathan Lippman, non-lawyer experts offer a significant resource to those facing a legal crisis. See *Non-Lawyers May Be Given Role in Closing “Justice Gap”*, FORDHAM UNIV. SCH. OF LAW (May 29, 2013), <http://law.fordham.edu/29962.htm>. For a comprehensive discussion of the development of non-lawyer practice, see Richard Zorza & David Udell, *New Roles For Non-Lawyers To Increase Access To Justice*, 41 FORDHAM URB. L.J. 1259 (2014); Richard Zorza, *Progress in Three States on Non-Lawyer Access Innovations*, RICHARD ZORZA’S ACCESS TO JUSTICE BLOG (April 4, 2014), <http://accesstojustice.net/2014/04/04/progress-in-three-states-on-non-lawyer-access-innovations/>.

85. Family courts have been particularly focused in recent years on developing screening protocols that can measure how much help parents will need to reach resolution and to modify court support services and resolution approaches accordingly. The use of these tools allows for a differentiated approach to problem resolution and a targeted use of alternative dispute resolution options. See Michael Saini, *Triage in Family Law: Presentation to the National Centre for State Courts*, PREZI (June 1, 2014), <https://prezi.com/3ujqwzohcap6/saini-2014-triage-in-family-law-presentation-to-the->

collaboration networks into self-help services will be a priority in coming years.

C. Simplification: Looking to Self-Help Centers for Ideas

Richard Zorza's 2013 article, *Some First Thoughts on Court Simplification: the Key to Civil Access and Justice Transformation*, urges a radical simplification of the legal dispute resolution system so it becomes much more accessible and the costs of accessing and operating the system dramatically decrease.⁸⁶ There is broad consensus that simplification is needed despite the fact that it is extremely challenging because it involves nearly every facet of the justice system.⁸⁷ As Mr. Zorza notes, simplification is burdened by the potential of the "ratchet effect," whereby "almost every change in the legal system (and indeed the outside world) results in greater procedural complexity. Each change seems worthwhile on its own but is almost never assessed before implementation for its potential to increase complexity or costs."⁸⁸ However, when we ground our exploration of simplification in a consumer-centric perspective informed by what we learn in the self-help service centers, it is easier to identify and assess potential reforms.

As mentioned above, self-help service centers provide a perpetual feedback loop of what works and what does not. In fact, rule and

national-centre-for-state-courts/ for an excellent description of triage in the family court arena. Connecticut has one of the more advanced triage projects in family law that fully integrates court-employed social workers. See Peter Salem, Debra Kulak, & Robin M. Deutsch, *Triaging Family Court Services: The Connecticut Judicial Branch's Family Civil Intake Screen*, 27 PACE L. REV. 741 (2007); see also Peter Salem, *The Emergence of Triage in Family Court Services: The Beginning of the End for Mandatory Mediation*, 47 FAM. CT. REV. 371 (2009). Outside of the family law context, the Orange County Superior Court has recently deployed a screening interview that will aid consumers in small claims matters to assess whether the small claims procedure is appropriate and whether ADR options should be considered. See *Small Claims Online Interview: Is Small Claims Right for Your Situation?*, THE SUPERIOR COURT OF CALI., CNTY. OF ORANGE, <http://www.occourts.org/self-help/smallclaims/onlineinterview.html> (last visited Mar. 9, 2015). These are only a few examples of the growing work in this area, not only in the United States, but also abroad. For example, Rechtwijzer 2.0 is an online application from the Netherlands that supports people throughout their justice journey--whether it is helping people to diagnose their situation and exploring their options, structuring and framing a problem-solving dialogue, or organizing transparent professional interventions like a neutral, binding decision. See RECHTWIJZER, *supra* note 24.

86. Richard Zorza, *Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation*, 61 DRAKE L. REV. 845, 847 (2013).

87. RICHARD ZORZA, *THE EMERGING ACCESS TO JUSTICE CONSENSUS AMONG COURTS, BAR AND LEGAL AID AND THE IMPLICATIONS FOR LEGAL AID* (2011), available at <http://www.zorza.net/MIE.pdf> [hereinafter ZORZA, EMERGING ACCESS TO JUSTICE].

88. Zorza, *supra* note 86, at 851.

procedural simplification is so central to self-help centers that it is included in the Self Represented Litigation Network's Best Practices document.⁸⁹ Self-help staff members know firsthand how consumers react to forms and technology and precisely which procedures in a jurisdiction pose obstacles to the average consumer or what language is incomprehensible. Self-help staff are ideally situated to make recommendations regarding procedural reform, such as reducing the steps to accomplish something or the number of documents required. Indeed, in many jurisdictions, we are increasingly seeing self-help staff working with judges to create simplified settlement calendars.⁹⁰

Earlier in this article, we highlighted the important value that can be added when an attorney self-help services director is on a court's senior staff. If a court desires to initiate simplification efforts, being able to look to senior staff who have central responsibilities or involvement with self-help services would seem necessary. Furthermore, given the importance of civil rule reform in simplification efforts, it would seem equally important to include a self-help center director on the civil rules committee. Consumer-centric reforms require simplification, and looking to the self-help services center will yield concrete and testable ideas.

There is also a great deal of experimentation going on within the courtroom, allowing judges an opportunity to assess various procedural strategies. Recognizing that most matters can be resolved through settlement, it is increasingly common for individual judges to pre-sort their caseloads and hold settlement or resolution-oriented calendars, often supported by volunteer lawyer-for-a-day projects, mediators, or non-attorney helpers.⁹¹ For matters that do not appear on track to settle, courts are also experimenting with informal trials. For example, in Alaska,⁹² Idaho⁹³ and Oregon⁹⁴, the trial courts have amended their rules

89. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 26, at 91.

90. See, e.g., *Alaska Court System Early Resolution Project*, ALASKA COURT SYSTEM FAMILY LAW SELF-HELP CENTER, <https://richardzorza.files.wordpress.com/2013/03/early-resolution-project-2-13.pdf>. [hereinafter ALASKA COURT SYSTEM, *Alaska Court System Early Resolution Project*].

91. See *Id.* See also SAN FRANCISCO HOUSING COURT, <http://www.sfsuperiorcourt.org/divisions/civil/realproperty/housing-court> (last visited Mar. 10, 2015) and N.Y. CITY BAR, NEW YORK CITY LAWYER FOR A DAY PROJECT REPORT: A TEST OF UNBUNDLED LEGAL SERVICES IN THE NEW YORK CITY HOUSING COURT (2008), available at http://www.nycourts.gov/courts/nyc/housing/pdfs/vlfdreport_0208.pdf.

92. ALASKA R. CIV. P. 16.2.

93. IDAHO R. CIV. P. 16(p). See also Hon. Benjamin Simpson, *Informal Custody Trial: A Child-Focused Alternative*, STATE OF IDAHO JUDICIAL BRANCH, http://isc.idaho.gov/judicialedu/judges/ChildCustody/Informal_Custody_Trial_Bench_book_Article.pdf (last visited Mar. 10, 2015) [hereinafter Hon. Simpson].

of procedure to permit informal custody trials in which the parties waive the rules of evidence and forgo the normal question and answer format of the courtroom. The intent is to simplify the process for the litigants so that they have an easier time relating their stories, while the technical decision of what is admissible or what weight to give a particular piece of evidence is left for the judge to determine without the input of the parties or their counsel through the use of objections or adherence to the rules.⁹⁵ These projects warrant close observation and evaluation to determine whether they produce the intended consequence of simplifying the experience for litigants, reducing parental conflict, and creating more enduring orders.

D. Minding the Digital Divide

The phrase “digital divide” traditionally refers to the gap between those who have access to the Internet and broadband capabilities and those who do not.⁹⁶ Indeed, it is important that there is an understanding that more persons, including low-income persons, have access to high speed Internet, smartphones, and social media now more than ever before, and this trend is even deeper with younger persons.⁹⁷ The popularity and reach of these technologies give providers unprecedented tools to disseminate information and create communication platforms. However, access to justice leaders also caution that while technology has enabled us to imagine a world of providing access to justice to “everyone, anytime, anywhere,”⁹⁸ it is also critical that courts never disadvantage a party because of new technology.⁹⁹ What this means in practice is that close attention must be paid to the user interface, as well

94. See *Informal Domestic Relations*, Deschutes County Circuit Court, <http://courts.oregon.gov/Deschutes/services/famlaw/Pages/Informal-Domestic-Relations-Trials.aspx> (last visited Mar. 10, 2015).

95. Hon. Simpson, *supra* note 93, at 1-2.

96. Lee Rainie, *The State of Digital Divides (Video & Slides)*, PEW RESEARCH CTR. (Nov. 5, 2013), <http://www.pewinternet.org/2013/11/05/the-state-of-digital-divides-video-slides/>.

97. See *Home Broadband 2013*, PEW RESEARCH CTR., <http://www.pewinternet.org/2013/08/26/home-broadband-2013/> (last visited Apr. 28, 2015); *U.S. Smartphone Use in 2015*, PEW RESEARCH CTR., <http://www.pewinternet.org/2015/04/01/chapter-one-a-portrait-of-smartphone-ownership/> (last visited Apr. 28, 2015); *Mobile Access Shifts Social Media Use and Other Online Activities*, PEW RESEARCH INST., <http://www.pewinternet.org/2015/04/09/mobile-access-shifts-social-media-use-and-other-online-activities/> (last visited Apr. 28, 2015).

98. LEGAL SERVS. CORP., *Glenn Rawdon's Speech*, *supra* note 10.

99. Bonnie Hough, *Let's Not Make it Worse: Issues to Consider in Adopting New Technology*, 26 HARV. J.L. & TECH 256, at 266 (2012).

as a recognition that the same features that make an application friendly for unsophisticated users may make it unfriendly for those who use it more frequently.¹⁰⁰ 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 for the fastest and most efficient data entry possible.¹⁰¹ Therefore, a consumer-centric system will mind the digital divide and appreciate that two or more versions of an application may be necessary to meet the reasonable needs of both types of users.¹⁰²

However, as we consider which populations would be best served by various approaches, a new wrinkle is emerging. Providers have historically assumed that consumers who have smartphones and use them handily for things like banking, movie viewing, music, and directions must be tech savvy. Recent research suggests a new dimension of the digital divide involving those so-called savvy users who are in fact disinclined or unskilled in their ability to find information in an efficient and effective manner. Researchers have discovered that today's college students are very poor at seeking and finding Internet-based information.¹⁰³ They might have grown up with the language of the information age, but they do not necessarily know the grammar.¹⁰⁴ If today's college students struggle with effectively navigating the Internet to find reliable information, it is not unreasonable to assume that this must be the common state of affairs for most Americans.

Therefore, although access to broadband or the use of mobile may be on the rise, the general user is not necessarily more sophisticated. In fact, quite the opposite might be happening; users we might anticipate as being very tech savvy because of their education and use of smartphones may face significant challenges engaging technology to find help with legal problems or prepare court documents, with a technology skills profile more similar to those that have less education or use technology less effectively for non-legal daily tasks. Awareness of this emerging

100. COURT TECH. ADVISORY COMM., JUDICIAL COUNCIL OF CAL., COURT TECHNOLOGY AND ACCESS: ADVANCING ACCESS TO JUSTICE THROUGH TECHNOLOGY: GUIDING PRINCIPLES FOR CALIFORNIA JUDICIAL BRANCH INITIATIVES 9 (2012) available at <http://www.courts.ca.gov/documents/jc-20120831-itemA.pdf>.

101. *Id.*

102. *Id.*

103. Alison J. Head & John Wihbey, *At Sea in a Deluge of Data*, THE CHRON. OF HIGHER EDUC. (July 2, 2014), <http://chronicle.com/article/At-Sea-in-a-Deluge-of-Data/147477/>.

104. Steve Kolowich, *What Students Don't Know*, INSIDE HIGHER ED (Aug. 22, 2011), https://www.insidehighered.com/news/2011/08/22/erial_study_of_student_research_habits_at_illinois_university_libraries_reveals_alarminglly_poor_information_literacy_and_skills.

reality should inform design choices but also requires additional attention and investment in consumer polling and focus groups to identify search terms that resonate with the user to ensure that search engine optimization and marketing initiatives are actually responsive and accessible to the target audience. Marketing initiatives might also include lessons on how to effectively engage in legal self-help research.

Because technology can aid and hinder access to justice in sometimes unpredictable ways, we must also be vigilant in preserving transparency as we turn to technology to improve efficiencies. This is of particular concern as court procedures become more automated and computer programmers write code to represent the law. Access to justice demands transparency in coding, which can be accomplished so long as programmers provide adequate comments on the code as written so that their decisions are transparent and subject to review. Just as someone drafting a form looks to a statute and then translates those concepts into plain language to create it, a programmer translates statutes or court procedure into code. As document assembly tools, e-filing, and other automated decision processes develop, we must be vigilant that coding decisions are documented and maintained in a transparent way. Transparency is the key to a consumer-centric approach, because without transparency, the system can easily slide back into the realm of experts only.

IV. CONCLUSION

The invitation we received to write this article is itself an illustration of the point we are hoping to make – that there is interest in and opportunity for leveraging current access to justice innovations in a way that helps consumers identify their legal needs and get the right kind of help when they need it. A consumer-centric design can best be achieved when all stakeholders in the justice system work together in planning and implementation of services, particularly through self-help centers as a hub for innovation and learning to improve the integration of a variety of services. And while this article does not focus on evaluation as a separate topic, the authors believe that evaluation is a critical component of systems development. Evaluation provides not only helpful data about the experience of self-represented litigants, but also helps programs improve and be sure that their innovations are producing the intended results. For example, an evaluation of the effectiveness of automated divorce documents conducted by the Michigan Legal Help program revealed verifiable information about numbers of self-represented litigants, how successful those are who use MLH were, where they

struggle in the process, what the impact is from the court's view and various comparisons on speed of completion of divorce cases for MLH uses versus others.¹⁰⁵ This information provides valuable insights about where to improve such programs and how to best build on their successes.

The authors hope that the ideas in this article about self-help centers, connecting with providers, simplification, and minding the digital divide, are helpful to many working on these innovations. We especially hope that readers will also benefit from the authors' assertion that these innovations are even more powerful when coordinated as part of a consumer-centric design. We thank the *Journal of Law in Society* for its focus on access to justice and allowing us to offer thoughts about why consumer-centric design is key on the path to 100% access.

105. KERRY SHELDON, MICHIGAN LEGAL HELP EVALUATION REPORT (2015), available at <http://www.mplp.org/Taskforces/technology/michigan-legal-help-evaluation-report-1-15.pdf>.