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The Middle Ground: A Meaningful Balance Between the Benefits and Limitations of Artificial Intelligence to Assist with the Justice Gap

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The Middle Ground: A Meaningful Balance Between the Benefits and Limitations of Artificial Intelligence to Assist with the Justice Gap

KATHERINE L.W. NORTON*

Access to justice continues to be an ongoing battle for those who cannot afford an attorney in civil legal matters. These civil legal matters touch issues that significantly impact daily life, from issues relating to health, such as advance directives, to family, such as custody of children. Lawyers, courts, and scholars have attempted to tackle this ongoing problem in our justice system. Some suggest that providing free counsel for all civil legal matters is the solution, while others suggest that self-help materials provide more immediate access to services and information. Regardless of the position one takes, the need is clear and there is room for additional solutions. Artificial intelligence (“AI”) is a necessary tool for the development of these additional solutions. AI solutions are often met with skepticism from those who believe that utilizing them would constitute the unauthorized practice of law, while proponents believe it can provide lawyer-like services superior to those of actual lawyers. Current technology in the legal field falls on a spectrum from programs that act like a lawyer, for example, litigation strategy programs, to programs that do not act like a

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lawyer at all, such as online self-help materials. A similar spectrum exists for current pro se solutions, ranging from programs that would provide significant assistance from a lawyer, such as “Civil Gideon,” to those that provide no services from a lawyer, such as printed self-help materials. Additionally, comparable problems exist for the use of AI lawyering solutions and traditional pro se assistance methods, including the unauthorized practice of law, questions of reliability, and whether the offering lacks the complexity and support many individuals need. Between these two ends of the spectrum lies a middle ground where many of the needs of low-income civil litigants can be met. While many pro bono legal services have long been occupying that middle ground to assist those in need, technology, specifically the limited use of AI, can extend and improve available services. We are not yet at a point where AI will provide the panacea of “Civil Gideon,” but that does not mean it cannot help bridge the gap.

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INTRODUCTION

“Technology can and must play a vital role in transforming service delivery so that all poor people in the United States with an essential civil legal need obtain some form of effective assistance.”¹

Options for improving services for low-income litigants are vital as access to justice in the United States remains an ongoing problem.² At best, access to justice for low-income litigants has been stagnant over the past decade.³ At worst, the justice gap has grown.⁴ In 2009, Legal Services Corporation (“LSC”) reported “that nationally, on the average, only one legal aid attorney is available for every 6,415 low-income people.”⁵ The same report concluded that most people who appear in court pro se are unrepresented due to their

¹ LEGAL SERVS. CORP., REPORT OF THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE 2 (2013) (emphasis added), https://www.lsc.gov/sites/default/files/LSC_Tech%20Summit%20Report_2013.pdf.

² See LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 9 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [hereinafter LSC, THE JUSTICE GAP]. Legal Services Corporation (“LSC”) is an independent nonprofit established by Congress in 1974. See *Congressional Oversight*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are/congressional-oversight> (last visited Nov. 18, 2020). This organization provides financial support for civil legal services for low-income individuals. See *About LSC*, LEGAL SERVS. CORP., <http://www.lsc.gov/about-lsc> (last visited Nov. 18, 2020). Its mission is to promote “equal access to justice and provide[] grants for high-quality civil legal assistance to low-income Americans.” As part of this mission, LSC also reports on the needs of low-income individuals and provides statistics on individuals’ ability to receive services for civil legal matters. See *Fact Sheets*, LEGAL SERVS. CORP., [lsc.gov/media-center/fact-sheets](https://www.lsc.gov/media-center/fact-sheets) (last visited Nov. 18, 2020).

³ See David Luban, *Optimism, Skepticism, and Access to Justice*, 3 TEX. A&M L. REV. 495, 495–97 (2016). Luban discusses concerns regarding whether lawyers, as a profession, should be optimistic or skeptical when it comes to access to justice improvements since the American Bar Association’s pivotal study about the legal needs of low-income litigants. See *id.* at 496–500. Focusing in part on the reduction of funding for legal aid, the lack of attorneys engaging in pro bono work, and the growing number of low-income Americans, Luban concludes that the current solutions available to those in need are not enough. *Id.*

⁴ See *id.*

⁵ LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 1 (2009), https://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

inability to afford counsel.⁶ These conditions continue to exist despite substantial efforts by legal aid organizations, law school legal clinics, court self-help centers, and volunteer attorneys. As of 2017, LSC reported that “7 in 10 low-income Americans with recent personal experience of a civil legal problem say [the] problem has significantly affected their lives.”⁷ Further, “71% of low-income households have experienced a civil legal problem in the past year.”⁸ LSC’s 2017 report on the justice gap indicated that “86% of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help.”⁹ There are limitations to what legal aid organizations, volunteers, and law schools can accomplish to address the needs and barriers that low-income individuals face when confronted with a civil legal issue. Limitations include, for instance, a lack of funding and locations that are inaccessible because of distance and a lack of transportation.¹⁰ Further, research over the past decade confirms that there are not enough legal aid resources to comprehensively address the civil legal needs of low-income households.¹¹

Low-income individuals face particular difficulties when attempting to address their legal issues when they do not have access to an attorney. These difficulties consist of both legal and non-legal barriers. The legal barriers include an inability to deploy legal information to handle the procedural and substantive legal aspects of a case.¹² Non-legal barriers come in many forms, including an individual’s available bandwidth to add a legal issue to his or her already

⁶ *Id.* at 24.

⁷ LSC, THE JUSTICE GAP, *supra* note 2, at 7.

⁸ *Id.*

⁹ *Id.* at 6.

¹⁰ See Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 458–459 (2016) [hereinafter Sandefur, *What We Know*]. Detailing the specific needs of low-income individuals, Sandefur’s research reflects that the cost of litigation is often a secondary concern when compared to whether an individual believes their issue is legal in nature. See *id.* at 450.

¹¹ See LSC, THE JUSTICE GAP, *supra* note 2, at 10.

¹² D. James Greiner et al., *Self-Help, Reimagined*, 92 IND. L.J. 1119, 1126–28, 1130 (2017).

overfull plate of daily life challenges.¹³ Moreover, there are physical and financial barriers low-income individuals face, such as the ability to take time off from employment or the ability to afford childcare.¹⁴ Many low-income individuals do not even seek legal assistance when it is available for their legal problem because they believe their issue does not require help, that it is too difficult, too time consuming, or that it is unpleasant to seek assistance.¹⁵ Because of these problems with the accessibility of available legal services, LSC has dedicated funds to Technology Initiative Grants (“TIGs”) that encourage the development of artificial intelligence (“AI”) in legal aid programs to lower the barriers to low-income individuals seeking assistance with civil legal matters.¹⁶

¹³ *Id.* at 1128–29. Greiner discusses at length the issues that pro se litigants face regarding available bandwidth to address legal issues. This can come in the form of the energy and mental bandwidth necessary to address their daily needs. *See id.*; *see also* Joni Berner et al., *Unbundled Legal Services*, 90 PA. B. ASS’N. Q. 96, 98, 101–02 (2019).

¹⁴ *See* Greiner et al., *supra* note 12, at 1128–29.

¹⁵ *See* REBECCA L. SANDEFUR, LEGAL TECH FOR NON-LAWYERS: REPORT OF THE SURVEY OF US LEGAL TECHNOLOGIES 10 (2019) [hereinafter SANDEFUR, LEGAL TECH FOR NON-LAWYERS], http://www.americanbarfoundation.org/uploads/cms/ocuments/report_us_digital_legal_tech_for_nonlawyers.pdf; *see also* REBECCA L. SANDEFUR, AM. BAR FOUND., ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 12–13, (2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf [hereinafter ACCESSING JUSTICE IN THE CONTEMPORARY USA]. In Sandefur’s research and study, she discovered that often the cost alone is not what keeps low-income litigants from seeking legal assistance. Rather, it is the perception of the legal community and the legal issue itself that keeps people from seeking assistance. She concludes that technology can alleviate these non-legal reasons why low-income litigants do not seek assistance. *See id.* at 12–16; SANDEFUR, LEGAL TECH FOR NON-LAWYERS, at 14–16.

¹⁶ *Technology Initiative Grant Program*, LEGAL SERVS. CORP., <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/tig> (last visited Nov. 18, 2020); *LSC Moves Forward with Legal Navigator Project*, LEGAL SERVS. CORP., <https://www.lsc.gov/simplifying-legal-help> (last visited Nov. 18, 2020). Legal Services Corporation is the largest funding organization for civil legal aid for low-income Americans. *See Who We Are*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are> (last visited Nov. 18, 2020). Examples of grant recipients include: Central California Legal Services, who worked with an expert to maximize the use of technology for client services by conducting an

AI in the legal field has been received with mixed reviews.¹⁷ Most tend to view AI at the extremes, considering it as something to be avoided at all costs or wholeheartedly embraced.¹⁸ Skeptics suggest that AI should be avoided, arguing it interferes with the lawyering profession, violates the rules of professional conduct, or constitutes the unauthorized practice of law.¹⁹ Those who favor utilizing

inventory, identifying gaps, and developing recommendations; and Massachusetts Community Legal Aid for its Massachusetts Legal Resource Finder, which provides those seeking legal assistance with targeted contact information for programs or self-help materials that can assist with their legal needs. *See 2018 TIG Awards—Project Descriptions*, LEGAL SERVS. CORP., <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/tig/2018-tig-awards-project-descriptions> (last visited Nov. 18, 2020).

¹⁷ *See* David Hodson, *The Role, Benefits, and Concerns of Digital Technology in the Family Justice System*, 57 FAM. CT. REV. 425, 427–28 (2019). Hodson, as a family law practitioner, has significant experience with the hands-on aspects of the limitations and benefits that AI can provide. Benefits include the ability to address the issue without traveling to a courthouse and that document preparation can be made easier. However, limitations arise if there is not collaboration with lawyers and the bench. *See id.* at 427–28, 433; *see also* Raymond H. Brescia et al., *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 ALB. L. REV. 553, 553–54 (2015); Anita Bernstein, *Minding the Gaps in Lawyers’ Rules of Professional Conduct*, 72 OKLA. L. REV. 125, 125, 135 (2019); Dana Remus & Frank Levy, *Can Robots Be Lawyers? Computers, Lawyers, and the Practice of Law*, 30 GEO. J. LEGAL ETHICS 501, 502–05 (2017).

¹⁸ *See* Susan Saab Fortney, *Online Legal Document Providers and the Public Interest: Using a Certification Approach to Balance Access to Justice and Public Protection*, 72 OKLA. L. REV. 91, 91–94 (2019).

¹⁹ *See* Deborah L. Rhode et al., *Access to Justice Through Limited Legal Assistance*, 16 NW. J. HUM. RTS. 1, 5 (2018) (citing Benjamin H. Barton & Deborah Rhode, *Legal Services Regulation in the United States: A Tale of Two Models*, in *INTERNATIONAL PERSPECTIVES ON THE REGULATION OF LAWYERS AND LEGAL SERVICES* 27 (Andrew Boone ed., 2017)). Rhode references in her research regarding limited legal services how the bar is averse to both the utilization of technology as well as paraprofessionals as a resource for access to justice problems as it interferes with the lawyering profession but argues, however, that the bar’s views may be misguided. Specifically, Rhode discusses online services and publications that provide a wide range of assistance, including explanations of legal processes, example forms, and automated form completion tools. *See id.* at 18. Other services include toll-free helplines and online videos that explain forms and court processes. *Id.*; *see also* Benjamin H. Barton & Deborah L. Rhode, *Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators*, 70 HASTINGS L.J. 955, 957, 979–81 (2019) [hereinafter Barton & Rhode, *Access to Justice*].

AI take the position that AI may make legal decisions better than lawyers.²⁰ Notwithstanding these extremes, there is a practical middle ground where AI can be utilized to assist with the “pro se crisis” without running afoul of ethical considerations and the historical role of a lawyer.

Some have suggested the ideal solutions for the “pro se crisis” is an overhaul of the legal system and court processes or that representation should be provided for all.²¹ However, given the unlikelihood of comprehensive near-term reform,²² litigants with low-incomes will have to turn to other options. Like AI, the existing solutions to the “pro se crisis” fall on a spectrum. These range from the most involved, providing full representation in all civil legal matters via “Civil Gideon,”²³ to the least amount of attorney involvement in the form of printed self-help materials. Historically, each solution presented to fill the justice gap has faced limitations and ethical concerns along with its advantages.²⁴ AI should be viewed as an added solution to an already significant collection of available tools to assist with the “pro se crisis.”²⁵ AI will have its limitations, but it also has advantages over other access to justice solutions.

The following story illustrates the difficulties pro se litigants face on a daily basis and provides an example of how AI may assist with a particular legal need in a novel way. The client in this case,

²⁰ John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 *FORDHAM L. REV.* 3041, 3041, 3046 (2014).

²¹ See Benjamin H. Barton, *Against Civil Gideon (and for Pro Se Court Reform)*, 62 *FLA. L. REV.* 1227, 1229, 1269–72 (2010) [hereinafter Barton, *Against Civil Gideon*].

²² McGinnis & Pearce, *supra* note 20, at 3041–42.

²³ “Civil Gideon” is the concept of providing counsel for all litigants in need of assistance in civil cases. Barton, *Against Civil Gideon*, *supra* note 21, at 1227–29.

²⁴ See Barton, *Against Civil Gideon*, *supra* note 21, at 1250–51.

²⁵ See Rhode et al., *supra* note 19, at 4–5. Rhode concludes that what commentators have dubbed the “pro se crisis” is actually the new “reality in today’s justice system” exemplifying the need for additional resources. *Id.* at 4 (quoting Marsha M. Mansfield, *Litigants Without Lawyers: Measuring Success in Family Court*, 67 *HASTINGS L.J.* 1389, 1392 (2016)).

Julia, faced legal issues trying to exercise custody of her son, Will.²⁶ Her ex-husband, James, moved to Pennsylvania just three months ago from southern Virginia; Julia lives in Maryland and has for the past two years. Julia and James never addressed custody in their divorce proceedings because they reached an amicable resolution and decided to work together to arrange a custody schedule in Will's best interest. Julia did not object when James asked her if he could move to Pennsylvania, as James' new residence would actually be closer to her home in Maryland. However, James stopped letting Julia talk to or see Will after the move to Pennsylvania.

Julia, recognizing she needs legal assistance, seeks help from a legal clinic offering limited services. She must miss work to meet with law students at the clinic, and because she works in a minimum wage hourly position and has no paid leave, her next paycheck reflects these lost hours. With the help of a student lawyer, she drafts the necessary paperwork to move forward with her custody request. After completion, she is informed that she has to come back, and miss another day of work, to see if she can have her filing fees waived. She does appear, is granted the fee waiver, and files her complaint for custody.²⁷ However, the court enters a Rule to Show

²⁶ As supervising attorney of the Duquesne Family Law Clinic, I have the opportunity to observe the barriers that pro se litigants face in family court in Pennsylvania. As part of my pro bono service, I am a secondary reviewer for the county Appellate Program and review applications for consideration for merit when the primary reviewer, a local family law firm, is conflicted out of reviewing the case. As a reviewer, I see how difficult it is for a litigant to express a meritorious reason as to why his or her case was incorrectly decided at the trial level. Often, the focus of the litigant is that the court "got it wrong" without any supporting facts. It is my impression that often the case may have merit but due to the inability to convey procedurally difficult concepts it is often refused due to the contents of the application and lack of information provided.

²⁷ In Pennsylvania, to start an action to seek custody of a child, individuals have to file a Complaint for Custody. *See* 231 PA. CODE § 1915.3(a) (2020). Filing this document costs between \$100 and \$400 depending on what county it is being filed in, unless a Court enters an order waiving the fee requirement. *See, e.g., Family Division Filing Fees*, ALLEGHENY CNTY., <https://www.alleghe-nycounty.us/court-records/civil/family-division-fees.aspx> (last visited Nov. 18, 2020). This document requires a list of all the addresses, along with the dates of residence, for the child over the prior five years. *See* 231 PA. CODE § 1915.15 (2020). Depending on the information provided, the Court can issue a Rule to Show Cause to determine if jurisdiction is appropriate in each state or county. *See generally* 23 PA. CONS. STAT. § 5421 (2020).

Cause Order requiring her to come back to court in Pennsylvania and provide argument to determine if Pennsylvania has jurisdiction in light of the length of time Will has lived in Pennsylvania. Julia does not even know what jurisdiction means, let alone how to argue that it should be in Pennsylvania. Julia appears for court and states that there is no prior custody order between the parties. She also provides the court with the following information: that Will now lives in Pennsylvania with James; that she lives in Maryland; and no one lives in Virginia anymore. The court enters an Order denying jurisdiction. The court determines that, because James and Will have not lived in Pennsylvania for the prior six months, the court does not have jurisdiction. Pursuant to this Order, Julia will have to go to a different court (one in Virginia, Maryland, or perhaps somewhere else). What Julia does not know is that even though Pennsylvania is not currently the “home state” under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), she may have an appealable issue as the UCCJEA allows a Pennsylvania court to exercise jurisdiction when no other court can meet the jurisdictional standards.²⁸

²⁸ *See id.* (“Initial child custody jurisdiction.”). As Julia is filing for custody in Pennsylvania, she would have to meet the jurisdictional requirements of Pennsylvania where the UCCJEA is utilized. In Pennsylvania, a court may hear a case for determining an initial custody resolution if the litigants meet the requirements of Section 5421. This section provides:

(a) General rule.--Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth has jurisdiction to make an initial child custody determination only if:

- (1) this Commonwealth is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth;
- (2) a court of another state does not have jurisdiction under paragraph (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under section 5427 (relating to inconvenient forum) or 5428 (relating to jurisdiction declined by reason of conduct) and:

Julia cannot afford to continue to miss work to travel to attempt to find a court to hear her custody request, and she knows that Maryland is not the correct forum because Will never resided there.²⁹ Pro bono programs may be available to provide some guidance, but depending on where Julia lives and whether that area has a program to address her legal issue, she may not find any help, or she may only have limited services available to her.³⁰ She is still reeling from

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this Commonwealth other than mere physical presence; and

(ii) substantial evidence is available in this Commonwealth concerning the child's care, protection, training and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under section 5427 or 5428; or

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3).

(b) Exclusive jurisdictional basis.--Subsection (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this Commonwealth.

(c) Physical presence and personal jurisdiction unnecessary.--Physical presence of or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination.

Id. Here, Julia does not meet the requirements for "home state" in Pennsylvania as the child has not resided there for the prior six months. Home state is defined as: "The state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child six months of age or younger, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period." 23 PA. CONS. STAT. § 5402 (2020).

However, Julia may meet § 5421(a)(4)'s requirements as no jurisdiction qualifies as Will's "home state," and therefore, Pennsylvania may exercise jurisdiction. 23 PA. CONS. STAT. § 5421(a)(4) (2020).

²⁹ See 23 PA. CONS. STAT. § 5421(a)(4) (2020) (providing an option for jurisdiction when an individual has no "home state").

³⁰ One significant barrier that limits a low-income litigant's access to services, or even the courthouse, is the location and available transportation. See

the Pennsylvania court's refusal to let her proceed with her case, and she decides she wants to challenge the court's ruling. This is an issue which can be procedurally difficult to initiate.³¹ She could go back to the program she first sought help from, but she really cannot afford another day off. She could try to do it on her own, but ultimately, because she is not legally trained, she would likely commit an error resulting in waiver of her claims.³² If Julia could have some

Amy J. Schmitz, *Expanding Access to Remedies through E-Court Initiatives*, 67 BUFF. L. REV. 89, 93 (2019). Schmitz's article discusses the benefits of utilizing e-courts to expand access to justice and the availability of justice for those who otherwise would not have reasonable access to the court system. *See generally id.*

³¹ Colorado has a successful appellate pro bono program for special civil cases within the Tenth Circuit; however, it has only accepted 18% of applications over the past five years. *See* Marcy G. Glenn, *Pro Se Civil Appeals—Resources and Opportunities*, 45 COLO. LAW. 57, 58 (2016). The California courts have also recently developed an online self-help center focusing on appeals assistance for pro se litigants. *See generally Self Help Resources*, CAL. CTS., <https://www.courts.ca.gov/2148.htm> (last visited Nov. 18, 2020). Allegheny County, in Pennsylvania, has a family law pro bono custody appeals program for pro se litigants. *See Family Law Appellate Pro Bono Pilot Project*, PRO BONO CTR., ALLEGHENY CNTY. BAR FOUND., http://www.pittsburghprobono.org/Family_Law_Appellate_Pro_Bono_Pilot_Project.asp (last visited Nov. 18, 2020). However, based on personal experience, this program has a number of requirements that are difficult for a pro se litigant to meet, including successfully completing an application that reflects a meritorious claim for appeal. Often, this is problematic due to the pro se litigant's lack of understanding regarding what a meritorious issue for a custody appeal would entail.

³² For child custody actions, Pennsylvania requires that both a Notice of Appeal and Concise Statement of Errors Complained of on Appeal be filed simultaneously. 210 PA. CODE §§ 904, 905, 1925 (2020). The notice contains primarily demographic information while the concise statement requires all issues to be addressed on appeal be raised. Section 1925 states:

(a) *Opinion in support of order.*

.....

(2) *Children's fast track appeals.*

(i) The concise statement of errors complained of on appeal shall be filed and served with the notice of appeal.

.....

(b) *Direction to file statement of errors complained of on appeal; instructions to the appellant and the trial court.*

.....

(4) *Requirements; waiver.*

prompts to help her explain her situation and complete the documents necessary to file an appeal in Pennsylvania while not having to travel from her home in Maryland, she would be able to file the necessary documents to initiate an appeal. Based on the statutory provisions, Julia has a meritorious claim for jurisdiction and her case

(i) The Statement shall set forth only those errors that the appellant intends to assert.

(ii) The Statement shall concisely identify each error that the appellant intends to assert with sufficient detail to identify the issue to be raised for the judge. The judge shall not require the citation to authorities or the record; however, appellant may choose to include pertinent authorities and record authorities in the Statement.

(iii) The judge shall not require any party to file a brief, memorandum of law, or response as part of or in conjunction with the Statement.

(iv) The Statement should not be redundant or provide lengthy explanations as to any error. Where non-redundant, non-frivolous issues are set forth in an appropriately concise manner, the number of errors raised will not alone be grounds for finding waiver.

(v) Each error identified in the Statement will be deemed to include every subsidiary issue that was raised in the trial court; this provision does not in any way limit the obligation of a criminal appellant to delineate clearly the scope of claimed constitutional errors on appeal.

(vi) If the appellant in a civil case cannot readily discern the basis for the judge's decision, the appellant shall preface the Statement with an explanation as to why the Statement has identified the errors in only general terms. In such a case, the generality of the Statement will not be grounds for finding waiver.

(vii) Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.

§ 1925(a)–(b). Waiver can be found when a concise statement is not legally appropriate. This includes if it: is vague, is not in the correct form, is not filed timely, does not raise all issues prior to briefing, presents issues that are not ripe, presents issues that are moot, or presents issues that are not limited and are therefore deemed to be meritless. See Katherine L.W. Norton, *Mind the Gap: Technology as a Lifeline for Pro Se Child Custody Appeals*, 58 DUQ. L. REV. 82, 82, 86–87 (2020).

should be heard in Pennsylvania.³³ What Julia really needs to move forward with her claim is accessibility and guided assistance to preserve her legal rights and initiate her appeal.

AI may be able to assist those like Julia who cannot afford privately retained attorneys or have barriers to access other services. LSC recognized this potential when it developed the TIGs.³⁴ But finding the right solution for someone like Julia requires careful consideration. It is important to select an AI solution that does not act too much like a lawyer because there is the potential for running afoul of the Model Rules of Professional Conduct or laws relating to the unauthorized practice of law.³⁵

Yet, on the spectrum of AI solutions, some minimally replicate the role of lawyers, such as automated online document preparation services.³⁶ While such online document preparation may be met with some scrutiny, current forms of legal assistance for low-income individuals, such as limited legal representation, were also met with scrutiny during their development and still have limitations.³⁷ If we

³³ 23 PA. CONS. STAT. § 5421(a)(4) (2020).

³⁴ See *Technology Initiative Grant Program*, *supra* note 16.

³⁵ See Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587, 2588 (2014). Rhode and Ricca discuss how strict unauthorized practice of law (“UPL”) enforcement mechanisms have prohibited the use of online document assistance (a major assistance source for the low-income litigant). See *id.* at 2589, 2595. The article provides a close look at whether UPL statutes actually protect the public. See *id.* at 2593–98; see also Barton & Rhode, *Access to Justice*, *supra* note 19, at 964. Barton and Rhode explore technologies joining the legal service arena which could have an impact in assisting the low-income and middle-income litigants in need of legal services. *Id.* at 957–99. As technologies such as LegalZoom and Avvo join the market, the bar regulators have consistently battled these programs, in some circumstances resulting in their removal from the market. Barton and Rhode argue that the bar regulators should allow these services to assist those in need of low-cost legal services and find a way to “get to yes.” *Id.* at 959.

³⁶ See Rhode et al., *supra* note 19, at 18–19.

³⁷ See Thomas E. Spahn, *Artificial Intelligence: Litigation-Specific Ethics Issues (Part I)*, 64 PRAC. LAW. 43, 43–44 (2018). Spahn discusses the difficulties with utilizing ghostwriting as an assistance model in Federal Court due to case law and ethical prohibitions that give inappropriate impressions to the Court about a person’s representation level. *Id.* at 44–53. See generally Greiner et al., *supra* note 12, at 1135–69 (discussing necessity of making sure that self-help materials,

compare the core forms of legal assistance³⁸ available to low-income litigants to the available AI resources in the legal field, it is reasonable to suggest that the same principles of balance and flexibility used to develop existing pro se solutions should also be utilized to accept solutions through the available AI. Even though the ideal solution, “Civil *Gideon*,”³⁹ cannot be realized at this time,⁴⁰ there is an opportunity to limit the justice gap with reasonable AI technology. While AI that develops legal strategy and arguments would potentially violate current rules and laws governing legal practice,⁴¹ more limited forms of AI, such as online automated document preparation, are not significantly different from current limited legal services and would ameliorate many of the current barriers that prevent individuals from utilizing traditional pro bono services.

There is a need to overcome the legal and non-legal barriers that a low-income litigant such as Julia faces.⁴² Comparing non-AI options that are currently available to assist with access to justice to the current AI employed in the legal field, it becomes apparent that there are AI solutions that are ideal for use to help close the justice gap today. To determine these ideal solutions, Part I of this article will discuss and evaluate the ongoing needs of low-income individuals, both legal and non-legal, and available solutions; Part II will discuss the use of AI in the legal field, as well as limitations and benefits; and Part III will discuss the ideal solutions of using AI to assist with the justice gap.

prominent form of legal assistance available to those that cannot afford attorneys, are accessible, understandable, and tested in order to provide proper assistance). Also, ensuring that development recognizes the psychological state of the individual at the time they need assistance is key to proper development of materials. As the focus of the bench and the bar is access, often the process of developing self-help materials does not reach the targeted audience and deployment is ineffective. This is the case when materials do not have visual imagery, proper layout and organization, or obtain the necessary details. *See id.* at 1136–50.

³⁸ *See* Rhode et al., *supra* note 19, at 4–5. The forms of assistance include legal aid, pro bono attorneys, unbundled limited legal services, and self-help materials. *Id.*

³⁹ *See* Barton, *Against Civil Gideon*, *supra* note 21, at 1227–28.

⁴⁰ *Id.* at 1231–32.

⁴¹ Spahn, *supra* note 37, at 43–44.

⁴² *See* Barton, *Against Civil Gideon*, *supra* note 21, at 1228.

I. ACCESS TO JUSTICE

As Earl Johnson, Jr.⁴³ stated, “Poor people have access to the American courts in the same sense that the Christians had access to the lions when they were dragged into a Roman arena.”⁴⁴ Addressing the justice gap, and helping the poor to command the lions and not be eaten by them, requires discussion of where we are and how we got here. What does true access to justice mean? How does the United States compare to the rest of the world? What are the barriers that pro se litigants face? And what are the first steps in determining how to address the justice gap?

A. *Access to Justice in America*

The World Justice Project measures and defines “access[ibility] [and] afford[ability] [of] civil justice” as “the accessibility and affordability of civil courts, including whether people are aware of available remedies; can access and afford legal advice and representation; and can access the court system without incurring unreasonable fees, encountering unreasonable procedural hurdles, or experiencing physical or linguistic barriers.”⁴⁵

Access to justice has been interpreted to mean that every person should have access to: representation, the advice of a lawyer, legal information to inform a person how to proceed with legal proceedings, a basic understanding of the law, fair treatment in court, and the ability to proceed with their case on equal footing to have the case evaluated on the merits and under the appropriate standards of the law.⁴⁶ In 2010, to address issues regarding access to justice, the

⁴³ Earl Johnson, Jr., was a California Court of Appeals Judge from 1982–2007. *Earl Johnson, Jr.*, CAL. CTS., <https://www.courts.ca.gov/documents/JohnsonE.pdf> (last visited Nov. 18, 2020).

⁴⁴ Hon. Tori R.A. Kricken, *The Justice Gap: The Impact of Self-Representation on the Legal System and Judicial System (and Beyond)*, WYO. LAW., Oct. 2018, at 16, 17 (citations omitted) (citing California Court of Appeals Justice Earl[] Johnson, Jr.).

⁴⁵ WORLD JUST. PROJECT, RULE OF LAW INDEX 14 (2020), https://world-justiceproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf.

⁴⁶ Andrew C. Budzinski, *Reforming Service of Process: An Access-to-Justice Framework*, 90 UNIV. COLO. L. REV. 167, 184 (2019); see also Luban, *supra* note 3, at 501–02. Luban suggests that while activists and scholars generally view “access to justice” as access to lawyers, there are other mechanisms to achieve justice.

Department of Justice established the Office for Access to Justice.⁴⁷ The three guiding principles for the Office for Access to Justice included: promoting accessibility (“eliminating barriers that prevent people from understanding and exercising their rights”); ensuring fairness (“delivering fair and just outcomes for all parties, including those facing financial and other disadvantages”); and increasing efficiency (“delivering fair and just outcomes effectively, without waste or duplication”).⁴⁸

In sum, to have access to justice is to have access, fairness, and efficiency when dealing with the legal system.⁴⁹ However, it is apparent that the United States continues to trail many other countries, ranking 108th out of 128 countries on “accessibility and affordability of civil justice.”⁵⁰ For comparison, the United States and Afghanistan have similar rankings on this scale of “accessibility and affordability of civil justice.”⁵¹

While sometimes a lawyer is required, this is not always the case. *See id.* at 501–08.

⁴⁷ Nick Rishwain, *How Courts Can Increase Access to Justice by Adopting Better Technology*, 36 GPSOLO 40, 40 (2019).

⁴⁸ *Id.*

⁴⁹ *See id.*

⁵⁰ *U.S. Rank on Access to Civil Justice in Rule of Law Index Drops to 108th out of 128 Countries*, NAT’L COAL. FOR A CIV. RIGHT TO COUNCIL (Mar. 10, 2020), http://civilrighttocounsel.org/major_developments/217. *See* WORLD JUST. PROJECT, *supra* note 45, at 28, 154. The World Justice Project publishes a Rule of Law Index which surveys the perception and experiences of households and experts on the rule of law, including perceptions of accessibility to justice. On the scale for accessibility and affordability of civil justice, the United States has dropped since 2015. This scale measures: “[T]he accessibility and affordability of civil courts, including whether people are aware of available remedies; can access and afford legal advice and representation; and can access the court system within incurring unreasonable fees, encountering unreasonable procedural hurdles, or experiencing physical or linguistic barriers.” *See id.* at 14.

⁵¹ *See id.* at 33, 154. The World Justice Project defines the rule of law with four universal principles: accountability; just laws; open government; and accessible and impartial dispute resolution. *Id.* at 10. The index measures a country’s performance across eight factors, including: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. *Id.* at 11. The United States has a global ranking of 36 out of 128 countries on civil justice overall. *Id.* at 28. However, on the sub-scale measurement of “accessibility and affordability of civil justice” the United States has scores similar to countries who are ranked in the bottom 10% of civil justice overall. *See id.* at 152.

Beyond defining access to justice, it is also necessary to evaluate the needs of low-income litigants before evaluating the AI solutions that are available. Evaluating access to justice and the needs of low-income individuals includes review of the current statistics available, the legal challenges low-income litigants face, and the everyday life barriers that low-income litigants may face.⁵²

The statistics reveal that providing “equal justice under law” to those who cannot afford counsel is an ongoing battle.⁵³ There is undisputed evidence that the justice gap has continued for the millions of Americans who fall within the definition of low-income.⁵⁴ In 2019, sixty million Americans fell below federal poverty guidelines,⁵⁵ a standard encompassing a family of four earning \$26,200 a year or less.⁵⁶

In 1994, the American Bar Association published its pinnacle study regarding the legal needs of low-income Americans.⁵⁷ The results of this study indicated that 70% of the legal needs of low-income Americans went unmet.⁵⁸ As mentioned, in 2017 it was reported that 71% of low-income households experienced at least one justiciable civil legal issue, and of those households, 86% indicated that they received inadequate or no professional assistance with their legal issue.⁵⁹ In 2017 it was also reported that: 41% of those households had a civil legal issue relating to health, 37% relating to consumer protection or finance, 29% relating to rental housing, 27% relating to children and custody, 26% relating to education, 23% relating to disability, and 22% relating to income maintenance.⁶⁰ These civil issues touch on a number of fundamental rights, which,

⁵² LSC, THE JUSTICE GAP, *supra* note 2, at 6–9.

⁵³ See Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1785–86 (2001) [hereinafter Rhode, *Access to Justice*].

⁵⁴ See Luban, *supra* note 3, at 496.

⁵⁵ LSC, THE JUSTICE GAP, *supra* note 2, at 6.

⁵⁶ 2020 Poverty Guidelines, U.S. DEP’T OF HEALTH & HUM. SERVS. (Jan. 21, 2020), <https://aspe.hhs.gov/2020-poverty-guidelines>.

⁵⁷ AM. BAR ASS’N, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS (1994), https://www.wisbar.org/aboutus/membership/Documents/WisTAFApp_J_ABA_Legal_need_study.pdf [hereinafter ABA, LEGAL NEEDS AND CIVIL JUSTICE]; see Luban, *supra* note 3, at 495–96.

⁵⁸ Luban, *supra* note 3, at 495. See ABA, LEGAL NEEDS AND CIVIL JUSTICE, *supra* note 57, at 17.

⁵⁹ LSC, THE JUSTICE GAP, *supra* note 2, at 27, 30.

⁶⁰ *Id.* at 23.

while protected, do not afford the right to counsel.⁶¹ For these low-income households, if they cannot afford a lawyer they must address these life altering matters on their own.⁶² As of 2017, “[seven] in [ten] low-income Americans with recent personal experience of a civil legal problem say [the] problem has significantly affected their lives.”⁶³ Often, without a lawyer, litigants may not recognize the collateral consequences associated with civil legal issues, or even the issues that are presented in their case.⁶⁴ This is concerning considering that issues relating to family, health, or education are deeply personal issues.⁶⁵ Accordingly, it is difficult for people to address these issues in a public forum, let alone attempt to conform to the procedural and substantive legal requirements to address them.⁶⁶

Knowing the statistics presents a daunting picture of what is at risk for those who cannot afford counsel. Yet, knowing that we cannot provide counsel in every civil case, determining methods to assist those without counsel is an equally daunting task. For someone like Julia, the barriers can be broken down into two broad categories: legal barriers and non-legal barriers.⁶⁷

B. *Legal and Non-Legal Barriers to Justice*

In every civil case there are administrative, substantive, and procedural legal issues that present themselves and need to be addressed

⁶¹ *See id.* at 9.

⁶² *See id.*

⁶³ *Id.* at 7.

⁶⁴ *See* Luban, *supra* note 3, at 504.

⁶⁵ *See id.*

⁶⁶ *See also* Rhode et al., *supra* note 19, at 3 (noting that in state courts at least one party is unrepresented in two thirds of cases); Michele N. Struffolino, *Taking Limited Representation to the Limits: The Efficacy of Using Unbundled Legal Services in Domestic-Relations Matters Involving Litigation*, 2 ST. MARY’S J. LEGAL MAL. & ETHICS 166, 197–98 (2012) (“In some states, as many as 80% of cases in family court involve at least one unrepresented party.”).

⁶⁷ *See generally* Sandefur, *What We Know*, *supra* note 10 (discussing civil legal needs of public and pointing to many reasons people do not take their civil justice issues to court). Sandefur discusses the “law-thick” world that we live in. This adds to the difficulties for pro se litigants given how common and routine matters are regulated. *See id.* at 446.

by a litigant.⁶⁸ Self-represented litigants “are prone to committing administrative, procedural and substantive errors”⁶⁹ However, the legal barriers that pro se litigants face go beyond procedural and substantive legal issues.

Even prior to being able to address the legal issue, litigants face other barriers that stymie their progress. For example, the legal language of lawyers, courts, and other legal professionals can create a barrier for pro se litigants.⁷⁰ Courts across the country have made efforts to assist pro se litigants by adopting plain language in their orders.⁷¹ This provides some alleviation to the barriers that pro se litigants face;⁷² however, it is not uniform and not available for every civil legal matter.⁷³

At the point the litigant enters the system he or she must determine: the appropriate documents to start the proceeding (if the plaintiff) or respond (if the defendant); what law is required to be pled in order to proceed; what evidence is required; and how to present the case in legal terms for the court’s understanding.⁷⁴ The pro se litigant must, at a minimum, understand what is required to meet the procedural and substantive legal requirements to navigate this process.⁷⁵

Starting with the procedural rules of the court, the failure to follow the correct procedure in civil cases, or appeals of civil cases, can result in dismissal of the litigant’s case or a finding of waiver.⁷⁶

⁶⁸ Ayelet Sela, *Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation*, 26 CORNELL J.L. & PUB. POL’Y 331, 334–36 (2016).

⁶⁹ *Id.* at 339.

⁷⁰ See Sandefur, *What We Know*, *supra* note 10, at 455–56.

⁷¹ *See id.*

⁷² *Id.* at 456.

⁷³ See Maria Mindlin & Katherine McCormick, *Plain Language Works for Pro Per Litigants*, TRANSCEND, https://www.transcend.net/library/legalCourts/PL_ProPerLitigants.pdf (last visited Nov. 18, 2020).

⁷⁴ Sandefur, *What We Know*, *supra* note 10, at 455.

⁷⁵ *See id.* Pennsylvania, the jurisdiction of Julia’s case, defines procedural and substantive law as follows: “substantive law is that part of the law which creates, defines and regulates rights, while procedural laws are those that address methods by which rights are enforced.” *Commonwealth v. Morris*, 771 A.2d 721, 738 (Pa. 2001).

⁷⁶ *See Sela*, *supra* note 68, at 337 (citations omitted).

By way of example, if Julia does not comply with the Pennsylvania procedural rules to initiate an appeal, her appeal may be dismissed.⁷⁷

In civil actions, a person has a right to have the merits of a case addressed.⁷⁸ Yet, since pro se litigants are prone to procedural errors, which can result in waiver or dismissal, it is difficult for a pro se litigant to ultimately have a case heard on the merits.⁷⁹ If Julia's case is dismissed, the merits of her claims for custody may not be heard as she cannot overcome the inappropriate denial of jurisdiction by the trial court.⁸⁰ Case law suggests that allowing procedural rules to prohibit cases from being decided on the merits can constitute a due process violation.⁸¹ For some procedural matters, the courts are less strict when it comes to the pleading requirements for pro se litigants, avoiding procedural dismissals when possible.⁸² However, no matter how relaxed the court approaches enforcement, procedural rules and laws still remain a major barrier for low-income individuals to overcome.⁸³ Revision of the procedural rules is unlikely to occur in the immediate future, necessitating the creation of alternatives to address these matters.⁸⁴

In addition to the difficulties pro se litigants have addressing procedural issues, there are also difficulties in addressing substantive legal issues.⁸⁵ Substantive legal issues include the merits of the case, such as the elements a plaintiff must prove to move forward

⁷⁷ See 210 PA. CODE §§ 105, 1925, 2188 (2020).

⁷⁸ Budzinski, *supra* note 46, at 190.

⁷⁹ See Sela, *supra* note 68, at 339.

⁸⁰ Budzinski, *supra* note 46, at 192.

⁸¹ *Id.* at 191–92. Budzinski, in citing to *Boddie v. Connecticut*, 401 U.S. 371, 379–80 (1971), notes that procedural rules must have balance. They are prohibited from creating an “unjustifiably high risk that meritorious claims will be terminated.” See *id.* at 191 (quoting *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435 (1982)). In *Boddie*, the Court held that it was a violation of the Due Process Clause for states not to have in place a fee-waiver system that would allow low-income litigants to waive the filing fee to get a divorce. The Court focused on the fact that there were no other means for individuals to get a divorce, thus, low-income individuals were denied their right to be heard. See *Boddie*, 401 U.S. at 381–83.

⁸² *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

⁸³ Budzinski, *supra* note 46, at 178–80.

⁸⁴ See *id.* at 186.

⁸⁵ Sela, *supra* note 68, at 333.

with an action, or an affirmative defense the defendant may raise.⁸⁶ A litigant's substantive errors may also result in a litigant failing to effectively present his or her case.⁸⁷ Failure to address each of the elements of the substantive legal issue, or to raise defenses to the same, will also result in a case being dismissed or a finding against the litigant.⁸⁸

Generally, lawyers have substantial expertise with court rules.⁸⁹ The question is: How can pro se litigants gain sufficient competence without access to a lawyer? Generally, information about the procedural and substantive requirements is available to pro se litigants, but access to the information does not mean the litigant can understand or deploy it properly.⁹⁰ When low-income litigants are unfamiliar with the procedural rules or cannot apply the facts of the case to the rules, they are less likely to obtain relief.⁹¹ Yet, this is not due to a defect in the litigant's claim, but it is instead a product of the overly-strict procedures and legal standards.⁹²

⁸⁶ See Howard M. Wasserman, *The Demise of "Drive-by Jurisdictional Rulings"*, 105 NW. U. L. REV. COLLOQUY 184, 184–85 (2011). Defining substantive and procedural law, Wasserman states that "substantive merits rules . . . control real-world conduct and function as rules of decision determining the validity and success of a plaintiff's claim for relief from a defendant over a particular transaction or occurrence" and "procedural, or 'claim-processing,' rules . . . determine how a court processes and adjudicates the claim for relief, and how the parties and the court behave within the litigation process." *Id.*

⁸⁷ See Koan Mercer, *"Even in These Days of Notice Pleadings": Factual Pleading Requirements in the Fourth Circuit*, 82 N.C. L. REV. 1167, 1183 (2004).

⁸⁸ See *id.* at 1181–82 (citing *Iodice v. United States*, 289 F.3d 270, 280 (4th Cir. 2002)). Citing the federal courts, "[d]ismissal of a complaint for failure to state facts supporting each of the elements of a claim is, of course, proper." *Iodice*, 289 F.3d at 281.

⁸⁹ See Budzinski, *supra* note 46, at 202–03.

⁹⁰ See Greiner et al., *supra* note 12, at 1123–24. As part of understanding how to deploy the information, the information must be relayed in plain language. Through a specific example regarding a tenant issue, Greiner shows how deployment can often be the main issue due to an individual's inability to negotiate, and even his or her struggle with emotions such as shame, fear, or hopelessness. See *id.* at 1124.

⁹¹ See Budzinski, *supra* note 46, at 186 (citing Sela, *supra* note 68, at 337). This is clearly seen in the differences in communication style between pro se litigants and lawyers or judges. Pro se litigants center around a narrative while lawyers and judges use "precise, element-driven application of facts to law." *Id.*

⁹² See *id.*

Legal barriers, including legal language, procedural and substantive law, and the ability to deploy legal information, are only part of the obstacles that pro se and low-income litigants face when dealing with legal matters. Non-legal barriers—such as financial, physical, and psychological barriers—also impede access to justice.⁹³ For example, many individuals do not even recognize they need legal assistance for a problem.⁹⁴ A common description that individuals give regarding their legal issues is that it is “part of life” and they feel that they do not need advice or assistance.⁹⁵ Unsurprisingly, studies show that millions of individuals struggle each year to address even minor legal issues.⁹⁶

Indeed, research has shown that low-income litigants are less likely than others to solve their issues through the legal system.⁹⁷ Often, doing nothing is a common course of action.⁹⁸ Similarly, civil justice problems may not be viewed as legal problems, as people are more likely to view them as “bad luck/part of life,” as an issue that is “private,” a “family/community” issue or simply one that does not require assistance.⁹⁹ People will, instead, seek access to systems that

⁹³ See J.J. Prescott, *Assessing Access-to-Justice Outreach Strategies*, 174 J. INST. & THEORETICAL ECON. 34, 38 (2018).

⁹⁴ Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 U. ARK. LITTLE ROCK L. REV. 721, 725 (2015).

⁹⁵ *Id.* Often individuals experiencing a civil legal matter do not view the matter as a legal concern to be addressed through the courts. See *id.*

⁹⁶ See Prescott, *supra* note 93, at 38.

⁹⁷ See Deborah L. Rhode & Scott L. Cummings, *Access to Justice: Looking Back, Thinking Ahead*, 30 GEO. J. LEGAL ETHICS 485, 487 (2017) (citing Sarah Sternberg Greene, *Race, Class and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1266–67 (2016)); Danielle Linneman, *Online Dispute Resolution for Divorce Cases in Missouri: A Remedy for the Justice Gap*, 2018 J. DISP. RESOL. 281, 293 (2018) (citing ACCESSING JUSTICE IN THE CONTEMPORARY USA, *supra* note 15).

⁹⁸ See Sandefur, *What We Know*, *supra* note 10, at 448. Sandefur states that, in cases involving money and housing problems, low-income individuals were more likely to do nothing about these problems than people who were not poor. *Id.* (citing Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, in TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112, 114 (Pascoe Pleasence et al. eds., 2007)).

⁹⁹ See Sandefur, *What We Know*, *supra* note 10, at 449 (citations omitted). The “Middle City” study, funded by the National Science Foundation and the American Bar Foundation, was conducted in 2013 and took its sample from

do not require lawyers or going to court, seeking answers from outside sources, friends, family, or the internet.¹⁰⁰ However, if a person does not utilize the legal system to address their issue, they are often left without any remedy.¹⁰¹ Ongoing evidence of this struggle to address legal issues in court includes the high volume of default judgments against unrepresented litigants.¹⁰² For example, default judgments against defendants in debt collection cases are a key area where litigants do not address their issues in court and, often, do not appear or respond.¹⁰³ If the defendant responded, appeared in court, or otherwise addressed the issue, these cases would often be dismissed.¹⁰⁴ A litigant's view of the legal system and its key players, such as lawyers and the courts themselves, further hinders the desire to solve legal problems through the court system.¹⁰⁵ The litigant may

residents of a middle-sized city in the Midwestern region of the United States. The city was chosen for its typicality of many U.S. cities in terms of its size and socioeconomic and demographic composition. The study asked respondents about ninety-eight specific civil justice situations. The study found that low-income individuals were about 30% more likely to report civil justice problems than those people in the top income quintile and were more likely to report negative consequences from their experiences, such as lost income, fear, and ill health. The study also found that low-income individuals were more likely to do nothing about their legal problems than were people who were not of low-income. *See id.* at 445–48.

¹⁰⁰ Schmitz, *supra* note 30, at 95; *see also* Jean Braucher, *An Informal Resolution Model of Consumer Product Warranty Law*, 1985 WIS. L. REV. 1405, 1405–07 (1985).

¹⁰¹ Schmitz, *supra* note 30, at 95 (quoting Rebecca L. Sandefur, *The Fulcrum Point of Equal Access to Justice: Legal and Nonlegal Institutions of Remedy*, 42 LOY. L.A. L. REV. 949, 966 (2009)).

¹⁰² *See* Prescott, *supra* note 93, at 34, 38.

¹⁰³ *See* Greiner et al., *supra* note 12, at 1138–39; URB. JUST. CTR., DEBT WEIGHT: THE CONSUMER CREDIT CRISIS IN NEW YORK CITY AND ITS IMPACT ON THE WORKING POOR 9–10 (Oct. 2007), http://cdp.urbanjustice.org/sites/default/files/CDP_Debt_Weight.pdf. In New York City civil court dealing with consumer debt cases, 80% of cases resulted in a default judgment when, in 99% of those cases, the plaintiffs did not meet their burden of proof. *Id.*

¹⁰⁴ *See id.* Based on admittedly incomplete data, Greiner observes that, if a defendant raised even a basic defense, the litigant would likely be successful in having the case dismissed as often the plaintiffs lack proof of issues such as the principal owed, interest rates, permissive charges and fees, or even the appropriate state law that governs the action. *Id.*; *see also* Dalié Jiménez, *Dirty Debts Sold Dirt Cheap*, 52 HARV. J. LEGIS. 41, 81–82 (2015).

¹⁰⁵ *See* Sandefur, *What We Know*, *supra* note 10, at 450.

even feel that a lawyer or the court cannot assist with the problem.¹⁰⁶ People often seek legal information from sources outside of the courts and lawyers, turning to churches, social workers, city agencies, or other non-legal resources.¹⁰⁷ In a recent study of people facing a civil justice situation, 22% took the issue to a person outside of their social network to discuss the issue, while of this 22%, only 8% contacted lawyers and only 8% had court involvement.¹⁰⁸

An obvious barrier for low-income individuals relates to the financial aspects of legal matters;¹⁰⁹ however, the financial barrier is not limited to an individual's ability to afford an attorney. Financial concerns include everything from filing fees to the inability to afford a constable to effectuate service.¹¹⁰ Further, low-income individuals may be unable to afford to take a day off from work to attend court or afford childcare during court proceedings.¹¹¹

While there is an assumption that the financial concerns of a low-income individual are the largest barrier to accessing justice, this is only one component of the non-legal barriers faced by a low-income individual.¹¹² Physical barriers and the formality of the legal system similarly hinder a low-income individual's ability to navigate the legal system.¹¹³ The court's location can dissuade a low-income litigant from pursuing his or her matter due to a lack of

¹⁰⁶ See Linneman, *supra* note 97, at 293.

¹⁰⁷ See Sandefur, *What We Know*, *supra* note 10, at 448.

¹⁰⁸ *Id.*; see also ACCESSING JUSTICE IN THE CONTEMPORARY USA, *supra* note 15, at 11; Raymond H. Brescia, *What We Know and Need to Know About Disruptive Innovation*, 67 S.C. L. REV. 203, 206 (2016).

¹⁰⁹ Budzinski, *supra* note 46, at 174.

¹¹⁰ *Id.* at 203–04.

¹¹¹ See *id.* at 177.

¹¹² Sandefur, *What We Know*, *supra* note 10, at 448–50. Sandefur notes that, despite conventional wisdom, the cost of legal assistance is not the main reason why people do not seek it. In fact, many people in the studies Sandefur examined did not seek legal assistance with their issue because they did not believe they needed it. See *id.*

¹¹³ Greiner et al., *supra* note 12, at 1130. Greiner discusses the emotional effect that the legal system's mundane details—such as where to sit and who will speak when—can have on an unrepresented litigant attending their first court hearing. Even though missteps in these details are slight and easily fixed, they can have a large impact on a litigant who is already emotionally vulnerable. This leads to “increased cognitive load” for the litigant who is simultaneously trying to remember legal arguments as well as maneuver the court's minor formalities and procedural aspects. *Id.*

available transportation, the cost of transportation, or even issues related to employment.¹¹⁴ The minor formalities of addressing a legal issue in court, such as where to sit in a courtroom, can also create a barrier.¹¹⁵ This can impair a person's confidence in presenting his or her legal matter, adding to an already full list of issues to address, and negatively impacting the individual's ability to concentrate on addressing the legal problem.¹¹⁶

Psychological factors that can create barriers include fear of speaking to the judge or in public, fear of the outcome and its potential consequences, as well as issues in the litigant's everyday life.¹¹⁷ Further, prior negative experiences with lawyers or the court may impact a litigant's ability to effectively seek out available attorney resources.¹¹⁸ With other problems affecting the litigant potentially in the background, such as how to make ends meet on a day-to-day basis, it can be difficult for low-income individuals to address their legal issues.¹¹⁹ Everyone has a limited capacity to handle issues arising in daily life.¹²⁰ For those living with issues related to poverty, this can be especially difficult, as it can take significant energy to address primary concerns such as food, shelter, transportation, and employment.¹²¹ These concerns may fill the "available bandwidth"

¹¹⁴ See Budzinski, *supra* note 46, at 177–78; see also Prescott, *supra* note 93, at 38.

¹¹⁵ Greiner et al., *supra* note 12, at 1130; see also Prescott, *supra* note 93, at 38.

¹¹⁶ See Greiner et al., *supra* note 12, at 1130. Greiner found that there are very few self-help-oriented materials that address these relatively mundane issues. *Id.*

¹¹⁷ See Prescott, *supra* note 93, at 38.

¹¹⁸ NATALIE ANN KNOWLTON ET AL., CASES WITHOUT COUNSEL: RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT 21 (2016).

¹¹⁹ See Greiner et al., *supra* note 12, at 1128.

¹²⁰ See *id.* See generally SENDHIL MULLAINATHAN & ELDAR SHAFIR, SCARCITY: WHY HAVING TOO LITTLE MEANS SO MUCH 215 (2013). Mullainathan and Shafir explore the effects that a scarcity of money and time have on people and lead them to make choices that are ultimately against their own interests. The book delves into how low-income individuals are forced to make decisions and choose between things that the more well-off do not. The book also explores how a lack of resources can strain an individual's bandwidth and inhibit his or her ability to function and make decisions. See generally *id.* at 215–20.

¹²¹ Greiner et al., *supra* note 12, at 1128. Greiner points out that the additional concerns faced by the impoverished creates an overtaxed bandwidth resulting in legal issues getting pushed to the backburner for those facing a civil legal issue. *Id.*

of those living in poverty and leave little room for their civil litigation matters.¹²² Even if a low-income individual has the “available bandwidth” to address legal matters, the matter itself can trigger feelings of guilt or hopelessness, especially if it brings the individual embarrassment.¹²³ These psychological barriers can significantly hinder an individual’s ability to address his or her legal needs.¹²⁴

The litigation process itself can cause problems for the unrepresented low-income individual that do not affect those who have counsel.¹²⁵ Often, low-income litigants cannot overcome the non-legal barriers to seek the help they need or to address their legal issue on their own.¹²⁶ Given the breadth of barriers that a low-income individual can face, finding ways to overcome these barriers requires evaluating all available options, including the use of AI.

C. Current Non-AI Solutions Addressing the Justice Gap

Given the ongoing need, new programs are regularly developed to assist those who cannot afford counsel. The programs provide everything from full representation to self-help materials.¹²⁷ Four different points for comparison include: (1) efforts to create “Civil Gideon”, or a right to representation in civil legal matters;¹²⁸ (2)

¹²² *Id.* (“Low bandwidth ‘means that you have fewer mental resources to assert self-control.’” (quoting MULLAINATHAN & SHAFIR, *supra* note 120, at 158)).

¹²³ *Id.* at 1124; *see also* Sandefur, *The Importance of Doing Nothing*, *supra* note 98, at 123, 126–27.

¹²⁴ *See* Greiner et al., *supra* note 12, at 1129–30.

¹²⁵ *See* Kricken, *supra* note 44, at 19. The impact of a lack of representation is not only felt by the litigant but also the court system. A pro se litigant can impact court personnel and resources. The litigant may cause delays in the progress of cases and encumber court resources. Often, pro se litigants ask for assistance directly from the court and its staff, which creates a situation where the court could be viewed as partial and, accordingly, the litigant does not receive the information. *Id.*

¹²⁶ *See* Budzinski, *supra* note 46, at 177–78.

¹²⁷ *See* Rhode et al., *supra* note 19, at 4–5. In outlining the available solutions to address the justice gap, Rhode notes that they vary greatly but generally fall on a spectrum from involving a lawyer’s assistance to self-help materials that walk litigants through a process enabling them to address the issues on their own. *See id.*

¹²⁸ “Civil Gideon” describes the concept that constitutional guarantees of due process and the right to be heard that arise whenever an individual’s fundamental rights are at issue should extend to civil legal matters. It stems originally from the

legal help, up to full representation, in the form of pro bono attorneys or legal aid offices;¹²⁹ (3) limited legal advice from a professional or other unbundled legal services;¹³⁰ and (4) self-help materials.¹³¹ The primary difference between these pro se solutions is the level of lawyer involvement. Program development in these arenas has been constant given the barriers that low-income litigants face.¹³² All of these options have had setbacks, specified benefits, and limitations.

Many argue that in order to achieve justice for an individual, every litigant should be provided with counsel.¹³³ This is due to the belief that without a lawyer a person will lose valuable rights.¹³⁴ This notion flows from the fact that, since 1963, defendants in most criminal cases have been entitled to a court appointed attorney.¹³⁵ The basis for guaranteed representation is the significant fundamental right of liberty that is at stake in criminal cases.¹³⁶ Yet, significant

constitutionally protected right to representation in criminal actions (due to a fundamental right of liberty) as provided under *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

¹²⁹ Rhode et al., *supra* note 19, at 4. Some scholars argue that more lawyers are not the answer to address the justice gap. Instead, as Barton & Rhode argue, combining legal assistance with technology can be an effective means to provide pro se litigants with the help they need. See Barton & Rhode, *Access to Justice*, *supra* note 19, at 958.

¹³⁰ Rhode et al., *supra* note 19, at 5. Unbundled legal services generally come in the form of a mix of in-person professional legal advice, document preparation assistance, and providing self-help materials. *Id.*

¹³¹ Greiner et al., *supra* note 12, at 1121; see also Rhode et al., *supra* note 19, at 5.

¹³² See Berner et al., *supra* note 13, at 96, 104.

¹³³ See Luban, *supra* note 3, at 499. But see Barton, *Against Civil Gideon*, *supra* note 21, at 1233–34, 1251. Barton's article highlights the tension between providing lawyers and access to justice and discusses the challenges of implementing "Civil *Gideon*", including lawyer caseload, ineffective assistance of counsel, and funding, among others. Barton further criticizes the argument that more lawyers are the solution to the justice gap, and instead argues for a systemic change of the courts. Barton argues that a simplification of legal procedures could achieve the same goals without the logistical and jurisprudential pitfalls of "Civil *Gideon*," and the best option is to introduce technology in the dispute resolution process. See *id.* at 1272–74.

¹³⁴ See David Udell, *Building the Access to Justice Movement*, 87 *FORDHAM L. REV. ONLINE* 142, 147 (2018–2019).

¹³⁵ See *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

¹³⁶ *Id.* at 341, 343.

rights are also at stake in civil cases, including rights that extend to basic human needs such as housing, medical care, employment, child custody, and more.¹³⁷ However, there is no federally recognized right to counsel in civil cases.¹³⁸ Accordingly, if a litigant cannot afford a lawyer, they are not guaranteed a lawyer.¹³⁹ The primary benefit supporting the creation of “Civil Gideon” is that providing lawyers to all litigants would address the procedural and substantive legal barriers faced by pro se litigants.¹⁴⁰ For these reasons, there are many scholars who argue for the necessity of “Civil Gideon” and the civil right to counsel; however, there are some scholars that raise concerns about the creation of a “Civil Gideon.”¹⁴¹

Concerns stem from the systemic problems that exist with the implementation of the right to counsel in criminal cases.¹⁴² Indeed, the criminal justice system has faced a number of challenges providing counsel for defendants.¹⁴³ Scholars have documented that, while approximately \$100 billion is spent annually on criminal justice in the United States, only 2–3% of these monies go to indigent defense.¹⁴⁴ In addition to funding problems, there is a case load

¹³⁷ Udell, *supra* note 134, at 142.

¹³⁸ LSC, THE JUSTICE GAP, *supra* note 2, at 9.

¹³⁹ *Id.* at 7, 9. In these civil cases you could have your parental rights terminated, lose custody of your children, lose your home, lose the right to income, lose medical benefits, the right to education, and more. *Id.* at 7. Some states have determined that even if there is not a federally protected right to counsel, there is a state constitutional right to counsel for the civil matter in cases where the right at stake is significant. Specifically, this can be seen in the right to counsel in cases involving the termination of parental rights in Pennsylvania. 23 PA. CONS. STAT. § 2313 (2020).

¹⁴⁰ See Russel Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37, 39 (2010).

¹⁴¹ See Barton, *Against Civil Gideon*, *supra* note 21, at 1250–51; see also *Turner v. Rogers*, 564 U.S. 431, 448 (2011). In 2011, the Supreme Court addressed the ongoing push for legal representation in civil cases where fundamental interests are at stake in *Turner v. Rogers*. *Id.* At 431. The Court held that a person is not entitled to free representation in a civil contempt case involving child support as long as the court provides sufficient alternative procedural safeguards for the defendant. Accordingly, even in a civil matter where incarceration is a possibility, a defendant has no right to counsel. *Id.* at 448.

¹⁴² See Barton, *Against Civil Gideon*, *supra* note 21, at 1228.

¹⁴³ See *id.* at 1251.

¹⁴⁴ *Id.* (citing DEBORAH L. RHODE, ACCESS TO JUSTICE 123 (2004)).

problem.¹⁴⁵ In the early 2000s, in states ranging from Minnesota to Ohio, the average caseload of a public defender was around 600 cases per attorney per year, resulting in less than four hours to spend on each case.¹⁴⁶ Accordingly, some argue that putting “Civil *Gideon*” into effect would result in overburdened and ineffective counsel, providing a scenario where civil legal rights are not truly protected.¹⁴⁷

Regardless, even if “Civil *Gideon*” existed, it would not eliminate all of the barriers that low-income individuals face in the legal system; providing a lawyer does not address any of the non-legal barriers that confront low-income litigants.¹⁴⁸ “Civil *Gideon*” would still require that low-income litigants: recognize their issue as a legal one; be willing to contact and utilize a lawyer and their services; have transportation and time to meet with their attorney; and have the bandwidth to deal with their legal issues in a legal setting. Even if “Civil *Gideon*” would assure that the procedural and substantive legal issues that low-income litigants face are protected and addressed properly, the lack of judicial support for “Civil *Gideon*,” concerns regarding its cost and effectiveness, and the lack of ability to address the non-legal barriers require the consideration of other options.¹⁴⁹

A similar solution to “Civil *Gideon*” that is currently offered for low-income litigants is to provide full representation by having pro bono counsel or a legal aid attorney handle the case.¹⁵⁰ In general, this solution provides full service and more involvement from a lawyer to address the civil justice issues than other currently utilized pro se solutions.¹⁵¹ While this solution is generally supported and has the potential to address the procedural and substantive barriers that litigants face, other issues arise such as the availability of attorneys and cost.¹⁵²

¹⁴⁵ See *id.* at 1251–52.

¹⁴⁶ See *id.* at 1252–53.

¹⁴⁷ *Id.* at 1231, 1251.

¹⁴⁸ See Budzinski, *supra* note 46, at 184–85.

¹⁴⁹ *Id.* at 1231–32, 1274. See Budzinski, *supra* note 46, at 184.

¹⁵⁰ See Rhode et al., *supra* note 19, at 4–6.

¹⁵¹ See *id.*

¹⁵² See Sandefur, *What We Know*, *supra* note 10, at 453, 455, 459.

Pro bono activity by lawyers is formally included as part of the Model Rules of Professional Conduct (“Model Rules”).¹⁵³ Model Rule 6.1 provides that every lawyer has a professional responsibility to provide legal services to those who are unable to pay and that a lawyer should aspire to render at least fifty hours of pro bono legal services per year.¹⁵⁴ However, according to a self-reporting American Bar Association (“ABA”) survey, only one-third of attorneys reported that they meet the aspirational standard outlined in Model Rule 6.1.¹⁵⁵ One-fifth of the attorneys who responded to the survey indicated that they did no pro bono work at all.¹⁵⁶ A startling aspect of this study is that the response rate to the survey was under 1% of attorneys in 2013.¹⁵⁷ It is likely that the number of attorneys providing pro bono services to low-income clients is even lower when considering that those who replied are likely the ones who participated in pro bono activities given the self-reporting nature of the survey.¹⁵⁸ Additionally, fewer than 17% of attorneys participate in an organized pro bono program; and the largest law firms, with the greatest resources, are among the worst offenders, with the majority of attorneys providing less than twenty hours of service per year.¹⁵⁹

Ongoing efforts continue with the goal to recruit attorneys to increase pro bono participation for civil legal issues. Some efforts have been focused on law schools by encouraging students to engage in pro bono activities prior to graduating from law school.¹⁶⁰

¹⁵³ See MODEL RULES OF PRO. CONDUCT r. 6.1 (AM. BAR ASS’N 2020).

¹⁵⁴ *Id.*

¹⁵⁵ Rhode & Cummings, *supra* note 97, at 493 (citing AM. BAR ASS’N. STANDING COMM. ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS vi (2013) [hereinafter SUPPORTING JUSTICE III]).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* (citing SUPPORTING JUSTICE III, *supra* note 155, at 2).

¹⁵⁸ See SUPPORTING JUSTICE III, *supra* note 155, at A-2.

¹⁵⁹ Rhode & Cummings, *supra* note 97, at 493.

¹⁶⁰ Rima Sirota, *Making CLE Voluntary and Pro Bono Mandatory: A Law Faculty Test Case*, 78 LA. L. REV. 547, 585–86 (2017) (quoting ALL. FOR EXPERIENTIAL LEARNING IN L., *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. 1, 78 (2015)). To promote student pro bono activities, and with the ongoing concerns about having “practice ready” graduates, the ABA requires law schools to provide “substantial” pro bono opportunities for students. See *id.* at 586; see also

Some states require the completion of pro bono work prior to being eligible to be admitted to the state bar.¹⁶¹ Even with these efforts, there are still not enough pro bono attorneys to address the civil legal needs of low-income individuals.¹⁶²

Given the lack of pro bono attorneys available to meet the needs of low-income litigants, another avenue to provide assistance consists of legal aid offices staffed with attorneys who provide full legal services.¹⁶³ However, these legal service organizations often lack the resources necessary to meet all of the needs of low-income litigants.¹⁶⁴ In 2017, LSC reported the following shortcomings: of the approximately 1,700,000 civil legal problems presented to legal aid organizations, 41% received no assistance; 54% of those that did not receive assistance were over the income guidelines; and 21–31% of those receiving assistance only received partial assistance.¹⁶⁵ Legal aid organizations simply lack the resources to address the needs of everyone.¹⁶⁶

The lack of funding leads to a stark contrast, as “[t]he nation has only about one legal aid lawyer or public defender for every [4,300] persons below the poverty line compared with a ratio of one lawyer for every 380 Americans in the population generally.”¹⁶⁷ Two-thirds of the funding for civil legal aid comes from the federal government,

Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, 41 FORDHAM URB. L.J. 1227, 1255 (2014) (quoting ASS’N OF AM. LAW SCHS., COMM’N ON PRO BONO & PUB. SERV. OPPORTUNITIES IN LAW SCHS., LEARNING TO SERVE: A SUMMARY OF THE FINDINGS AND RECOMMENDATIONS OF THE AALS COMMISSION ON PRO BONO AND PUBLIC SERVICE IN LAW SCHOOLS 2 (1999)). The American Association of Law Schools recommends that schools offer “well supervised pro bono opportunit[ies]” that are designed to encourage “the great majority of students” to participate. *Id.*

¹⁶¹ See, e.g., N.Y. COMP. CODES R. & REGS. tit. 22, § 520.16. New York requires fifty hours of pro bono work prior to admission to the bar. *Id.*

¹⁶² See LSC, THE JUSTICE GAP, *supra* note 2, at 10.

¹⁶³ See *Who We Are*, *supra* note 16.

¹⁶⁴ Brescia et al., *supra* note 17, at 590; see also Gilliam K. Hadfield & Jamie Heine, *Life in the Law-Thick World: Legal Resources for Ordinary Americans*, in BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA 21, 34–35 (Samuel Estreicher & Joy Radice eds. 2016).

¹⁶⁵ Budzinski, *supra* note 46, at 181–82; LSC, THE JUSTICE GAP, *supra* note 2, at 39, 43.

¹⁶⁶ See Budzinski, *supra* note 46, at 181; see also LSC, THE JUSTICE GAP, *supra* note 2, at 10.

¹⁶⁷ Rhode, *Access to Justice*, *supra* note 53, at 1788.

with government funding in 2018 equaling \$410 million.¹⁶⁸ To meet the needs of low-income litigants, \$3–4 billion would be required.¹⁶⁹

If funding and resources were available, these solutions would also alleviate the barriers of procedural and substantive law by providing full representation.¹⁷⁰ However, similar to the remaining barriers with “Civil *Gideon*,” few of the non-legal barriers that a low-income litigant faces are alleviated by these solutions and other solutions may be more accessible for individuals.¹⁷¹

Given the difficulties with providing full legal representation to low-income individuals, litigants often turn to limited representation mechanisms for assistance.¹⁷² Limited legal services, also referred to as unbundled legal services, are one of the primary methods of assistance for those who cannot afford counsel or for when free counsel is unavailable.¹⁷³ Limited legal services provide less than full representation to clients with the understanding that the lawyer and client agree that the lawyer will perform one legal task or a subset of discrete legal tasks required for a legal matter.¹⁷⁴ These types of services can include drafting letters, complaints, helping to complete legal forms, making telephone calls, and providing brief

¹⁶⁸ LEGAL SERVS. CORP., BUDGET REQUEST FISCAL YEAR 2020, at 1 (2019), <https://lsc-live.app.box.com/s/vhmgkumcyxr4q6htd7kmgmlfuf7i46oj>; Rhode, *Access to Justice*, *supra* note 53, at 1788. This is a reduction from the peak amount of funding in 1980 which was at \$771 million for the year. See Rachel M. Zahorsky, *Everything on the Table: LSC Representatives Look to ABA for Help in Exploring New Strategies for Meeting Legal Needs of the Poor*, 98 ABA J. 60, 60 (2012); see also Amanda Robert, *With LSC Under Threat for Third Year, ABA President Asks Congress to Increase Legal Aid Funding*, ABA (Mar. 18, 2019, 3:40 PM), <http://www.abajournal.com/news/article/aba-president-responds-to-trumps-plan-to-cut-lsc-funding-for-third-time-in-three-years>.

¹⁶⁹ Rhode, *Access to Justice*, *supra* note 53, at 1788 (citing ACCESS TO JUST. WORKING GRP., REPORT TO THE STATE BAR OF CALIFORNIA 4–6 (1996)).

¹⁷⁰ See *Who We Are*, *supra* note 16.

¹⁷¹ See LSC, THE JUSTICE GAP, *supra* note 2 at 33–34.

¹⁷² See Greiner et al., *supra* note 12, at 1121 (citing Herbert M. Kritzer, *The Professions Are Dead, Long Live the Professions: Legal Practice in a Postprofessional World*, 33 LAW & SOC’Y REV. 713, 745–47 (1999)).

¹⁷³ See Rhode et al., *supra* note 19, at 5.

¹⁷⁴ See *id.* at 5–6; see also D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 904–05 (2013) [hereinafter *The Limits of Unbundled Legal Assistance*].

advice.¹⁷⁵ Most states have some formal program that offers limited legal services.¹⁷⁶ These services are offered by law school clinical programs, hotlines, bar associations, and pro bono centers, or they are housed in courts in the form of self-help centers.¹⁷⁷ An example of a very traditional limited legal service program is one that was developed by MidPenn Legal Services in Pottsville, Schuylkill County, Pennsylvania.¹⁷⁸ The program assists low-income individuals complete a divorce in situations where the parties have no marital assets or debts.¹⁷⁹ An attorney and staff member meet with a potential client to answer questions, explain the process, and assist with the completion of a divorce complaint and other necessary paperwork.¹⁸⁰ MidPenn then serves the divorce complaint and files the same with the court.¹⁸¹ This process uses approximately one to two hours of a MidPenn attorney's time and most litigants receive a divorce decree within a couple of months.¹⁸² In general, limited legal services are an effective middle ground of lawyer involvement between full representation and the use of self-help materials.

Limited legal service models have faced challenges during their development. Ethical concerns such as conflict of interest issues, the duty of candor to the court, zealous advocacy, and even potential contradictions with the rules of civil procedure have arisen during the development of these programs.¹⁸³ Over time, individual states

¹⁷⁵ Rhode et al., *supra* note 19, at 5.

¹⁷⁶ *Id.* (citing JOHN M. GREACEN, MICH. ST. BAR FOUND., RESOURCES TO ASSIST SELF-REPRESENTED LITIGANTS: A FIFTY-STATE REVIEW OF THE "STATE OF THE ART" 44 (2011)).

¹⁷⁷ *See id.* These programs assist approximately 3.7 million people a year. *Id.* Also, these services are effective. Rhode's 2016 study found that legal advice combined with guidance for form completion is one of the most effective methods of assistance. Some of the study participants even indicated that they wish they had more forms with guidance. *See id.* at 12, 18–20; *see also* Mansfield, *supra* note 25, at 1390, 1393.

¹⁷⁸ Berner et al., *supra* note 13, at 103–04.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *See The Limits of Unbundled Legal Assistance, supra* note 174, at 912–13.

have addressed these concerns by expressly permitting limited legal services and modifying the Model Rules when necessary.¹⁸⁴

Ghostwriting, a form of limited legal services, faced a number of challenges.¹⁸⁵ The degree to which an attorney can “ghostwrite” or assist in the background of a case has long been debated.¹⁸⁶ The federal courts have historically held a restrictive view of ghostwriting.¹⁸⁷ The concern raised regarding ghostwriting was that it created an unfair advantage for pro se litigants due to the lessened standards placed on them by the court.¹⁸⁸ Federal courts employ looser standards when evaluating the pleadings of unrepresented parties.¹⁸⁹ As such, federal courts took the position that ghostwriting that extends to a level of significance should be disclosed to the court.¹⁹⁰ Although ghostwriting is frowned upon by the federal courts, it is generally permissible so long as appropriate disclosures occur.¹⁹¹ The

¹⁸⁴ *Id.* See, by way of example, ABA Model Rule of Professional Conduct 6.5: Nonprofit & Court-Annexed Limited Legal Services Programs, which provides:

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

MODEL RULES OF PRO. CONDUCT r. 6.5 (Am. Bar Ass’n 2020). Model Rules 1.7, 1.9, and 1.10 relate to conflicts of interest. *See* MODEL RULES OF PRO. CONDUCT r. 1.7, 1.9, 1.10 (Am. Bar Ass’n 2020).

¹⁸⁵ *See* Spahn, *supra* note 37, at 44–53. Ghostwriting is a practice in which “a member of the bar represents a pro se litigant informally or otherwise, and prepares pleadings, motions, or briefs for the pro se litigant which the assisting lawyer does not sign” *Id.* at 51 (citing *In re Mungo*, 305 B.R. 762, 767 (Bankr. D. S.C. 2003)).

¹⁸⁶ *Id.* at 44, 45, 49.

¹⁸⁷ *Id.* at 49.

¹⁸⁸ *Id.* at 51–52.

¹⁸⁹ *See* *Duran v. Carris*, 238 F.3d 1268, 1271–73 (10th Cir. 2001).

¹⁹⁰ Spahn, *supra* note 37, at 49–53.

¹⁹¹ *See id.* at 53.

goal of this disclosure is to assure that lawyers are held accountable, and cannot hide behind ghostwriting when it comes to their professional ethics and responsibility.¹⁹² In some respects, the court has created a middle ground to encourage assistance when necessary while assuring that the responsibilities of a lawyer are maintained.¹⁹³ The ABA takes a liberal approach to how lawyers can assist low-income litigants.¹⁹⁴ The ABA originally took the position that only limited ghostwriting was appropriate, as it gave the false appearance that the pro se litigant lacked assistance when they received substantial assistance in the background.¹⁹⁵ However, in 2007, the ABA took the position that “the fact that a litigant submitting papers to a tribunal on a pro se basis has received legal assistance behind the scenes is not material to the merits of the litigation. Litigants . . . may do so without revealing that they have received legal assistance in the absence of a law or rule requiring disclosure.”¹⁹⁶

A new area of limited legal services gaining traction is the concept of non-lawyer paraprofessionals providing these services.¹⁹⁷ Washington State developed a program allowing for licensed legal technicians to provide limited legal services for very specific legal issues that do not require full legal training.¹⁹⁸ Other countries permit non-lawyers to provide advice and assistance with routine document preparation.¹⁹⁹ While some consider this service a form of the unauthorized practice of law, there have been significant strides to

¹⁹² See *id.* at 51.

¹⁹³ See *id.* at 50–51.

¹⁹⁴ *Id.* at 44.

¹⁹⁵ See ABA Comm. on Ethics & Pro. Resp., Informal Op. 1414 (1978).

¹⁹⁶ ABA Comm. on Ethics & Pro. Resp., Formal Op. 446 (2007).

¹⁹⁷ See Rebecca M. Donaldson, *Law by Non-Lawyers: The Limit to Limited License Legal Technicians Increasing Access to Justice*, 42 SEATTLE U. L. REV. 1, 6–8 (2018).

¹⁹⁸ *Id.*; Luban, *supra* note 3, at 508–09.

¹⁹⁹ Deborah L. Rhode, *What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers*, 67 S.C. L. REV. 429, 433 (2016) [hereinafter Rhode, *What We Know*]. Rhode references a study evidencing that non-lawyer’s assistance with routine documents in the United Kingdom on issues of welfare benefits, housing, and employment outperformed lawyers. *Id.*

allow for paraprofessionals to assist in very limited circumstances.²⁰⁰

When it comes to the effectiveness of limited legal service programs, low-income individuals report generally being satisfied with the services that they received and find them effective.²⁰¹ Programs such as these alleviate both legal and non-legal barriers that low-income litigants face. Specifically, these services help litigants overcome some of the procedural barriers by offering document preparation combined with some advice from a lawyer, law student, or, in some circumstances, a paraprofessional.²⁰² This assistance is significant, given the procedural difficulties presented in legal document

²⁰⁰ *Id.* at 431–32. While definitions of the unauthorized practice of law are rather amorphous, generally speaking it is the provision of legal advice and/or representation, by either an attorney not licensed in the jurisdiction or by a non-lawyer. *See Rhode & Ricca, supra* note 35, at 2588–89.

²⁰¹ Rhode et al., *supra* note 19, at 7. Researchers at Stanford Law School conducted a non-randomized study in which they were provided the contact information for individuals who had sought assistance with family law matters and who either received limited services or no services at all. The researchers chose to focus on family law matters because of the field’s high level of unmet need. The program chosen was the Alaska Legal Services Corporation, in part because of the program director’s willingness to work with the researchers, as well as the ideal population sample Alaska provided, given the area’s geographic size. *Id.* at 9–10.

The researchers then conducted telephone interviews with the selected individuals to gauge their satisfaction with the assistance they received. *Id.* at 10. The service individuals found most helpful was assistance with filling out forms as opposed to receiving legal advice only. Many people who received advice only reported that they had difficulty understanding the advice and lacked the ability to follow through with it. *Id.* at 11–12. Those who received hands-on assistance with filling out forms, on the other hand, reported much higher levels of satisfaction with the program. Indeed, those who received assistance with filling out forms had significantly higher positive outcomes with their case than those who received advice only. *Id.* at 12–13. Ultimately, the study found that hands-on assistance with form completion and direct contact with legal staff were the most effective means of assisting individuals, rather than simply providing advice only. *Id.* at 18.

Considering, in light of the disparity that existed between rural and non-rural residents in regard to the ability to obtain helpful legal assistance, Rhode further recommended the use of online services that help with form completion to reach those rural residents who are unable to seek help in person, extending the reach limited legal services have in assisting those in need. *Id.*

²⁰² *See id.* at 5, 20.

preparation.²⁰³ Advice, often offered in conjunction with services like document preparation, assists with overcoming the substantive legal issues by preparing a litigant for court even if an attorney is not present with them for a trial or hearing.²⁰⁴ There is evidence that if individuals understand and follow the advice they receive from limited legal services, they obtain more positive outcomes.²⁰⁵

This solution alleviates some non-legal barriers, but others remain. Litigants utilizing a limited legal service, over full representation from an attorney, often feel they are able to address the steps of the legal issue separately and feel more in control of the matter.²⁰⁶ With respect to the emotional toll of court, the services can help a litigant prepare for court, providing confidence and demystifying the mundane aspects of litigation, such as where to sit or how the process works once the individual arrives at the courthouse. Additionally, given their limited nature, these services take less time away from the low-income litigant, making it easier to accommodate work schedules and childcare issues.²⁰⁷

Recognizing an issue as a legal matter remains a barrier for this solution. To seek out a limited legal service, an individual must first recognize they have a legal issue.²⁰⁸ Non-legal barriers such as available “bandwidth” and having transportation remain barriers for the limited legal service model. Despite the limitations that arise, limited legal services provide almost four million people a year with a resource that helps both the legal and non-legal barriers facing low-income litigants.²⁰⁹

The last non-AI pro se solution to explore is one where no attorney assistance is provided as individuals utilize self-help materials on their own.²¹⁰ Self-help materials, in the traditional sense, are materials available in print at locations including courts, bar

²⁰³ See Rhode, *What We Know*, *supra* note 199, at 430.

²⁰⁴ See Rhode et al., *supra* note 19, at 18.

²⁰⁵ *Id.*

²⁰⁶ See Berner et al., *supra* note 13, at 97, 101–02.

²⁰⁷ See, e.g., *id.* at 103–04.

²⁰⁸ See COMM’N ON THE FUTURE OF LEGAL SERVICES, AM. BAR ASS’N, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 8 (2016), https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSR-report_FNL_WEB.pdf.

²⁰⁹ Rhode et al., *supra* note 19, at 5.

²¹⁰ See Greiner et al., *supra* note 12, at 1121.

associations, public libraries, and neighborhood centers.²¹¹ The materials assist litigants by providing step-by-step guides that aid the individuals in addressing the legal matters on their own.²¹²

These guides are currently the dominant form of assistance that low-income litigants receive.²¹³ This is primarily the result of the non-legal barriers that they alleviate. Indeed, these materials are often available free of charge, thereby eliminating financial concerns.²¹⁴ Individuals can utilize the materials to help determine whether their issues are legal and not something that just happens as part of life.²¹⁵ The materials often address concerns about access because they can be obtained without requiring transportation to an office as they are often available online, and can help an individual understand what will occur at the courthouse.²¹⁶

One of the complications with this model is the difficulty of drafting user-friendly self-help materials.²¹⁷ There are multiple steps when determining how to draft self-help materials and how to make them available to those in need of assistance. Self-help materials must be drafted in plain language.²¹⁸ Because the self-help materials provide significant legal information, they must be designed in a digestible manner.²¹⁹ The design of the materials is particularly important to convey the necessary information.²²⁰ Layout,

²¹¹ *Id.* Relying on these types of environments to obtain legal information became problematic as the United States experienced the pandemic of COVID-19. Not only did courts close to the public but also libraries and churches. With these closures, low-income individuals no longer had the ability to obtain resources in person and only had technology-based options for legal information as the stay-at-home orders went into effect across the county. See DANIELLE E. HIRSCH, NAT'L CTR. FOR STATE CTS., COMING TO COURT FOR SELF-HELP DURING COVID19: SIX WAYS TO KEEP COURT USERS AND STAFF SAFE 2–3 (July 2020), https://www.ncsc.org/_data/assets/pdf_file/0019/42076/Coming-to-Court-for-Self-Help-During-COVID-19-Six-Ways-to-Keep-Court-Users-and-Staff-Safe.pdf.

²¹² See Greiner et al., *supra* note 12, at 1132–33.

²¹³ *Id.* at 1121.

²¹⁴ See *id.* at 1122–23.

²¹⁵ See *id.* at 1149–50.

²¹⁶ See *id.* at 1123, 1149.

²¹⁷ See *id.* at 1123. User-friendly means that “[a] lay would-be user can successfully use the materials to advance his or her cause” *Id.*

²¹⁸ *Id.* at 1123–24.

²¹⁹ See *id.*

²²⁰ See *id.* at 1133–35.

organization, and visual imagery are used together to make the materials effective.²²¹ Often, while the self-help materials are well drafted and provide the necessary information, litigants have difficulty deploying the information effectively.²²² The difficulties in deployment relate back to the psychological barriers, including emotions of fear, guilt, and hopelessness.²²³

Initially, self-help materials were viewed as providing a disruption to the legal field, similar to the impact of modern technology.²²⁴ At first, critics of self-help materials equated them to the unauthorized practice of law.²²⁵ However, these concerns were overcome as self-help materials only provide legal information, consist of how-to guides, and have been utilized since as early as 1965.²²⁶ Today, these materials are widely accepted, and organizations, from the ABA to the Government Accountability Project, publish materials on everything from how the judicial process works to know-your-rights materials.²²⁷

At the end of the day, while addressing the non-legal barriers, issues remain regarding whether the self-help solution can significantly address the substantive and procedural issues litigants face.²²⁸ Remembering that pro se litigants often have difficulties deploying the legal information available to them, having the information available may not be enough to assist them in the same ways that other options can.

²²¹ *Id.* at 1125, 1134–35.

²²² *Id.*; see also Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 J. ASS'N LEGAL WRITING DIRS. 108, 134 (2004).

²²³ Greiner et al., *supra* note 12, at 1125.

²²⁴ Brescia et al., *supra* note 17, at 566. In 1965, Norman Dacey, a non-lawyer, published a book entitled *How to Avoid Probate*. The book directly addressed how to establish estates without using attorneys. *Id.*

²²⁵ *See id.*

²²⁶ *See id.*

²²⁷ *Id.* at 567.

²²⁸ *See id.* at 605.

II. FIRST STEPS TO ADDRESSING THE JUSTICE GAP WITH ARTIFICIAL INTELLIGENCE

Despite jokes to the contrary,²²⁹ lawyers have consistently been early adopters of technology, from copiers to email. For instance, in the 1800s, lawyers adopted the use of early copy machines, alleviating the need for lawyers to copy documents by hand.²³⁰ In light of this history, it should not be surprising that AI is already being explored as an option to address the justice gap and will continue to be developed, especially in light of the LSC Technology Grants.²³¹

²²⁹ See John Alber, *Are Lawyers Really Luddites?*, RETHINKING LEGAL (Aug. 10, 2017), <https://rethinking.legal/are-lawyers-really-luddites-7c1bb480d608>.

²³⁰ See M.H. Hoeflich, *From Scriveners to Typewriters: Document Production in the Nineteenth-Century Law Office*, 16 GREEN BAG 2D 395, 399–400 (2013).

²³¹ See *Technology Initiative Grant Program*, *supra* note 16. LSC began offering TIGs in 2000. *Id.* In 2017, LSC funded twenty-five TIGs to twenty-two legal service organizations to develop technologies to improve efficiency and provide greater assistance for low-income Americans. *LSC Awards Nearly \$4 Million in Technology Grants to Legal Aid Organizations*, LEGAL SERVS. CORP. (Nov. 9, 2017), <https://www.lsc.gov/media-center/press-releases/2017/lsc-awards-nearly-4-million-technology-grants-legal-aid>. In 2018, LSC awarded twenty-six TIGs to twenty-four legal service organizations located in twenty-one different states with an award total of \$3,884,257. *2018 Technology Initiative Grants Awarded to 24 LSC Grantees*, LEGAL SERVS. CORP. (Oct. 15, 2018), <https://www.lsc.gov/media-center/press-releases/2018/2018-technology-initiative-grants-awarded-24-lsc-grantees>; see also *Legal Innovation & Technology Lab*, SUFFOLK LAW SCH., <https://suffolklitlab.org> (last visited Nov. 18, 2020). The Suffolk Legal Innovation and Technology Lab offers an arena for law students to work on research and development for systems that provide guided interviews, machine learning for decision making, and other technologies to assist with non-profit and for-profit clients. *See id.*

AI is a major component of everyday life.²³² Americans are exposed to AI every day.²³³ Individuals can order groceries on their cell phones via an app, sending the request to the grocery store which then delivers the groceries to the individual's home within hours.²³⁴ Given the growth of the use of AI as part of everyday life from finance to medicine, the legal profession has moved to integrate AI into the daily functions of lawyering.²³⁵

Current examples of AI in the legal field include legal research tools such as WestLaw and LexisNexis, e-discovery programs, and court e-filing systems.²³⁶ However, recent advances in AI have allowed it to be used in a wider variety of situations, including to develop litigation strategy.²³⁷ ROSS Intelligence and similar AI

²³² See Jan L. Jacobowitz & Justin Ortiz, *Happy Birthday Siri! Dialing in Legal Ethics for Artificial Intelligence, Smartphones, and Real Time Lawyers*, 4 TEX. A&M J. PROP. L. 407, 408–09 (2018). Wendy Wen Yu Chang has a workable definition to help understand where these technologies fit within the legal field. She states:

Broadly, AI is the ability of a machine to perform what normally can be done by the human mind. AI seeks to use an automated computer-based means to process and analyze large amounts of data and reach rational conclusions—the same way the human mind does.

Id. at 412–13; see also Jordan Bigda, Note, *The Legal Profession: From Humans to Robots*, 18 J. HIGH TECH. L. 396, 409 (2018) (“Artificial intelligence is defined as an area of computer science that deals with giving machines the ability to seem like they have human intelligence and has the power of mimicking intelligent human behavior.”).

²³³ See Jackie Snow, *Most Americans Are Already Using AI*, MIT TECH. REV. (Mar. 7, 2018), <https://www.technologyreview.com/2018/03/07/104695/most-americans-are-already-using-ai/>.

²³⁴ See CHINONSO ETUMNU ET AL., WHAT DRIVES ONLINE GROCERY SHOPPING? 3 (2019), https://ageconsearch.umn.edu/record/290858/files/Abstracts_19_05_14_13_09_26_99_128_210_107_129_0.pdf. Companies such as Amazon and Target have spent millions investing in online delivery services for their groceries, and the grocery delivery service is projected to be worth \$100 billion by 2022. *Id.*

²³⁵ See McGinnis & Pearce, *supra* note 20, at 3041; see also Ed Walters, *The Model Rules of Autonomous Conduct: Ethical Responsibilities of Lawyers and Artificial Intelligence*, 35 GA. ST. U. L. REV. 1073, 1073 (2019).

²³⁶ Emily S. Taylor Poppe, *The Future is Bright Complicated: AI, Apps & Access to Justice*, 72 OKLA. L. REV. 185, 189 (2019).

²³⁷ Walters, *supra* note 235, at 1078; see also McGinnis & Pearce, *supra* note 20, at 3052–53.

vendors provide attorneys with assistance in the form of research, litigation strategy, jury selection, and more.²³⁸ These programs offer substantive assistance, often making legal strategy recommendations that have historically been the responsibility of lawyers.²³⁹ Programs like these often come with a price that limits usage of the programs to lawyers, law firms, or other corporate entities.²⁴⁰ Currently, the greatest area of growth in uses for AI in the legal field are tools assisting with document production and assembly, discovery, marketing, and research.²⁴¹

Consistent with the general use of AI in the legal field, LSC TIGs still focus on technology that allows lawyers to provide more services and to triage cases or share information with those in need.²⁴² However, there is a movement towards offering more litigant focused interfaces to complete legal documents.²⁴³ As AI continues to advance, it will challenge the typical notions of the relationship between clients and attorneys.²⁴⁴ There are two areas where AI is likely to significantly transform the delivery of legal services.²⁴⁵ First are tasks that are viewed as the easiest to automate—for example, the legal functions performed by low level associates.²⁴⁶ The second is the area where there is the most need in the legal market, such as addressing the needs of low-income individuals with civil legal matters.²⁴⁷ In light of this, and the fact that low-income individuals often need assistance with forms and drafting (often the work of low level associates), it is apparent why funders

²³⁸ Jacobowitz & Ortiz, *supra* note 232, at 413–14.

²³⁹ *See id.* at 414.

²⁴⁰ *See Pricing*, ROSS INTEL., <https://www.rossintelligence.com/pricing> (last visited Nov. 18, 2020). The monthly cost associated with ROSS varies between \$69 to \$89 per month. *Westlaw Plans and Pricing*, THOMSON REUTERS LEGAL, <https://legal.thomsonreuters.com/en/products/westlaw/westlaw-plans-pricing> (last visited Nov. 18, 2020). The monthly starting cost of WestLaw is \$89 for a basic plan. *Id.*

²⁴¹ Brescia, *supra* note 108, at 207.

²⁴² *2019 TIG Awards—Project Descriptions*, LEGAL SERVS. CORP., <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/tig/2019-tig-awards> (last visited Nov. 18, 2020).

²⁴³ *See id.*

²⁴⁴ Taylor Poppe, *supra* note 236, at 185.

²⁴⁵ *See id.* at 189.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 190; *see also* Rhode et al., *supra* note 19, at 4–5, 18–19.

like LSC are supporting technology innovation to help close the justice gap.²⁴⁸ Yet, even with all of the efforts to develop AI and its uses in the legal system, full evaluation of the extent to which AI has a place in the legal system is still in its infancy.²⁴⁹ Accordingly, it is difficult to fully ascertain the extent to which AI can be used to close the justice gap.

Attorneys and other legal professionals generally fall within one of two camps when expressing a position regarding AI: they either love AI or they hate it.²⁵⁰ Often, there is no expressed middle ground. Yet, by considering the benefits and limitations asserted by both sides of the AI divide, and by comparing the AI options that are available, a middle ground comes into focus where the benefits of AI can assist low-income litigants with few pitfalls.

Because of the scope and urgency of legal issues facing low-income litigants who cannot afford representation, particularly with regard to issues relating to health, housing, or children, it is important to find a balance that would allow this underserved population to benefit from available AI while reducing potential risks. By focusing on the needs of this population and the basic functions of lawyers, particularly those functions that do not require legal analysis, access to justice can be enhanced for low-income litigants. The following sections will consider the potential risks of using AI to assist the poor, as well as its likely benefits. While AI ultimately will not reach the level of “*Civil Gideon*,” it provides a middle path to greater access to justice for millions of Americans.

A. *Currently Available AI Solutions and How They Can Help Bridge the Justice Gap*

Technology in the legal field falls on a similar spectrum to the current pro se solutions, from AI that acts most like an attorney, making human decisions, to AI that does not, such as online self-help materials. This spectrum includes: (1) automated litigation

²⁴⁸ See *Technology Initiative Grant Program*, *supra* note 16; see also *2019 TIG Awards*, *supra* note 202.

²⁴⁹ Brescia et al., *supra* note 17, at 553–54.

²⁵⁰ See *id.* at 553–55.

analysis;²⁵¹ (2) online research portals and e-discovery;²⁵² (3) automated document preparation through answering prompts;²⁵³ and (4) online or electronic self-help materials.²⁵⁴

Similar to the desire to have “Civil *Gideon*” solve the civil representation issues of low-income litigants is the desire for AI to act

²⁵¹ Walters, *supra* note 235, at 1078. Automated litigation strategy encompasses technologies that provide predictive analytics through the use of empirical data that a user can use to inform their decisions in a particular case. These programs take massive amounts of information from sources such as docket sheets, briefs, case law, motions, pleadings, and judicial opinions, and use this information to recognize patterns that can then be used to predict what will happen in new situations. Thus, users can make decisions such as selecting the most favorable forum in which to file suit, assessing whether to pursue particular claims in front of certain judges, assessing the settlement strategy of an opposing party, or even whether to advise a client to settle or go to trial. *See id.* For lawyers, these technologies enable them to better advise their clients about what decisions to make in a case, as opposed to simply relying on the lawyer’s intuition and personal experience; they provide concrete data that can give the client and the lawyer comfort in knowing they are making sound decisions. They can also lead to quicker settlements by assessing the value of a particular case, saving the lawyer’s time and the client’s money. *See id.*

²⁵² Stuart Teicher, *Tech Tock, Tech Tock: The Countdown to Your Ethical Demise*, 31 J. AM. ACAD. MATRIM. LAWS. 481, 507 (2019). E-discovery includes both discovery of electronically stored information (“ESI”) as well as technology systems that review documents produced in the discovery process. Technology allows for documents to be reviewed more quickly and efficiently than a human lawyer could. Further, ESI has become more prevalent and more important in the litigation process in the last few years, and a lawyer who fails to conduct discovery of this information raises the risk of violating the duty of competence. *Id.* at 482–84, 507.

²⁵³ *See* James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241, 251 (2012). Document preparation technologies offer an alternative for unrepresented litigants who struggle with filling out court forms that are often confusing and filled with legal jargon. One example is the “HotDocs” document assembly software, which will prompt the litigant with a series of questions and generate a form based on the information that the litigant inputs. *Id.* These services allow a litigant to complete the necessary forms and documents for their case without enduring the often disorienting process of filling out forms and eliminates the guesswork and confusion inherent in the process. They also help to reduce the burden on the court system by streamlining the filing system and reducing the number of missing, incomplete, or inaccurate forms. *Id.* at 251–52. These services, however, still require significant time and resources, as well as a certain level of experience with technology to use them. *Id.* at 252.

²⁵⁴ Greiner et al., *supra* note 12, at 1123; *see also* Rhode et al., *supra* note 19, at 18–19.

and provide full services equivalent in nature to what a lawyer provides.²⁵⁵ In fact, some believe that AI would, in some respects, perform better than a lawyer.²⁵⁶ This includes the belief that algorithms can be coded to engage in the subtler forms of thinking.²⁵⁷ Moreover, utilizing legal analytics, a concept where AI collects massive amounts of information and data from briefs, case law, and fact patterns to then issue predictions on case outcomes, can allow for the consideration of massive amounts of data.²⁵⁸ In 2015, ROSS Intelligence introduced ROSS, the first AI lawyer, to the United States.²⁵⁹ ROSS can be asked fully formed legal research questions, and will then collect information from cases, statutes, and more.²⁶⁰ The unique aspect of this program is that it follows up with additional questions, asking for clarification to assist in determining if the information was helpful.²⁶¹ As these questions are answered, ROSS becomes smarter and learns, including learning the intent behind the question asked without the need for additional programming.²⁶² Following this research, ROSS offers the user an option that would take this legal research and draft a legal memorandum.²⁶³

Beyond ROSS, there have been studies about the effectiveness of these systems when it comes to decision making. A Cornell study concluded that AI is better at recognizing deception.²⁶⁴ The study found that in 90% of the courtroom simulations, the computer was correct in determining whether an individual was lying.²⁶⁵ Ultimately, the study concluded that AI is better and fairer than the court

²⁵⁵ See Luban, *supra* note 3, at 499–500, 508–12.

²⁵⁶ See *id.* at 502.

²⁵⁷ See *id.* at 503. Watson, the program that won Jeopardy, had the ability to match phrases in the clues through data-mining algorithms to come up with the winning answer within seconds. This is similar to the “search-and-match-and-guess” that lawyers often employ. *Id.* at 502–03.

²⁵⁸ See McGinnis & Pearce, *supra* note 20, at 3052–53.

²⁵⁹ Catherine Nunez, Comment, *Artificial Intelligence and Legal Ethics: Whether AI Lawyers Can Make Ethical Decisions*, 20 TUL. J. TECH. & INTELL. PROP. 189, 192 (2017).

²⁶⁰ *Id.* at 193.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ Sean Semmler & Zeeve Rose, Comment, *Artificial Intelligence: Application Today and Implications Tomorrow*, 16 DUKE L. & TECH. REV. 85, 88 (2017).

²⁶⁴ Schmitz, *supra* note 30, at 150.

²⁶⁵ *Id.*

when it comes to making bail determinations.²⁶⁶ The study authors concluded that AI increases the accuracy of bail determinations with significant results in making appropriate determinations: first, they have the ability to cut crime rates by approximately 25% by appropriately denying bail; and, second, they reduce the prison population by 42% by accurately suggesting release of the arrestees least likely to commit another crime.²⁶⁷

Despite the results from these studies, in other studies it was discovered that there can be built-in biases in algorithms.²⁶⁸ By way of example, a ProPublica study that found that Correctional Offender Management Profiling for Alternative Sanctions, a program that courts have used during sentencing to help determine an individual's likely recidivism rate, incorrectly flagged African American convicts twice as often as Caucasian convicts.²⁶⁹ Biases such as this give significant pause to the use of AI in decision-making legal circumstances.

Even though these programs tend to be geared towards lawyers, determining if they are appropriate to use to assist with access to justice requires additional considerations. Aside from the potential bias in programing, there is also the potential of engaging in unethical activity by utilizing a full legal analysis program.²⁷⁰ Often decisions and strategies are developed regarding the incorporation of sensitive client information.²⁷¹ Programs may potentially ignore a client's objection in certain steps in the decision-making process.²⁷² Further, AI cannot mirror the emotional intelligence that a lawyer brings to a legal scenario.²⁷³ Similarly, AI may not be able to adequately account for emergency-based legal situations.²⁷⁴

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 150–51.

²⁶⁸ *See id.* at 151.

²⁶⁹ *Id.*

²⁷⁰ *See* Drew Simshaw, *Ethical Issues in Robo-Lawying: The Need for Guidance on Developing and Using Artificial Intelligence in the Practice of Law*, 70 HASTINGS L.J. 173, 195–98 (2018).

²⁷¹ *Id.* at 188.

²⁷² *See id.* Lawyers are required to consider a client's objections and concerns regarding the decision-making process in their case. Often there are personal and sensitive facts that may or may not be included in the process after confidential communications between the client and lawyer. *Id.* at 187–88.

²⁷³ *See* Luban, *supra* note 3, at 504.

²⁷⁴ *See* Simshaw, *supra* note 270, at 190.

Accordingly, lawyers remain best equipped to address legal issues that require immediate attention.²⁷⁵ While AI could potentially provide services which mirror full representation, it would not address the non-legal barriers that low-income individuals face such as financial restraints, recognizing the issue as a legal issue, or having the knowledge base to utilize such a program.

A step down on the AI spectrum from automated litigation strategy programs are research platforms and e-discovery programs.²⁷⁶ These programs do some of the work of a lawyer by providing legal research and discovery preparation for legal matters.²⁷⁷ LexisNexis and WestLaw have been publishing legal research materials for decades.²⁷⁸ In the late 1990s these programs moved to online platforms, significantly improving the efficiency of legal research for lawyers.²⁷⁹ Now these programs use AI to allow searches in plain language, including cite checking, and are moving towards offering more automated litigation strategy programming such as WestLaw Litigation Analytics.²⁸⁰ The targeted audience for these programs is attorneys.²⁸¹ These programs take research and move closer to the programs “thinking like a lawyer.”²⁸² They are not geared towards or easily accessible for non-lawyers let alone those with low-income.²⁸³ By way of example, WestLaw costs \$89 per month for its base program.²⁸⁴

²⁷⁵ *See id.*

²⁷⁶ *See* Simshaw, *supra* note 270, at 176, 193.

²⁷⁷ *See* Brescia et al., *supra* note 17, at 567–68.

²⁷⁸ *Id.*

²⁷⁹ *Id.* With these research materials moving to an online platform, it permits a lawyer to conduct an exhaustive search where in the past there were concerns regarding the comprehensiveness of a search. These innovations in research have expanded to smartphone apps, allowing lawyers to have the research at their fingertips at any time. *Id.* at 568.

²⁸⁰ *Id.* *See* *Litigation Analytics*, THOMSON REUTERS LEGAL, <https://legal.thomsonreuters.com/en/products/WestLaw/edge/litigation-analytics> (last visited Nov. 18, 2020). WestLaw Litigation Analytics gathers “data-driven insights” helping with everything from determining how factually similar cases were determined in a jurisdiction to how a specific judge has ruled on similar issues in the past. *See id.*

²⁸¹ *See* Brescia et al., *supra* note 17, at 567–68.

²⁸² *See* Luban, *supra* note 3, at 502; Brescia et al., *supra* note 17, at 568.

²⁸³ *See id.* at 567–71; *see, e.g., Westlaw Plans and Pricing, supra* note 240.

²⁸⁴ *Westlaw Plans and Pricing, supra* note 240.

Programs like these can avoid the concerns relating to AI analytic programs given that, generally, they primarily provide legal information being utilized by lawyers.²⁸⁵ When these services are available to non-lawyers, barriers still exist whereby low-income litigants are required to recognize the issue as legal, understand the legal research, and ultimately deploy the information. These barriers make the research and e-discovery program form of AI an unrealistic option to assist with the justice gap.

AI in the form of automated document preparation programs are acting in part like a lawyer and in part like an information portal. Automated document preparation includes guided legal forms which often provide prompts for an individual to answer and utilize the information to generate a correctly drafted pleading.²⁸⁶ Many automated document programs utilize decision trees, a rather simplistic form of AI, to create the prompts and, ultimately, the documents.²⁸⁷ Some are similar to a lawyer's initial intake interview.²⁸⁸ As questions are answered, additional questions are generated until sufficient information has been obtained to generate an appropriate pleading.²⁸⁹ These programs are limited in scope and address discrete legal issues.²⁹⁰

²⁸⁵ See Simshaw, *supra* note 270, at 185. However, not every lawyer can afford these services. *Id.*

²⁸⁶ Barton & Rhode, *Access to Justice*, *supra* note 19, at 973. LegalZoom is a forerunner in this field as it offers guided forms for sale. For an additional cost a lawyer will review your prepared document. To be clear that this is not a legal service, there are significant disclaimers which state: "not acting as your attorney" and "not a substitute for the advice of an attorney." *Id.*; see also Brescia et al., *supra* note 17, at 573–74. Given that lawyers spend significant time drafting simple forms for clients that are often prescribed by rules of civil procedure, lawyers have also utilized the programs that do preliminary types of drafting. However, lawyers often do not fully adopt this practice due to fears that the systems may make legal errors which could result in claims of malpractice. *Id.* at 572–73.

²⁸⁷ Luban, *supra* note 3, at 502. Providing an example of the importance of the decision tree option for apps, Luban discusses how technologies use decision trees that prompt the user to answer the same questions a human attorney would ask her client in order to reach an end result. *Id.* at 502–03.

²⁸⁸ See *id.* at 502.

²⁸⁹ See *id.* at 500–01.

²⁹⁰ See *id.* at 500–02.

Prime examples of these types of programs are the ABA Free Legal Answers and Pro Bono Net LawHelp Interactive.²⁹¹ These programs are online tools that provide answers to simple procedural and substantive legal questions.²⁹² In some states the program permits individuals to fill out legal documents online and ultimately sends these documents to the courthouse for filing.²⁹³ LawHelp provides an online platform that creates documents through guided interviews with a LawHelp representative available to assist if needed.²⁹⁴ These types of programs are geared towards non-lawyers and are emerging throughout the country as a way to assist low-income litigants.²⁹⁵ Notably, the Tennessee version of ABA Free Legal Answers directs users to a “Legal Wellness Checkup.”²⁹⁶ This consists of automated questions and answers, ultimately informing litigants about their legal rights as well as areas of risk that are associated with the issues identified.²⁹⁷ With LawHelpMN, another program based on automated questions and answers, litigants are able to obtain materials and referrals by answering guided questions with the intent to narrow the legal topic and to evaluate a participant’s eligibility for various legal services programming.²⁹⁸ LawHelpMN helps more than 1,000 people per day.²⁹⁹

Automated document preparation programs provide assistance with respect to very specific procedural and substantive legal requirements and can help low-income individuals overcome legal

²⁹¹ Schmitz, *supra* note 30, at 121–23; *see ABA Free Legal Answers*, TENN. ALLIANCE FOR LEGAL SERVS., <https://www.tals.org/abafreelegalanswers> (last visited Nov. 18, 2020); LAWHELP INTERACTIVE, <https://lawhelpinteractive.org/> (last visited Nov. 18, 2020).

²⁹² *See* Schmitz, *supra* note 30, at 121–23.

²⁹³ *Id.* at 122.

²⁹⁴ *Id.* at 123.

²⁹⁵ *See id.* at 121–23; Luban, *supra* note 3, at 500–02.

²⁹⁶ W. Preston Battle IV et al., *Artificial Intelligence: State of the Industry and Ethical Issues*, TENN. BAR J., Mar. 2018, at 24, 26. The program directs individuals to personalized forms, pamphlets, and videos to assist the individual with learning about their particular issue. *Id.*

²⁹⁷ *Id.*

²⁹⁸ *See* Bridget Gernander, *Access to Justice Made Easy (Well, Easier)*, BENCH & BAR MINN., Aug. 2019, at 16, 18. To assist in the accessibility of the programming, it is designed using plain language and has built in legal issue-spotting. This alleviates the necessity of having legal knowledge. *Id.*

²⁹⁹ *Id.*

barriers.³⁰⁰ This form of AI is also ideal to assist low-income litigants overcome the non-legal barriers. The programs are often free or offered at a reduced cost and offer low-income litigants the ability to identify and address their legal needs on their own timetable,³⁰¹ removing the tax on their “bandwidth,” concerns about employment, and other financial difficulties. These programs address some of the largest non-legal barriers that low-income individuals face. Given the benefits and the number of individuals that currently utilize limited legal services, the technological equivalent of automated document preparation provides additional services and can assist in closing the justice gap by expanding the four million people already assisted by limited legal services.³⁰²

Self-help materials available online are a form of AI but, like traditional self-help materials, do not seek to replicate the job of an attorney. These materials are available online and are often found on webpages such as a court’s homepage and legal aid provider websites.³⁰³ Examples of these materials include forms, explanations of legal issues, deadlines for filing, and general procedural instructions.³⁰⁴ Online self-help materials are often identical to their paper counterparts; however, they are more accessible. These materials alleviate a number of the non-legal barriers and can even reach those in rural areas, those with work constraints, or those who have issues that they do not feel comfortable addressing in person.³⁰⁵ Simply put, technology can be utilized to increase a client’s ability to utilize self-help.³⁰⁶ However, just as traditional self-help materials have substantial limitations, so, too do these online materials as they do not necessarily alleviate the legal barriers through the effective deployment of procedural and substantive legal information.

³⁰⁰ See Schmitz, *supra* note 30, at 121–23.

³⁰¹ *Id.* at 104–05, 108, 121–22.

³⁰² See Rhode et al., *supra* note 19, at 5; Greiner et al., *supra* note 12, at 1122–23. As Greiner aptly notes, non-lawyer and additional unbundled legal services are necessary and part of the solution to closing the civil justice gap. *Id.*

³⁰³ Rhode et al., *supra* note 19, at 18; *see also* Brescia et al., *supra* note 17, at 567, 570–72.

³⁰⁴ Rhode et al., *supra* note 19, at 18; *see also* Brescia et al., *supra* note 17, at 601–03.

³⁰⁵ See Rhode et al., *supra* note 19, at 15.

³⁰⁶ Taylor Poppe, *supra* note 236, at 190.

B. *Evolution, Limitations, and Benefits of AI in the Legal Field*

The ability to instantaneously obtain information from the internet encourages individuals to opt for AI programs to answer their everyday legal questions.³⁰⁷ As people become more comfortable with online transactions, such as shopping on Amazon, it is easy to imagine that using AI to address legal concerns will offer a more comfortable outlet for finding information. Exemplifying Americans' comfort with these programs, consumers in 2015 spent approximately \$350 billion online, with 79% of Americans making purchases online.³⁰⁸ As they have developed over time, companies like Amazon have created online dispute resolution systems to assist individuals in quickly resolving any issues they may have, like the failure to receive a package or the need to return items.³⁰⁹ This creates a level of comfort and ease in accessibility that could easily be transferred to addressing legal issues through the use of AI, as individuals are already engaged in dispute resolution online when utilizing these other systems.³¹⁰

Just as AI is part of everyday life, it has become part of the everyday life in the legal profession.³¹¹ As a result, the Model Rules had to adjust the rules relating to a lawyer's competence, diligence, and confidentiality requirements.³¹² In 2017, the ABA issued Formal Opinion 477 ("Opinion 477"), addressing issues that arise from the use of AI and new technologies in the practice of law.³¹³ In Opinion

³⁰⁷ See Barton & Rhode, *Access to Justice*, *supra* note 19, at 960. This transition has occurred quickly. In 2011, the majority of the public still used the Yellow Pages to find a lawyer. *Id.* By 2014, this had switched to the Internet being the primary resource if an individual was searching for a lawyer. *Id.* Specifically, in 2014, 38% preferred the internet, 29% asked a friend, and only 4% used the Yellow Pages. *Id.* at 960–61.

³⁰⁸ Schmitz, *supra* note 30, at 90–91.

³⁰⁹ See *id.* at 91.

³¹⁰ See *id.* at 107–09.

³¹¹ See Walters, *supra* note 235, at 1082.

³¹² See Debra Cassens Weiss, *Lawyers Have Duty to Stay Current on Technology's Risks and Benefits*, *New Model Ethics Comment Says*, ABA J. (Aug. 9, 2012), https://www.abajournal.com/news/article/lawyers_have_duty_to_stay_current_on_technologys_risks_and_benefits.

³¹³ ABA Comm. on Ethics & Pro. Resp., Formal Op. 477 (2017) [hereinafter Formal Op. 477] (discussing precautions lawyers should take in securing

477, the ABA discussed the necessity of securing communications of protected client information in light of potential cyber related attacks.³¹⁴ The ABA, when providing its analysis, discussed multiple rules implicated by the rise of technology in the communication of confidential client information.³¹⁵

The introduction to Opinion 477 references the 2012 “technology amendments” to the Model Rules, which were enacted because technology was playing a growing role in everyday life.³¹⁶ Accordingly, the ABA recognized the tension between emerging technology and an attorney’s traditional duties.³¹⁷ A lawyer’s duty of competence, found in Model Rule 1.1,³¹⁸ requires lawyers to exercise “continued vigilance and learning as technology advances, in order to comply with a lawyer’s duties under [the] ethics rules.”³¹⁹ Some have even suggested that, in certain circumstances, such as complex litigation, the duty of competence requires utilization of AI in e-

communications that contain protected client information); *see also* ABA Comm. on Ethics & Pro. Resp., Formal Op. 477R (2017) (revised formal opinion).

³¹⁴ Formal Op. 477, *supra* note 313, at 2–3. The Opinion gives guidance on what constitutes “reasonable efforts” to protect information when technology provides a primary source of communication. *Id.* at 4–5. It is important to note that the ABA is not saying that technology for communication and data storage should necessarily be avoided but that “reasonable efforts” to protect confidential information must be made. *See id.* at 2, 4–5.

³¹⁵ *Id.* at 2–3, 5.

³¹⁶ *Id.* at 1–2.

³¹⁷ *See id.*

³¹⁸ MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS’N 2020) (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”). Comment 5 to Model Rule 1.1 states:

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence

MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 5 (AM. BAR ASS’N 2020).

³¹⁹ Simshaw, *supra* note 270, at 197 (quoting JILL D. RHODES & VINCENT I. POLLEY, THE ABA CYBERSECURITY HANDBOOK: A RESOURCE FOR ATTORNEYS, LAW FIRMS, AND BUSINESS PROFESSIONALS 66 (2013)).

discovery, as it has surpassed human review in recall and accuracy.³²⁰ At a minimum, Comment 8 to Model Rule 1.1 makes it clear that an attorney is required to be aware of the relevant technologies available, including the benefits and limitations associated with the same.³²¹ This relates directly to a lawyer's duty of diligence, as some suggest that this mandates an investigation of AI or other technologies and the impact they have on a case.³²²

Issues relating to the rules of professional conduct and AI become more nuanced when considered in conjunction with a lawyer's duty of confidentiality (Model Rule 1.6), which requires a lawyer not to reveal information relating to representation.³²³ This rule is significantly implicated when contemplating the use of AI, as many AI programs keep and hold a significant amount of confidential

³²⁰ Walters, *supra* note 235, at 1076; *see also* Maura R. Grossman & Gordon V. Cormack, *Quantifying Success: Using Data Science to Measure the Accuracy of Technology-Assisted Review in Electronic Discovery*, in *DATA-DRIVEN LAW: DATA ANALYTICS AND THE NEW LEGAL SERVICES* 127, 142 (Ed Walters ed., 2018); McGinnis & Pearce, *supra* note 20, at 3048.

³²¹ *See* MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (AM. BAR ASS'N 2018) ("To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.").

³²² Walters, *supra* note 235, at 1091–92; *see also* *Litigation Analytics*, *supra* note 280; LEX MACHINA, <https://lexmachina.com> (last visited Nov. 18, 2020) (Programs that think include Lex Machina and WestLaw, which have been developed to assist lawyers by offering litigation analytics helping to craft arguments). Relatedly, some suggest that the failure to fully investigate/understand the impact of certain AI, such as virtual personal assistants, on a client's confidential information may violate the rule regarding an attorney's diligence in representation. *See* Jacobowitz & Ortiz, *supra* note 232, at 423; *see also* MODEL RULES OF PRO. CONDUCT r. 1.3 cmt. 1 (AM. BAR ASS'N 2020) ("A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor.").

³²³ MODEL RULES OF PRO. CONDUCT r. 1.6(a) (AM. BAR ASS'N 2020) ("A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)."); MODEL RULES OF PRO. CONDUCT r. 1.6(c) (AM. BAR ASS'N 2020) ("A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.").

information.³²⁴ A simple example is how Google stores user searches, including searches which could directly relate to confidential aspects of a case.³²⁵ Comment 18 to Model Rule 1.6 was added to explain:

Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure³²⁶

As lawyers have utilized technology for years, conducting case work via email and over telephone (including voicemail), and drafting in word processing programs, more advanced AI tools do not necessarily create new rules about confidentiality.³²⁷ In fact, as Comment 18 to Model Rule 1.6 notes, lawyers only have to make reasonable efforts to prevent disclosure.³²⁸ By assuring that attorneys have a reasonable level of competence when using the advances in AI, the duty of confidentiality is maintained.

As the ABA and the Model Rules address how lawyers should be aware of AI in everyday practice, additional limitations should be considered when determining the uses of AI for increasing access to justice. Most agree that lawyers or other legal professionals can offer a dynamic legal representation that no AI can currently replicate.³²⁹ This includes empathy, emotional intelligence, moral

³²⁴ See Jacobowitz & Ortiz, *supra* note 232, at 421–23.

³²⁵ *Id.* at 422–23.

³²⁶ MODEL RULES OF PRO. CONDUCT r. 1.6 cmt. 18 (AM. BAR ASS'N 2020).

³²⁷ See Walters, *supra* note 235, at 1082.

³²⁸ MODEL RULES OF PRO. CONDUCT r. 1.6 cmt. 18 (AM. BAR ASS'N 2020).

³²⁹ See Luban, *supra* note 3, at 505.

evaluation, and creativity.³³⁰ In sum, when it comes to the human aspects of the law, evaluating legal strategy, and making decisions, lawyers can assist in ways that computers cannot. That does not mean that there is not a role for AI to assist with legal matters, but instead that there must be a balance between the benefits of using AI and the risks of removing a lawyer from the equation. It is clear that AI will fall short in “emotional intelligence, moral give-and-take . . . , and creativity.”³³¹ Yet, certain simple legal tasks do not call for these particular skills.³³²

As AI becomes more prevalent, tools are developed to help lawyers understand and analyze prior litigation outcomes, in part to determine whether a current claim is meritorious.³³³ However, in the access to justice arena, pro se litigants often lack a rudimentary legal knowledge and have difficulty navigating procedural matters, making it almost impossible to raise a meritorious claim or contention, even if they recognize the issue as a legal one.³³⁴ Rather than supplementing a lawyer’s skills, simple AI can provide the guidance needed by pro se litigants.³³⁵

Even with respect to the initial barrier for low-income litigants of having to identify that their issue is legal, AI can provide assistance.³³⁶ Once the issue is identified as a legal one, AI can immediately provide information necessary to assure that individuals are aware of the relevant substantive and procedural law.³³⁷ Further, to the extent necessary, systems such as automated document preparation can ensure that legal documents meet the procedural legal

³³⁰ *Id.* at 505–07. Luban notes, given the highly sensitive and personal nature that legal issues present, the human aspect of lawyering is often more important. *Id.* at 506. However, this does not preclude space for technology in the legal system. *Id.* at 507.

³³¹ *Id.* at 508.

³³² See Barton & Rhode, *Access to Justice*, *supra* note 19, at 957.

³³³ See Walters, *supra* note 235, at 1083–84. The Model Rules require that lawyers bring only meritorious claims and contentions. Model Rule 3.1 states: MODEL RULES OF PRO. CONDUCT r. 3.1 (AM. BAR ASS’N 2020).

³³⁴ See Gernander, *supra* note 298, at 18.

³³⁵ See *id.*

³³⁶ See Brescia et al., *supra* note 17, at 608.

³³⁷ See Greiner et al., *supra* note 12, at 1152; see also Cabral et al., *supra* note 253, at 247–49.

requirements.³³⁸ AI that addresses basic but important legal matters can meet the needs of low-income litigants.³³⁹

While there may be concerns raised about whether low-income litigants have access to these technologies, there is evidence to support that the growing use of smart phones would provide the necessary platform for litigants.³⁴⁰ In 2019, 92% of individuals with an income at or below \$30,000 a year owned a cell phone.³⁴¹ Of this 92%, 67% had smart phones.³⁴² Even courts have recognized the growing availability of this type of technology.³⁴³ Accordingly, courts use messaging to remind litigants of their hearings, due dates, and other court related matters.³⁴⁴ So, while there are concerns about availability and knowledge, these concerns are lessened as more and more individuals have access to smart phones with internet capabilities.

With regularly available technology like smart phones, low-income individuals do not have to leave the comfort of their homes to address their legal needs.³⁴⁵ Accordingly, AI has the ability to address many of the non-legal barriers of access to justice, including the financial needs, accessibility issues, necessity of ease of use, empowerment of individuals, and even alleviating some of the “bandwidth” barriers that hinder low-income litigants.

³³⁸ See Fortney, *supra* note 18, at 120–21.

³³⁹ Barton & Rhode, *Access to Justice*, *supra* note 19, at 957. As Rhode and Barton point out, these are often urgent needs of the litigant. *Id.* When dealing with aspects relating to child custody and domestic violence, timing in the initiation of the action is often paramount and can have significant importance dealing with the safety of the individual. See Simshaw, *supra* note 270, at 190.

³⁴⁰ See Budzinski, *supra* note 46, at 216.

³⁴¹ *Id.*

³⁴² *Id.* The Lifeline program of the Federal Communication Commission has updated its rules to make cellular phones that are available to low-income individuals also have internet access, set call minutes, and text messaging. *Id.*

³⁴³ See *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1017 (9th Cir. 2002).

³⁴⁴ See, e.g., John M. Greacen, *Eighteen Ways Courts Should Use Technology to Better Serve Their Customers*, 57 FAM. CT. REV. 515, 530 (2019). The utilization of technology can assure that litigants are aware of their proceedings. In 2018, the 22nd Judicial Circuit of McHenry County, Illinois implemented a free service that provides text or email reminders of upcoming court dates. *Id.*

³⁴⁵ See Brescia et al., *supra* note 17, at 575.

Further, AI alleviates the necessity for a lawyer to perform basic tasks, reducing cost and increasing accessibility for individuals, especially when compared to the traditional cost of litigation.³⁴⁶ Given the cost-effective nature of these technological options, individuals are quick to utilize them over the services of a full representation lawyer.³⁴⁷ In some circumstances, AI offers a “do-it-yourself” experience, allowing individuals to pick the level of service that they utilize.³⁴⁸ This experience has the possibility of empowering litigants to understand and act on their civil legal issues.³⁴⁹ This empowerment can come with relative ease thanks to smart phones with online tools that conveniently allow individuals to understand what legal options are available.³⁵⁰ Often, low-income individuals may not even utilize available attorney services because of the potential embarrassment or stigma of the legal matter.³⁵¹ The relative anonymity

³⁴⁶ Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 MICH. L. REV. 953, 954 (2000). At the time of this article, it was estimated that a simple business matter, after considering lawyer fees, costs, and expert fees, was over \$100,000. This was with lawyers at hourly rates of \$200 to \$400 per hour. *See id.* at 957; *see also* Barton & Rhode, *Access to Justice*, *supra* note 19, at 957.

³⁴⁷ Barton & Rhode, *Access to Justice*, *supra* note 19, at 962–63. As Rhode and Barton note in their article, once a service or product is initially sold on the internet, the price of the service drops. *Id.* at 962; *see also* Kricken, *supra* note 44, at 20. Studies have shown that there is a significant economic benefit to monies spent on civil legal aid. This includes a return of “more than six dollars for every one dollar of funding” provided to civil legal aid entities. *Id.* The economic benefit could result in greater than \$1.5 billion. *Id.* With this type of return on monies placed into the system, it seems probable that increasing access by readily available technologies would result in further economic benefits.

³⁴⁸ Barton & Rhode, *Access to Justice*, *supra* note 19, at 962. Most programs offer different packages that an individual may choose to utilize, with options ranging from simply printing an available form or utilizing an interactive program that asks questions to assist with preparation of the form. *Id.*

³⁴⁹ SANDEFUR, LEGAL TECH FOR NON-LAWYERS, *supra* note 15, at 16; *see also* Linneman, *supra* note 97, at 294. This concept is similar in nature to what exists in the medical field with apps like WebMD which helps individuals triage symptoms. *Id.*

³⁵⁰ SANDEFUR, LEGAL TECH FOR NON-LAWYERS, *supra* note 15, at 8; Luban, *supra* note 3, at 500–02.

³⁵¹ Prescott, *supra* note 93, at 36. Significant research exists that discusses these non-trivial costs of utilizing government programs (similar to the services offered to assist those who cannot afford counsel). These costs include the time

of AI can alleviate these problems, providing low-income litigants with information about their issue, without requiring them to share their personal circumstances face-to-face.³⁵²

Having the available “bandwidth” is a serious concern for low-income litigants.³⁵³ Being able to research, draft, and potentially file the necessary paperwork with the court from the comfort of an individual’s home alleviates concerns about missing work, having child-care, and finding the courthouse, among other issues. AI allows individuals to have some control over the process without requiring the individual to find time or transportation, or expend significant monies, and is a significant service to a low-income litigant.³⁵⁴

III. THE MIDDLE GROUND

AI has the potential to address the legal and non-legal barriers low-income litigants face with access to justice. AI can be used to complete tasks traditionally within the purview of a lawyer.³⁵⁵ However, AI cannot entirely replace lawyers, nor should it.

Just as “Civil *Gideon*” may not be the best or most realistic solution for low-income litigants, the risks associated with legal analytics programs, such as automated litigation strategy tools, outweigh the potential benefits, and are not an ideal AI solution for low-income litigants. Similarly, legal aid offices and pro bono attorneys cannot address all of the needs of low-income individuals.³⁵⁶

associated with finding the services, the process of learning how to use them, as well as the significant stigma costs associated with utilizing a service such as these. *Id.*

³⁵² See *id.* at 36–37. Prescott’s research reflects that even the best free legal services are useless if people are not using them. Schmitz, *supra* note 30, at 97–98. As Schmitz notes, this is particularly true for individuals that fear stereotypes, biases, or the pressures of face-to-face communications. *Id.*

³⁵³ Greiner et al., *supra* note 12, at 1128.

³⁵⁴ See Barton & Rhode, *Access to Justice*, *supra* note 19, at 962. Exemplifying the ability to piecemeal the online legal experience for an individual is the ability to pick and choose how much interaction one has with the technology. With LegalZoom, an individual could simply purchase a form, or if they need slightly more assistance, they have the option to utilize an interactive program which asks questions to generate a completed form. If this is not sufficient, an individual can opt for a package that includes some legal advice. *Id.*

³⁵⁵ *Id.* at 957.

³⁵⁶ Kricken, *supra* note 44, at 20.

Further, the AI comparative of online research tools and programs that address issues like discovery do not address the needs of low-income litigants and, therefore, are also not the ideal AI solution.

Successful self-help materials are ones that are easily accessible, that can be found in a timely manner, and that litigants can utilize in a manner to advance their case.³⁵⁷ Given that most individuals have a smart phone with internet access and are well versed in online searching, placing these materials online would reach more individuals and assist a wider audience with the issues that they face. It has the possibility to expand access to justice, while also freeing up resources, expanding on what already works for traditional printed self-help materials.³⁵⁸ Combining self-help materials with automated document preparation services is akin to providing limited legal services.³⁵⁹ This is the AI solution middle ground that can best help individuals overcome legal and non-legal barriers to justice.

As companies like Avvo, LegalZoom, and Shake, which offer limited legal services through online platforms, became more prevalent over the past ten to twenty years, concerns were raised that these companies engaged in the unauthorized practice of law due to the extent to which their AI systems perform services which could be deemed “legal.”³⁶⁰ Opponents to automated form preparation

³⁵⁷ Greiner et al., *supra* note 12, at 1123.

³⁵⁸ See Benjamin H. Barton, *Technology Can Solve Much of America's Access to Justice Problem, If We Let It*, in *BEYOND ELITE LAW*, *supra* note 164, at 444, 446–47.

³⁵⁹ See Brescia, *supra* note 108, at 207.

³⁶⁰ Barton & Rhode, *Access to Justice*, *supra* note 19, at 975–76; Walters, *supra* note 235, at 1087–88. All states have statutory provisions prohibiting the unauthorized practice of law, which include potential criminal penalties. *Id.* In addition to the statutory prohibitions, Model Rule 5.5 provides, in part, “[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.” MODEL RULES OF PROF. CONDUCT r. 5.5 (AM. BAR ASS’N 2020). While the statutory provisions governing the unauthorized practice of law and the enforcement of the same vary, the common concern is that the utilization of AI in legal matters may violate these laws. Walters, *supra* note 235, at 1088; see also *Unauthorized Prac. of L. Comm. v. Parsons Tech., Inc.*, 179 F.3d 956, 956 (5th Cir. 1999) (per curiam). In *Parsons*, the court held that a software program that posed questions to individuals and selected the appropriate legal form based on the answers went beyond telling an individual how to fill out an online form and ventured in to the realm of “cyber-lawyer” and “the unauthorized practice of law.” However, following this decision,

claim it is the unauthorized practice of law, yet there is precedent that document preparation by non-lawyers, such as deeds and leases, is permissive and not the unauthorized practice of law.³⁶¹ A number of states permit automated document preparation with question prompts as long as disclaimers exist that the documents are not a substitute for an attorney, removing any confusion about the perceptions of what these programs can do.³⁶²

Similar allowances for limited legal services have been cemented in the rules of professional conduct, including relaxing the rules relating to conflicts of interest to require actual knowledge of a conflict prior to prohibiting an attorney from providing general advice in a limited legal service setting.³⁶³ This evidences the possibility to make minor allowances to the rules of professional conduct to encourage program development and increase access to justice. Most states already permit the sale of pre-made standardized forms with blanks, even when these forms are available online.³⁶⁴ The next step to automated document preparation is a minor step above pre-made standardized forms, but that step can provide more significant assistance to the litigant, similar to limited legal services that provide document preparation with some advice.

As concerns were raised regarding the rise of online document preparation programs, bar associations responded with proposed best practices for online document providers.³⁶⁵ Ultimately, the

the Texas legislature took matters into their own hands and defined “the practice of law” such that it did not include things such as the design, creation, publication, or distribution of computer software or similar products as long as there is a clear statement that the software is not a substitute for legal advice. *Id.*

³⁶¹ Rhode & Ricca, *supra* note 35, at 2589; *see also* Dressel v. Ameribank, 664 N.W.2d 151, 156 (Mich. 2003). In *Dressel*, the court determined that a law license is not necessary for drafting documents such as leases, deeds, or similar ordinary documents. *Id.*

³⁶² Brescia et al., *supra* note 17, at 575. By way of example, in Texas automated forms are permitted with these disclosures. *Id.*

³⁶³ *See* MODEL RULES OF PRO. CONDUCT r. 1.7 (AM. BAR ASS’N 2020).

³⁶⁴ Brescia et al., *supra* note 17, at 574–75.

³⁶⁵ Fortney, *supra* note 18, at 95–98, 108. New York County Lawyer Association (“NYCLA”) developed a best practices guideline to protect consumers and create regulation proposals for online document providers. In 2019, NYCLA and the New York State Bar Association proposed a resolution to the ABA asking that they adopt an ABA Best Practice Guideline. The proposal included suggestions

ABA adopted the ABA Best Practice Guidelines for Online Legal Document Providers.³⁶⁶ This resolution provides recommendations for best practices that include, *inter alia*, that providers should: keep their forms up-to-date, assure that they are explained and that guidance is provided in plain language, notify customers how their information is being maintained or utilized, inform individuals they are not protected by attorney-client privilege or work product protections, and advise them that the service is not a substitute for a lawyer.³⁶⁷ It is clear from the ABA's resolution that AI solutions are gaining traction, but they must be designed thoughtfully and carefully. Having lawyers work hand-in-hand with developers to create the AI programs is necessary to achieve these best practices.³⁶⁸ Assuring that lawyers assist in the development process can help alleviate concerns about the legal knowledge shared within the programs themselves.³⁶⁹

Basic forms of AI, like decision trees, can be the key to developing these programs.³⁷⁰ Given how many legal issues are rule-based, a number of legal needs can be addressed by having a client answer straight forward questions through an online interface.³⁷¹ Developing online document preparation through question and answer prompts, via decision trees, could be the most effective solution as it generally does not impinge on the situations where lawyers are absolutely necessary.³⁷² By limiting the use of AI to procedural

for the protection of consumers' confidential information. This proposal was ultimately adopted at the ABA House of Delegates meeting in August 2019. *Id.* at 95–96; ABA House of Delegates, Resol. 10A (2019), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/10a-annual-2019.pdf> [hereinafter ABA Resol. 10A].

³⁶⁶ ABA Resol. 10A.

³⁶⁷ *Id.* at 1–2.

³⁶⁸ *Id.* at 7; *see also* Brescia et al., *supra* note 17, at 604; Brescia, *supra* note 108, at 221–22.

³⁶⁹ *See* Simshaw, *supra* note 270, at 177.

³⁷⁰ Luban, *supra* note 3, at 502.

³⁷¹ By way of example, a number of states' procedural rules are very specific with regard to what must be included in documents such as complaints, answers, or other pleadings. *See, e.g.*, 231 PA. CODE § 1019 (2020); N.Y. C.P.L.R. 3015 (Consol. 2020); N.J. Cts. R. 5:10-3.

³⁷² *See* Luban, *supra* note 3, at 500–03. Depending on the answers an individual provides in response to a question, a decision tree will provide a new subset

and standardized documents prescribed by court rules,³⁷³ we can limit the concerns regarding the necessity of lawyers to identify the issues presented or the needs of the client. Examples illustrating where AI can provide a viable option include powers of attorney; complaints initiating actions such as divorce, child support, or custody; and notices of appeal or other documents initiating an appeal.

One area where automated guided document preparation would be well-suited to assist a low-income individual is in the area of estate planning.³⁷⁴ Given the high levels of intestacy, having assistance in drafting a simple will to protect the transfer of assets provides a significant service to a low-income individual.³⁷⁵ These documents can be done at home, via a cell phone, during non-business hours, and during a time that is convenient for the individual.³⁷⁶ Taking this concept a step further are programs that facilitate drafting and then, ultimately, submitting the documents to the court when necessary.³⁷⁷ One example comes from Michigan, where, in 2014, a program was developed, creating an online portal for defendants to submit their traffic cases for four counties.³⁷⁸ This portal allows individuals to convey their arguments and explanations about the citation or payment of their fines.³⁷⁹ From there, police and the prosecutors review the information before a judge makes a decision.³⁸⁰ In addition to being a space to share information, the portal provides empowerment to users by giving them options to contest the

of questions, ultimately providing the individual with a finalized set of prepared responses. *Id.* at 500, 505.

³⁷³ By way of example, complaints in divorce or child custody proceedings are generally prescribed by a state's individual Rules of Civil Procedure that require very specific information in a specific format. *See* 231 PA. CODE § 1915.15 (2020).

³⁷⁴ Taylor Poppe, *supra* note 236, at 185–86.

³⁷⁵ *Id.* at 186.

³⁷⁶ *See id.* at 199–201.

³⁷⁷ Schmitz, *supra* note 30, at 106–09. A number of online dispute resolution programs have been modified from Amazon's live chat method of addressing retail concerns, to addressing legal matters raised in courts. Programs such as these have been developed as pilots throughout the country. These AI solutions assist with everything from traffic ticket issues to tax disputes. *Id.* at 91, 105–07.

³⁷⁸ *Id.* at 105–06.

³⁷⁹ *Id.*

³⁸⁰ *Id.* at 106.

citation.³⁸¹ This portal allows individuals to address their needs without missing work or having to travel to a courthouse within business hours as well as limiting any necessary fees.³⁸²

AI such as this improves access, efficiency, and quality.³⁸³ Given the number of individuals with smart phones, it is unsurprising that low-income individuals rely on their cell phones as the primary means of accessing the internet.³⁸⁴ Interfaces that are friendly to cell phone platforms, such as Michigan's traffic ticket portal, result in effective tools accessible to more individuals.³⁸⁵ Given the familiarity that individuals have with using everyday programs like Amazon, AI can use a similar interface to assure that the correct information is gathered to prepare the documentation to avoid procedural errors. This can be done in a similar nature to ordering books with Amazon one-click versus the more difficult task of correctly drafting an email to do the same.³⁸⁶

Examples of apps successfully designed to provide these types of automated limited legal services include legal triage apps, intake apps, criminal expungement drafting and review apps, and apps to help prepare for unemployment hearings.³⁸⁷ In looking at past LSC TIG recipients who used programs like HotDocs and A2J document assembly to assist low-income litigants, examples of the benefits of automated document programs are apparent and offer a template for replication.³⁸⁸

³⁸¹ *Id.* at 106–07, 159–60.

³⁸² *Id.* at 160.

³⁸³ *See* Luban, *supra* note 3, at 500. Technologies use decision trees that prompt the user to answer the same questions a human attorney would ask her client in order to reach an end result. Luban, however, suggests that for some areas, technology can do this better than an attorney and questions how far this technology can be taken. Thus, if these apps were available to all, low-income individuals would ideally be able to receive the same result as hiring an attorney but without the cost. *See id.* at 500–02.

³⁸⁴ Simshaw, *supra* note 270, at 184.

³⁸⁵ *See id.*; Schmitz, *supra* note 30, at 105–06.

³⁸⁶ Remus & Levy, *supra* note 17, at 539–40.

³⁸⁷ Luban, *supra* note 3, at 501–02.

³⁸⁸ HotDocs and A2J document assembly are technologies that help develop automated document preparations often using simple decision tree AI. These systems are effective in walking individuals through prompts that then accurately prepare documentation necessary to proceed with litigation or other legal matters.

Montana Legal Services Association used its TIG funding to revamp its document assembly system, creating guided interviews that accurately yield family law forms that can then be filed in the state's courts.³⁸⁹ After the program's implementation, there was a 21% conversion rate of individuals successfully moving their case forward.³⁹⁰ The generated forms were created by pro se litigants, self-help center staff, and other pro bono advocates.³⁹¹

Legal Services of South Central Michigan developed AI that created interactive document assembly interviews.³⁹² The program automated seventeen different complex legal documents in the areas of housing law, family law, and public benefits.³⁹³ As of mid-2014, these directed interviews compiled 2,700 legal documents presenting clear legal arguments.³⁹⁴

Legal Aid of Nebraska worked with the Nebraska Supreme Court Pro Se Implementation Committee to create automated legal pleadings through guided interviews.³⁹⁵ This included forms such as a divorce packet for couples with children, a divorce packet for couples without children, criminal set aside for felonies, criminal set aside for misdemeanors, and protection orders.³⁹⁶

Returning to the issues Julia faces as a pro se litigant dealing with an appeal issue, pro bono appellate programs have begun to emerge across the country as there are a number of pro se appeals in

See Document Assembly (Replicable TIG Projects), LEGAL SERVS. CORP., <https://www.lsc.gov/grants-grantee-resources/grantee-guidance/reporting-requirements/tig-reporting/document-assembly> (last visited Nov. 18, 2020); A2J AUTHOR, <https://www.a2jauthor.org/> (last visited Nov. 18, 2020); HOTDOCS, <https://www.hotdocs.com/> (last visited Nov. 18, 2020).

³⁸⁹ *See TIG Final Evaluation Report*, MONT. LEGAL SERVS. ASS'N, LEGAL SERVS. CORP. 1–3 (2017), https://www.lsc.gov/sites/default/files/attach/2018/08/TIG_14009_LSC_Approved_Final_Report.pdf.

³⁹⁰ *Id.* at 2.

³⁹¹ *Id.*

³⁹² *TIG Final Evaluation Report*, LEGAL SERVS. OF S. CENT. MICH., LEGAL SERVS. CORP. 1 (2014), <https://www.lsc.gov/sites/default/files/11017%20MI%20Final%20Report.pdf>.

³⁹³ *Id.* at 2, 4.

³⁹⁴ *Document Assembly (Replicable TIG Projects)*, *supra* note 388.

³⁹⁵ *Id.*

³⁹⁶ *Attachment 1: List of Developed Forms*, LEGAL SERVS. CORP., <https://www.lsc.gov/sites/default/files/TIG/Nebraska%20Automated%20Forms.pdf> (last visited Nov. 18, 2020).

civil matters.³⁹⁷ Given the complex and very technical nature of the procedural requirements for appeals, there are substantial risks for pro se litigants if they fail to meet these requirements.³⁹⁸ There is evidence that pro se litigants need assistance beyond written directions.³⁹⁹ Without this assistance, meritorious appeals may fall through the cracks.⁴⁰⁰ In light of the risks, the appeals process is an ideal arena to utilize AI automated document preparation through an AI guided interview process.

For Julia, trying to file an appeal in Pennsylvania, she must file the notice of appeal and concise statement of errors complained of on appeal simultaneously because custody appeals are fast-tracked in order to expedite the appeal process given that children are involved.⁴⁰¹ Programing to assist with the preparation of these documents would significantly assist Julia.⁴⁰² These procedurally difficult documents are ideal for automated document preparation, as the issues to raise in a concise statement of errors complained of on appeal are limited.⁴⁰³ The options of what an individual can raise in a child custody appeal generally fall into one of the following categories: standing, jurisdiction, evidentiary, best interests of the child, or procedural errors.⁴⁰⁴ Utilizing an AI program based on decision trees, with clear prompts for the litigant to review in a cell phone application program in “plain language,” litigants can determine an appealable issue of merit while importing the information necessary

³⁹⁷ Meehan Rasch, *A New Public-Interest Appellate Model: Public Counsel’s Court-Based Self-Help Clinic and Pro Bono “Triage” for Indigent Pro Se Civil Litigants on Appeal*, 11 J. APP. PRAC. & PROCESS 461, 461–62 (2010).

³⁹⁸ *Id.* at 462.

³⁹⁹ *Id.* at 463.

⁴⁰⁰ *Id.* at 464. In California, they developed a self-help clinic in the California Court of Appeals (Los Angeles) to assist pro se litigants in need of help filing an appeal. The program does not establish an attorney-client relationship but provides technical assistance. If qualified, a pro bono attorney may be appointed at another point. However, the program itself is careful to distinguish between information or technical assistance versus direct representation. The program offers more assistance than the written appellate guides alone, as often even with the written materials pro se litigants have difficulties understanding the hypertechnical appellate filing requirements. *Id.* at 464–65, 468–69, 482–84.

⁴⁰¹ 210 PA. CODE § 1925(a)(2) (2020); *see also* 210 PA. CODE § 905 (2020).

⁴⁰² *See* Norton, *supra* note 32, at 85–88.

⁴⁰³ *Id.* at 91.

⁴⁰⁴ *Id.*

to complete the documents to initiate the appeal. From there, a volunteer attorney can focus his or her energy on drafting briefs and preparing for argument—issues best left to a lawyer rather than AI.

As anxiety plays a significant role in the ability to successfully deploy legal information, creating an online environment that is familiar to the individual can reduce that anxiety.⁴⁰⁵ Using familiar technologies can assist with this particular barrier that unrepresented individuals face.⁴⁰⁶ An additional benefit of this method of assistance is its ability to address the procedural barriers in the same manner as the non-technology form of limited legal services. Non-legal barriers of low-income litigants are also resolved by the utilization of automated document preparation and, in fact, may be better at addressing them than traditional limited legal services. AI programming can include legal issue screening (helping litigants understand their issues as legal), can be used during hours convenient to the individual, and can empower the individual by giving greater individual control of the issues.⁴⁰⁷ Self-affirmation exercises within these programs can also assist with deployment of the information that individuals receive and the forms that they prepare.⁴⁰⁸

When evaluating the needs of low-income individuals, it is apparent they need services that are readily accessible in light of their life circumstances and services that will assist with procedural and substantive law, while not taxing their already stretched available “bandwidth.” AI in the form of automated document preparation, combined with online self-help materials, creates a middle ground that addresses these needs.

⁴⁰⁵ Tal Shavit et al., *Don't Fear Risk, Learn About It: How Familiarity Reduces Perceived Risk*, 23 APPLIED ECON. LETTERS 1069, 1069 (2016).

⁴⁰⁶ See Brescia et al., *supra* note 17, at 608.

⁴⁰⁷ Schmitz, *supra* note 30, at 94–96, 106–10.

⁴⁰⁸ Greiner et al., *supra* note 12, at 1139–42. Increasing self-worth through self-affirmation can assist with deployment and follow through with the document preparation and ultimately proceeding with the necessary legal action. *Id.* at 1139–40. This can be as simple as noting in debt collection actions that an individual is not “bad” because they had an issue with a debt that requires legal action. *Id.* at 1142.

CONCLUSION

Just as current pro se solutions have limitations and benefits, so do their AI counterparts. While believing AI solutions are not a panacea, they should be effectively utilized to aid individuals without putting the litigant at risk on the issues that are better suited for a lawyer. As Rhode confirmed in her study, “limited legal assistance programs can often be cost-effective means by which to secure legal services for low-income individuals, and that some forms of assistance, such as hands-on help with form completion, are more successful than others.”⁴⁰⁹ The middle ground of automated document preparation through guided interviews and available online self-help materials offers low-income litigants this “more successful [assistance],”⁴¹⁰ helping to close the justice gap.

⁴⁰⁹ Rhode et al., *supra* note 19, at 2.

⁴¹⁰ *Id.*