

AI, UPL, & A2J — GENERATIVE AI’S DISRUPTIONS  
IN THE DELIVERY OF LEGAL SERVICES TO  
LOW-INCOME INDIVIDUALS

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ABSTRACT

The access to legal services for low-income and disadvantaged individuals is quickly transforming because of the rise of generative artificial intelligence (generative AI or GenAI). While AI tools promise to provide legal information and document preparation assistance, they also raise concerns about accuracy, reliability, and the unauthorized practice of law (UPL). Much attention is on the legal profession’s resistance to AI and the regulatory responses that focus on limiting its use. This Article instead brings attention to AI resources from the perspective of a consumer of legal services. The Article critiques the profession’s restrictive stance on AI, arguing that regulators should focus on improving AI’s integration into guided legal assistance programs. By relaxing UPL restrictions and encouraging collaboration between attorneys and AI developers, the legal system can balance consumer protection with innovation, ensuring that AI serves as a tool to expand access to justice.

INTRODUCTION

Like its predecessor communication and information tools, generative artificial intelligence (GenAI) has challenged the legal profession to apply

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its core values to a new technological development. Issues of competence and supervision,<sup>1</sup> confidentiality and privacy,<sup>2</sup> candor to the tribunal,<sup>3</sup> communicating with clients,<sup>4</sup> and charging for the use of AI<sup>5</sup> are among the most frequently addressed topics. The analysis of these issues echoes responses to prior technology developments,<sup>6</sup> suggesting that not all aspects of this new technology require transformative changes in regulation.<sup>7</sup> Some aspects of GenAI are likely to be more truly disruptive than prior technologies, necessitating new approaches to the regulation of the legal profession and the delivery of legal services. While much attention is being given to artificial intelligence tools for attorneys, this Article addresses these tools from the perspective of consumers of legal services.<sup>8</sup> In particular, this Article will examine the ways in which artificial intelligence

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1. ABA Comm. on Ethics & Pro. Resp., Formal Op. 512 at 6–7, 10–11 (2024) [hereinafter ABA Formal Op. 512]. *See also* Fla. Bar Ethics Op. 24-1 (2024); Ky. Bar Ass’n, Ethics Op. KBA E-437 (2024); Mo. Off. of Legal Ethics Couns., Informal Op. 2024-11 (2024); Pa. Bar Ass’n Comm. on Legal Ethics & Pro. Resp. & Phila. Bar Ass’n Pro. Guidance Comm., Joint Formal Op. 2024-200 (2024).

2. ABA Formal Op. 512, *supra* note 1, at 6–7.

3. ABA Formal Op. 512, *supra* note 1, at 9–10.

4. ABA Formal Op. 512, *supra* note 1, at 8–9.

5. ABA Formal Op. 512, *supra* note 1, at 11–14.

6. ABA Comm. on Ethics & Pro. Resp., Formal Op. 11-459 (2011) (“Duty to Protect the Confidentiality of E-mail Communications with One’s Client”); ABA Comm. on Ethics & Pro. Resp., Formal Op. 477R (2017) (“Securing Communication of Protected Client Information”); ABA Comm. on Ethics & Pro. Resp., Formal Op. 483 (2018) (“Lawyers Obligations After an Electronic Data Breach or Cyberattack”).

7. ABA Formal Op. 512, *supra* note 1, at 2 n.3 (“Many of the professional responsibility concerns that arise with GAI tools are similar to the issues that exist with other AI tools and should be considered by lawyers using such technology.”).

8. Ethics opinions focus on addressing issues for attorneys. Likewise, some state bar task forces have also confined their recommendations to attorneys and the judiciary. *See* CAL. STATE BAR, STANDING COMM. ON PROF. RESP. & CONDUCT, PRACTICAL GUIDANCE FOR THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN THE PRACTICE OF LAW 3 (2023), <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf> [<https://perma.cc/2SMK-LGX6>]. Other state bar task forces have broadened their inquiry to address the use of AI by self-represented litigants. *See* N.Y. STATE BAR ASS’N TASK FORCE ON ARTIFICIAL INTELLIGENCE, REPORT AND RECOMMENDATIONS (2024), <https://nysba.org> [<https://perma.cc/FUN6-CFF4>]; TEX. TASKFORCE FOR RESP. AI IN THE L., INTERIM REPORT TO THE STATE BAR OF TEXAS BOARD OF DIRECTORS 7 (2024), [https://www.texasbar.com/AM/Template.cfm?Section=Meeting\\_Agendas\\_and\\_Minutes&Template=/CM/ContentDisplay.cfm&ContentID=62597](https://www.texasbar.com/AM/Template.cfm?Section=Meeting_Agendas_and_Minutes&Template=/CM/ContentDisplay.cfm&ContentID=62597) [<https://perma.cc/5ZLH-22ZJ>]. Others have included discussions of the risks of unauthorized practice. *See* N.J. STATE BAR ASS’N, TASK FORCE ON ARTIFICIAL INTELLIGENCE (AI) AND THE LAW, REPORT, REQUESTS, RECOMMENDATIONS, AND FINDINGS 22–24 (2024), <https://njsba.com/wp-content/uploads/2024/05/NJSBA-TASK-FORCE-ON-AI-AND-THE-LAW-REPORT-final.pdf> [<https://perma.cc/L8JD-S4EB>]; MINN. STATE BAR ASS’N WORKING GRP. ON AI, IMPLICATIONS OF LARGE LANGUAGE MODELS (LLMs) ON THE UNAUTHORIZED PRACTICE OF LAW (UPL) AND ACCESS TO JUSTICE 4 (2024), <https://mnbars.org/> [<https://perma.cc/N6NV-PHW2>].

tools may affect the quality and availability of legal services for low-income and disadvantaged persons.<sup>9</sup>

Part I of this Article provides context, focusing on several key assumptions about the profession's role and responsibility in providing access to justice for low-income and disadvantaged individuals.

Part II explores how consumers might use currently available AI tools in seeking do-it-yourself (DIY) solutions for their legal problems. The Article demonstrates two current tools: internet searches and document automation programs. It evaluates the utility and reliability of each of these tools for individuals for whom DIY solutions are their only realistic options. For each tool, the section examines how regulation of the profession, particularly doctrines of unauthorized practice, affect access to these tools.

Part III focuses on the future of these tools in providing access to justice by exploring the impact of GenAI. This section explores how GenAI can combine broad information access with document automation in a way that is readily available to low-income and disadvantaged communities. The experiences of attorneys and pro se litigants in using GenAI to create court documents reveals the risks of relying on this incomplete tool, as it lacks expertise or judgment.

This section concludes that, despite court rules attempting to limit its use, it will be exceedingly difficult for regulators to stop consumers from turning to GenAI for legal assistance. Unauthorized practice doctrines are unlikely to limit the widespread availability of GenAI given the decentralized and collaborative nature of AI development.

The Article concludes that, rather than attempting to suppress the use of GenAI for expanding access to legal information and document preparation, the profession would be better off to encourage marrying the expertise of document generation systems with the broad accessibility and efficiency of GenAI. This combination keeps humans in the loop at production and usage stages. Attorneys and technologists can provide the expertise in production

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9. Obviously, the persons one might characterize as low-income or disadvantaged can vary depending on context, location, and purpose for which the term is being used. For purposes of this Article, I am referring to individuals or households who, because of limited financial resources or other significant barriers beyond their control, struggle to cover basic needs like housing, food, healthcare, and education. These would include many individuals whose income is above the federal poverty line, but still have limited access to quality legal services. This includes individuals who may own homes or farms or who are in areas chronically underserved by attorneys. Clients of legal services offices exemplify but are not the exclusive members of this group.

to ensure quality information and assistance. Relaxing the unauthorized practice of law (UPL) standards that will permit nonlawyers to assist consumers to use the resulting technology could balance innovation and access to legal services with the need to protect the public from unqualified or misleading legal advice.

### I. CONTEXT AND ASSUMPTIONS FOR EVALUATING AI AS A TOOL FOR LEGAL SERVICES

When one focuses on the use of technology to deliver legal services to low-income individuals, assumptions about access to justice can distort our analysis. Three underlying assumptions are especially important to correct: that all lawyers are the same, that all individuals have the same access to those lawyers, and that lawyers are the only legitimate source for legal assistance.

The first fiction—that all lawyers are the same, governed by a single set of standards<sup>10</sup>—is belied by the highly stratified nature of the bar. Sociologists have long observed that there are two hemispheres of lawyering: those attorneys who represent entities and work in large firms or organizations, or those attorneys who work in solo and small firms serving primarily individuals.<sup>11</sup> Attorneys in the organizational hemisphere have greater status and income and less diversity than their colleagues representing individuals.<sup>12</sup> More recent studies suggest a widening disparity in income between the two hemispheres of lawyering and an increasing percentage of the bar representing entities and organizations rather than

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10. See Fred C. Zacharias, *The Future Structure and Regulation of Law Practice: Confronting Lies, Fictions, and False Paradigms in Legal Ethics Regulation*, 44 ARIZ. L. REV. 829, 840–42 (2002).

11. See generally JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1982).

12. One can see this result today in the bimodal curve of starting salaries for new attorneys. The National Association for Law Placement’s annual survey of starting salaries indicates that the national median salary for the class of 2023 was \$90,000, up 5.9% compared to the median of \$85,000 for the class of 2022. NALP, *JOBS & JDS: EMPLOYMENT FOR THE CLASS OF 2023 SELECTED FINDINGS 7–8* (2024), [https://www.nalp.org/uploads/Class\\_2023\\_Selected\\_Findings.pdf](https://www.nalp.org/uploads/Class_2023_Selected_Findings.pdf) [https://perma.cc/G8UQ-A54B]. However, few salaries are at this median. For graduates working in private practice, the national median law firm salary was \$165,000. *Id.* In contrast, public service jobs—those in government, public interest organizations, or judicial clerkships—continue to offer relatively low starting salaries, with medians of \$73,500, \$66,620, and \$67,000, respectively for the class of 2023. *Id.* at 9. “[M]ore than half of all graduate salaries (50.7%) falling on the left-side of the curve between \$50,000–\$90,000 and another large peak on the right-side of the curve at the prevailing BigLaw salary.” *Id.* at 8.

individuals.<sup>13</sup>

These descriptions of the legal profession pose a second assumption: that the legal needs of all individuals are met by one or the other of these groups of attorneys. However, many people stand outside of either of these hemispheres—needing but unable to afford legal services. In 1956, the Supreme Court observed that “[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”<sup>14</sup> Yet state and national studies throughout the past decades consistently report that one’s income does indeed affect one’s access to legal services. In 2022, the Legal Services Corporation found that low-income Americans receive little or no legal help for 92% of their civil legal problems.<sup>15</sup> The study defined low-income as households whose income falls below 125% of the federal poverty threshold.<sup>16</sup> At the time of the study, that population amounted to fifty million Americans, including more than fifteen million children and nearly eight million seniors.<sup>17</sup>

These low-income individuals face legal issues that substantially affect their lives: securing rights to basic needs such as housing, education, health care, safety, jobs, or income.<sup>18</sup> Yet they only seek out legal assistance for about one quarter of these problems.<sup>19</sup> Cost concerns and inaccessibility to attorneys deter them from asking for help.<sup>20</sup> Many simply do not know or

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13. JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 41–43, 159–62 (2005). These studies focus on attorneys in Chicago. There is little evidence that the “two hemispheres” model these researchers discovered in Chicago is not true for the rest of the country or that it has changed significantly since 2005. *Id.*

14. *Griffin v. Illinois*, 351 U.S. 12, 19 (1956).

15. LEGAL SERVS. CORP., *THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 7 (2022), <https://lsc-live.app.box.com/s/x12v2uraitotbbzrhwtjlgioemp3myz1> [<https://perma.cc/AL7R-73SU>] [hereinafter *Justice Gap*].

16. For a family of four in 2024, this income level is \$31,200 a year. Annual Update of the HHS Poverty Guidelines, 89 Fed. Reg. 2961, 2962 (Jan. 17, 2024). Different federal programs use different multiples of the federal poverty line to determine eligibility for services.

17. *Justice Gap*, *supra* note 15, at 24.

18. Rebecca L. Sandefur & James Teufel, *Assessing America’s Access to Civil Justice Crisis*, 11 U.C. IRVINE L. REV. 753, 768 (2021) (estimating that in 2019, 19.5 million Americans’ civil justice problems resulted in impaired health and 18 million led to lost employment, income, or housing).

19. *Justice Gap*, *supra* note 15, at 18.

20. How much cost plays a role in seeking legal assistance is an open question. Some research indicates that only about half of individuals with legal issues do not engage attorneys because of cost. *Id.* In the family court setting, other research suggests that cost concerns are the primary consideration for as many as 90% of self-represented litigants. INS. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *CASES WITHOUT COUNSEL: RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT 2* (2016), [https://iaals.du.edu/sites/default/files/documents/publications/cases\\_without\\_counsel\\_](https://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_)

believe that the legal system can help them.<sup>21</sup>

This justice gap is ever widening and has systemic effects on the United States' commitment to the rule of law. One measure can be found in the World Justice Project's Rule of Law Index, which, among other factors, measures "whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system,"<sup>22</sup> and the accessibility, efficiency, impartiality, and effectiveness of that system. Since 2015, the United States ranking worldwide has fallen on this measure.<sup>23</sup> Some of the most dramatic decline has been on the measure of accessibility. This measure assesses "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."<sup>24</sup> The United States has fallen from near the middle of the rankings to the bottom ten or twenty percent of countries.<sup>25</sup>

A final assumption presumes that the responsibility for ensuring access to the legal system can and should rest on the legal profession. Of the three roles of an attorney described by the preamble to the American Bar Association (ABA) Model Rules of Professional Conduct, the least well-developed and least regulated is the attorney's role as "an officer of the legal system and a public citizen having special responsibility for the quality of

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research\_report.pdf [https://perma.cc/UCD7-F5MR] ("While cost is the predominant factor, there are other considerations. There is a certain level of concern about how the involvement of an attorney will affect the ongoing relationship of the parties, whether based on perception or prior experience. There is some sentiment concerning the desire to have a voice in the process (i.e., to tell their story to the court in their own words).").

21. See generally Sandefur & Teufel, *supra* note 18, at 755.

22. *WJP Rule of Law Index, Factor 7: Civil Justice*, WORLD JUST. PROJECT (2023), <https://worldjusticeproject.org/rule-of-law-index/factors/2023/Civil%20Justice/> [https://perma.cc/4CUU-LER9].

23. *WJP Rule of Law Index Country Information for Civil Justice*, WORLD JUST. PROJECT (2023), <https://worldjusticeproject.org/rule-of-law-index/global/2023/United%20States/Civil%20Justice/historical> [https://perma.cc/D3GN-CWSH] (reporting that the United States' civil justice system ranking declined steadily between 2015 (21st) to 2021 (41st), with the 2023 ranking increasing slightly (38th)).

24. *WJP Rule of Law Index, Factor 7: Civil Justice*, *supra* note 22.

25. *WJP Rule of Law Index Country Information for Civil Justice*, WORLD JUST. PROJECT (2023), <https://worldjusticeproject.org/rule-of-law-index/country/2023/United%20States/Civil%20Justice/> [https://perma.cc/MTZ5-7CHK]. The United States has never ranked in the top half of the world on this index, but the measure has fallen even further into the lowest percentage. *Id.* The United States fell from the bottom 40% (72/102) in 2015 to the bottom 10% (126/139) in 2021, with some improvement in 2023 (115/142). *Id.*

justice.”<sup>26</sup> In particular, the preamble addresses the duty of the profession to address access to justice:

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.<sup>27</sup>

However, seven jurisdictions have not adopted the ABA Model preamble, and another seven states alter these two sentences in their version.<sup>28</sup>

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26. MODEL RULE OF PRO. CONDUCT Preamble 1 (AM. BAR. ASS’N 2024) [hereafter MRPC Preamble]. The preamble’s “public citizen” responsibilities are expressed directly in only a few of the Model Rules of Professional Conduct, the vast majority of which regulate the attorney’s conduct when representing a client. Rules 8.4(b)–(g) definitions of misconduct and Rule 8.2 prohibition on false statements regarding qualifications or integrity of judges, reach behavior outside of the roles of advocate and officer of the court.

In recent years, courts citing this provision of the preamble, do so primarily in hortatory commentary rather than to support a disciplinary judgment. *See, e.g.*, *Jones v. Uribe*, 695 S.W.3d 1, 15–16 (Tex. App. 2024) (noting attorneys litigation tactics in child support matter and commenting “we hope the attorneys will remember their role is not merely to act as hired guns, but to ensure that justice is done”); *Drake v. DePuy Orthopaedics, Inc.*, No. 24-3180, 2024 U.S. App. LEXIS 27497, at \*23 (6th Cir. Oct. 28, 2024) (Moore, J., concurring) (citing preamble in reviewing attorney’s aggressive action to enforce contingent fee agreement with client, and concluding that, while the attorney has “no legal obligation” to refund the client fees, “he has an *ethical* duty to refund the money . . . [c]onduct like Johnson’s results in disrespect for the legal profession”); *Raleigh v. Baribault*, No. 3:22-CV-01069 (VDO), 2024 U.S. Dist. LEXIS 189747, at \*66 n.20 (D. Conn. Oct. 18, 2024) (declining to issue sanctions against self-represented attorney whose “extraordinarily broad, scorched-earth discovery tactics that clearly go beyond Rule 26(b) and his refusal to negotiate in good faith with his adversaries” but citing preamble to warn attorney that, in representing clients, this conduct would not be acceptable); *Moore v. Live Cheap, LLC*, No. 1:15-cv-22264-UU, 2015 U.S. Dist. LEXIS 183004, at \*2 n.1 (S.D. Fla. Aug. 26, 2015) (citing preamble in order striking affirmative defenses, commenting on defense counsel’s poor excuses for dilatory response to motions to strike). The attorney’s responsibility for the public good is emphasized most strongly in discussions of prosecutorial duties. However, these are framed as the special role of prosecutors rather than as public citizens. *See, e.g.*, *Worrell v. DeSantis*, 386 So. 3d 867, 875 (Fla. 2024) (Labarga, J., dissenting) (reviewing executive order suspending state attorney and citing preamble for the proposition that “a state attorney’s role does not fall squarely within the traditional role of law enforcement”).

27. MRPC Preamble, *supra* note 26, at 6.

28. AM. BAR ASS’N CPR POLICY IMPLEMENTATION COMM., VARIATIONS OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT (2010),

In keeping with these pronouncements of professional obligation, responses to the justice gap often focus on funding for legal services and increasing pro bono efforts by individual attorneys. While important, these responses are simply inadequate.<sup>29</sup> Lawyers for low-income individuals are a very small subset of the profession.<sup>30</sup> Moreover, the federal Legal Services Corporation (LSC), which is the largest single funder of legal services offices, restricts the type of clients legal services offices can serve<sup>31</sup> and the methods of representation they can use.<sup>32</sup> Because of these restrictions, most legal service attorneys are limited to addressing individual rather than systemic legal problems.<sup>33</sup>

Nonetheless, access to justice need not mean access to the courts and lawyers.<sup>34</sup> Professor Rebecca Sandefur's research on how individuals meet their legal needs challenges the assumption that "any problem with legal implications requires the involvement of a legally trained professional for a just, fair, or successful resolution."<sup>35</sup> Her research points to a need for a broader conception of access to justice:

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[https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/pic\\_migrated/preamble.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/pic_migrated/preamble.pdf) [<https://perma.cc/M2CH-4M8L>].

29. Benjamin Barton, *The LLLT Conundrum*, 76 WASH. U. J. L. & POL'Y 5, 32–33 (2025).

30. AM. BAR ASS'N, PROFILE OF THE LEGAL PROFESSION (2023), <https://www.americanbar.org/content/dam/aba/administrative/news/2023/potlp-2023.pdf> [<https://perma.cc/3B6L-CGMR>] ("Nationwide, there are 2.8 paid legal aid lawyers for every 10,000 U.S. residents in poverty as defined by the Census Bureau.").

31. Agencies who are funded by the Legal Services Corporation are prohibited from representing, among others, clients in: abortion-related litigation of any kind; prisoners; people who are being evicted from public housing because they face criminal charges of selling or distributing illegal drugs; clients seeking desegregation of public schools or military service; or cases involving assisted suicide. *Statutory Restrictions on LSC-Funded Programs*, LEG. SERVS. CORP. (2024), <https://www.lsc.gov/our-impact/publications/other-publications-and-reports/statutory-restrictions-lsc-funded-programs> [<https://perma.cc/3D77-B6LB>].

32. Prohibited actions include: political activities (including voter registration); organizing activities; class actions; most activities involving welfare reform; and soliciting clients in-person. *Id.* A prior limitation that prohibited representation in cases in which statutory fee-shifting is available was removed in 2010. *Id.*

33. *See generally* BRENNAN CTR. FOR JUST., RESTRICTING LEGAL SERVICES: HOW CONGRESS LEFT THE POOR WITH ONLY HALF A LAWYER (2000), [https://www.brennancenter.org/sites/default/files/2019-07/Report\\_How%20Congress%20Left%20the%20Poor%20with%20Half%20a%20Lawyer.pdf](https://www.brennancenter.org/sites/default/files/2019-07/Report_How%20Congress%20Left%20the%20Poor%20with%20Half%20a%20Lawyer.pdf) [<https://perma.cc/X3KD-AJZ2>] (describing how limitations on class actions and other restrictions on legal options limits ability to serve population of low-income clients).

34. *See generally* BENJAMIN H. BARTON, THE LAWYER-JUDGE BIAS IN THE AMERICAN LEGAL SYSTEM 105 (2011) (arguing that the lawyer-judge bias negatively impacts access to justice by creating a legal system that is more complicated, technical, and lawyer-centric, which can make it difficult for non-lawyers to navigate).

35. Rebecca L. Sandefur, *Access to What?*, 148 DÆDALUS 49, 50 (2019).

Most civil justice problems are handled by people on their own, or with advice from family and friends. The most common reason people give for not turning to lawyers is not the cost of lawyers' help. There is a much more important reason: people do not consider law as a solution for their justice problems; they do not think of their problems as being "legal," even when the legal system could help solve them. They think of them simply as problems: problems in relationships, problems at work, or problems with neighbors.<sup>36</sup>

To make legal services more accessible, solely lawyer-centric solutions should make room for self-help resources. Artificial intelligence, in the form of search engines, document automation software, and GenAI, present important opportunities to expand access. However, the profession's regulatory responses to the availability of these tools for expanded access is often to either largely ignore or completely exclude these tools. The profession's larger responsibility for the quality of justice suggests that this attitude need to be re-thought.

## II. THE USES AND CHALLENGES OF TECHNOLOGY IN PROVIDING ACCESS TO JUSTICE

While creating incentives and resources to increase the availability of attorneys for low-income clients is an important part of the picture, the size of the justice gap suggests that solutions must reach beyond traditional means.<sup>37</sup> Delegation to technology is one such solution. One of the basic principles of robotics is that the first tasks to be delegated to technology should be those that are "Dull, Dirty, Dangerous, and Dear."<sup>38</sup> Undoubtedly, attorneys who represent indigent persons would object to characterizing their work as dull or dirty.<sup>39</sup> Anyone who has helped a low-income client

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36. *Id.* at 51.

37. Drew Simshaw, *Technology Competence as a Compass for Helping to Close the Justice Gap*, 20 U. ST. THOMAS L.J. 129, 133 (2024).

38. ANDREW MCAFEE & ERIK BRYNJOLFSSON, MACHINE, PLATFORM, CROWD: HARNESSING OUR DIGITAL FUTURE 99 (2017).

39. ABA STANDING COMM'N ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 19 (2018), [https://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/lb\\_pb\\_supporting\\_justice\\_iv\\_final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lb_pb_supporting_justice_iv_final.authcheckdam.pdf)

maneuver through the maze of federal and state regulations in order to help them protect their children, health, or subsistence knows that the legal issues faced by low-income persons are not necessarily simple or routine.<sup>40</sup> Rather than dull, the representation of indigent and disadvantaged clients “can be one of the most rewarding experiences in the life of a lawyer.”<sup>41</sup>

However, the behavior of the profession and society in supporting this work indicates that others may not share this view.<sup>42</sup> Accordingly, providing legal services to the poor may be one of the first places to which the profession delegates its responsibility. Given the limited financial resources for indigent representation, the time of legal services attorneys is indeed “dear,” and more efficiencies are required to make any progress in increasing access. It should not surprise us that the drive to integrate technology into legal practice has been strong in legal services work.<sup>43</sup> The

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[<https://perma.cc/4565-DT7M>] (describing the primary motivation for most attorneys in providing pro bono work as “empathetic or ethical motivations, such as helping people, reducing social inequalities, being a good person, and ethical or professional obligations”).

40. *Johnson v. Avery*, 393 U.S. 483, 491 (1969) (Douglas, J., concurring) (“The increasing complexities of our governmental apparatus at both the local and the federal levels have made it difficult for a person to process a claim or even to make a complaint. Social security is a virtual maze; the hierarchy that governs urban housing is often so intricate that it takes an expert to know what agency has jurisdiction over a particular complaint; the office to call or official to see for noise abatement, for a broken sewer line, or a fallen tree is a mystery to many in our metropolitan areas.”).

41. MODEL RULE OF PRO. CONDUCT r. 6.1 cmt. 1 [hereinafter MRPC]. *See also*, Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 615 (2015) (reporting pro bono work as increasing well-being). In contrast to the personal reward of pro bono work, recruitment efforts for firms to develop pro bono service often emphasize professional advantages. *See, e.g., What Does Pro Bono Work Mean to Attorneys?*, THOMPSON REUTERS (Sept. 20, 2022), <https://legal.thomsonreuters.com/blog/what-does-pro-bono-work-mean-to-attorneys/> [<https://perma.cc/84QZ-GG4H>] (describing the reasons for pro bono work as developing skills, building teams, boosting reputation, and recruiting and retaining talent).

42. Professor Simshaw suggests that this delegation could result in a two-tiered system of legal services in which “technology-driven legal tools and services would be accepted (or even expected) as the primary source of assistance for low-income individuals, even in situations where human-driven assistance would be more appropriate.” Drew Simshaw, *Toward National Regulation of Legal Technology: A Path Forward for Access to Justice*, 92 FORDHAM L. REV. 1, 12 (2023). However, he observes that a two-tiered system already exists, with no legal assistance at all being the alternative for low-income clients. *See* Drew Simshaw, *Access to A.I. Justice: Avoiding an Inequitable Two-Tiered System of Legal Services*, 24 YALE J.L. & TECH. 150, 177–178 (2022). *Cf.* Bruce A. Green, *Why State Courts Should Authorize Nonlawyers to Practice Law*, 91 FORDHAM L. REV. 1249, 1273 (2023) (“[L]ow-income individuals, on average, might be far better served by being able to take the risks posed by nonlawyer providers of legal help rather than being denied this alternative.”); James E. Cabral et al., *Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241, 246 (2012) (exploring web-based legal services delivery to low-income clients).

43. Chris Johnson, *Leveraging Technology to Deliver Legal Services*, 23 HARV. J.L. & TECH. 259, 279 (2009) (describing development of online legal services to tap into market of low- and

Legal Services Corporation established a program to encourage the use of technology to expand access to justice. Since 2000, over \$81 million has been allocated through these Technology Initiative Grants.<sup>44</sup>

The question to be explored here, however, is not whether and how attorneys should integrate technology into pro bono or legal services work, but whether current advances in AI require restricting this tool to attorneys. The most common tasks of limited scope representation by attorneys are increasingly available through AI tools designed or delivered with minimal or no attorney (or even human) assistance. The development of more accessible and powerful technological tools to deliver legal assistance has caused an explosion of these services. These tools provide legal services that go beyond simply providing legal information or forms and close in on what most UPL standards consider the core of the practice of law: providing individualized advice and assistance in accessing the legal system. This section examines three questions: What are these tools and how do consumers use them? How useful are these tools for low-income individuals to solve legal problems? How do rules prohibiting the unauthorized practice of law affect the availability of these tools?

The term “artificial intelligence” was coined in the mid 1950s and since then, researchers have debated the boundaries of that term.<sup>45</sup> Nonetheless, the computerized resources an individual consumer might use to address a legal problem all readily fall within the term “artificial intelligence.” Each present strengths and weaknesses as tools for increasing access to justice.

To illustrate these tools, consider a hypothetical homeowner in Missouri (we’ll call her Monday Carter).<sup>46</sup> Monday is a widow who lives alone.<sup>47</sup> Her

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moderate-income persons); James Holmes, *The Technological Revolution for Legal Services Organizations May Change Your Practice*, 65 TEX. B.J. 496, 496–98 (2002) (describing the technology initiatives of legal services organizations).

44. ALAN W. HOUSEMAN, LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2023 4 (2023), <https://clp.law.harvard.edu/wp-content/uploads/2023/05/USA-National-Report-ILAG-Conference-2023.pdf> [<https://perma.cc/P9ZB-NN8S>].

45. STUART RUSSELL & PETER NORVIG, ARTIFICIAL INTELLIGENCE: A MODERN APPROACH 1 (Russell & Norvig eds., 4th ed. 2020).

46. Monday’s first name was produced by the random name generator at [behindthename.com](https://behindthename.com), by specifying feminine English name. *Random Name Generator*, BEHIND THE NAME, <https://www.behindthename.com/random/> [<https://perma.cc/74P2-AJND>]. Her second name was selected to honor Robert L. Carter, the lead counsel for the NAACP in *NAACP v. Button*. See 371 U.S. 415, 417 (1963).

47. This use of a hypothetical case study to examine the use of tools has limits of course. For example, I have not included Monday’s racial or ethnic characteristics. These characteristics could affect

adult stepson lives nearby, and they have a close relationship. Her only other relative is a cousin, with whom she has little contact. Monday is a retired childcare worker with social security income of \$20,000 a year (which is less than 150% of the federal poverty level for a single individual).<sup>48</sup> Her home, worth \$140,000, is her only significant asset.<sup>49</sup> Monday would like her stepson to have her home when she dies.<sup>50</sup> How might Monday use AI to achieve her goal?

Monday might turn to a computer or smart phone to search the internet for assistance or use a document generation software tool. What kind of help would each of these tools provide? How useful and reliable would the results be? How does the profession regulate the accessibility and quality of these tools?

#### A. Internet Search Tools

The first level of legal assistance Monday needs is simply information. What will happen to her house when she dies? Monday may turn to the

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the outcome. Racial biases can be built into AI algorithms and into the large language models (LLMs) used to train GenAI. When used as tools for decision by judges, employers, banks, and others, these biases can further exacerbate inequality. *See* Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 CAL. L. REV. 671, 677–695 (2016) (describing how data mining can create bias in decision making); Valerie Schneider, *Locked Out by Big Data: How Big Data, Algorithms and Machine Learning May Undermine Housing Justice*, 52 COLUM. HUM. RTS. L. REV. 251, 274–82 (2020) (AI disparate impact and intentional discrimination in housing); Tom C.W. Lin, *Artificial Intelligence, Finance, and the Law*, 88 FORDHAM L. REV. 531, 537–38 (2019) (bias in lending and other finance decision driven by AI). Like any demonstration experiment, the author encourages others to replicate the experiment here with different variables.

48. *See* Annual Update of the HHS Poverty Guidelines, 89 Fed. Reg. 2961, 2962 (Jan. 17, 2024).

49. *See* Erik Hembre, *Homeownership Among Lowest-income Households Climbs Near All-time High*, FED. RSRV. BANK OF MINNEAPOLIS (July 30, 2024), <https://www.minneapolisfed.org/article/2024/homeownership-among-lowest-income-households-climbs-near-all-time-high> [<https://perma.cc/PGQ6-MXSA>]. Lower-income households are less likely to own their homes than higher-income households. *Id.* Nonetheless, nearly half of the bottom 20% of households were homeowners in 2023, compared to over 80% of the top quintile. *Id.*

50. Justice Gap, *supra* note 15, at 33. Surveys of legal needs indicate that Monday's legal need is not necessarily representative of most legal needs of low-income persons. Only 14% of low-income households experienced a wills and estates legal issue in the past year. *Id.* However, over a lifetime, this is likely to be more prevalent—as these issues tend to concentrate in an older age cohort. The most common legal issues faced by low-income households in a single year (2021) were consumer issues (50% of households), health care (39%), income maintenance (34%), housing (33%), family and safety (26%), and education (19%). *Id.*

internet for answers,<sup>51</sup> accessing that information through the artificial intelligence tool of a search engine.

### i. Products and Processes

If Monday uses a search engine, what determines the sources she will see? The answer depends on many factors, starting with the search engine she selects. For purposes of this Article, Monday will use Google, which currently captures almost 90% of search engine users in the United States.<sup>52</sup>

Search engine results involve a complex suite of software programs. Crawlers search the internet,<sup>53</sup> the results of which are combined with Google's knowledge base built from other sources of information. Together, these sources are used to build an index to the internet.<sup>54</sup> When a user submits a query, a search algorithm analyzes the user's input, applying natural language processing<sup>55</sup> to improve the quality of the prompt by correcting spelling errors, providing synonyms, and adjusting for language and location, among other factors.<sup>56</sup> The Google search algorithm then

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51. Margaret Hagan, *The User Experience of the Internet as a Legal Help Service: Defining Standards for the Next Generation of User-Friendly Online Legal Services*, 20 VA. J. L. & TECH. 394, 428 (2016).

52. United States v. Google LLC, No. 20-cv-3010, 2024 WL 3647498, at \*1, 134 (D.D.C. Aug. 5, 2024) [hereinafter U.S. v. Google] (holding that Google violated Section 2 of the Sherman Act by maintaining its monopoly over the general search services market and general text advertising market). A multitude of other options exist. See Chuck Price, *24 Great Search Engines You Can Use Instead of Google*, SEARCH ENGINE J. (Sept. 4, 2024), <https://www.searchenginejournal.com/alternative-search-engines/271409/> [<https://perma.cc/43G7-6CBZ>].

53. U.S. v. Google, *supra* note 52, at \*38. Only Google and Microsoft's Bing search engine employ software to crawl the web to generate search results. *Id.* Other search engines, like Yahoo and DDG, syndicate search results. *Id.*

54. *Id.* at 38.

55. *Id.* at 38 (search engines "identify spelling errors, annotate the query with synonyms, mark multi-word concepts, generate terms related to the query, and more"). Natural language processing and natural language understanding technologies decode words into computer instruction. *Id.* Machine learning then enables the computer to configure a response. *Id.* When used through conversational AI and additional set of programs involving natural language generation and text-to-speech software permit a voice assistant to produce an oral response. See *Conversational AI Examples: How Siri, Alexa & Google Assistant have Human-like Conversations*, CFTE (Feb. 11, 2021), <https://blog.cfte.education/conversational-ai-examples-how-siri-alexa-google-assistant-have-human-like-conversations/> [<https://perma.cc/LM97-4VSZ>].

56. *Automatically Generating and Ranking Results*, GOOGLE SEARCH, <https://www.google.com/search/howsearchworks/how-search-works/ranking-results/> [<https://perma.cc/2BDV-ADS2>] ("Search algorithms look at many factors and signals, including the words of your query, relevance and usability of pages, expertise of sources, and your location and settings.")

assesses the index content to rank results based on relevance, quality, usability, and personalization.<sup>57</sup> The algorithm itself is a trade secret,<sup>58</sup> with entire industries designed to provide “search engine optimization”<sup>59</sup> in the hopes their websites will appear on the first page of results.

In addition, Google sells advertisements on its search results pages, which will result in search text ads<sup>60</sup> (labeled as “Sponsored” links) appearing along with the organic search results. Google differentiates searches according to whether the queries appear to be commercial or noncommercial.<sup>61</sup> Commercial searches are more likely to produce these advertisements.

If Monday enters a Google search with the prompt “What happens to my house in Missouri when I die?,” the results will provide her a variety of webpages providing answers. Because of Google’s search algorithm, the search results will differ from person to person. Google’s determination of the relevancy of results relies on hundreds of factors, including the user’s location, language, device (desktop or phone), and search history.<sup>62</sup>

The results for Monday’s search provide a window into the sources of legal information that the public might use. Monday’s first page of search results provides links to a web service that matches consumers with

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57. *Id.*

58. Katarina Foss-Solbrekk, *Three Routes to Protecting AI Systems and Their Algorithms Under IP Law: The Good, the Bad and the Ugly*, 16 J. INTEL. PROP. L. & PRACTICE 247, 257 (2021).

59. *Search Engine Optimization*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Search\\_engine\\_optimization](https://en.wikipedia.org/wiki/Search_engine_optimization) [<https://perma.cc/9NK6-Y89M>].

60. U.S. v. Google, *supra* note 52, at \*40.

61. A noncommercial query is one in which “the user seeks to retrieve information that the GSE does not attempt to monetize by delivering a search advertisement. 80% of Google’s queries are noncommercial in nature.” U.S. v. Google, *supra* note 52, at \*10. Advertisements appear primarily on search results from commercial queries. *Id.*

62. The searches included here were conducted using the author’s personal desktop computer, through an incognito window to eliminate the influence of any search history in ordering the results. Because the search occurred from a computer in Missouri, however, the Missouri resources would be more likely to surface even if Monday had not included that parameter in her search. Likewise, the results any individual would obtain from their search would not be identical to my search, since the user’s profile, prior searches, and variations on prompts would provide differing results. This experiment is intended as a demonstration to uncover patterns of results rather than empirical proof of the precise results all users would achieve. Again, the author encourages replication of the experiment. The author is not alone in using this type of experimentation to uncover meaning. For example, federal circuit Judge Newsom undertook a similar search experiment as a tool of statutory construction in *Snell v. United Specialty Ins. Co.* See 102 F.4th 1208, 1224–25 (11th Cir. 2024) (using ChatGPT to interpret meaning of “landscaping” and providing extensive discussion of the future of LLMs as tools for statutory interpretation).

financial advisors,<sup>63</sup> a law firm,<sup>64</sup> and a self-help legal publisher.<sup>65</sup> Each one of these websites functions primarily as an advertisement, exemplifying three different sources of assistance for addressing Monday's estate-planning problem.

How likely is Monday to trust these sources? How useful are these sources for a low-income individual to address a legal problem? How reliable is the information provided?

The first search result leads to a blog that advertises estate planning services.<sup>66</sup> Several aspects of the 1600-word blog would signal to Monday that it is not likely to be aimed at her. The content focuses initially on the tax implications of estate planning, which is unlikely to be Monday's primary concern. Photos feature rural Missouri landscapes and the St. Louis arch.<sup>67</sup> Many legal terms are used without definition and assume a sophistication with investments. A side bar asks, "How Often Should I Take My RMDs?"<sup>68</sup> Monday is unlikely to know that an RMD is a "required minimum distribution" for beneficiaries of individual retirement accounts, an asset that low-income individuals are unlikely to hold.<sup>69</sup> The side bar invites Monday to take a quiz that will match her with up to three financial advisors. She is unlikely to take up the offer.

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63. Rachel Cautero, *Missouri Inheritance Laws: What You Should Know*, SMART ASSET (Dec. 21, 2023), <https://smartasset.com/financial-advisor/missouri-inheritance-laws> [<https://perma.cc/A2LU-G5FX>].

64. Megan D. Andrews, *What Happens if I Die Without a Will?*, LAYTON & SOUTHARD LLC, <https://www.laytonsouthardlaw.com/faqs/what-happens-when-you-die-without-a-will-in-missouri.cfm> [<https://perma.cc/3G2S-S8DD>].

65. Jeff Burtka, *Intestate Succession in Missouri*, NOLO (Jan. 6, 2024), <https://www.nolo.com/legal-encyclopedia/intestate-succession-missouri.html> [<https://perma.cc/N858-HCVG>].

66. Cautero, *supra* note 63.

67. *Cf.* Jim Hawkins & Renee Knake, *The Behavioral Economics of Lawyer Advertising: An Empirical Assessment*, 2019 U. ILL. L. REV. 1005, 1033–34 (2019) (finding photos of attorneys or clients in 716 of 909 attorney websites examined and noting the race and gender of each).

68. Cautero, *supra* note 63.

69. Maria G. Hoffman et al., *New Data Reveal Inequality in Retirement Account Ownership*, U.S. CENSUS BUREAU (Aug. 31, 2022), <https://www.census.gov/library/stories/2022/08/who-has-retirement-accounts.html> [<https://perma.cc/4V9X-PG25>] (18% of working-age individuals have an IRA). As a professional childcare worker, Monday would be especially unlikely to have a retirement account. *See* Nick Brancalone, *No Retirement? Child Care Sector Hobbled by Lack of Retirement Benefits*, FED. RSRV. BANK OF BOSTON (July 12, 2023), <https://www.bostonfed.org/news-and-events/news/2023/07/child-care-early-educators-retirement-challenges-and-opportunities.aspx> [<https://perma.cc/463X-WNJE>].

The second website is an attorney's blog that provides a plain English<sup>70</sup> description of intestate succession and goes on to suggest that a will or other estate planning tool would be helpful.<sup>71</sup> A sidebar form encourages Monday to "Get Help Now" to receive a personalized consultation with one of the firm's attorneys. It is possible that this consultation may be free, though the website does not say so.<sup>72</sup> It is possible that the attorneys at the firm would be able to help Monday craft an affordable estate plan for her house. Perhaps the attorneys would even provide their assistance pro bono.<sup>73</sup> However, it is just as likely that Monday could not afford the assistance of the attorneys or might wonder whether a law firm 400 miles away on the other side of the state could help, so she may prefer to continue to search.

Monday's final option on the first page of her search results is what appears to be a self-help website: NOLO Press Legal Encyclopedia.<sup>74</sup> Much like the other resources, Monday would find a lot of information about intestate succession. The article, which indicates this it is written by an attorney, is written simply and clearly for lay persons. Hypotheticals provide helpful detailed examples (so helpful in fact that one can find these examples republished in law firm blogs,<sup>75</sup> government websites,<sup>76</sup> and discussion board responses).<sup>77</sup> A pop-up screen answers the question "Why

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70. Running the blog contents through Word's editor indicates that the entry is written at a ninth grade reading level, using the Flesch-Kincaid Grade Level.

71. See Andrews, *supra* note 64.

72. Attorneys do not generally advertise prices. See Hawkins & Knake, *supra* note 67, at 1030 (noting that only 18.59% of attorney websites presented price information).

73. Note that I did not contact the Layton & Southard law firm to ask these questions. The firm is in rural Missouri (Cape Girardeau) and its attorneys are deeply engaged with the community. *Our History*, LAYTON & SOUTHARD LLC, <https://www.laytonsouthardlaw.com/aboutus.cfm> [<https://perma.cc/6P4P-VD8J>]. Their firm website says it provides pro bono assistance. *Id.* Perhaps these values might cause them to more readily work to assist Monday. I am simply using this firm because their website turned up as the third "hit" on my search and as an example of what one might find if they clicked on any of the hundreds of additional links for law firm websites that follow in the search window.

74. See Burtka, *supra* note 65.

75. *PA Rules for Intestate Succession*, RJ FICHERA L. FIRM, <https://rjfesq.com/faq/pa-rules-for-intestate-succession> [<https://perma.cc/5HP3-EXZT>].

76. *Intestate Succession*, OFF. OF THE STAFF JUDGE ADVOC. LEGAL ASSISTANCE OFF., [https://home.army.mil/wood/application/files/8416/1713/9646/The\\_Intestate\\_Succession\\_in\\_Missouri\\_Process.pdf](https://home.army.mil/wood/application/files/8416/1713/9646/The_Intestate_Succession_in_Missouri_Process.pdf) [<https://perma.cc/3WB7-LMDD>]; *Probate Procedures*, BOONE CNTY. CLERK, <https://www.boonecountyclerkww.com/wp-content/uploads/2019/04/Probate-Procedures.pdf> [<https://perma.cc/TV8A-EE9Q>].

77. Adam Yarussi, *My Father Passed Away Recently and Left No Will. He Left Behind a New Wife and 2 Children from Previous Marriages. I, JUST ANSWER: ESTATE L.*, <https://www.justanswer.com/estate-law/c5h1b-father-passed-away-recently-left-no-will-left.html> [<https://perma.cc/22UA-YJH8>]; dazeepetals, *Blended Family & Inheritance, Who Gets What?*, TWO

Trust Us?” by explaining that, “Nolo was born in 1971 as a publisher of self-help legal books. Guided by the motto ‘law for all,’ our attorney authors and editors have been explaining the law to everyday people ever since.”<sup>78</sup>

However, NOLO is not only in the business of self-help law. Monday is invited by a chatbot window to engage an attorney. The chatbot, with the picture of a woman, says, “Hi, welcome to Nolo.com! I am a real person. I can help coordinate a consultation with an attorney. Say Hi to begin 😊.” Scrolling to the bottom of the page one finds again a web form inviting Monday to “Talk to an Estate Planning Attorney.”

The NOLO website encyclopedia article will be especially helpful to Monday because she will learn that “Foster children and stepchildren you never legally adopted will not automatically receive a share.”<sup>79</sup> Accordingly, Monday will learn that if her stepson is to inherit her house, she must take some affirmative steps to make that happen.

Monday might be skeptical of engaging further with any of these websites from private entities. “Pro-se litigants consider publicly funded online resources more trustworthy and favor them over other resources.”<sup>80</sup> However, the most helpful government-published resource on estate planning in Missouri would not appear until the third page of results, where Monday could find a forty-page online Probate Law Resource Guide published by the Missouri Bar that would provide fairly comprehensive information about probate, wills, will alternatives, and more.<sup>81</sup>

Because Monday used the Google search engine, she would also be provided a second source of information in the first page of her search results: online discussion fora.<sup>82</sup> For example, the above search would lead to Reddit, where at least two different discussions appear in the prior month

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PEAS REFUGEES (March 25, 2020, 10:07 AM), <https://2peasrefugees.boards.net/thread/104681/blended-family-inheritance-who-gets?page=2> [<https://perma.cc/9VYQ-VNTU>].

78. See Yarussi, *supra* note 77; dazeepetals, *supra* note 77.

79. See Burtka, *supra* note 65; see also Yarussi, *supra* note 77; dazeepetals, *supra* note 77.

80. Ayyoub Ajmi, *Covid-19: A Catalyst to Automate Protection Order Petitions to Support Self-Represented Litigants*, 60 FAM. CT. REV. 165, 174 (2022), [https://irlaw.umkc.edu/faculty\\_works/335](https://irlaw.umkc.edu/faculty_works/335) [<https://perma.cc/9LZU-XHZ5>].

81. See generally THE MO. BAR, PROBATE LAW RESOURCE GUIDE (2021), <https://missourilawyershelp.org/wp-content/uploads/2021/06/probate-resource-guide-updated-5-16.pdf> [<https://perma.cc/Z8AC-8F9R>].

82. Matt G. Southern, *Google Highlights Online Discussions and Forums in Search Results*, SEARCH ENGINE J. (Sept. 28, 2022), <https://www.searchenginejournal.com/google-highlights-online-discussions-forums-in-search-results/466392/> [<https://perma.cc/A9Y8-LB94>].

in the Estate Planning subreddit.<sup>83</sup> Here, individuals have posed detailed and personal questions about what would happen to their home when they die.<sup>84</sup> These individuals are more often looking for advice and information than they are referrals to attorneys to represent them.<sup>85</sup> Monday would see dozens of responses to similar questions, ranging from advice to get a lawyer, links to Missouri statutes, explanations of the probate process, descriptions of similar experiences, and even personal attacks on the individual posting the question. The ranking of these answers would be provided by a combination of Reddit's open-source algorithms. These algorithms assign keywords to queries<sup>86</sup> and permit user evaluation of answers. Readers can upvote or downvote responses, which reorders results based on their perceived usefulness.<sup>87</sup>

If Monday posts a question to Reddit or another social media site, she will likely receive more than information. Because she can post a specific question about her situation and "crowdsource" answers, this tool might be very tempting for her to use and rely upon.<sup>88</sup>

One could repeat this exercise for a variety of other legal problems Monday might face, with different types of sources predominating. If Monday was being threatened with eviction from her home, a wide variety

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83. Reddit is a social media platform that operates by dividing topics into "subreddits," each of which is moderated by a volunteer "mod." Kevin Roose, *Reddit's I.P.O. Is a Content Moderation Success Story*, N.Y. TIMES (Mar. 21, 2024), <https://www.nytimes.com/2024/03/21/technology/reddit-ipo-public-content-moderation.html> [<https://perma.cc/R2ET-8CQ6>].

84. @Hopefully987, *r/Estate Planning*, REDDIT, [https://www.reddit.com/r/EstatePlanning/comments/1buwznw/in\\_mo\\_if\\_there\\_is\\_no\\_will\\_and\\_1\\_adult\\_child\\_lives/](https://www.reddit.com/r/EstatePlanning/comments/1buwznw/in_mo_if_there_is_no_will_and_1_adult_child_lives/) [<https://perma.cc/JPQ6-FNM6>] ("In MO if there is no will and 1 adult child lives in the house after both parents die"); @Affectionate-Log-692, *r/Missouri*, REDDIT, [https://www.reddit.com/r/missouri/comments/1cyio92/questions\\_re\\_missouri\\_inheritance\\_laws\\_and\\_maybe/](https://www.reddit.com/r/missouri/comments/1cyio92/questions_re_missouri_inheritance_laws_and_maybe/) [<https://perma.cc/KQP6-FG7R>] ("[Q]uestions re: Missouri inheritance laws and maybe unique situation").

85. Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 STAN. J. CIV. RTS. & CIV. LIBERTIES 283, 291 (2020).

86. The Reddit keyword system is a robust tool for organizing consumer questions about law. Stanford Design Lab used the system to investigate digital legal needs for the ABA's legal information hotline "Free Legal Answers." See generally AM. BAR ASS'N & STANFORD LEGAL DESIGN LAB, ABA FREE LEGAL DIGITAL NEEDS ANALYSIS (2023), [https://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/abafree/stanford-analysis.pdf](https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/abafree/stanford-analysis.pdf) [<https://perma.cc/8AN7-53FY>].

87. Amir Salihendic, *How Reddit Ranking Algorithms Work*, MEDIUM (Dec. 8, 2015), <https://medium.com/hacking-and-gonzo/how-reddit-ranking-algorithms-work-ef11e33d0d9> [<https://perma.cc/NZ74-P7VP>].

88. Cassandra Burke Robertson, *The Facebook Disruption: How Social Media May Transform Civil Litigation and Facilitate Access to Justice*, 65 ARK. L. REV. 75, 80–81, 84 (2012).

of resources would appear in the top search results.<sup>89</sup> Monday might be discouraged to see that the top search results provide help for landlords, provided by companies selling property management services and software.<sup>90</sup> However, the helpful NOLO encyclopedia would also be prominent.<sup>91</sup>

Compared to her estate planning query, this search would produce more self-help resources from government,<sup>92</sup> legal aid, and nonprofit organizations.<sup>93</sup> There are several possible explanations for the larger share of self-help resources in response to this topic. One is that evictions require court action and tenants are often unrepresented. Courts are motivated to provide assistance when pro se litigants flood their dockets.<sup>94</sup> A second explanation might be the impact of the significant investments made in housing stability during COVID.<sup>95</sup> Third, legal services organizations are

89. Using query, “What do I do if my Missouri landlord says he is evicting me?”

90. David Bitton, *2024 Eviction Process in Missouri: Laws for Landlords & Property Managers*, DOORLOOP (Sept. 11, 2024), <https://www.doorloop.com/laws/missouri-eviction-process> [<https://perma.cc/3GXB-H624>]; *Missouri Eviction Process*, INNAGO (Nov. 2, 2023), <https://innago.com/missouri-eviction-process/> [<https://perma.cc/79KA-EJAJ>]; *A Guide to the Eviction Process in Missouri*, REAL PROP. GRP., <https://www.realpropertygroup.co/missouri-eviction-laws> [<https://perma.cc/HUA8-6SLY>]. Again, this is the search result from my queries for this demonstration. Repeated experiments would not necessarily, and in fact would unlikely, be identical to the search results from another computer and user. Although, multiple searches by the author replicate these patterns of search results as to types of resources available. For additional explanation of methodology, see *supra* note 62 (explaining author’s process).

91. Beth Dillman, *Tenant Defenses to Evictions in Missouri*, NOLO LEGAL ENCYCLOPEDIA (Jun. 28, 2024), <https://www.nolo.com/legal-encyclopedia/tenant-defenses-evictions-missouri.html> [<https://perma.cc/H6GD-UVVM>].

92. See generally ANDREW BAILEY, MO. ATT’Y GEN., MISSOURI’S LANDLORD-TENANT LAW: THE RIGHTS & RESPONSIBILITIES OF LANDLORDS & TENANTS (2023), <https://ago.mo.gov/wp-content/uploads/attachments/landlord-tenantlaw.pdf?sfvrsn=4> [<https://perma.cc/PY3L-P6RT>].

93. See, e.g., *Eviction*, MID-MO. LEGAL SERVS., <https://www.mmls.org/forms-info/eviction/> [<https://perma.cc/JJ3U-ZTT2>] (FAQ); *Are You a Missouri Tenant Facing Eviction?*, MO. TENANT HELP, <https://motenanthelp.org/> [<https://perma.cc/78YY-E7LL>] (includes interactive guided interview and document generation software); *What Can I Do if My Landlord is Trying to Evict Me?*, PINE TREE LEGAL ASSISTANCE, <https://www.ptla.org/what-can-i-do-if-my-landlord-trying-evict-me> [<https://perma.cc/6NQ4-A8Q4>] (including sample forms and a chatbot pertaining to Maine laws).

94. Jessica K. Steinberg et. al., *Judges and the Deregulation of the Lawyer’s Monopoly*, 89 *FORDHAM L. REV.* 1315, 1316 (2021) (judges promote nonlawyer victim assistance programs to address domestic violence docket pressures).

95. *Emergency Rental Assistance Program*, U.S. DEP’T TREASURY, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> [<https://perma.cc/R97Z-D2P6>] (“Treasury’s Emergency Rental Assistance (ERA) programs have collectively provided communities over \$46 billion to support housing stability for eligible renters throughout the COVID-19 pandemic.”).

more likely to include eviction defense in their available services and therefore provide online information. In contrast, if Monday is unable to effectuate her intent to have her stepson inherit her house, neither the courts nor the legislature are likely to notice.

## ii. Utility and Reliability

How useful are these internet resources likely to be for the majority of low-income and disadvantaged individuals facing legal issues?

Several factors limit the utility of web-based information in providing access to justice. As we have seen, those using the internet to advertise products and services will rise to the top of search engines. The degree to which a producer of web pages will direct their attention to low-income individuals will, of course, vary depending on the type of problem and the likelihood that there are sources (consumers, government grants, or other sources) to pay for these legal services. For example, a search for “help filing for workers compensation” retrieves more sponsored ads<sup>96</sup> and organic search results with law firm<sup>97</sup> and insurance<sup>98</sup> links than a search for “help filing for unemployment compensation in Missouri,” which has no sponsored ads and top results and are almost entirely government and nonprofit self-help resources.<sup>99</sup>

The reliability and usefulness of internet search results is a constant battle between those producers who seek to attract attention to their websites,<sup>100</sup> and the search engines that seek to optimize quality and engagement with the search engine itself.<sup>101</sup> If a low-income person’s legal issues might be shared by those who can pay for assistance with these issues,

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96. In the author’s search, seven sponsored ads from law firms appear at the top of the search results. Each user’s search results will differ depending on prior searches and the user’s profile. The author encourages replication of the experiment to confirm the patterns identified here.

97. Three law firms appear in the organic search results.

98. Two links were to insurance companies.

99. Out of the top ten results: seven were government sponsored websites, one was NOLO, one was from Villanova University, and one was a private law firm blog.

100. ANNETTE CHOTI, CLICK MAGNET: THE ULTIMATE DIGITAL MARKETING GUIDE FOR LAW FIRMS 114–119 (2022) (describing search engine optimization techniques).

101. *Id.* at 101–103 (search engines have an incentive to create algorithms that give priority to “expertise, authoritativeness, and trustworthiness”); Matt G. Southern, *Google E-E-A-T: What Is It & How to Demonstrate It for SEO*, SEARCH ENGINE J. (Apr. 24, 2024), <https://www.searchenginejournal.com/google-e-e-a-t-how-to-demonstrate-first-hand-experience/474446/> [https://perma.cc/2G32-WVH5].

or if government offices devote resources to provide online information, search results are more likely to provide answers.

Thus, the usefulness of the internet for low-income and disadvantaged individuals seeking assistance with legal problems depends in part on whether those who create and deploy these web-based resources are authoritative providers with the interests of these communities in mind. “It is a known problem that applications and content development are often developed for, not with, the populations that they are intended to serve.”<sup>102</sup> To advance access to justice beyond individual representation, the legal profession could work with low-income communities to identify their needs for legal information and develop responsive content.

Regardless of how helpful online information might be to low-income consumers, underlying digital divide factors may limit the extent to which this content will be readily accessible. Not all individuals have internet access, computers, or smartphones. While this “digital divide” has narrowed in recent years, in that 95% of adults in the United States say they use the internet,<sup>103</sup> the speed, reliability, and quality of that access likely depends significantly on income. 28% of lower-income adults rely heavily on smartphones for internet access.<sup>104</sup> Almost half of broadband users with lower incomes worry about paying their internet bill.<sup>105</sup> These lower-income broadband users “are roughly 20 points more likely to say they often or sometimes experience problems with their connection than those with relatively high incomes.”<sup>106</sup>

Additionally, not all individuals with access to the internet will be able to use it. Tech readiness varies in general—with about one quarter of adults saying that they need help to use a new computer, smartphone, or other

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102. ANGELA SIEFER ET AL., THE DIGITAL INCLUSION STARTUP MANUAL 9 (2020), <https://startup.digitalinclusion.org/ch2.html> [<https://perma.cc/R56P-SU5N>] (describing the five elements of digital inclusion as affordable internet access, affordable devices, digital literacy training, tech support, and applications/content development).

103. RISA GELLES-WATNICK, PEW RSCH. CTR., AMERICANS’ USE OF MOBILE TECHNOLOGY AND HOME BROADBAND 4, 7 (2024), [https://www.pewresearch.org/wp-content/uploads/sites/20/2024/01/PI\\_2024.01.31\\_Home-Broadband-Mobile-Use\\_FINAL.pdf](https://www.pewresearch.org/wp-content/uploads/sites/20/2024/01/PI_2024.01.31_Home-Broadband-Mobile-Use_FINAL.pdf) [<https://perma.cc/ELG8-WZK9>].

104. *Id.* (28% of individuals earning less than \$30,000 a year and 19% of individuals earning less than \$70,000 a year rely exclusively on cell phones compared to only 4% of individuals who earn more than \$100,000 a year).

105. COLLEEN MCCLAIN ET AL., PEW RSCH. CTR., THE INTERNET AND THE PANDEMIC 6 (2021), [https://www.pewresearch.org/wp-content/uploads/sites/20/2021/09/PI\\_2021.09.01\\_COVID-19-and-Tech\\_FINAL.pdf](https://www.pewresearch.org/wp-content/uploads/sites/20/2021/09/PI_2021.09.01_COVID-19-and-Tech_FINAL.pdf) [<https://perma.cc/UD2D-MNR3>].

106. *Id.*

device.<sup>107</sup> Older adults in particular report that they are challenged in learning new tech skills.<sup>108</sup>

Being able to access text-based resources on the internet requires reading literacy as well. Nearly thirty-two million adults in the United States are functionally illiterate, meaning they cannot read above a basic level or complete tasks such as filling out a job application or interpreting a simple set of instructions.<sup>109</sup> Unsurprisingly, functional illiteracy is overrepresented among low-income populations. For example, 75% of Americans who receive food stamps perform at the lowest two levels of literacy.<sup>110</sup> Not all internet resources require reading skills of course. YouTube does play an important role in providing news and information for many individuals, with over half of America's adults saying that it is very important when it comes to getting DIY information.<sup>111</sup>

Regardless of whether the information is delivered in webpages, videos, or discussion board, many of these internet sources will warn that they are not providing legal advice and will caution Monday to speak to an attorney (or other professional). Looking online, she might hope that a legal services office could help her but would discover that drafting a will would be unlikely to be a service offered.<sup>112</sup> Monday would quickly, however, find

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107. *Id.* at 7.

108. *Id.* at 8.

109. *Adult Literacy Facts*, PROLITERACY (Jan. 15, 2023), <https://www.proliteracy.org/resources/adult-literacy-facts/> [<https://perma.cc/T65R-J8QZ>].

110. *Literacy Statistics*, BEGIN TO READ, <https://www.begintoread.com/research/literacystatistics.html> [<https://perma.cc/4352-WH9F>].

111. Monday could find videos using the YouTube search tool to answer her question. The sources providing these tools and the quality of information is even more varied than those identified through the Google search for websites, but includes attorneys and other allied professionals. *See, e.g.*, Finely Revealed, *Who Gets Your Property if You Die Without a Will*, YOUTUBE (Aug. 4, 2020), <https://www.youtube.com/watch?v=d1V9BHHWxQU> [<https://perma.cc/L7JX-6LS2>] (general advice podcaster); Legacy Talk Podcast, *What Happens to My House When I Die?*, YOUTUBE (Aug. 2, 2024), <https://www.youtube.com/watch?v=cDJ0468yPdE> [<https://perma.cc/8B7B-AMHM>] (attorney); BHHS All. Real Estate, *What Happens to a Mortgage When Someone Dies*, YOUTUBE (Feb. 21, 2020), <https://www.youtube.com/watch?v=JxEUDgF-lwM> [<https://perma.cc/3XSK-FTJA>] (real estate broker); Real Estate Investing Tips for Beginners, *If a Homeowner Dies What Happens to the House?*, YOUTUBE (Apr. 12, 2018), <https://www.youtube.com/watch?v=TfjDyirKJb8> [<https://perma.cc/922P-EFEY>] (real estate investor).

112. *Types of Legal Services Provided by Local Legal Aid Programs*, MO. LEGAL SERVS., <https://www.lsmo.org/node/965/types-services-provided-local-legal-aid-programs> [<https://perma.cc/EES4-4YB5>]. Most legal services offices focus on “matters involving safety, subsistence, and family stability” such as domestic violence, child support, evictions, and foreclosures. *How We Work*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/what-legal-aid/how-we-work> [<https://perma.cc/H8CQ-JMER>]. The Legal Services Corporation, which funds legal services offices

subscription services for online attorney advice being advertised by companies such as Legal Shield<sup>113</sup> or Just Answer.<sup>114</sup> She would have to pay for this assistance.

### iii. Regulation

To what extent does regulation of the profession assist or hinder Monday in using the internet for legal assistance? In the 1960s, Monday might have turned to the New York Times bestselling book *How to Avoid Probate!* for answers to her questions.<sup>115</sup> The book was the subject of an action by the New York Bar Association to enjoin the publication as the unauthorized practice of law.<sup>116</sup> The New York Court of Appeals overturned the lower court's injunction, concluding that the book was not unauthorized practice because it was sold to the public at large and "no relationship of personal trust and confidence arose between Dacey [the author] and the purchasers of his book."<sup>117</sup> Since then, definitions of the practice of law have generally excluded publication of legal information.<sup>118</sup> Today, that safe-harbor for publication of legal information largely extends to internet resources.

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nationwide, has identified wills and estates problems as the least common civil legal problem with "substantial impacts." See Justice Gap, *supra* note 15, at 38. Nonetheless, legal service offices may sometimes order grants to support transactional or planning assistance such as beneficiary deeds. See, e.g., JoAnn Rose, *Legal Aid of Western Missouri Assists Senior Homeowners with Beneficiary Deeds*, AARP (June 22, 2015, 1:40 PM), <https://states.aarp.org/missouri/legal-aid-of-western-missouri-assists-senior-homeowners-with-beneficiary-deeds> [<https://perma.cc/8JSX-CRMG>] (describing 2015 program, since discontinued).

113. See LEGALSHIELD, <https://www.legalshield.com/> [<https://perma.cc/GH2R-XKSD>].

114. See JUSTANSWER LEGAL, <https://www.justanswer.com/law/> [<https://perma.cc/CQS2-G8CK>].

115. See generally NORMAN F. DACEY, *HOW TO AVOID PROBATE!* (1965).

116. See generally *New York Cnty. Lawyers' Ass'n v. Dacey*, 234 N.E.2d 459 (1967). In a previous action, Dacey was personally found to have engaged in the unauthorized practice of law in Connecticut, where he: distributed booklets describing his "Dacey Trust"; "prais[ed] his own expertise in devising the trust arrangement"; and used this as a tool to sell his services to consumers, for whom he "prepared trusts and wills adapted to their needs and desires, providing for large potential profits for himself in the sale of Wellington Fund shares, on which he received a 6 percent commission." Grievance Comm. of Bar of Fairfield Cnty. v. Dacey, 222 A.2d 339, 352 (1966). The Connecticut court found this activity to violate the state UPL statute and issued an injunction. *Id.* Dacey appealed to the United States Supreme Court, which dismissed the appeal for want of a substantial federal question. *Dacey v. Grievance Comm. of Bar of Fairfield Cnty.*, 386 U.S. 683 (1967), *reh'g denied*, 387 U.S. 938 (1967).

117. *Dacey v. New York Cnty. Lawyers' Ass'n*, 423 F.2d 188, 190-91 (2d Cir. 1969).

118. Catherine J. Lanctot, *Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law*, 30 HOFSTRA L. REV. 811, 822-36 (2002).

That does not mean that no other regulation would limit or shape the availability of internet sources for legal consumers. Many websites providing legal information include disclaimers. The content of these disclaimers points to the regulatory concerns that are driving these producers.

For example, in Monday's estate planning search, the footer on the financial planning website that Monday located focuses on disclaiming the site as a financial advisor or investor. It does not, however, disclaim its content as legal advice—even though the blog is heavy with legal information. Indeed, the disclaimer does not make any representations regarding the nature of the information provided other than disclaiming that it is “not an offer to buy or sell any security or interest.”<sup>119</sup> Should these financial planners go on to actually provide legal assistance in the form of drafting estate planning documents for their clients, they may indeed be subject to UPL actions.<sup>120</sup> However, there is little threat of UPL enforcement against web-based publications, no matter how detailed the level of information they provide, so long as they are not providing individualized advice or assistance to identified individuals.

In contrast, disclaimers on attorney websites focus on the concern that the reader might consider their website to be giving advice about the reader's individual circumstances. For example, in the first law firm blog Monday discovered in her estate-planning search, a fine print footer on the page provides a number of disclaimers.<sup>121</sup> It notes that the website does not create an attorney-client relationship; qualifies statements of practice areas by noting that Missouri does not certify specialist designations; and discloses that the firm may use co-counsel or refer to other attorneys. It warns that “past results afford no guarantee of future results. Each case is different and must be judged on its own merits.”<sup>122</sup> Finally, the page provides the disclaimer required by the Missouri rules of professional

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119. See Cautero, *supra* note 63.

120. See, e.g., *In re Mid-America Living Trust Assocs. Inc.*, 927 S.W.2d 855, 871 (Mo. 1996) (enjoining operation of non-lawyer assistance); *Trumbull Cnty. Bar Ass'n v. Hanna*, 684 N.E.2d 329, 329 (Ohio 1997) (UPL when non-Ohio based attorney and corporation reviewed estate plans in Ohio); *Cincinnati Bar Ass'n v. Mid-South Est. Planning*, 903 N.E.2d 295, 299 (Ohio 2009) (UPL when out of corporation and individual marketing trust and estate planning out of licensure state); *Eisel v. Midwest BankCentre*, 230 S.W.3d 335, 339 (Mo. 2007) (en banc) (finding UPL in bank loan practices).

121. See Andrews, *supra* note 64.

122. *Id.*

conduct: “The choice of a lawyer is an important decision and should not be based solely upon advertisements.”<sup>123</sup> These disclaimers are the product of evolving advertising rules and liability concerns. Nonetheless, Monday is unlikely to read these disclaimers and, if she does, they are unlikely to affect her subsequent decisions.<sup>124</sup>

The NOLO website contains the most extensive disclaimer of all. If Monday were to read the fine print disclaimer at the bottom of that page, she would learn that:

Self-help services may not be permitted in all states. The information provided on this site is not legal advice, does not constitute a lawyer referral service, and no attorney-client or confidential relationship is or will be formed by use of the site. The attorney listings on this site are paid attorney advertising. In some states, the information on this website may be considered a lawyer referral service. Please reference the Terms of Use and the Supplemental Terms for specific information related to your state. Your use of this website constitutes acceptance of the Terms of Use, Supplemental Terms, Privacy Policy, Cookie Policy, and Consumer Health Data Notice.<sup>125</sup>

This disclaimer reflects the dual nature of the site as both a self-help resource and a lawyer referral service and identifies the concerns of the nonlawyers and lawyers, both who are involved with NOLO. It may also reflect NOLO’s long history of walking the fine line between legal practice and UPL.<sup>126</sup>

Finally, those individuals posting to online discussion forums, where responses do appear to cross the line to individualized advice, face little risk of UPL charges. The identity of the individual responding may be difficult

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123. MO. SUP. CT. R. 4–7.2(f) (2024).

124. See generally Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 159 U. PA. L. REV. 647 (2011) (reviewing the “spectacular prevalence, and failure” of mandated disclosure requirements in consumer and borrower protection, patient informed consent, contract formation, and constitutional rights).

125. See Burtka, *supra* note 64.

126. See, e.g., *In re Nolo Press/Folk Law Inc.*, 991 S.W.2d 768, 769 (Tex. 1999) (dismissing for want of jurisdiction, NOLO petition for writ of mandamus against UPL committee to produce documents).

to ascertain, and those individuals are not ordinarily in the business of regularly providing legal advice on these forums.

Additionally, content moderation rules regulate content on some social media sites. For example, the Reddit discussion forum that Monday may have consulted for advice has rules set by the moderator of the subreddit, who controls whether posts or responses appear on the site. One of these rules is “Nothing posted or commented here is legal advice. Don't rely on anything you read here to be sound legal advice, You MUST consult your own attorney. Anything posted or commented here is hypothetical and exists for discussion purposes only.”<sup>127</sup> Individual responses might include additional brief disclaimers in the nature of “I'm not a lawyer but . . .” or “You should talk to a lawyer, but . . .” Even with these disclaimers, the nature of these forums is such that they are in fact providing personalized legal advice. However, the fact that this advice is free, limited, and social advice reduces the risk that it will be viewed as practicing law. Practically speaking, “the organic, user-created, and highly communicative nature of social media probably means that such communications cannot be curtailed or limited.”<sup>128</sup>

In sum, the internet can be a useful source of information for low-income and disadvantaged individuals to gather legal information. The ability of these individuals to access or use this information is limited by the larger social and economic inequalities they face. The quality of the information varies, but both the AI algorithms and the individual producers of most legal information have incentives to produce quality, though limited, information. The utility of the information for low-income communities in particular is limited by the fact that few producers are targeting these communities.

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127. *r/EstatePlanning*, REDDIT, <https://www.reddit.com/r/EstatePlanning/> [<https://perma.cc/8GG8-MNVU>]. Other rules are designed to control the quality of posts: “*Be excellent to each other*. No personal attacks, abusive language, or bigotry. *No spam*. No spamming links, shameless self-promotion, reposting the same thing over and over, or anything else that feels spammy. *Do not promulgate misinformation*. If the mods determine you're here to spread disinformation, troll, or just cause chaos, you will be banned.” *Id.* (emphasis added).

128. Cassandra Burke Robertson, *The Facebook Disruption: How Social Media May Transform Civil Litigation and Facilitate Access to Justice*, 65 ARK. L. REV. 75, 80–81, 84 (2012).

### *B. Document Preparation Programs*

While Monday may have learned a great deal from the internet about what happens if she dies without a will or other estate planning tool, she will gain little practical information about how to use that information. Accordingly, she may search for an online tool that could draft a will, finding diverse options.<sup>129</sup>

#### *i. Products and Processes*

Free forms and templates are available at many sites but do not provide any customization.<sup>130</sup> Paid services such as Legal Zoom,<sup>131</sup> Trust&Will,<sup>132</sup> GoodTrust,<sup>133</sup> Nolo's Quicken Willmaker,<sup>134</sup> or RocketLawyer<sup>135</sup> all provide options for DIY wills and many also function as lawyer referral services. These online services use interactive software programs to provide individualized interviews and to generate legal documents.

These interactive document automation tools are not particularly new developments in AI. Over twenty years ago, Chicago-Kent College of Law's Center for Access to Justice and Technology partnered with the Center for Computer-Assisted Legal Instruction (CALI) to create A2J Author.<sup>136</sup> This software tool is designed to permit court clerks, legal aid staff, law students, and others to build interactive interviews. "Since 2005, over 7 million people have used an A2J Guided Interview to address their legal issue. Thousands of court forms have been automated by legal aid and

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129. Caroline Shipman, *Unauthorized Practice of Law Claims Against LegalZoom—Who Do These Lawsuits Protect, and Is the Rule Outdated?*, 32 GEO. J. LEGAL ETHICS 939, 940 (2019) (citing Harris poll reporting that "76% of respondents aged 18–54 said 'they were willing to use online legal services for legal issues if it would save them money.'").

130. See DOYOUROWNWILL, <https://www.doyourownwill.com/> [<https://perma.cc/A5J3-WKCE>]; FABRIC BY GERBER LIFE, <https://meetfabric.com/wills> [<https://perma.cc/2NAQ-GLMM>] (tailored to young families); FREEWILL, <https://www.freewill.com/> [<https://perma.cc/6FRM-FRS6>] (also a free service, which provides an interactive form and intersperses requests for the user to leave a portion of their estate to charity, providing a range of suggested charities).

131. LEGALZOOM, <https://www.legalzoom.com/> [<https://perma.cc/P8S8-AMRZ>].

132. TRUST & WILL, <https://trustandwill.com/about> [<https://perma.cc/WFY7-LZQ7>].

133. GOOD TRUST, <https://mygoodtrust.com/> [<https://perma.cc/PA2W-J3NK>].

134. WILLMAKER, <https://www.willmaker.com/> [<https://perma.cc/ZH8P-PED3>].

135. ROCKET LAWYER, <https://www.rocketlawyer.com/> [<https://perma.cc/65LA-H8EE>].

136. *History of A2J Author*, A2J AUTHOR, <https://a2jauthor.org/content/history-a2j-author> [<https://perma.cc/2Z6R-NQKP>].

court professionals in 44 U.S. states, as well as Canada and Australia.”<sup>137</sup>

These tools combine several software systems. First, software is used to build a rule-based program for self-guided interviews. These interviews are built on decision trees that direct the user to only those portions of the interview that are relevant based on the user’s input. Second, a software program must permit the user to “play” the interview from their computer. Third, from the data collected through the interview, document assembly software creates a completed form or document.<sup>138</sup> Fourth, the document automation may be integrated with other software systems such as a case management system or even a court e-filing system.<sup>139</sup>

These systems can vary widely in their sophistication. Basic document production tools simply automate fill-in-the-blank forms—gathering and filling in information without significant guidance, information, or individualization. More sophisticated guided interview systems use conditional logic, help screens, and other features that guides users through these systems to produce individualized information and documents for the user.

For example, suppose that Monday decides to write a will using one of these online services. She looks for a free service. While some websites advertise free services, she may discover that they nonetheless require credit card information to activate a “trial,” or they are incredibly limited without paid upgrades. The leading, *truly* free service is FreeWill,<sup>140</sup> which is owned by a nonprofit organization and is designed, in part, to boost charitable giving overall. FreeWill partners with nonprofit organizations and encourages users to leave a portion of their estate to a charitable group when they die.<sup>141</sup>

If Monday uses FreeWill’s online tool, she will likely simply begin by working through the questions—starting with basic name, age, contact information, and residency information. She is unlikely to click through and

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137. Jessica Bolack Frank & John Mayer, *Justice at the Crossroads: Lessons Learned from 20 Years of Automating Justice*, LAW PRAC.TODAY, Dec. 2022, <https://www.lawpracticetoday.org/article/justice-at-the-crossroads-lessons-learned-from-20-years-of-automating-justice/> [<https://perma.cc/5TW5-GRPX>].

138. *Chapter 15, A2J AUTHORING GUIDE* (2021), <https://www.a2jauthor.org/content/chapter-15-a2j-document-assembly-tool-a2j-dat-and-templates-tab> [<https://perma.cc/4UP3-AHAY>].

139. *History of A2J Author*, A2J AUTHOR, <https://a2jauthor.org/content/history-a2j-author> [<https://perma.cc/UB2B-K8GC>].

140. *See generally* FREEWILL, <https://www.freewill.com/> [<https://perma.cc/6FRM-FRS6>].

141. *Id.*

read the terms of service,<sup>142</sup> where she would learn that she has agreed to mandatory arbitration if she is unhappy with the service.<sup>143</sup>

Question icons provide popup windows explaining why the website requests particular information. For example, when Monday gets to step two (nominees), a question asks, “Do you have any children?” Clicking on the question icon will provide a brief Q&A about adopted, foster, deceased, or stepchildren.<sup>144</sup>

At step four (residuary), Monday will identify her beneficiaries, executor, and residual beneficiaries. Before she leaves this page, she will find a page of nonprofit organizations to whom she is encouraged to leave her residual estate. Alternatively, the page encourages her to enter information for any nonprofit.

The remaining steps cover some minimal additional items, such as specific bequests (gifts) and directions for her funeral. She will be given choices (and explanation about the choices) to include a no contest clause, a self-proving affidavit, and (because she is in Missouri) an independent administration of the estate. Once again, the solicitation for a bequest to a charity will appear before she will be given an opportunity to review and edit the information. She will then be able to download the completed will and will be given a step-by-step plan for how to execute the will. A sidebar encourages the user to have an attorney review the will and provides links to attorney locators from the American Bar Association (ABA), The American College of Trusts and Estates Counsel (ACTEC), the online legal referral site Avvo, and from the database of “Free Will Fellows.” This last group includes attorneys who volunteer to review and keep content current in the FreeWill program.

FreeWill’s program is a good example of a basic guided interview

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142. Ben-Shahar & Schneider, *supra* note 124, 704–27.

143. *Terms of Service*, FREEWILL, <https://www.freewill.com/terms> [<https://perma.cc/C2CQ-L4UG>]. These types of mandatory arbitration clauses in online legal services have been upheld by some courts. *See e.g.*, Litevich v. Legalzoom.com, Inc., No. X04HHDCV146055757S, 2016 WL 401912, at \*5 (Conn. Super. Ct. Jan. 8, 2016) (enforcing mandatory arbitration clause against beneficiary of will drafted using online resources); LegalZoom.com, Inc. v. McIlwain, 429 S.W.3d 261, 266 (Ark. 2013) (holding arbitration clause enforceable in class action alleging Legal Zoom’s unauthorized practice of law in drafting wills).

144. FREEWILL, <https://www.freewill.com/will/nominees/children-and-pets/children> [<https://perma.cc/6ZZE-2R48>]. “Should I include adopted, foster, deceased, or stepchildren here? This question refers to any living biological or adopted children. If you have stepchildren or foster children who are not officially adopted, you can include them as recipients of gifts in your will, but you should not list them here.” *Id.*

document generation program. The program's questions depend in part on the user's prior responses. For example, if Monday had selected "Married" when the question of marital status appeared, she would be given the option to create a "Mirror Will" for her spouse at the review stage of the will-making process. Because she indicated that she lived in Missouri, she was given a question about an option for independent administration of the estate.

With a free document generation program such as this, Monday could draft a will and learn how to execute that will. But would it be effective?

## ii. Utility and Reliability

The quality of these online tools largely depends on the underlying legal schema that drives the information. At the most basic, these tools may simply automate completing forms without screening for whether the tool is appropriate, and without providing any instruction or information for the user to explain what the resulting form means or how it might be used. The best of these tools are built on design principles that engage multiple forms of expertise. Building the decision trees that guide a user through the program requires a thorough understanding of the substantive and procedural law governing the legal problem being addressed.<sup>145</sup> Making the programs trustworthy and understandable for the users requires understanding how consumers are likely to approach their legal problems.<sup>146</sup> Thus, those who develop these programs must engage the community who will be using these forms in determining their needs.<sup>147</sup>

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145. Lutz-Christian Wolff, *The AI-Based Legal Paradise—A (Necessary!) Thought Experiment*, 6 J.L. & TECH. TEX. 168, 174 (2023) ("It is widely ignored that laws and regulations involve algorithms. Laws and regulations give step-by-step instructions on how to apply them, how to act in accordance with them, and how to reach a particular legal outcome").

146. See Ajmi, *supra* note 80, 173–74 (describing the discovery and design phases of building the Kansas online protective order portal during COVID-19); see also *Simplifying the Protection Order Process*, KAN. POP.: PROTECTION ORD. PORTAL, <https://www.kspop.org/> [<https://perma.cc/59CL-BY7S>]. Today a majority of protective order petitions are filed using this portal. See Ayyoub Ajmi, *KS POP Celebrating Three Years of Tech-Driven Justice for All*, 28 AALL SPECTRUM 18, 19 (2024), [https://irlaw.umkc.edu/faculty\\_works/952](https://irlaw.umkc.edu/faculty_works/952) [<https://perma.cc/VQK7-XEZ9>]. See generally Cynthia L. Fountaine, *When Is A Computer A Lawyer?: Interactive Legal Software, Unauthorized Practice of Law, and the First Amendment*, 71 U. CIN. L. REV. 147, 154 (2002) (noting that interactive legal software necessarily involves both understanding law and exercising some judgment in how that law might apply to different users).

147. See Ajmi, *supra* note 80, 176–77.

The difference between the information Monday will get from an internet search and guidance she could get from a guided interview is more than just the fact that the latter program can produce a legal document. A well-designed guided interview could help her decide what provisions to include in the will and even whether a will is indeed her best option for her estate planning. Much like an intake checklist any attorney might use in counseling a client,<sup>148</sup> the program could ask questions that would identify collateral issues, such as any debts to which the house may be subject, the age and health of her stepson, the possibility of other family members disputing the will, and more. These questions could help to identify which legal options are best for Monday's individualized circumstances by asking preliminary questions and providing follow-up information. They engage attorneys' fundamental competency skill of "determining what kind of legal problems a situation may involve."<sup>149</sup>

Criticism of AI tools highlight the risks of DIY tools as one-size-fits-all, incompetent, deceptively trustworthy products that are likely to eventually result in problems.<sup>150</sup> Despite the ability of these programs to personalize the process of document preparation, the most common warning that attorneys provide to dissuade potential clients away from these document generation tools is not that the tools are inaccurate, but that they are generalized. Criticizers label the documents these services produce as "cookie cutter" or "one-size-fits-all" products.<sup>151</sup> The criticism itself relies

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148. Barbara Glesner Fines, *The Ethical Risk of Experience*, 36 J. AMER. ACAD. MATRIM. L. 63, 76 (2023).

149. MRPC r. 1.1 cmt. 2.

150. See, e.g., Nicholas M. Oertel, *Using Low-Cost DIY Legal Services: Risks Far Outweigh Benefits*, FOSTER SWIFT (Jan. 24, 2023), <https://www.fosterswift.com/communications-risks-using-diy-internet-legal-services.html> [<https://perma.cc/DLB8-9TZ5>]; Matthew Shapiro, *The Risks and Limitations of DIY Wills: The Importance of Professional Guidance in Estate Planning*, RICE L. FIRM (Nov. 14, 2023, 9:30 PM), <https://www.ricelawflorida.com/the-risks-and-limitations-of-diy-wills-the-importance-of-professional-guidance-in-estate-planning/> [<https://perma.cc/6FJY-G6EE>]; *The Risks of DIY Legal Services For Your Business*, INTEGRATED GEN. COUNS. (July 31, 2023), <https://integratedgeneralcounsel.com/the-risks-of-diy-legal-services-for-your-business/> [<https://perma.cc/AYK5-9MPH>].

151. Debra Carrasquillo Hedges, *What Are the 8 Risks of DIY Estate Planning?*, BORCHERS L. (Feb. 28, 2023), <https://www.borcherslaw.com/what-are-the-8-risks-of-diy-estate-planning/> [<https://perma.cc/HUK9-S4RF>] ("The one-size-fits-all approach of a DIY plan may give you a false sense of security because it was done quickly and inexpensively, but in the end, you may leave your family to clean up the mess."); *8 Reasons You Should Avoid Cookie-Cutter Estate Plans*, TULLY L. GRP., <https://tullyelderlaw.com/blog/8-reasons-you-should-avoid-cookie-cutter-estate-plans/> [<https://perma.cc/2V82-5VSS>]; *3 Dangers of DIY Legal Service*, AGUILERA L. CTR., PA, [<https://perma.cc/2V82-5VSS>].

on a false comparison: that is, “cookie cutter” generic legal forms versus highly individualized representation by attorneys. As Richard Susskind accurately forecast in 2013, “bespoke” legal services will be increasingly rare for most clients and many legal services will move toward commodification.<sup>152</sup> Indeed, the very AI tools that attorneys criticize online providers for relying on may be tools that the attorney also use. This makes the actions to block these online providers through UPL restrictions look much more like market protection than consumer protection. The comparison is especially false for low-income consumers. The choice for these individuals is not generic assistance versus individualized attorney representation.<sup>153</sup> For those without access to attorneys, the choice is cookie cutter service or no cookie at all.

One of the most significant limitations in deploying these tools is simply the time and expertise it takes to build these systems. While technology grants led to an initial wave of these programs from legal services offices, funding has decreased over time.<sup>154</sup> Moreover, the attorneys building these programs concentrate, for the most part, on assistance for pro se litigants.<sup>155</sup> Individuals like Monday, who are seeking assistance with needed documents for business formation, estate planning, consumer or property transactions, or employment, will more often find these programs presented by paid services.

### iii. Regulation

Whether the companies who provide these programs are engaged in

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<https://aguileralawcenter.com/3-dangers-of-diy-legal-service/> [https://perma.cc/N34P-J5DU] (“Paperwork is generic and does not address your unique needs”). Of course, the catch-22 for developers (that limits their ability to make these programs more personalized) is that shift would move the program from information to advice and thus to UPL.

152. RICHARD E. SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* 29–32, 237, 247 (2008). The legal profession is not alone in this trend. See Raymond H. Brescia et al., *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice*, 78 ALBANY L. REV. 553, 609 (2015) (“[C]onsumers are facing more one-size-fits-all treatment by the institutions with which they come in contact—banks, cell phone companies, employers, credit card companies.”).

153. Bruce A. Green, *Why State Courts Should Authorize Nonlawyers to Practice Law*, 91 FORDHAM L. REV. 1249, 1273 (2023).

154. Bolack Frank & Mayer, *supra* note 137.

155. For example, most guided interviews hosted on A2J.org involve family law litigation. See *Welcome to A2.J.org*, A2.J.ORG, <https://a2j.org/> [https://perma.cc/MR5V-EV9J].

UPL has been the subject of decades of ethics opinions<sup>156</sup> and litigation.<sup>157</sup> Sometimes these actions begin with the state bar association seeking to enjoin the company's offering of its products, arguing that these products go beyond the generally tolerated action of selling a product that simply permits customers to fill in forms (sometimes known as the "scrivener's exception" to unauthorized practice)<sup>158</sup> to the sale of a service that requires giving advice or making choices for the customer.<sup>159</sup> As the Missouri Court of Appeals noted regarding Legal Zoom's online systems:

LegalZoom's branching computer program is created by a LegalZoom employee using Missouri law. It is that human input that creates the legal document. A computer sitting at a desk in California cannot prepare a legal document without a human programming it to fill in the document using legal principles derived from Missouri law that are selected for the customer based on the information provided by the customer. There is little or no difference between this and a lawyer in Missouri asking a client a series of questions and then preparing a legal document based on the answers provided and applicable Missouri law. That the Missouri lawyer may also give legal advice does not undermine the analogy because legal advice and

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156. Bd. on the Unauthorized Prac. of L. of the Sup. Ct. of Ohio, Advisory Op. UPL 2008-03 (Dec. 12, 2008), [http://www.supremecourt.ohio.gov/Boards/UPL/advisory\\_opinions/UPLAdvOp\\_08\\_03.pdf](http://www.supremecourt.ohio.gov/Boards/UPL/advisory_opinions/UPLAdvOp_08_03.pdf) [<https://perma.cc/QHA7-Y5U2>] ("Unless a preprinted legal form is chosen by the consumer, without assistance, guidance, selection, or direction from the online service, and the consumer provides all information for the form without prompting for key or relevant information, the combined activities of an online service will normally constitute the unauthorized practice of law in Ohio."); Penn. Bar Ass'n Unauthorized Prac. of L. Comm., Formal Op. 2010-01 (Mar. 10, 2010), <http://www.pabar.org/public/committees/unautpra/Opinions/2010-01LglDocumentPreparation.pdf> [<https://perma.cc/3KP6-Q7QM>].

157. See generally Unauthorized Prac. of L. Comm. v. Parsons Tech., Inc., No. CIV.A. 97CV-2859H, 1999 WL 47235 (N.D. Tex. Jan. 22, 1999), *vacated*, 179 F.3d 956 (5th Cir. 1999); Janson v. LegalZoom.com, Inc., 802 F. Supp. 2d 1053 (W.D. Mo. 2011); LegalZoom.com, Inc. v. N.C. State Bar, No. 11 CVS 15111, 2014 WL 1213242 (N.C. Super. Mar. 24, 2014); Bergenstock v. LegalZoom.com, Inc., No. 13 CVS 15686, 2015 WL 3866703 (N.C. Super. June 23, 2015); LegalZoom.com, Inc. v. McIlwain, 429 S.W.3d 261, 261 (Ark. 2013); Litevich v. LegalZoom.com, Inc., No. X04HHDCV146055757S, 2015 WL 4570739 (Conn. Super. June 26, 2015), *on re-argument in part*, No. X04HHDCV146055757S, 2015 WL 9595160 (Conn. Super. Dec. 1, 2015).

158. LegalZoom.com, Inc. v. N.C. State Bar, No. 11 CVS 15111, 2014 WL 1213242, at \*12 (N.C. Super. Ct. Mar. 24, 2014).

159. Janson, 802 F. Supp. 2d at 1053.

document preparation are two different ways in which a person engages in the practice of law.<sup>160</sup>

These UPL actions have been met with mixed success. In actions brought by bar associations, public tugs of war ensue. In the North Carolina litigation involving Legal Zoom, the state bar's cease and desist letter was met by a suit by Legal Zoom to enjoin the bar from seeking to enforce UPL restrictions.<sup>161</sup> Defenses not only allege that these products fall within exceptions to unauthorized practice, but also raise constitutional<sup>162</sup> and antitrust<sup>163</sup> principles. In many of these cases, after a period of intense negotiation, the parties have settled.<sup>164</sup> Providers agree to have licensed attorneys in the state evaluate all documents offered to customers and agree to provide conspicuous disclaimers.<sup>165</sup> Some cases are dismissed on the basis that the UPL statute requires that a state's supreme court determine first that the activity constitutes unauthorized practice before an injunction can be sought at the trial court.<sup>166</sup> In some states, legislatures have responded to court challenges by amending UPL statutes to expressly permit online legal assistance.<sup>167</sup>

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160. *Id.* at 1065.

161. *N.C. State Bar*, 2012 WL 3678650, at \*1.

162. *Id.* (raising state constitutional claims); *see also* *Unauthorized Prac. of L. Comm. v. Parsons Tech., Inc.*, No. CIV.A. 97CV-2859H, 1999 WL 47235, at \*7–10 (N.D. Tex. Jan. 22, 1999), *vacated and remanded*, 179 F.3d 956 (5th Cir. 1999) (free speech claims). *See generally* Fountaine, *supra* note 146 (discussing the First Amendment analysis in the *Parsons* decisions).

163. Shipman, *supra* note 129, at 947 (noting that in North Carolina litigation, Legal Zoom responded by filing a federal antitrust lawsuit against the North Carolina State Bar for its refusal to register prepaid legal plans).

164. *See, e.g., Janson*, 802 F. Supp. 2d at 1053; Assurance of Discontinuance, *In re LegalZoom.com, Inc.* (Wash. Super. Ct. Sept. 15, 2010), [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/News/Press\\_Releases/2010/LegalZoomAOD.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/News/Press_Releases/2010/LegalZoomAOD.pdf) [<https://perma.cc/W566-KYKM>]. *See* *South Carolina State Conf. of the NAACP v. Wilson*, No. 2:23-CV-01121-DCN, 2023 WL 5207978, at \*7 (D.S.C. Aug. 14, 2023) (dismissed on grounds of abstention). Nonprofit organizations providing these services are not exempt from UPL enforcement. For example, the NAACP in designing a “housing advocate” program that would engage nonlawyers in representing tenants feared enforcement of UPL restrictions against the program and sued for an injunction against this enforcement. *Id.*

165. Assurance of Discontinuance, *In re LegalZoom.com, Inc.* (Wash. Super. Ct. Sept. 15, 2010), [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/News/Press\\_Releases/2010/LegalZoomAOD.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/News/Press_Releases/2010/LegalZoomAOD.pdf) [<https://perma.cc/W566-KYKM>].

166. *Lowry v. LegalZoom.com, Inc.*, No. 4:11CV02259, 2012 WL 2953109, at \*2–3 (N.D. Oh. 2012) (dismissed for lack of jurisdiction).

167. In 2015, after North Carolina settled with Legal Zoom, the legislature passed an act exempting websites that generate forms from the definition of UPL. Shipman, *supra* note 127, at 947.

While most UPL actions focus on for-profit organizations, nonprofits providing these online form generation services for low-income consumers are not exempt from UPL enforcement. The nonprofit Upsolve, for example, faced numerous charges of UPL by assisting low-income debtors in preparing bankruptcy petitions. The Upsolve software provides guided interviews to screen individuals for its service, focusing on low-income debtors with more than \$10,000 of debt and relative uncomplicated bankruptcy actions.<sup>168</sup> The software assists users in filling in information on bankruptcy petitions, including automatically conducting a “soft pull” of the user's credit report<sup>169</sup> and searching the federal courts’ Pacer system for prior bankruptcy actions.<sup>170</sup>

In two separate bankruptcies filed by pro se litigants, the Maryland bankruptcy court noted that the required pro se disclosure identified Upsolve as aiding in preparing the petition. The court issued an order to Upsolve to show cause as to why its actions did not constitute the practice of law.<sup>171</sup> In a lengthy memorandum opinion, the court exhaustively described the components of Upsolve’s software and clerical assistance and compared these actions against Maryland’s standards for unauthorized practice. The court noted the difficulty in applying these standards when technology is involved but concluded that different standards were not justified simply because of advances in the methods in which individuals assisted others in preparing bankruptcy petitions.<sup>172</sup>

The court concluded that “the issue of whether the software overall constitutes the practice of law is a close one.”<sup>173</sup> For most of Upsolve’s product, the court concluded that it was not engaged in the practice of law. However, the court directed Upsolve to address some aspects of the program

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Likewise, litigation enjoining Parsons Technology from selling the Quicken Family Lawyer software product was followed by the Texas legislature refining its UPL statute to exclude software and websites so long as the products include a disclaimer noting that it is not a substitute for an attorney’s advice only to be followed by the Texas legislature’s prompt and direct response. Fountaine, *supra* note 146, at 158.

168. *In re Peterson*, No. 19-24045, 2022 WL 1800949, at \*16-18 (Bankr. D. Md. June 1, 2022).

169. *Id.* at \*51.

170. *Id.* at \*53.

171. *Id.* at \*55.

172. *Id.* at \*39. The court noted several previous bankruptcy court decisions in which online or software bankruptcy preparation services were held to have engaged in the practice of law. *See In re Kaitangian*, 218 B.R. 102, 110 (Bankr. S.D. Cal. 1998); *In re Farness*, 244 B.R. 464, 472 (Bankr. D. Idaho 2000); *Frankfort Digit. Servs., Ltd. v. Kistler (In re Reynoso)*, 477 F.3d 1117, 1125–26 (9th Cir. 2007); *In re Evans*, 413 B.R. 315, 326–27 (Bankr. E.D. Va. 2009).

173. *In re Peterson*, 2022 WL 1800949, at \*55.

that limited user choices. In particular, the court was concerned regarding the “exemption selection” tool. While Upsolve denied that the program used any “artificial intelligence, machine learning, or natural language processing algorithm,”<sup>174</sup> the software program *did* provide a simple rule-based system for directing some users regarding the available bankruptcy exemptions. The court concluded that this forced selection mechanism took the software over the line from the scrivener’s exception into the territory of providing legal advice.<sup>175</sup>

The court also found that Upsolve engaged in UPL when its website seemingly directed users to use the Kelley Blue Book car value website,<sup>176</sup> and in the limited way its software handled fee waivers.<sup>177</sup> Again, both concerns were based on the limited choices the software provided regarding these issues.

These document preparation programs pose the opportunity to provide personalized, accurate, and efficient assistance in generating common legal forms. This could significantly increase access to justice for low-income persons. However, significant challenges, including the costs to build these programs and the UPL enforcement actions that confine the opportunities and responsibilities for building these programs, prevent widespread adoption.

### III. THE NEXT GENERATION OF AI ASSISTANCE: GENAI

GenAI presents the next step in AI tools that could assist Monday. GenAI tools can read, write, synthesize, summarize, and analyze text.<sup>178</sup> Rather than asking a search engine for information, Monday might use a tool such as the latest version of ChatGPT, Claude, Gemini (DeepMind), Perplexity, or NotebookLM, or any of the many other GenAI tools that will

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174. *Id.* at \*32–55.

175. *Id.* at \*46, \*49. “Upsolve fails to recognize that the moment the software limits the options presented to the user based upon the user’s specific characteristics—thus affecting the user’s discretion and decision-making—the software provides the user with legal advice.” *Id.* at \*46.

176. *Id.* at \*52.

177. *Id.* at \*54.

178. Paul D. Callister, *Generative AI and Finding the Law*, 117 L. LIBR. J. (forthcoming 2025) (manuscript at 15, 39–43), [https://irlaw.umkc.edu/faculty\\_works/911](https://irlaw.umkc.edu/faculty_works/911) [<https://perma.cc/3HU2-GYPG>].

likely appear by the time readers are reviewing this article.<sup>179</sup> Conversational chatbots built on GenAI can use natural language processing to understand a diversity of inputs and generate human-like responses.<sup>180</sup> These chatbots can provide general information about legal rights and duties. The advantage of these chatbots over other self-help information resources is that these chatbots can translate inputs and outputs in multiple languages, with responses that do not require higher levels of literacy or, to the extent chatbots produce audio responses, any reading literacy at all.<sup>181</sup>

#### A. Combining Information with Assistance

Suppose Monday uses ChatGPT<sup>182</sup> to get help. In the space of ninety seconds, she will have advice on the best tool for transferring her house, a sample document, and advice about how to complete the process. Observe the following exchange:

**Monday asks:** I own a home that I want my stepson to have when I die. What is the best way to accomplish that?

**ChatGPT responds:** To ensure that your stepson inherits your home, you have a few options:

1. **Will:** You can specify in your will that you want your stepson to inherit the home. A will is a legal document that outlines your wishes for the distribution of your assets after your death. It's important to have the will drafted by a legal

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179. See Rolf Mistelbacher, *The Best AI Assistants Compared: Claude vs Gemini vs ChatGPT vs Mistral vs Perplexity vs CoPilot*, FRESH VAN ROOT (Aug. 14, 2024), <https://freshvanroot.com/blog/best-ai-assistants-compared-2024/> [https://perma.cc/B3EN-PZ2P].

180. Ayyoub Ajmi, *Revolutionizing Access to Justice: The Role of AI-Powered Chatbots and Retrieval-Augmented Generation in Legal Self-Help*, 53 THE BRIEF 10, 12 (2024), [https://irlaw.umkc.edu/faculty\\_works/949](https://irlaw.umkc.edu/faculty_works/949) [https://perma.cc/HL3Z-M8PQ].

181. See *id.* at 11–15.

182. CHATGPT, <https://chatgpt.com/> [https://perma.cc/833K-2UPR]. For purposes of these demonstrations, I have used ChatGPT4o, conducting these conversations on August 23, 2024. While I logged into my subscription account, the basic search mechanisms are no different for a free account. One of the features of these large language models is that the same prompt might result in a different output at different times. Callister, *supra* note 178, at 32. Accordingly, a reader replicating these prompts might not see precisely the same responses.

professional to ensure it meets all legal requirements and is clear in its instructions.

2. **Trust:** Setting up a trust can be a more flexible option. With a living trust, you transfer ownership of the property into the trust, and you can designate your stepson as the beneficiary. This can also help avoid probate, which is the legal process of distributing your estate, and can provide more privacy and control over how and when your stepson receives the property.
3. **Transfer on Death Deed (TODD):** Some states allow you to execute a Transfer on Death Deed. This deed allows you to name a beneficiary who will receive the property upon your death without having to go through probate.
4. **Joint Ownership:** You could add your stepson as a joint owner of the property with right of survivorship. This means that upon your death, your stepson would automatically inherit the property. Be cautious with this option, as it could affect your control over the property while you're alive and might have implications for taxes and your stepson's liability.

Each of these options has different legal and tax implications, so it's wise to consult with an estate planning attorney who can help you choose the best method based on your specific circumstances and ensure that everything is set up correctly.

**Monday asks:** Which of these would be the easiest and least expensive options for my son? My house is not worth a lot, and I don't have any other assets.

**ChatGPT responds:** Given that your house is not worth a lot, and you don't have other assets, the easiest and least expensive options might be:

1. **Transfer on Death Deed (TODD):** If your state allows it, this is often a straightforward and cost-effective method. It involves filling out and filing a specific form with your local land records office. It allows your stepson to inherit the property directly upon your death without going through probate. This method is generally less complex and less expensive than setting up a trust or drafting a will.
2. **Will:** Drafting a will is relatively inexpensive and simple, especially if you use a standard template or work with a legal service provider. You'll need to ensure the will is properly executed and updated if your circumstances change.
3. **Joint Ownership:** Adding your stepson as a joint owner with right of survivorship can be relatively simple, but it has some potential drawbacks. It can affect your control over the property while you're alive and might have implications for taxes and liability.

The choice largely depends on your comfort level with each method and whether you're open to potential implications of joint ownership. Consulting with an estate planning attorney can help clarify which option would be best for your situation and ensure it's done properly.

**Monday asks:** Can you provide a sample TOD Deed?

**ChatGPT responds:** Certainly! Here's a simplified sample of a Transfer on Death Deed (TODD). Remember, this is a general example and may need to be adjusted based on your specific situation and state requirements. It's always best to consult with a legal professional to ensure it's correctly drafted and executed.

### **Transfer on Death Deed**

**This Transfer on Death Deed** (the "Deed") is made

on this [Day] day of [Month], [Year], by and between [Your Full Name], residing at [Your Address] (the "Grantor"), and [Beneficiary's Full Name], residing at [Beneficiary's Address] (the "Beneficiary").

### **1. Property Description**

The Grantor hereby transfers and conveys to the Beneficiary all of Grantor's interest in the following described real property located in [County], [State], with the legal description as follows:

[Insert Legal Description of Property]

### **2. Transfer on Death**

The transfer of the property described above shall be effective upon the death of the Grantor. The Beneficiary shall take title to the property subject to any existing encumbrances, conditions, and restrictions of record.

### **3. Effective Date**

This Deed shall become effective only upon the death of the Grantor and shall be recorded in the office of the [County Clerk/Recorder] of [County], [State], before the death of the Grantor.

### **4. Signature and Acknowledgment**

#### **Grantor:**

[Your Full Name]

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

#### **Notary Public:**

State of [State]

County of [County]

On this [Day] day of [Month], [Year], before me, [Notary's Full Name], a Notary Public in and for said

State, personally appeared [Your Full Name], known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that [he/she] executed the same.

Witness my hand and official seal.

Signature: \_\_\_\_\_  
[Seal]

### 5. Recording

This Deed must be recorded in the [County Clerk/Recorder] office of [County], [State], to be effective.

Make sure to adjust the details to match your specific situation and follow your state's requirements. Consulting with an attorney will help ensure that everything is in order and legally binding.

**Monday asks:** Will this sample deed work in Missouri?

**ChatGPT responds:** The sample Transfer on Death Deed (TODD) provided is a general template and might need adjustments to meet Missouri's specific requirements. Missouri does have its own rules and requirements for TODDs. Here are some key points for Missouri:

1. **Legal Description:** Ensure the legal description of the property is complete and accurate. Missouri requires a detailed legal description of the property, not just the address.
2. **Execution:** The deed must be signed by the grantor and acknowledged before a notary public. The signature should match the name on the deed.
3. **Notarization:** The deed must be notarized by a Missouri notary public. Ensure the notary follows Missouri's requirements for acknowledgment.

4. **Recording:** The TODD must be recorded with the Recorder of Deeds in the county where the property is located. Missouri requires that the deed be recorded before the grantor's death to be effective.
5. **Forms and Fees:** Check with the local Recorder of Deeds for any additional forms or requirements and be prepared to pay any recording fees.
6. **Validity:** The deed must comply with Missouri statutes, specifically Missouri Revised Statutes Section 461.051 and related sections, which outline the requirements for Transfer on Death Deeds.

To ensure compliance, it's a good idea to consult with a Missouri attorney or a local title company to review the deed and make sure it meets all state requirements.

**Monday asks:** Is there anything else you suggest I think about?

**ChatGPT responds:** Yes, here are a few additional considerations:

1. **Impact on Estate Planning:** Consider how the TODD fits into your overall estate planning. Ensure it aligns with your wishes and other estate planning documents, such as a will or trust.
2. **Beneficiary's Readiness:** Ensure that your stepson is aware of the TODD and is prepared to manage the property. It might be helpful to discuss your plans with him to avoid any surprises.
3. **Property Liens or Encumbrances:** Be aware of any existing liens or encumbrances on the property. The TODD transfers the property subject to any existing debts or claims.
4. **Tax Implications:** Consider any potential tax implications for your stepson upon inheriting the

property. Consulting a tax advisor can help clarify this.

5. **Updating Documents:** If your circumstances change (e.g., a change in relationship with your stepson or a significant change in the property's value), you might need to update or revise the TODD.
6. **Review Local Laws:** Ensure that the TODD complies with any recent changes in Missouri's laws or recording requirements.
7. **Record Keeping:** Keep copies of the recorded TODD and any related documents in a safe place. Inform relevant parties about the recording and storage of these documents.
8. **Legal Advice:** Although the TODD process is relatively straightforward, consulting with a legal professional can help ensure that everything is done correctly and in accordance with Missouri law.

These steps can help ensure that your intentions are clearly understood and legally enforceable, minimizing potential complications for your stepson.

**Monday said:** Thank you

**ChatGPT responds:** You're welcome! If you have any more questions or need further assistance, feel free to ask. Good luck with your estate planning!

Despite the chatbot's frequent advice to consult with an attorney, Monday may well be satisfied that she has what she needs to solve her legal problem. It's little wonder that GenAI has grown in popularity so quickly. "In November 2022, ChatGPT was released, and in just two months, it had over 100 million monthly active users—making ChatGPT the fastest-

growing consumer application in history.”<sup>183</sup>

Obviously, the reliability of output is a core concern with the products of GenAI. On the surface, ChatGPT’s responses to Monday appear to look precisely like “what lawyers do.”<sup>184</sup> Upon Monday’s prompts, the GenAI proceeded to “determin[e] what kind of legal problems a situation may involve,”<sup>185</sup> and “render candid advice.”<sup>186</sup> The program provided Monday with options to achieve her objectives, explained those options “to the extent reasonably necessary to permit the client to make informed decisions,”<sup>187</sup> and “communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”<sup>188</sup> In continually reminding her that an attorney would be the best source of guidance, it consulted with Monday about “any relevant limitation” on its conduct.<sup>189</sup> It provided her with a legal document with directions for its use. It even went beyond the requested advice and provided information about collateral legal issues like property liens and tax implications.<sup>190</sup>

### *B. The Limits of AI’s Competence*

Though it is not apparent from the responses Monday received, what GenAI cannot do is exercise “independent professional judgment.”<sup>191</sup> Indeed, GenAI cannot “know” anything much less make decisions based on

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183. MINN. STATE BAR ASS’N WORKING GRP. ON AI, *supra* note 8, at 4.

184. See Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STAN. L. REV. 1, 45 (1981).

185. Cf. MRPC r. 1.1 cmt. 2.

186. Cf. MRPC r. 2.1.

187. Cf. MRPC r. 1.4(b).

188. Cf. MRPC r. 1.0(e).

189. Cf. MRPC r. 1.4(a)(5).

190. Cf. MRPC r. 2.1 cmt. 5 (“In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer’s duty to the client under Rule 1.4 may require that the lawyer offer advice if the client’s course of action is related to the representation.”). The duty to broaden one’s advice can take on constitutional dimensions in the criminal defense setting. *Padilla v. Kentucky*, 559 U.S. 356, 374 (2010) (holding that allegation of defense counsel’s failure to inform the client whether his plea carries a risk of deportation stated a claim for constitutionally deficient assistance of counsel).

191. Cf. MRPC r. 2.1.

judgment.<sup>192</sup> The limitation of GenAI is that, unlike guided interview software, that is based on rule-based algorithms designed by experts specifically for a legal problem, GenAI is simply a text-prediction machine. That machine has a prime directive to provide a response, even if it lacks the data to provide an accurate response.

One of the most concerning aspects of GenAI's reliability is that it can produce profoundly wrong results. Highly publicized incidents of attorneys using off-the-shelf GenAI products highlight the severe consequences of relying on AI generated legal documents. Consider the example of Zachariah C. Crabill.<sup>193</sup> Crabill had been admitted for two years to the Colorado State Bar when his law firm assigned him to write a motion that was new to him.<sup>194</sup> He was "overwhelmed" and "stressed out to the max" and explained that,

I had just been exposed to the idea of ChatGPT. And I'm trying to save him money, trying to not eat through his entire retainer. And it dawned on me: What if ChatGPT could do case load research for me? And boom, it generated seemingly impeccable case law and case citations.<sup>195</sup>

When he got to court to argue his motion, he realized there was a problem. Texting with a legal intern at the office, Crabill said he thought all the case cites from ChatGPT were garbage and that he could not even find the cases in Lexis.<sup>196</sup> The intern responded, "Did you not check them after it gave them to you?" Crabill admitted, "no. like an idiot."<sup>197</sup> He went on to

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192. Ryan McCarl, *The Limits of Law and AI*, 90 U. CIN. L. REV. 923, 938–39 (2022) (discussing how an AI system may not be able to fully comprehend litigation strategy).

193. See generally *People v. Crabill*, No. 23PDJ067, 2023 WL 8111898 (Colo. O.P.D.J. Nov. 22, 2023).

194. Thy Vo, *Colo. Atty Suspended For Using 'Sham' ChatGPT Case Law*, LAW 360 (Nov. 27, 2023, 4:38 PM), <https://www.law360.com/pulse/articles/1770085/colo-atty-suspended-for-using-sham-chatgpt-case-law> [<https://perma.cc/375X-SMY7>].

195. Ishita Srivastava, *Colorado Attorney is Suspended From the Bar and Fired From His Firm for Using ChatGPT in Court After the AI Cited Fake Cases*, DAILY MAIL (Apr. 30, 2024, 2:43 PM), <https://www.dailymail.co.uk/news/article-13367897/Colorado-attorney-suspended-bar-fired-chatgpt-ai.html> [<https://perma.cc/2TEK-GKP9>].

196. Quinn Ritzdorf, *Colorado Springs Attorney Says ChatGPT Created Fake Cases He Cited in Court Documents*, KRDO (Jun. 13, 2023, 5:30 PM), <https://krdo.com/news/2023/06/13/colorado-springs-attorney-says-chatgpt-created-fake-cases-he-cited-in-court-documents/> [<https://perma.cc/5R4Y-HRTE>].

197. *Id.*

make his situation much worse when he did not disclose the fact that the citations were hallucinated (that is, that they were fictitious citations) or withdraw the motion. When asked about the problems in the motion, he then blamed the mistakes on a legal intern.<sup>198</sup>

The motion was denied, Mr. Crabill was fired from his firm, and the court imposed a two-year suspension as discipline.<sup>199</sup> Upon regaining good standing, Mr. Crabill formed his own law firm—Av{AI}lable Legal Solutions—advertising his use of AI to cut costs and level the playing field.<sup>200</sup>

If attorneys are tempted to use GenAI, even more would pro se litigants turn to this tool to prepare their court papers. Courts are unwilling to overlook this misuse:

The Court is aware of recent incidents in the legal community involving filings generated in whole or in part by artificial intelligence, such as ChatGPT, that incorporate case citations and quotations which do not, in fact, exist. In the Court's view, blind reliance on artificial intelligence does not excuse misrepresentation of the law to the Court. Although this is especially true for attorneys, who certainly ought to know better than to submit a filing without verifying citations, pro se litigants must be held to the same standard.<sup>201</sup>

For example, a pro se litigant assisted by an “internet consultant” filed an appeal in the Missouri Court of Appeals.<sup>202</sup> Out of twenty-four cited cases in the appeal, seventeen were completely fictitious and five had the same name as a real case, but the content of the cases was fictitious.<sup>203</sup> The

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198. See *Crabill*, 2023 WL 8111898, at \*1.

199. See *id.*; see also Srivastava, *supra* note 195.

200. Zachary Crabill, LINKEDIN, <https://www.linkedin.com/in/zach-crabill/> [<https://perma.cc/5FVM-SNS9>] (explained in Crabill's “about” section of his profile). “I started Av{ai}lable Law to advocate for the incorporation of reliable AI tools to make justice more available. . . . It's time to make justice Av{ai}lable for all.” *Id.*

201. *Scott v. Fed. Nat'l Mortg. Ass'n*, No. RE-2023-037, at \*7 (Me. Super. Ct. Jun. 14, 2023), <https://files.maine.gov/mainelaw/maine.edu/library/SuperiorCourt/decisions/CUMre-23-037.pdf> [<https://perma.cc/L57K-FLT9>].

202. See *Kruse v. Karlen*, 692 S.W.3d 43, 51 (E.D. Mo. 2024).

203. See *id.* at 6–7 (of the twenty-four cases, only two cases were genuine).

court dismissed the appeal<sup>204</sup> and sanctioned the pro se litigant \$10,000.<sup>205</sup>

Similarly, a pro se plaintiff in New York sued under 41 U.S.C. § 6503 (a federal breach of contract statute) alleging that he had agreed to find properties suitable for development and the defendant would compensate him with a “generous finder’s fee” in the event he purchased the property himself or found a different buyer for the property. The plaintiff cited cases purporting to support the enforceability of finder-fee agreements with individuals who are not licensed as real estate agents. However, in oral argument, he admitted that these cases were the product of GenAI and did not exist, requesting leave to strike those fictitious citations from his own papers.<sup>206</sup>

These horror stories have led many to disclaim GenAI as a helpful tool. However, once again, a fair comparison on the reliability score of GenAI cannot pose the worst-case errors of AI against an ideal legal professional. GenAI does not produce hallucinations and errors most of the time, and AI tools are increasingly being developed to address these issues. Similarly, the profession of law is subject to misattributions and errors<sup>207</sup> with attorneys who do not conduct research,<sup>208</sup> do not read the law correctly, and simply do not do the work. The question for expanding access to justice cannot be whether the tools used are the equivalent of the best legal services available, but whether they are sufficiently competent that they are better than the alternative. “A good enough solution will always beat no solution at all.”<sup>209</sup>

Moreover, today’s AI is likely to be the worst AI we will have available.

There is no reason to suspect that the abilities of AI systems are going to stop growing anytime soon, but even if they do, tweaks and improvements to how we use AI will ensure

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204. See *id.* (citing MO. R. CIV. PRO. 55.03, 84.06(c)).

205. See *id.* (citing MO. R. CIV. PRO. 84.19).

206. See *Small v. Halon*, No. 100022/2023, slip op. at 2–3 (N.Y. Sup. Ct. Oct. 18, 2023).

207. See Amanda O’Brien, *Legal Malpractice Claim Values Reach an ‘All-Time High’ in Last Year*, AM. LAW. (May 15, 2024, 2:45 PM), <https://www.law.com/americanlawyer/2024/05/15/legal-malpractice-claim-values-reach-an-all-time-high-in-last-year/?slreturn=20240710203341> [<https://perma.cc/7AKM-9T73>].

208. See BARBARA GLESNER FINES, *PROFESSIONAL RESPONSIBILITY: A CONTEXT AND PRACTICE CASEBOOK* 107 (2013) (“[T]he number one cause of malpractice claims is a missed deadline. The errors that lead to missed deadlines include failing to know the deadline, failing to calendar the deadline, and failing to meet the deadline.”).

209. Hilary G. Escajeda, *The Vitruvian Lawyer: How to Thrive in an Era of AI and Quantum Technologies*, KAN. J.L. & PUB. POL’Y 421, 475 (2020).

that future software is far more advanced than it is today. We are playing Pac-Man in a world that will soon have PlayStation 6s.<sup>210</sup>

A few solutions for problems of reliability are in development.<sup>211</sup> With improved prompting, AI can review documents as accurately and more efficiently than attorneys.<sup>212</sup> While new models of GenAI tools are designed to significantly decrease<sup>213</sup> the incidence of errors in content, these tools they do not yet eliminate problems such as fictitious citations and other errors.<sup>214</sup>

### *C. Consumer Trust Will Drive Use*

As consumers grow to trust AI tools, they will increasingly rely upon them to access legal information and assistance. Certainly, court rules prohibiting the use of GenAI, to the extent the use can be detected at all, will have no effect on consumers like Monday. Her beneficiary deed will not be subject to litigation until after her death and then, only if it is deficient. The ability to identify use of GenAI would require a monitoring of individual online activity at a massive scale—a task that is simply not feasible either practically or politically.

The nature of GenAI is that Monday will likely trust the help she receives, despite disclaimers throughout ChatGPT's response to Monday's prompts and the continual footer that essentially says "ChatGPT can make mistakes. Check important info."

There are several cognitive factors driving this trust. These GenAI tools

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210. ETHAN MOLLIK, CO-INTELLIGENCE: LIVING AND WORKING WITH AI 62 (2024).

211. See Kit Eaton, *New Open Source AI Model Can Check Itself and Avoid Hallucinations*, INC. (Sept. 6, 2024), <https://www.inc.com/kit-eaton/new-open-source-ai-model-can-check-itself-avoid-hallucinations.html> [<https://perma.cc/8N93-CEZG>].

212. See Escajeda, *supra* note 209, at 470 (summarizing a 2018 LawGeex study that compared experienced attorneys against LawGeex's AI algorithm to review non-disclosure agreements and noting that the algorithm performed at a 94% accuracy rate, compared to rates of 67–94% for attorneys, and completed the task in 26 seconds, compared to between 51 and 156 minutes for the humans).

213. See Ajmi, *supra* note 180, at 11.

214. See Varun Magesh et al., *AI on Trial: Legal Models Hallucinate in 1 out of 6 (or More) Benchmarking Queries*, STANFORD UNIV. HAI (May 23, 2024), <https://hai.stanford.edu/news/ai-trial-legal-models-hallucinate-1-out-6-or-more-benchmarking-queries> [<https://perma.cc/66VN-YXPV>].

are designed to be authoritative sounding.<sup>215</sup> This authoritative framing of answers can lead people to overestimate what this tool can do, presuming that a tool that is primarily designed to statistically predict language relationships can function to answer questions based on knowledge and judgment.

The ability to produce narrative responses that sound like humans can generate trust in these tools. ChatGPT's response to Monday, using informal language, and responding "Certainly!" to her request for help are examples of ways in which the responses can be made to feel like human responses. GenAI will sometimes go further, using anthropomorphisms, such as being "happy to help," apologizing for errors or confusion, or responding in the first person (especially when prompts questioned an initial response). These human-like GenAI responses "invite trust, at least subconsciously. It is not that all humans are always trusted, but in many circumstances, they are more trusted than machines."<sup>216</sup>

The growth rate of AI will simply outstrip the ability of regulators to respond. "[L]aw tends to work linearly, while the 'power and harm of online activity' grow at a much faster rate, thus creating a situation in which regulatory policy fails to keep up with its underlying goal of public protection."<sup>217</sup> To recognize the ways in which the market for AI legal services could fundamentally disrupt legal regulation, one need only consider the rapid rise of Uber, which essentially ignored regulation designed to exclude it from the market while building consumer demand that made subsequent regulatory exclusion nearly impossible.<sup>218</sup>

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215. Lawyerist.com, *Lawyerist Podcast #452 Managing AI in Your Practice, with Ed Walters*, YOUTUBE (Jan. 22, 2024), <https://www.youtube.com/watch?v=Ov0JS-6pJgU> [<https://perma.cc/7AZ8-UQXB>]. Ed Walters is the Chief Strategy Officer of vLex and joinder of Fastcase notes. *Id.* (video description).

216. Paul D. Callister, *Generative AI Large Language Models and Researching the Law*, 18 THE BRIEF 1, 9 (2024).

217. Cassandra Burke Robertson & Sharon Hoffman, *Professional Speech at Scale*, 55 U.C. DAVIS L. REV. 2063, 2099 (2022) (citing Paul Ohm, *Regulating at Scale*, 2 GEO. L. TECH. REV. 546, 549 (2018)).

218. See Veena B. Dubal et al., *Disrupting Regulation, Regulating Disruption: The Politics of Uber in the United States*, 16 PERSP. ON POL. 919, 1–3 (2018), [https://repository.uchastings.edu/faculty\\_scholarship/1685](https://repository.uchastings.edu/faculty_scholarship/1685) [<https://perma.cc/4CG9-KL3C>] (a theoretical study of Uber's interaction with regulations).

#### *D. Court Rules Prohibiting GenAI are Unlikely to Deter Use*

Because the errors that GenAI produces are appearing first and most egregiously in litigation documents, it is individual courts who are moving first to regulate the use of AI.<sup>219</sup> “To protect the integrity of the justice system, courts around the country have been considering and/or enacting local rules specifically geared towards prohibiting or disclosing the use of generative A.I. in court filings.”<sup>220</sup> Judges take a variety of approaches to these orders. Most orders require litigants to disclose their use of AI, or emphasize the responsibility to ensure the accuracy of content, while a small number of courts prohibit the use of GenAI entirely.<sup>221</sup>

Rules prohibiting or limiting the use of GenAI are unlikely to deter consumers from turning to these tools. They are accessible and easy to use.<sup>222</sup> Industries that have attempted to deny employees access to GenAI have found that these restrictions simply lead to surreptitious use.<sup>223</sup> While those who use GenAI and produce errors are likely to face severe sanctions, many, perhaps most, of court documents produced by GenAI are unlikely to contain hallucinations. So, the use of the tool to create these documents will go undetected.

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219. See *Tracking Federal Judge Orders On Artificial Intelligence*, LAW 360, <https://www.law360.com/pulse/ai-tracker> [<https://perma.cc/Y5HW-8ZTA>]; *Generative Artificial Intelligence (AI) Federal and State Court Rules Tracker*, LEXIS AI+ (Aug. 8, 2024), <https://plus.lexis.com/document/lpadocument/?crd=572f6b18-7fa5-4423-a853-454b8c32deb0&pdpermalink=863acb4a-8f2c-4f00-a64b-4baf7e04938d&pdmfid=1530671&pdisurlapi=true&cbc=0> [<https://perma.cc/DVG6-WWXR>] (explaining trackers have emerged to identify court orders regarding AI).

220. See *Kruse v. Karlen*, 692 S.W.3d 43, 51 (E.D. Mo. 2024).

221. The Ropes Gray law firm is one of several sources that reports ongoing changes in court orders relating to AI on its website. *Artificial Intelligence Court Order Tracker: Standing Orders and Local Rules on the Use of AI*, ROPES GRAY, <https://www.ropesgray.com/en/sites/artificial-intelligence-court-order-tracker> [<https://perma.cc/267X-ZPCH>]. As of January 10, 2025, the majority of jurisdictions with these orders applied them only to GenAI and either suggested caution or required disclosure and verification. *Id.* A small number prohibit the use of GenAI. *Id.*

222. See Callister, *supra* note 216, at 1, 2 (“We will tend to believe generative AI because it is easier than assimilating and synthesizing the large volume of legal information that we confront”).

223. Alex Christian, *The Employees Secretly Using AI at Work*, BBC (Oct. 24, 2023), <https://www.bbc.com/worklife/article/20231017-the-employees-secretly-using-ai-at-work> [<https://perma.cc/G6Z9-F7UB>] (reporting survey which indicates that 68% of employees who used AI at work did so without disclosing to employers); see Keith Kirkpatrick, *More than 50% of Workers Admit to Using Unapproved Generative AI Tools*, FUTURUM (Nov. 21, 2023), <https://futurumgroup.com/insights/more-than-50-of-workers-admit-to-using-unapproved-generative-ai-tools/> [<https://perma.cc/W7WB-C8MV>]; Mollick, *supra* note 210, at 143–44.

*E. Unauthorized Practice Restrictions are Challenged  
by the Nature of GenAI*

Unauthorized practice restrictions will not deter the growth of GenAI to provide legal services—either by individual consumers, by producers of GenAI products, or by lay providers of legal services who use these products to serve consumers.

UPL is unlikely to stop individual consumers from using AI legal services. Federal statutes and state court constitutions provide that natural individuals<sup>224</sup> have a right to represent themselves in court.<sup>225</sup> Accordingly, an individual cannot be charged with UPL if they are representing themselves. “The need for legal counselling in any transaction is a question which must be decided by the person whose legal rights are involved. If, in his judgment, he does not need advice as to his legal rights or assistance with respect to them, no one can complain of his self-reliance.”<sup>226</sup>

Traditional UPL enforcement relies on identifying and prosecuting the individual or entity providing unauthorized legal services. These laws were crafted with the assumption that there is a clear “author” or “provider” of legal advice—whether it be a licensed attorney, a paralegal under supervision, or a non-lawyer acting independently. However, the rise of open-source LLMs complicates this framework by diffusing responsibility across a potentially vast and anonymous network of contributors. Open-source LLMs, such as those based on GPT or similar architectures, are often developed collaboratively by a global community of researchers, developers, and users. These models can be freely downloaded, modified, and deployed by anyone with the technical know-how, making it difficult to pinpoint a single “author” or entity responsible for the outputs generated by the AI.

This diffusion of responsibility challenges the traditional UPL enforcement mechanisms that rely on the ability to identify and sanction those who engage in UPL. Thus, with open-source AI, the line between provider and user becomes blurred. For example, if a non-lawyer uses an

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224. Cf. Suneal Bedi, *The Corporate Pro Se Litigant*, 82 OHIO ST. L.J. 77, 105 (2021) (explaining that corporations, unlike individuals, are always required to appear through counsel).

225. See Helen B. Kim, *Legal Education for the Pro Se Litigant: A Step Towards a Meaningful Right to be Heard*, 96 YALE L.J. 1641, 1641 (1987).

226. *Pioneer Title Ins. & Tr. Co. v. State Bar of Nev.*, 326 P.2d 408, 410 (Nev. 1958).

open-source AI to generate a legal document: Is the responsibility for the resulting content on the individual who used the AI, the developers who created the AI, or the broader community that contributed to the model? This ambiguity makes it difficult to apply existing UPL laws effectively.

Moreover, the very design of GenAI programs makes it difficult to identify how legal advice is being created or communicated. GenAI programs are simply tools for statistical predictions. Unlike guided interview programs that require the designer to build a framework of questions, answers, and pathways that guide legal decisions—GenAI does not require building an intentional framework for application of the law.

Private attorneys might seek to challenge these online competitors. The Do Not Pay (DNP) suit demonstrates the challenge of standing for these attorneys. DNP is “an online subscription service that uses artificial intelligence to provide a variety of legal services.”<sup>227</sup> DNP offers services on a broad range of legal issues including “marriage annulment, speeding ticket appeals, canceling timeshares, breaking leases, breach of contract disputes, defamation demand letters, copyright protection, child support payments, restraining orders, revocable living trusts, and standardized legal documents.”<sup>228</sup> In 2020, the service received an ABA award for its efforts in access to justice.<sup>229</sup>

Not all members of the profession saw DNP as award-winning. MillerKing, an Illinois law firm, filed a class action on behalf of all Illinois law firms, alleging that DNP violated the Lanham Act<sup>230</sup> and the Illinois Uniform Deceptive Trade Practices Act<sup>231</sup> by its representation that it was a “Robot Lawyer.” A fourth count alleged unauthorized practice of law under Illinois statutes.<sup>232</sup> MillerKing sought “certification of the class and subclass, an injunction precluding DNP from continuing its unlawful

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227. MillerKing, LLC v. DoNotPay, Inc., 702 F. Supp. 3d 762, 767 (S.D. Ill. 2023).

228. *Id.*

229. *DoNotPay Honored with ABA Brown Award for Access to Justice Efforts*, AM. BAR ASS'N (Jan. 23, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/01/donotpay-honored-with-aba-brown-award-for-access-to-justice-effo/> [<https://perma.cc/9AWL-6M27>].

230. 15 U.S.C. § 1125(a)(1)(B) (2023) (false advertising). The plaintiffs argued that assertions that services would be provided by a robot “lawyer” and “attorney” misrepresented DNP’s services—as it was not licensed to practice law. *MillerKing*, 702 F. Supp. 3d at 767.

231. Illinois Uniform Deceptive Trade Practices Act, 815 ILL. COMP. STAT. 510/1–12 (1965). Plaintiffs argued that DNP’s misrepresentation of its affiliation with licensed attorneys caused consumer confusion. *MillerKing*, 702 F. Supp. 3d at 767.

232. Illinois Attorney Act, 705 ILL. COMP. STAT. 205/1 (2022); Corporation Practice of Law Prohibition Act, 705 ILL. COMP. STAT. 220/1–2 (1984).

activities and ordering it to engage in a corrective advertising campaign, and disgorgement of DNP's profits."<sup>233</sup> The firm also requested that the court find DNP in contempt and assess a civil penalty.<sup>234</sup>

The court held that MillerKing lacked standing to bring these claims, because it had alleged that it had lost revenue or clients to DNP, and it had not presented facts to support its claim or reputational harm.<sup>235</sup> One can imagine that few attorneys can muster this type of direct evidence of injury.

In addition to standing challenges, other doctrines may constrain any UPL enforcement actions. State bar associations increasingly face antitrust concerns. Such concerns are not new. In 1975, the United States Supreme Court held that, even if a bar association has been delegated regulatory authority by the state, for a particular enforcement action to be exempt from antitrust laws, "anticompetitive activities must be compelled by direction of the State acting as a sovereign."<sup>236</sup> While many state bar associations are delegated governmental functions, their role in UPL enforcement may not be sufficiently connected to their delegated role so as to be immune from antitrust regulation. Most recently in *North Carolina State Bd. of Dental Examiners v. FTC*,<sup>237</sup> the Court reaffirmed the application of antitrust laws to actions by professional associations to limit perceived unauthorized practice. The dental board in that case had issued a letter ordering non-dentists to cease and desist from performing teeth whitening procedures.<sup>238</sup> Because the dentists on the board were "active market participants,"<sup>239</sup> the Court held that they were not entitled to the state action exemption from the antitrust laws.<sup>240</sup>

Because of this decision, state and local bar associations, who in the past would send cease-and-desist letters to individuals or entities believed to be engaged in unauthorized practice, now may face antitrust challenges to these demands. For example, after the Cleveland Bar Association filed suit to enjoin Zlien, a company that provided online mechanic's lien software

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233. *MillerKing*, 702 F. Supp. 3d at 769.

234. *Id.*

235. *Id.* at 774.

236. *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 791 (1975) (holding state bar minimum fee schedules subject to challenge under antitrust law).

237. 574 U.S. 494 (2015).

238. *Id.* at 1117.

239. *Id.* at 1114.

240. *Id.* at 1111 (explaining that state agencies must provide "more than a mere facade of state involvement" in order to be considered sovereign actors for purposes of state-action immunity).

to Ohio customers,<sup>241</sup> the company brought an antitrust claim against the association and three members of the UPL committee.<sup>242</sup> Zlien then dismissed their claim when the underlying UPL action was settled on terms that permitted zlien to continue to offer its product in Ohio.<sup>243</sup> In sum, both practical considerations and legal limitations make it unlikely that UPL restrictions will slow the development of GenAI as a tool for providing legal services. Even with these limitations, however, the threat of criminal UPL enforcement is likely to deter those seeking to develop these tools to assist low-income consumers. The profession will advance the interests of justice best by engaging with these tools to improve their accessibility, authority, and reliability rather than expending resources of restricting their availability.

#### *F. Keeping Humans in the Loop of GenAI*

GenAI alone is unlikely to be the cure-all for access to justice. While the growth of GenAI is unlikely to be slowed significantly by regulation, its reliability for unrepresented consumers of legal services is an issue that must be addressed if it is to truly provide access to justice. Again, one must remember that GenAI is primarily a text prediction tool. That means it must begin with input from a user. The more precise and accurate the input, the more relevant the output.<sup>244</sup>

Monday was able to formulate her question and ask appropriate follow-up questions—not all consumers will be able to do so. For these individuals, accessing AI will require assistance of a human or AI text reader. While the process of asking about estate planning led her through the choices, one can expect that the average consumer would be unlikely to explore the full

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241. Order Dismissing Complaint, *Cleveland Metro. Bar Ass'n v. Zlien*, Case UPL 15-01 (Oh. July 20, 2016), <https://www.supremecourt.ohio.gov/docs/Boards/UPL/settlement/UPL15-01.pdf> [<https://perma.cc/BNZ2-GFDK>] [hereinafter Settlement Order].

242. Complaint, *Zlien v. Cleveland Metro. Bar Ass'n et al.*, Case No. 2:15-cv-02519 (E.D. La. July 9, 2015).

243. Joan Rogers, *Settlement Ends Antitrust Suit Over Ohio UPL Charges*, BLOOMBERG L. NEWS (July 26, 2016, 11:00 PM), <https://news.bloomberglaw.com/antitrust/settlement-ends-antitrust-suit-over-ohio-upl-charges> [<https://perma.cc/C7Y7-MXPM>]. The settlement agreement provided that zlien could continue to provide software to customers to complete mechanic's lien affidavits as long as zlien did not advise or assist the customers regarding which property descriptions to use. Settlement Order, *supra* note 241.

244. See *Garbage-in, Garbage-out*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Garbage\\_in,\\_garbage\\_out](https://en.wikipedia.org/wiki/Garbage_in,_garbage_out) [<https://perma.cc/7NK8-W45A>].

implications of these choices.

The biggest problem of course is that Monday doesn't know what she doesn't know. For example, if Monday receives Medicaid, the state of Missouri may have a claim for the services received that would be enforceable against her home even after her death and even if she uses a transfer-on-death deed.<sup>245</sup> In formulating her prompt, Monday did not appreciate the need to provide information about Medicaid, mortgages, debt, or any other aspects that might influence the AI's output. A five-minute conversation with an estate-planning expert would have quickly warned her of this concern.<sup>246</sup> In contrast to open-ended GenAI programs, a guided interview program can build in the expertise of that five-minute conversation.

To leverage the power of these tools for low-income consumers, producers must marry the expertise of guided interview programs with the efficiency and flexibility of GenAI. GenAI can reduce the costs of developing guided programs, while the programmed structure of these programs can in turn increase the reliability of the GenAI. The resulting tools can enable librarians, court clerks, paralegals, pastors, and others to help low-income individuals with confidence and without the risk of crossing UPL lines.

An example of how GenAI can be used to produce guided interviews at scale can be found in recent work by courts to develop court navigators.<sup>247</sup> These programs begin with a chatbot, which users can access through text or voice. The user's query will be processed by a natural language processing system, not unlike that already used by search engines and rule-based chatbots. Language translation tools, rapidly improving in speed and accuracy,<sup>248</sup> will bring down what has long been a significant barrier to legal

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245. *In re Estate of Jones*, 280 S.W.3d 647, 655 (W.D. Mo. 2009) (holding that home transferred by way of a beneficiary deed was subject to a claim by the State of Missouri to recover value of Medicaid benefits provided to the grantor of the house).

246. Indeed, I was alerted to the concern by my colleague Professor Chris Hoyt when I asked him about this problem, which led me to conduct the legal research (using Google Scholar) to find the Missouri caselaw on the question of Medicaid liens.

247. See Ajmi, *supra* note 180, at 10.

248. See Haifeng Wang et al., *Progress in Machine Translation*, 18 ENGINEERING 143, 143 (2022), <https://doi.org/10.1016/j.eng.2021.03.023> [<https://perma.cc/SB7G-SHAJ>]; Emily Carroll, *The Current State of Machine Translation and Future Predictions*, VISATEC (Dec. 6, 2023), <https://vistatec.com/the-current-state-of-machine-translation-and-future-predictions/#:~:text=Machine%20Learning%20and%20Continuous%20Improvement,models%20to%20more%20dynamic%20ones> [<https://perma.cc/3KAJ-LLHV>].

services.<sup>249</sup> Retrieval augmented generation (RAG) limits the resources that the GenAI tool uses to answer questions to limit hallucinations.<sup>250</sup> Enhanced system prompts can include instructions to answer questions only if answers exist in these resources—to refer to reputable agencies for assistance, and to take different or additional steps to address the problem, such as calling 911 if the user is in danger.<sup>251</sup>

As these programs grow, building expertise into their systems, the reliability of these tools will undermine the justification for restricting their use only to attorneys. As the Nevada court observed in 1958, addressing UPL restrictions that:

The circumstances which call for creation of the attorney-client relationship are, however, subject to continuing change. As civilization becomes more complex we find that counselling becomes important in more and more new fields involving legal rights. Conversely we find that the public becomes accustomed to certain areas of transaction and that as transactions in those areas become standardized, legal counselling is no longer generally regarded as a practical necessity or a reasonable precaution. Contracts of insurance and of purchase and sale, the borrowing of money and the extension of credit all are now a familiar every-day experience to thousands of laymen. The nature of the rights and obligations thereby created have become familiar lay concepts. Furthermore, as the public in standardized areas of transaction, becomes familiar with the nature of the rights and obligations which are created, it becomes accustomed to the standardized form of the instruments involved. Custom serves to standardize both the rights and obligations and the form of instrument by which they are created.<sup>252</sup>

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249. See LAURA K. ABEL, NAT'L CTR. FOR ACCESS TO JUST., LANGUAGE ACCESS IN THE FEDERAL COURTS 3–4 (2013), <https://ncaj.org/sites/default/files/2021-03/abel-ncaj-language-access-federal-courts.pdf> [<https://perma.cc/3P9U-GKVD>]; Myasar Ihmud, *Lost in Translation: Language Barriers to Accessing Justice in the American Court System*, 56 UIC L. REV. 669, 672–73 (2023).

250. See Ajmi, *supra* note 180, at 10.

251. See generally *id.*

252. See *Pioneer Title Ins. & Tr. Co. v. State Bar of Nev.*, 326 P.2d 408, 410 (Nev. 1958).

When unauthorized practice discourages this natural progression from bespoke to routine legal services, its value in protecting consumers of legal services is questionable. The for-profit arm of the legal profession is increasingly incorporating AI tools to improve efficiency and reliability of their legal service. The access to justice gap could be significantly narrowed if those same efforts were married with equal attention to developing these tools for low-income DIY consumers of legal services.

### CONCLUSION

This Article demonstrated how low-income and disadvantaged consumers might look for and find assistance for their legal issues using AI tools. Internet searches provide a surfeit of information. Search engines deliver this information to these individuals more or less directly depending on whether the questions asked would indicate a desire to purchase assistance and whether the answers provided come from expert, authoritative, and trustworthy sources. Unauthorized practice restrictions do not limit these resources, in part because they do not provide personalized advice or assistance. That non-limitation also limits the usefulness of information alone.

Assistance in using legal information can be delivered through document automation and guided interview programs. Designed by experts and using conditional logic, these programs can provide substantial assistance. However, developing these programs requires significant resources and expertise, and unauthorized practice restrictions currently limit their use by nonlawyers.

The advent of GenAI appears to provide information, advice, and assistance in a way that generates significant consumer trust. However, the trust is misplaced in many instances as GenAI is simply text prediction. Nonetheless, efforts by courts and UPL enforcement are directed at slowing the adoption of GenAI as a tool for legal assistance. If regulatory bodies impose strict barriers on the use of AI for legal services, the availability of affordable legal assistance could be diminished, leaving low-income and underserved individuals with even fewer options.<sup>253</sup> This Article suggests

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253. Paul R. Tremblay, *Surrogate Lawyering: Legal Guidance, Sans Lawyers*, 31 GEO. J. LEGAL ETHICS 377, 420 (2018) (explaining that “the ambiguity about the definition and limits of the practice

that a better response would be to encourage the improvement of this tool. Improvements such as limiting the universe of GenAI data to authoritative sources and combining GenAI with document automation and guided interview programs will more efficiently will transform the ability of AI to provide accurate and reliable DIY legal assistance. The resulting tools promise to play a significant role in narrowing the access to justice gap. Encouraging and supporting these developments is one way the profession can fulfill its special responsibility for the quality of justice and commitment to the rule of law.

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of law” creates an unfortunate “constraint on innovation in the field of access-to-justice”).