

Review of the Status and Potential of Access to Justice Technology in the United States of America

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I. Introduction

The contribution of the technology elements to the overall civil legal aid delivery system in the US -- and indeed to its legitimacy and political status should not be underestimated. Perhaps ten times as many people access legal aid generated technology tools each year than have direct human contact with providers.²

The political significance of technology for the credibility of legal aid in the U.S. is illustrated by the fact that at an April 16, 2013 White House presentation on the Legal Services Corporation (LSC) introduced by Vice President Joseph Biden, the two topics of discussion were pro bono and technology.³ The current commitment of national legal aid leadership to technology is underlined by LSC President Jim Sandman's comment at that gathering that in some areas the legal aid community was ahead of the private bar in its use of technology.

However, the technology-enabled portion of the U.S. legal aid delivery system reflects the overall structure, funding and environment of the system as a whole. The technology deployment is varied, some would say fragmented; it both benefits from, and is hampered by, the complex relationship between national organizations and the states, and between the states and local providers, as well as the almost complete wall between the criminal and civil systems.⁴ At the same time its reach and accessibility reflects the fact that it is deployed in a society with relatively deep technological penetration, even for low-income

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² In 2011, there were over 8 million unique visitors to the LSC funded network of self-help websites, compared with about 900,000 human contact case closings from brief service and advice.

³ Description and video online at <http://www.lsc.gov/media/in-the-spotlight/lsc-white-house-host-forum-increasing-access-justice>. This writer's description of highlights are at <http://acesstojustice.net/2013/04/17/what-a-day-at-the-white-house/>.

⁴ Rebecca L. Sandefur & Aaron C. Smyth, American Bar Association, *Access Across America: First Report of the Civil Justice Infrastructure Mapping Project* ix (2011) ("The results [of the research] are sobering. They underscore a fundamental absence of coordination in the system, fragmentation and inequality in who gets served and how, and arbitrariness in access to justice depending on where one lives.")

individuals, and one with widely varied urban and rural states, and large linguistic minorities.⁵ At least on the civil side, the technology benefits from, and indeed has been a major contributor to, the increasing delivery-system collaboration among non-profit groups, the courts, and the bar. Its components have had to be very carefully structured to comply with the relatively vigorous prohibitions on the unauthorized practice of law and restrictions on the use of Federal legal aid funds in the U.S. Importantly, the technology has benefited from the willingness of the courts to partner and cooperate. Finally, and perhaps paradoxically, the shameful lack of resources for the overall civil U.S. delivery system has made necessary a speedier and more comprehensive deployment than might have happened in a more generously funded system.⁶

This paper describes the current technology deployment and role, with the focus on the far more advanced civil side, introduces the thinking about the next generation now beginning, and offers some possible conclusions for systems considering what lessons our experience might offer.

II. Elements of the US System

A. Delivery System Elements

Because so little of civil legal access demand is met by the traditional legal services delivery system, the substantial majority of technology innovation has focused on assistance to the self-represented, including those not necessarily going to court, with less attention and investment in tools aimed at making traditional advocacy more efficient or effective. The general availability of counsel in criminal cases, and the institutional division between civil and criminal in the U.S. also explains the relative lack of attention to technology on the criminal side. (Given that most technology innovations can be scaled to serve large numbers of additional individuals at almost zero marginal cost, it has been considered that such investments in serving those who would otherwise receive no services are far more effective.) This focus on those without lawyers is, of course, in contrast to investment in the private legal sector, although a private on-line sector is also emerging.

1. *Web Information*

Every U.S. state and jurisdiction has a legal informational website, developed in some form of partnership with a range of access organizations, often, but not always including

⁵ Pew Research Center's Internet & American Life Project, *Digital Differences 2*, 5 (2012),

http://pewinternet.org/~media/Files/Reports/2012/PIP_Digital_differences_041312.pdf.

⁶ Richard Zorza, *Access to Justice: The Emerging Consensus. and Some Questions and Implications*, 95 *Judicature* 156 (Jan-Feb. 2011), <http://www.zorza.net/Judicature-Consensus.pdf>; Richard Zorza, *Courts in the 21st Century: The Access to Justice Transformation*, 49 *Judge's Journal* 14 (2010), <http://www.zorza.net/21st-century.pdf>.

the courts. These states date to early in the last decade, and were triggered by grants under the Legal Services Corporation's Technology Initiative Grants program.⁷

All the sites can be accessed through www.lawhelp.org. About half the sites are hosted on one platform, operated by Pro Bono Net, with the remainder of a variety of platforms, most, if not all, funded in some way by LSC. All sites are required to use the same subject matter codes for all materials, but that system is invisible to the user, with menu descriptions and options chosen completely at the state level. Many, but not all of the sites collect zip code or county information, producing a rich trove of as yet un-mined data for future use in developing legal need analysis and prediction algorithms.

There is also a network of sites that are specific to national areas of legal need, and are designed to serve both the public and public interest lawyers. These are newly developing sites provide services to both attorneys and the general public.⁸

Some states have robust public interest attorney sites designed to support, promote, recruit and place pro bono cases.⁹ In addition, many state court systems provide extensive online information, not only about court requirements, but about the underlying law, and how to present appropriate facts to the court.¹⁰ It should be noted however, that the state court system is far more fragmented and uneven than the legal aid portion of the system. While there is extensive cross-linking between courts and legal aid, the goal of a single-user portal is far from being met.

Those involved with the system generally consider that the main challenges for the future include improving comprehensiveness, making the content align more closely to the categories experienced by users, developing better front ends, improving partnering with access locations such as public libraries, and optimizing comprehensibility and multi-lingual access. However, although Internet access for low income individuals is most frequently obtained through smart phones,¹¹ very little of the content has been optimized for this platform (see discussion of mobile technologies below.)

2. *Tools for Access – Online Documents*

⁷ For numbers, see note 2, above.

⁸ Examples are a site specific to citizenship applications, <http://www.citizenshipworks.org>, and a site designed to assist those affected by national disasters, <http://www.femaappeals.org>.

⁹ Such sites exist in California, <http://www.californiaprobono.org>, Georgia, <http://www.georgiaadvocates.org>, and Pennsylvania, <http://www.paprobono.net>.

¹⁰ The California site is <http://www.courts.ca.gov/selfhelp.htm>. The Minnesota site is <http://www.mncourts.gov/selfhelp/>.

¹¹ Pew Research Center's Internet & American Life Project, *Digital Differences 2*, 15 (2012), http://pewinternet.org/~media/Files/Reports/2012/PIP_Digital_differences_041312.pdf.

For most self-represented litigants, the gateway to the courts and agencies that make decisions critical to their lives -- and thus to access to justice -- is the filing of a pleading -- hopefully a form. Thus, the second major element of civil online access to justice in the U.S. is a system of state-developed online document assembly. The system, Law Help Interactive,¹² also operated by Pro Bono Net with funding from the Legal Services Corporation, and established with additional funding from the State Justice Institute, is in use in about a third of the states. In many states the system is operated by legal aid alone and in some in cooperation with the courts.

The system operates by asking users a series of branching questions, and assembling the answers into an appropriate document. A user friendly front end, known as A2J is available for states and courts to use to program a simple interface. The back end is a commercial package called HotDocs. The owner of this software makes it available without cost to the legal aid community through Pro Bono Net.

One major advantage of this system is that the choices and instructions built into the system have the effect of shifting what would otherwise, in the U.S. categorization, from “advice” to “information.”

The deployment of this system is still very much a work in progress. Perhaps the biggest barrier is the number of states that have few standardized forms available.¹³ While far from typical, the recent approval by the Texas Supreme Court of simple divorce forms for use in uncontested no-child cases, was the subject of bitter, but ultimately futile opposition from the Family Court Bar.¹⁴ This area of innovation is strongly supported by the courts, because it improves the quality of court pleadings and reduces the time wasted when incomplete information is submitted to the court.¹⁵ Challenges to this deployment come from the cost of programming and maintaining the forms, and dealing with multi-lingual issues.

3. *Tools for Access – Online Service Application*

After a hesitant start, perhaps ten states are in the process of developing online service application capacities for legal aid. As a general matter, the systems require some form of human contact, by phone or chat, prior to completion of the intake. Those programs piloting these systems are reporting very significant time savings over traditional walk-in

¹² www.lawhelpinteractive.org.

¹³ John Greacen, *Resources to Assist Self-Represented Litigants: A Fifty-State Review of the "State of the Art,"* [http://www.legalaidnc.org/public/participate/legal_services_community/ABA_Resolution_onehundredtwelve\[1\].pdf](http://www.legalaidnc.org/public/participate/legal_services_community/ABA_Resolution_onehundredtwelve[1].pdf) (2011).

¹⁴ Richard Zorza, *Bloomberg Editorial Board Endorses Forms, Self-Help Services, Unbundling*, <http://accesstojustice.net/2012/03/05/bloomberg-editorial-board-enforces-forms-self-help-services-unbundling/> (March 5, 2012).

¹⁵ Conference of State Court Administrators, *Position Paper on Self-Represented Litigation* 6 (2000), <http://cosca.ncsc.dni.us/WhitePapers/selfreplitigation.pdf>.

or phone in systems. The systems are linked to the caseload management databases to avoid the need for duplicate data entry.

4. *Help for Accessing Information and Tools – Chat and Phones*

Approximately 20 states are now operating online chat support for their access services. These permit programs, without establishing an attorney-client relationship, to make sure that users are getting to accurate information. In addition, some state courts, specifically Alaska and Minnesota, operate statewide hotlines that provide informational assistance to litigants, using both websites and document assembly, as well as phone support.¹⁶ In the case of Minnesota, this service includes “co-browsing,” the ability for the person providing assistance to view the same screen as the user.¹⁷

Evaluations of these services have generally shown a very high positive response from users. They have also shown that the user population is not that different from that of other online legal aid services.¹⁸ In New York, use of chat with Spanish speakers proved to be a very effective way to assist those looking for information and led to higher satisfaction and use of the Spanish resources available.¹⁹

5. *Online Attorney Client Relationships*

Because of complex legal aid eligibility rules for full attorney-client relationship case handling, there have been relatively few experiments in the US with such online relationships. However, Michigan and Tennessee have systems in which advice, in the U.S. sense of an attorney-client relationship, is given with e-mail.²⁰ There is little or no evaluation data on these experiments. In New York City, through a collaboration between Pro Bono Net and the courts, pro bono assistance is given over a video link.

6. *Internal Program Software – Document Assembly and Caseload Management Systems*

Caseload management software, in place since the 1980’s, is slowly gaining in sophistication and reach. Many deployments now include standardized case category

¹⁶ Information on contacting the Minnesota courts statewide self-help center is at <http://www.mncourts.gov/selfhelp/?page=2861>. Similar information is available for Alaska at <http://courts.alaska.gov/shcabout.htm#1b>.

¹⁷ <http://www.mncourts.gov/selfhelp/>.

¹⁸ Richard Zorza, *Chat Services for Access to Justice Web Site Users Final Evaluation Report* (2007), http://www.probono.net/library/item.179623-LiveHelp_Pilot_Project_Final_Evaluation_Report.

¹⁹ *LawHelp New York LiveHelp TIG Final Report* (2010), http://www.probono.net/library/item.476024-LawHelp_New_York_LiveHelp_TIG_Final_Report.

²⁰ The Michigan project can be accessed at <http://www.lsnmirp.org/client.php>. The Tennessee one is at <http://www.onlinetnjustice.org>.

labeling, linkages to document assembly, integration with online intake, and report generating systems pro bono management modules, grants/contracts modules, and “form wizards.”²¹ More project directors use the numbers in their management. However, much remains to be done, and program management remains generally very “light touch.” Criminal systems make significant use of this kind of software. The same kinds of criticism could be levied at court caseflow management software, which is all too rarely used to true management analysis.²²

Document assembly software, which is primarily, at least in number terms, used by the self-represented, has obvious quality and cost effectiveness advantages for advocates too, and usage is slowly becoming the norm. However, the culture is slow to change, and a “craft culture” remains in place in many programs.

B. Management and Funding Elements

As the discussion below shows, a complex system for developing, deploying, and supporting technology has developed in response to the decentralized nature of funding and management. The system has allowed for flexibility, but is regarded by some as weak on ensuring full deployment of proven innovations, and the benefits of scale.

1. LSC TIG Program

For the past twelve years, the Legal Service Corporation’s Technology Innovations Grant Program has been at the core of innovation and of deployment incentives for tech-supported access. Since 2000, 525 awards, with a total value of \$40 million have been made, covering everything from websites to phone integration upgrades.²³

Unlike LSC general field program funding, and unlike most states’ Interest of Lawyer Trust Accounts (IOLTA), the TIG money is not distributed by formula. Rather grants are discretionary and competitive. Each year the Corporation issues a request for letters of intent, programs submit such letters, and a proportion are invited to submit full proposals. Most, but not all, of those full proposals are ultimately funded. The request for letters of intent includes priority areas each year, and usually includes an “open” category. Recent priority areas have included mobile technology, triage, document assembly, and federal law.²⁴

A major reason for the great impact of the TIG program has been its orientation to funding appropriate activities conducted as part of a grant by collaborating agencies. Particularly important have been such collaborations with courts, and with the

²¹ See, NTAP, *Case Management System Reviews and Ratings*, <http://cms.lsntap.org> (2004).

²² Indeed, many systems fail to record when a lawyer is present.

²³ <http://tig.lsc.gov/about-us/background>.

²⁴ The 2013 TIG *Request for Letters of Intent* is at <http://tig.lsc.gov/sites/default/files/TIG/pdfs/2013-TIG-LOI-Notice.pdf>.

intermediaries described below. That TIG money can go to courts, libraries and other partners makes close collaboration much easier, particularly in tough economic times.

Equally important has been the requirement of an evaluation built into each grant. Moreover, all the evaluations are required to follow a standardized process and format. These evaluations make replication much easier, as well as improving quality.

2. *Individual Programs and State Collaborations*

Since the grants are made to individual programs (of which there are now 153) these programs remain a core part of the delivery system. It is the programs that are responsible for building the collaborations, managing the projects, and reporting to LSC. Some programs have become national leaders, with significant in-house technological capacity, delivering services nationally, way beyond their formal service areas.²⁵ Some act as gateways to the national intermediaries discussed below.

3. *Access to Justice Commissions*

A growing number of states, now about 30, have access to justice commissions appointed by the state courts, with a likely rapid expansion ahead. These commissions have an expanding role in the coordination and promotion of access initiatives, and act as a forum for different stakeholders to develop joint programs. The TIG program, given its funding stream, provides leverage for legal aid programs within these bodies, and an increasing number of grants are being made to projects that have come together through the commissions.²⁶

4. *National Intermediaries*

However, a system built only at the state level would suffer from major diseconomies of small scale. Thus a system of intermediaries has grown up, with organizations such as Pro Bono Net and Chicago Kent College of Law developing software, providing national hosting services, and facilitating the building of collaborations both within the legal aid world and beyond. These organizations act under subcontract to LSC grantees, although they also raise significant resources beyond TIG, and these resources are leveraged to provide dramatically better and broader services.²⁷

III. Building the Next Generation

²⁵ E.g. Legal Aid Society of Orange County, <http://www.legal-aid.com>.

²⁶ State Access to Justice Commissions are listed and linked at http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/state_atj_commissions.html.

²⁷ The website of Pro Bono Net is <http://www.probono.net>. The 2011 Annual Report is at http://www.probono.net/about/item.3104-Annual_Report.

As should be clear from the above, the tech infrastructure is dynamic and continually emerging. As of this writing, a major effort is beginning to conceptualize and lay the groundwork for the next generation of innovation. This new generation will reflect a very different reality than the one out of which the prior generation emerged.

A. The Different Context

At this point, there is a broad, if emerging consensus that is impacting the context in which the planning for the next generation occurs. Broadly put, this consensus includes an understanding that “traditional” legal aid representation in all cases will never be financially feasible, that we can deliver 100% access through a continuum of services, that we are developing the research base with which to identify who needs what to obtain access, that courts and other partners are major players in delivering these services, and that there needs to be attention to simplifying the entire process.²⁸

B. Access to Justice Technology Summit

It is in the context of this consensus that the Legal Services Corporation brought together, in June 2012 and January 2013, a national Summit on Technology and Access to Justice. As the first 1998 Summit did, this brought together stakeholders from courts, the technology sector, and access partners. It is a measure of the attention that access to justice technology has brought to LSC that the Summit was addressed by Todd Park, the White House Technology Tsar.²⁹

C. Elements of the Next Generation

The six elements that came out of the Summit (with descriptions that reflect this writer’s views, rather than the official Summit product, which has not yet been released) are:

1. Business process analysis

There has been within the legal aid world almost none of the process analysis that has spread through almost every other sector, including even the private bar. The emergence of technology as a driver makes it possible to raise questions about efficiency, job roles, and information flow that might otherwise be difficult to raise.

2. Expert systems and intelligent checklists

²⁸ Richard Zorza, *Access to Justice: The Emerging Consensus. and Some Questions and Implications*, 95 *Judicature* 156 (Jan-Feb. 2011), <http://www.zorza.net/Judicature-Consensus.pdf>.

²⁹ Richard Zorza, *LSC Access to Justice Summit – Inspiring Start of a Process*, <http://accesstojustice.net/2012/06/23/lsc-access-to-justice-technology-summit-inspiring-launch-of-a-process/> (June 23, 2012).

Expert systems – rule-based algorithms to govern workflow and decisions – and checklists which can improve quality by ensuring that appropriate steps are taken in each case, are critical tools, widely used in healthcare, yet largely ignored in the legal aid world.³⁰

3. *Statewide legal portals*

This is the idea of a system that allows litigants and others not only to get access to information, tools, and services, but also to keep and track their own documents and interact with courts and other institutions.

4. *Document assembly*

The goal is to build a comprehensive, accessible, and up to date system for the major areas of access practice. This would support legal aid, pro bono lawyers and the self-represented.

5. *Triage*

The triage concept is spreading quickly. The core idea is that we need systems that sort out who needs what to obtain access to justice. Triage tools and protocols are needed for litigants, the courts and legal aid. As the range of tools expands, the triage can become more subtle and nuanced. Initial versions of the system are likely to be based on a “Delphi” assessments by experts – indeed the process of developing such models is already underway. Future generations will be “self-learning,” building outcomes data into the triage protocols.³¹

6. *Mobile technologies*

The access to justice world is way behind in mobile technology. While some content has been converted to mobile access, and while there has been a limited attempt to make use of location awareness in some data access, the community as a whole has failed to take advantage of the potential of mobile content. Some have argued for the creation of a Center on Mobile Access to Justice Technology to explore ideas such as phone-targeted court reminders linking to preparation tools, location aware systems to provide legal

³⁰ More information about such systems is provided by LSC at <http://tig.lsc.gov/guidance-expert-systems>.

³¹ Richard Zorza, *The Access to Justice Sorting Hat: Towards a System of Triage That Maximizes Access and Outcomes*, 89 *Denver University Law Review*, 859 (2013), <http://www.zorza.net/Sorting-Hat.pdf>; James E. Cabral, et al, *Using Technology to Enhance Access to Justice*, 26 *Harvard Journal of Law & Technology*, 243, 292 (2012)(section by Bonnie R. Hough and Richard Zorza.)

information about the transactions in which a person is engaged, and movement analyzing algorithms to identify domestic violence incidents.³²

Together these six approaches represent an entire next general vision.³³

D. Infrastructure Needs for the Next Generation

Building this system will require closer partnerships with courts, government agencies and others, sustained and flexible funding structures, and strong leadership from all the stakeholders. One of the greatest challenges will be creating a cross-organizational structure for leadership liaison and coordination during this process. (There are those who believe that this need illustrates the importance of creating some form of national access to justice coordinating entity.)

IV. Implications for Other Countries

A. Political Lessons

1. Serves broader class constituency

Because the self-help technology is available to all without charge, and because it is not subject to income or other eligibility checking, it reaches a far broader class spectrum. This has a potential significant impact of the negative perception of legal aid as a “poor peoples program.” While not yet fully taken advantage of in political terms, this can only help the long-term sustainability of the program. It might be noted that, notwithstanding the general public stigma associated with poverty programs, we have never found any indication that users shy away from LSC or legal aid funded content for these reason, even though it is clearly identified.

2. Very popular with politicians and elites

Access to justice technology is very popular with politicians and elites. It provides a referral option for the staffs of elected officials – often when there is no alternative available. Launching of technology projects provide media opportunities for elected officials that are not seen as having the downside of being associated with poor peoples programs.

3. Focus of partnership with system stakeholders

³² Richard Zorza, *LSC TIG Grants Announced – The Year of Mobile and Beyond*, <http://accesstojustice.net/2012/10/01/lsc-tig-grants-announced-the-year-of-mobile-and-beyond/> (October 1, 2012).

³³ This writer’s additional thoughts on the possibilities can be accessed through his blog post on the 2013 TIG round, which includes links prior blogs with discussion of these priority areas. <http://accesstojustice.net/2013/02/21/thoughts-on-the-lsc-tig-solicitation/>.

Courts, bar, access to justice commissions and public libraries are enthusiastic partners in technology innovation, collaborating in websites, document assembly, etc. The result is that technology innovations have actually proved to be a spur to closer relationships across a range of issues.

4. *Supports broader innovation and flies under the radar*

In part for this reason, technology innovation often flies under the radar, and acts as a wedge that allows for broader delivery system innovation. As a general matter, for example, the increase of legal aid program attention to the self-represented has been driven by, but now goes way beyond, technology to include a commitment to self-help centers.³⁴

B. Technology and Deployment Lessons

1. *Usage by lower income populations*

In the early days of technology deployment there was substantial concern that low-income and elderly populations would not use the technology. Three developments have lessened this concern. Most obviously, usage of technology has greatly increased among low income populations.³⁵ Evaluations have shown that very significant portions of usage are by low-income populations. Finally, it has become recognized that usage by some, but not necessarily all, low income clients frees up human advocacy resources for those unwilling to unable to use the technology.

2. *Need for human support*

It has also become clear that tech systems must be deployed with human support options and human interface alternatives. While many analogize the tech innovations above to bank ATMs, the fact is that those with bank accounts use the ATMs frequently, but few court system users have that many divorces. Thus the systems, including support subsystems, have to be built on the assumption that people will not have lots of experience using those particular systems.

3. *Integration with overall delivery system*

³⁴ Los Angeles area legal-aid-operated self-help centers are described at <http://www.lafla.org/service.php?sect=muni&sub=selfhelp> and <http://www.nsls.org/programs/court-and-community/self-help-legal-access-center>. (That there are two separate links in this footnote is an illustration of the fragmentation of the system alluded to above).

³⁵ Pew Research Center's Internet & American Life Project, *Digital Differences 2*, 15 (2012), http://pewinternet.org/~media/Files/Reports/2012/PIP_Digital_differences_041312.pdf.

We have found, in both courts and legal aid, that it is critical that technology systems not be developed in isolation from the delivery system as a whole. Thus, the decision to develop a particular capacity involves an analysis of who will use this capacity, how this capacity will change the division of labor and clients within the system, and how it will free up resources for uses in other parts of the system.

4. *Jurisdiction wide (test is governing law)*

It is important to avoid fragmentation into what would otherwise be a very expensive individualized development process. As a general matter, systems should be set up to be jurisdiction-wide, rather than program specific. The test is governing law. Thus, in the US, some systems should be national, and some should be state-wide.

C. Management and Partnering Lessons

1. *Value of incentive grants*

We have been astonished at the extent to which relatively small grants to legal aid programs and courts have resulted in significant changes in behavior. While it is hard to explain the extent that a \$5,000 grant can get a whole project going (grants can go up to \$300,000 or so, however), part of the explanation seems to be that putting money on the table changes the political environment in which a possible innovation is discussed, and that it does so even when the total expense will be much greater than the incentive offered.

2. *Value of discretion in grant-making*

The LSC TIG program has also shown the value of allowing discretion to the funder in grant-making. (This is in contrast to LSC grants for field activity, and indeed for much of the state level legal aid funding.)

Competitive grant-making has led to higher quality grants and innovations, and has also allowed LSC to focus its technology funding on priority and replicable items.

2. *Partnering*

A consistent theme throughout the US technology deployment has been rewarding the establishment of partnerships. While LSC does not require matching funding, it does value partnerships in the decision-making process. Many of these projects end up with significant in kind contributions beyond the dollar amount of the grant for the partners involved. Moreover, these partnerships have impacts way beyond the individual project.

V. Conclusion: Achievements and Potential

The technology deployment in the U.S .is broadly regarded as a success. The success reflects the willingness of an entire community, challenged by lack of resources to

reassess its assumptions and push beyond prior limits and to do so in cooperation with courts and other agencies. It is this willingness that promises future advances, for which the groundwork is now being laid.