

Chapter 4

Artificial Intelligence in Legal Services: Reducing the Gap in Access to Justice

Sam B. Edwards

 <https://orcid.org/0000-0002-5911-0031>

Quinnipiac University, USA

ABSTRACT

Many people lack the resources to get legal assistance with their civil legal problems. These problems include serious issues such as those impacting housing, safety, access to healthcare, families. The current systems that seek to provide legal services to those who need but cannot afford them fall far short of the need. Because of this lack of legal services, most people are forced to represent themselves or they give up their rights without even going to court. Legal technology, especially artificial intelligence (AI), has revolutionized the practice of law. Technology typically is developed and used by those who can afford it. Embracing AI can help reduce the justice gap by driving down costs and increasing access to legal services. Failure to act preemptively will only serve to continue the gap in access to justice.

INTRODUCTION

Can you afford an attorney? For most people, the answer is no. The United States provides for the right to a jury trial, though most people could never afford one due to the high cost of legal services. There is a saying that to get married, all that is needed is two people, an optional bottle of wine, and some quick paperwork. In some jurisdictions, this can be accomplished from a car with a drive-through service and fifty dollars. Unwinding that decision, however, requires courts and, often, attorneys for both parties. Other common situations benefiting from legal assistance include custody disputes, drafting a will, defending a lawsuit, landlord/tenant disputes, disputes over debts, and buying and selling property.

The unfortunate truth is that legal representation is for the few who can afford it. This gap in justice is a significant problem for many. To address this gap in justice, there are a variety of efforts systems to help people access low or no cost legal services. Bar associations encourage attorneys to provide their

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services *pro bono*, indigent defendants are entitled to a court appointed attorneys in criminal cases, and plaintiffs in tort cases can get representation through attorneys who often charge a contingent fee. Despite these efforts, "...studies estimate that approximately 85 to 97 percent of civil legal issues go unaddressed by LSC-funded organizations due to insufficient resources" (Reyes & Ward, 2020, p. 337). The situation is more dire for low-income households. There are more than 90 million people in the US living below the federal poverty line, and only two in ten below the poverty line get legal assistance in civil legal problems (Legal Services Corporation, 2022, p. 7).

People without the means to hire an attorney are welcome to represent themselves *pro se*, or on their own without any professional assistance. This, unfortunately, is like going into a boxing ring against a professional fighter. For example, "according to the Connecticut Fair Housing Center, tenants are 89 percent more likely to be evicted if they don't have legal representation" (Glesby, 2022). Because of this, jurisdictions are adopting right to counsel laws for tenants facing eviction (Connecticut Public Act No. 21-34, 2021).

There are documented ways to address this gap, such as allowing non-attorney legal professionals like licensed paralegals to provide legal services. This is common in the medical field, yet bar associations have been reluctant to ease their monopoly on providing legal services. Additional funding for organizations providing legal services to low-income clients is an "easy" solution, in principle, though having the political will to increase the funding is far from easy. In short, these solutions fall far short of meeting the need.

Artificial intelligence (AI) has recently exploded in both its capabilities and its availability to the public, with programs such as OpenAI's ChatGPT, Google's Bard, and Microsoft's Bing becoming increasingly available. AI refers to programs that can organically learn from very large datasets, such as information available on the Internet. When given sufficient data, AI can synthesize that data and draw conclusions. AI is on the way to becoming a tool that many rely on for assistance in a variety of areas such as writing school papers, researching medical and legal questions, and providing search responses in the form of unscripted chats. AI is changing how people get information.

Increasing the use of technology, especially AI, is an untapped way to help address the justice gap. Disruptive technologies often provide services to low-margin or areas of unmet needs (Christensen et al., 2015). Legal services are ripe for disruption to help address the justice gap. Companies already provide DIY legal forms such as wills and basic contracts and this field is just getting started. AI is set to greatly enhance these low-cost legal services. AI will replace and augment services provided by lawyers, which will drive down the costs for parties. This should, if properly regulated, improve the gap in access to justice.

There are many challenges to expanding AI in legal services. Existing systems present problems with these potential disruptions. For example, the codes of legal ethics specifically prohibit the unauthorized practice of law, which is also a criminal offense in most jurisdictions. The prohibition is based on good intentions, protecting parties from unscrupulous and unskilled attorneys. It also helps aggrieved clients with compensation when attorneys fail to provide proper legal services. Despite the basis for this rule, it stands in the way of allowing others, such as AI, the ability to provide legal services and help reduce the justice gap.

Are AI legal programs providing legal services? Where is the line? Should the rules of ethics allow for AI? Who is responsible when the AI is wrong? These are questions that must be answered as these disruptive technologies expand. How jurisdictions decide these questions will certainly impact the legal industry, with the more important impact being on the gap in access to justice.

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