AI and the Future of Legal Aid

Ensuring Justice for All

BY TONY ARIAS

In a free-market, rule-of-law society, and in a time of growing income and wealth inequality, access to justice for the most vulnerable members of our society is not just a moral imperative but also a defining challenge. As an advocate for technology's transformative potential, I believe artificial intelligence (AI) holds the key to addressing this pressing issue.

Over the last few years, AI has taken the world by storm. Naturally most people focus on the overblown hype and on the risks. AI's impact, however, is already undeniable. Whether it's in the healthcare industry, the financial services industry, national security, legal practice, employment operations, or creative endeavors, AI is increasingly in the mix. The legal profession will undoubtedly be drastically different 10 years from now.

Of course, regulators should address the significant risks and concerns that AI poses. Colorado recently did so by passing the nation's first comprehensive AI law,[1] but it shouldn't stop there. Because AI also presents incredible opportunities and newfound benefits, Colorado should also take the lead in the nation and leverage AI capabilities to alleviate a long-standing problem in this country: access to legal aid.

The Current System Is Inadequate

I am always amazed at how much time attorneys give to their communities, both in their practice and outside of it. Whether through pro bono efforts spearheaded by the Colorado Supreme Court, community volunteer activities facilitated by law firms or bar associations, or legal organizations formed and supported to provide low-income individuals or small businesses with legal services, there is a lot of help already available, and a lot of attorneys who are always willing to help some more.

Still, despite the annual hundreds, if not thousands, of volunteer attorneys and the thousands, if not tens of thousands, of hours devoted to pro bono and community service, plus the millions of dollars spent to support organizations helping low-income individuals, the statistics for access to justice issues always paint an alarming picture.[2] The Legal Services Corporation—a publicly funded nonprofit corporation promoting equal access to justice in the United States—states that low-income Americans "do not get any or enough legal help for 92% of their substantial civil legal problems."[3] Those without means, unfortunately, "often see the law not as a protector, but as an enemy which evicts them from their flat, victimizes them as consumers, cancels their welfare payments, binds them to usury, and seizes their children."[4]

Why Can't We Fix This?

With so many dedicated attorneys and legal initiatives available, why do people still face monumental hurdles to access justice? A simple answer is the insufficient amount of money being spent to address the issue.[5] Indeed, recent actions in Colorado have focused on increasing funding to catch up to its western neighbors who have a higher per-capita state funding for legal aid.[6] Catching up is a positive trend, to be sure, but from a macro-perspective, it is insufficient to address this problem, as the national data shows.

Focusing on money alone, therefore, is unwise. For one, the likelihood of ever sufficiently funding the current access to justice model is practically zero. Thus, there will always be issues of reach and availability (like ongoing issues with rural legal deserts), scalability (that is, the inability of legal initiatives to expand their services to meet demand), and affordability (the always present prohibitive costs of full-fledged

legal representation for many individuals). As painful as it sounds, these issues are likely to persist with the current status quo in providing legal aid.

AI to the Rescue

Imagine a statewide AI-powered legal services app, meticulously trained by Colorado attorneys and enriched with Colorado legal data sourced from publicly available Colorado court forms and instructions, dockets, and case law and pleadings. This digital companion, available to all Colorado residents, would provide a legal guide at your fingertips. It would address your questions, navigate complex legal procedures, guide you to the right resources, and even one day complete and file court forms. This is not a distant dream but a feasible reality.

Don't just take my word for it. The New York State Bar Association thinks so too:

> [A] site powered by generative AI technology could provide a step-by-step guide to getting divorced, explain how to file a claim against an unlawful landlord or provide legal and other support options for domestic violence survivors. This is not a hypothetical scenario, as such systems have already been put into place by some legal services organizations, and these tools will only become more powerful, intelligent and accurate as generative AI becomes more and more sophisticated.[7]

Many of you reading this, particularly risk-averse attorneys (most of us, really), may feel a sense of hesitation or outright dismissal. Indeed, there are already many lawsuits, worrying cases of hallucinations, and prohibitions on the use of AI by bar associations and courts. The legal profession, steeped in traditions and precedents, may understandably feel uncomfortable with the idea of such a transformative change. There may even be conscious or unconscious efforts to protect our existing privileges and advantages as self-regulated lawyers.

AI, however, has the potential to transform access to justice in ways previously unimaginable. For those who care, we should take this opportunity seriously.

We can take small steps. Take your typical legal aid night, for example. Attorneys are given brief trainings and a binder of relevant

With so many dedicated attorneys and legal initiatives available, why do people still face monumental hurdles to access justice? A simple answer is the insufficient amount of money being spent to address the issue.

information, which includes details on various legal areas and resources, including pro bono organizations that can provide further assistance. Attorneys dedicate one to two hours to see people in need, understand their problems, point them to available resources, and instruct them on next steps. This process is primed for AI capabilities using decision-tree technology.

Decision-tree technology in AI mimics the human decision-making process by creating a flowchart-like structure of choices and outcomes. It starts with a root question and branches out based on possible answers, leading to further questions or final conclusions.

With this technology, AI can systematically guide individuals through their legal issues, mirroring the decision-making process of an attorney. By asking a series of structured questions, the AI tool can identify pertinent legal areas and suggest appropriate resources or next

steps, providing a similar depth of assistance as an attorney at legal aid night but with a level of efficiency and scalability that human attorneys might struggle to match—legal help 24/7, without geographical limits, and without overburdening dedicated attorneys.

A Unified Approach Is Essential

To truly revolutionize access to justice, Colorado needs a more comprehensive and unified strategy, rather than relying on the fragmented, localized, and unregulated initiatives seen across the country. As Milton Friedman—famous economist and advocate of free market principles—acknowledged, there are certain functions, goods, and services in our society that require a centralized system to protect citizens. For issues of this magnitude, free market and mixed public-private solutions are inadequate.

Here are some reasons why a unified approach, enhanced by AI, is more effective:

- **Consistency and standardization:** A statewide approach ensures uniform access to high-quality legal assistance across all regions. This eliminates disparities that might arise from varying resources and expertise in different municipalities or organizations. By centralizing the AI system's knowledge base and continually updating it with the latest legal information, we can provide consistent, accurate guidance to all users, regardless of their location within the state.
- **Resource optimization:** Pooling resources at the state level allows for more efficient development, maintenance, and improvement of the AI system. Instead of multiple organizations investing in separate, potentially redundant systems, a unified approach enables the concentration of financial and intellectual resources. This centralized effort can lead to a more sophisticated, comprehensive, and regularly updated AI tool that benefits from the collective expertise of legal professionals across the state.
- **Scalability and reach:** A statewide app has the potential to reach every resident, including those in underserved or rural areas where legal resources are scarce.

This scalability is particularly crucial in addressing the persistent issue of rural legal deserts. By providing a digital solution accessible to anyone with a smartphone or internet connection, we can dramatically expand the reach of legal aid services beyond what individual municipalities or organizations could achieve independently.

- **Data-driven improvements:** A centralized system allows for the collection and analysis of data on a much larger scale. This wealth of information can provide valuable insights into the most pressing legal needs across the state, patterns in legal issues, and the effectiveness of different approaches. These insights can then be used to continuously refine and improve the AI system, as well as inform policy decisions and resource allocation for other legal aid initiatives.

Of course, such an undertaking will be long and rife with pitfalls and challenges, including issues surrounding attorney-client privilege, unauthorized practice of law claims, privacy, security, bias, and funding. These are issues, however, that can be addressed; they are not impediments per se.

As I see it, the potential benefits of improving access to justice issues vastly outweigh the potential risks, which we can reasonably address. By investing in an AI-powered legal aid app, Colorado can become a pioneer in employing technology to tackle access to justice issues,

setting a precedent for the rest of the nation. The Colorado Supreme Court, law firms, bar associations, legal corporations that serve low-income individuals, and law schools can all join hands to lead this potential effort.

Conclusion

We are in a technological revolution, and with AI, we now have a choice: to merely play catch-up as we have in the past and safeguard against potential harm, or to harness AI's transformative power for the greater good. By championing an AI-powered legal aid system, Colorado can become a model of innovation and justice, setting a gold standard for the nation. This is an opportunity to unlock a new era of fairness, proving that our legal system serves, protects, and empowers every individual, regardless of their means. We should take it. **CL**

Tony Arias is an associate attorney at Holland & Hart LLP—JAArias@hollandhart.com.

NOTES

1. SB 24-205, 74th Gen. Assemb., Reg. Sess. (Colo. 2024).

2. *See, e.g.*, Avery et al., "ChatGPT, Esq.: Recasting Unauthorized Practice of Law in the Era of Generative AI," 26 *Yale J.L. & Tech.* 64 (2023) (hereinafter "Recasting Unauthorized Practice"); Legal Services Corp., *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* (Apr. 2022) (hereinafter *The Justice Gap*); Institute for the Advancement of the American Legal System, "New Study Reveals the Full Extent of the Access to Justice Crisis in America" (Aug. 24, 2021), https://iaals.du.edu/blog/new-study-reveals-full-extent-access-justice-crisis-america; *The Justice Gap*, Executive Summary, https://justicegap.lsc.gov/resource/executive-summary.

3. *The Justice Gap*, Executive Summary, *supra* note 2.

4. "Recasting Unauthorized Practice," *supra* note 2 at 108 (citing Brown, "Legal Software and the Unauthorized Practice of Law: Protection or Protectionism," 36 *Cal. W. L. Rev.* 157, 170 (1999)).

5. *See, e.g.*, Tabachnik, "Colorado Spends Less on Low-Income Legal Aid Than Most Western States. That May Soon Change," *Denver Post* (Feb. 15, 2024), https://www.denverpost.com/2024/02/15/colorado-legal-aid-funding-legislation.

6. *Id.*

7. New York State Bar Association, *Report and Recommendations of the New York State Bar Association, Task Force on Artificial Intelligence* 42 (Apr. 2024).