

COLLABORATIVE TECHNOLOGY IMPROVES ACCESS TO JUSTICE

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INTRODUCTION

By almost any definition, access to justice is not simply a problem in America; it is a crisis.¹ Low-income Americans² cannot obtain legal assistance in connection with sixteen million legal matters per

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1. See Eric Holder, Att’y Gen., U.S. Dep’t of Justice, Address at the Equal Justice Works 25th Anniversary Gala (Oct. 20, 2011), *available at* <http://www.justice.gov/atj/opa/pr/speeches/2011/atj-speech-111020.html>; *see also* Laurence Tribe, Senior Counselor for Access to Justice, U.S. Dep’t of Justice, Keynote Address at the National Institute of Justice Conference: Indigent Defense and Access to Justice (June 14, 2010), *available at* <http://nij.ncjrs.gov/multimedia/video-nijconf2010-keynote-tribe.htm#tab1>.

year, and they are denied meaningful access to justice³ in eighty percent or more of their legal claims.⁴ Low-income Americans, along with increasing numbers of those with moderate incomes,⁵ are addressing their legal matters without the assistance of lawyers. They are

2. Federal regulations for legal aid provided by the Legal Services Corporation offer a relevant measure of which Americans may be considered low income, setting eligibility at incomes at or below 125% of the Federal Poverty Guidelines. 45 C.F.R. § 1611.3 (2012). In 2011, the number of Americans who qualified for Legal Services Corporation-funded legal aid assistance reached an all-time high of 64.6 million. *See* LEGAL SERVS. CORP., 2011 ANNUAL REPORT 4 (2012), available at <http://www.lsc.gov/sites/default/files/LSC%202011%20Annual%20Report-CompleteForWebsite.pdf>.

3. Washington State Access to Justice Technology Principles define access to justice as including “the meaningful opportunity, directly or through other persons: (1) to assert a claim or defense and to create, enforce, modify, or discharge a legal obligation in any forum; (2) to acquire the procedural or other information necessary (a) to assert a claim or defense, or (b) to create, enforce, modify, or discharge an obligation in any forum, or (c) to otherwise improve the likelihood of a just result; (3) to participate in the conduct of proceedings as witness or juror; and (4) to acquire information about the activities of courts or other dispute resolution bodies. Furthermore, access to justice requires a just process, which includes, among other things, timeliness and affordability. A just process also has ‘transparency,’ which means that the system allows the public to see not just the outside but through to the inside of the justice system, its rules and standards, procedures and processes, and its other operational characteristics and patterns so as to evaluate all aspects of its operations, particularly its fairness, effectiveness, and efficiency.” *Access to Justice Technology Principles*, WASHINGTON COURTS, http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=am&set=ATJ&ruleid=amatj02principles (last visited Aug. 27, 2012).

4. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 16 (2009) [hereinafter JUSTICE GAP], available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf; see also LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 4 (2007), available at <http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf>; LEGAL SERVS. OF N.J., THE CIVIL JUSTICE GAP 3 (2011), available at http://www.lsnj.org/PDFs/The_Civil_Justice_Gap_2011.pdf.

5. See Nathan Koppel, *More Strapped Litigants Skip Lawyers in Court*, WALL ST. J., July 22, 2010, <http://online.wsj.com/article/SB10001424052748704229004575371341507943822.html> (citing Professor Laurence Tribe, in his capacity as a Senior Counselor for Access to Justice, on the emergence of this issue within the middle class); see also AM. BAR ASS’N, REPORT ON THE LEGAL NEEDS OF THE MODERATE INCOME PUBLIC (1994); Terry Carter, *Judges Say Litigants are Increasingly Going Pro Se—at Their own Peril*, AM. BAR ASS’N JOURNAL (July 12, 2010, 11:39 AM), http://www.abajournal.com/news/article/judges_say_litigants_increasingly_going_pro_se—at_their_own_/ (citing ABA President Carolyn B. Lamm on the rise in litigants representing themselves); Debra Cassens Weiss, *Middle-Class Dilemma: Can’t Afford Lawyers, Can’t Qualify for Legal Aid*, AM. BAR ASS’N JOURNAL (July 22, 2010, 8:36 AM), http://www.abajournal.com/news/article/middle-class_dilemma_cant_afford_lawyers_cant_qualify_for_legal_aid. Like people in the low-income group, people with moderate incomes—i.e., middle class America—are appearing in court without representation.

the focus of this article and will be referred to as People without Representation by Lawyers (PRLs).⁶

Most PRLs proceed without a lawyer because they cannot afford one.⁷ Access to justice for this population is exacerbated by the fact that “[f]unding for civil legal services nationally is shrinking at a time when legal services programs across the country are reporting huge increases in numbers of people seeking their help.”⁸ Other PRLs forego counsel for noneconomic reasons, such as a fundamental distrust of lawyers or because they believe that they can navigate the litigation process alone.⁹

Whether a PRL foregoes counsel because she lacks financial resources, is unaware of available remedies, or underestimates the difficulty of representing herself, navigating the court system and litigation process without representation can have serious, negative consequences. Sixty-two percent of judges surveyed by the American Bar Association (ABA) observed that PRLs suffered negative outcomes due in large part to their unfamiliarity with basic procedural concepts such as introducing and objecting to the introduction of evidence, procedural errors, and ineffective witness examination.¹⁰ PRLs also “lack the resources to uncover facts prior to filing their complaints,”¹¹ and a “significant bias” against PRLs exists in the court system.¹² Regardless of the reasons for a litigant’s PRL status, the potential for poorly or incorrectly adjudicated litigation is an undesirable outcome for society as a whole. Accordingly, sound public policy is best served by

6. Some authors prefer the term “self-represented” when referring to people without representation by lawyers. This author rejects the use of the term “self-represented,” primarily because it tends to mask the stark reality of the person’s true status. Most people—even lawyers—cannot effectively represent themselves in complex legal disputes any more than most doctors can perform complex surgical procedures on themselves. Also, the focus of this article is not simply on unrepresented *litigants*. Therefore, unrepresented individuals involved in litigation and both pre- and post-litigation disputes will be referred to as People without Representation by Lawyers or PRLs (pronounced “pearls”).

7. See Rory K. Schneider, *Illiberal Construction of Pro Se Pleadings*, 159 U. PA. L. REV. 585, 594–95 (2011) (“[T]he most prevalent reason individuals choose to prosecute their own cases is inability to afford counsel.”).

8. Helaine M. Barnett, *A National Perspective on New York State Chief Judge Jonathan Lippman’s Initiative*, 15 N.Y.U. J. LEGIS. & PUB. POL’Y 257, 258 (2012).

9. See Schneider, *supra* note 7, at 595–96.

10. LINDA KLEIN, AM. BAR ASS’N COAL. FOR JUSTICE, REPORT ON THE SURVEY OF JUDGES ON THE IMPACT OF THE ECONOMIC DOWNTURN ON REPRESENTATION IN THE COURTS (PRELIMINARY) 3 (2010), available at http://www.abajournal.com/files/Coalition_for_Justice_Report_on_Survey.pdf.

11. Schneider, *supra* note 7, at 599.

12. *Id.* at 597.

seeking solutions that address the full range of barriers that stand between PRLs and meaningful access to justice.

This critical lack of access to justice has not gone unnoticed. At least twenty-six state-sponsored commissions and related entities have been trying to solve the dilemma for more than a decade,¹³ but solutions remain complex, costly, and obscure. Despite these good-faith efforts, America has long been unable to solve the access to justice predicament solely through attempts to underwrite the cost of traditional legal representation for PRLs. Indeed, the growing gap between the civil justice system that we want and the one we can afford¹⁴ suggests that increasing pro bono hours and funding for free legal services alone is not a complete answer.¹⁵

This article explores ways to use interactive technology via the Internet to improve access to justice for PRLs. Referred to in this article as “collaborative technology,” these powerful yet accessible tools can *dramatically* improve access to civil justice in America both in traditional court cases and alternative dispute resolution (ADR) forums. Collaborative technology will not replace traditional legal representation and ADR, but it can help PRLs more successfully resolve legal disputes by reducing substantive and procedural knowledge deficits, by helping PRLs address the underlying problems that give rise to legal disputes, and by reducing—or reshaping—the need for traditional legal services.¹⁶

This article proceeds in three parts. Part I further describes the growing access to justice problem and documents some of the most

13. See *State Access to Justice Commissions: Lists and Links*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/state_atj_commissions.html (last visited Oct. 3, 2012) (containing links to state commissions, bar committees, related court commissions, and staffed programs). For more access to justice resource links, see *Resource Center for Access to Justice Initiatives*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html (last visited Aug. 9, 2012).

14. See Barnett, *supra* note 8, at 258–59 (noting that traditional sources of funding for civil legal services have been significantly negatively impacted at the same moment that more and more PRLs are seeking assistance).

15. For instance, even if the current system were fully funded, numerous moderate-income PRLs would not be eligible for many forms of legal assistance, and increased funding would have negligible impact on PRLs who do not retain counsel for the non-economic reasons discussed above.

16. For example, collaborative technology might enable a PRL to obtain narrowly prescribed, unbundled legal assistance at a relatively low cost at exactly the procedural stage in which a lawyer might make the greatest difference. For discussion of the various ways in which the set of services traditionally performed by a lawyer might be provided individually or selectively, see *infra* Part III.C.

significant barriers that stand between PRLs and meaningful access to justice. Part II sheds light on the demographic characteristics of PRLs and describes their growing access to the Internet and sources of collaborative technology. Part III describes several types of collaborative technology, and how they can help ameliorate some of the obstacles that prevent PRLs from achieving meaningful access to justice. This article concludes that courts and policy makers should increasingly adopt collaborative technology solutions in order to help PRLs more effectively and efficiently navigate the civil justice system.

I.

THE ACCESS TO JUSTICE PROBLEM

A. *The Scope of the Problem*

The United States is experiencing a crisis in access to civil legal services.¹⁷ U.S. Attorney General Eric Holder recently declared that federal courts are stressed to the breaking point by caseloads and judicial vacancies.¹⁸ On the ground, a majority of judges surveyed by the ABA in 2010 saw an increase in civil cases filed, mostly concerning foreclosures, domestic relations, housing matters, and other consumer issues.¹⁹ Sixty percent of surveyed judges observed an increase in the number of unrepresented parties to civil cases.²⁰

One reason for this large number of PRLs might be that “[o]ver half of those who qualify for and seek assistance from the 137 principal federally-funded legal assistance programs must be turned away because of funding constraints.”²¹ According to the Legal Services Corporation, less than twenty percent of legal problems experienced by low-income individuals receive legal assistance, and that share is shrinking.²² A recent study of Washington State reported that only twelve percent of low-income people obtained the legal help they

17. See, e.g., Jonathan Lippman, *Equal Justice at Risk: Confronting the Crisis in Civil Legal Services*, 15 N.Y.U. J. LEGIS. & PUB. POL’Y 247, 248 (2012) (“Many of our courtrooms in New York are standing room only, filled with unrepresented litigants, frightened and vulnerable people—the elderly on fixed incomes, single parents, the disabled and mentally ill, abuse victims, and so many more.”).

18. Eric H. Holder Jr., *Now Vacant: A Confirmation Crisis in our Courts*, WASH. POST, Sept. 28, 2010, at A25.

19. KLEIN, *supra* note 10, at 2.

20. *Id.* at 3.

21. Mark Childress, Senior Counselor for Access to Justice, U.S. Dep’t of Justice, Address at D.C. Bar Annual Pro Bono Program (Oct. 24, 2011), available at <http://www.justice.gov/atj/opa/pr/speeches/2011/atj-speech-111024.html>. These conclusions are consistent with those reported by the Legal Services Corporation. See JUSTICE GAP, *supra* note 4, at 8.

22. JUSTICE GAP, *supra* note 4, at 13, 18.

needed, and the situation is hardly better for moderate-income people.²³ When low- and moderate-income people are turned away from traditional sources of public legal assistance, the out-of-pocket cost for traditional legal representation can become an insurmountable barrier to obtaining meaningful access to civil courts. In 2011, American consumer law attorneys charged a median hourly rate of \$300,²⁴ which is similar to rates charged in other legal practice areas.²⁵ In the words of Stanford Law Professor Deborah Rhode, it is a “shameful irony that the country with the highest concentration of lawyers in the world does such an abysmal job of ensuring that they are available for the vast majority of low-income people who need them, and whose needs are greatest.”²⁶

Even if low-and-moderate-income Americans did have meaningful access to legal representation, American court systems lack the resources to adequately try the vast majority of civil claims. The number of civil trials in the nation’s seventy-five most populous counties declined by fifty-two percent between 1992 and 2005.²⁷ The number of trials in tort cases decreased by forty percent while trials in real property and contract cases declined by seventy-seven percent and sixty-three percent, respectively.²⁸ Trials in general jurisdiction courts now account for only about three percent of all civil dispositions.²⁹

23. WASH. STATE SUPREME COURT TASK FORCE ON CIVIL EQUAL JUSTICE FUNDING, THE WASHINGTON STATE CIVIL LEGAL NEEDS STUDY 25 (2003), available at <http://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf>.

24. RONALD L. BURDGE, UNITED STATES CONSUMER LAW ATTORNEY FEE SURVEY REPORT 2010–2011 11 (2011), available at <http://www.nclc.org/images/pdf/litigation/fee-survey-report-2010-2011.pdf>. Consumer law includes “bankruptcy, credit discrimination, consumer banking, warranty law, unfair and deceptive acts and practices, and more narrow topics of consumer law such as consumer protection rights enabled by specific statutes such as the Fair Credit Reporting Act, the Uniform Consumer Sales Practices Act, state and federal lemon laws, and many others.” *Id.* at 1.

25. *2011 Survey of Billing and Practices for Small and Midsize Law Firms*, SMART-PROS, <http://www.accountingnet.com/x71411.xml> (last visited Oct. 26, 2012).

26. *Access to Justice on Campus*, U.S. DEP’T OF JUSTICE, <http://www.justice.gov/atj/atj-campus.html> (last updated July 2012) (quoting Deborah Rhode, Ernest W. McFarland Professor of Law, Stanford Law Sch., Address at Champions of Change (Oct. 13, 2011)).

27. LYNN LANGTON ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, SPECIAL REPORT: CIVIL BENCH AND JURY TRIALS IN STATE COURTS, 2005 8–9 (Apr. 9, 2009), available at <http://www.bjs.gov/content/pub/pdf/cbjtsc05.pdf>; see also *Civil Cases*, BUREAU OF JUSTICE STATISTICS, <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=45> (last updated Oct. 26, 2012) (documenting the recent decline in the number of civil trials).

28. LYNN LANGTON ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, SPECIAL REPORT: CIVIL BENCH AND JURY TRIALS IN STATE COURTS, 2005 8–9 (Apr. 9, 2009), available at <http://www.bjs.gov/content/pub/pdf/cbjtsc05.pdf>.

29. *Id.*

Such a scarcity of competent legal representation and of court resources to adjudicate civil disputes may cause affected citizens to lose confidence in the American legal system. Indeed, according to the World Justice Project's analysis in its Rule of Law Index, the United States ranked twenty-first out of sixty-six nations along the dimension of "access to civil justice" in 2011.³⁰ Within the group of nations having similar incomes, survey respondents ranked the United States an embarrassing twentieth out of twenty-three.³¹

Yet, despite a broad consensus that the American justice system is failing to meet the needs of all litigants, it remains less clear exactly what constitutes an adequate degree of access to justice. As Supreme Court Justice Lewis Powell Jr. stated, "[J]ustice should be the same, in substance and availability, without regard to economic status."³² More recently, Laurence Tribe defined access to justice as a measure of "how well people can achieve fair outcomes in matters that are of major importance to the way they live."³³ From an international perspective, the World Justice Project asserts that access to civil justice requires a system that is affordable, effective, impartial, and culturally competent.³⁴

30. MARK DAVID AGRAST ET AL., *THE WORLD JUSTICE PROJECT, WORLD JUSTICE PROJECT RULE OF LAW INDEX 2011* 111 (2011), available at http://worldjusticeproject.org/sites/default/files/WJP_Rule_of_Law_Index_2011_Report.pdf.

31. *Id.* The World Justice Project describes the survey as follows:

[Survey] questions are . . . administered to a representative sample of the general public, and to local experts, and then are analyzed and cross-checked pursuant to a rigorous triangulation methodology. The outcome of this exercise is one of the world's most comprehensive data sets of the extent to which countries adhere to the rule of law in practice. The 2011 Rule of Law Index builds on more than 400 variables drawn from the assessments of more than 66,000 people and 2,000 local experts in 66 countries.

Id. at 117.

32. Francis J. Larkin, *The Legal Services Corporation Must Be Saved*, JUDGES' J., Winter 1995, at 1 (quoting Justice Powell's comments made when Justice Powell was the President of the ABA).

33. Laurence H. Tribe, Senior Counselor for Access to Justice, Dep't of Justice, Address at the National Telecommunications and Information Administration Announcement of Broadband Grant Recipients (Sept. 16, 2010), available at <http://www.justice.gov/atj/opa/pr/speeches/2010/atj-speech-100916.html>.

34. AGRAST ET AL., *supra* note 30, at 11.

Civil justice requires that the system be accessible, affordable, effective, impartial, and culturally competent. Accessibility includes general awareness of available remedies; availability and affordability of legal advice and representation; and absence of excessive or unreasonable fees and hurdles. Impartiality includes absence of arbitrary distinctions, such as social and economic status, as well as decisions that are free of improper influence by public officials or private interests. Effective civil justice also implies that court proceedings are conducted in a timely manner and

Although the term “access to justice” perhaps defies precise definition, it is enough for the purposes of this article to say that the civil justice system should have the capacity to produce some form of fair outcome for all, regardless of status or income.

B. *Barriers for People Without Representation by Lawyers*

By almost any measure, many PRLs do not achieve fair outcomes in civil disputes. Sixty-two percent of judges recently surveyed by the ABA observed that PRLs suffered worse outcomes than their counterparts with representation.³⁵ Regardless of the reason that PRLs proceed without representation, they quickly learn that parties represented by lawyers have a distinct advantage. PRLs not only lack legal knowledge, but more significantly, they usually do not understand the formal process or the culture surrounding the American legal system.³⁶ Many judges have observed that PRLs fail to present necessary evidence, fail to properly object to submission of evidence, commit procedural errors, and ineffectively examine witnesses.³⁷ PRLs are not trained to wade through the often complex documents associated with legal disputes and do not have the collection of resources at their disposal that lawyers bring to bear on a case.

It should be no surprise that lawyers matter.³⁸ An empirical study in 2005 of the United States and the United Kingdom concluded that being represented by a lawyer increases a party’s odds of winning by seventy-five percent over a PRL.³⁹ The odds in favor of the represented party are greatest in forums where the adjudicator also is a

judgments are enforced without unreasonable delay. Finally, in a rule of law society, it is essential that alternative dispute mechanisms provide effective access to justice, while refraining from binding persons who have not consented to be bound by the mechanism.

Effective Civil Justice, THE WORLD JUSTICE PROJECT, <http://worldjusticeproject.org/factors/effective-civil-justice> (last visited Oct. 29, 2012). The World Justice Project was founded by leaders of the ABA and later spun off as a private not-for-profit association. Former ABA leaders continue to sit at its helm and its offices are co-located with those of the ABA in Washington, D.C. Organizational sponsors are as diverse as the U.S. Chamber of Commerce, Muslim Women Lawyers for Human Rights, Human Rights Watch, and the World Council of Religious Leaders.

AGRAST ET AL., *supra* note 30, at 155.

35. KLEIN, *supra* note 10, at 3.

36. *See id.* at 3–5 (explaining how self representation affects parties and the court system).

37. *Id.* at 4 (noting that 62% of judges observed procedural deficiencies that negatively impacted PRLs).

38. Rebecca L. Sandefur, Effects of Representation on Trial and Hearing Outcomes in Two Common Law Countries 4–5 (July 7, 2005) (unpublished manuscript), *available at* <http://www.reds.msh-paris.fr/communication/docs/sandefur.pdf>.

39. *Id.* at 15.

lawyer, where PRLs are uncommon, and where the field of law is procedurally complex.⁴⁰

Access to justice advocates take note of this data when they ask whether Americans today truly enjoy equal access to justice. Today, access to justice means the ability to head towards court with hardly a chance that the case actually will be disposed of in court. Today, access to justice also means that most low- and moderate-income litigants who arrive in court will do so without a lawyer, and as a result will be less likely to leave with a positive outcome. Today, access to justice in America is not equal. Action is necessary to instill trust in our legal system and infuse it with characteristics necessary to honestly call it a system of justice for all.

II.

WHO ARE PEOPLE WITHOUT REPRESENTATION BY LAWYERS?

The incidence of PRLs in America is dramatic. For example, in a 2004 California report, sixty-seven percent of petitioners in family law cases were unrepresented.⁴¹ The same study reported that ninety percent of unlawful detainer defendants were unrepresented and twenty-two percent of petitioners in probate were unrepresented at the time of filing.⁴² In 2001, the percentage of unrepresented Osceola County, Florida litigants in family law cases before the circuit judge was even higher.⁴³ In Arizona, pro se case filings in bankruptcy court during the first eight months of 2012 hovered at 22.8%.⁴⁴ Likewise, in New Hampshire in 2005:

One party [was] *pro se* in 85 percent of all civil cases in the district court and 48 percent of all civil cases in the superior court. In probate court, both sides [were] unrepresented in 38 percent of the cases. In superior court domestic relations cases, almost 70 percent

40. *Id.* at 18.

41. JUDICIAL COUNCIL OF CAL., STATEWIDE ACTION PLAN FOR SERVING SELF-REPRESENTED LITIGANTS 11 (2004) [hereinafter STATEWIDE ACTION PLAN], available at <http://www.courts.ca.gov/documents/selfreplitsrept.pdf>.

42. *Id.*

43. *Judge McDonald Statistics*, NINTH JUDICIAL CIRCUIT COURT OF FLA., <http://www.ninja9.org/courts/judges/Statistics/McDonald%20Statistics%202000.htm> (last visited Sept. 7, 2012).

44. *Pro Se Case Filings 1/1/2012 Through 8/31/2012*, U.S. BANKR. COURT DIST. ARIZ. (Oct. 1, 2012), <http://www.azb.uscourts.gov/Documents/ProSeReportForWeb.pdf>.

of cases [had] one *pro se* party, while 97 percent of district court domestic violence cases [had] one *pro se* party.⁴⁵

Given these staggering statistics, it is hardly surprising that judges in at least one state are being told that “[s]elf-representation is the primary means for assuring access to justice for most poor and middle income Americans.”⁴⁶ PRLs do not fit a single demographic profile.⁴⁷

[T]hey are not all poor and uneducated. Increasing numbers of *pro se* litigants are middle class and college-educated individuals. Those who have at least some ability to pay for legal assistance often do not know how to select a lawyer other than randomly. Some are motivated more by lack of trust in attorneys than by lack of resources to hire a lawyer.⁴⁸

Although most PRLs are low-income petitioners, most have at least a high school education and Internet access.⁴⁹ In 2000, the largest

45. James E. Duggan, *Challenge to Justice: A Report on Self-Represented Litigants in NH Courts*, 45 N.H. B.J., no. 4, Winter 2005 at 16, 16–18.

46. PowerPoint: John M. Greacen, Greacen Assocs., Presentation at the Indiana Spring Judicial College: Courtroom Best Practices in Self-Represented Litigation (Apr. 16, 2008), available at <http://www.in.gov/judiciary/center/files/jedu-lib-social-self-rep-litigation-self-rep-litigation.pdf>.

47. CYNTHIA CRAN STRATIOTI, INST. COURT MGMT., FOUR PERSPECTIVES ON SELF-REPRESENTATION AND THE JUDICIAL SYSTEM IN DULUTH, MINNESOTA 12 (2002), available at <http://cdm16501.contentdm.oclc.org/utills/getfile/collection/accessfair/id/36/filename/37.pdf>; see also CORRIE L. KELLER, INST. COURT MGMT., MEETING THE DEMANDS OF PRO SE LITIGANTS IN IDAHO 18 (1997), available at <http://cdm16501.contentdm.oclc.org/utills/getfile/collection/accessfair/id/52/filename/53.pdf>.

48. CYNTHIA COOK, INST. COURT MGMT., SELF-REPRESENTED LITIGANTS IN FAMILY LAW CASES IN JACKSON COUNTY, MISSOURI 17 (2007).

49. PowerPoint: John M. Greacen, Greacen Assocs., Presentation at the Indiana Spring Judicial College, Principles and Techniques for Dealing with Self Represented Litigants in the Courtroom (Apr. 20, 2006), available at <http://www.in.gov/judiciary/center/files/jedu-lib-social-self-represented-litigants-presentation.pdf>. Mr. Greacen also presented the underlying data of the findings. Mr. Greacen’s findings were based on a 2002 meta-analysis of thirty-five program evaluations; a 2004 multi-jurisdiction assessment; and a 2004 California Administrative Office of the Courts evaluation of five pilot programs. *Id.* (describing the results of the California evaluation). The California study revealed that more than one-third of the PRLs have a college degree and almost half were employed. *Id.* Mr. Greacen has been the principle source of research data relied on by other states as well. See, e.g., JOHN M. GREACEN, GREACEN ASSOCS., LLC, REPORT ON THE PROGRAMS TO ASSIST SELF REPRESENTED LITIGANTS OF THE STATE OF MARYLAND (2004), available at http://www.courts.state.md.us/family/evaluations_mdsummary.pdf (summarizing and assessing five programs to assist self-represented litigants in the state of Maryland); Seminar Report, Mich. Judicial Inst., Best Practices for Serving the Self-Represented (March 25, 2009), http://courts.michigan.gov/education/mji/Seminars-Training/webcastmaterialarchive/032509/Best_Practices_combined_for_webcast.pdf [hereinafter Michigan Best Practices] (presenting John Greacen as one of the principal trainers). Mr. Greacen’s impressive credentials can be viewed at <http://www.msbf.org/selfhelp/appendices/jmgresume.pdf>.

group of unrepresented California family court litigants were in their thirties (with ninety percent under the age of fifty), high school educated, employed with an annual income below \$18,000, and as likely to be men as women.⁵⁰ Similarly, a 2008 report revealed that about seventy-five percent of unrepresented litigants had at least a high school diploma and that ten to fifteen percent had earned a college degree.⁵¹

But if so many PRLs are young or middle aged, educated, and employed (albeit at the lower end of the economic spectrum), why do they go unrepresented? Studies show that about half of litigants in family courts appear unrepresented because they believe they cannot afford a lawyer or believe they do not need one.⁵² But that is not the universal viewpoint. At least one other study has concluded that “[m]ost individuals self-represent due to their negative perception of lawyers and the legal system.”⁵³ This is not inconsistent with 1999 research that revealed most people in America believe that they are capable of representing themselves in court.⁵⁴

It is not uncommon for people to question whether PRLs—especially those who are older or have low incomes—have access to and

50. See Frances L. Harrison et al., *California's Family Law Facilitator Program: A New Paradigm for the Courts*, 2 J. CTR. FAM. CHILD. & CTS. 61, 75–77 (2000), available at <http://www.courts.ca.gov/documents/jourvol2.pdf>.

51. THOMAS GEORGE & WEI WANG, WASHINGTON'S COURTHOUSE FACILITATOR PROGRAMS FOR SELF-REPRESENTED LITIGANTS IN FAMILY LAW CASES 11 (2008) (citing John Greacen, *Self-Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know* (July 20, 2002) (unpublished manuscript)); see also Harrison et al., *supra* note 50, at 61.

52. GEORGE & WANG, *supra* note 51, at 44. Research by the New Hampshire Pro Se Task Force supports the finding that these are the most common reasons that PRLs appear without lawyers. Duggan, *supra* note 45, at 16. The survey data reflect that litigants develop the belief that representation is unaffordable without trying to determine whether this is in fact the case. *Id.* Mr. Greacen, when providing training at the Michigan Judicial Institute, noted that the *average* hourly attorney fee in California was \$315 in 2009, with only 25% charging less than \$275. Michigan Best Practices, *supra* note 49. At such rates, it is understandable that even educated, employed, family court litigants might reasonably believe they cannot afford a lawyer.

53. CYNTHIA COOK, INST. COURT MGMT., SELF-REPRESENTED LITIGANTS IN FAMILY LAW CASES IN JACKSON COUNTY, MISSOURI 5 (2007), available at http://www.ncsc.org/~media/files/pdf/education%20and%20careers/cedp%20papers/2007/cook_selfrepresentedlitigants.ashx.

54. NAT'L CTR. FOR STATE COURTS, HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY 25 (1999), available at http://www.ncsconline.org/WC/Publications/Res_AmtPTC_PublicViewCrtsPub.pdf.

the ability to utilize collaborative technology. Today, Internet access in America is almost ubiquitous.⁵⁵

TABLE 1: WHO USES THE INTERNET?⁵⁶

Who Uses the Internet?			
Adult Internet Use			
Total	85%		
Women	85		
Men	85		
Age		Household income	
18-29	96%	Less than \$30,000/yr	75%
30-49	93	\$30,000-\$49,999	90
50-64	85	\$50,000-\$74,999	93
65+	58	\$75,000 +	99
Race/ethnicity		Educational attainment	
White, Non-Hispanic	86%	Less than High School	61%
Black, Non-Hispanic	86	High School	80
Hispanic	80	Some College	94
		College +	97

Unless someone is over the age of sixty-five or has less than a high school education, it is very likely that she uses the Internet.⁵⁷ Though lower-income households and those with less education do not have the near-universal rates of Internet use seen in more affluent populations, these rates do indicate greater access than might commonly be expected. A high-speed connection is not necessary for PRLs to use most collaborative technology, but may make it more effective. In 2010, sixty-seven percent of whites and fifty-six percent of African Americans were broadband users.⁵⁸ Significant adopters of broadband include seniors (thirty percent), low-income households (fifty-three percent), and rural Americans (forty-six percent).⁵⁹ Projects are underway to close those Internet access gaps that remain.

55. *Demographics of Internet Users*, PEW RESEARCH CTR., [http://www.pewinternet.org/trend-data-\(adults\)/whos-online.aspx](http://www.pewinternet.org/trend-data-(adults)/whos-online.aspx) (last visited Sept. 7, 2012) (summarizing findings of a survey conducted between July 16 and August 7, 2012).

56. *Demographics of Internet Users*, PEW RESEARCH CTR., [http://www.pewinternet.org/trend-data-\(adults\)/whos-online.aspx](http://www.pewinternet.org/trend-data-(adults)/whos-online.aspx) (last visited Sep. 7, 2012).

57. See *supra* Table 1.

58. AARON SMITH, PEW RESEARCH CTR., HOME BROADBAND 2010 2 (2010), *available at* <http://www.pewinternet.org/~media/Files/Reports/2010/Home%20broadband%202010.pdf>.

59. Press Release, Pew Research Ctr., Home Broadband Adoption Increases Sharply in 2009 with Big Jumps Among Seniors, Low-Income Households, and Rural Residents Even Though Prices Have Risen Since Last Year (June 17, 2009), *available at* <http://www.pewinternet.org/Press-Releases/2009/Home-broadband-adoption-increases-sharply-in-2009.aspx>.

For example, one project in Washington State aims to develop and maintain a network of public computers in libraries, community centers, non-profit organizations, courthouses, and low-income housing complexes.⁶⁰

Of course, access to technology requires not only physical proximity to computers, but also the ability to use them effectively. Here too, current statistics and trends, combined with policy initiatives, give reason for an optimistic assessment of access to technology as a viable route to accessing justice. Sixty-five percent of online adults use social networking sites,⁶¹ and many more of them presumably possess the moderate level of computer skill and technological familiarity necessary to do so. A component of the Washington State project includes significant computer skills training so users can be better equipped to utilize the online resources—such as legal aid offices, courts, and government services—that improve their access to justice.⁶²

Thus it appears that although PRLs cannot be easily categorized based on their socioeconomic demographics or reasons for foregoing counsel, they do, by and large, have access to the Internet and the ability to use it. People of moderate means can and do use all forms of online technology, and there is good reason to believe that PRLs in America are increasingly able to use, and benefit from, the collaborative technologies described in Part III of this article.

III.

COLLABORATIVE TECHNOLOGY IMPROVES ACCESS TO JUSTICE

The access to justice gap is real. It is growing despite more than a decade of important pro bono and legal aid initiatives, and available resources appear to be diminishing at the very time when the need seems to be the greatest.⁶³ Corrective action requires more than just access to legal representation. PRLs also need access to resources that ameliorate the inherent disability created by the inevitable lack of traditional legal representation. PRLs need substantive resources to help them understand and effectively process their claims. They need tools they can understand and use to efficiently engage with the legal

60. See Tribe, *supra* note 33.

61. MARY MADDEN & KATHRY ZICKUHR, PEW RESEARCH CTR., 65% OF ONLINE ADULTS USE SOCIAL NETWORKING 2 (2011), available at <http://www.pewinternet.org/~media/Files/Reports/2011/PIP-SNS-Update-2011.pdf>.

62. See Tribe, *supra* note 33.

63. See Karen Sloan, *Perfect Storm Hits Legal Aid*, NAT'L L.J. (Jan. 3, 2011), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202476843961>.

forum, other parties, and resource personnel. They need tools that help offset their relative lack of knowledge, skill, and ability concerning legal process and procedure. They need help assembling and submitting legal documents and evidence. They need affordable, accessible, and relatively simple alternatives to traditional legal forums through which they can successfully resolve⁶⁴ disputes that otherwise would become litigation.

The goal of introducing collaborative technology is not to enable PRLs to function as lawyers in the absence of a lawyer, nor to provide PRLs with overnight expertise in witness examination, presenting and objecting to evidence, or complying with court rules. Rather, collaborative technology should be used to help offset the unmet need for traditional legal services by allowing PRLs to resolve disputes in a variety of ways that may be more appropriate than litigation, to reduce PRLs' legal knowledge deficit when they do interact with the court system, and to make traditional legal and ADR services more accessible and affordable by lowering transaction costs and increasing efficiency. It is in this context that collaborative technology can help close the justice gap.⁶⁵

64. "Successfully resolve" is a key phrase that is subject to more than one meaning. In what is called a distributive bargaining analysis of "success," the assumption is that for one party to win the other party must lose. That is not the intended meaning in this article. Instead, the author adopts what is referred to as an *integrative bargaining* model where parties attempt to use cooperative approaches that result in more mutually successful resolutions. As a result, properly implementing such a toolset can not only improve PRLs' access to justice, but can help to achieve stronger, more durable, and more real solutions to underlying problems that give rise to legal disputes. See generally MICHAEL R. CARRELL & CHRISTINA HEAVRIN, *NEGOTIATING ESSENTIALS: THEORY, SKILLS, AND PRACTICES* (2007).

65. In the words of Laurence H. Tribe, Harvard University Professor and then Senior Counselor for Access to Justice, U.S. Department of Justice:

We must develop the necessary infrastructure—including both broadband access and strategically-placed computer terminals—so that under-served populations can acquire access to available web-based legal assistance and basic government services.

We must encourage electronic form assembly and electronic filing systems, so that people seeking government benefits and prospective pro se litigants—litigants without legal representation—can get help in diagnosing their legal problems and can then take the actions they need to help solve their problems.

We must promote technology literacy training to educate people about the available uses of the Internet in securing resources and services that are available yet often hard to obtain for the most vulnerable and remote populations.

We should study the utilization of videoconferencing technology throughout the justice system, including remote conferencing capability for pro bono lawyers and law school clinics and their geographically dispersed clients.

For purposes of this article, the phrase “collaborative technology” describes interactive software and services via the Internet that PRLs can use to successfully resolve disputes that otherwise could fuel the American access to justice predicament.⁶⁶ Each type of technology described below was selected because it offers great promise to help PRLs overcome significant hurdles that result from not being represented by a lawyer.⁶⁷

A. *Online Dispute Resolution Systems*

One way to lower barriers to access to justice is to empower PRLs to resolve disputes outside the traditional court system. For almost three decades, American courts, from federal circuits to small claims, have been adopting adjunct alternative dispute resolution (ADR) systems and empanelling dispute resolution practitioners to help manage court caseloads.⁶⁸ Mediation and other types of court-annexed ADR systems generally are *not* best suited to parties who are looking for vindication, want to establish precedent, or want to maximize recovery. Instead, the most satisfied users of ADR systems tend to be litigants who value quick results, privacy, simplicity, relationship retention, outcome compliance,⁶⁹ and who want to minimize cost,

We must seek the cooperation and input of key stakeholders throughout the community, including the judiciary, legal aid providers, law schools and other educational institutions, law enforcement, tribal courts, librarians, and health care providers.

See Tribe, *supra* note 33.

66. The scope of this article does not extend to backend court administration technology processes, systems that are not hosted on the Internet, systems that are not interactive or that cannot be part of a dispute resolution process. Examples of technology not included in this article are case management systems, network communication systems, non-interactive or minimally interactive public access computers and kiosks, and purely informational websites. For those interested in this more expansive treatment of the topic, see Katherine Alteneder et al., *The Role of Technology in the Access Solution, in THE FUTURE OF SELF-REPRESENTED LITIGATION: REPORT FROM THE MARCH 2005 SUMMIT* 81, 93 (2005), available at <http://lawworks1.com/publicfiles/PDF's/FutureOfProSe.pdf>; *see also* *Technology*, NAT'L CTR. FOR STATE COURTS, <http://www.nssc.org/Services-and-Experts/Areas-of-expertise/Technology.aspx> (last visited Oct. 26, 2012).

67. Specific tools mentioned in this section are among those that currently lead the pack. It is improbable that all of them will do so a few short years from now.

68. *See, e.g., Alternative Dispute Resolution*, FLA. STATE COURTS, http://www.flcourts.org/gen_public/adr/index.shtml (last visited Sept. 5, 2012); *Court-Connected Mediation in Ohio*, SUPREME COURT OF OHIO & OHIO JUDICIAL SYS., <http://www.sconet.state.oh.us/JCS/disputeResolution/resources/mediation.asp> (last visited Sept. 5, 2012).

69. Outcome compliance describes agreements that are self-enforcing and which parties are most likely to perform.

risk, time, formality, and conflict.⁷⁰ It should be no surprise that PRLs and other litigants are attracted to ADR options.

Courts can play an important role in this process by using collaborative technology to create a triage system for PRLs. A triage system that allows parties to choose methods of dispute resolution other than traditional litigation can help alleviate the overcrowded dockets of courts around the country, and *online* dispute resolution (ODR) technologies can provide a less legalistic and more intuitive mechanism for resolving disputes. Through these systems, empaneled dispute resolution practitioners can leverage ADR and ODR systems to improve PRLs' access to justice in a cost-effective manner. A highly automated, online triage system can help PRLs select and use the most appropriate dispute resolution⁷¹ forum, only one of which might be a court, and help PRLs select the most appropriate technology (if any) to make effective use of the recommended dispute resolution system. Knowledgeable and experienced practitioners can help triage cases, so that the choice of technology reflects the specific facts and circumstances of a given case.

Courts might find it cost effective to also adopt an approved set of online workspaces through which the empaneled dispute resolution practitioners can leverage ADR and ODR systems to improve PRLs' access to justice. Associations of dispute resolution practitioners, local bar associations, and even the Legal Services Corporation might share the tasks of testing and recommending preferred online workspaces and helping with licensing and training.

Courts in British Columbia, Canada, have partnered with Modria⁷² to create the "Resolution Center," which is an example of how ODR tools can be used to help PRLs resolve claims without going to court. Parties use Resolution Center to fully explain the nature of their disagreement in writing and to upload any files that support

70. See generally JENNIFER E. SHACK, RESOLUTION SYS. INST., BIBLIOGRAPHIC SUMMARY OF COST, PACE, AND SATISFACTION STUDIES OF COURT-RELATED MEDIATION PROGRAMS (2d ed. 2007) (cataloging evaluations of court-related mediation programs), available at <http://courtdr.org/files/MedStudyBiblio2ndEd2.pdf>.

71. Some readers will notice that "appropriate dispute resolution" is a somewhat different use of the term "ADR." Triage systems will help the various and still somewhat disparate American dispute resolution systems—including mediation, arbitration, and the courts—merge into a single "Appropriate Dispute Resolution" system.

72. Modria, which stands for Modular Online Dispute Resolution Implementation Assistance, was founded by Colin Rule, formerly the Director of Online Dispute Resolution at eBay and Pay-Pal. Julia Wilkinson, *Colin Rule: From eBay Conflicts to Global Peace Initiatives*, ECOMMERCEBYTES.COM (June 26, 2011), <http://www.ecommercebytes.com/cab/abu/y211/m06/abu0289/s05>; see also *Our Team*, MODRIA, <http://www.modria.com/team/> (last visited Sept. 5, 2012).

their respective positions.⁷³ Next, the parties engage in highly structured, text-based negotiations through the Resolution Center website. In the background, Modria's algorithmic tools help parties narrow the differences and work towards agreement.⁷⁴ If they resolve the matter at this stage, both sides indicate this on the website.⁷⁵ Otherwise, the parties can request assistance from a "neutral resolution expert."⁷⁶ Through joint and separate online sessions, the resolution expert helps clarify issues, shares interests and information, brainstorms options, and tries to facilitate resolution. Absent agreement, the moving party can explore other options including small claims court.⁷⁷

Mediators in other countries are already using full service online dispute resolution technologies to reduce the need for face-to-face mediation sessions.⁷⁸ In the near future, though not in the United States, initiatives will gain traction to change and unify the online space for technology-enhanced dispute resolution services. In fact, the European Commission recently announced its intention to pass legislation before the end of 2012 that would implement a cross-border ODR system for European Union consumer disputes in 2014–2015.⁷⁹

73. See *Frequently Asked Questions*, CONSUMER PROT. B.C., <http://www.consumerprotectionbc.ca/faqs> (last visited Sept. 5, 2012).

74. See *Resolution Center*, MODRIA, <http://www.modria.com/resolution-center/> (last visited Sept. 4, 2012).

75. If either party fails to perform the agreement, it is up to the other party to enforce it. *Frequently Asked Questions*, CONSUMER PROT. B.C., <http://www.consumerprotectionbc.ca/faqs> (last visited Sept. 4, 2012).

76. *Id.* It appears that any assistance from the neutral resolution expert is delivered online. *Id.*

77. See *How Does It Work?*, CONSUMER PROT. B.C., <http://www.consumerprotectionbc.ca/odr-how-it-works> (last visited Sept. 4, 2012).

78. See *infra* text accompanying notes 80–91.

79. See *Commission Proposal for Regulation of the European Parliament and of the Council COM (2011) 794 final* (Nov. 29, 2011), available at http://ec.europa.eu/consumers/redress_cons/docs/odr_regulation_en.pdf. In addition, the United Nations Commission on International Trade Law (UNCITRAL) has established "Working Group III" to develop a global system primarily for low-value, high-volume, cross-border disputes arising from e-commerce. The Working Group III three-part model begins with negotiation, followed by facilitated settlement, and, if necessary, final and binding decision by a neutral party. Working Group III intends to develop accreditation criteria and guidelines for providers and neutrals, a framework for case resolution, and enforcement protocols. See *Working Group III 2010 to Present: Online Dispute Resolution*, UNCITRAL, http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html (last visited Oct. 5, 2012). American ODR system designers and implementation leaders should pay careful attention to the work of the European Commission and UNCITRAL. Not only might such global systems offer important lessons and possibly serve as a model to consider, but also any domestic systems might be far more effective if developed with the capacity to integrate into a broader global ODR scheme. See Ethan Katsh & Jeff Aresty, Op-Ed., *A New Face for Small Claims Courts*, BOSTON GLOBE, Sept. 29, 2007, <http://www>.

Full service ODR platforms use online tools to gather and collect preliminary information for the ADR process, in which a mediator works with the parties, either online or face-to-face, to resolve the dispute. When applied appropriately, these technologies reduce barriers of time, place, cost, and process⁸⁰ in a way that can substantially improve PRLs' access to justice. For example, Juripax,⁸¹ developed in the Netherlands and Germany, and The Mediation Room,⁸² developed in the United Kingdom, offer mediators and parties full service online dispute resolution environments. These are leaders among several online service providers that, for a relatively small fee,⁸³ enable mediators to create secure workspaces and invite parties to join them in the Cloud.⁸⁴

Juripax mediators can select a module for divorce, employment, e-commerce, or small claims, and then customize the workspace template and online process to a particular case.⁸⁵ To begin, each party establishes an account on a Juripax online server, electronically signs an agreement to engage, and uses asynchronous tools⁸⁶ to conduct intake and other preliminary processes.⁸⁷ The mediator then guides the parties through the remainder of the process, using tools within the

boston.com/news/globe/editorial_opinion/oped/articles/2007/09/29/a_new_face_for_small_claims_courts/.

80. See JURIPAX, <http://www.juripax.com/> (last visited Sept. 4, 2012).

81. *Id.*

82. THE MEDIATION ROOM, <http://www.themediationroom.com> (last visited Sept. 4, 2012).

83. See *Editions and Pricing*, JURIPAX, <http://juripax.com/EN/products.php> (last visited Sept. 4, 2012) (providing a limited-use online mediation solution for a € 49 annual fee).

84. Most consumers of Internet services experience "the Cloud" as applications running on a collection of remote, publicly accessible hardware and software that, according to the National Institute of Standards and Technology, has five essential characteristics: on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. LEE BADGER ET AL., NAT'L INST. OF STANDARDS & TECH., CLOUD COMPUTING SYNOPSIS AND RECOMMENDATIONS 2-1 (2012), available at http://www.nist.gov/customcf/get_pdf.cfm?pub_id=911075. This is only one service model/deployment model combination of what it means to work in the Cloud. A more complete definition of Cloud computing is "a model for enabling convenient, on-demand network access to a shared pool of configurable computing resources . . . that can be rapidly provisioned and released with minimal management effort or service provider interaction." *Id.* According to the authors, users can experience the Cloud in one of three service models (software, platform, and infrastructure) using four methods of deployment (private, community, public, and hybrid). *Id.* at 2-1-2-2.

85. *Features*, JURIPAX, <http://juripax.com/EN/software.php> (last visited Sept. 4, 2012).

86. In contrast to *synchronous* tools, which permit users to jointly engage in real time, *asynchronous* tools permit users to separately engage in their own time.

87. *Online-Mediation*, JURIPAX, <http://www.juripax.com/EN/odr.php> (last visited Sept. 4, 2012).

online environment, external tools such as telephone, online video, audio communication tools, and, when appropriate, face-to-face meetings in order to more effectively resolve disputes.

One use of the Juripax platform in the Netherlands has been to submit confidential intake data to the mediator in preparation for face-to-face mediation.⁸⁸ Research has demonstrated that parties to employment disputes who use this Juripax function are better prepared for mediation, are more likely to engage on a more level playing field, feel more empowered to make decisions on their own, engage in a more resolution-focused mindset, and achieve time and costs savings of up to thirty percent.⁸⁹ When applied to a court-annexed ADR process, each of these benefits can enhance PRLs' ability to successfully resolve disputes and thereby minimize the number of cases that otherwise would require resources from the civil courts. A recent study of 126 Dutch participants in online divorce mediation using Juripax found that both parties perceived the process and outcome to be equally fair.⁹⁰ The study concluded that online divorce mediation is a viable alternative to both offline mediation and other more traditional modes of dispute resolution in divorce.⁹¹ Given the number of PRLs in American family law courts,⁹² full service ODR platforms should be considered as an alternative to the courtroom and even face-to-face mediation in appropriate family law cases.

Full service ODR platforms also allow dispute resolution practitioners to reduce costs and increase efficiency by using online workspaces to initiate the ADR process, collect and exchange party submissions and responses (and fees), upload and securely share case documents, and use threaded discussion tools to engage in joint sessions and virtual caucuses.⁹³ Dispute resolution practitioners can cre-

88. *Id.*

89. *Id.* (mentioning studies).

90. Martin Gramatikov & Laura Klaming, *Getting Divorced Online: Procedural and Outcome Justice in Online Divorce Mediation*, 14 J.L. & FAM. STUD. 97, 97 (2012).

91. *Id.*

92. See STATEWIDE ACTION PLAN, *supra* note 41.

93. While working at the Federal Mediation and Conciliation Service and at the National Mediation Board, I created secure, online workspaces for parties to use in many types of dispute resolution processes. For example, I worked with representatives of a major rail carrier and its engineers' union, both of which used separate and joint online workspaces hosted by an Internet service provider called Central Desktop. CENTRAL DESKTOP, <http://www.centraldesktop.com> (last visited Oct. 24, 2012). The parties used the online workspace to prepare for critical negotiations over numerous disputes. During the course of two years, the parties used the online workspace between face-to-face meetings, together with collaborative mind mapping software called FreeMind, FREEMIND, <http://freemind.sourceforge.net> (last visited Oct. 24,

ate a secure folder in the online workspace to store notes, time and billing records, and confidential materials. An experienced practitioner can manage multiple cases in separate, clearly marked online workspaces and increase efficiency by using a common set of templates, calendars, and task lists across all workspaces. Doing so can help minimize the transaction costs of the dispute resolution process and make better use of the practitioner's limited face-to-face time with parties. This can expedite the resolution of disputes and enable PRLs to participate in aspects of the process without physically being in the same place as the practitioner or other parties.⁹⁴ In these ways, the online workspace can break down barriers of time, place, cost, and process associated with litigation and ADR processes.

By reducing the cost of ADR through the effective leveraging of collaborative technologies like full service ODR, dispute resolution practitioners can make their services more accessible to low- and moderate-income disputants. In addition, by managing the ADR procedure more efficiently, practitioners can increase their individual caseloads. The combination of reduced costs and greater capacity will allow a greater swath of the population to access private ADR procedures and resolve disputes outside the traditional court system. This increase in the number of cases that are satisfactorily resolved outside of the traditional court system will in turn reduce court system caseloads, allowing quicker resolution of those cases that do go to court. This two-pronged approach will increase the number of Americans with access to justice, whether outside or inside of the traditional court system.

2012), to post and maintain an ongoing issues list, a running record of issues discussed, documentation of how various issues were resolved, related resource documents, and voluminous side agreements. Within the secure workspace, they used an online forum for secure threaded discussions, an online calendar and task list to manage action items between synchronous dispute resolution sessions, and a "Team" tab to manage contact information and ensure the security of their information. The online workspace included numerous features that created an excellent user experience, such as an auto-notification to authorized users whenever something changed in the workspace.

For example, a major air carrier and its pilots association used an online workspace configured to support joint drafting of several settlement agreements and to securely edit settlement agreements. The workspace provided automatic version tracking, maintained a trail of interpretive comments to minimize future disputes, allowed the parties to easily drag-and-drop to upload and download supporting documents, and permitted the parties to work asynchronously from almost anywhere using computers, tablets, and smartphones.

94. Assertions in this section that are not otherwise footnoted are based at least in part on my professional experience adapting and utilizing collaborative technology tools since 1999.

B. Online Document Assembly Services

As previously noted, PRLs' lack of procedural expertise is a major factor that limits access to justice.⁹⁵ Collaborative technology can help overcome this barrier by enabling PRLs to fill out ready-to-file court documents. Many court systems are already using Internet technology to substantially aid PRLs in this process.⁹⁶

Beginning around 2002, the Center for Access to Justice & Technology at Chicago-Kent College of Law, together with The Center for Computer-Assisted Legal Instruction, created A2J Author⁹⁷ specifically for PRLs. A2J Author is a freely available tool that enables non-technical developers to rapidly build and implement web-based court forms.⁹⁸ The developer might be court staff or someone in a Legal Services office. The developer builds a question-and-answer form and uploads it to a server on the Internet where it is joined to a template.⁹⁹ From a computer or kiosk with Internet access, PRLs then use software called A2J Guided Interview to complete and print ready-to-file court documents. This system helps non-lawyers complete court forms in the same way that TurboTax helps millions of filers complete tax returns.

Valley Crisis Center in Nampa, Idaho was one of the first places to promote the A2J system, and demonstrates the potential of such technological solutions.¹⁰⁰ The first Valley Crisis Center client to use the A2J system was a domestic abuse victim and a PRL. She had little computer experience, yet was able to use the A2J Guided Interview to fill in the forms required to file for divorce without assistance in about thirty minutes. She printed and filed the completed forms with the

95. See *supra* text accompanying notes 35–40.

96. See Paula Hannaford-Agor, *Access to Justice: Meeting the Needs of Self-Represented Litigants*, 1 CIV. ACTION (Nat'l Ctr. for State Courts, Williamsburg, V.A.), no. 3, Fall 2002, available at http://www.ncsconline.org/WC/Publications/Res_ProSe_CivilActionVol1No3Pub.pdf.

97. *A Brief History*, A2J AUTHOR COMMUNITY WEBSITE (Feb. 4, 2008, 1:16 PM), <http://www.a2jauthor.org/drupal/?q=node/123>. "A2J" is an acronym for "access to justice."

98. Aili McConnon, *Case Study: Access to Justice*, BUSINESSWEEK (Nov. 26, 2006), http://www.businessweek.com/magazine/content/06_48/b4011431.htm. For an authoritative history of the A2J project, see Ronald W. Staudt, *All the Wild Possibilities: Technology that Attacks Barriers to Access to Justice*, 42 LOY. L.A. L. REV. 101 (2009).

99. The form template is produced using HotDocs, which is document automation software used around the globe to convert Microsoft Word and PDF files into electronic templates. When used with question-and-answer structured interview forms, these templates generate transaction-ready documents such as court documents. See HotDocs, <http://www.hotdocs.com> (last visited Sept. 5, 2012).

100. See McConnon, *supra* note 98.

court the next day. Without A2J Guided Interview, she probably would have had to obtain a protective order and spend four to six weeks living in a shelter while waiting for an appointment with an Idaho Legal Aid attorney.¹⁰¹

The California Superior Courts spent a decade supporting online document assembly and data collection services for PRLs by using a service called EZLegalFile in family law matters, small claims, landlord-tenant, and domestic violence and guardianship matters.¹⁰² The California Superior Courts stopped offering the service in July 2011 due to lack of funding.¹⁰³ However, the Los Angeles Superior Courts still enable PRLs to use an online guided interview and document assembly service to generate and e-file small claims.¹⁰⁴

Similar services are evolving nationwide¹⁰⁵ thanks to support from the Center for Access to Justice & Technology and a handful of other organizations that thrive at the confluence of technology and access to justice initiatives. These include the Legal Services National Technology Assistance Project,¹⁰⁶ Pro Bono Net,¹⁰⁷ and a related project called LawHelp.¹⁰⁸ A LawHelp project, LawHelp Interactive, serves as a development partner to organizations in twenty-six states that now supply online document preparation systems for PRLs.¹⁰⁹ At

101. *Id.*

102. *See EZLegalFile*, SUPERIOR COURT OF CAL., <http://www.ezlegalfile.com> (last visited Sept. 5, 2012).

103. *Id.*

104. *See Small Claims-General Information*, L.A. SUPERIOR COURT, <https://ww2.lasuperiorcourt.org/eFiling/login.aspx> (last visited Sept. 5, 2012).

105. For example, TurboCourt offers a guided interview system for certain types of cases in twenty jurisdictions, together with e-filing in some of those jurisdictions. *See TURBOCOURT*, <http://www.turbocourt.com/go.jsp?act=actShowHome&tmstp=1327883017452&showContent=alljur> (last visited Sept. 5, 2012).

106. *See LEGAL SERVS., NAT'L TECH. ASSISTANCE PROJECT*, <http://lsntap.org> (last visited Sept. 5, 2012).

107. Pro Bono Net is a national nonprofit organization dedicated to increasing access to justice through innovative uses of technology and increased volunteer lawyer participation. *See PRO BONO NET*, <http://www.probono.net> (last visited Sept. 5, 2012). In addition to serving as a national linchpin for document assembly initiatives, Pro Bono Net offers free online resources to support lawyers' pro bono endeavors, and sells software to law firms that integrate content from the public interest legal community with reporting, knowledge management, and lawyer matching tools that draw on data from the law firm's internal systems. This can help the firm increase pro bono program management capacity and thereby increase pro bono services. *See Why PBM?*, PRO BONO MANAGER, <http://www.probono.net/probonomanager/why> (last visited Sept. 5, 2012).

108. *See LAWHHELP*, <http://www.lawhelp.org> (last visited July 28, 2012).

109. *LawHelp Interactive*, LAWHHELP, <https://lawhelpinteractive.org> (last visited July 28, 2012). Funding for LawHelp Interactive comes from Legal Services Corporation, the State Justice Institute, and state courts in Arkansas, California, New Mexico, and

least twenty-two of those states already use the latest version of the A2J collaborative technology.¹¹⁰

These relatively basic tools can provide a foundation for developing more in-depth legal assistance. The Legal Aid Society of Orange County (LASOC) developed a service called I-Can! Legal¹¹¹ to help PRLs complete court forms. LASOC has since developed versions for PRLs in six other states.¹¹² This service is still used in California jurisdictions where EZlegalFile was discontinued.¹¹³ Building on its success, LASOC developed “Legal Genie” for PRLs who do not qualify for Legal Aid services.¹¹⁴ Users begin by registering on the Legal Genie website and then use the assisted Q&A system to complete court forms and pleadings. The unique element of Legal Genie is that the system then connects the PRL to an attorney who reviews the documents and offers legal advice before the PRL prints the completed documents.¹¹⁵ This integration of collaborative technology and narrow-scope attorney review can add value to cases that are too complex for most non-lawyers to competently handle without at least some legal assistance. The cost for using Legal Genie starts at \$199.¹¹⁶

LegalZoom is another online service that helps people complete legal documents that can be more complex than standard court fil-

New York. *Interactive Resource Center*, LAWHELP, <http://www.probono.net/dasupport/gettingstarted/#learn> (last visited July 28, 2012). For a sample implementation of LawHelp Interactive legal forms, see *Self Help – Idaho Interactive Forms*, IDAHO LEGAL AID SERVS., INC., <http://idaholegalaid.org/SelfHelp> (last visited Nov. 9, 2012).

110. Press Release, Ill. Inst. of Tech. Chi.-Kent Coll. of Law Ctr. for Access to Justice & Tech., CATJ Releases A2J Author 2.0 (Apr. 5, 2008), available at <http://www.kentlaw.edu/cajt/assets/A2JAuthor2Release.html>.

111. *Sample Document Automation Programs for Legal Services*, LEGAL SERVS. NAT’L TECH. ASSISTANCE PROJECT, <http://lsntp.org/node/1407> (last visited July 28, 2012).

112. I-CAN! LEGAL, <http://www.icandocs.org/> (last visited July 28, 2012). California, Georgia, Massachusetts, Minnesota, North Carolina, Oklahoma, and Virginia provide assistance with various court forms including divorce, paternity, order to show cause, guardianship, name change, domestic violence, civil harassment, small claims, fee waiver, child support, eviction, child custody, wage and earnings, notice of motion, and income and expense matters. See *id.* Like A2J, ICAN! “mndocs” in Minnesota populates HotDocs templates to reduce the cost and complexity of creating and maintaining templates for PRLs. *mndocs*, PRACTICE LAW.ORG, <http://www.practicelaw.org/117> (last visited Oct. 20, 2012).

113. *Online Services*, SUPERIOR COURT OF CAL., <http://www.santacruzcourt.org/online-services> (last visited July 28, 2012).

114. LEGAL GENIE, <http://www.legalgenieapps.com> (last visited July 28, 2012).

115. *Why Legal Genie is Unique*, LEGAL GENIE, http://www.legalgenieapps.com/Page_ID.asp?caller=&IDTXT=74 (last visited July 28, 2012).

116. *Frequently Asked Questions*, LEGAL GENIE, http://www.legalgenieapps.com/Page_ID.asp?caller=&IDTXT=57#1 (last visited July 28, 2012).

ings.¹¹⁷ A completed, ready-to-file, basic will costs \$69.¹¹⁸ A ready-to-file Debt Settlement Resolution Agreement¹¹⁹ or Termination of Lease Agreement¹²⁰ form costs \$15. LegalZoom's \$299 uncontested divorce service includes completion of all state-specific divorce documents for both spouses, which may include a petition, complaint, summons, decree, request for judgment, and other state-required documents; filing instructions; a marital settlement agreement detailing the terms of the divorce settlement, including property and debt division; a parenting plan for specifying child-related agreements, such as child custody arrangements and visitation schedules; child financial support documents, including calculation worksheets and provisions for securing court-ordered support; name change provision for the wife; and a guidebook and both telephone and email support.¹²¹ A flat-rate lawyer-assisted Chapter 7 bankruptcy costs \$1255 for an Iowa resident or \$2405 for a Florida resident.¹²² The company has received more than \$100 million in investor funding and has served more than one million customers.¹²³

A well-designed online document assembly service can be an essential link between PRLs and meaningful access to justice. Services like A2J, EZLegalFile, ICan! Legal, Legal Genie, and LegalZoom help overcome procedural barriers that otherwise disadvantage PRLs in traditional legal environments. Investor interest in LegalZoom bodes well for the development of a private market in such services. Market conditions alone, however, are unlikely to adequately incent private providers to design and implement collaborative technology systems that properly balance public and private interests connected to PRLs' access to justice.¹²⁴ At the same time, public funds need not do all of the heavy lifting. A public-private partnership might be the right vehicle to achieve the most cost-effective solutions. The Legal Ser-

117. LEGALZOOM, <http://www.legalzoom.com> (last visited July 28, 2012).

118. *Last Will and Testament Pricing*, LEGALZOOM, <http://www.legalzoom.com/legal-wills/wills-pricing.html#lap> (last visited July 28, 2012).

119. *Debt Settlement Agreement*, LEGALZOOM, <http://www.legalzoom.com/legalforms/debt-settlement-agreement.html> (last visited July 28, 2012).

120. *Termination of Lease Agreement*, LEGALZOOM, <http://www.legalzoom.com/legalforms/Termination-of-Lease.html> (last visited July 28, 2012).

121. *Divorce Package Details*, LEGALZOOM, <http://www.legalzoom.com/legal-divorce/divorce-packages.html> (last visited July 28, 2012).

122. *Pricing for Chapter 7 Bankruptcy Packages*, LEGALZOOM, <http://www.legalzoom.com/bankruptcy/bankruptcy-pricing.html> (last visited July 28, 2012).

123. Leena Rao, *Eying an IPO in the New Year, LegalZoom Raises \$66M from Kleiner Perkins and IVP*, TECHCRUNCH (July 24, 2011), <http://techcrunch.com/2011/07/24/eying-an-ipo-in-the-next-year-legalzoom-raises-66m-from-kleiner-perkins-and-ivp/>.

124. See Staudt, *supra* note 98, at 122.

vices Corporation's strategy, creating a national server to support A2J Guided Interviews for their clients,¹²⁵ could be a model for developing a collection of national servers for local, state, and federal courts to propagate additional court-ready forms that can greatly expand access by PRLs to civil justice systems. This expansion should extend to PRLs who are not eligible for Legal Services Corporation representation and thereby avoid tapping resources needed to support Legal Services Corporation-eligible PRLs. As suggested by Ronald Staudt of Chicago-Kent College of Law, future A2J Author systems could follow the lead of the Eastern District of Missouri and even include electronic filing systems rather than just completion of paper court-ready forms.¹²⁶

C. *Technology for Unbundling and Delivery of Legal Services*

Collaborative technology can be used to unbundle and streamline the delivery of legal services. Unbundled legal services can take several forms, including document preparation, advice and counseling, limited appearances, and other discrete functions that otherwise might be part of full scope legal representation.¹²⁷ For example, a consulting lawyer might provide advice and direction for a client who is acting pro se. Another form of unbundled legal services involves the lawyer and client collaboratively preparing legal documents, with the client otherwise acting pro se. In yet another form of unbundled legal services, the lawyer might provide limited representation in court for a client who otherwise acts pro se.¹²⁸ Some jurisdictions already permit lawyers to offer certain types of unbundled legal services as part of the solution to the access to justice gap.

125. *Id.* The LawHelp website consolidates access to information and self-help forms for twenty-five states and the District of Columbia. See *Find Forms*, LAWHELP, https://lawhelpinteractive.org/legal_information_and_forms (last visited Aug. 27, 2012).

126. Staudt, *supra* note 98, at 122. OpenAdvocate, a web publishing solution for building public information websites, is an example of such a public/private partnership. OPENADVOCATE, <http://www.openadvocate.org> (last visited Nov. 9, 2012). OpenAdvocate is built on DLAWE 2.0, an open-source website system for legal aid websites. *Drupal for Legal Aid Websites*, OPENADVOCATE, <http://www.openadvocate.org> (last visited Nov. 9, 2012). DLAWE was developed using Legal Services Corporation Technology Initiative Grant funding, and implemented by Urban Insight, a private website development firm, in collaboration with the Legal Services National Technology Assistance Project, Idaho Legal Aid Services, and legal aid organizations from eleven states. *Id.*

127. See *Resources*, STANDING COMM. ON DELIVERY OF LEGAL SERVS., http://www.americanbar.org/groups/delivery_legal_services/resources.html (last visited July 29, 2012).

128. *Id.*

Collaborative technology tools and services can help make such unbundled legal services both possible and economically feasible. For example, RocketLawyer, a nationwide online facilitator of unbundled legal services, claims to have served more than fifteen million people since 2008.¹²⁹ RocketLawyer offers site visitors an interactive, online tool to compute their “Legal Health Score,” from which RocketLawyer then recommends specific legal services. It enables visitors to complete online forms, after which a local attorney can answer questions and provide document review to “make it legal” in the relevant state(s). It offers the equivalent of a low-cost retainer service and a “Find a Lawyer” service, complete with published hourly rates.¹³⁰ Without making any observations about the quality of RocketLawyer services specifically, its model certainly appears to be a promising way for PRLs to seek low-cost legal guidance.

Other online services might better suit those who only have a general question, or alternately, those whose legal inquiries begin with more fact-specific issues. Avvo¹³¹ and LawPivot¹³² utilize a form of online lawyer crowdsourcing to offer free “Ask a Lawyer” consultation services. Visitors to the Avvo website¹³³ can post a question and wait for a participating lawyer to respond at no cost. Questions might include: “What rights does a father who was never married to the child’s mother have for custody?” or “what if the judgment creditor does not respond to an order to return levied money?” Prior results are posted by topic for visitors to review. Another section of the website enables visitors to search for a local attorney, view attorneys’ “Avvo Ratings,” and read and submit client reviews. The Avvo website does not appear to promote unbundled legal services, but it could enable PRLs to be more informed consumers of legal services and thus improve their chances of obtaining affordable legal assistance, or increase their comfort with retaining legal assistance.

129. See *RocketLawyer Survey Reveals Top Issues for Small Business are Legal and Financial, with a Majority Optimistic about Growth in 2012*, ROCKETLAWYER (Feb. 1, 2012), <http://www.rocketlawyer.com/news/article-SMB-Growth-2012.aspx>. Among RocketLawyer’s impressive leadership team are the former CEO of LinkedIn and Google’s Chief Legal Officer. *Board of Directors*, ROCKETLAWYER, <http://www.rocketlawyer.com/about-us.rl#board> (last visited Oct. 5, 2012); *Executive Team*, ROCKETLAWYER, <http://www.rocketlawyer.com/about-us.rl#execs> (last visited Oct. 5, 2012).

130. See ROCKETLAWYER, <http://www.rocketlawyer.com/> (last visited Oct. 25, 2012).

131. *Ask a Lawyer*, AVVO, http://www.avvo.com/ask-a-lawyer?ref=header_navbar (last visited July 29, 2012).

132. LAWPIVOT, <http://www.lawpivot.com/> (last visited July 29, 2012).

133. AVVO, <http://www.avvo.com> (last visited July 29, 2012).

LawPivot¹³⁴ is similar to Avvo, except that it charges \$29 to ask a question concerning a personal issue and \$49 for a business issue. The service links the website visitor to one or more local attorneys from among more than two thousand participating attorneys, from whom the visitor can ask unlimited follow up questions at no additional cost. If he or she so chooses, the visitor is free to retain one of the attorneys. Again, without weighing in on the quality of LawPivot services, the site provides a viable method for PRLs to obtain low-cost legal advice concerning a specific issue of concern, and might even increase the chances that someone who can afford legal representation will develop sufficient trust in a lawyer to retain him or her as a representative.

D. Creative Adaption of Familiar Online Technology

Creative adaption of familiar online technology might be the shortest path towards significantly improving access to justice. Technology such as video conferencing, online video instruction, online “Ask a Librarian” services, online workspaces, electronic charting, and online mind mapping services can help overcome barriers of cost, time, and process.

Video conferencing can enable lawyers to remotely provide services even when they or a client might not have the time, resources, or physical capacity to travel or meet in person. Time, resources, and physical capacity to travel can be especially significant obstacles for those living in remote areas, for those with various disabilities, and for lower-income workers with inflexible job schedules and hourly wages. Video conferencing also can provide a way for parties to engage in settlement discussions or ADR processes, including when in-person engagement might not be safe.

Court use of live video is quite common. For example, courts in Montana allow Legal Services Corporation attorneys to make appearances on behalf of clients in a remote court via live video.¹³⁵ Forty-seven of the fifty-three immigration courts had video conferencing capabilities as early as 2006.¹³⁶ California Legal Services self-help cen-

134. LAWPIVOT, <https://www.lawpivot.com/accounts/register/company/question/> (last visited July 29, 2012).

135. *Montana Judicial Interactive Video Site*, MONT. COURTS, <http://courts.mt.gov/cao/technology/video/default.mcp>x (last visited July 29, 2012).

136. U.S. Gov’t Accountability Office, GAO-06-771, Executive Office for Immigration Review: Caseload Performance Reporting Needs Improvement 18 (2006), *available at* <http://www.gao.gov/assets/260/251155.pdf>. Not all practitioners are enthusiastic supporters of video conferencing. *See, e.g.*, BETSY CAVENDISH & STEVEN SCHULMAN, REIMAGINING THE IMMIGRATION COURT ASSEMBLY LINE: TRANSFORMA-

ters use video conferencing in child custody mediation and multi-location workshops.¹³⁷ The Legal Aid Society of Hawaii uses video conferencing to help improve individual assistance as a follow-up to pro se clinics for PRLs on remote islands.¹³⁸ Illinois Legal Aid uses video conferencing to remotely deliver live clinical instruction.¹³⁹

Recorded videos can provide PRLs with focused sources of general legal knowledge in a cost-effective and efficient manner. For example, students at John Marshall Law School are turning the Illinois State Bar's legal guides into short online audio and video clips for those who have difficulty reading.¹⁴⁰ The State of California sponsors an Online Self-Help Center that appears to be an excellent resource for PRLs,¹⁴¹ as are the 196 California Courts videos that have been viewed more than 229,000 times on YouTube.¹⁴² Topics include "Resolving Your Small Claims Case in California," "Eviction Cases," and "Self-Help."¹⁴³

In addition to passively watching informational videos, California PRLs can access a self-help page called "Ask the Librarian." Doing so transports the PRL to a rich collaborative technology service through which a California county law librarian solicits a specific question from the PRL.¹⁴⁴ The librarian then recommends books or research methods, answers factual questions, and offers real time guidance (but not legal advice) via online text chat.¹⁴⁵ The librarian can even take the PRL for a virtual tour of various web sites that display

TIVE CHANGE FOR THE IMMIGRATION JUSTICE SYSTEM 58 (2012), available at <http://www.appleseednetwork.org/wp-content/uploads/2012/03/Reimagining-the-Immigration-Court-Assembly-Line.pdf>; see also Aaron Haas, *Videoconferencing in Immigration Proceedings*, 5 U.N.H. L. Rev. 1, 60 (2006).

137. See Alteneider et al., *supra* note 66, at 90–91.

138. *Id.*

139. *Id.*

140. *Access to Justice on Campus*, U.S. DEP'T OF JUSTICE, <http://www.justice.gov/atj/atj-campus.html> (last visited July 29, 2012).

141. *Online Self-Help Center*, CAL. COURTS, <http://www.courts.ca.gov/selfhelp.htm> (last visited October 28, 2012).

142. *California Courts*, YOUTUBE, <http://www.youtube.com/user/CaliforniaCourts/videos?sort=&view=0> (last visited July 29, 2012).

143. *Id.*

144. See *Law Libraries, Websites, and Self-Help Books*, CAL. COURTS, <http://www.courts.ca.gov/1091.htm> (last visited Oct. 5, 2012); see also *Chat with a California Law Librarian*, ASK NOW, <http://www.questionpoint.org/crs/servlet/org.oclc.admin.BuildForm?&page=frame&institution=11341&type=2&language=1> (last visited Oct. 5, 2012).

145. *Chat with a California Law Librarian*, ASK NOW, <http://www.questionpoint.org/crs/servlet/org.oclc.admin.BuildForm?&page=frame&institution=11341&type=2&language=1> (last visited Oct. 5, 2012).

answers.¹⁴⁶ The law librarian also can send web pages to the PRL during the online session and provide a list of links at the conclusion of the session that the PRL can save and visit again at a later date.¹⁴⁷ These services can help PRLs obtain a general sense of the legal landscape surrounding their concerns and can leave them better positioned to use more in-depth technological tools or to make an informed choice about whether to seek conventional representation.

Collaborative technology in the form of a secure, online workspace has the potential to dramatically improve access to justice. For example, a PRL might post completed legal forms and other case-related documents to a secure online workspace during the course of litigation or an ADR process.¹⁴⁸ The PRL can invite a lawyer to remotely review a draft settlement agreement or post guidance concerning a pending offer, and, in some online workspaces, the PRL might be able to pay the lawyer. The PRL can also invite the other party to jointly develop solutions within the online workspace. Using built-in version control, the parties can edit documents with tracked changes online until they solve the problem that otherwise could have required court resources. Such an online workspace may be able to improve a PRL's chances of obtaining a better outcome even without traditional legal representation.

Courts might find it cost effective to equip trained ADR practitioners with enhanced online workspaces that include calendar and task functions to manage multiple cases,¹⁴⁹ as well as electronic charting¹⁵⁰ and online mind mapping¹⁵¹ tools. Online electronic charting

146. *Id.*

147. *Id.*

148. Examples of online workspaces include Central Desktop, CENTRAL DESKTOP, <http://www.centraldesktop.com> (last visited Oct. 24, 2012); Google Drive, GOOGLE DRIVE, <http://drive.google.com/> (last visited Oct. 25, 2012); and Basecamp, BASECAMP, <http://basecamp.com> (last visited Oct. 25, 2012).

149. These functions are built into Basecamp, Central Desktop, and similar commercially available online services.

150. Electronic charting is an online version of the chart pads typically seen on easels in meeting rooms. One excellent electronic charting tool is called FacilitatePro. *FacilitatePro—Web Meeting Software*, FACILITATE.COM, <http://www.facilitate.com/technology> (last visited Oct. 25, 2012). It enables users to digitize the interest-based process and move it to the Cloud. When used in multi-party disputes, FacilitatePro can add even greater value. Another market leader is GroupSystems' ThinkTank. *ThinkTank*, GROUPSYSTEMS, <http://www.groupsystems.com/wp-content/uploads/2012/02/AboutThinkTank-GAFeb20121.pdf> (last visited Oct. 25, 2012).

151. A mind map begins with a central idea or theme and radiates outwards as related information and tasks are linked by connecting lines. Mind maps can incorporate symbols, colors, images, and links to provide clarity and meaning. The result is a set of visual connections that can enhance brainstorming, problem solving, project planning, and decision making. See *Mind Mapping*, BUSINESSDICTIONARY.COM, <http://>

and mind mapping tools can enable PRLs to participate in dispute resolution processes that might otherwise never happen. These tools also can reduce cost, expedite process, enable engagement in real time or PRLs' own time, and even make geographic location irrelevant. These can be important tools to breach the barriers between PRLs and access to justice.¹⁵²

CONCLUSION

Despite more than a decade of heroic efforts by access to justice advocates, more than eighty percent of low-income individuals with legal needs remain unable to obtain legal assistance.¹⁵³ The Legal Services Corporation can serve only half the number of eligible people who seek its help.¹⁵⁴ As a result, millions of low- and moderate-income people in America annually engage in civil legal disputes without a lawyer, mostly because they cannot afford one.¹⁵⁵ The outcome is predictable: they routinely fail to prevail as often as parties who have legal representation and thereby fail to achieve fair outcomes in matters that are of major importance to the way they live.¹⁵⁶ In sum, millions of people in America lack meaningful access to justice.

Improving access to justice in America requires a two-pronged approach. The first prong is to dramatically improve support for traditional initiatives such as Legal Services Corporation and pro bono programs. Once we recognize, however, that the problem cannot be solved solely by trying to provide more legal services for unrepresented litigants, we better understand the need for the second prong: cost effective ways for PRLs to overcome the inherent disadvantages associated with a lack of counsel. Collaborative technology can enable both prongs of this approach.

Courts, pro bono programs, and legal aid providers can expand the use of online document assembly services, which help PRLs gain initial entry to the court system. Courts might even integrate the document assembly service with an online triage system that helps direct PRLs to the most appropriate forum. Cases that are directed to ADR

www.businessdictionary.com/definition/mind-mapping.html (last visited Nov. 10, 2012).

152. Associations of dispute resolution practitioners, local bar associations, and even the Legal Services Corporation might share the task of testing and recommending preferred online work spaces, and help with licensing and training. The potential impact of such an initiative is explosive.

153. JUSTICE GAP, *supra* note 4, at 16.

154. *Id.* at 12.

155. *See* Schneider, *supra* note 7, at 595–96.

156. *See supra* notes 12–14 and accompanying text.

forums can utilize collaborative technology, when appropriate, to host online dispute resolution systems, thus minimizing barriers to justice commonly experienced in traditional litigation.

Parties who enter the traditional litigation channel might use an online workspace to more effectively engage with advisors, counsel, other parties, court personnel, and ADR neutrals. PRLs might get online help about general subject matter via an online video library and get specific help from online attorneys and online law librarians. Courts can permit certain PRLs to take advantage of live video services when appropriate. Attorneys can reduce transaction costs by using collaborative technology to offer unbundled legal services, thereby making legal services available to those who might not otherwise be able to afford it. Parties might begin their exploration of legal assistance through interactive online services. It might grow into full service legal representation or be limited to document preparation, advice, or a limited appearance in court. When used appropriately, these collaborative technology tools can transform the American legal system.

Most PRLs have access to the Internet and are able to utilize collaborative technology tools that offer the potential to dramatically improve their access to justice. The enormous scope of the access to justice predicament and the viability of collaborative technology should cause policymakers and stakeholders to pursue these solutions with a passion.

