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TECHNOLOGY AND CLIENT COMMUNITY ACCESS TO LEGAL SERVICES — SUGGESTIVE SCENARIOS ON COMMUNITY LEGAL EDUCATION, INTAKE AND REFERRAL AND PRO SE

By Michael Genz[1], Legal Services Corporation

INTRODUCTION

The papers prepared for the Conference provide a broad perspective on emerging technologies and the potential they offer Legal Services. This paper, building on those perspectives, first offers a real world scenario showing how these technologies might be deployed to maximize client and community access to Legal Services resources. For each scenario, the paper then lays out what needs to be in place — technologically, managerially and institutionally, for the scenario to be made real.

SCENARIO ONE: INFORMATION AND ADVICE — THE CLIENT USES PULL TECHNOLOGY

Maria Lopez Pages is about to rent an apartment for herself and her child. From what she learned in school and from public service announcements, she knows to consult the browser on the telemonitor before pursuing any complex transactions that are new to her. With her mother's television in "Internet mode" she turns to the Yahoo channel. The Yahoo "Genie" appears and asks her, "What would you like to know?"

She replies, "I am about to rent an apartment. What do I need to know?" The Genie gives her a list of links that he has, including a listing of apartments for rent with the relevant information and a hot-link to the rental agent for each. Since she has already located a place she wants to rent, she skips the apartment listing and turns instead to "Renting an Apartment" produced by the Legal Aid Society and the law school. She could have chosen from a list of topics that site presented, but since this is going to be her first time renting, she opts for the tutorial.

Her prospective landlord had suggested to Maria that she could have a lease or she could "just go month to month." Month to month had sounded good to her. But she learns from the video that if there is not a lease for a longer term, she could be evicted at any time with a month's notice — something she does not want since

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she feels lucky to find the apartment. She also learns about the purpose of the security deposit, and the limits to the landlord's right to enter her apartment.

At the end of the video tutorial, the teacher on the video asks if she wants an analysis of the lease her landlord offers. When she says "yes," she is transferred to an applet that scans a database of landlords and the leases they use. The database and the applet are a joint project of the law firm of Suskind and Alvarez's pro bono project and the City Landlords' Association. When prompted, she says the name of her landlord and the location of the property. Since the landlord uses the standard lease, there were no provisions designated as "questionable." (If there had been, she could have pressed a button to be transferred to the Legal Aid Society's Hotline where she could have received advice on how to proceed.) But there are some things not clear in the lease that the program explained. For example, even though the lease says that the tenancy automatically terminates upon non-payment of rent, the program explains that she could not be evicted or locked out without a court hearing and gives a number to consult the sheriff's department should self-help eviction be threatened. The program goes on to explain "disturbing the quiet enjoyment of other tenants" by giving definitions and examples that were derived from the state's appellate cases.

DEPLOYMENT PREREQUISITES FOR SCENARIO ONE

Bandwidth. Bandwidth that allows sound and video is presumed in this Scenario. It is also assumed here that the bandwidth is so plentiful that the prices have dropped sufficiently so that Maria's mother can afford both the monthly charges and the cost of the telemonitor that receives Internet as well as television that allows video-conferencing. Depending on how the marketplace works, the invisible hand of the marketplace may not be sufficient to ensure that Maria's mother has access to such services. Statutes or regulations might be necessary to facilitate universal access to this high-end technology. Failing such efforts, centers at libraries, schools and community organizations might have to be developed to give Maria some access to the information that more affluent people will enjoy at home.

Next Generation Browsers. In this scene, the Yahoo browser "talks" to Maria and responds to what she says. It is also very sophisticated in what it provides her in response to her question. Rather than giving her thousands of links that respond to the words "rent" and "apartment" such as Hertz Rent A Car and condominiums rentals in Curacao, it zeros in on what she most likely wants. Since she did not say otherwise, the browser software assumes that she wants to rent a residential apartment in the city where she is.

Web Site Video. Because of the bandwidth, it is possible for organizations such as the coalition noted here to produce a video on landlord tenant law rather than

just a text web site. Note that the video produced by the state legal aid society and the law school is much less sophisticated than the Yahoo Genie. It does not interact with her. It is just a single video divided into sections that can be accessed through a menu. The video, nonetheless, required considerable efforts to produce. Not only did accurate and relevant material have to be gathered and written but also the video had to be produced. Such efforts are often going to require the resources of several organizations such as the ones involved here.

Data Base Applet. The data base applet is less sophisticated than the video in that its information is displayed textually, but it is more sophisticated in that it is interactive. Given the name of the landlord and the location of the apartment, it locates and analyzes the lease, and links to another data base that provides explanations of common lease terms, including those in Maria's lease. That database is, in turn, kept up to date by a sophisticated information search engine that locates relevant legal decisions, as they are decided. If an appellate level in the state renders a decision that involves tenant conduct disturbing other tenants the case will be identified so that its facts can be included in the database. In this way, the database can be kept up to date without considerable time being spent by a lawyer to manually monitor case law to find appropriate precedents.

Translation. The scenario does not deal with whether Ms. Lopez Pages is fluent in English. If she is not, it is possible that sophisticated language translating programs will allow the material produced in English to be translated into other languages. In the shorter term, the material can be produced in the languages that are relevant to the client community.

State Level Coalitions. Because the video and the databases are going to be expensive and complex to produce, these products will often only be possible if produced in concert with several organizations. Where state law is involved, state organizations and organizations across the state are possible partners. The production expenses are also likely to produce joint efforts by strange bedfellows such as the pro bono project and the Landlords' Association. While haggling over content and nuance will be more difficult with groups who have different orientations, the product will present a more balanced presentation than one that was produced by either the Legal Aid Society or the landlords. As the scenario suggests, such projects are also fertile ground for pro bono participation. They allow the legal services community to tap into the high technology capabilities of large law firms, and they provide pro bono attorneys with interesting projects that are significantly different from their day to day practice. They also can have a significant impact on the low-income community.

SCENARIO TWO: INFORMATION AND ADVICE — THE LEGAL SERVICES PROGRAM USES PUSH TECHNOLOGY

Next, the Yahoo Genie asks Maria whether she is interested in receiving tenants' rights bulletins. The bulletins are sponsored by the state impact litigation society and by several tenant and community action organizations. They contain information on bills affecting landlord/tenant law; ways to impact the legislative process; information on court decisions that affect landlord tenant law and information on landlord practices that might affect tenants. Maria responds that she wants the bulletins, but indicates that she does not want to be solicited for legislative action.

DEPLOYMENT PREREQUISITES FOR SCENARIO TWO

Push Technology. The basic technology for these bulletins exists today — at least for simple e-mail or Intranet transmissions. Increased bandwidth will allow these bulletins to include audio/video. They will be more effective if they provide the opportunity for clients to communicate back with questions they have, or maybe even with related problems they are facing. It will also be more helpful to Maria if the bulletins are stored and indexed so that she can refer back to them as the need arises. It may be that a topic that has no relevance to her today may be come important in the future.

Information Analysis. The information that the bulletins are able to provide will be much more impressive if they are informed by sophisticated information analysis that may be able to discover relevant patterns. One example would be the conduct of a certain landlord who knowingly attempts to evict tenants for conduct that does not constitute a breach of the lease. Discovery of such a pattern might enable a litigation response not addressed just to saving the tenancies of individual victims but also to punishing and stopping the conduct of the landlord.

Coalitions to Produce the Content. The material to be distributed will have to be produced. The opportunity that "push" presents to reach the client community with relevant information will tend to bring together advocacy groups, tenant rights groups and impact litigation groups. All these groups are dealing with the same set of problems and possibilities, and each has something to add. Tenants groups are in touch with tenants and in touch with the problems that they face; the advocacy and litigation groups have expertise available at their disposal to address the issues identified.

SCENARIO THREE: INTAKE — TECHNOLOGY HELPS ROUTE THE CASE

A year and a half later, Maria receives an eviction notice from the landlord for "repeated late payment of rent." Maria's lease states that her rent is "due and payable on the first day of each month" and that there will be a five-percent penalty for

any rent not paid by the tenth day of the month. The lease also states that "repeated late payment" is grounds for eviction. The state supreme court has ruled that "late payment of rent" means payment after the ten-day period when the penalty applies and not to rent paid within the first ten days of the month. Nonetheless, Maria's landlord customarily pursues eviction actions for tenants who repeatedly pay their rent between the second and tenth days of the month. The landlord does this because he would like to get the rent by the first and because he believes that those who pay on or before the first tend to be better tenants. He sees little downside in pursing this eviction because tenants typically either move out or sign agreements to pay by the first of the month or forfeit their tenancy.

Maria remembers reading something on late payment of rent cases in one of the tenant bulletins that she received. She retrieves the message and follows its advice to contact the regional hotline's intake web page by clicking on the link in the e-mail message.

The region's web page/hotline is designed to give and receive as much information as possible before an intake worker gets involved. In many situations it is possible to have done intake screening, gotten the pertinent information, and given individualized advice and brief service all before an intake worker or case handler gets involved. This is done by ascertaining the facts through a series of questions and determining what issues the caller has through her answers. In such a case an intake worker talks to the person at the end of the process to make sure that the caller understands the advice given and that there are no other facts that would change the advice to be given. The caller can save a recording of what she has received or she can have the information transcribed and printed for later reference. The intake supervisor is able to review the transcripts of advice given to make sure that it is clear, accurate and thorough.

When Maria contacts the centralized intake and delivery system it is clear that she needs more assistance than simply information or advice. She is being sued for eviction and will have to answer the complaint and defend the case. She may be able to take advantage of the pro se protocol designed for these cases or she may need an attorney appointed. The intake unit's housing specialist searches the court data base and determines that: the complaint filed against Maria is based entirely on repeated late payments; the instances cited were all, except for one, paid within ten days of the beginning of the month; there have been no previous filings by the landlord against Maria; and that there is no other relevant information in the data base about either Maria or the landlord. She comes on "live" to begin a video-conferencing interview with Maria. She needs to determine: if there is anything else going on that would affect the case (e.g., an unauthorized tenant) whether Maria has any counterclaims or cross claims (e.g. apartment conditions issues) that she could assert and if Maria appears able to and willing to proceed pro se.

DEPLOYMENT PREREQUISITES FOR SCENARIO THREE

Increased Bandwidth Enabling Centralized Intake and Delivery System to Move to the Web. This scenario envisions an intake system that has been retooled to take advantage of the increased capabilities of the new technologies. Web pages can become an effective intake tool when potential clients have sufficient access to them, when increased bandwidth allows video-conferencing to be added to the process and when the web page has sophisticated scripts that branch according to answers.

Coalitions to Develop Smart Programs. To replace the case handler in the initial fact interview stage the program is going to have to be very sophisticated. It will have to be structured to get all the pertinent facts and to analyze them singly and in combination to draw conclusions. It will have to be based on a thorough and up-to-date understanding of the law. Construction of such a system will require significant resources beyond the capabilities of individual programs. The combined efforts of national organizations such as specialty law units and cyber-law organizations that create templates that can be revised to fit the specifications of state law. Also, state and local legal services organizations can combine to modify the template to the needs of the state. Companies producing programs for the private attorney market might well be useful partners.

Even with all of this in place, some clients will not be able to effectively use semi-automated intake. Some may not be able to understand the questions as they are asked. Others may not feel comfortable using an automated system. Alternative access methods will have to be in place for these clients.

Computerized Accessible Court Data Base. For the intake attorney to have, instantaneously, all the court related information that she needs, the court system needs to receive, store and supply its information electronically. This not only requires that the technological system be in place but requires records to be submitted electronically, and requires previous records to be entered into the system. It also requires the agreement of the populace that court records — already public in that they can be accessed by someone who goes to the court house — be made much more public in that anyone with a computer can have access to them, either individually or in the aggregate.

SCENARIO FOUR: REFERRAL — THE TECHNOLOGY LINKS ORGANIZATIONS

The intake specialist consults the referral extranet. She goes to the index of issue categories, finds Maria's exact issue, and discovers that there is a private attorney who is aware of this issue and is interested in pursuing class action litigation under several tort theories as well as the state's consumer protection statute and is seeking clients. It also appears that the program in the state that does impact litigation is

generally interested in issues of this type. The intake specialist asks Maria if she would like to be referred either to the attorney or to the program. Because she does not want to confront her landlord at the level of a class action case, Maria declines the referral.

DEPLOYMENT PREREQUISITES FOR SCENARIO FOUR

Referral Extranet. The technology for a referral extranet, such as the one described here, exists today. In order for it to be effective, all possible referrals have to be on it, and have to continuously update their interests and availability. In the scenario, the referral extranet is more effective than it would otherwise be because it lists a wide range of resources including attorneys who are looking for cases on other than a pro bono basis. If the client had been interested in a referral to the private attorney, that process could have been speeded along. With Maria's permission, the intake information and even a video of the interview between Maria and the housing specialist, could have been electronically sent to the private attorney.

SCENARIO FIVE: PRO SE — THE COMPUTER HELPS

The housing intake specialist determines that this case can proceed pro se. While it is adversarial and there is a good deal at stake for Maria, it presents only the very narrow legal issue that has already been decided — favorably to Maria — by the state's supreme court. Maria is interested in going pro se and appears to the intake specialist to be capable of doing so. Since the system has the necessary information, the specialist produces the documents. She reviews them with Maria during the teleconference and determines that Maria understands the documents and the proceedings. The documents are downloaded to Maria's telemonitor, complete with instructions on how to electronically file them (including how to "sign" them with her identifier) with the court and send a copy to the adverse party. The specialist advises Maria to contact the legal services program if other issues arise in the case or if she is not certain how to proceed. At Maria's request, the case is put on "active monitoring." The program's computer will automatically search daily for pleadings in the case that have been filed in the court. It will alert Maria if she has not filed her Answer and Motion for Summary Judgment and the deadline is approaching. If the adverse side files other pleadings, the pleading will be brought to the desktop of the housing specialist for her review and possible contact with Maria. If the landlord amends its pleading, pursues discovery, or otherwise acts in a manner not anticipated, the case will be considered for full representation.

DEPLOYMENT PREREQUISITES FOR SCENARIO FIVE

Document Assembly and Information Search and Analysis. The software described in the scenario takes the intake information that is in the intake database

and merges it with the appropriate pleadings. The assertions of law that the pleadings make should be filed in a legal information database search, so that if either case law or statutory law changes, there would be a trigger to indicate that the pleading has to change. For example, in this case, if the decision that Maria is relying on was of an intermediate appellate court rather than of the state's highest court, the search engine would be on the lookout for a case that overturns or modifies the decision being relied upon.

Reliable Identification of the Source of Filed Documents. Automatic court filing is very helpful to pro se procedures because pro se litigants often find the process of actually filing the needed documents complex, intimidating or both. But in order for this to be a practical way for courts to proceed, there has to be a secure and reliable way for the person submitting the document to be identified.

Resolution of Unauthorized Practice of Law Issues and Other Issues Surrounding Pro Se Representation. In this case, there has to be a determination whether such pleadings provided by the computer provision constitutes the unauthorized practice of law. The decision may require the finding that both: there is an attorney (as opposed to a paralegal or a "smart computer program") behind every aspect of the pleading production and that the filing is that of the client pro se, and not of the attorney. There also has to be the finding that the centralized intake and delivery system is within the code of professional responsibility in producing pleadings and continuing to monitor the progress of the case without actually being responsible to the court or to the client as the attorney of record.

DISCUSSION: NEW ROLES FOR LEGAL SERVICES AND THE IMPORTANCE OLD ROLES

These scenarios suggest ways that technology can expand and redefine the way clients interact with legal services providers and with the legal system itself. Undoubtedly there are other technologies and other applications that can affect access in helpful ways. There are also concerns about institutional barriers and about unintended ill effects that need to be examined. The challenge we face is to examine the options and to build the structures and institutions that will accomplish the most good.

The potential of community legal education is not just that the individual can get access to information and further assistance that helps her avoid a particular problem or get legal help. An even greater potential is that available, relevant communication about legal rights could result in fewer potential problems to begin with. For example, today it is a reality that a small percentage of landlords routinely violate landlord tenant law. These landlords regularly engage in self-help eviction, draft and enforce illegal lease provisions, keep security deposits that they have no right to and successfully evict tenants that have not violated

valid lease provisions. Where the low-income client knows to get help and does so, he gets relief, but the landlord is seldom deterred from continuing these practices. When almost everybody knows their rights, these practices will not only be thwarted, but will cease to exist. It will not be tenable for a landlord to have a blatantly illegal lease on display for the world to see. Nor will it gain him anything to attempt a self-help eviction when a couple of touches to the tenant's screen will bring a sheriff to the landlord's door. Furthermore, the Maria who knows how to access this help, will be able to use these skills to access information that can be useful to her in many other aspects of her life such as health, child rearing and education.

These scenarios posit a world where access to information is significantly different from the world in which we live. The culture in that society will be such that everyone understands that they can get the information that they want and need. Rather than Maria just signing the lease that she is handed, she knows that she can and should get information about this transaction before she enters into it. But even assuming that the information revolution proceeds apace to the world of wide bandwidth and regular access to information of all sorts, it is not a certainty that it will be there for Maria. The diligence of the low-income community and its advocates is necessary to make sure that Maria — not just those who can pay more or who live in neighborhoods that are more desirable to the telecommunications industry — has access to the information superhighway.

Even assuming that Maria has access to the genie described in the first scenario, it will be of limited good to her if the information that she wants and needs is not there. It is up to the legal services community to make sure that relevant and accessible information is available to our clients. If the only information available comes from landlord groups she is not likely to learn everything that she needs to know and will not be attached to sources of further help and information. Legal services programs and others have to work together to produce the information that can be useful to Maria and the rest of our clients.

One way for the community to be prepared for the world of wide bandwidth communication is to fully explore the technological potential that is available today. If we are using the technological potential we have today; we will be gaining many of the skills and expertise that will be necessary for the future. If we are working on community legal education and pro se web pages we will have much of the material we will need to build the wide bandwidth information sources. If we are building partnerships to produce, share and disseminate information, we will be able to turn to them to assist in constructing the more complex edifices of video, intranets and teleconferencing.

It is not the intention of the author that the model suggested here replaces the model of one to one representations where it is needed. The role of individual representation will be as vital as it is now. The statutory and constitutional rights that drafters intended will tend to atrophy if they are not defended in courts. If

decisions that recognize the fullness of our clients' constitutional and statutory rights are not handed down, all the information in the world about limiting decisions will have little benefit. The suggestion is simply that when we build the information structure for our clients we will be able to help them avoid problems and to quickly and easily find the level of help they need when the problems are upon them. Not only will we be able to address issues before they become problems, but we will be able to reach clients who did not know that they have judiciable legal issues and/or that there is help available.