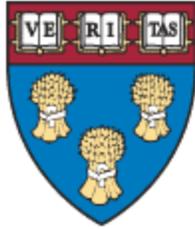


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Technology, the Courts and Self-represented Litigants

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Technology, the Courts and Self-Represented Litigants

By Ronald W. Staudt

Electronic filing (e-filing) of court documents brings with it the promise of dramatic savings and improvements in the work of courts and changes the way that courts will operate in the future.

National Center for State Courts web site, visited 02/05/2003,
http://www.ncsconline.org/WCDS/Topics/topic1.asp?search_value=Electronic%20Filing

Introduction

The information revolution is slowly beginning to change the justice system. Lawyers in large firms and solo practices use computers, word processing, email and the common tools of modern information technology. The justice institution most reluctant to adopt modern information tools has been the court system itself.¹ Yet even the courts are beginning to build and install electronic data systems to manage cases and court files. The most aggressive and best funded electronic filing initiatives in the United States are now being deployed in the federal court system. The Federal Case Management/Electronic Case Files system describes itself as follows:

The federal judiciary is now well underway with the nationwide implementation of its new Case Management/Electronic Case Files (CM/ECF) systems. CM/ECF not only replaces the courts' aging electronic docketing and case management systems, but also provides courts the capability to have case file documents in electronic format, and to accept filings over the Internet if they choose to do so.

CM/ECF systems are now in use in 12 district courts, 43 bankruptcy courts, and the Court of International Trade. Most of these courts are accepting electronic filings. More than 5 million cases with more than 15 million documents are on CM/ECF systems. And more than 25,000 attorneys and others have filed documents over the Internet. Under current plans, the number of CM/ECF courts will increase steadily each month into 2005.

This aggressive plan makes only cursory provision for self represented litigants. For example, most federal courts adopt local rules to guide the use of the electronic filing systems when they go "live." Here is the text of the rule for the Bankruptcy Court for the Southern District in Illinois:

¹ Perritt & Staudt, The Changing Culture: The 1% Solution: American Judges Must Enter The Internet Age, 2 J. App. Prac. & Process 463 (2000)

A debtor without legal representation shall file petitions, schedules, motions, pleadings and any other documents conventionally in accordance with the Local Rules of the Bankruptcy Court for the Southern District of Illinois...²

Electronic filing and digital case management systems are slowly being built for scattered state court systems, but the obvious targets of opportunity have been large multiparty cases, not the volume court calls in traffic and divorce and landlord/tenant courtrooms where pro se litigants predominate. Historically, most state courts have been unable or unwilling to appropriate the funds needed to re-engineer their paper processes in the manner of the federal CM/ECF project. Instead state courts, or more correctly lawyers in complex multi-party state court cases have turned to private industry to outsource the creation of electronic filing systems. Because of the "big case" economics of state court e-filing, even the leading commercial providers of electronic filing have little experience in building systems aimed at the special needs of self-represented litigants.

National organizations supporting state and local courts have not focused on the impact that e-filing might have on self-represented litigants.

The National Center for State Courts has been an active partner in several studies of pro se litigants and sponsored a series of national conferences examining the issue. These same national organizations have spearheaded numerous studies, conferences and initiatives aimed at the electronic filing issues facing state and local courts. The [Joint Technology Committee \(JTC\)](#) of the [Conference of State Court Administrators \(COSCA\)](#) and the [National Association of Court Managers \(NACM\)](#) formed an E-Filing Standards sub-committee to define a national court XML Standard to allow electronic filing via the Internet.

On December 5, 2002, the Joint Technology Committee of COSCA/NACM accepted the report of the National Consortium for State Court Automation Standards adopting the E-Filing Functional Requirements as a "recommended standards." As a result of the action of the Joint Technology Committee, the recommended standard will be submitted to the COSCA and NACM Boards of Directors for approval at their next meetings scheduled in the spring of 2003.³

² Administrative Procedures for Filing, Signing, Maintaining and Verifying Pleadings and other Documents in the Electronic Case Filing (ECF) System, p. 5, viewed 02/05/2003 at <http://www.ilsb.uscourts.gov/so021.pdf>.

³Electronic Filing Processes (Technical and Business Approaches) http://www.ncsconline.org/D_Tech/Standards/Documents/RTF/Recommended_%20Process_%20standards_%2011_27_02.rtf (last visited May 5, 2003).

While these standards make important contributions to the progress of electronic filing generally, there is little treatment devoted to the special issues raised by self represented litigants.⁴ Section 1.1L, the section “addressing the special needs of users” offers several paragraphs of suggestions for helping those who do not speak English, for illiterate persons, the blind, deaf and those who have no computer skills. Standard 1.1L acknowledges that self-represented litigants are filers with special needs in an electronic filing system and suggests that courts can:

- waive e-filing fees or require private services providers to make e-filing available at no cost to self represented persons,
- ensure that the e-filing applications are as easy to use as possible, and
- ensure that access computers are available in libraries, courthouses, shelters and community centers.

The Technology Bill of Rights (TBOR) initiative in the State of Washington is a remarkable exception to the relative inattention given by state e-filing projects to low income self-represented court customers. TBOR is a unique project that is strongly supported by the Supreme Court of Washington and has become a lightning rod for analysis of the special needs of the poor and other disadvantaged groups when technology is implemented in the state justice system.⁵ TBOR is working on best practices that should govern the implementation of electronic filing in Washington as the first of its efforts to manage the impact of technology on access to justice. But TBOR has not yet published the results of its efforts to define best practices for electronic filing for self represented litigants.

⁴ Two of its constituent organizations have promulgated technology standards that address electronic filing *COSCA/NACM Joint Technology Standards*. Section 1.1L of these standards offers some suggestions for self represented filers:

Addressing the Special Needs of Users

In developing and implementing electronic filing, courts will consider the needs of indigent, self-represented, non-English speaking, or illiterate persons and the challenges facing persons lacking access to or skills in the use of computers.

The intent of this standard is for courts to take reasonable steps to ensure that electronic filing systems promote, rather than create barriers to, public access to the courts.

⁵ See, <http://www.atjtechbillofrights.org/> (last visited May 2, 2003.) The mission of TBOR is stated on this web site as follows:

“To create a body of enforceable fundamental principles to ensure that current and future technology both increases opportunities and eliminates barriers to access to and effective utilization of the justice system, thereby improving the quality of justice for all persons in Washington State.”

State-wide Web Sites to Improve Delivery of Civil Legal Services

Beginning in fiscal year 2000, the Legal Services Corporation (LSC) began to explore creative, new approaches to using technology as a leveraging force dramatically to increase the legal services available to low income people. In three rounds of Technology Innovation Grants, LSC has launched a national effort to help every state establish a state-wide web portal with information, training, forms and sophisticated tools to educate and support low income customers. All of the grants were aimed as using technology to expand access to information and services to low income people with a special emphasis on services to self represented people who would not receive any assistance without the use of technology.

There are dozens of examples of state initiatives that were energized by the prod of the TIG funds. For example, in Orange County California the ICAN! Project has built kiosks (and web sites resembling kiosk functionality) that offer advice and instruction to self represented litigants in the preparation of court forms. ICAN uses high quality video to explain every action a customer must take to prepare and file court documents. ICAN has already taken the next logical step: its web based domestic violence kiosks are able to transmit the documents generated by the user and the computer directly into the Orange County Court system's filing depository.

The Illinois Technology Center for Law and the Public Interest (ITC) is the statewide collaboration dedicated to improving access to justice for low income people in Illinois. The ITC has built three web sites for Illinois on a data base infrastructure that is fueled by content contributions from poverty law experts across the state. A special ITC project experiments with multimedia elements to make the site easy to use by customers with no legal training or experience. ITC was able to build on the results of a research and design project aimed at self-represented litigants. This research project, described next, helped the ITC to develop some unique user interfaces for its website aimed at the public.

Customer Centered Design: The NCSC/ Chicago-Kent /Institute of Design Access to Justice Project

Chicago-Kent College of Law, Illinois Institute of Technology's Institute of Design and the National Center for State Courts worked together in 1999 and 2000 to study the access to justice problems posed by the flood of self-represented litigants in United States state and local courts.⁶ Using design technology pioneered by Professor Charles Owen at the Illinois Institute of Technology's Institute of Design, we sent 10 teams of law students

⁶ The research reported in this testimony was funded by grants from the State Justice Institute (SJI-00-N-248), the Open Society Institute (No. 20001562), the Center for Access to the Courts through Technology, and the Illinois Institute of Technology. The points of view expressed are those of the author and do not represent the official positions or policies of the State Justice Institute, the Open Society Institute, the Center for Access to the Courts Through Technology, the National Center for State Courts, or the Illinois Institute of Technology.

and design students to observe the customers (self represented litigants and those who deliver justice to them) and the processes of four different state courts.

Immersed in the reality of these observations, the interdisciplinary team spent 15 weeks in 2001 using systematic design methods to identify barriers, describe problems and propose solutions to address these problems. The fully described results of this redesign project are available at its web site, www.judgeline.org/A2J/ and in book form.⁷

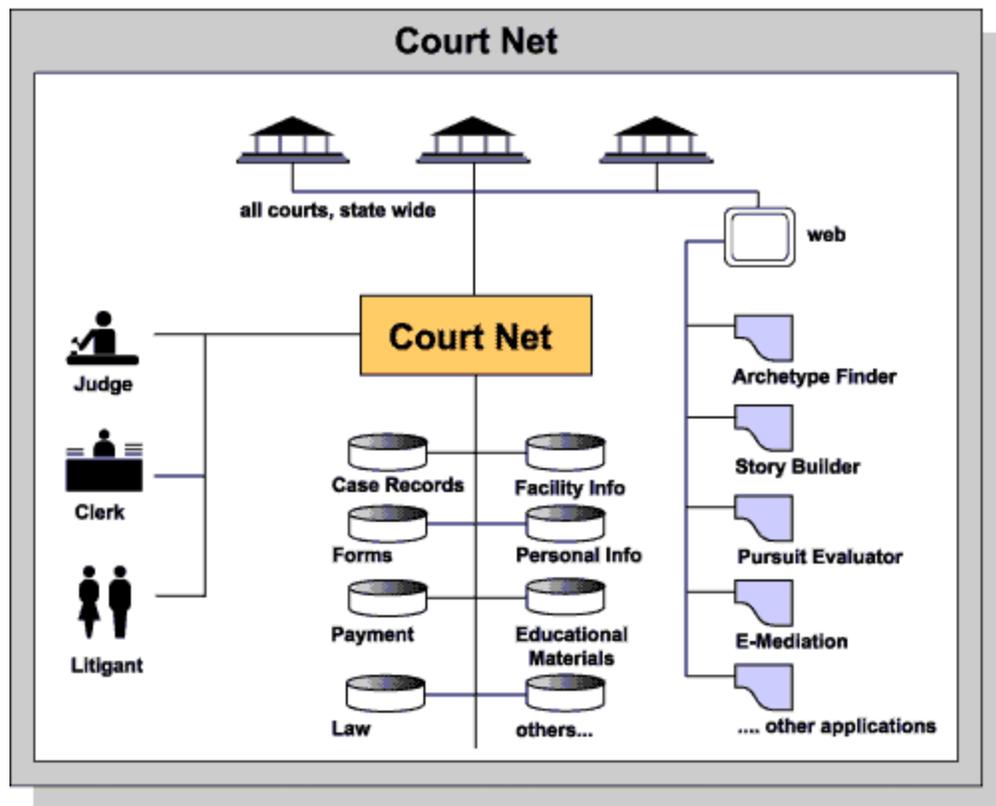
These teams found that self-represented litigants valued the traditional dispute resolution system, our civil courts. The teams found solid evidence in their observations to support the importance of the current dispute resolution system to court customers. Self-represented litigants placed high value on the direct interaction with court personnel, judges and clerks. The utility of our courts as valued institutions for dispute resolution is strong. Most court and clerk employees worked hard to deliver justice and most were aware of the special problems of self-represented litigants. Some courts were more innovative and customer centered than others. Courts and clerks had created self help centers, pro se facilitators, extended office hours and even mobile clerk's offices that motored into remote areas to bring the court's filing services to farm workers. This is the good news.

The project found that even the most service oriented courts and their associated clerk's offices were unable to deliver excellent customer service. Story after story told of bad outcomes, wasted time, confused and error filled filings, long waits and baffling processes only thinly explained and almost never understood by customers. Some of these problems are driven by unnecessary complexity built into current court processes. Some problems come from the knowledge, language and skill gaps that burden most self-represented litigants.

The design team began to develop solutions to streamline the process, to educate the customer and to supplement the existing court system with tools and products that empower the customer and the court personnel alike to resolve disputes with efficiency and transparent fairness. A large amount of the dissatisfaction of court customers comes from the complexity of courts and customer ignorance of their particular place in the complex arena. Other sources of dissatisfaction, like lengthy delays, long waits for court calls and scheduling inefficiency, affected both unrepresented litigants and lawyers. Even the most customer-centered courts are quite poor at reducing these inefficiencies that burden the time of all court customers. The design team was struck by the notion that Wal-Mart was better able to schedule delivery of disposable diapers to its hundreds of stores than were courts able to organize and plan hearings. Many of the information processing and customer relationship management tools of modern business could be applied to the challenges courts face as they struggle to improve customer service to self-represented litigants: reengineering, total quality management, personalized segments of one, supply side value chains and net communities.

⁷ C. OWEN, R. STAUDT, T. PEDWELL, *ACCESS TO JUSTICE: MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS* (2002). To purchase, contact Ron Staudt at rstaudt@kentlaw.edu, or (312) 906-5326, or Todd Pedwell at tpedwell@kentlaw.edu or (312) 906-5328.

Drawing on their observations, the structured design methods of Professor Owen and their own diverse business and educational backgrounds, the teams designed fifty-three solutions – product proposals like Storybuilder, Pursuit Evaluator and Personal Case Account. The guiding principle in each of these solutions was the most palatable of all the change management ideas: start with the customer and drive all processes to meet the customers’ needs. Nearly every solution presumed access to modern information technology. The team named this pervasive technology infrastructure, Court Net. The following diagram illustrates the expansive but simply stated mission of the technology infrastructure: digitize all the information that anyone connected to the courts will use and make it available wherever and whenever needed.



This illustration shows all the actors on the left: judges, clerks and litigants; all the information in the middle: case records, forms, law, payment records, facility and personal information, and more; and all the tools that a systematic redesign could deliver on the right, Emediation, Storybuilder, Pursuit Evaluator, etc. All the people and all the information and all the tools are connected by a line, a wire, a network.

Written small, this network could be the local network of a small, integrated court system. Written large, it could be the Internet with necessary and relevant privacy and

security protections. The key insight here, the critical “going forward” assumption, is that court information must be digitized so that modern computing and networking and communication techniques can be employed to solve severe problems of poor customer service, inefficiency and lack of effectiveness.

In fact, CourtNet is an ideal, more of a dream than a reality. State and local courts move paper, not digital information. Court systems are in desperate need of massive infrastructure investment to be able to deliver the type of service that today’s customers deserve and expect. “In a period of increasingly tight budgets and ever expanding caseloads, courts across the country have looked at the concept of “electronic filing” as a way to reduce the considerable demands of handling physical case files and to reduce the long term costs of storing official documents.”⁸ The Chicago-Kent/ NCSC Study and the “efiling” movement within state courts both point toward the emergence of an electronic infrastructure that low income self-represented will face. As this infrastructure is built, it is critically important that the special needs of this set of customers are included within the design requirements. The Chicago-Kent web prototype that is described next, attempts to build an interface from the customer’s perspective. That interface has potential to make LSC funded statewide web sites more accessible to low income self-represented people. The same interface can be more welcoming entrance to state court systems as they build efileing infrastructure that self-represented customers must use to obtain access to justice.

A Prototype Access to Justice Interface for Self-Represented Litigants

To test the design conclusions of the Chicago-Kent/ NCSC Study (and inspired by the pilots constructed by ICAN in California), Chicago-Kent built a prototype web application to educate unsophisticated customers, to help them prepare pleadings and other court papers and to provide instruction on how to file those papers. The first pilot project was released to customers as the Illinois Joint Simplified Dissolution of Marriage system, portions of which are reproduced in the Appendix.

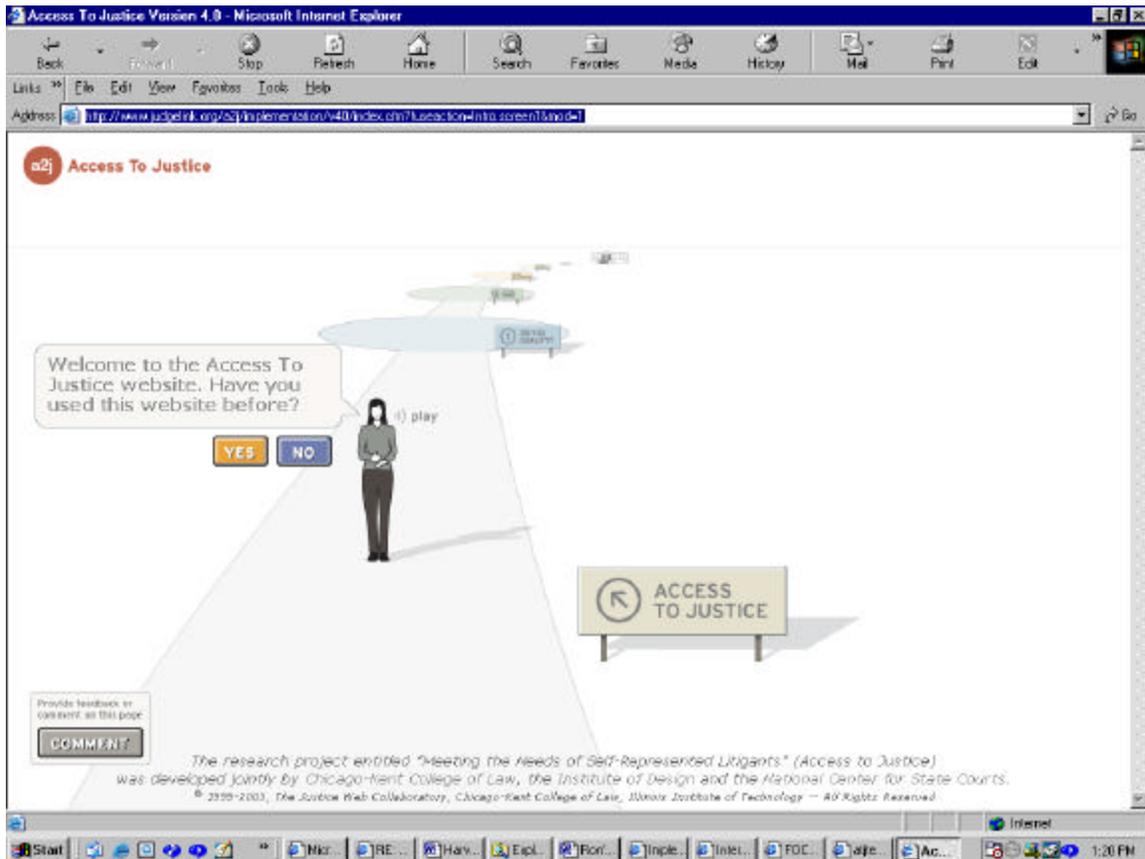
The JSMD pilot was launched on the web by the Illinois Technology Center in early 2003. The pilot includes a “soft” graphical interview that is designed to be customer friendly. The interview helps determine client eligibility for the special dissolution procedure and gathers all the data needed to complete all the court papers that both the husband and wife need to sign to obtain a dissolution. This data is formatted and sent to a web server running HotDocs Online, a document assembly system donated to the legal aid community by LexisNexis. The document assembly server compiles all the court forms and a set of graphical instructions and sends the packet electronically to the customer’s web site. In Illinois the documents are printed either at home, a legal aid office or at a special Self Help Desk to be installed in the Circuit Court of Cook County in June. The same tools could be used to format and deliver to an electronic filing server if a court were equipped to accept electronic filing.

⁸ Electronic Filing Processes (Technical and Business Approaches) *supra*, Note 3 at page 9.

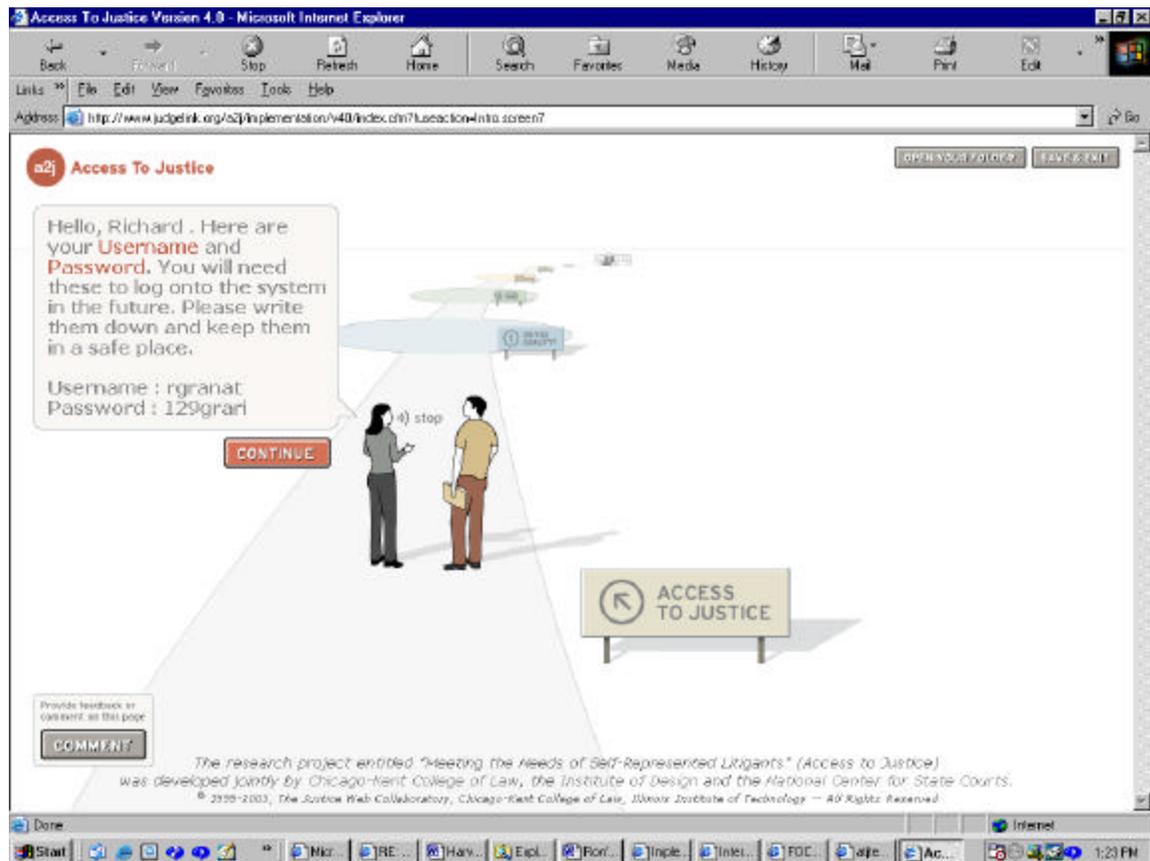
In effect, two important processes are meeting at the digital door of the courthouse: statewide web sites delivering legal services to low income people and electronic filing. Both processes are critically important to improving access to justice. Neither process is currently positioned to fully coordinate with the other. We have just started to build the interfaces that low income self represented litigants will need. We need to work hard to build the solid collaborations between the justice community and the courts that will be required to provide justice for all.

Appendix

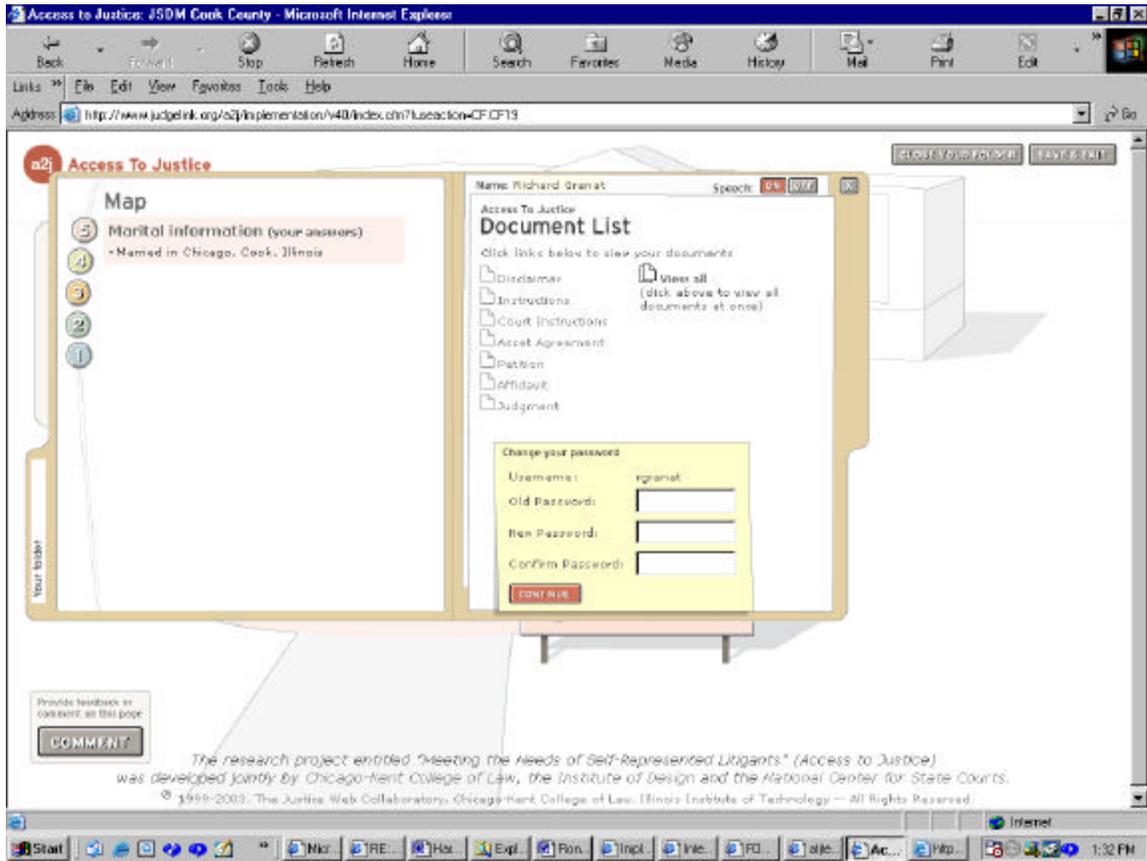
The Illinois Joint Simplified Dissolution of Marriage module begins with some screens that provide disclaimers and determine if you have previously stored some of your information in a prior use of the system:



When a user identifies himself as a man, for example, a graphical character representing the user appears in the scene on the road to the courthouse.



Once the interview journey is completed, all the forms and instructions can be printed and delivered to the web site where the customer accessed the module.



Instructions for a Cook County, Illinois Joint Simplified Dissolution of Marriage

The Joint Simplified Dissolution of Marriage (JSDM) process consists of following six steps:



The Access to Justice JSDM Guide-Me will help you to complete the first two steps – Qualification and Preparing the forms.

STEP 1 – Qualification



The JSDM Guide-Me walks you through the qualification process.