

# Comment, **Access to Freedom: Can Technology Improve Access to Justice for Survivors of Domestic Abuse?**

## Introduction

“Freedom is independence of the compulsory will of another; and in so far as it can coexist with the freedom of all according to a universal law, it is the one sole original, inborn right belonging to every [hu]man in virtue of [their] humanity.”<sup>1</sup> This concept of freedom, so fundamental to humanity, is routinely denied to victims of domestic abuse, first by their coercive intimate partners and second by a complicated U.S. legal system.<sup>2</sup> Lack of resources to hire suitable legal representation often forces survivors to navigate the court system on their own.<sup>3</sup> As self-represented litigants, survivors lack understanding about available relief through protection orders, how to communicate the facts of their situation to a judge, what their rights are as parents, and how to utilize the court system to protect themselves and their children. This Comment will explore how technology might bridge the gap between survivors and their freedom.

To explore how technology may be designed and utilized to improve a domestic violence survivor’s access to justice, this comment will proceed in several parts. Part I will introduce the barriers to justice and freedom experienced by victims of domes-

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<sup>1</sup> Immanuel Kant, *The Science of Right*, MARXISTS INTERNET ARCHIVE, <https://www.marxists.org/reference/subject/ethics/kant/morals/ch04.htm> (last visited Mar. 28, 2023).

<sup>2</sup> Alesha Durfee, *Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders*, 4 FEMINIST CRIMINOLOGY 7, 10 (2009).

<sup>3</sup> See *Bringing the Access to Justice Pieces Together*, SELF-REPRESENTED LITIG. NETWORK 1 n.2, <https://perma.cc/3CPC-JRTT> (Mar. 7, 2019) (explaining that, although jurisdictions rarely formalize statistics regarding the representation of litigants, sample studies indicate that in “domestic violence proceedings nearly 100% of the parties are self-represented.”); See also Durfee, *supra* note 2, at 10 (“[L]egal scholars have noted that there is an “overwhelming lack of (legal) representation among domestic violence victims filing for protection orders.” (internal quotes omitted)).

tic violence and the experience of the pro-se litigant. Part II will summarize the ways that technology is currently being used to provide access to justice in domestic law and other areas of law. Part III will explore how technology might be utilized to provide access to justice for survivors of domestic violence. Part IV will outline criticisms of the use of technology in the law in general as well as specific problems the use of technology presents to victims of domestic abuse. Finally, Part V will describe recommended features for any technology created to improve access to justice for self-represented litigants seeking freedom from abusive partners.

## **I. Barriers to Freedom Experienced by Victims of Domestic Violence**

Despite the rigorous efforts of victim advocates, domestic abuse is often misunderstood by the general public and in the legal system. For example, common misunderstandings about the nature of domestic violence include the following: that men are always the perpetrators; that women are always the victims; that only physical violence is abuse; that victims are helpless and do not retaliate against abusers; and that victims will always try to leave.<sup>4</sup> These misunderstandings create significant barriers to freedom. Domestic abuse is much more than physical violence toward an intimate partner. It involves cyclical behaviors used by an abuser to exert power and control over a partner.<sup>5</sup> These behaviors often include physical or sexual violence but also threats, intimidation tactics, emotional abuse, isolation, gaslighting, using children to manipulate, and restricting access to money.<sup>6</sup> Though a “typical abuser” does not exist, many abusers follow common and predictable patterns.<sup>7</sup> An abuser often minimizes the seriousness of the violence, sees the victim as his or her

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<sup>4</sup> *Id.* at 12.

<sup>5</sup> *Dynamics of Abuse*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/dynamics-of-abuse> (last visited Feb. 3, 2023).

<sup>6</sup> *Id.*

<sup>7</sup> Debra Poggrund Stark et. al., *Properly Accounting for Domestic Violence in Child Custody Cases: An Evidence-Based Analysis and Reform*, 26 MICH. J. GENDER & L. 1, 10–11 (2019).

property, has internal feelings of inadequacy, blames violence on external factors like alcohol, and blames the victim for violence.<sup>8</sup>

Abuse survivors also face external barriers to freedom within the legal system. First, a victim whose financial resources have been cut off or are controlled by an abuser is much more likely to need judicial intervention and protection.<sup>9</sup> Since victims of domestic violence are less likely to have the resources and opportunity to hire a lawyer, they must often represent themselves in order to avail themselves of judicial protection.<sup>10</sup> One national survey of domestic violence organizations indicates that half of respondents were discouraged from filing orders of protection against their abusers when faced with filling out the complex paperwork on their own.<sup>11</sup>

Second, the counterintuitive nature of abuse and common misconceptions may cause judges to miss telltale signs of abuse, or worse, view victims as “pathetic, stupid, or even deserving of the abuse.”<sup>12</sup> As mentioned above, abusers use violence, threats, humiliation, social isolation, and other tactics to exert control over the victim. Many people, judges included, expect a victim to be wilting and helpless as a result.<sup>13</sup> In demeanor, victims appear angry at their abuser and rigid in their demands for sole legal and physical custody.<sup>14</sup> Other battered individuals might suffer from post-traumatic stress disorder and giggle or seem unaffected by descriptions of abuse.<sup>15</sup> Meanwhile, the abuser appears charm-

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<sup>8</sup> *Signs of Abuse*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/dynamics-of-abuse> (last visited Feb. 3, 2023).

<sup>9</sup> Ayyoub Ajmi, *COVID 19: A Catalyst to Automate Protection Order Petitions to Support Self-Represented Litigants*, 60 FAM. CT. REV. 1, 4 (2022).

<sup>10</sup> Amy J. Schmitz & John Zeleznikow, *Intelligent Legal Tech to Empower Self-Represented Litigants*, 23 COLUM. SCI. & TECH. L. REV. 142, 154 (2021).

<sup>11</sup> Ajmi, *supra* note 9, at 7.

<sup>12</sup> Camille Carey & Robert A. Solomon, *Impossible Choices: Balancing Safety and Security in Domestic Violence Representation*, 21 CLINICAL L. REV. 201, 226 (2014) (quoting Jennifer L. Hartman & Joanne Belknap, *Beyond the Gatekeepers: Court Professionals' Self-Reported Attitudes About and Experiences with Misdemeanor Domestic Violence Cases*, 30 CRIM. JUSTICE & BEHAV. 349, 361 (2003)).

<sup>13</sup> Emmaline Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It*, 24 UCLA WOMEN'S L.J. 41, 43 (2017).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

ing, likeable, and flexible.<sup>16</sup> If a judge fails to recognize these unusual behaviors as symptoms of abuse, he or she may make decisions that hinder justice. If the victim is not represented by an attorney who can explain the origin of these behaviors to a judge, the victim may have little chance to gain freedom from an abuser.

Third, low-income people of color who seek remedies through the court system may be particularly reluctant to engage in a process that may be guided by implicit or explicit racial bias that exposes them to unwanted state interventions and over or under enforcement of protection orders.<sup>17</sup>

Finally, after successfully obtaining a dissolution of marriage or custody order from the courts, any award of decision-making ability to the abuser gives him or her another opportunity to control the survivor by threatening to modify the order or by withholding child support.<sup>18</sup>

Despite these barriers, studies show that there is a surge of domestic violence cases where the parties are self-represented litigants (SRLs). Studies indicate an increase of SRL cases in a variety of legal fields including family law, domestic violence, and child support.<sup>19</sup>

#### A. *Self-Represented Litigants' Experiences and Outcomes*

The U.S. National Center on State Courts indicates that 72% of family law cases have at least one self-represented litigant.<sup>20</sup> SRLs tend to be negatively impacted by their lack of counsel in the legal system.<sup>21</sup> Lack of representation is particularly damaging when the opposing party is represented by an attorney.<sup>22</sup> In addition SRLs unfamiliar with procedural norms

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<sup>16</sup> *Id.*

<sup>17</sup> Elizabeth L. MacDowell, *Domestic Violence and the Politics of Self-Help*, 22 *WM. & MARY J. WOMEN & L.* 203, 209 (2016).

<sup>18</sup> Joy Barber, *Race to Jurisdiction: Forum Determination in Dv-Related Child Custody Actions When Survivors Flee Across Reservation Lines*, 82 *MONT. L. REV.* 259, 261–62 (2021).

<sup>19</sup> Christine E. Cerniglia, *The Civil Self-Representation Crisis: The Need for More Data and Less Complacency*, 27 *GEO. J. ON POVERTY L. & POL'Y* 355, 375 (2020).

<sup>20</sup> Schmitz & Zeleznikow, *supra* note 10, at 144.

<sup>21</sup> Cerniglia, *supra* note 19, at 375.

<sup>22</sup> *Id.*

tend to create a drain on the system and create problems with judicial efficiency and impartiality.<sup>23</sup> Despite an SRL's lack of understanding of the system, judges must still require them to clearly state their case, meet appropriate deadlines, and follow procedural and substantive rules.<sup>24</sup> It is important to note that there is no due process right to representation in civil cases.<sup>25</sup>

The increase of SRLs in the legal system has been described as a crisis and methods to address the crisis include self-help services.<sup>26</sup> However, self-help services are still limited in the ways they are able to help SRLs. "Most legal assistance programs are so severely underfunded that they are unable to assist many victims of domestic violence beyond the initial step of filing paperwork."<sup>27</sup> Furthermore, judges can only provide so much help without becoming biased,<sup>28</sup> and court staff cannot provide help that constitutes the unauthorized practice of law.<sup>29</sup> However, the absence of help effectively denies SRLs access to justice.<sup>30</sup> At the same time, legal aid agencies only have resources to handle about 20% of the legal needs of the poor.<sup>31</sup> Without free legal services, a low income SRL has no help accessing the legal system and may give up pursuing justice. In fact, a survey by the

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<sup>23</sup> *Id.* at 374.

<sup>24</sup> Ajmi, *supra* note 9, at 3.

<sup>25</sup> *Turner v. Rogers*, 564 U.S. 431, 448 (2011). Pro bono programs may provide some limited assistance for those seeking protection from domestic violence. Examples include the National Domestic Violence Hotline (<https://www.thehotline.org/get-help/domestic-violence-legal-help/>), legal aid through Legal Services Corporation (<https://www.lsc.gov/our-impact/publications/other-publications-and-reports/how-legal-aid-helps-domestic-violence>), Women'sLaw.org, and Network for Victim Recovery of DC (<https://www.lsc.gov/our-impact/publications/other-publications-and-reports/how-legal-aid-helps-domestic-violence>).

<sup>26</sup> MacDowell, *supra* note 17, at 205.

<sup>27</sup> Durfee, *supra* note 2, at 10 (internal quotes omitted).

<sup>28</sup> Schmitz & Zeleznikow, *supra* note 10, at 145.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* However, in response to the problem, many states have relaxed laws to permit court staff and other advocates to assist pro-se litigants. *See, e.g.*, LA. STAT. ANN. § 46:2138 (2023 Sess.)(allowing clerks and "domestic abuse advocates" to assist with orders of protection); MO. ANN. STAT. § 455.025 (2022) (authorizing court clerks to assist unrepresented litigants without constituting the practice of law).

<sup>31</sup> Ronald W. Staudt, *All the Wild Possibilities: Technology That Attacks Barriers to Access to Justice*, 42 LOY. L.A. L. REV. 1117 (2009).

American Bar Association indicated that in 38% of cases, low-income people with a legal problem decide to take no action.<sup>32</sup> Domestic abuse survivors face the barriers outlined above along with the stigma of self-representation.<sup>33</sup> One solution to this access to justice problem may be technology.<sup>34</sup>

### B. *Technology's Influence on the Legal Systems*

Many experts suggest that technology is the answer to the access to justice problem in the United States.<sup>35</sup> Richard Susskind envisions the court system of the future will be online and asynchronous, that artificial intelligence (“AI”) will take on many of the tasks currently done by lawyers, and that extended online court services will grant access to justice to more people with more efficiency.<sup>36</sup> Susskind’s vision may be closer than one might imagine as courts throughout the world, shoved forward by the COVID-19 pandemic, have embraced technology.<sup>37</sup> This acceptance of technology in the legal field appears in a variety of forms. For example, Online Dispute Resolution (“ODR”) has particular promise for guiding SRLs to meaningful solutions with minimal court oversight.<sup>38</sup> Artificial intelligence software, as another example, can help SRLs calculate likely outcomes and cost of litigation.<sup>39</sup> Since self-represented litigants present legal tech companies with an ample market for focused products, more innovative technology may be imminent.<sup>40</sup> The implications for access to justice in this burgeoning field seem endless. As law professors Kathleen Elliott Vinson and Samantha Moppett put

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<sup>32</sup> Ajmi, *supra* note 9, at 3.

<sup>33</sup> Cerniglia, *supra* note 19, at 376.

<sup>34</sup> *Id.* at 380.

<sup>35</sup> Schmitz & Zeleznikow, *supra* note 10, at 150.

<sup>36</sup> Richard Susskind, *Online Courts: Perspectives from the Bench and Bar*, HARVARD LAW SCHOOL’S CENTER ON THE LEGAL PROFESSION (Nov. 20, 2020), <https://www.youtube.com/watch?v=X1oXoTr-aW8>.

<sup>37</sup> Samuel Dahan & David Liang, *The Case for AI-Powered Legal Aid*, 46 QUEEN’S L.J. 415, 418 (2021).

<sup>38</sup> Schmitz & Zeleznikow, *supra* note 10, at 146.

<sup>39</sup> Dahan & Liang, *supra* note 37, at 423.

<sup>40</sup> Schmitz & Zeleznikow, *supra* note 10, at 145.

it, “[w]ith bold innovation, the justice system could serve everyone.”<sup>41</sup>

## II. Technology and Access to Justice

Technology permeates every aspect of life, including the law. Even before the COVID-19 pandemic forced courts to embrace e-filing and Webex hearings, attorneys, legal aid agencies, and court systems increasingly relied on technology to improve efficiency, access legal resources, assemble documents, or accomplish any number of tasks. The following is a very limited sketch of ways that technology is being utilized in the legal field. This survey will provide a background for envisioning technology that will increase access to justice for victims of domestic violence.

### A. Document Assembly Programs

One of the most widely used technologies in the United States and around the world is the Access to Justice Author (“A2J Author”).<sup>42</sup> A2J Author, developed in 2004,<sup>43</sup> is a “software tool that delivers greater access to justice for self-represented litigants by enabling non-technical authors from the courts, legal services programs, and law schools to rapidly build and implement customer friendly web-based interfaces for document assembly.”<sup>44</sup> For example, A2J Author allows a user to respond to an online guided interview, on an online platform containing a series of simply worded questions upon filing for divorce. These questions, arranged in an unthreatening, user-friendly fashion by A2J Author, guide the pro-se litigant to provide necessary information about the dissolution of their mar-

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<sup>41</sup> Kathleen Elliott Vinson & Samantha A. Moppett, *Digital Pro Bono: Leveraging Technology to Provide Access to Justice*, 92 ST. JOHN’S L. REV. 551, 558 (2018).

<sup>42</sup> Staudt, *supra* note 31, at 1117.

<sup>43</sup> A2J Author was co-developed by Chicago-Kent College of Law’s Center for Access to Justice and Technology and the Center for Computer-Assisted Legal Instruction. Ajmi, *supra* note 9, at 10. A2J Author was part of the Legal Services Corporation’s effort to utilize technology to expand delivery of free legal information and services to pro-se litigants. Staudt, *supra* note 31, at 1124.

<sup>44</sup> A2J AUTHOR, *An Overview of A2J Author*, <https://www.a2jauthor.org/content/overview-a2j-author> (last visited Feb. 24, 2023).

riage. The platform collects that information, applies it to the correct court form, and creates a document which the pro-se litigant can file in court.<sup>45</sup> The applications in law of such guided interviews seem limited only by the user's imagination.

A more specific application of document assembly technology is the Kansas Protection Order Portal ("KSPOP").<sup>46</sup> KSPOP is a free resource that allows SRLs in Kansas to file a petition for a protection order online without having to travel to a courtroom.<sup>47</sup> The portal was developed by a team from the University of Missouri-Kansas City ("UMKC") with funding from the Kansas Judicial Branch and launched in April of 2021.<sup>48</sup> The technology behind KSPOP is JotForm.<sup>49</sup> The first step a user will encounter is an eligibility review which guides the user to the correct type of petition.<sup>50</sup> The user then follows a self-guided interview which results in a petition for an order of protection.<sup>51</sup> KSPOP is directly linked to the state's e-filing system, allowing the victim to file the petition directly from the portal.<sup>52</sup> Ayyoub Ajmi, part of the UMKC team of developers, considers this connection to directly e-file the petition one of KSPOP's most important features because it allows the user to file at any time of the day or night, regardless of whether the courts are open.<sup>53</sup> The portal also provides the user with information about domestic violence, links to available resources, and next steps.<sup>54</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> KSPOP, <https://www.kspop.org/> (last visited Mar. 1, 2023).

<sup>47</sup> Ajmi, *supra* note 9, at 1.

<sup>48</sup> *Id.* at 9.

<sup>49</sup> *Id.* at 11-12 (explaining that JotForm is a commercial form builder which offers "electronic signature, conditional formatting, responsive design, multi-lingual support, file attachment, and a large number of integrations with third-party applications").

<sup>50</sup> *Id.* at 12.

<sup>51</sup> *Id.*

<sup>52</sup> Interview with Ayyoub Ajmi, Director of Technology and Associate Director of the Law Library, University of Missouri-Kansas City School of Law, in Kansas City, Mo. (Feb. 8, 2023).

<sup>53</sup> *Id.*

<sup>54</sup> Ajmi, *supra* note 9, at 12.



## B. Online Dispute Resolution Systems

Online Dispute Resolution (“ODR”) systems show promise in improving access to justice for SRLs.<sup>55</sup> The goal of an ODR system is to support negotiation between opposing parties to achieve better outcomes than they would be able to achieve themselves.<sup>56</sup> Generally, ODR provides information to potential litigants regarding the merits of their case, explains appropriate processes, and even assists them in choosing meaningful trade-offs in negotiation.<sup>57</sup> One of the ways ODR systems operate is by using case-based reasoning powered by Artificial Intelligence (“AI”).<sup>58</sup> “Artificial intelligence and analytics research . . . can help litigants move beyond intuitive negotiation and instead exploit more data-driven negotiation strategies based on accurate legal predictions.”<sup>59</sup> To truly be of use to SRLs, ODR design should be user-friendly.<sup>60</sup> Elements of a user-friendly design are discussed further in Part V.

Several well-known ODR systems are utilized in family law matters. First, Our Family Wizard was created to help parents in co-parenting situations and boasts the ability to reduce legal costs, even for high conflict co-parenting situations.<sup>61</sup> The platform provides a shared calendar, secure messaging, and payment sharing options, among other features.<sup>62</sup> It also allows parents to invite a third party, such as a therapist, to participate in communication efforts.<sup>63</sup> Our Family Wizard uses a unique AI feature, called ToneMeter.<sup>64</sup> ToneMeter checks language used in the program against “eight levels of connotative feeling” and allows a user to re-consider “emotionally charged” messages before sending.<sup>65</sup> While this feature might be effective for well-intentioned

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<sup>55</sup> Schmitz & Zeleznikow, *supra* note 10, at 146.

<sup>56</sup> *Id.* at 148.

<sup>57</sup> *Id.* at 155.

<sup>58</sup> *Id.* at 156.

<sup>59</sup> Dahan & Liang, *supra* note 37, at 423.

<sup>60</sup> Schmitz & Zeleznikow, *supra* note 10, at 149.

<sup>61</sup> Our Family Wizard, *Knowledge Center*, <https://www.ourfamilywizard.com/knowledge-center> (last visited Feb. 25, 2023).

<sup>62</sup> *Id.*

<sup>63</sup> Schmitz & Zeleznikow, *supra* note 10, at 163.

<sup>64</sup> Kristen M. Blankley, *Online Resources and Family Cases: Access to Justice in Implementation of a Plan*, 88 *FORDHAM L. REV.* 2121, 2133 (2020).

<sup>65</sup> Schmitz & Zeleznikow, *supra* note 10, at 168-69.

parties, ToneMeter still allows the emotionally charged message to be transmitted if hostility is intended.<sup>66</sup>

Second, CoParenter is an online service often ordered by courts to help parents communicate more effectively for the benefit of their children.<sup>67</sup> CoParenter helps users create court-ready parenting plans and supports dispute resolution to help them save time and money by keeping them out of court.<sup>68</sup> For example, CoParenter allows some flexibility in the implementation of the parenting plan with formal request features to change the plan on a temporary basis by mutual agreement.<sup>69</sup> Additionally, CoParenter records messages with time and date information and makes them un-editable after posting.<sup>70</sup> These message records can be made available to a judge, preventing disputes about who said what.<sup>71</sup> CoParenter uses AI in several ways: predicting common conflicts in making parenting plans, providing an AI mediation options, and alerting a parent if the message they are about to send sounds hostile.<sup>72</sup>

### *C. Technology in Select States Improving Access to Justice*

Other states are using technology to improve access to justice. For example, in West Virginia, the Remote Domestic Violence and Sexual Assault Outreach Project provides certain domestic violence shelters and rape crisis centers with the technology to allow victims to call and arrange to file petitions remotely and attend follow up hearings remotely, avoiding the danger of seeing their assailant in court.<sup>73</sup> In Maine, the Apps for Justice Project seeks to create “practical, technology-based tools that will enable low-and moderate-income consumers to address their legal and law-related problems” with or without pro-

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<sup>66</sup> Blankley, *supra* note 64.

<sup>67</sup> Schmitz & Zeleznikow, *supra* note 10, at 162.

<sup>68</sup> CoParenter, <https://coparenter.com/> (last visited Feb. 25, 2023).

<sup>69</sup> Blankley, *supra* note 64, at 2129.

<sup>70</sup> *Id.* at 2128.

<sup>71</sup> *Id.*

<sup>72</sup> Blankley, *supra* note 64, at 2130; Schmitz & Zeleznikow, *supra* note 10, at 162-63.

<sup>73</sup> Evan H. Jenkins, *New, Safer Access to Justice for Domestic Violence and Sexual Assault Victims*, W. VA. LAW., Winter 2021-2022, at 20.

professional help.<sup>74</sup> By building on these existing technologies, developers can assist survivors of domestic abuse dramatically with minimal creative effort and financial burden.

### III. How Technology Might Provide Access to Justice for Survivors of Domestic Violence

With tools like A2J Author, JotForm, and AI, a creative developer could facilitate a survivor's freedom through access to justice in a variety of ways. From this discussion, a few options seem clear and imminently possible: remote protection order support, legal expert systems for survivors of domestic abuse, and online dispute resolution systems specifically designed for abusive relationships.

#### A. Remote Protection Order Support

First, jurisdictions across the United States should adopt remote protection order support portals. One of the most common legal remedies sought by victims of domestic violence is the civil protection order.<sup>75</sup> In fact, the creation of the civil protection order was driven by battered women's advocates and lawyers who wanted to create a civil remedy other than divorce for domestic violence victims, outside the criminal system.<sup>76</sup> Protection orders help safeguard victims from types of abuse that are not necessarily criminal, like some forms of emotional and economic abuse, and they provide remedies uniquely beneficial in the context of domestic violence.<sup>77</sup> Remedies often include custody orders, possession of property, child and spousal support, injunctions to refrain from further violence against or contact with the protected party, payment of attorney fees, surrender of an adverse party's firearms, exclusion from a shared residence,

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<sup>74</sup> Lois R. Lupica, Tobias A. Franklin, & Sage M. Friedman, *The Apps for Justice Project: Employing Design Thinking to Narrow the Access to Justice Gap*, 44 *FORDHAM URB. L.J.* 1363, 1375 (2017).

<sup>75</sup> MacDowell, *supra* note 17, at 207.

<sup>76</sup> *Id.* at 212-13.

<sup>77</sup> *Id.* at 214.

requirements that an adverse party attend batterer treatment program, and reimbursement of costs associated with abuse.<sup>78</sup>

Even with this comprehensive list of available remedies, self-represented victims of domestic violence face several unique barriers to justice. First, court provided forms offer little guidance for the victim in accessing these remedies and are full of legalese.<sup>79</sup> Recognizing this, some statutes allow court clerks and advocates to help victims fill out the forms without running afoul of “unauthorized practice of law” limitations.<sup>80</sup> As outlined above, the need is simply greater than the support available through court services, legal aid, and advocate groups. Second, a self-representing victim utilizing court forms that can only be filed in the courthouse puts herself or himself in danger. If the only place to obtain an order of protection is the courthouse, an abuser knows where to find and further harm the victim.<sup>81</sup> One magistrate, after receiving a middle of the night call to meet someone wishing to file a protective order at the courthouse, witnessed an abuser repeatedly try to block his victim from entering the courthouse parking lot with his vehicle and pulling his car alongside his victim to prevent her from opening her door.<sup>82</sup> Additionally, experts consider the most dangerous time for a domestic violence victim is during the period between the filing of a protection order and service of the order.<sup>83</sup> Other reports suggest that at the point of separating from a former intimate partner, a victim experiences a dramatic increase in violent episodes.<sup>84</sup> Martha Mahoney calls this phenomenon “separation assault” and defines it as “the attack on the woman’s body and volition in which her partner seeks to prevent her from leaving,

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<sup>78</sup> See, e.g., the Kansas Petition for Protection from Abuse Order (July 2022), <https://www.kansasjudicialcouncil.org/legal-forms/protection-orders/protection-abuse/petition-protection-abuse-order>; See also California Request for Domestic Violence Restraining Order (DV-100) (Jan. 1, 2023), <https://self-help.courts.ca.gov/jcc-form/DV-100>.

<sup>79</sup> Ajmi, *supra* note 9, at 6.

<sup>80</sup> *Id.* at 5.

<sup>81</sup> Jenkins, *supra* note 73, at 20.

<sup>82</sup> *Id.*

<sup>83</sup> Ajmi, *supra* note 9, at 8.

<sup>84</sup> Stark et. al., *supra* note 7, at 30 (“Women who have recently separated from an intimate partner report experiencing violent episodes at a rate 40 times greater than those who are still married.”).

retaliate for the separation, or force her to return.”<sup>85</sup> Accordingly, victim advocates often do a lethality assessment and safety plan to give victims the tools they need to escape this danger.<sup>86</sup>

Self-represented domestic violence victims could avoid these barriers with a properly crafted online portal for filing civil orders of protection. Already technology like KSPOP is attempting to address this gap in access to justice.<sup>87</sup> Since each state has particularized differences in their protection order statutes, technology should be developed with customization options to address each nuance of the state’s law. Design features of an online portal should include user-friendly design, simple language, direct connection to the court’s online filing system, 24/7 accessibility, information about the dynamics of domestic abuse, a guided lethality assessment and safety plan creator, and information on community supports available. Part V will address some of these design features in more detail.

### B. *Legal Expert Systems for Survivors of Domestic Abuse*

Second, legal expert systems should be developed for survivors of domestic abuse. The Legal Services Corporation, a non-profit established by Congress to support legal services organizations,<sup>88</sup> identified legal expert systems as a tool that legal aid organizations and state and national bar associations could use to provide better access to justice.<sup>89</sup> Legal expert systems simulate the logical reasoning of attorneys for consumers seeking law-related answers.<sup>90</sup> A resource like this specifically designed to address the legal choices a domestic violence victim must make has tremendous potential to empower a victim. One well known tactic of abusers is to threaten a victim with legal action, for ex-

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<sup>85</sup> Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65 (1991).

<sup>86</sup> Ajmi, *supra* note 9, at 8.

<sup>87</sup> While many states have online guided interviews available to SRLs seeking orders of protection, they often do little to simplify legalese and still require an SRL to print a form which they must file in person at the courthouse. One example of a portal similar to KSPOP is Arizona’s AZPoint, <https://azpoint.azcourts.gov/> (last visited Feb. 28, 2023).

<sup>88</sup> Lupica, Franklin, & Friedman, *supra* note 74, at 1364.

<sup>89</sup> *Id.* at 1372.

<sup>90</sup> *Id.* at 1371.

ample divorce, custody, or deportation.<sup>91</sup> Without access to an attorney to explain the law, the victim only has the information given to her by an abuser who may also have the financial resources to hire a lawyer. Access to a legal expert system designed to show a victim the difference between what the law says and what their abuser says has the potential to influence decision making and create options to empower a victim to leave.<sup>92</sup>

### C. *Online Dispute Resolution*

Online Dispute Resolution (“ODR”), already encouraged by courts around the world to promote access to justice,<sup>93</sup> may provide at least three opportunities to benefit users experiencing domestic violence. First, ODR systems should include a triaging feature. In other words, because the process of separation is so dangerous for a victim of domestic violence, ODR platforms should be created with various triggers to inform a user that he or she may be in danger.<sup>94</sup> For example, a new user could be asked to fill out a lethality assessment with questions about whether the opposing party has ever threatened pets, destroyed property, or controlled daily activities.<sup>95</sup> Alternately, since ODR technology often uses case-based reasoning and conditional programming, in theory, it could be programmed to recognize when an opposing party is utilizing one or more of the extremely predictable behaviors and tactics used by abusers. These predictable tactics would trigger the program to alert a victim, provide a list of resources to assist, do a lethality assessment, or even walk the victim through a guided interview to develop a safety plan. One researcher, as of 2021, did not identify any current ODR systems that provided such a triaging feature.<sup>96</sup>

Second, an ODR system that recognized abusive tactics could provide negotiation support to an abuser. Like the “hostile language” feature of Our Family Wizard and CoParenter, the

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<sup>91</sup> Campbell, *supra* note 13, at 57.

<sup>92</sup> Schmitz & Zeleznikow, *supra* note 10, at 152.

<sup>93</sup> *Id.* at 146.

<sup>94</sup> *Id.* at 161.

<sup>95</sup> DANGER ASSESSMENT, <https://www.dangerassessment.org/DATools.aspx> (last visited Mar. 29, 2023) (containing the danger assessment tool created by Jacquelyn C. Campbell).

<sup>96</sup> Schmitz & Zeleznikow, *supra* note 10, at 161.

program could offer the abuser an opportunity to revise a statement that seems to be gaslighting a victim. At the same time the program could offer information about batterer intervention programs or counseling resources. Whether an abuser would choose to revise an abusive statement or benefit from batterer intervention classes is a question beyond the scope of this comment. However, care should be taken in program design to prevent an abuser from using the ODR system to abuse the victim verbally, emotionally, or psychologically.<sup>97</sup>

Third, an ODR system for domestic violence cases should include drafting software or agreement technologies. In any settlement achieved privately between parties, there is a risk that one party will claim lack of memory regarding one or more aspects of the settlement.<sup>98</sup> This risk is greater when issues of coercive control are at play. For example, a common tactic of abusers is to make, for example, a parenting agreement outside of court and then claim ignorance of the agreement to extend the process and drain the resources and emotional resolve of the victim.<sup>99</sup> ODR programs should not only provide support in drafting parenting plans or other agreements between parties, but also record statements of understanding and consent to prevent abusers from using this tactic.

#### **IV. Specific Problems with Technology in Cases of Domestic Abuse**

Technology is not always the solution it promises to be and there are significant criticisms of the use of technology in the law. Some concerns arise from the use of technology with domestic violence victims specifically. Others come from objections to the use of technology in the law in general.

##### *A. Victim Safety*

Any technology used in the sphere of domestic violence must be carefully designed to minimize the risk of technology abuse. When an abuser employs various technologies to harass

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<sup>97</sup> Blankley, *supra* note 64, at 2136 (indicating that such abuse may happen in ways that are undetectable to an outside party).

<sup>98</sup> Schmitz & Zeleznikow, *supra* note 10, at 176.

<sup>99</sup> Barber, *supra* note 18, at 262.

or control an intimate partner it is called technology-facilitated abuse, or “tech abuse.”<sup>100</sup> The more technology becomes ingrained in everyday life, the more opportunity an abuser has to control and manipulate an intimate partner.<sup>101</sup> Tech abuse might include monitoring a victim’s phone or internet usage, using spyware to gather information, or even creatively activating smart appliances.<sup>102</sup> Tech abuse has the potential to profoundly limit a victim’s choices when contemplating escape because of the possibilities of surveillance.<sup>103</sup> With this danger in mind, any technology designed for use by domestic abuse survivors must be carefully designed to avoid detection by the abuser.<sup>104</sup>

### B. *Balancing Pros and Cons of Human Interactions*

While technology might facilitate easy access to the courts, it simultaneously eliminates a victim’s contact with other human beings. Interacting with another human provides emotional support and intuition which may not be replicable with AI. In fact, some lay advocates view the emotional support they provide along with legal information as essential to a survivor successfully accessing justice and ultimately freedom from abuse.<sup>105</sup> One study of advocates assisting battered women with applications for protection orders suggested that a good advocate can comfort a woman throughout the process, offer support outside of the legal process, and show respect for the difficult decisions she must make.<sup>106</sup> This support from another human being may be what a victim needs to break free from her abuser. On the other hand, the same study concluded that “a machine could replace” some advocates who treated women with less empathy.<sup>107</sup> At the same time, even well-intentioned advocates may possess

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<sup>100</sup> Isabel Lopez-Neira, et. al, *‘Internet of Things’: How Abuse Is Getting Smarter*, SAFE - THE DOMESTIC ABUSE Q., Mar. 11, 2019, at 22-26, <https://ssrn.com/abstract=3350615>.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* (Imagining that gaslighting could occur “through the touch of a mobile screen, whether it is to adjust the temperature of a room from miles away, or to boil a kettle to remind someone you are watching.”).

<sup>103</sup> Schmitz & Zeleznikow, *supra* note 10, at 161.

<sup>104</sup> Ajmi, *supra* note 9, at 8.

<sup>105</sup> MacDowell, *supra* note 17, at 222.

<sup>106</sup> *Id.* at 234.

<sup>107</sup> *Id.* at 236.



implicit or explicit biases that negatively affect the help they are able to give victims.<sup>108</sup> Another separate but related concern about technology, particularly ones based on case-based reasoning and AI, is that human bias inherent in family law decisions will be programmed into the technology itself and widely reproduced.<sup>109</sup> Technology developers must carefully weigh these concerns in the design of programs aimed at assisting domestic abuse survivors.

### C. *The Technology Gap*

Thus far, this comment has operated under the assumption that most people have access to a device with a reliable connection to the internet. However, this may not be the case for some low-income or rural survivors.<sup>110</sup> As a result, as courts embrace digital interaction and online filing, access to justice decreases for a section of the population.<sup>111</sup> This “gap between people who can use or access technology and those who cannot” has been referred to as the digital divide.<sup>112</sup> The digital divide involved two barriers. First, in sparsely populated areas a household may have no access to high-speed digital infrastructure.<sup>113</sup> Second, individuals may be unable to benefit from a connection because of the cost of subscription, lack of device, or digital illiteracy.<sup>114</sup> Some suggestions for addressing this problem include making sure both online and in person options are available, providing greater access to broadband service, and facilitating digital skills training.<sup>115</sup>

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<sup>108</sup> *Id.* at 250.

<sup>109</sup> Schmitz & Zeleznikow, *supra* note 10, at 151.

<sup>110</sup> Caroline Bettinger-Lopez, R. Denisse Córdova Montes, & Max Zoberman, *The Duty to Protect Survivors of Gender-Based Violence in the Age of Covid-19: An Expanded Human Rights Framework*, 29 U. MIAMI INT’L & COMP. L. REV. 235, 264 (2022).

<sup>111</sup> *Id.*

<sup>112</sup> *Cut Off from the Courthouse: How the Digital Divide Impacts Access to Justice and Civic Engagement* 8-9 (publication of Berkeley Law, Mar. 2022), <https://nextcenturycities.org/wp-content/uploads/2021/05/cut-off-from-the-courthouse.pdf>.

<sup>113</sup> *Id.* at 9.

<sup>114</sup> Dahan & Liang, *supra* note 37, at 427.

<sup>115</sup> *Cut Off from the Courthouse: How the Digital Divide Impacts Access to Justice and Civic Engagement*, *supra* note 112, at 5,6.

#### D. *The Unauthorized Practice of Law*

A common concern regarding technology that assists SRLs with legal problems is that developers or other responsible parties would be guilty of the unauthorized practice of law (“UPL”).<sup>116</sup> Several courts have grappled with the issue. For example, in *In re Reynoso*, the Ninth Circuit examined whether the creator and provider of bankruptcy preparation software was liable to the user in a suit for UPL.<sup>117</sup> The court drew a distinction between programs that simply automated the application and programs that took user data and provided “personalized guidance” on the document’s preparation.<sup>118</sup> Because the program provided personalized guidance and “projected an aura of expertise” in the legal field of bankruptcy, the court found that the defendant had engaged in UPL.<sup>119</sup> The issue is far from settled and becomes further blurred as technology becomes more “human-like.”<sup>120</sup> Some states, like Texas, created statutes that exclude the design, distribution, and sale of technology from the practice of law, provided there is a conspicuous statement that the product is not a substitute for attorney advice.<sup>121</sup> Some authors suggest that concerns for UPL in technology will not prevail against the individual’s Sixth Amendment right to represent themselves effectively, a First Amendment right to transmit knowledge about the law, and general free market concerns.<sup>122</sup> Marc Lauritsen claims, “It is in the enlightened interest of lawyers, and the best interest of society in general, to enable programmatic expression of legal knowledge.”<sup>123</sup> Where the law will develop in this area remains to be seen, but any technologi-

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<sup>116</sup> American Bar Association, *Rule. 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law* (Apr. 17, 2019), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_5\\_5\\_unauthorized\\_practice\\_of\\_law\\_multijurisdictional\\_practice\\_of\\_law/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_5_unauthorized_practice_of_law_multijurisdictional_practice_of_law/).

<sup>117</sup> *In re Reynoso*, 477 F.3d 1117, 1120 (9th Cir. 2007).

<sup>118</sup> *Id.* at 1123.

<sup>119</sup> *Id.*

<sup>120</sup> Lupica, Franklin, & Friedman, *supra* note 74, at 1402.

<sup>121</sup> TEX. GOV’T CODE ANN. § 81.101 (Westlaw through 2021 Sess. of the 87th Legis.).

<sup>122</sup> See generally Marc Lauritsen, *Liberty, Justice, and Legal Automata*, 88 CHI.-KENT L. REV. 945, 954-67 (2013).

<sup>123</sup> *Id.* at 967.

cal endeavor to provide SRLs with the means to engage with the court system effectively should consider this issue and perhaps include disclaimers that the product is not a substitute for attorney advice.

## **V. Features of Effective Technology for Self-Represented Survivors**

Creating a platform that will effectively improve access to justice for self-represented survivors of domestic violence is no small task. Success with such an endeavor might provide access to freedom for countless victims under the coercive control of intimate partners. A poorly designed system, on the other hand, could have grave consequences. In addition to some of the specific features outlined in Part III, any well designed technology should involve all of the following: (1) findability; (2) readability; (3) accessibility; (4) user centric design; (5) triage capability; (6) input from all stakeholders; (7) facilitating the empowerment of survivors; and (8) flexibility for use on a variety of devices. While this comment has already highlighted the importance of some of these design elements, a few warrant more detailed attention.

### *A. User-centric Design*

Any technology created for the use of SRLs should be designed with the average SRL in mind. This human-centered approach must begin with an understanding of the reasons that many people choose to represent themselves, for example, lack of funds, lack of education, lack of trust in lawyers, or lack of opportunity to develop a relationship with a lawyer. The reasons people choose to represent themselves may be different across community, socio-economic, or racial lines. Designers should give this some thought when designing a program from scratch or when adapting existing technology for use in a different state.

Some design elements are likely universal, however. First, all platforms designed for use by an SRL should be readable. Readability involves both aesthetic choices, like the font or colors chosen, and language choices. An estimated 20% of adults in the United States read below a fourth grade reading level and

fewer than 50% read above a tenth grade level.<sup>124</sup> Therefore, text should be analyzed to be readable for the largest number of users. Additionally, research indicates that adults learn information better when it is expressed concisely using active voice, strong verbs, and plain words.<sup>125</sup> In the legal context, confusing legal terms should be broken down into helpful but understandable language.<sup>126</sup> Other consideration might be given to how to accommodate non-English speaking SRLs attempting to access a court system that operates in English.<sup>127</sup>

Second, simple visuals should accompany text. Simple graphics along with text aids comprehension, appeals to people with lower reading ability, and clarifies textual ambiguity.<sup>128</sup> In addition, graphics can be used to help a user visualize where he or she is in the process.<sup>129</sup> Having a visual representation of how far they have come in the interview may prevent an SRL from becoming frustrated and giving up mid-interview. Overall, visuals can help to welcome an SRL, keep them motivated during the process, and retain information helpful to their legal issue.

### *B. Facilitating the Empowerment of Survivors*

The goal of any effort to support survivors of domestic violence should be to empower them for a life free of coercive control.<sup>130</sup> Even if technology allows SRLs to bypass human interaction when filing with the court, technology does not have to ignore the emotions of the user. Victims of domestic violence have experienced trauma. Their trauma reactions may include crippling emotion or restriction of cognitive bandwidth.<sup>131</sup> Affirming language can be used to acknowledge how difficult legal matters can be and reduce the stress of filling out the online in-

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<sup>124</sup> Lupica, Franklin, & Friedman, *supra* note 74, at 1384.

<sup>125</sup> *Id.*

<sup>126</sup> Ajmi, *supra* note 9, at 12 (indicating that KSPOP evaluated language according to the plain-language principles provided by the National Association for Court Management).

<sup>127</sup> See, e.g., Bettinger-Lopez, Montes, & Zoberman, *supra* note 110, at 266 (recommending information to survivors in Florida be disseminated in Spanish, Portuguese, and Creole).

<sup>128</sup> Lupica, Franklin, & Friedman, *supra* note 74, at 1383.

<sup>129</sup> Staudt, *supra* note 31, at 1133.

<sup>130</sup> MacDowell, *supra* note 17, at 221.

<sup>131</sup> Lupica, Franklin, & Friedman, *supra* note 74, at 1389.

interview.<sup>132</sup> A thoughtful online interview designer might even consider placing affirming language after particularly difficult questions or explanations of the law to motivate further steps.<sup>133</sup> Some apps even include deep breathing prompts and emotion-balancing exercises to counteract stress reactions.<sup>134</sup> These validations and stress reduction methods may counteract some of the concerns about the emotional support necessary to break free from the cycle of abuse and serve the over-arching goal of empowering survivors.

## Conclusion

A victim of coercive, controlling intimate partner abuse is excluded from many of the freedoms Americans prize, both by the abusive partner and by barriers inherent in the legal system. At the same time, domestic violence victims are often unable to afford an attorney to help them get the relief that the law provides through orders of protection, dissolution of marriage, and custody orders. Instead, they must represent themselves. By creating a technological platform that could support a self-represented victim of domestic violence to navigate complicated legal issues, a designer would not only provide that victim access to justice but provide a survivor with access to freedom.

Michelle Egbert

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<sup>132</sup> *Id.* at 1384.

<sup>133</sup> *Id.* at 1385.

<sup>134</sup> *Id.*

