



LEGAL SERVICES AND THE DIGITAL DIVIDE

*By Julia R. Gordon,¹ Senior Counsel
Project for the Future of Equal Justice, Center for Law and Social Policy*



Most of us have heard quite a lot about “the digital divide” in the past couple of years.² But many of us assume that this problem, whatever it might really be, isn’t relevant to our practice. After all, our clients have much more important things to worry about than whether they can surf the net from their home (if they are

lucky enough even to have a home). The reality, however, is that the digital divide is not just about access to the Internet, but is actually an information-age iteration of myriad economic and social inequities of opportunity and outcome that demands our attention as much as more familiar inequities related to income, employment, housing, health care, race, and access to justice.

In the past 10 years, we have experienced an “information revolution,” the implications of which are as stunning as those of the industrial revolution, but which has happened in a fraction of the time.³ Beginning with the affordable personal computer and taking a giant leap forward with the creation of the Internet and the invention of the web browser, this revolution has changed how we work, play, communicate, learn, and obtain goods and services from the private sector or government.

Any revolution this sweeping necessarily affects all of us, not just those who are better educated or wealthier. The Internet is now used for everything from buying groceries and finding apartments to getting jobs and taking advantage of educational opportunities. States are experimenting with online voting, and governments are increasingly moving from services provided by staff at an office from 9 am to 5 pm to online services available 24x7. It is probably not an exaggeration to say that within a few years, people who do not have access to and ability to navigate the

Internet will effectively be shut out of many aspects of commercial and civic life, including educational, social, financial and employment opportunities. People who are not connected to the Internet because they are already disadvantaged — due to income, race, disability, or a similar reason — will find themselves falling further and further behind.⁴

Legal services advocates can work to redress these inequities using the same arsenal of tools that we use for other, more familiar inequities. We can litigate, advocate, educate and partner with other organizations to ensure that new technologies do not become just another layer of complexity and discrimination that our clients have to negotiate. Additionally, the digital divide has galvanized government, private industry, academia and the nonprofit world in a way that other more longstanding and fundamental divides that concern us (e.g., housing, income, access to justice, etc.) have not, or at least, not for many years. If corporate, government and funding decisionmakers are bringing their resources to bear to bridge the digital divide, we might want to explore the intersection of the digital divide and legal services work so that we can most effectively leverage these new resources and technologies to benefit our client communities.

What is the digital divide?

The digital divide is a popular term that is very difficult to define and has many facets. It is about far more than just computer access, although that is the aspect of the divide that receives the most popular attention, perhaps because it is easiest to measure. According to the Department of Commerce, the percentage of U.S. households with Internet access was 41.5 percent in August 2000, up from 26.2 percent a year earlier.⁵ In African-American households, 23.5 percent had Internet access, as compared to 11.2 percent in the 1999 report. The percentage of Hispanic households with Internet access was 23.6 percent, up from 12.6 percent. Thus, while Internet access for every group

increased dramatically over the past 20 months since the last report, the gap between white and African-American or Hispanic Americans has not lessened. Rural Americans are similarly disadvantaged, and households with incomes of \$75,000 and higher *were more than twenty times as likely* to have access to the internet than households at the lowest income levels — and nine times as likely to have a computer in the home.⁶

Some factors preventing low income and minority people and communities from participating fully in the information age are:

- *Lack of relevant content:* Currently, much of the content available on the web relates to shopping/retail and leisure pursuits/hobbies rather than to community needs. The leading study of web content for underserved Americans was conducted by the Children's Partnership in 1999. In surveying the web, the researchers defined the characteristics of relevant content as: (1) information about employment, education, and similar topics; (2) reading levels accessible by limited-literacy users; (3) multiple languages; and (4) ways for the underserved to create content and interact with it so that it is culturally appropriate. The report found extremely little information useable by people with limited literacy skills or language barriers, not very much local or community information, and almost no culturally relevant information. The report also underscored the need for underserved communities to be able to create content rather than just consume it.⁷ The Internet can be a critical tool for community and civic engagement.
- *Need for literacy:* Because so much information currently on the web is text-based, using the Internet right now requires good "basic" literacy. In addition, because an Internet user must sift through such an enormous amount of information, the web requires a high level of what is known as "information literacy," or the ability to sift through information and glean what is important and reliable. Even those users with good basic literacy and education are often weak on information literacy. Furthermore, many consumer transactions are already highly complex, and adding the complexity of using the Internet on top of those transactions can lead to additional confusion for the user. Content developers aiming at a low-
- income or low-education population need to pay special attention to creating sites that use both text and pictures or video and that are designed to be easily navigated and understood.
- *Insufficient bandwidth:* It is becomingly increasingly important to have high-speed lines ("broadband" or "high bandwidth") to be able to use the Internet effectively, because these lines are the "pipes" through which data travels. High speed access is crucial for the advanced technologies that often are the most useful for marginalized people, such as streaming video instead of text for people facing language or literacy barriers, or remote videoconferencing with service providers for those living in rural areas or people with disabilities or child care and transportation problems. Yet low-income and rural areas are precisely those areas that have the least access to broadband, and even where such services are available, the cost of these services over time is more prohibitive than the cost of an initial investment in a low-end web device. Also, neighborhoods lacking broadband access will have trouble attracting new businesses, so these issues become critical for anyone interested in community economic development.
- *Need for training and alleviation of fear:* While there are many ways for low-income people to access technology if they want to, often people do not try. Part of the problem is lack of training, both of end-users and of the staff at public access points. Another part of the problem is that many people of all income levels and backgrounds are simply afraid of technology. Some are "technophobic" and mistrust interactions that do not involve familiar human contact. Others worry that private information about them will fall into the wrong hands. Still more fear that "if they push the wrong button, something will go wrong."⁸ It is very difficult to counter these concerns, in part because some of them are so well founded. For example, while privacy issues matter to everyone, people with less power or money are far more susceptible to having information used against them to deny them credit, jobs, and homes. In addition, many of the service providers, organizations, and other institutions that underserved people interact with are also undertrained and underinformed about technology, which does not permit them to be helpful to their clients in this area.⁹

Supporting many of these points is an interesting recent study of people who do not use the Internet. The study found that 54% of those not online believe the Internet is a dangerous thing, 51% do not think they are missing anything by staying away from the Internet, 39% are not online due to the expense, and 36% express concern that the online world is a confusing and hard place to negotiate.¹⁰

The Intersection Between Traditional Legal Services Issues and the Digital Divide

Traditional legal services issues intersect with the information revolution and digital divide in a number of ways. Most of these intersections involve potential challenges or obstacles for low income people posed by technological advances. One important area is the use of new technologies by federal, state and local government agencies. The first major issue of government technology to show up on the legal services horizon was the move to providing certain benefit payments via "ATM" style cards, known as electronic benefits transfer. Advocates have worked for several years now to ensure that these programs do not disadvantage unbanked low-income people or subject them to onerous fees. And now, most federal agencies and many state governments are beginning to move their entire benefits structure on-line, as well as other key government services. For many clients, being able to apply for benefits or obtain other government services on-line 24 hours a day over the web will be a huge advantage. At the same time, we have to ensure that the government websites or "portals" are built in ways that facilitate usage by people with limited literacy and language skills or lower educational levels, and that services are still available to those without web access or abilities (for some people, the obstacle of the already challenging and complex process of application will just be compounded by adding the need to use the internet). Legal services advocates can work with governments as they move on-line to ensure that the interests of low-income people are properly represented and taken into account.

There are also information-age threats to low-income people embedded in ordinary transactions and legal matters. For example, through the Internet, landlords and other merchants now have lower-cost and significantly faster access to credit reports and other forms of personal information related to finances or even family matters, and they can potentially use this information to discriminate against our clients. This

same easy access to personal information is available for use and abuse by opposing parties in divorce and custody proceedings. While some consumer advocates have become involved in Internet privacy issues, this area of the law would greatly benefit from the participation of more advocates who represent the particular interests of lower income people.

Another looming issue is that clients who do have access to the internet can enter into electronic transactions where the paper trail may be close to nonexistent, providing little if any consumer protection. The danger of consumer fraud is enhanced by the recent passage of federal and state legislation permitting people to "sign" legally binding contracts over the Internet.¹¹ Legal services advocates, who are experts in assisting low-income individuals with consumer problems, are ideally situated to learn how to reduce the threat to their clients posed by these new technologies.

Additionally, clients and low-income communities now face new possibilities of discrimination based on place. Most of us are familiar with the "redlining" practiced by banks, which resist giving loans to people living in certain neighborhoods. Rampant redlining is now occurring in the area of telecommunications, as carriers choose not to build out their broadband services to inner city neighborhoods, less affluent suburbs, or any rural areas. Working to prevent broadband redlining is a natural extension of traditional legal services utilities work to help obtain basic telephone services for low-income neighborhoods and rural communities, many of whom still lack such access.

A form of redlining can also be practiced by the many dot com companies that deliver products to people's homes. While the availability of on-line groceries, movie videos and other consumer goods could give underserved communities access to better prices than can be found in their neighborhoods or even to products that are not sold in lower income neighborhoods, care must be taken to ensure that companies do not refuse to deliver to those areas, and advocates can use traditional civil rights theories to help in this area. Again, equal justice advocates have the expertise to prevent or seek redress for this type of discrimination.

Using the Internet to Extend the Reach of Legal Services

Legal services can help bridge the content-related aspects of the digital divide by providing on-line legal information relevant to the needs of low-income people and communities.¹² This information can include self-help material for people who either cannot find an

attorney or who wish to proceed on their own for another reason, and it can also be used to provide information on how a person can find the correct agency to help with their problem. The equal justice community has already begun to take important steps in this direction, posting service area information along with self-help materials on websites.¹³

An important but sometimes overlooked benefit of posting information of use for clients is the potential for use of this information by the many other serv-

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ice providers with whom clients come in contact, such as social workers, health care providers, librarians, teachers, job center personnel, etc. Most poor people obtain legal or law-related information from these sources, either along with or in many cases in lieu of information directly from attorneys. Making information easily available to this group, which is more quickly obtaining internet access and does not face the same literacy and legal reasoning obstacles that many clients face, can help get the right information at the right time to an enormous number of people.

Another benefit of providing this type of information is that it will help legal services staff use their time most effectively. By posting information on line, staff members do not have to spend the time or money to reprint materials regularly and to distribute them widely (although obviously until online access is universal, some level of printing and distribution still must be done in hard copy). Moreover, much of this information can be used in more than one neighborhood, city, or even state, so that once it is on the internet, there is no need for other programs to reinvent the wheel. Perhaps most important, once clients are able to get basic forms and information from the internet, advocates will be able to spend more time using the legal reasoning and advocacy skills unique to them, skills that the internet will never replace and that our clients desperately need.

The legal services community can also use the Internet to provide clients with information that can

help them prevent legal problems from developing. Along with self-help materials, many legal services programs are already beginning to post community legal education information on the Internet to help low income people understand their rights and responsibilities in various areas. However, providing text-based legal information only scratches the surface of the preventative potential of the Internet. Although the more transformative ideas will require more internet access than our clients currently have, as internet access becomes both more affordable and more portable through the increased use of handheld and wireless devices, we will be able to give people information right when they need it. Potential examples include people accessing information about loans or lemon laws right in the auto sales lot, or information about leases while sitting in the management company's office signing a lease.

To realize these possibilities, legal services advocates must also get involved in helping to ensure that clients do indeed obtain access to the Internet.¹⁴ As noted above, the availability of broadband services is critical both for clients and for our own offices. We know how to work with public utilities commissions, and we can use that knowledge to ensure an adequate telecommunications infrastructure for low-income and rural communities. Moreover, the area of telecommunications offers a potential source of funding for clients, as wealthy telecommunications companies frequently have to meet a public interest standard when obtaining regulatory relief or when merging with another company, a requirement that was leveraged in Ohio to create the largest state-based network of community technology centers.¹⁵ There is also an enormous opportunity for partnering with libraries, schools, and community technology centers to help create more access for clients. For example, HUD runs a program called Neighborhood Networks through which owners of certain HUD properties are given incentives to create technology centers located right in the subsidized housing.¹⁶

The Bottom Line: How Do We Do This Work?

Working to help our clients successfully navigate the digital divide calls for awareness, creativity and collaboration. Awareness requires that all staff attune themselves to the issues that the information age presents to clients and the communities in which we work, so that we can recognize when an opportunity for advocacy in one of our areas of expertise (consumer, housing, equal protection, community economic development)

presents itself. We also need to learn more about how technology is impacting our clients and their communities. For example, advocates should pay attention to what the telecommunications companies in the local area are doing and where the broadband buildout is (or is not) taking place. It is also helpful if legal services advocates themselves feel empowered by technology rather than fearful of it, which means that your own office needs to train and support its staff in the effective use of new technologies.

Creativity will help us to spot technology-related issues that might affect clients, including some of the issues flagged in this article, as well as others as they develop. We can also use this creativity to develop resources to support our work. New sources of funding for reduction of the digital divide are appearing regularly, and we may be able to support our traditional areas of work, such as consumer and utilities work, through these sources. We might also find new resources to allow us to create content relevant to our client communities, or to help our clients create their own content. The key is to frame proposals so that the funder understands how legal services is helping lower-income people use technology to find jobs, obtain education, and improve their communities.¹⁷

In addition, like so many other issues, the set of issues presented by the information revolution lend themselves to new collaborations with other organizations that can help strengthen the role of legal services in the community. As discussed above, partnerships with the other people who work with our clients can help extend our reach tremendously. Working with libraries and schools in particular can potentially enable a legal services program to take advantage of the "e-rate," a special low rate for telecommunications services available only to libraries and schools. Technology based collaborations can enable clients who have trouble coming into the office due to child care, transportation, disability, or other reasons (such as women in domestic violence shelters) to consult with attorneys via video and the internet. Attorneys can also work this way with other service providers. Local libraries and community technology centers can be encouraged to bookmark legal services information on their computers, and to use legal websites as examples in their trainings.¹⁸ We can also partner with government, particularly as relates to consumer and privacy issues.¹⁹

Working together with staff, clients, and other organizations, we can help protect our clients from being harmed by new technologies and help them har-

ness the potential of new technologies to improve their lives and communities.

1. Julia R. Gordon is Senior Counsel to the Project for the Future of Equal Justice, a joint project between the Center for Law and Social Policy and the National Legal Aid and Defender Association that promotes the creation of state justice communities capable of providing low-income individuals and communities with meaningful access to a full range of civil legal assistance. Julia directs the Technology for Justice Initiative of the Project, working on ways to use new technologies to improve the delivery of legal services. In addition, she manages the Project's web site (www.equaljustice.org) and the Hotline Outcomes Assessment Study.

Before coming to CLASP, Julia served as the deputy director of the National Association for Public Interest Law (NAPIL) and as a litigation associate at Wilmer, Cutler & Pickering, where she also managed the firm's extensive pro bono program. Julia graduated from Harvard College in 1985 and from Harvard Law School in 1992, where she was a research assistant for the Interuniversity Consortium on Poverty Law and worked at the Hale & Dorr Legal Services Center and Massachusetts Correctional Legal Services as a summer associate and clinical student.

2. As of this writing, no one knows for certain who coined the term "digital divide" to describe the difference between people who have access to technology and people who don't. The term is reported to have been in use as early as the mid-1990s by usenet groups. However, most agree that the term entered the popular lexicon in 1998 through its use by Assistant Secretary of Commerce Larry Irving and the Department of Commerce's National Telecommunications and Information Administration in its periodic report on computer ownership and Internet access, "Falling Through the Net."

3. See John Tull, "Technology and the Future of Legal Services," *MIE Journal* (Summer 2000).

4. See generally Mark Cooper, "Disconnected, Disadvantaged and Disenfranchised: Explorations in the Digital Divide," released October 11, 2000, by the Consumers Union and the Consumer Federation of America. This report can be found at www.consumerfed.org/digitaldivide/disconnected102000.pdf.

5. This statistic and the rest of the statistics in this paragraph can be found in the Department of Commerce report, "Falling Through the Net," 4th ed., October 2000, available at www.ntia.doc.gov/ntiahome/fttn00/contents00.html.

6. It is important to note that the Department of Commerce study did not attempt to measure the number of people accessing the Internet from workplaces, schools, public libraries, community technology centers or other public

access points. Thus, the numbers of African-American, Hispanic, rural and low-income people accessing the internet in some way are likely to be significantly higher than the numbers of people owning their own computer.

7. Although African-Americans lag in access to the Internet, a new study by the Pew Internet and American Life Project finds that of those who are connected, African-Americans are more likely than whites to appreciate its value as an information tool. Forty-five percent of black Americans with online access found the Internet useful for getting health care information compared with 35 percent of white Internet users. The report also found that African-Americans were more likely than whites to use the Internet to find information on religion, jobs and housing. See Pew Internet and American Life Project, "African Americans and the Internet," released October 22, 2000 and available at www.pewinternet.org/reports.

8. This quote is from a client board member who attended a session on the digital divide that I moderated at the National Legal Aid and Defender Association Annual Conference on November 30, 2000.

9. The nonprofit digital divide, or the difference in the use of new technologies between nonprofit organizations and the private sector, is a significant part of the overall digital divide problem. A number of people in the equal justice community, myself included, have focused on helping our community close that gap. More information about those efforts can be found in the companion articles to this one, as well as on the Equal Justice Network at www.equaljustice.org/technology.index.html.

10. See "Who's Not Online," released September 21, 2000, Pew Internet & American Life Project, available at www.pewinternet.org/reports.

11. See Gail Hillebrand and Margot Saunders, "E-Sign and UETA: What Should States Do Now?," by Consumers Union and National Consumers Law Center, released October 12, 2000.

12. The first "dot-com redlining" lawsuit was filed this past year in Washington, DC, against kozmo.com, a company that delivers food and other consumer goods to private homes. Kozmo.com had chosen its service areas using income and race demographics to "predict" what parts of the city were most likely to have Internet access. The suit was recently set-

tled, with kozmo.com agreeing to deliver to all parts of the city and to assist lower-income neighborhoods in obtaining Internet access.

13. For a comprehensive list of links to legal services websites, see www.equaljustice.org/connections/legserv2.htm. Some examples include www.ptla.org; www.neighborhood-law.org; and www.mlan.net.

14. Many clients and organizations already do have Internet access. A statewide poll of eligible clients conducted by Vermont Legal Aid in the summer of 2000 showed that about 60% of indigent Vermonters said they had access to a computer and almost 40% said they had email. A survey that I conducted of community-based child care and health care organizations in Washington, DC, revealed that 27 out of 28 had internet access at the office, in many cases offering access to clients as well. Dirk Slater, Circuit Rider at the Welfare Law Center in New York City, works with dozens of community-based welfare rights organizations that regularly use the Internet for advocacy and community building.

15. See Ellis Jacobs, "Fighting to Turn the Promise of Universal Telecommunications Service into Reality: The Experience of One Community Organization in Ohio," 8 *Georgetown Journal on Poverty Law and Policy* (Winter 2001).

16. For more information about HUD Neighborhood Networks, see <http://www.neighborhoodnetworks.org>.

17. As most of us have learned by now, funders have not shown unbridled enthusiasm for providing nonprofits with grants to upgrade their internal technological infrastructure. However, it appears that projects aimed at client communities are more appealing, and often offer an opportunity to upgrade the office's own systems as part of the project. See Hugh Calkins article in this *Journal*.

18. Dirk Slater of the Welfare Law Center tells a story about one of the first computer trainings he helped conduct for a low-income community. The first training was billed simply as "internet training," and attendance was poor. After talking more with members of the community to learn about their particular needs, the trainers redesigned the session publicizing it as a training to learn how to use the Internet to find jobs. The redesigned training drew over 40 participants.

19. For example, New York's Office of the Attorney General has recently created a special Internet Bureau.