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## The Case for Court-Based Document Assembly Programs: A Review of the New York State Court System's "DIY" Forms

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**THE CASE FOR COURT-BASED DOCUMENT  
ASSEMBLY PROGRAMS:  
A REVIEW OF THE NEW YORK STATE  
COURT SYSTEM’S “DIY” FORMS**

*Rochelle Klempner\**

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*No issue is more fundamental to the courts’ constitutional mission  
than ensuring equal justice for all.*

– New York State Chief Judge Jonathan Lippman<sup>1</sup>

**INTRODUCTION**

It is estimated that, at best, no more than twenty percent of low-income New Yorkers’ legal needs are met because civil legal services providers lack resources to meet their needs.<sup>2</sup> The chronic lack of free or low-cost legal services has contributed to a crisis of unrepresented litigants<sup>3</sup> in the New York State (NYS) courts.<sup>4</sup> Each

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\* Chief Counsel, New York State Courts Access to Justice Program.

1. Press Release, N.Y. State Comm’ns Office, Task Force to Support Chief Judge’s Efforts to Ensure Adequate Legal Representation in Civil Proceedings Involving Fundamental Human Needs, (June 9, 2010), *available at* [http://www.nycourts.gov/press/pr2010\\_09.shtml](http://www.nycourts.gov/press/pr2010_09.shtml).

2. *See* TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2011), *available at* [http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT\\_web.pdf](http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT_web.pdf).

3. This Article will use the term “unrepresented” litigants, rather than “self-represented” litigants because the term self-represented seems to imply that litigants who appear without attorneys have made a choice to represent themselves and are on an equal playing field with parties represented by attorneys. *See* Fern Fisher, Dir.,

year, more than 2.3 million New Yorkers navigate civil legal proceedings without the benefit of counsel.<sup>5</sup> In an effort to alleviate this crisis, the judiciary has awarded a total of \$77.5 million to civil legal services providers throughout New York State from its 2011–2014 budgets.<sup>6</sup> To date, despite serving thousands of families, the civil legal services funding has had little impact on the justice gap.<sup>7</sup> Until there is a right to counsel in civil legal matters,<sup>8</sup> it is unrealistic to believe that there will be any substantial change in the ability of our already overburdened legal services providers and pro bono attorneys to meet the demand for legal assistance.

Against this backdrop of unmet legal needs, the New York State court system's shrinking state budget adversely affects its ability to provide mechanisms to promote fair and equitable access to justice for unrepresented litigants.<sup>9</sup> The NYS court system's \$2.7 billion

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N.Y. State Courts Access to Justice Program, Closing Statement of Justice Fern Fisher, Public Hearing on Civil Legal Services (Oct. 2010), *available at* [http://www.nycourts.gov/ip/nya2j/pdfs/Fisher\\_testimony2010.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/Fisher_testimony2010.pdf).

4. *See* TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., *supra* note 2, at 1.

5. *See* TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 4 (2010), *available at* <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

6. *See* N.Y. STATE UNIFIED COURT SYS., BUDGET FISCAL YEAR: APR. 1, 2012–MAR. 31, 2013, at 134 (2011), *available at* <http://nycourts.gov/admin/financialops/BGT12-13/Final2012-13Budget.pdf> (providing \$12.5 million awarded fiscal year 2011–2012); N.Y. STATE UNIFIED COURT SYS., BUDGET FISCAL YEAR: 2013–2014, at 138 (2012), *available at* <http://nycourts.gov/admin/financialops/BGT13-14/Final-13-14Budget.pdf> (providing \$25 million awarded fiscal year 2012–2013); N.Y. STATE UNIFIED COURT SYS., BUDGET: FISCAL YEAR 2014–2015 at 138 (2013), *available at* <http://nycourts.gov/admin/financialops/BGT14-15/2014-15-Budget.pdf> (providing \$40 million awarded fiscal year 2013–2014; \$55 million has been requested for the 2014–2015 budget, an increase of \$15 million over the previous year's allocation).

7. *See* TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 14 (2012), *available at* [http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT\\_Nov-2012.pdf](http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT_Nov-2012.pdf) (explaining that New York was hit hard in 2012 with Hurricane Sandy which generated a plethora of additional legal needs).

8. The right to counsel in civil proceedings, or “civil *Gideon*,” has been gaining momentum. In 2010, the ABA adopted two resolutions in favor of the civil right to counsel and published the ABA Toolkit for a Right to Counsel in Civil Proceedings. *See* WORKING GRP. ON CIVIL RIGHT TO COUNSEL, ABA, ABA TOOLKIT FOR A RIGHT TO COUNSEL IN CIVIL PROCEEDINGS (2010), *available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_toolkit\\_for\\_crtc.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_toolkit_for_crtc.authcheckdam.pdf); *see also* NAT'L COALITION FOR A CIVIL RIGHT TO COUNSEL, <http://www.civilrighttocounsel.org> (last visited Apr. 2, 2014).

9. *See generally* Jonathan Lippman, *State Courts Weather the Storm*, 247 N.Y. L.J. 83, 9 (2012).

2011–2012 budget was slashed by \$170 million, an unprecedented cut.<sup>10</sup> The shortfall required drastic staff layoffs, which were effectuated on the heels of a retirement incentive the previous year.<sup>11</sup> A hiring freeze still prevents recovering lost personnel.<sup>12</sup> These personnel shortages mean fewer attorneys staff Court Help Centers, fewer Clerks answer pro se questions, fewer interpreters help litigants understand and communicate,<sup>13</sup> and longer delays overall.<sup>14</sup> Court hours were immediately decreased following the budget cuts, forcing unrepresented litigants to handle all their court-related matters during regular daytime business hours.<sup>15</sup> Evening Small Claims Court, often referred to as the “People’s Court,” was reduced to one night a week to save overtime.<sup>16</sup> Court-based childcare centers were closed, causing many unrepresented litigants to bring their young children into the courtrooms.<sup>17</sup>

A number of court-facilitated legal services programs that greatly benefitted unrepresented litigants were also severely curtailed or discontinued altogether.<sup>18</sup> For example, ProBonoNY, which employed numerous Pro Bono Coordinators outside New York City

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10. Joel Stashenko, *‘Painful but Unavoidable’: Courts Trim Jobs*, 245 N.Y. L.J. 96, 1 (2011); see S. 2801, 2011–2012 Leg. & Judiciary (N.Y. 2011), at 10–22.

11. *At a Standstill: Budget Cuts Have Brought New York’s Court System to a Crawl*, N.Y. PRESS (Dec. 5, 2012), <http://nypress.com/at-a-standstill-budget-cuts-have-brought-new-yorks-court-system-to-a-crawl>.

12. *Id.*; see also Lippman, *supra* note 9.

13. New York State Courts provide interpreters for free. See *FAQ’s on Getting an Interpreter*, NYCOURTS.GOV <http://www.nycourts.gov/courtinterpreter/faqs.shtml> (last visited Apr. 2, 2014).

14. See Lippman, *supra* note 9.

15. See, e.g., Daniel Wise, *Family’s Plight Illustrates Adverse Effects of Budget Cuts on Courts*, 247 N.Y. L.J. 13, 5 (2012) (illustrating how the forced Family Court shutdown at 4:30 p.m. led to three children being separated from their parents for five days); *Civil Court Schedule and Service Changes, New York City Housing Court*, NYCOURTS.GOV, <http://www.nycourts.gov/courts/nyc/housing/courtservicechanges.shtml> (last visited Apr. 2, 2014).

16. See Robert A. Mulhall, *“People’s Court” Hit Hard*, 247 N.Y. L.J. 83, 12 (2012).

17. See *Public Hearings on the Executive Budget Before the Joint Fiscal Committees of the Senate and Assembly: Public Protection Hearing 5* (Feb. 5, 2014) (testimony of Barbara Moses, Pres., N.Y. Cnty. Lawyers’ Ass’n), available at <http://www.nysenate.gov/files/pdfs/NYCLA.pdf>; see also N.Y. STATE BAR ASS’N, REPORT OF THE EXECUTIVE COMMITTEE ON THE IMPACT OF RECENT BUDGET CUTS IN NEW YORK STATE COURT FUNDING 15 (2012), available at <http://www.nysba.org/CourtFundingReport>.

18. See JONATHAN LIPPMAN ET AL., NEW YORK STATE COURTS ACCESS TO JUSTICE PROGRAM: 2011 REPORT, at iii (2012), available at [http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J\\_2011report.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2011report.pdf) [hereinafter 2011 REPORT].

to facilitate pro bono, and all of the court system's unbundled volunteer lawyer programs, were defunded.<sup>19</sup> New York State Chief Judge Jonathan Lippman characterized the consequences of the budget cuts as "painful" and stated that the impact on the public was "immediate and visible."<sup>20</sup>

In fact, two Bar Association committees investigated and reported that the budget cuts affected the NYS court system's ability to meet its constitutional mandate to deliver justice that is meaningful, fair and impartial, and equal for all.<sup>21</sup> The decreases in personnel, court hours, and services exacerbate the myriad of obstacles unrepresented litigants face when accessing the court system.<sup>22</sup> With record numbers of unrepresented litigants in case types that impact the most basic necessities of life, providing legal and procedural assistance at the courthouse and help with completing and filing legal papers could save homes, secure employment, and keep families intact.<sup>23</sup> This reality has led the NYS court system to invest in innovative, cost-effective, and non-traditional types of delivery methods to provide assistance to unrepresented litigants.<sup>24</sup>

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19. *See id.* at 5.

20. Lippman, *supra* note 9.

21. *See* N.Y. STATE BAR ASS'N, *supra* note 17, at 4; *see also* TASK FORCE ON JUDICIAL BUDGET CUTS, N.Y. CNTY. LAWYERS' ASS'N, PUBLIC HEARING REPORT: THE EFFECTS OF JUDICIAL BUDGET CUTS ON THE NEW YORK STATE AND FEDERAL COURTS (2012) *available at* [http://www.nycla.org/siteFiles/Publications/Publications1516\\_0.pdf](http://www.nycla.org/siteFiles/Publications/Publications1516_0.pdf) (concluding that the reduced funding levels significantly decrease the court system's ability to meet their constitutional duty of reasonable access to justice).

22. *See* N.Y. STATE BAR ASS'N, *supra* note 17, at F1, I2, K1); *see also infra* Part I. *See generally* CHARLES L. OWEN ET AL., ACCESS TO JUSTICE: MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS (2002), *available at* <http://www.kentlaw.iit.edu/Documents/Institutes%20and%20Centers/CAJT/access-to-justice-meeting-the-needs.pdf> (summarizing the challenges that unrepresented litigants face).

23. *See* TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., *supra* note 5, at 1. Nearly 100% of borrowers in consumer debt cases, 99% of tenants in danger of eviction, and 96% of parents in child support matters are unrepresented. *Id.* In foreclosure cases, where owners face the loss of their homes, 44% of the defendants are unrepresented, while 100% of the plaintiffs have counsel. *Id.*

24. *See, e.g.*, JONATHAN LIPPMAN ET AL., NEW YORK STATE COURTS ACCESS TO JUSTICE PROGRAM 2010 (2011), *available at* [http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J\\_2010report.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2010report.pdf) [hereinafter 2010 REPORT]; 2011 REPORT., *supra* note 18; JONATHAN LIPPMAN ET AL., NEW YORK STATE COURTS ACCESS TO JUSTICE PROGRAM 2012 (2013) *available at* [http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J\\_2012report.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2012report.pdf) [hereinafter 2012 REPORT] (reporting the NYS Courts Access to Justice Program's efforts to deliver legal information and services in a variety of formats); *see also* Jeanne Charn, *Celebrating the "Null" Finding: Evidence-Based Strategies for Improving Access to Legal Services*, 122 YALE L.J. 2206, 2232–33 (2013) (encouraging innovation and experimentation in legal services delivery).

Over the past few years, the NYS court system has been working to build Internet-based document assembly programs using available technology specifically designed to address the barriers to justice that litigants face when they create their court papers.<sup>25</sup> A document assembly program asks the user questions, and then takes the answers and assembles completed personalized court papers.<sup>26</sup> Technology's exponential growth, its enhanced accessibility, and its decreasing costs make document assembly programs an ideal mechanism for serving the unrepresented public.<sup>27</sup> The NYS court system has been extremely successful with its programs, known as DIY (Do-It-Yourself) Forms, which create court papers and instructions for unrepresented litigants employing A2J Author<sup>28</sup> and HotDocs<sup>29</sup> software.<sup>30</sup> A2J Author software was specially designed to make Internet-based document assembly of court forms more widely accessible to unrepresented litigants.<sup>31</sup> In 2012, twenty-five percent of the court forms generated by litigants using A2J Author programs were attributable to NYS court system's document assembly programs.<sup>32</sup>

A Fall 2012 article in the *Harvard Journal of Law & Technology* acknowledges that projects using A2J Author and HotDocs software provide helpful resources for unrepresented litigants, but posits that it would be difficult to convince court systems of their value given the economic climate and the resources required to utilize the technology.<sup>33</sup> This Article meets that challenge by identifying the

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25. See 2010 REPORT, *supra* note 24, at 21–31; 2011 REPORT, *supra* note 18, at 21–36; 2012 REPORT, *supra* note 24, at 23–33.

26. The commercially sold TurboTax and ImmigrationPro are examples of Document Assembly Programs. See IMMIGRATIONPRO, [www.immigrationpro.com](http://www.immigrationpro.com) (last visited Apr. 2, 2014); TURBOTAX, <https://turbotax.intuit.com/> (last visited Apr. 2, 2014).

27. See FERN A. FISHER & ROCHELLE KLEMPNER, DOCUMENT ASSEMBLY PROGRAMS: BEST PRACTICES GUIDE FOR COURT SYSTEM DEVELOPMENT AND IMPLEMENTATION USING A2J AUTHOR, at iii (2013) *available at* [http://www.nycourts.gov/ip/nya2j/pdfs/BestPractices\\_courtsystemdocument\\_assembly\\_programs.PDF](http://www.nycourts.gov/ip/nya2j/pdfs/BestPractices_courtsystemdocument_assembly_programs.PDF).

28. See *A2J Author Community Website*, ACCESS JUST. CHI-KENT C. L., <http://www.a2jauthor.org/drupal> (last visited Apr. 2, 2014).

29. See HOTDOCS, <http://www.hotdocs.com> (last visited Apr. 2, 2014).

30. See 2012 REPORT, *supra* note 24, at 23.

31. See *infra* Part I.

32. See 2012 Q4 LHI Content Statistics, LAWHHELP INTERACTIVE, [http://www.probono.net/dasupport/library/folder.464622-2012\\_Q4\\_LHI\\_Statistics](http://www.probono.net/dasupport/library/folder.464622-2012_Q4_LHI_Statistics) (password required) (last visited Nov. 19, 2013).

33. James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241, 252 (2012).

benefits both litigants and courts systems attain from a well-executed document assembly project.<sup>34</sup> The data collected by the NYS court system<sup>35</sup> demonstrates that these programs “help save court clerk time, increase the efficiency of the court system, and provide increased court access for litigants who cannot afford an attorney.”<sup>36</sup> Court systems throughout the nation must ensure equal access to justice and ensure improved court operations by developing similar document assembly programs.

There are three Parts to this Article. Part I provides an overview of the obstacles unrepresented litigants face with court forms and how the utilization of A2J Author and HotDocs software can combat these obstacles. Part II of this Article relates the NYS court system’s experience and success with its document assembly programs and how they benefit unrepresented litigants. Part III examines the reasons why court systems are ideally situated to create document assembly programs for unrepresented litigants and how court systems benefit from their widespread use.

## I. DOCUMENT ASSEMBLY PROGRAMS AS A PARTIAL SOLUTION

It is impossible to fully access the legal system without completing and filing written court papers.<sup>37</sup> Virtually all court cases must be started and answered in writing and all relief must be sought through a written application.<sup>38</sup> Any one case can necessitate drafting and reading an abundant number of legal documents in order to pursue or defend a legal claim.<sup>39</sup> Accordingly, templates for the preparation of court documents are generally the first resource requested by unrepresented litigants and the first task taken on by court systems when they begin to assist the unrepresented public.<sup>40</sup> Thus, to varying

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34. *See infra* Parts II and III.

35. Data on file with author.

36. Cabral et al., *supra* note 33, at 252.

37. *See, e.g.*, N.Y. C.P.L.R. § 2101–06 (McKinney 2013) (governing the form of papers in New York practice); *see also* TEX. ACCESS TO JUSTICE COMM’N, A REPORT TO THE SUPREME COURT ADVISORY COMMITTEE FROM THE TEXAS ACCESS TO JUSTICE COMMISSION ON THE COURT’S UNIFORM FORMS TASK FORCE 21 (2012), *available at* <http://www.texasatj.org/files/file/041012TAJCReporttoSCACREVISED.pdf>.

38. N.Y. C.P.L.R. §§ 2101 et seq. (McKinney 2013).

39. *See id.* (naming summonses, answers, orders to show cause, affidavits, subpoenas, discovery requests, notices of trial, and appeals as just a few examples).

40. JOHN M. GREACEN, RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE “STATE OF THE ART” 8 (2011), *available at* <http://www.msbf.org/selfhelp/GreacenReportNationalEdition.pdf>.

degrees, many courts and court systems have promulgated forms, especially in the area of family law.<sup>41</sup>

Most state court systems have promulgated state-wide uniform forms.<sup>42</sup> This consistency is helpful to litigants who are confused by disparate local forms and the wide variety of vendor forms offered over the Internet, which might not be accepted or applicable.<sup>43</sup> Yet, standardized forms alone are not enough to ensure the pro se litigant will make it through the filing process unless the forms address the other obstacles that unrepresented litigants often encounter.<sup>44</sup>

Many court systems and many local courts have also placed forms online in an effort to assist unrepresented litigants.<sup>45</sup> Court forms are posted in a variety of formats.<sup>46</sup> The basic offering is the printable form, usually provided as a PDF so most users cannot make changes to the form itself.<sup>47</sup> The user prints out the form and fills in the blanks

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41. *See id.* at 9. Many court systems start with family law forms because it is in that area where unrepresented litigants appear in large numbers and need the most assistance. *Id.*

42. *See id.* app. *Spreadsheet of Information on the Websites of Each State and the District of Columbia*, MICH. ST. BAR FOUND., <http://www.msbf.org/selfhelp/spreadsheetofstateswebsites.pdf> (last visited Apr. 2, 2014); *see also State Responses on Standardized Forms*, TEX. ACCESS JUST. COMMISSION, <http://texasatj.org/files/file/1StateResponsesonStatewideForms.pdf> (last visited Apr. 2, 2014) (compiling information from interviews with representatives from 22 states who were involved in promulgating state forms); *Statewide Uniform Forms—All 50 states + D.C.*, TEX. ACCESS JUST. COMMISSION, <http://www.texasatj.org/files/file/2StatesFormResearch.pdf> (last visited Apr. 2, 2014).

43. *See* MICHAEL DENNARD, IDAHO INTERACTIVE COURT FORMS PROJECT 8 (2007), *available at* [http://www.probono.net/dasupport/library/item.147889-Idah\\_Interactive\\_Court\\_Forms\\_Project](http://www.probono.net/dasupport/library/item.147889-Idah_Interactive_Court_Forms_Project) (password required); *see also* TEX. ACCESS TO JUSTICE COMM'N, *supra* note 37 at 10–12.

44. *See infra* notes 52–66 and accompanying text (discussing the obstacles that unrepresented litigants face when filling out court forms).

45. JULIE MACFARLANE, THE NATIONAL SELF-REPRESENTED LITIGANTS PROJECT: IDENTIFYING AND MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS FINAL REPORT 56 (2013), *available at* <http://www.representingyourselfcanada.files.wordpress.com/2014/02/reportm15-2.pdf> (reporting data on the experiences of unrepresented litigants in three Canadian provinces); *see also* DEBORAH SAUNDERS ET AL., CTR. ON COURT ACCESS TO JUSTICE FOR ALL, ACCESS BRIEF: FORMS AND DOCUMENT ASSEMBLY 1 (2012), *available at* <http://ncsc.contentdm.oclc.org/utills/getfile/collection/accessfair/id/264/filename/265.pdf>; *Self-Representation State Links*, NAT'L CENTER ST. COURTS, <http://www.ncsc.org/Topics/Access-and-Fairness/Self-Representation/State-Links.aspx?cat=Court%20Forms> (listing online forms by state) (last visited Apr. 2, 2014).

46. GREACEN, *supra* note 40, at 19.

47. The basic software needed to open a PDF (portable document format) is a free download from Adobe, making a PDF a universally accepted format. *See* ADOBE READER, <http://get.adobe.com/reader> (last visited Apr. 2, 2014).



by hand.<sup>48</sup> More often, state courts post forms online in a fillable format.<sup>49</sup> Fillable forms allow the user to type the required information into the blank spaces on the form before printing.<sup>50</sup> Fillable forms are an improvement over paper forms because they furnish the user and the court with a legible and neat finished product. The format, however, is far from perfect, especially because filling out court forms presents unique challenges that unrepresented litigants often struggle to overcome.<sup>51</sup>

A 2013 report from Canada entitled *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (Canadian study) found that one of the most consistent complaints unrepresented litigants have when navigating the court system is difficulty reading and understanding the forms due to confusing and complex language.<sup>52</sup> This confusion is not surprising given that twenty-one percent of American adults read below a fifth-grade level,<sup>53</sup> yet legal language is so difficult for most people to understand that the word “legalese” actually exists to describe it.<sup>54</sup> Poorly drafted court forms that are unnecessarily complex frequently overwhelm litigants.<sup>55</sup> Unless the forms are simplified and understandable, a litigant still has no access to justice.<sup>56</sup> Toward this end, a number of court systems have rewritten their court forms in “plain language” to make them more litigant-friendly.<sup>57</sup> Plain language forms help unrepresented litigants understand

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48. GREACEN, *supra* note 40, at 19.

49. *Id.*

50. *Id.* at 20.

51. CTR. FOR ACCESS TO JUSTICE & TECH., MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS: A2J AUTHOR, EXECUTIVE SUMMARY 2 (2006), *available at* [http://www.kentlaw.edu/cajt/a2j\\_authordownload/A2J%20150/A2J\\_Author\\_Executive\\_Summary.pdf](http://www.kentlaw.edu/cajt/a2j_authordownload/A2J%20150/A2J_Author_Executive_Summary.pdf); *see infra* notes 220–32 and accompanying text.

52. MACFARLANE, *supra* note 45, at 59–60.

53. *National Assessment of Adult Literacy*, NAT'L CENTER EDUC. STAT., [http://nces.ed.gov/naal/kf\\_demographics.asp](http://nces.ed.gov/naal/kf_demographics.asp) (noting that fourteen percent of American adults possess no more than the most simple and concrete literacy skills) (last visited Apr. 2, 2014).

54. *Legalese*, OXFORD ADVANCED AM. DICTIONARY, <http://oaadonline.oxfordlearnersdictionaries.com/dictionary/legalese> (“the sort of language used in legal documents that is difficult to understand”) (last visited Apr. 2, 2014).

55. *See* TEX. ACCESS TO JUSTICE COMM'N, *supra* note 37, at 8.

56. *See* SAUNDERS ET AL., *supra* note 45, at 1.

57. In fact, the Plain Writing Act of 2010 requires all federal agencies to use “clear government communication that the public can understand and use.” *See* Pub. L. No. 111-274, 124 Stat. 2861 (2010), *available at* <http://www.gpo.gov/fdsys/pkg/PLAW-111publ274/pdf/PLAW-111publ274.pdf>. The government has an excellent website filled with plain language resources. *See* PLAINLANGUAGE.GOV, <http://www.plainlanguage.gov> (last visited Apr. 2, 2014).

information better and avoid confusion and misunderstanding.<sup>58</sup> Plain language forms take difficult concepts and state them in simple sentences aimed at a fifth- to seventh-grade reading level.<sup>59</sup> Plain language forms increase unrepresented litigants' access to the legal system.<sup>60</sup>

The creation of standardized forms, online forms, and plain language forms are all commendable efforts toward leveling the playing field for unrepresented litigants. Nonetheless, for the most part, these measures only address a fraction of the challenges that unrepresented litigants face when completing forms.<sup>61</sup> From 1991–2001, *The Access to Justice: Meeting the Needs of Self-Represented Litigants* (Meeting the Needs) project studied pro se litigants in five different state courts and issued a report identifying their challenges to equal access.<sup>62</sup> A number of these challenges, such as the complexity of the legal system, lack of knowledge, language and comprehension difficulties, lack of uniformity from court to court, and the sheer intimidation of the process, greatly impact an unrepresented litigant's ability to successfully utilize court forms.<sup>63</sup> The Canadian study also found that unrepresented litigants consistently complained about their difficulty identifying the right forms for their problems and that if they do find the correct forms, they often make mistakes and omissions that lead to serious consequences.<sup>64</sup>

Litigants who use the wrong forms or cannot find the forms they need do not obtain the relief they seek; litigants who leave out necessary information do not prevail; and litigants who do not know what to do after completing the form or are overwhelmed by the

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58. See SAUNDERS ET AL., *supra* note 45, at 1.

59. See *WriteClearly.org*, LEGAL ASSISTANCE W. N.Y., <https://sites.google.com/a/lawny.org/plain-language-library> (last visited Apr. 2, 2014); see also LAW NY & TRANSCEND, THE ESSENTIAL PLAIN LANGUAGE COLLECTION FOR LEGAL AID AGENCIES (2006), available at <http://www.housingissues.org/docs/PlainLanguageCollection.pdf>.

60. See SAUNDERS ET AL., *supra* note 45, at 1.

61. See BERKMAN CTR. FOR INTERNET & SOC'Y AT HARVARD UNIV., PRELIMINARY REPORT: BEST PRACTICES IN THE USE OF TECHNOLOGY TO FACILITATE ACCESS TO JUSTICE INITIATIVES 24 (2010), available at [http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/A2J\\_Report\\_Final\\_073010.pdf](http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/A2J_Report_Final_073010.pdf) (stating that document assembly programs are far more useful for unrepresented parties than printable or fillable online forms). See generally OWEN ET AL., *supra* note 22.

62. OWEN ET AL., *supra* note 22.

63. *Id.* at 15–16. A more detailed list includes economic barriers, distrust of the legal system, outside time commitments that prevent managing a court case, the inability to travel to court, and inconsistent information. *Id.*

64. MACFARLANE, *supra* note 45, at 61–62.

paperwork may just give up and never access the justice they seek.<sup>65</sup> Litigants need information provided in a non-intimidating format to assist with language difficulties and comprehension, to know if they are using the correct form, to help properly complete the form, to locate missing information, and to understand next steps.<sup>66</sup>

A few courts have employed document assembly software to facilitate the production of court forms<sup>67</sup> and address these issues. In general, document assembly programs guide users through a logical series of questions and follow different paths based upon the user's answers.<sup>68</sup> Accordingly, document assembly programs can be set up to screen litigants for eligibility and exit the program if the user does not qualify.<sup>69</sup> The programs can also ask questions that identify the forms that the user needs.<sup>70</sup> Users do not see questions unless they apply to their situation and do not need to repeatedly input information as is required when completing paper forms.<sup>71</sup> Users can save their answers if they want to return and make changes or complete the document later.<sup>72</sup> Document assembly programs can be hosted online so that the litigant can use the program from any Internet-enabled location.<sup>73</sup> Document assembly programs can be designed to provide and collect information in a less intimidating format.<sup>74</sup> Research shows that a litigant's success is usually dependent on the user-friendly quality of the document assembly offering.<sup>75</sup>

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65. *Id.*

66. GREACEN, *supra* note 40, at 9.

67. *See, e.g., id.* at 20 (some court systems use vendor-provided applications such as the TurboCourt system; some state court systems have produced their own programs such as the Utah Administrative Office of the Court's OCAP (Online Court Assistance Project); and a number of court systems, such as Virginia and California use ICAN); *see also* Claudia Johnson, *Online Document Assembly Initiatives to Aid the Self-Represented*, in INNOVATIONS FOR SELF-REPRESENTED LITIGANTS 97, 98-99, Association of Family and Conciliation Courts (Bonnie Rose Hough & Pamela Cardullo Ortiz eds., 2011).

68. *See* BERKMAN CTR. FOR INTERNET & SOC'Y AT HARVARD UNIV., *supra* note 61, at 24.

69. GREACEN, *supra* note 40, at 20-21; *see also* A2J Author, ITT CHI.-KENT C. L., <http://www.kentlaw.iit.edu/institutes-centers/center-for-access-to-justice-and-technology/a2j-author> (last visited Apr. 2, 2014).

70. GREACEN, *supra* note 40, at 20-21.

71. Marc Lauritsen, *Document Assembly*, LEGAL SERVICES NAT'L TECH. ASSISTANCE PROJECT (2005), <http://lsntap.org/?q=node/316>.

72. *Id.*

73. *See* Johnson, *supra* note 67, at 99-103.

74. *See* A2J Author, *supra* note 69.

75. MACFARLANE, *supra* note 45, at 56.

The NYS Courts Access to Justice Program (Access to Justice Program) is one of the NYS court system's many programs and initiatives that strive to increase access and improve the delivery of justice in the courts.<sup>76</sup> The Access to Justice Program produces attractive, user-friendly document assembly programs that address pro se needs and alleviate many of the challenges they face when attempting to access the judicial system.<sup>77</sup> The Access to Justice Program develops document assembly programs for unrepresented litigants by using a combination of A2J Author<sup>78</sup> and HotDocs<sup>79</sup> software. The software allows non-programmers to quickly and inexpensively create user-friendly Internet-based guided interviews for document assembly.<sup>80</sup> Completed programs are hosted on Pro Bono Net's<sup>81</sup> national online document assembly project, LawHelp Interactive (LHI).<sup>82</sup>

A2J Author software was created in 2004 by the Center for Computer-Assisted Legal Instruction (CALI) and the Illinois Institute of Technology Chicago-Kent College of Law Center for Access to Justice & Technology as a means to create document assembly programs that address the challenges unrepresented litigants face identified in the Meeting the Needs project's report.<sup>83</sup>

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76. See *About Us, New York State Courts Access to Justice Program*, NYCOURTS.GOV, <http://nycourts.gov/ip/nya2j/ourwork.shtml> (last visited Apr. 2, 2014).

77. See *infra* Part II.

78. See *A2J Author Community Website*, *supra* note 28.

79. See *HOTDOCS*, *supra* note 29.

80. Ronald W. Staudt & Andrew P. Medeiros, *Access to Justice and Technology Clinics: A 4% Solution*, 88 CHI.-KENT L. REV. 695, 708 (2013); *Online A2J Authoring Guide*, ACCESS JUST. CHI.-KENT C.L., [http://www.a2jauthor.org/drupal/?q=Authoring Guide](http://www.a2jauthor.org/drupal/?q=Authoring+Guide) (last visited Apr. 2, 2014).

81. Pro Bono Net is a nonprofit organization that works to increase access to justice through innovative uses of technology and web-based applications. Pro Bono Net is significantly responsible for the success of the A2J Author document assembly programs through its operation of the LHI server and LawHelp website. See PRO BONO NET, <http://www.probono.net> (last visited Apr. 2, 2014).

82. See LAWHELP INTERACTIVE, <https://lawhelpinteractive.org/> (last visited Apr. 2, 2014). For more information, as well as an explanation of the history of LHI, see Johnson, *supra* note 67, at 99–103.

83. Ronald W. Staudt, *All the Wild Possibilities: Technology that Attacks Barriers to Access to Justice*, 42 LOY. L.A. L. REV. 1117, 1129–33 (2009) [hereinafter Staudt, *All the Wild Possibilities*] (providing detailed background behind the creation of the A2J Author software); see also Ronald W. Staudt, *Technology for Justice Customers: Bridging the Digital Divide Facing Self-Represented Litigants*, 5 U. MD. L.J. RACE RELIGION GENDER & CLASS 71, 84 (2005) [hereinafter Staudt, *Bridging the Digital Divide*]; *A2J Author*, *supra* note 69; *Online A2J Authoring Guide*, *supra* note 80, at 1–2.

A2J Author was funded through grants from the Legal Services Corporation (LSC)<sup>84</sup> and the State Justice Institute (SJI)<sup>85</sup> and is offered as a free tool to legal services providers, court systems, and others assisting low-income litigants.<sup>86</sup>

A2J Author creates the “front-end” experience for the user.<sup>87</sup> Every A2J Author program has the same attractive graphic appearance of a guide walking a litigant step by step along a path that leads to the courthouse.<sup>88</sup> The graphic design was specifically created with low-literacy users in mind.<sup>89</sup> The user is presented with a limited amount of information per screen.<sup>90</sup> There are signposts along the road that show progress and announce the next set of questions.<sup>91</sup> The user’s choice of gender controls whether the litigant on the path will be male or female, thereby placing him or herself on the path next to the guide.<sup>92</sup> The experience can be further personalized by having the program address the user by his or her first name once this information has been collected.<sup>93</sup> This can be done with any information collected such as children, spouses, employers, or banks.<sup>94</sup> The overall design of the program makes the user’s experience with completing a court form far less intimidating.

When providing the user with information, the software’s built-in features can be utilized to maximize an unrepresented litigant’s chances of succeeding at the courthouse.<sup>95</sup> A2J Author allows the program’s author to create “pop-ups” to explain terms.<sup>96</sup> Users click on any word that is colored red for a definition.<sup>97</sup> Optional “Learn More” buttons can be programmed to provide additional information

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84. See *TIG’s Impact*, LSC TECH. INITIATIVE GRANTS, <http://tig.lsc.gov/about-us/tigs-impact> (last visited April 2, 2014) (LSC awards TIG funding to legal services offices).

85. See STATE JUSTICE INSTITUTE, <http://www.sji.gov> (last visited Apr. 2, 2014) (SJI awards technology assistance grants to state courts).

86. See Staudt, *Bridging the Digital Divide*, *supra* note 83, at 84.

87. See *A2J Author*, *supra* note 69.

88. See *Online A2J Authoring Guide*, *supra* note 80, at 2.

89. Johnson, *supra* note 67, at 100.

90. See Staudt, *Bridging the Digital Divide*, *supra* note 83, at 80 (discussing the design of the Joint Simplified Dissolution of Marriage Prototype upon which A2J Author is based).

91. *Online A2J Authoring Guide*, *supra* note 80, at 50.

92. *Id.* at 42, 50.

93. *Id.* at 46–48, 53.

94. *Id.*

95. *Online A2J Authoring Guide*, *supra* note 80, at 1.

96. *Id.* at 76.

97. *Id.*

to help the user understand the question or for users that seek greater knowledge.<sup>98</sup> A2J Author's features also assist users with language and comprehension difficulties.<sup>99</sup> Pop-ups can provide text in other languages.<sup>100</sup> Audio can be recorded and added to the program to make it easier for users who do not read well or who understand better through listening, and the same program can offer a choice of audio in different languages.<sup>101</sup> An author can make an entire program available in multiple languages to accommodate the needs of the targeted population.<sup>102</sup> In fact, the most recent version of A2J Author includes Chinese and Vietnamese language support.<sup>103</sup> Users with hearing impairment or visual challenges can adjust audio levels and text and graphics size.<sup>104</sup> Authors can embed videos in the program to provide additional visual and instructional assistance.<sup>105</sup> Hyperlinks can be offered as a means to locate information needed to complete the program.<sup>106</sup>

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98. *Online A2J Authoring Guide*, *supra* note 80, at 68.

99. *See infra* notes 101–06.

100. *See, e.g., Tenant Affidavit to Vacate a Default Judgment, New York City Housing Court*, NYCOURTS.GOV, [http://www.nycourts.gov/courts/nyc/housing/int\\_tenantaffidavit.shtml](http://www.nycourts.gov/courts/nyc/housing/int_tenantaffidavit.shtml) (last visited Apr. 2, 2014) (offering pop-ups containing text of every screen and Learn More in French and Spanish).

101. *See* BERKMAN CTR. FOR INTERNET & SOC'Y AT HARVARD UNIV., *supra* note 61, at 30; *Online A2J Authoring Guide*, *supra* note 80, at 162; *see, e.g., Adult Name Change Petition Program, New York City Civil Court*, NYCOURTS.GOV, [http://www.nycourts.gov/courts/nyc/civil/int\\_adultnamechange.shtml](http://www.nycourts.gov/courts/nyc/civil/int_adultnamechange.shtml) (last visited Apr. 2, 2014) (offering the litigant a choice of English or Spanish audio to listen to while he or she moves through the English screens of the program).

102. *See, e.g., Paternity Petition Program*, N.Y. COURTHELP, <http://nycourthelp.gov/DIY/paternity.html> (last visited Apr. 2, 2014); *Programa para Iniciar Peticiones de Paternidad*, N.Y. COURTHELP, [http://www.nycourthelp.gov/diy/paternity\\_spanish.html](http://www.nycourthelp.gov/diy/paternity_spanish.html) (last visited Apr. 2, 2014) (versions of the same program for a paternity petition made in English and Spanish).

103. *See A2J Author, Version 4.1.1*, ACCESS JUSTICE CHI.-KENT C. L., <http://www.a2jauthor.org/drupal/?q=node/337> (last visited Apr. 2, 2014). A2J Author 5.0, not yet released, will be mobile-device friendly. Litigants will be able to access the programs from a smart phone. *See* Gwendolyn Osborne, *Access to Justice on a Smartphone: Work Begins on A2J Author 5.0*, CHI.-KENT C. L., ILL. INST. TECH. (May 14, 2012), <http://www.kentlaw.iit.edu/news/2012/access-to-justice-on-a-smartphone>.

104. *See Online A2J Authoring Guide*, *supra* note 80, at 7.

105. *Id.* at 72–74.

106. *See Online A2J Authoring Guide*, *supra* note 80, at 74–76; *see, e.g., Roommate Holdover Program, New York City Housing Court*, NYCOURTS.GOV, [http://www.nycourts.gov/courts/nyc/housing/roommate\\_diy.shtml](http://www.nycourts.gov/courts/nyc/housing/roommate_diy.shtml) (last visited Apr. 2, 2014). In this program, the litigant is required to input the name and address of the registered managing agent and multiple dwelling registration number of the building. Since most litigants do not know this information, a hyperlink is provided to the New York City Housing Preservation and Development's (HPD's) website where this

A2J Author's features can also be used to maximize an unrepresented litigant's chances of success when collecting information from the litigant. The software has a built-in feature that prompts the user to enter information if the user attempts to continue without completing a mandatory screen.<sup>107</sup> This ensures that the litigant does not omit a necessary element of the application.<sup>108</sup> The author can program confirmation screens to ensure that the litigant has entered information correctly.<sup>109</sup> Confirmatory questions keep the litigant on the right path of questions in the program and help prepare an accurate final product.<sup>110</sup> The author can also use the program to create an introductory set of questions that determine the form's applicability to the litigant's situation.<sup>111</sup> If the litigant's answers indicate that the litigant should not use the program, early exit buttons can take the litigant to another more appropriate program if one exists,<sup>112</sup> or to an informational webpage or website.<sup>113</sup> In addition, just one A2J Author program can collect all the information needed to complete one form or multiple court forms.<sup>114</sup>

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information can be located, and a graphic is provided with step by step pictures to explain how to navigate the HPD website. *Id.* Once the information is obtained, the litigant can enter it into the A2J program. *Id.*

107. See *Online A2J Authoring Guide*, *supra* note 80, at 82–83.

108. See, e.g., *Vacate Default Judgment in a Consumer Debt Case*, N.Y. COURTHelp, <http://nycourthelp.gov/MoneyProblems/DIYconsumerdebt.shtml> (last visited Apr. 2, 2014) (program will not allow the litigant to proceed unless an excuse for the default is entered).

109. See, e.g., *Supreme Court Adult Name Change Petition Program*, N.Y. COURTHelp, <http://nycourthelp.gov/diy/nameChange.html> (last visited Apr. 2, 2014) (asking the user to confirm the new name).

110. *Id.* The program makes sure the litigant's new name is correct before the papers are completed. *Id.*

111. See FISHER & KLEMPNER, *supra* note 27, at 16.

112. See generally *id.*; see, e.g., *District, City, Town or Village Court Small Property Owner Nonpayment Petition Program*, N.Y. COURTHelp, <http://nycourthelp.gov/diy/smallProperty.html> (last visited Apr. 2, 2014) (targeting owners outside New York City, but taking the litigant to the New York City DIY Form program if the litigant chooses a property location in New York City; since the procedure is completely different inside and outside New York City, this exit screen ensures that the litigants produces the correct court papers and obtains the correct procedural information).

113. See FISHER & KLEMPNER, *supra* note 27, at 16. If a helpful webpage or website to assist the litigant does not exist, a DIY Form program will exit the litigant to a list of Court Help Centers. See *Court Help Centers & Community Organizations*, N.Y. COURTHelp, <http://nycourthelp.gov/helpcenters.html> (last visited Apr. 2, 2014).

114. See, e.g., *Adult Name Change Petition Program, New York City Civil Court*, NYCOURTS.GOV, [http://www.nycourts.gov/courts/nyc/civil/int\\_adultnamechange.shtml](http://www.nycourts.gov/courts/nyc/civil/int_adultnamechange.shtml) (last visited Apr. 2, 2014) (producing all the papers needed to request a fee waiver application as well as a name change).

As the litigant answers questions, A2J Author collects the user's information.<sup>115</sup> A "back-end" assembly engine, such as HotDocs, is then required to complete the process.<sup>116</sup> HotDocs software creates the form template that is the basis for the finished document.<sup>117</sup> The HotDocs template can be programmed to generate as many court forms as the program determines are needed based upon the litigant's responses to the questions in the A2J Author guided interview.<sup>118</sup> This includes any proposed orders, supplemental pleadings and affidavits of service.<sup>119</sup> Thus, the litigant does not need to worry about choosing the correct court form to complete.<sup>120</sup> Personalized instructions and information can be generated to increase the litigant's chances of successfully reaching the courthouse.<sup>121</sup> This can include: filing and service instructions; courthouse locations and hours; court costs and fee waiver information; courtroom procedures; what the adversary may do next; what to do if there is a default; and where to find additional required documents, information or low-cost legal assistance.<sup>122</sup> Since HotDocs is programmed in Microsoft Word, the information can be translated and created in most languages.<sup>123</sup>

Once the programming is completed, the A2J Author interview and the corresponding HotDocs template can be uploaded to the LHI server.<sup>124</sup> In the LHI environment, authors can test, share, and

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115. See *Online A2J Authoring Guide*, *supra* note 80, at 3.

116. BERKMAN CTR. FOR INTERNET & SOC'Y AT HARVARD UNIV., *supra* note 61, at 26; see HOTDOCS, *supra* note 29 (referring to HotDocs as the "back-end" because it works behind the scenes, only the A2J "front-end" is seen by the user).

117. See *Online A2J Authoring Guide*, *supra* note 80, at 3. HotDocs can also produce a document without the front-end A2J Author interface, however, the interface is too complicated and business-oriented for the unrepresented public. See Staudt, *All the Wild Possibilities*, *supra* note 83, at 1128–29.

118. See FISHER & KLEMPNER, *supra* note 27, at 16–17.

119. See, e.g., *Vacate Default Judgment in a Consumer Debt Case*, *supra* note 108. In addition to an affidavit, affidavit of service and instructions, this program may generate an order to show cause, a proposed answer, a request for judicial intervention, information about defenses and counterclaims, and Spanish instructions, depending on the user's answers collected in the A2J Author interview. *Id.*

120. See FISHER & KLEMPNER, *supra* note 27, at 14–15.

121. See *id.*

122. *Id.*

123. See, e.g., *Tenant Affidavit to Restore Case to Calendar Program*, *New York City Housing Court*, NYCOURTS.GOV, [http://nycourts.gov/courts/nyc/housing/restoretocalendar\\_diy.shtml](http://nycourts.gov/courts/nyc/housing/restoretocalendar_diy.shtml) (last visited Apr. 2, 2014) (offering the litigant a choice of instructions printed in English and Spanish or French or Polish).

124. See Johnson, *supra* note 67, at 100. This service is free to legal aid organizations, but courts must negotiate contracts and fees. Alternatively, it is



manage content.<sup>125</sup> Unrepresented litigants answer the questions in the A2J Author guided interview, the information is merged into the HotDocs template, and the litigant receives a finished personalized court form.<sup>126</sup>

Clearly, court forms prepared using this type of document assembly program offer an unrepresented litigant far better assistance than a paper form or a fillable court form.<sup>127</sup> The NYS court system has found that forms completed with the supportive benefits of the A2J Author and HotDocs software tools are immensely helpful tools for increasing access to justice.<sup>128</sup>

## II. NEW YORK STATE COURT SYSTEM'S DIY FORM PROGRAMS

The Access to Justice Program has had tremendous success with document assembly programs made with A2J Author and HotDocs software.<sup>129</sup> In 2012, over 100,000 court documents were assembled from the twenty-four programs<sup>130</sup> used in different case types in different courts throughout the state.<sup>131</sup> This figure is greater than any of the legal services organizations and court systems that develop A2J Author based form programs.<sup>132</sup> Unrepresented litigants can access

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possible for a court system to bypass LHI by developing its own server. *See* FISHER & KLEMPNER, *supra* note 27, at 7–8.

125. Johnson, *supra* note 67, at 100.

126. *Id.*

127. *See* RICHARD ZORZA, IDAHO LEGAL AID INTERACTIVE FORMS EVALUATION (2010), available at [http://www.probono.net/dasupport/library/item.341486-Idaho\\_Evaluation\\_of\\_Online\\_Forms](http://www.probono.net/dasupport/library/item.341486-Idaho_Evaluation_of_Online_Forms) (password required) (describing user's satisfaction with Idaho's interactive document assembly program).

128. *See infra* Part II.

129. *See 2012 Q4 LHI Content Statistics*, *supra* note 32 (providing the number of documents assembled by litigants through these two programs).

130. *See DIY Forms, New York State Courts Access to Justice Program*, NYCOURTS.GOV, <https://www.nycourts.gov/ip/nya2j/diyforms.shtml> (last visited Apr. 2, 2014) (listing programs by case type and court, and providing links to the programs' landing pages).

131. 2012 REPORT, *supra* note 24, at 23. The first program for New York State County Courts was created in 2013. *See DIY Forms: County Court*, N.Y. COURTHelp, <http://nycourthelp.gov/diy/countyCourt.shtml> (last visited Apr. 2, 2014).

132. *See 2012 Q4 LHI Content Statistics*, *supra* note 32 (this includes legal services organizations that have more available programs).

the New York programs on the Internet<sup>133</sup> or on terminals in Court Clerk's Offices, Help Centers, and Public Access Law Libraries.<sup>134</sup>

The NYS court system's interest in document assembly software was born out of a great need to assist the unrepresented tenants who were flooding the New York City Housing Court.<sup>135</sup> Each year, over 200,000 nonpayment cases are filed against tenants in the New York City Housing Courts.<sup>136</sup> Ninety-nine percent of these tenants do not have attorneys.<sup>137</sup> New York City tenants are required to come to court and file a written or oral answer containing their defenses and counterclaims within five days of service of the initiating court papers, a nonpayment notice of petition, and petition.<sup>138</sup> If the tenant does not answer the petition within the five days, the Judge may grant the landlord a judgment for possession and the tenant can be evicted.<sup>139</sup>

Judge Fern A. Fisher,<sup>140</sup> who was the Administrative Judge of the New York City Civil Court (Civil Court) at the time, wanted to create some sort of computer terminal or kiosk<sup>141</sup> to place in the Housing

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133. The NYS Unified Court System's website for unrepresented litigants is known as CourtHelp. See COURTHELP, <http://www.nycourthelp.gov> (last visited Apr. 2, 2014). Most of the programs are also available through Pro Bono Net's website for unrepresented litigants known as LawHelpNY. See LAHELPNY, <http://www.lawhelpny.org> (last visited Apr. 2, 2014).

134. See 2012 REPORT, *supra* note 24, at 33.

135. See CLAUDIA JOHNSON ET AL., TECHNOLOGY ENABLED SELF-HELP CENTERS 13 (2009), available at [www.a2jauthor.org/drupal/?q=system/files&file=CTC\\_Technology\\_Enabled\\_Self-Help\\_Centers.pdf](http://www.a2jauthor.org/drupal/?q=system/files&file=CTC_Technology_Enabled_Self-Help_Centers.pdf).

136. See *Court Statistics, New York City Housing Court*, NYCOURTS.GOV, <http://www.nycourts.gov/COURTS/nyc/housing/statistics.shtml> (last visited Apr. 2, 2014). A landlord commences a nonpayment case when a tenant has defaulted in the payment of rent. See N.Y. REAL PROP. ACTS. LAW § 711(2) (McKinney 2009).

137. See TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., *supra* note 5, at 17 (noting that ninety-eight percent of tenants are unrepresented in eviction cases outside of New York City); see also JOHNSON ET AL., *supra* note 135, at 13 (estimating that ninety percent of tenants in New York City Housing Court in 2009 were unrepresented).

138. See N.Y. REAL PROP. ACTS. LAW § 732(1) (McKinney 2009).

139. See N.Y. REAL PROP. ACTS. LAW § 732(3) (McKinney 2009).

140. Judge Fisher is now the Deputy Chief Administrative Judge for New York City Courts and the Director of the New York State Courts Access to Justice Program. See *Profile of Honorable Fern A. Fisher*, NYCOURTS.GOV, <http://www.nycourts.gov/ip/nya2j/profile.shtml> (last visited Apr. 2, 2014).

141. The type of "kiosk" depended on how it would be built. This ranged from booths containing interactive touch-screens and videos to public access computer work stations set-up in the courthouse. See CLAUDIA JOHNSON, LAHELPINTERACTIVE.ORG: DOCUMENT ASSEMBLY PROJECTS THROUGH COURT-LEGAL AID PARTNERSHIPS 11-12 (2010), available at [http://www.probono.net/dasupport/library/folder.206101-LawHelp\\_Interactive](http://www.probono.net/dasupport/library/folder.206101-LawHelp_Interactive) (password required).

Courts, which tenants could use to prepare an informed answer.<sup>142</sup> By 2005, a partnership between the Civil Court and Columbia Law School's Lawyering in the Digital Age Clinic<sup>143</sup> had produced the logic and questions that could form the basis for a document assembly program.<sup>144</sup> The Civil Court was now in the market for document assembly software to produce the Nonpayment Answer Program for little or no cost to either the court or the litigant.<sup>145</sup> Serendipitously, Legal Assistance of Western New York (LawNY)<sup>146</sup> was looking for a partner to provide the logic and questions for a nonpayment answer document assembly program for New York City tenants.<sup>147</sup> LawNY wanted to create the program with A2J Author and HotDocs software and make it available to the public through the LHI website.<sup>148</sup> LHI would host the program at no cost because the service

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142. This was a long and laborious process. See JOHNSON ET AL., *supra* note 135, at 13; see also CIVIL COURT OF THE CITY OF N.Y., A DECADE OF CHANGE AND CHALLENGE IN "THE PEOPLE'S COURT" 1997-2006 21 (2006), available at <http://nycourts.gov/COURTS/nyc/civil/pdfs/10year.pdf> (stating that the Civil Court had been working on developing a Nonpayment Answer program since the Housing Initiative, which was promulgated in 1997); Conrad Johnson & Brian Donnelly, *If We Only Knew What We Know*, 88 CHI.-KENT L. REV. 729, 739 (2013) (describing some of the history and frustration).

143. See *Lawyering in the Digital Age Clinic*, COLUMBIA L. SCH., <http://web.law.columbia.edu/clinics/lawyering-in-the-digital-age-clinic> (last visited Apr. 2, 2014).

144. See Johnson & Donnelly, *supra* note 142, at 737-41 (providing greater detail about the creation of the logic and questions for the Nonpayment Answer program); see also JOHNSON ET AL., *supra* note 135, at 13.

145. Vendor applications such as TurboCourt were rejected because they charge the litigant a fee to use the program. Since the NYS court system's Department of Technology (DOT) employed FileMaker for various projects and was concerned about costs, the Civil Court partnered with New York Law School to make a version of the Nonpayment Answer Program in FileMaker. Some inquiries were also made into ICAN!, a software developed by the Legal Aid Society of Orange County. See I-CAN! LEGAL, <http://www.legalican.com/> (last visited Apr. 2, 2014). FileMaker was also rejected. See JOHNSON ET AL., *supra* note 135, at 13 (providing a more in-depth discussion of the technology options that the Civil Court considered); see also GREACEN, *supra* note 40, at 21-22 (discussing the principal sources of document assembly software).

146. See LEGAL ASSISTANCE W. N.Y., <http://www.lawny.org> (last visited Apr. 2, 2014).

147. See JOHNSON ET AL., *supra* note 135, at 13.

148. *Id.* LawNY was working on a Nonpayment Answer Program for outside New York City as well, but since the landlord-tenant laws are so different for inside New York City, Jeff Hogue from LawNY approached the NYS court system about partnering on the downstate version. Jeff Hogue's inquiries led them to the author, who at the time was the Principal Law Secretary to the Administrative Judge of the Civil Court.

is free for any programs developed by or in partnership with a legal services organization.<sup>149</sup>

Thus, the NYS court system's experience with A2J Author software officially began in November 2005 when the Civil Court partnered with LawNY to produce an informational Housing Court program.<sup>150</sup> The partnership was funded, in part, through a Legal Services Corporation Technology Initiative Grant (TIG)<sup>151</sup> as part of LawNY's SOPHIA project.<sup>152</sup> The partnership agreement included training for court employees in the use of the A2J Author software.<sup>153</sup> The result was the creation of the New York City Nonpayment Answer Program, which was first made available to pro se tenants at the start of 2007 through the LHI website.<sup>154</sup> The Nonpayment Answer Program helps the tenant prepare to orally answer a petition by producing a document package that includes an answer chart identifying possible defenses and counterclaims and fact sheets to assist the litigant in court.<sup>155</sup>

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149. Johnson, *supra* note 67, at 97, 102.

150. See Letter of Understanding from Jeff L. Hogue, SOPHIA Project Coordinator, LawNY to Hon. Fern A. Fisher, Administrative Judge, N.Y.C. Civil Court (Nov. 8, 2005) (on file with author); see also CIVIL COURT OF THE CITY OF N.Y., *supra* note 142, at 21–22. *Contra* Johnson & Donnelly, *supra* note 142, at 740–41 (crediting the students from the Columbia Law School Lawyering in the Digital Age Clinic with the programming of the A2J template). Students from this Clinic programmed a different A2J template for tenants a few years later. The Nonpayment Answer Program was programmed by LawNY's Jeff Hogue, Esq., and the author. *Id.*

151. See LSC TECH. INITIATIVE GRANTS, <http://tig.lsc.gov> (last visited Apr. 2, 2014).

152. SOPHIA stands for Statewide Online Pleading Help and Information Assistant. See *SOPHIA Project*, LAWNY, <http://www.lawny.org/index.php/sophia-project-attorney-resources-128> (last visited Apr. 2, 2014).

153. Letter of Understanding, *supra* note 150.

154. At the time, LHI was known as NPADO, National Public Automated Documents Online. *Innovative Demonstration Projects: LawHelp Interactive*, MONTANAPROBONO.NET (June 2010), [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CC4QFjAB&url=http%3A%2F%2Fwww.montanaprobono.net%2Fgeo%2Fsearch%2Fdownload.174240&ei=vgpHU9j\\_OtWysQTt ooDYCw&usg=AFQjCNEPqp0HCzzEIyi517tSkC485VBcTg&bvm=bv.64507335,d.cWc](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CC4QFjAB&url=http%3A%2F%2Fwww.montanaprobono.net%2Fgeo%2Fsearch%2Fdownload.174240&ei=vgpHU9j_OtWysQTt ooDYCw&usg=AFQjCNEPqp0HCzzEIyi517tSkC485VBcTg&bvm=bv.64507335,d.cWc).

155. See CIVIL COURT OF THE CITY OF N.Y., *supra* note 142, at 21–22; see also *Nonpayment Answer Program, New York Housing Court*, NYCOURTS.GOV, available at [http://nycourts.gov/COURTS/nyc/housing/int\\_nonpayment.shtml](http://nycourts.gov/COURTS/nyc/housing/int_nonpayment.shtml) (last visited Apr. 2, 2014). A Spanish version of the program is also available. See *Programa de Ayuda Computarizada para Responder una Demanda por Incumplimiento de Pago del Alquiler*, NYCOURTS.GOV, [http://www.nycourts.gov/courts/nyc/housing/spanish/int\\_nonpayment.shtml](http://www.nycourts.gov/courts/nyc/housing/spanish/int_nonpayment.shtml) (last visited Apr. 2, 2014).

After launching the NYS court system's first document assembly program for unrepresented tenants, Judge Fisher wanted to create a program for property owners of one or two units to use to produce papers to start a nonpayment proceeding against a tenant.<sup>156</sup> Court statistics showed that a growing number of owners and landlords in Housing Court appear in court unrepresented and increasingly visit the Court Help Centers for assistance.<sup>157</sup> Judge Fisher felt that the court system, as a neutral entity, must provide the same court system access to an unrepresented landlord in danger of foreclosure as to an unrepresented tenant in danger of eviction.<sup>158</sup> Because legal services organizations do not represent landlords, partnering on this project and hosting the program for free on LHI was not an option.<sup>159</sup>

In 2007, the NYS court system decided to contract with Pro Bono Net to host document assembly programs directly on the LHI website.<sup>160</sup> Contracting with Pro Bono Net gave the court system complete autonomy over program development.<sup>161</sup> Autonomy was important in order to create forms for case types legal services organizations did not represent, like Judge Fisher's landlord eviction program.<sup>162</sup> This independence would also allow the NYS court system to work on the court forms that had the greatest number of unrepresented litigant filings, and were the most difficult for unrepresented litigants to complete. With limited resources, the NYS court system wanted to direct its energies where they would most improve access to justice and court system efficiency.<sup>163</sup> In addition, the NYS court system was wary of partnerships that might produce programs proffering legal advice rather than legal information.<sup>164</sup>

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156. See JOHNSON ET AL., *supra* note 135, at 14 n.20.

157. See 2010 REPORT, *supra* note 24, at 2.

158. See JOHNSON ET AL., *supra* note 135, at 14 n.20.

159. *Id.*

160. Contracting with Pro Bono Net also gave the NYS Court system access to the LHI infrastructure and all its support services. See JOHNSON, *supra* note 141, at 3 n.1.

161. See BERKMAN CTR. FOR INTERNET & SOC'Y AT HARVARD UNIV., *supra* note 61, at 28–29 (noting that a court may “in some cases prefer to control the tone and neutrality” of interviews when developing a program).

162. See *id.*; see also JOHNSON, *supra* note 141, at 10–11 (discussing the Access to Justice Program's creation of the Roommate Holdover DIY Form program).

163. *Cf.* JOHNSON, *supra* note 141, at 22–23 (contending that court control over the forms produced is a drawback because court systems will only invest in developing programs that affect their dockets and will not produce programs that assist with public benefits and administrative forums, leaving a gap in poverty law practice).

164. See BERKMAN CTR. FOR INTERNET & SOC'Y AT HARVARD UNIV., *supra* note 61, at 29, 50 (controlling the tone is important to maintain neutrality). Court staff can only provide legal information to litigants, while offering legal advice is

Maintaining executive control over program content would ensure neutral programs.<sup>165</sup> Accordingly, the NYS court system hired an attorney-technologist to develop its own programs<sup>166</sup> and made plans to create additional programs for New York City, as well as the rest of the state.

Beginning in 2009, the Access to Justice Program became responsible for developing the document assembly programs for the NYS courts.<sup>167</sup> The programs were officially re-branded with an easy and memorable name for both litigants and court staff.<sup>168</sup> DIY (Do-it-Yourself) Forms was chosen, hoping to imply that the programs are simple and designed for self-use.<sup>169</sup> Five more programs were made through a TIG grant in partnership with LSC and LawNY.<sup>170</sup> A program was also made in partnership with Columbia Law School's Lawyering in the Digital Age clinic.<sup>171</sup>

Today, the DIY Form programs are available at no cost to unrepresented litigants in the New York State Supreme, County, Family, Surrogate's, District, City, Civil, New York City Housing, Town, and Village Courts.<sup>172</sup> The programs generate the appropriate court forms plus personalized instructions with phone numbers and addresses for every court in New York's sixty-two counties.<sup>173</sup> The developed programs target areas of the law where pro se litigants are prevalent, such as Family and Housing law.<sup>174</sup> Also targeted are areas of the law in which legal services organizations do not provide

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inappropriate. *See generally* 1 N.Y. STATE UNIFIED COURT SYS., FACILITATING ACCESS TRAINING PROGRAM REFERENCE MANUAL (2013).

165. *See Johnson, supra* note 67, at 102–03 (describing some of the additional benefits for a court system to contract with Pro Bono Net).

166. It was agreed that this position should be an attorney with a technology background, rather than a technologist. Attorney Sun Kim was hired. *See JOHNSON, supra* note 141, at 20.

167. *See JOHNSON ET AL., supra* note 135, at 14–15.

168. *See FISHER & KLEMPNER, supra* note 27, at 11, 40 (referring to the programs as “A2J” was dismissed because litigants would not understand the acronym).

169. *Id.* at 40.

170. These five programs include the Small Estate Affidavit program, the Adult Name Change program, the Modification of Support Petition program, the Paternity Petition program, and the Guardianship 17-A program. *See* N.Y. COURTHELP, <http://nycourthelp.gov/forms.html> (last visited Apr. 2, 2014).

171. *See Tenant Affidavit to Vacate a Default Judgment, New York City Housing Court, supra* note 100.

172. *See DIY Forms*, N.Y. COURTHELP, <http://www.nycourthelp.gov/diy/index.html> (last visited Apr. 2, 2014).

173. For a more extensive list of information included with the instructions, see FISHER & KLEMPNER, *supra* note 27, at 14–15, 37.

174. *Id.* at 13–14 (listing the criteria for choosing a form to program).

representation, yet pro se litigants often need assistance, including small estates, name changes, guardianships, and landlord cases.<sup>175</sup> DIY Form programs have been developed for child support, custody, visitation, paternity, estates, consumer debt, guardianship, name changes, and housing cases.<sup>176</sup>

The Access to Justice Program follows a set of published Best Practice guidelines for the development and implementation of the DIY Form programs.<sup>177</sup> All programs are developed with substantial input from developer's groups comprised of court personnel throughout the state who volunteer their time.<sup>178</sup> The volunteer personnel have backgrounds in the areas of law under development and primarily interact with unrepresented litigants in their court. Significant time and attention is spent on ensuring that the generated forms and instructions are applicable to every court in the state.<sup>179</sup> In addition to court personnel, the programs are sent to stakeholders from public interest groups, private practice and legal services organizations, for extensive testing before they are released to the public.<sup>180</sup> Every program is sent to a plain language specialist to simplify the text.<sup>181</sup>

Once a program is live, the Access to Justice Program conducts considerable outreach and training on the programs for court personnel.<sup>182</sup> Statistics indicate that staff training dramatically increases usage of the programs.<sup>183</sup> In the first three quarters of 2013,

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175. *Id.* The Access to Justice Program also produced five DIY Form programs for small property owners which are only available through the NYS court system's CourtHelp website. *See DIY Forms: District, City, Town and Village Courts*, N.Y. COURTHELP, <http://nycourthelp.gov/diy/districtCityTownVillagecourts.html> (last visited Apr. 2, 2014); *DIY Forms: New York City Civil Court, Housing Court*, N.Y. COURTHELP, [http://nycourthelp.gov/diy/nyccivil\\_housing.html](http://nycourthelp.gov/diy/nyccivil_housing.html) (last visited Apr. 2, 2014). Pro Bono Net refused to make these programs available through their LawHelp.org website.

176. *See Available DIY Forms, New York State Courts Access to Justice Program*, NYCOURTS.GOV, <http://www.nycourts.gov/ip/nya2j/diyavailable.shtml> (last visited Apr. 2, 2014). An Uncontested Divorce DIY Form program is coming soon.

177. *See generally* FISHER & KLEMPNER, *supra* note 27. These guidelines were established after much trial and error.

178. *Id.* at 18–19.

179. *Id.* at 10, 14–15.

180. *Id.* at 17–18.

181. *Id.* at 19.

182. *Id.* at 29–31.

183. *See, e.g.*, 2011 REPORT, *supra* note 18, at 34.

73.19% of DIY Form users stated that court personnel referred them to the programs.<sup>184</sup>

The Access to Justice Program conducts a quarterly review to check for any problems with the programs and to determine which courts to target for additional training efforts and which courts to commend.<sup>185</sup> Usage of the DIY Form programs is tracked through statistics supplied by LHI, statistics from the court's case management system, and user surveys completed by litigants.<sup>186</sup> The usage statistics from LHI and case management show a steady rise from year to year.<sup>187</sup>

The user survey data indicates that the DIY Form programs are extremely popular and beneficial for litigants.<sup>188</sup> A number of common themes appear over and over in the optional comment section of the survey as litigants convey their gratitude and appreciation.<sup>189</sup> Litigants often remark about the ease of use of the programs and how simple they are to complete.<sup>190</sup> Many express their surprise that the programs are so effortless and trouble-free, even first-time computer users.<sup>191</sup> One litigant wrote, "this program was so simple and made my life easier. I was so afraid I would do it wrong; had I known how easy it was, I wouldn't have put this off so long."<sup>192</sup> Litigants who saved money using the DIY Forms or who could not afford legal fees also expressed their appreciation that the program is

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184. The user survey contains nine brief questions and two optional questions. See 2012 REPORT, *supra* note 24, at 65. In the first three-quarters of 2013, of the 13,518 DIY Form users who returned surveys, 13,041 answered the question "How did you learn about this program?" Of those, 9345 answered "Court employee" and an additional 200 answered "Poster, sign, postcard, etc." (data on file with author).

185. The Access to Justice Program gives out "DIY Star Awards" to courts or court personnel who demonstrate outstanding commitment to increasing access to justice through the DIY Form programs. See *DIY Star Awards, New York State Courts Access to Justice Program*, NYCOURTS.GOV, <http://nycourts.gov/ip/nya2j/diyawards.shtml> (last visited Apr. 2, 2014).

186. See 2012 REPORT, *supra* note 24, at 23.

187. *Id.* at 24.

188. See *DIY Forms: User Testimonials, New York State Courts Access to Justice Program*, NYCOURTS.GOV, <http://www.nycourts.gov/ip/nya2j/diytestimonials.shtml> (last visited Apr. 2, 2014).

189. See 2011 REPORT, *supra* note 18, at 24.

190. *Id.* at 24–25.

191. See, e.g., *DIY Forms: User Testimonials, supra* note 188 (user survey comment submitted Aug. 12, 2010, Queens County Family Court, support modification program).

192. *Id.* (user survey comment submitted Oct. 31, 2011, Onondaga County Family Court, Support Modification Program).



available free of charge.<sup>193</sup> For example, an unrepresented landlord wrote, “This was very helpful. Step by step instructions. Thank you. I have been a nervous wreck for a year and half because I could not afford an attorney. This truly helps me do the process myself.”<sup>194</sup>

Litigants repeatedly comment about the amount of time that the program saved them.<sup>195</sup> Litigants are pleased with how much time they save using the programs, whether they use them in court or over the Internet.<sup>196</sup> A significant percentage of litigants use the programs at their place of employment.<sup>197</sup> One litigant wrote, “Really appreciate the opportunity to prepare the forms online. It made the process go faster. My papers are neater and more accurate. Thanks!”<sup>198</sup> Another Family Court litigant noted, “This was so helpful to use to avoid sitting on in-take for hours.”<sup>199</sup> The litigant continued, “If all forms for court were like this, it would help so much.”<sup>200</sup> Survey data from the past four years indicates that approximately ninety-five percent of users believe the programs save time.<sup>201</sup>

In addition, litigants regularly comment that the programs are empowering.<sup>202</sup> Many users articulate that using the program themselves makes them feel like they are more a part of the court process.<sup>203</sup> For example, one litigant wrote, “I appreciate the new DIY Program. It made me feel part of the process instead of just a

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193. See 2011 REPORT, *supra* note 18, at 25–26; see also *DIY Forms: User Testimonials*, *supra* note 188.

194. *DIY Forms: User Testimonials*, *supra* note 188 (user survey comment submitted Jan. 27, 2010, Kings County Civil Court, NYC Small Property Owners Program).

195. See 2011 REPORT, *supra* note 18, at 25; see also *DIY Forms: User Testimonials*, *supra* note 188.

196. See *DIY Forms: User Testimonials*, *supra* note 188.

197. In 2013, 16,755 DIY Form users responded to the question, “Where did you use this program?” Of those, 5740 used the program outside of the courthouse, with 778 responding that they used the program at work (data on file with author).

198. *DIY Forms: User Testimonials*, *supra* note 188 (user survey comment submitted Aug. 27, 2012, Suffolk County Surrogate’s Court, Small Estate Program).

199. *Id.* (user survey comment submitted Jan. 8, 2010, Suffolk County Family Court, Support Modification Program).

200. *Id.*

201. In the first three quarters of 2013, of the 12,925 DIY Form users who responded to the question, “Do you think the DIY program saved you time?,” 12,269 said yes, while 656 said no (data on file with author). See 2012 REPORT, *supra* note 24, at 25.

202. See 2011 REPORT, *supra* note 18, at 25; see also *DIY Forms: User Testimonials*, *supra* note 188.

203. See 2011 REPORT, *supra* note 18, at 25.

number. Thanks.”<sup>204</sup> Another expressed, “Excellent, I actually enjoyed this process, it allows us to become more involved and in control of the process. I love it.”<sup>205</sup>

Litigants also comment on the procedural assistance that the program provided.<sup>206</sup> This assistance ranges from helping litigants find the right court form, to learning where to find additional information, to preparing them to move forward in the case.<sup>207</sup> For instance, litigants have praised the program as follows:

This program was very helpful because I printed out the papers as well and I wasn’t sure where to put the right info so thanks a lot for the DIY program.<sup>208</sup>

This is an amazing service. Thank you for making a very complicated process (filing legal papers) such an enjoyable experience. Thank you.<sup>209</sup>

I found this program to be extremely helpful and saved me time from asking questions and trying to figure out what and how to file! Kudos!!<sup>210</sup>

Very helpful for people that do not understand court systems or how to fill out the paperwork.<sup>211</sup>

The comments discussed above only reveal a tiny sampling of the positive feedback received from DIY Form users.<sup>212</sup> Through the first half of 2013, the Access to Justice Program reviewed data from approximately 65,000 litigant user surveys.<sup>213</sup> The data reveals how

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204. *DIY Forms: User Testimonials*, *supra* note 188 (user survey comment submitted May 10, 2011, New York County Family Court, Support Modification Program).

205. *Id.* (user survey comment submitted Aug. 30, 2011, Kings County Family Court, Support Enforcement Program).

206. *See* 2011 REPORT, *supra* note 18, at 25; *see also* *DIY Forms: User Testimonials*, *supra* note 188.

207. *See* 2011 REPORT, *supra* note 18, at 25.

208. *DIY Forms: User Testimonials*, *supra* note 188 (user survey comment submitted Sept. 19, 2011, Wayne County Family Court, Support Modification Program).

209. *Id.* (user survey comment submitted Oct. 2, 2011, Bronx County Civil Court, NYC Adult Name Change Program).

210. *Id.* (user survey comment submitted Jan. 8, 2011, Saratoga County Family Court, Support Modification Program).

211. *Id.* (user survey comment submitted Oct. 16, 2013, Oswego County Family Court, Paternity Petition Program).

212. *See* *DIY Forms: User Testimonials*, *supra* note 188.

213. Data on file with author. All courts forward returned user surveys to the Access to Justice Program where user survey data is entered daily into an internal court system database made with FileMaker. Reports are run quarterly as well as

DIY Forms simplify court procedures for unrepresented litigants and help them overcome many barriers to accessing equal justice.<sup>214</sup> DIY Form programs are enormously beneficial for unrepresented litigants.<sup>215</sup> As discussed in Part III, many of the benefits that unrepresented litigants receive from court-based document assembly programs are equally beneficial to the court system.<sup>216</sup> Unrepresented litigants who are more informed and better prepared, have more accurate pleadings and can complete their court forms quickly on their own or in court are less of a burden on courthouse operations.<sup>217</sup> Accordingly, the Access to Justice Program is working on several new DIY Form programs.<sup>218</sup> Overall, the NYS court system's experience developing and implementing court-based document assembly programs has been extremely successful.<sup>219</sup>

### III. THE CASE FOR COURT-BASED DOCUMENT ASSEMBLY PROGRAMS

The NYS court system's DIY Form programs have assisted hundreds of thousands of unrepresented litigants over the past few years.<sup>220</sup> Yet, it is the court system that may have reaped the greater benefit. Pro se cases are notoriously known for requiring a disproportionate amount of time and court resources because many litigants are unprepared or have inaccurate or incomplete information about how to proceed.<sup>221</sup> Nonetheless, according to feedback collected by the Access to Justice Program from court employees throughout the state, this is not the case when litigants utilize the DIY

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throughout the year as needed. Comments are reviewed regularly and some are added to the Access to Justice Program's website's DIY testimonials page.

214. *Id.*

215. Reports from other jurisdictions using the same software have found the programs to be extremely beneficial for litigants. *See, e.g.*, JOHN M. GREACEN, SERVICES FOR SELF-REPRESENTED LITIGANTS IN ARKANSAS: A REPORT TO THE ARKANSAS ACCESS TO JUSTICE COMMISSION 12–13, 20 (2013), available at [http://www.arkansasjustice.org/sites/default/files/file%20attachments/SJI-Report\\_Self-Represented\\_Litigants.pdf](http://www.arkansasjustice.org/sites/default/files/file%20attachments/SJI-Report_Self-Represented_Litigants.pdf) (noting that A2J Author/HotDocs programs “ensure[] that court users obtain the right form for their intended purpose . . . that the form is complete and that it is legible”); ZORZA, *supra* note 127.

216. *See infra* notes 220–47 and accompanying text.

217. *See infra* notes 220–47 and accompanying text.

218. An uncontested divorce DIY Form program is in development as well as a statewide minor name change program.

219. *See supra* note 24 and accompanying text.

220. *See* 2012 REPORT, *supra* note 24, at 24.

221. *See* Drew A. Swank, *In Defense of Rules and Roles: The Need to Curb Extreme Forms of Pro Se Assistance and Accommodation in Litigation*, 54 AM. U. L. REV. 1537, 1547–48 (2005).

Form programs.<sup>222</sup> DIY Form programs save court clerk time and improve court efficiency in a variety of ways.

First, court personnel spend less time answering litigant questions when the litigant has already been guided step-by-step through the process by a document assembly program.<sup>223</sup> Court Clerks stated that the programs save time of having to “go through and explain forms and procedures” and having to “correspond back and forth . . . as to what needs to be corrected and/or what documents are missing.”<sup>224</sup> As one Chief Clerk stated after she placed public access terminals in her Clerk’s Office, “DIY Forms programs have helped my office maximize efficiency . . . [The litigants] produce accurate, concise, and completed forms without making several trips to the clerk for line by line instructions.”<sup>225</sup>

More accurate and complete forms lead to fewer rejections of pleadings, which means less work for judicial and non-judicial staff reviewing repeat applications.<sup>226</sup> Court personnel have remarked that the DIY Form program court papers are legible, easy to read, and missing none of the required information.<sup>227</sup> One Clerk lamented, “Nothing is worse than having a pro se litigant trying their best to complete forms to have them rejected or dismissed because they are incomplete.”<sup>228</sup> With the user-friendly A2J Author features described in detail in Part I, litigants are guided through the process, and pleadings are filed correctly the first time.<sup>229</sup> Thus, the DIY Form program is a great time saving benefit to judges and court staff.<sup>230</sup>

Court employees in the Court Help Centers and Clerk’s Offices find they can serve many more litigants in a shorter amount of time at

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222. See Staff testimonials on file with author.

223. See ZORZA, *supra* note 127, at 16–17.

224. Staff Testimonial of Katherine Peterson-Lyle, Court Assistant, Steuben County Surrogate’s Court (June 2013) (on file with author).

225. Staff Testimonial of Monica Dingle, Assistant Deputy Chief Clerk, Queens Cnty. Civil Court (May 2013) (on file with author).

226. See ZORZA, *supra* note 127, at 18; see also Staff testimonials on file with author.

227. See Staff Testimonials on file with author.

228. Staff Testimonial of Maureen Ball, Chief Clerk, Fulton City Court, Oswego Cnty. (June 2013) (on file with author).

229. Staff Testimonial of Katherine Peterson-Lyle, *supra* note 224.

230. SELF-REPRESENTED LITIG. NETWORK, THE CASE FOR . . . COURT-BASED FORMS AND INSTRUCTIONS PROGRAMS 1 (2007), available at [http://www.selfhelpsupport.org/library/item.223570-The\\_Case\\_for\\_CourtBased\\_Forms\\_and\\_Instructions\\_Programs](http://www.selfhelpsupport.org/library/item.223570-The_Case_for_CourtBased_Forms_and_Instructions_Programs) (password required); see also ZORZA, *supra* note 127, (evaluating the effectiveness of the A2J Author Programs on LHI).

a faster pace by employing the programs.<sup>231</sup> As one staff member stated, “DIY . . . enables [my staff] to assist more than one client at a time . . . . They can now . . . help out with other clerical duties while the litigants are typing their own petition.”<sup>232</sup> Another Court Clerk stated that she liked being able to focus on emergency applications, while litigants worked on the DIY Form programs.<sup>233</sup> This feature is especially valuable because budget cuts have left most court offices short staffed.<sup>234</sup> Document assembly programs enable a court Help Center to assist a larger daily volume of litigants.<sup>235</sup>

Document assembly programs also minimize litigant frustration, making it easier for judicial and non-judicial staff to focus on the finished product and end result.<sup>236</sup> Observers of heavy pro se courts often remark about the high levels of aggravation experienced by everyone involved.<sup>237</sup> With the assistance of document assembly programs, litigants are more self-confident and less pressured.<sup>238</sup> “[Litigants] love the programs . . . . Happy [litigants] make for happy clerks,” reported a satisfied court employee.<sup>239</sup> A boost in mood for staff and litigants cannot be undersold, especially when staff morale has declined due to the fiscal crisis.<sup>240</sup>

Another benefit of making online document assembly programs available to unrepresented litigants is the potential for easing court congestion.<sup>241</sup> Access to this resource is available well beyond

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231. See Staff Testimonials on file with author.

232. Staff Testimonial of Nicholas Rapallo, Assistant Deputy Chief Clerk, N.Y. Family Court, N.Y. Cnty. (July 2013) (on file with author).

233. Staff Testimonial of Veronica Bullard, Assistant Deputy Clerk, N.Y. Family Court, N.Y. Cnty. (Aug. 2013) (on file with author).

234. See N.Y. STATE BAR ASS’N, *supra* note 17, at 11.

235. See JOHNSON, *supra* note 141, at 15.

236. See Staff Testimonials on file with author; see also SELF-REPRESENTED LITIGATION NETWORK, *supra* note 231, at 2; see also TEXAS ACCESS TO JUSTICE COMM’N, *supra* note 37, at 13 (court forms reduce frustration).

237. See, e.g., Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 2063–65 (1999) (discussing the New York City Housing Courts).

238. SELF-REPRESENTED LITIGATION NETWORK, *supra* note 231, at 2.

239. Staff Testimonial of Cheryl Lidell-Obenauer, Chief Clerk, Tompkins County Family Court (May 2013) (on file with author).

240. See generally N.Y. CNTY. LAWYERS’ ASS’N, TASK FORCE ON JUDICIAL BUDGET CUTS: REPORT ON ELECTRONIC SURVEY CONDUCTED NOVEMBER 9–NOVEMBER 30, 2011, at 7, available at [http://issuu.com/nycla14/docs/survey\\_report\\_2011-12-08\\_rev2/1](http://issuu.com/nycla14/docs/survey_report_2011-12-08_rev2/1).

241. JOHNSON, *supra* note 141, at 29 (“More and more people expect to be able to use the Internet to meet their needs at their own time and convenience.”).

business hours.<sup>242</sup> It saves litigants trips to the courthouse when self-help is available at all times.<sup>243</sup> Indeed, the most compelling reason for court systems to invest their energies in the production of document assembly programs is the potential to eliminate filing trips to the courthouse through electronic filing (e-filing), which sends the litigant's information directly to the court's case management system.<sup>244</sup> Integrating the document assembly program with the court's case management system eliminates hours and hours of data entry time and is a major improvement in courthouse efficiency.<sup>245</sup>

The NYS court system has already taken steps toward e-filing of its document assembly programs. In 2011, with funding from a STOP grant,<sup>246</sup> the court system and Pro Bono Net built a conduit between LHI and the Family Court's case management system for the transfer of data entered by domestic violence advocates when they assist litigants with the preparation of petitions for orders of protection.<sup>247</sup> Court staff members believe that the data transfer saves a half hour of data entry on each case, which in turn assists the litigant much faster.<sup>248</sup> Although this is an advocate HotDocs program without the A2J Author front end,<sup>249</sup> and the petitioner must still come to court to file the petition, this feat is a precursor to e-filing of DIY Form programs for the unrepresented.<sup>250</sup> With TIG funding, the Minnesota state court system, in partnership with Central Minnesota Legal Services, Inc., is already developing an access-friendly e-filing solution

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242. *Id.* ("The beauty of online document assembly is that once interviews are posted online, those without attorneys can use them without having to pay for parking, worry about child care, take time off from work or ask a relative to accompany them to the court house.").

243. *See id.* at 7, 29.

244. SELF-REPRESENTED LITIG. NETWORK, *supra* note 230, at 1.

245. *Id.*

246. *See FY 2011 OVW Grant Awards by State*, U.S. DEP'T JUST., <http://www.ovw.usdoj.gov/grant2011.htm> (last visited Apr. 2, 2014).

247. *See* 2012 REPORT, *supra* note 24, at 35.

248. Personal Conversation with Mike Williams, Chief Clerk, Bronx Cnty. Family Court (Jan. 28, 2013).

249. Because this program was designed for advocates, as opposed to unrepresented litigants, the user-friendly simplified A2J Author experience was not necessary. The program is hosted on Pro Bono Net's domestic violence practice site, which requires membership to access the resources, so litigants do not use the program without appropriate counseling. *See Family Justice/DV*, PRO BONO NET, [http://www.probono.net/ny/family/fop\\_project](http://www.probono.net/ny/family/fop_project) (last visited Dec. 13, 2013) (password required).

250. *See* 2012 REPORT, *supra* note 24, at 35.

for unrepresented litigants using a HotDocs program hosted on LHI.<sup>251</sup>

Although an e-filing solution requires a greater investment of time, personnel and costs, the initial start-up of a document assembly initiative does not; especially when the cost to serve each litigant is compared to the total costs of the project.<sup>252</sup> In addition to the licensing fee paid to Pro Bono Net, the Access to Justice Program currently employs the equivalent of two full-time attorneys for the development and implementation of its DIY Form programs that generated over 100,000 documents in 2012.<sup>253</sup> Start-up expenses can be minimized if the costs of programming, plain language, and hosting the programs on the Internet are shared with a legal services provider.<sup>254</sup> Other preliminary minimal costs can include promotional, training, and clerical expenses.<sup>255</sup> Document assembly programs are a cost effective enhancement to access to justice and court operations.<sup>256</sup> The programs make efficient use of limited resources.<sup>257</sup>

Document assembly programs also have the potential to earn the public's confidence and in turn influence the legislature's decisions on

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251. See LSC TECH. INITIATIVE GRANTS, 2011 AWARDED TIG PROJECTS (2011), available at [http://tig.lsc.gov/sites/default/files/TIG/pdfs/2011\\_TIG\\_Awards.pdf](http://tig.lsc.gov/sites/default/files/TIG/pdfs/2011_TIG_Awards.pdf). The data submitted to LHI is transferred directly into the Minnesota state court system's vendor's case management system.

252. To clarify, if the NYS court system spent \$300,000 on the DIY Forms initiative last year and 100,000 unrepresented litigants generated court forms, then the cost per user would be \$3.00, far less than what a litigant would pay an attorney for document preparation. A DIY Forms initiative is even more reasonable when the savings to courthouse staff time is factored in.

253. Three attorneys (Rochelle Klempner, Sun Kim, and Tracy McNeil) dedicate the equivalent of two full time attorneys' time to the DIY Form initiative.

254. See, e.g., LSC TECH. INITIATIVE GRANTS, *supra* note 251 (funding awarded to Legal Aid of Orange County to provide the ability to e-file domestic violence court forms in the California Superior Courts and funding awarded to Utah Legal Services, Inc. in partnership with Utah's Courts to update their HotDocs library). The NYS court system does not currently share these costs.

255. See FISHER & KLEMPNER, *supra* note 27, at 6-7 (containing a more detailed list of potential costs). The NYS court system spent less than \$2000 on promotional costs in 2012 and conducts nearly all staff training via webinar to save money. In addition, all translations and audio costs have been obtained at no cost by using staff volunteers. Employees even produced videos in English and Spanish to promote the DIY Form programs. The videos are available on YouTube on the Access to Justice Programs channel. See *NYCourtsA2J*, YOUTUBE, <http://www.youtube.com/user/NYCourtsA2J> (last visited Apr. 2, 2014).

256. See, e.g., LEGAL AID OF NEB., TIG 10047 FINAL EVALUATION REPORT 5-6 (2012), available at <http://tig.lsc.gov/sites/default/files/TIG/TIG%2010047%20Nebraska%20Automated%20Docs.pdf>.

257. *Id.*

the court system's budget.<sup>258</sup> A recent study on public opinion and the courts found that public confidence in the state court system is extremely low and most people do not believe that funding the judiciary should be a main concern of the legislature.<sup>259</sup> DIY Form program user surveys indicate that the programs improve the public's trust and confidence in the courts.<sup>260</sup> Many DIY Form program users commented on their positive interaction with the court system. For example, litigants have said:

This program is great. New York cares about people who can't afford lawyers.<sup>261</sup>

I don't know when I have ever used a government service that was so very helpful. This is GREAT!<sup>262</sup>

This is the best thing I've experienced in this or any court.<sup>263</sup>

In these times of shrinking state court system budgets, a positive public attitude is important if the courts are to become a legislative budgeting priority.<sup>264</sup>

Clearly, there are tremendous advantages to a court system from the deployment of user-friendly court-based document assembly programs.<sup>265</sup> Despite the benefits, in addition to New York, only the California, Arkansas, Minnesota, and New Mexico state court systems presently contract with Pro Bono Net to utilize LHI on their own.<sup>266</sup> The majority of document assembly programs hosted on LHI are produced by legal service organizations.<sup>267</sup> Over forty territories produce A2J Author programs, some in partnership with state

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258. See SELF-REPRESENTED LITIG. NETWORK, *supra* note 230, at 2; TEX. ACCESS TO JUSTICE COMM'N, *supra* note 37, at 13.

259. GERSTEIN BOCIAN AGNE STRATEGIES, PUBLIC OPINION AND THE COURTS: COURT TECHNOLOGY CONFERENCE 2013 figs. 3, 5, 10–12, 15–17 (2013), available at [http://www.ctc2013.com/~media/Microsites/Files/CTC2013/CTC2013\\_Midnote.ashx](http://www.ctc2013.com/~media/Microsites/Files/CTC2013/CTC2013_Midnote.ashx).

260. Data on file with author.

261. *DIY Forms: User Testimonials*, *supra* note 188 (user survey comment submitted Mar. 11, 2010, Queens County Family Court, Support Modification Program).

262. *Id.* (user survey comment submitted Jan. 13, 2010, Suffolk County Supreme Court, Adult Name Change Program).

263. *Id.* (user survey comment submitted Feb. 27, 2012, New York County Family Court, Support Modification Program).

264. See generally GERSTEIN BOCIAN AGNE STRATEGIES, *supra* note 259.

265. See *supra* notes 261–64 and accompanying text.

266. See FISHER & KLEMPNER, *supra* note 27, at 39; cf. JOHNSON, *supra* note 141, at 20 (listing the four court systems contracting with Pro Bono Net as of 2010).

267. See JOHNSON, *supra* note 141, at 5; see also *id.* at 15 (pointing out that LSC programs have access to TIG funding to create document assembly programs).



courts.<sup>268</sup> Yet the most successful authors of A2J Author programs on LHI are the New York and California court systems.<sup>269</sup> Document assembly programs are most effective when the court system takes a leadership role in their creation and implementation.<sup>270</sup> This is because court administration and judicial and non-judicial personnel are well situated to create and support a document assembly project.<sup>271</sup>

Input from court system personnel is integral for authoring the most user-friendly and assistive programs.<sup>272</sup> Window Clerks, Court Help Center and Public Access Law Library staff, who regularly interact with unrepresented litigants, know which forms litigants need the most help filling out and which pro se filings are most frequently rejected due to omissions and errors.<sup>273</sup> When court employees contribute to the development and testing of a program, it makes a better product.<sup>274</sup> The Access to Justice Program's developer's groups regularly suggest changes that improve the programs, making it more likely that litigants will succeed.<sup>275</sup> Help Center personnel, court attorneys who conference cases, window Clerks, and Judges with years of experience eliciting information from pro se litigants are well suited to assist in the question flow of the interview.<sup>276</sup> Furthermore, because the Clerks and Judges ultimately decide the sufficiency of a pleading, it makes the most sense for these people to contribute their expertise to the authorship process.<sup>277</sup> A court system in charge of the

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268. *Id.* at 4–5 (providing an overview of how courts from a number of jurisdictions are offering their document assembly programs to litigants). *See generally* Johnson, *supra* note 67.

269. *See LHI General Statistics Q3 2013*, PRO BONO NET, <http://www.probono.net/dasupport/search/item.498613> (password required). Although the New York and California state court systems do not have the greatest number of programs available, they consistently rank one and two in the number of documents generated by unrepresented litigants each quarter. *See id.*; *2012 Q4 LHI Content Statistics*, *supra* note 32.

270. *See* JOHNSON, *supra* note 141, at 22.

271. *See infra* notes 272–300 and accompanying text.

272. *See* FISHER & KLEMPNER, *supra* note 27, at 5.

273. *Id.*

274. *Id.* at 17–18.

275. For example, court employees in developer's groups pointed out that a.k.a. questions needed to be added to the Adult Name Change Petition Program and the Uncontested Divorce Program (in development) because if the unrepresented litigants' name on the petition doesn't match their photo ID, they may have trouble getting the documents notarized. *See, e.g., Supreme Court Adult Name Change Petition Program*, *supra* note 109.

276. *See* FISHER & KLEMPNER, *supra* note 27, at 18.

277. *See* JOHNSON, *supra* note 141, at 22; FISHER & KLEMPNER, *supra* note 27, at 5.

development of a document assembly program can solicit this assistance from appropriate personnel without difficulty.<sup>278</sup> Indeed, the court system has the unique ability to form state-wide committees, assign and require feedback, and set up testing locations in the courthouses.<sup>279</sup>

In addition, the court system can mandate uniform rules and procedures.<sup>280</sup> The greatest challenge to completing a new DIY Form program is not producing the court form itself, but the production of litigant instructions that are applicable to every court in the state. Uniformity is vital for delivery of equal justice.<sup>281</sup> When building consensus, the court system is in a prime position to gain statewide agreement on filing requirements.<sup>282</sup> The court system can easily survey the courts to ensure that instructions in the output are correct.<sup>283</sup> It is counterproductive to automate programs when there are variations in local procedures.<sup>284</sup> Doing so would only lead to litigant confusion and pleading rejections when litigants mistakenly follow the wrong procedure.<sup>285</sup> Where local court rules differ, the court system can make changes.<sup>286</sup> Where local laws differ, the court system can play an essential role in seeking legislative change.<sup>287</sup>

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278. See JOHNSON, *supra* note 141, at 22 (discussing how legal services groups developing document assembly programs must have courts buy-in and identify key court personnel to provide feedback); FISHER & KLEMPNER, *supra* note 27, at 5.

279. See FISHER & KLEMPNER, *supra* note 27, at 5.

280. See *Rules of the Chief Judge, Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts*, NYCOURTS.GOV, <http://www.nycourts.gov/rules/chiefjudge/index.shtml> (last visited Mar. 10, 2014) (“the Chief Judge establishes Statewide standards and administrative policies”); *Rules of the Chief Administrative Judge, Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts*, NYCOURTS.GOV, <http://www.nycourts.gov/rules/chiefadmin/index.shtml> (last visited Apr. 2, 2014) (the Chief Administrative Judge is responsible for supervising the administration and operation of the State’s trial courts).

281. See FISHER & KLEMPNER, *supra* note 27, at 15.

282. *Id.* at 5, 10, 14. This is extremely difficult in a large jurisdiction. For example, when researching the development of a statewide fee waiver application, the NYS Courts Access to Justice Program discovered that the requirements differed from court to court throughout the state. Before a program can be developed, a uniform procedure must be established and this is the prerogative of the court system.

283. See JOHNSON, *supra* note 141, at 20; FISHER & KLEMPNER, *supra* note 27, at 19.

284. See FISHER & KLEMPNER, *supra* note 27, at 15.

285. See TEX. ACCESS TO JUSTICE COMM’N, *supra* note 37, at 11.

286. See *supra* notes 279–81 and accompanying text.

287. Counsel’s Office drafts legislation on behalf of the court system. See N.Y. STATE UNIFIED COURT SYS., ANNUAL REPORT 2012, at 30–36, available at [http://www.nycourts.gov/reports/annual/pdfs/UCS\\_AnnualReport\\_2012.pdf](http://www.nycourts.gov/reports/annual/pdfs/UCS_AnnualReport_2012.pdf).

Court personnel are also well-positioned to track usage within the courthouse by recording filings in the case management system and gathering user feedback.<sup>288</sup> The user surveys collected by the Access to Justice Program ask the litigant to report any questions that were unclear or difficult to understand.<sup>289</sup> Upon quarterly review of survey data, the Access to Justice Program will clarify text screens or add more text based on user survey responses.<sup>290</sup> LHI's online feedback button is much less likely to gather helpful data because litigants skip the on-line survey to retrieve their documents and the survey does not capture information about the litigant's experience in the court.<sup>291</sup>

Furthermore, courthouses are ideal environments to place public access computer terminals and promote and facilitate usage of the programs because litigants visit courthouses to file court forms.<sup>292</sup> It is not a far leap to suggest that placing and advertising a product in the location where it will be utilized increases the product's usage.<sup>293</sup> In New York, DIY Form terminals have been placed in Court Help Centers, Public Access Law Libraries, and in many Court Clerk's Offices.<sup>294</sup> The Clerk's Office terminals open to menu pages that list the available DIY Form programs for that court.<sup>295</sup> Signs are posted near the terminals to advertise their availability and provide

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288. See FISHER & KLEMPNER, *supra* note 27, at 5. In the NYS court system, when new DIY Form program is developed, the ability to record the DIY Form filing is added to the court's case management system. Court personnel are trained to watch for the DIY footers on the court papers and record the filing in the court's case management system. Instructions for court staff on how to record the filings are available on the court's intranet. Case management filing statistics are automatically generated each quarter and sent to the Access to Justice Program for review. Surrogate's Courts, which have a different case management system, self-report their DIY filings every quarter to the Access to Justice Program.

289. See 2012 REPORT, *supra* note 24, at 65.

290. See FISHER & KLEMPNER, *supra* note 27, at 15. The Access to Justice Program recently added text to the end of all the DIY Form programs stating that the documents need to print in Word. A new "Learn More" button explains how to download free WordViewer if the litigant does not have Word. Previously, this information was only written on the programs' landing pages. These changes were made after user surveys demonstrated that many litigants were printing their documents incorrectly. See *id.* (recommending these features as best practices).

291. See FISHER & KLEMPNER, *supra* note 27, at 16.

292. See JOHNSON, *supra* note 141, at 11–12 (discussing placement of unassisted self-help kiosks and Internet portals).

293. See *id.* at 12 (describing how the NYS court system's placement of signs around the courthouse increased courthouse usage of the programs); FISHER & KLEMPNER, *supra* note 27, at 25.

294. *DIY Forms, New York State Courts Access to Justice Program*, *supra* note 130.

295. See *id.*

instruction.<sup>296</sup> In 2012, seventy-seven percent of DIY Form program users surveyed stated that they used a DIY Form program in a court facility.<sup>297</sup> By placing computer terminals in the courthouses, staff members are available to assist litigants that may not be able to do it all themselves.<sup>298</sup> This helps litigants who do not possess the level of understanding and knowledge needed to utilize even a simple DIY Form program.<sup>299</sup> An outside organization does not have the presence in the courthouse to provide this level of service.<sup>300</sup>

The court system administration controls which signs are posted in the courthouse and what information court employees distribute to the public.<sup>301</sup> The Access to Justice Program distributes flyers, posters, and postcards to courthouses throughout the sixty-two New York counties to promote the DIY Form programs.<sup>302</sup> Some courthouses continuously run silent slideshows in public areas that advertise the programs.<sup>303</sup> Litigants outside the courthouse can also find a DIY Form program by surfing the Internet, however, if the litigant visits the court system's website—the logical place to look for information on a case—then the litigant will ultimately be led to the DIY Form program.<sup>304</sup> The court system controls and maintains the content on its web pages.<sup>305</sup> Accordingly, on the NYS court system's web pages there are multiple links to access the programs from topical sections, forms pages, and local court pages.<sup>306</sup> In 2012, the DIY Forms on the CourtHelp website received more than 108,000

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296. An assortment of DIY Form flyers posted in the courthouses are posted on the Access to Justice Program's website. *See id.*

297. *See* 2012 REPORT, *supra* note 24, at 26. The Access to Justice Program attributes this high percentage to the education and training of court staff conducted throughout the year. The training is primarily conducted via webinar during the lunch hour. The Access to Justice Program periodically holds live trainings and webinars for public service advocates and legal services attorneys, but these are limited due to budget and time constraints. *See* 2012 REPORT, *supra* note 24, at 30–32.

298. *See* JOHNSON, *supra* note 141, at 12.

299. *See id.* (describing the Ontario court's triage system).

300. *See id.* at 11 (noting that courts have multiple options on how and where to place public access terminals in the courthouse); *see also* FISHER & KLEMPNER, *supra* note 27, at 9–10 (discussing assisted versus unassisted use in the courthouse).

301. *See* FISHER & KLEMPNER, *supra* note 27, at 5.

302. *See id.* at 32.

303. *See id.* Slideshows advertising DIY Form programs run in the Syracuse and Rochester City Courts, as well as the New York City Civil Courts. *See* 2010 REPORT, *supra* note 24, at 31.

304. *See* FISHER & KLEMPNER, *supra* note 27, at 23, 42.

305. *See id.* at 23–24.

306. *See, e.g., id.* at 42 (describing how a new topical section on “Starting A Roommate Holdover Case” was added to the New York City Housing Court website after a DIY Form program was created).

views.<sup>307</sup> The Access to Justice Program also publicizes the DIY Form programs on its Twitter feed and YouTube channel.<sup>308</sup> Litigants who telephone the courthouses for information are advised of the programs' availability.<sup>309</sup>

Thus, it is evident that a court system's structure makes it the ideal environment to successfully develop and implement a court-based document assembly initiative similar to the NYS court system's DIY Form program. Indeed, LSC encourages its organizations to collaborate and develop the programs in partnership with the court system.<sup>310</sup> Although LSC's TIG grants are primarily the driving force behind the success of A2J Author, the software was originally envisioned as a court-supported tool to repurpose the court system.<sup>311</sup> LSC was enlisted to support the project due to the difficulty of finding state courts willing to invest in automation.<sup>312</sup> Thus, it is no surprise that today the successful document assembly programs are those in which the court is a committed and active partner.<sup>313</sup> Plainly put, court systems are ideally suited to take a lead role in the creation of document assembly programs for unrepresented litigants.<sup>314</sup>

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307. 2012 REPORT, *supra* note 24, at 36.

308. *See id.* at 33; *see also NYCourtsA2J*, *supra* note 256; *NYCourtsA2J*, TWITTER, <https://twitter.com/accesstojustice> (last visited Apr. 2, 2014).

309. *See, e.g.*, Outgoing Message, Schenectady Family Court, *available by telephone*: (518) 285-8435 (last verified Mar. 10, 2014) ("DIY petitions are available at [www.NYCourts.gov](http://www.NYCourts.gov).").

310. *See* LSC TECH. INITIATIVE GRANTS, NOTICE AND REQUEST LETTER FOR INTENT TO APPLY FOR 2012 GRANT FUNDING BY LEGAL SERVICES CORPORATION 2 (2012), *available at* <http://tig.lsc.gov/sites/default/files/TIG/pdfs/2012-TIG-LOI-Notice.pdf>.

311. *See* Staudt, *Bridging the Digital Divide*, *supra* note 83, at 88–90.

312. *See id.* (containing a lengthy description of LSC's involvement with A2J Author document assembly).

313. For example, using A2J Author software, the Idaho Supreme Court partnered with Idaho Legal Aid Services in 2005 to develop hundreds of court forms. The Idaho Supreme Court reviewed all programs, worked to standardize forms, actively promoted the programs and ensured that litigants had access to computer terminals. *See* JOHNSON, *supra* note 141, at 7, 14; Johnson, *supra* note 67, at 116; *see also* LEGAL AID OF NEB., *supra* note 257 at 5–6; ZORZA, *supra* note 127; Camille Cameron & Katherine Bladow, *Courting Judicial Partners—The Promises and Perils of Court Collaboration*, LEGAL SERVICES NAT'L TECH. ASSISTANCE PROJECT (2005), <http://lsntap.org/?q=node/304>.

314. *See* FISHER & KLEMPNER, *supra* note 27, at 5.

### CONCLUSION

It is undeniable that an acute equal justice gap exists between civil legal needs and available legal assistance.<sup>315</sup> This imbalance has only been exacerbated by the economic recession and the resulting budget cuts to the NYS court system, making it impossible to meet the demand.<sup>316</sup> Unrepresented litigants are left to navigate the court system on their own, even though their cases may have serious consequences.<sup>317</sup> The problem impacts over two million New Yorkers each year.<sup>318</sup>

Access to justice is now, and has been for hundreds of years, the most fundamental of all rights.<sup>319</sup> The judiciary is mandated to uphold this right and deliver justice that is meaningful, fair and impartial, and equal for all.<sup>320</sup> “[H]ow can we enjoy equal protection of the laws without equal access to justice?”<sup>321</sup> This becomes impossible when so many unrepresented litigants come to court without benefit of counsel and are unable to prevail on meritorious legal claims or defend against frivolous ones.<sup>322</sup>

If the demand for legal assistance cannot be met, it is the judiciary’s responsibility to reduce procedural and other complexities wherever possible to facilitate the ability of unrepresented litigants to “do it themselves.”<sup>323</sup> As demonstrated in this Article, document assembly technology has produced software that greatly benefits unrepresented litigants by helping them complete and file court forms on their own.<sup>324</sup> A2J Author’s features make it possible to address many of the challenges unrepresented litigants face to accessing justice.<sup>325</sup> The

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315. See TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., *supra* note 5, at 1.

316. See Fisher, *supra* note 3, at 2–3.

317. See *id.*

318. See *supra* note 5 and accompanying text.

319. See U.S. CONST. art. IV, § 2, cl. 1; *id.* amend. I; *id.* amend. V; *id.* amend. XIV.

320. See U.S. CONST. art. IV, § 2, cl. 1; *id.* amend. I; *id.* amend. V; *id.* amend. XIV.

321. LEGAL AID OF NEB., *supra* note 257, at 1. As New York State Chief Judge Jonathan Lippman stated, “Equal justice is our reason for being in the Judiciary and the profession, and if we don’t have equal justice in these beautiful courtrooms and courthouses then we might as well close the courthouse doors.” STATE OF N.Y. FOURTH DEP’T HEARING, THE CHIEF JUDGE’S HEARINGS ON CIVIL LEGAL SERVICES 5 (Oct. 2, 2012).

322. See generally Fisher, *supra* note 3.

323. See Charn, *supra* note 24, at 2233; see also TEX. ACCESS TO JUSTICE COMM’N, *supra* note 37, at 7–13 (discussing the numerous benefits, procedural and otherwise, of document assembly forms).

324. See *supra* Part I.

325. See *Online A2J Authoring Guide*, *supra* note 80; see also *supra* Part I.

NYS court system and other jurisdictions have been extremely successful with document assembly programs.<sup>326</sup> Unfortunately, these efforts, while laudable, only begin to scratch the surface.<sup>327</sup> There are mountains of legal forms that should be automated in New York and across the country to improve access to justice.<sup>328</sup> “It is the role of the *Court* to ensure access to justice, not vendors on Craigslist or Legal Zoom.”<sup>329</sup>

As demonstrated in Part III, an investment in document assembly technology substantially benefits courthouse operations and significantly outweighs its costs.<sup>330</sup> The programs drastically reduce judge and staff time required to assist unrepresented litigants.<sup>331</sup> To address the public’s needs and improve the way the court does business through a document assembly initiative a court system must be fully invested in the development and implementation process.<sup>332</sup> This requires court administrators to devote the attention needed to ensure that everyone involved gains the utmost advantage.<sup>333</sup> A court system can begin by partnering with a legal services organization or a clinical law school program, as the NYS court system has successfully done in the past.<sup>334</sup> Partnering is an excellent means to share resources and expertise.<sup>335</sup> A court system can also choose to embark on its own.<sup>336</sup> In either case, court systems are ideally situated to replicate the NYS court system’s success with its DIY Form programs.<sup>337</sup> With court-based document assembly programs, court systems have a unique opportunity to improve access to justice and courthouse efficiency all at once.<sup>338</sup> This is a win-win situation.<sup>339</sup>

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326. *See supra* Part II.

327. *See* Staudt & Medeiros, *supra* note 80, at 709–10.

328. *See id.*

329. TEX. ACCESS TO JUSTICE COMM’N, *supra* note 37, at 21.

330. *See supra* Part III.

331. *See* BERKMAN CTR. FOR INTERNET & SOC’Y AT HARVARD UNIV., *supra* note 61, at 5; *see also supra* Part III.

332. *See* FISHER & KLEMPNER, *supra* note 27, at 2–3.

333. *See id.* at 8–9.

334. *See supra* note 150 and accompanying text. Indeed, the NYS court system’s DIY Form programs would not be where they are today but for the initial support, training and encouragement from LAWNY and Jeff Hogue, Esq.

335. *See* FISHER & KLEMPNER, *supra* note 27, at 10.

336. *See generally* FISHER & KLEMPNER, *supra* note 27; JOHNSON, *supra* note 141.

337. *See supra* Part III.

338. *See supra* Parts II & III.

339. *See supra* Parts II & III.