

Chicago-Kent College of Law

From the Selected Works of Ronald W Staudt

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Access to Justice for the Self-Represented Litigant: An Interdisciplinary Investigation by Designers and Lawyers (with P. Hannaford)

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ACCESS TO JUSTICE FOR THE SELF-REPRESENTED LITIGANT: AN INTERDISCIPLINARY INVESTIGATION BY DESIGNERS AND LAWYERS[‡]

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INTRODUCTION

Courts in the past decade have experienced a dramatic increase in the number of filings by self-represented litigants. While the proportion of self-represented litigants remains relatively modest in general jurisdiction courts,¹ filings by self-represented litigants often constitute the majority in limited jurisdiction courts, especially in domestic relations cases. In the mid-1990s, at least one party was self-represented in more than two-thirds of domestic relations cases in Phoenix, Arizona and Washington, DC.² Half of the cases filed in the Florida family courts are entirely pro se, and over 80% have at least one pro se litigant.³ Recent reports by various state and local court task forces document similar trends in courts across the country.⁴

For many courts, this trend was alarming. Self-represented litigants tend to place heavier demands on court resources, especially staff time, compared to litigants represented by counsel. Judges and court staff also perceive that litigants' requests for personalized assistance jeopardize their ability to adhere to ethical requirements of neutrality and objectivity. For a

1. See BRIAN J. OSTROM ET AL. (eds.), EXAMINING THE WORK OF STATE COURTS, 1999-2000: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT 32 (2001) (In a 1996 study of civil trials in general jurisdiction courts, only 4% of defendants and 2% of plaintiffs appeared pro se.).

2. See JONA GOLDSCHMIDT ET AL., MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS (1998).

3. Remarks of Justice Barbara Pariente, Florida Supreme Court, at the National Conference on Pro Se Litigation, Nov. 18, 1999, Scottsdale, AZ.

4. See, e.g., *Meeting the Challenge of Self-Represented Litigants in Wisconsin* (Dec. 2000), available at <http://www.courts.state.wi.us/media/reports/pro%5Fse%5Freport%5F12%2D00.htm> (documenting an increase in cases with at least one self-represented litigant from 43% to 53% from 1996 through 1999 in the 10th Judicial Administration District, and from 69% to 72% during the same period in the 1st Judicial Administration District); Judicial Services Division, Administrative Office of the [Washington] Courts, *An Analysis of Pro Se Litigants in Washington State, 1995-2000*.

long time, most courts simply took the position that individuals could represent themselves in court if they (foolishly) chose to do so, but courts had no obligation to provide assistance or to modify their policies and procedures to accommodate the needs of these litigants. For a variety of reasons, a number of courts in the 1990s began to reconsider their attitudes toward self-represented litigants. First, the sheer volume of self-represented litigants made it impossible for courts to continue ignoring the needs of these litigants. Even minimal assistance by court staff demanded tremendous amounts of staff time and court resources. A change in the way courts responded to self-represented litigants was needed, if only to avoid drowning in the sea of litigants that threatened to overwhelm them.

Second, judges and court staff began to face a reality that had been well documented by research studies on the legal needs of American citizens⁵—namely, that the demand for legal services far outstrips the ability of local pro bono and Legal Services/Legal Aid programs to meet those needs.⁶ The fact that most of the self-represented litigants appearing in court could not afford lawyers and did not qualify for Legal Services/Legal Aid assistance did not alter the legitimacy of the legal issues or disputes that they faced, nor the fact that the courts were often the only institution that could provide a resolution.

Finally, many courts began to appreciate the relationship between the treatment of self-represented litigants and public trust and confidence in the justice system. A public opinion survey conducted for the National Center for State Courts (NCSC) with funding by the Hearst Corporation documented that a sizeable majority (68%) of Americans believe that it is not affordable to bring a case to court and most (87%) attribute the high cost of litigation to lawyers.⁷ The NCSC survey found that the manner in

5. *See generally* REPORT ON THE LEGAL NEEDS OF THE LOW-INCOME PUBLIC: FINDINGS OF THE COMPREHENSIVE LEGAL NEEDS STUDY (1994) (estimating that 47% of low-income households experienced a new or existing legal need, but only 29% of those needs were addressed through the legal/judicial system and 38% went unaddressed altogether); REPORT ON THE LEGAL NEEDS OF THE MODERATE-INCOME PUBLIC: FINDINGS OF THE COMPREHENSIVE LEGAL NEEDS STUDY (1994) (estimating that 52% of moderate-income households experienced a new or existing legal need, but only 39% of those needs were addressed through the legal/judicial system and 26% went unaddressed altogether); BARBARA A. CURRAN, THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY (1977).

6. Cuts in funding for Legal Services/Legal Aid programs and restrictions on the scope of legal services they can provide only exacerbated the situation. Annual Appropriations for the Legal Services Corporation from 1980-2001, *at* http://www.lsc.gov/press/pr_prov.htm. (last visited Aug. 9, 2002).

7. HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY, 22-23. Other significant factors included the slow pace of litigation (57%), the amount of personal

which courts handle cases overall is rated only mediocre,⁸ a finding that was consistent with several other national and state public opinion surveys about the courts. At the National Conference on Public Trust and Confidence in the Justice System,⁹ attendees identified the high cost of access to the justice system as the third most important factor (of 15 total factors identified) affecting public trust and confidence in the justice system. The various survey findings served as a wake-up call to courts that if they wanted to regain their status as trusted public institutions they would have to do a better job of serving the needs of their primary constituents, including self-represented litigants.

The question then becomes, "What could courts do to improve access to justice for self-represented litigants?" The most popular model of pro se assistance is the Self-Help Center, which consists of making model court forms and educational materials about routine court procedures available to self-represented litigants upon request.¹⁰ Another common component is referrals to local attorneys that provide legal advice or representation on a pro bono or reduced fee basis. These two basic forms of assistance seem, at first blush, well suited for meeting the needs of self-represented litigants. They provide a direct response for the most frequent question posed to court staff—namely, "How do I (file for divorce, modify a child support order, collect on an unpaid debt, etc.)?"—without violating ethical requirements of neutrality or engaging in the unauthorized practice of law.¹¹ For very inquisitive litigants or those whose issues require more comprehensive legal assistance, court staff can politely decline further assistance and point them in the direction of a lawyer.

These models of pro se assistance programs are well intentioned and

time involved in litigation (56%), and the complexity of the legal system (51%). *Id.*

8. In all case types (civil, criminal, small claims, family relations, and juvenile delinquency), more survey respondents rated court management of litigation as "poor," than respondents who rated it as "excellent." *Id.* at 14.

9. Washington, DC, May 14-15, 1999.

10. The Maricopa County (Phoenix, Arizona) Superior Court was one of the first courts to adopt this model on a large-scale basis. Other courts expanded on this idea by posting materials on the Internet, bringing these materials to places where low-income people often congregate, developing educational materials in formats other than written materials and translating those materials to other languages.

11. The ethical issues faced by clerks, judges and the unauthorized practice of law issues faced by non-lawyers who would help self-represented litigants are deeply controversial. See, e.g., Deborah Rhode, *Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice*, 22 N.Y.U. REV. L. & SOC. CHANGE 701 (1996), and her prior work collected there at 702 n.3; see also *Conference on the Delivery of Legal Services to Low-Income Persons: Professional and Ethical Issues*, 67 FORDHAM L. REV. 1713-2791 (1999) and its detailed bibliography at 2731.

help many self-represented litigants get started on the right track. But self-represented litigants face a variety of obstacles in their attempts to resolve disputes and problems through the courts, only some of which are helped by the availability of model forms and instructions. They may have trouble framing their problem in a legal context or, if they have more than one avenue for pursuing their case, evaluating the advantages and disadvantages of those options. They are generally unfamiliar with the formal requirements for conducting court proceedings (e.g., subpoenaing witnesses) and often have difficulty evaluating the relevance and reliability of evidence. Courts continue to struggle to identify appropriate methods of assistance to address these obstacles.

To assist courts with these efforts, the National Center for State Courts in partnership with the Illinois Institute of Technology's Institute of Design and the Chicago-Kent College of Law launched a research project to examine court processes and recommend modifications to eliminate or reduce procedural barriers to access for self-represented litigants.¹² The project had three major tasks: (1) to identify major barriers to access to justice that self-represented litigants encounter due to court procedures and administrative requirements; (2) to employ system design methodology to redesign court processes to remove those barriers; and (3) to translate the conceptual model for the redesigned court system into an Internet-based prototype for implementation in the courts.

This article first briefly describes the project methodology and characteristics of the observation sites, and then summarizes the conclusions and several of the recommendations from the first two tasks, which were completed in December 2000 and May 2001, respectively. Next, we provide a rather detailed explanation of the information gathering and system design work of the various student/faculty teams. In the system design discussion that follows, we will focus most of our attention on the development and refinement of new ideas. A book length presentation of the design process, including more detail about Steps 3, 4 and 5 in the process, is set out in the Access to Justice report available both in print and on the web.¹³ Task 3, the creation of an Internet-based prototype, was still in progress in May 2002 as the final editing of this article was completed. In a later article the prototype that was constructed in the third task will be presented and discussed.

12. CHARLES L. OWEN, RONALD W. STAUDT & EDWARD B. PEDWELL, ACCESS TO JUSTICE: MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS, (2002) [hereafter ACCESS TO JUSTICE]; see also materials collected at the Access to Justice website, at <http://www.judgeline.org/a2j/> (last visited Aug. 8, 2002).

13. *Id.*

I. PROJECT METHODOLOGY

This project was structured, from its inception, to be interdisciplinary.¹⁴ The ethnographic research¹⁵ undertaken to complete Task 1 and the design process for Task 2 were driven by the requirements and methodology developed by the Institute of Design. Design Professor Charles Owen, the expert who conceived of the structured planning process that we employed, mapped the agenda and drove the activities.¹⁶ The law trained team members, law students, law professors and researchers from the National Center for State Courts, were cast in the role of "domain experts" who could provide detailed information about the law and its application throughout the design process. The techniques used to gather information about self-represented litigants and the techniques used to synthesize new solutions and systems to address their problems were drawn from the design profession, not from law. This fresh perspective made all of us see the issues in a new way. The law trained team members repeatedly were called on to justify or explain the law, procedures, physical spaces, paper tools, professional roles, and process relationships of every aspect of the civil dispute resolution process that we call the state court system. The rigor of these required explanations was driven by two characteristics of the project: the Design professors and graduate students were not law trained and demanded sophisticated justifications and explanations of our legal practices and rules. Second, the project methodology forced both design and law trained investigators to see these rules and procedures through the eyes of the customers, the self-represented litigants.

A. Task 1: Understanding the Experience of Going to Court from the Perspective of the Self-Represented Litigant.

The first project task involved direct observation of self-represented litigants as they undertook various stages of litigation (initial research, filing pleadings, conducting hearings). Observation teams, consisting of

14. The Illinois Institute of Technology has focused on interdisciplinary research and education. This university focus as implemented in the IPRO Program was valuable as a curricular structure within which to build teams of design graduate students and law students. See IPRO Home Page, at <http://ipro.iit.edu/new/>; About IPRO, at <http://ipro.iit.edu/new/aboutipro.shtml>.

15. The IIT design process applies methodologies that understand users' needs from multiple perspectives, including not only the users' physical and cognitive capabilities but their cultural backgrounds and the social situations in which they use a product or service.

16. CHARLES OWEN, STRUCTURED PLANNING: A PROCESS FOR FINDING, STRUCTURING, USING AND COMMUNICATING THE INFORMATION NECESSARY FOR PLANNING AND DESIGN (1999).

law students from the Chicago-Kent College of Law and graduate design students from the Institute of Design under the supervision of Chicago-Kent faculty and National Center for State Courts researchers, conducted two 3-day site visits at five courts across the country. The teams interviewed litigants and those judges and court staff who regularly interact with self-represented litigants. Students also collected and reviewed court forms, instructions, and educational materials available to self-represented litigants as well as details about formal and informal court policies and procedures. All of the observations, interviews and materials focused on understanding the experience of going to court from the perspective of the self-represented litigant.

The five courts that participated as project sites were selected to provide opportunities to observe self-represented litigants in communities with a variety of geographic, demographic, jurisdictional and procedural characteristics. See Table 1. At Site 1 students focused on domestic relations (divorce, custody and visitation, child and spousal support), small claims (amount in dispute less than \$3,000) and landlord/tenant cases.

TABLE 1

Census Data¹	Site 1	Site 2	Site 3	Site 4	Site 5
Total Population	225,339	666,168	516,418	669,016	5,105,067
Education²:					
% HS Diploma	91.3	77.5	84.7	79.4	73.4
% Bachelor's Degree	42.1	21.4	32.0	23.0	22.8
% Spanish Speaking³					
	4.0	2.5	6.5	20.1	11.9
Income:					
% Poverty Status ⁴	11.0	8.7	5.2	7.3	14.2
Median Household Income (Dollars) ⁵	35,322	34,875	46,047	45,612	32,673
% \$100,000 or more ⁵	5.5	4.5	13.7	9.3	5.5

1 Data compiled from 1990 census information provided at <http://factfinder.census.gov/servlet/BasicFactsServlet>

2 Percentages are based on persons age 25 years and over

3 Percentages are based on persons age 5 years and over

4 Percentages are based on persons for whom poverty status was determined

5 Median income and percentages are based on total number of households

At Site 2 students observed litigants at a court that has jurisdiction over all domestic relations cases (divorce/separation, visitation and custody, child and spousal support, orders of protection, dependency and neglect) for one entire state that encompasses urban, suburban and rural counties. The focus of observations for this site was divorce, custody and visitation, property distribution, and orders of protection. The third project site was in a county that contains several very affluent communities. The county has a predominantly white population with a significant African-American population and growing Hispanic and Asian communities. At this site, students focused on domestic relations, small claims and landlord/tenant cases.

Site 4 was a county court that has developed several innovative pro se assistance programs. The County encompasses a mixture of urban and rural areas, with a large Hispanic community. In this court, students focused on family law, small claims, and landlord/tenant cases. The fifth project site was a large urban county court. The observations focused on landlord/tenant and small claims (up to \$30,000) cases. The court features a pro se assistance program with one-on-one assistance for landlord/tenant cases and small claims delivered at an Advice Desk in the court building staffed by a clinical law professor and law students.

Five teams of students observed hundreds of self-represented litigants at the five court locations. Students in pairs, a design and law student, observed the security process at the entrance to Court buildings and the full day ebb and flow of customers at the filing and payment windows of each Clerk's office. As self-represented litigants gathered early in the day outside of the small claims courtroom, or the child support enforcement courtroom, or the eviction courtroom, students introduced themselves, interviewed the litigants, watched the court event and, as often as possible, debriefed the litigants after court. These discussions were audio taped and sometimes photographed.¹⁷

This first set of court visits gathered an experiential base for the work of finding information, identifying barriers, synthesis and design that would follow in Task 2.¹⁸ Different professional training drove different

17. See ACCESS TO JUSTICE, *supra* note 12; see also materials collected at the Access to Justice website, at <http://www.judgelink.org/a2j/>. The IPRO Course entitled, Justice Web Collaboratory, that Professor Staudt taught to structure the research in the Fall, 2000, built a web site to display and share insights about Task 1. See Fall 2000 Justice Web Collaboratory IPRO 380, at <http://www.judgelink.org/a2j/planning/ipro/>. The web site contains the team assignments and project description documents, a modest bibliography, some full text references on pro se litigation and the slides for the final student team presentation.

18. Student teams visited each of these sites again during Task 2 as a means of

observations. The students who were architects/designers observed and photographed lighting, workspaces, traffic flow and signage. Those with other skills focused on the human reactions to confusing forms, waiting in line, huge complex court buildings and busy clerks. Each team gathered as much information as it could about the innovations and tools used by each court and clerk's office to help self-represented litigants navigate the system.

Even at this preliminary stage (well before the formal system design was scheduled to begin), design students began to synthesize some key problems and to brainstorm early solution proposals. For example, one design student focused on the vast improvement in ability when self-represented litigants returned to court for a second time in the same matter. He saw the first experience as a powerful learning process that might be simulated by requiring self-represented litigants to do dry runs or by forcing them to observe several cases, like their own, several days in advance of their first court appearance.¹⁹ Hundreds of these ideas would be developed, analyzed and refined as Task 2 unfolded.

*B. Task 2: Designing a System to Improve Access to Justice for Self-represented Litigants*²⁰

In the second project task, graduate students from the Institute of Design and the Chicago-Kent College of Law incorporated their observations from the first task into a process called "Structured Planning" to aid in the synthesis of new, modified court systems that are more accessible to pro se litigants. The structured planning process involves five steps: Project Definition, Action Analysis, Information Structuring, Synthesis and Communication.²¹

1. Step 1: Project Definition

The first step in the Structured Planning process is to define the

confirming and expanding the ethnographic foundations of the project.

19. See, Indu Varma & Divya Singhal, Meeting the Needs of Self-Represented Litigants: A Consumer Based Approach 23-25 (Dec. 8, 2000), at <http://www.judgeline.org/A2J/planning/ipro/final08-12.ppt> (Student IPRO Day Presentation).

20. An elaborate web site gathers the work product of Task 2, presents teaching component of the student teams' projects at each phase of the design process, explains the design tools and techniques developed by Professor Owen and used by the students and describes each of the system elements selected by the team for inclusion in the final report. See Meeting the Needs of Self-Represented Litigants, at <http://www.judgeline.org/a2j> (last visited Aug. 8 2002).

21. OWEN, *supra* note 16.

project. For this project, the students developed a general Charter²² outlining broad goals and intentions. Because of the very nature of the problem posed by self-represented litigants, it was immediately apparent that a large number of the barriers and solutions would be centered on the information needs of the “customer.” Self-represented litigants have no current access to the guidance, training, knowledge or experience of their own lawyer—the professional guide that the legal system has been designed to expect. The design experts on the team began to struggle with the deeper issue that an “outside the box” solution might raise: Was it feasible to design a new system that made wholesale and deep changes in the current court process? Challenged by the leadership of the National Center for State Courts and the expert advisors who met with the design team regularly through the redesign process, the group wrote a Charter that stated an aspiration to solve the problems that “customers” look to the courts to solve, rather than develop band-aid incremental improvements in the information available to self-represented litigants.²³

2. *Step 2: Action Analysis*

Once the Charter had been refined and edited by Professor Owen, the team of students wrote a more specific series of documents (called Defining Statements) describing in greater detail issues that the project would face as the system design emerged.²⁴ The documents included background information and arguments specific to each issue. The team wrote a series of 35 Defining Statements to explore a wide range of issues that affected the satisfaction and success of self-represented litigants in using courts to solve their disputes. Some of the topics include:

- Role of technology;
- Place of alternate dispute resolution;
- Balance of efficiency and fairness;
- Source of funds to implement a new system;

22. See ACCESS TO JUSTICE, *supra* note 12.

23. The concluding language from the Charter sets out this aspiration and its context of attainability:

Overall, the solution should:

Assume that the proposal can be acted upon as it is conceived. Do not underpropose on the assumption that a concept might be politically opposed.

Demonstrate what might be achieved. The value of the proposal is in its ideas, not its direct attainability. Ideas that might not be attainable under today's conditions may be highly successful tomorrow – if they are known.

ACCESS TO JUSTICE, *supra* note 12, at 19.

24. Professor Owen spent hundreds of hours refining and rewriting the Defining Statements initially drafted by the students.

- Differences in the knowledge and education of the customers;
- Position of judges and clerks as “customers” of the system;
- Political balance of power between the typical self-represented defendant and the typical institutional plaintiff;
- Unbundling legal services;
- Viability of paperless alternatives to current court processes;
- Balance between respect and intimidation; and
- Role of community organizations in supporting self-represented litigants.

The Defining Statements are powerful guides in the design process. They underscore the need to have an integrated system when the process is concluded, not just a patchwork of bandages. For example, one of the Defining Statements was, “How should the system address the financial costs to the courts of implementing a new system?” The team noted as a constraint that the available funds of each court vary. Thus, the designed system must encompass core parts that can be expanded as more funding becomes available. The teams also made arguments that the costs might change due to system improvements. For instance, the cost saved by not printing paper forms, if the courts were to use on-line forms, could be funneled into other expenses in the budget.

Next, in the action analysis step, the issues identified in the Defining Statements were organized into a hierarchical system from the top (major operations like “hearing” or “diagnosis”—“modes”) down to specific activities and the functions that compose them. A “function” is the smallest unit of analysis—that is, what the system or user must do to make the system work. The teams identified and described 193 discreet functions. The functions were quite detailed and ranged from very simple tasks like, “wait in line,” “take notes” and “find appropriate court” to more sophisticated tasks like, “develop strategy and position,” “interpret and apply law,” and “negotiate settlement.”

From the hierarchical system, the teams studied each activity or issue looking for insights about what goes right or wrong in fulfilling each function. Insights of this kind, along with proposed solutions, were distilled into documents called “Design Factors.” Ultimately, the Design Factors specify why things will be designed in the suggested way. Encompassed in each Design Factor document were specific ideas, some of which exist, some of which could be modified from existing solutions, and some of which are novel ideas for redesigning the courts to accommodate the needs of pro se litigants. The team wrote 140 Design Factors, each grounded in observations of customers seeking resolution of a dispute

without a lawyer.

The students organized the Design Factors into clusters beginning with the first interaction the self-represented litigants had with the court system and ending after the cases were concluded. For this structuring they divided the process into 5 "modes:"

1. diagnosis,
2. preparation to initiate proceedings,
3. alternate dispute resolution,
4. hearing, and
5. enforcement.

Each Design Factor described a relevant observation, identified associated functions, and served as a platform to link to design strategies and solution elements that were developed next. A full list of the Design Factors is reproduced in the Appendix. The titles are suggestive of the centrality of the customer perspective to the design team's analysis:

- Information Overload,
- Misestimation of Own Competence,
- Mental Model for Processes Not Available,
- No Privacy,
- Emotion Hinders Performance,
- Unexpected Incarceration, and
- Suddenly Homeless.

These 140 observations are a litany of the barriers and frustrations that the team observed when self-represented litigants tried to handle cases on their own. These barriers, problems and issues that were identified and described in the first part of the structured design process, stimulated the teams to describe 299 proposed solution ideas. This huge brainstorm of "Solution Elements" was the culmination of significant grounding in the experiences of the customers, visits to the court sites, research on existing solutions and hundreds of hours of discussion and debate on the possibilities for change and improvement. Each of the Solution Elements was named in much the same way a manufacturing company would name new product ideas. Some of the names were fanciful like: "Spoon Feeder," "Ruling Schooling," and "Motion Notion," while others were more prosaic suggestions like, "Return Date Calculator," "Payment Record Card," and "Speak My Language."

3. *Step 3: Information Structuring*

The third phase of the Structured Design Process is Information Structuring. In this phase, computer programs analyzed all the data

(evaluations of solution elements and functions) to produce an interconnected Information Structure of functions organized by the potential commonality of their solution. The computer program generates its preliminary Information Structure by uncovering relationships between the 193 functions and the 299 solutions. The student teams prepare for this synthesis process by separately evaluating every solution as a positive or negative influence on every function, producing thousands of data points for the computer analysis.

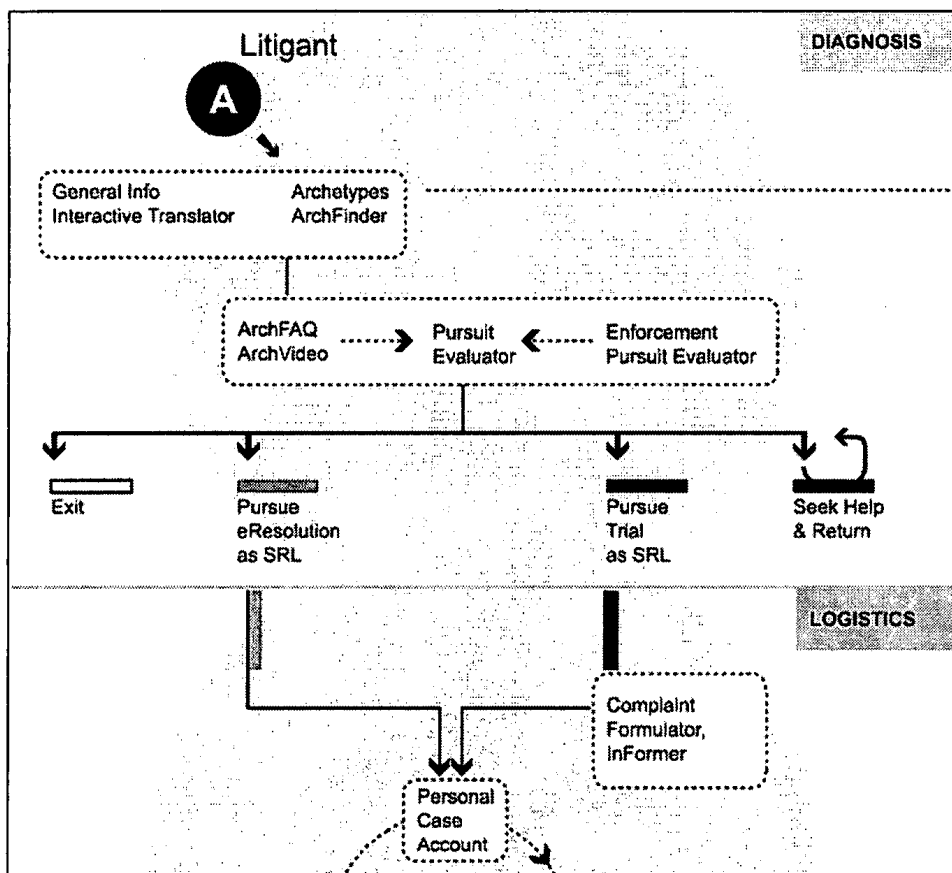
4. *Steps 4 & 5: Synthesis and Communication*

The design students and law student teams verified and evaluated the hierarchical computer output, refining the Information Structure and naming the various branches to bring new insight to the next step—synthesizing the data into an integrated set of system elements. In this phase, the teams selected 53 final system elements to be incorporated into the proposed Access to Justice System. Obviously, hundreds of ideas were left on the cutting room floor. Dozens of ideas were combined and refined and coordinated to put together a coordinated system to address the problems of self-represented litigants. Finally, in the last “communication” phase, all the ideas and supporting analytical materials were written up and illustrated in a final report.²⁵

II. SELECTED SYSTEM ELEMENTS

The Access to Justice System described in the Final Report offers 53 inter-related tools in five clusters: Diagnosis, Logistics, Strategy, Resolution and Collaboration. A flow chart of the System shows how a customer might move between groups of system elements and illustrates some high level relationships across the groups. Consistently represented in every area is the strong value that self-represented litigants should not be compelled to use any of the recommendations and should have access to current means of meeting their objectives within the judicial system. The System diagram presented here as Illustration 1 graphically suggest this value by indicating in every cluster that customers should be able to seek a lawyer or other types of assistance at any point in the system.

25. See ACCESS TO JUSTICE, *supra* note 12.

ILLUSTRATION 1*A. Customer Service*

Student observers consistently discovered that courts are not user friendly, especially if the user is not a lawyer. Design students found that court buildings had poor lighting, inadequate signage, confusing building layouts, and inefficient, repetitive administrative processes and traffic patterns. Simply put, courts are not very convenient. Of the 299 Solution Elements, dozens of the suggestions were common sense ideas to make it easier for customers to do what is needed to get through the court system, like: color coordinated banner signs, well designed form packets with clear explanations, courteous personnel to offer directions, customer sensitive scheduling, cueing information and transparent information on what is happening in the courtroom.²⁶

26. During Phase 1 of this project, in a separate effort also funded by SJI, Richard

Some of these “obvious” solutions were incorporated as final system elements, like “Physical File Management,” “Legal Lounge” and “Just in Time.” “Physical File Management” is a tool that uses low technology to reduce confusion and guide self-represented litigants in the management of the paperwork needed to prosecute their own cases. When a self-represented litigant files an action, she would receive a notebook with the blank forms needed in subsequent phases of the matter, color coded tabs, clear plastic sleeves with labels for retaining receipts, notices of service, copies of pleadings and documents needed for the hearing. The team suggested that this system element would cue appropriate actions with visual reminders, make the structure of the process explicit, eliminate redundancy and reduce the workload of court clerks. “Legal Lounge” is a private area for customers to fill out forms and organize their documents and meet with witnesses for hearings. “Just in Time” is a web-based assistance tool that is keyed to the status of the matter at hand and provides instruction and information about the legal system when that information is most useful and when the customer is most interested.

B. Information Systems

Modern technology sits in the center of the innovations proposed by the Access to Justice system. Students were encouraged by the Advisory Board and the faculty to consider courts in the same way that Amazon.com evaluated the book selling business or eTrade viewed the stockbroker process in 1997.²⁷ The third phase of the project, now underway, requires the construction of an Internet based prototype to test the new ideas that the system proposes. Students repeatedly voiced the view that the system should not “over rely” on web-based tools and technology. They included a value statement in the final presentation that “implementation of technological infrastructure . . . should not impede or create barriers to access. Rather they should remain transparent, creating an invisible safety net for self-represented litigants.”²⁸ While we were mindful of these

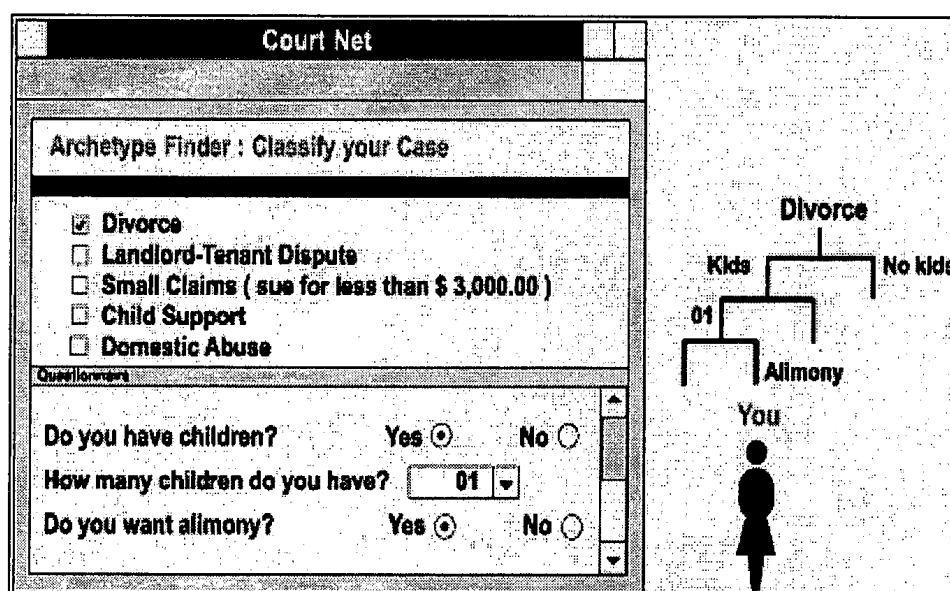
Zorza prepared a deep and challenging description of a hypothetical court built “from the ground up” for self-represented litigants. Zorza’s paper provided important insights and a rich array of new ideas that help liberate and energize students in their search for solutions. See Zorza Associates, *Designing, from the Ground Up, a Self-Help Centered Court, One in Which the Litigant Without a Lawyer Is the Norm* (2001), at <http://www.ncsc.dni.us/kmo/Topics/prose/Resources/Psonline.html> (a preliminary draft of an SJI report).

27. See, e.g., LARRY DOWNES & CHUNKA MUI, UNLEASHING THE KILLER APP: DIGITAL STRATEGIES FOR MARKET DOMINANCE, 149-51 (1998).

28. For the full list of values stated on May 4, 2001 in the students’ final presentation, see the Justice Web Collaboratory Access to Justice web site, at http://www.judgeline.org/a2j/planning/systems01/5_4_01_Present.pdf. For a similar

reservations, the core of the system innovations contains a heavy reliance on the assumption that courts in the near future will have installed a ubiquitous digital infrastructure. In effect, a full implementation of this system requires a foundation of electronic filing and electronic case management. The system describes this assumed infrastructure in a system element called CourtNet. On top of this infrastructure, the system recommends a series of new tools for customers, clerks and judges. The remainder of this article will describe six of these tools as illustrations of the proposed system.

ILLUSTRATION 2



C. Archetype Finder

Perhaps the most important task that lawyers perform for clients is diagnosis and evaluation of problems to determine whether the justice system can provide a legal remedy and, if so, whether that remedy would adequately resolve the problem given the time and resources necessary to pursue it. Most people can explain that they have been injured in some way, or articulate that they believe that they have been wrongly accused of

expression of the importance of insuring that technological advances in the tools used by the justice system do not harm access to justice by low income or other disadvantaged customers, see the Access to Justice Technology Bill of Rights (TBoR), the Washington State Bar Association, at <http://www.wsba.org/tbor/index.html>.

something, but few self-represented litigants know how to express their problem in a legally cognizable framework, a task that requires at least a working knowledge of the justice system's intricate classification system. For example, was the injury caused by a breach of a contractual obligation or of a common law duty of care (contract or tort action)? Did the person who caused the injury intend to harm another person (intentional tort)? Or were they merely careless (negligence)? Did the person who caused the accident have a justifiable reason for what they did (affirmative defenses)? For self-represented litigants, this process is made more difficult by unfamiliarity with legal terminology.²⁹

For many of the types of cases in which self-represented litigants most often appear, the classification range is actually quite limited. In a divorce action, for example, some of the classifying questions might be, "Have you lived in this state for longer than x months (statutory residency requirement)?" "Have you and your spouse been living separate and apart for more than x months (statutory separation period)?" "Do you and your spouse have children under the age of 18 years (need for child support order)?"³⁰ By working through a series of classification questions, a self-represented litigant can determine fairly quickly whether he or she meets the statutory requirements for obtaining a divorce decree in that jurisdiction, as well as estimate child or spousal support payments based on state guidelines, and identify marital versus non-marital property for distribution purposes.

One of the proposed solutions (system elements) from the Access to Justice Project, called "Archetype Finder," is designed to help self-represented litigants identify the legal choices and options available to them for selected types of cases.³¹ Archetype Finder is a computer-based program that poses a series of interactive questions to help self-represented litigants define their issue or problem and identify the range of legal remedies that may be available to them. The program also features a glossary of legal concepts to provide objective information about unfamiliar legal concepts (e.g., legal versus physical custody). The litigant's answers to the classification questions can also be used to generate the legal documents to be filed with the court.³²

29. See generally PETER TIERSMA, *LEGAL LANGUAGE* (1999).

30. For landlord-tenant problems, another common pro se category, the questions might include: "Are you the landlord or the tenant?" "Have you paid the rent?" "Did you receive any notices from your landlord?"

31. ACCESS TO JUSTICE, *supra* note 12, at 20.

32. See *id.* at 35-37.

D. Pursuit Evaluator

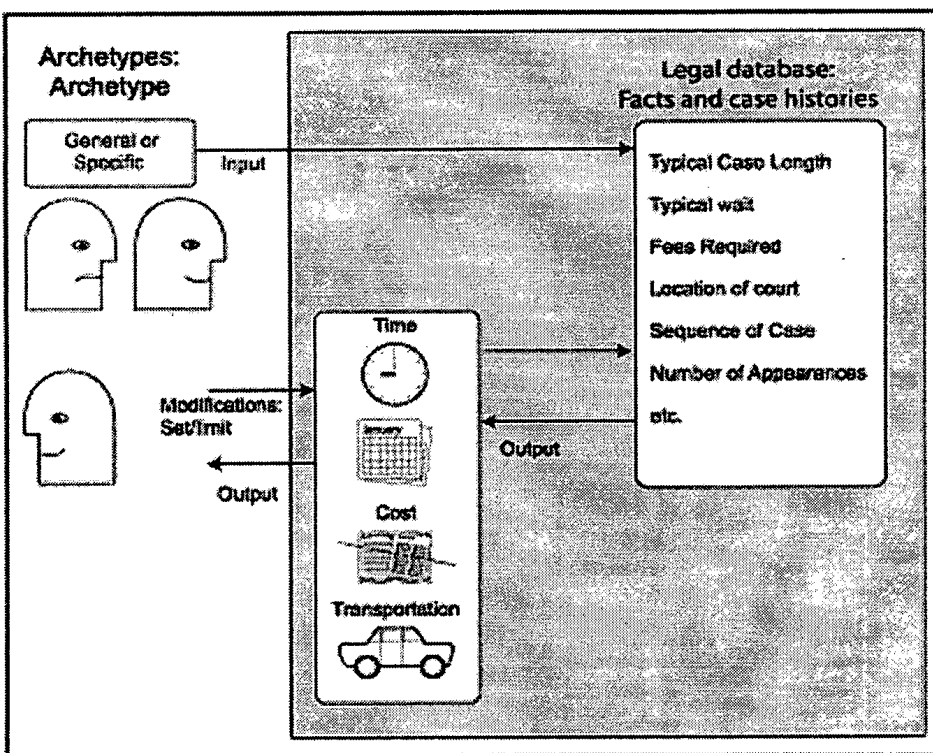
Another difficulty that self-represented litigants face is lack of access to a source of accurate information with which to formulate expectations about the amount of time, money, and resources that would be necessary to pursue a case through the courts. Although lawyers are prohibited from promising results from their representation,³³ those who regularly practice in a community for any length of time know the probable outcomes for a given case, as well as how long it will take to resolve, how much the court fees and related expenses will be, and how many court appearances will ordinarily be necessary to conclude the case. They are able to explain these factors to help their clients make informed decisions about how to proceed.

Many courts are reluctant to share this type of information with self-represented litigants for fear that it will create false expectations for litigants, even though much of it is routinely reported in annual reports (e.g., filings, dispositions, clearance rates). If appropriately explained, however, this type of information could provide self-represented litigants with a more realistic outlook of how their cases are likely to proceed through the court system, both in terms of time and expense. This approach is proposed by the "Pursuit Evaluator" element of the Access to Justice Project.³⁴

Pursuit Evaluator is a computer-based reporting function that is integrated with the Archetype Finder. After using Archetype Finder to identify and narrow the type of case that a self-represented litigant wants to file, this program calculates statistical information based on similar cases filed in the past. A small claims court, for example, could provide objective information about the percentage of cases that are dismissed, settled, won by default judgment, and won on the merits by plaintiffs and defendants. It could also report time to disposition rates for each type of outcome (minimum, median, and maximum) and the number of in-court appearances for each.

33. MODEL RULES OF PROF'L CONDUCT, R. 7.1(b) (2000).

34. See, Pursuit Evaluator, at http://www.judgeline.org/A2J/system_design/Diagnosis/pursuit_eval.htm.

ILLUSTRATION 3*E. Complaint Formulator*

In our ethnographic observations we found that self-represented litigants were often overwhelmed by the difficulty of drafting and filing the right legal documents to launch a case or to respond to a lawsuit filed against them. SRLs underestimated the importance correct language and accurate details served in filling out simple form complaints. In filling out the complaint form, litigants were often formally stating the basis of their argument for the first time. Although the court system expressly encourages litigants to settle or go to mediation, the design teams thought that the complaint form is one factor that actually sets up the opposite, more adversarial expectation.

The Complaint Formulator helps litigants to frame their problems in legally cognizable categories to create a sustainable foundation for the subsequent proceedings in resolving the dispute at hand. This solution element interacts with the diagnostic process embodied in the Archetype

element. To the extent that the Archetype element has gathered demographic data or other details of the customer's situation, that information is available to the Complaint Formulator.

Filing a complaint is one of the first opportunities the court system has to support litigants in their effort to change the way they see their problem to come to a resolution that they were previously unable to achieve on their own. This opportunity to discover and explore alternate solution paths, including mediation, is almost always squandered today. At the time the customer first formally describes the dispute and states in the Complaint the relief sought from the courts, the proposed system explicitly points to the related system elements, like Story Builder and E-Mediation, that offer alternative methods for dispute resolution.

ILLUSTRATION 4

The screenshot shows a window titled "Court Net" with a sub-header "Complaint Formulator". Below the header is a menu bar with "File", "Edit", "View", and "Help". Under the "Form" menu, there are tabs for "Logic Learner", "Complaint Formulator", and "Informant". The main area is divided into two columns. The left column contains the text "Thomas Logan" and "Complaint # 00M123456", followed by two checkboxes: "Check form progress" and "Save current form". Below these is a box with the text "If you pay your rent within 3 days of it being due". The right column contains two questions with radio button options. The first question is "When did you last pay your rent?" with options: "last month" (selected), "2 months back", "4 months back", and "6 months back". The second question is "Do you pay rent on time?" with options: "exactly on time", "within 1-2 days" (selected), and "5-10 days after rent is due". A vertical scrollbar is on the right side of the main area.

F. Story Builder

We found that litigants were puzzled and unsophisticated when they

attempted to present their cases to judges and mediators. For example, the students gathered the following observations from our ethnographic studies:

1. "People didn't understand the relevance of the evidence they were presenting, and often tried to prove things like 'I'm a good person.'"
2. People didn't understand the case they were making from a legal standpoint, and thus did not offer sufficient evidence to make the case.
3. The judge would fit a legal case around the Plaintiff's collection of related facts and then tease out relevant testimony from each litigant.
4. Litigants often misinterpreted the implication of the judge's legal case fit and were often uncooperative about answering direct questions concerning the case."³⁵

The Story Builder is an on-line tool that gathers details from the litigant and assembles the litigant's story from a group of unorganized facts. The tool uses information previously collected by user interaction with the system in Pursuit Evaluator, Archetypes or Complaint Formulator. The enhancement that Story Builder brings is that it is inherently focused on gathering the details needed to make factual determinations and resolve the dispute. The tool can be used by one litigant, or used cooperatively to build one story between two litigants. By asking a series of questions, it incorporates the facts into small pre-authored paragraphs. It is intended to prepare a case for resolution on-line, by traditional trial, or mediation. For divorce cases, the Story Builder uses a unique approach that is designed to discover the list of marital assets and property. This process generates a list that feeds into the E-Mediation engine or into Complaint Formulator if a property agreement is needed to file a Joint Simplified Petition for Dissolution. This allows divorce parties to negotiate the division of assets and property through online negotiation. The iterative aspect of the Story Builder also might be useful to establish a monetary value for items in the list before mediation.³⁶

35. See Justice Web Collaboratory Access to Justice web site, at http://www.judgeline.org/a2j/planning/systems01/5_4_01_Present.pdf.

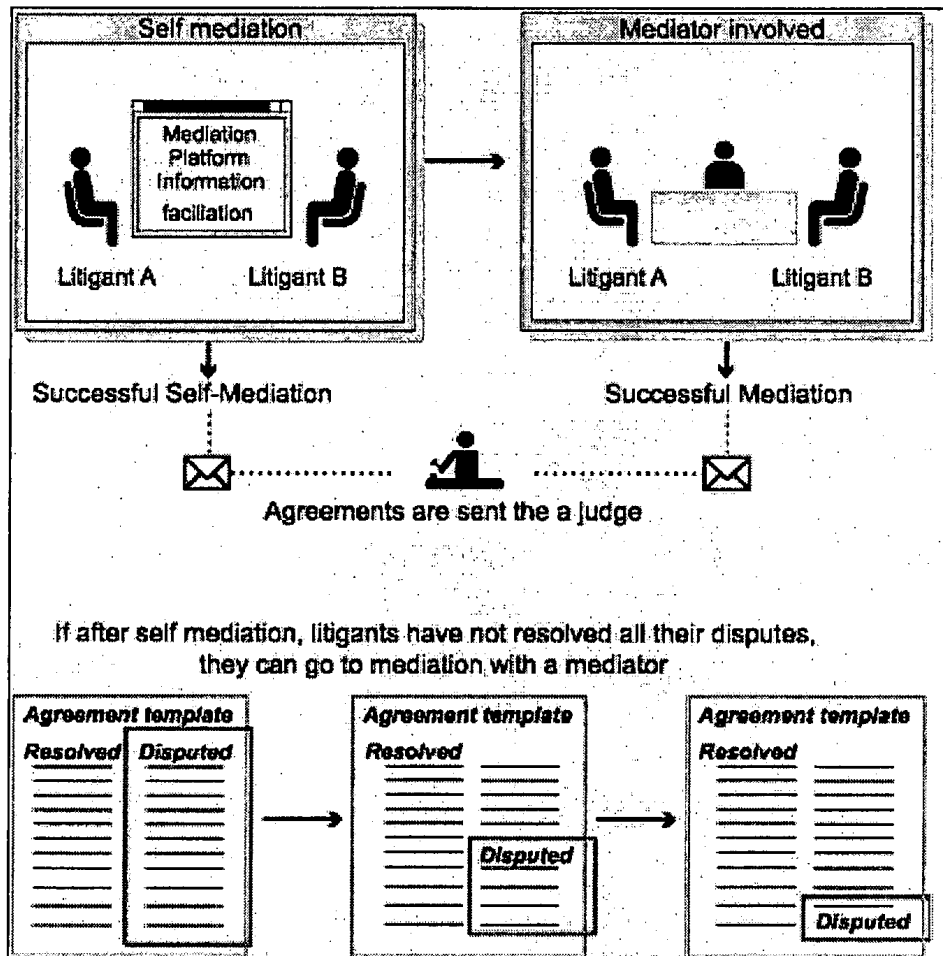
36. *Id.*

more than 150,000 disputes arising out of E-Bay transactions, and lawyers are almost never involved in Square Trade mediations.³⁸

E-Mediation is an online collaborative tool that facilitates decision making towards a mutually acceptable agreement. Both participants can access this tool to negotiate the issues in dispute and determine their options. The student team describes the properties and features of E-Mediation as follows:

- Interactive software that facilitates communication, either real time or delayed;
- Database of information about mediation including sample case types, evidence requirements, etc.;
- A complete record of interactions in the online workroom;
- Forum for mediators who can be appropriate for the specific case type;
- Helps negotiate, in an iterative fashion, the issue in dispute;
- Displays the data input by the two participants and reflects the offers made between the two participants;
- Provides contextual facts in a visual format to give the litigant a sense of how reasonable the offer is; and
- After the dispute is resolved, it determines a formal agreement that is sent to the court.

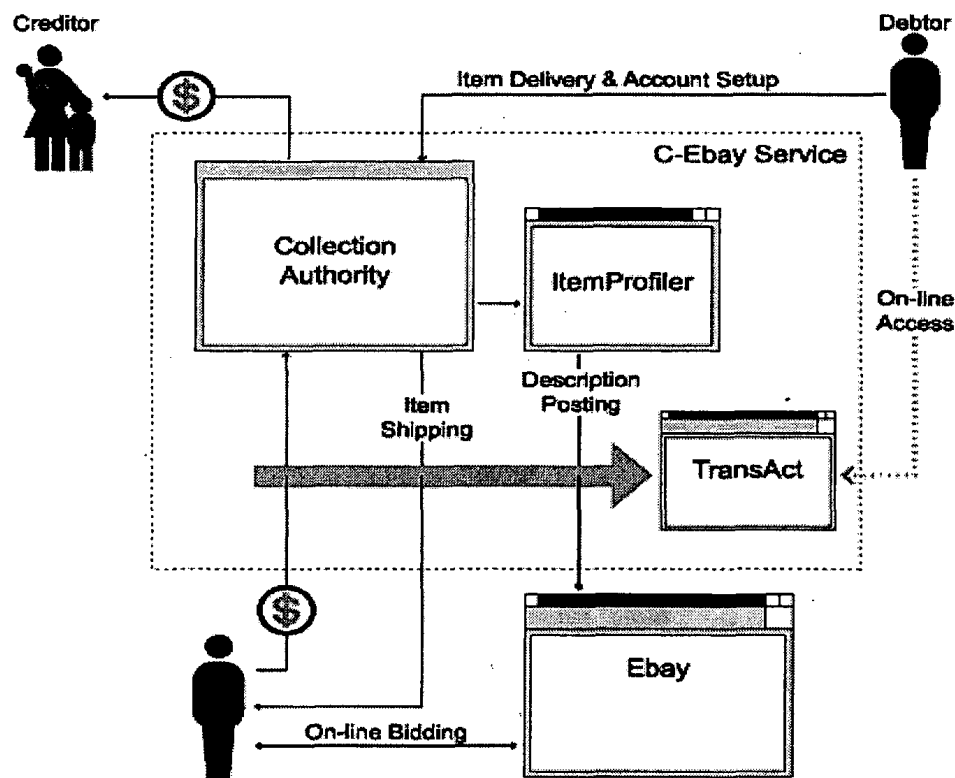
38. Telephone Interview by Ronald W. Staudt with Steven Abernathy, President of Square Trade (July 13, 2001).

ILLUSTRATION 6*H. C-eBay*

Students who observed self-represented plaintiffs soon discovered that these customers were baffled by the judgment enforcement tangle. Many thought that they would get cash or a check if they won a case, right in the courtroom. Most were overwhelmed by the problems facing them when collection was difficult. Within this procedural cluster of barriers, the teams discovered that most merchandise sold at auction by courts, or at distressed sales by sheriffs, brings very low prices. Both the judgment debtor and the creditor are ill served by these antiquated processes. The Access to Justice team proposed an enforcement tool as part of the system that would link directly to the largest auction site on the web and use eBay as a tool to increase the total amount of money available to those who mediate or take their cases to trial.

Our Advisory Board found this to be a very clever and very powerful suggestion. Buoyed by their enthusiasm, the team described C-eBay and included it in the final project report as an enforcement system element. The "C" stands for Collection Authority, a proposed cluster of services that would help debtors to satisfy judgments by using the Sheriff's Office as an interface to the world-wide market of eBay. As we finished the final edits of the report, the spouse of one of the authors of this article discovered, navigating eBay, that the State of Oregon and the federal government were already using that online marketplace as a tool for distressed sales.³⁹

Illustration 7: C-eBay



CONCLUSION

On May 4, 2001, in the last class of the Spring 2001 semester, the students presented the Access to Justice System to a group of experts and

39. See eBay, United States Postal Service website, at <http://www.pages.ebay.com/promo/usps.html> (last visited Aug. 8, 2002); see also, *Oregon Puts Surplus Goods on eBay*, USA TODAY TECH REPORT (Jan. 4, 2000), at <http://www.usatoday.com/life/cyber/tech/cth057.htm>.

dignitaries at Chicago-Kent College of Law.⁴⁰ The students started the 3-hour presentation with a recitation of 6 values that serve as a fitting conclusion to this discussion of the project. As they discovered the harshness of the rules and procedures in the court system, and difficulty of the barriers to access to justice that lawyers and judges have erected to those who do not have lawyers, the student team still found deep value in the traditional court processes. At the same time, the team embraced the power and potential of technology and the web revolution to improve, streamline and open up the system to the citizenry.

1. Self-represented litigants should not be compelled to use any of the recommendations that are implemented and should have the alternative means of meeting their objectives within the current judicial system.
2. Tools developed to help self-represented litigants should attempt to make the process explicit, revealing possible implications and consequences of their actions, while providing assistance.
3. Educational tools should be provided "just in time"
4. . . . [T]echnological infrastructure and information-based resources should not impede or create barriers to access. Rather, they should be transparent, creating an invisible safety net for self-represented litigants.
5. Computation-based decision support tools should only be employed in conjunction with human judgment.
6. Solutions must strive to balance inequities among parties even if the benefits of efficiency are lost.⁴¹

At this writing we are building a subset of the system tools as our project addresses the objectives of Task 3: building a prototype to test in the courts. Our prototype goals are modest. We are building pieces of Complaint Formulator, Pursuit Evaluator, Story Builder and perhaps E-Mediation for a very limited group of family law litigants: those who seek to file and complete a divorce using the Joint Simplified Marital Dissolution process available in Illinois and many other states. This process is designed to streamline divorce cases when the issues are limited and the parties have reached formal agreements on all open questions. Despite this limited solution space, the system issues are daunting. Most

40. The slides and streaming video of this set of presentations are available at the Justice Web Collaboratory Access to Justice web site, at <http://www.judgelink.org/a2j/planning/systems01/Presentations.html>.

41. ACCESS TO JUSTICE, *supra* note 12, at 23.

jurisdictions require dozens of documents to be filed even in these simple agreed cases. All issues as to the division of marital property must be resolved and memorialized in a written agreement. The potential users of the system will have a wide range of educational backgrounds and language skills. The value statements of May 4, 2001 stand as powerful and correct principles to guide this work. Ultimately, however, the customer will decide if the system has value.⁴²

APPENDIX: DESIGN FACTORS

Individual Cases Allow No Standard

Professional Competence

Visibility of Services

Accessibility of Information

Information Overload

Relevance of Information

Barriers of Language

Courtroom Learning

Clarity of Information Materials

Complexity of Information

Time Constraints

Degree of Information

Ability to Perform According to Rules

Convenient and Flexible Services

Scope of Direction

Relevance of References

Claim Matches Law Category

Time Need

Complexity of Position

Misestimation of Own Competence

Limited Availability of Help Center Staff

Strategy Matches Relevant Information

Mode of Distribution

42. During the summer, 2001, the Institute for Design and Chicago-Kent worked on user interface design for several of the system elements. Several alternatives were tested and a new graphical approach that engages the user in an interface with some of the elements of computer gaming was selected. In 2002, a prototype based on Story Builder and Complaint Formulator was programmed for use by self-represented litigants. The National Center for State Courts and Chicago-Kent College of Law are working with several courts to develop opportunities to test this prototype in 2002.

Accessibility of Forms
Clarity of Forms
Understanding of Terms
Legitimacy of Documents
Confusion Created by Distractors
Procedures for Strategizing Are Not Obvious
No Time to Consider Ramifications
Paucity of Legal Advice
SRLs Often Fail in Self Expression at Trial
Distraction Through Visible Objects
Distraction Through Physical Objects
SRLs Not Aware of the Uniqueness of Court Documents
Mental Model for Processes Not Available
Retrieval of Data is Time Consuming
Uncertainty of Court Date Communication
Information is Incomplete
No Space for SRLs to Process Forms
Posting Boards Are Confusing
Uncertain Court Dates
Documents Mostly in English
Only at Court Building
Many Receipts
No Privacy
Inability to Critically Evaluate
Difficulty in Finding Information
Inappropriate Advice from Peers
Intimidation of SRLs
Inability to Understand and Communicate
Communicating Information Through a Story
Research Legal Position
Preparing Financial Documents
Mediation Forms
Unconvinced of Legitimacy of Option
Other Party is Unagreeable to ADR
Consulting with a Lawyer is Expensive
SRLs Don't Know How to Ask Questions in Examination
SRLs Don't Realize That Going to Court Could Mean Jail
SRLs Don't Know How to Begin Pursuing Mediation

SRLs Do Not Know What ADR Is
SRLs Don't Know What Avenues of Finding Info are Available
SRLs Don't Want to Try Mediation Even After Judge Suggests It
Mediation Requires a Lot of Human Resources
Unsure if ADR Really Is a Better Option Than Trial
Creating a Record
Emotional Involvement
Financial Planning
Living Outside Banking
Litigant Changes Mind
Last Minute Uncertainty
SRL Not Convinced That Agreement Is Fair
Compromise Impossible
Bad Communication Flow
Emotion Hinders Performance
Environmental Chaos
Inaccessible Resources
Rules of Evidence
SRLs Lack Crucial Skills
Unclear Communication of Goals
Unfamiliar Process
Barriers to Arriving in Court
Unpredictable Scheduling
Orienting Newcomers to Basic Procedures
Uncertain Role Identity
Last Minute Form Changes
Form Synchronization and Dissemination
Wait Time Underutilized
Common Workplace Familiarity
Computer Proficiency
Deliberation Conditions
End of Trial Confusion
Engaged Courtroom Learning
Expectation of Immediate Enforcement
Judges' Isolation
Multiple Case Confusion
Paper Document Towers
Payment Variations

Real-World Translation of Order
Unpredictable Calling
Recounting the Case
Irregularly-Paced Procedures
Repetitive Procedures
Encountered Legalese
Deadline to Prove a Case
Case Boundary
Irrelevant Argument and Facts
Unaware of Self Role and Responsibility
Validity of Evidence
Implication of Procedure
Trip for Rescheduling a Case
Debtor Information Difficult to Find
Filing Procedure Complex
Documentation Difficult to Coordinate
Evidence Difficult to Keep Track Of
Debtor Difficult to Find
Asset/People Locator Too Expensive to Hire
Unexpected Incarnation
Unclear About Need For Proof of Payment
Lack of Compliance Tracking
Unfamiliar With Civil Procedure
Difficulty Coordinating Schedules
Explanation of Rulings Not Understood
Evidence is Invalid or Unobtainable
Creates Adversarial Situation
No Place to Wait
Complicated Schedule Board
Hard to Navigate
Lack Guidance of Procedure
Feel Uncomfortable
Unable to Verify Completeness
Suddenly Homeless
Environment Unsuitable
Unable to Assign Value to Options
Unable to Locate Information
Space Not Provided

2002]

Access to Justice

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Resources Not Consolidated

Tools Not Available

Unable to Comprehend Material . . .

* * *