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- [Ambrogi, Bob](https://www.lawnext.com/2024/02/the-justice-gap-in-legal-tech-a-tale-of-two-conferences-and-the-implications-for-a2j.html), The Justice Gap in Legal Tech: A Tale of Two Conferences and the Implications for A2J (February 5, 2024), available at <https://www.lawnext.com/2024/02/the-justice-gap-in-legal-tech-a-tale-of-two-conferences-and-the-implications-for-a2j.html>
- Avery, Joseph J., Abril, Patricia Sánchez, del Riego, Alissa, ChatGPT, Esq.: Recasting Unauthorized Practice of Law in the Era of Generative AI, 26 Yale Journal of Law & Technology 64 (2024), available at: https://yjolt.org/sites/default/files/avery_abril_delriego_26yalejltech64.pdf
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- Legal Talk Network Talk Justice: AI for Self-Help and Legal Aid at the Innovations in Technology Conference (LSC Podcast, February 14, 2024), available at: <https://legaltalknetwork.com/podcasts/talk-justice/2024/02/ai-for-self-help-and-legal-aid-at-the-innovations-in-technology-conference/>
- Sigler, Eunice, SANDI: Improving Court Access and Service in Miami with an Advanced Artificial Intelligence Chatbot

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The Justice Gap in Legal Tech: A Tale of Two Conferences and the Implications for A2J



By **Bob Ambrogi** on February 5, 2024



In the blur of activity that was last week, I attended two legal tech conferences, plus an adjacent legal technology summit. After starting the week in New York at the glitzy celebration of big law tech that is **Legalweek**, and ending it in Charlotte, N.C., at the Legal Services Corporation's **Innovations in Technology Conference** devoted to tech for access to justice, I was both struck and troubled by the chasm between these two worlds and what it means for serving the legal needs of all.

We talk often of the justice gap in this country — of the fact that the roughly 50 million low-income Americans receive no or insufficient legal help for **92% of their civil legal problems**. The justice gap extends well beyond low-income Americans. Estimates say some 60 percent of small business owners deal with legal problems without the assistance of a lawyer, and countless middle-income Americans go without legal help.

But there is another, related, kind of justice gap in this country. It is the funding gap between those who are developing legal technology to better meet the legal needs of low-income Americans and those who are developing legal tech to serve large law firms and corporate legal departments.

At Legalweek, the focus of the conference is almost exclusively on tech for large law firms and corporate legal departments. The sponsors and exhibitors are focused on products for e-discovery, contract lifecycle management, large firm financial and business management, and the like. The programs, similarly, focus on data privacy, e-discovery, information governance, contract technology, and large-scale litigation.

The exhibit hall spans three floors, the booths are big and bright, and the vendors seemingly all throw parties that are over the top, or quite literally near the top, at venues such as the Rainbow Room at the top of Rockefeller Center, with freely flowing alcohol and plenty of food.

By contrast, at the ITC conference, the attendees come mostly from the ranks of legal aid offices, pro-bono programs, court self-help staff, and the like. The programs focus on how understaffed legal aid offices and understaffed courts and understaffed community programs can use technology to help meet the influx of low-income people seeking legal help.

The exhibit hall was modest, with 10 simple tables, and there were no lavish parties put on by vendors – just a conference reception with a cash bar (and pretty good food, from what I saw).

Inequity in Legal Tech Funding

The juxtaposition of the glitziness of one conference and the modesty of the other speaks to the larger issue of inequity in legal tech – and specifically financial inequity.

The glitziness of Legalweek reflects the relative wealth of the legal tech sector that serves big law and big corporations. Bank robber Willie Sutton, when asked why he robs banks, famously answered, “Because that’s where the money is.” In the legal tech industry, money pours into tech for big firms and big corporates for the same reason – that’s where the money is.

Estimates say that some \$1.4 billion was invested in legal tech in 2023 and \$2.2 billion in 2022. Virtually all of that went into products designed for and marketed to the big law and corporate law sectors.

By contrast, the principal source of funding for technology development in the legal services sector is the LSC’s Technology Initiative Grants program. In 2023, the total available funding for TIG was \$5 million, and most of the individual grants under the program are less than \$40,000.

Think about it: The total TIG funding is roughly the amount of a seed round for a single startup focused on big law tech

Legal Tech for the 1%

Access to justice is a problem that extends beyond those who are low-income. As already noted, many small businesses are unable to afford legal help when they need it. Middle-income households often tackle legal issues on their own, unable to afford a lawyer. Although I haven’t been able to put my finger on stats that would back this up, it seems likely that hundreds of millions of people in the United States – not just those who are low income – face a lack of access to justice.

Meanwhile, those big law firms and big corporate legal departments are helping, what, maybe the top 1% or 2% of the population? Let’s be generous and call it the top 10% of the population.

However you figure it, the conclusion is unavoidable that the vast majority of funding in legal tech is going to products that serve the legal needs of only a small minority, while tech devoted to serving the vast majority of legal needs receives only a minuscule portion of that money.

Granted, the argument can be made that some of this money poured into big law tech trickles down to A2J tech. Generative AI developed and refined for big law, for example, may someday lead to products used to better serve low-income individuals.

It also cannot be ignored that an increasing number of well-financed legal tech companies are developing programs by which they make their tech available to lawyers and legal professionals in the A2J sector. In fact, Relativity, probably the largest e-discovery company in the world, was on site at the ITC conference talking about its **Justice for Change** program, through which it provides its tech to programs tackling social and racial justice.

But imagine if just a fraction of the billions being spent on big law tech could somehow be diverted to A2J tech? Imagine the impact it could have on narrowing the justice gap in this country?

Willie Sutton might say, “Sorry, that’s not where the money is.” But, in fact, legal tech companies are making money serving the A2J and pro bono sectors. Consider the companies that are part of the **Justice Technology Association**, all for-profit companies devoted to, as the JTA’s website says, “increasing access to justice for real people in their daily lives.”

An Industry Divided

There is a tendency to think of the legal tech industry as a monolith. But in traveling last week from relative opulence of Legalweek to the seeming modesty of ITC, it did not feel that way. Rather, it felt like an industry divided between the haves and have-nots.

Let me be very clear that I do not mean in any way to minimize the amazing work being done by technologists in the legal aid sector. The ITC’s agenda was replete with examples of how legal services programs are developing creative and cutting-edge approaches to addressing the justice gap. Several law school programs are also providing valuable support for these efforts.

But when balanced against the enormity of the access to justice problem in this country, these efforts will never be enough. The legal tech industry needs all hands on deck to fight the justice gap. What does that mean?

- VCs, private equity, and other funding sources should intentionally allocate money to A2J tech.
- Big legal tech companies should set up programs to donate their tech to A2J programs.
- Big legal companies also should put resources towards developing or adapting tech to serve A2J programs and providers.
- More law schools should emulate schools such as Arizona, Duke, Stanford, Suffolk and others to create programs that study A2J tech.
- More people working in legal tech should come to conferences such as ITC to broaden their perspectives on where tech is needed and how it can be applied.
- Big law innovation staff should reach out and partner with local legal aid agencies and other community groups to jointly develop A2J tech.

The justice gap in legal technology is a reflection of the justice gap more generally, and both reflect a capitalist society in which the balance of wealth and resources is wildly out of whack. But more can be done. If the legal tech sector reflected at Legalweek contributed more to the sector reflected at ITC, perhaps that imbalance could be offset, at least slightly, and the justice gap narrowed, even just a bit.



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ABOUT LAW SITES

LawSites is a blog covering legal technology and innovation. It is written by Robert Ambrogi, a lawyer and journalist who has been writing and speaking about legal technology, legal practice and legal ethics for more than two decades.

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**ChatGPT, Esq.: Recasting Unauthorized Practice of Law in
the Era of Generative AI**

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In March of 2023, OpenAI released GPT-4, an autoregressive language model that uses deep learning to produce text. GPT-4 has unprecedented ability to practice law: drafting briefs and memos, plotting litigation strategy, and providing general legal advice. However, scholars and practitioners have yet to unpack the implications of large language models, such as GPT-4, for long-standing bar association rules on the unauthorized practice of law (“UPL”). The intersection of large language models with UPL raises manifold issues, including those pertaining to important and developing jurisprudence on free speech, antitrust, occupational licensing, and the inherent-powers doctrine. How the intersection is navigated, moreover, is of vital importance in the durative struggle for access to justice, and low-income individuals will be disproportionately impacted.

In this Article, we offer a recommendation that is both attuned to technological advances and avoids the extremes that have characterized the past decades of the UPL debate. Rather than abandon UPL rules, and rather than leave them undisturbed, we propose that they be recast as primarily regulation of entity-type claims. Through this recasting, bar associations can retain their role as the ultimate determiners of “lawyer” and “attorney” classifications while allowing nonlawyers, including the AI-powered entities that have emerged in recent years, to provide legal services—save for a

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narrow and clearly defined subset. Although this recommendation is novel, it is easy to implement, comes with few downsides, and would further the twin UPL aims of competency and ethicality better than traditional UPL enforcement. Legal technology companies would be freed from operating in a legal gray area; states would no longer have to create elaborate UPL-avoiding mechanisms, such as Utah's "legal sandbox"; consumers—both individuals and companies—would benefit from better and cheaper legal services; and the dismantling of access-to-justice barriers would finally be possible. Moreover, the clouds of free speech and antitrust challenges that are massing above current UPL rules would dissipate, and bar associations would be able to focus on fulfilling their already established UPL-related aims.

Article Contents

Introduction67

I. ChatGPT Meets UPL75

 A. What is UPL?.....76

 B. UPL’s Existential Problems80

 C. UPL in Action (Causing Inaction).....87

II. Human-AI Legal Collaboration.....92

III. The Case for Dismantling UPL Rules101

 A. Enforcement Issues.....103

 B. A Frustrated (or Perhaps False) Aim.....107

IV. Where UPL Rules Once Were, Let There Be . . . UPL
 Rules?.....112

 A. The Recommendation Unpacked117

 B. Consideration One: The Importance of Torts121

 C. Additional Considerations: Updating Civil Procedure
 and Federalizing Legal Ethics.....126

Conclusion.....128

Introduction

A college student was walking her dog on private property in Florida when she was cited for trespassing. Unsure of what to do, she sought the help of someone who, although not a lawyer, had genuine legal knowledge: they had scored in the 90th percentile on the Uniform Bar Exam. The advice given was tailored and specific; the trespasser was told which Florida statutes to review and which aspects of the charges would be most susceptible to challenge, as well as what arguments she should make, depending on the facts of her case. On the same day, a veteran was wrongfully evicted from his home. Distraught, and without funds to hire a lawyer, he contacted someone (a nonlawyer) and was led, free of charge, through the relevant statutes and the different avenues for recourse. Finally, a first-year attorney licensed to practice in Florida fell behind on a legal memo she was writing. She contacted this same nonlawyer, who promptly provided her with a well-written and factually correct overview of the Florida Securities and Investor Protection Act, including a detailed analysis of Sections 517.211-517.218, which she needed for an upcoming meeting with a client.

It should not be a great surprise to learn that the benevolent nonlawyer who provided these legal services was also a nonhuman: it was GPT-4, an autoregressive language model that uses artificial intelligence (“AI”) technologies, including deep learning, to produce text.¹ As is evident in the above examples, there is a wide spectrum along which large language models (“LLMs”) are providing legal services.² They can

¹ For complete transcripts of these exchanges see <https://osf.io/49nsm> [<https://perma.cc/FPB3-8EEA>]. (These are “real” cases in a limited sense: the authors consulted ChatGPT about these issues and received detailed responses, as described above.) For a description of GPT-4, see *GPT-4*, OPENAI (Mar. 14, 2023), <https://openai.com/research/gpt-4> [<https://perma.cc/LP9J-JXKP>].

² Alec Radford et al., *Language Models are Unsupervised Multitask Learners*, OPENAI BLOG (Feb. 14, 2019), <https://openai.com/blog/better-language-models> [<https://perma.cc/T37E-5AHW>] (describing large

function like Zoom does in the provision of mental health services, acting as a medium through which greater and cheaper delivery of professional advice is achieved. They can function like “Dr. Google,” such that clients will use them to conduct their own research prior to, during, and after meeting with licensed attorneys. They can function as a means for licensed attorneys to outsource: just as Americans overwhelmingly outsourced tax preparation to individuals in non-U.S. countries, lawyers now can cheaply and effortlessly outsource legal work to AI. And, lastly, LLMs can function in isolation, serving as full replacements for lawyers: think of Expedia and other software-as-a-service (“SaaS”) companies that have diminished the need for traditional travel-agent professionals. Moreover, think again of “Dr. Google,” as law is a profession quite distinct from medicine: a patient may Google her symptoms and treatment options, but she cannot write a prescription for herself or go to a hospital and perform medical procedures on herself. A legal client, in contrast, could, in theory, ask GPT-4 for a legal diagnosis and advice, and she then could go to court and represent herself in a *pro se* capacity.

Until recently, law was somewhat immune from the large technological disruptions felt in other domains, and this immunity was at least partly because law is not a mathematics-driven, computational field.³ Rather, law “has language at its

language models (LLMs) as a type of artificial intelligence model designed to understand and generate human-like text based on vast amounts of textual data). We consider LLMs to be a subset of artificial intelligence, and we define artificial intelligence in line with how Sundar Pichai, the CEO of Google, does: “At its heart, AI is computer programming that learns and adapts.” Sundar Pichai, *AI at Google: Our Principles*, GOOGLE (June 7, 2018), <https://www.blog.google/technology/ai/ai-principles> [https://perma.cc/25KF-ZFHL].

³ Later, we discuss a second reason for law’s immunity from technological disruption: the legal industry has long had mechanisms in place to protect its monopoly on the provision of legal services. See Susan Stephen, *Blowing the Whistle on Justice as Sport: 100 Years of Playing a Non-Zero Sum Game*, 30 *HAMLIN L. REV.* 588, 588-89 (2007) (“The concepts of the legal profession as a cartel and of the ABA and state and local bar associations as competition-restricting entities in the realm of legal education and the practicing bar are far from original.”).

heart.”⁴ And language is a human endeavor, not an endeavor that is overly susceptible to technological encroachment—until the development of LLMs, that is. In May of 2020, OpenAI described its creation of GPT-3, an autoregressive language model that uses deep learning to produce text.⁵ In other words, GPT-3 is an AI that can write—and write well. In 2021, “A Human Being Wrote This Law Review Article” was published in the *U.C. Davis Law Review*.⁶ In the article, Professor Amy B. Cyphert made the claim that AI like GPT-3 were “poised for wide adoption in the field of law.”⁷ ChatGPT, a chatbot that is built on top of GPT-3, was widely in use by the end of 2022, including by students who were enlisting the AI to write their research papers.⁸ A student interviewed by *The New York Times* professed that ChatGPT had eliminated the need for professional guidance: “it completely destroys the use of tutors.”⁹

But does ChatGPT completely destroy the use of lawyers? The successor to GPT-3, GPT-4, now scores higher than 90

⁴ David Freeman Engstrom & Jonah B. Gelbach, *Legal Tech, Civil Procedure, and the Future of Adversarialism*, 169 U. PA. L. REV. 1001, 1020 (2021) (quoting Robert Dale, *Law and Word Order: NLP in Legal Tech*, MEDIUM (Dec. 15, 2018), <https://towardsdatascience.com/law-and-word-order-nlp-in-legal-tech-bd14257ebd06> [<https://perma.cc/4QWF-RGLW>]; see also Alfred Denning, *The Discipline of Law*, 128 CAMBRIDGE L. J. 493 (1979).

⁵ Tom B. Brown et al., *Language Models Are Few-Shot Learners* 5 (2020), <https://arxiv.org/pdf/2005.14165.pdf> [<https://perma.cc/JYP5-R4ZH>] (describing GPT-3).

⁶ Amy B. Cyphert, *A Human Being Wrote This Law Review Article: GPT-3 and the Practice of Law*, 55 U.C. DAVIS L. REV. 401 (2021).

⁷ *Id.*

⁸ Kalley Huang, *Alarmed by A.I. Chatbots, Universities Start Revamping How They Teach*, N.Y. TIMES (Jan. 16, 2023), <https://www.nytimes.com/2023/01/16/technology/chatgpt-artificial-intelligence-universities> [<https://perma.cc/6Q6D-XHGL>].

⁹ The Learning Network, *What Students Are Saying About ChatGPT*, N.Y. TIMES (Feb. 2, 2023), <https://www.nytimes.com/2023/02/02/learning/students-chatgpt> [<https://perma.cc/DSG6-3X69>].

percent of human test takers on the Uniform Bar Exam.¹⁰ In February of 2023, a “robot lawyer” that leverages OpenAI’s technology was set to represent a client in court.¹¹ The dawn of AI law, long foretold, had arrived. Or not quite. The plan was to have the AI go to court in a limited sense: via smart glasses and earbuds, the AI would tell the defendant (who was challenging a speeding ticket) what to say.¹² But the CEO of the AI’s parent company, DoNotPay, said that multiple state bar associations had threatened to report him for the unauthorized practice of law (“UPL”), with one even intimating a referral to a district attorney’s office for prosecution—since in some states, UPL is a crime punishable by up to six months in jail.¹³ As *NPR* put it, “A robot was scheduled to argue in court, then came the jail threats.”¹⁴

For at least a decade, AI has been touted as a potential boon for legal claimants and legal justice.¹⁵ The Legal Services

¹⁰ Kevin Roose, *GPT-4 Is Exciting and Scary*, N.Y. TIMES (Mar. 15, 2023), <https://www.nytimes.com/2023/03/15/technology/gpt-4-artificial-intelligence-openai.html> [<https://perma.cc/TW6Z-R2F3>]. But see also how, with all things AI, there is dispute over performance and concerns over the conclusions people might draw from performance reports: “The fact that GPT-4’s reported ‘90th percentile’ capabilities were so widely publicized might pose some concerns that lawyers and non-lawyers may use GPT-4 for complex legal tasks for which it is incapable of adequately performing.” Karen Sloane, *Stellar or So-So? ChatGPT Bar Exam Performance Sparks Differing Opinions*, REUTERS (May 31, 2023), <https://www.reuters.com/legal/transactional/stellar-or-so-so-chatgpt-bar-exam-performance-sparks-differing-opinions-2023-05-31> [<https://perma.cc/Y52S-YSEM>].

¹¹ Bobby Allyn, *A Robot Was Scheduled to Argue In Court, Then Came the Jail Threats*, NPR (Jan. 25, 2023), <https://www.npr.org/2023/01/25/1151435033/a-robot-was-scheduled-to-argue-in-court-then-came-the-jail-threats> [<https://perma.cc/BRX4-U3EU>].

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See LEGAL SERVS. CORP., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE 10 (2013), https://www.lsc.gov/sites/default/files/LSC_Tech%20Summit%20Report_2013.pdf [<https://perma.cc/W38F-FYBP>] (“The Legal Services Corporation

Center, for example, showed that legal technology could make a genuine difference in resolving the long stalemate in the fight for access to justice.¹⁶ More recent years have seen countless scholars argue similarly,¹⁷ with the only major roadblock being the rate of technological advancement: when would something as capable and effective as ChatGPT come along? And yet, now that ChatGPT is here, we see legal authorities checking its use, even for something as anodyne as helping a person argue a traffic-ticket case.

This was not just an isolated anti-AI event. At the national level, the American Bar Association (“ABA”) House of Delegates recently passed a nonbinding resolution discouraging states from innovating in such areas.¹⁸ As just one example from the state level, California recently put together a “Closing the Justice Gap Working Group,” which was tasked with producing a report on how the state might expand its legal

(LSC) has found through its experience with its Technology Initiative Grant program that technology can be a powerful tool in narrowing the justice gap the difference between the unmet need for civil legal services and the resources available to meet that need.”).

¹⁶ *Id.*

¹⁷ Raymond H. Brescia et al., *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 ALB. L. REV. 553, 588 (2015) (“The ‘Great Recession’ of 2008 increased the need for legal services for low- and moderate-income individuals.”); Anjanette H. Raymond & Scott J. Shackelford, *Technology, Ethics, and Access to Justice: Should an Algorithm Be Deciding Your Case?*, 35 MICH. J. INT’L L. 485, 492 (2014) (arguing that online dispute resolution systems “can increase individuals’ access to justice”); Drew Simshaw, *Ethical Issues in Robo-Lawyering: The Need for Guidance on Developing and Using Artificial Intelligence in the Practice of Law*, 70 HASTINGS L.J. 173, 180 (2018) (“AI will be an even more impactful force [in fixing the access to justice problem] than previous tools, and has the potential to magnify and transform benefits of existing technologies.”).

¹⁸ Sam Skolnik, *ABA Sides Against Opening Law Firms Up to New Competition*, BLOOMBERG L. (Aug. 9, 2022), <https://news.bloomberglaw.com/business-and-practice/aba-sides-against-opening-law-firms-up-to-new-competition> [https://perma.cc/FUW6-Y2WB].

profession to better provide access to justice.¹⁹ But the Working Group was quickly shut down by state legislators who passed legislation limiting the California State Bar’s ability to work on UPL reform.²⁰

In this Article, we begin in Part I by explaining this paradox. With AI poised to help so many with legal needs, why is it being blocked not on negligence grounds, but on statutory UPL grounds? Explaining this paradox requires unpacking the rather nuanced context of UPL: that its current form is a relatively recent one,²¹ that it benefits from the “inherent powers doctrine,” which is a judge-made doctrine holding that courts alone have the power to regulate the practice of law;²² and that it may be in conflict with the evolving jurisprudence of occupational freedom,²³ antitrust,²⁴ and anti-competitive practices,²⁵ especially as the Supreme Court has begun to move

¹⁹ Lucy Ricca & Graham Ambrose, *The High Highs and Low Lows of Legal Regulatory Reform*, LEGAL EVOLUTION (Oct. 16, 2022), <https://www.legalevolution.org/2022/10/the-high-highs-and-low-lows-of-legal-regulatory-reform-334> [<https://perma.cc/VP37-BLV6>].

²⁰ Joyce E. Cutler, *California Restrains State Bar From Expanding Nonlawyer Practice*, BLOOMBERG L. (Sept. 19, 2022), <https://news.bloomberglaw.com/business-and-practice/california-restrains-state-bar-from-expanding-nonlawyer-practice> [<https://perma.cc/ZU6E-Y272>].

²¹ Laurel A. Rigertas, *The Birth of the Movement to Prohibit the Unauthorized Practice of Law*, 37 QUINNIPIAC L. REV. 97, 98 (2018).

²² Charles W. Wolfram, *Lawyer Turf and Lawyer Regulation: The Role of the Inherent-Powers Doctrine*, 12 U. ARK. L. J. 1, 17 (1989).

²³ See, e.g., David E. Bernstein, *The Due Process Right to Pursue a Lawful Occupation: A Brighter Future Ahead?*, 126 YALE L.J.F. 287, 302-03 (2016) (“The time, however, may be ripe for courts to evince greater skepticism of occupational restrictions. . . . [T]he unofficial demise of the fundamental/non-fundamental rights dichotomy in the Supreme Court’s due process jurisprudence, combined with a rising generation of judges, liberal and conservative, who may not share their predecessors’ reflexive hostility to meaningful judicial oversight of occupational restrictions, provide a glimmer of hope that the right to pursue a lawful occupation free from unreasonable government regulation will soon be rescued from constitutional purgatory.”).

²⁴ *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975).

²⁵ *N.C. State Bd. of Dental Exam’rs v. FTC*, 574 U.S. 494 (2015).

away from the rational-basis test when considering the right to occupational freedom.²⁶

After explaining UPL's history and its recent impingement upon legal technology, we provide in Part II an overview of the types of human-AI collaboration and their relevance for legal practice and UPL claims. In Part III, we then outline the case against UPL rules, building upon recent First Amendment and antitrust scholarship relating to occupational rights but focusing most acutely on how LLMs are radically altering the nature of legal practice. This Part concludes with a discussion of how UPL harms legal consumers and exacerbates many of the access-to-justice issues the United States currently faces.

In Part IV, we turn to our main argument. Rather than abandon UPL rules, we propose that they be recast as primarily regulation of entity-type claims. This recasting will allow bar associations to retain their role as the ultimate determiners of "lawyer" and "attorney" classifications, while permitting nonlawyers, including the AI-powered entities that have emerged in recent years, to provide certain legal services (which have never been adequately defined anyway, save for a narrow and clearly defined subset). This Part is especially important in how it advances the academic literature. To date, prominent scholarship has focused on the inevitability of technological development: how change is coming, whether or not lawyers like it.²⁷ Or it has focused on how we should understand such technology.²⁸ Those scholars who have focused on technology and UPL have done the hard work of breaking new ground, arguing for exceptions for technology,

²⁶ Clark Neily, *Beating Rubber-Stamps into Gavel: A Fresh Look at Occupational Freedom*, 126 YALE L.J.F. 304, 308-09 (2016).

²⁷ John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 FORDHAM L. REV. 3041, 3064-66 (2014).

²⁸ Daniel W. Linna Jr., *What We Know and Need to Know about Legal Startups*, 67 S.C. L. REV. 389, 412 (2016).

but such work has been light on specifics.²⁹ Others have focused on definitions, addressing whether AI actually infringes UPL rules.³⁰ In sum, there has been a distinct lack of scholarship that both embraces legal technology and outlines a specific, practicable way forward. This Article and our proposal does just that.

Under our recommendation, consumers would be free to avail themselves of nonlawyer providers of legal services, acknowledging the risks inherent in relying upon an individual or entity who has not received bar certification. “Risks,” of course, may be an overstatement, since (i) there is no guarantee that lawyers will perform adequately; (ii) both lawyers and nonlawyers who provide negligent legal services will be exposed to liability via the tort system; and (iii) nonlawyers, especially legal technology solutions, will often surpass the performance of lawyers with respect to specific commoditized legal services.³¹ Although this recommendation is novel, it is easy to implement, comes with few downsides, and manages to further the twin UPL aims of competency and ethicality better than traditional UPL enforcement. In brief, legal technology companies would be freed from operating in a legal grey area; states would no longer have to create elaborate UPL-avoiding mechanisms, such as Utah’s “sandbox”;³² consumers—both individuals and companies—would benefit from better and cheaper legal services; and solutions to long-standing access-to-

²⁹ Benjamin H. Barton & Deborah L. Rhode, *Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators*, 70 HASTINGS L.J. 955, 959 (2019).

³⁰ Thomas E. Spahn, *Is Your Artificial Intelligence Guilty of the Unauthorized Practice of Law*, 24 RICH. J.L. & TECH. 1, 47 (2018).

³¹ See *infra* Part II and Section III.B. See also McGinnis & Pearce, *supra* note 27, at 3064-66.

³² Robert Gehrke, *A New App Is Helping Some 450 Utahns Get A Second Chance. Robert Gehrke Explains How*, SALT LAKE TRIB. (Nov. 23, 2022), <https://www.sltrib.com/opinion/2022/11/23/new-app-is-helping-some-450> [https://perma.cc/SLB2-G8CV]. See also *An Office of the Utah Supreme Court*, UTAH OFF. LEGAL SERVS. INNOVATION, <https://utahinnovationoffice.org> [https://perma.cc/D86K-JLJY] [hereinafter Utah Innovation Off.].

justice problems would finally be within reach. Moreover, the free speech and antitrust challenges that are massing above current UPL rules will be mooted, and bar associations will be free to focus on fulfilling their already established UPL-related aims.

I. ChatGPT Meets UPL

In 1968, Norman Dacey was convicted of a misdemeanor and faced jail time for writing and publishing a book.³³ The book was not untoward or obscene or seditious. But the book did possess a scandalous title: *How to Avoid Probate*.³⁴ Such draconian policing of nonlawyers is an oddity that is generally limited to the United States. As Gillian Hadfield writes, “Control is at its greatest in the United States, where effectively no one who has not completed a three-year graduate degree that meets requirements established by the [ABA] and passed an exam designed and graded by lawyers in state bar associations can provide any kind of legal service.”³⁵ To understand how U.S. lawyers have managed to secure nearly unchecked powers of self-regulation and tight control over the supply of legal services, we have to understand the history and development of UPL in the United States. In this Part, after covering these matters, we turn to the significant problems with UPL, particularly its increasing tensions with Supreme Court rulings on antitrust and anticompetitive practices. We conclude by unpacking recent instances of UPL litigation, focusing on those that impinge legal technology.

³³ See Catherine J. Lanctot, *Does LegalZoom Have First Amendment Rights? Some Thoughts about Freedom of Speech and the Unauthorized Practice of Law*, 20 TEMP. POL. & CIV. RTS. L. REV. 225, 265-74 (2011).

³⁴ *Id.* (noting that Dacey ultimately won his fight: a New York appellate court upheld Dacey’s claim that he had a constitutional right to publish such a book without being a lawyer, though he did not have the right to practice law without being a lawyer).

³⁵ GILLIAN K. HADFIELD, RULES FOR A FLAT WORLD 228 (2017).

A. *What is UPL?*

UPL, in its current form, is relatively recent. People often practiced without a law degree prior to the 20th century.³⁶ In 1931, with lawyers increasingly wary of nonlawyers encroaching upon their historically recognized space,³⁷ the ABA created its first committee on the unauthorized practice of law.³⁸ Over the ensuing decades, numerous states created their own statutory rules regarding UPL, with each successive round of rules seemingly more expansive than the last.³⁹

Carte blanche for such expansion emanated from “the *inherent-powers doctrine*—a judge-made, lawyer-supported doctrine holding that courts, and *only* courts, may regulate the practice of law.”⁴⁰ There are both affirmative and negative assertions within the doctrine.⁴¹ The affirmative assertion is

³⁶ Franklin Delano Roosevelt, for example, practiced at a prestigious New York City law firm without ever obtaining a law degree. In fact, Roosevelt had dropped out of Columbia Law School. ROBERT DALLEK, FRANKLIN D. ROOSEVELT: A POLITICAL LIFE 38-39 (2017); *see also* JAMES MACGREGOR BURNS, ROOSEVELT: THE LION AND THE FOX 28 (1956).

³⁷ Susan B. Schwab, Note, *Bringing Down the Bar: Accountants Challenge Meaning of Unauthorized Practice*, 21 CARDOZO L. REV. 1425, 1435-36 (2000); Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Partnership*, 13 GEO. J. LEGAL ETHICS 217, 248 (2000). *See also* Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 FORDHAM L. REV. 2581, 2583-84 (1999) (outlining how UPL regulations expanded into curtailing non-litigation related legal activities performed by nonlawyers).

³⁸ Charles H. Kuck & Olesia Gorinshteyn, *Immigration Law: Unauthorized Practice of Immigration Law in the Context of Supreme Court’s Decision in Sperry v. Florida*, 35 WM. MITCHELL L. REV. 340, 342 (2008).

³⁹ John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 90-91 (2000); Kuck and Gorinshteyn, *supra* note 38, at 343; Jacqueline M. Nolan-Haley, *Lawyers, Non-Lawyers and Mediation: Rethinking the Professional Monopoly from a Problem-Solving Perspective*, 7 HARV. NEGOT. L. REV. 235, 238-39 (2002); Schwab, *supra* note 37, at 1428-29.

⁴⁰ Wolfram, *supra* note 22, at 3.

⁴¹ *Id.* at 4.

that courts inherently have the power to regulate the legal profession, even without express statutory grants.⁴² This is relatively uncontroversial. More controversial is the negative assertion: *only* courts have the power to regulate the legal profession. Professor Wolfram made the arrogant nature of the negative assertion clear: “For example, to say that as a citizen I have the power to vote normally does not also entail a claim that no *other* citizen has the same right. But that is essentially what courts have claimed.”⁴³ Drawing shakily on the separation-of-powers doctrine, the negative assertion within the inherent-powers doctrine asserts that, should the legislative or executive branches issue laws or regulations concerning lawyers (or the practice of law), state courts may strike down such issuances as unconstitutional.⁴⁴

Although the inherent-powers doctrine is not firmly rooted in the Constitution, and although it has been contravened on occasions both historical and more recent,⁴⁵ it is important as a point of distinction between the legal profession and other professions. After all, medicine, nursing, accounting, cosmetology, the ministry, and so on, are all at least partially self-regulating, but their forms of self-regulation are not emboldened by notions of inherent powers. It is the legal profession alone that posits itself—courts and lawyers—as the only and final arbiter of its business, able to frustrate even reasonable legislative or administrative attempts at reform.⁴⁶

It was not until 1975, with *Goldfarb v. Virginia State Bar*,⁴⁷ that the U.S. Supreme Court began to check this power and the attendant expansion of UPL litigation. In *Goldfarb*, a group of lawyers in northern Virginia had agreed to set minimum fees for their services.⁴⁸ Fee schedules in Virginia are regulated by

⁴² *Id.*

⁴³ *Id.* at 6-7.

⁴⁴ *Id.* at 7.

⁴⁵ *Id.* at 4-5.

⁴⁶ *Id.* at 18-19. *See also* Hadfield, *supra* note 35, at 229.

⁴⁷ 421 U.S. 773 (1975).

⁴⁸ *Id.* at 776.

the Virginia State Bar, and the Bar approved the fee schedule.⁴⁹ Moreover, the Bar began chastising lawyers who were charging lower fees.⁵⁰ One such chastised lawyer was Lewis Goldfarb, who filed suit challenging the fee schedule on federal antitrust grounds.⁵¹

The Supreme Court ruled in favor of Goldfarb, holding that the fee schedule was a vertical restraint on competition and violated the Sherman Antitrust Act.⁵² The ruling drew into relief the fact that licensing boards do not necessarily benefit from the same protections as states: the latter are largely immune from antitrust suits when, for policy reasons, they enforce regulations that eliminate competition.⁵³ In *Goldfarb*, the Court intimated that licensing boards like the Virginia State Bar, which is run by members of the very profession it oversees, should not be likewise immune.⁵⁴ There are limits, it would appear, to the inherent-powers doctrine.

From this foundation, we turn to the specifics of UPL. As a general rule in all U.S. states, unless a person is a licensed attorney who has been admitted to the state bar after having met requirements of education, examination, and moral character, she may not represent another person in a legal matter.⁵⁵ The restriction is embodied in Model Rule of Professional Conduct 5.5, although Rule 5.3 also touches upon UPL.⁵⁶ From the Model Rules, three basic forms of UPL restrictions can be gleaned.⁵⁷ First, there are rules prohibiting

⁴⁹ *Id.* at 776-77.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Nolan-Haley, *supra* note 39, at 262.

⁵⁴ 421 U.S. at 791.

⁵⁵ Drew A. Swank, *Non-Attorney Social Security Disability Representatives and the Unauthorized Practice of Law*, 36 S. ILL. U. L.J. 223, 224-25 (2012).

⁵⁶ MODEL RULES OF PRO. CONDUCT r. 5.3, 5.5 (AM. BAR ASS'N 2019).

⁵⁷ Denckla, *supra* note 37, at 2587; Dzienkowski and Peroni, *supra* note 39, at 90. *See also* Nolan-Haley, *supra* note 39, at 259 (citation omitted).

non-attorneys from practicing law.⁵⁸ “Practicing law” is not welldefined,⁵⁹ although we argue that it certainly would include representation in legal proceedings, and it extends to preparing legal instruments or documents that affect the legal rights of others, as well as giving legal advice. Second, there are rules prohibiting attorneys duly licensed in one jurisdiction from practicing in other jurisdictions in which they are not licensed.⁶⁰ Third, there are rules limiting the extent to which attorneys may assist nonattorneys who are committing UPL.⁶¹

If one runs afoul of UPL rules, punishment may include injunctions, findings of contempt, *quo warranto* writs, and criminal penalties.⁶² Criminal penalties are more common than one would assume;⁶³ in many states, the first form of UPL violation—nonlawyers practicing law—is a criminal offense.⁶⁴

⁵⁸ MODEL RULES OF PRO. CONDUCT r. 5.5(a) (AM. BAR ASS’N 2019) (“A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction . . .”).

⁵⁹ People ex rel. Ill. State Bar Ass’n v. Schafer, 404 Ill. 45, 50 (1949).

⁶⁰ MODEL RULES OF PRO. CONDUCT r. 5.5(b)-(e) (AM. BAR ASS’N 2019).

⁶¹ *Id.* at r. 5.3.

⁶² RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 4 cmt. a (AM. L. INST. 2000); Denckla, *supra* note 37, at 2592-93. *See also* Alex J. Hurder, *Nonlawyer Legal Assistance and Access to Justice*, 67 FORDHAM L. REV. 2241, 2242 (1999); Quintin Johnstone, *Bar Associations: Policies and Performance*, 15 YALE L. & POL’Y REV. 193, 218 (1996); Nolan-Haley, *supra* note 39, at 260.

⁶³ *See, e.g.*, ALA. CODE § 34-3-1 (2023) (stating that the penalty for UPL is a fine of up to \$500 or imprisonment of up to six months, or both); S.C. CODE ANN. § 40-5-310 (2023) (stating that practicing law without admittance to the South Carolina Bar may lead to a fine of up to \$5,000 or imprisonment of up to five years, or both).

⁶⁴ *See* Attorneys’ Liability Assurance Society, Inc., *Statutes and Rules Limiting Multijurisdictional Law Practice from 51 United States Jurisdictions*, AM. BAR ASS’N (2000), https://www.americanbar.org/groups/professional_responsibility/committees/commissions/commission-on-multijurisdictional-practice/mjp_uplrules [<https://perma.cc/CX3H-X2FG>] (surveying court rules and statutes on UPL).

Typically, this would be a misdemeanor offense, but in certain circumstances it can rise to a felony.⁶⁵

B. UPL's Existential Problems

The former introduction to the Rules of the Supreme Court of Virginia states, “[N]o one has the right to represent another; it is a privilege to be granted and regulated by law for the protection of the public.”⁶⁶ In Section I.A of this Article, we explained *what* UPL is, not *why* it is. The Supreme Court of Virginia made the *why* explicit: “for the protection of the public.”⁶⁷ Or, as the Model Rules have it: “Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons.”⁶⁸ The theory is that nonlawyers will make errors that lawyers would not make, thereby harming the legal consumer.⁶⁹ The theory is also that, because nonlawyers are not bound by the various ethical rules stipulated by bar associations, they are not the upstanding, conflict-free, loyal professionals they should be.⁷⁰

While such aims are commendable, they are hard to square with glaring exceptions—longstanding loopholes—to UPL rules. The Restatement makes these exceptions clear: “a nonlawyer undoubtedly may engage in some limited forms of law practice . . . ”⁷¹ Or, as a Montana court put it:

⁶⁵ TEX. PENAL CODE ANN. § 38.123 (West 2023); N.J. STAT. ANN. § 2C:21-22 (West 2023).

⁶⁶ *In re Jay*, 446 B.R. 227, 243 (E.D. Va. Bankr. 2010) (quoting Va. Sup. Ct. R., Pt. 6, § I, Introduction (2010)).

⁶⁷ *Id.*

⁶⁸ MODEL RULES OF PRO. CONDUCT r. 5.5 cmt. 2 (AM. BAR ASS’N 2019).

⁶⁹ Dzienkowski & Peroni, *supra* note 39, at 92.

⁷⁰ *Id.* Moreover, there is a related argument that flows from this: because nonlawyers are outside of the bar associations’ remit, they cannot be regulated in the way that bar associations would like to regulate them. Tort law provides ex post solutions, but that still is not precisely what bar associations want.

⁷¹ RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 4 cmt. a (AM. L. INST. 2000).

[W]e conclude that the array of persons and institutions that provide legal or legally-related services to members of the public are, literally, too numerous to list. To name but a very few, by way of example, these include bankers, realtors, vehicle sales and finance persons, mortgage companies, stock brokers, financial planners, insurance agents, health care providers, and accountants.⁷²

Paralegals and legal assistants often provide legal services, and they often do so without requisite supervision.⁷³ Yet bar associations have long turned a blind eye since to do otherwise would hazard the full functioning of many law firms.⁷⁴ Likewise, law librarians may fervently disclaim that they practice law, yet their daily work straddles the line.⁷⁵ Law students, law clerks, and new associates who have not yet passed the bar often engage in legal practice, especially giving advice that ostensibly is legal advice, but they seldom face UPL prosecution. And consider corporate officers who, despite being nonlawyers, are permitted to represent their corporations on convoluted *pro se* grounds.⁷⁶ But the most important and glaring exception is the legal representation provided to individuals in federal and state administrative proceedings.⁷⁷

⁷² *In re Dissolving Comm'n on Unauthorized Prac. of L.*, 242 P.3d 1282, 1283 (Mont. 2010) (dissolving the Bar's Commission on UPL).

⁷³ Warren H. Resh, *Paralegals - Are They the Solution of a Problem or Just Part of the Problem Itself*, 40 UNAUTHORIZED PRAC. NEWS 88, 88-89 (1976). See MODEL RULES OF PRO. CONDUCT r. 5.5 cmt. 3 (AM. BAR ASS'N 2018) ("Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services.").

⁷⁴ See Resh, *supra* note 73, at 88.

⁷⁵ See Paul D. Healey, *Pro Se Users, Reference Liability, and the Unauthorized Practice of Law: Twenty-Five Selected Readings*, 94 LAW LIBR. J. 133 (2002).

⁷⁶ See, e.g., Suzannah R. McCord, *Corporate Self-Representation: Is It Truly the Unauthorized Practice of Law*, 67 ARK. L. REV. 371 (2014).

⁷⁷ Denckla, *supra* note 37, at 2591-92.

The Administrative Procedure Act allows for nonlawyer representation before federal administrative agencies, as happens in social security disability proceedings.⁷⁸ Such representation often is in clear violation of UPL rules. After the Florida Bar Association charged Alexander Sperry, a patent agent, with unauthorized practice of law, the U.S. Supreme Court took up the matter in *Sperry v. Florida*.⁷⁹ While the Court held that the regulation of the practice of law was primarily the responsibility of the states and not the federal government, it ultimately ruled in favor of Sperry.⁸⁰ The Court approvingly cited a report stating that, in the patent office context, “[T]here is no significant difference between lawyers and nonlawyers, either with respect to their ability to handle the work or with respect to their ethical conduct.”⁸¹ The *Sperry* decision affirmed what was already clear: in some circumstances, nonlawyers may provide legal services without violating prohibitions of the unauthorized practice of law.

A central tension can be gleaned from this discussion: there is an inappropriate vagueness that besets UPL enforcement. That which qualifies as the practice of law has never been clearly delineated. As one court explained, it is often “difficult, if not impossible, to lay down a formula or definition of what constitutes the practice of law.”⁸²

In the early 2000s, the ABA convened a task force for the sole purpose of defining the “practice of law.”⁸³ What did the task force conclude? That it could not, in the end, produce a

⁷⁸ Swank, *supra* note 55, at 235.

⁷⁹ 373 U.S. 379, 381 (1963).

⁸⁰ *Id.* at 404.

⁸¹ *Id.* at 402 (citing COMM’N ON ORG. OF THE EXEC. BRANCH OF THE GOV’T, REPORT OF THE TASK FORCE ON LEGAL SERVICES AND PROCEDURE 158 (1955)).

⁸² People ex rel. Ill. State Bar Ass’n v. Schafer, 404 Ill. 45, 50 (1949).

⁸³ See AM. BAR ASS’N CTR. FOR PRO. RESP., TASK FORCE ON MODEL DEFINITION OF THE PRACTICE OF LAW, REPORT & RECOMMENDATION TO THE HOUSE OF DELEGATES (adopted Mar. 28, 2003) (resolving that each jurisdiction should develop its own definition of the practice of law).

viable definition.⁸⁴ Instead, it urged the various jurisdictions to adopt their own standards and to apply “common sense.”⁸⁵ Even more astounding is the current ABA Model Rules definition, or what might be called a nondefinition: “[t]he definition of the practice of law is established by law and varies from one jurisdiction to another.”⁸⁶ And so we are left with “broad and vague definitions of what does, and does not, constitute the practice of law.”⁸⁷ We are left with the feeling that “much unauthorized practice doctrine is inconsistent, incoherent, and, from a policy perspective, indefensible,”⁸⁸ a claim that was true forty years ago and has persisted to the present, in no small part owing to the entrenchment of the bar associations’ members. This situation is troubling for most parties, but it is perhaps, all too convenient for bar associations and lawyers who seek, as one court put it, “to localize, monopolize, regulate, or restrict the interstate and international provision of legal services.”⁸⁹

Is there anything to this? Could UPL be substantially motivated by a desire to restrain the trade for the economic benefit of lawyers? That is, in spite of its claimed aims, is UPL actually driven by a protectionist aim? Moreover, in answering these questions, have courts sent notice to bar associations that their power has become more tenuous, that it is no longer guaranteed that, when occupational freedom is at stake, courts will apply the deferential rational-basis test articulated in

⁸⁴ *Id.*

⁸⁵ See AM. BAR ASS’N CTR. FOR PRO. RESP., TASK FORCE ON MODEL DEFINITION OF THE PRACTICE OF LAW, REPORT & RECOMMENDATION TO THE HOUSE OF DELEGATES 5 (adopted Aug. 11, 2003), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-def_migrated/taskforce_rpt_803.pdf [<https://perma.cc/7QUH-Y3ZT>].

⁸⁶ MODEL RULES OF PRO. CONDUCT r. 5.5 cmt. 2 (AM. BAR ASS’N 2019).

⁸⁷ Swank, *supra* note 55, at 232.

⁸⁸ Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STAN. L. REV. 1, 5 (1981).

⁸⁹ See *In re Dissolving Comm’n on Unauthorized Prac. of L.*, 242 P.3d 1282, 1283 (Mont. 2010) (dissolving the Bar’s Commission on the unauthorized practice of law).

*Williamson v. Lee Optical of Oklahoma, Inc.*⁹⁰ A Supreme Court case addressed many of these issues—albeit in another profession. *North Carolina State Board of Dental Examiners v. FTC* involved a dispute between the North Carolina State Board of Dental Examiners and the Federal Trade Commission (“FTC”).⁹¹ The Board had been sending cease-and-desist letters to nondentists who were providing teeth-whitening services in North Carolina.⁹² The Board’s argument was that teeth-whitening services fell within the practice of dentistry, and thus nondentists were not allowed to perform these services.⁹³ It is worth noting, as the Court did, that eight of the Board’s ten members during the period at issue earned substantial fees from providing teeth-whitening services.⁹⁴ The FTC filed an administrative complaint charging the Board with violating federal antitrust laws.⁹⁵ The FTC alleged that the Board’s actions to exclude nondentists from the market for teeth-whitening services constituted an anticompetitive and unfair method of competition.⁹⁶

The Court held that the Board was not immune from antitrust laws, as state actors would be, because it was controlled by active market participants who were competing in the market that they were regulating.⁹⁷ In other words, because the Board members had a financial interest in limiting competition in the market for teeth-whitening services, they would be subject to antitrust scrutiny.⁹⁸

⁹⁰ 348 U.S. 483, 487-88 (1955).

⁹¹ 574 U.S. 494 (2015).

⁹² *Id.* at 501.

⁹³ *Id.*

⁹⁴ *Id.* at 500.

⁹⁵ *Id.* at 501.

⁹⁶ *Id.*

⁹⁷ *Id.* at 503-04.

⁹⁸ We pause here to mention one potential limitation in extending teeth-whitening scenarios (dental practice) to provision of legal services scenarios: teeth whitening requires less expertise than a root canal. Likewise, there are a range of legal services, and perhaps only those that require less expertise should be subject to the reach of *North Carolina State Board of Dental Examiners*.

The ruling has already proven influential. “Active market participants” who regulate their own markets now are on notice that they face liability for antitrust violations. In *Teladoc, Inc. v. Texas Medical Board*,⁹⁹ the U.S. District Court for the Western District of Texas cited *North Carolina State Board of Dental Examiners* in holding that a state medical board’s rule prohibiting telemedicine was subject to antitrust scrutiny. Likewise, a legal technology company under UPL pressures—LegalZoom—attempted to leverage *North Carolina State Board of Dental Examiners* in making its case.¹⁰⁰

But the question remains: even if UPL rules are overly broad and so vague as to be boundaryless, and even if they are crafted with exceptions and loopholes, are they problematically driven by an economic protectionist aim? There are instances of this being the case. For example, the attorney in charge of a patent and trademark law firm in California admitted that growth is flat for his company and that he is failing to compete with legal technology companies. Over the past few years, he has initiated UPL suits against many such companies, including LegalZoom.¹⁰¹ Legal scholars have identified this protectionist instinct and its misuse of UPL litigation: “lawyers often fight rearguard actions in attempts to prohibit laymen from using books, software.”¹⁰² Or, as Professors McGinnis and Pearce put it: “[t]he surest way for lawyers to retain the market power of old is to use bar regulation to delay and obstruct the use of machine intelligence.”¹⁰³ In fact, claims of market power and

⁹⁹ *Teladoc, Inc. v. Tex. Med. Bd.*, 112 F. Supp. 3d 529, 535-36 (W.D. Tex. 2015).

¹⁰⁰ Brief for Legalzoom.com, Inc. as Amici Curiae Supporting Respondent, *Dental Examiners*, 574 U.S. 494 (2015) (No. 13-534). See *infra* for a full discussion of LegalZoom’s UPL litigation.

¹⁰¹ Jason Tashea, *Rash of UPL Lawsuits Filed by LegalForce Show its Failure to Compete, Defendants Say*, AM. BAR ASS’N J. (Jan. 9, 2018), https://www.abajournal.com/news/article/rash_of_upl_lawsuits_filed_by_legalforce_show_failure_too_compete_defendant [https://perma.cc/5TV5-AGDK].

¹⁰² Spahn, *supra* note 30, at 47.

¹⁰³ McGinnis & Pearce, *supra* note 27, at 3042.

monopolistic aims for UPL restrictions have been leveled since such rules were first instituted.¹⁰⁴

Since AI currently can automate various tasks, including document generation, there should be significant time savings that are passed on to clients in the form of lower fees. Of course, this exposes a tension, a misalignment of incentives, that is inherent to the legal business model. Mark Chandler, former Chief Legal officer at Cisco Systems, Inc., has described how clients seek to manage expenses, while law firms, driven by hourly billing, are somewhat indifferent to productivity gains and expense reductions.¹⁰⁵ Lawyers' adherence to their highly customized, highly leveraged, labor-intensive, and expensive methods, as well their adherence to UPL rules, certainly seems to be a protectionist maneuver.

But the question of economic protectionism is nearly impossible to answer, requiring one to intuit the motivations of countless parties across many years. Moreover, it is not even a question that is limited to UPL and the legal context. Professor Haupt has put the more general question thus: "Is licensing merely an access control mechanism that serves a profession's economic interests by excluding newcomers?"¹⁰⁶ That is, it is a question that can be put to any profession, assessment of which demands weighing of both the barriers to entry created and the public interest in ensuring competency. Of course, "'Competency' . . . may be but a euphemism for economic control of the trade group."¹⁰⁷ In recent years, a consensus has formed in support of this proposition. Those criticizing professional licensing hail from a wide expanse of the political

¹⁰⁴ Rigertas, *supra* note 21, at 100, 112.

¹⁰⁵ Mark Chandler, Gen. Counsel, Cisco Sys., Inc., *Address at the Northwestern School of Law's 34th Annual Securities Regulation Institute: State of Technology in the Law*, Jan. 25, 2007 (transcript available at <https://www.legalevolution.org/2017/11/mark-chandler-speech-january-2007-035> [<https://perma.cc/RA9K-6TRC>]).

¹⁰⁶ Claudia E. Haupt, *Licensing Knowledge*, 72 VAND. L. REV. 501, 516 (2019).

¹⁰⁷ Henry Paul Monaghan, *The Constitution and Occupational Licensing in Massachusetts*, 41 B.U. L. REV. 157, 165 (1961).

spectrum.¹⁰⁸ The Obama Administration,¹⁰⁹ the 2016 Clinton presidential campaign,¹¹⁰ the Hamilton Project at the Brookings Institution,¹¹¹ and libertarian groups¹¹² have all taken positions against licensing.

Regardless of the motivations, we begin to unpack the effects of UPL rules and whether they serve their stated public interest purposes in the discussion below, especially given the rise of capable language models like GPT-4. Before we get there, though, we must turn to a few examples of UPL litigation in action, including the spate of lawsuits that LegalZoom has navigated over the past decade.

C. UPL in Action (Causing Inaction)

The classic example of a UPL violation—indeed, what bar associations hold up as justification for UPL—is when a bad actor tricks a naïve legal consumer. For example, individuals who identify as “notarios” often mislead immigrants into

¹⁰⁸ Haupt, *supra* note 106, at 515-16.

¹⁰⁹ Press Release, White House, Fact Sheet: New Steps to Reduce Unnecessary Occupation Licenses that are Limiting Worker Mobility and Reducing Wages (June 17, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/06/17/fact-sheet-new-steps-reduce-unnecessary-occupation-licenses-are-limiting> [<https://perma.cc/D9GH-5YZD>]; *see also* DEP’T OF THE TREASURY OFF. OF ECON. POLICY ET AL., OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS 45-46 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf [<https://perma.cc/ZJQ9-8YAN>] (encouraging states to reduce the burdens imposed by professional regulations).

¹¹⁰ Jeanne Sahadi, *Hillary Clinton’s New Plan to Help Small Business Owners*, CNN BUS. (Aug. 23, 2016), <https://money.cnn.com/2016/08/23/news/economy/hillary-clinton-small-business/index.html> [<https://perma.cc/6JPH-Y2JK>].

¹¹¹ Ryan Nunn, *The Future of Occupational Licensing Reform*, BROOKINGS INST. (Jan. 30, 2017), <https://www.brookings.edu/articles/the-future-of-occupational-licensing-reform> [<https://perma.cc/5V88-R46C>].

¹¹² *See Occupational Licensing*, INST. FOR JUSTICE, <http://ij.org/issues/economic-liberty/occupational-licensing> [<https://perma.cc/2XVS-6WA7>] (“[O]ccupational licenses, which are essentially permission slips from the government, routinely stand in the way of honest enterprise.”).

believing that, in addition to notary-type services, they are qualified to provide legal services.¹¹³ This exploits a lexical ambiguity. In many Spanish-speaking countries, the term “notario” refers to someone who is licensed to provide some legal services.¹¹⁴ In the United States, notarios have filed fraudulent asylum applications on behalf of clients, knowing that it will be years before the fraud is discovered.¹¹⁵

Other classic examples include disbarred attorneys who continue to represent clients, or attorneys representing clients in states in which they are not bar licensed.¹¹⁶ This latter UPL violation might seem like an easy case—if UPL stands for anything, it is that attorneys should not practice in states in which they are not licensed. But the past few years have proven the impracticality of UPL rules even when it comes to easy cases. With the spread of COVID-19, many lawyers across the country took to remote work, which resulted in countless instances of attorneys practicing in jurisdictions in which they did not hold a license to practice law.¹¹⁷ Although the Model Rules include a loophole for such conduct,¹¹⁸ the loophole has only increased the balkanization of legal ethics, since not all states have adopted it.¹¹⁹

¹¹³ Helen Gunnarsson, *Immigration Lawyers Should Embrace Technology to Thwart UPL*, 33 LAW.’S MANUAL PRO. CONDUCT 664 (2017).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Lauren M. Hardesty, *What Constitutes the Unauthorized Practice of Law*, 61 RES GESTAE 35 (2018).

¹¹⁷ Lyle Moran, *Ethics Attorneys Hopeful COVID-19 Will Prompt Changes in Remote Working Rules*, AM. BAR ASS’N J. (2021), <https://www.americanbar.org/groups/journal/articles/2021/ethics-attorneys-hopeful-covid-19-will-prompt-changes-in-remote-> [<https://perma.cc/HB2Q-32HJ>].

¹¹⁸ “A lawyer shall not be subject to discipline if the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer’s conduct will occur.” MODEL RULES OF PRO. CONDUCT r. 8.5(b)(2) (AM. BAR ASS’N 2019).

¹¹⁹ D.C. Bar Ass’n, Ethics Op. 370, at 5 (2016). *See also* Richard J. Rosensweig, *Unauthorized Practice of Law: Rule 5.5 in the Age of COVID-*

Most germane to this Article are UPL lawsuits against technology-driven legal solutions. The roots of such litigation can be found in matters like the case, discussed *supra* in Part I, wherein a nonlawyer wrote a book providing advice about probate.¹²⁰ Similarly, there have been countless suits brought against “Do-It-Yourself legal kits.”¹²¹ In the 1970s, there was even an effort—with bar associations enlisting the aid of newspaper editors—to scare people away from self-help legal services.¹²² Consider the quaint hysteria in the following:

Sidestepping lawyers’ fees, Americans by the thousands are representing themselves in legal disputes—usually with less skill and thrill than a TV courtroom lawyer and often with disastrous results. . . .

This “unauthorized practice of law,” says Warren H. Resh of the Wisconsin Bar Association, may be well-intentioned, but the public must be protected from incompetent legal advice.¹²³

One of the first cases that addressed self-help instantiated in technology was *Unauthorized Practice of Law Committee v. Parsons Technology*,¹²⁴ a 1999 Texas case involving Quicken Family Lawyer and Quicken WillMaker, software programs developed by Parsons Technology. The program provided users with templates for more than 100 different legal forms, including leases and employment contracts, and it provided

19 and Beyond, AM. BAR ASS'N (Aug. 12, 2020), <https://www.americanbar.org/groups/litigation/resources/newsletters/ethics-professionalism/unauthorized-practice-law-rule-55-age-covid-19-beyond> [<https://perma.cc/Y3UA-YNTT>].

¹²⁰ See Lanctot, *supra* note 33, at 225, 265-74 (noting that Dacey ultimately won his fight: a New York appellate court eventually upheld Dacey’s claim that he had the constitutional right to publish such a book, though he did not have the right to practice law, of course).

¹²¹ *Newspapers Help in Alerting the public to the Hazards in the Purchase of Do-It-Yourself Kits*, 40 UNAUTHORIZED PRAC. NEWS 28 (1976).

¹²² *Id.*

¹²³ *Id.* at 29-30.

¹²⁴ No. Civ. A. 3:97CV-2859H, 1999 WL 47235 (N.D. Tex. Jan. 22, 1999).

instructions as to how the forms should be filled out.¹²⁵ Moreover, if users answered a series of questions, the software would produce documents tailored for them.¹²⁶ A Texas district court enjoined sale of the software program, holding that its services constituted the practice of law and were thus unauthorized.¹²⁷

The Quicken case was just a precursor to the wave of litigation that would crash upon LegalZoom, Inc. Established in 2001, LegalZoom is an online legal-technology platform that was founded with the aim of “mak[ing] legal help available to all.”¹²⁸ What this grandiose aim consists of is rather mundane. LegalZoom’s business model is centered on providing individuals and business entities with simple legal forms that can be pre-filled.¹²⁹ This may include forms for business formation, copyright protection, power-of-attorney appointment, and so on.¹³⁰ For providing these services, LegalZoom was either sued or faced bar proceedings in multiple states, actions that hobbled the company and threatened its continued existence.¹³¹

¹²⁵ *See id.* at *1.

¹²⁶ *See id.* at *1-2.

¹²⁷ *Id.* at *6-7, *10.

¹²⁸ Sarah Templin, *Blocked-Chain: The Application of the Unauthorized Practice of Law to Smart Contracts*, 32 *GEO. J. LEGAL ETHICS* 957, 966 (2019) (citing *Legal Zoom*, LEGALZOOM, <https://www.legalzoom.com> [<https://perma.cc/C4D3-QKJD>] (2018)).

¹²⁹ *We’re the One-Stop-Shop for All Your Business Formation, Tax, and Trademark Needs*, LEGALZOOM, <https://www.legalzoom.com/business> [<https://perma.cc/75K5-BX77>].

¹³⁰ *Id.*

¹³¹ Emily McClure, *Legal Zoom and Online Legal Service Providers: Is the Development and Sale of Interactive Questionnaires That Generate Legal Documents the Unauthorized Practice of Law?*, 105 *KY. L.J.* 563, 573-78 (2017) (discussing a number of cases in which UPL claims have been brought against online legal providers). *See also* Daniel Fisher, *LegalZoom Sees Supreme Court Ruling as Tool to Challenge N.C. Bar*, *FORBES* (June 6, 2015), <https://www.forbes.com/sites/danielfisher/2015/06/06/legalzoom-sees-supreme-court-ruling-as-tool-to-challenge-n-c-bar/?sh=14d09de75f5f> [<https://perma.cc/V2RM-LG7U>]; Conn. Unauthorized Prac. L. Comm.,

In *Janson v. LegalZoom.com, Inc.*,¹³² a class action brought in the Western District Court of Missouri, the court held that there was no significant difference between a lawyer preparing a document for a client and LegalZoom's services, and thus LegalZoom would have to cease such operations. This was in spite of LegalZoom's extensive disclaimer, provided to all customers.¹³³

The North Carolina State Bar, in particular, waged a lengthy battle with the company. In *LegalZoom.com, Inc. v. North Carolina State Bar*, the North Carolina Superior Court held that the Bar had the requisite authority to regulate the company.¹³⁴ LegalZoom, in turn, filed a federal antitrust suit against the Bar. LegalZoom essentially won the suit, with the two sides reaching a settlement that allows LegalZoom to provide legal services in North Carolina.¹³⁵ But "won" is an overstatement: as per the settlement, the parties agreed that "practice of law" does not include offering "consumers access

Informal Op. 2008-01 (2008); Pa. Bar Ass'n Unauthorized Prac. L. Comm., Formal Op. 20 10-01 (2010) (finding that LegalZoom had violated Pennsylvania's UPL rules).

¹³² 802 F. Supp. 2d 1053, 1065 (W.D. Mo. 2011).

¹³³ "LegalZoom is not a law firm, and the employees of LegalZoom are not acting as your attorney. LegalZoom's document service is not a substitute for the advice of an attorney. LegalZoom cannot provide legal advice and can only provide self-help services at your specific direction. LegalZoom is not permitted to engage in the practice of law. LegalZoom is prohibited from providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms or strategies. This site is not intended to create an attorney-client relationship, and by using LegalZoom, no attorney-client relationship will be created with LegalZoom. Instead, you are representing yourself in any legal matter you undertake through LegalZoom's legal document service." *Legalzoom Disclaimer*, LEGALZOOM, <https://www.legalzoom.com/disclaimer.html> [<https://perma.cc/98KS-CW77>].

¹³⁴ *LegalZoom.com, Inc. v. N.C. State Bar*, No. 11 CVS 1511, 2014 WL 1213242, at *9 (N.C. Super. Ct. Mar. 24, 2014).

¹³⁵ See Joan C. Rogers, *Settlement Allows LegalZoom to Offer Legal Services in N.C.*, BNA (Nov. 18, 2015), <https://news.bloomberglaw.com/class-action/settlement-allows-legalzoom-to-offer-legal-services-in-nc> [<https://perma.cc/CED9-R7VG>].

to interactive software that generates a legal document based on the consumer's answers to questions presented by the software . . . ”¹³⁶ In other words, LegalZoom was put into a small box, a proximal legal space. Unsurprisingly, this changed little; LegalZoom continued to face UPL suits.¹³⁷

II. Human-AI Legal Collaboration

In this Part, we consider two taxonomies that are essential for understanding the intersection of artificial legal intelligence and UPL rules. First, there is the taxonomy of the forms of human-AI conjoined effort—in other words, the spectrum of automation. Second, there is the taxonomy of legal technology—in other words, the types of legal automation.¹³⁸ The first taxonomy is essential to the present Article, as the different bands on the automation spectrum will trigger UPL concerns of differing magnitude. The second taxonomy is useful for providing examples as to where specific legal technologies fall within the automation spectrum.

Before we explore these taxonomies, we want to reiterate the general framework of UPL rules, acknowledging that they vary by jurisdiction. As the Model Rules of Professional Conduct have it, supervision is governed by Rule 5.3, which states that a supervisory lawyer must make reasonable efforts to ensure that nonlawyer assistants comply with professional legal obligations.¹³⁹ In addition, there are rules prohibiting

¹³⁶ *LegalZoom.com, Inc., v. N.C. State Bar*, No. 11-cvs-15111, 2015 WL 6441853, at *1 (N.C. Super. Ct. Oct. 22, 2015).

¹³⁷ *See, e.g., LegalForce RAPC Worldwide v. LegalZoom.com, Inc.*, No. 17-cv-07194-MMC, 2018 WL 1730333 (N.D. Cal. Apr. 10, 2018).

¹³⁸ *See, e.g., McGinnis & Pearce, supra* note 27, at 3046.

¹³⁹ MODEL RULES OF PRO. CONDUCT r. 5.3(b) (AM. BAR ASS'N 2019) (“With respect to a nonlawyer employed or retained by or associated with a lawyer . . . a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer . . .”). *See also* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 11 (AM. L. INST. 2000).

nonlawyers from practicing law,¹⁴⁰ which include prohibiting lawyers duly licensed in one jurisdiction from practicing in other jurisdictions in which they are not licensed.¹⁴¹

Murray and colleagues,¹⁴² in considering the waxing presence of AI in organizations like law firms, developed the following intuitive taxonomy of the ways in which human-AI conjoined effort may occur. AI may be “assisting,” “arresting,” “augmenting,” or “automating.”¹⁴³ These are ordered in terms of AI agentic freedom, going from least to most agentic. Beginning with least agentic, we have “assisting,” which is nonagentic collaboration. An example of this is when an attorney uses an excel spreadsheet. The spreadsheet merely stores information in a usable format. Moreover, if functions are embedded within the spreadsheet, then it also performs automated work on behalf of the attorney. Imagine that an attorney has created a formula, based on medical expenses and lost wages, for determining the range of settlement outcomes that she will present to her client. The machine performs the mathematics, and it even provides a settlement range, but the attorney retains control over what is presented to the client. As of this writing, there are few circumstances, absent an attorney’s failure to vet the automated output, in which a UPL suit against assisting technologies would be appropriate. Such technologies do not provide advice.

That said, consider Electronic Discovery (“E-Discovery”), which may be classified as assisting technology (although it might also fall into the next category, “arresting” technology). E-Discovery is the automation of document review. Instead of having an attorney (typically, a junior associate at a big firm) comb through millions of documents, firms have taken to

¹⁴⁰ MODEL RULES OF PRO. CONDUCT r. 5.5(a) (AM. BAR ASS’N 2019) (“A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction . . .”).

¹⁴¹ *Id.* at (b)-(e).

¹⁴² Alex Murray, J. E. N. Rhymer & David G. Sirmon, *Humans and Technology: Forms of Conjoined Agency in Organizations*, 46 ACAD. MGMT. REV. 552 (2021).

¹⁴³ *Id.* at 553.

offloading such tasks onto machines.¹⁴⁴ Software is used to search for words or phrases, or even entire document types, and flag instances for subsequent use in litigation. In other words, the attorneys encode the search parameters, and the AI executes the search.¹⁴⁵ Modern legal practice is beset with digitized documents, and E-Discovery tools have become indispensable. This is in spite of the fact that most, if not all, lawyers do not possess the proper analytical tools “to assess whether a particular technology is adequate for the task and whether it is working properly when employed,” raising questions about the scope of lawyer supervision.¹⁴⁶

The second type of human-AI collaboration is even trickier to unpack. “Arresting” agentic collaboration is when an AI exercises intentionality over action selection. The AI does not have the ability to develop protocols, but it does have the ability to select actions.¹⁴⁷ The most common example of this is a blockchain-based smart contract. When encoded conditions are satisfied, the contract automatically executes encoded actions. For example, Walmart works with IBM to employ smart contracts that use AI to authenticate materials and products—or verify task completion—at various handoff points, facilitating automatic release of funds.¹⁴⁸ To fully

¹⁴⁴ See, e.g., Thomas Spigolon, *Law Firms’ E-Discovery Centers See Growing Business From Other Firms, Clients*, LAW.COM (Aug. 7, 2023, 5:26 PM), <https://www.law.com/dailyreportonline/2023/08/07/law-firms-e-discovery-centers-see-growing-business-from-other-firms-clients> [<https://perma.cc/QD4U-94QH>].

¹⁴⁵ For example, “Is this UPL?” Answering that question would require a Model Rule 5.3-type reasonableness analysis: did the responsible attorney make reasonable efforts to ensure that the AI’s conduct was compatible with the professional obligations of the attorney? MODEL RULES OF PROFESSIONAL CONDUCT r. 5.3(a)-(b) (2019).

¹⁴⁶ Dana A. Remus, *The Uncertain Promise of Predictive Coding*, 99 IOWA L. REV. 1691, 1710 (2014).

¹⁴⁷ Murray et al., *supra* note 142, at 556.

¹⁴⁸ Michael J. Casey & Pindar Wong, *Global Supply Chains Are About To Get Better, Thanks To Blockchain*, HARV. BUS. REV. (Mar. 2017), <https://hbr.org/2017/03/global-supply-chains-are-about-to-get-better-thanks-to-blockchain> [<https://perma.cc/X5M3-PKEP>]; Alex Tapscott &

understand the agentic nature of such AI, consider The Dao, which was an investor-led decentralized investment fund. In 2016, the fund was hacked, and close to \$60 million was stolen.¹⁴⁹ Various people observed the hack as it was happening, but they were unable to stop it because The Dao ran autonomously on smart contracts.¹⁵⁰ To stop the attack, all designated actors would have had to reach consensus about appropriate revisions to the underlying structure; otherwise, the smart contract would proceed as designed, which it did.¹⁵¹

When deployed in the legal domain, are “arresting” technologies practicing law? Most likely. LegalZoom, after all, should be classified as an arresting technology. Its “interactive legal documents” function much like smart contracts, receiving input from customers and generating documents in accordance with encoded rules.¹⁵² And we have discussed the UPL liability that LegalZoom faced—in spite of the fact that LegalZoom was not actually executing or filing anything. As a similar example, consider *Franklin v. Chavis*,¹⁵³ a case in which an insurance agent tried to help his elderly neighbor make a will.¹⁵⁴ The agent used software to generate a fill-in-the-blank form, which he then completed and provided to his neighbor.¹⁵⁵ The neighbor eventually passed away, at which point her family

Don Tapscott, *How Blockchain Is Changing Finance*, HARV. BUS. REV. (Mar. 2017), <https://hbr.org/2017/03/how-blockchain-is-changing-finance> [<https://perma.cc/79CW-6Q5T>].

¹⁴⁹ Quinn DuPont, *Experiments in Algorithmic Governance: A History And Ethnography Of “The DAO,” A Failed Decentralized Autonomous Organization*, in BITCOIN AND BEYOND: CRYPTOCURRENCIES, BLOCKCHAINS, AND GLOBAL GOVERNANCE 157-77 (Malcolm Campbell-Verduyn ed., 2017).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Caroline Shipman, *Unauthorized Practice of Law Claims Against LegalZoom - Who Do These Lawsuits Protect, and Is the Rule Outdated*, 32 GEO. J. LEGAL ETHICS 939 (2019).

¹⁵³ 640 S.E.2d 873, 875-76 (S.C. 2007).

¹⁵⁴ Mathew Rotenberg, Note, *Stifled Justice: The Unauthorized Practice of Law and Internet Legal Resources*, 97 MINN. L. REV. 709 (2012).

¹⁵⁵ 640 S.E.2d at 875-76.

sued the insurance agent for UPL.¹⁵⁶ The South Carolina Supreme Court agreed with the family: “Even the preparation of standard forms that require no creative drafting may constitute the practice of law if one acts as more than a mere scrivener.”¹⁵⁷

Still, such technology is far less objectionable on UPL grounds than are arresting technologies like Rasa Legal, a B-corporation that combines AI-enabled software with nonlawyer professionals to do two things: (1) help individuals determine whether they are eligible to expunge their criminal records and (2) perform the expungement process.¹⁵⁸ This is a UPL violation. The only reason Rasa Legal is permitted to operate is because the state of Utah instituted a “legal services sandbox” in 2020—in essence, a free-pass from UPL claims for companies experimenting with using technology to overcome barriers to justice.¹⁵⁹

Before progressing to the third type of human-AI conjoined effort, it is worth pausing to consider the different types of artificial legal intelligence. McGinnis and Pearce identified five types of artificial legal intelligence tools that would develop: (1) discovery, (2) legal search, (3) document generation, (4) brief and memoranda generation, and (5) prediction of case outcomes.¹⁶⁰ Professor Linna, in his own taxonomy, does a few things differently. For one, he merges the document automation pieces into a unified group: brief and memoranda generation would be subsets of document automation, also known as assembly.¹⁶¹ Prediction of case outcomes, likewise, would fall within a broader group: outcome analytics.¹⁶² This would include predictions, and it also would include more general analytics, such as actionable business

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 876.

¹⁵⁸ *Expungement Made Easy*, RASA LEGAL, <https://www.rasa-legal.com> [<https://perma.cc/H7TC-K4RL>].

¹⁵⁹ See sources cited *supra* note 32.

¹⁶⁰ McGinnis & Pearce, *supra* note 27, at 3046.

¹⁶¹ Linna, *supra* note 28, at 412.

¹⁶² *Id.*

intelligence or strategy recommendations.¹⁶³ Finally, Professor Linna includes tools that impinge the paradigmatic examples of lawyering: technologies that litigators are using in the courtroom to gain advantages.¹⁶⁴ In summary, Professor Linna’s classification encompasses a streamlined approach, consolidating document-related tasks into document automation, broadening case outcome prediction into outcome analytics, and incorporating technologies that enhance litigators’ performance in the courtroom. The specifics, however, matter less than the overall survey of the field.

Of these groups, discovery and document generation have already been covered above in the discussions of assisting and arresting human-AI conjoined effort. Legal search might also be put into the assisting bin. Brief and memoranda generation (as a subset of document generation) and outcome analytics are pure legal tasks—by any definition of the practice of law, they would be included. But this is also true for certain types of discovery, search, and document generation. Systems like ROSS intelligence, for example, steered search in such a way that they were undoubtedly doing the work of a lawyer.¹⁶⁵ It should now be evident—but it will become more evident still—that AI is rapidly subsuming tasks that constitute the practice of law, and disentangling humans from AI contributions is nearly impossible. That is, most every law firm, most every individual attorney’s practice, is or will be reliant upon AI that are violating UPL rules and cannot be reasonably overseen.

The third type in the taxonomy is “augmenting” agentic collaboration, where an AI exercises intentionality over protocol development. More than “arresting,” “augmenting” AI takes on some of the deliberative process. Think of a machine-learning algorithm that parses large amounts of data, detects patterns, and makes predictive recommendations.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 413.

¹⁶⁵ *Our Company, ROSS INTELLIGENCE*, <https://www.rossintelligence.com/about-us> [https://perma.cc/W3N8-3NDU].

However, these recommendations would be made to humans; the AI would not subsume action selection. Much legal technology, including the advanced search functions in Lexis, Westlaw, and other systems, arguably are technologies of the augmenting type. Other examples here would include judicial-risk-score calculators or structured machine-learning processes, such as case outcome predictors,¹⁶⁶ that parse datasets, detect patterns, and provide predictive recommendations for a human collaborator to pursue.

The fourth type in the taxonomy is “automating” agentic collaboration, where the AI exercises intentionality over protocol development *and* action selection. This final category reaches most fully into AI independence (i.e., away from conjoined effort), as seen in the example of IBM’s Deep Blue for chess. Deep Blue uses a combination of brute-force searching and domain-specific heuristics, to independently seek data, learn, formulate rules for action, and ultimately execute.¹⁶⁷ As another example, consider how the publisher of *Sports Illustrated* and other media is now using AI to both pitch potential topics and write full articles.¹⁶⁸ Some articles in *Men’s Journal*, for instance, are entirely AI-generated, created by an AI process that is trained on the publisher’s archived articles and leverages OpenAI’s LLMs.¹⁶⁹

In the legal domain, automating technology is seen in prediction tools that are able to act, if given such authority. These might be active at the case-resolution stage or at the case-intake stage, analyzing potential client case information and making determinations as to whether a case should be

¹⁶⁶ See Masha Medvedeva, Martijn Wieling & Michel Vols, *Rethinking the Field of Automatic Prediction of Court Decisions*, 3 A.I. L. 195 (2023).

¹⁶⁷ See generally FENG-HSIUNG HSU, *BEHIND DEEP BLUE: BUILDING THE COMPUTER THAT DEFEATED THE WORLD CHESS CHAMPION* (2002).

¹⁶⁸ Alexandra Bruell, *Sports Illustrated Publisher Taps AI to Generate Articles, Story Ideas*, WALL ST. J. (Feb. 3, 2023), <https://www.wsj.com/articles/sports-illustrated-publisher-taps-ai-to-generate-articles-story-ideas-11675428443> [<https://perma.cc/Q7N6-S2XB>].

¹⁶⁹ *Id.*

accepted or rejected.¹⁷⁰ But an even more salient form of automating technology is that embodied by LLMs that can generate text and, conceivably, briefs and other legal documents. In other words, this technology can, on its own, generate legal output, including the provision of legal advice. ChatGPT, in particular, has been shown to be relatively adept at nuanced writing tasks like penning scholarly articles,¹⁷¹ and at creative writing tasks like penning love notes.¹⁷² In a recent study, academic reviewers were only able to catch 63% of fake abstracts created by ChatGPT.¹⁷³ As one commentator said, “That’s a lot of AI-generated text that could find its way into the literature soon.”¹⁷⁴ At the *Science* family of journals, editors have specifically singled out ChatGPT, stating that text generated by the AI may not be used since, “[i]t is, after all, plagiarized from ChatGPT.”¹⁷⁵

A recent article explored the extent to which different professions will be impacted by LLMs, such as GPT-4.¹⁷⁶ The authors looked at “exposure percentages,” where exposure was defined as reducing the time it takes to complete a task by at least 50%. They projected that as much as 70% of lawyers’ tasks are exposed to GPT-powered software.¹⁷⁷

Anyone with access to ChatGPT can see how reasonable this projection is. In early March 2023, we asked ChatGPT to

¹⁷⁰ Medvedeva et al., *supra* note 166; *Robots Change the Face of Legal Practice*, DISCIPLINARY BD. SUP. CT. PA. (May 2017), <http://198.8.33.167/Storage/media/pdfs/20180417/133713-attorneynewsletter-2017.05.pdf> [<https://perma.cc/MU3Y-9LTE>].

¹⁷¹ Holden H. Thorp & Valda Vinson, *ChatGPT is Fun, But Not an Author*, 379 SCI. 313 (2023).

¹⁷² Callie Holtermann, *Leave ‘I Love You’ to the Pros*, N.Y. TIMES (Feb. 10, 2023), <https://www.nytimes.com/2023/02/10/style/flower-delivery-card-messages> [<https://perma.cc/U23G-6H7E>].

¹⁷³ Thorp, *supra* note 171.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Tyna Eloundou et al., *GPTs are GPTs: An Early Look at the Labor Market Impact Potential of Large Language Models* 1, 15 (2023), <https://arxiv.org/abs/2303.10130> [<https://perma.cc/LJY5-9KF2>].

¹⁷⁷ *Id.* at 16.

write a brief on the law of trespassing in Miami-Dade County, Florida.¹⁷⁸ Wary of UPL rules, the AI deferred: “I’m sorry, but . . . creating a legal brief without proper training and knowledge could result in significant legal repercussions. It’s important to seek assistance from a licensed attorney who can provide the necessary legal guidance and prepare a legal brief that is appropriate for your case.” So we asked the AI to do an equivalent task: explain the “concept and rules” of trespassing in Miami-Dade County, Florida. ChatGPT then wrote an excellent brief for us. Two weeks later, in mid-March 2023, we had access to an updated version of ChatGPT, one that is built atop GPT-4. We asked the AI to write a brief to help us beat a trespassing charge in Miami-Dade County. This time, after a short disclaimer (“It is essential to consult with a qualified attorney to ensure that the advice is tailored to your specific case. This memo is for informational purposes only and should not be considered as legal advice.”), it rather brilliantly told us what to do, even referring to itself as our “ChatGPT Legal Advisor.”¹⁷⁹ Specifically, we were impressed by three aspects of ChatGPT as lawyer. First, it displayed a solid grasp of statutory interpretation, parsing the nuances of the relevant legislation to provide clear, contextual guidance. Second, the legal analysis was thorough and methodical, with all relevant facets of the issue considered and addressed. Third, the advice showed factual accuracy, drawing upon up-to-date legal rules in presenting an informed perspective on the matter.

With each iteration, the potential of generative AI like ChatGPT to benefit the legal profession increases; such tools are becoming not just ancillary aids but frequent and almost essential legal collaborators. This increased utility brings us to our next Part, wherein we explore compelling arguments for rethinking the traditional framework of UPL in light of these technological advancements.

¹⁷⁸ For complete transcripts of these exchanges, see <https://osf.io/49nsm> [<https://perma.cc/FPB3-8EEA>].

¹⁷⁹ *Id.*

III. The Case for Dismantling UPL Rules

The case for dismantling UPL rules has never been stronger than it is today. First, there are the constitutional arguments. As Professor Bernstein and others have argued, there exists a due process right to occupational freedom that many licensing bodies may be unlawfully restricting.¹⁸⁰ In fact, opinions like that of the Texas Supreme Court in *Patel v. Texas Department of Licensing & Regulation*¹⁸¹ suggest that courts are becoming more protective of the right to pursue an occupation, a right that traditionally has been considered a subset of liberty of contract.¹⁸² At issue in *Patel* was a law requiring individuals who make their living by threading eyebrows to obtain a cosmetology license.¹⁸³ Instead of applying the rational-basis test, which indubitably would have led to a ruling in favor of the law, the court used a more stringent test. Under the Texas Constitution, the state cannot meet the test if “the statute’s actual, real-world effect as applied to the challenging party . . . is so burdensome as to be oppressive in light of[] the governmental interest.”¹⁸⁴ Drawing on such rulings, Professor Bernstein has shown that there is an ever-expanding opening for litigants to argue for a more robust (greater than rational basis) test for laws and regulations restricting occupational liberty.¹⁸⁵

Similarly, Clark Neily has argued that the First Amendment may provide robust protection against occupational restrictions that implicate free-speech issues.¹⁸⁶ Since the dawn of the so-called Information Age, vocations have become increasingly expressive.¹⁸⁷ Neily uses the example of an interior designer to make this point: drafting design ideas, recommending furniture, suggesting finishes—all of this is

¹⁸⁰ Bernstein, *supra* note 23, at 289 n.9.

¹⁸¹ 469 S.W.3d 69 (Tex. 2015).

¹⁸² Bernstein, *supra* note 23, at 289 n.9.

¹⁸³ 469 S.W.3d at 87.

¹⁸⁴ *Id.*

¹⁸⁵ Bernstein, *supra* note 23, at 289.

¹⁸⁶ Neily, *supra* note 26, at 306.

¹⁸⁷ *Id.* at 310.

speech, “and frequently artistic speech.”¹⁸⁸ This is even more true for legal services, where the work product is nothing but speech. Importantly, courts do not apply the rational-basis test when free speech is implicated. Rather, as discussed in the previous paragraph, they apply some form of heightened scrutiny.¹⁸⁹

The Circuits have taken varied stances on this issue. For example, in some states, licensing requirements have been instituted for tour guides, who primarily convey information about points of interest (quite literally, their job is to speak). There is a split in authority over the issue, with the D.C. Circuit striking down the licensing laws on First Amendment grounds and the Fifth Circuit upholding such laws while rejecting the First Amendment argument.¹⁹⁰ In cases involving psychotherapy, the Third Circuit has expressly recognized a speech interest,¹⁹¹ while the Ninth Circuit has done precisely the opposite.¹⁹²

Among other reasons, Neily suggests that heightened scrutiny regarding occupational licenses may be beneficial because policymakers will be required to exercise at least a modicum of care when they restrict the right to work.¹⁹³ This would be impactful in the legal domain, where decades of research has shown that UPL rules have caused harm¹⁹⁴ and where the inherent-powers doctrine restricts individuals’ ability to seek recourse through the political process. Applying First Amendment analysis to UPL rules risks conflating political, artistic, commercial, and other types of speech in the

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Compare *Kagan v. City of New Orleans*, 753 F.3d 560 (5th Cir. 2014) (rejecting the free-speech argument and upholding New Orleans’ licensing requirement for tour guides), with *Edwards v. District of Columbia*, 755 F.3d 996 (D.C. Cir. 2014) (rejecting the *Kagan* court’s holding and striking down D.C.’s licensing of tour guides on First Amendment grounds).

¹⁹¹ *King v. Governor of New Jersey*, 767 F.3d 216 (3d Cir. 2014).

¹⁹² *Pickup v. Brown*, 740 F.3d 1208, 1221-22 (9th Cir. 2014).

¹⁹³ Neily, *supra* note 26, at 311.

¹⁹⁴ See *infra* Section III.B.

analysis, so it is worth hesitating here for a moment. The core restriction that's questionable is that which forbids provision of legal advice: as in the case of psychotherapy, the communication itself (the therapist's psychosocial advice; the lawyer's legal advice) is the product. So we might think of expression of legal opinions: if someone cannot provide their perspective on a legal matter due to fear of being accused of unauthorized practice, this might chill public discourse on matters of public concern. But this is the more extreme form of UPL and it implicates the more expansive protections afforded to noncommercial speech. It perhaps is best to think of a nonlawyer offering legal information as a service or a product (like self-help legal books or a demand letter or a brief), where UPL often infringes upon the speech right.

While these constitutional arguments suggest that courts will continue the process of curtailing UPL overreach, there also are reasons why bar associations might want proactively to dismantle UPL rules. First and foremost is the fact that, especially with the emergence of LLMs, UPL rules are routinely broken and are impossible to enforce with consistency, thus providing bar associations with significant discriminatory powers. Second, the externalities of UPL rules run counter to the intended aims. UPL rules harm legal consumers and prevent solutions to durative access-to-justice problems. In the remainder of this Part, we unpack these two points.

A. *Enforcement Issues*

A century ago, lawyers functioned much like medieval priests: they held information to which the public lacked access. For the most part, individuals with legal questions had to bring those questions to lawyers, as no one else knew the answers. Today, with the democratization of information, legal knowledge is not possessed by a select few; in stark contrast, it is widely available on the Internet.¹⁹⁵ Other information-centric professions have already felt the impact from the

¹⁹⁵ Linna, *supra* note 28, at 399.

democratization of information. For example, over the eight-year period that ran from 2006 to 2014, revenues in traditional journalism fell by about a third, and employment decreased by about 17,000 people; the market value of newspapers plummeted.¹⁹⁶ Spurred by information democratization, legal-technology companies have sprouted and proliferated, in spite of the fact that UPL laws force them to operate in legal gray areas.¹⁹⁷ In 2009, only 15 legal startups were listed on the startup-related website, AngelList.¹⁹⁸ By April 2014, there were more than 400 legal startups listed.¹⁹⁹ By January 2015, the number had grown to more than 720 startups.²⁰⁰ As of November 2015, there were 976 entities listed under the “legal startups” category²⁰¹ and 210 entities listed under the “legal tech startups” category.²⁰²

Likewise, demand for nonlawyer provision of legal services is high and has been high for many years. In a 1974 ABA survey, 82% of respondents (all drawn from the general legal-services-using public) agreed with the following statement: “many things that lawyers handle—for example, tax matters or estate planning—can be done as well and less expensively by nonlawyers like tax accountants, trust officers of banks and insurance agents.”²⁰³ Nearly five decades later, attitudes remained the same. A study of over 2,000 adults aged 18-54 found that 76% of respondents “were willing to use online legal

¹⁹⁶ See McGinnis & Pearce, *supra* note 27.

¹⁹⁷ Linna, *supra* note 28, at 389.

¹⁹⁸ Nicole Bradick, Potomac Law Grp., *All Rise: The Era of Legal Startups Is Now in Session*, VENTURE BEAT (Apr. 13, 2014), <https://venturebeat.com/entrepreneur/all-rise-the-era-of-legal-startups-is-now-in-session> [<https://perma.cc/3SH9-A4NA>].

¹⁹⁹ *Id.*

²⁰⁰ Susan C. Liebel, *Are You Working with the New Consumer-Facing Legal Startups?*, SOLO PRAC. UNIV. (Jan. 26, 2015), <https://solopracticeuniversity.com/2015/01/26/are-you-working-with-the-new-consumer-facing-legal-startups> [<https://perma.cc/9LHK-MZ2S>].

²⁰¹ Linna, *supra* note 28, at 389.

²⁰² *Id.*

²⁰³ BARBARA CURRAN & FRANCIS SPAULDING, *THE LEGAL NEEDS OF THE PUBLIC* 231 (1977).

services for legal issues if it would save them money.”²⁰⁴ These lay attitudes are also echoed by specialists, such as in-house counsel and corporate legal departments, which are demanding lower prices, greater transparency, and higher-quality legal services—even if that means straying from traditional legal services business models.²⁰⁵

So information has been democratized, the moat around legal work has dried up, and technology tools that provide legal services are widely available and in high-demand, but rules still exist to prevent the use of such tools. A parallel situation is evident in education. With the emergence of ChatGPT, schools and universities have been deciding on the equivalent of UPL rules: whether to ban the technology in educational settings.²⁰⁶ Some educators have argued against bans, even asserting that students should be obligated to use the technology, as it can serve as a useful collaborator that pushes students to perform better.²⁰⁷ Professor Mollick said of his students, “I expect them to write more and expect them to write better. This is a force multiplier for writing. I expect them to use it.”²⁰⁸ While some are taking the opposite tack, banning ChatGPT. An education expert believes such moves are fools’ errands: “[t]he first reason not to ban ChatGPT in schools is that, to be blunt, it’s not going to work.”²⁰⁹ Administrators in colleges and universities across the country have echoed this sentiment.²¹⁰

²⁰⁴ Shipman, *supra* note 152, at 940.

²⁰⁵ Linna, *supra* note 28, at 393.

²⁰⁶ Kevin Roose, *Don’t Ban ChatGPT in Schools. Teach With It*, N.Y. TIMES (Jan. 12, 2023), <https://www.nytimes.com/2023/01/12/technology/chatgpt-schools-teachers.html> [<https://perma.cc/V3L2-LSUH>].

²⁰⁷ Douglas Belkin, *Professors Turn to ChatGPT to Teach Students a Lesson*, WALL ST. J. (Jan. 25, 2023), <https://www.wsj.com/articles/professors-turn-to-chatgpt-to-teach-students-a-lesson-11674657460> [<https://perma.cc/DW98-RMXK>].

²⁰⁸ *Id.*

²⁰⁹ Roose, *supra* note 206.

²¹⁰ Katherin Schulten, *Lesson Plan: Teaching and Learning in the Era of ChatGPT*, N.Y. TIMES (Jan. 24, 2023), <https://www.nytimes.com/2023/01/24/learning/lesson-plans/lesson-plan-teaching-and-learning-in-the-era-of-chatgpt.html> [<https://perma.cc/668H-FJJR>].

The technology is helpful and in-demand, so students will use it regardless of the rules. Case in point: during the second week of January 2023, a sampling of papers from all grade levels from around the world revealed that 10% of students had used ChatGPT.²¹¹ A recent survey of 1,000 students aged 18 or older found that roughly 50% had used ChatGPT to complete an at-home test or quiz or to write an essay.²¹² In early 2023, a professor of philosophy at a U.S. college was grading papers when he came across one that was “the best paper in the class.”²¹³ A quick discussion with the student led to a confession—ChatGPT had written the paper.²¹⁴

The use of this technology in legal practice is similarly inevitable. Even before the emergence of artificial legal intelligence, Professor Swank observed that “[d]espite the rules prohibiting the unauthorized practice of law, it is rampant in the United States.”²¹⁵ Today, with the existence of LLMs, it is safe to assume that UPL infractions are rampant, both by lawyers who are using these tools without providing adequate oversight and by nonlawyers who are doing work traditionally performed by lawyers. Rampant infractions are not in and of themselves a concern; they simply indicate that the UPL restrictions are overbroad, unenforceable, or both. What is a concern, however, is that rampant infractions create room for inequitable enforcement by bar associations. If a vast swath of legal and law-adjacent individuals can be hit with UPL suits, then nearly everyone is operating at the whim of bar association leadership.

Earlier in this Section, we described the rapid proliferation of legal-technology startups. Notice that these startups were proliferating at the same time LegalZoom was tied up in litigation with bar associations in multiple states. Some of these startups undoubtedly offered services similar to LegalZoom’s.

²¹¹ Belkin, *supra* note 207.

²¹² *Id.*

²¹³ Huang, *supra* note 8.

²¹⁴ *Id.*

²¹⁵ Swank, *supra* note 55, at 225.

Many of them undoubtedly were engaging in what most bar associations would deem the unauthorized practice of law. But because there were so many startups, and because most of them were relatively small, only a few visible ones, like LegalZoom, were targeted for suit. Case in point: white shoe law firms, such as New York's Cravath, have had dedicated data-analytics groups for years.²¹⁶ These groups undoubtedly have engaged in UPL. Yet, as with E-Discovery tools that lack proper oversight, they operate with impunity.

If bar associations want to stipulate UPL rules, at the very least they need to clearly define what is and is not a violation, and they need be consistent in identifying and litigating violations. The past decades have evinced a complete unwillingness to do either, and consumers are paying the price, as we discuss in the succeeding Section.

B. A Frustrated (or Perhaps False) Aim

If the stated aim of UPL rules is to benefit legal consumers, it is alarming that the bulk of the evidence suggests that UPL rules accomplish the exact opposite.²¹⁷ This concern has formed the backdrop of the antitrust claims that have dogged bar associations and their UPL rules. A joint letter from the Department of Justice and the Federal Trade Commission concluded, "There is no evidence before the [ABA] of which we are aware that consumers are hurt by this competition [between lawyers and nonlawyers] and there is substantial evidence that they benefit from it."²¹⁸ Indeed, it has been

²¹⁶ See *Scott B. Reents*, CRAVATH, <https://www.cravath.com/sreents> [<https://perma.cc/4HZK-CVUG>] (noting that the head of the Data Analytics and E Discovery team "advises clients on defensible approaches to the preservation, collection, search and analysis of digital evidence").

²¹⁷ David Nahmias, *The Changemaker Lawyer: Innovating the Legal Profession for Social Change*, 106 CALIF. L. REV. 1335, 1370 n.140 (2018).

²¹⁸ U.S. DEP'T OF JUST. & FED. TRADE COMM'N, COMMENT LETTER ON AMERICAN BAR ASSOCIATION'S PROPOSED MODEL DEFINITION OF THE PRACTICE OF LAW 3 (Dec. 20, 2002), <https://www.justice.gov/sites/default/files/atr/legacy/2008/03/26/200604.pdf> [<https://perma.cc/93ZJ-M2T7>] [hereinafter Justice/FTC Letter].

convincingly argued that, if UPL rules are eliminated, legal costs will go down.²¹⁹ Even 20 years ago, scholars recognized that UPL rules had created a gap in justice. Individuals most in need of legal services, especially those with low incomes, were unable to access them because of the monopoly prices.²²⁰

In 2015, ABA President William Hubbard estimated that 80% of the U.S. population lacked adequate access to legal services.²²¹ In 2013, the Legal Services Corporation (“LSC”) estimated that low-income Americans had 1.7 million legal issues, and, for more than half of these issues, the cost of legal services would prohibit them from receiving requisite legal guidance.²²² “Lacking effective representation, poor persons often see the law not as a protector, but as an enemy which evicts them from their flat, victimizes them as consumers, cancels their welfare payments, binds them to usury, and seizes their children.”²²³ This access-to-justice problem also affects businesses. Each year, more than 7 million small businesses fail to seek out a lawyer when dealing with a significant legal event, primarily because of cost concerns.²²⁴ In sum, the most salient negative externality of UPL statutes is that they unfairly and overwhelmingly impact underprivileged individuals.²²⁵

When UPL restrictions are lifted, the benefits to consumers are immediately apparent. For example, Professor Linna of

²¹⁹ Julian Moradian, *A New Era of Legal Services: The Elimination of Unauthorized Practice of Law Rules to Accompany the Growth of Legal Software*, 12 WM. & MARY BUS. L. REV. 247, 267-69 (2020).

²²⁰ See Cynthia L. Fountaine, *When Is a Computer a Lawyer?: Interactive Legal Software, Unauthorized Practice of Law, and the First Amendment*, 71 U. CIN. L. REV. 147, 147 (2002).

²²¹ Meg Graham, *How the ABA Is Using Technology to Make Legal Services More Accessible*, CHI. TRIB. (Mar. 16, 2015), <http://www.chicagotribune.com/bluesky/originals/chi-william-hubbard-aba-bsi-20150313-story.html> [<https://perma.cc/D54L-PQZ5>].

²²² LEGAL SERVS. CORP., *supra* note 15.

²²³ William H. Brown, Comment, *Legal Software and the Unauthorized Practice of Law: Protection or Protectionism*, 36 CAL. W. L. REV. 157, 170 (1999).

²²⁴ Linna, *supra* note 28, at 393.

²²⁵ Denckla, *supra* note 37, at 2581.

Northwestern Law is experimenting with a chatbot called “Rentervention,” which uses LLMs including ChatGPT, to come up with better responses and draft more detailed letters for tenants facing legal problems.²²⁶ Similarly, Utah and a few other states, like Arizona, have permitted limited experimentation with technological and nonlawyer provision of legal services. The results have been a boon to legal consumers.²²⁷

The general process by which automation improves legal services and benefits consumers is well-established.²²⁸ Human-driven legal work is bespoke in the sense that it is handcrafted and individualized. Such work might be high-quality; it also undoubtedly is sometimes low-quality. As a step towards automation, lawyers—but more truly, firms—might begin to standardize legal work. Checklists and templates, built from past experience, create less of a need for bespoke, time-intensive work. Next, that which is standardized becomes systematized: expert systems are built, document drafting is automated, and so on. Technology has replaced the human component. At some point, this standardized and systematized technology is packaged so that it can be bought and used by others. It becomes a commodity, a high-quality standardized service that is made available at a reasonable price. At this point, there is no reason for clients to pay more than a standard rate. Rather than a bespoke, lawyer-driven legal service, what

²²⁶ *Law Center for Better Housing Honors Professors Laurie Mikva and Daniel Linna*, NW. (Sept. 21, 2023), <https://news.law.northwestern.edu/law-center-for-better-housing-honors-professors-laurie-mikva-and-daniel-linna> [<https://perma.cc/GZL6-TVLH>]; *CS+Law Innovation Lab Teams Demo Client-Focused Technology Solutions*, NW. (April 27, 2023) (“ . . . utilized ChatGPT to train Rentervention to better recognize a user’s intent and thus provide the most relevant, detailed legal advice.”), <https://www.mccormick.northwestern.edu/computer-science/news-events/news/articles/2023/cs-plus-law-innovation-lab-teams-demo-client-focused-technology-solutions.html> [<https://perma.cc/8SVK-YGED>].

²²⁷ Gehrke, *supra* note 32. See David Engstrom et al., *Legal Innovation After Reform: Evidence from Regulatory Change*, STAN. L. SCH., DEBORAH L. RHODES CTR. ON. LEGAL PRO. (Sept. 2022).

²²⁸ RICHARD SUSSKIND, *TOMORROW’S LAWYERS* 23-28 (1st ed. 2013).

the client is purchasing after all is nothing more than a commoditized service.²²⁹

While this process is well-established, what perhaps goes unnoticed is that this final commoditized service may be—or even is likely to be—of the highest quality. For the types of legal services that can be commoditized, noise and bias in performance may be significantly reduced. Thinking about ChatGPT in particular, we know that as even better LLMs are developed,²³⁰ and as ones geared especially for legal work are created, it is only a matter of time until the best, cheapest, and most efficient attorney for some matters will be an AI. In these instances, UPL restrictions will be a grave injustice for consumers, especially those who are low income.

In the previous paragraph, we mentioned that noise and bias may be significantly reduced, and it is worth pausing on this claim. Bias in AI is a well-studied area,²³¹ and it certainly is possible that artificial legal intelligence will show bias in, say, case evaluations or text generation.²³² For example, in a law-adjacent space (policing), there has been some use of facial recognition tools, and researchers have found racial biases in these types of tools.²³³ But we must remember that bias is a

²²⁹ *Id.*

²³⁰ Huang, *supra* note 8 (“That’s especially true as generative A.I. is in its early days. OpenAI is expected to soon release another tool, GPT-4, which is better at generating text than previous versions. Google has built LaMDA, a rival chatbot, and Microsoft is discussing a \$10 billion investment in OpenAI. Silicon Valley start-ups, including Stability AI and Character.AI, are also working on generative A.I. tools.”).

²³¹ Sandra G. Mayson, *Bias In, Bias Out*, 128 YALE L. J. 2218 (2019).

²³² Tiffany Hsu & Stuart A. Thompson, *Disinformation Researchers Raise Alarms About A.I. Chatbots*, N.Y. TIMES (Feb. 8, 2023), <https://www.nytimes.com/2023/02/08/technology/ai-chatbots-disinformation.html> [<https://perma.cc/P549-82TN>].

²³³ Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, PROC. MACH. LEARN. RSCH. 79 (2018).

human problem,²³⁴ and one that has proven intractable.²³⁵ To continue with the facial recognition example, the AI architecture for these tools is modeled on human cognition: one of the more common computational learning systems—artificial neural networks (“neural nets”)—is designed to function somewhat like neurons in human brains. Not surprisingly, research on neural nets used in facial-recognition classifiers shows skin-type biases, echoing the well-documented “own-race bias” in humans. Just as one’s memory for faces of one’s own race is typically superior to one’s memory for faces of other races,²³⁶ AI facial recognition systems err in the direction of their exposure, i.e., training.²³⁷

So biases in AI are reflections of human biases present in training data or in development protocols. AI bias is human bias, which means that AI itself, if properly developed and deployed, could lessen biases in overall outcomes.²³⁸ A startling demonstration of this can be found in bail decisions. Professor Kleinberg and colleagues showed that their algorithm could improve upon judicial decision-making, such that it could reduce all categories of crime, including violent crimes, while simultaneously reducing racial disparities.²³⁹ A full discussion of AI bias is, however beyond the scope of this Article. For now, we close the topic by saying that AI, including artificial legal intelligence, appears to be a promising route by which greater fairness (greater than what humans provide) in legal

²³⁴ Frank W. Munger & Carroll Seron, *Race, Law, and Inequality: Fifty Years After the Civil Rights Era*, 13 ANN. REV. L. & SOC. SCI. 331, 333 (2017).

²³⁵ Elizabeth Levy Paluck & Donald P. Green, *Prejudice Reduction: What Works? A Review and Assessment of Research and Practice*, 60 ANN. REV. PSYCH. 339 (2009).

²³⁶ Christian A. Meissner & John C. Brigham, *Thirty Years of Investigating the Own-Race Bias in Memory for Faces: A Meta-Analytic Review*, 7 PSYCH., PUB. POL’Y & L. 3, 7 (2001).

²³⁷ Buolamwini & Gebru, *supra* note 233, at 77.

²³⁸ Joseph J. Avery & Joel Cooper, *Racial Bias in Post-Arrest and Pretrial Decision Making: The Problem and a Solution*, 29 CORNELL J. L. & PUB. POL’Y 257, 280-289 (2020).

²³⁹ Jon Kleinberg et al., *Human Decisions and Machine Predictions*, 133 Q. J. ECON. 237, 241, 275 (2018).

outcomes could be achieved, including by self-restraint of sorts: AI itself, if properly deployed, could lessen biases in overall outcomes by strategically placing constraints on the underlying algorithms.

IV. Where UPL Rules Once Were, Let There Be . . . UPL Rules?

Nearly ten years ago, Professors McGinnis and Pearce wrote in the *Fordham Law Review* that “the machines are coming, and bar regulation will not keep them out of the profession or do much to delay their arrival.”²⁴⁰ Said bar regulation will, however, empower bar association leadership with mechanisms for selective enforcement and unjust litigation. It also will prevent the resolution of longstanding access-to-justice problems, with disproportionate harm befalling low-income and indigent individuals. And it will continue to frustrate consumers—both individuals and businesses—who desire cheaper and better legal services. In light of these facts, maintaining the UPL status quo would not be responsible, and it is not tenable. UPL rules are causing—and will cause—too much harm. However, abandonment of UPL rules seems too extreme, with the prospect of unintended consequences too daunting. UPL rules are old fences; as lawyers and law professors who have long supported UPL rules, we acknowledge feeling a reluctance, perhaps psychological as much as intellectual, to tear them down entirely.

In the landmark Supreme Court case, *Sperry v. Florida*,²⁴¹ discussed *supra* in Section I.B, the Court addressed two issues in deciding whether to permit nonattorneys to practice law before a federal agency. The two issues that the Court addressed were (1) competency and (2) ethical misconduct.²⁴² If there was assurance that nonlawyers were, and would be, as competent and as ethical as lawyers, then the Court would

²⁴⁰ McGinnis & Pearce, *supra* note 27, at 3043.

²⁴¹ *Sperry v. Florida*, 373 U.S. 379, 404 (1963).

²⁴² *Id.*

permit them to practice when authorized by federal law. If we duplicate the Court's analysis and apply it to the whole U.S. legal system, we have a relatively straightforward question: if UPL rules are dismantled, how can we be sure that the individuals providing legal services meet baseline competency and ethics requirements? In this Part, we make a recommendation that, although novel, is workable from a policy perspective, comes with scant downsides, and furthers the twinned UPL aims better than traditional UPL enforcement.

Before we proffer our recommendation, it is worth mentioning the current alternatives to the dominant UPL regime. As discussed above, some states, most notably Utah,²⁴³ have instituted a "legal services sandbox." This is essentially a free pass from UPL claims for companies experimenting with using technology to overcome barriers to justice.²⁴⁴ But Utah's approach is experiment, not reform. It allowed a limited number of companies to enter the legal space, but these companies were carefully vetted and approved by Utah's Office of Legal Services Innovation. Moreover, since February 2023, the Utah Supreme Court has ordered the Office to temporarily stop accepting new applications due to excessive demand.²⁴⁵ So our recommendation stands at the beachhead of this important work.

Our recommendation is as follows. First, rather than controlling provision of legal services, bar associations should primarily control lawyer designations (that is, which individuals can call themselves lawyers). This would leave the

²⁴³ Or, more precisely, only Utah, as other states have experimented with changes to Model Rule 5.4, but these have mainly dealt with nonlawyer ownership of law firms, rather than UPL. Daniel J. Siegel, *Playing in the Regulatory Sandbox: A Survey of Developments*, AM. BAR ASS'N (Oct. 26, 2021),

https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2021/october-2021/playing-regulatory-sandbox-survey-developments [https://perma.cc/6TTD-BXV3].

²⁴⁴ See sources cited *supra* note 32.

²⁴⁵ Utah Innovation Off., *supra* note 32.

current institutional framework largely untouched. Law schools, bar examinations, and UPL rules would continue to serve their essential purpose of identifying individuals who have met baseline educational, competency, and ethicality requirements for the practice of law—that is, lawyers or attorneys. At the same time, nonlawyers would be free to provide legal services, which have never been sufficiently delineated anyhow.²⁴⁶ However, nonlawyers would not be allowed to explicitly or implicitly hold themselves out as “lawyers” or “attorneys.” In turn, consumers would be able to avail themselves of nonlawyer providers of legal services. Although we acknowledge the risks inherent to relying upon an individual or entity who has not received bar endorsement, these “risks” may be less than initially believed, since (i) there is no guarantee that lawyers will perform adequately; (ii) both lawyers and nonlawyers who provide negligent legal services will be exposed to liability via the tort system; and (iii) nonlawyers, especially legal technology solutions, will often surpass the performance (in efficacy, efficiency, and cost) of lawyers with respect to specific commoditized legal services.²⁴⁷ In addition, the benefits of this reconceptualization of UPL rules are various and significant, especially for low-income individuals. We discuss these in the next Section.

The qualifier stated in the first prong above—bar associations should *primarily* control lawyer designations—leads us to our second prong: UPL rules should continue to forbid nonlawyers from providing *some* legal services. Here, we are referring to a clearly defined subset of legal services—representation in legal proceedings. This prong solves the vagueness and overbreadth problem that has long enabled bar associations to selectively prosecute UPL claims. Moreover, this prong limits the possibility of disruptive unintended consequences, as courts will continue to function much as they

²⁴⁶ *People ex rel. Ill. State Bar Ass’n v. Schafer*, 404 Ill. 45, 50 (1949).

²⁴⁷ *See supra* Part II and Section III.B. *See also* McGinnis & Pearce, *supra* note 27, at 3064-66.

have to date. Only lawyers will be able to provide legal representation.

We draw the line at representations in legal proceedings for a number of reasons. One, the line between these two classes of legal services has significant historical precedent. In the United Kingdom, as in the United States, “the bar” has come to refer to a symbolic barrier that separates the public from the court.²⁴⁸ Only those who are admitted to a court may traverse the bar. Historically, in the United Kingdom, such persons were called “barristers.”²⁴⁹ They specialized in representing clients in court. In the 17th, 18th, and 19th centuries, barristers were distinct from “solicitors” in this important respect.²⁵⁰ Solicitors provided legal services, including provision of legal advice. But should a matter require representation in court, a solicitor would need to enlist a barrister on behalf of the client.²⁵¹ At present in the United States, a similar distinction exists around *pro se* representation. If legal proceedings are implicated, such that an individual seeks to appear before a court (or is called to appear before a court), the individual has but two options: she can hire a licensed lawyer, or she can represent herself.²⁵² This latter option—representing herself—is called *pro se* representation.²⁵³ In our recasting of UPL rules, this practice remains undisturbed. A nonlawyer may not represent an individual in a legal proceeding. For such legal work, either a lawyer must be hired, or the individual must proceed *pro se*. Importantly, the first prong of our recommendation makes *pro se* representation more feasible. A *pro se* litigant could leverage the full gamut of nonlawyer legal

²⁴⁸ *Bar*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/bar> [<https://perma.cc/TTN9-27MS>].

²⁴⁹ DAVID LEMMINGS, GENTLEMEN AND BARRISTERS: THE INNS OF COURT AND THE ENGLISH BAR 1680-1730, at 110-143 (1990).

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37, 41 (2010).

²⁵³ *Pro se*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/pro_se [<https://perma.cc/E7AV-UX9H>].

advice, technological or otherwise, in prepping for court. Even more importantly, this is an appropriate place to draw the line because the definition of representation in legal proceedings is clear, well-defined, and hard to dispute—a stark contrast from the murky uncertainty of “legal practice.”²⁵⁴

Two, representation in legal proceedings includes significant interpersonal dynamics.²⁵⁵ Representatives must build rapport with jurors, cross-examine witnesses, and craft compelling narratives that are sensitive to judges’ waxing and waning emotional engagement. These interactions require a level of human connection, trust, and persuasion that AI is unlikely to effectively replicate in the immediate future. Moreover, there is a physical aspect to legal proceedings, and the influence of a nonhuman actor (either positively or negatively) on such an environment has not yet been fully worked out.

Third, in a courtroom proceeding, it is more likely that a person’s liberty and even life are at stake. Such decisions have heightened moral salience, and AI moral decision-making raises complex and nuanced human responses.²⁵⁶

In Part II, *supra*, we outlined taxonomies that illustrate different levels of automation. Our proposal limits AI from representing parties in legal proceedings. Applying this proposal to the taxonomies can help make the proposal more concrete. For the taxonomy of the forms of human-AI conjoined effort (that is, the spectrum of automation), there would be no restrictions on AI taking the lead in assisting, arresting, or augmenting tasks. The only limitation would be for automating tasks and, even here, the limitation would not be absolute. For instance, for non-court-based legal

²⁵⁴ By legal proceedings, we refer to those instances in which an individual physically appears before a court.

²⁵⁵ Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225, 1228-29 (2004).

²⁵⁶ Yochanan E. Bigman & Kurt Gray, *People Are Averse to Machines Making Moral Decisions*, 181 COGNITION 21, 31-32 (2018).

representations, AI would be permitted to provide legal services. If we consider the second taxonomy (that is, the types of legal automation), it makes this clearer still. Discovery, legal search, document generation, brief and memoranda generation, and prediction of case outcomes—all fall within the new remit of AI. What does not fall within AI's remit, however, is the presentation of such work product at in-court proceedings. For the reasons mentioned above, this importantly remains in human hands.

All that said, we view the present Article as a launching point for greater discussion regarding what this reconceptualization will produce. We also acknowledge that there are numerous questions that we have only partially answered. We nonetheless hope that the answers we offer can aid the thinking of lawyers, policymakers, and scholars as they plan for this inevitable development.²⁵⁷

A. *The Recommendation Unpacked*

This recommendation resolves the decades-long debate regarding UPL, a debate that rightly has intensified with the rise of AI. We believe adoption of the recommendation is both necessary and inevitable. We begin our overview of the recommendation by showing how the Model Rules ought to be redrafted in light of it.

First, Rule 5.3,²⁵⁸ which governs the obligations of a lawyer who has retained or employed a nonlawyer, should be left largely unchanged. When relying upon nonlawyer work product to provide services to a client, a lawyer should have an obligation to ensure that the work product is on par with that which she herself would provide. That general principle should remain.²⁵⁹ The primary change needed concerns diction. Rule

²⁵⁷ Engstrom & Gelbach, *supra* note 4, at 1099.

²⁵⁸ MODEL RULES OF PRO. CONDUCT r. 5.3 (2019).

²⁵⁹ Rule 5.3 should protect lawyers whose clients have engaged or used nonlawyer legal services that are not under the lawyers' supervision or control. For example, an individual civil plaintiff may think that certain

5.3 repeatedly refers to the nonlawyer as a “person,” which should be changed to “person or entity” to include AI and legal technology companies that might be serving as the nonlawyer.²⁶⁰

Rule 5.3 should be able to protect lawyers whose clients have engaged or used nonlawyer legal services that are not under the lawyers’ supervision or control. For example, an individual civil plaintiff may think that certain legal tasks can be more efficiently and economically handled by an AI. Clients should have the ability to make these decisions and rely upon these technologies, but lawyers who took no part in selecting, employing, monitoring, and vetting such output should not be held liable should the AI’s services fall below the standard of care.

Second, and most importantly, we turn to Rule 5.5, which was drafted with the understanding that anyone providing legal services is acting as a lawyer. Thus, there are statements like this: “A lawyer who is not admitted to practice in this jurisdiction shall not . . . hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.”²⁶¹ The understanding should be that a lawyer in a specific jurisdiction is someone who has completed all of the licensing requirements for being a lawyer in that jurisdiction. Only such persons may hold themselves out to be lawyers. However, any person or entity that wants to provide legal services—so long as they are not representing clients in legal

legal tasks can be more efficiently and economically handled by an AI. Clients should have the ability to make these decisions and rely upon these technologies, but lawyers that took no part in selecting, monitoring, and vetting such output should not be held liable should if AI’s services fall below the standard of care.

²⁶⁰ As additional guidance for modifying Rule 5.3, we recommend full consideration of Katherine Medianik’s 2018 article, in which she adds new terms and comments to Model Rule 5.3, as well as Rules 1.1 and 2.1. See Katherine Medianik, *Artificially Intelligent Lawyers: Updating the Model Rules of Professional Conduct in Accordance with the New Technological Era*, 39 *CARDOZO L. REV.* 1497, 1531 (2018).

²⁶¹ MODEL RULES OF PRO. CONDUCT r. 5.5(b)(2) (2019).

proceedings—may do so to the extent they are not holding themselves out as lawyers. Said again, providing legal services does not redesignate providers as lawyers. Thus, such providers are not subject to UPL suits, so long as they do not claim to be lawyers or represent clients in legal proceedings. With this understanding in place, Rule 5.5 can be largely left unaltered, as it now will apply only to those individuals who are claiming to be lawyers.²⁶²

A parallel that may help to illustrate this distinction can be found in healthcare. Most women in the United States who become pregnant enlist a medical doctor to help with the pregnancy and delivery. This doctor is nearly always an obstetrician or gynecologist (“OB/GYN”), physicians who are specially trained and licensed to care for women during pregnancy and childbirth and to diagnose and treat diseases of the female reproductive organs.²⁶³ However, it is fully within the rights of a pregnant woman to forgo the services of an OB/GYN and enlist, say, a doula. A doula is a person who provides guidance and support for a client who is undergoing a significant health-related experience, such as childbirth. In the United States, there is no law requiring that doulas be licensed or certified.²⁶⁴ Yet many pregnant women enlist doulas to perform virtually the same services that OB/GYNs provide. While these women cannot have doulas assist them in delivering their babies in a traditional hospital, they can have the doula assist with at home deliveries or in alternative birthing sites. Similarly, pregnant women can choose to have a doula provide prenatal care and support during a delivery. But these women will have to receive the services of licensed

²⁶² This may also be clarified in a comment to the model rule.

²⁶³ GARY F. CUNNINGHAM, ET AL., *WILLIAMS OBSTETRICS 2-13* (McGraw-Hill Medical 25th ed. 2018).

²⁶⁴ Amy Chen & Kate Rohde, *Doula Medicaid Training and Certification Requirements: Summary of Current State Approaches and Recommendations for Improvement*, NAT'L HEALTH L. PROGRAM (Mar. 16, 2023), <https://healthlaw.org/doula-medicaid-training-and-certification-requirements-summary-of-current-state-approaches-and-recommendations-for-improvement> [<https://perma.cc/5674-EAYM>].

medical providers with privileges should they choose hospital care.²⁶⁵

We propose that nonlawyers, including AI, be allowed to function likewise with respect to providing legal services.²⁶⁶ These nonlawyers can assist consumers by providing legal services the same way that any consumer of such services is authorized to act on his own behalf. They cannot, however, hold themselves out as lawyers or assume the role of a lawyer in legal proceedings before a court.

The benefits of this approach are manifold. First, it will enable bar associations to skirt the free speech and antitrust claims that are steadily mounting. “Lawyer” will take on a special meaning—indicating that one is duly licensed in the jurisdiction in which one claims to be a lawyer—and thus UPL restrictions on free speech will become trivial. If one is not a lawyer, one cannot claim to be a lawyer, as this is an instance of misrepresentation and not protected speech. Moreover, the core free-speech claims—that providing legal advice is speech, and bar associations cannot regulate who can speak in such ways—is rendered moot, since any person and any entity can provide legal advice.

The antitrust claims also would lose strength since bar associations will no longer have a monopoly on the provision of legal services. Even more importantly, the dismantling of the monopoly will serve consumers, who have long demanded

²⁶⁵ *Are Doulas Allowed In Hospitals?* INT’L DOULA INST. (Dec. 5, 2020) <https://internationaldoulainstitute.com/2020/12/are-doulas-allowed-in-hospitals> [<https://perma.cc/7SPF-BY54>].

²⁶⁶ We must also mention the limitations of the doula analogy. Doulas do not have admitting privileges at hospitals, just as AI would not be allowed to represent a client in court in our proposal. But there may be some other particularly complex legal services besides courtroom representation where a human lawyer would still be preferable to an AI (for example, in a negotiation over a contract/deal); the use of an AI tool in those contexts may be to the detriment of the consumer. But we leave this to customer choice, preference, and the tort mechanisms mentioned *infra*.

nonlawyer provision of legal services.²⁶⁷ Legal-technology companies will be able to focus on the areas that are most in demand, rather than relegating themselves to those areas that can survive current UPL scrutiny. They also will be freed from the uncertainty that emanates from current UPL rules, considering how bar associations are able to selectively target entities for UPL violations. This would create a legal-services marketplace that better reflects the conclusion, mentioned *supra*, reached by the Department of Justice and the Federal Trade Commission that “[t]here is no evidence before the [ABA] of which we are aware that consumers are hurt by this competition [between lawyers and nonlawyers] and there is substantial evidence that they benefit from it.”²⁶⁸ Legal-technology companies will surely seek to reap the financial rewards available to anyone who can address the United States’s access-to-justice issues and meet the millions of legal needs that go unmet each year.

Finally, this shift in UPL rules will represent a step towards greater “private ordering,” the practice wherein parties are empowered to make their own law by private agreement,²⁶⁹ and general problem-solving. So long as the UPL-based monopoly on the provision of legal services is in effect, individuals will shy away from using, outside of formal legal representation, the rules, procedures, and tools of the profession for resolving matters. With the expansion of AI-driven legal-service providers, people may come to emphasize results and resolution, not place and credentialing, a shift that would echo the recent emphasis on problem-solving courts.²⁷⁰

B. Consideration One: The Importance of Torts

When a fully licensed and barred attorney provides incompetent legal services, the recourse available to the

²⁶⁷ See *supra* Section III.B.

²⁶⁸ Justice/FTC Letter, *supra* note 218.

²⁶⁹ Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 951 (1979).

²⁷⁰ See, e.g., Jessica K. Steinberg, *A Theory of Civil Problem-Solving Courts*, 93 N.Y.U. L. REV. 1579 (2018).

harmed client is generally limited. Bar associations might investigate and discipline the attorney, but that largely works to sanction the attorney and prevent others (potential future clients) from being harmed.²⁷¹ And bar censure does not necessarily accomplish even that. How many clients review an attorney's bar notices before hiring the attorney? Moreover, a harmed client can only recover damages through a legal malpractice case, which she can, of course, pursue even in the absence of UPL rules. However, attorneys are infamously reluctant to take on such matters since they involve suing colleagues. So the only remaining justification for UPL rules on competency grounds is at the gatekeeping stage: law school and bar exam requirements. In other words, UPL rules mandate baseline education and certification for those seeking to practice law. Nevermind that commentators, including Barack Obama, have made strong arguments that law school is at least partly (i.e., one third) superfluous²⁷² and that bar exams might be both unnecessary and partially responsible for the death of diversity in the legal profession given racial differences in passage rates.²⁷³ The question is whether baseline competency can be achieved without these requirements.

As others have argued, the tort system is fully equipped to achieve this end in the absence of UPL rules.²⁷⁴ While legal malpractice claims exist to compensate individuals for injuries

²⁷¹ In most cases, with the exception of Client Protection Funds, clients do not receive compensation when the bar pursues an attorney for ethics violations (i.e., there are no damages).

²⁷² Robert Steinbuch, *Many Persuasive Arguments in "Failing Law Schools"*, NAT'L L.J., Aug. 13, 2012, at 20-21, 173 (calling upon the ABA to reduce the minimum hours of instruction required for the J.D. by a third); Peter Lattman, *What Students Are Saying About ChatGPT*, N.Y. TIMES (Aug. 23, 2013), <https://archive.nytimes.com/dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three> [https://perma.cc/9X6X-BN58].

²⁷³ See generally Scott Devito, Kelsey Hample & Erin Lain, *Examining the Bar Exam: An Empirical Analysis of Racial Bias in the Uniform Bar Examination*, 55 U. MICH. J.L. REFORM 597 (2022).

²⁷⁴ Rotenberg, *supra* note 154, at 736.

sustained from a licensed lawyer's negligence,²⁷⁵ consumers of alternative legal services can find similar recourse in tort law. Nonlawyer providers of legal services will not escape liability simply because the fiduciary attorney-client relationship required under the legal malpractice tort is absent. Injured consumers will have a private right of action such that the negligence claim will look to the definition of the service provided and determine whether that service fell below the standard of care. It might take some time for the common law to establish the standard of care owed by nonlawyer legal service providers, particularly in instances in which partial services are provided (e.g., a nonlawyer provides legal research and gives legal advice but neither drafts nor files the final legal document), but legal malpractice jurisprudence will provide guidance.²⁷⁶

Moreover, these claims will be less tentatively prosecuted. At present, legal malpractice claims are beset with stigma, as they involve a licensed attorney suing a colleague: another licensed attorney. As per our recommendation, consumers of legal services would have a private right of action against any party that provides legal services, rather than specifically against licensed attorneys.²⁷⁷ Importantly, if anyone, including AI, can provide legal services, then the stigma around claims

²⁷⁵ *Legal Malpractice*, JUSTIA, <https://www.justia.com/injury/legal-malpractice> [<https://perma.cc/7LFX-YM4Z>].

²⁷⁶ For example: Just as lawyers owe a duty of care to their clients, nonlawyer legal service providers might also be held to a duty of care consistent with the specific service they are providing. This could be established by the reasonable expectations of the client, by industry standards, or by some similar other metric. Or consider causation: As in legal malpractice suits, wherein a client must prove that the attorney's negligence caused their harm, a consumer might need to prove that the nonlawyer legal services provider's error directly resulted in their harm. As the legal landscape evolves to accommodate nonlawyer legal service providers, core principles from legal malpractice like these can serve as foundational benchmarks to protect consumers.

²⁷⁷ Rotenberg, *supra* note 154, at 736.

for negligent provision of these services will be diminished and such claims may be more expansively pursued.²⁷⁸

In addition, nonlawyer legal-service providers would be held to the same public-policy restrictions as lawyers with respect to waivers. If a lawyer could not enforce a negligence waiver, a mandatory arbitration clause, or like ilk, then a nonlawyer could not enforce them either.

In total, this tort-based right would create a competency incentive that likely would be more effective than the two (law school graduation and bar examination) competency bars currently in place. For example, if a company like DoNotPay wants to provide legal services,²⁷⁹ then its AI must be competent enough to withstand claims of negligent provision. The attendant analysis would be rather simple: What service did DoNotPay claim it could provide? What service did the client reasonably enlist DoNotPay to perform? Did DoNotPay's provision of that service fall below the standard of care? Companies and individuals would thus be incentivized to make sure that the legal services they provide are efficacious.

Injured consumers also could bring deceptive practices and false advertising suits. The basis for such claims is well-established in state and federal law.²⁸⁰ If new players in the legal-services market make misleading, deceptive, unfair, or inaccurate claims regarding the services they provide, then false advertising and unfair deceptive trade-practices suits would be appropriate.²⁸¹ Litigation here would be at the edges:

²⁷⁸ However, costs may pose a problem. Legal malpractice claims typically require a costly expert witness (i.e., a legal expert) to establish the relevant standard of care. As in other areas of the law in which poor individuals are disadvantaged, work will have to be done to ensure that such suits do not become inaccessible ex post remedies.

²⁷⁹ Allyn, *supra* note 11.

²⁸⁰ See *In re* Petition of Felmeister & Isaacs, 518 A.2d 188, 188-89 (N.J. 1986); *Carter v. Lovett & Linder*, 425 A.2d 1244, 1246 (R.I. 1981).

²⁸¹ *False Advertising*, JUSTIA, <https://www.justia.com/consumer/deceptive-practices-and-fraud/false-advertising> [<https://perma.cc/439B-HMXZ>]. See also Rotenberg, *supra* note 154, at 736.

Is a nonlawyer creating the impression that she is a licensed attorney when she is not? If so, then UPL litigation should be initiated.

Increased reliance on torts would require courts to think deeply about the standard of care required in providing legal services—about what negligence in the sphere of legal practice looks like. Behavior and performance would become central. For instance, imagine that a consumer relies upon an LLM for legal advice, and the AI hallucinates incorrect information.²⁸² If that false advice causes harm to the consumer, should the developer of the AI be held liable? What if the developer didn't hold itself out as providing legal services? What if it couldn't have reasonably anticipated that someone might use its AI for legal services? Relatedly, consider the examples of LLMs providing legal services that were mentioned *supra* in the Introduction. LLMs may be used like “Dr. Google,” such that clients will conduct their own research prior to, during, and after meeting with a licensed attorney; they may be used as a means for lawyers to outsource legal work to AI; and they may operate in isolation, as full replacements for lawyers. Negligence would be quite different across these use cases. As things currently stand, legal malpractice is a relatively weak tool that regulates what will become a diminishing percentage of providers of legal services. A move towards the torts system would ensure greater focus on what matters: the quality of the legal services provided to consumers.

²⁸² Lance Eliot, *What You Need To Know About GPT-4 The Just Released Successor To Generative AI ChatGPT, Plus AI Ethics And AI Law Considerations*, FORBES (Mar. 15, 2023), <https://www.forbes.com/sites/lanceeliot/2023/03/15/what-you-need-to-know-about-gpt-4-the-just-released-successor-to-generative-ai-chatgpt-plus-ai-ethics-and-ai-law-considerations> [https://perma.cc/Y7K7-QPKV] (discussing how AI may hallucinate false but plausible answers to questions).

C. *Additional Considerations: Updating Civil Procedure and Federalizing Legal Ethics*

Regardless of the future of UPL, legal technology is necessitating significant changes in civil procedure.²⁸³ Across three case studies, Professors Engstrom and Gelbach showed that E-Discovery, outcome prediction, and advanced legal analytics tools are making specific civil procedure rules, such as *Twombly/Iqbal*'s pleading standard, adapt. The result is that legal technology will soon remake the adversarial system by altering several of the system's procedural cornerstones.²⁸⁴ This reform, which the authors posit as necessary, both overlaps with the reforms that our recommendation will necessitate and reveals the hurdles that lie ahead. With AI tools and other nonlawyers providing legal services, civil procedure will have to adjust.

In addition, there may be a need for at least some code of legal ethics that applies to providers of legal services—lawyers and nonlawyers alike. This assertion is mostly just a proposal for discussion, since we have already detailed the significant problems with defining legal services. And without adequate definition, determining implicated parties becomes nearly impossible. That said, consider how licensed lawyers are at least ostensibly bound by the attorney-client duty. This includes such facets as confidentiality, although commentators have been chipping away at such duties for some time.²⁸⁵ Regardless, on account of the sensitive nature of legal services, perhaps there should be elevated standards of allegiance from provider to client. So, there is a case for imposing a general professional duty on providers of legal services. And the attorney-client duty is not the only professional duty that might warrant memorialization. For duties like this, we believe a case

²⁸³ Engstrom & Gelbach, *supra* note 4, at 1099.

²⁸⁴ *Id.* at 1001-07.

²⁸⁵ See generally William H. Simon, *Attorney-Client Confidentiality: A Critical Analysis*, 30 GEO. J. LEGAL ETHICS 447 (2017).

can be made for a limited federalization of legal ethics.²⁸⁶ A federal code of ethics for legal providers, as opposed to state-level codes, would create the consistency needed when legal service providers are technology-driven, since their tools will operate across state lines.

These are but two additional considerations. As mentioned above, there will be many more that emerge. For example, one problem is that nonlawyers who provide legal services will be less likely to carry malpractice insurance. This issue is well-discussed in the medical field, as some states like Florida do not require all physicians to carry malpractice insurance.²⁸⁷ Exempt physicians must, however, notify their patients in writing that they do not carry insurance.²⁸⁸ Something similar may be needed for providers of legal services. As another example, consider our prior discussion of notarios, individuals who exploit a lexical ambiguity to falsely imply that they are licensed attorneys.²⁸⁹ With nonlawyers permitted to provide legal services, will there be an increase in similar ploys, even though our recommendation maintains bar-association control over the lawyer/attorney designation? Consider the economic effects as well: with nonlawyers providing legal services, will there be such a precipitous drop in legal fees that talented individuals leave the legal field altogether? And although our recommendation appears poised to resolve many access-to-justice issues and increase legal coverage for lower-income individuals, is it possible that our policy will disproportionately benefit individuals who are either well-educated or well-off? After all, it takes some technical proficiency, education, time, and resources to make use of even intuitively designed, low-cost AI products. This Article does not answer all of these questions, but it hopefully takes a step toward having these important conversations, paving the way for a more informed

²⁸⁶ See generally Fred C. Zacharias, *Federalizing Legal Ethics*, 73 TEX. L. REV. 335 (1994).

²⁸⁷ FLA. STAT. ANN. § 458.320(5)(f) (West 2023).

²⁸⁸ *Id.*

²⁸⁹ See *supra* Section I.C.

and nuanced understanding of the evolving intersection between generative AI and legal practice.

Conclusion

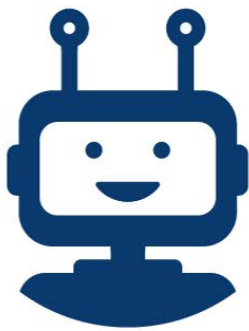
It is not easy to recast UPL rules. Such recasting comes with the prospect of unintended consequences, and unintended legal consequences are daunting because they may touch upon such essentialities as livelihood, liberty, family—everything that law involves. Moreover, any change to UPL rules is certain to be met with resistance, as judges, practicing attorneys, law professors, and law students all are committed to the notion of law as a profession that should have high barriers to entry. However, maintaining the UPL status quo is no longer tenable with the rise of LLMs and the indisputable evidence that “justice is not equal under the law, and that lawyers’ monopoly does not promote the public good.”²⁹⁰ Our recommendation, which recasts UPL rules while largely preserving the professional structure they create, is not a compromise. Quite the opposite, it is a novel solution. In permitting bar associations to remain the final arbiter of “lawyer” and “attorney” designations, and by allowing AI and other nonlawyers to provide any legal service besides representation in court proceedings, the stated aims of UPL rules will be best achieved. Baseline competency and ethicality will be denoted by lawyer/attorney monikers; competency will improve, as legal technology is already less noisy, less biased, and more adept at providing certain legal services; and the millions of legal needs that go unmet each year will start to be addressed. Moreover, the free-speech and antitrust challenges that are looming above current UPL rules will dissipate, and bar associations will be free to focus on fulfilling their already established UPL-related goals.

While law might be nonpareil in some respects, this sea change will not be so different from that being felt in other domains, such as education. As two commentators recently remarked about ChatGPT: “[E]ducators needn’t fear this

²⁹⁰ McGinnis & Pearce, *supra* note 27, at 3065.

change. Such technologies are transformative, but they threaten only the information-centric type of education that is failing to help students succeed. . . . AI may be a useful invention that hastens much-needed educational reform.”²⁹¹ Indeed, autoregressive LLMs are transformative, but they threaten only the information-monopolizing type of legal practice that is failing consumers. AI may be a useful invention that hastens much-needed legal reform and improves access to legal services.

²⁹¹ Joe Ricketts & Ray Ravaglia, *AI Can Save Education From Itself*, WALL ST. J. (Jan. 23, 2023), <https://www.wsj.com/articles/ai-can-save-education-from-itself-chatgpt-reform-information-skills-tools-reasoning-opportunity-11674513542> [<https://perma.cc/E2YZ-3XLG>].



Court Chatbots

How to build a great chatbot for
your court's website.

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Contents

Acknowledgments	i
Contents	ii
What is a chatbot?	1
Chatbots versus live chat.....	1
How do chatbots work?	2
Rule-based chatbots.....	2
Artificial intelligence chatbots.....	3
Why should courts consider using a chatbot?	4
Remote access to court services benefits users	5
Remote access to court services benefits courts	5
Court can be overwhelming and complicated for users.....	6
Meet the needs of modern users	6
How should courts use chatbots?	7
Answering frequently asked questions.....	7
Navigating court websites and resources	8
How should courts not use chatbots?	9
A chatbot cannot replace your staff	9
A chatbot cannot, and should not, give legal advice	10
What are the risks of using a chatbot?	10
Misinterpretation.....	10
Vulnerability to hacking and data theft	10
How can I make a great chatbot?	11
A good chatbot has a good vendor contract.....	11
A good chatbot is easy to find and use	12
Make it easy to find	12
Instructions and expectation setting.....	13
Interaction types.....	14
Response length	16
Up to date	17
A good chatbot is accessible	18
Plain language	18

Disability access.....	18
Language access	19
Literacy access	20
Mobile access	20
A good chatbot provides transcripts and a way to follow up with the court.....	22
History and transcripts.....	22
Follow up with the court.....	23
Feedback surveys	23
A good chatbot is user tested	24
Appendix A – What are some examples of chatbots?.....	25
Court chatbots.....	25
Clerk chatbots	25
Legal aid chatbots	26
Non-court chatbots	26
Appendix B – Table of Figures.....	27
Appendix C – Chatbot Checklist.....	28

What is a chatbot?

A chatbot is computer software that imitates a question-and-answer style interaction with a person, but in a virtual messaging platform for the purpose of resolving user inquiries. Chatbot technology has taken many forms, from phone trees to virtual assistants like Apple Inc.'s Siri.¹ Chatbots are commonly used in customer-facing organizations to improve efficiency, provide accurate and consistent answers, expand coverage, and better serve the public.²

Recently, AI chatbots have drawn significant national media attention with the debut of large language models such as ChatGPT, developed by OpenAI, and Bard, developed by Google. Many have raised concerns and fears related to use in the legal system, while others point to potentially positive applications, such as expanding access.

However, not all chatbots require big budget investments, the use of AI, or the ability to respond to all questions within human curiosity. Chatbots can be scaled to serve a narrow audience and topic: in this case, to give court users legal information. Currently, law firms, legal aid providers, clerks, and courts have developed chatbots to assist court users. See, [Appendix A – What are some examples of chatbots?](#)

This document gives an overview of how chatbots work, discusses how courts can use chatbots, and provides principles to build a great chatbot for your court website.

Chatbots versus live chat

Live chat differs from chatbots in that live chat must be staffed by a person to provide a response. Live chats are a channel for communication between two people, whereas chatbots can assist without constant oversight. Because chatbots are software, they are available 24/7/365, whereas live chat is dependent on staff during working hours.

Some software supports both chatbots and live chat. In these instances, the chatbot attempts to answer the user's question first. If the chatbot is unable to provide the requested information or resource, it can transfer the user to the live chat. See, [Follow up with the court.](#)

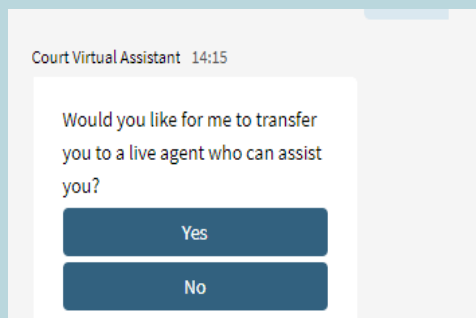


Figure 1. The Riverside Superior Court chatbot provides the option to transfer to a live agent for assistance if the user indicates that the chatbot was not able to resolve their question.

Riverside Superior Court, "Court Web Chat." <https://www.riverside.courts.ca.gov/OnlineServices/CourtWebCt/chat.php>.

¹ *What is a chatbot?* IBM. <https://www.ibm.com/topics/chatbots>; Forbes, "What Is a Chatbot? Everything You Need to Know." August 21, 2022. <https://www.forbes.com/advisor/business/software/what-is-a-chatbot/>.

² *Getting Started with a Chatbot.* Joint Technology Committee, April 20, 2020. https://www.ncsc.org/data/assets/pdf_file/0028/28567/2020-04-15-qr-getting-started-with-a-chatbot.pdf

How do chatbots work?

There are two models to build a chatbot: rule-based chatbots or AI chatbots. Both models can be successful in the court context. Selecting the right model depends on how much time, labor, and money you can invest in developing the chatbot.

Rule-based chatbots

Rule-based chatbots follow a set of “rules” that are predefined by their programming. These rules use conditional logic to pair keywords and/or phrases with prewritten answers. Once the user submits a question, the chatbot searches the text for keywords or phrases that it recognizes from its programming. The chatbot then applies the rules about each keyword or phrase included and omitted in the question to select a predefined answer. The predefined answer is a script that is sent as a response to the user.

If the user does not use keywords or phrases the chatbot recognizes, the chatbot may not be able to return an answer that provides substantive information. The programming can include prompts to the user to rephrase their question or even offer a best guess, though this risks being irrelevant or incorrect. Because the script is predetermined, rule-based models may struggle more with spelling errors and typos. They may also have trouble understanding slang terms or abbreviations and be unable to identify them as keywords if definitions are not included in the programming.

Further, because rules are manually programmed, the model is not scalable without manual edits by the programmer. Because rule-based chatbots rely on manual program rules, they require a clearly defined scope. This allows the programmer to create rules that reach end points without endless development. While scope may be expanded, this means that rule-based chatbots are slower to scale up.

To effectively maintain a rule-based chatbot, it is important to collect and review the queries that the chatbot receives, to continuously refine the chatbot to provide better responses. This collection and continuous review may uncover common questions that the original programming missed, allow responses to be refined and updated, and ensure that the chatbot remains aligned with current court processes, legislation, and available resources. See, [Up to date](#).

While the prescriptive nature of the rule-based chatbot may seem rigid, it can offer the developer more control over the interaction because the chatbot only uses the responses written for it.

Further, rule-based chatbots are often faster to train an early model because the rules allow for less variability and do not require a learning period like AI chatbots.

Rule-based chatbots are typically less expensive software options when compared to AI chatbots.

	PROS	CONS
Rule-based chatbots	<p>Controlled interaction – The use of scripted answers offers greater control over interactions.</p> <p>Faster training – No learning period is required once rules are provided.</p> <p>Cost effective – The software is generally less expensive, though there is the associated cost of the programmer’s time.</p>	<p>Scalability – Manual edits are required, making rule-based chatbots slower to increase in scale when compared to AI chatbots.</p> <p>Language recognition issues – May struggle with errors, typos, slang, and abbreviations if not included in key terms.</p> <p>Potential rigidity – The reliance on scripted answers may appear rigid and limited to users.</p>

Artificial intelligence chatbots

Artificial intelligence (AI) chatbots use machine learning algorithms to understand users’ questions and form responses. Machine learning algorithms can use training data from documents, text, websites, and databases to build their knowledgebase. The algorithm studies the training data to understand patterns and learn how the language uses words and phrases in context, and a human analyst continuously verifies and validates the accuracy of the machine learning. The algorithm trains by analyzing correct or erroneous responses until it learns the “right” response.³ Once the AI chatbot has trained on the data, it uses patterns and the language it identified to predict what users are looking for and generates a response for each query. Machine learning algorithms have the capacity to rate their level of accuracy in identifying key data, often referred to as a confidence threshold or score. This score may be tied to the level the software may act on its own or if the action requires further human-in-the-loop review. Confidence scores are from 0 to 100, with the higher numbers demonstrating a higher level of accuracy. Once launched, the AI chatbot adds the conversations into the knowledgebase to continue learning and improving the model based on actual use.⁴

Improvement is not guaranteed, however. There are concerns that AI models actually become less accurate over time, referred to as “drift.”⁵ Data drift describes the possibility that the real-world user’s prompts may differ from the data the algorithm trained on, causing the performance

³ C. Basu Mallick. *What Is a Chatbot? Meaning, Working, Types, and Examples*. Spiceworks. June 17, 2022. https://www.spiceworks.com/tech/artificial-intelligence/articles/what-is-chatbot/#_002.

⁴ M. Hingraja. *How do Chatbots Work? A Guide to Chatbot Architecture*.” Maruti Techlabs. December 19, 2022. <https://marutitech.com/chatbots-work-guide-chatbot-architecture/#How do Chatbots>.

⁵ M. Ali. *Understanding Data Drift and Model Drift: Drift Detection in Python*. Data Camp. January 2023. <https://www.datacamp.com/tutorial/understanding-data-drift-model-drift>.

of the model to deteriorate rather than improve.⁶ Conceptual drift refers to another way that the chatbot may become less accurate: as concepts change over time and the data the algorithm trained on slowly becomes outdated and can no longer accurately predict the right response.⁷

It is necessary to monitor both improvements and degradation. Regular maintenance and testing can help identify and prevent deterioration. The model can be retrained if drift is causing inaccurate responses. Improvements should also be monitored to ensure the chatbot does not attempt to meet user requests and unintentionally forms a tone in its responses that appears to convey legal advice rather than legal information.

AI chatbots are more complex and take more investment to develop, train, and maintain. They may be a significant investment of resources, but this model can handle more complex interactions as a result. A developed chatbot can be used as the basis for creating others, and the learning from one use may be transferred or shared, thus reducing some of the up-front learning time involved.

AI chatbots are also more complex software and are thus typically more expensive than a rule-based chatbot. However, vendors are increasingly making the user interface to program AI chatbots easier to use, so this complexity may be reduced over time.

	PROS	CONS
AI chatbots	<p>Complex interaction – The ability to understand more complex user queries offers the potential for improved interactions.</p> <p>Continuous learning – The algorithm adds user conversations to its knowledge base to continuously learn from interactions.</p> <p>Scalability – Machine learning allows the algorithm to digest more materials and can be scaled quickly after the learning period.</p>	<p>Initial complexity – A longer training period and larger knowledge base is required to train the initial model.</p> <p>Less control of tone – Less control of the answer script leaves potential for a tone that unintentionally conveys legal advice, requiring ongoing monitoring.</p> <p>Higher cost – More complex software is associated with a higher price.</p>

Why should courts consider using a chatbot?

Millions of Americans go to court each year without a lawyer, and resources to help them are limited.⁸ Courts should strive to make court processes as user-friendly as possible for all court

⁶ *Id.*

⁷ *Id.*

⁸ Access to Justice Team. *The Things we Think and Do Not Always Say*. National Center for State Courts. Williamsburg, VA. March 2023. https://www.ncsc.org/data/assets/pdf_file/0035/88838/Access_To_Justice_Manifesto_.pdf.

users. Further, courts have a duty to meet all users where they are and communicate about those processes clearly and effectively. Simplicity, clarity, and transparency are essential to promoting public trust and confidence in the judiciary.⁹ Chatbots are a beneficial option to assist court users in finding relevant and reliable legal information and to fulfil the court's access obligations.

Remote access to court services benefits users

It is now standard practice for courts to offer remote services, including virtual and hybrid hearings. Understandably, then, court users expect courts to have an online presence and to maintain updated modern websites, host legal information videos and tools online, and be available via email. Chatbots can be part of those offerings. Remote access to court resources reduces the required cost and time to travel to the court. Online resources help users resolve their issues without taking time away from work or arranging childcare, at a time that is convenient for them, 24/7/365.

Chatbots are another way for users to reach the court and find relevant information. Chatbots provide an alternative way to search and locate information through the court's website and materials. They can help answer questions and eliminate the need to ask court staff, but they can also help court patrons ask better questions, resulting in a better customer experience and more streamlined interactions with court staff.

Chatbots can also assist users in completing tasks online. A user may want to pay a court fee, traffic ticket, or file a pleading, but may not be aware that they can do so through an online portal. When the chatbot presents online functions, it reduces the need for staff interaction and the user is able complete the task in one sitting.

Remote access to court services benefits courts

A chatbot can resolve user inquiries, and therefore limits the questions that require personal assistance. This can reduce the number of phone calls, emails, live chats, or in-person visits by court users and lessen the burden on court staff, allowing them to focus on more complex tasks and lead to greater efficiencies overall.¹⁰

Even if a question is not entirely resolved, users may be directed to other resources that may better address the specific issue(s) or be prepared to ask court staff more focused and relevant questions. Chatbots may direct a user to the right contact, so the user can connect to the correct department or resource on their first call.

⁹ *Interactive Plain Language Glossary*. National Center for State Courts. Williamsburg, VA. <https://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/plain-language/glossary>.

¹⁰ E. Sigler and J. Holtzclaw. *A Miami chatbot means less staff time yet more help for users*. National Center for State Courts. July 12, 2023. <https://www.ncsc.org/information-and-resources/trending-topics/trending-topics-landing-pg/a-miami-chatbot-means-less-staff-time-yet-more-help-for-users>. See also, *Maricopa County saves \$185k by building citizen-centric experiences*. Twilio

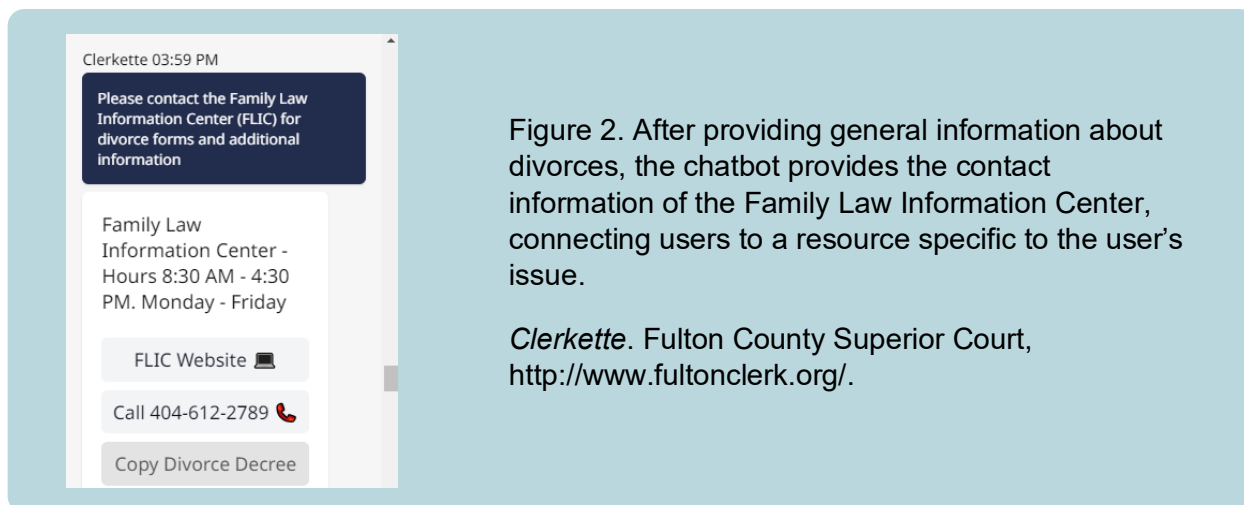


Figure 2. After providing general information about divorces, the chatbot provides the contact information of the Family Law Information Center, connecting users to a resource specific to the user’s issue.

Clerkette. Fulton County Superior Court, <http://www.fultonclerk.org/>.

Court can be overwhelming and complicated for users

Litigants frequently navigate unfamiliar rules and procedures, within unfamiliar courthouse buildings, sometimes in an unfamiliar language. Many court websites are content rich in an attempt to help, but the information can be difficult to identify or find or may be written in difficult to understand legalese. Courts may not be able to reorganize a whole website due to lack of resources or direct control. Implementing a chatbot is a way to provide a plain-language navigation tool that can circumvent some of these issues.¹¹

As discussed above, chatbots help users find answers to their questions, navigate court processes, and identify proper forms and other resources, all of which can reduce user stress and limit the need for help from court staff. For a user with fewer technical skills, a chatbot can allow them to focus on a single-stream conversation, rather than attempt to navigate a robust court website filled with attachments, hyperlinks, and subpages. For advanced or tech-savvy users, chatbots provide convenience as an efficient and direct path to information.

Finally, chatbots that use digital avatars may be helpful in mitigating fear and stress. Non-human avatars such as friendly robots, a gavel, or a scroll are appropriate to convey the chatbot is a trusted resource that offers a casual interaction.

Meet the needs of modern users

Chatbots have become a standard offering across industries from retail to healthcare to finance. The legal community has also deployed chatbots to serve their users and can be found on the websites of law firms, government agencies, legal aid providers, and courts. In 2019, the

¹¹ Plain language is clear, direct writing that can be understood by all. Replace legal terms with plain language using the Plain Language Glossary. See, *Interactive Plain Language Glossary*. National Center for State Courts. <https://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/plain-language/glossary>.

Judicial Branch of California’s Information Technology Advisory Committee noted “chatbots are part of the current norm.”¹²

Law firms host chatbots on their websites to complete client intake forms and answer frequently asked questions. Some chatbots can be integrated with their case management system and client portal. This lets clients access their case and seek updates and answers without directly contacting their attorney, reducing the cost of services for the client.

Government agencies are also using chatbots. The Nevada DMV created a chatbot to help users navigate popular topics.¹³ Universal City, Texas created a chatbot called Jet to help navigate the city website, which includes court related information.¹⁴

Legal aid providers are also deploying chatbots to connect users with resources.¹⁵ Law Center for Better Housing created a chatbot to help Chicago tenants learn about their rights, send a letter to their landlords, and find legal help.¹⁶

And, of course, courts have deployed chatbots. See, [Appendix A – What are some examples of chatbots?](#)

How should courts use chatbots?

The initial target audience for a chatbot should be self-represented litigants and the general public. For a non-expert audience, a chatbot provides two main benefits: 1) answering frequently asked questions and 2) help navigating the court website and its resources.

Answering frequently asked questions

Chatbots are ideal for assisting users with frequently asked questions, which though often routine, still can take up considerable staff time. Further, FAQs are also discrete and a good way to help your court learn how to use the chatbot software. FAQs have a limited scope and are easier to test in production because there are fewer ways to ask the question and they have clear, correct answers.

Prior to development, create a list of frequently asked questions for the court by working with court staff to track the questions asked in person, over the phone, and via e-mail. Be sure to speak with frontline staff who regularly interact with the public, like clerks, self-help center staff, bailiffs, and security. Website analytics of popular pages may also indicate information that

¹² *Information Technology Advisory Committee (ITAC) Public Business Meeting*. Judicial Branch of California, Information Technology Advisory Committee. August 19, 2019. <https://www.courts.ca.gov/documents/itac-20190819-slides.pdf>.

¹³ *Why Wait? Go online first*. Nevada Department of Motor Vehicles. <https://dmv.nv.gov/index.htm>.

¹⁴ *Court*. Universal City, Texas. <https://www.universalcitytexas.gov/386/Court>.

¹⁵ *Get Help*. Legal Aid Society of Hawai'i. <https://www.legalaidhawaii.org/get-help.html>.

¹⁶ *Rentervention*. Law Center for Better Housing. <https://rentervention.com/>.

should be integrated early on. The chatbot should be able to provide basic information about the court, such as:

- Court address
- Court contact information
- Court hours
- Department hours, such as the self-help center, clerk's office, and court annexed programs
- Public transportation and parking information
- Information about what time court starts
- Information about reporting for jury duty
- How to request an in-person or remote hearing
- How to submit a request for an ADA accommodation
- How to submit a request for an interpreter
- How to request a fee waiver
- How to access online casefiles and case look-up portals
- How to make payments and set up a payment plan online

Once the chatbot can answer these routine questions, it is important to continue to expand the functionality to answer more advanced questions. See, [Navigating court websites and resources](#).

Navigating court websites and resources

Many court websites are not organized in the most user-friendly way.¹⁷ The general public doesn't necessarily understand the meanings or distinctions as to different departments, filing units, clerks' offices, and the like, so organizing a website to mirror the organizational structure of a court is not generally helpful. It is unfamiliar to self-represented litigants, jurors, and the general public.

A chatbot provides a map of the website designed specifically for these non-expert users. The chatbot accomplishes this by providing a reduced menu of choices specific to the audience and directing users to relevant pages. Chatbots do this by using their menu or allowing the user to ask questions they draft as they understand their issue. See,

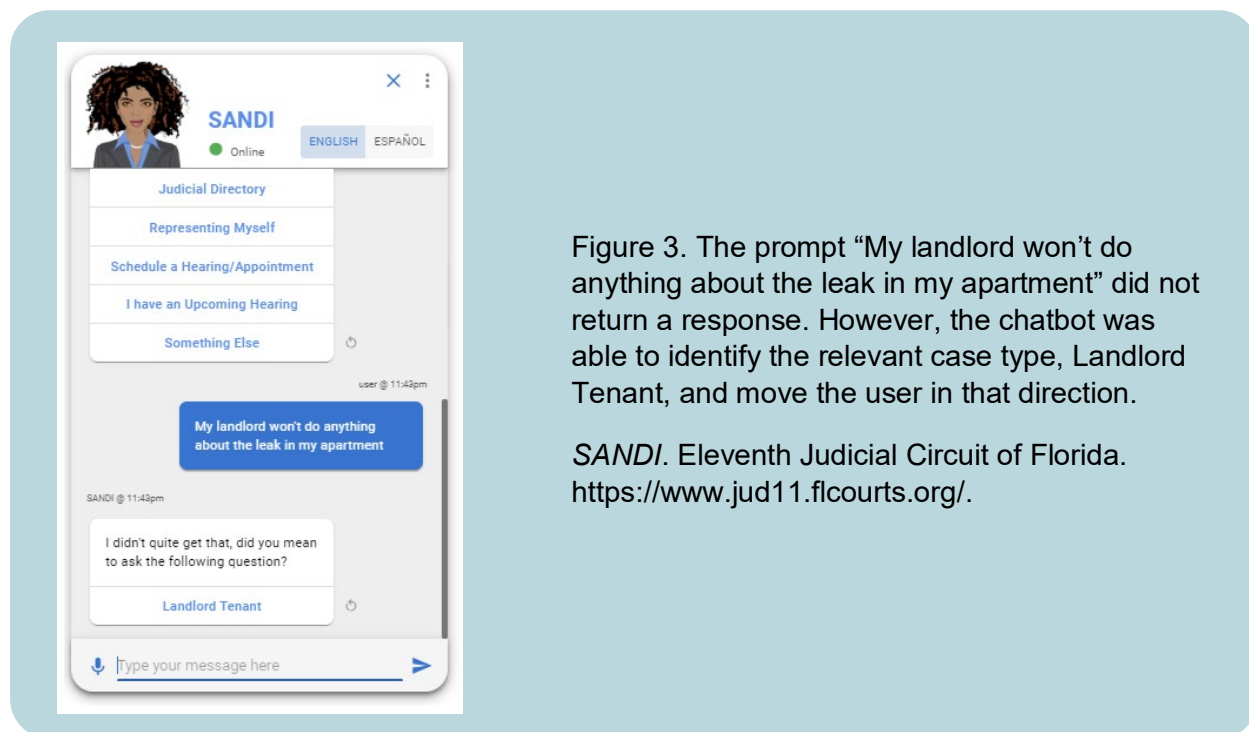
[Interaction types](#).

Further, even if the court website or processes are not yet in plain language, the chatbot can "translate" legalese by using plain language in the menu and responses. The chatbot can also understand the plain-language questions and tie these to the legal terms used by the court. For example, a user is unlikely to ask about an "in forma pauperis petition" but may ask for a "fee waiver." The chatbot's ability to use and understand plain language connects the user to the

¹⁷ But not all! These websites are just a few examples of courts and others rising to the challenge. See, Philadelphia Municipal Court, <https://www.courts.phila.gov/municipal/>. See, Michigan Legal Help, <https://michiganlegalhelp.org/>. See, Illinois Legal Aid Online, <https://www.illinoislegalaid.org/>. See also, *Tiny Chat 101: Website Design*. National Center for State Courts. Williamsburg, VA. August 30, 2022. <https://vimeo.com/showcase/7003975/video/744563891>.

information they are looking for while building the user's understanding of how the court will talk about their issue.

Many users may reach for the chatbot only after failing to locate a satisfying or correct resource through their independent navigation of the website. The chatbot must be able to assist a user in navigating to these more advanced webpages and resources or the user may lose faith in the chatbot and the website as a source of reliable information.



How should courts not use chatbots?

A chatbot cannot replace your staff

Chatbots should be one of many ways users can find court information. Chatbots can make public interactions with staff more efficient and can eliminate the need for some in-person or phone-based interactions, but they cannot and should not replace staff. Chatbots are just one part of a help and navigation ecosystem that includes self-help materials, websites, staff, online tools, hotlines, and more. Some court users will not be capable of using a chatbot, either because of issues with connectivity, equipment, or lack of comfort.¹⁸ Other court users may simply better understand the information if they can have a conversation with staff.

Furthermore, chatbots are reliant on court staff to keep them (and the court website) up to date. See, [Up to date](#).

¹⁸ *Tiny Chat 4: Digital Divide*. National Center for State Courts. Williamsburg, VA. April 27, 2020. <https://vimeo.com/showcase/7003975/video/412333503>.

A chatbot cannot, and should not, give legal advice

Chatbots cannot and should not attempt to provide legal advice. A chatbot is not licensed to practice law and an attempt to provide legal advice may raise unauthorized practice of law concerns. Legal advice is tailored information designed to tell someone what they should do in a given circumstance. In other words, legal information is the rules of the game. Legal advice is how to win.¹⁹

However, chatbots are great navigational tools to help locate legal information. See, [Navigating court websites and resources](#). Legal information is procedural, and includes information about how to navigate a process, what options exist, and what someone needs to do to comply with the law.²⁰

When a court users includes details specific to their situation in their queries, even though the chatbot is not responding after weighing those details, the user may believe the answer is legal advice. For this reason, all chatbots should include clear disclaimers about the services that it does and does not provide. See, [Instructions and expectation setting](#).

What are the risks of using a chatbot?

Misinterpretation

Chatbots do not provide responses tailored to the user's personal circumstances. Often, users include personal details and facts in their questions. A chatbot may use personal details or facts to identify a specific subcategory or piece of information. However, the responses are general information and are not about the user's circumstances.

This expectation mismatch can lead a user to believe they are receiving information about their case, or even legal advice. Thus, it is important to have clear instructions and use disclaimers. See, [Instructions and expectation setting](#).

Similarly, chatbots may misinterpret the user input and provide irrelevant or even incorrect responses. For this reason, chatbots should be regularly reviewed and updated. See, [Up to date](#).

Vulnerability to hacking and data theft

Any software the court uses will require security measures to protect the court IT environment and users from improper access and use of data.

If chat transcripts are accessed by malicious, unauthorized persons, users may be exposed to scams or fraud. As noted above, users tend to tell chatbots personal information, even if promoted not too. Part of the chatbot's maintenance model should include regular security checks. See, [Up to date](#).

¹⁹ *Tiny Chat 26: Legal Advice vs. Legal Information*. National Center for State Courts. Williamsburg, VA. October 9, 2020. <https://vimeo.com/showcase/7003975/video/466698942>.

²⁰ *Id.*

How can I make a great chatbot?

A great chatbot can resolve user inquiries and lessen the burden on court staff. However, a poorly designed chatbot can leave users confused, frustrated, or worse, give wrong information. Part of deciding whether to use a chatbot on your court website is whether you can invest the time and attention to build and maintain a great chatbot. Use the below principles when building your chatbot to ensure it is helpful to users.

- Start with a [good vendor contract](#).
- Make the chatbot [easy to find](#) on the court website.
- Provide [instructions](#) to help users learn how to interact and [disclaimers](#) to set expectations.
- Make the [responses easy to understand](#) by using plain language and limiting their length.
- Use the [interaction type](#) that works best for the chatbot's sophistication.
- Keep the information [up to date](#) with a maintenance model.
- Ensure all users have access, including users with [disabilities](#), [limited English proficiency](#), [low literacy](#), and [mobile phone users](#).
- Provide users with a way to keep the information they found helpful with a [chat history](#) or [a transcript](#) they can save.
- Give users a path to [follow up with the court](#) if they need more help.
- [Test](#) the chatbot prior to publication and collect continuous [user feedback](#).

A good chatbot has a good vendor contract

Most chatbots are built using software from a vendor or by contracting with a vendor to have them build the bot. Once the decision to pursue a chatbot is made, court should be mindful of their procurement and RFI/RFP processes.²¹ These can be powerful tools to ensure a good relationship with the vendor that contemplates maintenance, updates, security, data ownership, troubleshooting, and more.

Digital services contracts require special attention to “procedural rights,” assigning roles and designating processes for changes and updates.²² Contracting software's support requirements is vital. Considerations must include the court staff's ability to make modifications independently, the types of changes possible without vendor assistance, and the frequency and duration of required vendor support.²³ Chatbots are likely to require continued maintenance to keep the information current with potential expansion overtime. Division of responsibilities between the court and the vendor must be contracted for explicitly.

Digital services contracts also require attention to the use and ownership of data generated by the chatbot. Understanding the data rights outlined in the agreement is vital to protect court

²¹ *Tiny Chat 56: Procurement*. National Center for State Courts. Williamsburg, VA. June 28, 2021. <https://vimeo.com/showcase/7003975/video/568389850>.

²² See, Access to Justice Team. *Contracting Digital Services for Courts*. National Center for State Courts. Williamsburg, VA. 2022. www.ncsc.org/data/assets/pdf_file/0029/76754/Contracting-Digital-Services.pdf.

²³ See, *Exiting technology projects*. Small Scale, National Center for State Courts. 2021. https://www.ncsc.org/data/assets/pdf_file/0028/74782/Exiting-Tech-Projects-v2.pdf

users and the court. “Courts using technologies that generate, categorize, or publish data about stakeholders should include provisions that ensure both transparency and acceptable use limitations.”²⁴

Dive deeper into [Contracting Digital Services for Courts](#) and what to consider when contracting. You may also explore the [Exiting Technology Projects](#) booklet as a resource for planning vendor conversations.

A good chatbot is easy to find and use

Make it easy to find

Chatbots on court websites should be easy to find. Use visual signals to draw a users’ attention to the chatbot. Use a logo that is large enough to be obvious and stands out from the rest of the page. Court users are familiar with chat interfaces from their phones and other websites, so use that familiar format. A text bubble with dots and a heading that says “chat with us” are good examples of ways to invite the user to engage with the chatbot. See [Figure 4](#), [Figure 5](#), and [Figure 6](#). Non-human avatars are also appropriate and avoid the tendency to making digital assistants female by default.

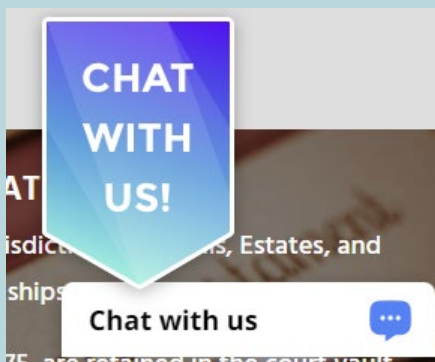


Figure 4. Cook County Probate Court Chatbot Support Agent calls attention to the chatbot with the bright blue tag the first time you visit the page. After opening and then closing the chatbot, the large blue tag disappears but the white bar remains available, making it less prominent on the page.

Court Agent. Cook County Probate Court. <https://cookcountyprobatecourt.com/>.

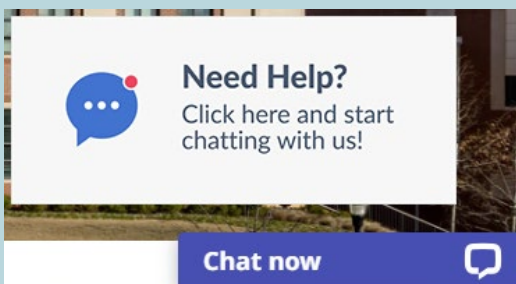


Figure 5. Forsyth Clerk ChatBot uses the prompt “Need Help?” to invite users to use the chat.

Forsyth Clerk ChatBot. Clerk of Superior, State & Juvenile Courts, Forsyth County, Georgia <https://www.forsythclerk.com/>.

²⁴ See, *Contracting Digital Services for Courts*, www.ncsc.org/_data/assets/pdf_file/0029/76754/Contracting-Digital-Services.pdf.



Figure 6. This chatbot draws the attention with a large talk bubble and the phrase “Let’s talk!”

Clerkette. Fulton County Clerk of Superior and Magistrate Courts.
<http://www.fultonclerk.org/>.

Most chatbots are in the lower right-hand corner of the page. This allows the chatbot to be out of the way and not interfere with the navigation of the page if users choose not to use it. However, when placed in the lower right-hand corner, those who use a screen reader must tab through the entire page to locate the chatbot. See, [Disability access](#). Add an additional banner or other signal to help all users find the chatbot sooner.

Do not make the chatbot distracting. Features like a moving icon or a repeating noise interrupt users. Include a minimize, close, or mute function for users who do not want to interact with the chatbot.

Further, the chatbot should be accessible on all pages of the court website. Don’t embed the chatbot into a website page. If a chatbot only lives on one page, the user will often navigate away from it as they follow the instructions and referrals the chatbot provides and move through the website content.

At a minimum, the chatbot should be available on:

- The home page
- Webpages with self-help resources
- Webpages with information about attending court
- Any webpages that relate to subjects the chatbot can help with

Instructions and expectation setting

Instructions should tell the user exactly what to do and how the chatbot can help, making it easier and more enjoyable to use.

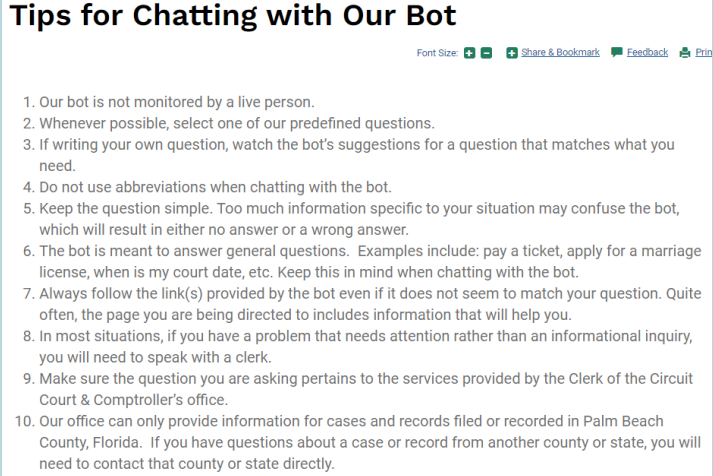
Inform the user how they can interact with the chatbot: free text, menu choices, speak to chat, or a combination of the choices. See,

[Interaction](#) types. If free text is an interaction option, provide well-constructed example prompts for users to mimic. Instructions should appear again if the chatbot is unable to provide an answer. This helps users build the skills to interact with the chatbot.

The instructions must also include a disclaimer about how the chatbot can and cannot help. Inform the user that chatbots can only provide general information. This is easier to manage when the chatbot is limited to menu choices because the user does not write their own, lengthy questions that may include personal circumstances. However, the limitation should be shared regardless. Disclaimers are important to set expectations about what the chatbot can do.

Chatbots cannot provide legal advice. Chatbots are not real people. It is important to make this limitation clear early to avoid confusion and misleading the user.

Embed these instructions and disclaimers into the chatbot. This increases the likelihood that the user will read them. And, like with all technology, providing instructions makes the chatbot easier to use and increases user success.



The screenshot shows a webpage titled "Tips for Chatting with Our Bot". At the top right of the page, there are links for "Font Size", "Share & Bookmark", "Feedback", and "Print". The main content is a numbered list of 10 tips for interacting with the chatbot. The tips cover topics such as not being monitored by a live person, using predefined questions, following suggestions, avoiding abbreviations, keeping questions simple, following provided links, and contacting the appropriate office for specific inquiries.

Tips for Chatting with Our Bot

1. Our bot is not monitored by a live person.
2. Whenever possible, select one of our predefined questions.
3. If writing your own question, watch the bot's suggestions for a question that matches what you need.
4. Do not use abbreviations when chatting with the bot.
5. Keep the question simple. Too much information specific to your situation may confuse the bot, which will result in either no answer or a wrong answer.
6. The bot is meant to answer general questions. Examples include: pay a ticket, apply for a marriage license, when is my court date, etc. Keep this in mind when chatting with the bot.
7. Always follow the link(s) provided by the bot even if it does not seem to match your question. Quite often, the page you are being directed to includes information that will help you.
8. In most situations, if you have a problem that needs attention rather than an informational inquiry, you will need to speak with a clerk.
9. Make sure the question you are asking pertains to the services provided by the Clerk of the Circuit Court & Comptroller's office.
10. Our office can only provide information for cases and records filed or recorded in Palm Beach County, Florida. If you have questions about a case or record from another county or state, you will need to contact that county or state directly.

Figure 7. ClerkPBC provides a link to more detailed instructions about how to use the chatbot.

Tips for Chatting with Our Bot.
Clerk of the Circuit Court & Comptroller, Palm Beach County.
<https://www.mypalmbeachclerk.com/about-us/tips-for-chatting-with-our-bot>.

Interaction types

Chatbots can offer two modes of user interaction.²⁵ Users can either select from a menu or input free text, typing their own questions as they understand them. Some chatbots combine both methods and allow the user to select the method of interaction they wish to use. Both models offer benefits to the user.

Menu selection

Menu selection benefits the user because it displays available options, similar to a website navigational menu. The court website menu serves many audiences including lawyers, jurors, litigants, probationers, parents and guardians, partner agencies and court employees. The chatbot menu is typically smaller than the website menu because it helps with a selection of issues.

Providing a menu of options is particularly important for those who do not know how to interact with a chatbot. Menu-based chatbots ask questions for the user to respond to within a set path. However, menu-based chatbots can require more clicks before providing information about the user's narrow question. This is sometimes frustrating for a user who may already know their question and want to ask it immediately; however, those users may be better served by navigating the court website menu instead.

²⁵ Both rule-based and AI chatbots can use a menu of options or free text input.

Free text

Free text input benefits the user by allowing them to ask the question in terms they understand. This mimics a conversation that can feel natural to users. Like a Google search, the question-and-answer interaction is familiar. If the question is well formed, the chatbot can move directly to substantive information.

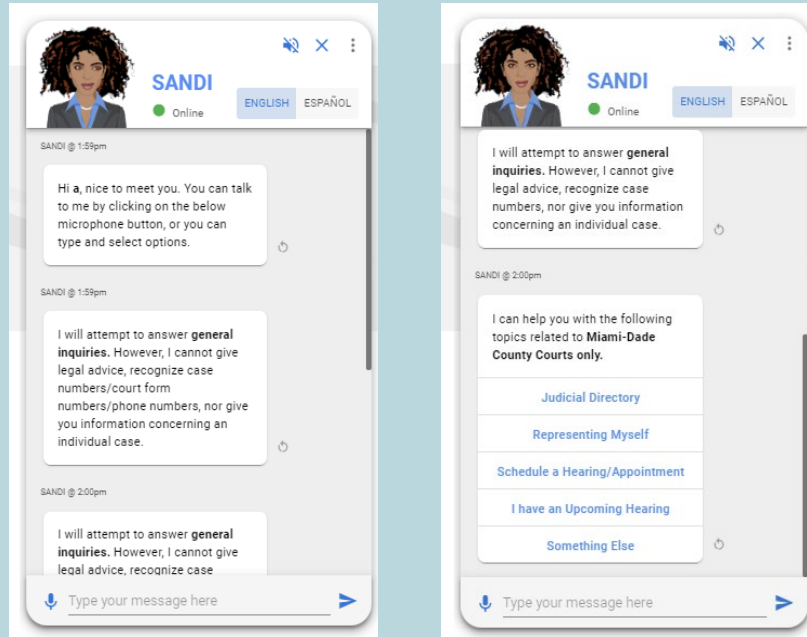


Figure 8. SANDI greets the user and explains the methods of interacting: using the microphone, typing a question, or selecting from their menu. It then sets expectations by stating what it can help with, general inquiries, and what it cannot do.

SANDI. Eleventh Judicial Circuit of Florida, <https://www.jud11.flcourts.org/>.

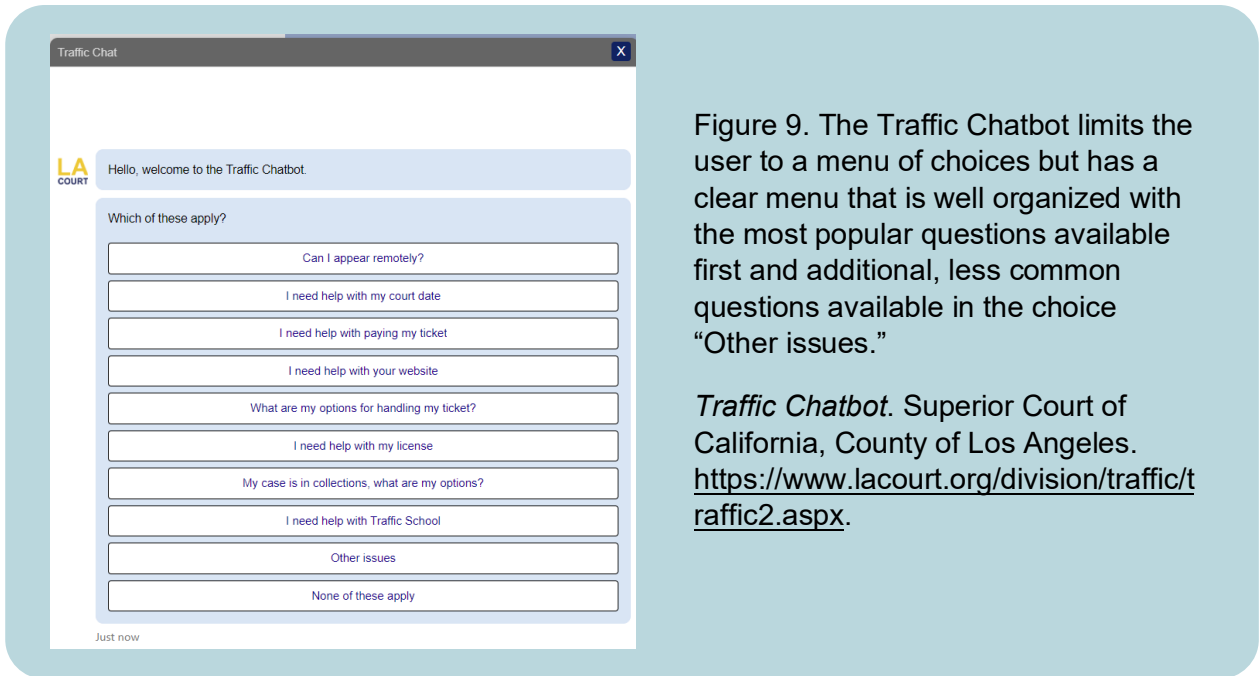


Figure 9. The Traffic Chatbot limits the user to a menu of choices but has a clear menu that is well organized with the most popular questions available first and additional, less common questions available in the choice “Other issues.”

Traffic Chatbot. Superior Court of California, County of Los Angeles. <https://www.lacourt.org/division/traffic/traffic2.aspx>.

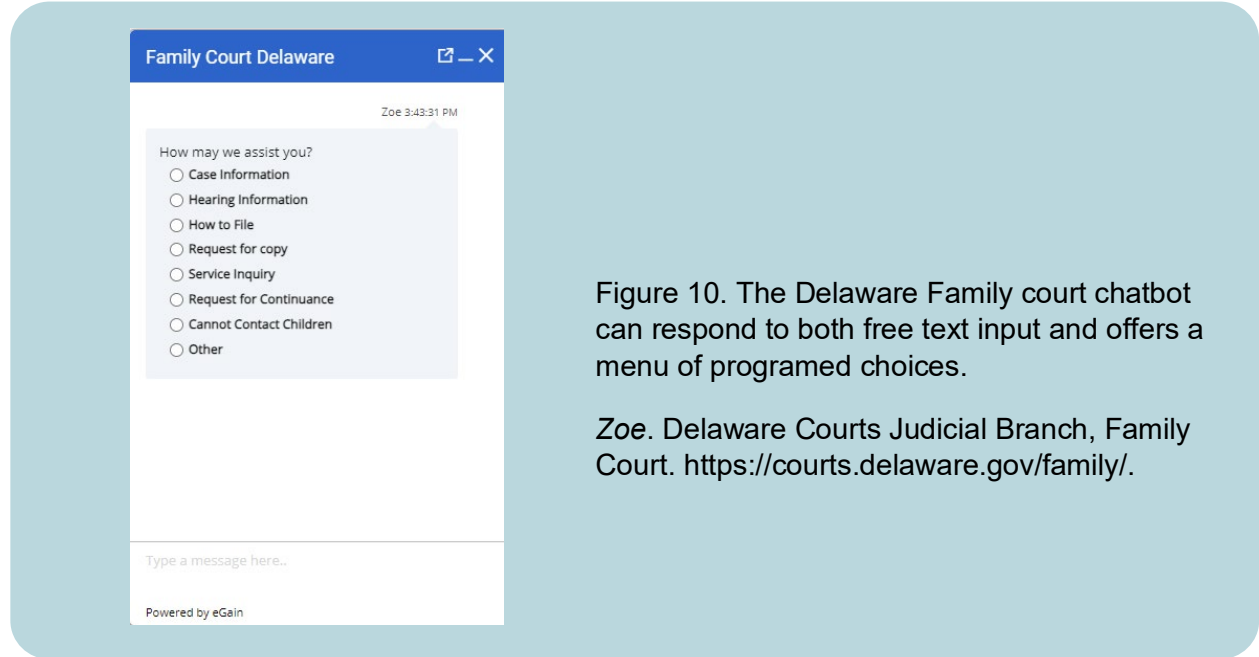


Figure 10. The Delaware Family court chatbot can respond to both free text input and offers a menu of programed choices.

Zoe. Delaware Courts Judicial Branch, Family Court. <https://courts.delaware.gov/family/>.

Response length

Keep response length relatively short. Chatbots are small windows with limited space for text. If the response is long, it is challenging to read in the window. The chatbot should be used as a wayfinding tool, not a place to recreate the entire court website. Use the chatbot to link to or

even redirect the user to the webpage that hosts the information that can answer their question, like Clara in New Mexico.²⁶

If the user's prompt requires a lengthy response, consider whether that information should be a webpage, and direct the user to that page. Alternatively, you may have trusted partners such as self-help centers that may host content on their websites the chatbot can link to rather than creating new content.

When linking to external websites, the response should describe the hyperlink and inform the user that it will take them away from the court's website. The hyperlink should open in a new tab so that the user does not lose their place on the court website.

Up to date

Chatbots require a maintenance model to stay up to date. Maintenance models should cover accuracy, improvements, security, and technical support. Assign responsibility for maintenance to court staff and the chatbot vendor. See, [A good chatbot has a good vendor contract](#).

When changes are made to processes, forms, and other information, the chatbot must receive updated information. Once launched, you cannot "set it and forget it," and must have a plan to check and recheck that the chatbot continues to provide accurate, relevant information. Reviews should be conducted on a regular schedule. Define a method of evaluation that does not rely on a single point of expertise. This may include outreach to various court departments for updates and collaborating on updating the chatbot and website together.

Maintenance should also include improvements to the chatbot. The initial version of the chatbot may be based on a small set of training information to test its success. For continued updates and success, review [transcripts](#) and [feedback surveys](#) regularly to identify areas to expand the chatbot, identify where corrections or clarifications need to be made, and indicate how users are using the chatbot.

Assign responsibility for chatbot updates and improvement maintenance. This is likely a partnership where court staff are primarily responsible for content, and the vendor is responsible for implementing the changes in the software. Both updates and improvement maintenance should be contracted for explicitly.²⁷ See, [A good chatbot has a good vendor contract](#).

Maintaining the technology with technical and security features must also be contracted for and included in the service. It is likely that the chatbot will require ongoing support from the vendor, though court IT staff should play a role in integrating the chatbot into the website and monitoring it for security risks.

²⁶ See, *Clara*. The Judicial Branch of New Mexico. <https://languageaccess.nmcourts.gov/?avn>.

²⁷ See, *Digital Public, Contracting Digital Services for Courts*. National Center for State Courts. May 2022. www.ncsc.org/_data/assets/pdf_file/0029/76754/Contracting-Digital-Services.pdf. See also, *Exiting technology projects*. Small Scale, National Center for State Courts. 2021. https://www.ncsc.org/_data/assets/pdf_file/0028/74782/Exiting-Tech-Projects-v2.pdf

A good chatbot is accessible

Plain language

Chatbots are designed to mimic a question-and-answer conversation. The responses from the chatbot define the user's experience and should be easy to understand. Prompts, answers, and content should all be written in plain language to provide clear and concise interaction.

Even if the court website is not yet written in plain language, the chatbot is a place to start translating legalese.²⁸ Explaining the legalese on the webpage in the chatbot builds the user's understanding of how the court may talk about their issue.

Disability access

Website features, including chatbots, must be accessible for users with disabilities.²⁹

General principles for website accessibility³⁰ will benefit all users:

- Body font sizes should be at least 12 pt (16px) font
- Use high contrast colors in the design so that is friendly for users with colorblindness and other vision issues
- Text can be adjusted up to 200% without loss of content/functionality
- Include text on buttons to indicate use, and ensure the button is large enough for easy selection

Further, chatbots should be compatible with screen readers. Screen readers are software programs that allow blind or visually impaired users to read the text that is displayed on the computer screen with a speech synthesizer or braille display.³¹ The Bureau of Internet Accessibility notes that the button to activate and respond to the chatbot is often at the bottom lower right of the screen. This placement requires the user to tab through the whole screen every time they want to interact with the page.³² Add an additional banner or signals to help all users find the chatbot sooner.

Some chatbots, including the New Mexico Courts' Clara, have a speak-to-chat option, where the software reads the messages to the user and allows the user to respond with their voice instead of navigating the chatbot through the menu or typing.³³ This feature can provide assistance for

²⁸ See, *Interactive Plain Language Glossary*. National Center for State Courts. <https://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/plain-language/glossary>.

²⁹ Under the Americans with Disabilities Act of 1990 (ADA) state and local governments must follow the ADA in pursuit of providing equal access for people with disabilities. ADA compliance applies to websites in addition to building access and hiring processes. 42 U.S.C. § 12101. Section 508 of the Rehabilitation Act applies to federal agencies and requires that information and communications technology can be used by people with disabilities. 29 U.S.C. § 798, S. 508.

³⁰ See, *Web Content Accessibility Guidelines (WCAG2) Overview*. Web Accessibility Initiative. <https://www.w3.org/WAI/standards-guidelines/wcag/>.

³¹ *Screen readers*. American Foundation for the Blind, <https://www.afb.org/blindness-and-low-vision/using-technology/assistive-technology-products/screen-readers>

³² *Five Key Accessibility Considerations for Chatbots*, Bureau of Internet Accessibility. Bureau of Internet Accessibility. February 18, 2020. <https://www.boia.org/blog/five-key-accessibility-considerations-for-chatbots>

³³ *Clara*. New Mexico Courts. <https://languageaccess.nmcourts.gov/?avn>.

blind and visually impaired users as well as users with mobility challenges or lower literacy levels, or those who are less technically skilled.

Language access

Equal justice depends on everyone’s ability to understand what is happening in court and in court-adjacent settings, regardless of what language they speak.³⁴ In 2019, 8 percent of the U.S. population spoke English less than “very well.”³⁵ Courts that receive federal funding are “required to take reasonable steps to ensure that an [limited English proficiency (LEP)] individual has meaningful access to the court and can communicate effectively.”³⁶

Website materials should be offered in multiple languages, including the chatbot. Courts can use the data from the United States Census Bureau data to identify the most common languages spoken at home to target the most popular languages within the court’s jurisdiction.³⁷

The instructions and welcome screen should notify users what languages the chatbot is offered in and allow them to make the change immediately. See, [Figure 11](#).

When the chatbot is used in a language other than English, automatically inform the user of their right to request language access services from the court and how to submit a request for interpreter services.

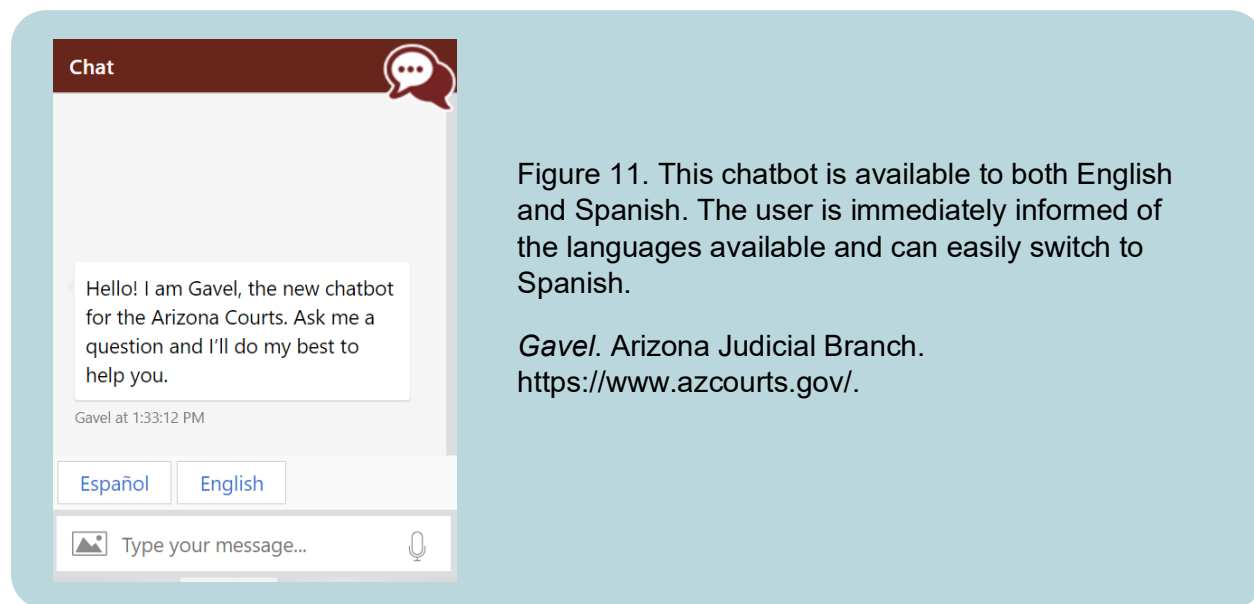


Figure 11. This chatbot is available to both English and Spanish. The user is immediately informed of the languages available and can easily switch to Spanish.

Gavel. Arizona Judicial Branch.
<https://www.azcourts.gov/>.

³⁴ *Statement of the Issue*. National Center for State Courts, <https://www.ncsc.org/consulting-andresearch/areas-of-expertise/interpreter-info/called-to-action/statement-of-the-issue>.

³⁵ S. Dietrich and E. Hernandez. *Language Use in the United States: 2019*. August 2022. <https://www.census.gov/content/dam/Census/library/publications/2022/acs/acs-50.pdf>.

³⁶ This obligation stems from the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. (Title VI); Executive Order 12250; Executive Order 13166 (2000); Omnibus Crime Control and Safe Streets Act of 1968; 34 U.S.C. § 10101, and the Court Interpreters Act, 28 U.S.C. § 1827.30. See, *LEP.gov*. <https://www.lep.gov/>.

³⁷ See, *Explore Census Data*. The United States Census Bureau. <https://data.census.gov/>. See also, *Tiny Chat 122: GIS Mapping and Census Data*. National Center for State Courts. Williamsburg, VA. April 27, 2023. <https://vimeo.com/showcase/7003975/video/821732364>.

Literacy access

One in five adults lack the English literacy skills to complete tasks that require comparing information, paraphrasing, or making low-level inferences.³⁸ More than eight million people in the United States are functionally illiterate in English.³⁹ This means they cannot successfully determine the meaning of sentences, read relatively short texts to locate a single piece of information, or complete simple forms.⁴⁰

Though chatbots are a text medium, they can include multimedia information such as sound, video, or images to assist users with low literacy.⁴¹ Providing the option to speak to the chatbot and read aloud responses can assist users who may struggle to use the chatbot if relying on the written functions.⁴²

Mobile access

97% of Americans own cellphones, and 85% own a smartphone, compared to 77% of U.S. adults who own a desktop or laptop computer or 50% that own a tablet computer.⁴³ Though smartphone dependency has decreased over time, 15% of American adults are “smartphone-only” internet users.⁴⁴ Many users browse on their phones, even if they are not reliant on their phone for internet access.

Chatbots should be mobile friendly. The mobile version of the website should not be disrupted by the chatbot, meaning that it does not block access to the website content, and should provide the same experience and information as it would on a desktop browser

Cleo from the Superior Court in Maricopa County, Arizona is not only available on the website, but is also mobile friendly, and can even be accessed through Amazon Alexa, SMS text messaging, and email.⁴⁵

³⁸ *Adult Literacy in the United States*. U.S. Department of Education, National Center for Education Statistics, July 2019, <https://nces.ed.gov/pubs2019/2019179.pdf>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Translators without Borders states their multilingual chatbots use multimedia content to assist people with low literacy levels. NCSC was unable to verify the type of media used, however video, sound, and images would all be valuable content to incorporate into chatbots. *TWB Chatbots*. Translators without Borders. <https://translatorswithoutborders.org/chatbots#:~:text=TWB%20is%20building%20chatbots%20using,people%20with%20lower%20literacy%20levels...>

⁴² The New Mexico chatbot reads the script aloud and lets the user speak to select an option instead of selecting from the menu. See, *Clara*. The Judicial Branch of New Mexico. <https://languageaccess.nmcourts.gov/?avn>. See also, *SANDI*. Eleventh Judicial Circuit of Florida, <https://www.jud11.flcourts.org/>.

⁴³ *Mobile Fact Sheet*. Pew Research Center, April 2021, <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

⁴⁴ *Id.*

⁴⁵ *AI to Improve the Customer and Employee Experience*. Clerk of the Superior Court, Maricopa County. <https://cocappagents.maricopa.gov/experience/index.html>.

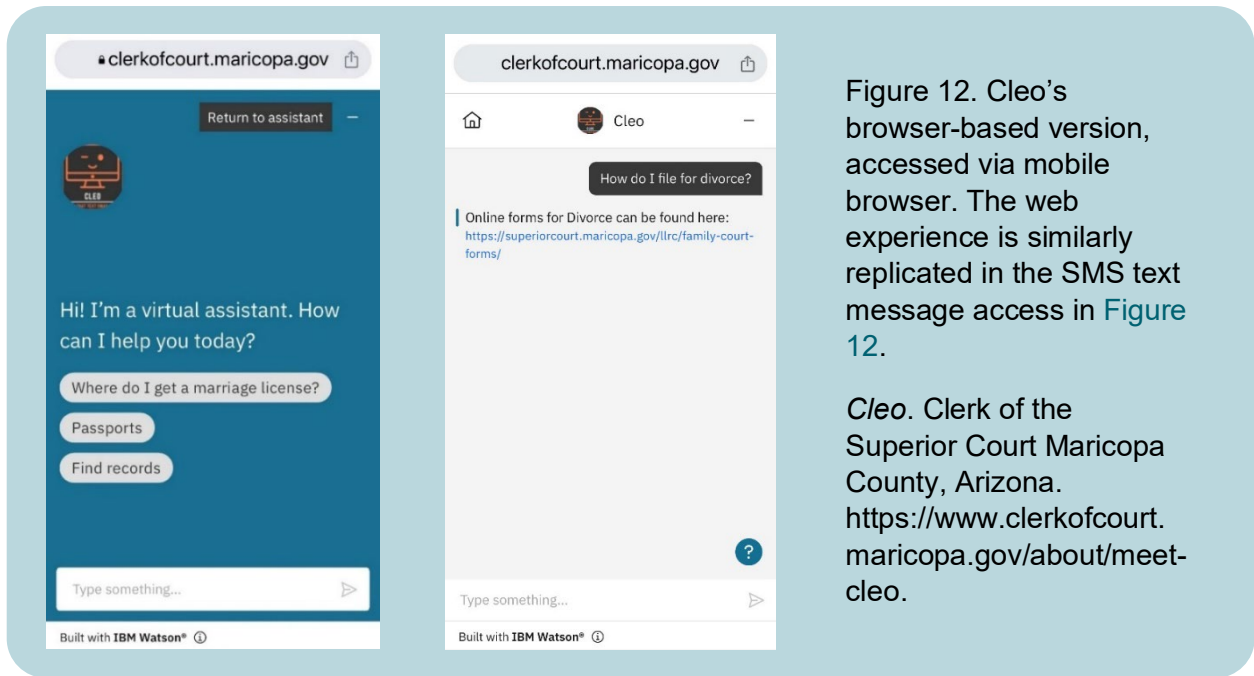


Figure 12. Cleo’s browser-based version, accessed via mobile browser. The web experience is similarly replicated in the SMS text message access in Figure 12.

Cleo. Clerk of the Superior Court Maricopa County, Arizona.
<https://www.clerkofcourt.maricopa.gov/about/meet-cleo>.

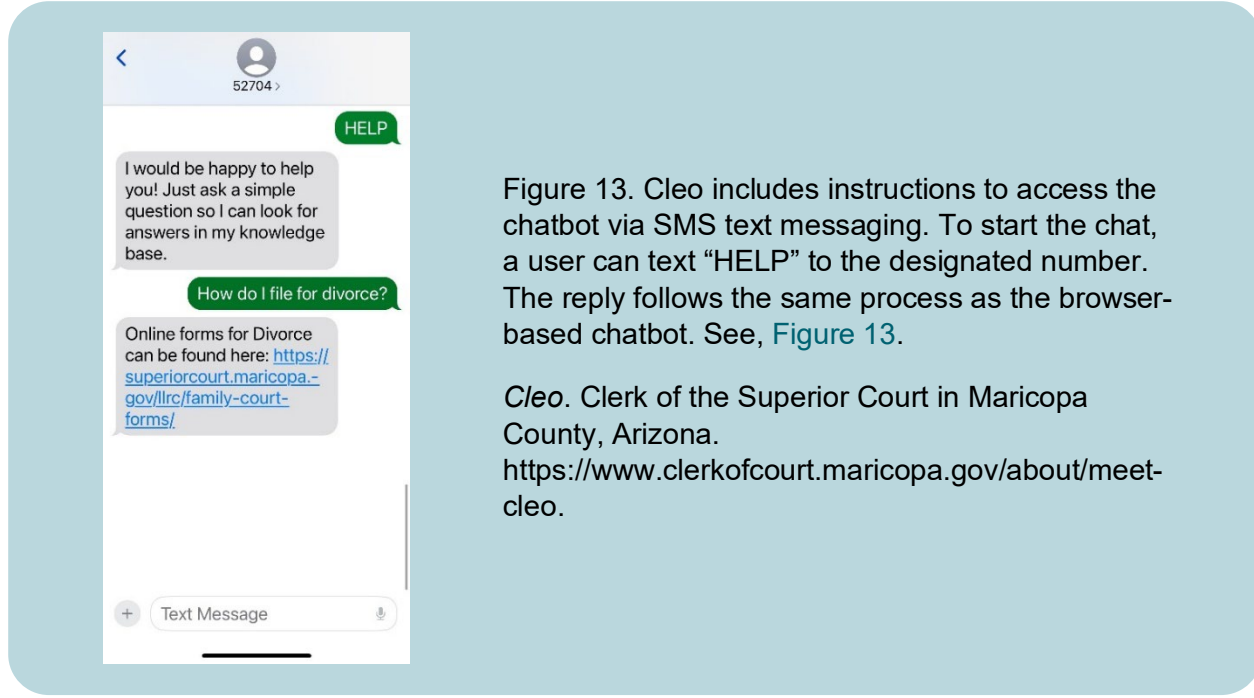


Figure 13. Cleo includes instructions to access the chatbot via SMS text messaging. To start the chat, a user can text “HELP” to the designated number. The reply follows the same process as the browser-based chatbot. See, Figure 13.

Cleo. Clerk of the Superior Court in Maricopa County, Arizona.
<https://www.clerkofcourt.maricopa.gov/about/meet-cleo>.

A good chatbot provides transcripts and a way to follow up with the court

History and transcripts

Many of the surveyed chatbots kept the conversation history in the chat window when later returning to the page. This benefits users who return for the information so that they are not required to repeat the interaction and can reuse their history. However, be conscious of privacy issues for users who may use a shared computer. Users may be put at risk if the chatbot stores the conversation and resources automatically. Sensitive topics such as orders of protection and questions related to domestic violence require special considerations to keep your users safe. A common online safety tool is a “quick exit” button that leaves the court website and goes to a neutral webpage, but it is not a complete solution.⁴⁶ Quick exit buttons do not clear the browser history that records that the court website was visited. They also do not clear the cache that keeps the conversation history stored in the chat window. To protect your users, include safe browsing tips on topics like: 1) how to clear the conversation history through the platform, or 2) clearing the browser history, cache, and cookies, or 3) how to use a private browser.

Transcripts allow the user to save the information outside of the chat window. Downloading or emailing the transcript are helpful ways to hold on to the information provided. This allows the user to organize the resources and maintain the information in their preferred manner

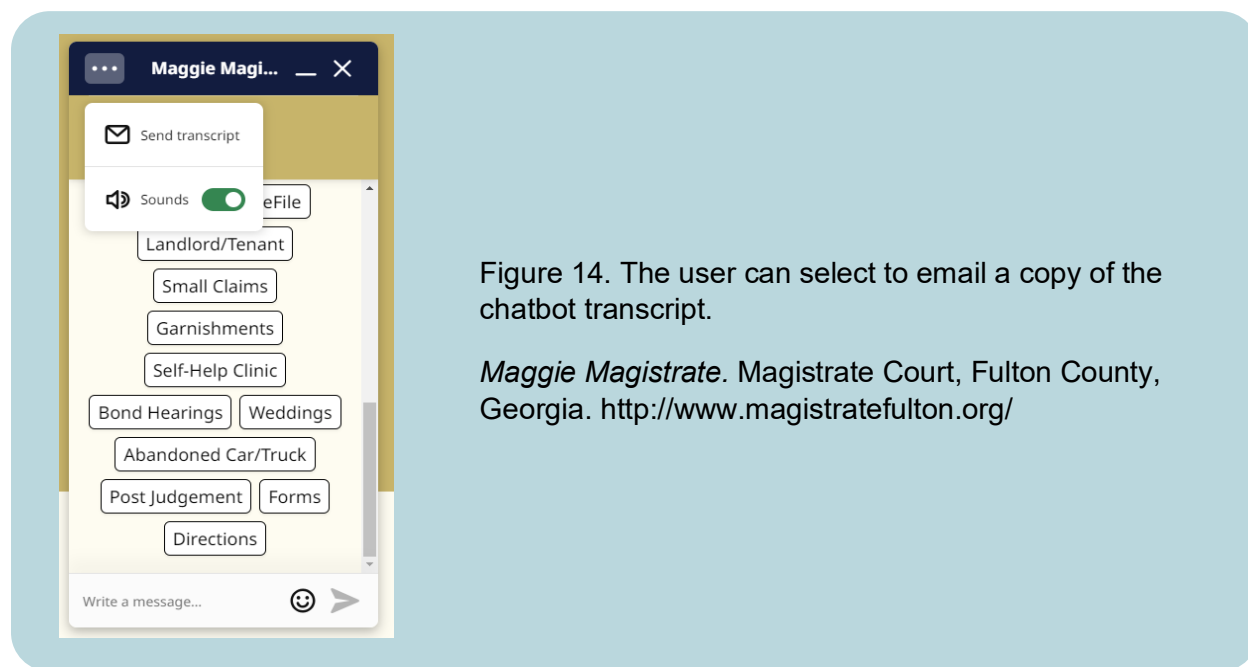


Figure 14. The user can select to email a copy of the chatbot transcript.

Maggie Magistrate. Magistrate Court, Fulton County, Georgia. <http://www.magistratefulton.org/>

⁴⁶ See an example of a quick exit button on Arizona’s Order of Protection guided interview AZPOINT. *Welcome to AZPoint*. The Judicial Branch of Arizona. <https://azpoint.azcourts.gov/>.

Follow up with the court

A chatbot cannot answer every user's question nor is it a replacement for meaningful interaction with court staff. For unanswered issues, a chatbot should provide a clear path to contact the court or external resource.

This can be simple, such as providing contact information for the clerk or self-help center or forwarding user questions via email to the court.

During court hours, chatbots can be enabled to transfer the user to a live chat with court staff if the function is consistently staffed and enabled. Transferring to live chat allows the user to continue solving their problem on a single platform. This keeps the user engaged and increases the likelihood they will complete their task in one sitting. The court staff also interact with the chatbot more regularly and can continue to be aware of what issues the chatbot does not solve, creating a list of what corrections and improvements are needed. The live chat interactions then contribute to drafting the script for additions to the chatbot.

Seamless transfer is an ideal user experience for those who would have difficulty accessing the court in person or those who require discretion and privacy when reaching court services and cannot do so over the phone.

Starting with the chatbot can help resolve many questions, limit live chat interactions to users with more complex questions, and lessen the burden on court staff. See, [Remote access to court services benefits courts](#).

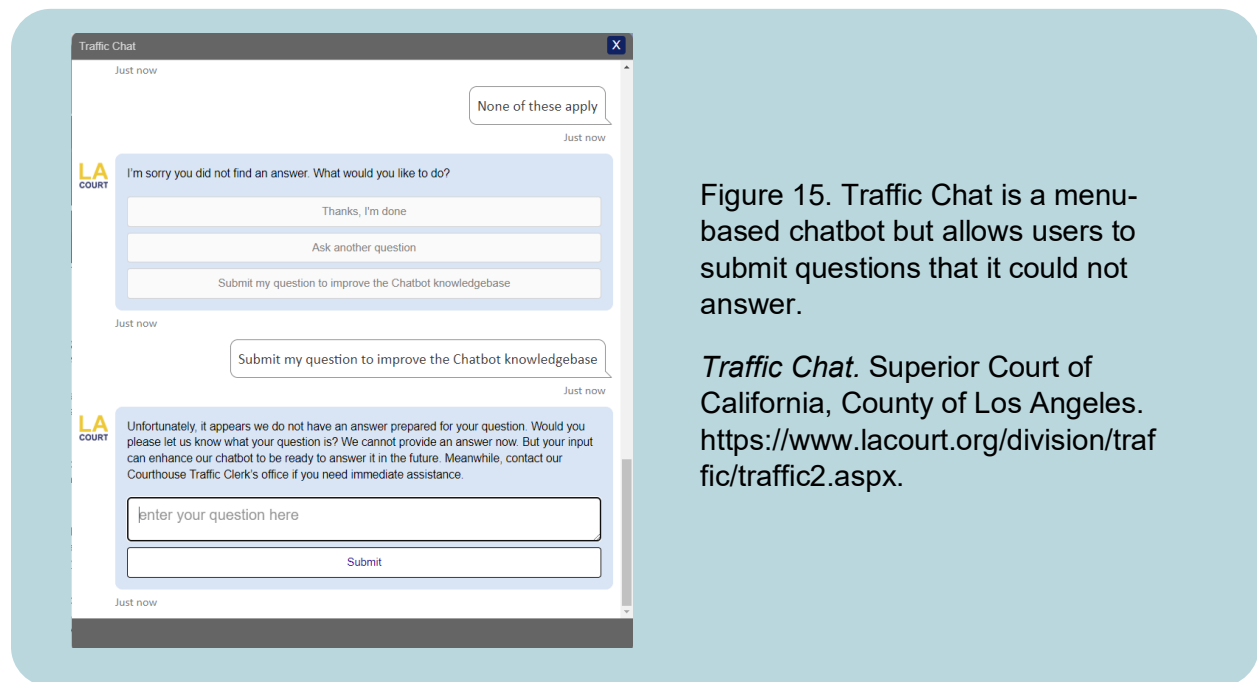


Figure 15. Traffic Chat is a menu-based chatbot but allows users to submit questions that it could not answer.

Traffic Chat. Superior Court of California, County of Los Angeles. <https://www.lacourt.org/division/traffic/traffic2.aspx>.

Feedback surveys

Surveying your chatbot users can help improve your chatbot. Ask the user if they found their answer and review the transcripts when users answer "No." Determine a threshold for repeat

questions that indicates you should expand the website and/or chatbot content to answer users' questions.

Keep feedback surveys short to increase the likelihood of response. Only ask survey questions that you will use to improve the content and experience. Review the surveys regularly, at least once a month, if not more often, to spot bugs or urgent needs for attention.

Chatbots are iterative, meaning that the first version is not the final version. The chatbot should cycle through development, testing, use, feedback, and then development again for an improved version. Using transcript reviews and surveys during the feedback phase creates an information loop to learn how the chatbot is succeeding with real users and that shapes the chatbot to respond to their needs.

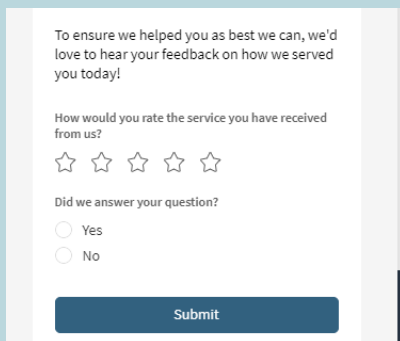
A screenshot of a chatbot feedback survey form. The form is white with a dark blue 'Submit' button at the bottom. The text on the form reads: 'To ensure we helped you as best we can, we'd love to hear your feedback on how we served you today!'. Below this is a question: 'How would you rate the service you have received from us?' followed by five empty star icons. The next question is 'Did we answer your question?' with two radio button options: 'Yes' and 'No'. The 'Submit' button is dark blue with white text.

Figure 16. This chatbot uses two simple questions to solicit user feedback and measure the success of the chatbot.

Court Web Chat. Riverside Superior Court.
<https://www.riverside.courts.ca.gov/OnlineServices/CourtWebChat/chat.php>.

A good chatbot is user tested

User testing should be used to develop public facing materials such as a new court form or technology projects like a chatbot.⁴⁷ User testing is the process of testing a product with real users.⁴⁸ A real user tests the tool by attempting a series of tasks that mimic the tool's intended use. The observation of the test looks for ease of use, whether the user is able to accomplish their task, accuracy, and user satisfaction. The feedback from the tester identifies unexpected use or behavior, areas of confusion, and provides insight into the actual perception of the tool. User testing can be done continuously during development and should always be done before a product is released to the general public.

Testing with real users is the best way to user test a chatbot because the general public is the intended audience. However, testing can be done internally by staff before becoming available to the public. Internal use and testing are an opportunity to test the chatbot, contribute to the training knowledgebase, and become familiar with the technology and review improvements to prepare for a public launch.

⁴⁷ *Forms Camp 2022: User Testing – If you love your forms, let them go*. National Center for State Courts. August 11, 2022. <https://vimeo.com/738650155>.

⁴⁸ See, *User Testing Guidelines*. National Center for State Courts. www.ncsc.org/_data/assets/pdf_file/0017/42722/User-testing.pdf. See also, *Tiny Chat 48: User Testing*. National Center for State Courts. Williamsburg, VA. April 19, 2021. <https://vimeo.com/538629268>.

Appendix A – What are some examples of chatbots?

Court chatbots

Arizona Judicial Branch	Gavel	https://www.azcourts.gov/
Superior Court of California, County of Riverside	Court Virtual Assistant	https://www.riverside.courts.ca.gov/OnlineServices/CourtWebChat/chat.php
Superior Court of California, County of Los Angeles	Traffic Chatbot & SitePal	https://www.lacourt.org/division/traffic/traffic2.aspx
Eleventh Judicial Circuit of Florida	SANDI	https://www.jud11.flcourts.org/
Delaware Courts Judicial Branch, Family Court	Zoe	https://courts.delaware.gov/family/
Cook County Probate Court	Support Agent	https://cookcountyprobatecourt.com/
Clerk of Superior, State & Juvenile Courts, Forsyth County, Georgia	Forsyth Clerk ChatBot	https://www.forsythclerk.com/
Montana Judicial Branch	Virtual Agent	https://courts.mt.gov/
New Jersey Courts	Jia (Judiciary Information Assistant)	https://www.njcourts.gov/
Judicial Branch of New Mexico	Clara	https://languageaccess.nmcourts.gov/?avn

Clerk chatbots

Maricopa County, Arizona	Cleo	https://www.clerkofcourt.maricopa.gov/about/meet-cleo
Clerk of the Circuit Court & Comptroller Palm Beach County, Florida	ClerkPBC	https://www.mypalmbeachclerk.com/about-us/tips-for-chatting-with-our-bot
Clerk of the Circuit Court & Comptroller Pinellas County, Florida		https://www.mypinellasclerk.org/

Fulton County Clerk of Superior & Magistrate Courts	Clerkette	https://www.fultonclerk.org/
Magistrate Court, Fulton County	Maggie Magistrate	http://www.magistratefulton.org/

Legal aid chatbots

Law Center for Better Housing, Illinois	Rentervention	https://rentervention.com/
Legal Aid Society of Hawai'i		https://www.legalaidhawaii.org/get-help.html

Non-court chatbots

U.S. Citizenship and Immigration Services	Emma	https://www.uscis.gov/tools/meet-emma-our-virtual-assistant
National Institutes of Health	Grants Virtual Assistant	https://grants.nih.gov/help/grants_virtual_assistant.html
Center for Disease Control	COVID-19 Viral Testing Tool	https://www.cdc.gov/TemplatePackage/contrib/widgets/healthBot/covid-testing-tool/

Appendix B – Table of Figures

Figure 1. The Riverside Superior Court chatbot provides the option to transfer to a live agent for assistance if the user indicates that the chatbot was not able to resolve their question.	1
Figure 2. After providing general information about divorces, the chatbot provides the contact information of the Family Law Information Center, connecting users to a resource specific to the user’s issue.	6
Figure 3. The prompt “My landlord won’t do anything about the leak in my apartment” did not return a response. However, the chatbot was able to identify the relevant case type, Landlord Tenant, and move the user in that direction.	9
Figure 4. Cook County Probate Court Chatbot Support Agent calls attention to the chatbot with the bright blue tag the first time you visit the page. After opening and then closing the chatbot, the large blue tag disappears but the white bar remains available, making it less prominent on the page.	12
Figure 5. Forsyth Clerk ChatBot uses the prompt “Need Help?” to invite users to use the chat.	12
Figure 6. This chatbot draws the attention with a large talk bubble and the phrase “Let’s talk!”	13
Figure 7. ClerkPBC provides a link to more detailed instructions about how to use the chatbot.	14
Figure 8. SANDI greets the user and explains the methods of interacting: using the microphone, typing a question, or selecting from their menu. It then sets expectations by stating what it can help with, general inquiries, and what it cannot do.	15
Figure 9. The Delaware Family court chatbot can respond to both free text input and offers a menu of programed choices.	16
Figure 10. The Traffic Chatbot limits the user to a menu of choices but has a clear menu that is well organized with the most popular questions available first and additional, less common questions available in the choice “Other issues.”	16
Figure 11. This chatbot is available to both English and Spanish. The user is immediately informed of the languages available and can easily switch to Spanish.	19
Figure 12. Cleo includes instructions to access the chatbot via SMS text messaging. To start the chat, a user can text “HELP” to the designated number. The reply follows the same process as the browser-based chatbot. See, Figure 13.	21
Figure 13. Cleo’s browser-based version, accessed via mobile browser. The web experience is similarly replicated in the SMS text message access in Figure 12.	21
Figure 14. The user can select to email a copy of the chatbot transcript.	22
Figure 15. Traffic Chat is a menu-based chatbot but allows users to submit questions that it could not answer.	23
Figure 16. This chatbot uses two simple questions to solicit user feedback and measure the success of the chatbot.	24

Appendix C – Chatbot Checklist

Use this checklist from conception through planning, development, and launch of a court chatbot.

Vendor considerations

Vendor functionality

- Model Selection:
 - Rule-based
 - AI chatbot
- Disability access compliance
 - Speak to chat/ Mute function
 - High contrast colors in the design
 - Text can be adjusted up to 200% without loss of content or functionality
 - Font size is at least 12 pt (16px) font
 - Buttons include text to indicate use
- Multilingual capability
- Mobile friendly view
- Compatibility with current website
- Transcripts available for users
- Live chat transfer
- Feedback survey
- Additional desired features:
 - _____
 - _____
 - _____

Contracting

- Read “[Contracting Digital Services for Courts](#)” from National Center for State Courts to prepare for vendor selection and contracting⁴⁹
- Use “[Exiting technology projects](#)” by Small Scale and National Center for State Courts to work through vendor contracting before and during the process⁵⁰
- Contract assigns responsibility for updates
- Contract assigns responsibility for improvement and maintenance
- Contract assigns responsibility for security, data privacy, and related maintenance

⁴⁹ See, Access to Justice Team. *Contracting Digital Services for Courts*. National Center for State Courts. Williamsburg, VA. 2022. www.ncsc.org/data/assets/pdf_file/0029/76754/Contracting-Digital-Services.pdf.

⁵⁰ See, *Exiting technology projects*. Small Scale, National Center for State Courts. 2021. https://www.ncsc.org/data/assets/pdf_file/0028/74782/Exiting-Tech-Projects-v2.pdf.

Easy to find and use

Logo or Icon

- Large enough to stand out from the rest of the page
- Recognizable logo such as a text bubble with dots, a phrase like “chat with us,” or a digital avatar

Placement

- The chatbot should be available on as many pages as possible throughout the court website. At a minimum chatbot should be available on:
 - The home page
 - Webpages with self-help resources
 - Webpages with information about attending court
 - Any webpages that relate to subjects where the chatbot can help
- Placement does not interfere with the navigation of the webpage when not in use
- If placed in the lower right-hand corner an additional banner or indicator is higher on page to signal to users who use a screen reader of its availability
- Include a minimize function
- Include a mute function

Instructions

- Inform the user how they can interact with the chatbot (free text, menu choices, speak to chat, etc.)
- Provide an example of a prompt for users to mimic if free text is an option
- Embed the instruction into the chatbot
- How to use history and transcripts
- How to follow up with the court

Disclaimer

- Explain what the chatbot can help with (legal information)
- Explain what the chatbot cannot do (Not legal advice, is not an attorney, is not a person)
- Embed the disclaimer into the chatbot

Maintenance

- Create a maintenance model for accuracy, improvements, security and technical support
 - Assign responsibility to court staff and vendor
 - Create schedule to review and update content
 - Create schedule to review transcripts and feedback surveys to implement updates

Accessibility

Plain language

- Responses should be written in plain language
- Use NCSC's [Plain Language Glossary](#) to translate legalese⁵¹

Disability access

- Disability compliance reviewed with vendor
- Use high contrast colors
- Include text on buttons to indicate use
- Font size should be at least 12 pt (16px) font
- Compatible with screen readers

Language and literacy access

- Chatbot is offered in languages other than English
 - Notify users immediately that the chatbot is available in languages other than English
- Include multimedia information such as sound, videos, or images for users with low literacy
- Speak to chat and read aloud

Readability

- Keep response lengths relatively short
- Rely on page redirects where the information is hosted
- Answers explain to the user how to use the information on the webpage

⁵¹ See, *Interactive Plain Language Glossary*. National Center for State Courts. <https://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/plain-language/glossary>.

History and transcripts

- Provide a chat transcript for users
- Instructions include how to use the transcript function
- If the chatbot assists with sensitive topics, provide safety features like a quick exit button or instructions on how to clear the conversation history

Feedback survey

- Include a user feedback survey
- Only include questions you will use
- Review the surveys at least once a month if not more to spot bugs or urgent needs for attention/ correction

User testing

- Test with court staff
- Test with real users

Generative AI and Legal Aid: Results from a Field Study and 100 Use Cases to Bridge the Access to Justice Gap

By Colleen V. Chien and Miriam Kim¹

ABSTRACT

How can AI tools be used to address the access to justice gap — the millions of low-income Americans that lack adequate legal assistance for 90% of their civil legal problems? We conducted the first field study of lawyers using generative AI of which we are aware and a companion survey of 202 legal aid professionals to find out. A cohort of 91 people received 1-2 months of access to paid generative artificial intelligence tools, a randomly selected subset of which also received “concierge” support including peer use cases, office hours, and assistance. Following the pilot, 90% of pilot participants reported increased productivity and 75% reported their intent to continue using generative AI tools. While concerns remained, pilot participants were able to manage risks by focusing on lower-risk applications like document summarization, confirmatory or preliminary research, the production of first drafts, and translation, from legalese or English into more accessible formats. Before the trial, women were far less likely than men to use or value the tools. By the trial's end, men's and women's outcomes across various measures were statistically indistinguishable. Participants receiving concierge services had significantly better outcomes than the control group across a range of metrics.

These results suggest that generative AI tools can significantly enhance legal professionals and narrow the justice gap, but that how they are introduced matter - though women comprise the majority of public interest lawyers, organic uptake of generative AI was much higher among men in our study. Assistance can also improve tool adoption. The participants’ positive experiences support viewing AI technologies as augmenting rather than threatening the work of lawyers. As we document, legal-aid lawyer directed technological solutions may have the greatest potential to not just marginally, but dramatically, increase service coverage, and we suggest some steps, such as exploring regulatory sandboxes and devising ways to institute voluntary certification or “seal of approval” programs verifying the quality of legal aid bots to support such generative collaborations. Along with the paper, we release a companion database of 100 helpful use cases, including prompts and outputs, provided by legal aid professionals in the trial, to support broader adoption of AI tools.

¹ Colleen V. Chien is Professor of Law at Berkeley Law School, Co-Director of the Berkeley Center for Law and Technology, and the founder of the Paper Prisons Initiative (paperprisons.org); Miriam Kim is a Partner at the law firm Munger, Tolles, & Olson and a Fellow of the Berkeley Center for Law and Technology. We thank OpenAI, Gavel.io, and Casetext for providing free access to the tools for our pilot; Stephanie Moser, Yangxier Sui, and Kelly Tsu for excellent research assistance; and the State Bar of California and audiences at the OneJustice Pro Bono Conference, Loyola Law Review Symposium 2024, CS+Law Group, and our survey and pilot participants, and the legal aid bar to which they belong, for their support of this project. This study was carried out pursuant to IRB Protocol 2023-10-16780 approved by the Committee for Protection of Human Subjects (CPHS) of the Office for Protection of Human Subjects (OPHS) at UC Berkeley. Our use case database is available at <https://bit.ly/AIA2J>. Correspondence can be directed to: cchien@berkeley.edu, Miriam.Kim@mto.com.

ABSTRACT..... 1

Introduction..... 3

Part I: The Justice Gap and Role of AI.....6

 A. The Justice Gap.....6

 B. Historical Efforts to Address the Justice Gap Through Technology.....9

 C. Generative AI and the Legal Profession..... 14

Part II: Methodology..... 16

 A. Recruitment and Data Collection.....16

 B. Pilot Design.....17

 C. Analysis Approach and Respondent Profile..... 19

Part III: Survey and Pilot Results..... 20

 A. Patterns of use and perceptions of the benefits and risks of generative AI tools..... 20

 B. Increases in Productivity and Satisfaction..... 22

 C. Differences by Gender Not Replicated Post-Pilot..... 26

 D. Concierge Services Led to Better Outcomes..... 27

PART IV: Generative AI Use Cases for Lawyers and Legal Aid Professionals..... 27

 A. Risks of AI Tools..... 27

 B. Beneficial Uses of AI Tools, By Type of Task.....29

 1. Document Summarization or Analysis.....29

 2. Brainstorming and Ideation..... 31

 3. Legal Research..... 32

 4. Legal Writing..... 34

 5. Nonlegal Writing..... 36

 6. Client Intake and Automating Documents..... 38

 7. Development Work (e.g. Grant Writing)..... 39

 8. Translation..... 40

 9. Building Custom GPTs..... 42

 10. Other Tasks..... 42

 C. Implications of Beneficial Use Cases..... 42

PART V: OBSERVATIONS AND RECOMMENDATIONS..... 44

 A. Ensuring Equitable Access and Uptake of Generative AI Tools in Legal Aid.....45

 B. Enhancing the Use of Generative AI in Legal Aid Through Innovative Models of Assistance.....47

 C. Facilitating Tech + Legal Aid Lawyer, not Tech v. Legal Aid Lawyer Offerings..... 48

 D. Facilitating the Development of Legal Aid-Directed Technological Solutions..... 49

 E. Certification for Legal Aid Bots..... 50

APPENDIX..... 52

 Methodological Details.....52

 Demographics of Survey Takers.....52

 Survey 1 (Access to Justice AI Automation + Pilot survey combined — using first survey as base).. 55

 Survey 2 (Pilot Exit Surveys for Concierge + Standard Group)..... 61

Introduction

While AI promises increasing productivity across a wide variety of domains, its distributional impacts remain uncertain.² This study considers the potential of AI tools to address the access to justice gap, the high proportion of low-income Americans with unmet legal needs, through the augmentation of legal aid workers. While AI introduces new possibilities to expand the reach of justice, for example by increasing the accessibility of legal logic, processes and filings across income, language, and geographical barriers,³ obstacles remain. First, generative AI tools hallucinate, limiting their use in high-precision contexts like the law.⁴ Second, resource disparities mean that specialized tools being developed to overcome the shortcomings of general purpose products will not necessarily be accessible to resource-limited lawyers and consumers.⁵

² At the macro level, much of the focus has been on the impact of AI on jobs. Although automation generally disfavors workers with low skills and education, fueling estimates of worsening inequality in sectors like, e.g. transportation as drivers are replaced by autonomous vehicles, generative AI's ability to automate knowledge work has been associated with an equalizing effect across workers as discussed in Part I; cf Daron Acemoglu, *The Philosophy of AI: Learning from History, Shaping Our Future*, Testimony Before the S. Comm. on Homeland Sec. & Governmental Affs., 117th Cong. (2023), <https://www.hsgac.senate.gov/wp-content/uploads/Testimony-Acemoglu-2023-11-08.pdf> (providing an overview of AI automation's potential role in widening inequality and the role of policy and other non-technical factors); with Rakesh Kochhar, *Which U.S. Workers Are More Exposed to AI on Their Jobs?*, PEW RESEARCH CENTER (July 26, 2023), <https://www.pewresearch.org/social-trends/2023/07/26/which-u-s-workers-are-more-exposed-to-ai-on-their-jobs> (finding that jobs that require a college education and analytical skills are more likely to be vulnerable to AI displacement); see also Alexandre Georgieff & Raphaela Hye, *Artificial Intelligence & Employment: New Cross-Country Evidence*, OECD PUBLISHING (2021), <https://doi.org/10.1787/c2c1d276-en> (finding that exposure to AI is positively associated with employment growth in occupations where computer use is high, such as managers and professionals, but negatively associated with growth in working hours in occupations where computer use is low, such as agricultural workers and machine operators); Anton Korinek et al., *Technological Progress, Artificial Intelligence, & Inclusive Growth*, 2021 INTERNATIONAL MONETARY FUND (2021), <https://www.elibrary.imf.org/view/journals/001/2021/166/article-A001-en.xml#A001ref52> (discussing mechanisms by which technological progress can amplify or reduce economic inequality); Michael Webb, *The Impact of Artificial intelligence on the Labor Market*, SSRN (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3482150 (characterizing AI as directed towards high-skilled tasks and predicting that AI will reduce top decile, but not top 1%, inequality); Valerio Capraro et al., *The Impact of Generative Artificial Intelligence on Socioeconomic Inequalities and Policy Making* (2023), <https://arxiv.org/abs/2401.05377> (identifying, across four domains — work, education, health, and information — ways in which generative AI could worsen existing inequalities but also resolve pervasive social problems).

³ Discussed *infra* at Part I.

⁴ Discussed *infra* at Part IV.

⁵ At least not initially, see profile of Co-Counsel *infra* at Part I, and Harvey.ai, which were first piloted among high end law firms. Charlotte Johnstone, *Macfarlanes Showed Us How It's Using Harvey AI. Here's What We Learnt*, LAW.COM, (Oct. 9, 2023), <https://www.law.com/international-edition/2023/10/09/macfarlanes-showed-us-how-its-using-harvey-ai-heres-what-we-learnt/#:~:text=Harvey%20has%20quickly%20become%20one.to%20start%20the%20Harvey%20journey>. Accord Bob Ambrogio, *12 Thoughts on Promises & Challenges of AI in Legal after Yesterday's AI Summit at Harvard Law School*, LAW SITES (Sept. 20, 2023), <https://www.lawnext.com/2023/09/thoughts-on-promises-and-challenges-of-ai-in-legal-after-yesterdays-ai-summit-at-harvard-law-school.html> (expressing similar concerns).

Third, despite the notion that everyone benefits from innovation as it trickles down,⁶ there is abundant evidence that technology often fails to be a leveler⁷ and that low-income and marginalized individuals often do not reap the full benefits of product innovation — because it is not priced or otherwise within reach, deprioritizes their unique needs,⁸ or tends to cater to the better off.⁹

A major channel of legal assistance to low-income consumers is through state- and philanthropically- funded legal aid organizations, which represent individuals in consequential matters such as eviction defense, deportation proceedings, and criminal defense.¹⁰ Their services are often oversubscribed, addressing only a fraction of the need, implying that increasing the productivity of legal aid professionals could appreciably increase access to justice.¹¹

To explore the potential of generative AI tools to increase access to justice by augmenting the work of legal aid workers, in the fall of 2023, we surveyed 202 legal aid professionals to gauge their use and attitudes towards AI tools. We next conducted a month-long field experiment¹² in which 91 participants were given free access to paid AI tools: ChatGPT-4, a general purpose tool that interacts with users through a chat interface and provides answers to a broad range of requests and questions, Gavel, a legal document automation platform built on traditional AI and automation technologies, and Co-Counsel, billed as a “comprehensive legal assistant” for carrying out legal research and drafting tasks.¹³ We provided a subset of pilot participants, randomly chosen, with “concierge services” including office hours and weekly emails with use cases aimed at reducing the costs of becoming familiar with the tools, while the rest of participants received the “standard” treatment of having subscriptions to the tools and the internet.

⁶ As perhaps most famously expressed by Joseph Schumpeter when he wrote: “The capitalist achievement does not typically consist in providing more silk stockings for queens but in bringing them within the reach of factory girls in return for steadily decreasing amounts of effort.” Joseph A. Schumpeter, *CAPITALISM, SOCIALISM, AND DEMOCRACY*, 67-68 (5th ed., 2003).

⁷ As discussed extensively in Daron Acemoglu and Simon Johnson, *POWER AND PROGRESS* CH. 2–3 (2023) (describing e.g. crop rotation as a technology that improved agricultural efficiency and yields but primarily benefited those who already owned land and had the resources to implement these new methods, the First Industrial revolution as enriching factory owners and entrepreneurs but at the expense of artisans and workers, and railroads and telecommunications developments as tending to concentrate wealth and power in the hands of who controlled those networks).

⁸ For discussion and cites, see, e.g., Colleen V. Chien, *The Inequalities of Innovation*, 72 *EMORY L. J.* 1, 14–16 (2022) (providing examples of the large share of Americans for whom prescription drug medicines are not taken because they are not affordable, the inaccessibility of naloxone to treat opioid overdoses, the lack of research support for conditions like uterine fibroids which disproportionately impact Black women, and tropical diseases that impact poor populations, and the under-representation of poor and marginalized populations in innovation, impacting its direction and impact).

⁹ Xavier Jaravel, *The Unequal Gains from Product Innovations: Evidence from the U.S. Retail Sector*, 134 *QUARTERLY J. ECON.* 715, 717 (2019) (demonstrating how, empirically and theoretically, high-income households experienced a faster increase in product variety and lower inflation than did low-income households due to firms becoming increasingly attuned to the needs of high-end consumers in the face of rising inequality).

¹⁰ Described *infra*, at Part I.

¹¹ Discussed *infra*, at Part I.

¹² The exact duration of access varied by participant.

¹³ Described in greater detail in Part I, *infra*.

PRELIMINARY DRAFT

At the end of the trial, we asked participants to describe their use patterns, experiences, and intents with respect to continued use of tools. We also asked them to disclose in detail their beneficial use cases and to indicate, for each use case, the estimated amount of time saved as well as their likelihood of reusing each use case in the future.

Our study yielded several findings about the introduction and use of generative AI tools by legal aid lawyers:

- Pilot participants reported higher productivity and intent to continue use: 90% of pilot participants indicated some level of productivity increase in connection with the tools, 25% that indicated a medium to high level of productivity increase; 75% signaled their intent to continue using generative AI tools.¹⁴
- To address AI concerns, lawyers focused on lower-risk tasks: To overcome persistent concerns, pilot participants reported ~50% productivity gains on lower-risk tasks like document summarization, preliminary or confirmatory legal research, translation from legalese or English into more accessible forms of communication, and getting to a first draft of a legal document.
- A gender gap in organic uptake was not replicated in outcomes after using generative AI tools: Men in our baseline survey were 2-3x (47% v. 17%) more likely to be using the tools than women but post-pilot, the outcomes between men and women on a large range of outcomes were statistically indistinguishable.
- Assistance improved outcomes: Pilot participants who received extra support services reported statistically significant better outcomes than those that did not with respect to productivity, satisfaction, quality of output, frequency of use, attitudes, and intentions to continue use of paid tools.

These results suggest that AI tools show significant potential to aid legal professionals and narrow the justice gap, but that how they are introduced matter - though women comprise the majority of public interest lawyers, organic uptake of generative AI was much higher among men in our study. Supportive services also appear to improve tool adoption. The participants' positive experiences support viewing AI technologies as augmenting rather than threatening the work of lawyers. Legal aid lawyer directed technological solutions may hold the greatest potential to dramatically increase the scope of coverage, and we suggest some steps, such as devising ways to certify the quality of legal information bots in the same way attorneys are bar-qualified, to support such generative collaborations. Along with the paper, we release a companion database of 100 helpful use cases, including prompts and outputs, provided by legal aid professionals in the trial, to support broader adoption.

In Part I, we briefly describe the access to justice gap, past efforts to address it through technology, and relevant studies of the impact of generative AI on legal workers. Part II describes how we undertook our survey and pilot. Part III reports on the results of our survey,

¹⁴ Conditional upon being given access.

pilot, and resulting use case database. Part IV discusses lawyers' concerns with AI tools and shows, through descriptions and examples of use cases, how they are able to manage them and achieve productivity gains. Part V includes our observations and recommendations. To support broader dissemination and use of generative AI tools by legal aid lawyers, we release a compendium of approximately 100 use cases produced as part of our pilot, available at <https://bit.ly/AIA2J>.

Part I: The Justice Gap and Role of AI

Though the widespread availability of generative AI tools is new, the justice gap, and efforts to close it through technology are not.¹⁵ There is also now an emerging literature considering the impact of generative AI on workers, including lawyers. Our study, of the role that generative AI can play in addressing the access to justice gap by enhancing legal aid workers, sits at the intersection of these areas, which we briefly discuss to foreground our study.

A. The Justice Gap

The Legal Service Corporation estimates that 92% of low-income Americans' substantial civil legal needs are unmet.¹⁶ This translates into millions of Americans lacking adequate legal help with problems in domains like housing, health care, and protection from abuse.¹⁷ It is estimated that over 100 million Americans face civil justice problems pertaining to "basic human needs," including matters related to shelter, sustenance, safety, health, and child custody.¹⁸

Among the many causes of the access to justice gap, two are particularly salient. First, there is a knowledge gap, because many, if not most, with civil legal needs do not know their problem is a legal issue or do not know how to get legal help.¹⁹ Second, there is a service gap. Paid legal assistance is often out of reach and legal aid organizations can only serve about 30%

¹⁵ For an overview of some of these efforts, see Raymond H. Brescia et al., *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 ALB. LEV. REV. 553, _____ (2015).

¹⁶ The Legal Services Corporation (LSC) defines the "justice gap" as "the difference between the civil legal needs of low-income Americans and the resources available to meet those needs." LEGAL SERVICES CORPORATION, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* (2022), <https://justicegap.lsc.gov/the-report/> (last visited Sept. 11, 2023).

¹⁷ The Legal Services Corporation (LSC) reported in 2022 that LSC-funded organizations are unable to provide any or adequate legal help for approximately 1.4 million (or 71%) civil legal problems that come to their doors every year. *Id.* at Executive Summary.

¹⁸ ABA COMMISSION ON THE FUTURE OF LEGAL SERVICES, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 11–14 (2016), https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf (quoting Rebecca L. Sandefur, *What We Know & Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 433, 466 (2016)).

¹⁹ *Described, e.g.* in Rocio Avalos et al., THE STATE BAR OF CALIF., CALIF. JUSTICE GAP STUDY EXECUTIVE REPORT 7 (2019). The access to justice gap is not the same thing as the access to lawyer gap, and some have suggested that skepticism about the value of legal services by low- and middle- income consumers also explains why there is a lack of access to justice. Milan Markovic, *Juking Access to Justice to Deregulate the Legal Market*, 29 Geo. J. Legal Ethics 63, 67 (2016).

of the clients that come through their doors.²⁰ While generative AI has the potential to address these and other problems, the focus of our study is on augmenting the capacity of legal aid organizations to meet the demands of clients.

Three realms of legal assistance - eviction defense, expungement, and immigration - illustrate the scope and severity of the conditions that follow inadequate representation. Each year, approximately 2.7 million households (or 7.6 million people) in the United States face the threat of displacement from their homes through court-ordered eviction.²¹ Nearly 40% (or 2.9 million) of individuals facing the threat of eviction each year are children.²² There is strong evidence that legal representation improves outcomes and housing stability for tenants in eviction or unlawful detainer proceedings.²³ For example, the Shriver Report (2020) found that representation by counsel in unlawful detainer proceedings in California led to close to zero defaults. Even when landlords prevailed, 83% of represented tenants were able to secure negotiated settlements. One year later, 71% of the represented tenants had secured a new rental unit, compared to 43% of tenants without an attorney.²⁴ But only 4% of tenants are represented by an attorney in eviction proceedings, as compared to 83% of landlords.²⁵

Or, take the realm of expungement. An estimated 1 in 3 American adults has a criminal record, which can lead to being shut out of employment, housing, and related opportunities. As a result, there is a significant earnings impact associated with living with a conviction.²⁶ But only a fraction of people eligible for expungement of their records have received the relief to which they are entitled under the law. A 2020 study by one of us estimated, based on the examination of criminal records across the country, that 20-30 million Americans that were eligible for

²⁰ LEGAL SERVICES CORPORATION, *supra* note ___, at 11.

²¹ Ashley Gromis et al., *Estimating Eviction Prevalence Across the United States*, PRINCETON UNIV. EVICTION LAB, <https://data-downloads.evictionlab.org/#estimating-eviction-prevalance-across-us/>. (Deposited May 13, 2022).

²² Nick Graetz et al., *A Comprehensive Demographic Profile of the US Evicted Population*, 120 PNAS (Oct. 2, 2023), <https://www.pnas.org/doi/10.1073/pnas.2305860120> (based on review of eviction cases from 2007 to 2016 and linking them to Census records).

²³ JUDICIAL COUNCIL OF CAL., FINAL REPORT FROM THE WORK GROUP ON HOMELESSNESS TO THE CHIEF JUSTICE, at 8–9 (Oct. 22, 2021), https://www.courts.ca.gov/documents/hwg_work-group-report.pdf (summarizing 2020 Shriver report and other studies); STOUT RISIUS ROSS, LLC, THE ESTIMATED COST OF AN EVICTION RIGHT TO COUNSEL OUTSIDE OF NEW YORK CITY 10–12 (Mar. 2022), <https://www.stout.com/-/media/pdf/evictions/cost-rtc-onyc-stout-report-march-2022.pdf> (describing benefits of representation during eviction proceedings).

²⁴ JUDICIAL COUNCIL OF CAL., REPORT TO THE CALIFORNIA STATE LEGISLATURE FOR THE SARGENT SHRIVER CIVIL COUNSEL ACT EVALUATION (2020 Shriver Report) (June 2020), https://www.courts.ca.gov/documents/Shriver-Legislative-Report_June-30-2020.pdf.

²⁵ National Coalition of Civil Right to Counsel (NCCRC), *Eviction Representation Statistics for Landlords & Tenants Absent Special Intervention* (2023), http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats__NCCRC_.pdf (last visited Nov. 30, 2023).

²⁶ The average lost earnings per year associated with a felony or misdemeanor conviction record is \$6,400 and \$5,100, respectively, *see* Colleen V. Chien et al., *Estimating the Earnings Loss Associated with a Criminal Record & Suspended Driver's License*, 64 ARIZ. L. REV. 675 (2022).

expungement remedies had not received them.²⁷ Follow on work by the Paper Prisons Initiative has documented uptake rates of less than 10% with respect to clearable convictions across a number of states.²⁸ The challenges of getting relevant records, determining eligibility, and following the relevant procedures are presently difficult to navigate without legal assistance, leaving millions of Americans in the “second chance gap.”²⁹

Immigration proceedings in the United States can result in particularly grave outcomes, including detention and removal and the separation of families. Nevertheless, there is generally no right to counsel in immigration proceedings. While the government is always represented by counsel, approximately 40% of individuals are represented in immigration proceedings.³⁰ Evidence shows that immigrants represented by counsel are more likely to seek and obtain relief,³¹ and success in removal proceedings.³² Never-detained respondents with counsel were about five times more likely to succeed; released respondents with counsel were three and a half times more likely to obtain relief, and detained respondents with representation were over two times more likely to succeed than unrepresented respondents.³³ Over the six year period reviewed by the American Immigration Council, only 2% of those in removal proceedings who applied for relief were successful without counsel.³⁴ While correlation is not causation, and even the best lawyer cannot guarantee victory, in adversarial contexts, the absence of counsel is generally associated with worse outcomes.³⁵

²⁷ Colleen V. Chien, *America's Paper Prisons: The Second Chance Gap*, 119 MICH. L. REV. 519, 523-524 (2020). (this estimate did not take into account criteria that are not readily ascertainable based on background check records, such as out of record fines and fees.)

²⁸ THE PAPER PRISONS INITIATIVE, What Is the “Second Chance Gap?” Page, <https://paperprisons.org/SecondChanceGap.html> (last visited Feb. 22, 2024).

²⁹ Chien 2020, *supra* note __.

³⁰ DEPT. OF JUSTICE, Executive Office for Immigration Review Adjudication Statistics, Current Representation Rates (July 13, 2023), <https://www.justice.gov/media/1174836/dl?inline> (last visited Nov. 29, 2023). In 2018, Vera reported that almost half of all immigration court cases have gone unrepresented. Karen Berberich & Nina Siule, *Why Does Representation Matter? The Impact of Legal Representation in Immigration Court*, VERA INST. OF JUSTICE (Nov. 2018), <https://www.vera.org/downloads/publications/why-does-representation-matter.pdf>. Based on a review of over 1.2 million deportation cases decided between 2007 and 2012, the American Immigration Council reported in 2016 that only 37% of all immigrants, and only 14% of detained immigrants, secured legal representation in their removal cases. INGRID EAGLY & STEVEN SHAFER, AMERICAN IMMIGRATION COUNCIL, Access to Counsel in Immigration Court 5 (2016), <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court> (only 37% of immigrants in removal proceedings are represented by counsel); *see also* Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 7 & Fig. 1 (2015), <https://papers.ssrn.com/abstract=2581161> (63% of immigrants went to court without counsel).

³¹ *See, e.g., id.* Eagly & Shafer, at 70, Fig. 19 (including release from detention, with 44% of represented respondents released after custody hearing, compared to 11%).

³² *Id.* at 50, Fig. 14.

³³ *Id.* at 51, Fig. 15.

³⁴ *Id.* at 76. *See also* CAL. COAL. FOR UNIVERSAL REPRESENTATION, CALIFORNIA’S DUE PROCESS CRISIS: ACCESS TO LEGAL COUNSEL FOR DETAINED IMMIGRANTS 1, 3 (2016), <https://www.nilc.org/wp-content/uploads/2016/06/access-to-counsel-Calif-coalition-report-2016-06.pdf> (italics in original) (finding that “detained immigrants who had counsel succeeded *more than five times* as often as did their unrepresented counterparts”).

³⁵ *See, e.g.,* Mitchell Levy, *Empirical Patterns of Pro Se Litigation in Federal District Courts*, 85 U. CHI. L. REV. 1819, 1865 (2018) (“pro se plaintiffs are less than one-tenth as likely to win cases as represented plaintiffs, whereas pro se defendants are only about one-third as likely to win cases as represented defendants”). *But see* BENJAMIN H.

Though the details of the relevant proceedings, as well as the roles of lawyers,³⁶ vary, in most cases, legal aid lawyers are required to oversee multi-step processes that are repeated over multiple cases. This provides an opportunity for technological solutions that can scale across clients. Augmenting the capacity so that they can serve a greater number of people and serve them more effectively is an important component of addressing the justice gap.

B. Historical Efforts to Address the Justice Gap Through Technology

Efforts to address the justice gap through technology have generally followed the more general development of tools to increase lawyer efficiency, particularly in the areas of legal research and e-discovery.³⁷ The Internet led to the creation of online platforms and services that provide legal information and assistance directly to the public, such as legal databases, websites, blogs, and self-help guides. Online legal services providers such as LegalZoom, Nolo, and RocketLawyer began emerging in the 2000s to provide consumers with legal information and more affordable, automated options for the preparation of some common legal documents such as wills, trademark registrations, and business formation documents.³⁸

In 2000, the Legal Services Corporation also created a new Technology Initiative Grants (TIG) program, made possible through special funds appropriated by Congress, to encourage innovation in the delivery of legal assistance to low-income Americans.³⁹ As of this date, LSC has awarded over \$86 million in TIG funding to LSC-funded providers.⁴⁰ One such program is A2J Author, an online program created in 2004 with the help of TIG funding. A2J Author helps courts and legal aid organizations create “guided interviews” to help pro se litigants draft and file legal documents.⁴¹

The rise of AI and automation technologies over the last decade has spawned a new generation of innovative solutions designed to make legal services generally more accessible,

BARTON & STEPHANOS BIBAS, *REBOOTING JUSTICE: MORE TECHNOLOGY, FEWER LAWYERS, AND THE FUTURE OF LAW* (2017) (“lawyers did not significantly outperform self-represented litigants in securing wins in noncomplex civil cases.”).

³⁶ For example, routine “transactional” tasks like registering trademarks, filing business formation documents, developing simple prenuptial agreements, and filing for expungements in some case need little to no individualized attention from lawyers as compared to, for example court appearances (as described in Drew Simshaw, *Toward National Regulation Of Legal Technology: A Path Forward For Access To Justice*, 92 *FORDHAM L. REV.* 1., 10-12, 16-17 (2023)).

³⁷ For example, one of the most notable technological advances for lawyers was the introduction of Shepard’s on Lexis.com in 1999, replacing the cumbersome process of finding and validating legal authority using Shepard’s in print. LEXISNEXIS, *HOW TO SHEPARDIZE*, <https://lexisnexis.com/infopro/training/reference/lexisdotcom/shep.pdf> at 3 (noting that “your legal-research instructor may prefer that you master SHEPARD’S in print before you learn SHEPARD’S on lexis.com”).

³⁸ See, e.g., Raymond H. Brescia et al., *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 *ALB. L. REV.* 553, 569–575 (2015).

³⁹ Sherley E. Cruz, *Coding for Cultural Competency: Expanding Access to Justice with Technology*, 86 *TENN. L. REV.* 347, 354 (2019).

⁴⁰ Press Release, Legal Services Corporation Awards \$5.1 Million in Technology Grants to 29 Legal Aid Organizations (Nov. 16, 2023) (<https://www.lsc.gov/press-release/legal-services-corporation-awards-51-million-technology-grants-29-legal-aid-organizations>).

⁴¹ A2J AUTHOR, <https://www.a2jauthor.org/>.

with lawyers and consumers in mind. Lawyers have used AI and automation to carry out tasks like streamlining legal research, electronic discovery, due diligence review, contract analysis, and other tasks.⁴² For example, TextIQ, founded in 2014, leveraged machine learning and natural language processing to help lawyers reduce the time and cost of reviewing documents for responsiveness and privilege.⁴³ On the consumer-facing side, AI and automation technologies have been used to build chatbots and virtual kiosks that can walk self-represented litigants through a series of questions, help them identify their legal issue, connect them to a legal service provider, or help them draft a legal document.⁴⁴

The advent of consumer-facing generative AI tools has ushered in new optimism about the potential for AI tools to transform the practice of law, including the access to justice gap. As Chief Justice John Roberts remarked as part of his 2023 Year-End Report on the Judiciary:

“For those who cannot afford a lawyer, AI can help. It drives new, highly accessible tools that provide answers to basic questions, including where to find templates and court forms, how to fill them out, and where to bring them for presentation to the judge—all without leaving home. These tools have the welcome potential to smooth out any mismatch between available resources and urgent needs in our court system.”⁴⁵

While the deployment of generative AI technologies across legal domains is still in its infancy, several risks are already readily apparent. First, that technology will exacerbate existing inequities given that the capital to invest in technology requires, well, capital.⁴⁶ Drew Simshaw, for example, has warned of a two-tiered system in which those who can effectively harness legal AI or retain expensive human lawyers receive superior services, while others are left with

⁴² See, e.g., Frank Pasquale & Glyn Cashwell, *Four Futures of Legal Automation*, 63 UCLA L. REV. DISCOURSE 26, 34 (2015) (“[p]redictive coding” used to “decrease time spent in discovery by 75 percent.”); Agnieszka McPeak, *Disruptive Technology & the Ethical Lawyer*, 50 U. TOL. L. REV. 457, 466 (2019) (legal technology can “streamline legal-related tasks” and lead to “more accurate results, for less cost, and in a much quicker timeframe”). For example, ROSS Intelligence, founded by two AI researchers in 2014, used AI to offer end users the ability to ask questions using natural language rather than a keyword or Boolean search. Nina Haikara, *AI Success Story: U of T’s ROSS Intelligence Returns to Toronto to Open New Research Headquarters*, U OF T NEWS (Mar. 29, 2017), <https://www.utoronto.ca/news/ai-success-story-u-t-s-ross-intelligence-returns-toronto-open-new-research-headquarters>. The company shut down its business operations in 2020 but is continuing to defend against a contract and copyright lawsuit filed by Thomson Reuters. David Thomas, *ROSS Intelligence Hopes for Second Act After Blaming Thomson Reuters for Forced Shutdown*, REUTERS (Dec. 11, 2020), <https://www.reuters.com/article/ross-shutdown/ross-intelligence-hopes-for-second-act-after-blaming-thomson-reuters-for-forced-shutdown-idUSL1N2IR2HU/>.

⁴³ *Relativity Acquires Text IQ to Drive Leadership in AI for e-Discovery, Compliance and Privacy*, PR NEWswire (May 27, 2021), <https://www.prnewswire.com/news-releases/relativity-acquires-text-iq-to-drive-leadership-in-ai-for-e-discovery-compliance-and-privacy-301300405.html>.

⁴⁴ Cruz, *supra* note __, at 364.

⁴⁵ Hon. John G. Roberts, Jr., *2023 Year-End Report on the Federal Judiciary*, 6 (Dec. 31, 2023), <https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf> (“As AI evolves, courts will need to consider its proper uses in litigation. In the federal courts, several Judicial Conference Committees . . . will be involved in that effort.”).

⁴⁶ See examples provided in Acemoglu & Johnson, *supra* note ____.

inferior AI-driven assistance;⁴⁷ a dehumanized version of the law.⁴⁸ The *Mata v. Avianca* suit, in which a lawyer infamously cited sources in court pleadings that were hallucinated by ChatGPT, provides one example.⁴⁹ Though receiving less attention, the posture of the parties is note-worthy: the case involved a personal injury claim brought by a plaintiff represented by small practice⁵⁰ that improperly relied on ChatGPT to do his work, pitted against a large corporation, Avianca S.A.⁵¹ As low-resourced plaintiffs turn to lawyers who promise cost savings based on their use of generative AI tools, or use them themselves, a two-tier model may emerge. Limited internet access and algorithmic literacy among low-income individuals could further hinder their access to innovative legal services.⁵²

The risk of unfair and discriminatory outcomes also looms. Racial and gender biases have been widely documented in contexts that range from facial recognition⁵³ to recidivism prediction,⁵⁴ and age bias claims have been alleged and settled in the context of hiring algorithms.⁵⁵ In 2023, five federal agencies, including the U.S. Equal Employment Opportunity Commission, the Federal Trade Commission, the Department of Justice, and the Consumer Financial Protection Bureau launched a coordinated initiative to guard against the use of “inaccurate, biased, and discriminatory” AI tools, and their application in realms like hiring, tenant screening, and credit decisions.⁵⁶ Bias can show up in unexpected ways as well. In one study, GPT-3 correctly answered 77% of the 200 questions in the study related to online terms of service. GPT-3 was poor in answering pro-consumer questions, potentially reflecting an anti-consumer bias.⁵⁷ Performance was also highly sensitive to the wording of questions.⁵⁸ Based on these findings, Kolt concluded that, “while language models have the potential to empower

⁴⁷ See Drew Simshaw, *Access to A.I. Justice: Avoiding an Inequitable Two-Tiered System of Legal Services*, 2022 YALE J. L. & TECH. 150, __ (2022).

⁴⁸ Roberts, *supra* note __ at 5 (describing AI as risking “dehumanizing the law”).

⁴⁹ *Mata v. Avianca, Inc.*, No.22-cv-1461, 2023 WL 4114965 (S.D.N.Y. June 22, 2023).

⁵⁰ The lawyer’s firm, Levidow, Levidow and Oberman does not appear to have a website and is indicated on their website LinkedIn page to have 2-10 employees. LEVIDOW, LEVIDOW AND OBERMAN, <https://www.linkedin.com/company/levidow-levidow-&-oberman-p.c./about/>.

⁵¹ Billed as the second-largest airline in South America.

⁵² Simshaw (2022), *supra* note __, at 187.

⁵³ Timnit Gebru & Joy Buolamwini, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, Proceedings of Machine Learning Research, MIT Media Lab, Feb. 4, 2018, 1–15, <https://www.media.mit.edu/publications/gender-shades-intersectional-accuracy-disparities-in-commercial-gender-classification> (documenting the worse performance of facial recognition systems among women and people of color as compared to white males).

⁵⁴ Jeff Larson, Surya Mattu, Lauren Kirchner & Julia Angwin, *How We Analyzed the COMPAS Recidivism Algorithm*, ProPublica (May 23, 2016), <https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm> (finding that black defendants were twice as likely as white defendants to be misclassified as a higher risk of violent recidivism, while white recidivists were more likely to be misclassified as low-risk).

⁵⁵ Press release, iTutorGroup to Pay \$365,000 to Settle EEOC Discriminatory Hiring Suit (Sept. 11, 2023), <https://www.eeoc.gov/newsroom/itutorgroup-pay-365000-settle-eeoc-discriminatory-hiring-suit>.

⁵⁶ Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems by the EEOC, CFPB, DOJ, FTC <https://www.eeoc.gov/joint-statement-enforcement-efforts-against-discrimination-and-bias-automated-systems>

⁵⁷ Noam Kolt, *Predicting Consumer Contracts*, 37 BERKELEY TECH. L.J. 71, 103 (2022).

⁵⁸ *Id.* at 104, 107–09.

consumers, they also have the potential to provide misleading advice and entrench harmful biases.”⁵⁹ Concerns about data privacy, confidentiality, hallucinations, and fabrications are also urgent among the lawyers we polled, and described further in Part IV.

Another set of problems relates to the risk of potential consumer harm through offerings that result in the unauthorized practice of law.⁶⁰ Unauthorized practice of law (UPL) rules generally prohibit non-lawyers from engaging in the provision of legal advice unless they are authorized to do so in a particular jurisdiction.⁶¹ This includes not only practicing law in violation of the regulations of the legal profession in that jurisdiction, but also assisting another in doing so. While varying from jurisdiction to jurisdiction, these rules are designed to protect the public against the rendition of legal services by unqualified persons, a class that some may argue includes legal technologists that are not lawyers.

Yet UPL rules have also been subject to criticisms that they are more about protecting the bar and lawyers, than about protecting consumers.⁶² There is a parallel and just as urgent risk, as Orly Lobel discusses in her book, *The Equality Machine*, that an undue focus on the harms of AI will result in a failure of AI to deliver on its potential benefits, particularly with respect to access to justice.⁶³ As Justice Roberts has quipped, “[t]he legal profession is, in general, notoriously averse to change.”⁶⁴ This conservatism, when applied to technology, has meant that efforts to address access to justice challenges have historically “been hindered by resistance to technological changes and other innovations.”⁶⁵ Several barriers can hinder the effective “calibration” of technological solutions to access to justice problems, including resource constraints, lack of resilience, and relationship challenges.⁶⁶ However, at the heart of these lie regulations that discourage or prohibit legal services providers from accessing capital for technology, which in many cases stem from fears of engaging in the unauthorized practice of law (UPL).

Drew Simshaw has identified resource, resilience, and relationship barriers to the effective “calibration” of technological solutions to access to justice problems, but has also commented that underlying all of these barriers are regulations that discourage or prohibit legal

⁵⁹ *Id.* at 71.

⁶⁰ See, e.g., Katherine L. W. Norton, *The Middle Ground: A Meaningful Balance Between the Benefits and Limitations of Artificial Intelligence to Assist with the Justice Gap*, 75 U. MIAMI L. REV. 190, 248–49 (2020); Spencer Williams, *Predictive Contracting*, 2019 COLUM BUS. L. REV. 621, 691–93 (2019) (discussing the potential unauthorized practice of law by AI contracting tools).

⁶¹ MODEL RULES OF PROF. CONDUCT R. 5.5 (AM. BAR ASS’N 2019).

⁶² NATIONAL CENTER FOR ACCESS TO JUSTICE, “UNAUTHORIZED PRACTICE OF LAW” ENFORCEMENT IN CALIFORNIA: PROTECTION OR PROTECTIONISM? (2022), <https://ncaj.org/sites/default/files/2022-02/Cease%20and%20Desist%20Report%20-%20%20Final%2C%202-14-22%20pdf.pdf>.

⁶³ Orly Lobel, *THE EQUALITY MACHINE* (2022), ____.

⁶⁴ Roberts, *supra* note ____ at 3.

⁶⁵ COMM’N ON THE FUTURE OF LEGAL SERVS., AM. BAR. ASS’N, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 11–14 (2016), https://iaals.du.edu/sites/default/files/documents/publications/aba_future_of_legal_services_report.pdf

⁶⁶ Simshaw 2024, *supra* note ____ at 15–20

PRELIMINARY DRAFT

services providers from accessing capital for technology, in many cases out of a fear of engaging in UPL.⁶⁷

Utah, Arizona, and several other states have moved forward with regulatory reforms that mitigate UPL issues. Utah’s regulatory sandbox, the first of its kind, allows participants to offer innovative legal services to the public in a controlled environment while enabling data-collection and ongoing supervision to protect consumers from harm.⁶⁸ Arizona’s regulatory reform efforts, without a sandbox per se, consist of the state adopting a framework that allows alternative business structures for law firms.⁶⁹ A recent study of these initiatives in Utah concluded that reform efforts were “spurring substantial innovation” in legal services delivery models without a substantial risk of consumer harm.⁷⁰ A small number of states, including Utah, Arizona, Delaware, and Alaska, have also approved initiatives to allow nonlawyer community-based advocates to provide limited-scope legal advice in certain areas, such as family law, medical debt, and housing.⁷¹ But other states have been slower to embrace reforms: while California, Washington, and Florida, have also explored regulatory sandboxes in the legal sector, none have been approved.⁷²

⁶⁷ Simshaw 2024, *supra* note ___ at 15–20

⁶⁸ See Utah Sup. Ct. Standing Order No. 15 (Amended) at 8 (Amended Sept. 2022), <https://utahinnovationoffice.org/wp-content/uploads/2022/10/Standing-Order-No.15-Amended-9.21.22.pdf>. As of December 2023, the office overseeing the sandbox had received only 9 harm-related complaints, or approximately 1 complaint per 7,937 services delivered. UTAH OFFICE OF LEGAL SERVICES INNOVATION, ACTIVITY REPORT: DECEMBER 2023 6-7 (Jan. 2024), <https://utahinnovationoffice.org/wp-content/uploads/2024/02/December-Activity-Report.pdf>.

⁶⁹ Alternative Business Structures, AZCOURTS.GOV, <https://www.azcourts.gov/cld/Alternative-Business-Structure>; Order Amending the Arizona Rules of the Supreme Court and the Arizona Rules of Evidence, No. R-20-0034 (Ariz. 2020) (abrogating Ethical Rule 5.4 and adopting new Rule 31.3(e)(4) effective January 1, 2021); see also TASK FORCE ON THE DELIVERY OF LEGAL SERVICES, ARIZONA SUPREME COURT, REPORT AND RECOMMENDATIONS (Oct. 4, 2019), <https://www.azcourts.gov/Portals/74/LSTF/Report/LSTFReportRecommendationsRED10042019.pdf?ver=2019-10-07-084849-750>.

⁷⁰ David Freeman Engstrom et al., *Legal Innovation After Reform: Evidence from Regulatory Change* 4, Deborah L. Rhode Center on the legal Profession 2022, <https://law.stanford.edu/publications/legal-innovation-after-reform-evidence-from-regulatory-change/>.

⁷¹ See Housing Stability Legal Advocates, <https://www.innovation4justice.org/hsla> (last visited Mar. 6, 2024); Press Release, Delaware Supreme Court Announces Adoption of New Supreme Court Rule 57.1 to Allow Non-Lawyer Representation of Residential Tenants in Eviction Actions (Jan. 28, 2022), <https://courts.delaware.gov/forms/download.aspx?id=133348>; Alaska Legal Services Corp., Community Justice Worker Program, <https://www.alsc-law.org/community-justice-worker-program/>; Tracey Read, Ariz., Utah OK Nonlawyer Program For Housing Advice (May 30, 2023), <https://www.law360.com/access-to-justice/articles/1682740/ariz-utah-ok-nonlawyer-program-for-housing-advice>.

⁷² California took steps towards forming a regulatory sandbox, but those efforts came to a halt in 2022. In 2020, the State Bar formed a Working Group on Closing the Justice Gap to explore the creation of a regulatory sandbox. But the working group was dissolved in 2022 in light of significant restrictions imposed by the annual fee bill (Assembly Bill 2958). Closing the Justice Gap Working Group, THE STATE BAR OF CALIFORNIA, <https://www.calbar.ca.gov/About-Us/Who-We-Are/Archived-Committees/Closing-the-Justice-Gap-Working-Group> (last visited Feb. 17, 2024). In Washington, the Practice of Law Board has recommended that the Supreme Court create a legal regulatory lab to foster innovation. WASHINGTON COURTS PRACTICE OF LAW BOARD, BLUEPRINT FOR A LEGAL REGULATORY LAB IN WASHINGTON STATE (Feb. 2022), https://www.wsba.org/docs/default-source/legal-community/committees/practice-of-law-board/polb_legal-regulatory-lab_2.0_02-2022.pdf?sfvrsn=b67110f1_5. In 2021, a special committee of the Florida Supreme Court recommended establishing an innovation lab program similar to the Utah sandbox, but the proposal was rejected.

For these reasons, it is likely that for the foreseeable future, legal technology will be intermediated through legal professionals, making it an opportune time to test the extent to which their work can be enhanced by generative AI technology. As we elaborate in the following sections, the current body of evidence, which serves as the foundation for our work, presents a complex picture.

C. Generative AI and the Legal Profession

A number of studies have considered the extent to which generative AI tools can be useful to legal professionals. The studies that examine the use of generative AI in the legal profession using OpenAI's GPT-3.5 emphasize the opportunities and limitations. Shortly after the launch of GPT-3.5, Perlman (2022) used it to generate an article that predicted generative AI's potential to revolutionize the legal industry by conducting legal research, generating legal documents, providing legal information, and performing legal analysis.⁷³ However, Perlman also found ChatGPT's responses were "imperfect and at times problematic" and warned that "the use of an AI tool for law-related services raises a host of regulatory and ethical issues."⁷⁴ These concerns are echoed by Dahl et al. (2024) which concluded, based on a study, that "legal hallucinations are alarmingly prevalent" in LLMs, occurring 69% (ChatGPT 3.5) to 88% (Meta's Llama 2) of the time when asked specific questions about federal court cases.⁷⁵

Another set of studies has been more sanguine about the prospect of generative AI's usefulness to the legal profession. For example, while one study showed that OpenAI's GPT-3.5 failed the bar exam, Katz et al. (2023) found that ChatGPT-4 obtained a score in the 90th percentile on the Uniform Bar Examination and a passing score in all jurisdictions.⁷⁶ Similarly, studies involving law school exams have shown more benefits with more recent versions of generative AI tools. Choi et al. (2023) found that ChatGPT 3.5 averaged a C+ on four real law school examinations.⁷⁷ In general, ChatGPT performed better on essay questions than multiple choice questions, with some answers being above average and other answers being dramatically incorrect.⁷⁸ When Choi and Schwarcz tested GPT-4's impact on law students' final examination

See Gary Blankenship, *Board Rejects Special Committee's "Legal Lab" Recommendation* (Dec. 2021), <https://www.floridabar.org/the-florida-bar-news/board-rejects-special-committees-legal-lab-recommendation/>.

⁷³ Andrew M. Perlman, *The Implications of ChatGPT for Legal Services and Society*, SUFFOLK UNIV. L. SCH. RESEARCH PAPER NO. 22-14 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4294197.

⁷⁴ *Id.* at 1.

⁷⁵ Matthew Dahl et al., *Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models 1* & Fig. 1 (Jan. 2, 2024), <http://arxiv.org/abs/2401.01301>.

⁷⁶ Daniel Martin Katz et al., *GPT-4 Passes the Bar Exam*, SSRN (Mar. 15, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4389233. *But see* Eric Martinez, *Re-Evaluating GPT-4's Bar Exam Performance*, (MIT, LPP Working Paper No. 2-2023, 2023), <https://ssrn.com/abstract=4441311> (investigating methodological challenges in verifying claim that GPT-4 scored 90th-percentile on Uniform Bar Exam).

⁷⁷ Jonathan H. Choi et al., *ChatGPT Goes to Law School*, 71 J. LEGAL EDUC. 387 (2022) (discussing ChatGPT's performance on over 95 multiple choice questions and 12 essay questions in Constitutional Law: Federalism and Separation of Powers, Employee Benefits, Taxation, and Torts).

⁷⁸ *Id.* at 391.

performance,⁷⁹ they found that GPT-4 significantly improved students' performance on multiple-choice questions, although it had no effect on essay answers. Similar to more general workplace studies,⁸⁰ the study showed evidence of productivity compression: the lowest-performing students performed significantly better when using GPT-4, while the best-performing students performed worse.⁸¹

Outside the exam context, several studies have examined the use of generative AI on hypothetical legal tasks. One study (Choi, Monahan & Schwarcz, 2023) conducted a randomized controlled trial of the use of AI by 59 law students. The students completed four hypothetical legal tasks (drafting a complaint, a contract, a section of an employee handbook, and a client memorandum), with or without GPT-4's assistance.⁸² The study showed that the addition of GPT-4 consistently and uniformly reduced the amount of time students took to complete tasks, although it only slightly and inconsistently improved the quality of students' legal analysis.⁸³

Some studies have used hypothetical legal tasks to evaluate the extent to which generative AI can replace lawyers. Trozze et al. (2023) prompted GPT-3.5 to identify potential legal violations when presented with fact patterns from real-life securities cryptocurrency cases. Mock jurors were also asked to assess complaints written by either ChatGPT or a human lawyer.⁸⁴ The study showed that GPT-3.5 performed very well at drafting a complaint, but its legal reasoning proved weak as it missed certain violations.⁸⁵ Another study provided 25 legal professionals with a summary of a real-world employment case and asked them to review two versions of a letter from the employee's lawyer.⁸⁶ When asked which letter was more effective in presenting the case, 80% of participants preferred the letter written by ChatGPT-4 over the letter written by a trained lawyer.⁸⁷

In sum, to date, studies of AI in the legal profession have focused on law school exams and/or fictional scenarios, rather than on actual use cases. To our knowledge, there are no studies involving the use of generative AI by practicing lawyers, much less legal aid lawyers. In addition, we are not aware of any studies - legal or otherwise - that have focused particularly on

⁷⁹ Jonathan H. Choi & Daniel Schwarcz, *AI Assistance in Legal Analysis: An Empirical Study*, 73 J. LEGAL EDUC. (forthcoming, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4539836.

⁸⁰ See, e.g., Erik Brynjolfsson et al., *Generative AI at Work* (NBER Working Paper No. x31161 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4426942 (summarizing some of this literature and providing its own finding that agents with access to conversational guidance from a generative AI tool successfully resolved 14% more customer chats per hour, with less-experienced and lower-skill workers experiencing the greatest gains (34%) with a minimal impact on experienced and highly-skilled workers).

⁸¹ *Id.* at 15–16.

⁸² Jonathan H. Choi et al., *Lawyering in the Age of Artificial Intelligence* (Minn. Legal Studies Research Paper No. 23-31, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4626276.

⁸³ *Id.* at 21.

⁸⁴ Arianna Trozze, Toby Davies & Bennett Kleinberg, *Large Language Models in Cryptocurrency Securities Cases: Can a GPT Model Meaningfully Assist Lawyers?* (2023), <http://arxiv.org/abs/2308.06032> (last visited Feb 23, 2024).

⁸⁵ *Id.* at 26–28.

⁸⁶ Lena Wrzesniowska, *Can AI Make a Case? AI Vs. Lawyer in the Dutch Legal Context*, THE INT'L J. LAW, ETHICS, & TECH. (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4614381.

⁸⁷ *Id.* at 26 (evaluating effectiveness of AI-generated and human lawyer-written letter based on persuasiveness, clarity, key arguments, and use of evidence).

the impact and use of generative AI in public interest contexts. These contexts may give rise to particular needs, for example for multilingual communications appropriate for different education levels and tasks like volunteer coordination, fundraising, and managing turnover in clients by design.⁸⁸

We sought to fill this gap by conducting a field experiment of legal aid lawyers using AI tools to perform actual use cases in connection with their work. We modified the roll out for some participants by offering a subset, chosen randomly, with supportive services, based on literature that suggests that providing assistance in legal administrative settings can close success gaps.⁸⁹ By coupling our field experiment with a survey we can also get a perspective on the “organic” uptake of the tools and its variance across dimensions.

Part II: Methodology

Our research was motivated by several questions, both descriptive and causal. First, to what extent are generative AI tools being used by the legal aid community and how are they perceived? Second, what happens when paid generative tools are provided to legal aid attorneys, in terms of their use, productivity, opinions, and intents with respect to generative AI tools? And third, does the way that tools are introduced (i.e. with or without support) impact the outcomes associated with sustained exposure to them through the pilot? Across these questions, we were also curious about the extent to which demographic and experience traits were correlated with survey respondents or pilot participant’s experiences.

In this section we describe the methodology we used to conduct the survey and field study we used to answer these questions, with human subjects approval from the Committee for Protection of Human Subjects (CPHS) of the Office for Protection of Human Subjects (OPHS) at UC Berkeley.⁹⁰

A. Recruitment and Data Collection

We recruited participants from three sources. First, the State Bar of California Office of Access & Inclusion emailed 149 legal aid practitioners inviting them to take our baseline survey in connection with a convening hosted at the State Bar’s Los Angeles office on October 26, 2023 (see Appendix Survey 1). The request to fill out the survey was reinforced during a presentation in person at the convening on AI use cases for legal aid lawyers. The survey included an invitation to participate in the pilot of AI/automation tools; those who expressed interest in the pilot received a link to a consent form. 118 individuals, or close to 80% of those who were sent

⁸⁸ For example, the individuals that responded to our survey worked in an average of 4.5 legal areas (median =3). As described in Part II.

⁸⁹ See Nick A. Pairolero et al., *Closing the Gender Gap in Patenting: Evidence from a Randomized Control Trial at the USPTO* (USPTO Economic Working Paper No. 1, 2022, 2023), <https://ssrn.com/abstract=4265093>.

⁹⁰ University of California Berkeley IRB Protocol 2023-10-16780.

the survey completed it, and we enrolled 51 participants in the pilot through this initial outreach.⁹¹

Second, in November 2023, we distributed a second round of the same survey by email to our informal networks of legal aid professionals and also invited survey recipients and staff at the California State Bar Office of Access & Inclusion and the Legal Services Corporation to share the survey with their networks. Third, we emailed the baseline survey to individuals recommended by their peers from the first distribution. 86 people completed the survey and 40 participants joined the pilot based on one of these two forms of outreach.

Our baseline survey (available in the Appendix), which each person in both the survey group and pilot group took, asked about the relevant experiences of each respondent.⁹² Those who accepted our invitation to join the pilot and consented to research were welcomed into the pilot from November 3, 2023 to November 29, 2023.⁹³

At the conclusion of the pilot, we asked pilot participants to fill out a second, exit survey that asked similar questions to the ones that appeared in the baseline, but also asked for additional details regarding each person's experiences in the pilot, changes as a result of the pilot, and intentions for future use of AI tools.

202 people completed the initial survey, and 91 people began the pilot. Over the course of the pilot, 10 participants dropped out, citing time constraints or failing to respond to our email asking for verification of a ChatGPT account that we could upgrade. 81 finished the pilot, and 66 completed the exit survey, a response rate of 81%.

Of the 91 people who began the pilot, 54 were placed in the control group and 37 in the group treated with concierge services. At the conclusion of the pilot, we were left with 51 people in the control group and 30 in the treated group. As part of exit processing, participants were asked to fill out a final survey and, separately, provide use cases for future sharing with their permission. About 80% of each of the concierge and control group⁹⁴ responded to the survey, and about 41 pilot participants provided use cases for further sharing.

B. Pilot Design

We structured our pilot as a field trial in which participants were offered generative AI services, and then a subset of participants, chosen randomly, were provided with additional AI support services. Our pilot included three AI tools that include automation, "traditional AI," and generative AI capabilities and could, in principle, be used by lawyers or consumers.

⁹¹ 26 survey takers, and the remainder from people at the organizations of survey takers who were referred by them

⁹² As detailed in the appendix, there were slight differences between the first and second distribution of the baseline survey. When asked about the number of concerns, use cases, and potential use cases of generative AI, in the second distribution of the baseline survey, the limitation "choose your top 3" was introduced. Taking this into account, whenever we made direct comparisons between the baseline and exit survey, we restricted our baseline survey results to the first distribution, where the wording was the same.

⁹³ Although dates of ChatGPT-4 access varied due to company developments around that time.

⁹⁴ 41 from the control group and 25 from the concierge group.

Gavel is a platform for automating legal documents and workflows. The service has been described as a no-code technology that enables “subject-matter experts to build data collection and intake applications that generate [] rules-based legal workflows and documents.”⁹⁵ Founded in 2018, the platform enables both law firms as well as nonprofits and pro bono lawyers to build client-facing workflows and document templates for business clients, domestic violence survivors, low-income tenants, and other clients.⁹⁶ Its website describes its ability to help streamline attorney-client interactions, customize tools, and manage intake, across a variety of legal domains including estate planning, family law, bankruptcy, and IP and the use of AI that helps carry out automation. The standard package was priced, around the time of the trial, at \$165/month per seat. It also offered non-profit and educational rates.⁹⁷

ChatGPT-4 is the premium version of the conversational chatbot offered by OpenAI. It is a general purpose, generative AI tool that is able to answer questions, write copy, draft emails, provide code, explain concepts, and provide assistance in many other contexts, in response to natural language prompts. As one source put it, “[i]t’s a chatbot, but a really, really good one.”⁹⁸ During the course of the trial, OpenAI introduced the capability to create custom GPTs that are capable of being pre-programmed with customized information. At the time of the trial, ChatGPT-4 was priced at \$20 per month per person.

CoCounsel is a generative AI legal platform powered by OpenAI’s large language model GPT-4 and Casetext’s proprietary legal databases. Customized for legal applications, CoCounsel is advertised as capable of being able to “read, comprehend, and write at a postgraduate level” and to perform a variety of legal tasks, including legal research, document review, deposition preparation, and contract analysis.⁹⁹ Casetext’s website states that CoCounsel is more secure than ChatGPT, insofar as user data provided to CoCounsel is not used to train the AI model.¹⁰⁰ At the time of our trial, CoCounsel was being offered at a retail price of approximately \$400-\$500 per seat per month.¹⁰¹

Baseline Treatment

All participants were offered free, one-month subscriptions to OpenAI’s ChatGPT-4¹⁰² and Gavel.¹⁰³ The participants who worked at legal aid organizations funded by the State Bar of

⁹⁵ Press Release, Documate Rebrands as Gavel to Expand Its Platform for Legal Products; Adds Pierre Martin as CTO (Jan. 31, 2023), <https://www.globenewswire.com/en/news-release/2023/01/31/2598772/0/en/Documate-Rebrands-as-Gavel-to-Expand-Its-Platform-for-Legal-Products-Adds-Pierre-Martin-as-CTO.html>.

⁹⁶ *Gavel Co-Founder, Dorna Moini: In-depth Interview*, ARTIFICIAL LAWYER (Feb 18, 2021), <https://www.artificiallawyer.com/2021/02/19/documate-co-founder-dorna-moini-in-depth-interview/>.

⁹⁷ Plans & Pricing, GAVEL, <https://www.gavel.io/pricing>.

⁹⁸ Harry Guinness, *How Does ChatGPT Work?: Here’s the Human-Written Answer for How ChatGPT Works*, ZAPIER (Sept. 6, 2023), <https://zapier.com/blog/how-does-chatgpt-work/>.

⁹⁹ CASETEXT, <https://casetext.com/cocounsel/>.

¹⁰⁰ Security, CASETEXT, <https://casetext.com/security/>.

¹⁰¹ INTERNET ARCHIVE, <https://web.archive.org/web/20231126213602/https://casetext.com/subscribe>.

¹⁰² OPENAI, <https://chat.openai.com/auth/login>.

¹⁰³ GAVEL, <https://www.gavel.io/>.

California Office of Access & Inclusion¹⁰⁴ also received free subscriptions to Casetext’s CoCounsel for approximately 4 weeks, although some had their access extended further.¹⁰⁵ We also invited users to try the free versions of Anthropic’s Claude,¹⁰⁶ Google Bard (recently renamed Gemini),¹⁰⁷ and Microsoft Bing Chat, all large-language models that provide conversational interfaces similar to ChatGPT.¹⁰⁸

RCT

We implemented our study of the impact of concierge services as a randomized controlled trial (RCT), randomizing at the individual enrollee level. To minimize spillovers between groups, we placed all participants from a single organization into the same (control or treatment) group. The “concierge” support was in the form of:

- (1) Weekly emails with sample use cases and links to tailored training,¹⁰⁹
- (2) Invitations to weekly office hours hosted three days a week by one of the authors and a trained third year law student,¹¹⁰
- (3) Invitations to tailored trainings presented by representatives of Gavel and Casetext; and
- (4) Access to curated training materials, including slides and/or recordings of the tailored training sessions.

We provided members of the control group subscriptions to the tools but did not offer them any additional concierge support; they were largely left to their own devices. However, some members of the control group attended AI presentations at a State Bar event as discussed above.

C. Analysis Approach and Respondent Profile

Once we had our initial results, missing data for demographic variables (age, race, gender, experience level) on the initial survey were imputed with available values from the pilot survey, and vice versa. Where demographic data was missing, we used LinkedIn disclosures to supplement the information we had regarding relevant work experience (which we inferred based on year of graduation from law school) in combination with visual inspection and probabilistic classifiers to infer binary gender and race. We worked with a statistician to perform a series of descriptive and regression analyses on the resulting data, the details of which are provided in the Appendix, along with information about the demographic profile of our respondents and

¹⁰⁴ See Grants, THE STATE BAR OF CALIFORNIA, <https://www.calbar.ca.gov/Access-to-Justice/Grants> and 2024 Legal Aid Grant Recipients, THE STATE BAR OF CALIFORNIA, <https://www.calbar.ca.gov/Portals/0/documents/accessJustice/Legal-Aid-Grant-Recipients.pdf> (2024 list of grantees).

¹⁰⁵ Tools described in more detail in Part I.

¹⁰⁶ ANTHROPIC CLAUDE, <https://claude.ai/>.

¹⁰⁷ GOOGLE GEMINI, <https://bard.google.com/> & <https://gemini.google.com/>.

¹⁰⁸ MICROSOFT BING, <https://www.bing.com/chat>.

¹⁰⁹ Use cases that were shared included summarizing documents, writing grant applications, automating letters, and building a custom GPT.

¹¹⁰ Office hours were held by Zoom using a Berkeley Zoom account on Mondays at 12 pm PT and Wednesdays and Fridays at 9 am PT.

participants.¹¹¹ In the next Part we report the results of our analyses, noting differences that were statistically significant.

The “average” respondent to our survey was a white, female lawyer with roughly 10-15 years of experience in the field, in her late 30s to early 40s. The average number of practice areas was 4.5 (median =3). Our responses skewed female, consistent with the demographics of legal aid practitioners;¹¹² among people for whom we had binary gender data, 78% of the respondents to our baseline survey and 69% of the participants to our pilot study were women. As compared to the average respondent to our survey, the average participant in our pilot was younger, more likely to be male, and less experienced. The greatest share of lawyers in this population had 0-4 years of experience, consistent with the finding described previously in Part I that tools can be most helpful for the least experienced.

Part III: Survey and Pilot Results

A. Patterns of use and perceptions of the benefits and risks of generative AI tools

We first sought to determine, as a descriptive matter, the extent of use of generative AI tools by legal aid professionals. Around 21% of participants overall reported that they were currently using the tools in their work. This figure was in line with the result of a comparable survey reported several months earlier by LexisNexis that found that 16% of US lawyers were using tools for their legal work.¹¹³ But while the majority of respondents to our survey were women (78%), a much higher proportion of men than women reported using the tools in their work. (47% v. 17%)¹¹⁴ While available data suggests that 55% of visits to the ChatGPT website

¹¹¹ StataCorp. 2017. Stata Statistical Software: Release 15. College Station, TX: StataCorp LLC.

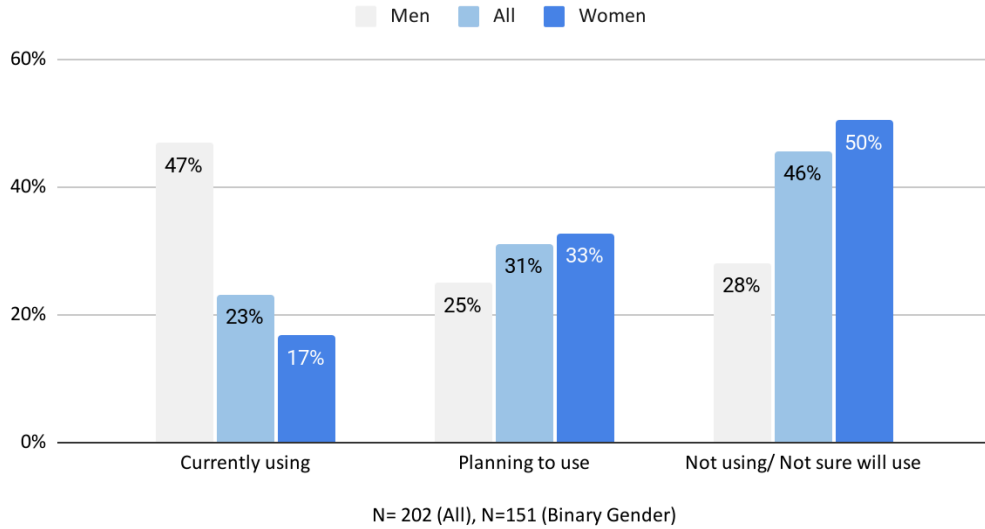
¹¹² 73.8% of all full-time staff, and 77.4% of part-time staff at Legal Services Corporation grantees were women in 2022. *LSC By the Numbers 2022: The Data Underlying Legal Aid Programs*, Fig. 7.6 (2023), <https://lsc-live.app.box.com/s/h2bajpr3gps4s4a1iio6fwiddhmu1nwb>. In comparison, men outnumber women in the law in California. Diversity of 2022 California Licensed Attorneys, THE STATE BAR OF CALIFORNIA, Fig. 3 (2022), <https://publications.calbar.ca.gov/2022-diversity-report-card/diversity-2022-california-licensed-attorneys> (44% of lawyers in California identified as female in 2022). See also Catherine Albiston et al., *Making Public Interest Lawyers in a Time of Crisis: An Evidence-Based Approach*, 34 GEORGETOWN J. LEGAL ETHICS 223, 264 (2021) (finding that “identifying as female is predictive of public interest work at later stages of one’s career but not at the beginning . . . gender is significantly related to holding a *current* job in a public interest setting”); *id.* at 239 & n.80 (summarizing past research finding that women law students prefer to pursue public interest work).

¹¹³ LEXISNEXIS, *International Legal Generative AI Report: Detailed Survey Findings* 6 (2023), <https://www.lexisnexis.com/pdf/lexisplus/international-legal-generative-ai-report.pdf>. But see THE CONFERENCE BOARD, SURVEY: *Majority of US Workers Are Already Using Generative AI Tools--But Company Policies Trail Behind* (Sept. 13, 2023) <https://www.prnewswire.com/news-releases/survey-majority-of-us-workers-are-already-using-generative-ai-tools-but-company-policies-trail-behind-301925743.html> (report of the Conference Board reporting that 56% of respondents to their survey, which included workers in general, not restricted to lawyers, were using generative AI for work tasks).

¹¹⁴ $p = .001$

are by men, and 45% are by women,¹¹⁵ male respondents to our survey were nearly three times as likely as their female counterparts to be using the tools.¹¹⁶ Women’s outlook regarding the future use of tools was also less optimistic — 50% of women were unsure of or not planning to use AI tools in their work in the future as compared to 28% of men.¹¹⁷

Fig. 1: Current use of AI Tools by Legal Aid Survey Respondents by Gender



Legal aid professionals that affirmatively reported using generative AI tools¹¹⁸ cited a wide range of uses, resembling those reported by corporate lawyers. (Fig. 1) But while both groups cited increasing efficiency and quality, drafting emails, and drafting documents as priority uses, the groups also diverged in how they used the tools: corporate lawyers were much more likely to use generative AI for due diligence than were legal aid professionals, for example, while certain use cases popular among legal aid lawyers, like translation, were not offered as options to Lexis survey respondents. Consistent with their more extensive use of the tools, men reported a higher average number of ways of using AI than women.¹¹⁹

¹¹⁵ Website Traffic Demographics of chat.openai.com, SIMILARWEB, <https://www.similarweb.com/website/chat.openai.com/#demographics> (estimating that of visitors to chat.openai.com, that about 55% are male, and around 45% are female).

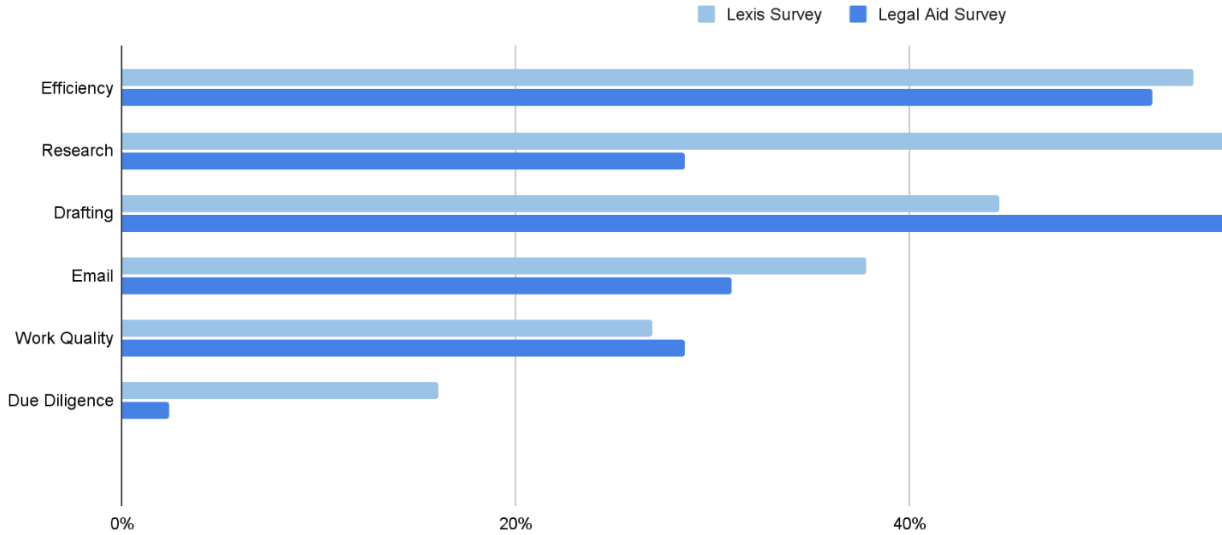
¹¹⁶ Accord, Sarah Di Troia et al., *Inspiring Action: Identifying the Social Sector AI Opportunity Gap* 21, Fig. 19 (Stanford University Human-Centered Artificial Intelligence, Working Paper February, 2024), <https://hai.stanford.edu/sites/default/files/2024-02/Working-Paper-Inspiring-Action.pdf> (showing that, among 233 social sector professional respondents to a survey, male survey respondents were about twice as likely as female respondents to be using the technology daily and were about half as likely as to have never used generative AI tools).

¹¹⁷ p = .002

¹¹⁸ N=43

¹¹⁹ 1.5 v. 0.5 ways of using the tools (p = .001) When we adjusted for use, there were no gender differences in the mean number of use cases identified by men or women.

Fig. 2 Selected Generative AI Uses by Respondents to Lexis-Nexis and Legal Aid Surveys



Besides by gender, we did not see any significant differences in the current use of AI by any other particular group.¹²⁰ However, respondents with 25 or more years of experience were more likely to be using AI than those with 15-25 years of experience.¹²¹ In addition, those providing direct service to clients reported significantly more ways of using AI than those in leadership roles.¹²²

We also asked respondents to our initial baseline survey who had not used generative AI tools about the ways in which the tools potentially could be used. In contrast to *actual* use, which varied significantly by gender, there were no statistical differences in the number of *potential* uses across profiles. We asked respondents about their perceptions of the concerns and benefits associated with generative AI tools. Across the board, respondents to our initial survey expressed that they believed AI to be generally beneficial¹²³ but also raised a number of concerns.¹²⁴

B. Increases in Productivity and Satisfaction

We next considered the experiences of people who participated in the pilot. Unlike earlier experimental simulations which used uniform tests or tasks created for purposes of the pilot

¹²⁰ Specifically by race/ethnicity (p = .317), years of experience (p = .250), age (p = .857), or role (p = .913).

¹²¹ 41% v. 16%, p = .077.

¹²² p = .018. There were no significant differences in the number of ways of using AI between different race/ethnic groups (p = .759), level of work experience (p = .211), and age when previous experience with AI was and was not taken into account.

¹²³ Q: Based on what you know about AI conversational tools like ChatGPT, how beneficial do you believe they are in assisting with tasks or answering questions? A: very beneficial =5, beneficial =4, somewhat beneficial =3, neither beneficial nor harmful =2, somewhat harmful =1. (M = 3.4, SD = 1.0)

¹²⁴ Among 8 options, citing 3.7 concerns on average, with confidentiality, inaccuracy, data privacy, and ethical concerns ranking highest.

described in Part II, our field trial design provided the actual conditions that people in the field would encounter when introduced to the tools. While this made it impossible for us to assess performance gains or losses with reference to a standardized task, we were still able to assess participant experiences with the tools in a few ways.

First, we directly asked users a set of questions about how their experiences and attitudes changed over the course of the pilot.¹²⁵ While this subjected our responses to the well-rehearsed challenges of self-reporting bias, it did provide a way for us to consider outcomes that were keyed to improvement relative to each participant's baseline. Our second method of assessment attempted to reduce the impact of reporting bias by looking for within-respondent differences to the same questions, provided just before and then just after the pilot. Though such a "quasi-experimental design" has its limitations, the short period of time between the two surveys (pre- and post-), with 2-3 months elapsing between surveys reduced the chance that reported changes were attributable to secular factors rather than to exposure to tools, though we acknowledge the rapid evolution of AI tools during this period of time. We also asked participants about their intentions to continue use, including paid use, of the tools and which tools were favored. Finally, because we randomized an aspect of treatment—whether or not tools were rolled out with concierge support—we were able to assess the impact of this support, if any, on the outcomes and experiences of legal aid professionals.

Positive Experiences with Generative AI

Respondents generally reported increases in use and satisfaction with generative AI following exposure through the pilot. 86% reported more AI use during the pilot, and 63% reported more satisfaction with AI after the pilot. (Table 1) There were no significant differences with respect to changes in use or satisfaction with AI due to the pilot by gender, race, experience, or age. However, a higher percentage of respondents in leadership and direct service roles reported increased satisfaction than respondents in "other" roles.¹²⁶

¹²⁵ As reflected in questions that asked about comparative increases or decreases in: usage (S2 Q8), satisfaction (S2 13), productivity (S2 12), and concerns (S2 13).

¹²⁶ $p = .030$

Table 1: Average self-reported changes in usage, productivity, or concerns as a result of the pilot¹²⁷

Question	Average Value (sd) / Share	Scale, Data Notes
Comparative Usage during pilot compared to before	2.78 (0.6) / 86%	1=Less, 2= Same, 3=More / Share reporting some increase
Comparative Satisfaction	2.64 (0.5) / 63%	1=Less, 3= More / Share reporting some increase
Productivity Increase	90.2% ¹²⁸	Share reporting some increase
Level of Concern about AI	70.3% ¹²⁹	Share reporting same or more concern

sd = standard deviation

In terms of productivity, 90% reported some increase in productivity, with 25% reporting a medium or significant increase in productivity after the pilot. (Table 1) While there were no significant differences with respect to productivity increases with AI use after the pilot by gender, race, years of legal experience, or age, there was a significant difference in productivity increase by role with supervisors reporting higher levels of productivity gains than non-supervisory roles.¹³⁰

In addition to considering participants’ self-assessments as a result of their exposure, we compared respondents’ answers to the same questions asked before and after the pilot. Before the trial, pilot participants reported an average of 1.2 uses for the tools. After the pilot, the average number of ways of using the technology had increased to 4.2, a significant difference.¹³¹

But even as respondents generally reported greater use and productivity with the tools, they reported similar levels of concerns about the tools. Over 70% of respondents reported being just as or more concerned by AI tools. (Table 1) In addition, the mean number of concerns post-pilot was similar to the mean number of concerns pre-pilot , and there were no significant differences in level of concern of AI after the pilot by demographic group.¹³²

How did pilot participants balance higher levels of productivity with the persistent concerns they experienced based on use of the tools? The responses to our question regarding participant intentions to continue using the tool provides one answer: 75% of participants in the pilot that responded to the second survey indicated their intention to keep using the tools, around

¹²⁷ S2 Q8 (usage), S2 11 (satisfaction), S2 12 (productivity increase), S2 13 (more or less concerned)

¹²⁸ Breakdown: 9% no increase, 50% a little bit of an increase, 21% a medium increase, 14% a significant increase

¹²⁹ Breakdown: 12.5% more concerned, 58% just as concerned, 30% less concerned

¹³⁰ p = .033

¹³¹ p < .001 (1.2 (SD =2.35) vs 4.2 (SD =1.63)). Averages calculated among survey respondents that received the same wording of the question as it appeared in the exit survey.

¹³² Post-pilot: M = 4.7, SD = 2.2, v, pre-pilot: (M = 4.9, SD = 2.0) (ns). Averages calculated among survey respondents that received the same wording of the question as it appeared in the exit survey.

83% of whom indicated that they intended to continue use of paid tools.¹³³ (Table 2) Among the tested tools, legal aid professionals favored ChatGPT, even over higher priced and specialized products. (Fig. 3)

Fig. 3: Which Generative AI tool(s) do you plan to continue to use?

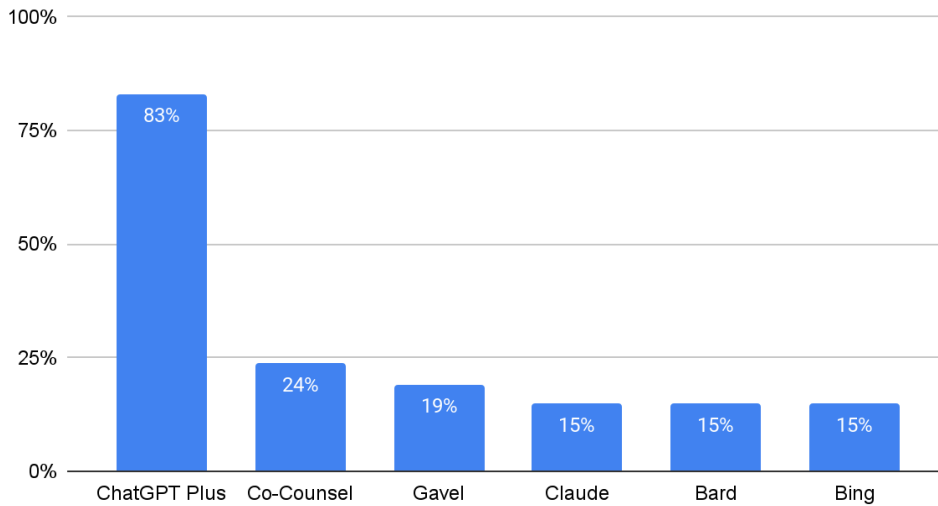


Table 2: Post-Pilot Outcomes

Question	Average Value (sd)	Scale, Data Notes
How Often Used	3.14 (1.0)	1=None, 5=Everyday
Variety of ways used	4.2 (1.6)	Selected from a list of 8 ways
Quality of AI output	1.70 (0.5)	1=Novice, 3=Expert
Positive Impact of AI on my job	71.4%	Share reporting that GenAI tools will have a positive impact
Future Use (any)	75%	Share reporting intent to use tools in the future
Future Paid Use (any)	62.5%	Share reporting intent to use paid tools in the future

Answers to other questions provided their rationale: on average, 64% of people rated the output of the tools to be at the level of an experienced or expert worker.¹³⁴ In addition, 71% of pilot

¹³³ 83.3% of 75% = 62.5%

¹³⁴ 3% expert, 33% novice. Cf responses to the Conference Board Survey, supra note ___ which reported responses of 45% = experienced, 31%=novice, 10%=expert (sic).

participants reported a positive outlook with respect to the impact of AI on their work.¹³⁵ (Table 2)

C. Differences by Gender Not Replicated Post-Pilot

Although people in the pilot indicated a positive experience in general, we sought to determine whether the gender differences in use we observed pre-pilot also showed up in our post-pilot results. We first took baseline measurements based on the first survey in our pilot population, given that this self-selecting group had demographic traits different than the total survey group (skewing younger and less experienced) and might plausibly also have different characteristics than overall respondents to our survey, for example, harboring more optimistic and positive attitudes towards the tools.

Indeed, the pilot group did feature a greater share of people who were using generative AI tools.¹³⁶ But we also observed a gender divide between pilot participants similar to what we saw among the overall group: a much higher share of men than women¹³⁷ reported use prior to the pilot.¹³⁸ In addition, there were also significant differences in the number of identified and prospective uses detected, suggesting latent demand and interest among the women who opted into the pilot.¹³⁹ Further, while pilot participants, like the overall population of survey-takers, generally felt like AI was beneficial pre-pilot,¹⁴⁰ male pilot participants found AI tools to be marginally more beneficial than did female pilot participants.¹⁴¹ Again, the difference disappeared when exposure was taken into account.

But, as was true of the earlier findings above, about changes in use, satisfaction, productivity and concern levels, we generally did not find any significant differences between the survey responses of men and women following the pilot. (See Appendix Table 1A: Differences in outcomes by gender in the pilot population before and after the pilot) This was true of the questions that were repeated, regarding the use, attitudes and concerns towards Generative AI tools, as well as with newly introduced questions about the quality of work product and outlook regarding the role of AI and future intentions to use AI products. This suggests that once men and women were equally exposed to and provided with the tools, there was no statistically significant difference in their experience with the tools.

¹³⁵ Answering “a.” to the Question: “Please check the box that best describes your outlook on the role of AI in your work.” Answer: “a. AI will replace elements of my job in a positive way—e.g., by freeing up time for more valuable or creative tasks; b. AI will replace parts of my work in a negative way—e.g., by threatening my job altogether; c. I do not expect AI to replace any element of my job.” (a:71%, b:26% , c:3%)

¹³⁶ 21% v. 35%

¹³⁷ 65% (men), 22% (women)

¹³⁸ $p = .012$

¹³⁹ For example, while men cited more ways of using the tool ($* p < .05$), women cited more ways that they would *consider* using the tools ($* p < .01$). Appendix Table 1A: Differences in outcomes by gender in the pilot population before and after the pilot

¹⁴⁰ $M = 3.3$, $SD = 0.9$

¹⁴¹ $p = .067$

D. Concierge Services Led to Better Outcomes

Our final hypothesis was that providing assistance along with paid generative AI tools could improve participant experiences and outcomes. As has been said, it is equally easy to overestimate as it is to underestimate the power of generative AI tools.¹⁴² Productivity gains can often only be accessed once initial frictions and learning curves are surmounted.

A comparison of outcomes by concierge v. standard group provides some support for our hypothesis. Reported usage during the pilot compared to before it was slightly (but not significantly) higher in the standard group¹⁴³ than the concierge group.¹⁴⁴ But on every other metric, pilot participants that received concierge services reported better outcomes than those that did not. For five out of the nine outcomes, the differences were statistically significant. When adjusted for previous use, three out of the five outcomes remained significantly different for the concierge group than the standard group, implying that people with different levels of exposure to the tools could all benefit to some degree. (See Appendix Table A2 : Differences in outcomes by concierge or standard support during the pilot)

PART IV: Generative AI Use Cases for Lawyers and Legal Aid Professionals

As noted above, three quarters of pilot participants indicated they would continue using tools despite a similar share being as or more concerned by AI tools after the pilot.¹⁴⁵ While this finding at first may seem counterintuitive, a closer examination of the use cases reveals how participants were able to manage the risks and still leverage AI. Participants reported significant efficiency gains on a wide range of tasks, such as translating legal text into a more accessible form or language, document summarization or analysis, brainstorming and ideation, getting to a first draft for legal writing, drafting and editing nonlegal writing, and carrying out associated non-legal or operations-related tasks. As we detail below, by selecting lower risk tasks, and exercising supervision, pilot participants were able to capture gains in efficiency and discover useful AI applications that they reported that they were likely to use again.

A. Risks of AI Tools

Before we discuss the use cases in detail, we briefly address the top concerns that pilot participants identified both before and after the pilot. These concerns are consistent with key AI

¹⁴² Anton Korinek, *Large Language Models in Economic Research: Use Cases and Implications for Economists* (July 2023), https://www.dropbox.com/scl/fi/1dwkjbj84i4eue38fvjoh/LLMs_revised.pdf?rlkey=z2f7bsaerupi8ee6xin8mopfg&e=1&dl=0.

¹⁴³ 2.8 (Standard group) vs. 2.7 (concierge group)

¹⁴⁴ Q: Compared to before the pilot, your usage of Generative AI tools during the pilot was

A: 3=More than before, 2=the same as before, 1= less than before

¹⁴⁵ Part III, Table 1.

risks and limitations discussed in the literature and emerging ethical guidance: confidentiality, data privacy, inaccurate results, and hallucinations.¹⁴⁶

Data privacy and confidentiality ranked high among reported concerns before and after the pilot. As the California State Bar explains in its Practical Guidance on the Use of Generative AI, “[g]enerative AI products are able to utilize the information that is input, including prompts and uploaded documents or resources, to train the AI, and might also share the query with third parties or use it for other purposes. Even if the product does not utilize or share inputted information, it may lack reasonable or adequate security.”¹⁴⁷ Thus, the State Bar advises lawyers using generative AI to take steps to ensure the confidentiality of client information is protected, such as using an AI system with stringent security and confidentiality protocols, anonymizing client information, and/or not entering identifying information.¹⁴⁸ As is reflected in the use case database, many pilot participants used the consumer-facing version of ChatGPT-4 but omitted any information that could be used to identify their clients.

Hallucinations are the confident generation by AI tools of *inaccurate results*, such as nonexistent case citations, inaccurate legal information, and incorrect information about court procedures or deadlines. In addition to the sanctions order in *Mata v. Avianca*¹⁴⁹ discussed above, national media outlets reported on former Trump lawyer Michael Cohen’s use of Google Bard to unknowingly generate fake case citations that his lawyer used in a motion.¹⁵⁰ Other lawyers have also been caught for submitting hallucinated, nonexistent case citations.¹⁵¹ In response, courts in several jurisdictions have issued local rules or standing orders mandating the disclosure of the use of generative AI and/or a certification that the accuracy of any AI-generated content was

¹⁴⁶ As discussed in Part III. “Ethical concerns” also ranked high among concerns, but we do not address it separately since it overlaps with the other concerns that ranked highest.

¹⁴⁷ THE STATE BAR OF CALIFORNIA, *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*, 2, <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf>.

¹⁴⁸ *Id.* (“A lawyer must not input any confidential information of the client into any generative AI solution that lacks adequate confidentiality and security protections. A lawyer must anonymize client information and avoid entering details that can be used to identify the client. A lawyer or law firm should consult with IT professionals or cybersecurity experts to ensure that any AI system in which a lawyer would input confidential client information adheres to stringent security, confidentiality, and data retention protocols.”); Florida Bar Ethics Opinion 24-1 at 1–2 (Jan. 19, 2024), <https://www-media.floridabar.org/uploads/2024/01/FL-Bar-Ethics-Op-24-1.pdf>.

¹⁴⁹ *Mata v. Avianca, Inc.*, No.22-cv-1461, 2023 WL 4114965 (S.D.N.Y. June 22, 2023).

¹⁵⁰ Benjamin Weiser & Jonah E. Bromwich, Michael Cohen Used Artificial Intelligence in Feeding Lawyer Bogus Cases, THE NEW YORK TIMES (Dec. 29, 2023); *United States v. Cohen*, No. 18-CR-602 (JMF), 2023 WL 8635521, at *1 (S.D.N.Y. Dec. 12, 2023) (order to show cause requiring submission of declaration, including “a thorough explanation of how the motion came to cite cases that do not exist and what role, if any, Mr. Cohen played in drafting or reviewing the motion before it was filed”).

¹⁵¹ See, e.g., *Park v. Kim*, 91 F.4th 610, 615–616 (2d Cir. 2024) (finding that attorney, who submitted brief relying on non-existent case suggested by ChatGPT, failed to make the reasonable inquiry required by Rule 11; and referring attorney for further investigation and disciplinary proceedings); *People v. Crabill*, 2023 WL 8111898, at *1 (Colo. O.P.D.J. Nov. 22, 2023) (suspending attorney for failing to verify cases provided by ChatGPT); David Wagner, *This Prolific LA Eviction Law Firm Was Caught Faking Cases In Court. Did They Misuse AI?*, LAIST (Oct. 12, 2023), <https://laist.com/news/housing-homelessness/dennis-block-chatgpt-artificial-intelligence-ai-eviction-court-los-angel-es-lawyer-sanction-housing-tenant-landlord>.

verified.¹⁵² The State Bar of California also advises lawyers that their existing professional obligations require them to verify and correct any AI-generated output, including any analysis and case citations, consistent with the duty of supervision.¹⁵³

B. Beneficial Uses of AI Tools, By Type of Task

We asked pilot participants to submit helpful use cases (including prompts and outputs),¹⁵⁴ and classify each use case by the following types of task: (1) brainstorming and ideation, (2) document summarization or analysis, (3) translation, (4) legal research, (5) legal writing, (6) nonlegal writing, (7) automating letters, (8) intake processes, (9) development work (e.g. grant writing), and (10) other. We also asked participants to rate each use case they submitted based on its usefulness (on a scale of 1 to 5),¹⁵⁵ likelihood they would reuse the use case (on a scale of 1 to 3),¹⁵⁶ and how much more efficient they were as a result of using AI for the task.¹⁵⁷

As shown below and in the companion database (available at <https://bit.ly/AIA2J>), pilot participants reported efficiency gains on a wide range of tasks. We discuss below a sampling of the submitted use cases and associated risks, time savings, and likelihood of repeat use.

1. Document Summarization or Analysis

Non-generative AI has been used for years to save time and increase efficiency in reviewing documents for purposes of eDiscovery, due diligence, and contract management.

¹⁵² See, e.g., E.D. Tex. Local Rules AT-3(m) & CV-11(g) (effective Dec. 1, 2023) (requiring lawyers and pro se litigants who use technology, such as ChatGPT, Bard, Bing, or generative AI services, to “review and verify any computer-generated content to ensure that it complies with” Rule 11 and all other applicable standards of practice); Standing Order for Civil Cases, ¶ VII(C) (N.D. Cal. July 14, 2023) (Kang, J.) (outlining detailed guidance for AI and filings with the court, AI-generated evidence, and AI and confidentiality; and clarifying that the guidance does not apply to “use of traditional legal research, word processing, spellchecking, grammar checking, or formatting software tools (e.g., Lexis, Westlaw, Microsoft Word, or Adobe Acrobat)”; Standing Order Re: Artificial Intelligence (“AI”) in Cases Assigned to Judge Baylson (E.D. Pa. June 6, 2023); Mandatory Certification Regarding Generative Artificial Intelligence (N.D. Tex. May 30, 2023) (Starr, J.). Some commentators have expressed concerns that such rules or orders may be overbroad and/or will discourage appropriate uses of generative AI. See, e.g., Maura R. Grossman, Paul W. Grimm, & Daniel G. Brown, *Is Disclosure and Certification of the Use of Generative AI Really Necessary?*, 107 JUDICATURE 68, 69 (2023), https://judicature.duke.edu/wp-content/uploads/2023/10/AIOrders_Vol107No2.pdf; see Choi et al., *supra* note ___ at 42–43.

¹⁵³ THE STATE BAR OF CALIFORNIA, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law at 2, 4, <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf>; Florida Bar Ethics Opinion 24-1 (Jan. 19, 2024) at 4, <https://www-media.floridabar.org/uploads/2024/01/FL-Bar-Ethics-Op-24-1.pdf>.

¹⁵⁴ We asked pilot participants not to submit or to redact any confidential client information, so there were some limits on the use cases we could receive. We also re-reviewed all of the entries to protect against privacy breaches.

¹⁵⁵ The question asked for: “Rating you would assign to this use case (1-5) 1= minimally if at all useful, 5 = extremely useful.”

¹⁵⁶ The question asked: “How likely are you to reuse this use case 3= very likely, 2= somewhat likely, 1= unlikely.”

¹⁵⁷ The question asked: “Please estimate how much more efficient you were as a result of using AI.”

Generative AI solutions build on those capabilities and offer the potential to review documents faster and at lower cost, as well as generate summaries or analysis related to the documents, such as timelines, case narratives, and contract negotiating points or redlines.¹⁵⁸ Even if the user provides an AI tool with documents to summarize, this task is not without risks. The AI tool may generate inaccurate or incomplete summaries by, for example, missing key nuances that an experienced lawyer may be more likely to catch. Nonetheless, given the speed with which LLMs can process and analyze voluminous datasets, participants found document summarization use cases to increase their productivity consistent with empirical studies.¹⁵⁹

Use Case: Summarize court opinions and records

Michael Semanchik, executive director at the Innocence Center, used CoCounsel to draft summaries of Court of Appeal opinions and trial records to help identify cases with strong evidence of innocence.¹⁶⁰ The document summarization feature in CoCounsel similarly could be used by others to enable the summarization of court filings, deposition and trial transcripts, court orders, and other lengthy documents.

Use Case: Summarize and rewrite website text

A director of community engagement¹⁶¹ asked ChatGPT-4 to summarize and rewrite the history webpage for her legal services organization. Referring to the use case as a “[h]uge time saver,” the participant reported that it was extremely useful (5 rating) and resulted in 80% time savings.¹⁶²

Prompt #1: Summarize the text below in 3-5 paragraphs, in plain language, and focus on the

¹⁵⁸ See, e.g., RELATIVITY AIR, <https://www.relativity.com/data-solutions/air/>; EVERLAW, <https://www.everlaw.com/ai-analytics/>; HARVEY, <https://www.harvey.ai/>.

¹⁵⁹ See, e.g., Lauren Martin et al., *Better Call GPT, Comparing Large Language Models Against Lawyers* 1, 10–11 (Jan. 2024), <https://arxiv.org/abs/2401.16212> (finding that LLMs performed “on par” with junior lawyers and legal processor outsourcers (LPOs) in determining legal issues within contracts, with the fastest LLMs completing the contract review in an average of 0.728 minutes in contrast to an average of 56.17 minutes for a junior lawyer and 201 minutes for an LPO).

¹⁶⁰ See Michael Semanchik Presentation (Oct. 26, 2023), https://docs.google.com/presentation/d/16NE_yjXLKYzprlqo0dtGAJwWvupJwRwg/edit#slide=id.p1; see also Bernard Marr, *How Generative AI Is Used To Fight Miscarriages Of Justice At The California Innocence Project*, FORBES (Oct. 6, 2023), <https://www.forbes.com/sites/bernardmarr/2023/10/06/how-generative-ai-is-used-to-fight-miscarriages-of-justice-at-the-california-innocence-project/?sh=6330e0f861fd>; Matt Reynolds, *California Innocence Project harnesses generative AI for work to free wrongfully convicted*, ABA JOURNAL (Aug. 14, 2023), <https://www.abajournal.com/web/article/california-innocence-project-harnesses-generative-ai-for-work-to-free-wrongfully-convicted>.

¹⁶¹ Submitted by Tori Praul, Deputy Director of Community Engagement, at Inland Counties Legal Services (ICLS), <https://www.linkedin.com/in/toripraul/>.

¹⁶² See Use Case Database, No. 66.

early history of inland counties legal services while omitting extraneous details. The resulting output will be for a nonprofit legal aid organization's history page and should illustrate the focus on ensuring access to justice. [1878-word text of webpage omitted]

Prompt #2: Alter the text above to deemphasize Legal Aid Society of San Bernardino and focus only on the formation and evolution of Inland Counties Legal Services.

ChatGPT-4 Output #2:

The history of Inland Counties Legal Services (ICLS) begins in the late 1950s with the establishment of the Legal Aid Society of Riverside (LASR). Founded in 1958, LASR was created to provide legal assistance to the needy and to collaborate with courts, the Bar, and social agencies in the administration of justice. . . .

Today, ICLS's history is a testament to its enduring commitment to advocacy, community engagement, and collaboration with various stakeholders. The organization continues its mission to enhance legal access and representation for underserved populations in Riverside County, staying true to its roots while adapting to the changing needs of the community it serves.¹⁶³

2. Brainstorming and Ideation

Generative AI can help stimulate thinking and generate ideas, arguments, and counterarguments. As demonstrated by *Mata* and the Cohen case discussed above, there is a significant risk that the AI may generate irrelevant, biased or inaccurate ideas, including nonexistent case citations and arguments that do not support the client's best interests. While this risk may be mitigated by grounding the LLM's brainstorming and ideation on user-provided data, such as a complaint or proposed legislation, the risk is not entirely eliminated.

Use Case: Brainstorming discovery requests

A pilot participant used ChatGPT-4 to brainstorm discovery requests. The prompt, shown below, does not upload a copy of the complaint, but ChatGPT generated 10 interrogatories and 10 requests for production.¹⁶⁴ The user rated this use case as useful (3 of 5), somewhat likely to be reused (2 of 3), and associated with a 40% increase in efficiency.

¹⁶³ The full chat for this use case is available at [66-Summarize organization's early history page](#).

¹⁶⁴ Use Case Database, No. 24.

I am an attorney litigating a lawsuit against the State of Louisiana, challenging the state's policy and practice of requiring persons with felony convictions to produce documentary proof of eligibility in order to register to vote. [] Can you give me ideas for interrogatories and requests for production?

ChatGPT 4:

...

Interrogatories

1. **Policy Details**: Please describe in detail the policy requiring persons with felony convictions to produce documentary proof of eligibility in order to register to vote, including any and all amendments and revisions made to this policy since its inception.
2. **Implementation Procedures**: Describe the procedures followed by the Secretary of State's office in implementing and enforcing the aforementioned policy.

...

Requests for Production

1. **Policy Documents**: All documents pertaining to the development, implementation, revision, and enforcement of the policy in question.
2. **Statistical Data**: Any statistical data or analyses related to the impact of this policy on voter registration and turnout, particularly among individuals with felony convictions.
3. **Training Materials**: Copies of training materials and guidelines given to employees involved in voter registration under this policy.

...

Remember, these are just starting points, and you may need to tailor these to the specifics of your case and legal strategy.¹⁶⁵

Notably, ChatGPT-4 reminded the user that “these are just starting points” and should be tailored. If the user had uploaded the complaint and relevant rules or orders, the AI tool may have generated more tailored discovery requests.

3. Legal Research

Pilot participants submitted fewer legal research use cases, and we saw significant variation in the quality and usefulness based on participants’ comments. Notwithstanding ChatGPT’s limitation as a general purpose tool, some participants found beneficial ways to use it

¹⁶⁵ [W 24-Use Case.docx](#) .

for legal research use cases for preliminary research or to confirm the accuracy of research that they had already performed using traditional research methods.

Use Case: Quick research during legal clinic

A pilot participant used ChatGPT-4 to perform quick research while volunteering at a Workers' Rights Clinics at Legal Aid Work.¹⁶⁶ The clinic offers a limited scope engagement where the attorney may have a very brief period to conduct necessary research before providing the client with basic legal information and/or referrals at the end of the appointment.¹⁶⁷ The attorney rated the legal research use case as extremely useful, very likely to be reused, and associated with a 40% increase in efficiency.¹⁶⁸

[W]hat are the eligibility rules for california state disability insurance
ChatGPT 4: California State Disability Insurance (SDI) provides short-term benefits to eligible workers who have lost income due to a non-work-related illness, injury, or pregnancy. To be eligible for SDI, you must meet the following criteria: <ul style="list-style-type: none">● Paid into SDI: You must have had SDI deductions from your paycheck. Most California employees contribute to this program through payroll deductions.● Minimum Earnings: You must have earned at least a minimum amount in wages during a 12-month base period. This base period is the 12 months prior to the start of your disability. . . . It's important to note that specific situations and exceptions may apply, so it is always a good idea to check the most current eligibility criteria from the California Employment Development Department (EDD), which administers the SDI program. ¹⁶⁹


Use Case: Confirmatory legal research

A pilot participant asked CoCounsel to conduct asylum-related research after having already done some research using more traditional means. CoCounsel provided a short memo,

¹⁶⁶ Use Case Database, No. 18. Submitted by Kevin Clune, Legal Aid at Work. <https://legalaidatwork.org/staff-members/kevin-clune/>.

¹⁶⁷ Workers' Rights Clinic, LEGAL AID AT WORK, <https://legalaidatwork.org/clinics/workers-rights-clinic/>.

¹⁶⁸ Use Case Database, No. 18. Mr. Clune also submitted and ranked as extremely useful another use case requesting an overview of liquidated damages in wage claims. Use Case Database, No. 11.

¹⁶⁹ Use Case Database, No. 18..  18-Copy of Use Case # 4 .

which correctly concluded there was no clear case law. The user rated the use case as useful (3 of 5), very likely to be reused (3 of 3), and resulting in a 20% increase in efficiency.¹⁷⁰

4. Legal Writing

Since large language models are trained on massive volumes of text, pilot participants found ways to use the AI tools as writing assistants. With respect to legal writing, there is a significant risk that the AI may generate inaccurate or biased content. As a result, we found that pilot participants generally tended to find their most useful AI writing use cases on letters or other writing that did not require citations to cases or other legal authority.

Use Case: Draft an Agreement

A pilot participant asked ChatGPT-4 to draft a memorandum of understanding between two non-profits. The user rated the use case as extremely useful and very likely to be reused. Citing a 60% increase in efficiency, the user noted that they used the tool as a “jumping off point” to get a “good first draft.”¹⁷¹

<p>Prompt: Draft a MOU between two non-profits where one non-profit, NAME1, agrees to administer a \$75,000 emergency housing fund for the benefit of NAME2's clients. The term is 1/1/2024 to 12/31/2024 (specific for CA)</p>
<p>ChatGPT 4:</p> <p>MEMORANDUM OF UNDERSTANDING (MOU)</p> <p>’ ’ ’</p> <p>1. ADMINISTRATION OF EMERGENCY HOUSING FUND: NAME1 agrees to administer the Emergency Housing Fund in accordance with the following terms and conditions:</p> <p>1.1. NAME1 shall establish and maintain a separate account specifically designated for the Fund in compliance with California state regulations.</p> <p>1.2. NAME1 shall accept and process applications for emergency housing assistance from NAME2's eligible clients during the term of this MOU, adhering to California law.</p> <p>1.3. NAME1 shall review and evaluate all applications received from NAME2's clients to determine eligibility for emergency housing assistance based on predetermined criteria and in accordance with California guidelines.</p> <p>. . .</p>

¹⁷⁰ Use Case Database, No. 23.

¹⁷¹ Use Case Database, No. 50.

2. NAME2 RESPONSIBILITIES: . . .
3. CONFIDENTIALITY: . . .
4. AMENDMENTS: . . .
5. TERMINATION: . . .
6. GOVERNING LAW: . . .¹⁷²

Use Case: Cease and desist letter

A pilot participant used ChatGPT-4 to write a cease and desist letter to a prospective client who had been abusive. The user fine-tuned the prompt; the fourth prompt and output are below. The user rated this use case as extremely useful, very likely to be reused, and resulting in a 60% increase in efficiency.¹⁷³

[W]rite a letter to a prospective client of our pro bono legal services agency who has been abusive toward the lawyer referral services agency that refers clients to our agency as well as to private attorneys. In the letter clarify that we have never represented the client and also request that the client cease contacting our agency and staff.

ChatGPT 4:

. . .

Re: Notice of Non-Engagement and Request to Cease Contact

Dear [Prospective Client's Name],

I am writing on behalf of [Your Pro Bono Legal Services Agency's Name]. Our agency has been informed by the lawyer referral service, which is a key partner in referring clients to both our agency and private attorneys, about their recent interactions with you. It is our understanding that these interactions have involved conduct on your part that is regarded as abusive [detail specific nature of the conduct if appropriate and legally advisable].

We wish to clarify that [Your Agency's Name] has not entered into an attorney-client relationship with you and will not be able to provide you with legal representation. Our decision is based on our commitment to maintaining a safe, respectful, and professional environment for our staff and the people we serve.

In addition, we kindly request that you refrain from any further contact with our agency and our staff. Continued communication from you will not be responded to, and any attempts at

¹⁷²  50-Copy of ChatGPT CA MOU .

¹⁷³ Use Case Database, No. 29.

contact will be documented. . . .¹⁷⁴

Use Case: Draft letter to landlord

An attorney at Mental Health Advocacy Services used ChatGPT-4 to draft a letter to a landlord requesting a reasonable accommodation for a client who was about to be evicted. Noting that the eviction notice was rescinded, the attorney rated this use case as extremely useful, very likely to be reused, and resulting in a 40% increase in efficiency.¹⁷⁵

[No prompt provided]

ChatGPT 4:

. . .

Subject: Understanding Schizophrenia — A Request for Accommodation

Dear [Property Manager's Name],

I am writing to you regarding [Tenant's Name], who is a resident in your property and is currently under my care for the treatment of schizophrenia. I feel it's important to provide you with some insights into schizophrenia to ensure a supportive living environment and to discuss reasonable accommodations that might be necessary due to the nature of this condition.

. . .

In light of this, we kindly request that you consider the following reasonable accommodations, in accordance with the Fair Housing Act:

- Flexible Communication: During periods of crisis, alternative methods of communication may be necessary.
- Guest Policy Leniency: Allowing a support person to stay with the tenant during a crisis.
- . . .¹⁷⁶

5. Nonlegal Writing

A popular use case among pilot participants was nonlegal writing, including drafting emails, letters, requests for proposal, website or social media content, or other administrative

¹⁷⁴ [29-Copy of Berkeley AI Pilot - Use Cases](#) .

¹⁷⁵ Use Case Database, No. 3. Submitted by Cindy Vivanco, Mental Health Advocacy Services, <https://www.linkedin.com/in/cindy-vivanco-1166a98b/>.

¹⁷⁶ [3-Draft a letter for a tenant asking for reasonable accommodation](#) .

documents. The prevalence of this use case may be related to the fact that many lawyers in the pilot group hold leadership positions at their organization.¹⁷⁷

Use Case: Draft policy talking points

A Deputy Director at the Center for Gender & Refugee Studies¹⁷⁸ used ChatGPT-4 to generate talking points on why saving asylum protections is important. She commented that it was “a surprisingly excellent summary of some of the main arguments we make to policymakers and other stakeholders (including donors) for why our work around asylum law is important to support.” She found no evidence of bias or hallucinations and thought it could serve as a “starter” for a first draft of a fundraising appeal.¹⁷⁹

Help me explain why saving asylum in the United States is important
ChatGPT 4: Saving asylum in the United States is crucial for various ethical, legal, and humanitarian reasons. Here are some key points to help you explain the importance of preserving asylum: Humanitarian Obligation: Asylum is a fundamental human right established by international law to protect individuals who are fleeing persecution, violence, or other forms of severe harm in their home countries. By granting asylum, the United States demonstrates its commitment to upholding human rights and providing a safe haven for those in need. Protection of Vulnerable Populations: Asylum serves as a lifeline for individuals, including women, children, and minorities, who are particularly vulnerable to persecution, discrimination, or violence in their home countries. . . . Global Leadership: By maintaining a robust asylum system, the United States sets an example for other nations to prioritize the protection of refugees and asylum seekers. . . . ¹⁸⁰

Use Case: Draft a social media post

¹⁷⁷ See *supra* at Part II.

¹⁷⁸ Submitted by Moira Duvernay. <https://cgrs.uclawsf.edu/about/bio/moira-duvernay>.

¹⁷⁹ Use Case Database, No. 56. She rated this use case as a 4 of 5 for usefulness, 2 of 3 for somewhat likely to use, and 40% time savings.

¹⁸⁰  56-Copy of Moira Duvernay, CGRS, Use Case 2 .

PRELIMINARY DRAFT

A Vice President at Legal Aid at Work asked ChatGPT-4 to draft a tweet based on a press release.¹⁸¹ After receiving an initial draft, he followed up twice with more instructions. He rated the use case as extremely useful and very likely to be reused, and indicated that the task resulted in an 80% gain in efficiency, i.e., the task took him about 20% as much time as it usually did.¹⁸²


Prompt #1: can you draft a tweet about this: . . . A lawsuit against the Department of Defense seeks to remove any mention of sexual orientation or homosexual conduct from the military records of discharged veterans. . . . [Rest of ~1370 word press release omitted]


Prompt #2: revise to indicate that it's our lawsuit (Us being Legal Aid at Work and the Impact Fund)

Prompt #3: revise to indicate we're not announcing the lawsuit--it is ongoing--but that 30,000 veterans deserve better

ChatGPT-4 Prompt #3:

Certainly, here's a revised version of the tweet to reflect the ongoing nature of the lawsuit and the focus on the 30,000 veterans:

 In our ongoing lawsuit with the Impact Fund, we stand for the 30,000+ veterans unjustly affected by "Don't Ask, Don't Tell." This fight is about more than records; it's about honoring every service member's dignity and contribution. Let's right these wrongs together. #JusticeForVeterans #LGBTQService #LegalAidAtWork

 [Link to the full article] . . .¹⁸³

6. Client Intake and Automating Documents

As discussed above, AI and automation technologies can be used to automate client intake process and the drafting of letters, court forms, and other documents. Some no-code platforms, including Gavel, are leveraging generative AI to make it easier for users to automate their templates into automated workflows.¹⁸⁴


Use Case: Generate workflow for durable power of attorney

The Director of Pro Bono Programs at Legal Aid of North Carolina reported using Gavel to convert a Durable Power of Attorney template document into a fillable workflow partially

¹⁸¹ Submitted by Kevin Clune, Vice President of Strategy at Legal Aid at Work.

<https://legalaidatwork.org/staff-members/kevin-clune/>.

¹⁸² Use Case Database, No. 17.

¹⁸³ For all the prompts and outputs for this use case, see  17-Copy of Use Case .

¹⁸⁴ <https://www.gavel.io/use-cases/gavel-blueprint>.

depicted below.¹⁸⁵ After the volunteer attorney inputs responses to each question, Gavel generates a draft document for review and verification by the attorney and client. The organization’s goal is “to use Gavel to make inexperienced volunteer attorneys more comfortable completing these documents for clients and reduce the number of typos in volunteer work.” The Director rated the use case as extremely useful, very likely to be reused, and allowing her to save 80% time.¹⁸⁶

The screenshot shows a web form titled "Designation of Agent(s)" from the Gavel platform. The form includes the Gavel logo and a "Sign In" link in the top right. The form contains the following fields and questions:

- What is the client's name? (Text input field)
- What initials does the client use? (Text input field)
- Who does the client name as their agent? (Text input field)
- What is the agent's relationship to the client? (Text input field)
- Does the client wish to name a successor agent? (Radio buttons for Yes and No)
- Does the client wish to give their agent the power to name a successor agent? (Radio buttons for Yes and No, with a help icon)

A blue "Continue" button is located at the bottom left of the form.

7. Development Work (e.g. Grant Writing)

Legal aid organizations often lack the resources to serve everyone who comes to their doors for help. In response to a survey question about what it would take to 10x the number of people they serve, many respondents noted a need for more funding.¹⁸⁷ The development work

¹⁸⁵ For the full instructions for this use case, see [33-Copy of GAVEL DPOA Use Case](#) . The final workflow is available at <https://legalaidnc.gavel.io/run/playground2/POA/#/1>.

¹⁸⁶ Use Case Database, No. 33.

¹⁸⁷ Survey responses detailed the use of funds to provide, e.g. “a coordinated intake system for the 60 plus immigration legal services who provide free legal services to low-income Texans,” staff, advertising, efficiency improvements.

use case would help address the funding needs by leveraging a number of the AI use cases discussed above, such as document summarization (e.g. analyzing current application requirements and past grant applications), brainstorming (e.g. generating ideas for a project plan or other component of the application), and nonlegal writing (e.g. drafting and editing the application).

Use Case: Draft grant application

Jane Ribadeneyra, Legal Services Corporation,¹⁸⁸ provided a detailed prompt to prepare a grant application using Claude, a general purpose generative AI tool. Her presentation slides include excerpts of the draft application, which was generated within seconds.¹⁸⁹

I am going to give you a detailed APPLICATION GUIDE for a Technology Improvement Project (TIP) grant from the Legal Services Corporation and then I'm going to give you a TECHNOLOGY PLAN for a legal aid non-profit organization. Acting as a professional grant writer for the legal aid non-profit organization, follow the series of prompts below create a grant application for a Technology Improvement Project.

Prompt 1: Following the Application Instructions in the APPLICATION GUIDE and using information about the current state of the legal aid organization's technology infrastructure in the TECHNOLOGY PLAN, provide three to four paragraph responses for each application question.

Prompt 2: Write a PROJECT PLAN for the grant project, providing a succinct project goal, three objectives and three to five milestones that are align with the examples provided in the APPLICATION GUIDE.

Claude:

Here are 3-4 paragraph responses for each application question, based on the Application Guide and Technology Plan: . . .¹⁹⁰

8. Translation

Approximately 6.4 million Californians speak English “less than very well,” and 17.2% of Californians cannot access the court system without language assistance.¹⁹¹ Generative AI can

¹⁸⁸ <https://www.linkedin.com/in/jribadeneyra/>.

¹⁸⁹ Provided courtesy of Jane Ribadeneyra of the Legal Services Corporation. See [81-Grant Application](#) .

¹⁹⁰ *Id.*

¹⁹¹ Judicial Council of California, Fact Sheet: Language Access Implementation, 1 (Sept. 2023), <https://www.courts.ca.gov/documents/LAP-Fact-Sheet.pdf> (citing U.S. Census Bureau, 2017-2021 American Community Survey 5-Year Estimates).

help prepare translations, thereby making legal information and advice more accessible to individuals who do not speak English or have limited English proficiency.

Use Case: Translate client communication

A pilot participant asked ChatGPT-4 to translate a client communication using a simple prompt: “Please translate the following text into Spanish.”¹⁹² The user reported that it was “not a super great translation” and that it would need to be revised. Despite the need to “always double check the translation,” the user rated the translation use case as very useful (4 of 5), somewhat likely to be reused (2 of 3), and resulting in a 20% increase in efficiency.¹⁹³

Use Case: Translate legalese for nonlawyers

Some English-speaking and limited English proficient individuals may benefit from an AI-generated translation of legalese into simple terms. This sample use case was used to explain a special needs trust to a client’s friend or family member. The user rated it as extremely useful, somewhat likely to be reused, and associated with a 40% increase in efficiency.¹⁹⁴

[Prompt not provided]

ChatGPT 4:

Explaining a trust to a layperson requires breaking down the concept into simple terms. Here's a simplified explanation of a trust:

A trust is like a special container that you can create to hold and manage your assets (like money, property, or investments) for a specific purpose or for the benefit of certain people. Imagine it as a safe or a box that you fill with your valuable items.

There are typically three main roles in a trust:

- Grantor or Settlor: This is the person who creates the trust. Think of them as the owner of the box. They decide what goes into the trust and what rules should be followed.
- Trustee: The trustee is like the caretaker of the box. They are responsible for managing and safeguarding the assets in the trust according to the rules set by the grantor. Their job is to make sure the assets are used for the benefit of the beneficiaries....

Keep in mind that there are various types of trusts, and the specifics can vary, but this simple explanation should provide a basic understanding for a layperson.¹⁹⁵

¹⁹² To see the full prompt and output, see [45-Copy of Use Case](#) .

¹⁹³ Use Case Database, No. 45.

¹⁹⁴ Use Case Database, No. 2.

¹⁹⁵ To see the full output, see [2-Explain a trust](#) .

9. Building Custom GPTs

During the course of the pilot, OpenAI launched custom GPTs.¹⁹⁶ We provided the concierge group with training on building custom GPTs during office hours. Several participants and researchers involved in the pilot built GPTs to explore the possibility of distributing legal information to volunteers and/or consumers at scale. The exploratory GPTs direct individuals to TexasLawHelp.org resources¹⁹⁷ and information on landlord-tenant law and eviction actions,¹⁹⁸ criminal expungement eligibility,¹⁹⁹ and special immigration juvenile petitions.²⁰⁰ The CIO of Legal Aid Chicago also built a GPT to help write technology surveys for users at their organization.²⁰¹


10. Other Tasks

Some of the “Other” use cases that did not clearly fall within another category included coding, database administration, and HR. We also note that over 30 of the beneficial use cases submitted through the pilot are administrative, legal operations, or management tasks, such as hiring,²⁰² payroll,²⁰³ benefits,²⁰⁴ training,²⁰⁵ and procurement.²⁰⁶

C. Implications of Beneficial Use Cases

Across the uses in our companion case database, pilot participants reported an increase in efficiency of an average of 50% on a wide range of tasks. The following five categories of lower


¹⁹⁶ GPTs, OPENAI, <https://chat.openai.com/gpts>.

¹⁹⁷ TexasLawHelp Navigator, OPENAI, <https://chat.openai.com/g/g-iHB5j3DzB-texaslawhelp-navigator>;  41-Copy of Virtual Legal Navigator Prompt . See Use Case Database No. 41. (submitted by Aaron Varner, Texas Legal Services Center. <https://www.linkedin.com/in/aaron-varner-73aa1453/>).

¹⁹⁸ Arizona Eviction Bot, OPENAI, <https://chat.openai.com/g/g-7J13wp6qh-arizona-eviction-bot>; see also Use Case Database No. 62 (submitted by Greg T. Armstrong but no GPT link provided).

¹⁹⁹ Arizona Expungement Help, OPENAI, <https://chat.openai.com/g/g-zKSocDTTs-arizona-expungement-help>; Maryland - Brute Force, OPENAI, <https://chat.openai.com/g/g-mDNjoP1OS-maryland-brute-force>.

²⁰⁰ California SIJS Guide, OPENAI, <https://chat.openai.com/g/g-rKWt2oaMP-california-sijs-guide>

²⁰¹ Tech Survey Assistant, OPENAI, <https://chat.openai.com/g/g-wfGZMqaB2-tech-survey-assistant>;  27-Tech Survey Assistant Chatbot . See Use Case Database No. 27 (submitted by Vivian Hessel, Legal Aid Chicago, <https://legalaidchicago.org/who-we-are/our-people/leadership/>).

²⁰² Use Case Database, No. 55 (drafting email to unsuccessful job applicants).

²⁰³ Use Case Database, No. 37 (draft email to staff regarding payroll).

²⁰⁴ Use Case Database, No. 60 (drafting annual management process to review insurance coverage and rating the use case extremely useful, very likely to reuse, and 60% efficiency gain); *id.* (“I believe strongly the work product was much better/richer than if I attempted to do the task from scratch.”).

²⁰⁵ Use Case Database, No. 7 (drafting training questions on housing law).

²⁰⁶ Use Case Database, No. 26 (writing a request for proposal). Submitted by Vivian Hessel, Legal Aid Chicago. <https://legalaidchicago.org/who-we-are/our-people/leadership/>.

risk use cases were popular among the pilot group, and may therefore provide promising starting points for lawyers seeking to use generative AI in their work.

- Lower risk tasks where user-provided data or inputs limits hallucination risk: Pilot participants found beneficial use cases for tasks where the input data grounds the AI model and limits the risk of hallucinations. This includes document summaries and brainstorming and ideation. Pilot participants asked ChatGPT-4 and CoCounsel to summarize, analyze, and, in some cases, rewrite a variety of documents ranging from court opinions²⁰⁷ and expert declarations²⁰⁸ to an organization’s website that needs to be revised.²⁰⁹ On the brainstorming end, brainstorming discovery requests²¹⁰ proved more useful and productive than the more complex task of brainstorming appellate arguments.²¹¹
- Legal Writing Assistant — Getting to a first draft faster: Pilot participants also found some beneficial ways to use generative AI to help them get to a first draft faster, particularly where legal citations are not required. There were no use cases submitted for brief writing or other complex legal writing. Instead, pilot participants found increases in productivity through the use of AI to write and edit legal correspondence (e.g. letter to a landlord or a cease and desist letter), automate letters and legal documents (e.g. durable power of attorney), and draft a contract.
- Writing assistant – Getting the tone right: Several pilot participants shared that ChatGPT-4 is particularly useful as an assistant for writing or editing emails to ensure the right tone is used or to address difficult communications.²¹² ChatGPT 4’s simplification of legalese was also rated as extremely useful (e.g. explaining a trust).²¹³

²⁰⁷ See Michael Semanchik Presentation (Oct. 26, 2023), *supra* note

²⁰⁷ [Artificial Intelligence.pptx](#) ; see also Bernard Marr, *How Generative AI Is Used To Fight Miscarriages Of Justice At The California Innocence Project*, FORBES (Oct. 6, 2023), <https://www.forbes.com/sites/bernardmarr/2023/10/06/how-generative-ai-is-used-to-fight-miscarriages-of-justice-at-the-california-innocence-project/?sh=6330e0f861fd>; Matt Reynolds, *California Innocence Project harnesses generative AI for work to free wrongfully convicted*, ABA JOURNAL (Aug. 14, 2023), <https://www.abajournal.com/web/article/california-innocence-project-harnesses-generative-ai-for-work-to-free-wrongfully-convicted>.

²⁰⁸ Use Case Database, No. 34; [34-Summary of document](#) .

²⁰⁹ See Use Case Database, No. 66 (referring to the use case as a “[h]uge time saver,” the participant reported that it was extremely useful (5 rating) and resulted in 80% time savings). Submitted by Tori Praul, Deputy Director of Community Engagement, at Inland Counties Legal Services (ICLS), <https://www.linkedin.com/in/toripraul/>.

²¹⁰ Use Case Database, No. 24. [24-Use Case.docx](#)

²¹¹ Use Case Database, No. 25. [25-Use Case.docx](#)

²¹² See, e.g., Use Case Database, No. 22 (editing email to appear more professional) & No. 55 (writing email to job applicants who did not get offer).

²¹³ Use Case Database, No. 2; [2-Explain a trust](#) .


- Preliminary or confirmatory legal research: We saw significant variation in the quality of the legal research use cases submitted. For example, while ChatGPT-4 did fairly well on preliminary legal research on basic topics,²¹⁴ it struggled with more complex legal research questions.²¹⁵ This variation based on complexity is not surprising given that ChatGPT-4 is not specially trained for legal use cases. Notwithstanding ChatGPT’s limitations as a general purpose tool and the risk of hallucinations, some participants found beneficial ways to use it for legal research use cases for preliminary research²¹⁶ or confirmatory research (i.e., confirming the accuracy of research that they had already performed using traditional research methods). Quick research in the middle of a legal aid clinic was also cited as extremely useful.²¹⁷
- Lower risk tasks that are nonlegal and have lower stakes: Pilot participants, who skewed heavily toward leadership positions (47.6%),²¹⁸ found very beneficial use cases in operations, administrative, or management tasks with lower stakes and minimal to no consequences for inaccuracy. This includes drafting internal staff emails, social media content,²¹⁹ policy talking points,²²⁰ policies, and administrative planning documents.

PART V: OBSERVATIONS AND RECOMMENDATIONS


In the following sections, we leverage our study’s findings to propose ways in which generative AI can improve legal aid services, thereby advancing access to justice. Although this approach represents only one path to narrowing the justice gap, it is significant due to the central role that lawyers have in providing legal help to underserved populations. Nonetheless, the recommendations provided should be viewed as preliminary, considering the limited scope of our survey and pilot study, lending themselves to further research and inquiry, as well as action.

²¹⁴ See, e.g., Use Case Database No. 46 (Prompt: “What are the legal requirements to be granted asylum in the US”) (rated useful [3 of 5], likely to be reused [2 of 3], and described as “[g]ood for a quick overview/brief understanding, but would definitely want to double check all info with an expert source”).

²¹⁵ See, e.g., Use Case Database No. 39 (Prompt: “What takes precedence, a circuit court of appeals decision or a subsequently issued board of immigration appeals decision?”) (rated unlikely to be reused and did not save time), 40 (Prompt: “What takes precedence, a circuit court of appeals decision or a subsequently issued regulation?”) (rated unlikely to be reused and did not save time).


²¹⁶ Use Case Database, No. 11 (requesting an overview of liquidated damages in wage claims and rated as extremely useful, very likely to be reused, and resulting in a 80% increase in efficiency)  11-Copy of Use Case 1 (submitted by Kevin Clune, Legal Aid at Work. <https://legalaidatwork.org/staff-members/kevin-clune/>).


²¹⁷ Use Case Database, No. 18 (requesting information on eligibility for state disability insurance during clinic and rated as extremely useful, very likely to be reused, and resulting in a 40% increase in efficiency)

 18-Copy of Use Case # 4 (submitted by Kevin Clune, Legal Aid at Work.

<https://legalaidatwork.org/staff-members/kevin-clune/>).

²¹⁸ See Appendix for demographic details.

²¹⁹ Use Case Database, No. 17;  17-Copy of Use Case .

²²⁰ Use Case Database, No. 56;  56-Copy of Moira Duvernay, CGRS, Use Case 2 .

A. Ensuring Equitable Access and Uptake of Generative AI Tools in Legal Aid

The majority of legal aid attorneys in our pilot study reported that the generative AI tools provided were useful and advantageous. However, it is clear that the benefits of generative AI are available only to the extent that users access and utilize these technologies. Our findings indicate that simply making generative AI tools “available” does not guarantee equitable or optimal outcomes.

For example, our survey showed stark gender differences in the use of generative AI tools: female respondents to our survey were only about a third as likely as their male counterparts to be using them. While we may be among the first to document a gender divide in the uptake of AI tools, differences among men and women with respect to access and attitudes towards technology have long been observed.²²¹ In 2020, the European Union published, as part of its 2020-2025 “Gender Equality Strategy,” a report that explored the lower rate of confidence and trust, and higher levels of concern, among women with respect to digital technologies including robots, which it traced, in turn, back to the gendered design of digital technologies and lack of testing of technologies with women.²²²

The pronounced gender disparity in the adoption of AI tools is particularly concerning within the legal aid sector, where women represent over 75% of the workforce, even though they remain underrepresented among practicing attorneys at large.²²³ Women also make up the majority of workers in “caring” and social service oriented industries.²²⁴ Should the trend from our survey generalize and extend to other fields, the natural assimilation of these advanced technologies could unintentionally exclude specific groups, along with the industries and clientele they predominantly support. Therefore, increased focus on addressing this issue could have benefits beyond the legal aid sector.

²²¹ See e.g., Zhihui Cai, Xitao Fan, & Jianxia Du, *Gender and attitudes toward technology use: A meta-analysis*, COMPUTERS & EDUCATION 105 (2017), https://www.researchgate.net/publication/309897772_Gender_and_attitudes_toward_technology_use_A_meta-analysis (providing a meta-analysis of studies of gender differences in attitudes toward technology and finding the gaps to have reduced along certain dimensions (affect and self-efficacy) but not along others (belief).) A relative recent review of survey and related empirical evidence on gender gaps in digital technologies, from a global perspective, is provided by Alison Gillwald & Andrew Partridge, *Gendered Nature of Digital Inequality: Evidence for Policy Considerations*, RESEARCH ICT AFRICA (December 2022), https://www.unwomen.org/sites/default/files/2022-12/BP.1_Alison%20Gillwald.pdf (see, e.g., Table 1, documenting larger gender gaps in internet usage by women in poorer countries as compared to richer ones).

²²² EUROPEAN INSTITUTE FOR GENDER EQUALITY, GENDER EQUALITY INDEX 2020: DIGITALISATION AND THE FUTURE OF WORK (2020), https://eige.europa.eu/publications-resources/toolkits-guides/gender-equality-index-2020-report/gendered-patterns-use-new-technologies?language_content_entity=en.

²²³ See *supra* note ___ (citing evidence that women comprise 74-77.4% of staff at Legal Services Corporation grantee organizations, but only 44% of lawyers in California).

²²⁴ For example, in healthcare and teaching, where women comprise over 75% of workers (see *Gender Divide in Healthcare Professions*, ROSALIND FRANKLIN UNIV. OF MEDICINE AND SCIENCE (2017), <https://www.rosalindfranklin.edu/symposiums/wish/gender-divide/>) (though stating that women comprise only 34% of practicing physicians) and Michael Hansen & Diana Quintero, *How Gender Diversity among the Teacher Workforce Affects Student Learning*, BROOKINGS (July 10, 2018), <https://www.brookings.edu/articles/how-gender-diversity-among-the-teacher-workforce-affects-student-learning/>).

Our survey also showed that cost considerations are important. 62.5% of pilot participants reported that they would continue to use paid AI tools for work (Table 2), but numerous respondents said they would only continue using the tools if their organizations could afford them. Among the tested tools, pilot participants favored the lowest priced paid tool, ChatGPT-4. (Fig. 3)

While we recognize there are organizations that are already working to promote equitable access to generative AI technology through complimentary access, funding, and outreach to women, more can be done, by AI tool providers, legal aid funders, and others.

- Complimentary Access: We recommend that AI tool providers consider making commitments to ensure more AI tools get into the hands of more legal aid providers. One way is to establish a pro bono program similar to “Everlaw for Good,” which provides nonprofits and legal aid providers with complimentary access to Everlaw, an eDiscovery platform with a beta release of an AI assistant.²²⁵ Other AI vendors are including legal aid groups in their beta programs. For example, Casetext worked with several legal aid groups, including the Innocence Project, during beta testing of CoCounsel.²²⁶ They should be encouraged to continue to provide complimentary access as the vendors’ products evolve beyond the beta stage.
- Funding: Legal aid organizations need more funding to procure and implement AI solutions. LSC recently awarded federally-funded Technology Initiative Grants to legal services organizations in Los Angeles, Kansas, and Tennessee to support the use of AI.²²⁷ But TIG funding is available only to LSC-funded legal services organizations, and more government or private funding is needed to support legal services organizations’ adoption of AI.
- Outreach: We recommend increased outreach to encourage legal aid providers, particularly women, to explore the use of generative AI. As discussed above, the State Bar of California Office of Access and Inclusion partnered with us to invite legal aid lawyers to pilot AI tools. Similar pilots and outreach could be facilitated through

²²⁵ Everlaw for Good, EVERLAW, <https://www.everlaw.com/everlaw-for-good/>. See also Relativity for Justice, <https://www.relativity.com/company/commitments/social-impact/justice-for-change/>.

²²⁶ See, e.g., Sarah Martinson, “How Legal Aid Groups Are Using Artificial Intelligence Tools” (Mar. 24, 2023), <https://www.law360.com/pulse/articles/1585913/how-legal-aid-groups-are-using-artificial-intelligence-tools>; see also *supra* note ____.

²²⁷ See, e.g., Press Release, Legal Services Corporation Awards \$5.1 Million in Technology Grants to 29 Legal Aid Organizations (Nov. 16, 2023), <https://www.lsc.gov/press-release/legal-services-corporation-awards-51-million-technology-grants-29-legal-aid-organizations> (describing \$233,210 grant to Legal Aid Foundation of Los Angeles to “develop AI capabilities within its LegalServer case management system . . . to use AI to help analyze case data to generate summaries, identify additional legal needs, and recommend appropriate case outcomes”; \$314,140 to Kansas Legal Services to enhance a prior website upgrade that had boosted KLS’ traffic by over 25%, by “leveraging AI technology to assess and simplify legal information”; and \$329,027 to West Tennessee Legal Services to leverage AI in connection with the development of a centralized data repository and predictive analytics model).

networks of legal aid professionals, such as LSC and the Legal Aid Association of California.

In summary, no matter how useful AI tools can be, simply making them “available” will not necessarily result in their equitable uptake and application, especially if the current disparities in use, by gender or otherwise, are not directly addressed. More proactive efforts may be needed to ensure that access to and usage of the technologies is optimized within the legal aid sectors, and does not tilt along traditional gender and resource lines.

B. Enhancing the Use of Generative AI in Legal Aid Through Innovative Models of Assistance

Another finding of our pilot was that assistance, in its various forms, and information sharing enhanced the benefits of AI tools as to some outcomes. The differences were not large, but they were significant on a number of metrics. Yet few legal aid organizations can afford to dedicate resources just to supporting the use of generative AI tools. Based on our experience with this pilot, we recommend exploring the following ideas to provide assistance to legal aid professionals:

- National Help Desk: One way to provide concierge type assistance at scale is to implement something like a National Helpdesk, to provide assistance to legal aid organizations and professionals as they learn to use generative AI while mitigating its risks. Particularly for organizations that are not large enough to have a large IT staff, this could provide an important infrastructural element.
- Community of Practice: Organizations serving legal aid professionals can cultivate a community of practice for discussing and disseminating best practices on the use of AI. For example, LSC²²⁸ and Legal Services National Technology Assistance Project²²⁹ have facilitated discussion of legal technology and information sharing through conferences, podcasts, and online resources.

²²⁸ See, e.g., Technology, LSC, <https://www.lsc.gov/i-am-grantee/model-practices-innovations/technology>; LSC’s Innovations in Technology Conference, LSC (2024), <https://www.lsc.gov/events/events/lscs-innovations-technology-conference>; Talk Justice: An LSC Podcast, LEGAL TALK NETWORK, <https://legaltalknetwork.com/podcasts/talk-justice/>.

²²⁹ Legal Services National Technology Assistance Project (LSNTAP), a part of the Michigan Advocacy Program, helps legal aid organizations effectively use technology by providing training, information, online tools and community forums. About, LEGAL SERVICES NATIONAL TECHNOLOGY ASSISTANCE PROJECT, <https://www.lsnatp.org/node/523/about>. Among other things, LSNTAP has created a database of cases, attorney guidance, judicial opinions, and state bar materials on the use of generative AI. See AI & Legal Information Database, LEGAL SERVICES NATIONAL TECHNOLOGY ASSISTANCE PROJECT, <https://www.lsnatp.org/node/662/ai-legal-information-database>.

- Tech Bono: To facilitate the flow of information, a new model for pro bono, that falls under the umbrella of “Tech Bono,” could be used in which technologically savvy professionals or law students volunteer in legal clinics or pro bono matters, and make it a point to leverage generative AI and share with clients and counsel how they have done so. As discussed below, one of us did so during the pilot with results. An extension of the pro bono model would be for engineers and law students to work together with organizations to serve not only individual clients, but clients at scale through automation and AI tools.

Such support structures may assist legal aid organizations in harnessing the potential of generative AI and also promoting a culture of knowledge sharing and collaboration.

C. Facilitating Tech + Legal Aid Lawyer, not Tech v. Legal Aid Lawyer Offerings

The beneficial use cases submitted by our pilot participants generally focused on lower risk tasks where generative AI’s role was to augment and support, rather than replace legal aid lawyers. This included helping lawyers get to a good first draft, edit a draft, summarize documents, or perform a variety of nonlegal tasks (e.g., draft a grant application or update a website). While pilot participants reported time savings of up to 80% on certain tasks, they also emphasized the need to verify, correct, and/or supplement AI-generated outputs. The outlook of pilot participants on the impact of AI technologies on their jobs was generally favorable: 71% reported that they believed AI would replace elements of their work in a positive way. (Table 2) Another 26% of respondents expressed that they did not expect AI to replace any element of their jobs, while only 3% of respondents selected the option associated with a belief that AI’s impact on their work would be negative.²³⁰

One of us saw the synergy between the role of generative AI and the human lawyer while volunteering in legal aid clinics under the supervision of two of our pilot participants from the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area (LCCR). During the first 40 minutes or so of a 60-minute clinic appointment, the participating pro bono and LCCR attorneys would ask questions about the client’s legal needs. During these discussions, the lawyers’ empathy and judgment were critical to understanding the often sensitive needs of the client. After obtaining consent from the client and all participating attorneys, one of us would use generative AI tools (e.g. ChatGPT-4, Bard, Bing) to address the client’s needs by drafting a letter (e.g., to a landlord or government agency) and customizing the letter for review and approval by the supervising LCCR attorney. This enabled the LCCR attorney to provide the client with a customized letter by the end of the appointment, resulting in faster and better work product for clinic clients.

As was the case in the LCCR clinic, the integration of generative AI into legal aid has the potential to enhance the capabilities of legal aid lawyers, enabling them to serve clients more

²³⁰ See *supra* note __.

efficiently and effectively. We recommend that legal aid see generative AI as a powerful assistant to lawyers, not as a replacement, ensuring that legal services become more accessible while retaining the essential human expertise and empathy that is central to legal aid.

D. Facilitating the Development of Legal Aid-Directed Technological Solutions

While getting technology in the hands of legal aid lawyers is important, it will not fully close the justice gap. low-income Americans do not receive any or adequate help for 92% of their civil legal problems,²³¹ and the ABA has estimated there are only 2.8 paid legal aid lawyers for every 10,000 residents in poverty.²³²

Therefore, we recommend that tool vendors and legal aid professionals work together to develop more AI-powered solutions, including consumer-facing solutions, not just for legal services organizations and the individuals whom they serve, but also more generally for low-income consumers. Legal aid-directed solutions that do not require interaction between the legal aid workforce and those utilizing the solutions may hold the greatest potential to use generative AI to help close the justice gap. Legal aid lawyers are at the forefront of the justice gap, so they are well-qualified to help design solutions that will increase their efficiency, reach, and impact.

Based on the current limitations of generative AI and the feedback from our pilot participants, we believe that combining generative AI capacities with automation technology and human oversight can lead to the creation of effective, scalable consumer-facing solutions. Here are a few examples of such solutions developed by lawyers in three areas of legal aid assistance—eviction defense/housing, criminal expungement, and immigration — where the ability of the consumer to interact directly with the technology appears not just marginally, but dramatically, to increase service coverage. These solutions can serve as inspiration for further discussion, research, and development of legal aid-directed technologies.

Housing: A joint effort of Law Center for Better Housing (“LCBH”) and the Lawyers Trust Fund of Illinois, Rentervention is a generative AI platform that helps Illinois tenants with housing issues.²³³ When tenants visit Rentervention.com, they can chat with Renny, a virtual AI assistant powered by OpenAI’s GPT-4. Renny helps clients diagnose their legal issue and provides relevant, human-verified legal information about their needs. If Renny determines that LCBH can assist with the tenant’s legal issue, the tenant is directed to an automated workflow built using Gavel’s no-code automation platform. Renny can then help the tenant draft an automated letter to their landlord. If necessary, Renny can connect the tenant to a staff member who will follow up in one business day.²³⁴ By combining legal technology and human support,

²³¹ LEGAL SERVICES CORPORATION, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* (2022), <https://justicegap.lsc.gov/the-report/> (last visited Sept. 11, 2023).

²³² ABA Profile of the Legal Profession, Legal Aid Lawyers (2023), <https://www.abalegalprofile.com/legalaid.html>.

²³³ Rentervention, LCBH, www.rentervention.com.

²³⁴ *Id.* See also About, LCBH, <https://rentervention.com/about/>; How Rentervention Used OpenAI / GPT and Gavel to Provide Legal Services, YOUTUBE, <https://www.youtube.com/watch?v=pLH66GJq5KI>; Conor Malloy, Gavel and GPT: Empowering Tenants with Rentervention, LOOM,

“Rentervention has helped more than 50,000 renters since 2019”;²³⁵ likely many times more than could be serving using a standard clinic model.²³⁶

Expungement: Rasa Legal, created by former public defense lawyer Noella Sudbury, shows the promise of legal aid-lawyer driven technology offerings for a more complex legal service: expungement. As a for-benefit corporation, Rasa uses technology to streamline the expungement process, which, due to its complexity, means that an estimated 75% of self-represented individuals fail to complete the expungement process.²³⁷ But using technology to allow people to search for and view their own records,²³⁸ and to then determine expungement eligibility, as well as to file the necessary paperwork, Rasa has been able to achieve a much higher rate of success. According to Sudbury, in Rasa’s first year, “close to 10,000 people used their services, in comparison to 400 people per year served by legal aid.”²³⁹

Immigration: The American Immigration Lawyers Association (AILA), a national 16,000-member association, collaborated with Visalaw.Ai to develop GEN 1.0, a generative AI-powered legal research product designed to assist immigration lawyers. Launched in January 2024, GEN is built on GPT-4, and its knowledge base includes an immigration law library and AILA resources that are not publicly available.²⁴⁰ An earlier version was beta tested by members of the AILA, demonstrating the broad impact that tools can have in a short period of time.²⁴¹ On its website, Visalaw.Ai features a variety of use cases such as legal research, eligibility analysis, and summarizing documents.²⁴²

E. Certification for Legal Aid Bots

Some of the most promising use cases that we heard about involved chatbots that can converse with consumers and dispense relevant legal information in many different forms and

<https://www.loom.com/share/358284de65e7475cb4dde623e3ee32cf?sid=0a30a501-31da-493f-a4cc-4df98cb91893>.

Renny is also available within LCBH to help staff members navigate LCHB’s legal knowledge base and prepare responses to tenants’ questions. Conor Malloy, Update on Rentervention Helpdesk, LOOM,

<https://www.loom.com/share/6b2dc5c8e9c74e1a9c92b0bffd613fda>.

²³⁵ Rentervention Named Winner at 22nd Annual Chicago Innovation Awards, LCBH (Nov. 17, 2023),

<https://lcbh.org/rentervention-named-winner-at-22nd-annual-chicago-innovation-awards/>.

²³⁶ For example, at the same time that Rentervention was recently honored, a law school clinical project facilitated volunteer work on 20 eviction defense cases, some of them quite complex, over the same period. *Law Center for Better Housing Honors Professors Laurie Mikva and Daniel Linna*, N_{LAW} NEWS (Sept. 21, 2023),

<https://news.law.northwestern.edu/law-center-for-better-housing-honors-professors-laurie-mikva-and-daniel-linna/>.

²³⁷ The Reason for Rasa, RASA, <https://www.rasa-legal.com/about/the-reason-for-rasa/>.

²³⁸ <https://techbuzz.news/rasa-legal-uses-tech-to-clear-criminal-records-and-create-opportunity/>

²³⁹ Email from Noella Sudbury on file with the authors (Sept. 21, 2023).

²⁴⁰ Press Release, Visalaw.Ai Launches GEN 1.0: A Revolutionary AI-Powered Legal Research Tool for Immigration Law Firms (Jan. 16, 2024),

<https://www.aila.org/library/visalaw-ai-launches-gen-1-0-a-revolutionary-ai-powered-legal-research-tool-for-immigration-law-firms>;

Josh Sinnott, Where does GEN’s Knowledge come from? (Sept. 8, 2023),

<https://www.visalaw.ai/blog/gen-knowledge>.

²⁴¹ Andrew Kreighbaum, *AI Makes Its Way to Immigration with New Tool to Aid Attorneys*, BLOOMBERG LAW (June 21, 2023),

<https://news.bloomberglaw.com/daily-labor-report/ai-makes-its-way-to-immigration-with-new-tool-to-aid-attorneys>.

²⁴² Use Cases, VISALAW.AI, <https://www.visalaw.ai/usecases>.

languages, and customize the information in accordance with the user’s specific needs. But going from concept to reliable and deployable bot solution involves a high level of vetting and quality control, which would benefit from updates and adaptation of the regulation that is done of human lawyers, paraprofessionals, or non-lawyer community-based advocates. Therefore, we recommend that the legal industry consider exploring regulatory sandboxes or community-based justice worker models that involve standards and tech certifications to help ensure the deployment of high-quality, trustworthy AI tools for legal aid.

To protect the public interest, regulatory entities generally restrict the practice of law to legal professionals who have passed the bar exam and character and fitness requirements, maintain ethical standards, fulfill continuing legal education requirements, and uphold their duties to their clients and the public. As discussed above, Utah has implemented a regulatory sandbox to allow for the development and testing of innovative legal services models.²⁴³ Utah, Arizona, and several other states have developed community-based justice worker models that allow non-lawyers to be trained and certified to provide limited-scope legal advice in certain areas, including housing, family law, and medical legal debt. These regulatory reforms could be explored by other jurisdictions to cover new models that are intended to directly serve the public.

In addition, state bar authorities could consider whether to institute and oversee voluntary certification or “seal of approval” programs verifying that automated legal services meet appropriate functionality, accuracy and ethical standards. Particularly in light of the known challenges of generative AI technology including bias, accuracy, privacy, and confidentiality,²⁴⁴ a certification or “seal of approval” program could evaluate legal bots across dimensions including reliability in providing accurate and up to date legal information, ability to spot ethical issues, transparency around limitations and disclaimers, and adherence to privacy policies and data regulations. Lawyers and technologists could collaborate on appropriate certification standards and procedures tailored for verifying legal bots across domains and dimensions.

* * *

In conclusion, the integration of generative AI into legal aid presents an opportunity to enhance access to justice. However, our surveys and pilot findings demonstrate the necessity for thoughtful and strategic approaches to maximize access and effective utilization of generative AI, and the importance of addressing the gender gap in its use. We encourage further collaboration and dialogue among the legal aid community, technology providers, researchers, and policymakers with a focus on the development of legal aid-directed solutions that combine generative AI and automation technology with proper human oversight and quality controls.

²⁴³ Described supra, in Part I. B.

²⁴⁴ Described supra, in Part IV. A.

APPENDIX

- Methodological Details, Demographics of Survey Takers, and Tables
- Survey 1 & 2 Instruments

Methodological Details

Data from the initial study and the pilot survey were combined in order to examine baseline and post-pilot differences between respondents. Word responses were normalized to numerical responses for purposes of display and analysis, according to the scales described in Part III. As items were assessed on different response scales, some of the graphic representation of results include responses normalized to a 1-5 point scale.

Descriptive statistics including means, standard deviations, frequencies, and percentages were computed for each variable of interest. We then assessed mean differences in response items between different subgroups (i.e. gender, age group, role, experience level) using independent sample t-tests or ANOVA. We assessed proportion differences in categorical response items between subgroups with chi-square tests or Fisher's exact tests, when the estimated cell count was less than 5. To verify the robustness of our results, we calculated adjusted means and proportions by estimating regression models including covariates such as current/previous AI use.

Demographics of Survey Takers

Out of the 204 respondents to the initial survey 88.1% were attorneys and 11.9% were non-attorneys. Among individuals that completed the pilot (P1), the ratio was 95.2% attorney and 4.8% non-attorney. Our responses skewed female, consistent with the demographics of legal aid practitioners²⁴⁵ — among people for whom we had binary gender data, 77.9% of the respondents to our baseline survey were women, and 22.1% were men; in the pilot study, 68.9% were women and 31.2% were men.

In terms of age, our population also skewed towards older, more experienced lawyers: 38.4% of the initial respondents were aged 45 or older, 49.6% were between 35 and 44 years old, and 11.6% were 34 or younger. Of the initial respondents, 23.4% had between 0-4 years of

²⁴⁵ 73.8% of all full-time staff, and 77.4% of part-time staff at Legal Services Corporation grantees were women in 2022. *By the Numbers 2022: The Data Underlying Legal Aid Programs*, LEGAL SERVICES CORP., Fig. 7.6 (2023), <https://lsc-live.app.box.com/s/h2bajpr3gps4s4a1iio6fwidhmu1nwb>. In comparison, men outnumber women in the law in California. Diversity of 2022 California Licensed Attorneys, THE STATE BAR OF CALIFORNIA, Fig. 3 (2022), <https://publications.calbar.ca.gov/2022-diversity-report-card/diversity-2022-california-licensed-attorneys>. (44% of lawyers in California identified as female in 2022). See also Catherine Albiston et al., *Making Public Interest Lawyers In A Time Of Crisis: An Evidence-Based Approach*, 34 GEORGETOWN J. LEGAL ETHICS 223, 264 (2021) (finding that “identifying as female is predictive of public interest work at later stages of one’s career but not at the beginning . . . gender is significantly related to holding a *current* job in a public interest setting”); *id.* at 239 n.80 (summarizing past research finding that women law students prefer to pursue public interest work).

PRELIMINARY DRAFT

experience, 36.3% had 5-14 years of experience, 26.6% had 15-25 years of experience, and 13.7% had over 25 years of experience.

But our pilot study differed in important ways from our survey population. It skewed towards younger, relatively less experienced lawyers: 25.8% were aged 45 or older, 54.8% were between 35 and 44 years old, and 19.4% were 34 or younger. In the pilot study, 41.5% had 0-4 years of experience, 30.8% had 5-14 years of experience, 16.9% had 15-25 years of experience, and 10.8% had over 25 years of experience.

Of the initial respondents, 52.5% were white, and 47.6% were people of color. In the pilot study, 56.3% were white, and 43.8% were people of color. Of the initial respondents, 61.4% were in leadership, 8.4% were supervisors, 12.4% were in direct service roles, and 17.8% were in other roles. In the pilot study, 47.6% were in leadership, 7.9% were supervisors, 19.1% were in direct service roles, and 25.4% were in other roles.

PRELIMINARY DRAFT

Table A1 : Differences in outcomes by gender in the pilot population before and after the pilot²⁴⁶

PRE-PILOT	Men	Women	POST-PILOT	Men	Women
Current Use			Used How Often	3.3 (0.8)	3.1 (1.1)
Currently Using	65%	22%*	Usage during pilot compared to before (adjusted for previous use)	2.9 (0.7)	2.8 (0.6)
Planning to Use	24%	46%	Number ways used	4.7 (1.9)	3.8 (1.6)
Not using/ not sure	12%	32%	Quality of AI output	1.6 (0.5)	1.8 (0.5)
			Comparative Satisfaction	2.7 (0.5)	2.7 (0.5)
Number ways used	2.1 (1.8)	0.8 (1.7)*	Productivity Increase	90%	90%
Number ways considered use	1.9 (1.5)	2.9 (2.4)**	Level of Concern about AI	79%	63%
Benefit	3.6 (0.8)	3.1 (0.9)+	Number of Concerns	5.1 (1.9)	4.5 (2.1)
Number of Concerns	3.1 (1.7)	3.8 (1.8)	Positive Impact of AI on my job	63%	78%
			Future Use (any)	74%	76%
			Yes Future Paid Use (any)	58%	63%

Note: + p < .10, * p < .05, ** p < .01

²⁴⁶ Calculated on the basis of the 66 individuals' responses to surveys before and after the pilot. Because some of the respondents to the initial survey received a slightly different version of the questions pertaining to number of ways used, considered, and concerns, as described infra at Appendix Survey 1, the pre-and post- pilot absolute values are not directly comparable.

PRELIMINARY DRAFT

Table A2: Differences in outcomes by concierge or standard support during the pilot

POST-PILOT	Unadjusted		Adjusted for Previous Use	
	Standard Group (N=41)	Concierge Group (N=25)	Standard (N=41)	Concierge Group (N=25)
Used How Often	3.0 (1.0)	3.3 (1.0)	3.1	3.3
Usage during pilot compared to before	2.8 (0.5)	2.7 (0.7)	2.8	2.7
Number ways used	3.8 (1.9)	4.3 (1.7)	3.9	4.2
Quality of AI output	1.6 (0.5)	1.9 (0.4)*	1.6	1.9**
Comparative Satisfaction	2.6 (0.6)	2.8 (0.4)+	2.6	2.8
Productivity Increase (any improvement)	84%	100%*	87%	99%
Productivity Increase (1-4 scale)	2.2 (0.8)	2.8 (0.8)**	2.2	2.9**
Level of Concern about AI	73%	67%	74%	65%
Number of Concerns	4.5 (2.1)	4.9 (2.0)	4.5	4.9
Positive Impact of AI on my job	62%	88%*	61%	88%*
Future Use (any)	73%	79%	74%	77%
Yes Future Paid Use (any)	55%	75%+	55%	74%

Note: + $p < .10$, * $p < .05$, ** $p < .01$. Adjusted means and percentages were obtained by running multiple regression models predicting each item from group type (concierge vs standard) and adding previous use (yes/no) as a covariate.

Survey 1 (Access to Justice AI Automation + Pilot survey combined — using first survey as base)
 Hello, we are researchers at UC Berkeley studying access to justice and AI/automation tools. We invite you to take the following anonymous survey, which should take no more than 10 minutes. We will use your responses to write one or more research articles about the potential of AI and automation to help

PRELIMINARY DRAFT

address the justice gap but will not identify you or your organization in our research. Your participation is voluntary and you are free to opt out at any time without penalty. We will provide a \$10 giftcard for your completion of the survey. You may forward this to legal services providers who directly serve clients at your organization, but each person is only eligible to receive one gift card. At the end of the survey you'll have the opportunity to sign up for our pilot project which will give participants free trial access to paid GenerativeAI platforms in exchange for providing a written or interview-based debrief about the experience.

This survey is being implemented pursuant to University of California Berkeley IRB Protocol 2023-10-16780. You are welcome to email Miriam at miriam.kim@berkeley.edu or University of California Berkeley's Office for Protection of Human Subjects (OPHS) at ophs@berkeley.edu or 510-642-7461 if you have questions or concerns about the survey.

By answering the questions below, you consent to participating in research.²⁴⁷

Thank you for your participation,
Prof. Colleen Chien and Miriam Kim, Berkeley Law

--

Gating and Background

1. Have you previously taken a survey from the A2J/AI team at Berkeley?²⁴⁸
 - a. Yes
 - b. No
2. Please provide your name, contact, information, and organization.²⁴⁹
3. Please provide the names and contact information of other attorneys at your organization you'd like us to reach out to offer the pilot to (optional) You may also share with them this link:
<https://bit.ly/A2JAIPilot>²⁵⁰
4. Are you a lawyer?²⁵¹
 - a. Yes
 - b. No
5. In which of the following areas do you practice? Select all that apply.
 - a. Children / youth
 - b. Civil rights

²⁴⁷ A slightly different version of this appeared in the second distribution of the survey.

²⁴⁸ This question (1) appeared only on the second distribution of the survey, and not the first.

²⁴⁹ This question (2) appeared only on the second distribution of the survey, and not the first.

²⁵⁰ This question (3) appeared only on the second distribution of the survey, and not the first.

²⁵¹ This question (4) was worded differently in the second distribution, instead asking "are you employed at an organization that provides legal services to or advocates on behalf of underserved populations, directly or indirectly?"

PRELIMINARY DRAFT

- c. Conservatorship
 - d. Consumer / economic justice
 - e. Criminal
 - f. Disability rights
 - g. Domestic violence
 - h. Education
 - i. Elder law
 - j. Employment / workers' rights
 - k. Family law
 - l. Guardianship
 - m. Health
 - n. Housing
 - o. Immigration
 - p. Income maintenance
 - q. Juvenile
 - r. Litigation
 - s. Miscellaneous
 - t. Veterans' rights
 - u. Voting rights
 - v. Women's rights
 - w. Other _____
6. Please identify the three tasks on which you spend the most time:
- a. Client intake
 - b. Community clinics
 - c. Community education
 - d. Community outreach
 - e. Direct legal services
 - f. Litigation
 - g. Marketing/communications (e.g. blog posts, website, social media)
 - h. Policy work
 - i. Development (e.g. fundraising, grant writing)
 - j. Recruiting staff and volunteers
 - k. Administrative tasks
 - l. Operations
 - m. Other _____
7. Please indicate your role in the organization for which you work (check all that apply)
- a. Leadership
 - b. Supervisor of attorneys /volunteers to provide direct services to clients
 - c. Provide direct services to clients
 - d. Other [let them choose]

PRELIMINARY DRAFT

8. Are you using or do you plan to use Generative AI (ChatGPT, Claude, Bard, Co-Counsel, etc.) tools in your work?
- a. Currently using
 - b. Planning to use
 - c. Not using and do not plan to use
 - d. Not sure if I will use

If “a: *currently using*” is not selected, start Perceptions of AI:

Perceptions of AI

8a. Would you consider using AI tools for the following tasks at work? Select all that apply²⁵².

- a. Researching matters
- b. Increasing efficiency
- c. Writing emails
- d. Drafting documents
- e. Understanding new legal concepts
- f. Streamlining work
- g. Improving work quality
- h. Document analysis
- i. Conducting due diligence
- j. Translation
- k. Other
- l. Developing litigation strategies

8b. What concerns do you have about using AI tools in your work? (select all that apply)²⁵³

- a. No concerns
- b. Bias
- c. Confidentiality
- d. Cost
- e. Data Privacy
- f. Ethical concerns
- g. Hallucinations
- h. Inability to explain how AI works
- i. Inaccurate results
- j. Other _____

²⁵² This question (8a) in the second distribution of this survey included the instruction “Select the top 3 areas of interest,” rather than “Select all that apply.”

²⁵³ This question (8b) in the second distribution of this survey included the instruction “Select your top 3 answers,” rather than “Select all that apply.”

End “Perceptions of AI ARM”

If “*a: currently using*” is selected, then start “AI Tech Arm:”

AI Tech Arm

8c. How are you using Generative AI tools in your work? Select all that apply²⁵⁴.

- a. Researching matters
- b. Increasing efficiency
- c. Writing emails
- d. Drafting documents
- e. Understanding new legal concepts
- f. Streamlining work
- g. Improving work quality
- h. Document analysis
- i. Conducting due diligence
- j. Translation
- k. Other
- l. Developing litigation strategies

8d. How have these tools helped or hindered your practice? Please describe the tools you are using and provide examples regarding how you are using them.

8e. Please indicate if you’d be interested in talking to us further about your experiences with Generative AI.²⁵⁵

- a. Yes
- b. No

8f. What concerns do you have about using AI tools in your work? (select all that apply)²⁵⁶

- a. No concerns
- b. Bias
- c. Confidentiality
- d. Cost
- e. Data Privacy
- f. Ethical concerns
- g. Hallucinations
- h. Inability to explain how AI works
- i. Inaccurate results

²⁵⁴ This question (8c) in the second distribution of this survey included the instruction “Select your top 3 answers,” rather than “Select all that apply.”

²⁵⁵ This question (8e) only appeared in the first distribution of the survey, and was later edited out for the second distribution.

²⁵⁶ This question (8f) included “select your top 3 answers,” rather than “select all that apply” in the second distribution of the survey.

PRELIMINARY DRAFT

j. Other: _____

End “AI TECH ARM”

9. Based on what you know about AI conversational tools like ChatGPT, how beneficial do you believe they are in assisting with tasks or answering questions?²⁵⁷
- a. Very Beneficial
 - b. Beneficial
 - c. Somewhat beneficial
 - d. Neither beneficial nor harmful
 - e. Somewhat harmful
 - f. Harmful
 - g. Very harmful
10. Are you using primarily paper-based records for any of the following tasks? Select all that apply.²⁵⁸
- a. Client intake
 - b. Case management
 - c. Legal research
 - d. Legal forms and petitions
 - e. Timesheets/payroll
 - f. Other: _____
 - g. None of the above
11. Which of the following limits the number of people served by your organization? (select all that apply)²⁵⁹
- a. Knowledge gap: people don't know they have a legal remedy
 - b. Eligibility: people who come to us often are ineligible
 - c. Inaccessible court records or government information
 - d. Marketing: people don't know about us or our services
 - e. Not enough funding
 - f. Not enough legal aid lawyers
 - g. Not enough time
 - h. Translation issues
 - i. Unauthorized practice of law (UPL) regulations
 - j. Other
12. Please expand, if you'd like (optional).

²⁵⁷ This question (9) only appeared in the second distribution of the survey.

²⁵⁸ This question (10) appeared differently on the second survey, instead stating “If you are using primarily paper-based records for any of the following tasks, please indicate that below.”

²⁵⁹ This question (11) included “select the top 3 answers,” rather than “select all that apply” in the second distribution of the survey.

PRELIMINARY DRAFT

13. If asked by a funder how you could double your impact, in terms of clients served, what resources would you ask for and why?²⁶⁰
14. Please indicate if you would like to:
- receive a gift card for your time.
 - be contacted for future paid survey or interview opportunities, or to elaborate on your response.
15. Please provide your contact information (name, email, and organization name) so that we may follow up.
16. We have a limited number of free subscriptions to GenAI tools like ChatGPT-that we are offering to direct service providers as part of a pilot. The attorneys would get free 1-month subscriptions in exchange for sharing their experiences through a brief interview or short report (for which a \$50 gift card will be offered). Would your organization like to participate? Please only check “yes” / “maybe” if your organization does not prohibit the use of such tools.
- Yes
 - No
17. If you would like to participate in our pilot and receive free subscriptions to AI tools for a month, please indicate that by selecting the option below²⁶¹:
- Yes, I consent to participating in the pilot and have a ChatGPT account already ready to be upgraded
 - Yes, I consent to participating in the pilot but need to set up a ChatGPT account.
 - No, I cannot participate in the pilot at this time, but please contact me again.
 - No, I’m no longer interested but please send me a gift card for finishing the survey.
 - No, I’m no longer interested and do not want a gift card for finishing the survey.

Survey 2 (Pilot Exit Surveys for Concierge + Standard Group)

Thank you for participating in the Berkeley Law pilot. To wrap up, we are asking for feedback in two parts: your responses to this survey and your documentation of 2-5 use cases. The survey should take no more than 5 minutes and the use cases should take 1-5 minutes per example to document. (Instructions: <https://bit.ly/AIA2JShare>) Do not include any confidential information or PII; please modify or redact your use cases to anonymize them, if necessary.

We will provide you a \$50 gift card if you complete the survey and report on or before January 12, 2024, to be sent in batches the weeks of January 1 and 15.

²⁶⁰ This question (13) marks the end of the second distribution survey. Questions 14 to 16 appeared only in the first distribution.

²⁶¹ This question (17) appeared only on the second distribution of the survey was placed at the front.

PRELIMINARY DRAFT

If you want to be acknowledged for your submissions, please indicate that in your use case entry, and we will provide you with credit as you wish. We will not identify you or your organization without your consent in connection

Your participation is voluntary and you are free to opt out at any time without penalty. This survey is being implemented pursuant to University of California Berkeley IRB Protocol 2023-10-16780. Please email Miriam at miriam.kim@berkeley.edu or University of California Berkeley's Office for Protection of Human Subjects (OPHS) at ophs@berkeley.edu or 510-642-7461 if you have questions or concerns about the survey.

Thank you for your participation in our pilot and we hope you will continue to explore the use of AI to increase access to justice.

- Prof. Colleen Chien and Miriam Kim, Berkeley Law

Identify Yourself

1. What is your name?
2. What is your email?

Which tools were used

3. Which tools had you used prior to the pilot, if any?
 - a. ChatGPT Plus
 - b. ChatGPT
 - c. Claude
 - d. Bard
 - e. Bing Chat
 - f. CoCounsel
 - g. Gavel
4. How did your use of the following tools change during the pilot, if at all? (0= NA, not available, 1= no change, 2= a bit more, 3= a lot more) as applied to
 - a. ChatGPT Plus, ChatGPT, Claude, Bard, Bing Chat, CoCounsel, Gavel

For Concierge service group²⁶²

5. Which of the following **services** did you receive as part of the pilot, and if you used them, please indicate how useful they were:²⁶³
(0 = did not receive, 1= received but did not use or find useful, 2= received and found pretty useful, 3= received and found very useful)
 - a. Google group

²⁶² This section (Q5 to Q7) was only shown to the concierge group, and not the standard group.

²⁶³ For FAQs, see [ChatGPT/Claude Pilot FAQ's](#)

PRELIMINARY DRAFT

- b. Tool Trainings
 - c. Weekly best practices emails
 - d. Office hours
 - e. Emails
 - f. FAQs
6. Please comment, if you wish (optional)
7. How could we have done better? (optional)

For all (both standard and concierge group)

8. What outside sources of information did you find useful for using the AI tools? (select all that apply)
- a. Tool websites
 - b. Peers
 - c. Internet search
 - d. Facebook or other opt-in group (e.g. slack or mailing list)
 - e. Other _____

Nature and quality of the experience

9. What was the extent of your usage of generative AI during the pilot?
- a. Everyday
 - b. Most days
 - c. Some days
 - d. Occasionally
 - e. None
10. Compared to before the pilot, your usage of Generative AI tools during the pilot was
- a. More than before
 - b. The same as before
 - c. Less than before
11. Select all of the ways that you used the technology:²⁶⁴
- a. Brainstorming or ideation
 - b. Research
 - c. Legal writing
 - d. Nonlegal writing
 - e. Translation
 - f. Document summarization
 - g. Analyzing data and making forecasts,
 - h. Generating /checking computer code,

²⁶⁴ Benchmark: THECONFERENCEBOARD *supra* note 97.

PRELIMINARY DRAFT

- i. image recognition and generation,²⁶⁵
 - j. Development work
 - k. Forms automation
 - l. Designing your own bot
12. Please indicate the level you found your AI's output quality to be comparable to:
- a. Expert worker
 - b. Experienced worker
 - c. Novice worker
13. Please indicate your level of satisfaction with your AI-assisted work process,²⁶⁶ as compared to before the pilot:
- a. More satisfied
 - b. Equally satisfied
 - c. Less satisfied
14. Did you experience an increase in productivity as a result of the AI tools?
0=NA, 1 = no increase, 2 = a little bit of an increase, 3 = a medium increase, 4 = a significant increase

Attitudes towards and likelihood of continued usage

15. Did the pilot make you more or less concerned about the potential use of AI tools in your work?
- a. More concerned
 - b. Just as concerned
 - c. Less concerned
16. Please indicate your concerns about AI:
- a. Bias
 - b. Confidentiality
 - c. Cost
 - d. Data Privacy
 - e. Ethical concerns
 - f. Hallucinations
 - g. Inability to explain how AI works
 - h. Inaccurate results
 - i. Other _____
17. Please check the box that best describes your outlook on the role of AI in your work:

²⁶⁵ *Id.*

²⁶⁶ Choi et al., *supra* note ___ at 36 (“young lawyers provided with access to AI to facilitate their work accurately appreciate these benefits of AI, find that access to AI tends to enhance their work satisfaction, and generally become more enthusiastic about using AI to facilitate their work as they gain experience doing so.”).

PRELIMINARY DRAFT

- a. AI will replace elements of my job in a positive way—e.g., by freeing up time for more valuable or creative tasks.
- b. AI will replace parts of my work in a negative way—e.g., by threatening my job altogether.
- c. I do not expect AI to replace any element of my job.

Future usage

18. Based on your experience, do you plan to continue to use AI tools in your work and if so, which ones?
- a. No
 - b. Yes, ChatGPT Plus
 - c. Yes, Claude
 - d. Yes, Bard
 - e. Yes, Bing
 - f. Yes, Co-counsel
 - g. Yes, Gavel
19. Please comment, if you wish (optional)
20. Are there features or capabilities you would like to see added or improved? (optional)

Open-Ended Question

21. We hope to disseminate our work to policymakers interested in how to use technology to make government systems more accessible and equitable. What technical or data access improvements could local or state governments make to make your work easier? Please be specific and explain the impact this capacity would have on expanding access. (For example, “for us, the bottleneck is accessing and reading rap sheets which requires Livescans which are costly and take time. Thus, please tell the California government to improve rap sheet access and also to give us the person’s record in a more readable form.”)

Demographics/Background

22. Are you a lawyer?
- a. Yes
 - b. No
23. In which of the following areas do you practice? Select all that apply.
- a. Children / youth
 - b. Civil rights
 - c. Conservatorship
 - d. Consumer / economic justice
 - e. Criminal

PRELIMINARY DRAFT

- f. Disability rights
 - g. Domestic violence
 - h. Education
 - i. Elder law
 - j. Employment / workers' rights
 - k. Family law
 - l. Guardianship
 - m. Health
 - n. Housing
 - o. Immigration
 - p. Income maintenance
 - q. Juvenile
 - r. Litigation
 - s. Miscellaneous
 - t. Veterans' rights
 - u. Voting rights
 - v. Women's rights
 - w. Other _____
24. Please indicate how you primarily self-identify your race/ethnicity:
- a. Hispanic or Latin American
 - b. White
 - c. Black or African American
 - d. American Indian or Alaska Native
 - e. Asian, Asian-American, or Pacific Islander
 - f. Middle Eastern or North African
 - g. Multiracial
 - h. Other
25. Please indicate how you primarily identify:
- a. Man
 - b. Woman
 - c. Non-Binary
 - d. Transgender Man
 - e. Transgender Woman
 - f. Other (e.g., gender fluid)
 - g. Prefer Not to Say
26. What is your age?
- a. Under 25
 - b. 25-34
 - c. 35-44
 - d. 45-54
 - e. 55-64

PRELIMINARY DRAFT

- f. 65+
27. How long have you been practicing law?
- a. 0-4 years
 - b. 5-14 years
 - c. 15-25 years
 - d. Over 25 years

*SANDI: Improving Court
Access and Service in
Miami with an Advanced
Artificial Intelligence
Chatbot*



SANDI: Improving Court Access and Service in Miami with an Advanced Artificial Intelligence Chatbot*

Eunice Sigler

Director, Office of Government Liaison and Public Relations,
Eleventh Judicial Circuit of Florida

The Eleventh Judicial Circuit of Florida in Miami launched an artificial-intelligence-based navigation assistant chatbot on their website in July 2022. The chatbot, the most advanced of its kind, has already reduced requests for live-chat staff assistance from the Family Court's Self-Help Program by 94 percent.

* NCSC *Trends* produces factual articles on new developments and innovations in courts across the United States with the purpose of helping the courts anticipate and manage change to increase public accountability, trust, and confidence in the judicial system. The NCSC does not endorse any products or entities that may be mentioned in *Trends* articles.

SANDI: Improving Court Access and Service in Miami with an Advanced Artificial Intelligence Chatbot

SANDI, an acronym for **Self-Help Assistant Navigator for Digital Interactions**, was made possible by a federal grant from the [State Justice Institute](#), in collaboration with the [National Center for State Courts](#) (NCSC) and [Advanced Robot Solutions](#), which developed this artificial intelligence (AI) enhanced digital assistant—also known as a chatbot.¹

Those who visit the [Miami-Dade Courts website](#) are now greeted by SANDI in an online chat window.²



SANDI can understand user requests in English and Spanish and can help web visitors find frequently requested information, such as judicial directories, courtroom Zoom ID numbers, and case information.

1 See State Justice Institute at <https://perma.cc/QRB7-T8M9>; National Center for State Courts at <https://perma.cc/TSB2-SU92>; and Advanced Robot Solutions at <https://perma.cc/YQP9-NEYA>.

2 See <https://www.jud11.flcourts.org/>.

SANDI: Improving Court Access and Service in Miami with an Advanced Artificial Intelligence Chatbot

One feature that distinguishes SANDI from other court chatbots is the ability to respond multilingually to both typed and spoken responses. Other features that distinguish SANDI from other court chatbots are:

- SANDI uses a moving avatar—a digital representation of a person whose eyes follow the cursor—to make the technology more human-like and user friendly.
- It uses speech-to-text and voice-command technologies, so those who are using a microphone-enabled device can select the option to speak a question rather than type it.
- Unlike other chatbots that are based on spreadsheet question-and-answer pairs, SANDI is supported by an artificial intelligence engine that makes recommendations on how to improve the chatbot’s conversations. The AI engine uses free-flow conversation and context awareness, helping the user navigate through the website via Natural Language Processing.
- SANDI features session continuation and session follow-up—meaning SANDI retains the conversation from one part of the website to another, and once the user is taken to a new part of the website, SANDI provides more information on what can be done on that page, so the user is never left hanging about what to do next.

“This was a proof of concept and proof of technology. SANDI is proof that artificial-intelligence-based technology for two-way communication, using a guided interview, can be developed and assist website visitors,” said Robert Adelardi, the Eleventh Circuit’s chief technology officer.

The proof is also in the numbers. Aside from assistance with general court questions and information, SANDI was developed with an initial focus on questions related to the Eleventh’s Family Court Self-Help Program where a high volume of self-represented litigants go for assistance in obtaining and correctly completing the forms needed for simple divorces and other non-complex family court matters. The self-help staff assist customers by in-person appointments, phone, and live chats.



*Family Court
Self-Help Program
Waiting Area*

SANDI: Improving Court Access and Service in Miami with an Advanced Artificial Intelligence Chatbot

“Prior to the launch of the SANDI chatbot, we averaged about 950 live chats monthly,” said Juan C. Carmenate, director of the Family Courts Self-Help Program in the Eleventh Circuit. “Once SANDI went live at the end of July 2022, we started seeing the number of live chats go down significantly, especially as we kept adding more knowledge to the SANDI chatbot. Currently we average about 55 live chats a month,” he said.

SANDI answers frequently asked questions about the self-help program, points users to the information and forms they need, and can connect visitors real-time to a live chat with a staff member when needed. If the interaction happens after hours, SANDI can place the user’s question in a queue that is seen by a staff member the next business day.

The handoff between chatbot and live assistants ensures that no requests fall through the cracks and allows the self-help staff to offer assistance even when the courts are closed. It is an example of an emerging discipline known as Human-Centered AI, where the focus is not just on perfecting the AI interaction itself but enhancing human abilities while maintaining human control (see Vassilakopoulou and Pappas, 2022).

“This artificial intelligence-based chatbot has been a real game changer,” said Chief Judge Nushin G. Sayfie. “The fact that SANDI is taking care of hundreds of inquiries that previously required a live chat with a staff member means the technology is working the way it was intended—the public is finding the information they need, when they need it, 24/7 and our precious court resources, our staff,

are being devoted more efficiently, so that we can serve the public as well as possible. It’s all about access to justice. We plan to continue to expand SANDI’s knowledge base so we can continue to improve service to the people of Miami-Dade.”

The number of users interacting with SANDI exceeded expectations early on and continues to grow. From July 23, 2022 to August 23, 2022 alone, SANDI’s first month of existence, a total of 3,545 unique users interacted with the chatbot. Just a few months later, in January of 2023, a total of 4,961 unique users interacted with SANDI.

The idea for a digital website assistant was born in 2021 based on feedback from website visitors. “I had heard complaints from people about how difficult it was to navigate court websites in general, not just our own, so I started looking at the websites of court systems throughout the United States. It was challenging. I don’t know how anyone found their way through anything,” said Sandy Lonergan, the former trial court administrator for the Eleventh Circuit. Around that time, she had occasion to visit a California airport where she saw an avatar that made it seem as though a person was standing in front of her giving directions.

“But it was like a hologram, and I knew we couldn’t afford that, but there had to be something we could do to make access to the courts easier,” Lonergan said. “I wanted to give access, not just ‘go to the next page.’ I wanted people to really have access. You come home from work, have dinner, and before you know it, it’s ten o’clock at night and you’re dead tired.

SANDI: Improving Court Access and Service in Miami with an Advanced Artificial Intelligence Chatbot

No one wants to navigate a very convoluted website at that time.” She then tasked Adelardi with finding technology that could provide better access on the Eleventh’s website—technology that could answer real questions and lead web visitors exactly where they needed to go.

Around the same time, Adelardi had his own brush with a stark reminder of just how difficult it can be for some people to access the courts. One morning in the lobby of the Lawson E. Thomas Courthouse Center—the family courthouse of the Eleventh Circuit—a man in work clothes was holding a tattered court notice and looking completely lost. As luck would have it, Adelardi was also in the lobby to grab a snack from the vending machines. He stopped to ask the man if he could help.

The gentleman did not speak English. He knew he had a court case and a hearing that morning, but he could not understand the notice, which was written only in English. He had driven to the only address printed on the form. It was the address for the Eleventh Circuit’s ADA (Americans with Disabilities Act) Office, located at the Lawson courthouse. “I don’t know where I need to go,” he told Adelardi in Spanish. The notice was for a 9:00am traffic hearing on Zoom. It was 8:40am and he had no cell phone to use. Mr. Adelardi asked one of his staff members to take the gentleman to a public kiosk with a laptop at a nearby courthouse, and he was able to make it to his hearing.

Self-represented litigant on a Zoom traffic hearing at a court laptop kiosk.



SANDI: Improving Court Access and Service in Miami with an Advanced Artificial Intelligence Chatbot

But the encounter nagged on Adelardi's mind. "I thought to myself, what are we doing wrong?" he said. "Our forms and website are not translated. We have a lot of pockets of information all over the place and that keeps people from reaching and gathering the information they need." At [eCourts](https://e-courts.org/), an NCSC-organized court technology trade show in Las Vegas that year, it all came together.³ Adelardi found a vendor that had developed a kiosk-based avatar, CLARA, for courts in New Mexico as part of a partnership with NCSC to provide better language access to the New Mexico courts via the kiosk. NCSC was also partnering with the Miami courts on language access via a federal grant. Shortly after, the vendor's CEO brought a mobile kiosk to Miami to demo the technology. "I met with them, and I said, 'this is what I want,'" former Trial Court Administrator Lonergan said. "Once you provide this technology to people, anybody else who is serving the public will have a framework for better access."

Lonergan's requirements for the project were specific. The technology should speak in multiple languages, provide interactive access, answer questions, and take web visitors directly to the page they need. If the technology does not have the answer, its knowledge base should "grow" based on interactions with the public. The circuit would provide an initial knowledge base developed from frequently asked questions.

"We work with a lot of court systems, and we found Miami to be the most innovative, the most proactive," ARS CEO McManus said. "Doing innovation requires teamwork between the developer and the client, and sometimes things happen in a vacuum, and we don't get feedback. On this project, we learned as much as they did because their approach was completely organized, collaborative and cooperative."

In just a little over a year, SANDI was born with a knowledge base of 35 question-answer pairs and an action knowledge base of 826 questions. Based on interactions with the Miami public, SANDI has been able to synthesize answers for 120 more questions and keeps growing.

Aside from having very practical benefits, such as freeing up Family Court Self-Help Program staff so they can offer more in-person assistance, SANDI has helped bridge the divide between complex legal terminology and the layman's vocabulary. "A perfect example is 'dissolution of marriage.' That's the legal term for a divorce, but the average person will be looking for 'divorce' instead and may not find the information they need," said Pritesh Bhavsar, Advanced Robot Solutions' chief technology officer. "SANDI knows that 'divorce' means 'dissolution of marriage' and takes the web visitor to the right page. By dealing with the legal jargon, SANDI takes an already stressful situation, lowers the stress, and improves the customer experience."

³ See <https://e-courts.org/>.

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In addition, the technology is allowing the Eleventh Circuit to provide better access to the courts by offering around-the-clock assistance to users, which live staff cannot. “Chatbots never sleep, and they can be programmed to interact with customers in as many languages as you program them to do. They can provide that front-line support without forcing you to overextend your budget with new or temporary hires” (Kumar et al., 2023).

Bhavsar remarked on the types of interactions SANDI has received from the Miami public, and how they differ from what the kiosk-based CLARA chatbot receives. “People are trying to explain their situation, they write their entire stories as though they were talking to a person. I think the avatar as the image of a person is what contributes to that,” Bhavsar said.

Ms. Lonergan’s successor, Trial Court Administrator Deirdre Dunham, whose previous accomplishments at the Eleventh Circuit focused on technology advancements in various key departments, is excited to carry the innovation forward. “Advancements in technology have made life so much easier for people and businesses in so many ways these past few decades; there is no reason why the courts shouldn’t also be at the forefront of progress,” she said.

“We are extremely happy to see that SANDI has made things easier for those who interact with the courts. This has always been and will continue to be our goal.” Meanwhile, the future looks bright for SANDI and visitors to Miami’s court website.

Phase 3 of SANDI’s deployment in the months ahead will add specific knowledge bases for more court divisions as well as enhanced performance of the AI technology—both in context recognition and question-answering functions. Further down the line, the plan is to add Creole, which is a very phonetic-intensive language, as a third language, and migrate the technology to kiosks that can be placed in libraries, retail stores, and other public areas. “This will bring the courts to the people, and Miami is leading the way in that trend,” McManus said.

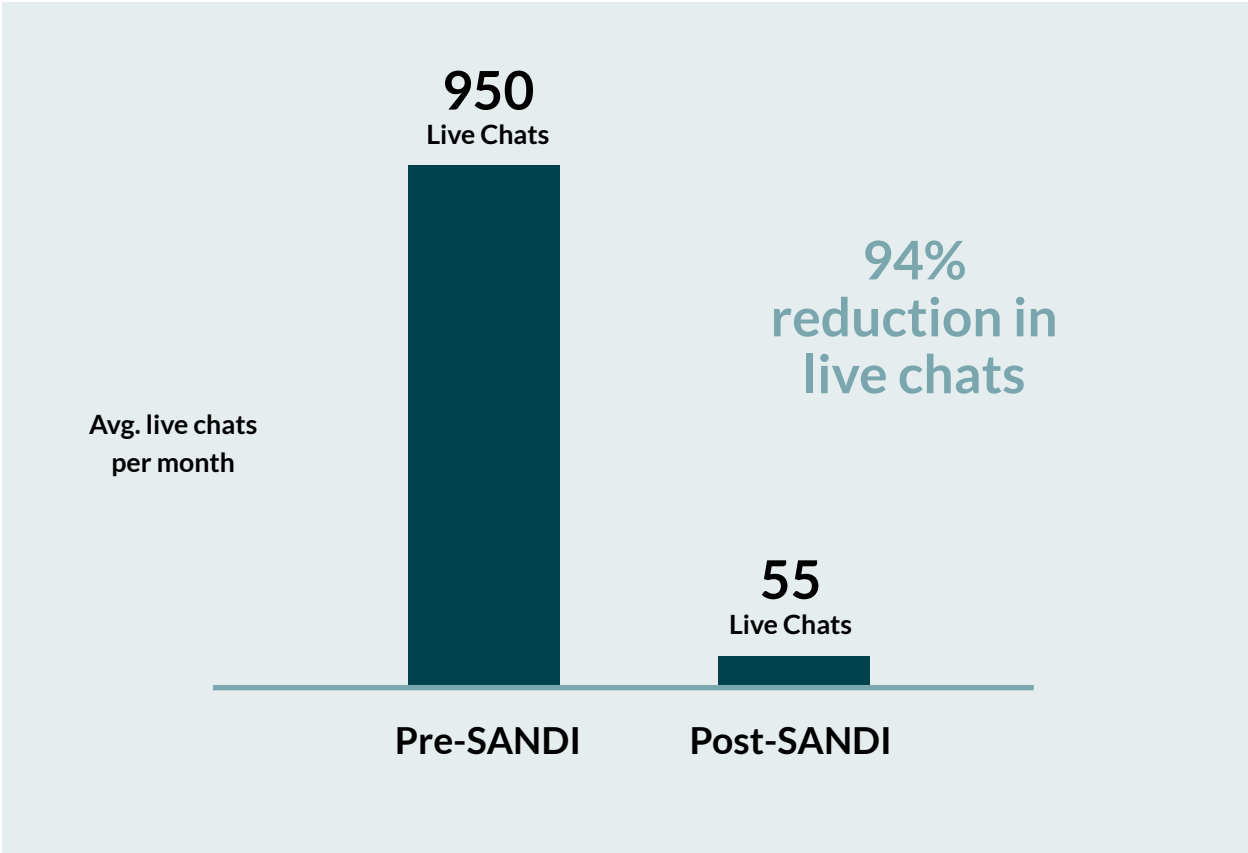
The SANDI Avatar



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SANDI Data

Family Court Self-Help Reduction in # of Live Chats



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Further Reading

The following are articles, research papers and case studies on the integration of chatbots into legal systems and other applications:

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