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ACCESS TO JUSTICE AND THE ELDERLY: A LOOK AT END-OF-LIFE CARE PLANNING AND LAW TECH

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Riley L. Arter, JD Candidate



Table of Contents

<i>I. Abstract</i>	<i>1</i>
<i>II. Introduction</i>	<i>1</i>
<i>III. The Access to Justice Movement</i>	<i>4</i>
a. Background	4
b. Access to Civil Justice	5
c. Technology and Access to Justice	8
<i>IV. Estate and End-of-Life Care Planning in the United States</i>	<i>12</i>
a. The Old-Age Ratio and a Growing Elderly Population	12
b. Statistics on End-of-Life Care Planning in the United States	14
c. Barriers to Serving the Elderly Population	15
<i>i. Tech Literacy and Confidence Among the Elderly</i>	15
<i>ii. Privacy Concerns Unique to the Elderly</i>	16
<i>iii. Do Elderly People Distrust Lawyers Online?</i>	18
<i>V. Addressing How Tech and Unique Input Can Work Together to Bridge the Justice Gap</i>	<i>19</i>
<i>VI. Conclusion</i>	<i>20</i>

ACCESS TO JUSTICE AND THE ELDERLY: A LOOK AT END-OF-LIFE CARE PLANNING AND LAW TECH

Riley L. Arter*

I. Abstract

The access to justice movement has grown immensely in the last century. With an emphasis on equal legal representation for all, the movement has incorporated technology to boost efficiency in providing quality legal services to underserved populations. The need for efficiency does not come as a surprise; the justice gap in the United States is vast. Every year, millions of Americans face significant civil legal problems without assistance from counsel and receive little to no legal advice. What is more troubling is that these Americans often qualify, usually based on income, for some type of civil legal aid, but they do not have access to such services. In particular, Elderly Americans face unique barriers to access to legal services not only based on income, but also on many other factors related to their health and status in American society. One facet of elder law that sees these unique barriers quite frequently is end-of-life care planning. The fields of law and technology must work together to (1) understand these unique barriers to the elderly, (2) develop and implement new technologies to provide civil legal services with flexibility, and (3) support the technology developed and implemented with unique user input.

II. Introduction

The phrase “access to justice” has all but taken over the legal field in the last decade. Access to justice efforts aim to bridge the gap between the costly and complex legal system and non-lawyers. Recently, the legal field has been incorporating technology in an attempt to address the access to justice issue.¹ The access to justice movement began in the mid-1860s², and through an increase in public interest and federal funding, it has made great strides in helping Americans with their civil legal needs. The introduction of technology into the legal field has advanced the move to bridge the gap. However, certain populations, like the elderly, are still underserved by the access to justice movement.³ While the movement has focused mostly on benefits to low-income families and individuals, there is one group of people that can greatly benefit from these efforts: the ever-growing elderly population, regardless of income. This

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discrepancy shines light on an important question: If the access to justice movement promotes access for *all*, how can the tech-heavy movement help those that don't traditionally understand or trust technology?

This question is especially profound for the specialized legal field of estate and end-of-life care planning. Most people think of estate and end-of-life care planning as a legal service reserved for the rich and middle-aged to old; however, estate and end-of-life care planning is a civil legal service that benefits all demographics of people. Fewer Americans are creating end-of-life care planning documents for many reasons, including: a lack of resources, a lack of financial means to pay for such services, and perceived lack of need for such services.⁴ Specifically, older adults are becoming less and less likely to have a will or other related documents.⁵ To further compound this issue, elderly adults can often lack resources related to civil legal services.⁶ The technology-driven access to justice movement still has work to do to bridge the gap for this population.

The access to justice movement often uses technology to attempt to address the immense discrepancy between those that need civil legal services and those who can afford them. Many tools and self-help resources have flooded the internet in hopes to supply people with information, guidance, and advice.⁷ These resources are great for those that can afford, access, and utilize them; however, a lot of these services have a cost associated with them making them less accessible to low-income individuals.

Some populations, like the elderly, cannot always access and utilize such resources to their full potential due to physical, financial, or experiential limitations. Technology cannot, on its own, address most complex civil legal problems from start to finish. To best serve marginalized populations, legal tech solutions must be (1) low cost and (2) paired with unique input from other users. Unique input can be thought of as human input that works with the technology platform to maintain the integrity of a client's individual case and needs. Knowledgeable users need to support people using tech tools, tech platforms need to be better designed for marginalized populations, and the integrity of a client's individual needs and case must be protected for technology to become a "one-size-fits-all" solution to the widening justice gap.

III. The Access to Justice Movement

a. Background

The story of the access to justice movement begins in 1863 with the creation of the Working Women's Protective Union for workers in New York whose wages were fraudulently withheld.⁸ By 1905, this small-scale advice "clinic" expanded its ideas to big cities like Chicago and Boston, setting a foundation for multiple legal aid societies that sought to help people who were often ignored by the American judicial system.⁹ In the early 20th century, people in the legal and social work fields took notice of these movements and called on the government to provide equal access to justice.¹⁰ Despite the contention that true justice for all included mass funding to expand fundamental legal services to all Americans, federal funding to such programs did not begin until the mid-1960s.¹¹ In fact, the American Bar

Association condemned state-funded, “socialist” civil-legal services for much of the 20th century.¹²

In 1965, as a part of the “war on poverty” instituted by President Lyndon B. Johnson, the Office of Economic Opportunity Legal Services Program (now known as the Legal Services Corporation, or LSC) was created and became the first instance of government-funded legal assistance¹³ to poor citizens.¹⁴ Federal funds began to flow to legal aid and young lawyers “aligned with the New Left” and directed much time and energy into legal aid offices, creating a demand for such services never seen before in the United States.¹⁵

Fast forward to 1980 when federal services expanded the total national legal aid budget by about 6300% in million dollars per year in one turn of the fiscal calendar.¹⁶ Despite a seemingly clear push by the government to support movements for equal justice for all, a vast majority of groups, such as the poor and racial minorities, were still shut out of the justice system.¹⁷ While the government claimed to fund civil legal aid programs to “provid[e] assistance to those who face[d] an economic barrier to adequate legal counsel . . . and reaffirm faith in our government of laws,” the LSC saw its funding cut by 25% in 1981, allegedly due to then President Ronald Reagan’s contention that only states should manage their legal aid funding as they saw fit.¹⁸ Congress emphasized that such cuts and funding phase outs “will not eliminate free legal aid to the poor,” however, it seems that this decision only widened the justice gap.¹⁹ In this same year, Congress began to impose unprecedented restrictions on organizations funded by the LSC, undoing years of progress in the access to justice movement.²⁰ Many federally funded entities, including local programs and individually practicing attorneys, were eliminated entirely, forcing the remaining legal aid organizations to either seek private funding or scale back on their assistance by developing ways to help self-represented litigants navigate the legal system on their own.²¹

b. Access to Civil Justice

The touchstone concept of a “right to counsel” only applies in criminal matters as a matter of constitutional law.²² Civil matters do not provide for the constitutional protection of counsel.²³ Losing a civil matter can have severe consequences, though. Civil matters can determine if someone remains in their home, keeps their children, or if someone can legally protect themselves against a situation of domestic violence.²⁴ Regardless of these risks, a so-called “Civil Gideon” right, or the idea that people who are unable to afford lawyers in legal matters involving basic, civil human needs should have access to free legal representation, is not protected by the Constitution.²⁵ The lack of such protection only widens the gap and leaves more Americans without seemingly necessary legal aid.²⁶

Due to the recent increase in the need for civil legal aid, the access to justice movement has focused for the last three decades on the gap between the complex and costly legal system and average Americans. On a yearly basis, Americans receive limited or no legal help for more than half of the 1.7 million civil legal battles they face on a yearly basis.²⁷ As of 2013, 60 million Americans qualified for some type of civil legal aid service, but almost 80% of these legal needs went unmet.²⁸ Despite the profession’s best efforts to bridge the gap, more people are representing themselves (as pro se litigants) in court and are not well-equipped to

handle the complexities of the American legal system.²⁹ Despite these underwhelming figures, civil legal service providers still work to expand their reach because studies have shown that people who get assistance with a legal problem through legal aid receive better outcomes than those who do not.³⁰

Take, for example, Step Up to Justice (SU2J), a pro-bono law center that serves residents in Pima County, Arizona.³¹ SU2J's mission is to answer the question: "How can we direct quality free civil legal services to the most people in need at the lowest cost?"³² Since its inception in 2017, SU2J has served over 4,300 clients, worked with 210 volunteer attorneys, and provided over \$4 million in free civil legal assistance for its clients.³³ SU2J is not alone; it is a part of a recent movement of privately funded pro-bono law centers around the country that are able to do more than LSC-funded organizations. Because SU2J is not funded by the LSC, it is not subject to certain, arguably limiting, federal regulations. For example, SU2J can serve undocumented people whereas LSC funded organizations are only able to serve undocumented people if they are victims of domestic violence. Also, LSC funded organizations are prohibited from engaging in legislative advocacy while SU2J is not prohibited to do so. The distinction is important to note because the recent development in organizations like SU2J around the country emphasizes a different type of legal aid organization that can, in a sense, do more.

More information and data are provided for LSC funded organizations. In 2019, the LSC delivered approximately \$428 million in grant-based assistance to 132 legal aid organizations in 880 offices around the country.³⁴ While 57.3 million Americans were eligible for LSC services, only about 1.8 million were received some type of legal service via LSC grantees.³⁵

Most of the data surrounding civil legal aid focuses on low-income individuals, and rightfully so; the LSC's statistics on poverty in the 2017 Justice Gap Report suggested that 1.7 million low-income Americans had an issue that qualified for civil legal assistance.³⁶ These statistics, while alarming, fail to account for the tens of millions of people that also qualify for such services but are considered to have "moderate" income.³⁷ More than 50% of those that not only qualify for civil legal services but also apply for such services are turned away due to unavailability of resources.³⁸ There is simply no room in the budget to help people access lawyers.³⁹ So, with all of these individuals being turned away, who is actually served by civil legal aid services?

Civil legal aid providers aim to serve people independent of their age, gender, race, national origin, and other characteristics but not income.⁴⁰ Due to limited legal resources, civil legal aid services usually only represent the "poorest of the poor," or people who live in households with an annual income at or below 125% of the federal poverty guidelines.⁴¹ Unfortunately, the justice gap "knows no regional or demographic boundaries."⁴² In fact, low and moderate-income people are both disserved in the contemporary market for legal services.⁴³

c. Technology and Access to Justice

The United States government has made efforts to provide funding for civil legal services to needy persons since 1964.⁴⁴ Despite these efforts' implementations, there are still a vast majority of people with legitimate legal needs not receiving help.⁴⁵ In 1998, the LSC held its

first conference dedicated to using technology to improve access to justice efforts.⁴⁶ This conference led to major funding—over \$40 million—for legal aid organizations dedicated to implementing new tech-driven solutions to the gap problem.⁴⁷

The effort to expand civil legal services to those that need it has generated many tech-driven solutions. In 2019, the American Bar Foundation found approximately 320 digital legal tools used in United States jurisdictions, offering assistance to non-lawyers for problems across the legal spectrum to help narrow the access to justice gap.⁴⁸ These tools were most commonly used (1) to provide information, (2) to connect individuals to attorneys, and (3) to automate and produce legal documents.⁴⁹

Approximately 75% of the tools surveyed by the American Bar Foundation were to provide information to non-lawyers, or people who might need a lawyer but don't have one.⁵⁰ These tools include “self-help” information like searchable libraries of practice resources, sample legal forms, and answers to common legal questions.⁵¹ Other examples of this type of legal aid tool include court-based and legal aid organization websites, e-filing services, social media presence, and online learning tools.⁵² These tools are created for non-lawyers seeking to diagnose and understand their legal problem before, or without, seeking advice from a lawyer.⁵³ These information-driven services are not only limited to non-lawyers; some platforms, like Probono.net, provide legal information and guidance to attorneys taking on pro-bono matters outside of their normal practice boundaries.⁵⁴ Probono.net, and other sites like it, seek to “empower the public with information and self-help tools, equip advocates with resources to make a stronger impact, and mobilize volunteers to expand help available.”⁵⁵

The second most common type of legal tool is one that connects individuals with attorneys in the relevant field of law.⁵⁶ Approximately 48% of the tools examined by the American Bar Foundation acted as a connector between people with legal problems and practicing attorneys.⁵⁷ An example of this type of tool is the well-known site Rocketlawyer.com. On their “Meet our lawyers” page, Rocket Lawyer notes: “Our network of Rocket Lawyer attorneys are ready to help. Ask a legal question and we'll connect you with a qualified lawyer.”⁵⁸ You can search lawyers through “issue” or “state” or both.⁵⁹ Rocket Lawyers and tools like it are ideal for people who have the funds available to hire a private attorney or firm. Rocket Lawyer's “legal made simple” slogan offers a wide variety of tech services to those that become members through various payment plans.⁶⁰

Lawyer-referral tools are limited in their ability to narrow the access to justice gap due to financial accessibility. A central issue in the discussion about access to justice and the justice gap is an individual's inability to pay for necessary civil legal services. This type of legal tool, one that connects a non-lawyer to a lawyer in the field related to their legal issue, does not seem to take into consideration one's inability to pay high legal fees. People of limited means can be referred to a lawyer, then unable to do anything with it. While lawyer-referral tools have been developed and implemented in high numbers over the last few decades and are the second most common type of digital legal tool available on the market, they do little to advance the movement's goal of providing adequate legal services at reduced or no cost.

The third-most popular category of legal tools surveyed by the American Bar Foundation is document automation platforms.⁶¹ Document automation technology allows firms, organizations, and private practicing attorneys to use interactive processes that guide attorneys and clients through the process step-by-step.⁶² This is the technology behind the Prep with Tech (PWT) Project launched by SU2J in October of 2020.⁶³ At the start of the Project, SU2J selected Afterpattern (formerly known as Community.lawyer), a company created to assist organizations and firms in automating their documents, to train them on the document automation process.⁶⁴ Afterpattern allows users to create their own automated documents from scratch or purchase already-created documents from their library of templates. SU2J built six documents from the ground-up related to estate planning and end-of-life care and now provides volunteer attorneys access to these document-creating services when serving low-income clients in clinic settings.⁶⁵

Document-automation platforms are in wide-use throughout the country and the legal tech community has seemed to welcome these tools.⁶⁶ Thomson Reuters conducted a study that showed such automation software programs have shown that attorneys and firms that use them find their time on document preparation reduced, on average, by 82%.⁶⁷ In theory, all of these legal tools have the potential to address the justice gap; non-lawyers can educate themselves on their legal issues and potentially circumvent the use of an attorney entirely. Attorneys also can increase their efficiency and serve more clients.

Despite these positives, technology is not a one-size-fits-all solution for all populations that need civil legal aid services. Many of the legal tech tools available require capabilities that some groups, the elderly being a prime example, simply do not have.⁶⁸ These same groups may also struggle to access the tools based on physical and financial limitations.⁶⁹ In particular, elderly people may suffer from physical conditions, like decreased hearing and vision, that prevent them from full access to otherwise helpful tech-driven tools and solutions.⁷⁰

One setback with the law and technology tools available on the market is seen in design standards.⁷¹ New types of technology are born and die every day. New advances quickly fall out of fashion or requires so much upkeep and adaptation as to be rendered prohibitively inefficient.⁷² New types of technology are born and die every day. Outdated technologies often fall out of fashion quickly or require so much upkeep and adaptation as to be rendered prohibitively inefficient.⁷³ While this is not the case for all legal aid tools, tools that do require constant reformation may burden the already-strapped civil aid organizations and advocates. Elderly people are often overlooked in the design process to make technology more user-friendly though.⁷⁴ This oversight frequently creates difficulties for elderly people when they interact with tech-driven services,⁷⁵ and these problems call for special attention, especially in the legal services field.

Aging matters in the legal field; as the population of older, retirement-age Americans increases, so has the number of attorneys expanding their practices to provide elder law services.⁷⁶ Concurrently, aging will matter in the newer and rapidly growing field of legal-tech. Legal help for older adults is a multi-faceted and complex issue that will require the legal community to navigate a society that is unprepared for the number of and longevity of older adults in the American population.⁷⁷ An estimated 87% of older adults seeking legal

assistance had difficulty finding or affording it, and available resources to combat these problems are often underfunded or underutilized.⁷⁸ Attorneys, organizations, and firms that want to use tech-driven solutions to provide legal services at low-to-no-cost for underserved populations should continue to do so with poor and elderly people in mind. Creating tech-driven solutions *can* bridge the justice gap only if the solutions are accessible to the entirety of the intended community.

Take again, for example, SU2J's PWT Program. For example, SU2J ran an estate-planning and end-of-care planning clinic. To assist in this program, SU2J created the PWT Program. The program proposed the use of "a novel document assembly and document automation software to generate individualized and accurate end of life planning documents . . . based on attorney notes and unique input."⁷⁹ The emphasis here is on *unique input*. Unique input, or human interaction with and support of the technology, ensures that the individual needs of the client are factored into the use of the technology and the legal-focused output.

Many of the clinic's applicants were elderly and would indicate in the preliminary screening that they were uncomfortable with technology. This was demonstrated when SU2J staff noticed hang-ups in engaging some of the elderly clients in the screening process: when asked to edit and return a preliminary screening PDF, some clients found this task daunting, causing some potential clients to drop their spot in the program entirely. A handful of clients that expressed interest in the PWT Clinic had little to no experience using PDFs in general, let alone editable PDF formats. Despite SU2J's list of instructions on how to download, edit, and return the editable document, some clients were hesitant to deal with the PDF at all.

SU2J had to problem-solve. This program created for the attorneys was meant to streamline the process and serve clients efficiently, but the tech could not be implemented if the client could not use the technologies chosen to convey their information to SU2J and the volunteer attorney. This is where flexibility with the tech and with human clients came into play. SU2J began to assist clients in filling out these forms through an individualized intake process to help clients overcome this tech hurdle.

Training users (volunteer attorneys) to deploy the PWT Program was another tech-influenced issue SU2J had to address. The problem-solving approach here is another example of the success of unique input because SU2J took the time to train users individually to use the tech-platform and to provide the tech with user-inputs that optimize the efficiency function of the technology. Even though the training focused on the technology used in the project, these tutoring sessions addressed a user's unique questions and their understanding of the platform. This approach considers the idea that individualizing education for users is key to serving clients more efficiently.

This approach has been very successful. Since the program launched in 2020, SU2J has been able to hold six clinics, each with a respective volunteer attorney to serve qualifying Pima County residents in their estate planning needs.⁸⁰ This "tech rich" legal service delivery has put SU2J and similar organizations in a unique position to help low-income individuals receive competent civil legal services. It has been successful because it does not operate solely through the tech platform; the staff of SU2J work closely with clients and volunteer attorneys to supplement areas where technology might be lacking.

This approach's success must be analyzed. At first glance, the adaptations implemented by SU2J to address these concerns appear to decrease technology's service output and efficiency. The additional requirement of unique user input, such as a person-to-person intake process and individualized attorney training, seem to render the efficiency point moot. However, the technology here *does* increase efficiency and *does* optimize positive client outcomes through *support* from unique user input. The PWT Project shows that technology is a useful weapon to combat the justice gap—so long as it is coupled with some type of human-driven support. Most of these human-driven adaptations are done on the front-end of the process, and therefore, do not decrease the overall efficiency of the technology's ability to streamline the clinic process. Overall, the PWT Project provides an informal case-study on how technology can be used to address the gap in legal services, increase organization efficiency, and convey the individual client's case needs to the technology for, hopefully, the best possible legal outcome.

IV. Estate and End-of-Life Care Planning in the United States

a. The Old-Age Ratio and a Growing Elderly Population

Demographic projections in the United States show that by 2030, when all baby boomers will be at least 65 years of age, older Americans will outnumber children for the first time in American history.⁸¹ At this time, one in every five residents of the United States will be of retirement age.⁸² An aging nation means a smaller workforce; this is the very essence of the old-age dependency ratio. The old age dependency ratio describes the phenomenon in which the number of “economically inactive” citizens will outnumber “economically active” people, those that fall within the class of working individuals.⁸³

What implications does the old-age dependency ratio have for a country like America? Recent publications show “disquieting trends.”⁸⁴ Such trends include racial and ethnic health disparities, widening socioeconomic disparities related to health and mortality, and an increase in the number of older Americans living with one or more disabilities.⁸⁵ This will place a strain on caregivers, families, and the overall U.S. health care system. Potentially more important though, the economically active population and the overall economy will face a greater burden to support and provide social services needed by economically inactive people dependent upon such services.⁸⁶ One likely strained service is providing legal help for older Americans.⁸⁷ Despite government efforts like the Older Americans Act⁸⁸ which directed funds for legal services specifically for the elderly, demand might simply outweigh resources with a growing older population.⁸⁹ Funds provided to legal service providers aimed specifically at the elderly are “wholly inadequate” to meet the needs of the ever-growing elderly population.⁹⁰

Another important implication of the old-age dependency ratio to consider is the growing problem of senior poverty. Since the early 1990s, the percentage of people 50 and over comprising the American homeless population has increased from 11% to over 50%, and the number of food insecure seniors has increased by 130%. Perhaps more alarming, approximately one-third of elderly people in the U.S. have no pension or retirement savings

and median annual incomes of only \$19,000.⁹¹ In fact, during 2015 to 2016, “individuals aged 65 and older had the unique distinction of being the only population segment to experience a significant increase in the number of individuals in poverty.”⁹²

A huge portion of elderly Americans will not have enough money to live out their lives independent of social service programs.⁹³ On top of day-to-day expenses, the elderly population is in a unique position of financial hardship due to their higher respective cost of health care.⁹⁴ This creates a scenario in which approximately half of the population entering retirement will be unable to maintain their standard of living once they stop working.⁹⁵ An elderly’s person inevitable need for legal representation is a significant additional expense, so the magnitude of the justice gap hits the impoverished elderly population particularly hard.⁹⁶

b. Statistics on End-of-Life Care Planning in the United States

As the baby boomer generation ages, the demand for elder law and estate planning services increases.⁹⁷ Elder law firms and services often encompass many topics related to end-of-life care through estate planning, long-term care planning, asset protection planning, and guardianship/conservatorship planning.⁹⁸ The need for these services is not new; since the mid-1990s, the American legal field has recognized the need for elder law specialists and began multiple educational programs aimed at meeting such needs.⁹⁹ The National Academy of Elder Law Attorneys (NAELA), founded in 1987, boasts 4,500 attorneys specializing in elder law services as part of their membership and advocacy efforts in the United States.¹⁰⁰

Despite the increase in the elderly population and this seemingly logical connection to an increase of estate planning services, actual data show that the number of adults 55 and older with a will or similar documents has decreased from 60% to 44% in the last two years alone.¹⁰¹ Further, the number of young adults with a will or other like documents has increased by 63% since 2020.¹⁰² Because these trends are so new, there is little research surrounding these figures.¹⁰³ However, surveys of Americans about estate planning show that there are a multitude of reasons why these figures are what they are: some people state they “haven’t gotten around to it,” “don’t know how to get these documents,” “don’t have enough assets to leave anyone,” or that estate planning is just “too expensive to set up”¹⁰⁴

c. Barriers to Serving the Elderly Population

i. Tech Literacy and Confidence Among the Elderly

There is a common misconception that older Americans do not understand or cannot master new types of technology, however, recent studies show that about 75% of people over the age of 65 are “online” in some capacity.¹⁰⁵ The disparity between elderly adults and young adults online is not that large; 90% of younger adults are online, leaving a 15% difference, approximately.¹⁰⁶ If these statistics are true, where does this misconception come from? There are a multitude of explanations for these assumptions. Elderly people are often thought of as having trouble using technology because they struggle with health issues that create barriers to compatible use.¹⁰⁷ Another misconception is that older adults experience

frustration with new technology and that this lack of confidence and knowledge leaves them unmotivated to continue developing skills or learning about other technologies.¹⁰⁸ There is some substance to these assumptions—a recent study from Pew Research Center found that low technology literacy and physical challenges together create the biggest barriers for seniors’ adoption of new technology.¹⁰⁹

The first major barrier faced by the elderly—as suggested by the Pew Research Center study—is the lack of accommodation for limitations in mobility and sensory capacities, like loss of hearing or eyesight.¹¹⁰ About 23% of older adults indicate that they have some physical or health condition that makes technology use difficult or challenging.¹¹¹ There are also issues related to reduced activity for the elderly, a by-product of aging that may make it difficult for some seniors to “keep up” with fast-paced technology.¹¹² The top cited conditions that impair technology use in the elderly are related to manual dexterity and visual impairments.¹¹³ Such conditions may prevent elderly people from fully engaging in otherwise useful services provided through technology.¹¹⁴

Arguably, the more important barrier to consider is some people’s inability to use technology as intended by the developer because the developer has not taken a human-centered approach in its creation. The nuances of technology feel overwhelming for many users when trying to grasp new technology.¹¹⁵ Issues of “technology usability” often create frustrating scenarios for people of all ages, particularly the elderly who are unfamiliar with the platform and more likely to quit what was designed to be a fairly routine task.¹¹⁶ Another facet of learning a new technology is finding someone to teach the new user; only 18% of older adults reported that they would feel comfortable tackling a wholly new technology on their own.¹¹⁷ This trepidation in “going it alone” only bolsters the issue of confidence in one’s ability to use technology.¹¹⁸ As if physical impairments and psychological barriers weren’t enough, the elderly also face another unique barrier when it comes to technology: their privacy.

ii. Privacy Concerns Unique to the Elderly

Elderly people tend to be more concerned about privacy, creating a self-imposed barrier for the elderly’s access to technology. In fact, the elderly report concerns about data confidentiality at a rate of 86% as opposed to their younger counterparts who report concerns at only 67%.¹¹⁹ Elderly citizens are rightfully concerned; in 2018 alone, adults over 60 lost approximately \$650 million through online crime, an increase of over 400% from 2013.¹²⁰ There are a number of online interfaces that target and attempt to misinform and disorient seniors who are sometimes already at a disadvantage due to their physical or psychological impairments.¹²¹

Even if a senior is ready to tackle learning a new technology, concerns over how to safely control and protect their personal data online loom large.¹²² A majority of adults (80%) who responded via the Westin Privacy Concern Index, a three-question survey used to classify users in relation to their concerns about personal data, reported a medium or high privacy concern online.¹²³ The most common privacy concerns for older adults are spam, unauthorized access to personal information, and information misuse.¹²⁴ These concerns, along with the trends of internet scammers targeting elderly people online, create unique problems for seniors navigating technology.

Elderly Americans are particularly vulnerable to online fraud.¹²⁵ Some reasons for this include that elderly people tend to be more trusting or polite and that elderly people have more assets and savings than younger people.¹²⁶ Another possible reason is elderly people get caught up in long-term—and therefore more costly—scams because they become afraid that relatives will lose confidence in their ability to control their own finances and fear loss of independence should they try to disclose or report the fraud.¹²⁷ Regardless of the reasons why, evidence suggests that as many as one in five elderly Americans have been a victim of some type of financial exploitation.¹²⁸ These privacy concerns can be further aggravated by yet another barrier; the individual may not trust divulging their sensitive information to a lawyer behind a screen.

iii. Do Elderly People Distrust Lawyers Online?

Lawyers are often respected, but not trusted.¹²⁹ Only a paltry 3% of Americans believe that lawyers' ethical standards are very high, and such standards were often compared to those of telemarketers, car salesmen, and members of Congress.¹³⁰ Overall, Americans just do not trust the legal system as a whole. Only 26% of Americans believe that the civil legal system provides timely and reliable resolutions of disputes.¹³¹ The amount of trust in the legal system has decreased over the last decade with only 53% of Americans having a "great amount" or "fair amount" of trust in the courts in 2015, compared to 76% in 2009.¹³²

Phrases such as "ambulance chaser," a term popularized in the 1920s to describe unsavory attorneys who solicited business at the scenes of accidents and in hospital waiting rooms, have only added to the negative reputation of attorneys over time.¹³³ Lawyers' reputation as a profession has likely not gotten better since. Nearly 100 years later, people in hospital waiting rooms of 2018 noticed targeted ads from injury attorneys pop up on their phone, a term called "geofencing."¹³⁴ Geofencing is the act of placing a digital perimeter around a specific location, like a hospital, and sending ads, coupons, or information to electronic devices in that specific area.¹³⁵ It seems as though the fear and anxiety surrounding predatory lawyers that is prevalent in American society has manifested itself in a "digital anxiety," or anxiety from interacting with technology, especially among older adults.¹³⁶

We know that Americans, in general, distrust lawyers. Do elderly Americans share this sentiment? American government and law enforcement agencies seem to think that the elderly have reason to distrust most information delivered to them via technology. The Federal Bureau of Investigation has spoken publicly about targeting scams on the elderly perpetuated through technology, advising older people to "resist the pressure to act quickly [with scammers], be cautious of unsolicited phone calls, mailings . . . be careful what you download, and take precautions to protect your identity."¹³⁷

It is clear that these warnings are aimed at the elderly, seeing as statistics show that they are the most vulnerable to these types of fraud.¹³⁸ With all of these warnings surrounding the dissemination of one's private information over the internet, a general frustration or misunderstanding of the nuances of technology, and a potential belief that lawyers are unethical, it would seem logical to assume that the elderly might not trust handling their personal affairs through a tech-driven platform.

V. Addressing How Tech and Unique Input Can Work Together to Bridge the Justice Gap

The assertion that technology needs more assistance and support to bridge the justice gap seems to be counterintuitive to the use of technology to increase efficiency. At the very core of this argument is one word: *efficiency*. The suggestion that technology needs support undermines the overall goal of efficiency. While SU2J and other organizations like it may be able to successfully supplement their tech-platforms with unique, human-driven input, not all organizations have this capability. The need for knowledgeable users to constantly monitor and update others on the tech may defeat the purpose of using technology to efficiently deliver services to more people.

Technological designers should be incentivized to create new products or modify existing ones to better serve consumers who are limited in their abilities to access or understand the technology. The designs of many commonplace devices and their interfaces pose a challenge for the elderly consumer base.¹³⁹ These issues render some devices non-inclusive for the elderly consumer base.¹⁴⁰ Further, the software engineers and product owners in their twenties and thirties often overlook the elderly and physically disabled in not only their product design but also in their marketing.¹⁴¹ The elderly population is growing in numbers and is already a large consumer base, but tech designers and product owners focus on younger groups to maximize profitability of their devices.¹⁴² Maybe designers do this because they too operate on the assumption that the elderly do not understand tech and are not interested in attempting to learn new skills in relation to technology. Perhaps this discrepancy can be attributed to something else entirely. The reality is that tech designers are not focused on the elderly. The tech market assumes that users are younger, but it fails to consider that older consumers could create a wider user base and increased revenue.¹⁴³

Legal aid service organizations, tech-developers, individual attorneys, and individual consumers must continue to recognize the relationship between technology and consumers and leverage unique input to better serve those in need of services. To achieve the true goal of access to justice—access *for all*—the field of legal tech should focus on a few key initiatives: (1) creating tools that correspond more closely to a client's *known* needs to maintain an emphasis on client's individual needs; (2) conducting more research related to how the justice gap affects the elderly population specifically; and (3) creating more opportunities to educate all involved parties about the limitations of technology already in use in the legal field and how to address potential limitations posed by the technology when delivering services. All these suggestions rely on a flexibility between users and technology.

The barriers discussed above are unique to the elderly based on their health, status in American society, and their income. Therefore, more efforts should be made on the part of those developing tech to receive feedback from this specific population to make it more accessible and navigable for them. Tech companies should be incentivized, ideally by legislative policies, to adapt their tech to serve underserved populations. In the field of legal tech, this improvement would likely include tailoring platforms based on the type of legal

services being provided. Organizations seeking to increase their efficiency in serving needy people can focus on developing tech that is multi-use and combines elements from all three types of legal aid tools. Legal aid organizations need to find a balance between relying on technology to bolster efficiency and remembering that each client has unique issues and needs. A good model for this is seen in the problem-solving implemented by SU2J as they developed their PWT Program and learned that the tech-platform was only one piece in the puzzle of efficiency.

Many times, education is discussed as a cure-all for major issues in the United States. Despite its perceived overuse, education initiatives should not be dismissed and should be considered as a strong, if not the strongest, tool in combating the justice gap. Education on the justice gap itself, as well as on the recent benefits and limitations of technology, will be crucial in the effort to incentivize attorneys to volunteer their time and resources towards bridging the gap. Education about presently available resources is also a necessary part of helping serve people with their civil legal needs. We cannot expect people to fully utilize resources if they do not know of their existence. Legal aid organizations like SU2J rely heavily on their partnerships with other community organizations to make their resources known and create greater access opportunities for needy members of their community.

VI. Conclusion

The legal field needs to focus on flexibility and unique input when it comes to serving clients with technology. Technology is increasingly important to the future practice of law, but it poses unique challenges for groups of people that are not traditionally aligned with the wonders of technology. Civil legal aid organizations have known about the justice gap for decades and have created unique, tech-driven solutions to try and bridge the gap. Technology is the main tool to bridge the gap, and the legal aid world has seen some great improvements as a result. Despite this, the gap still exists and is widening. Therein lies the issue; technology is, in a sense, only half of the bridge. If technology acts as the planks of the bridge, then unique input and an emphasis on individual client needs are the posts, rope, and anchors.

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³ Justice in Aging, <https://justiceinaging.org/advancing-equity-in-law-and-policy/> (last visited Sept. 10, 2021) (discussing how access to justice challenges become even greater as people age).

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⁶ See generally Jennifer Goldberg et al., *How Legal Aid Programs Can Address the Growing Problem of Senior Poverty*, MGMT. INFO. EXCH. J. (Spring 2016).

⁷ Pesochinsky, *supra* note 1 (talking about the three most common uses of tech for access to justice).

⁸ Gordon, *supra* note 2 at 36.

⁹ *Id.*

¹⁰ John M.A. DiPippa, *Reginald Heber Smith and Justice and the Poor in the 21st Century*, 40 CAMPBELL L. REV. 73, 75-77. (explaining that the expansion of legal aid rests on three basic principles: access to courts rooted in the obligation of justice, equality of justice as fundamental to American jurisprudence, and questioning democratic systems of government that fail to secure equality of justice for its citizens).

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¹³ See *infra* Section 1 Part B.

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¹⁶ Gordon, *supra* note 2 at 37.

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²⁰ Alan Houseman, *The Justice Gap: Civil Legal Assistance Today and Tomorrow*, CENTER FOR AMERICAN PROGRESS (June 2011), at 6.

²¹ *Id.* at 7.

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²³ Ethan Bronner, *Right to Lawyer Can Be Empty Promise for Poor*, N.Y. TIMES, (Mar. 16, 2013), <https://www.nytimes.com/2013/03/16/us/16gideon.html>.

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