

Let's Talk AI and A2J, April 11, 2024

CLE materials: Building an AI Tool to Expand Access to Justice

- Intelligence Help to Address the Justice Gap in Consumer Debt Litigation? (March 25, 2024). Fordham Urban Law Journal, Forthcoming Brescia, Raymond H., Robots vs. Predators: Can Generative Artificial, Available at SSRN: <https://ssrn.com/abstract=>
- Microsoft 2003 Pro Bono Report

ROBOTS VS. PREDATORS:
CAN GENERATIVE ARTIFICIAL INTELLIGENCE HELP TO ADDRESS THE
JUSTICE GAP IN CONSUMER DEBT LITIGATION?

*Raymond H. Brescia**

ABSTRACT

With generative artificial intelligence’s wide release in early 2023, many have expressed fears that this technological innovation might relieve humans of the burden of carrying out some repetitive and simple tasks, and possibly cost at least some of them their livelihoods. It also raised the specter that this and related technologies could end up displacing even workers engaged in creative works and certain professions, including those in the legal profession. The initial burst of enthusiasm surrounding the availability of generative artificial intelligence (GenAI) to the public—including members of the legal profession—was quickly dampened, however, when lawyers began relying on the work product of this technology to aid them in preparing legal documents, with rather unfortunate results, including lawyers being the subject of sanctions orders by judges for submitting documents with GenAI “hallucinations”: instances where the technology “found” authorities for legal propositions where no such authorities existed, and upon which those lawyers relied to their detriment. Given these and other experiences with GenAI proving unable to satisfy even the most basic standard of care that lawyers must meet when serving clients, the initial excitement that this technology engendered receded, yet lawyers and technologists have continued to explore ways to harness the technology to make the work of members of the legal profession more efficient and effective, while also ensuring that lawyers are able to uphold their ethical obligations even when they deploy new technologies to attempt to address the legal needs of their clients. While GenAI and other, related technologies, like machine learning, might play some future role in displacing some—if not many—of the functions the legal profession currently fills, the introduction of these new technologies might serve to address legal needs where the legal profession is currently failing to do so. That is, GenAI, if deployed effectively in certain underserved areas of legal need, does not run the risk of displacing lawyers where few lawyers currently serve clients in need. What is more, in at least

* The author is the Associate Dean for Research and Intellectual Life and the Hon. Harold R. Tyler Chair in Law & Technology and Professor of Law at Albany Law School. No artificially intelligent beings were harmed—or utilized—in the drafting of this Article.

some areas where lawyers are failing to address the legal problems of those in need, in many such cases, those legal needs call for interventions that GenAI is quite well-suited to execute: highly repetitive tasks, at scale, involving problems of relatively low complexity, and possibly even relatively low stakes. One such area is consumer debt. In the United States, millions of Americans of low- and moderate-income are sued by entities for relatively small amounts of money—ranging from \$5,000-10,000. Many of the plaintiffs in these cases are “debt buyers”: entities that have paid a very small percentage of the face value of the debt for the right to try to collect it, and they use the courts as their primary vehicle for doing so. The overwhelming majority of those creditor-plaintiffs are represented by counsel, whereas only a tiny fraction of the debtor-defendants have legal representation. The nature of these cases lends itself to the creation of technology-driven interventions, fueled by GenAI, to help provide some legal guidance, support, and perhaps even the preparation of formal pleadings, to assist such debtors to defend themselves in court. This Article explores the theoretical, technological, ethical, and practical challenges associated with creating a GenAI-powered intervention that might help address the significant asymmetry of legal representation and assistance in consumer debt cases. Through such an exploration, it will identify the opportunities and risks of developing such tools to help close the justice gap more broadly, in this and other areas of law where the nature of the dispute might lend itself to this type of intervention. It will also identify areas of further research and inquiry as the legal profession strives to not just adapt to, but also harness, the introduction of GenAI into the practice of law in ways that are effective, while also ensuring it will serve the broader goal of the profession, which should be to expand access to justice and do so in ethical, equitable, and meaningful ways.

INTRODUCTION

Across the U.S., millions of American families face their legal problems without the benefit of legal assistance.¹ Roughly eighty-percent of low-income and fifty-percent of middle-income Americans are unable to secure legal guidance and representation when they are threatened with

¹ See, e.g., LEGAL SERVICES CORPORATION, THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2022)(hereinafter JUSTICE GAP REPORT)(documenting the unmet legal needs of millions of Americans).

eviction, might consider filing for bankruptcy, are injured in the workplace, experience unpaid wages, or find themselves being sued for a debt they did not know they owed and may not now believe they must pay. In the midst of this access-to-justice crisis in many areas of law, and for many populations, law offices across the U.S. are exploring ways to incorporate new technologies, the most important of which is generative artificial intelligence (GenAI), to determine if such technologies might make the practice of law more efficient and effective. This Article explores the theoretical, technological, ethical, and practical challenges associated with creating a GenAI-powered intervention that might help address the significant asymmetry of legal representation and assistance in an area of great need that disproportionately impacts low- and moderate-income Americans: consumer debt cases. Through such an exploration, it will identify the opportunities and risks of developing such tools to help close the justice gap more broadly, in this and other areas of law where the nature of the dispute might lend itself to this type of intervention. It will also identify areas of further research and inquiry as the legal profession strives to not just adapt to, but also harness, the introduction of GenAI into the practice of law in ways that are effective, while also ensuring it will serve the broader goal of the profession, which should be to expand access to justice and do so in ethical, equitable, and meaningful ways.

With these goals in mind, this Article proceeds as follows. In Part I, I describe the access-to-justice crisis generally and the problem of consumer debt in the U.S. in particular. In Part II, I examine the way technology has impacted the practice of law for decades and the ways in which GenAI innovations are beginning to impact the practice of law today. Part III outlines the opportunities and risks associated with the widespread adoption of GenAI to the practice of law. In Part IV, I discuss what creating what I call a digital continuum of legal care in the consumer debt context might look like, and the potential barriers of doing so. I then explore the challenges and opportunities ahead for the widespread adoption of GenAI into the practice of law.

I. THE ACCESS-TO-JUSTICE CRISIS AND THE PROBLEM OF CONSUMER DEBT.

A. *The Justice Gap, the Reasons for Its Persistence, and Some Initial Thoughts on the Potential Role of Technology in Addressing It.*

The scale and scope of the access-to-justice crisis in the U.S. is well-established, if its precise contours, and the reasons for its stubborn persistence, are not exactly known. What we do know about the causes of the crisis goes beyond the high cost of legal services generally. In this section, I will first describe the scope of the access-to-justice crisis, often referred to as the justice gap. Second, I will provide a review of some of the literature on the reasons for this gap. Finally, I will offer some initial reflections on the ways in which emerging technologies might help to address some of the causes of the crisis.

1. The Scope of the Crisis.

The access-to-justice crisis—the fact that millions of Americans face their legal problems without a lawyer—is dramatic, and has profound implications for the rule of law, personal well-being, mental health, economic justice, and racial and gender equality.² A recent report from the Legal Services Corporation (LSC)³ documents the current state of this crisis, and the following are just some of its most salient findings:

- [N]early three-quarters (74%) of low-income households have experienced at least one civil legal problem in the past year. Additionally, 38% of low-income Americans have personally experienced a civil legal problem that substantially impacted their lives in some way. Even for these “substantial” problems, they only sought legal help 25% of the time.⁴
- Over the course of a year, low-income individuals will approach LSC-funded legal aid organizations for help with an estimated 1.9 million civil legal problems that are eligible for assistance. They will receive some legal help for 51% of these problems, but even then, they will only receive enough legal help to resolve their problem about one-half

² For a book-length treatment of the contours and impacts of the access-to-justice crisis, see, generally DEBORAH L. RHODE, *ACCESS TO JUSTICE* (2005).

³ LEGAL SERVICES CORPORATION, *THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* (2022)(hereinafter *JUSTICE GAP REPORT*).

⁴ *Id.*, at 18.

(56%) of the time.⁵

- [In 2022] Low-income Americans did not receive any legal help or enough legal help for 92% of the problems that substantially impacted their lives in the past year.⁶
- LSC-funded organizations are unable to provide any or enough legal help for 71% of the civil legal problems brought to them; this translates to an estimated 1.4 million problems over the course of a year.⁷

When individuals seek assistance from LSC-funded organizations surveyed by the LSC, most of the time they receive less-than full representation. Indeed, according to the LSC's 2022 study, only twenty-one percent of those who receive assistance from the LSC benefit from what are referred to as "extended services," what one normally might call full representation.⁸ A larger percentage—twenty-eight percent—receive "general information and self-help resources,"⁹ and a narrow majority, fifty-one percent, "receive brief services and advice."¹⁰

For our purposes, one additional data point is particularly salient. The survey respondents were asked to identify the most common legal problems they faced. The most prevalent legal problem, which a full fifty percent of respondents identified as having, was consumer law issues.¹¹ Other common categories included health care (39%), income maintenance (34%), and housing (33%).¹²

⁵ *Id.*, at 19.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*, at 72. The report describes the following interventions as examples of this level of service: "Preparing complex legal documents (e.g., advance directives, appeals for benefits, real estate documents)" and "Representing a client in court, in administrative proceedings, or in interactions with third parties." *Id.*

⁹ *Id.* The report provides the following as examples of this level of service: "[g]iving guidance on how to complete legal forms/documents" and "[e]xplaining the requirements on how to file for custody or apply for benefits." *Id.*

¹⁰ *Id.*, at 72. Examples of this type of services include: "[p]roviding advice about how to handle a custody hearing" and "[w]riting a demand letter to a landlord to repair a rented home." *Id.*

¹¹ *Id.*, at 33.

¹² *Id.*

2. Reasons for the Justice Gap.

Another element of the LSC report was its inquiry into the reasons why otherwise eligible potential clients of the LSC do not seek out legal assistance. Forty-six percent of respondents to the LSC's survey "who did not seek legal help for one or more problems cite concerns about cost as a reason why." In addition, "more than one-half (53%) of low-income Americans doubt their ability to find a lawyer they could afford if they needed one."¹³ More in-depth research helps shed greater light on both the scope of the justice gap and some of its reason it is so great, which I explore next.

In a study published in 2014, access-to-justice researcher Rebecca Sandefur surveyed the residents of a mid-sized, mid-western U.S. city to gauge the civil legal needs of its residents. The point of the study was to try to identify national trends because the city was "typical of many US communities in terms of its size and socioeconomic and demographic composition."¹⁴ For these reasons, the study argued, "its residents' are expected to represent typical experiences in the US context."¹⁵ According to the study, sixty-six percent of respondents "reported experiencing one or more" civil legal problems "in the 18 months prior to the survey."¹⁶ In terms of the types of problems respondents reported facing, the most common "involved their livelihood and financial stability."¹⁷ Indeed, twenty-four percent of respondents "reported at least one situation involving employment (e.g., termination, wages, unemployment benefits, disciplinary procedures)"; twenty-one percent reported "at least one situation involving money (e.g., mismanagement of pension funds, disputed bills)"; and the largest group, twenty-five percent, reported "at least one situation involving debt (e.g., being behind and unable to pay credit cards, student loans, taxes, or utility bills)."¹⁸ After assessing the total number of civil legal problems the respondents reported, Sandefur considered what these findings likely

¹³ *Id.*, at 18.

¹⁴ REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 4 (2014).

¹⁵ *Id.*

¹⁶ *Id.*, at 7.

¹⁷ *Id.*

¹⁸ *Id.* Other categories that respondents reported included "at least one situation involving insurance (e.g., disputes about payments and claims, confusion about policies and terms)" (twenty-two percent); "government benefits such as social security, Medicare or food stamps" (sixteen percent); "rental housing, such as eviction or problems with housing conditions" (eighteen percent.) *Id.*

represented for the nation as a whole: “In a nation of over 316 million people, these rates represent a tremendous amount of civil justice activity—tens of millions of civil justice situations.”¹⁹

What is more, Sandefur’s study, not surprisingly, also found that lower-income and BIPOC communities faced more civil legal problems than wealthier communities and those communities that were primarily Caucasian: “poor people were significantly more likely to report civil justice situations than people in high or middle income households, and African Americans and Hispanics were more likely to report civil justice situations than were Whites.”²⁰

While these findings are likely not surprising, what Sandefur also investigated was whether the respondents turned to lawyers to help solve their civil legal problems, and, finding that few did, she also explored why that was the case. One might presume that the most common reason individuals might not turn to an attorney to help them address such problems was the high cost of legal services, but that is not what Sandefur found. Indeed, according to the study’s author, “Americans respond to their civil justice situations in a wide variety of ways, but this variety masks a powerful consistency: rarely do they turn to lawyers or courts for assistance.”²¹ Indeed, the most common “source of assistance” Sandefur found “for people facing civil justice situations is actually themselves.”²² In other words, “the most common way in which people report handling civil justice situations is by taking some action on their own without any assistance from a third party.”²³ The second-most commonly reported strategy that respondents used when dealing with civil justice problems “involved turning to their immediate social network”: according to the study, twenty-three percent of such situations were addressed “with the help of family or friends, either as the sole source of assistance (16%) or in conjunction with a third party advisor or representative of some kind (an additional 7%).”²⁴ The report continues: “[j]ust over a fifth (22%) of situations were handled with the assistance of a

¹⁹ *Id.*

²⁰ *Id.*, at 8.

²¹ *Id.*, at 11.

²² *Id.*

²³ *Id.* The report showed that forty-six percent of respondents offered this explanation of how they tended to deal with civil justice system. *Id.*

²⁴ *Id.*

third party who was not a member of people's social network."²⁵ At the same time, among those who only relied on their social network for assistance, in forty-six percent of those instances, they took that action because they did not see the need to do so because "either the problem had resolved or they expected it to resolve without getting advice, or they simply felt that they did not need advice."²⁶ In addition, "[i]n 9% of instances where people did not or were not planning to seek advice," it was because "they did not know where to go or how to do so."²⁷

Only seventeen percent of respondents who did not turn to third parties for assistance identified cost as playing a role in that decision.²⁸ Sandefur also found that an additional reason many of the respondents did not seek to address their legal problems through lawyers or the courts was because they did not understand the problems to be legal in nature.²⁹ According to the study, "[o]verall, people went to lawyers for help or considered doing so with 16% of the situations" identified as having occurred over their lifetime. At the same time, "they were significantly more likely to have used or considered using lawyers for the situations that they believed to be "legal" (39% of instances) than for those they did not (14% of instances)."³⁰

In summary, Sandefur's study suggests that the crisis of access to justice in America is a product of several forces, with only one of them being the relatively high cost of legal services. But other reasons also exist for the justice gap, including that individuals and families may not realize they have a legal problem in the first place or that a lawyer might help them resolve it even if they do understand it to be legal. Certainly cost is a factor, but it's just one factor in the failure of the legal community to meet the legal needs of many Americans, mostly those on the lower end of the income scale and those from communities of color. For this reason, the justice gap has obvious economic, racial, and ethnic overtones. As a result, the need to address this crisis is even more acute if one believes that lawyers should contribute to a more just, less economically stratified, and fairer multi-racial democracy.³¹

²⁵ *Id.*

²⁶ *Id.*, at 12.

²⁷ *Id.*, at 13.

²⁸ *Id.*

²⁹ *Id.*, at 13.

³⁰ *Id.*, at 14 (footnote omitted).

³¹ For an argument that one of the core responsibilities of the American legal profession

3. Some Initial Reflections on the Ways in which Emerging Technologies Could Help Close the Justice Gap.

Any efforts to address the justice gap in the U.S. would strive to align solutions to the causes and scope of the problem. The justice gap operates on both the practical as well as the substantive level. A calibrated response to the crisis would help address both the root causes of the problem itself, but also match legal interventions to specific legal needs. A massive increase in the provision of a particular type of legal service in a particular area of need may help to address that problem. For example, the right-to-counsel movement in the context of eviction defense has resulted in a large increase in the delivery of legal services that target tenants who are facing eviction. For decades, this has been an area of significant legal need. That cities across the United States are creating programs that provide eviction defense legal services to tens of thousands of tenants represents a meaningful intervention to address the justice gap in this area of desperate need.³² Similar efforts could target towards such substantive areas as a way to address the justice gap. And one could imagine an increase in the provision of direct legal services in such areas as consumer bankruptcy, immigration law, and workplace justice, as areas of significant legal need. Targeting services to particular substantive areas where there is such need is just one way to address the justice gap. At the same time, directing resources to areas where there is not a significant need, would not necessarily help to close the justice gap, obviously.

Tailoring services to address some of the reasons why many Americans face their legal problems without a lawyer would be another way to address the justice gap. Since one of the main reasons Americans do not access a lawyer to address their legal needs is that they do not get in contact with one (despite the proliferation of lawyer advertising over the last forty years), improving ways that information about the provision and availability of legal services is delivered to the community to reduce the *knowledge* gap about

is to advance civil rights within a multiracial democracy, see RAY BRESCIA, *LAWYER NATION: THE PAST, PRESENT, AND FUTURE OF THE AMERICAN LEGAL PROFESSION* 106 (2024).

³² On the growing movement supporting a right to counsel in eviction proceedings, see generally, Maria Roumiantseva, *A Nationwide Movement: The Right to Counsel for Tenants Facing Eviction Proceedings*, 52 SETON HALL L. REV. 1351 (2022).

how to access legal services would be one way to help align responses to the reasons why people do not face their legal problems with assistance.³³ One could see a technological solution to this piece of the access-to-justice puzzle. Select courts have created systems for contacting litigants by mailing postcards by “snail mail” to defendants when a case is filed against them. This effort is largely a response to the risk of so-called sewer service: where plaintiffs lawyers submit false documentation that a defendant was properly served in an action, when, in reality, no such procedural requirement was followed.³⁴ One could imagine a technological solution where court filings are scanned for names and mailing addresses and simple notices are sent out automatically to such individuals.³⁵ Courts could also create an online registry where individuals could submit their name and share an effective means of communicating with them in the event that someone seeks to hale them to court. One could also imagine a computerized tool that searches legal filings—like the services that scan the legal notices in local publications—for the names and contact information of individuals who might find themselves as defendants in actions and then finds a way to communicate with them.

Another way to align digital interventions with the reasons for the justice gap would be for groups to make “know-your-rights” information readily available over the internet so that individuals who receive threatening letters from adversaries or court documents could receive guidance about their legal rights and obligations and help them to understand, if they do not already realize it, that the problem they are facing is a legal one.³⁶ Many non-profit organizations and legal services providers have made the transition to digital and have posted carefully curated legal guidance online, the type of information they might have made available in analog, hard copy form to

³³ On the history of restrictions on lawyer advertising and their demise, see RENEE KNAKE JEFFERSON, *LAW DEMOCRATIZED: A BLUEPRINT FOR SOLVING THE JUSTICE CRISIS* 39-43 (2024).

³⁴ See, Adrian Gottshall, *Solving Sewer Service: Fighting Fraud with Technology*, 70 *ARK. L. REV.* 813 (2018)(describing sewer service and potential technological solutions to overcome it).

³⁵ For a description of other technology-based solutions to the problem of inappropriate service, see *id.*, at 855-863.

³⁶ For an example of a community-based organization providing these sort of know-your-rights guides, see Make the Road NY, *Know Your Rights*, <https://maketheroadny.org/know-your-rights/> (last visited, March 14, 2024).

individuals seeking assistance in the past (which many still do).³⁷ Groups are also currently exploring the use of so-called chatbots (which I recount in Part II., A., *infra*) that can serve as a digital assistant to individuals in search of legal guidance around a problem that might require a legal solution.³⁸ These chatbots are being deployed in areas like tenants' rights to provide legal information to individuals contacting non-profit organizations in an effort to understand their rights and offer solutions to address their legal problem.³⁹ This type of intervention can also serve a triaging function: it can provide limited guidance to those individuals where such guidance is sufficient to address a relatively minor problem or issue, while directing such individuals with more complex problems that require more intensive and sophisticated interventions to more robust responses, which might include working with a live person on the other end of the line, or referral to a full-service attorney.⁴⁰ These bots are able to free up staff time from having to answer many of the same questions repeatedly, while also directing individuals who need more intensive services to those who can provide it.

In a similar vein, and finally, since cost is at least partly a driver of legal assistance need, making legal services more affordable, or less expensive to deliver, is another way to align responses to the reasons for the justice gap. It is in this area that technology might hold the most promise for helping to lower the cost of delivering legal services. Technology can do this in several different ways. In fact, technology has been doing this for lawyers for well over a century. Whether it was the introduction of the typewriter in the late 19th century, or such technologies as legal research and document assembly

³⁷ Together with my co-authors, I recount efforts to digitize information for homeowners facing foreclosure that a legal services office produced in a lengthy manual that it would mail via postal service each time an individual needing guidance in this area contacted the office. Raymond H. Brescia, Walter McCarthy, Ashley McDonald, Kellan Potts, Cassandra Rivais, *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 ALB. L. REV. 553, 601-05 (2015).

³⁸ For a description of chatbots, see IBM, *What is a Chatbot?*, <https://www.ibm.com/topics/chatbots#:~:text=A%20chatbot%20is%20a%20computer,and%20automate%20responses%20to%20them> (last visited, March 14, 2024).

³⁹ See, e.g., the Law Center for Better Housing's Rentervention initiative. <https://rentervention.com/> (last visited, March 14, 2024).

⁴⁰ For a description of triage in legal services practice, see Paul R. Tremblay, *Acting "a Very Moral Type of God": Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475, 2475-79 (1999) (discussing triage in nonprofit legal services offices). For a description of a technology-based tool for conducting such triage, see BRESCIA, *supra* note 31, at 171-73 (describing the screening processes of the Houston Volunteer Lawyers Project).

today, lawyer work has become much more efficient and effective, through technology, particularly in the last two decades. Lawyers no longer need to consult a library filled with bound volumes, to conduct a search using the Shephard's service for checking the status of legal citations without aid of a computer,⁴¹ or even communicate with adversaries and clients without texting or using email. There are many technologies that the lawyer uses every day that make their work easier to do, less expensive to provide, and more effective. While some of these technologies might have been eschewed at first, eventually, they become the standard of care.⁴² Indeed, to fail to use these technologies in a way that harms the client is likely to result in a finding that the lawyer failed to act competently. As explored in Part II., C., *infra.*, although the unbridled use of new generative artificial intelligence in pleadings and other court documents has resulted in lawyers facing sanctions for their failure to check the output of these technologies, it is not hard to imagine a day where a lawyer's failure to use such technologies may constitute malpractice. We are not there yet, but is such a day that far off?

What the history of the incorporation of technology into the practice of law tells us is that technology can and, most of the time does, make lawyer work more efficient and effective. When this occurs, it should lower the cost of legal services for paying clients, and permits non-profit organizations to, conceivably, serve more clients if it is less costly, per client, to handle matters for the communities they serve.⁴³ Technologies that provide information to prospective clients before those problems metastasize into more complex problems that require a more labor-intensive and sophisticated solutions, and that alert individuals that they might have a legal problem, that make the provision of legal services more cost-effective, are all ways that technology can align with and address the different reasons why too many Americans face their legal problems without legal assistance. In Part I.C. that follows, I will take a closer look at one of the substantive areas of law in which too many Americans face their legal problems without a lawyer: the field of

⁴¹ Cornell Law School, Legal Information Institute, *Shephard's Citations*, https://www.law.cornell.edu/wex/shepards_citations#:~:text=In%20the%20legal%20field%2C%20Shepard's,for%20a%20range%20of%20purposes (describing the Shephard's citation service)(last visited, March 14, 2024).

⁴² See Part II., A., *infra.*

⁴³ For examples of non-profit organizations using technology to address the justice gap, see *Sherley E. Cruz, Coding for Cultural Competency: Expanding Access to Justice with Technology*, 86 TENN. L. REV. 347, 357-68 (2019).

consumer debt. The scope of the problem in this area is vast and the justice gap yawning. In addition, the consequences of a lack of representation are dramatic, even while the relative complexity of the legal problem itself is generally fairly straightforward.⁴⁴ Given the significant economic and human consequences of consumer debt generally, the failure of the legal profession to address the significant need in this area, and the relatively simple nature of many of the legal problems consumers face, these characteristics all make this area ripe for a technological response to the justice gap that plagues the communities across the U.S. Before I explain the state of consumer debt issues in the U.S. at present, the following part serves as a thought experiment to consider the role of technology in the practice of law and whether our devotion to expensive, “bespoke” legal services,⁴⁵ which is the current model, would be our choice if the evolution of technology in this area, and the development of the legal profession, had both unfolded in a different way.

B. A Rift in the Space-Time Continuum.

Imagine if someone had invented global positioning technology before the creation of analog roadmaps: those difficult-to-fold—let alone hard to use—products about which we took tests as young people designed to evaluate our ability to read them. If one was driving along a lonely stretch of highway, or in a neighborhood where one had never been before, and the route was not apparent to the driver (or there was no navigator in the passenger seat), one would have to pull over at a rest stop or by the side of the road, unravel the map, and try to divine its guidance. The more granular the map, and the more specific its object, the less helpful it might be for a longer trip. Conversely, a map of a large state (or even a small one), might not be much use once the driver needed “last-mile” guidance and more street-by-street instruction. If a storm had washed out a road or there was construction (let alone a car accident), these static maps would not provide such real-time guidance, and one might find oneself having to backtrack a great distance or sit by the side of the road and ponder an alternative route.

⁴⁴ SANDEFUR, *supra* note 14, at 9-10 (describing negative impacts of civil justice problems).

⁴⁵ RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 29 (2008)(describing the traditional model of legal services as bespoke).

They were bulky to manage, frustrating to use, and did not adapt to real-time information on the ground that could help a driver navigate a whole host of impediments.

The coming of global positioning software (GPS), first made available to drivers on dashboard-mounted devices, incorporated into a car's navigational system, or simply installed on a smartphone, have all but made the analog roadmap obsolete. GPS applications can provide detailed guidance, navigate around impediments in real time, reroute drivers when traffic seems to build up on an otherwise preferred route, and alert drivers when there is police presence on the roadside surveilling drivers for speeding and other infractions. They do all this through audible commands that the driver can follow without having to pull over or stop to learn. What is more, had the GPS been made available prior to the "invention" of the roadmap, no one would purchase such a map, since the digital system is so far superior in many ways that navigating in any other way would seem ludicrous and far less superior along a range of metrics. In fact, it is unlikely that we would even see the so-called invention of the analog map in the first place.⁴⁶

What does such a thought experiment have to offer to the question at hand: the potential disruptive role of technology as it relates to the traditional functioning of lawyers? Let us assume that there will come a point where a GenAI will provide a level of legal guidance and assistance that is at least as competent as that which a lawyer would provide in situations of modest complexity, if we are not there already. Imagine a world where a GenAI tool could do something like prepare a simple tax return (it pretty much already does this for millions of Americans every year), prepare a simple will or an even simpler document like a power of attorney, or prepare a pleading in a relatively straightforward case, and do so with virtually no errors, apart from those that might be generated by the user failing to utilize the system correctly or inputting incorrect data. Imagine also that the technology could do these things at a fraction of the cost that a human might charge for the same service, the customer could utilize these services from the comfort of their home and at the push of a button or through a few keystrokes. If this technology existed before the emergence of a cartelized band of individuals who called themselves professionals, who charged many times more than what it would

⁴⁶ For the argument that this type of technology might actually harm cognitive functions, see Angela Lashbrook, *Google Maps Is Melting Your Brain*, MEDIUM (Oct. 29, 2020), <https://debugger.medium.com/google-maps-is-melting-your-brain-a9b34adc0936>.

cost a consumer to use the technology, who justified the cost they charged because it was expensive to provide the service, and who lobbied for the elimination of the technology-based approach because it undermined the professionals' ability to earn outsized profits on the backs of consumers, it is hard to imagine that such a group would find much support in the community for its practices and could not thrive in the market unless it was able to secure backing from legislators and regulators to prohibit consumers from using technology that threatened the cartel's bottom line. One might see wealthier consumers willing to pay for such higher-priced services because of the prestige it might earn them, or because they thought such services might offer them a tactical advantage over someone who utilized the more affordable technology-based services. One could also imagine this group of professionals having a hard time securing regulatory capture that would enable it to crowd out its silicon-based competitors simply because the consumer voice would likely resist such efforts and elected officials and regulators who sought to eliminate popular, widespread products that offered essential services, at scale, and at an affordable price, would likely soon find themselves voted out of office, or out of a job.

In this imagined world, would the professional class go the way of the mapmaker, or suffer the fate of buggy whip manufacturer who was displaced by the proliferation of the automobile?⁴⁷ Would it even emerge for all but the super-elites, those who pay for concierge services in the field of health care, travel, and leisure activities; who pay for luxury boxes in sporting events; and shell out a premium to skip the line at amusement parks, etc.? In a world where technological interventions provided competent, accessible, affordable services and helped to solve consumers' legal problems in effective ways, and preceded the emergence of a professional class that offered such services in less-accessible and far-less affordable ways, would that professional class even emerge, or would it only exist for the ultra-elite, who gained little from the advantage of using such services other than to signal to their peers that they can afford them. In such a world, we might tolerate the existence of such a class of professionals, but they would not threaten to undermine the ability of the overwhelming majority of consumers

⁴⁷ Kevin P. Lee, *The Citizen Lawyer in the Coming Era: Technology Is Changing the Practice of Law, But Legal Education Must Remain Committed to Humanistic Learning*, 40 OHIO N.U. L. REV. 1, 20-23 (using the common metaphor of the demise of the buggy whip manufacturer in the face of the emergence of automobiles to describe the legal profession's and law schools' resistance to the adoption of practice technology).

to receive adequate services that satisfied their needs.

Of course, we do not live in such a world. What is worse, the fact that the existence of the legal profession preceded the emergence of technology that might otherwise provide competent services to a large number of consumers in discrete areas of law, means that the profession has distinct advantages, and can work to undermine efforts to deploy technology in effective, accessible, affordable ways. Imagine again that this power did not exist, that we could deploy technology in ways that served customers effectively in discrete areas of law where it was well-suited to do so. Imagine also that the profession did not take it upon itself to try to stop this from happening. Such a thought experiment is just that—an experiment—if the technology does not exist that can truly serve the consumers of legal services in effective ways. But what if such technology does exist or might exist in the very near future? What are the barriers to its adoption in ways that expanded consumers' access to legal services, particularly in discrete areas of law where such access is, at present, virtually non-existent; the issues are far from complex; and the harm to consumers from the lack of access to justice is considerable? I will return to these issues and questions throughout the remainder of the piece. In the next section, I will examine one area of law—consumer debt—to identify it as one in which the justice gap is vast, the issues relatively straightforward, and the consequences of a lack of legal representation can have devastating effects. It is to this discussion that I now turn.

C. The Problem of Consumer Debt in the U.S.

Every year, millions of Americans of modest income face lawsuits classified as actions based on alleged consumer debt. These cases can arise from unforeseen medical bills, an old and unpaid credit card charge, or a personal guarantee of line of credit someone might have made for a friend or family member years earlier. When these lawsuits are brought against a consumer, the party suing them is often an entity called a debt buyer: a company that has purchased the debt from a financial institution, hospital, or some other company, at a fraction of the cost of the original debt (often at pennies on the dollar).⁴⁸ Those debt buyers then turn around and sue the

⁴⁸ On the debt-buyer industry, see generally Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*,

consumer for every dollar of the original debt, plus interest. Too often, the first time a consumer learns that a case has been filed against them is when they receive a notice from their bank that their savings or checking account has been frozen because the debt buyer has already won the case due to the consumer failing to answer the complaint filed in the action against them.⁴⁹ The default judgments the creditor obtains are often easily overturned once the consumer goes to court and explains that they never received notice of the original lawsuit against them, which happens far too often.⁵⁰ With many of these cases, the consumer has many different defenses to the claims against them, they just rarely get a chance to defend themselves before a judgment is rendered in their case. What is more, one study found that, at most, four percent of consumers in these types of cases are represented by a lawyer; at the same time, the creditors are all represented by counsel.⁵¹ While the consequences of this consumer debt, and the impact of having a judgment in such cases are severe, the reality is, these cases are far from complex. Indeed, there are often only a few defenses to these actions and the legal claims of the creditors raise relatively straightforward issues of contract law. I will explore these issues in greater depth in Part IV., *infra*.

II. TECHNOLOGY AND THE PRACTICE OF LAW: RISE OF THE MACHINES

The widespread availability of new GenAI tools in early 2023 has accelerated discussions over whether the emergence of new technologies may displace the traditional functions of lawyers. They have also prompted questions about the proper role of lawyers and whether new technologies may help address the justice gap. But such questions are not new with respect to the practice of law or the proper role of such technologies in the practice of law. Indeed, since the late 19th century, lawyers have typically resisted the widespread adoption of new technologies into the practice of law at first. As is often the case, however, such resistance is transformed into acceptance. Over time, the use of such technologies eventually becomes the standard of

52 HARV. J. ON LEGIS. 41 (2015).

⁴⁹ For a description of the harmful impacts of the outcomes of these cases, see ANIKA SINGH LEMAR, DEBT WEIGHT: THE CONSUMER CREDIT CRISIS IN NEW YORK CITY AND ITS IMPACT ON THE WORKING POOR 3-4 (2007), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3160600.

⁵⁰ *Id.*, at 4-5 (describing the process of vacating default judgments in these actions).

⁵¹ *Id.* at 1.

care, as I will explore further in this Part.

A. The Brief History of Technological Innovation in the Practice of Law.

We are just 150 years from a time when quill and ink served as the most advanced technologies used by many law offices. Apprentices served as human copy machines, writing out original drafts of correspondence, and pleadings, and copying such documents and court orders in long hand.⁵² This practice also served as a form of training of these apprentices as they supposedly absorbed the material they were transcribing while also generating the work product of the office in which they worked.⁵³ The introduction of the telephone, typewriter, and rapid reproduction of documents to the practice of law in the late 19th century was first met with skepticism or downright hostility. Some lawyers criticized these new technologies, claiming that they would interfere with the bonds of trust formed between lawyer and client.⁵⁴ What client would want to receive an impersonal typewritten letter which could have been composed and prepared by anyone without the personal touch of a handwritten note?⁵⁵ Who would want to talk on the phone with their lawyer when they could meet face-to-face?⁵⁶ Some lawyers bristled over the fact that the rapid reproduction of judicial opinions meant that their adversaries might gain an advantage in arguments and pleadings before courts because they could cite recently issued opinions as opposed to lawyers being used to reference “general principles” in their arguments and court documents.⁵⁷

Of course, no law office today could operate without a wide range of technologies that make the practice of law more efficient than when scribes copied out correspondence and pleadings by hand. Many law offices have gone “paperless,” some even virtual.⁵⁸ Human copy machines

⁵² For a description of the apprenticeship system, see LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 302-03 (4th ed. 2019).

⁵³ *Id.*

⁵⁴ GEORGE MARTIN, *CAUSES AND CONFLICTS: THE CENTENNIAL HISTORY OF THE BAR OF THE CITY OF NEW YORK 191-95* (1970).

⁵⁵ *Id.*, at 192-195.

⁵⁶ *Id.*

⁵⁷ *Id.*, at 196.

⁵⁸ For commentary on and predictions concerning the future prospects of the “electronic law office,” see Richard L. Marcus, *The Electronic Lawyer*, 58 DEPAUL L. REV. 263, 281-

have been replaced by their electronic counterpart. Messengers, and their initial digital replacement, the fax machine, have been supplanted by email, scanning, and document-sharing technologies. For nearly forty years, lawyers have used computer-assisted technologies to conduct legal research.⁵⁹ And long gone are the days when one conducted a laborious and tedious Shephard's search to determine the status of a case one wanted to cite; a search through the paper copies of publications by the Shephard's service could take hours, something that, today, is done automatically through most digital legal research services, requiring no more than a glance at an icon on the screen by one using such services to determine the status of the case.⁶⁰

The technologies that have become ubiquitous in the practice of law might have been resisted at first, but their use now represents the standard of care.⁶¹ One could not (or should not) argue that they missed a filing deadline because the office scrivener, laboring by hand, had failed to produce the office's brief in a timely fashion (in fact, many courts would not even accept a hand-written filing by a lawyer, while it *might* accept one by a pro se filer). While lawyers might possess a mug with the slogan "Please do not confuse your Google search with my by law degree,"⁶² in reality, lawyers are sometimes chided by courts for not conducting a "simple Google search" to learn basic facts about their case.⁶³ And an attorney might find themselves laughed out of court (or worse) if they offered as a defense that they had failed to realize that a case they had cited was overturned because the most recent loose-leaf pocket part of the analog Shephard's publication was circulating

86 (2009).

⁵⁹ Ray Worthy Campbell, *Rethinking Regulation in the U.S. Legal Services Market*, 9 N.Y.U. J.L. & BUS. 1, 8-9 (2012)(describing emergence of computer-assisted legal research).

⁶⁰ For a discussion of the analog version of a Shephard's search, see BRESCIA, *supra* note 31, at 164-65.

⁶¹ Dean Andrew Perlman makes this argument in a forthcoming piece, Andrew M. Perlman, *The Legal Ethics of Generative AI*, SUFF. U. L. REV. 14-15 (2024)(arguing that "generative AI is advancing so rapidly that we may eventually move away from saying that lawyers are ethically permitted to use it, to saying that lawyers are ethically required to do so")(pre-publication draft), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4735389.

⁶² Amazon.com, Please Do Not Confuse Your Google Search With My Law Degree Ceramic Coffee Mug (11oz) Funny Lawyer Mug, <https://www.amazon.com/Please-Confuse-Google-Ceramic-Attorney/dp/B019EV73U0> (last visited March 15, 2024).

⁶³ *See, e.g.*, Crooked Creek Properties, Inc., v. Ensley, 2017 WL 455937, *4 (M.D. AL 2017)(sanctioning lawyer for filing action when a "simple Google search" would have revealed that the matter had been litigated previously, multiple times).

on a librarian's cart somewhere when the lawyer had visited a local law library and that is why they failed to conduct a full review of the case's validity.

In many instances then, over the last 150 years, we can see that technology might face resistance by the profession at first, but then often enjoys widespread adoption to the point where the use of such technology is not just expected, it becomes the standard of care. At the same time, the most recent technology to emerge that holds the potential to truly transform the practice of law is GenAI. What is the promise and what are the potential pitfalls of this technology? What is more, can this technology help to expand access to justice by making the practice of law more efficient, effective, affordable, and accessible? Will it sustain or disrupt the practice of law and will its use ultimately become not just expected, but also represent the standard of care such that the failure to use it might constitute malpractice? It is to these and other questions that I will turn for the remainder of this part.

B. The Emergence of Generative Artificial Intelligence.

In late November of 2022, a new form of artificial intelligence was made widely available that has come to be known as generative artificial intelligence.⁶⁴ This GenAI represented not just a new form of search, which produced much more than links in response to an internet search, but could also generate a narrative, text-based answer to a query posed of the service. Whereas before one conducting a search had to sift through responses to a query and advertisements based on that query, with GenAI, one would receive an "answer" to the query itself. While GenAI image generators had been around for a short time before the text-based form of this technology, the introduction of this new type of GenAI represented a significant and intriguing new tool for many fields, including the practice of law. In late December, 2022, the dean of Suffolk Law School, Andrew Perlman, posted a paper describing this new version of GenAI, ChatGPT-3, as "a state-of-the-art chatbot developed by OpenAI," which, he explained "has the potential to revolutionize the way legal work is done, from legal research and document generation to providing general legal information to the public."⁶⁵ To say

⁶⁴ OpenAI Blog, *Introducing ChatGPT* (Nov. 22, 2022), <https://openai.com/blog/chatgpt> (last visited, March 15, 2022).

⁶⁵ Andrew Perlman, *The Implications of ChatGPT for Legal Services and Society*, Suffolk

Perlman “wrote” this paper is a bit of a misnomer. As he explained, the white paper he produced was almost entirely prepared and drafted by the technology itself, in response to queries he posed. This paper explains that the GenAI identified the following potential use cases of the technology as “legal research,” “document generation,” “providing general legal information,” and “legal analysis.”⁶⁶ Since Perlman posted that paper, some within the legal profession have approached the use of GenAI in the practice of law with some trepidation, while others have embraced it and explored ways to utilize it in a wide range of areas of law practice, with varying degrees of success, and with sometimes fairly harmful consequences. Some may consider this new technology, which is constantly being updated, as representing a significant step in transforming the practice of law by making the lawyer’s job easier, and perhaps even putting the power of technology in the hands of lay people who might find that they can secure legal advice and guidance from GenAI tools at little to no expense. Many early experiments in GenAI have produced extremely harmful results for lawyers and litigants alike, however.

C. Inappropriate Initial Uses of GenAI in the Practice of Law.

It took just six months from the introduction of ChatGPT to generate a cautionary tale and demonstrate that the technology, in the form it existed at the time, might not serve as the groundbreaking tool some might have believed it could be. Initial concerns about the technology came to light when a reporter for the *New York Times* revealed the interactions he had with the technology that included some fairly creepy exchanges, including that the bot with which the journalist was interacting asked him to leave his spouse because that bot had professed its love with that journalist.⁶⁷ Soon thereafter, it came to light that lawyers representing a plaintiff in a personal injury lawsuit in federal district court for the Southern District of New York utilized the technology to help them prepare a brief in opposition to a motion for

University Law School Research Paper No. 22-14 (Rev. Feb. 29, 2024), https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=263003.

⁶⁶ *Id.* at 2-3.

⁶⁷ Kevin Roose, *A Conversation With Bing’s Chatbot Left Me Deeply Unsettled*, N.Y. TIMES (Feb. 16, 2023), <https://www.nytimes.com/2023/02/16/technology/bing-chatbot-microsoft-chatgpt.html>.

summary judgment.⁶⁸ Those lawyers had apparently utilized the technology to look for support for the lawyers' positions in the litigation.⁶⁹ After the tool set forth several arguments that were favorable to the lawyers' position, the lawyer conducting the search then prompted the GenAI as follows: "provide case law", "show me specific holdings", "show me more cases" and "give me some cases". In turn, as the court found, when prompted in this way "the chatbot complied by making them up."⁷⁰

When the lawyers attempted to check the results produced by the technology by asking the technology itself whether those cases existed, the technology confirmed the validity of the citations.⁷¹ The trouble was, those cases were completely invented by the technology. Like with the interaction with the *New York Times* journalist, it became clear that GenAI was capable of what has come to be known as "hallucinations": instances where the technology produced incorrect answers to queries. Those lawyers, and several others since, have been sanctioned by courts for their use of GenAI when it produces incorrect or unverifiable results, showing that the technology might not be as useful as originally thought (at least by those lawyers who used it to produce such unfortunate results). In the wake of these developments, courts have attempted to take preemptive measures to address the potential inappropriate use of GenAI technologies in the courtrooms, as the next section explores.

D. Judicial Responses to the Introduction of GenAI to the Practice of Law.

With the introduction of new, GenAI technologies, courts have been on the front lines of dealing with the potential impact that such technologies may have on the practice of law. While GenAI tools might help lawyers scan judicial opinions, review documents, prepare initial outlines of pleadings and other documents, the risks of using GenAI lie with the fact that the technology might generate false results: hallucinations that produce fictitious sources. Courts are in a unique position to police the use of GenAI to limit the extent to which such fictitious sources find their way into legal pleadings, briefs, and other court documents. As they would with any filing, courts must

⁶⁸ *Mata v. Avianca*, 2023 WL 4114965 (S.D.N.Y., June 22, 2023).

⁶⁹ *Id.*, at *8.

⁷⁰ *Id.*

⁷¹ *Id.*, at *10.

review such documents for their legitimacy and may rely on or reject the arguments contained therein. They thus can and must scrutinize such documents—regardless of whether the litigants before them have utilized GenAI or not. Because of this important position within the legal system, courts stand as the primary monitor of the inappropriate adoption of the results of GenAI searches. Of course, counsel must always serve as the initial check on incorrect material finding its way into the documents they file, but, as the previous discussion showed, lawyers are not always upholding this obligation.

What is more, judges should harbor and act upon legitimate concerns that the use of GenAI in the drafting of legal documents that are submitted to courts can have adverse impacts on the legal system and the administration of justice. First and foremost, should counsel practicing before them rely on fictitious sources for their claims, courts will have to expend court resources to debunk those claims. When it comes to legal research, it is difficult to prove a negative: to conclude definitely that a case does not exist. Should a litigant actually produce a source in support of its position—like a judicial opinion—and share a copy of that source (as occurred in the *Mata* case described above), even though that source is completely fabricated by a GenAI tool, the task of confirming that the source is fictitious gets even harder.

Second, there is also the risk that a court might actually rely on a fictitious source submitted by a litigant when reaching its decision. This has obvious implications for not just the parties before the court but also for those who might rely on the opinion, and the sources cited within it, in subsequent litigation or simply as they order their behavior in light of the guidance supplied by the court in the dispute.

Third, courts are likely to see, if they have not seen this already, an increase in filings by pro se litigants using GenAI tools. One could imagine a particularly litigious group, like the so-called Sovereign Citizens, or individuals filing pro se petitions challenging conditions of confinement, that could make use of GenAI to amplify—and even to generate—their filings exponentially, placing strains on judicial resources to sift through and respond to the miasma of legal arguments produced using these new technologies.

There are likely other and broader, more general risks as well, as

described in the next Section, but the most significant impact of litigants using GenAI technologies to prepare and file legal pleadings is likely to burden courts with having to contend with litigants—knowingly or unknowingly—relying on fictitious sources in their filings. Courts already operating under resource constraints must now contend with an added burden: sifting through litigant filings to ensure such filings have not been improperly augmented by baseless claims that rely on the product of GenAI hallucinations. Cognizant of these threats, while we have seen courts impose *ex post facto* sanctions on litigants for relying on such fictitious sources, courts have also begun to examine ways to prevent litigants from their improper use of generative technologies, as the following discussing shows.

Courts have not shied away from imposing sanctions for improper use of GenAI after the fact. They have used Rule 11 of the Federal Rules of Civil Procedure,⁷² 28 U.S.C. §1927,⁷³ and the inherent powers of the court when doing so.⁷⁴ While these avenues through which courts may sanction litigants are imposed after the fact of the offensive conduct, courts are expected to tailor the punishment to deter future conduct. For that reason, although such sanctions are imposed after the fact, there is a future-oriented quality to them as well. Thus, courts certainly have at their disposal a range of tools that cannot just punish lawyers for filing baseless claims supported by fictitious sources, any such punishment is supposed to have a deterrent effect as well: it should discourage any offending litigant from taking such inappropriate action again while also discouraging others from engaging in the same sort of conduct.⁷⁵ But courts are examining other ways to try to deter such conduct as well.

While *ex post* punishments are certainly one way in which courts can seek to deter future offensive conduct, courts are beginning to explore ways in which other interventions might discourage litigants from relying on GenAI technologies when preparing submissions to the court. There is indeed a range of such interventions, from the least onerous to more Draconian, that courts have at their disposal. While the overwhelming majority of judges and

⁷² Fed. R. Civ. P. 11(c).

⁷³ 28 U.S.C. §1927.

⁷⁴ For an overview of the inherent powers of the court, see *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991).

⁷⁵ See Fed. R. Civ. P. 11(c)(4) (“[a] sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.”).

court systems have taken no affirmative steps to curb the inappropriate use of GenAI technologies, some judges have issued standing orders that cover the litigants who come before them, and a handful of court systems have begun to explore ways to address the risks associated with GenAI technologies.

Adopting no new mechanisms for reining in the inappropriate use of these technologies, and relying on the existing tools for sanctioning misconduct, is clearly the choice of most judges and courts. Still, we do see some judges and courts experimenting with different techniques to curb litigant misconduct, and we can map these interventions on a continuum, from the less onerous to most restrictive. The least onerous of these interventions involves warning litigants of the risks associated with the use of AI. Federal District Judge Arun Subramanian of the Southern District of New York has issued a standing order for those practicing before him that warns them of the dangers of using GenAI in their filings.⁷⁶ On the other extreme, Judge Michael J. Newman of the U.S. District Court for the Southern District of Ohio has not only prohibited GenAI in the production of court filings, he has also imposed an affirmative duty on litigants to disclose when they discover that it appears that others involved in litigation before the court might have done so.⁷⁷ The federal courts for the Eastern District of Missouri have issued an order banning pro se litigants from using GenAI in preparing their filings.⁷⁸

Other courts have chosen a range of disclosure-related mechanisms with respect to the use of GenAI in research and drafting of filings. U.S. Magistrate Judge Jeffrey Cole of the Northern District of Illinois has banned the use of GenAI in the drafting of filings and requires litigants to disclose its use in legal research related to those filings. Several judges have required that litigants disclose their use of GenAI in the preparation of filings and

⁷⁶ Standing Order, Hon. Arun Subramanian S.D.N.Y., Individual Practices in Civil Cases, Rule 8.F (July 29, 2023), https://www.nysd.uscourts.gov/sites/default/files/practice_documents/AS%20Subramanian%20Civil%20Individual%20Practices.pdf.

⁷⁷ Standing Order, Hon. Michael J. Newman S.D. Ohio, Standing Order Governing Civil Cases, VI (Dec. 18, 2023) <https://www.ohsd.uscourts.gov/sites/ohsd/files/MJN%20Standing%20Civil%20Order%2012.14.2023.pdf>.

⁷⁸ SELF-REPRESENTED LITIGANTS, UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI, <https://www.moed.uscourts.gov/self-represented-litigants-srl> (last visited Jan. 22, 2024).

confirm that they have confirmed the accuracy of such filings.⁷⁹ Others require litigants to disclose their use of GenAI but also to acknowledge that they recognize that FRCP 11 applies to their filing.⁸⁰ Finally, Judge Stephen Baden of the U.S. Court of International Trade requires litigants to disclose the use of GenAI in filings and confirm that no confidential client information was shared with the GenAI service the litigant used.

This typology of the different interventions that judges and court systems have imposed on the use of GenAI by litigants reflects a range of approaches—from outright banning of the practice to disclosure of its risks. As stated, however, the overwhelming majority of courts throughout the country have taken no specific action related to such use. This does not mean courts are powerless to take action should litigants rely on GenAI tools that produce fictitious sources, however. Courts certainly have the tools already at their disposal to rein in frivolous conduct. The approaches courts have taken help to point to just some of the risks associated with the use of GenAI in the practice of law, and such risks certainly go beyond the dissemination of fictitious sources throughout the judicial system. Indeed, these interventions, and the harm they are trying to prevent, help surface not just the larger risks but also the opportunities raised by the deployment of GenAI into the practice of law, as the next Section explores.

⁷⁹ Standing Order, Hon. Brantley Starr N.D. Tex., Mandatory Certification Regarding Generative Artificial Intelligence, <https://www.txnd.uscourts.gov/judge/judge-brantley-starr>; Bankr. N.D. Tex. Gen. Order 2023-03; Standing Order, Hon. Michael M. Baylson E.D. Pa., Standing Order Re: Artificial Intelligence (“AI”) in Cases Assigned to Judge Baylson (June 6, 2023) (available on court website); Standing Order, Hon. Leslie E. Kobayashi D. Haw., Disclosure and Certification Requirements—Generative Artificial Intelligence, <https://www.hid.uscourts.gov/cms/assets/95f11dcf-7411-42d2-9ac2-92b2424519f6/AI%20Guidelines%20LEK.pdf>; Standing Order, Hon. Gene E. K. Pratter E.D. Pa., General Pretrial and Trial Procedures, VI (Oct. 2023), <https://www.paed.uscourts.gov/sites/paed/files/documents/procedures/prapol2.pdf>.

⁸⁰ Standing Order, Hon. Scott L. Palk W.D. Okla., Disclosure and Certification Requirements—Generative Artificial Intelligence, https://www.okwd.uscourts.gov/wp-content/uploads/AI_Guidelines_JudgePalk.pdf; Standing Order, Hon. Evelyn Padin D. N.J., Judge Evelyn Padin’s General Pretrial and Trial Procedures (Nov. 13, 2023) (available on court website); Standing Order, Hon. Gabriel A. Fuentes N.D. Ill., Standing Order for Civil Cases Before Magistrate Judge Fuentes (May 31, 2023) (available on court website).

III. OPPORTUNITIES AND RISKS RELATED TO THE WIDESPREAD ADOPTION OF GENAI TO THE PRACTICE OF LAW: DISRUPTIVE VS. SUSTAINING TECHNOLOGIES.

While the previous Section outlined the measures some courts are taking to prevent against just some of the risks associated with the incorporation of GenAI into litigation practices, what this typology also shows, in a fun-house mirror sort of way, the potential *opportunities* of GenAI as well. I explore some these opportunities, while also highlighting the broader risks beyond the litigation context, in this section. I also introduce the concepts of Disruptive and Sustaining Innovations as an additional way to assess the technologies and the risks and opportunities they pose.

A. Opportunities Associated with GenAI.

Courts have certainly voted with their judicial orders to identify the risks associated with GenAI but the very need for such orders is likely a result of the fact that many legal practitioners are considering the potential use cases for GenAI in their work. Putting aside the issue of the risk that GenAI might hallucinate, which is a large caveat of course, the promise of GenAI is that it can make the lawyer's work more efficient, allowing them to complete certain repetitive and laborious tasks quickly and with minimal effort. We have seen the advances of machine learning and artificial intelligence in electronic discovery for several decades, where Optical Character Recognition (OCR) has permitted lawyers to review terabytes of documents during the discovery process in the fraction of the time, and arguably with greater accuracy, than a human lawyer might accomplish when reviewing the same data. Lawyers have also used electronic legal research since the late 1980s, likely saving countless hours of lawyer time, and, in turn, presumably passing those savings on to clients. Today, GenAI might supercharge these and other activities, helping to reduce the time it might take for a lawyer to summarize a record, prepare a first draft of a brief or other document, or compare and synthesize thousands of contracts to identify common terms and help clients understand their contractual obligations.

In work settings where lawyers engage in highly repetitive work, like high-volume/low-complexity practice areas like workers compensation, landlord-tenant law, or consumer debt, practitioners might use GenAI tools

to generate pleadings and other filings where the complaints, answers, and related documents are fairly generic, even if tailored to a specific client's case when it comes to inserting names, addresses, and other identifying information unique to a particular dispute. Why the approaches of courts to the introduction of GenAI into legal practice help to identify not just the risks, but also the possibilities that GenAI offers, is that there would be no need for such orders if lawyers did not see that GenAI might make their work more efficient, cost-effective, and less laborious. Indeed, if lawyers were not exploring ways to use GenAI in the practice, there would be no need to introduce ways to rein in such conduct.

Another way that the rules regarding the use of GenAI in court matters help to identify some of the opportunities this technology presents is that pro se litigants, and lay people in general, might gain critical assistance and insights into basic legal issues thereby allowing them to—at least in theory—address some of their legal problems before they turn into significant issues that require the representation of a lawyer to help solve. GenAI is also likely to provide consumers with information to represent themselves in court and even draft rudimentary pleadings for such consumers in simple cases. Again, putting aside the question of whether the guidance these consumers receive is actually accurate, a fairly large caveat again, we can see the possibility that GenAI, whether it is utilized by consumers using generic GenAI interfaces or through more sophisticated platforms designed to produce legal documents, could provide opportunities for consumers to receive some form of legal assistance where they might otherwise receive none.

With these two potential “upsides” to the use of GenAI in the legal context—that lawyer work might become more efficient and thus less costly to provide, and unrepresented individuals might receive some form of legal guidance where they might generally go without it—the introduction of GenAI is certainly not without its risks, as the following discussion shows.

B. The Risks Associated with Generative Artificial Intelligence in the Law.

We have already seen some of the risks associated with the introduction of GenAI into the practice of law. First and foremost, the technology cannot always be trusted to produce accurate results. The hallucinations that are sometimes the product of this technology mean that lawyers cannot rely on

the outputs of the technology when dispensing legal advice and certainly when submitting filings with courts. When lawyers acknowledge such risks, and are ultimately responsible for any submissions or legal guidance they might offer a client based on the output of GenAI use, there is some degree of accountability baked within the system of professional ethics that already exists such that the additional layers of requirements and punishments set forth in some of the approaches described above should only reiterate the point to lawyers who might seek to utilize these technologies in their practice: *caveat user* – user beware.

On the other hands, lay consumers of GenAI services in their efforts to protect their legal interests are not trained to consider the legitimacy of sources GenAI might produce when it is used, and largely do not have access to the tools—like Lexis and Westlaw—to verify the materials generated by this technology. While much of the focus of the legal press has centered around the punishments imposed on lawyers who have relied on GenAI to their detriment, pro se litigants have also found themselves on the business end of sanctions as well for their reliance on these technologies.⁸¹ Without the wherewithal or the knowledge that the fruit of GenAI technologies might prove untrustworthy, it is possible that pro se litigants and other consumers who rely on the work product of these tools might find themselves actually worse off than they were had they never utilized such tools in the first place.

Relatedly, while it is unlikely that an off-the-shelf product like ChatGPT could ever find itself facing charges that it is engaged in the unauthorized practice of law, to the extent entities might harness GenAI technologies to create interfaces that might help unrepresented consumers deal with legal issues and prepare court filings and other documents, it is likely that those providers might find themselves facing charges that they are violating state unauthorized practice of law (UPL) provisions.⁸² While GenAI might make the work of lawyers more efficient, as described above, what the incorporation of GenAI into platforms that might seek to displace lawyers altogether shows is that GenAI technology could not just render the work of

⁸¹ Eugene Volokh, *Six Federal Cases of Self-Represented Litigants Citing Fake Cases in Briefs, Likely Because They Used AI Programs*, THE VOLOKH CONSPIRACY (Nov. 23, 2023), <https://reason.com/volokh/2023/11/13/self-represented-litigants-use-ai-to-write-briefs-produce-hallucinated-citations/>.

⁸² Deborah L. Rhode & Lucy Buford Ricci, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587 (2014).

lawyers easier to undertake, it might make it so easy, even a computer could do it. In the next sub-section, I will introduce the typology first introduced by the late Clayton Christensen, that of disruptive and sustaining innovation, and show how it can help to frame the core issues at the heart of the broad potential impacts of technology on the practice of law.

C. Sustaining and Disruptive Innovation in the Legal Services Market.

Clayton Christensen, the late Harvard Business School professor, preached the so-called gospel of disruptive innovation, the notion that it is often the case that new processes for doing things and new technologies can “disrupt” a market, when harnessed by new entrants into a market, can crowd out incumbent actors within that market.⁸³ The cycle of disruption that he identified in various fields showed that incumbent market actors tend to offer more expensive products than their customers actually want, at a price such customers do not want to pay, but they are forced to do so if they want the product.⁸⁴ Often, a new entrant into the market begins to offer a cheaper product that begins to draw consumers to its product, typically on the lowest end of the market, attracting customers who the incumbent considers not its core customer base because those consumers are looking for a less-expensive product than the one the incumbent offers.⁸⁵ Eventually, the new entrant into the market refines its production processes and starts to improve its product to attract a larger and larger share of the market for that product, eventually surpassing the incumbent in market share.⁸⁶ But disruptive innovation always starts at the “low end” of a customer base but the cycle often results in the new entrant ultimately displacing the incumbent provider in all or most market segments.⁸⁷

Christensen contrasted disruptive innovation with what he called sustaining innovation.⁸⁸ This form of innovation helps incumbents preserve their market share by allowing them to provide their products to their

⁸³ See, CLAYTON M. CHRISTENSEN, *THE INNOVATOR’S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL* xv (1997)(describing disruptive innovation).

⁸⁴ *Id.*, at xii-xvii.

⁸⁵ *Id.*, at xvi-xvii.

⁸⁶ *Id.*, at 15.

⁸⁷ *Id.*, at xxii.

⁸⁸ *Id.*, at xviii.

customers in more efficient and effective ways.⁸⁹ Such innovations do not really create the type of changes to the market share or economic dominance of incumbents as they relate to new entrants because they tend to support—and sustain—those incumbents in ways that do not create major tectonic shifts in any particular market.⁹⁰

Today, many preach the “gospel of disruptive innovation” when it comes to the legal services market.⁹¹ In reality though, what they are often peddling is loyalty to sustaining innovation. Investment in the legal technology market is mostly targeted toward the higher end of the legal services market: business-to-business products designed to serve large firms and other private providers of legal services. That is, those who do not serve the “low-end” of the legal services market at all. If the story of disruptive innovation were to hold true in the legal services market, then we should look to innovation at that low end, and not concern ourselves with whether large or even mid-sized or small private law firms are going to be able to fight each other with sharper and sharper weapons.⁹² Indeed, since much of the interest and energy when it comes to legal technology innovation is directed towards this higher end of the market, then an additional risk from the introduction of new technologies like GenAI to the practice of law actually has the potential to increase, and not reduce, the justice gap because the haves will have more, and the have-nots will be left behind. What is more, if the theory of disruptive innovation holds true, then actual disruptive innovation in the legal sector will occur at the lower end of the legal services market, and not, as it is currently playing out, to help private law firms serving wealthier clients do their work more efficiently. If is the case that true disruption in the legal services market will occur at the lower end of the market, what might that look like, and what are the barriers to it occurring? In the following Part, I explore what disruption might look like in one of these “low-end” sectors of the legal market: the defense of debtors in consumer-debt litigation.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ For a critique of the “gospel of innovation” and Christensen’s theories, see Jill Lepore, *The Disruption Machine*, *NEW YORKER* (Jun. 16, 2014).

⁹² BRAD SMITH & CAROL ANN BROWNE, *TOOLS AND WEAPONS: THE PROMISE AND THE PERIL OF THE DIGITAL AGE* xix (describing information technology as both “a powerful tool and a formidable weapon”).

IV. CREATING A DIGITAL CONTINUUM-OF-CARE IN CONSUMER DEBT CASE.

A. *Consumer Debt: A Paradigmatic “Low-End” Market Sector.*

An area where low- and moderate income individuals and families find themselves facing legal problems with some regularity relates to litigation over consumer debt. This might be a credit card bill, car loan payments, student loans, medical debt or a range of other, related cases. The substantive law in question is generally not all that complex. Either the debt is owed or it is not. Either the creditor has standing to bring the case or it does not. Is the claim stale and outside the statute of limitations? Was the defendant properly served? Reflecting the relative simplicity of these actions, the complaint filed by the plaintiff and the answer filed by the defendant, if the defendant even files a complaint, each are rarely more than a page long, consisting of just a few paragraphs of content each. Before a suit is even commenced, a creditor or collection agency tends to send so-called dunning letters, a term derived from the verb “dun,” which meant to demand payment on a debt, which has its origins in Middle English.⁹³ When a creditor begins the process of seeking to collect payment on an alleged debt, that process unfolds in stages, starting with informal or formal demands for payment, followed by the commencement of a lawsuit if that demand is not satisfied and the creditor wishes to pursue the claim. It will then likely end in the resolution of the matter in court in some way. Too often, that resolution takes the form of a default judgment, or, if the defendant does appear to defend the action, the matter might get resolved through settlement, through the plaintiff making a motion for summary judgment on the debt, or, in rare instances, trials. If a default judgment is granted, and the consumer never received notice of the action, the first time they learn that a case was filed against them is when the creditor goes to seize the debtor’s assets, freeze bank accounts, and or garnish wages.⁹⁴ At that point, the debtor could try to re-open the default judgment. Throughout this process, legal interventions of various intensity could provide assistance to a debtor, beginning with advice when the consumer first receives a demand letter, straight through to efforts to vacate a default judgment. Across this range of services, then, a sort of continuum of care emerges, from brief advice at the outset, to full service through motion practice, trial, and even efforts to vacate any judgment. As

⁹³ “Dun.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/dun> (last visited, Mar. 25, 2024).

⁹⁴ See, Singh Lemar, *supra* note 49, at 3-4.

I explore next, to what extent could GenAI and related technologies serve to create a sort of digital continuum of care, mapped onto this sequence of events and interventions?

B. A Consumer-Focused, Digital Continuum of Care.

It is possible that technology can help to provide guidance and even assistance to consumers and the lawyers who do represent them, offering an essential legal counterweight to the otherwise unchecked and unsupervised debt buyers. Given the nature of the problem, here I will outline just some of the potential interventions where a technological solution might address the consumer-debt justice gap as part of a digital continuum of care.

1. A Consumer-Focused “Chatbot.”

As described above, at the outset of the process, when the consumer is first approached by the creditor, having legal information and guidance to help them respond to the demands might help the consumer present legitimate objections to the debt, or to assist them in working out a payment plan. There is already a fair amount of guidance to consumers in such situations where non-profit organizations have compiled pro se resources for such consumers.⁹⁵ These resources could be incorporated into a “chatbot”: an artificial-intelligence-fueled interface that could provide a curated list of answers that are responsive to the types of questions consumers in this situation might have. There are several settings in which these sorts of chatbots are currently being utilized with some degree of success, including in the landlord-tenant context.⁹⁶ The existence of these bots in other areas of law indicates that the technology has evolved to such a point that the content currently existing in other non-digital forms could be incorporated into a chatbot. Whether one saw such a bot created using traditional artificial intelligence that just matched pre-prepared answers to question posed by consumers, or if it utilized GenAI through a limited large language model

⁹⁵ See, e.g., Mobilization for Justice, *Fact Sheets and Self-Help Guides: Consumers*, <https://mobilizationforjustice.org/get-help/fact-sheets-and-self-help-guides/#consumers> (last visited, March 15, 2024).

⁹⁶ See, e.g., Ithaca Tenant Resources, *Tenants’ Rights Guide*, <https://ithacatenantresources.org/tenantsrightsguide> (last visited, March 15, 2024).

from which it draws its content, is somewhat beyond the point. In reality, the technology exists to bring such a chatbot to life, so to speak.

2. A Document-Assembly Tool to Provide Legal Filings for Consumers.

Similarly, the technology also seems to exist that would permit the creation of an interrogatory-based interface that asked a series of questions of a consumer about their case and the claims against them and would then compile the legal document (the “answer” as it is known) that the consumer could file in court to defend themselves in the lawsuit. One need not look much farther than a service like TurboTax, which addresses a far more complex area of law.⁹⁷

3. A Sophisticated Document-Assembly Tool, Fueled by GenAI, for Legal Filings for Attorneys.

This is envisioned as a tool fueled by OCR technology at first, which would scan creditors’ legal filings (the complaint) and analyze those filings for potential defenses and counterclaims the consumer might have. It would then utilize generative artificial intelligence (or a complex document assembly tool) to prepare the response to the complaint, either an answer or a motion to dismiss if there are grounds for filing one based on any perceived defects in the creditor’s complaint. This would be created as a “business-to-business” or “B-to-B” initiative, one that would be available to legal aid organizations only for their internal use. Those organizations would work to provide the appropriate content for and training of the AI. Both this and the next initiative, if they could be built, would save legal aid organizations significant time and resources so that they could assist more consumers.

⁹⁷ See, Michael J. Wolf, *Collaborative Technology Improves Access to Justice*, 15 N.Y.U. J. LEGIS. & PUB. POL’Y 759, 779-783 (2012)(describing document-assembly tools). For a discussion of creating such a tool to aid lawyers in serving non-profit organizations with critical incorporation documents, see Raymond H. Brescia, Alexandria Decatur and Julia Kosineski, *Civil Society and Civil Justice: Teaching with Technology to Help Close the Justice Gap for Non-Profit Organizations*, 29 ALBANY LAW JOURNAL OF SCIENCE AND TECHNOLOGY 16 (2019).

4. Automated Discovery.

At present, the field of so-called electronic discovery or e-discovery has developed to the point that it is a routine part of most litigators' practice.⁹⁸ While the issues in consumer debt cases are not complex, there are instances where the debtor might benefit from pursuing discovery, particularly when it comes to instances where a debt buyer is the plaintiff. One could imagine a simple macro that would generate discovery demands centered on the transfer of ownership of the debt, the relationship between the original creditor and the debt buyer, the knowledge the debt buyer has (or does not have) as it relates to the business records of the original creditor, etc. This is all information that would be beneficial to have, and the failure on the part of the plaintiff, whether debt buyer or not, to produce such evidence in discovery could create grounds for a defendant-debtor to move for summary judgment or for motions *in limine* that would prevent the creditor from presenting information related to such matters at trial. With simple document-creation software, like that which is available using off-the-shelf products like Google Forms, if the user supplies the basic information related to the parties and information related to the underlying transactions, the application could easily generate these form discovery demands. It is not difficult to imagine a system whereby such information is input once by an advocate and it populates all subsequent documents, from an answer and discovery demands to motions. The technology also exists at present to create a tool that would "read" the initial pleading if it is scanned into the system and pull the relevant information needed to populate the documents necessary to litigate the matter through several stages of the litigation process.

5. A Motion Practice Fueled by GenAI.

The final—and clearly most complex—stage of the continuum of care involves motion practice, which could be both defensive and offensive. In many consumer debt cases, the creditor files what is known as a "Motion for Summary Judgment": that is, a request of the court for a decision without the case having to go to trial.⁹⁹ The creditor is basically saying there are no disputes related to the creditors' claims and thus the court should just issue a

⁹⁸ Michael Thomas Murphy, *Just and Speedy: On Civil Discovery Sanctions for Luddite Lawyers*, 25 GEO. MASON L. REV. 36, 40 (2017).

⁹⁹ See, e.g. FED. RUL. CIV. PROC. 56.

ruling in the creditor's favor. Despite their arguments that there is no need for a trial and the plaintiff should win without one, it is often the case that a skilled legal analyst can assess the basis for the creditors' motion and compile meritorious defenses to it so that the court adjudicating the matter would have to deny the motion. Legal aid organizations, and perhaps pro se litigants, would benefit from a system that was capable of scanning and analyzing these motions and determining whether there are valid defenses or other responses to them, potentially also generating the appropriate documents and supporting material necessary to oppose the motion. While there is certainly the possibility that some of the arguments made by creditors, or by debtors moving for their own motion for summary judgment, might be complex, it is likely that in most instances a few, basic issues will be raised in support of, or against, the motion. A creditor might present the argument that the plaintiff's business records establish all of the elements necessary to prove the case.¹⁰⁰ It would obviously have to establish the admissibility of those records. A defendant opposing such a motion would, first, try to exclude the evidence. If they are able to do that, they could cross-move for summary judgment as well, given that there would be no evidence in admissible form of the underlying debt. A debtor might move for summary judgment on the issue of defective service of process: for example, the address where the plaintiff might have tried to serve the defendant was incorrect, or the affidavit of service submitted by the plaintiff does not establish that proper service was effectuated.

Given the relative simplicity of the issues, the arguments for or against a wide range of typical motions are fairly straightforward and one could imagine a brief/pleading bank of sorts that pulled relevant arguments from various documents that are aligned with the needs of a particular litigant. This could take the form of the type of rudimentary document assembly tool or even GenAI using a highly restricted LLM from which to draw the information. A "lawyer in the loop" might select the arguments to compile from a menu of options, or one could envision, in the case of preparing an opposition to a motion for summary judgment, the AI, once again, reading the opening motion papers and compiling a first draft of an opposition filing for a lawyer to review. To the extent that this type of program might be

¹⁰⁰ Lisa Stifler, *Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy Solutions*, 11 HARV. L. & POL'Y REV. 91, 104-106 (2017)(describing evidentiary challenges related to business records in consumer debt cases).

directly consumer facing, it might be difficult to ensure that the correct arguments are being compiled and raised. At the same time, if the summary judgment motion filed on behalf of a creditor is machine readable, then one might imagine GenAI being able to produce a viable response to it, perhaps enhanced by the consumer answering some basic question the tool might have regarding the consumer's case. This final element of the continuum of care would certainly appear that it would require the greatest amount of human labor to ensure it functions correctly. And the expertise required to accomplish that likely means that this final component of the continuum of care is probably the most difficult to provide as a purely direct-to-consumer application.

At the end of the day, and as described above, the creation of a continuum of care as described here does seem possible in theory. In the next Section, I explore some of the challenges the development of such a continuum poses in practice.

C. Technological, Practical, and Ethical Concerns with a Digital Continuum of Care in the Consumer Debt Sector.

Of course, the description of the continuum set forth above, which seems theoretically possible, might not work in practice, and might face considerable ethical hurdles. Accordingly, in this final section I identify some of the more significant barriers the deployment of such a model might face and raise some possible responses to such barriers. These sorts of impediments and issues impact not just consumer debt cases but a range of different areas of law as well.

1. Technological Barriers to Adoption of the Continuum.

The first and most serious issue that might stand in the way of the creation of the continuum of care described above is technological. Is the technology at such a state of development that it might be able to perform the tasks as set forth above? The technology currently exists to create the first element of the continuum—the chatbot. In addition, simple tools that assist in document assembly have been in existence for several decades and have only improved over time. Some of the more sophisticated applications, like those that might

require lawyer analysis to determine which features of a filing to include, that might need a human to input data, or might require appropriate review prior to filing, are certainly labor intensive, a barrier I will explore next. To what extent is the technology in such a state of development that it might enable utilize scanning and optical character recognition that would eliminate the need for some of this human intervention in the continuum of care? As it stands, it appears that, at a minimum, some of the more sophisticated applications that require some degree of oversight and review by humans are possible with current technologies.

2. Practical Considerations Regarding the Adoption of the Digital Continuum.

Of course, while the technology, aided by humans, might be up to the task of fulfilling many of the components of the continuum, that still begs the question: is the human capital there to carry out these functions? This question is particularly acute in the non-profit sector. This “low end” of the legal services market is presently dominated by non-profit providers. If human resources are needed to serve within the continuum, to what extent are such resources available to provide the critical link necessary to make these applications function? At present, non-profit legal services providers are currently under-staffed and operating on limited budgets.¹⁰¹ The resources available for such services are far from adequate to meet the need for legal services at present. Entities that fund legal services could dedicate some financial resources toward technological innovation when doing so might mean more clients receive some form of assistance from those providers. The LSC already does this through its technology grants.¹⁰² Could other funders follow suit? It might also mean a shift in personnel within such providers so that they would dedicate some staff to these sorts of initiatives. There is also the possibility that some entrepreneur might think of a low-cost or “low-bono” way to deliver these services to consumers and the proceeds from the provision of such services could fund the technology necessary to

¹⁰¹ See, JUSTICE GAP REPORT, *supra* note 1.

¹⁰² See, Legal Services Corporation, *Technology Initiative Grant Program* <https://www.lsc.gov/grants/technology-initiative-grant-program> (last visited, March 15, 2024).

provide them.¹⁰³

Another potential barrier to any technological innovation in the practice of law, such as the digital continuum of care described above, is that those on the low end of the economic spectrum might also face the so-called digital divide: that is, they do not have ready access to the internet, mobile technologies, or broadband, which are all essential elements to actual engagement with such technologies.¹⁰⁴ In addition, language barriers and the accessibility of these technologies to anyone with an impairment that might make use a challenge, would also serve as a barrier to the effective use of such technologies. Accordingly, to the extent these sorts of technological interventions are made available, accommodations must be made to ensure meaningful access to such tools.

3. Ethical Concerns with the Digital Continuum.

Last, but certainly not least, there are legitimate ethical concerns with the development of this sort of digital continuum of care. The first is the extent to which the services rendered satisfy the standard of care required of all attorneys (assuming, of course, that the services rendered are legal services). When lawyers and legal professionals are curating the content that serves as the basis of the outputs of these services, and are assessing those outputs as well, it should be fairly easy to ensure that the requisite standard of care is met, or at least lawyers can be held accountable if it is not.

Another issue that could affect the use of GenAI in the practice of law is the extent to which lawyers might share confidential information with outside entities when they utilize off-the-shelf technologies or other commercial providers.¹⁰⁵ But when the documents that are accessed and read by the GenAI are all public filings, there is no issue of confidential information being shared. To the extent any of these systems utilize GenAI in the

¹⁰³ On the role of low bono services in addressing the justice gap, see Deborah L. Rhode, *Whatever Happened to Access to Justice?*, 42 LOY. L.A. L. REV. 869, 898-907 (2009).

¹⁰⁴ Julie R. Gordon, *Legal Services and the Digital Divide*, 12 ALB. L.J. SCI. & TECH. 809, 811-14 (defining the digital divide).

¹⁰⁵ See, e.g., Dazza Greenwood, *Task Force on Responsible Use of Generative AI for Law: Principles* (listing duty of confidentiality to clients in all uses of GenAI as a first principle for responsible use of GenAI), <https://law.mit.edu/pub/generative-ai-responsible-use-for-law/release/9> (last visited, March 15, 2024).

production of content, such use must only occur within a closed system managed by the provider of services, or individuals using the system should be prompted not to share confidential information through the interface by which they access the service.

Finally, and most importantly, any system such as this will have to contend with UPL concerns. Whenever services are ultimately delivered by licensed attorneys, even if there is some use of technology along the way, and those licensed attorneys take responsibility for the work product, there is no UPL violation.¹⁰⁶ Even where a pro se litigant might access some of the elements of the continuum of care and utilize it without a lawyer's assistance—whether through the chatbot or the simple document-assembly components of it—in other contexts, some jurisdictions allow lawyers to engage in so-called ghostwriting of pleadings and other court filings provided that any such filing contains a notice that the litigant utilized the assistance of the entity in preparing that document.¹⁰⁷ Of course, that does not sound like ghostwriting if the ghostwriter is identified, nevertheless, it is a practice that some jurisdictions permit. Similarly, limited-scope engagements, unbundled services, and “lawyer-for-the-day” programs have functioned quite well in recent years in various contexts and it is likely that one could analogize the scope of at least some of the services rendered through the continuum to these types of programs, where the limitation is reasonable and the client consents to the nature of the engagement.¹⁰⁸ Still, if the programming is not providing tailored services to individual clients, it generally is not considered the unauthorized practice of law¹⁰⁹; to the extent it might qualify as a sort of limited-scope engagement, it should also be consistent with legal ethics, provided the limitation is reasonable and the consumer consents to the arrangement.¹¹⁰ To the extent that services are not

¹⁰⁶ See, Thomas E. Spahn, *Is Your Artificial Intelligence Guilty of the Unauthorized Practice of Law?* 24 RICH. J.L. & TECH. 2, 3-19 (2018)(providing definitions of the practice of law and the unauthorized practice of law in several jurisdictions).

¹⁰⁷ Ira P. Robbins, *Ghostwriting: Filling in the Gaps of Pro Se Prisoners' Access to the Courts*, 3 GEO. J. LEGAL ETHICS 271, 285-281 (2010)(describing different jurisdictions' approaches to ghostwriting of legal briefs by lawyers for pro se litigants).

¹⁰⁸ See, AM. BAR ASS'N, MOD. RULE PROF. COND. 1.2(c)(2024)(“A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent”)(hereinafter MODEL RULES).

¹⁰⁹ For an exploration of online services and their relation to UPL restrictions, see Catherine J. Lancot, *Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law*, 30 HOFSTRA L. REV. 811, 814-15 (2002).

¹¹⁰ Model Rules, *supra* note 108, r. 1.2(c).

provided in any way by lawyers, even if they are limited in scope (but tailored to a particular client's individual needs), then there is some risk that those services will constitute UPL. Thus, if the services are not specifically tailored to individual client needs, or the services offered and content generated are carefully curated and overseen by licensed lawyers, the continuum should pose no UPL issues.

CONCLUSION: TOWARDS A DIGITAL CONTINUUM OF CARE
IN THE CONSUMER DEBT SECTOR.

The widespread availability of GenAI to the general public, including the practice of law, has raised the possibility that it and other, related technologies could be deployed to help lower the justice gap in the U.S. by making critical legal guidance and assistance available to those most in need of legal services. At the same time, significant barriers exist that might impede the proliferation of such tools to help improve access to justice. What is more, given the potential costs associated with such technologies, and the fact that those entities that can afford to deploy such tools are likely those serving the higher end of clients, clients who already enjoy access to justice, it is likely that the introduction of these new technologies in the practice of law will not only fail to close the justice gap, they threaten to widen it. For this reason, it is imperative that those who seek to create true disruption in the market should target their attention and resources towards those who need it most: the millions of Americans who face their legal problems without a lawyer. The technology does seem to exist that might help address this justice gap; what might be missing is the will, resources, and commitment to develop effective technological interventions that can help realize the possibility that new technologies can help address the justice gap.

* * *



Promoting
justice

forall

2023
Pro Bono
Report

Table of Contents

Introduction

Letter from Hossein Nowbar and Beth Henderson.....3

Closing the justice gap4

2023 Pro Bono by the Numbers6

Providing direct legal services

Kids in Need of Defense.....8

Deferred Action for Childhood Arrivals.....10

Afghan Asylum Initiative12

Immigration Equality14

Virtual Records Clinic.....16

Seattle Clemency Project18

ProJourn20

Virtual Help Clinic22

National Veterans Legal Services Program23

Make What’s Next25

Advancing more diverse and inclusive communities

Racial Restrictive Covenants Project28

Women’s History Month Pro Bono Volunteer Celebration29

Street Law Legal Diversity Pipeline Program.....30

Leadership Council on Legal Diversity service project32

Achieving more through the power of technology

Achieving more through the power of technology34

Scaling access to justice with our partners

Pro Bono Maturity Model.....37

Community events38

Letter from Hossein Nowbar and Beth Henderson

As we publish Microsoft's fourth annual pro bono report, we reflect on the impact of the Microsoft Pro Bono Program and the opportunities that lie ahead. This year marks the fifteenth anniversary of Kids in Need of Defense (KIND), a legal services organization Microsoft cofounded in 2008 with the goal of ensuring that no child would appear in US immigration court alone. While our US engagement with KIND remains as strong as ever, Microsoft employees outside of the United States have also supported KIND's recent expansion efforts to meet the needs of unaccompanied children worldwide.

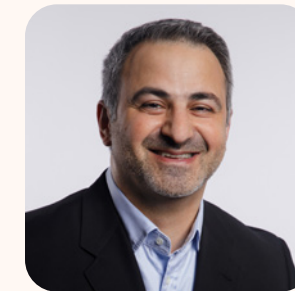
Just as our pro bono partners like KIND have grown and evolved, so has the Microsoft Pro Bono Program. To track our progress and to offer a resource to other in-house legal departments looking to develop their own pro bono programs, we created a **Pro Bono Maturity Model** in collaboration with the **Corporate Pro Bono project of the Pro Bono Institute (PBI)**. This self-guided tool helps corporate pro bono programs assess where they are on their pro bono journeys and provides a framework for building and growing an in-house pro bono program.

With growing awareness about the need for pro bono at Microsoft and beyond, we are excited about the role technologies, such as responsible AI, can play in helping more people get access to legal aid. In this year's report, you will find a section entitled "**Achieving more through the power of technology**" and an overview of the ways in which the Microsoft Pro Bono Program has used Microsoft technology to support pro bono volunteers, partners, and clients.

We are eager to expand upon this work in the year ahead and to explore how responsible use of AI can offer solutions at scale. We will continue the imperative work of ensuring that the technology we create benefits everyone on the planet through **Microsoft's societal impact commitments** to expand opportunity, earn trust, protect fundamental rights, and advance sustainability.

"With growing awareness about the need for pro bono at Microsoft and beyond, we are excited about the role technologies, such as responsible AI, can play in helping more people get access to legal aid."

Finally thank you to all the volunteers who have dedicated their time and energy to our program. Your contributions are invaluable, and we are grateful for your support. We also want to thank the people who have shared their stories with us, allowing us to spread awareness and make a difference. Your courage and willingness to share your experiences are truly inspiring.



Hossein Nowbar

Chief Legal Officer, Microsoft

A handwritten signature in black ink that reads "Hossein Nowbar".



Beth Henderson

Assistant General Counsel and Senior Director of the Microsoft Pro Bono Program

A handwritten signature in black ink that reads "Beth Henderson".

Closing the justice gap

In the United States, we are proud of the founding principle of equal justice under the law. This ideal is enshrined in our most important institutions, including the Supreme Court, yet it is far from reality today.

Individuals are not entitled to legal counsel for civil legal issues. That means representation, for the most part, is limited to those who can afford it. Those who cannot are left to navigate complex, high-stakes cases and legal systems on their own. In 2022, 92 percent of low-income Americans facing civil legal problems, including eviction, domestic violence, and deportation proceedings, received inadequate or no legal support. People of color, veterans, women, members of the LGBTQIA+ community, and other marginalized groups are disproportionately impacted by the lack of access to representation.¹

This justice gap presents a crisis. Legal and business professionals are rising to meet the responsibility of righting this inequity, together. As you will read in this report, Microsoft pro bono volunteers and partners are scaling access to justice and providing direct legal aid when individuals need it the most. Their tireless efforts show clients that they are not alone.

This year's report highlights three ways in which the Microsoft Pro Bono Program has worked to close the justice gap:

- Providing direct legal services
- Advancing more diverse and inclusive communities
- Using technology to enable pro bono volunteers and partners to achieve more

“

Low-income Americans do not get any or enough legal help for 92% of their substantial civil legal problems.

Source:

[Executive Summary | The Justice Gap Report \(lsc.gov\)](#)

¹ Source: [The Report | The Justice Gap Report \(lsc.gov\)](#)

Microsoft has also collaborated with access to justice leaders to raise awareness of the justice gap and inspire the development of innovative solutions:

- In October, the Microsoft Pro Bono Program hosted Professor Rebecca Sandefur of Arizona State University's School of Social and Family Dynamics, Jim Sandman of the Future of the Profession Initiative at the University of Pennsylvania Carey Law, and Lisa Dewey, Pro Bono Partner at DLA Piper—three leading experts on the access to justice crisis—who inspired employees to get involved.

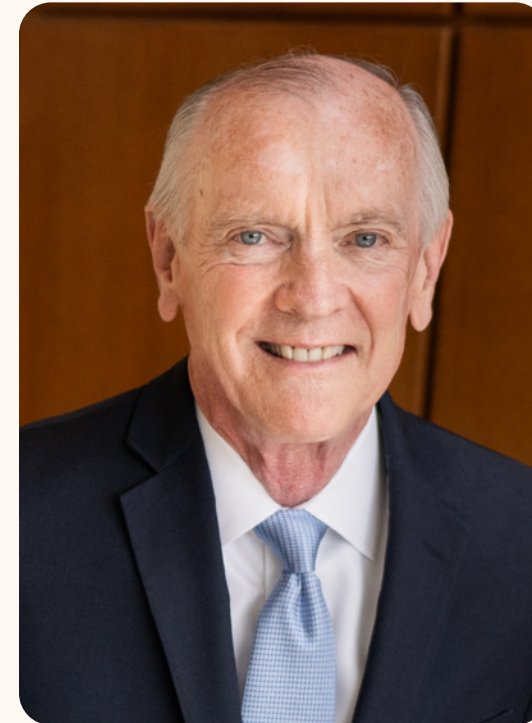
Listen to the podcast: [Bridging the Justice Gap in America](#)

- In April, Beth Henderson, Senior Director of the Microsoft Pro Bono Program, spoke at Stanford Law School on a panel with Jim Sandman and Lisa Dewey on the topic of **Regulatory Reform, Legal Innovation, Pro Bono, and Access to Justice**.

The justice gap will not be bridged in a single year, but this year's annual report shows progress. Read on for stories of impact and inspiration.



Professor Rebecca (Becky) Sandefur of Arizona State University's School of Social and Family Dynamics



Jim Sandman of the Future of the Profession Initiative at the University of Pennsylvania Carey Law



Lisa Dewey, DLA Piper Pro Bono Partner

The Microsoft Pro Bono Program hosted Becky Sandefur, Jim Sandman, and Lisa Dewey—three leading experts on the access to justice crisis—who inspired employees to get involved.

2023 Pro Bono by the Numbers

4,700

Pro bono hours reported through the **Microsoft Give Program**

64

Students served through **Street Law**

75

DACA clients served

896

Hours volunteered for **KIND**

300+

Hours volunteered for the **Immigration Equality Clinic**

700+

Hours volunteered for **Seattle Clemency Project**

Providing direct legal services

From upholding immigrants’ rights to guarding the right to equal justice, Microsoft pro bono volunteers take action using their legal expertise to advance social and economic well-being in the community.

- Kids in Need of Defense..... 8
- Deferred Action for Childhood Arrivals..... 10
- Afghan Asylum Initiative 12
- Immigration Equality 14
- Virtual Records Clinic..... 16
- Seattle Clemency Project 18
- ProJourn 20
- Virtual Help Clinic 22
- National Veterans Legal Services Program 23
- Make What’s Next 25

Kids in Need of Defense

Ensuring that no child faces the immigration system without legal aid

In 2022, more than 150,000 children entered the United States without an adult.² Dangerous political, social, and environmental crises in their home countries force them to seek safety and a better future in the US. If they make it to United States soil, many must then face another difficult challenge: immigration court.

Without legal representation, children must make their case for legal immigration status on their own. Yet roughly 9 in 10 children without a lawyer lose their case and are deported back to the unsafe conditions from which they fled.³

A not-so-straightforward Leave to Remain case—[Kids in Need of Defense UK](#)

In response to the unmet legal needs of unaccompanied children worldwide, KIND has expanded its efforts outside of the United States. Microsoft employees are helping to support this work, as highlighted by this story about a KIND UK pro bono case.

Read more at [KIND UK](#)

The legal services organization [Kids in Need of Defense \(KIND\)](#) works to help these children. Since 2008, when Microsoft cofounded KIND, pro bono volunteers have partnered with KIND to support children through this country's complicated, lengthy immigration process. Microsoft volunteers conduct interviews, file documents, and represent clients in court—all so that their clients can safely and legally stay in the United States.



Brad Smith, Vice Chair and President, Microsoft helped cofound KIND in 2008. This year, volunteers donated nearly 900 hours to helping unaccompanied minors with their immigration journey.

This year,

75

Microsoft volunteers
dedicated nearly

900

hours helping

42

clients. Five clients received
U.S. permanent residency.

² Source: Council on Foreign Relations, *U.S. Detention of Child Migrants*, March 2023

³ Source: Congressional Research Service, *Unaccompanied Alien Children: An Overview*, Sept. 2021

Kids in Need of Defense (cont.)

Enni's story

At age 12, Enni Ramirez fled her country to find safety. Now she has a green card and a new life with the help of Megan Yoshimura, KIND, and the Microsoft Pro Bono Program.

“

I don't think I would have had my papers if I didn't have a lawyer. I felt very safe and very grateful that they were able to help me.”

Enni Ramirez

[Read Enni's story here](#)



Deferred Action for Childhood Arrivals

Providing peace of mind to Dreamers facing uncertain futures

In 2012, President Obama issued the Deferred Action for Childhood Arrivals (DACA) executive order, enabling people who were brought to the United States as children to work and stay in the country. Participants in the program, called Dreamers, confront continued and ongoing anxiety and uncertainty when renewing their status every two years.

Roughly 580,000 people from 200 countries are active DACA program participants.⁴ Every two years, these Dreamers must renew their status to legally live, study, and work in the United States. The renewal process can be confusing, scary, and expensive. The program faces constant political tensions and litigation, perpetuating an uncertain future for Dreamers.⁵

Since February 2013, the **Northwest Immigrant Rights Project (NWIRP)** and Microsoft have hosted free monthly DACA clinics to help Dreamers secure DACA status and employment authorization. The services that volunteers provide offer peace of mind as they help Dreamers understand and complete the application forms accurately—a crucial step to ease the anxieties of participants, given that even inadvertent mistakes can jeopardize a DACA application.

Microsoft Service Engineer Cecilia Garcia Betancourt has channeled her drive to help others—and her experience of being a Dreamer herself—into supporting approximately 20 people during DACA clinics.

“I tell them, ‘I started right where you are, I know exactly what you’re going through.’ It feels amazing when they tell me they’re going to keep going. They’re grateful, but I do it for me, too. It gives me joy to give back.”

Cecilia Garcia Betancourt

*Microsoft Service Engineer
and pro bono volunteer*

This year,

39

Microsoft volunteers
helped

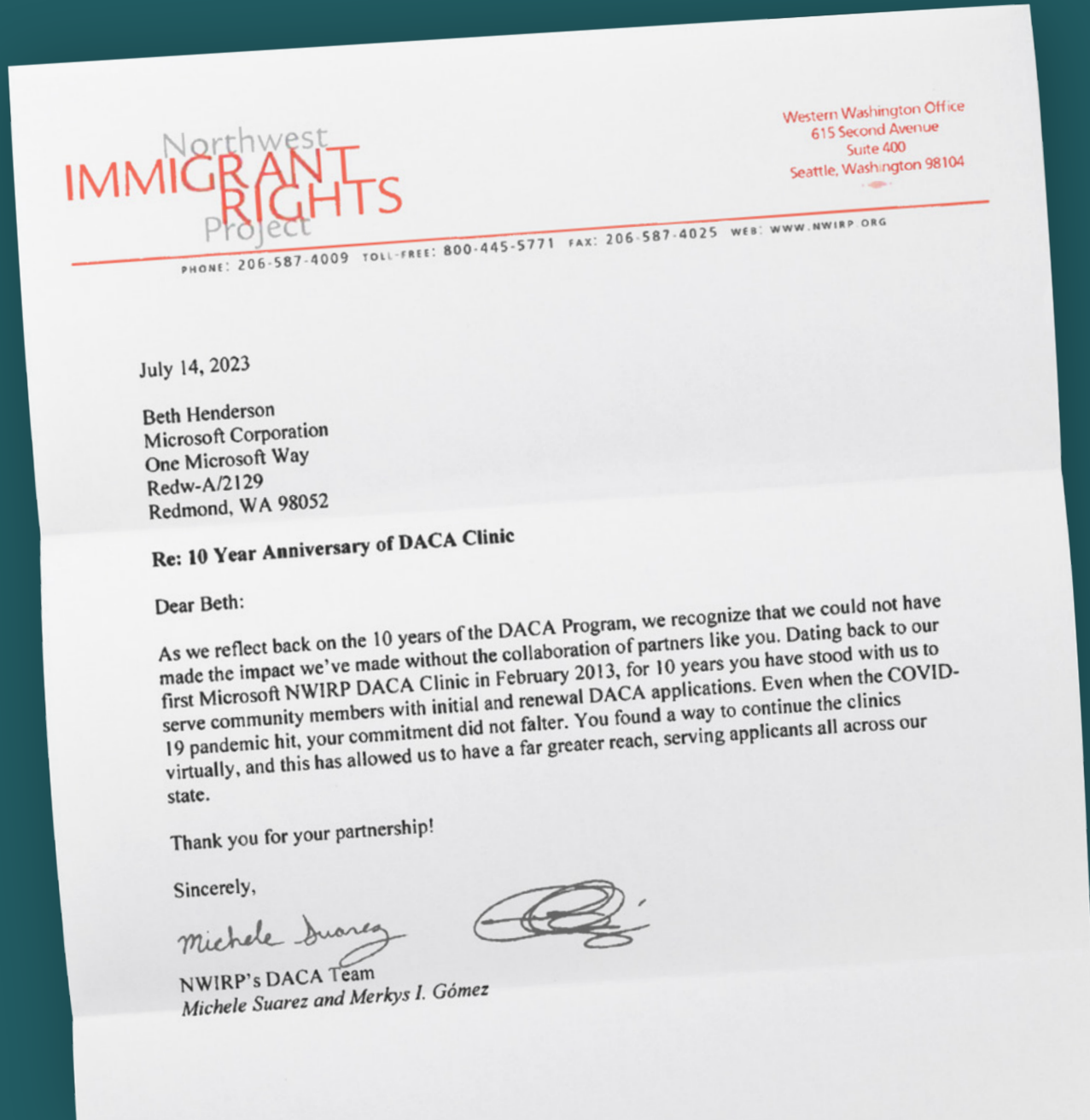
75

clients process their
DACA renewals.

⁴ Source: KFF, *Key Facts on Deferred Action for Childhood Arrivals (DACA)*

⁵ Source: USCIS, *DHS Begins Limited Implementation of DACA under Final Rule* | USCIS

Deferred Action for Childhood Arrivals (cont.)



“

...we recognize that we could not have made the impact we've made without the collaboration of partners like you.”

*NWIRP's DACA Team
Michele Suarez and Merkys I. Gómez*

Afghan Asylum Initiative

Helping at-risk Afghan nationals gain safe harbor in the United States

When the United States military withdrew from Afghanistan in 2021, thousands of Afghan nationals had to evacuate. They face risks to their safety if they return—and for those who entered the United States, a complicated legal process that often involves strict application deadlines.

Since the withdrawal of US forces from Afghanistan in 2021, over 100,000 Afghans, many of whom helped the US government, have fled Taliban rule and sought safety in the United States.⁶ With nonprofit and community support, they have resettled across the United States. While some of them are eligible for special visas, many more must apply for asylum or be returned to Afghanistan where the threat of violence awaits them.

Like other asylum seekers, Afghan evacuees are not guaranteed legal representation in the United States. The immigration process, however, can be confusing, intimidating, and time-consuming, especially for those impacted by the trauma of violence.

In response to this issue, Microsoft partnered with the immigration law firm Fragomen to assist Afghan evacuees applying for asylum. Volunteers conduct interviews, help clients compile in-depth asylum applications, and accompany clients to hearings. In short, they help establish that evacuees would face persecution, or even death, if they returned to Afghanistan.

Since launching this initiative, 20 Microsoft volunteers have supported 7 clients and their families with asylum cases. This year, 2 of these clients and their families received a grant of asylum.

“

I felt a huge sense of relief when we learned that our client was granted asylum and feel like my team and I had a direct impact on our client in this life-or-death case. It was one of the highlights of my career.”



Allison Lauterbach Dale

Senior Corporate Counsel and pro bono volunteer

⁶ Source: Homeland Security: [Statement from Secretary Mayorkas on the Two-Year Anniversary of Operation Allies Welcome](#) | Homeland Security (dhs.gov)

Afghan Asylum Initiative (cont.)

“

When I saw the letter that my asylum was granted, I just cried. Not just for me, but my family, too.

Afghan asylum seeker

People are here for me, they welcome me, they support me

“When I was in Afghanistan, I saw that when women contribute to their household income, others respect them and listen to their voice. I hoped to bring change to women’s lives. I wanted to bring changes to my country.

Then the government collapsed. I received threat letters. They said, ‘you are working for US purposes, your work is against Islam.’ They were threatening me and my family. The Taliban was aware of my work; I was exposed. They came to our house. I changed my location, changed homes, but anywhere I was not safe. That was no way to stay.

I did not want to go, but I had to go. When I evacuated, I got help in my asylum case. The amazing pro bono team worked with me very hard. They listened to me with passion. It was the feeling, people are here for me, they welcome me, they support me. I was getting help with asylum, and I was getting recovery, too.

In the asylum application, my history, the documentation, everything was reflected well. We expected to receive notification about the decision maybe after four weeks. We received notification after only one week.

When I saw the letter that my asylum was granted, I just cried. Not just for me, but my family, too. Now I can support us financially, I can work here, I can help my family. I am also connecting with other organizations and working with newcomers like me. I share my experience because it really helps to share your story and connect them with resources. We are trying to help as many people as possible.

People like me, we had no choice. We had to leave Afghanistan. We cannot go back. I know 100 percent, the pro bono team helped. Now I have asylum granted, and I’m in good shape. I’m very hopeful.”

Client name and identity omitted to protect their safety

Immigration Equality

Assisting LGBTQIA+ clients in applying for asylum

Worldwide, people face persecution and risk of harm for their sexual orientation and gender identity. For these individuals, navigating the US asylum system can be overwhelming and complicated.

At least 67 countries have laws that criminalize homosexuality, including seven that may impose the death penalty.⁷ In addition, at least nine countries outlaw diverse gender identities and expressions.⁷ Further, people who identify as lesbian, gay, bisexual, transgender, queer, intersex, or asexual (LGBTQIA+), along with people with HIV often endure discrimination, physical and psychological violence, and threats on their life and well-being.

While a growing number of people are seeking political asylum in the United States based on persecution of their gender identity or sexual orientation,⁸ navigating this process without legal representation lowers the chances of success: Only about one in five unrepresented individuals are granted asylum.⁹

This year, **Immigration Equality**, the law firm **Akin Gump**, and Microsoft hosted a clinic to help LGBTQIA+ and HIV-positive asylum seekers. During the event, Microsoft volunteers worked with their law firm counterparts to help clients prepare asylum applications, while Immigration Equality staff attorneys and experts offered guidance to the volunteers. Microsoft employees also volunteered their language skills to interpret in Russian, Turkish, and Spanish.

“Hosting the clinic in partnership with Microsoft allowed Akin Gump to form robust legal teams to support and service each Immigration Equality client,” shared Steve Schulman, Partner at Akin. “We hope this clinic encourages volunteers to continue to participate in meaningful, rewarding pro bono work.”

“For my client, his health and well-being were at stake. I was able to translate and communicate with him in a safe space so he could tell his story.”



Jenny Diaz

Microsoft Paralegal and pro bono volunteer

20

Microsoft volunteers gave

300

hours to help

9

clients to prepare asylum applications.

⁷ Source: Human Rights Watch, *The Love That Dare Not Speak Its Name*

⁸ Source: UNHCR, *LGBTIQ+ Claims*

⁹ Source: TRAC Immigration, *Asylum Grant Rates Climb Under Biden*

Immigration Equality (cont.)

“

This clinic demonstrated that when a dedicated in-house team and law firm come together to donate their talents and expertise the results are remarkable. Immigration Equality looks forward to using this model to reach more LGBTQIA+ asylum seekers.”



Stéfanie Lacroix

Staff Attorney, Immigration Equality

Virtual Records Clinic

Assisting justice-impacted individuals to get relief from the stigma of past convictions

Washington State law allows people to clear certain past convictions. A cleared conviction can help people overcome barriers in education, employment, housing, and more, but the process can prove to be unduly challenging for those without legal representation.

Since 2020, Microsoft pro bono volunteers have donated their time to a Virtual Records Clinic, an initiative formed in partnership with Microsoft, the Post-Conviction Unit of the King County Prosecuting Attorney’s Office, and the Urban League of Metropolitan Seattle.

Volunteers help in multiple stages. Some review court records and assess outstanding legal financial obligations and other imposed conditions to gauge individuals’ eligibility. Others write and file pleadings. Pro bono attorneys also represent clients in court.

This year, Microsoft helped organize a Leadership Council on Legal Diversity (LCLD) Day of Service, by developing a volunteer opportunity focused on the first step of Virtual Records Clinic work. Sixteen LCLD fellows and alumni assessed the eligibility of 42 cases, streamlining the next steps in the legal process.

Together, volunteers with the Virtual Records Clinic help relieve the stigma of past convictions, enabling individuals to improve their lives.



Microsoft pro bono volunteers shared their time and skills at a Virtual Records Clinic to help relieve individuals of the stigma of past convictions and improve their lives.

“Volunteering with the Virtual Records Clinic makes a tangible impact on individuals’ lives. By vacating convictions, we can help them find a job or a place to live and create a better path forward.”

Kristen Pugsley-Onsager

Assistant General Counsel and Microsoft pro bono volunteer

This year,

32

Microsoft volunteers gave

279

hours of pro bono service to vacate

30

convictions for

9

individuals.

Virtual Records Clinic (cont.)



Through the partnership with Microsoft's pro bono team, we have orchestrated a symphony of transformation by helping individuals vacate and expunge their criminal records. Together, we've not only cleared legal barriers but also paved the way for second chances and renewed opportunities."

Nick Jeffreys

Community Outreach Organizer, Urban League of Metropolitan Seattle

Read more about this initiative:

[Urban League's Vacating Records Programs Helps People Get a Fresh Start](#)

Seattle Clemency Project

Fighting to secure freedom from a lifetime in prison for rehabilitated individuals

Many states in the United States operate a parole system that provides incarcerated people with early release if they can demonstrate remorse, rehabilitation, and readiness to rejoin society. But Washington is one of 16 US states that abolished parole.¹⁰

In the absence of parole, justice-impacted individuals may apply for resentencing or clemency. When incarceration no longer serves its purpose—when a person demonstrates remorse, rehabilitation, and readiness to rejoin society and is deserving of another chance—resentencing or clemency can grant individuals' release before their original sentencing.

The clemency and resentencing processes are complicated and virtually impossible without legal representation. Through the **Seattle Clemency Project (SCP)**, Microsoft volunteers provide pro bono support to reformed individuals.

Microsoft volunteers Mia Scavella-Little and Juan Santillan recently helped their SCP client successfully navigate the ISRB petition process and secure early release from prison after establishing that the 47-year sentence he received as a juvenile no longer served its purpose.

Read Bobbie Lehman's story [here](#).

Over the course of an SCP case, volunteers meet with currently incarcerated clients to understand their story and how they have turned their lives around. Volunteers help clients shape a narrative to successfully explain to a prosecutor or clemency board how they have reformed their lives and are ready to reenter society.

Microsoft volunteers also assisted clients who received a lengthy or lifetime prison sentence as a juvenile and who are eligible under Washington State law to request early release by petitioning the Washington Indeterminate and Sentencing Review Board (ISRB).



Shont Miller and his wife, Katrina, with their client Gregory Steen, who was released in 2021 after they, in partnership with the Seattle Clemency Project, obtained a resentencing from life in prison to time served (13 years) under Washington State's revised 3-strikes law. While in prison, Greg was a leader in bringing college education to inmates, developing and teaching classes on confronting addiction, and earning a degree from Seattle Central College.

Thanks to these efforts, Microsoft volunteers have collectively prevented

142

years of prison for people deemed eligible for early release.

Read more about the special relationship between Seattle Clemency Project and Microsoft in the [Seattle Clemency Project 2023 Impact Report](#).

¹⁰ Source: Restore Justice, *Why Parole Matters*

Seattle Clemency Project (cont.)

Change the conversation, change the population

During his sentence in 2009, Anthony Powers cofounded the Redemption Project, a successful behavioral health program to create a better environment in prison to “change the conversation, change the population.” He taught and mentored over 2,000 inmates. His gift for rallying people for the better created highly effective solutions that helped reduce prison violence in prisons across Washington State.

In 2019, through pro bono counsel from Seattle Clemency Project—Anthony was granted an early release. He was then offered a job as the first Reentry Coordinator for the Seattle Clemency Project, which he accepted. At Seattle Clemency Project, Anthony established a successful reentry system and became the Reentry Program Director. During this time, Anthony also began pursuing his dream of creating a way to use technology to highlight disparities in the justice system.

Since 2018, the Pro Bono Program at Microsoft has been supporting the Seattle Clemency Project. During a pro bono workshop in 2019, Anthony was invited to Microsoft to discuss his vision for technology and share the sentencing data he was collecting. Following the discussion, Microsoft employees wanted to find ways to support his objective and get involved.

Read more at Microsoft Unlocked:
[The pursuit of justice](#)

*Anthony Powers, Executive Director,
American Equity and Justice Group
and Reentry Program Director for
Seattle Clemency Project*



ProJourn

Providing free legal aid to journalists and news outlets to protect democracy

Accurate and free reporting informs the public and holds those in power accountable. Without access to legal assistance, journalists and newsrooms can encounter challenges with sharing their findings with the public.

Independent journalists and small to medium news organizations do not always have the resources to access legal assistance. In fact, half of journalists nationwide say their legal needs are unmet.¹¹

To address this need, Microsoft and the law firm **Davis Wright Tremaine (DWT)** launched **The Protecting Journalists Pro Bono Program**, known as ProJourn, in 2020. What started as a regional pilot has since grown to a nationwide effort operated by the Reporters Committee for Freedom of the Press (RCFP) and in partnership with the Knight Foundation.

This year, a series that ProJourn supported won a James Beard Foundation Media Award. The investigative articles in the online news outlet Civil Eats, called **Injured and Invisible**, explored the dangers of animal agriculture in the United States. Microsoft and DWT volunteers provided pre-publication review for the pieces, which the investigative team identified as being at risk of retaliatory litigation.



Microsoft employees Sima Sarrafan, Amy Larsen, and Rachel Chernaskey attend RCFP's Freedom of the Press awards to celebrate and protect journalism.

This year,

8

volunteers worked

319

hours to serve

13

ProJourn clients.

¹¹ Source: ProJourn, *Standing Up for Journalism*

ProJourn (cont.)

“

It was an investigation that we could not have done without your support and guidance. Our newsroom has always been ambitious; but this kind of deep investigative work is a first for us, especially as it dealt with such a sensitive matter. My team has learned a lot and we are now even better journalists for having gone through this process.”¹²

Florangela Davila

ProJourn client News Director, 88.5 FM KNKX

¹² Quote used with client permission

Virtual Help Clinic

Offering a lifeline to survivors of domestic violence

More than 4 in 10 women in Washington State alone will experience some form of domestic violence (DV) in their lifetimes.¹³ Long-term protection orders can help prevent future abuse, but the process is often difficult and traumatic without legal aid. This year, volunteers secured 11 DV protection orders through the Virtual Help Clinic.

“Doing pro bono work reminds me why I became a lawyer: not only to match my expertise with my passion of technology, but to help people in need. We can all carve out a little bit of time to help, and that has a big impact.”



Tony Beasley

Senior Corporate Counsel and pro bono volunteer

To obtain a protection order against a DV abuser, survivors must navigate complicated paperwork and filing as well as appear in court alongside their abuser, all without legal representation unless they can afford a lawyer.

To address the rise in DV that occurred during the COVID-19 pandemic, the law firm Perkins Coie, Microsoft, and the King County Protection Order Advocacy Program launched the Virtual Help Clinic in 2020.¹⁴ The clinic provides high-quality, free legal counsel using Microsoft Teams. Through the program, survivors do not have to fight for safety alone.

Under the guidance of mentor volunteers, Microsoft attorneys and business professionals prepare clients' cases. Volunteers interview clients and compile the necessary documents for new or renewal protection orders. Through these efforts, volunteers stand as advocates for a safer future for the survivors.

“

People are being threatened with their lives or their families' lives, and most people fall through the cracks. It's not just filling the forms out or knowing what to do with them.

I advocated heavily for myself, but I didn't know how to navigate the civil court and wouldn't have gone forward with that on my own without Tony as my attorney.”

Anonymous client who Tony Beasley helped win an expanded protection order

¹³ Source: National Coalition Against Domestic Violence, *Domestic Violence in Washington*

¹⁴ Source: UN Women, *The Shadow Pandemic: Violence against women during COVID-19*

National Veterans Legal Services Program

Improving access to benefits for veterans

Members of the military are eligible for benefits in recognition of their service. Veterans with combat-connected injuries, and those incorrectly discharged with a less-than-honorable status, cannot always access those benefits without legal assistance.

Veteran benefits, from compensation and health care to home loans and education support, improve well-being and create opportunities for individuals and their families. Without legal assistance, many veterans cannot access these benefits.

The **National Veterans Legal Services Program (NVLSP)** created the Lawyers Serving Warriors® program to improve access to certain types of benefits. Microsoft volunteers support NVLSP in two ways: the combat-related special compensation project and discharge upgrade screening projects, including clinics.

Combat-related special compensation (CRSC)

Members of the military who sustained injuries during combat, including psychological harms such as post-traumatic stress disorder (PTSD), are eligible for compensation. Microsoft volunteers help these medically retired veterans by preparing a CRSC petition. They weave together medical records, the client's history, and other documentation to make a case connecting their need for CRSC to injuries sustained during combat duty.

Discharge upgrade screening projects and clinics

Through virtual clinics enabled by Microsoft Teams, volunteers meet with veterans who were discharged with less-than-honorable characterization. Volunteers interview clients and review documentation, then write summaries for pro bono NVLSP attorneys. This process allows NVLSP to move forward more quickly and ultimately helps more veterans apply for discharge upgrades. This year, four out of nine veterans interviewed during the clinic have been placed for full scope pro bono representation.

Volunteers also assist veterans remotely by analyzing and assessing veteran files, including veterans' Military Service History, Service Treatment Records, VA Claims File, and other supplemental documents. Volunteers then provide their analysis of documents that flag key terms and potential evidence for the veteran's claim to discharge their characterization of upgrade. This work significantly expedites the process for NVLSP screening attorneys, ensuring the veterans receive assistance promptly. Microsoft attorney volunteers and other professionals assisted with nine independent file review projects for preliminary screening this year.

25

volunteers donated

175

hours to veteran causes through NVLSP this year.

National Veterans Legal Services Program (cont.)

“

The Department of Army decided to grant me the award, with back pay from the day I was discharged.

Anonymous client assisted through NVLSP and the Microsoft Pro Bono Program

A combat-related special compensation victory

“I enlisted in the Army in 2011 and served for nine years, including two combat deployments to Afghanistan and one to Iraq. I did it voluntarily, and I’m thankful for the service I did, but war is not pretty. Many of those PTSD feelings come back even when you’re safe.

I was looking for services that helped veterans, and Microsoft volunteers helped me apply for combat-related special compensation. Their expertise came into play with the narrative reasoning to the Department of Army why I was entitled to the compensation.

The Department of Army decided to grant me the award, with back pay from the day I was discharged. I think it was because of the volunteer team’s expertise and reasoning, putting my story in words with concrete evidence. I have two kids and a mortgage to pay, so it’s a tremendous help with our finances.

I volunteered for this position; nobody owes me anything. But it’s nice to know the Department of Army recognizes my sacrifice. I’m extremely grateful.”

Client name and identity omitted to protect their safety



Microsoft pro bono volunteers Adrian Palma, Amanda Molina, and Bill Hayden attend the National Veterans Legal Services Program’s (NVLSP) Fourteenth Annual Benefit Reception with Paul Wright, Executive Director of NVLSP.

Make What's Next

Helping the next generation of inventors secure patents to protect their ideas

Securing a patent can feel overwhelming for new inventors. Microsoft volunteers support innovators from underrepresented communities to advance and protect their big ideas.

Patenting an invention takes time, effort, and expertise. Without guidance, a patent is often out of reach for many inventors, especially for those who cannot afford an attorney. Microsoft's **Make What's Next Patent Program** addresses this problem by matching pro bono volunteers with ambitious teams of inventors.

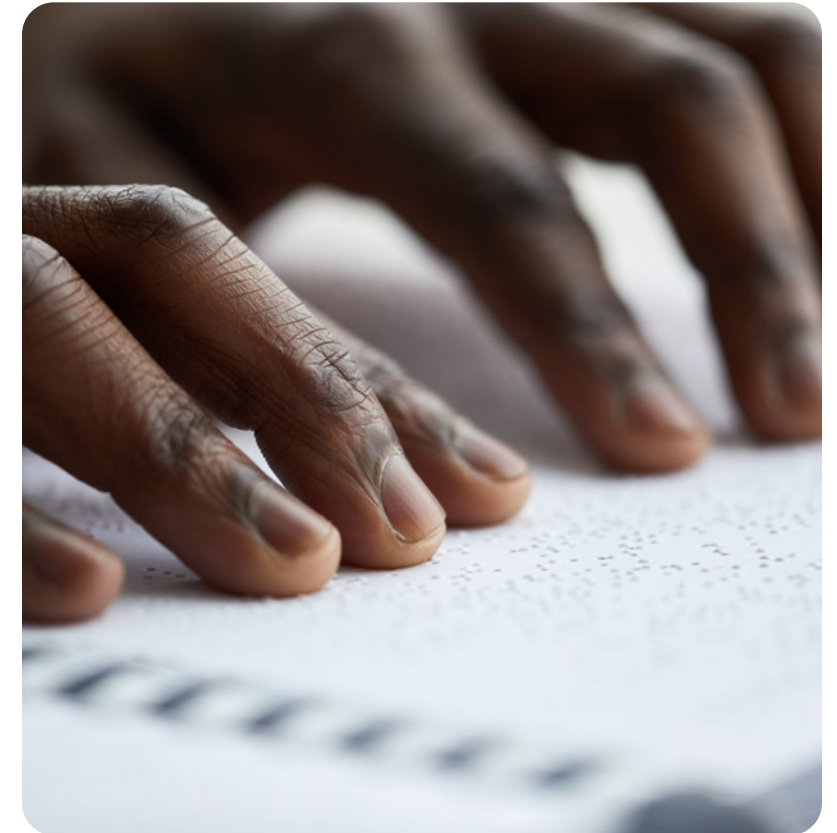
Make What's Next recently joined the **Advancing Diversity Across Patent Teams (ADAPT)** platform, which has allowed other in-house counsel and law firm volunteers to match with inventors from underserved communities in need of patent support.

Listen to the latest episode of the Inclusion Evolution podcast where Judy Yee, Assistant General Counsel at Microsoft and ADAPT cofounder, and Elaine Spector, Partner at Harrity & Harrity, recount their DEI journey, how ADAPT came to be, and why they are driven to change the industry.

This year, Microsoft pro bono volunteers mentored and supported a team from Massachusetts Institute of Technology in their patent application, and the team was granted a patent for their braille printing device.

Called Braille-It, the device enables people with blindness to easily create labels, helping them identify and navigate their home, work, and community.

[Read about Braille-It here](#)



Advancing more diverse and inclusive communities

When communities are diverse and inclusive, we are all better positioned to address the world’s greatest challenges, such as the access to justice crisis.

- Racial Restrictive Covenants Project 28
- Women’s History Month Pro Bono Volunteer Celebration 29
- Street Law Legal Diversity Pipeline Program..... 30
- Leadership Council on Legal Diversity (LCLD) service project..... 32

Advancing more diverse and inclusive communities

When communities are diverse and inclusive, we are all better positioned to address the world's greatest challenges, such as the access to justice crisis.

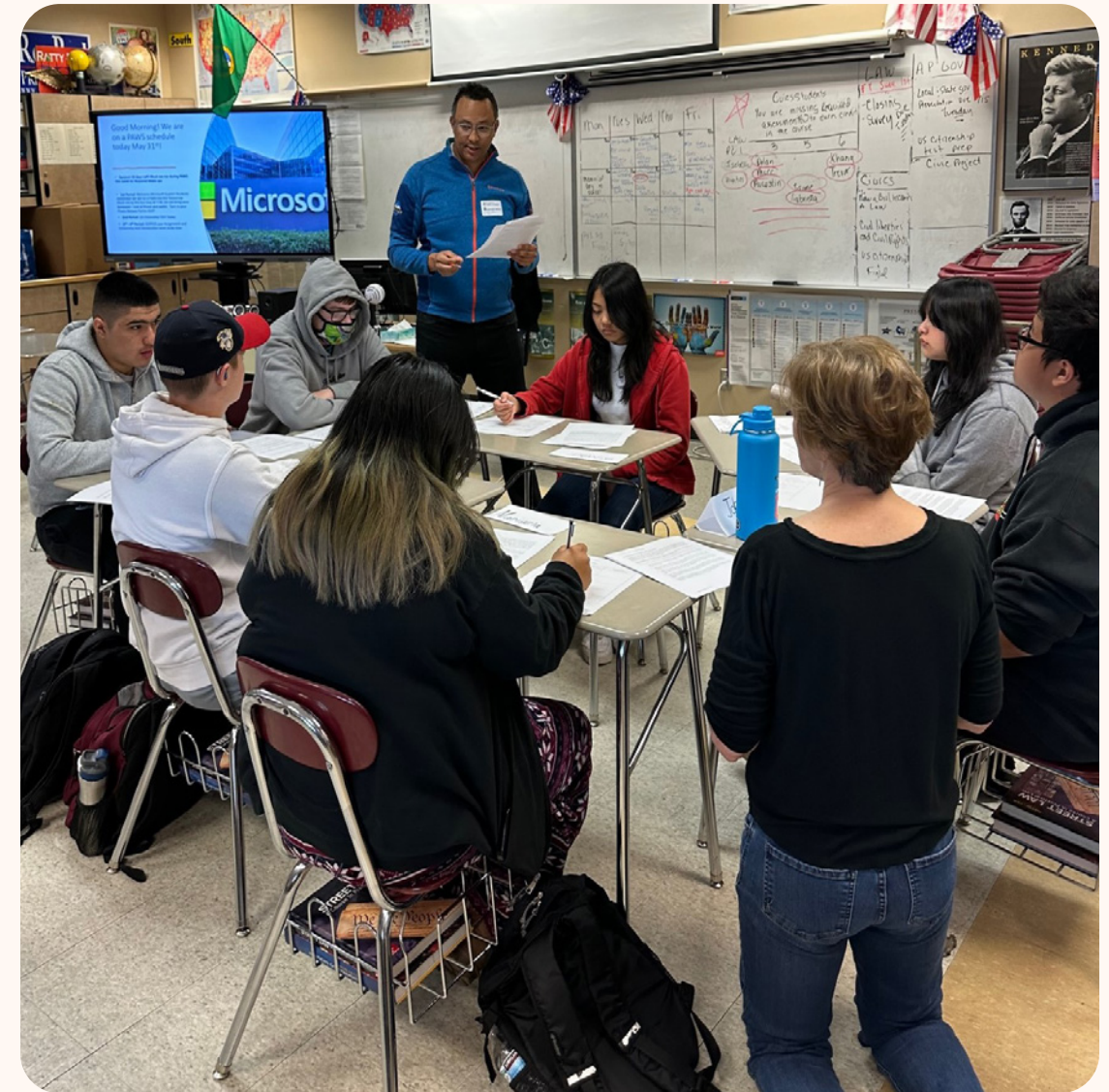
This year, the Microsoft Pro Bono Program collaborated with several Employee Networks (ENs) within Microsoft's Corporate External and Legal Affairs (CELA) department, including:

- Blacks in CELA
- Women in CELA
- GLEAM CELA (our LGBTQIA+ EN)
- Asians and Pacific Islanders (API) in CELA
- HOLA CELA (Hispanic and Latinx Organization of Leaders in Action)
- Military in CELA
- Disability Inclusion in CELA

And external partners:

- University of Washington
- Street Law
- The Leadership Council on Legal Diversity (LCLD)

These efforts provided programming and pro bono opportunities in support and celebration of diverse and inclusive communities, including an initiative to help address racially restrictive housing covenants in Washington State, a celebration of the Microsoft pro bono volunteers during Women's History Month, and participation in the Street Law Legal Diversity Pipeline Program and the LCLD Day of Service.



Microsoft volunteers Jika Gqiba-Knight (standing) and Cathy Clark (kneeling) shared their time and legal experience with students at an Introduction to Law class at Cascade High School in Everett, Washington.

Racial Restrictive Covenants Project

Before the US Supreme Court found the practice unconstitutional in 1948, many places across the United States used racially restrictive housing covenants to prevent people of color and religious minorities from purchasing homes. Although no longer enforceable, most of these covenants remain on the books, serving as a powerful yet painful reminder of the legacy of racism and segregation in the United States.

In Washington State, research teams at the University of Washington and Eastern Washington University have been working to identify and map racial restrictions buried in the state's property records. To date, they have identified more than 50,000 restricted properties across Washington and have engaged volunteers to support this work.

This year, the Microsoft pro bono team collaborated with the Blacks in CELA EN to host a training about the [Washington Racial Restrictive Covenants Project](#) during Black History Month. Following the training, Microsoft volunteers joined volunteers from the law firm Davis Wright Tremaine for a day of service at the University of Washington and examined property deeds on microfilm to identify racially restrictive language. This work helped further the project's goals of identifying and documenting every racially restrictive covenant in Washington, which will allow policymakers to determine how best to address the harms these covenants caused.



With the help of James Gregory, UW Professor of History and the leader of the Racial Restrictive Covenant Project, Microsoft and Davis Wright Tremaine volunteers examined historic property deeds to identify and map the racist and harmful legacy of deed provisions and restrictive covenants.

[Learn more here](#)

Women's History Month Pro Bono Volunteer Celebration

Highlighting the significant pro bono contributions of women

The Microsoft Pro Bono Program would not be what it is today without the pro bono contributions of the women in CELA. To these amazing volunteers, we say thank you.

The 2023 national theme for Women's History Month in the United States was "Celebrating Women Who Tell Our Stories." Building upon this theme, the Microsoft pro bono team celebrated the women in CELA who tell our stories through their pro bono efforts at a luncheon where they were thanked by Hossein Nowbar, Chief Legal Officer, and honored in a video highlighting individual volunteer efforts.

Join us in recognizing the work of these volunteers.

Watch the video [here](#)



Celebrating the Microsoft women employees who tell our stories

Street Law Legal Diversity Pipeline Program

Inspiring diverse students to dream of a future career in law

The legal field does not represent the diversity of the US population. Street Law's Legal Diversity Pipeline Program aims to inspire students from backgrounds underrepresented in legal professions to learn about and pursue a career in law.

The American Bar Association (ABA) affirms that diversity is crucial for a fair and effective justice system, yet representation in the legal profession continues to lag.¹⁵ Through its Legal Diversity and Pipeline Program, the nonprofit **Street Law** works with corporate legal departments and law firms to create legal career pathways for young people of diverse identities and backgrounds.

Since 2020, the Microsoft Pro Bono Program has contributed to this effort in two ways: conducting legal workshops at a local public high school where a significant number of students qualify for free or reduced-cost lunch and hosting students on the Microsoft Redmond Campus for a day of inspiration and fun.

“The impact on the students was tremendous, and the conversations we had at the workshops we hosted helped reinforce pursuing and proving what is possible.”



Hung To

*Director, Business Management
and pro bono volunteer*

This year,

71

volunteers donated

123

hours in support of Street Law's Legal Diversity Pipeline Program, reaching

64

students.

¹⁵ Source: American Bar Association, *Diversity in Law: Who Cares?*

Street Law Legal Diversity Pipeline Program (cont.)

“

My students want attainable ways of making the world the way they want it to be, and this program helps make it possible for them.”

Melissa Webster

Cascade High School teacher

This year, Microsoft volunteers shared their time and experience with students taking an Introduction to Law class at Cascade High School in Everett, Washington. This included conducting four legal workshops at the school and hosting two capstone events at Microsoft’s headquarters.

Over the course of the two capstone events, the Microsoft pro bono team and volunteers hosted over 60 Cascade High School students. These events included a tour of the **Microsoft Cyber Defense Operations Center (CDOC)**

and the **Executive Briefing Center**, where students experienced Microsoft’s technology through immersive demos and presentations of real-life customer solutions.

During the June 2023 capstone event, students also attended an event featuring philanthropic activist, Washington State Clemency and Pardons board member, and former Seattle Seahawks wide receiver, Doug Baldwin. Doug’s remarks provided students with practical, relatable perspective and helped them reconsider what is possible.



Doug Baldwin, former Seattle Seahawk, encourages local high school students to push limits and harness their potential.

Leadership Council on Legal Diversity service project

Fostering a more diverse and inclusive legal profession through pro bono work

Recognizing that equity in the law requires that the legal profession continue to diversify, Microsoft is a longstanding partner of the Leadership Council on Legal Diversity and proud supporter of a recent LCLD community service project.

The Leadership Council on Legal Diversity (LCLD) was founded in 2009 with the goal of building a legal profession in the United States that better represents the country's diversity. Since its inception, Microsoft has been an LCLD member and participates in the LCLD **Pathfinders** and **Fellows** leadership development programs.

As part of this year's LCLD Alumni Leadership Symposium in Seattle, Washington, Microsoft cosponsored a **Community Service event** with the law firm Davis Wright Tremaine that provided over 50 LCLD alumni with the opportunity to participate in a pro bono project.

For one of the projects, the Microsoft Pro Bono Program organized a file review project for its **Virtual Records Clinic (VRC)**, which helps justice-impacted individuals in Washington State clear eligible convictions from their records.

Sixteen LCLD fellows and alumni assessed the eligibility of 42 VRC cases during the Community Service event and helped streamline the next steps in the legal process.

"I really enjoyed learning about the [VRC] and having the chance to be a small part of its success!"

Amanda Schlitz

VP U.S. Bank and LCLD Alum



Pro bono volunteers from Microsoft and local law firm Davis Wright Tremaine volunteer at the Virtual Records Clinic in sponsorship with the Legal Council of Legal Diversity to help relieve the stigma of past convictions and enable justice-impacted individuals to improve their lives.

Achieving more through the power of technology

Achieving more through the power of technology

Lending expertise and technology to help legal aid organizations scale impact

The need for legal aid often outmatches attorneys' availability, leaving many individuals without legal support. Using technologies, such as responsible AI, to increase productivity and gain efficiency can transform the capacity of under-resourced legal aid organizations.

Microsoft not only provides direct legal aid to clients in need, but also shares tools and expertise with legal aid organizations on an ongoing basis. This year, Microsoft provided technology and expertise to help several partners accelerate their digital transformation journey.



Expanding ProJourn's capacity to help more journalists

ProJourn relies on the Microsoft Teams accessibility and AI features such as live captions, auto-generated meeting transcription, and live translation captioning so that journalists and newsrooms, including diverse reporters and outlets that publish content in languages other than English, have access to legal support. The Microsoft pro bono team also helped ProJourn implement Microsoft Power Automate workflows to streamline intake processes and legal requests, expanding the organization's capacity to help more journalists.



Scaling offerings and modernizing co-creation through Microsoft Loop

When the pandemic shut down in-person legal help events, the Microsoft Pro Bono Program transitioned to virtual clinics. This year, the team implemented Microsoft Loop, one of Microsoft's latest collaboration and productivity applications, to hold more clinics than ever before. The Virtual Records Clinic now relies on Microsoft Loop as the one-stop, collaborative hub to quickly onboard volunteers so they can focus on their clients, not on the busywork.

Microsoft Cloud for Nonprofit: Addressing the backlog of deadline-threatened asylum applications

Welcome.US created the Welcome Legal Alliance to connect volunteers with refugees needing legal help, but it wanted to expand to reach even more clients. The alliance turned to Microsoft Cloud for Nonprofit Volunteer Management to scale its efforts quickly. The centralized Volunteer Management hub trains volunteers, automates the intake of new clients, matches volunteers with clients, and tracks impact using the nonprofit common data model. With this technology, volunteers and immigration law experts are addressing the backlog of deadline-sensitive asylum applications.

"[Loop] is so nice and easy to navigate. It enables me to be much more efficient and effective in getting [pro bono] work done and collaborating with my partners."



Pamela Almaguer

*Senior Corporate Council
and pro bono volunteer*

“

I can confidently say that the Microsoft tools we're using are not only helping us, but are making sure that we can achieve our mission. We're avoiding unnecessary steps, saving time, gaining visibility, and measuring our impact. The possibilities are endless. This is just the beginning.”

Flavie Fuentes

*ProJourn and Pro Bono Director at Reporters
Committee for Freedom of the Press*

Scaling access to justice with our partners

Scaling access to justice is a collaborative effort that includes supporting the development of other in-house pro bono programs and events for community partners.

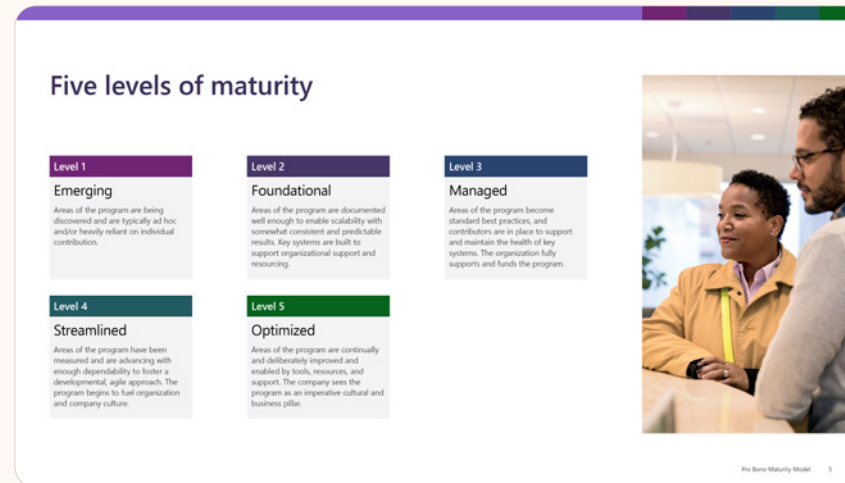
Pro Bono Maturity Model	37
Community events	38

Pro Bono Maturity Model

Scaling pro bono by empowering companies to evolve their in-house programs

This year, the Microsoft Pro Bono Program and the Corporate Pro Bono (CPBO®) project of Pro Bono Institute cocreated this Pro Bono Maturity Model as a tool for other corporate, in-house pro bono programs to assess the evolution of their pro bono efforts and to provide a framework for identifying specific opportunities for growth and development.

[View the 2023 Maturity Model](#)



Cover and pages from the 2023 Pro Bono Maturity Model

Community events

Sponsoring community and local events to help advance access to justice and support a more diverse and inclusive legal profession

The Microsoft Pro Bono Program is a proud supporter of efforts to raise awareness, funding, and in-kind donations for its pro bono and community partners. As these photos highlight, Microsoft employees joyfully came together this year to support the annual galas and similar events sponsored in part by the Microsoft Pro Bono Program.



Julie Mayer, Renate Norman, Jill Lloyd, David Little, Mia Scavella-Little, and Leticia Walker support the Seattle Clemency Project.



Grady Mitchell shows off Microsoft swag with Microsoft pro bono volunteer, Paolo Sy. Grady received clemency in January 2021 through the work of the Seattle Clemency Project. [Watch his story here](#)



Neeta Saran, Dan Choi, Jeremy Pitman, Minji Kim, Emily Schlesinger, Mia Scavella-Little, Jason Barnwell, and Becky Andrews support the local community's efforts for justice at the Eastside Legal Assistance Program's (ELAP) annual breakfast.



Kim Tran, Juan Santillan, Emily Chiang, Beth Henderson, Sam Winninghoff, Kim Meyers, and Tyler Quillin attend the King County Bar Association's annual MLK lunch as part of Microsoft's commitment to the local community.



Paolo Sy, Jeanne Ballot, Mohana Bhirangi, Rachel Brown, and Paul Heer at the Seattle Seahawks season opener where the team honored the work of the Seattle Clemency Project during half-time.

