Title:

Strategic Advocacy against Automated System Bias

Presenters:

Anna Dorn-Gulotta, Komengé © LLC, Tempe, AZ
Alex Gulotta, Kômëngé © LLC, Tempe, AZ
Ã®de Gulotta, Kômëngé © LLC, Tempe, AZ
Kevin De Liban, Legal Aid of Arkansas, West Memphis, AR
Julia Simon-Mishel, Philadelphia Legal Assistance, Philadelphia, PA
David Udell, National Center for Access to Justice at Fordham Law, New York, NY

We will discuss the variety of automated systems that may affect your community and provide specific examples of how those systems are used to make civil and criminal justice decisions. We will focus on strategic advocacy to address the ways in which these systems succeed and fail
Access to Justice & Automation
A Proposal to Create
A Toolkit for Implementation and A Roadmap for Advocacy

By David Udell, Alex Gulotta, Anna Dorn-Gulotta & Íde Gulotta

Introduction

In the United States, our civil justice system routinely and unjustly causes people to lose their homes, families, savings, physical security, personal liberties, even their freedom. The consequences are often devastating for individuals, families, and communities, and most fundamentally for our basic rule of law.

Many are working to increase access to justice in American society. A core goal of the reform agenda is to assure the availability of meaningful legal assistance for people unable to afford a lawyer and unable to secure a free legal aid lawyer because of the limitations of existing legal aid programs. Other initiatives are also being pursued, including efforts to simplify the legal system, to increase the responsiveness of officials operating the system, and to expand opportunities for people in need to secure legal assistance from individuals who are not attorneys.

Technology is often offered as a source of solutions, and, already, many innovations are in place, or soon to be in place. In the civil justice system, states are building online portals to provide navigational help to people with legal problems. Technology is being used to scan and review discovery materials, to rate the likelihood of successful outcomes in incoming cases, to locate and provide help to tenants who are at a heightened risk of eviction, and to enable tenants to track and document their landlords’ failures to maintain conditions in their apartments.

In the criminal justice system, the spread of technology has been faster and broader. Communities are relying on artificial intelligence algorithms to eliminate cash bail for defendants by targeting the specific defendants who are presumed to pose a danger to society or to be flight risks. Some communities are already using AI as a resource to determine how long to incarcerate individuals, and where to house them.

In theory, these kinds of developments should be invaluable game changers. But, when new technologies arise and spread this quickly, they are hard to evaluate. This would be of no
consequence if the different technologies posed no risk of harm.¹ But, that is far from assured. In this proposal we initially describe i) the need for vigilance, and ii) the forms vigilance can take. In a third section, we propose to create a toolkit for evaluating new AI models, and a roadmap for advocacy to help guide the necessary responses when new technologies go awry.

I. The Need for Vigilance by Access to Justice Stakeholders

Technological innovation has furnished society with a variety of flexible and powerful tools. Perhaps the most impressive of these tools, if also the most concerning, are those involving systems automation and machine learning. A substantial amount of research has been done and is continuing to be done on the ways in which these technologies are altering our world, though most of these initiatives do not examine in any detailed way the specialized world of civil legal aid.

a. Institutions engaged in vigilance

Data & Society is a research institute in New York City that is “focused on the social and cultural issues arising from data-centric and automated technologies.” D&S has authored publications on a variety of topics, ranging from the problematic rhetoric of companies advertising automation-based systems to the ethical consequences of precision medicine techniques (Data & Society Research Institute).

Similarly, the AI Now Institute at New York University, focuses on the fact that “the vast majority of AI systems and related technologies are being put in place with minimal oversight, few accountability mechanisms, and little research into their broader implications” (AI Now Institute). AI Now “produces interdisciplinary research on the social implications of artificial intelligence and acts as a hub for the emerging field focused on these issues” Id.

In Data-Driven Regulation and Governance in Smart Cities, authors Sofia Ranchorda and Abram Klop investigate both pre-existing and emerging concerns exposed by the use of automated, data-driven techniques at administrative and governmental levels (Ranchorda and Klop). Recognition of these kinds of concerns seems to be taking hold. Just this past December, the New York City Council voted to establish a task force to examine the City's "automated decision systems."

¹ The place of these concerns in our society has been highlighted recently in Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy by Cathy O’Neil and Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor by Virginia Eubanks. Their thinking is highly valuable to both implementers and advocates.
b. Institutions vigilant about the justice system

Substantial work is now beginning to be done on how new technological innovations intersect with the justice system. ProPublica has published a series of articles under the title *Machine Bias* focusing on the social consequences of automated systems. Of specific note, a May 23, 2016 addition to the series detailed racial bias in human risk assessment software applications for bail-setting that have been coming online in courts across the country (Mattu).

In May 2017, the Brookings Institute called on the justice system to “embrace artificial intelligence” (Watney). While noting the potential risks, Brookings postulated that the risks could be mitigated through careful oversight and transparency.

There are interesting startups entering the justice AI space, such as the Algorithmic Justice League, which “highlights algorithmic bias through media, art and science; and, provides a space for people to voice concerns and experiences with coded bias”.

c. The need for increased vigilance by access to justice organizations

In spite of the growing focus on the ethical and practical concerns at the macro level, there is relatively little literature or established best practices focusing on how the world of tech advancements has been, can be, or should be responsive to the needs of the unrepresented individuals, civil legal aid advocates, court officials and other stakeholder individuals and institutions that constitute the access to justice community. This project will produce and curate practical, actionable intelligence to guide access to justice organizations in how to identify, evaluate, plan for, and use these technologies to secure fair treatment and fair outcomes for clients and client communities.

II. The Form of Vigilance

“For those interested in inequality, the pertinent questions are whether and how different kinds of informality, in comparison with more formal procedures, exacerbate social inequalities, replicate them, or moderate them.” (Sandefur 345)

The need for vigilance in the access to justice space is increasing as the number of applications increases. Because law, as a field, is under-theorized relative to medicine, the prospects for machines to accurately diagnose, triage, and treat legal conditions are uncertain. That lack of knowledge has not slowed the pace of adoption of new technologies. New projects are being considered in every corner of the access to justice ecosystem, as, for example:

- New Mexico Legal Aid has an online intake module that uses Neota Logic’s intelligent workflow process.
• Microsoft Portals are being launched in Alaska and Hawaii to bring machine learning enhancements to triage and service delivery.

• LegalServer developer, IV Ashton, is developing Houston AI, which offers the promise of “Simplifying Justice Through Automated Intelligence.”

• Online dispute resolution models are increasingly being developed and tested, see JTC Resource Bulletin report, *Case Studies in ODR for Courts: A view from the front lines* (Joint Technology Committee).

Given this context, increased engagement of the access to justice community can make a substantial difference in the quality of justice that results from emerging technologies.

**a. Process Assessment Tools**

Bill Gates is credited with saying, “The first rule of any technology used in a business is that automation applied to an efficient operation will magnify the efficiency. The second is that automation applied to an inefficient operation will magnify the inefficiency” (Carlson). The significance of this quote is self-evident.

In embarking on projects that use technology to improve systems, there is a tendency to look for ways to “make what we do” more efficient. The better approach may be to question what we do and to decide how it could be done better. This attention to business process analysis and improvement, and the consideration of human centered design principles, must be prerequisites to any technological enhancement. If these factors are overlooked, or given short-shrift, we are just magnifying the inefficiencies.

**b. Human oversight evaluation**

The new technologies give rise to complex automated systems, but even as complexity increases, and as self-learning systems seem to function more independently with each new version, they will continue to require a deep engagement of sophisticated human overseers for the foreseeable future.

In the commercial sector, there is a pressure to automate without substantial human oversight. Systems deployed by Amazon, Ebay, and PayPal to enable buyers and sellers to resolve their disputes handle a massive volume of transactions. To maximize system efficiency, these platforms employ complex techniques in an explicit effort to limit human oversight. This approach reflects a design choice, and the same choice may not be a good fit for systems that are intended to assure the provision of access to justice.
By contrast, there are models that, by design, rely on human oversight. The Internet Corporation for Assigned Names and Numbers (ICANN) employs a dispute resolution process that allows the use of (and, in fact, directly integrates decisions from) approved, automated ODR providers. However, the final dispute resolution process typically requires a panel of human reviewers to hand down a decision for each individual case. The model prioritizes human oversight over pure efficiency.

Certain categories of disputes will especially necessitate human intervention, even in highly-automated contexts. The hard cases will include difficult-to-categorize disputes, instances where one or both parties escalates a request from ODR to external authority, and matters involving complicated facts or raising complicated questions of law. But, not all the "easier" cases are easy.

Many of the scenarios can be optimized by more robust systems and carefully structured terms of use, but there are some very real questions has to how desirable these paths are, to what extent they are worth pursuing, and whether they will create a wake of problems. As long as the human beings creating and implementing the technological systems are capable of making errors, as long as human nature generates uniquely complex human disputes, the oversight and intervention of live human beings will continue to be essential.

It is important that access to justice stakeholders are educated and meaningful partners in the oversight, testing, and evaluation of software implementation. It is important for these stakeholders to be engaged in deciding the levels of human intervention necessary to make the new systems appropriate as models for expanding access to justice.

c. Bias evaluation

There is some level of bias in every system. As used here, “bias” is simply an inclination or predisposition for or against a particular outcome. An automated intake system may be biased in favor of providing service to victims of domestic violence over providing service to other applicants seeking family law assistance. A triage system may be biased in favor of guiding people who have minimal literacy skills to the point of interaction with a human service provider more quickly than those who have higher levels of literacy.

But not all bias is considered ethically appropriate or conducive to fair and accurate treatment under the law. Moreover, the standards for what is acceptable, rather than unjust, may change. For a long time health insurance was biased against coverage for individuals with pre-existing health conditions. Thankfully, the propriety of this bias has been challenged by our national dialogue over health-care access.

The automation of legal processes does not remove bias, it reifies bias. Bias in systems can be difficult to discern, and algorithmic determinations may proliferate this bias. Machine learning can further compound this issue, potentially to the point that it may not be possible to
uncover the ultimate source of the bias or extract it from the trained system. Even if extraction were technically possible, many of these systems are proprietary and secret, which prevents detailed analysis.

As a case in point, in May 2016, ProPublica published a long exposé on the racially disparate impacts of a human risk assessment software application in the context of criminal justice system decision-making called COMPAS (“Correctional Offender Management Profiling for Alternative Sanctions”) and sold by Northpointe. The bias uncovered by ProPublica is striking; and the potential causes of the bias are inscrutable due to the secret proprietary nature of the tool (Mattu).

Importantly, bias may also take time to emerge. Systems employing machine learning typically need to be “trained” on a large and representative dataset, so they can start learning to make and then evaluate predictions. This training data forms the initial baseline for the service. Obviously, functionality on launch has an impact on public perception of the viability of the project, but there are less obvious yet more significant consequences. A system trained on the wrong data could be functioning correctly while appearing to have incorrect output (or vice-versa). This lengthens the development cycle, which may in turn have adverse consequences for budget or for the quality of the final product.

Even worse, however, is what happens when a system trained on non-representative data, appears to work correctly, and then is released out to the world in that form to cause havoc. The bias attributable to the non-representative data is only visible once people are being harmed (e.g. people denied pretrial release due to defects in the COMPAS tool) (Mattu).

The capacity of the community to anticipate, perceive, and ameliorate the effects of bias will be critical to the success of the new technologies in expanding access to justice, and constitutes the cornerstone of our ability to effectively identify and make whole victims of unjust systems.


We propose to create two new resources for access to justice stakeholders considering the advantages and disadvantages of automated systems: a toolkit to use when adopting new technologies; and a roadmap for advocacy when reviewing new technologies already adopted. We describe these proposed resources below.
a. The Toolkit: An Approach to Vigilance When Adopting New Technologies

To enable the access to justice community to embrace new technologies as a means of responding to the needs of clients and communities, while reducing the risk of harms, we will create and share in the community a toolkit of best practices for thoughtful implementation.

(1) Principles Informing the Creation of the Toolkit

Is the new technology useful? Systems must be designed with the end users’ needs in mind. How will the community use this tool? Will the tool be accessible to a broad cross-section of the community? Are we following the best thinking on human-centered design? Will the system simply improve a process or will it also improve understanding of the process? (Porcaro).

Does the technology allow for obtaining informed consent? The world of software and web development has historically struggled to provide an effective and well-founded option for obtaining informed consent. This creates a certain tension when it comes to using public-facing software tools to help remediate access-to-justice problems. The click-wrap agreements, opaque terms of service, and impenetrable privacy policies endemic to software and web services represent very real barriers to effective informed consent. What are the best practices in making these design choices?

Will the technology protect privacy? Neural networks use input data to continuously refine their outputs. If that input data is private, or if it contains personally identifying information (e.g. addresses), then there are standards which need to be upheld relative to that data. Great care needs to be taken to avoid the risk of unintentionally exposing this data in the output. This set of concerns compounds the aforementioned informed consent issues as they apply to the privacy policy – users’ data will be used to augment and refine the service that is provided. What are the prevailing industry standards? Are they protective enough?

Will the technology ensure data integrity? There are numerous ways to source training data: if an access to justice organization is already collecting relevant data, it may enter into the project with an acceptable dataset; a sufficiently mature and savvy technical partner may be able to furnish relevant training data; or, data collection may be contracted out to a third party. But, as described above, use of legitimate data is crucial to avoiding harm to individuals. How will the legal aid program source and test its training data?

Is it transparent? The underlying engine of any smart system includes logic flows, training data, and algorithms for automated processing. How these systems function and evolve over time, are critical pieces of information for an access to justice partner to know what the system is doing and who it may be adversely impacting. The use of open source AI is one
way to address this issue and may be a factor in determining a good tech partner. Where a proprietary system is offered to assist in a project, how can the community gain the necessary knowledge regarding what is going on inside the “black box?” Would non-disclosure agreements be sufficient? Is neutral outside expert needed? Is there a high-level way to share what is going on while protecting the IP of the tech partner? And, where algorithms function in ways that are not fully understandable, even to their creators, should the access to justice community adopt them at all?

**What are the risks of failure?** The repercussions for the access to justice community, including the people it serves, of a prejudiced automated system being employed by an access to justice organization are far-reaching. A systemic failure to serve the under-represented can delegitimize civil justice efforts or be used as evidence in support of unsavory policy. These social ills are made all the more likely or resilient by opaque evaluative structures, wide-spread ignorance of the parameters (capabilities, limitations) of these systems, and the rhetoric of Artificial Intelligence luminaries. How do you define the risks of failure and develop plans to mitigate those risks?

**Can the technology be fixed, and harms reduced, if the technology does not work as intended?** Once established, machine driven systems seem to function like objective arbiters. And once in operation it is difficult to change a system even if you later determine, based on strong evidence, that the system was founded on flawed assumptions. There are numerous practical and ethical tensions behind changing a system in place. Doing so splits the data used to run and evaluate a system into multiple data-sets of uncertain relationship to one another. It also may change who the provider serves and how it serves them. How should a civil legal aid organization prepare for these changes at an organizational level? How can a technology system be built to withstand such changes?

**Will the technology be sustainable?** Technology projects proceed on a timeline. They have a stakeholder kickoff. They plan, they code, they test, they implement. There may be many cycles of this routine. But eventually, they end. The product is delivered. The technical partner retreats, recedes, or completely disappears. From the outset of any technological implementation project, organizations need to plan for this inevitable day. What financial and human resources will be necessary to maintain the system? When does it need to be upgraded? What is the plan for making these things happen?

(2) Activities

- Research:
  - unmet tech needs and potential new applications in the access to justice community
  - current and anticipated initiatives
  - concerns evolving from current and anticipated initiatives.
• **Identify:**
  o valuable transferable information for the access to justice community and its clients
  o unique requirements of the access to justice community and its clients.

• **Assemble:**
  o a proposed system of best practices
  o a proposed legal and ethical framework.

• **Convene and consult:**
  o with civil legal aid stakeholders to brainstorm, test, and modify the best practices (round table discussions, etc.)

• **Create:**
  o a community of support for ongoing dialogue.

  (3) **Deliverables**

• **A clear statement of core goals, as provisionally described, above.**

• **A construct for initial project scoping:**
  • Identifying modes of failure. What are they? Which are more, or less, acceptable? Which modes of failure are illegal?
  • Identifying and valuing modes of success. What are they?
  • Identifying and accepting, openly and collectively, the bias being reified. How can bias be identified in the first instance? What are the intended and unintended consequences of that reification?

• **Analysis of big-picture questions about how a system is designed:**
  • If considering ODR, for example, what will be its output? Will it be a recommended decision or an actual decision? How binding is the system? Is it subject to further review? What rights do participants to give up by participating in the system? What incentives are offered to one or both parties to make such a commitment?
  • Is the system logic presented in an opaque (black box) manner, or in an open manner? There are relative advantages to each, but the choice should be made consciously as it is significant. Are processes analyzed before automating them? Using what construct? Does the system simply focus on improving the process or does it seek to improve understanding of the process? (Porcaro)
  • How much can an organization afford to automate? Stated otherwise, how much oversight does this process require to be performed in a reliable and ethical manner?
• **Guidance for managing failure:**
  - Establishing procedures for failure.
  - What are the impacts of modifying a system already in use?
  - Is there a duty to disclose the changes? How and to whom? How and to what extent is remediation offered to earlier users for the failure, depending on severity?

• **Guidance on organizational responsibilities:**
  - Clarifying terms for delegating responsibilities to a technical partner
  - Determining parameters for reasserting control when decisions could adversely affect the tool and thereby the communities served (e.g. preventing the employment of ethically questionable subcontractors, clearly defining the desired process, clearly delineating where and what proxies are acceptable, and similar factors).
  - Identifying “baseline” bias in existing human systems that need to be addressed before being hard-coded into a tech-based system.
  - Establishing parameters for selecting a technical partner reflective of project needs including a thoughtful analysis of proprietary vs. open source AI systems.
  - Recognizing the effect that the outputs of your system could have on the broader community.
  - Uncovering bias in tech systems

• **Recommendations for necessary legal and ethical frameworks.**

• **A clear and inspiring statement of best practices based on findings.**

b. **The Roadmap to Advocacy: An Approach to Guiding Advocacy When New Technologies Are Already in Place**

  Often, the implementation of technology has already occurred, with little to no input from advocates. In these instances, it is important to evaluate the existing technology, assess its capacity to increase or decrease justice, and advocate for solutions to change systems that fall short.

  (1) **Principles Informing the Creation of the Roadmap to Advocacy**

  The following principles focus on identifying problems before they occur, locating the source of a problem in an active system, and identifying and advocating for solutions to correct on-going problems.
Is it transparent? Systems with invisible algorithms, mysterious use of data points, and opaque programming prevent individuals and advocates from knowing how a system works. This makes it harder to know how systems make decisions, identify potential problems before the occur, and advocate for corrections when a problem arises. A system that is opaque even to the agency or organization using it further prevents tracking, identification, and correction of problems before they are multiplied. The transfer of an existing system to automation should be clearly announced to the community in question to allow changes to be tracked.

Is the human influence visible? Automated systems are created by humans. Automation lends a veneer of authenticity and neutrality and is often seen as neutral arbitration. Computers do not themselves have a will, therefore it would seem that automated systems cannot enforce their will on a population of users. However, this fails to recognize that policy-makers and developers influence the automated systems they create, and that this influence plays out over time after the policy-makers and developers are no longer directly involved.

Will the automation magnify potential harm? Automation can proliferate problems at a higher rate. Automation is often seen as a beneficial, or at least neutral, technology. When it is implemented correctly, it appears not to modify the nature of the activity, only the speed, consistency, and efficiency with which that activity occurs. For example, automating applications for assistance or benefits appears to speed up the distribution of resources. This ignores the fact that implementation of automated systems is not perfectly consistent. Increased efficiency magnifies and increases errors and inaccuracies, increasing the number of injustices if a problem is discovered only after the passage of time. For example, systems with incorrect selection criteria rapidly apply those criteria to many applicants, increasing the number of errors (as contrasted with the number that would result from human implementation).

Will errors caused by automation be fixable? Increased efficiency can create new harms. When automated systems make eligibility determination for access to limited resources, increased efficiency can compound the harm of errors. A more efficient distribution of a limited resource can accelerate the rate at which the resource is exhausted. When incorrect decisions or denials occur, this changes the distribution of which individuals receive resources and when they receive them. As a result, some individuals receive resources earlier than others and this may ultimately prevent others from receiving resources at all due to denial delays or errors. Unlike errors for programs or resources available to all eligible individuals, later appeals to correct delays or denials maybe ineffective if the resource is already fully distributed.

Can errors be self-corrected, or will they necessitate excessive appeals? Relying on appeals to correct automated errors increases burden and injustice. Due to the risk of proliferated errors or inappropriate denials, automated systems increase the number of appeals and burden on review systems. An automated system that forces people to appeal these errors, rather than self-correct, increases the downstream pressure on agencies, courts, or other institutions to correct the original erroneous decisions. This may also act as a
gatekeeper, preventing eligible individuals from receiving services. Erroneous denials may discourage eligible individuals from seeking or obtaining services.

**Can bias be discovered before harm is done?** Errors in automated systems can result in unintentional discrimination or disparate impact. Automated systems that distribute limited funds or resources on a first-come-first-served basis appear neutral but may slow the application process for people who do not speak English (require an interpreter) or who might require help to apply (for example, people with limited vision, physical disability, the need for a caseworker, etc.). As a result, these individuals may receive later spots on waitlists, or have delayed awards, or be denied altogether if resources are finite. In human-focused and implemented systems, these people may otherwise have received timely and necessary accommodations at the point of application. Vigilance during the introduction of automated systems can address these concerns at the start.

(2) Activities

- **Research:**
  - AI implementations in courts and agencies to date
  - Litigation challenging court and administrative AI implementations to date

- **Identify:**
  - Ongoing advocacy efforts in the space
  - Ongoing AI implementations that may be causing harm

- **Write:**
  - Guides for each category of advocacy, including: policy analysis, planning, litigation, communications, lobbying, organizing, etc.

- **Consult:**
  - With the field of access to justice stakeholders to test and strengthen this roadmap

- **Create:**
  - A community of support for collaborative advocacy campaigns

(3) Deliverables

- **Tools and protocols for research to learn about automated systems in the justice sector**
  - Model FOIA requests
  - Model surveys
  - Information clearinghouse
  - Justice Index inclusion
• An evaluative framework for automated systems
  o Desirable traits
  o Red flags
    ▪ Indicators for prevention (black box systems, poor auditing)
    ▪ Indicators for litigation (documented disparate impact, end-user harm)
  o Ratings framework
    ▪ Relative and/or absolute
    ▪ Potential tie-back to clearinghouse and Justice Index

• A guide to strategic planning for ethical automated advocacy
  o Positioning (market assessment, etc.)
    ▪ Methods of identifying nonprofits and vendors in the space whose actions may influence the rhetoric and politics
    ▪ How to define organizational strategy and advocacy space
  o Communicating around automation and AI
    ▪ How to frame the issues
    ▪ How to select effective, clear language
    ▪ How to reframe the issues for different stakeholders
    ▪ How to change messaging based upon current issues/events
  o Model strategic decision-making criteria
    ▪ Questions for evaluating and selecting organizational strategies

• Domain-specific frameworks for advocacy
  o Litigation
    ▪ Paper on state of the art of AI and automation litigation
      • Completed litigation
      • Active cases
      • Relevant law
        o Federal, state code, admin policy, etc.
      • Additional litigation opportunities
  o Lobbying
    ▪ Lobbying guide for advocates
      • Example letters, emails, phone call scripts
      • Research documents targeted to the public, legislators and other stakeholders
      • How to identify key legislators
      • How vendors affect this picture
        o In what situations should vendors be partners in advocacy, and when should they not?
  o Media
    ▪ Media guide for advocates vigilant about AI and automation
Community organizing

- How to organize around AI and automation
  - Case studies
- Building a professional community of advocates vigilant about AI and automation
  - Educational resources and trainings
- List of organizations and advocacy groups operating in this area and description of their work, role, and interests

Hybrid

- Elections / Social / Politics
  - How your advocacy efforts can force ethical AI and automation to the political/social forefront
  - How the conversation around ethics and AI and automation enters into the zeitgeist

Side-channel: how to engage in advocacy indirectly by modifying the broader environment that gives rise to bad systems or working to remediate downstream effects

- Independent policy advocacy (e.g. credit reports)
- “How to be at the table”
- Tools
  - For an example in the space of online privacy, see Electronic Frontier Foundation’s Privacy Badger

Conclusion

The embrace of new technologies is an exciting leap forward in what has historically been a slow march to expand access to justice. The risks and complications posed by these technologies should not deter us. Rather, they should galvanize us to develop a thoughtful and informed approach that provides organizations moving into this space both the tools needed to responsibly adopt new technologies, and the advocacy strategies needed to assure access to justice for all who lives will be influenced by those technologies.
Sources:


Ranchordas, Sofia and Klop, Abram, Data-Driven Regulation and Governance in Smart Cities (February 19, 2018). Forthcoming, A. Berlee, V. Mak, E. Tjong Tjin Tai (Eds), Research Handbook on Data Science and Law (Edward Elgar, 2018); University of Groningen Faculty of Law Legal Studies Research Paper Series . Available at SSRN: https://ssrn.com/abstract=3126221

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May 10th, 2019
Presenters: 
Anna Dorn-Gulotta and Íde Gulotta

Panel Discussion: 
David Udell, National Center for Access to Justice at Fordham Law School
Julia Simon-Mishel, Philadelphia Legal Assistance
Kevin De Liban, Legal Aid of Arkansas
Alex Gulotta, Komenge.Consulting
Bill Gates is credited with saying, “The first rule of any technology used in a business is that automation applied to an efficient operation will magnify the efficiency. The second is that automation applied to an inefficient operation will magnify the inefficiency.”

“Virginia Eubanks is a long-time technology and economic justice advocate. In 2014 she began an in-depth investigation into the systems that monitor and sort poor and working-class people in the United States . . . She developed three extensive case studies reviewing the impacts of technological systems. The case studies highlight the systems and people impacted by: automated eligibility assessments in Indiana’s welfare system; the electronic registry for Los Angeles’ homeless services system; and a risk model for child abuse or neglect in Allegheny County, Pennsylvania . . . Automating Inequality focuses on the ways in which technology is used to categorize, rank, police, and punish the poor.”

“High-tech tools have a built-in authority and patina of objectivity that often lead us to believe that their decisions are less discriminatory than those made by humans. But bias is introduced through programming choices, data selection, and performance metrics.”


“*Weapons of Math Destruction* covers a huge breadth of troubling implementations of mathematical systems that sift and categorize people. O’Neil discusses systems related to higher education, online advertising, the criminal justice system, employee hiring systems, worker treatment, consumer credit and loans, and the use and abuse of information and data. These systems impact low-income, working class, and middle-class Americans.”

“Big Data processes codify the past. They do not invent the future.”

These systems are impacting people and families across the country. We need to:

• Identify where and how these systems are being used.

• For each system, we need to know:
  • Is it transparent?
  • Is the human influence visible?
  • Will the automation magnify potential harm?
  • Will errors caused by automation or AI be fixable?
  • Can errors be self-corrected, or will they necessitate extensive appeals?
  • Can bias be discovered before harm is done?
139 Respondents, primarily attorneys and staff of Legal Aid Organizations

The purpose of the survey was to gain feedback about the use of technology in the legal system, specifically the use of automated systems. We included both simple automated systems and more complex ones that include machine learning and artificial intelligence. For the purposes of the survey and our conversation today, we use the term AI to discuss the entire spectrum of technological implementations from simple automated systems to AI.
Automated Systems and AI Advocacy Survey

• “I can't think of a context where clients and/or service recipients interact with AI in the state of XX.” (State has a highly automated public benefits portal).

• “My primary concern is algorithms determining access to public benefits, specifically in Medicaid related programs. At due process hearings, the state officials cannot explain any aspects of the algorithms and the ALJs are too deferential to the algorithmic findings.”

• “I think that people see AI as replacing or replicating effective legal assistance, it would be more helpful if it were viewed as a way to free up resources for more complex issues. The other problem is where AI systems fail to highlight systemic issues that might have been noticed by a human intake person.”
Are clients interacting with AI in these contexts?

- Benefit applications
- Interpreting
- Translating
- Finding a lawyer
- Civil justice system
- Criminal justice system
- Case/benefit decisions
- Fraud investigations
- Court form/doc creation
- Intake triage
- Online intake triage
- Legal advice chatbot

- Unsure/I don't know
- Rarely
- Occasionally
- Frequently
- Very Frequently
Panel Discussion

• What is Artificial Intelligence, machine learning, and automation?
• Where is it is used and how is it implemented?
• What advantages does AI promise to clients and communities?
• How can AI go awry? What are the risks posed?
• What vigilance is required?
• What responses are needed when systems go awry?
• Examples of AI delivering on its promises?
• Examples of concerns or problems?
Roadmap to Advocacy

Identify

Explore

Act
Research Informing Our Work


• Ranchordas, Sofia and Klop, Abram, Data-Driven Regulation and Governance in Smart Cities (February 19, 2018). Forthcoming, A. Berlee, V. Mak, E. Tjong Tjin Tai (Eds), Research Handbook on Data Science and Law (Edward Elgar, 2018); University of Groningen Faculty of Law Legal Studies Research Paper Series . Available at SSRN: https://ssrn.com/abstract=3126221


THANK YOU!
Q1 What kind of organization do you work in/with?

Answered: 139  Skipped: 0

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Aid Organization</td>
<td>51.80%</td>
</tr>
<tr>
<td>Pro Bono Program</td>
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<tr>
<td>State Support Center</td>
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<tr>
<td>Law School</td>
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<tr>
<td>Statewide Court...</td>
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<tr>
<td>Appellate Court</td>
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<tr>
<td>Local Court</td>
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<tr>
<td>Law Library</td>
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<tr>
<td>Library</td>
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<tr>
<td>Social Services...</td>
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<tr>
<td>State Agency</td>
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<tr>
<td>Other Service Provider</td>
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<tr>
<td>Community Organization</td>
<td></td>
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<tr>
<td>Policy advocacy...</td>
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<tr>
<td>Research institute</td>
<td></td>
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<tr>
<td>Other (please specify)</td>
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</table>

1 / 41
<table>
<thead>
<tr>
<th>#</th>
<th>OTHER (PLEASE SPECIFY)</th>
<th>DATE</th>
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<td>5/6/2019 6:48 AM</td>
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<tr>
<td>2</td>
<td>Public Defender</td>
<td>4/30/2019 7:32 AM</td>
</tr>
<tr>
<td>3</td>
<td>Legal Tech</td>
<td>4/29/2019 3:04 PM</td>
</tr>
<tr>
<td>4</td>
<td>tool developer</td>
<td>4/29/2019 11:38 AM</td>
</tr>
<tr>
<td>5</td>
<td>non-profit</td>
<td>4/29/2019 11:30 AM</td>
</tr>
<tr>
<td>7</td>
<td>PLEI Non-profit organization</td>
<td>4/29/2019 11:17 AM</td>
</tr>
<tr>
<td>8</td>
<td>solo lawyer serving poor</td>
<td>4/29/2019 11:15 AM</td>
</tr>
<tr>
<td>9</td>
<td>Medical Legal Partnership</td>
<td>4/29/2019 11:02 AM</td>
</tr>
<tr>
<td>10</td>
<td>Children's Civil Presentation - not formally legal aid org.</td>
<td>4/29/2019 11:02 AM</td>
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<tr>
<td>11</td>
<td>tech company</td>
<td>4/29/2019 11:01 AM</td>
</tr>
<tr>
<td>12</td>
<td>statewide legal information platform</td>
<td>4/24/2019 8:03 AM</td>
</tr>
<tr>
<td>13</td>
<td>Funder</td>
<td>4/23/2019 8:07 AM</td>
</tr>
<tr>
<td>15</td>
<td>Bar Foundation (philanthropy for civil legal aid)</td>
<td>4/22/2019 6:07 PM</td>
</tr>
<tr>
<td>16</td>
<td>tech legal non profit</td>
<td>4/22/2019 8:54 AM</td>
</tr>
<tr>
<td>17</td>
<td>Family Law Facilitation Office</td>
<td>4/22/2019 8:27 AM</td>
</tr>
<tr>
<td>18</td>
<td>Private Practice</td>
<td>4/22/2019 7:42 AM</td>
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<tr>
<td>19</td>
<td>Bar Foundation</td>
<td>4/22/2019 6:50 AM</td>
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<tr>
<td>20</td>
<td>Funder</td>
<td>4/22/2019 6:07 AM</td>
</tr>
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<td>ID</td>
<td>Response</td>
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<td>----</td>
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<td></td>
</tr>
<tr>
<td>21</td>
<td>Nonprofit legal tech provider</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Bar Foundation</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Software developer who works primarily with Legal Aid orgs</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Nonprofit software and content development in legaled/law/a2j space</td>
<td></td>
</tr>
</tbody>
</table>
Q2 What is your role?

Answered: 138  Skipped: 1

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff member of a legal aid organization</td>
<td>29.71%</td>
</tr>
<tr>
<td>Staff member of a court or court self-help center</td>
<td>8.70%</td>
</tr>
<tr>
<td>Attorney</td>
<td>36.23%</td>
</tr>
<tr>
<td>Non-attorney advocate for individuals</td>
<td>0.00%</td>
</tr>
<tr>
<td>Librarian or Law-librarian</td>
<td>4.35%</td>
</tr>
<tr>
<td>Service provider staff person</td>
<td>4.35%</td>
</tr>
<tr>
<td>State agency staff</td>
<td>5.80%</td>
</tr>
<tr>
<td>Policy advocate</td>
<td>2.17%</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>23.19%</td>
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Total Respondents: 138

# OTHER (PLEASE SPECIFY)       DATE
1  Executive director           5/6/2019 6:48 AM
2  technologist                4/30/2019 1:42 PM
<table>
<thead>
<tr>
<th></th>
<th>Title</th>
<th>Timestamp</th>
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</thead>
<tbody>
<tr>
<td>3</td>
<td>Solution team</td>
<td>4/29/2019 3:04 PM</td>
</tr>
<tr>
<td>4</td>
<td>researcher</td>
<td>4/29/2019 2:12 PM</td>
</tr>
<tr>
<td>5</td>
<td>Researcher</td>
<td>4/29/2019 12:20 PM</td>
</tr>
<tr>
<td>6</td>
<td>software developer</td>
<td>4/29/2019 11:38 AM</td>
</tr>
<tr>
<td>7</td>
<td>executive director</td>
<td>4/29/2019 11:26 AM</td>
</tr>
<tr>
<td>8</td>
<td>Director of Litigation</td>
<td>4/29/2019 11:21 AM</td>
</tr>
<tr>
<td>9</td>
<td>Executive Director</td>
<td>4/29/2019 11:21 AM</td>
</tr>
<tr>
<td>10</td>
<td>Program Director, PLEI organization</td>
<td>4/29/2019 11:17 AM</td>
</tr>
<tr>
<td>11</td>
<td>Medical Legal Partnership (MLP) Legal Director</td>
<td>4/29/2019 11:02 AM</td>
</tr>
<tr>
<td>12</td>
<td>Software developer</td>
<td>4/29/2019 11:01 AM</td>
</tr>
<tr>
<td>13</td>
<td>Attorney and law professor</td>
<td>4/25/2019 8:45 AM</td>
</tr>
<tr>
<td>14</td>
<td>Executive Director of legal services nonprofit</td>
<td>4/24/2019 8:03 AM</td>
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<tr>
<td>15</td>
<td>Funder</td>
<td>4/23/2019 8:07 AM</td>
</tr>
<tr>
<td>17</td>
<td>Director of Marketing and Development</td>
<td>4/22/2019 6:07 PM</td>
</tr>
<tr>
<td>18</td>
<td>Manager for statewide pro bono program</td>
<td>4/22/2019 3:18 PM</td>
</tr>
<tr>
<td>19</td>
<td>Program manager</td>
<td>4/22/2019 8:54 AM</td>
</tr>
<tr>
<td>20</td>
<td>fundraiser</td>
<td>4/22/2019 8:49 AM</td>
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<tr>
<td>21</td>
<td>Business Consultant</td>
<td>4/22/2019 8:42 AM</td>
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<tr>
<td>22</td>
<td>Law school clinician</td>
<td>4/22/2019 8:03 AM</td>
</tr>
<tr>
<td>23</td>
<td>Website developer</td>
<td>4/22/2019 7:17 AM</td>
</tr>
<tr>
<td>24</td>
<td>Director of Pro Bono &amp; Court Advocacy</td>
<td>4/22/2019 6:50 AM</td>
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<tr>
<td>25</td>
<td>staff at a civil legal aid funder</td>
<td>4/22/2019 6:07 AM</td>
</tr>
<tr>
<td>26</td>
<td>technical project manager</td>
<td>4/22/2019 5:29 AM</td>
</tr>
<tr>
<td>27</td>
<td>Court Manager</td>
<td>4/22/2019 4:49 AM</td>
</tr>
<tr>
<td>28</td>
<td>Administration and Technology oversight</td>
<td>4/22/2019 4:22 AM</td>
</tr>
<tr>
<td>29</td>
<td>Consultant</td>
<td>4/22/2019 4:03 AM</td>
</tr>
<tr>
<td>30</td>
<td>Program director</td>
<td>4/22/2019 3:46 AM</td>
</tr>
<tr>
<td>31</td>
<td>Vendor/consultant</td>
<td>4/21/2019 9:54 PM</td>
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<tr>
<td>32</td>
<td>Executive Director</td>
<td>4/21/2019 9:52 PM</td>
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Q3 Do you work with clients or service recipients who are interacting with AI in any of the following contexts:

Answered: 65  Skipped: 74
navigating the civil justice...

navigating the criminal...

obtaining decisions on...

receiving fraud...
receiving court forms online intake triage legal advice chatbot
<table>
<thead>
<tr>
<th></th>
<th>VERY FREQUENTLY</th>
<th>FREQUENTLY</th>
<th>OCCASIONALLY</th>
<th>RARELY</th>
<th>UNSURE/I DON'T KNOW</th>
<th>TOTAL</th>
<th>WEIGHTED AVERAGE</th>
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<tbody>
<tr>
<td>benefit applications</td>
<td>0.00%</td>
<td>6.25%</td>
<td>14.06%</td>
<td>34.38%</td>
<td>45.31%</td>
<td>64</td>
<td>4.19</td>
</tr>
<tr>
<td>interpreting</td>
<td>3.13%</td>
<td>3.13%</td>
<td>12.50%</td>
<td>42.19%</td>
<td>39.06%</td>
<td>64</td>
<td>4.11</td>
</tr>
<tr>
<td>translating</td>
<td>4.92%</td>
<td>8.20%</td>
<td>13.11%</td>
<td>36.07%</td>
<td>37.70%</td>
<td>64</td>
<td>3.93</td>
</tr>
<tr>
<td>finding a lawyer</td>
<td>8.06%</td>
<td>17.74%</td>
<td>14.52%</td>
<td>27.42%</td>
<td>32.26%</td>
<td>62</td>
<td>3.58</td>
</tr>
<tr>
<td>navigating the civil justice system</td>
<td>17.74%</td>
<td>14.52%</td>
<td>17.74%</td>
<td>19.35%</td>
<td>30.65%</td>
<td>62</td>
<td>3.31</td>
</tr>
<tr>
<td>navigating the criminal justice system (including bail and sentencing)</td>
<td>3.17%</td>
<td>3.17%</td>
<td>7.94%</td>
<td>34.92%</td>
<td>50.79%</td>
<td>63</td>
<td>4.27</td>
</tr>
<tr>
<td>obtaining decisions on cases or on benefits claims</td>
<td>1.56%</td>
<td>10.94%</td>
<td>10.94%</td>
<td>34.38%</td>
<td>42.19%</td>
<td>64</td>
<td>4.05</td>
</tr>
<tr>
<td>receiving fraud investigation or determination notices or decisions</td>
<td>0.00%</td>
<td>0.00%</td>
<td>9.68%</td>
<td>41.94%</td>
<td>48.39%</td>
<td>62</td>
<td>4.39</td>
</tr>
<tr>
<td>receiving court form or document creation assistance</td>
<td>17.19%</td>
<td>17.19%</td>
<td>23.44%</td>
<td>12.50%</td>
<td>29.69%</td>
<td>64</td>
<td>3.20</td>
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<tr>
<td>intake triage</td>
<td>11.29%</td>
<td>16.13%</td>
<td>11.29%</td>
<td>24.19%</td>
<td>37.10%</td>
<td>62</td>
<td>3.60</td>
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<tr>
<td>online intake triage</td>
<td>14.29%</td>
<td>11.11%</td>
<td>12.70%</td>
<td>25.40%</td>
<td>36.51%</td>
<td>63</td>
<td>3.59</td>
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<tr>
<td>legal advice chatbot</td>
<td>3.28%</td>
<td>9.84%</td>
<td>9.84%</td>
<td>27.87%</td>
<td>49.18%</td>
<td>61</td>
<td>4.10</td>
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</table>
Q4 Can you tell us of other contexts in which clients and service recipients interact with AI? Please describe.

Answered: 42   Skipped: 97

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<th>RESPONSES</th>
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<tbody>
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<td>1</td>
<td>Not that I know of</td>
<td>5/1/2019 11:34 AM</td>
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<tr>
<td>2</td>
<td>don't know</td>
<td>4/30/2019 12:31 PM</td>
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<tr>
<td>3</td>
<td>None</td>
<td>4/30/2019 11:18 AM</td>
</tr>
<tr>
<td>4</td>
<td>none known</td>
<td>4/30/2019 8:38 AM</td>
</tr>
<tr>
<td>5</td>
<td>Visitors to our website use a rudimentary AI chatbot for help with navigating the resources available on our website</td>
<td>4/30/2019 6:48 AM</td>
</tr>
<tr>
<td>6</td>
<td>Legal aid in nebraska uses ai for client support. The courts are exploring this potential.</td>
<td>4/29/2019 3:32 PM</td>
</tr>
<tr>
<td>7</td>
<td>It depends on the definition of AI. I'm not sure of your definition. There are online services in our Courts in CA, plus courts that have Kiosks. If so, this is where I see patrons interacting with AI.</td>
<td>4/29/2019 3:09 PM</td>
</tr>
<tr>
<td>8</td>
<td>web access centric solutions, in court kiosks, etc.</td>
<td>4/29/2019 3:06 PM</td>
</tr>
<tr>
<td>9</td>
<td>Landlord tenant disputes in learning how to take their landlords to Justice of the Peace court. The development of documents applicants plan to file in court cases.</td>
<td>4/29/2019 1:39 PM</td>
</tr>
<tr>
<td>10</td>
<td>No</td>
<td>4/29/2019 1:10 PM</td>
</tr>
<tr>
<td>11</td>
<td>Unsure. Most clients do not regularly use a computer, most call or go to service offices for benefits services.</td>
<td>4/29/2019 1:03 PM</td>
</tr>
<tr>
<td>12</td>
<td>NO.</td>
<td>4/29/2019 12:12 PM</td>
</tr>
<tr>
<td>13</td>
<td>no</td>
<td>4/29/2019 11:50 AM</td>
</tr>
<tr>
<td>14</td>
<td>triage system</td>
<td>4/29/2019 11:37 AM</td>
</tr>
<tr>
<td>15</td>
<td>There are currently no AI systems providing PLEI in Canada. There are guided pathways and other smart systems, but these are not learning systems. Not AI.</td>
<td>4/29/2019 11:20 AM</td>
</tr>
<tr>
<td>16</td>
<td>Statewide eCourt case management system with data collection, electronic document filing and retrieval, guided electronic court forms</td>
<td>4/29/2019 11:19 AM</td>
</tr>
<tr>
<td>17</td>
<td>Honestly I don't know but I believe it is necessary to serve the needs of the masses so I'm on board to learn</td>
<td>4/29/2019 11:18 AM</td>
</tr>
<tr>
<td>18</td>
<td>Not aware of any others not previously listed.</td>
<td>4/29/2019 11:12 AM</td>
</tr>
<tr>
<td>19</td>
<td>crime victim rights, crime victim notification of release of offender</td>
<td>4/29/2019 11:08 AM</td>
</tr>
<tr>
<td>20</td>
<td>Our clients go through an online intake process that spits them out to which of our programs they qualify for and which ones can best meet their legal needs.</td>
<td>4/29/2019 11:08 AM</td>
</tr>
<tr>
<td>21</td>
<td>Note that all &quot;rarely&quot; responses for question number 3, actually represent &quot;never&quot; since &quot;never&quot; was not an option.</td>
<td>4/29/2019 11:08 AM</td>
</tr>
<tr>
<td>22</td>
<td>We are interested in developing AI for use in several capacities, including wayfinding</td>
<td>4/29/2019 11:07 AM</td>
</tr>
<tr>
<td>23</td>
<td>N/A</td>
<td>4/29/2019 11:04 AM</td>
</tr>
<tr>
<td>24</td>
<td>None that I know of</td>
<td>4/29/2019 11:04 AM</td>
</tr>
<tr>
<td>25</td>
<td>none that I'm aware of</td>
<td>4/29/2019 11:03 AM</td>
</tr>
<tr>
<td>26</td>
<td>My primary concern is algorithms determining access to public benefits, specifically in medicaid related programs. At due process hearings, the state officials cannot explain any aspects of the algorithms and the ALJs are too deferential to the algorithmic findings.</td>
<td>4/25/2019 8:47 AM</td>
</tr>
<tr>
<td>No.</td>
<td>Comment</td>
<td>Time</td>
</tr>
<tr>
<td>-----</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>27</td>
<td>Clients have available to them all the advice our intake paralegals would offer on a variety of subjects, and can generate documents from our automated system Law Help NE: <a href="http://www.lawhelpne.org">www.lawhelpne.org</a>.</td>
<td>4/24/2019 6:05 AM</td>
</tr>
<tr>
<td>28</td>
<td>Within the county courts, I cannot think of a way. Outside of the legal system, automated menus and payment is getting common, and usually includes pictures.</td>
<td>4/22/2019 2:37 PM</td>
</tr>
<tr>
<td>29</td>
<td>PA has enacted Clean Slate, a law that will apply AI to seal criminal records by automation. An estimated 31 million records will be sealed by June 2020.</td>
<td>4/22/2019 9:54 AM</td>
</tr>
<tr>
<td>30</td>
<td>That is a hard question, many of the resources we direct clients to are starting to use AI to help clients complete forms (particularly in family law) and are interactive, systems that ask questions, give choices, seek to education and generally try to replicate what I do in person. How well it works varies with the client using it. It works best when there is a visual posing as the guide (better cartoon than a real human) and the system is sufficiently sophisticated that it realizes it must give positive feedback, a newly expanded definition of user friendly.</td>
<td>4/22/2019 9:44 AM</td>
</tr>
<tr>
<td>31</td>
<td>&quot;Guide and file&quot; forms provide interview based, predictive form assistance for forms that are maintained by the state judicial department. The interface allows self represented litigants to determine the proper form and also to file electronically.</td>
<td>4/22/2019 9:43 AM</td>
</tr>
<tr>
<td>32</td>
<td>Online forms are not AI. So they should not be in your questions above. There is a lot of talk about AI--but is vapor ware in civil legal services. The one group that might have some of it in actual use is Just Fix and Legal Server. Otherwise they are all talk and gum and tape ideas--not full products. Not vetted not researched.</td>
<td>4/22/2019 9:04 AM</td>
</tr>
<tr>
<td>33</td>
<td>We are investigating the development of chatbots for use with the California Courts website</td>
<td>4/22/2019 9:02 AM</td>
</tr>
<tr>
<td>34</td>
<td>Not sure</td>
<td>4/22/2019 8:43 AM</td>
</tr>
<tr>
<td>35</td>
<td>online dispute resolution; bail determinations; ability to pay</td>
<td>4/22/2019 8:18 AM</td>
</tr>
<tr>
<td>36</td>
<td>I can't think of a context where clients and/or service recipients interact with AI in the state of Georgia.</td>
<td>4/22/2019 7:44 AM</td>
</tr>
<tr>
<td>37</td>
<td>Working on a chatbot project for Lawyers' Committee for Better Housing (Rentervention)</td>
<td>4/22/2019 7:40 AM</td>
</tr>
<tr>
<td>38</td>
<td>no</td>
<td>4/22/2019 7:19 AM</td>
</tr>
<tr>
<td>39</td>
<td>customer service bots</td>
<td>4/22/2019 6:48 AM</td>
</tr>
<tr>
<td>40</td>
<td>Banks, creditors</td>
<td>4/22/2019 6:25 AM</td>
</tr>
<tr>
<td>41</td>
<td>none</td>
<td>4/22/2019 5:16 AM</td>
</tr>
<tr>
<td>42</td>
<td>Online calculators or form generation</td>
<td>4/22/2019 3:48 AM</td>
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</table>
Q5 Does your organization use AI to provide services to clients?

Answered: 63  Skipped: 76

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
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<tbody>
<tr>
<td>Yes</td>
<td>36.51%</td>
</tr>
<tr>
<td></td>
<td>23</td>
</tr>
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<td>No</td>
<td>63.49%</td>
</tr>
<tr>
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<tr>
<td>TOTAL</td>
<td></td>
</tr>
<tr>
<td></td>
<td>63</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>#</th>
<th>WHAT KINDS OF AI DO YOU USE? PLEASE DESCRIBE (FOR EXAMPLE: INTAKE TRIAGE, ONLINE INTAKE TRIAGE, CHATBOT, ETC.).</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>24/7 reference service (online chat) and e-mail reference service.</td>
<td>4/30/2019 11:18 AM</td>
</tr>
<tr>
<td>2</td>
<td>Visitors to our website use a rudimentary AI chatbot for help with navigating the resources available on our website</td>
<td>4/30/2019 6:48 AM</td>
</tr>
<tr>
<td>3</td>
<td>Development of forms</td>
<td>4/29/2019 1:39 PM</td>
</tr>
<tr>
<td>4</td>
<td>n/a</td>
<td>4/29/2019 1:03 PM</td>
</tr>
<tr>
<td>5</td>
<td>Chat, intake on website.</td>
<td>4/29/2019 11:50 AM</td>
</tr>
<tr>
<td>6</td>
<td>online intake triage.</td>
<td>4/29/2019 11:37 AM</td>
</tr>
<tr>
<td>7</td>
<td>online form creation, determination of type of legal help needed. working on chatbot to assist in form creation, working on online intake triage</td>
<td>4/29/2019 11:26 AM</td>
</tr>
<tr>
<td>8</td>
<td>Intake</td>
<td>4/29/2019 11:23 AM</td>
</tr>
<tr>
<td>9</td>
<td>There are currently no AI systems providing PLEI in Canada. We have guided pathways and other smart systems, but these are not learning systems. Not AI.</td>
<td>4/29/2019 11:20 AM</td>
</tr>
<tr>
<td>10</td>
<td>Same as #4</td>
<td>4/29/2019 11:19 AM</td>
</tr>
<tr>
<td>11</td>
<td>Online intake triage, app for screening</td>
<td>4/29/2019 11:12 AM</td>
</tr>
<tr>
<td>12</td>
<td>online intake triage, chatbox, form creation</td>
<td>4/29/2019 11:08 AM</td>
</tr>
<tr>
<td>13</td>
<td>Online intake triage — that's it. We don't use bots for any legal aid chat — it's staffed by real humans though.</td>
<td>4/29/2019 11:08 AM</td>
</tr>
<tr>
<td>14</td>
<td>Create and promote Do It Yourself Form programs.</td>
<td>4/29/2019 11:08 AM</td>
</tr>
<tr>
<td>15</td>
<td>online intake triage, legal help finder, interactive form letters (li/t; creditor/debtor mostly)</td>
<td>4/29/2019 11:07 AM</td>
</tr>
<tr>
<td>16</td>
<td>online intake triage, chatbots, information access, forms and self representation assistance</td>
<td>4/24/2019 8:08 AM</td>
</tr>
<tr>
<td>17</td>
<td>On-line intake triage; on-line advice for routine issues; on-line document generation for a variety of legal situations.</td>
<td>4/24/2019 6:05 AM</td>
</tr>
<tr>
<td></td>
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<tr>
<td>---</td>
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</tr>
<tr>
<td>18</td>
<td>See above - AI provided is in the context of using outside resources.</td>
<td>4/22/2019 9:44 AM</td>
</tr>
<tr>
<td>19</td>
<td>N/A - someday!</td>
<td>4/22/2019 9:43 AM</td>
</tr>
<tr>
<td>20</td>
<td>Neota Logic—which is a decision modeling tools on steroids. We use it to create risk detectors. We might have a chat droid in our forms soon--but don't know if that is AI--as it won't have NPL. It will be closed question tree system.</td>
<td>4/22/2019 9:04 AM</td>
</tr>
<tr>
<td>21</td>
<td>we are working on it, for intake, wayfinding, triage, making appointments and finding information and locating self-help centers</td>
<td>4/22/2019 9:02 AM</td>
</tr>
<tr>
<td>22</td>
<td>intake form/app for free Ask-a-Lawyer community event</td>
<td>4/22/2019 8:23 AM</td>
</tr>
<tr>
<td>23</td>
<td>online intake triage</td>
<td>4/22/2019 8:18 AM</td>
</tr>
<tr>
<td>24</td>
<td>It depends on the definition, but not a true AI system. There's intake, legal information, forms automation.</td>
<td>4/22/2019 7:40 AM</td>
</tr>
<tr>
<td>25</td>
<td>intake triage, identifying legal options, voice recognition for chatbot</td>
<td>4/22/2019 5:37 AM</td>
</tr>
<tr>
<td>26</td>
<td>online application</td>
<td>4/22/2019 5:16 AM</td>
</tr>
</tbody>
</table>
Q6 How do you rate the benefit of your organization's AI systems?

Answered: 62    Skipped: 77

- Benefits to clients
- Benefits to staff
- Benefits to your...
- Benefits to other...
### #1 WHAT ARE THE REASONS FOR YOUR RATINGS?

<table>
<thead>
<tr>
<th>#</th>
<th>WHAT ARE THE REASONS FOR YOUR RATINGS?</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Based on the feedback of our patrons.</td>
<td>4/30/2019 11:18 AM</td>
</tr>
<tr>
<td>2</td>
<td>I have not encountered these at all</td>
<td>4/29/2019 7:23 PM</td>
</tr>
<tr>
<td>3</td>
<td>Not yet available</td>
<td>4/29/2019 3:32 PM</td>
</tr>
<tr>
<td>4</td>
<td>The ability for applicants to develop the correct form to file with the court without an attorney raises the level of court accessibility.</td>
<td>4/29/2019 1:39 PM</td>
</tr>
<tr>
<td>5</td>
<td>We couldn’t do it without AI</td>
<td>4/29/2019 11:50 AM</td>
</tr>
<tr>
<td>6</td>
<td>need a better way to communicate data difficulty with call-backs to confirm intake data</td>
<td>4/29/2019 11:37 AM</td>
</tr>
<tr>
<td>7</td>
<td>I think the image on providing services in this way is seen as a plus for our organization. I think that there is a real benefit to people who trust enough to use the forms. That is about 6,000 people a year for our organization. About as many people as receive full representation. I do recognize a wide array of people for whom this is still an access issue.</td>
<td>4/29/2019 11:26 AM</td>
</tr>
<tr>
<td>8</td>
<td>There are currently no AI systems providing PLEI in Canada. We have guided pathways and other smart systems, but these are not learning systems. Not AI.</td>
<td>4/29/2019 11:20 AM</td>
</tr>
<tr>
<td></td>
<td>I believe the systems are very helpful to all who interact with it, but public perceptions may differ. I hear complaints from outside users, though.</td>
<td>4/29/2019 11:19 AM</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>10</td>
<td>Because of the sheer volume of cases, lack of funding and therefore manpower will mandate a new and innovative approach to servicing the poor. I think rich people will like it also.</td>
<td>4/29/2019 11:18 AM</td>
</tr>
<tr>
<td>11</td>
<td>I think the AI is helpful when it diverts clients with simple problems to effective form creation assistance. I think on-line triage helps people who are not available during regular office hours. By I think that AI does not help where there are problems that require a nuanced understanding of how people communicate. A person with a housing problem may focus on that, without understanding that providing information about how DV influenced that problem, may make a difference in the help that is provided</td>
<td>4/29/2019 11:08 AM</td>
</tr>
<tr>
<td>12</td>
<td>Comparing online intake triage and our client database is interesting for seeing WHY people aren't qualifying and where needs are.</td>
<td>4/29/2019 11:08 AM</td>
</tr>
<tr>
<td>13</td>
<td>We are still developing the technology</td>
<td>4/29/2019 11:07 AM</td>
</tr>
<tr>
<td>14</td>
<td>I think they are somewhat helpful to staff, somewhat helpful to clients who have assistance, but overall, I think they need improvement</td>
<td>4/29/2019 11:07 AM</td>
</tr>
<tr>
<td>15</td>
<td>We have not put AI systems in place.</td>
<td>4/29/2019 11:04 AM</td>
</tr>
<tr>
<td>16</td>
<td>We use technology as the core service delivery method. We can no longer achieve our mission without AI</td>
<td>4/24/2019 8:08 AM</td>
</tr>
<tr>
<td>17</td>
<td>Our on-line intake triage provides advice on a variety of topics that our intake paralegals used to provide: leaving the intake paralegals more time to conduct intakes on applications that fall within our priorities. In addition, the system is tied into our case management system, PIKA. The intake paralegals have been freed up from data entry, as all the information in an application is transferred directly to PIKA.</td>
<td>4/24/2019 6:05 AM</td>
</tr>
<tr>
<td>18</td>
<td>We don't use it. Have tried automated forms. It didn't work for us.</td>
<td>4/22/2019 2:37 PM</td>
</tr>
<tr>
<td>19</td>
<td>What we have access to is marginal. It is difficult to get people up to speed in using the AI and for them to retain what they have learned. No user has ever told me after using AI that it was really great - helpful, but when they return they are somewhat resistant to use the systems for other topics</td>
<td>4/22/2019 9:44 AM</td>
</tr>
<tr>
<td>20</td>
<td>We don't use AI currently on a large level - BUT I really think the benefits would be collectively great.</td>
<td>4/22/2019 9:43 AM</td>
</tr>
<tr>
<td>21</td>
<td>Other than the welfare department, PHA, HUD, and victim services fund groups at the state level— I don't think AI is yet in full use in legal aid. It is vaporware. It is not used routinely at all. Still not even a proof of concept—except for Salesforce database (on data analytics) and LS and Just Fix . Please note—language interpretation through AI is like spoken language (universal translator type tech like in Star Trek) that is not in use either. Translation (written) is used more through Google, but that is not an AI system—it is merely statistical techniques to translate. Not AI either.</td>
<td>4/22/2019 9:04 AM</td>
</tr>
<tr>
<td>22</td>
<td>We have not deployed any AI yet</td>
<td>4/22/2019 9:02 AM</td>
</tr>
<tr>
<td>23</td>
<td>It's the way things should be.</td>
<td>4/22/2019 7:40 AM</td>
</tr>
<tr>
<td>24</td>
<td>I have gone to AI sessions and thing that if developed for legal services I would move to the very helpful category.</td>
<td>4/22/2019 6:48 AM</td>
</tr>
<tr>
<td>25</td>
<td>We currently don't use any AI, not do our grantees.</td>
<td>4/22/2019 6:09 AM</td>
</tr>
</tbody>
</table>
Q7 Have you experienced problems with your program’s implementation of AI systems?

Answered: 62  Skipped: 77

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>33.87%</td>
</tr>
<tr>
<td>No</td>
<td>6.45%</td>
</tr>
<tr>
<td>Not applicable - we do not use AI systems</td>
<td>59.68%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>62</td>
</tr>
</tbody>
</table>

# PLEASE DESCRIBE ANY ISSUES YOU HAVE EXPERIENCED OR OBSERVED. DATE

1. There is not any issue I can recall. 4/30/2019 11:18 AM
2. Learning to program AI has been a learning curve for my staff. 4/30/2019 6:48 AM
3. It is sometimes difficult to stay ahead of the changes in the law or the changes at the local level, e.g. local rules, to construct a form that is recognized by the court and approved for filing. 4/29/2019 1:39 PM
4. We have a lot of great goals, but not the resources for implementation. 4/29/2019 12:03 PM
5. Bugs, getting staff on board. 4/29/2019 11:50 AM
6. Changing priorities and system upgrades. 4/29/2019 11:37 AM
7. Not a one-size fits all solution. But an effective tool for those who can access it. 4/29/2019 11:26 AM
8. Unintended bugs. 4/29/2019 11:23 AM
9. There are always adjustments. Forms, business processes, protocols, policies all had to be developed. Of course there have been technical issues. An entire new data system had to be built, and there have been occasional systems failures. 4/29/2019 11:19 AM
10. App doesn’t have full functionality to accomplish service delivery to clients. User error in online triage intake generates referrals that are not accurate to all situations. 4/29/2019 11:12 AM
11. I think that people see AI as replacing or replicating effective legal assistance, it would be more helpful if it were viewed as a way to free up resources for more complex issues. The other problem is where AI systems fail to highlight systemic issues that might have been noticed by a human intake person. 4/29/2019 11:08 AM
12. We’re a nonprofit — we don’t have a sexy IT dept. So programming the online intake triage has had hiccups and sometimes feels like us stumbling around. 4/29/2019 11:08 AM
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>13</td>
<td>As a nonprofit company on a slim and restricted budget, we do not have adequate resources to fully create or maintain our technology and we lag in using AI.</td>
</tr>
<tr>
<td>14</td>
<td>Not since we have accepted the product, but getting the product to completion was difficult. The product was 7 months late in delivery, and experienced a number of problems in implementation. However, it is running very smoothly now.</td>
</tr>
<tr>
<td>15</td>
<td>Patrons had to make complex decisions while learning a computer program. Paper and pen is much easier.</td>
</tr>
<tr>
<td>16</td>
<td>See above.</td>
</tr>
<tr>
<td>17</td>
<td>Statewide AI systems do not currently have the ability to account for local policies/supplemental local rules. This results in a 100% &quot;rejection&quot; rate of attempted filings currently as well as increased troubleshooting by clerks.</td>
</tr>
<tr>
<td>18</td>
<td>Defining the scope of a project and how the AI will come in and what it will do is very hard and time consuming. Getting lawyers to clearly explain what the parameters are is hard--lawyers know by instinct, but can't vocalize it w/out a lot of coaching. The imagination runs faster than the capacity. AI is expensive--so it should be used to solve really really hard problems--not for administrative decision making like (do I qualify for X) at least for very vulnerable groups looking for key services like services. AI would best used in research to a) better understand poverty and roots of poverty by legal structure in each state/county and then analyze the impact of specific legal/policy interventions on the problems of poverty and disenfranchisement of specific groups. Applying AI to eligibility of legal legal services--will ration legal services--and the savings in legal aid time in processing those applications will be small compared to the damage done to those denied services.</td>
</tr>
<tr>
<td>19</td>
<td>only reference I have is our online sign up app. Out of 60 participants: 58 people called or walked-in and 2 used the online app.</td>
</tr>
<tr>
<td>20</td>
<td>A work in progress</td>
</tr>
<tr>
<td>21</td>
<td>knowledge gap between technical staff and legal experts lack of reliable training examples to train on</td>
</tr>
</tbody>
</table>
Q8 Have you been pleased by the impacts of AI?

Answered: 57  Skipped: 82

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>36.84%</td>
</tr>
<tr>
<td>No</td>
<td>14.04%</td>
</tr>
<tr>
<td>I am not sufficiently engaged with AI systems to answer</td>
<td>49.12%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>49.12%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>#</th>
<th>IF YOU HAVE BEEN PLEASED BY THE IMPACTS OF AI, PLEASE GIVE EXAMPLES.</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Defendants being able to file answers in divorce, civil cases as well as divorces themselves. In addition the ability to file answers and to have the form be unique to their personal needs.</td>
<td>4/29/2019 1:41 PM</td>
</tr>
<tr>
<td>2</td>
<td>Because of documentation preparation software, my clients can go to court.</td>
<td>4/29/2019 11:51 AM</td>
</tr>
<tr>
<td>3</td>
<td>Makes things work better, but does not necessarily make things work.</td>
<td>4/29/2019 11:24 AM</td>
</tr>
<tr>
<td>4</td>
<td>There are currently no AI systems providing PLEI in Canada. We have guided pathways and other smart systems, but these are not learning systems. Not AI.</td>
<td>4/29/2019 11:22 AM</td>
</tr>
<tr>
<td>5</td>
<td>It takes a bunch of work out of the hands of staff members. It allows us to focus on higher level issues, while the system runs several simple operations in the background. It learns individual preferences and configures individual work stations - which also saves time.</td>
<td>4/29/2019 11:21 AM</td>
</tr>
<tr>
<td>6</td>
<td>I use a case management software which has a component allowing the client to input their own data but they don’t ever do it themselves.</td>
<td>4/29/2019 11:19 AM</td>
</tr>
<tr>
<td>7</td>
<td>I’ve really liked the form creation programs for things like letters to creditors, delegation of parental authority, etc.</td>
<td>4/29/2019 11:09 AM</td>
</tr>
<tr>
<td>8</td>
<td>That being said, I am pleased with an online program that makes filing for expungements very easy in my state of Maryland.</td>
<td>4/25/2019 8:48 AM</td>
</tr>
<tr>
<td>9</td>
<td>I need to get my staff's input to answer this question</td>
<td>4/24/2019 8:09 AM</td>
</tr>
<tr>
<td>10</td>
<td>From our dashboard we are able to see where the program is being used, and what issues are of greatest interest to people. We are pleased that the program is being used on a state-wide basis and we are pleased with the number of users. For example, our weekly report showed over 400 users with over 800 sessions in the past month.</td>
<td>4/24/2019 6:11 AM</td>
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</tr>
<tr>
<td>11</td>
<td>This question is unfair, because &quot;both&quot; should be an answer. There are situations where it is bad, like in decision making for benefits. But as I mentioned, in the context of Clean Slate, it will clear millions of criminal records which otherwise would not be cleared.</td>
<td>4/22/2019 9:57 AM</td>
</tr>
<tr>
<td>12</td>
<td>If the AI improves, and the users are educated, AI would be tremendously helpful in delivering assistant remotely.</td>
<td>4/22/2019 9:51 AM</td>
</tr>
<tr>
<td>13</td>
<td>Where are the papers? What are the metrics that people are using to measure AI? Are they using similar metrics as the electronic evidence search engines? Or different ones why? If the legal aid portal was a success and it is moving to another stage—where are the papers? Where is the data? Where are the metrics that how similar the Reddit data was to the data of low income women households? What is the fit? There is a lot of hoopla but no transparency—everything is being kept under tight reign—and that will be a disservice to the field and clients.</td>
<td>4/22/2019 9:19 AM</td>
</tr>
<tr>
<td>14</td>
<td>Currently AI works well for perception, e.g. voice recognition, image recognition, but not so well with triage when using machine learning. Triage and intake is still more effective when developed using concrete Decision Trees</td>
<td>4/22/2019 5:44 AM</td>
</tr>
</tbody>
</table>
Q9 Do you think that AI offers advantages you could highlight for us?

Answered: 51  Skipped: 88

<table>
<thead>
<tr>
<th>#</th>
<th>PLEASE DESCRIBE THOSE ADVANTAGES.</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I assume, if we had access to the right systems, IA could assist in screening, intake and triage of clients / cases.</td>
<td>5/3/2019 1:59 PM</td>
</tr>
<tr>
<td>2</td>
<td>We can only assist people if they physically walk in to our office. Having AI on our website provides some level of additional support for Visitors who are not able to come in during our open hours.</td>
<td>4/30/2019 6:48 AM</td>
</tr>
<tr>
<td>3</td>
<td>It could help clients navigate simple court operations issues.</td>
<td>4/29/2019 7:24 PM</td>
</tr>
<tr>
<td>4</td>
<td>Accessibility</td>
<td>4/29/2019 3:33 PM</td>
</tr>
<tr>
<td>5</td>
<td>May be able to use for triage, but it requires a high degree of computer literacy.</td>
<td>4/29/2019 1:04 PM</td>
</tr>
<tr>
<td>6</td>
<td>I am working on document assembly interviews with the state court and am very interested in the impacts of AI for civil justice navigation / wayfinding / content delivery / document assembly. Simplifying the process by providing procedural information instead of comprehensive information allows pro se litigants, self-help centers, and legal aid offices to provide services that they otherwise would be unable to complete as an unbundled service.</td>
<td>4/29/2019 11:41 AM</td>
</tr>
<tr>
<td>7</td>
<td>availability; increase access</td>
<td>4/29/2019 11:38 AM</td>
</tr>
<tr>
<td>8</td>
<td>Widely expands the people served. Great relationship with courts because we can offer this. The two largest courts created their own forms and think of us as &quot;competitors&quot;, however.</td>
<td>4/29/2019 11:28 AM</td>
</tr>
<tr>
<td>9</td>
<td>Pro se litigants may be able to navigate things better.</td>
<td>4/29/2019 11:24 AM</td>
</tr>
<tr>
<td>10</td>
<td>There is an opportunity to use AI to better serve clients seeking legal help. Over time, benefits include on-demand information, improved triage and reduced use of human resources in provision of assistance (especially baseline info)</td>
<td>4/29/2019 11:22 AM</td>
</tr>
<tr>
<td>11</td>
<td>same as #8</td>
<td>4/29/2019 11:21 AM</td>
</tr>
<tr>
<td>12</td>
<td>I put the comments in other areas.</td>
<td>4/29/2019 11:19 AM</td>
</tr>
<tr>
<td>13</td>
<td>I believe it offers advantages that have no examples to provide you.</td>
<td>4/29/2019 11:16 AM</td>
</tr>
<tr>
<td>14</td>
<td>It allows litigants to be more engaged in their own legal process. Legible documents created in a format that is accepted by the court system provides litigants decreases the need for repeat filings.</td>
<td>4/29/2019 11:10 AM</td>
</tr>
</tbody>
</table>

**Answer Choices**

<table>
<thead>
<tr>
<th></th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>68.63%</td>
</tr>
<tr>
<td>No</td>
<td>31.37%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
15. I think helping with simple forms that Legal Aid does not handle is a great use of AI.
4/29/2019 11:09 AM

16. We're more agile when we have the help of the 'computer' sorting clients.
4/29/2019 11:09 AM

17. I think AI can save time and money, especially for questions that are asked every day.
4/29/2019 11:08 AM

18. We do not have AI in place at our organization, but I think it could offer the advantage of stretching our limited resources, streamlining a currently very non-user-friendly intake system, and reducing wait times for our services.
4/29/2019 11:06 AM

19. With adequate resources to optimize technology, we can deliver much better, stronger service delivery and have greater impact in scale, scope and individual utility.
4/24/2019 8:09 AM

20. SRLs are forced to represent themselves. They can do so successfully in Landlord/Tenant cases, Consumer/Debt cases, post-conviction release cases, some child support issues, simple divorces with and without children etc. Our program provides these services to SRLs.
4/24/2019 6:11 AM

21. Can make the attorneys more efficient, proving them more time to help patrons.
4/22/2019 2:38 PM

22. I think AI has the ability to relieve court clerks from feeling pressured into giving legal advice. The line between legal advice and customer service is often blurred and causes a disservice to self-represented litigants. From a facilitator standpoint, I think AI offers a great supplemental opportunity for self-represented litigants to gain a grasp of their legal process. Often reading through 30+ pages of instructions for a simple dissolution case just isn't something parties are willing and able to do and something more interactive would likely greatly benefit them.
4/22/2019 10:02 AM

23. Where things are rote, they can be taken care of in a streamlined, less resource-intensive fashion.
4/22/2019 9:57 AM

24. Delivers a good product with less human staff involvement. Eliminates the embarrassment factor - people in many areas of the law do not want to reveal certain things or may be hesitant to ask questions, AI can help eliminate or reduce these issues (or in some cases do the opposite). I think AI would work great for filling out Restraining Order forms and other types of forms that require the user to describe things. But it would have to be properly programmed. My problem with dealing with AI in my daily life, most of the time it just so dumb it is a waste of time.
4/22/2019 9:51 AM

25. AI -and high performance analytics bring great promise--but is won't be cheap or easy. It would require a $15 Million investment in super computing, mathematicians and team of DIVERSE lawyers/experts in poverty and legal aid (civil) to start modeling poverty and how policy and legal aid impacts poverty. Think the 5 cases that were set up by Marshall to create Brown v. Board of Education. Do that, but use math, modeling, AI and HPC to analyze the impact of policies and legal interventions across different parts of the country--to test and iterate until we find what are the best legal techniques to get rid of racism and poverty in the US for all vulnerable groups. At a smaller scale--giving legal aid better data analytics capacity and modeling tools will raise the capacity of the field to mine and analyze their own data by catchment area--maybe by state through IOLTA. The other techniques like document scanning and recognition, natural language processing, etc. could be helpful in some applications to shorten the time of searches, or of certain tasks--or to help move diagnosis farther than w/out those tools--but the system will have to have fail safe against false denials--since denying a lawyer, or a service, or giving the wrong options can kill a person or get them kicked out on the street. I don't think AI will be beneficial if it is led and pushed by academics and a non diverse team of people as it is being done now. These efforts need to have participation of civil rights groups, race equity lawyers, and civil legal aid warriors who have built systems and who have led movements for years (Eg. NLAAN in language space). The NLADA needs to be part of the group. Right now all of this is being led by a small group of people at Harvard, Stanford and from other places--that have no experience representing poor, Latinx, Black, Vietnamese communities. They don't have credibility due to their lack of real experience fighting systems against poverty as attorneys. And they are not aware of their privilege enough to realize they need to bring in real civil legal aid lawyers to the table. Luckily they are working with strong local partners (Hi and Alaska) and that will create a balance--but there is little or no transparency at all on the results/metrics, decisions made to "fit " the data--and that is creates distrust. Groupthink is a huge threat--and it is happening.
4/22/2019 9:19 AM

26. We could save a lot of time and money using AI to support court self-help.
4/22/2019 9:04 AM

27. helping people to identify and untangle their question, help people to find the language/term to ask more specific questions. Efficiency for organizations with large volumes of customer interactions.
4/22/2019 8:25 AM

28. Intake triage, referral system to appropriate legal service provider, guiding pro se litigants to initiating civil claims in the appropriate court (venue, jurisdiction).
4/22/2019 7:46 AM
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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Scale</td>
<td>4/22/2019 7:40 AM</td>
<td></td>
</tr>
<tr>
<td>Triaging a case and steering case types to limited data pools</td>
<td>4/22/2019 7:20 AM</td>
<td></td>
</tr>
<tr>
<td>Use of AI could be used to verify income of online intake applications thus eliminating the LSC requirement of having to call back to verify income.</td>
<td>4/22/2019 6:49 AM</td>
<td></td>
</tr>
<tr>
<td>I think machine learning would be most useful to learn patterns of behavior, such as which demographics (age, language, location, tech-savviness, etc) access which online resources, what case backgrounds leads to successful resolution, what services/features lead to better client participation/follow-through, etc.</td>
<td>4/22/2019 5:44 AM</td>
<td></td>
</tr>
</tbody>
</table>
Q10 Have you been displeased by the impacts of AI?

Answered: 52  Skipped: 87

**IF YOU HAVE BEEN DISPLEASED BY THE IMPACTS OF AI, PLEASE GIVE EXAMPLES OF WHAT HAS DISPLEASED YOU.**

1. While I understand that everything is not perfect it does allow a wider service approach. 4/29/2019 1:42 PM

2. Sometimes harder to talk to an actual person about a complex problem before going through an AI protocol. 4/29/2019 1:06 PM

3. Effects on the single point of entry system for the homeless in Los Angeles and San Francisco has the effect of leaving out some of the most functional of my clients who are homeless because they don't rate high enough on the scale to get the little housing that is available. 4/29/2019 11:44 AM

4. mainly due to need to realign resources 4/29/2019 11:40 AM

5. There are some things that the system was not configured for, or cannot easily be configured for, that have caused problems. We have been forced to change law and how some types of cases are processed because the system could not accommodate the currant legal practices. I believe it has a lot to do with the programmers and those who configured the systems not being well versed in the law and process. 4/29/2019 11:25 AM

6. Not a substitute for an attorney. 4/29/2019 11:25 AM

7. Contractor not executing on promised deliverables renders aspects of AI useless. 4/29/2019 11:13 AM

8. I am displeased that AI is viewed as a solution to lack of access to justice. People seem to focus on AI instead of, rather than along with, creating additional resources for Legal Aid and other programs that provide actual representation. 4/29/2019 11:11 AM

9. Use of algorithms in determining access to public benefits. Data brokers using public records information this is inaccurate; discriminatory to marginalized populations. Predictive policing analytics. 4/25/2019 8:50 AM

10. The State has been using AI for years to decide unemployment insurance claims at the initial level. The decisions often do not make sense. 4/22/2019 9:59 AM
<p>| | | |</p>
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<thead>
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<tbody>
<tr>
<td>11</td>
<td>See prior answer.</td>
<td>4/22/2019 9:53 AM</td>
</tr>
<tr>
<td>12</td>
<td>Nothing real is live yet. Once it is--there will be problems. Hopefully the groups doing the work will be ready to adjust and pivot and even cancel if need be.</td>
<td>4/22/2019 9:28 AM</td>
</tr>
<tr>
<td>13</td>
<td>There is a fear of the chatbot going rogue, and also to make sure it doesn't start giving legal advice</td>
<td>4/22/2019 9:05 AM</td>
</tr>
<tr>
<td>14</td>
<td>It needs to be more available from a pricing standpoint.</td>
<td>4/22/2019 7:41 AM</td>
</tr>
<tr>
<td>15</td>
<td>It does not understand the customers need</td>
<td>4/22/2019 7:20 AM</td>
</tr>
<tr>
<td>16</td>
<td>I have not found that the choices offered are sufficiently detailed to be of assistance. If I want general information, I can go online. When I am calling for assistance, I want to talk to a person.</td>
<td>4/22/2019 6:28 AM</td>
</tr>
<tr>
<td>17</td>
<td>There's still a big barrier to entry. No good resources for applying and understanding effects of AI for non-technical stakeholders.</td>
<td>4/22/2019 5:47 AM</td>
</tr>
</tbody>
</table>
Q11 Have you litigated against any party based on problems that have surfaced with an AI system in the justice space?

Answered: 50  Skipped: 89

### ANSWER CHOICES

<table>
<thead>
<tr>
<th></th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>4.00%</td>
</tr>
<tr>
<td>No</td>
<td>96.00%</td>
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</table>

### IF YES, PLEASE DESCRIBE THE LITIGATION.

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<tr>
<th>#</th>
<th>IF YES, PLEASE DESCRIBE THE LITIGATION.</th>
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<tbody>
<tr>
<td>1</td>
<td>But I have seen cases where this did happen. A case was dismissed because of the way the courts were forced to handle a case type in the new system, which was contrary to statute.</td>
</tr>
<tr>
<td>2</td>
<td>Hearings on public benefits before state ALJs.</td>
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<td>3</td>
<td>Not yet.</td>
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<td>4</td>
<td>When I was at Bay Legal --we saw the implementation of automatic decision making in the PHAs and also welfare departments in Alameda County. We it a priority to flag those cases to our welfare/public benefit units--particularly the really narly form letters. The work on that is ongoing.</td>
</tr>
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</table>
Q12 Do you think that AI may pose concerns of any kind?

Answered: 49  Skipped: 90

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
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<tbody>
<tr>
<td>Yes</td>
<td>81.63%</td>
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<tr>
<td>No</td>
<td>18.37%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>49</td>
</tr>
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**PLEASE SHARE WITH US YOUR THOUGHTS ABOUT ANY POSSIBLE CONCERNS.**

<table>
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<tr>
<th>#</th>
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<th>TEXT</th>
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<tbody>
<tr>
<td>1</td>
<td>5/2/2019 3:22 PM</td>
<td>Confidentiality issues are always a concern because this is one more thing vulnerable to data breach. However, my primary concern is implicit bias. The people developing AI are overwhelmingly white, male, and/or economically privileged. They don't know what they don't know. My client population (250% of the poverty line and under) are completely different than the sophisticated business people that most AI is marketed toward. For instance, we write client communications at an 8th grade level because many of them aren't college educated. Our firm has an exhaustive intake process but you can't substitute human interaction. Things like the client's tone of voice, hesitancy or eagerness to answer questions, etc. give me important information about how to evaluate their issue and what I should be asking about the case. While AI may be able to give you cases and shepardize them, I think it takes a person to analyze how to deploy them persuasively in a brief.</td>
</tr>
<tr>
<td>2</td>
<td>4/30/2019 1:45 PM</td>
<td>review and transparency</td>
</tr>
<tr>
<td>3</td>
<td>4/30/2019 8:30 AM</td>
<td>Not everyone understands when they are talking to AI vs. talking to a real person</td>
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<td>4</td>
<td>4/29/2019 7:26 PM</td>
<td>I don't think that most of my clients could navigate these systems effectively. It could frustrate them. Also, funds used for this tech could be used to provide a real person to help instead and it could be more effective</td>
</tr>
<tr>
<td>5</td>
<td>4/29/2019 3:11 PM</td>
<td>As with any automated system, there can be issues with accuracy. We are already seeing the difference in results obtained when using the variety of legal research databases. The vendors' algorithms are all different and produce often quite different results. So there are those concerns - what do the results mean? And are the results good information or not?</td>
</tr>
<tr>
<td>6</td>
<td>4/29/2019 12:14 PM</td>
<td>Inherent biases within the AI structure. Access for those in rural areas without adequate phone/computer connections.</td>
</tr>
<tr>
<td>7</td>
<td>4/29/2019 12:05 PM</td>
<td>Like everything new and everything about technology, some professionals will assume the new thing will correct all problems — And, there often is a disconnect between what is being discussed within legal community and what the impact will be on unrepresented communities.</td>
</tr>
</tbody>
</table>
Implicit bias in the training data. A lot of AI for legal is trained on things like Reddit, which is a terrible representation of the population of people seeking services. Also, when we remove the human component of navigating a system, we get results in which people just give up because they can't get help. The California EDD system is an example of this. It is all automated and people just give up even when they are entitled to unemployment benefits.

Lawyers resistance to change -- misunderstanding of client information or the way client articulates information.

Concerns about algorithms replicating both the biases of programmers (who are largely white and male) and the biases of society. E.g. using neighborhood as a proxy for risk in bail evaluations (b/c of segregation).

Same as #10, but I am sure there are other issues.

May be relied upon too heavily.

I worry that AI may have too much information on people and not enough controls, but in my mind the benefit outweighs the risk since we are - especially here in Texas - doing a crappy job at helping unrepresented litigants or providing them a method to have their answers. It could be like the system ProDocs which Alan Schoolcraft developed, sold to Lexis and now, operates as TXDOCS. Clients can even input their data from their homes using the web. It makes it easy for a paralegal to draft also, but I worry about unlicensed practice of law.

Algorithms that are insufficiently vetted and tested for bias, and other inaccurate and dangerous calculations.

Lack of ability to identify nuanced issues. Lack of ability to identify systemic issues.

Collecting ANY client information comes with privacy risks. Clients have to submit detailed information into the system — it's one more place we need to worry about security.

They can go rogue or be hacked.

Cost, tech glitches, lack of human/humane interaction.

Misinformation, misinterpretation or lack of information.

Biased; lack of transparency; inaccurate; lack of explanation by anyone at state level.

People forced to represent themselves will make use of AI and manipulate it to meet their ends, even when it is not appropriate to do so. For example, using simple divorce forms in a contested custody case. Because it is all that is available for some SRLs, they will use the forms and advice even when the situation calls for extended representation by an attorney. That is, they do not understand the limits of the forms that can be generated.

It has the potential to replace judicial decision making. Where judges have no judicial discretion, why not replace them with bots?

I think with any legal-based technology, constant updates with local, state, and federal laws will need to be placed at a top priority.

Systems that aren't good enough, without human oversight. Especially in the context of benefits fraud.

I have seen it provide incorrect information which in some cases could be very damaging.
Groupthink. Tech is white and male. Law is white and mostly male. The groups doing the LSC portal are all white—and don't have experienced civil legal aid lawyers in their mix as part of the design/tech decision making groups (not the local client application). These efforts need to have participation of civil rights groups, race equity lawyers, and civil legal aid warriors who have built systems and who have led movements for years (Eg. NLAAN in language space). The NLADA needs to be part of the group. Right now all of this is being led by a small group of people at Harvard, Stanford and from other places—that have no experience representing poor, Latinx, Black, Vietnamese communities. They don't have credibility due to their lack of real experience fighting systems against poverty as attorneys. And they are not aware of their privilege enough to realize they need to bring in real civil legal aid lawyers to the table. Luckily they are working with strong local partners (HI and Alaska) and that will create a balance--but there is little or no transparency at all on the results/metrics, decisions made to "fit " the data--and that is creates distrust. If the LSC portal group succeeds, and all legal aid groups implement it—it will probably save around $100 Million dollars or so (assume about 1/3 of resources go to intake). That is a nice amount of$—that can be used to do more and higher level work. However, without knowing the impact of that on the communities (how many false denials happened)--how much was legal aid delayed for some groups, and what groups were excluded in what areas—it is hard to know if the benefits will outweigh the cost. Considering that there are digital desserts that are not about to change (geography)--and legal desserts that overlap--what is the harm to these communities? Also, since everything is done in English and in written format (cultural bias of anglo phone culture)—how long will these systems exclude the more than 25 Million people who speak other languages at home? or the 40 Million people born in other countries than prefer to learn in other ways not just in text based systems? I think that instead of trying to create a handmaiden to the allocation of civil legal aid—we should invest the limited money we have in figuring out how to use these tools and capacities to fight poverty and racism. The outcomes would take longer, like in Brown v. Board, but once we create the models and device litigation strategies to iterate on the data and systems--the impact would be long standing. Lack of inclusion is the biggest threat right now.

They can be hacked, they can go rogue

informational needs can be met easier than emotional needs, such as comfort, empathy, calming down in overwhelm, pacing of the conversation, creating rapport

I assist tenant-defendants facing eviction in Fulton County, Georgia. Many tenants facing eviction find themselves in housing court because they live in sub-standard housing conditions and withhold rent, or they live in sub standard conditions and are unaware that they may counterclaim. 46% of tenants do not respond to eviction notices, and those that do often file answers that focus on whatever is top of mind (i.e.: "I lost my job", when they could counterclaim, get into mediation based on that counterclaim, and either negotiate to lower the judgment or set up payment plans) Effective AI would have to keep the tenant engaged while pushing past the tenant's first impulse.

It's not nuanced enough to be correct

At the early stages when probability of error is the highest.

Difficulties for non-native/non-standard English speakers; Difficulties in developing sufficient logic trees to account for adequate fact-gathering to allow for competent legal advice to be be given; Interaction is off-putting and without empathy; Individuals often feel most strongly about (and want/need to focus on) one aspect of their situation, when the legal solution can be found in a different part of their fact-pattern.

Bias baked into the coding.

Machine learning and complex decision trees are notoriously difficult to audit, i.e. explain how a system came to the conclusion it did in laymen terms.
Q13 Do you think concerns about AI are:

- Overstated: 14.29% of 49 respondents
- Valid: 71.43% of 49 respondents
- Understated: 14.29% of 49 respondents

# COMMENTS: DATE
1 Those of us in the law library world are seeking to educate ourselves about AI. I don't think anyone is actively resisiting it. We just need to keep learning more and understanding it better to determine what's valuable and what might pose problems. 4/29/2019 3:13 PM
2 It is important to have the concerns raised so the systems can be changed to offer more efficient services. 4/29/2019 1:46 PM
3 No sure 4/29/2019 12:07 PM
4 I'm honestly more concerned with for-profit companies in the legaltech space being intentionally predatory than about the underlying AI. I think more of the civil justice community should be in the space so it is not taken over by proprietary software companies that are either advertising driven or in the business of data mining. 4/29/2019 11:48 AM
5 Despite the issues we've encountered, the overall benefit is great. There will be problems with any system, and we will adjust, but the increased functionality and time savings have been worth it. 4/29/2019 11:28 AM
6 My concerns relate to initial cost due to complexity of content and system requirements. 4/29/2019 11:24 AM
7 This community needs to fight inappropriate and opaque uses of AI aggressively. Now. 4/25/2019 8:51 AM
8 I do not think AI could nor should replace attorneys. However, AI can free of the time of attorneys to focus on areas where attorneys are needed and not the "busy" work of practice. 4/22/2019 11:46 AM
9 People are in "sell mode" and fallacy of thought : "new is better". There is a hype curve--and we are on the up of that. Once the systems are implemented, and the problems surface, there will be a realization of how hard it is to innovate, etc. and then there will be a big risk of others not wanting to adopt the tools an systems. That is when credibility and leadership will come to play. The groups doing this have no credibility in civil legal aid--that will come back to haunt the actual deployment of any worth while techniques/innovations. The problems will take 2-5 years to quantify--and will need $ to research and understand--so they will be understated for a while. 4/22/2019 9:35 AM
<table>
<thead>
<tr>
<th></th>
<th>I think it's a matter of balancing tools and situations. AI can be a strong part of integrated and complementary solutions</th>
<th>4/22/2019 8:31 AM</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Privacy concerns for the data are huge to me. Anything written down is potentially discoverable.</td>
<td>4/22/2019 6:30 AM</td>
</tr>
<tr>
<td>12</td>
<td>Too many systems being deployed without consideration of bias. Most proponents are mislabeling things as AI when it's really machine learning, or hyper-automation.</td>
<td>4/22/2019 6:14 AM</td>
</tr>
<tr>
<td>13</td>
<td>AI functions like a blackbox that end-users do not quite understand and therefore do not trust.</td>
<td>4/22/2019 5:52 AM</td>
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</table>
Q14 Do you think it is important for the civil justice community to be vigilant about any possible concerns raised by AI?

Answered: 51  Skipped: 88

### ANSWER CHOICES

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<tr>
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<th>COMMENTS:</th>
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<tbody>
<tr>
<td>1</td>
<td>The civil justice community is uniquely aware of inequities; to the extent that the use of IA exacerbates (rather than resolves) these inequities, I think we should be vigilant.</td>
<td>5/3/2019 2:01 PM</td>
</tr>
<tr>
<td>2</td>
<td>Certainly. As with anything new, we all need to learn as much as we can about it to ensure that it works optimally and correctly.</td>
<td>4/29/2019 3:13 PM</td>
</tr>
<tr>
<td>3</td>
<td>Again, it is important to stay abreast of the changes in technology and the problems that may be created as we explore this new frontier but to keep moving forward.</td>
<td>4/29/2019 1:46 PM</td>
</tr>
<tr>
<td>4</td>
<td>OF course. All systems need to be monitored for potential injustice, and inefficiency.</td>
<td>4/29/2019 11:28 AM</td>
</tr>
<tr>
<td>5</td>
<td>Somewhat.</td>
<td>4/29/2019 11:24 AM</td>
</tr>
<tr>
<td>6</td>
<td>I think that low-income people who are directed to AI will be getting second class legal help. Our justice community is answering that by saying second class help is better than none. When the answer should be second class help is unacceptable, and we should utilize it only as we try to increase the availability of legal services for vulnerable communities.</td>
<td>4/29/2019 11:13 AM</td>
</tr>
<tr>
<td>7</td>
<td>Client privacy. And managing the complex systems with an extremely lean IT-esc team.</td>
<td>4/29/2019 11:11 AM</td>
</tr>
<tr>
<td>8</td>
<td>It's only going to get more prevalent.</td>
<td>4/25/2019 8:51 AM</td>
</tr>
<tr>
<td>9</td>
<td>By definition, due process is a concern.</td>
<td>4/22/2019 10:04 AM</td>
</tr>
<tr>
<td>10</td>
<td>100%</td>
<td>4/22/2019 9:35 AM</td>
</tr>
<tr>
<td>11</td>
<td>We have some of the least-sophisticated consumers with some of the most difficult legal problems, and they are most vulnerable to the powers of the State.</td>
<td>4/22/2019 6:30 AM</td>
</tr>
<tr>
<td>12</td>
<td>Automating Inequality Algorithms of Oppression</td>
<td>4/22/2019 6:14 AM</td>
</tr>
<tr>
<td>13</td>
<td>Yes, the &quot;thinking&quot; behind AI algorithms need to be easily explained and understood to expand adoptability and oversight.</td>
<td>4/22/2019 5:52 AM</td>
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### RESPONSES

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<tr>
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<th>TOTAL</th>
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<tbody>
<tr>
<td>Yes</td>
<td>98.04%</td>
<td>50</td>
</tr>
<tr>
<td>No</td>
<td>1.96%</td>
<td>1</td>
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</table>

TOTAL RESPONSES: 51
Q15 Do you think there are steps that civil justice leaders should take to monitor new AI, and if so, what steps?

Answered: 51  Skipped: 88

- FOIA or similar requests about algorithm design: 83.67% (41 yes, 8 no, total 49)
- FOIA or similar requests about error rates: 93.62% (44 yes, 3 no, total 47)
- Tracking of client outcomes, particularly comparisons pre- and post-automation: 98.00% (49 yes, 1 no, total 50)
- Developing a toolkit to help stakeholders identify, evaluate, and monitor AI systems: 100.00% (51 yes, 0 no, total 51)

# WHAT OTHER TECHNIQUES SHOULD ADVOCATES USE?

<table>
<thead>
<tr>
<th>#</th>
<th>WHAT OTHER TECHNIQUES SHOULD ADVOCATES USE?</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>All of the above are good first steps. Like the idea of developing a toolkit.</td>
<td>4/29/2019 3:13 PM</td>
</tr>
<tr>
<td>2</td>
<td>Develop a means to gather the data from the courts themselves on the above issues. To have clerks perhaps participate in the process to increase acceptance.</td>
<td>4/29/2019 1:46 PM</td>
</tr>
<tr>
<td>3</td>
<td>Discussions with clients about their experiences using AI technology.</td>
<td>4/29/2019 1:07 PM</td>
</tr>
<tr>
<td>4</td>
<td>Have advisory working groups comprised of all stakeholders.</td>
<td>4/29/2019 12:07 PM</td>
</tr>
<tr>
<td>5</td>
<td>Work on open access to court records for measurable outcomes for cases (in civil litigation matters). Proprietary data systems currently control most of this data and it is really hard to even get a baseline to measure effects of automation.</td>
<td>4/29/2019 11:48 AM</td>
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</tr>
<tr>
<td>6</td>
<td>We need to establish common approach to language/content. We need to start to train machines to understand human legal help questions.</td>
<td>4/29/2019 11:24 AM</td>
</tr>
<tr>
<td>7</td>
<td>Developing a toolkit for legal services lawyers to advocate for clients impacted by AI.</td>
<td>4/25/2019 8:51 AM</td>
</tr>
<tr>
<td>8</td>
<td>Use the ai alone and with others. As part of the tool kit develop AI tests, identify and try to get issues resolved, track developing issues.</td>
<td>4/22/2019 9:55 AM</td>
</tr>
<tr>
<td>9</td>
<td>Identify the metrics that AI techniques have to pass--but technique, so for visualization tools, for NPL, for voice applications (works best with midwestern accents) for face scanning (works with white skin, not dark skin)--and publish those metrics. AI is not one monolithic field, but a wide collection of tools and techniques based on math and graph theory and problem space. Legal Aid needs to be sophisticated enough to be conversant on all of those discrete tools that can make a system. Legal aid is using algorithms and tools created by think tanks or corporation (Amazon, Google etc)--be clear on disclaiming what they miss and for what groups.</td>
<td>4/22/2019 9:35 AM</td>
</tr>
<tr>
<td>10</td>
<td>Some fail-safe for if it becomes rude or obnoxious or starts giving legal advice</td>
<td>4/22/2019 9:10 AM</td>
</tr>
<tr>
<td>11</td>
<td>offer alternatives - for example on a phone robot system or online, always offer option to talk/email with a representative/real person</td>
<td>4/22/2019 8:31 AM</td>
</tr>
<tr>
<td>12</td>
<td>Must engage with civil rights, civil justice advocates and targeted communities.</td>
<td>4/22/2019 6:14 AM</td>
</tr>
<tr>
<td>13</td>
<td>translating algorithms and logic pattern into laymen terms set standards for machine learning, i.e. number and type of learning cases ranking of accuracy of output compared to human judgment</td>
<td>4/22/2019 5:52 AM</td>
</tr>
</tbody>
</table>
Q16 Have you personally negotiated with a company, a government institution, or any other entity about their use or implementation of a product that involves AI in the civil justice space?

Answered: 50  Skipped: 89

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

**ANSWER CHOICES**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.00%</td>
<td>92.00%</td>
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**RESPONSES**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>46</td>
</tr>
</tbody>
</table>

**TOTAL**

Total: 50

**PLEASE DESCRIBE YOUR EXPERIENCE HERE.**

1. worked on AI court rules including acquisition, use and transparency  
   Date: 4/30/2019 1:46 PM

2. In process now.  
   Date: 4/29/2019 11:24 AM

3. Fought it in administrative hearings on basis of substantive challenge and administrative law challenge.  
   Date: 4/25/2019 8:51 AM

4. We negotiated with a private company, FINGENT, to produce the product we have purchased and implemented.  
   Date: 4/24/2019 6:16 AM

5. Getting Clean Slate passed in PA, and trying to replicate it in other states. Utah has since adopted it, and campaigns are ongoing in numerous other states. A recent study showed that only 6.5% of people in Michigan who were eligible for "set-asides" got them, which seems similar to other states. Clean Slate will close to a large extent this "Second Chance gap." We need to think about how to use AI in other contexts to help our clients enforce their rights.  
   Date: 4/22/2019 10:04 AM

6. PBN has with Neota Logic.  
   Date: 4/22/2019 9:35 AM
Q17 Is there anything else you would like to share about AI or AI advocacy?

Answered: 19   Skipped: 120

<table>
<thead>
<tr>
<th>#</th>
<th>RESPONSES</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>No</td>
<td>5/2/2019 3:24 PM</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
<td>4/29/2019 3:34 PM</td>
</tr>
<tr>
<td>3</td>
<td>no.</td>
<td>4/29/2019 3:13 PM</td>
</tr>
<tr>
<td>4</td>
<td>While AI or AI advocacy is important so is the access to technology for those applicants below the FPL.</td>
<td>4/29/2019 1:47 PM</td>
</tr>
<tr>
<td>5</td>
<td>no</td>
<td>4/29/2019 11:52 AM</td>
</tr>
<tr>
<td>6</td>
<td>No Thank Q.</td>
<td>4/29/2019 11:25 AM</td>
</tr>
<tr>
<td>7</td>
<td>N/A</td>
<td>4/29/2019 11:17 AM</td>
</tr>
<tr>
<td>8</td>
<td>No</td>
<td>4/29/2019 11:14 AM</td>
</tr>
<tr>
<td>9</td>
<td>no</td>
<td>4/29/2019 11:09 AM</td>
</tr>
<tr>
<td>10</td>
<td>no</td>
<td>4/29/2019 11:05 AM</td>
</tr>
<tr>
<td>11</td>
<td>I am interested in being a part of and staying engaged in this advocacy.</td>
<td>4/25/2019 8:53 AM</td>
</tr>
<tr>
<td>12</td>
<td>No</td>
<td>4/24/2019 6:17 AM</td>
</tr>
<tr>
<td>13</td>
<td>If applied to the right question/problem space--great opportunity. Applying it to the rationalization of legal services--meh idea. Applying it to tools and products like website search, data visualization, document recognition--potential discrete opportunities--but still will need standards, metrics, best in class type knowledge. We are not there yet.</td>
<td>4/22/2019 10:34 AM</td>
</tr>
<tr>
<td>14</td>
<td>No</td>
<td>4/22/2019 10:05 AM</td>
</tr>
<tr>
<td>15</td>
<td>NA</td>
<td>4/22/2019 7:42 AM</td>
</tr>
<tr>
<td>16</td>
<td>no</td>
<td>4/22/2019 7:21 AM</td>
</tr>
<tr>
<td>17</td>
<td>No</td>
<td>4/22/2019 6:52 AM</td>
</tr>
<tr>
<td>18</td>
<td>We need to have a better understanding of currently deployed systems and their outcomes, especially with marginalized communities. Unintended consequences cannot be swept under the rug.</td>
<td>4/22/2019 6:16 AM</td>
</tr>
<tr>
<td>19</td>
<td>AI techniques are pretty solid but implementation still needs a lot of work. Best way to move forward is clear transparency and sharing of algorithms/learning for peer review.</td>
<td>4/22/2019 5:56 AM</td>
</tr>
</tbody>
</table>
Master Model FOIA for Algorithms/Automated Systems
Kevin De Liban, Legal Aid of Arkansas
kdeliban@arlegalaid.org

The FOI requests below involve various phrasings and strategies to get information from our state Medicaid agency about algorithms, assessments, and related tech-driven processes. Roughly, the different strategies can be termed Topic, Person/Term, or Document References. At the end, there is some additional language to ensure that (a) the request encompasses all e-mails and attachments in a string and (b) avoids seeking confidential information.

I. Topic

(1) All public records (as defined in Ark. Code Ann. § 25-19-103(7)(A)) created on or after January 10, 2017 pertaining to the ArPath assessment tool or the Resource Utilization Group (“RUG”) case mix system used in the operation of the ARChoices Medicaid program. This request includes, but is not limited to, public records sent to or from employees of Center for Information Management, Inc. or the University of Michigan within the timeframe specified.

(1) All public records created on or after June 23, 2017 pertaining to the “MnCHOICES” assessment tool, including, but not limited to, all associated instruments, surveys, case-mix systems or indices, tier categories, criteria for tier placement, algorithms, data, review, projections, and studies.

(1) All algorithms and/or tiering logic that will be used to assign a beneficiary a Needs Intensity Score for each task/activity in the Task and Hour Standards as related to the ARChoices and/or Independent Choices programs;

(1) All algorithms and/or tiering logic that will be used to assign a beneficiary to an Individual Service Budget Level as related to the ARChoices and/or Independent Choices programs;

(1) All algorithms and/or tiering logic that will be used to determine eligibility for the ARChoices and/or Independent Choices programs;

(1) The ARIA assessment tool that will be used in the ARChoices and/or Independent Choices programs;

(1) All public records relating to projections, forecasts, studies, data, or research involving the Task and Hour Standards that will be used in the ARChoices and/or Independent Choices programs;

(1) All public records relating to projections, forecasts, studies, data, or research involving the Individual Service Budget that will be used in the ARChoices and/or Independent Choices programs;
Master Model FOIA for Algorithms/Automated Systems
Kevin De Liban, Legal Aid of Arkansas
kdeliban@arlegalaid.org

(-) All public records relating to the cost of services that will be subject to the Individual Service Budget that will be used in the ARChoices and/or Independent Choices programs, including, specifically, all public records relating to the cost of personal assistance services under the Independent Choices program.

(Helpful addition) This request includes, but is not limited to, business processes, algorithms, decision trees, change requests to vendors, modification requests to vendors, training documents provided to any DHS employee or third-party contractor, and statistical reports.

II. Person and Term Based

(-) All public records created by, originating from, or sent to Craig Cloud, Stephanie Blocker, Jay Hill, Bradford Nye (aka Brad Nye), or Clay Layson on or after June 23, 2017 that include at least one of the following words: “algorithm,” “tier,” “case mix,” “index,” “level of care,” “flowchart,” “tool,” “scoring system,” “attendant care,” “acuity,” “instrument,” or “allocation.”

(-) All public records created by, originating from, or sent to Craig Cloud, Stephanie Blocker, Donna Hicks, Cindy Gillespie, Jay Hill, Mitchell Harlan, Victoria Evans, Dennis Smith, Kelley Linck, Jack Tiner, Bradford Nye (aka Brad Nye), or Clay Layson on or after September 26, 2017 that include at least one of the following phrases or words (in singular or plural form): “ARChoices,” “algorithm,” “tier,” “case mix,” “index,” “level of care,” “flowchart,” “tool,” “scoring system,” “attendant care,” “care hours,” “acuity,” “instrument,” “allocate,” “allocated,” “allocation,” “MnChoices,” “ARIA,” “patch,” “Individual Services Budget,” “ISB,” “ArPath,” “Resource Utilization Group,” “RUG,” “Fries,” “Goodell,” “Thomasson,” “University of Michigan,” “Center for Information Management,” or “CIM.” Please note that this request does NOT include any ARChoices program participant’s person-centered service plan, comprehensive assessment report, or notice of action.

III. Document References

(-) All public records created on or after June 23, 2017 that include any draft of any part of a Center for Medicare and Medicaid Services (“CMS”) “Application for Section 1915(c) Home and Community-Based Services Waiver” involving persons aged 21 to 64 years of age with a physical disability or 65 and older who require an intermediate level of care in a nursing facility.

(-) All public records created on or after June 23, 2017 that include any draft of any change to the section of the Arkansas Medicaid Provider Manual called “ARChoices in Home Care Home and Community-Based 2176 Waiver” (also known as the “ARChoices Medicaid Program Manual”).

(-) All public records (as defined in Ark. Code Ann. § 25-19-103(7)(A)) pertaining to the “MnCHOICES” assessment tool referenced in Optum Government Solutions’ response to
Request for Proposal SP-17-0036, including, but not limited to, all associated instruments, surveys, case-mix systems or indices, tier categories, criteria for tier placement, algorithms, data, review, projections, and studies.

(-) All public records created on or after January 1, 2016 pertaining to the review by DAAS RN supervisory staff described as follows in Appendix D-1-g of the “Application for Section 1915(c) Home and Community-Based Services Waiver” for the ARChoices in Homecare program (version with 1/1/16 effective date):

“A statistically valid random sample of service plans is determined, using the Raosoft software calculations program, for review by the DAAS RN supervisory staff. Records are reviewed to assess the appropriateness of the service plan, to validate service provision, to ensure that services are meeting the waiver participant’s needs and that necessary safeguards have been taken to protect the health and welfare of the participant and profile provider billing practices. In the event the service plan is deemed inappropriate or service provision is lacking, the DAAS RN addresses any needed corrective action.”

(-) All public records created on or after January 1, 2016 that have been provided to CMS in accordance with Heading Five (5), Item H of the “Application for Section 1915(c) Home and Community-Based Services Waiver” for the ARChoices in Homecare program (version with 1/1/16 effective date), which states:

“Reporting: The State assures that annually it will provide CMS with information concerning the impact of the waiver on the type, amount and cost of services provided under the Medicaid State plan and on the health and welfare of waiver participants. This information will be consistent with a data collection plan designed by CMS.”

(-) All public records created on or after January 1, 2016 pertaining to Quality Improvement as described under Heading Six (6), Item H of the “Application for Section 1915(c) Home and Community-Based Services Waiver” for the ARChoices in Homecare program (version with 1/1/16 effective date), which states:

“Quality Improvement. The State operates a formal, comprehensive system to ensure that the waiver meets the assurances and other requirements contained in this application. Through an ongoing process of discovery, remediation and improvement, the State assures the health and welfare of participants by monitoring: (a) level of care determinations; (b) individual plans and services delivery; (c) provider qualifications; (d) participant health and welfare; (e) financial oversight and (f) administrative oversight of the waiver. The State further assures that all problems identified through its discovery processes are addressed in an appropriate and timely manner, consistent with the severity and nature of the problem. During the period that the waiver is in effect, the State will implement the Quality Improvement Strategy specified in Appendix H.”
IV. Helpful Additional Language

(·) To the extent that the responsive public records are e-mails, please include the full string of e-mails in which the responsive public record occurs and all attachments sent within the string.

(·) Please note that this request does NOT include any ARChoices program participant’s person-centered service plan, comprehensive assessment report, or notice of action.
Overview of the Justice Index
David Udell, Executive Director
May 1, 2019

In the United States and around the world, people’s lives are compromised – in evictions, foreclosures, family disputes, debt collection proceedings and many other types of civil legal disputes – when they are unable to understand the law, assert their rights, count on a neutral judge, depend on the rule of law and enforce a judgment. When access to justice is denied in these ways, people risk the unfair loss of their homes, children, savings, physical and emotional security, freedom . . . everything. Our courts and our society can do better. Built by the National Center for Access to Justice with volunteers from law firms, law schools and corporations, the Justice Index is an award winning tool that highlights best policies and practices for access to justice, and ignites a race by the states to adopt them.

I. The Justice Index

The Justice Index ranks states on access to justice overall, and in four specific categories of policies and practices, as follows:

- Attorney Access Index – ratio of civil legal aid attorneys per 10,000 poor people
- Self-Represented Index – policies and practices for self-represented litigants
- Language Access Index – policies and practices for people with limited English proficiency
- Disability Access Index – policies and practices for people with disabilities

The Justice Index’s rankings are produced by combining its four categories, with findings in each category contributing 25% of each state’s overall score.

II. The Justice Index Issue Areas, Indicators, Data and Findings

In the four categories, the Justice Index covers 28 issue areas with 112 indicators and 5,000 data points. NCAJ created its final findings with volunteers who, under NCAJ’s supervision, led a quality assurance review of original data obtained from courts, legal aid programs and other justice system institutions. Short descriptions of the measures used in each of the four categories are below:

A. Attorney Access – This category offers a count of civil legal aid lawyers in each state, and a total for the country. NCAJ’s findings are drawn from several sources. The Legal Services Corporation provided its own count of civil legal aid lawyers in programs that have LSC funds. NCAJ relied on other sources to count civil legal aid lawyers in programs that do not have LSC funds, such as State Bar Associations, State Court Systems, State Access to Justice Commissions and State Interest on Lawyers Trust Account foundations. NCAJ also corresponded with civil legal aid leaders and other stakeholders to verify the count. NCAJ’s findings, all posted at justiceindex.org, include: 1) number of civil legal aid lawyers, by state; 2) number of civil legal aid lawyers per 10,000 residents at or below 200% of federal poverty line, indexed by state; 3) number and names of civil legal aid programs, by state; 4) number of attorneys in general population, by state.

B. Self-Represented Access – This category relies on 14 issue areas and 56 indicators that track selected best policies and practices for people who are self-represented:
C. **Language Access** – This category relies on 8 issue areas and 39 indicators that track the selected best policies for access to justice for people with limited English proficiency:

**Certification:**
1. Certify Court Interpreters (43 states)
2. Require Use of Certified Interpreters (33)

**Guidance for Judges and Court Staff:**
3. Train Judges on Working with Interpreters (32)
4. Train Court Staff on Working with Interpreters (28)

**Website:**
5. Offer Free Interpreter on Website (21)
6. Use Other Languages to Offer Free Interpreter on Website (13)

**Outside the Courtroom:**
7. Require Interpreters at Clerks’ Counters (7)
8. Include Clerk Counter Interpreters in Language Access Plan (31)
9. Requires Interpreters at Self-Help Centers (3)

D. **Disability Access** – This category relies on six issue areas and 13 indicators that track selected best policies for access to justice for people with disabilities:

**Fees for Sign Language Interpreters:**
1. Require Sign Language Interpreters be Fee-Of-Charge (46 states)

**Certified Sign Language Interpreters:**
2. Require Sign Language Interpreters be Certified (28)
3. Prefer Interpreters with Courtroom Training (27)

**Website:**
4. Say on Website How To Request Accommodation (30)
5. Name on Website the Person for Accommodations (32)
6. Say on Website How To File Disability Access Complaint (27)
7. Name on Website the Person for Disability Access Complaints (29)
III.  Justice Index 2016 findings

Each Justice Index update identifies best and worst performing states, trends in policies and practices in the states, and the equivalent of dozens of reports on whether 112 specific justice system policies are present or absent in the states. It is difficult to perceive the full breadth of the Justice Index’s coverage from the Justice Index site, itself, since the presentation is so digitally economical. Each round of research prompts states to adopt new policies. Here are some highlights from the 2016 findings:

- Best states overall (top, down): Massachusetts, Hawaii, Maryland, Connecticut, Colorado
- Worst states overall (bottom, up): Mississippi, Wyoming, Puerto Rico, Nevada, South Dakota
- Best and worst states on attorney access: New York and South Carolina
- Best and worst states on self-represented access: California and Rhode Island
- Best and worst states on language access: Hawaii and Alabama
- Best and worst states on disability access: Colorado and Wyoming
- Total national number of civil legal aid attorneys, 6,953
- Fewer than one civil legal aid attorney per 10,000 poor people across the country
- Zero states with a statewide civil right to counsel for people facing eviction
- Many states using technology to help, but much more can be done
- Americans not proficient in English face striking barriers in court
- Court filing fees create daunting obstacles for poor Americans
- For presence in each state of specific best policies and practices, visit justiceindex.org.

IV.  Impacts

The Justice Index’s findings draw attention to societal inequality, deepen understanding of the role of the state courts, and support activism that leads to better justice system policies and practices.

The Justice Index holds up a mirror to the justice system, showing how better policies and practices are achievable. It is among the few standing resources that promotes justice system reform in all states, DC and Puerto Rico, 24 hours a day, seven days a week, 365 days per year.

Consider this example of the power of the Justice Index: when the latest Justice Index findings caused a drop in one state’s rankings because the state did not prohibit trial judges from charging money to people for interpreters, the state took swift action to improve its rule by adding the clause “at no expense.” For Justice Index media clips, see http://justiceindex.org/category/news/.

V.  Next Steps

NCAJ is working to strengthen the Justice Index by tracking best state policies for i) controlling the use of “fines and fees” to finance government, ii) providing pro bono legal services, iii) assuring fair treatment for immigrants in federal and state justice systems, and iv) relying on “artificial intelligence” in state justice systems.

[Contact David Udell, dudell@fordham.edu; May 1, 2019]
IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

ETHEL JACOBS  \[plaintiff\]

vs.  \[case number\]

CINDY GILLESPIE, in her official capacity  \[defendant\]
as director, Arkansas Department of Human Services

PLAINTIFF’S FIRST SET OF DOCUMENT PRODUCTION REQUESTS

The Plaintiff, through her attorneys, propounds the following Requests for Production of Documents under Fed. R. Civ. P. 34 to the Defendant, Cindy Gillespie, in her official capacity as director, Arkansas Department of Human Services. The Plaintiff hereby requests that defendant Cindy Gillespie, in her official capacity as director of the Arkansas Department of Human Services, produce and make available for inspection, sampling, testing, and copying all of the following documents and things within the defendant’s possession, custody, or control, including electronically stored information, at the offices of Legal Aid of Arkansas, 310 Mid-Continent Plaza, Suite 420, West Memphis, Arkansas, 72301, within twenty-one days from the date of service hereof. These Requests are continuing and the answers thereto must be supplemented to the maximum extent authorized by law and Fed. R. Civ. P. 26(e).

All underlined terms anywhere in this document are defined terms. Please consult the definitions below for the meaning of those terms. Contact counsel for the Plaintiff if there is any question about the meaning of an interrogatory or request.

In answering these requests, you are required by law to furnish all information that is available to you or subject to your reasonable inquiry (including information in the possession of
your attorneys, accountants, advisors, or other persons directly or indirectly employed by or connected with you or your attorneys and anyone otherwise subject to your control).

In answering these requests, you must make a diligent search of all your records, files, documents, and materials in your possession or available to you or your representatives. If a request cannot be answered in full, answer to the fullest extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion.

Identify the custodian(s) of each responsive document, the date of the making of the document, and the identity of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.

DEFINITIONS: Unless otherwise indicated, the following definitions apply to all of these requests:

(a) Document means any material whatsoever that contains information recorded through the use of letters, numbers, or their equivalent, whether recorded by photographic or any other means or recording, including electronically stored information (which shall be produced on compact disk(s) or USB flash drive in the manner most universally retrievable and labeled with the name of the computer programs and software used to initially create the electronic information and to copy the electronic information to disk or drive), and also including without limitation all letters or other correspondence, memoranda, notes, reports, minutes, bulletins, notices, drafts, raw notes, or other writings, accounts, books and ledgers, invoices, receipts, photographs, photonegatives, audio recordings, video recordings, data recordings, emails, voicemails, text messages (SMS, MMS, or other protocols), instant message and online chat transcripts, electronic notes and information posted through software systems, computer printouts, records, and any other
form of data compilation. Document also means any duplicates, copies or facsimiles of originals, summaries of documents, and substitutes for documents.

(b) Knowledge includes first-hand knowledge as well as information derived from any source whatsoever, including, but not limited to, hearsay sources.

(c) Person shall mean and include a natural person or legal entity, whether governmental or nongovernmental, and its partners, directors, officers, agents, or employees. In each instance, wherein you are asked to identify a person or state the identity of a person, state with respect to each such person her or his full name, occupation at the relevant time, job title at the relevant time, employer at the relevant time, business address at the relevant time (or, if none, last known residence address), current business address (or, if not known, last known residence address), and current business telephone number (or, if not known, last known telephone number).

(d) You means, and your refers to, both individually and collectively, Cindy Gillespie, personally and in her official capacity as director of the Arkansas Department of Human Services, as well as her counsel, as well as her or Arkansas Department of Human Services consultants, experts, investigators, agents, employees, officers, authorized representatives, or any other persons acting on her behalf or on behalf of the Arkansas Department of Human Services.

(e) Assessment and service allocation means the process by which the Arkansas Department of Human Services evaluates whether an individual meets the functional and/or medical criteria for the ARChoices, Elder Choices, or Alternatives for Adults with Physical Disabilities (“AAPD”) programs and determines the amount of program services to authorize. The term includes, but is not limited to, methodologies, tools, formulas, and systems used in the process.
Attendant care means attendant care services offered under the ARChoices program, homemaker and adult companion services offered under the Elder Choices program, and attendant care services offered under the AAPD program.

**REMINDER:** Please identify the custodian of each responsive document, the date of the making of the document, and the identity of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.

**Request 1:** All documents pertaining to assessment and service allocation that you received from or sent to the Centers for Medicare and Medicaid Services (including all of its subdivisions) any time on or after January 1, 2015.

**Request 2:** All documents pertaining to any aspect of the ARChoices, Alternatives for Adults with Physical Disabilities, or Elder Choices programs that you received from or sent to the Office of Appeals and Hearings, including any of its employees, any time on or after January 1, 2015. However, this request does **not** include any document that pertains specifically and exclusively to a single individual other than Ms. Jacobs and Mr. Ledgerwood.

**Request 3:** All documents pertaining to assessment and service allocation that you received from or sent to any enrolled provider of ARChoices, Alternatives for Adults with Physical Disabilities, or Elder Choices services, including any of its employees, any time on or after January 1, 2015. However, this request does **not** include any document that pertains specifically and exclusively to a single individual other than Ms. Jacobs and Mr. Ledgerwood.
Request 4: All documents you received from or sent to interRAI, including any of its employees, board members, contractors, or affiliated organizations, any time on or after January 1, 2012, pertaining to any aspect of the ARChoices, Alternatives for Adults with Physical Disabilities, or Elder Choices programs. This request includes all contracts and licensing agreements between you and interRAI made at any time.

Request 5: All documents you received from or sent to the University of Michigan, including Brant Fries, Mary Jones, Melanie Goodell, any of its employees, board members, contractors, or affiliated organizations, any time on or after January 1, 2012, pertaining to any aspect of the ARChoices, Alternatives for Adults with Physical Disabilities, or Elder Choices programs. This request includes all contracts and licensing agreements between you and the University of Michigan made at any time.

Request 6: All documents you received from or sent to Jonathan Elist, McKinsey and Company, including any of its employees, board members, contractors, or affiliated organizations, or any other entity for which Mr. Elist is or may have been working, including any of its employees, board members, contractors, or affiliated organizations, any time on or after January 1, 2012 pertaining to any aspect of the ARChoices, Alternatives for Adults with Physical Disabilities, or Elder Choices programs. This request includes all contracts and licensing agreements between you and Mr. Elist, McKinsey and Company, or any other entity for which Mr. Elist is or may have been working made at any time.
Request 7: All documents in your possession, custody, or control sent by or to Lori Rose, Bridget Beard, Craig Cloud, Bradford Nye, Kevin Sullivan, Stephenie Blocker, Brian Bowen, Krista Hughes, or any of their predecessors or successors any time on or after January 1, 2015 pertaining to any aspect of the ARChoices, Alternatives for Adults with Physical Disabilities, or Elder Choices programs. However, this request does not include any document that pertains specifically and exclusively to a single individual other than Ms. Jacobs and Mr. Ledgerwood.

Request 8: All documents in your possession, custody, or control pertaining to Resource Utilization Groups or any case-mix classification systems in the context of the ARChoices, Alternatives for Adults with Physical Disabilities, or Elder Choices programs that were created, distributed, sent, received, used, or obtained after January 1, 2012. This should include all documents regarding the data inputs that are used to generate the RUG-based attendant care tier and the algorithmic data functions that are used to make said assignments.

Request 9: All documents in your possession, custody, or control pertaining to the program budgets of the ARChoices, Alternatives for Adults with Physical Disabilities, or Elder Choices programs that were created, distributed, sent, received, used, or obtained on or after July 1, 2014.

Request 10: All documents in your possession, custody, or control that were created, distributed, sent, received, used, or obtained on or after July 1, 2014, pertaining to individual beneficiary budgets, including, but not limited to, cash expenditure plans, per unit reimbursement rates, and individual budgetary caps. However, this request does not include any document that
pertains specifically and exclusively to a single individual other than Ms. Jacobs and Mr. Ledgerwood.

**Request 11:** All documents in your possession, custody, or control that were used, created, sent, received, or obtained on or after January 1, 2015, pertaining to employee training relating to the ARChoices, Alternatives for Adults with Physical Disabilities, or Elder Choices programs. This includes all materials used in guiding or prescribing activities of your contractors, agents, hearing officers, employees, officers, or authorized representatives regarding the ARChoices, Alternatives for Adults with Physical Disabilities, or Elder Choices programs.

**Request 12:** The three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all individuals (1) who were receiving 40 hours per week or more of attendant care as of December 31, 2015, (2) who were reassessed between January 1, 2016, and March 31, 2016, and (3) whose attendant care hours increased pursuant to the most recent reassessment. All personal identifying information should be redacted to allow disclosure under applicable federal or state privacy laws.

**Request 13:** The three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all individuals (1) who were receiving 40 hours per week or more of attendant care as of December 31, 2015, (2) who were reassessed between January 1, 2016 and March 31, 2016, and (3) whose attendant care hours remained the same pursuant to the most recent reassessment.
reassessment. All personal identifying information should redacted to allow disclosure under applicable federal or state privacy laws.

Request 14: The three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all individuals (1) who were receiving 40 hours per week or more of attendant care as of December 31, 2015, (2) who were reassessed between January 1, 2016 and March 31, 2016, and (3) whose attendant care hours decreased pursuant to the most recent reassessment. All personal identifying information should redacted to allow disclosure under applicable federal or state privacy laws.

Request 15: The three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all individuals allocated 81 hours per week (approximately 352 hours per month) of attendant care pursuant to a reassessment completed between January 1, 2016 and March 31, 2016. All personal identifying information should redacted to allow disclosure under applicable federal or state privacy laws.

Request 16: The three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all individuals allocated 46 hours per week (approximately 201 hours per month) of attendant care pursuant to a reassessment completed between January 1, 2016 and March 31,
2016. All personal identifying information should be redacted to allow disclosure under applicable federal or state privacy laws.

Request 17: The three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all individuals allocated 37 hours per week (approximately 161 hours per month) of attendant care pursuant to a reassessment completed between January 1, 2016 and March 31, 2016. All personal identifying information should be redacted to allow disclosure under applicable federal or state privacy laws.

Request 18: The three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all individuals allocated 36 hours per week (approximately 157 hours per month) of attendant care pursuant to a reassessment completed between January 1, 2016 and March 31, 2016. All personal identifying information should be redacted to allow disclosure under applicable federal or state privacy laws.

Request 19: The three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all individuals allocated 35 hours per week (approximately 153 hours per month) of attendant care pursuant to a reassessment completed between January 1, 2016 and March 31, 2016. All personal identifying information should be redacted to allow disclosure under applicable federal or state privacy laws.
Request 20: The three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all individuals allocated 33 hours per week (approximately 143 hours per month) of attendant care pursuant to a reassessment completed between January 1, 2016 and March 31, 2016. All personal identifying information should be redacted to allow disclosure under applicable federal or state privacy laws.

Request 21: The three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all individuals allocated 32 hours per week (approximately 137 hours per month) of attendant care pursuant to a reassessment completed between January 1, 2016 and March 31, 2016. All personal identifying information should be redacted to allow disclosure under applicable federal or state privacy laws.

Request 22: All documents in your possession, custody, or control created, distributed, sent, received, used, or obtained on or after July 1, 2014, pertaining to program integrity, utilization, monitoring, quality assurance, or quality improvement for the ARChoices, Alternatives for Adults with Physical Disabilities, or Elder Choices programs. However, this request does not include any document that pertains specifically and exclusively to a single individual other than Ms. Jacobs and Mr. Ledgerwood.

DATED: July 29, 2016

Respectfully Submitted,

/s/ Kevin De Liban
Kevin De Liban (2012044)
kdeliban@arlegalaid.org
LEGAL AID OF ARKANSAS, INC.
CERTIFICATE OF SERVICE

Having been granted consent for e-mail service in writing, I hereby certify that on July 29, 2016 I sent this First Set of Document Production Requests via e-mail to Rich Rosen and David Sterling at:

rich.rosen@dhs.arkansas.gov
david.sterling@dhs.arkansas.gov

/s/ Kevin De Liban_____________
Kevin De Liban (2012044)
kdeliban@arlegalaid.org
LEGAL AID OF ARKANSAS, INC.
310 Mid-Continent Plaza, Suite 420
West Memphis, AR 72301
P: (800) 967-9224 x. 2206
F: (870) 732-6373
IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

ETHEL JACOBS

vs.

CINDY GILLESPIE, in her official capacity
as director, Arkansas Department of
Human Services

Case No. 3:16-cv-119

PLAINTIFF

DEFENDANT

PLAINTIFF’S FIRST SET OF INTERROGATORIES AND SECOND SET OF
DOCUMENT PRODUCTION REQUESTS

The Plaintiff, through her attorneys, propounds the following Interrogatories and
Requests for Production under Fed. R. Civ. P. 33 and 34 to the Defendant, Cindy Gillespie, in
her official capacity as director, Arkansas Department of Human Services. The Defendant must
answer the following interrogatories and requests within twenty-one days from the date of
service hereof. These interrogatories and requests are continuing and the answers thereto must be
supplemented to the maximum extent authorized by law and Fed. R. Civ. P. 26(e). The requests
must be answered by producing and making available for inspection, sampling, testing, and
copying all of the following documents and things within the defendant’s possession, custody, or
control, including electronically stored information, at the offices of Legal Aid of Arkansas, 310
Mid-Continent Plaza, Suite 420, West Memphis, Arkansas, 72301, within twenty-one days from
the date of service hereof.

All underlined terms anywhere in this document are defined terms. Please consult
the definitions below for the meaning of those terms. Contact counsel for the Plaintiff if
there is any question about the meaning of an interrogatory or request.

In answering these interrogatories and requests, you are required by law to furnish all
information that is available to you or subject to your reasonable inquiry (including information
in the possession of your attorneys, accountants, advisors, or other persons directly or indirectly employed by or connected with you or your attorneys and anyone otherwise subject to your control).

In answering these interrogatories and requests, you must make a diligent search of all your records, files, documents, and materials in your possession or available to you or your representatives. If a request cannot be answered in full, answer to the fullest extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion.

In answering these interrogatories, please identify each person providing any information for inclusion in your responses to these interrogatories, specifying each interrogatory for which each person supplied information and the information supplied. Where a response to an interrogatory requires information from multiple people, please specify each individual and the information she is providing.

Identify the custodian(s) of each responsive document, the date of the making of the document, and the identity of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence. Please include all metadata and all versions of any document you produce.

DEFINITIONS: Unless otherwise indicated, the following definitions apply to all of these requests:

(a) Document means any material whatsoever that contains information recorded through the use of letters, numbers, or their equivalent, whether recorded by photographic or any other means or recording, including electronically stored information (which shall be produced on compact disk(s) or USB flash drive in the manner most universally retrievable and
labeled with the name of the computer programs and software used to initially create the electronic information and to copy the electronic information to disk or drive), and also including without limitation all letters or other correspondence, memoranda, notes, reports, minutes, bulletins, notices, drafts, raw notes, or other writings, accounts, books and ledgers, invoices, receipts, photographs, photonegatives, audio recordings, video recordings, data recordings, emails, voicemails, text messages (SMS, MMS, or other protocols), instant message and online chat transcripts, electronic notes and information posted through software systems, computer printouts, records, and any other form of data compilation. Document also means any duplicates, copies or facsimiles of originals, summaries of documents, and substitutes for documents. Please note that all documents you produce must include all metadata and all versions of the document.

(b) Knowledge includes first-hand knowledge as well as information derived from any source whatsoever, including, but not limited to, hearsay sources.

(c) Person shall mean and include a natural person or legal entity, whether governmental or nongovernmental, and its partners, directors, officers, agents, or employees. In each instance, wherein you are asked to identify a person or state the identity of a person, state with respect to each such person her or his full name, occupation at the relevant time, job title at the relevant time, employer at the relevant time, business address at the relevant time (or, if none, last known residence address), current business address (or, if not known, last known residence address), and current business telephone number (or, if not known, last known telephone number).

(d) You means, and your refers to, both individually and collectively, Cindy Gillespie, personally and in her official capacity as director of the Arkansas Department of Human Services, as well as her counsel, as well as her or Arkansas Department of Human Services.
Services consultants, experts, investigators, agents, employees, officers, authorized representatives, or any other persons acting on her behalf or on behalf of the Arkansas Department of Human Services.

(e) **Assessment and service allocation** means the process by which the Arkansas Department of Human Services evaluates whether an individual meets the functional and/or medical criteria for the ARChoices, Elder Choices, or Alternatives for Adults with Physical Disabilities ("AAPD") programs and determines the amount of program services to authorize. The term includes, but is not limited to, methodologies, tools, formulas, and systems used in the process.

(f) **Attendant care** means attendant care services offered under the ARChoices program, homemaker and adult companion services offered under the Elder Choices program, personal care services offered to Elder Choices and/or AAPD beneficiaries through Independent Choices, and attendant care services offered under the AAPD program.

(g) **Beneficiary** means an individual receiving services through the ARChoices, AAPD, or Elder Choices programs and excludes service providers. Where the term beneficiary is accompanied by reference to a specific program (either ARChoices, AAPD, or Elder Choices), the interrogatory or request seeks information pertaining only to the beneficiaries of the referenced program and not to beneficiaries of the programs not referenced.

**REMEMBER:** Please identify the custodian of each responsive document, the date of the making of the document, and the identity of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence. Please include all metadata and all versions of each document you produce.
INTERROGATORY NO. 1: With reference to assessment and service allocation, please describe in detail the specific information, responses, and scores pertaining to a beneficiary that is required for assignment to each Resource Utilization Group (and/or tiers thereof) in use as of February 19, 2016, with your response listed for each such RUG (and/or tier thereof).

REQUEST FOR PRODUCTION 23 (numbering continued from Plaintiff's First Set of Document Production Requests): Please produce all statutory authority, regulatory authority, agency policy, and documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 1.

INTERROGATORY NO. 2: With reference to assessment and service allocation, please describe in detail the process or processes by which you have determined the number of attendant care hours to assign to an ARChoices, Elder Choices, or AAPD program beneficiary as of February 19, 2016, as of April 17, 2015, as of June 6, 2014, as of July 26, 2013, and as of November 7, 2012, including specific reference to the authority, discretion, judgment, or opinions of Division of Aging and Adult Services Registered Nurses ("DAAS RN") performing assessments in determining the number of attendant care hours to assign.

INTERROGATORY NO. 3: With reference to assessment and service allocation, please identify and describe in detail your reasons for all changes in the process or processes by which you determine or determined the number of attendant care hours to assign to an ARChoices, Elder Choices, or AAPD program beneficiary between November 7, 2012 and February 19, 2016, including all information and data supporting the reasons for all changes.
REQUEST FOR PRODUCTION 24: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 3.

INTERROGATORY NO. 4: Please describe in detail the reasons for the reduction in Ms. Jacobs’ attendant care hours pursuant to the assessment performed on February 19, 2016, including the specific information, responses, and scores used in assessment and service allocation and all statutory authority, regulatory authority, or agency policy that supports the reduction.

INTERROGATORY NO. 5: Please state each and every fact that you will rely on to establish that Ms. Jacobs is no longer eligible for the amount of attendant care she was allocated as of February 18, 2016.

INTERROGATORY NO. 6: With reference to assessment and service allocation as it existed on February 19, 2016 and as it currently exists, please describe in detail all means used to determine whether the number of attendant care hours allocated to program beneficiaries corresponds to their physical, mental, and functional status and abilities, medical conditions, medical necessity, and caregiving needs, including, but not limited to, your customary practices (whether written or verbal) to obtain information from beneficiaries’ primary care providers, other doctors or treating medical professionals, paid caregivers, unpaid caregivers, and case managers, your customary practices (whether written or verbal) to inform beneficiaries about assessment and service allocation prior to assessment, your customary practices (whether written or verbal) to inform, encourage, or allow beneficiaries to provide information prior to, at the time
of, and subsequent to assessment, and your customary practices (whether written or verbal) to incorporate the information obtained from all sources into assessment and service allocation.

REQUEST FOR PRODUCTION 25: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 6.

INTERROGATORY NO. 7: With reference to assessment and service allocation, please identify the total number of beneficiaries assessed between January 1, 2016 and May 1, 2016 who were allocated a total of monthly attendant care hours (rounded to the nearest whole number; the corresponding weekly totals are in parentheses and rounded to the nearest whole number) that is other than 352 (81), 201 (46), 161 (37), 157 (36), 153 (35), 143 (33), 137 (32), 118 (27), 116 (27), 112 (26), 99 (23), 97 (22), 94 (22), 81 (19), 69 (16), 62 (14), 55 (13), 53 (12), 38 (9), 36 (8), 30 (7), 28 (6), list the number of monthly attendant care hours allocated for each such individual, and describe in detail the process you used to determine the number of attendant care hours to allocate to them.

REQUEST FOR PRODUCTION 26: Please produce the three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all individuals identified in the response to Interrogatory No. 7.

INTERROGATORY NO. 8: Please state the name and address of all witnesses whom you may call at trial and provide a general summary of the facts to which they will testify.
INTERROGATORY NO. 9: Please state all possible monthly totals of attendant care hours (rounded to the nearest whole number) allocated to ARChoices beneficiaries and state the number of beneficiaries receiving each possible monthly total as of May 1, 2016. The response to this interrogatory must exclude all Elder Choices and AAPD beneficiaries who were not assessed and allocated attendant care hours under the ARChoices program as of May 1, 2016.

INTERROGATORY NO. 10: On page 13 of your substituted brief in opposition to the preliminary injunction motion (Dkt. 21), you contend that ARChoices beneficiaries have the opportunity to discuss changes in their plans of care with the DAAS RN, including changes in the number of attendant care hours allocated pursuant to the most recent reassessment. Please describe in detail the process or processes by which a discussion between the beneficiary and the RN takes place, state the scope of any such discussion, state whether the discussion allows a review of assessment and service allocation and, if so, describe the discretion the RN has to adjust the number of attendant care hours and the criteria the RN uses to do so, state the number of beneficiaries who have initiated such discussion, and state whether each discussion resulted in an increase, decrease, or no change in the amount of attendant care hours allocated pursuant to the most recent assessment.

REQUEST FOR PRODUCTION 27: Please produce all statutory authority, regulatory authority, agency policy, and documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 12.

INTERROGATORY NO. 11: Relying on Lori Rose's declaration (Dkt. 21-1), you contend on page 2 of your substituted brief in opposition to the preliminary injunction motion...
(Dkt. 21) that “53 percent of all ARChoices reassessments performed during the period of January 1, 2016 through May 1, 2016, resulted in no change in service hours or actually resulted in increased attendant care service hours.” Please state separately the total number and percentage of reassessments of program beneficiaries performed during the periods of January 1, 2016 through May 1, 2016 and January 1, 2014 to December 31, 2015 that resulted in increases in hours, decreases in hours, no changes in hours, and termination from the ARChoices, AAPD, or Elder Choices programs.

Example: XX% of the reassessments performed during the period of January 1, 2016 through May 1, 2016 resulted in a decrease in attendant care hours, XX% resulted in termination from the program, XX% resulted in an increase in attendant care hours, XX% resulted in no change in attendant care hours.

Example: XX% of the reassessments performed for the AAPD and Elder Choices programs during the period of January 1, 2014 through December 31, 2015 resulted in a decrease in attendant care hours, XX% resulted in termination from the program, XX% resulted in an increase in attendant care hours, XX% resulted in no change in attendant care hours.

REQUEST FOR PRODUCTION 28: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 13.

REQUEST FOR PRODUCTION 29: Please produce all documents upon which Lori Rose based Paragraph 10 of her declaration (Dkt. 21-1).

INTERROGATORY NO. 12: For all ARChoices reassessments performed during the period of January 1, 2016 through May 1, 2016 that resulted in increases in the attendant care hours allocated, state the average number of hours increased, the median number of hours
increased, the average percentage increase the additional hours constitute in relation to the allocation of hours that existed just prior to the increase, and the median percentage increase the additional hours constitute in relation to the allocation of hours that existed just prior to the increase.

As an example of the percentage calculations, an individual allocated 40 hours prior to reassessment who then was allocated 44 hours after reassessment experienced a 10% increase in hours in relation to the allocation of hours that existed just prior to the increase.

REQUEST FOR PRODUCTION 30: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 14.

INTERROGATORY NO. 13: For all ARChoices reassessments performed during the period of January 1, 2016 through May 1, 2016 that resulted in decreases in the attendant care hours allocated (reassessments resulting in termination from the program are excluded), state the average number of hours decreased, the median number of hours decreased, the average percentage decrease the subtracted hours constitute in relation to the allocation of hours that existed just prior to the decrease, and the median percentage decrease the subtracted hours constitute in relation to the allocation of hours that existed just prior to the decrease.

As an example of the percentage calculations, an individual allocated 40 hours prior to reassessment who then was allocated 36 hours after reassessment experienced a 10% decrease in hours in relation to the allocation of hours that existed just prior to the decrease.

REQUEST FOR PRODUCTION 31: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 15.
INTERROGATORY NO. 14: For all ARChoices reassessments performed during the period of January 1, 2016 through May 1, 2016 that resulted in decreases in the attendant care hours allocated (reassessments resulting in termination from the program are excluded), please state the number of administrative appeals initiated by beneficiaries and the outcome of each appeal. In your response, please define each possible outcome and ensure that each appeal has only one outcome. Provided that you provide the total number of administrative appeals initiated, it is permissible to list all possible appeal outcomes and specify the number of appeals resulting in each possible outcome.

REQUEST FOR PRODUCTION 32: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 16. Please note, however, that the Plaintiff does not now seek the orders resulting from each appeal.

INTERROGATORY NO. 15: Please state the name and contact information of all expert witnesses you may call, state the opinions that each is expected to give, and summarize the grounds for each opinion.

REQUEST FOR PRODUCTION 33: Please produce the documents in your possession, custody, or control that have been prepared by each expert.

REQUEST FOR PRODUCTION 34: Please produce the documents in your possession, custody, or control that support each expert’s opinion.

REQUEST FOR PRODUCTION 35: For any policy or regulation promulgated since 2010 that relates to assessment and service allocation, please produce all notices of rule-making.
notices of public comment, public comments received, your responses to public comments, and all documents in your possession, custody, or control supporting your responses to public comments.

REQUEST FOR PRODUCTION 36: Please produce the three most recent Plans of Care and ArPath Comprehensive Assessment Reports, including RUGS History, Individual CAPS, Individual Scales, Medications, and Diseases, for all ARChoices beneficiaries who (1) were reassessed for ARChoices services between January 1, 2016 and May 1, 2016, (2) were determined eligible for ARChoices, and (3) were authorized personal care services as defined and provided for in the Personal Care Medicaid Provider Manual §§ 212.000, 213.000, 213.200 214.300, 214.310. All personal identifying information should redacted be to allow disclosure under applicable federal or state privacy laws.

REQUEST FOR PRODUCTION 37: Please produce all documents that you may offer as evidence in any trial or hearing in this matter.

DATED: August 5, 2016

Respectfully Submitted,

/s/ Kevin De Liban
Kevin De Liban (2012044)
deliban@arlegalaid.org
LEGAL AID OF ARKANSAS, INC.
310 Mid-Continent Plaza, Suite 420
West Memphis, AR 72301
P: (800) 967-9224 x. 2206
F: (870) 732-6373

CERTIFICATE OF SERVICE

Having been granted consent for e-mail service in writing, I hereby certify that on August 5, 2016 I sent this First Set of Interrogatories and Second Set of Document Production Requests via e-mail to Rich Rosen and David Sterling at:

Plaintiff’s First Set of Interrogatories and Second Set of Document Production Requests- Page 12
rich.rosen@dhs.arkansas.gov
david.sterling@dhs.arkansas.gov

/s/ Kevin De Liban
Kevin De Liban (2012044)
IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

ETHEL JACOBS,
by and through her next friend,
Louis Welch

v.

CINDY GILLESPIE, in her official capacity
as director, Arkansas Department of
Human Services

Case No. 3:16-cv-119

NOTICE OF DEPOSITION

Time: September 7 at 9 a.m. (for designee for part 1(c))
      September 12, 13, 14, and 15 at 9 a.m.
      (dates to be finalized based on the number of designees)

Place: Arkansas Department of Human Services
       700 S. Main St.
       Little Rock, AR 72203

Method of Recording: Audio and Stenographic

Deponent’s Name and Address: Arkansas Department of Human Services
                            Donaghey Plaza
                            P.O. Box 1437
                            Little Rock, AR 72301

The Plaintiff issues this notice of deposition to the Arkansas Department of Human Services pursuant to Fed. R. Civ. P. 30(b)(6) and instructs the agency to designate individuals to be examined about the following matters:

(1) As related to the operation of the ARChoices, Elder Choices, and AAPD programs:

   (a) the process or processes by which the agency determines the amount of services to allocate to an ARChoices, Elder Choices, or AAPD beneficiary between January 1, 2012 and February 19, 2016, including the reasons for any changes in such process or processes, the efficacy of any such changes, and the ability of beneficiaries to contest the agency’s determinations;

   (b) overall program management, including budget oversight, quality assurance, program evaluation, and statutory and regulatory development, promulgation, and compliance, including communications with the federal Center for Medicare and Medicaid Services, state legislators, the Joint Performance Review Committee, the Health Reform Task
Force, the Health Care Payment Improvement Initiative, the Stephens Group consulting firm, and the governor’s office;

(c) the development, testing, validation, implementation, modification, monitoring, present use, and continuing review of the Resource Utilization Group classification system related to the interRAI assessment tool (also known as “ArPath”) as it applies to the ARChoices, Elder Choices, and AAPD programs between January 1, 2012 and the present date, including the agency’s practices and policies used to determine whether the number of attendant care hours allocated to program beneficiaries corresponds to their physical, mental, and functional status and abilities, medical conditions, medical necessity, and caregiving needs;

(d) supervision, evaluation, and training of Division of Aging and Adult Services nurses who perform evaluations using the interRAI assessment tool;

(e) the role of the programs in the agency’s efforts to de-institutionalize disabled and/or elderly individuals, balance institutional placements and costs with community-based placements and costs, and ensure compliance with the requirements of the Olmstead decision and the federally-mandated HCBS Settings Transition Plan.

(2) The administrative appeal and hearing process, including the operation of DHS Policy §§ 1098.8.1 and 1098.8.6, as related to ARChoices beneficiaries contesting the reduction of attendant care hours.

Pursuant to Fed. R. Civ. P. 30(b)(2), this Notice of Deposition incorporates a request under Fed. R. Civ. P. 34 that the individuals designated by the agency to be deposed produce at the time and place of the deposition any documents relied upon in preparation for this deposition, including, but not limited to, writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained.

DATED: August 26, 2016

Kevin De Liban (2012044)
kdeliban@arlegalaid.org
LEGAL AID OF ARKANSAS, INC.
310 Mid-Continent Plaza, Suite 420
West Memphis, AR 72301
P: (800) 967-9224 x. 2206
F: (870) 732-6373

CERTIFICATE OF SERVICE
I, Kevin De Liban, certify that on August 26, 2016, I sent a copy of this Notice of Deposition via e-mail to Rich Rosen at Rich.Rosen@dhs.arkansas.gov and David Sterling at David.Sterling@dhs.arkansas.gov.

Kevin De Liban
IN THE CIRCUIT COURT OF PULASKI COUNTY
CIVIL DIVISION

BRADLEY LEDGERWOOD, LOUELLA JONES, PEGGY SANDERS, MARCUS STROPE, WINNIE WINSTON, DANA WOLF, and MICHAEL YARRA

v.

ARKANSAS DEPARTMENT OF HUMAN SERVICES

Case No. 60CV-17-442

DEFENDANT

PLAINTIFF’S FIRST REQUEST FOR ADMISSIONS

The Plaintiff, through her attorneys, propounds the following Request for Admissions under Ark. R. Civ. P. 36 to the Defendant.

All underlined terms anywhere in this document are defined terms. Please consult the definitions below for the meaning of those terms. Contact counsel for the Plaintiffs if there is any question about the meaning of an interrogatory or request.

DEFINITIONS: Unless otherwise indicated, the following definitions apply to all of these requests:

(a) Document means any material whatsoever that contains information recorded through the use of letters, numbers, or their equivalent, whether recorded by photographic or any other means or recording, including electronically stored information (which shall be produced on compact disk(s) or USB flash drive in the manner most universally retrievable and labeled with the name of the computer programs and software used to initially create the electronic information and to copy the electronic information to disk or drive), and also including without limitation all letters or other correspondence, memoranda, notes, reports, minutes, bulletins, notices, drafts, raw notes, or other writings, accounts, books and ledgers, invoices, receipts, photographs, photonegatives, audio recordings, video recordings, data recordings,
emails, voicemails, text messages (SMS, MMS, or other protocols), instant message and online chat transcripts, electronic notes and information posted through software systems, computer printouts, records, and any other form of data compilation. Document also means any duplicates, copies or facsimiles of originals, summaries of documents, and substitutes for documents. Please note that all documents you produce must include all metadata and all versions of the document.

(b) Knowledge includes first-hand knowledge as well as information derived from any source whatsoever, including, but not limited to, hearsay sources.

(c) Person shall mean and include a natural person or legal entity, whether governmental or nongovernmental, and its partners, directors, officers, agents, or employees. In each instance, wherein you are asked to identify a person or state the identity of a person, state with respect to each such person her or his full name, occupation at the relevant time, job title at the relevant time, employer at the relevant time, business address at the relevant time (or, if none, last known residence address), current business address (or, if not known, last known residence address), and current business telephone number (or, if not known, last known telephone number).

(d) You means, and your refers to the Arkansas Department of Human Services, including counsel, consultants, experts, investigators, agents, employees, officers, authorized representatives, or any other persons acting on her behalf or on behalf of the Arkansas Department of Human Services.

(e) The RUGs system means the Resource Utilization Group process for determining the number of attendant care hours to assign to beneficiaries, including, but not limited to, tools, algorithms, tiers, and hour allocations associated with each tier.
(f) Attendant care means attendant care services offered under the ARChoices program, homemaker, chore, adult companion, and personal care services offered under the Elder Choices program, personal care services offered to Elder Choices and/or AAPD beneficiaries through Independent Choices, and attendant care services offered under the AAPD program.

(g) Beneficiary means an individual receiving services through the ARChoices, AAPD, or Elder Choices programs and excludes service providers. Where the term beneficiary is accompanied by reference to a specific program (either ARChoices, AAPD, or Elder Choices), the interrogatory or request seeks information pertaining only to the beneficiaries of the referenced program and not to beneficiaries of the programs not referenced.

REMINDER: Please identify the custodian of each responsive document, the date of the making of the document, and the identity of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence. Please include all metadata and all versions of each document you produce.

1. Admit that the RUGs system is an agency statement of general applicability and future effect.

2. Admit that the RUGs system is an agency statement that implements, interprets, or prescribes law or policy.

3. Admit that the RUGs system is an agency statement that describes the organization, procedure, or practice of the Department of Human Services.

4. Admit that the RUGs system affects the private rights or procedures available to the public.

5. Admit that the RUGs system is not an intra-agency memorandum.
6. Admit that you submitted documents relating to the ARChoices program to the Secretary of State on or around August 3, 2015.

7. Admit that the documents relating to the ARChoices program that you submitted to the Secretary of State on or around August 3, 2015 were intended for the purpose of “rule making” as that term is defined in Ark. Code Ann. § 25-15-202.

8. Admit that the documents relating to the ARChoices program that you submitted to the Secretary of State on or around August 3, 2015 were intended for the purpose of “rule making” as that term is defined in Ark. Code Ann. § 25-15-202.

9. Admit that you submitted documents relating to the ARChoices program to the Secretary of State on or around December 17, 2015.

10. Admit that the documents relating to the ARChoices program that you submitted to the Secretary of State on or around December 17, 2015 were intended for the purpose of “rule making” as that term is defined in Ark. Code Ann. § 25-15-202.

11. Admit that the documents relating to the ARChoices program that you submitted to the Secretary of State on or around December 17, 2015 were the intended for the purpose of “rule making” as that term is defined in Ark. Code Ann. § 25-15-202.

12. Admit that the documents relating to the ARChoices program that you submitted to the Secretary of State on or around December 17, 2015 were the final version of the “rule making” initiated by the documents relating to the ARChoices program that you submitted to the Secretary of State on or around August 3, 2015

13. Admit that you issued a Notice of Rule-Making with the documents relating to the ARChoices program you submitted to the Secretary of State on or around August 3, 2015.
14. Admit that the Notice of Rule-Making attached as Exhibit A (one page) is an accurate and genuine reproduction of the Notice of Rule-Making you issued with the documents relating to the ARChoices program you submitted to the Secretary of State on or around August 3, 2015.

15. Admit that Proposed Rule 016.06.15-006, as classified by the Secretary of State’s system, available at www.sos.arkansas.gov/rules_and_regs/index.php,¹ is an accurate and genuine reproduction of the documents relating to the ARChoices program you submitted to the Secretary of State on or around August 3, 2015.

16. Admit that Final Rule 016.06.15-021, as classified by the Secretary of State’s system, available at www.sos.arkansas.gov/rules_and_regs/index.php,² is an accurate and genuine reproduction of the documents relating to the ARChoices program you submitted to the Secretary of State on or around December 17, 2015.

17. Admit that you base the authority to operate the RUGs system on Final Rule 016.06.15-021, as classified by the Secretary of State’s system, available at www.sos.arkansas.gov/rules_and_regs/index.php.

18. Admit that there is no other final rule filed with the Secretary of State on which you base authority to operate the RUGs system.

¹ Due to the size of the proposed rule (242 pages), it is not practical to attach a copy of the document here. However, Plaintiffs’ counsel is furnishing it or otherwise making it available for inspection by providing a functioning link to the Secretary of State’s website along with the proper rule number needed to locate the document.

² Due to the size of the final rule (245 pages), it is not practical to attach a copy of the document here. However, Plaintiffs’ counsel is furnishing it or otherwise making it available for inspection by providing a functioning link to the Secretary of State’s website along with the proper rule number needed to locate the document.
19. Admit that Final Rule 016.06.15-021 is the finalized version of Proposed Rule 016.06.15-006, as classified by the Secretary of State’s system, available at www.sos.arkansas.gov/rules_and_regs/index.php.

20. Admit that your authority to promulgate rules relating to the ARChoices program is based on Ark. Code Ann. § 25-10-129.


22. Admit that the RUGs system was implemented on January 1, 2016.

23. Admit that, prior to January 1, 2016, the method for determining the amount of attendant care available to a beneficiary involved the discretion and judgment of the Division of Aging and Adults Services registered nurse who conducted the functional assessment of the beneficiary.

24. Admit that, prior to January 1, 2016, the RUGs system did not determine the amount of attendant care available to a beneficiary.

25. Admit that, since January 1, 2016, the amount of attendant care available to a beneficiary is determined solely by the RUGs system.

26. Admit that the document attached as Exhibit B (three pages) lists all RUG tiers to which a beneficiary may be assigned.

27. Admit that the document attached as Exhibit B (three pages) accurately lists the daily attendant care hour allocations associated with each RUG tier.

28. Admit that the document attached as Exhibit B (three pages) accurately lists the weekly attendant care hour allocations associated with each RUG tier.

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3 Please note the definition of attendant care used here (as seen on page 3) includes services under the Elder Choices program called personal care, homemaker, adult companion, and chore.
29. Admit that the document attached as Exhibit B (three pages) accurately lists the monthly
attendant care hour allocations associated with each RUG tier.

30. Admit that the document attached as Exhibit B (three pages) is a genuine and accurate copy
of a document that you created.

31. Admit that the data set used to generate the Arkansas-specific “base allocation” of attendant
care hours (calculating average CMI and average resource use) is no longer available.

32. Admit that fewer than 10 beneficiaries have been assigned to RUG tier SE3.

33. Admit that fewer than 5 beneficiaries have been assigned to RUG tier SE3.

34. Admit that the ARChoices waiver application submitted to the Center for Medicare and
Medicaid Services is not available anywhere on the DHS website.

35. Admit that you have never informed the Plaintiffs about the way the RUGs system works.

36. Admit that, under the RUGs system, identical answers on the ArPath evaluation from one
year to the next result in identical RUG tier placement.

37. Admit that you did not verbally discuss the RUGs system with the Administrative Rules and
Regulations Subcommittee of the Legislative Council on December 15, 2015.

38. Admit that you did not verbally discuss the RUGs system with the Administrative Rules and
Regulations Subcommittee of the Legislative Council at any point between August 3, 2015
and December 17, 2015.

39. Admit that, between August 3, 2015 and December 17, 2015, you did not file with the
Legislative Council any documents other than Proposed Rule 016.06.15-006 or Final Rule
016.06.15-021 that mention any aspect of the RUGs system.

40. Admit that you were not required by statute to adopt the RUGs system.
41. Admit that your choice to adopt the RUGs system was not compelled by any state or federal regulation, agency, or legislative body.

42. Admit that, as of August 3, 2015, you did not have reasonable projections about what percentage of AAPD and ElderChoices beneficiaries would receive increases in attendant care hours once the RUGs system was implemented.

43. Admit that, as of August 3, 2015, you did not have reasonable projections about what percentage of AAPD and ElderChoices beneficiaries would receive decreases in attendant care hours once the RUGs system was implemented.

44. Admit that, as of August 3, 2015, you did not have reasonable projections about the average increase or decrease in attendant care hours AAPD and ElderChoices beneficiaries would experience once the RUGs system was implemented.

45. Admit that, as of December 17, 2015, you did not have reasonable projections about what percentage of AAPD and ElderChoices beneficiaries would receive increases in attendant care hours once the RUGs system was implemented.

46. Admit that, as of December 17, 2015, you did not have reasonable projections about what percentage of AAPD and ElderChoices beneficiaries would receive decreases in attendant care hours once the RUGs system was implemented.

47. Admit that, as of December 17, 2015, you did not have reasonable projections about the average increase or decrease in attendant care hours AAPD and ElderChoices beneficiaries would experience once the RUGs system was implemented.

48. Admit that, as of August 3, 2015, you had no documents addressing the nature of the risk associated with the method used for determining the amount of attendant care available to a beneficiary prior to the RUGs system.
49. Admit that, as of December 17, 2015, you had no documents addressing the nature of the risk associated with the method used for determining the amount of attendant care available to a beneficiary prior to the RUGs system.

50. Admit that, as of August 3, 2015, you had no documents addressing the significance of any problems associated with the method used for determining the amount of attendant care available to a beneficiary prior to the RUGs system.

51. Admit that, as of December 17, 2015, you had no documents addressing the significance of any problems associated with the method used for determining the amount of attendant care available to a beneficiary prior to the RUGs system.

52. Admit that, as of August 3, 2015, you had no documents addressing the degree of the risk associated with the method used for determining the amount of attendant care available to a beneficiary prior to the RUGs system.

53. Admit that, as of December 17, 2015, you had no documents addressing the degree of the risk associated with the method used for determining the amount of attendant care available to a beneficiary prior to the RUGs system.

54. Admit that you did not consider adopting any case-mix systems apart from the RUGs system.

DATED: March 3, 2017

Respectfully Submitted,

/s/ Kevin De Liban
Kevin De Liban (2012044)
kdeliban@arlegalaid.org
LEGAL AID OF ARKANSAS, INC.
310 Mid-Continent Plaza, Suite 420
West Memphis, AR 72301
P: (800) 967-9224 x. 2206
F: (870) 732-6373

Plaintiff's First Request for Admissions- Page 9
CERTIFICATE OF SERVICE

In accordance with Ark. R. Civ. P. 5, I hereby certify that, on March 3, 2017, I sent this First Request for Admissions via e-mail to Rich Rosen and David Sterling at rich.rosen@dhs.arkansas.gov and david.sterling@dhs.arkansas.gov and via first-class mail to:

Attn: Richard Rosen or David Sterling
Department of Human Services
PO Box 1437, Slot S260
Little Rock, AR 72203

/s/ Kevin De Liban
Kevin De Liban (2012044)
Exhibit A:
Notice of Rule-Making
NOTICE OF RULE MAKING

The Director of the Division of Medical Services hereby issues the following proposed medical assistance rule(s) under one or more of the following chapters or sections of the Arkansas Code: 20-10-211(a), 20-10-203(b), 20-76-433, 25-10-129, and Title 20, Chapter 77.

Effective January 1, 2016, the Arkansas Department of Human Services is renewing the ElderChoices 1915(c) HCBS waiver. The renewal combines the ElderChoices and Alternatives for Adults with Physical Disabilities (AAPD) waivers into one waiver to be called the ARChoices in Homecare waiver covering participants 21 and older with a physical disability and individuals aged 65 and older. Effective January 1, 2016, the Department is also increasing the rate for Personal Care Services from $4.19 to $4.50 per 15 minute unit. The estimated annualized budget impact of the rate increase for the State Plan Personal Care Services is $11,439,689.

The proposed policy is available for review at the Division of Medical Services, Program Development and Quality Assurance, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access it on the Medicaid website (www.medicaid.state.ar.us), and download it from the “Proposed Rules For Public Comment” section of the website’s General menu. Policy accessed from this location will be watermarked with the word “Proposed”. All comments must be submitted in writing, at the above address, no later than September 1, 2015.

If you need this material in a different format, such as large print, contact our office at 320-6429.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. 4501545928 EL

Dawn Stehle
Director
Division of Medical Services
Exhibit B:
RUG-Based Attendant Care Tiers
RUG-Based Attendant Care Tiers (9/17/2014)

Historic average CMI & average daily hours attendant care:

<table>
<thead>
<tr>
<th></th>
<th>Entire population (n=3928)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average CMI</td>
<td>1.6377</td>
</tr>
<tr>
<td>Average daily hrs</td>
<td>3.308</td>
</tr>
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</table>

Tiers calculated by applying historic AR midpoints to Ontario CMIs:

<table>
<thead>
<tr>
<th>RUG</th>
<th>Ontario F+I CMI</th>
<th>RUG-specific base allocation per day</th>
<th>RUG-specific base allocation per week</th>
<th>RUG-specific base allocation per Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>RB</td>
<td>2.56</td>
<td>5.17</td>
<td>36.20</td>
<td>156.85</td>
</tr>
<tr>
<td>RA2</td>
<td>1.58</td>
<td>3.19</td>
<td>22.34</td>
<td>96.81</td>
</tr>
<tr>
<td>RA1</td>
<td>0.89</td>
<td>1.80</td>
<td>12.58</td>
<td>54.53</td>
</tr>
<tr>
<td>SE3</td>
<td>5.75</td>
<td>11.61</td>
<td>81.30</td>
<td>352.31</td>
</tr>
<tr>
<td>SE2</td>
<td>3.28</td>
<td>6.63</td>
<td>46.38</td>
<td>200.97</td>
</tr>
<tr>
<td>SE1</td>
<td>2.50</td>
<td>5.05</td>
<td>35.35</td>
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</tr>
<tr>
<td>SSB</td>
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<td>37.19</td>
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</tr>
<tr>
<td>SSA</td>
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</tr>
<tr>
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<td>32.94</td>
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<tr>
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<tr>
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<td>IB</td>
<td>1.89</td>
<td>3.82</td>
<td>26.72</td>
<td>115.80</td>
</tr>
<tr>
<td>IA2</td>
<td>1.33</td>
<td>2.69</td>
<td>18.81</td>
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<td>0.45</td>
<td>0.91</td>
<td>6.36</td>
<td>27.57</td>
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</tbody>
</table>

* As calculated by Sean McCormick (McKinsey), Sept 2014. Uses F+I Ontario CMIs (F+I selected over Formal because research shows that it more accurately predicts need, even when informal care not automatically considered). Respite shadow-priced out for AAPD, based upon EC RUG average usage for respite. This data set was only members with a valid rpg level, no members who had a
usage for respite. This data set uses only members with a valid RUG level, no members who had a gap in care of greater than 21 days, and only members who had more than 9 months (9*30 days) between their first and last claim in the system. "As before, the CMIs and the average hours are computed on a weighted basis, where the length of time a person had service was used as the weighting factor. By definition, the weight for an individual has to be somewhere between 9 and 18 months. (Less than 9 months is excluded for being too short, and only 18 months of data was included in the first place.)"
<table>
<thead>
<tr>
<th>RUG-specific base allocation per Month to be displayed</th>
</tr>
</thead>
<tbody>
<tr>
<td>157</td>
</tr>
<tr>
<td>97</td>
</tr>
<tr>
<td>55</td>
</tr>
<tr>
<td>352</td>
</tr>
<tr>
<td>201</td>
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<td>161</td>
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<td>143</td>
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<td>81</td>
</tr>
<tr>
<td>53</td>
</tr>
<tr>
<td>28</td>
</tr>
</tbody>
</table>
IN THE CIRCUIT COURT OF PULASKI COUNTY  
CIVIL DIVISION  

BRADLEY LEDGERWOOD,  
LOUELLA JONES, PEGGY SANDERS,  
MARCUS STROPE, WINNIE WINSTON,  
DANA WOLF, and MICHAEL YARRA

v.  

Case No. 60CV-17-442  

ARKANSAS DEPARTMENT OF HUMAN SERVICES

PLAINTIFF'S FIRST SET OF INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

The Plaintiffs, through their attorneys, propound the following Interrogatories and Requests for Production under Ark. R. Civ. P. 33 and 34. The Defendant must answer the following interrogatories and requests within thirty days from the date of service hereof. These interrogatories and requests are continuing and the answers thereto must be supplemented to the maximum extent authorized by law and Ark. R. Civ. P. 26(e). The requests must be answered by producing and making available for inspection, sampling, testing, and copying all of the following documents and things within the defendant’s possession, custody, or control, including electronically stored information, at the offices of Legal Aid of Arkansas, 310 Mid-Continent Plaza, Suite 420, West Memphis, Arkansas, 72301, within thirty days from the date of service.

All underlined terms anywhere in this document are defined terms. Please consult the definitions below for the meaning of those terms. Contact counsel for the Plaintiffs if there is any question about the meaning of an interrogatory or request.

In answering these interrogatories and requests, you are required by law to furnish all information that is available to you or subject to your reasonable inquiry (including information in the possession of your attorneys, accountants, advisors, or other persons directly or indirectly
employed by or connected with you or your attorneys and anyone otherwise subject to your control).

In answering these interrogatories and requests, you must make a diligent search of all your records, files, documents, and materials in your possession or available to you or your representatives. If a request cannot be answered in full, answer to the fullest extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion.

In answering these interrogatories, please identify each person providing any information for inclusion in your responses to these interrogatories, specifying each interrogatory for which each person supplied information and the information supplied. Where a response to an interrogatory requires information from multiple people, please specify each individual and the information she is providing. All personal identifying information should redacted to allow disclosure under applicable federal or state privacy laws.

**Identify the custodian(s) of each responsive document, the date of the making of the document, and the identity of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence. Please include all metadata and all versions of any document you produce.**

**DEFINITIONS:** Unless otherwise indicated, the following definitions apply to all of these requests:

(a) **Document** means any material whatsoever that contains information recorded through the use of letters, numbers, or their equivalent, whether recorded by photographic or any other means or recording, including electronically stored information (which shall be produced on compact disk(s) or USB flash drive in the manner most universally retrievable and
labeled with the name of the computer programs and software used to initially create the
electronic information and to copy the electronic information to disk or drive), and also including
without limitation all letters or other correspondence, memoranda, notes, reports, minutes,
bulletins, notices, drafts, raw notes, or other writings, accounts, books and ledgers, invoices,
receipts, photographs, photonegatives, audio recordings, video recordings, data recordings,
e-mails, voicemails, text messages (SMS, MMS, or other protocols), instant message and online
chat transcripts, electronic notes and information posted through software systems, computer
printouts, records, and any other form of data compilation. Document also means any duplicates,
copies or facsimiles of originals, summaries of documents, and substitutes for documents. Please
note that all documents you produce must include all metadata and all versions of the document.

(b) Knowledge includes first-hand knowledge as well as information derived from
any source whatsoever, including, but not limited to, hearsay sources.

(c) Person shall mean and include a natural person or legal entity, whether
governmental or nongovernmental, and its partners, directors, officers, agents, or employees. In
each instance, wherein you are asked to identify a person or state the identity of a person, state
with respect to each such person her or his full name, occupation at the relevant time, job title at
the relevant time, employer at the relevant time, business address at the relevant time (or, if none,
last known residence address), current business address (or, if not known, last known residence
address), and current business telephone number (or, if not known, last known telephone
number).

(d) You means, and your refers to the Arkansas Department of Human Services,
including counsel, consultants, experts, investigators, agents, employees, officers, authorized
representatives, or any other persons acting on her behalf or on behalf of the Arkansas Department of Human Services.

(e) The RUGs system means the Resource Utilization Group process for determining the number of attendant care hours to assign to beneficiaries, including, but not limited to, tools, algorithms, tiers, and hour allocations associated with each tier.

(f) Attendant care means attendant care services offered under the ARChoices program, homemaker, chore, and adult companion services offered under the Elder Choices program, personal care services offered to Elder Choices and/or AAPD beneficiaries through Independent Choices, and attendant care services offered under the AAPD program.

(g) Beneficiary means an individual receiving services through the ARChoices, AAPD, or Elder Choices programs and excludes service providers. Where the term beneficiary is accompanied by reference to a specific program (either ARChoices, AAPD, or Elder Choices), the interrogatory or request seeks information pertaining only to the beneficiaries of the referenced program and not to beneficiaries of the programs not referenced.

**REMEMBER:** Please identify the custodian of each responsive document, the date of the making of the document, and the identity of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence. Please include all metadata and all versions of each document you produce.

**INTERROGATORY NO. 1:** With reference to the RUGs system, please describe in detail the specific information, responses, and/or scores from the ArPath assessment that is required for assignment to each Resource Utilization Group (and/or tiers thereof), with your response listed for each such RUG (and/or tier thereof).
REQUEST FOR PRODUCTION 1: Please produce all statutory authority, regulatory authority, agency policy, and documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 1.

INTERROGATORY NO. 2: Please identify all your employees, agents, and contractors who possess knowledge responsive to Interrogatory No. 1.

INTERROGATORY NO. 3: Please identify all versions of all algorithms ever used in the RUGs system as implemented in Arkansas and state the dates that every such algorithm was in use.

REQUEST FOR PRODUCTION 2: Please produce all versions of all algorithms ever used in the RUGs system as implemented in Arkansas.

INTERROGATORY NO. 4: Please identify all your employees, agents, and contractors who possess knowledge responsive to Interrogatory No. 3.

INTERROGATORY NO. 5: Please identify all your employees, agents, and contractors involved in the drafting, preparation, or review of the proposed rule issued on August 3, 2015 pertaining to the ARChoices program.¹

INTERROGATORY NO. 6: Please identify all your employees, agents, and contractors involved in the drafting, preparation, or review of the notice of rule-making accompanying the proposed rule issued on August 3, 2015 pertaining to the ARChoices program.

INTERROGATORY NO. 7: Please state each and every fact that you will rely on to establish that the RUGs system is not a “rule” as defined in Ark. Code Ann. § 25-15-202(9).

¹ This document is Proposed Rule 016.06.15-006 under the Secretary of State’s classification system, available at www.sos.arkansas.gov/rules_and_regs/index.php. The Secretary of State states that the proposed rule was issued on August 3, 2015. The intent of including the date is merely to identify the promulgation at issue, not to establish the actual date of issue.
REQUEST FOR PRODUCTION 3: Please produce all statutory authority, regulatory authority, agency policy, and documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 7.

INTERROGATORY NO. 8: Please state each and every fact that you claim establishes that the RUGs system was promulgated “in compliance or substantial compliance with the requirements of the Arkansas Administrative Procedures Act” as claimed in Item M of the defenses listed in your Answer to Complaint.

REQUEST FOR PRODUCTION 4: Please produce all documents in your possession, custody, or control that you claim contain “[a] statement of the terms or substance of the intended action or a description of the subjects and issues involved” relating to the RUGs system as part of the promulgation of the proposed rule issued on August 3, 2015 pertaining to the ARChoices program.

REQUEST FOR PRODUCTION 5: Please produce all documents in your possession, custody, or control that you claim afforded “all interested persons reasonable opportunity to submit written data, views, or arguments, orally or in writing” relating to the RUGs system as part of the promulgation of the proposed rule issued on August 3, 2015 pertaining to the ARChoices program.

REQUEST FOR PRODUCTION 6: Please produce all documents in your possession, custody, or control that you claim show that you considered the following factors relating to the RUGs system prior to adopting it:

(a) whether the agency is required by statute to adopt the proposed rule, whether by a specific date, and whether the agency has discretion to promulgate rules;

(b) other statutes relevant to the proposed rule and its alternatives;
(c) the specific nature and significance of the problem the agency addresses with the proposed rule, including without limitation, the nature and degree of the risks the problem poses, the priority of addressing those risks as opposed to other matters or activities within the agency's jurisdiction, whether the problem warrants new agency action, and the countervailing risks that may be posed by alternative rules for the agency;

(d) whether existing rules have created or contributed to the problem the agency is addressing with the proposed rule, and whether those rules could be amended or repealed to address the problem in whole or in part;

(e) reasonable alternatives to the proposed rule, including without limitation, adopting no rule, amending or repealing existing rules, and other potential responses that could be taken instead of agency action;

(f) the financial impact of the proposed rule; and

(g) any other factor relevant to the need for and alternatives to the proposed rule.

REQUEST FOR PRODUCTION 7: Please produce all documents in your possession, custody, or control that you claim show that the RUGs system was reviewed by the Administrative Rules and Regulations Subcommittee of the Legislative Council.

REQUEST FOR PRODUCTION 8: Please produce all documents in your possession, custody, or control that you claim show that the Administrative Rules and Regulations Subcommittee of the Legislative Council allowed members of the public a "reasonable opportunity to comment on" the RUGs system.

REQUEST FOR PRODUCTION 9: Please produce all documents in your possession, custody, or control not otherwise responsive to Requests for Production 4, 5, 6, 7, or 8 that you claim show the RUGs system was promulgated "in compliance or substantial compliance with
the requirements of the Arkansas Administrative Procedures Act" as claimed in Item M of the defenses listed in your Answer to Complaint.

INTERROGATORY NO. 9: Please state each and every fact that you claim establishes that each of the plaintiffs in this action has "actual knowledge" of the RUGs system as claimed in Item N of the defenses listed in your Answer to Complaint.

INTERROGATORY NO. 10: Identify the names, telephone numbers, and addresses of all individuals who have knowledge responsive to Interrogatory No. 9.

REQUEST FOR PRODUCTION 10: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 9.

INTERROGATORY NO. 11 With respect to every discussion you had with any legislator or legislative body regarding the RUGs system, please identify the date of the discussion, the legislators or legislative body involved, the name of your employees, agents, or contractors involved in the discussion, and the substance of the discussion.

REQUEST FOR PRODUCTION 11: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 11.

INTERROGATORY NO. 12: On page 8 of your Response to the Motion for TRO, you contend that "more than half of the program participants had their hours increase or remain the same" after implementation of the RUGs system.

(a) Please state the total number of reassessments of beneficiaries performed during the period of January 1, 2016 through December 31, 2016 that resulted in increases in hours, decreases in hours, no changes in hours, and termination from the ARChoices, AAPD, or Elder Choices programs.
Example: DHS performed X reassessments during the period of January 1, 2016 through December 31, 2016. Of these, Y resulted in an increase in hours, Z resulted in a decrease in hours, A resulted in no changes in hours, and B resulted in termination from the ARChoices, AAPD, or Elder Choices programs.

(b) Please state the percentage of reassessments of beneficiaries performed during the period of January 1, 2016 through December 31, 2016 that resulted in increases in hours, decreases in hours, no changes in hours, and termination from the ARChoices, AAPD, or Elder Choices programs.

Example: XX% of the reassessments performed during the period of January 1, 2016 through December 31, 2016 resulted in a decrease in attendant care hours, XX% resulted in termination from the program, XX% resulted in an increase in attendant care hours, XX% resulted in no change in attendant care hours.

(c) Please state separately the average and median increase in hours for all reassessments performed during the period of January 1, 2016 through December 31, 2016 that resulted in increases in hours.

Example: For all reassessments performed during 2016 that resulted in an increase in hours, the average increase was X hours, and the median increase was Y hours.

(d) For all reassessments performed during the period of January 1, 2016 through December 31, 2016 that resulted in increases in hours, please state the average percentage increase the additional hours constitute in relation to the allocation of hours that existed just prior to the increase, and the median percentage increase the additional hours constitute in relation to the allocation of hours that existed just prior to the increase.
As an example of the percentage calculations, an individual allocated 40 hours prior to reassessment who then was allocated 44 hours after reassessment experienced a 10% increase in hours in relation to the allocation of hours that existed just prior to the increase.

(e) Please state separately the average and median decrease in hours for all reassessments performed during the period of January 1, 2016 through December 31, 2016 that resulted in decreases in hours.

Example: For all reassessments performed during 2016 that resulted in a decrease in hours, the average decrease was X hours, and the median decrease was Y hours.

(f) For all reassessments performed during the period of January 1, 2016 through December 31, 2016 that resulted in decreases in hours (exclude reassessments resulting in termination from the program), please state the average percentage decrease the subtracted hours constitute in relation to the allocation of hours that existed just prior to the decrease, and the median percentage decrease the subtracted hours constitute in relation to the allocation of hours that existed just prior to the decrease.

As an example of the percentage calculations, an individual allocated 40 hours prior to reassessment who then was allocated 36 hours after reassessment experienced a 10% decrease in hours in relation to the allocation of hours that existed just prior to the decrease.

REQUEST FOR PRODUCTION 12: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 12.

REQUEST FOR PRODUCTION 13: Please produce all documents upon which you base the contention on page 8 of your Response to the Motion for TRO that “more than half of the program participants had their hours increase or remain the same.”
INTERROGATORY NO. 13: Please identify the name, title, telephone number, and address of each of your employees, agents, or contractors who have knowledge of the contention on page 8 of your Response to the Motion for TRO that “more than half of the program participants had their hours increase or remain the same.”

INTERROGATORY NO. 14: Please identify the name, title, telephone number, and address of each of your employees, agents, or contractors who have knowledge responsive to Interrogatory No. 12.

INTERROGATORY NO. 15: Please state the number of beneficiaries presently assigned to each of the following RUG tiers:

(a) SE3
(b) SE2
(c) SSB
(d) RB
(e) SE1
(f) CC
(g) PD
(h) BB
(i) IB
(j) SSA
(k) PC
(l) RA2
(m) CB
(n) IA2
(o) PB
(p) CA2
(q) BA2
(r) RA1
(s) PA2
(t) IA1
(u) CA1
(v) BA1
(w) PA1

REQUEST FOR PRODUCTION 14: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 15.

INTERROGATORY NO. 16: Please state the legal authority upon which you base your authority to promulgate rules or regulations for the ARChoices program.

INTERROGATORY NO. 17: Please state the name and address of all witnesses whom you may call at trial and provide a general summary of the facts to which they will testify.

INTERROGATORY NO. 18: For all reassessments performed during the period of January 1, 2016 through December 31, 2016 that resulted in decreases in the attendant care hours allocated (exclude reassessments resulting in termination from the program), please state the number of administrative appeals initiated by beneficiaries and the outcome of each appeal. In your response, please define each possible outcome and ensure that each appeal has only one outcome. If you provide the total number of administrative appeals initiated, it is permissible to list all possible appeal outcomes and specify the number of appeals resulting in each possible outcome.
REQUEST FOR PRODUCTION 15: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 18. Please note, however, that the Plaintiff does not now seek the orders resulting from each appeal.

REQUEST FOR PRODUCTION 16: Please produce all documents in your possession, custody, or control pertaining to the RUGs system that you received from or sent to the Office of Appeals and Hearings, including any of its employees, any time on or after January 1, 2015. However, this request does not include any document that pertains specifically and exclusively to a single beneficiary.

INTERROGATORY NO. 19: Please state the name and contact information of all expert witnesses you may call, state the opinions that each is expected to give, and summarize the grounds for each opinion.

REQUEST FOR PRODUCTION 17: Please produce the documents in your possession, custody, or control that have been prepared by each expert.

REQUEST FOR PRODUCTION 18: Please produce the documents in your possession, custody, or control that support each expert’s opinion.

REQUEST FOR PRODUCTION 19: For any promulgation related to the RUGs system, please produce all notices of rule-making, notices of public comment, public comments received, your responses to public comments, and all documents in your possession, custody, or control supporting your responses to public comments.

REQUEST FOR PRODUCTION 20: Please produce all documents that you may offer as evidence in any trial or hearing in this matter.

REQUEST FOR PRODUCTION 21: Please produce all documents in your possession, custody, or control mentioning any problems, issues, concerns, or difficulties with the system.
used to allocate attendant care, personal care, homemaker, chore, or adult companion services under either the Alternatives for Adults with Physical Disabilities or Elder Choices programs.

REQUEST FOR PRODUCTION 22: Please produce all documents in your possession, custody, or control containing information about the impact of the RUGs system on beneficiaries.

REQUEST FOR PRODUCTION 23: Please produce all documents in your possession, custody, or control created, distributed, sent, received, used, or obtained on or after October 1, 2016, pertaining to program integrity, utilization, monitoring, quality assurance, or quality improvement for the ARChoices program. This request does not include any document that pertains specifically and exclusively to a single individual.

REQUEST FOR PRODUCTION 24: Please produce all documents in your possession, custody, or control pertaining to the RUGs system that were created, distributed, sent, received, used, or obtained after October 1, 2016.

DATED: February 24, 2017

Respectfully Submitted,

/s/ Kevin De Liban
Kevin De Liban (2012044)
kdeliban@arlegalaid.org
LEGAL AID OF ARKANSAS, INC.
310 Mid-Continent Plaza, Suite 420
West Memphis, AR 72301
P: (800) 967-9224 x. 2206
F: (870) 732-6373

CERTIFICATE OF SERVICE

In accordance with Ark. R. Civ. P. 5, I hereby certify that, on February 24, 2017, I sent this First Set of Interrogatories and Document Production Requests via e-mail to Rich Rosen and David Sterling at rich.rosen@dhs.arkansas.gov and david.sterling@dhs.arkansas.gov, and via first-class mail to:

Plaintiff's First Set of Interrogatories and Document Production Requests- Page 14
Attn: Richard Rosen or David Sterling
Department of Human Services
PO Box 1437, Slot S260
Little Rock, AR 72203

/s/ Kevin De Liban
Kevin De Liban (2012044)
IN THE CIRCUIT COURT OF PULASKI COUNTY
CIVIL DIVISION

BRADLEY LEDGERWOOD,
LOUELLA JONES, PEGGY SANDERS,
MARCUS STROPE, WINNIE WINSTON,
DANA WOLF, and MICHAEL YARRA

v.

Case No. 60CV-17-442

ARKANSAS DEPARTMENT OF HUMAN SERVICES

PLAINTIFFS

DEendant

PLAINTIFF’S SECOND SET OF INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

The Plaintiffs, through their attorneys, propound the following Interrogatories and Requests for Production under Ark. R. Civ. P. 33 and 34. The Defendant must answer the following interrogatories and requests within thirty days from the date of service hereof. These interrogatories and requests are continuing and the answers thereto must be supplemented to the maximum extent authorized by law and Ark. R. Civ. P. 26(e). The requests must be answered by producing and making available for inspection, sampling, testing, and copying all of the following documents and things within the defendant’s possession, custody, or control, including electronically stored information, at the offices of Legal Aid of Arkansas, 310 Mid-Continent Plaza, Suite 420, West Memphis, Arkansas, 72301, within thirty days from the date of service.

All underlined terms anywhere in this document are defined terms. Please consult the definitions below for the meaning of those terms. Contact counsel for the Plaintiffs if there is any question about the meaning of an interrogatory or request.

In answering these interrogatories and requests, you are required by law to furnish all information that is available to you or subject to your reasonable inquiry (including information in the possession of your attorneys, accountants, advisors, or other persons directly or indirectly
employed by or connected with you or your attorneys and anyone otherwise subject to your control).

In answering these interrogatories and requests, you must make a diligent search of all your records, files, documents, and materials in your possession or available to you or your representatives. If a request cannot be answered in full, answer to the fullest extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion.

In answering these interrogatories, please identify each person providing any information for inclusion in your responses to these interrogatories, specifying each interrogatory for which each person supplied information and the information supplied. Where a response to an interrogatory requires information from multiple people, please specify each individual and the information she is providing. All personal identifying information should redacted to allow disclosure under applicable federal or state privacy laws.

Identify the custodian(s) of each responsive document, the date of the making of the document, and the identity of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence. Please include all metadata and all versions of any document you produce.

DEFINITIONS: Unless otherwise indicated, the following definitions apply to all of these requests:

(a) **Document** means any material whatsoever that contains information recorded through the use of letters, numbers, or their equivalent, whether recorded by photographic or any other means or recording, including electronically stored information (which shall be produced on compact disk(s) or USB flash drive in the manner most universally retrievable and
labeled with the name of the computer programs and software used to initially create the electronic information and to copy the electronic information to disk or drive), and also including without limitation all letters or other correspondence, memoranda, notes, reports, minutes, bulletins, notices, drafts, raw notes, or other writings, accounts, books and ledgers, invoices, receipts, photographs, photonegatives, audio recordings, video recordings, data recordings, emails, voicemails, text messages (SMS, MMS, or other protocols), instant message and online chat transcripts, electronic notes and information posted through software systems, computer printouts, records, and any other form of data compilation. Document also means any duplicates, copies or facsimiles of originals, summaries of documents, and substitutes for documents. Please note that all documents you produce must include all metadata and all versions of the document.

(b) Knowledge includes first-hand knowledge as well as information derived from any source whatsoever, including, but not limited to, hearsay sources.

(c) Person shall mean and include a natural person or legal entity, whether governmental or nongovernmental, and its partners, directors, officers, agents, or employees. In each instance, wherein you are asked to identify a person or state the identity of a person, state with respect to each such person her or his full name, occupation at the relevant time, job title at the relevant time, employer at the relevant time, business address at the relevant time (or, if none, last known residence address), current business address (or, if not known, last known residence address), and current business telephone number (or, if not known, last known telephone number).

(d) You means, and your refers to the Arkansas Department of Human Services, including counsel, consultants, experts, investigators, agents, employees, officers, authorized
representatives, or any other persons acting on her behalf or on behalf of the Arkansas Department of Human Services.

(e) **The RUGs system** means the Resource Utilization Group process for determining the number of attendant care hours to assign to beneficiaries, including, but not limited to, tools, algorithms, tiers, and hour allocations associated with each tier.

(f) **Attendant care** means attendant care services offered under the ARChoices program, homemaker, chore, and adult companion services offered under the Elder Choices program, personal care services offered to Elder Choices and/or AAPD beneficiaries through Independent Choices, and attendant care services offered under the AAPD program.

(g) **Beneficiary** means an individual receiving services through the ARChoices, AAPD, or Elder Choices programs and excludes service providers. Where the term beneficiary is accompanied by reference to a specific program (either ARChoices, AAPD, or Elder Choices), the interrogatory or request seeks information pertaining only to the beneficiaries of the referenced program and not to beneficiaries of the programs not referenced.

**REMINDER:** Please identify the custodian of each responsive document, the date of the making of the document, and the identity of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence. Please include all metadata and all versions of each document you produce.

NOTE: Numbering for these interrogatories and requests for production continue from the interrogatories and requests for production previously issues.
INTERROGATORY NO. 20: For each Plaintiff, please state the following:

(a) The RUG tier to which the RUGs system assigned the Plaintiff pursuant to the ArPath assessment conducted in 2016;

(b) The number of attendant care hours authorized for the Plaintiff as of December 31, 2015; and

(c) The number of attendant care hours currently authorized for the Plaintiff.

REQUEST FOR PRODUCTION 25: Please produce all documents in your possession, custody, or control that evidences or supports the response to Interrogatory No. 20.

REQUEST FOR PRODUCTION 26: For each Plaintiff, please produce every Plan of Care (sometimes called a “Person Centered Service Plan”) and ArPath Comprehensive Assessment Report created on or after January 1, 2015, including the RUGs History, Individual CAPs, Individual Scales, Medications, and Diseases forms.

DATED: March 3, 2017

Respectfully Submitted,

/s/ Kevin De Liban
Kevin De Liban (2012044)
kdeliban@arlegalaid.org
LEGAL AID OF ARKANSAS, INC.
310 Mid-Continent Plaza, Suite 420
West Memphis, AR 72301
P: (800) 967-9224 x. 2206
F: (870) 732-6373

CERTIFICATE OF SERVICE
In accordance with Ark. R. Civ. P. 5, I hereby certify that, on March 3, 2017, I sent this First Set of Interrogatories and Document Production Requests via e-mail to Rich Rosen and David Sterling at rich.rosen@dhs.arkansas.gov and david.sterling@dhs.arkansas.gov and via first-class mail to:

Attn: Richard Rosen or David Sterling
Department of Human Services
PO Box 1437, Slot S260
Little Rock, AR 72203

/s/ Kevin De Liban
Kevin De Liban (2012044)
IN THE CIRCUIT COURT OF PULASKI COUNTY
CIVIL DIVISION

BRADLEY LEDGERWOOD,
LOUELLA JONES, PEGGY SANDERS,
MARCUS STROPE, WINNIE WINSTON,
DANA WOLF, and MICHAEL YARRA

v. 

Case No. 60CV-17-442

ARKANSAS DEPARTMENT OF HUMAN SERVICES

NOTICE OF DEPOSITION

Time: November 29, 2017 at 9 a.m.

Place: Arkansas Department of Human Services
700 S. Main St.
Little Rock, AR 72203

Method of Recording: Video, Audio, and Stenographic

Deponent’s Name and Address: Arkansas Department of Human Services
Donaghey Plaza
P.O. Box 1437
Little Rock, AR 72301

The Plaintiffs issue this notice of deposition to the Arkansas Department of Human Services pursuant to Ark. R. Civ. P. 30(b)(6) and instruct the agency to designate individuals to be examined about the following matters:

(1) The operation of the Resource Utilization Group system for determining the amount of attendant care to allocate to ARChoices beneficiaries, including the system’s process for sorting beneficiaries into RUG tiers, the criteria for placement into each RUG tier, the items from the assessment tool (known as the “ArPath” or, alternatively as the InterRAI Home Care Assessment Tool) that are relevant and irrelevant to the sorting process, the relationship between the ArPath assessment tool and RUG tiers, all versions of algorithms ever used by DHS, and safeguards to ensure that beneficiaries are sorted into the proper RUG tier.

(2) Identification of the changes in each plaintiff’s last assessment that would be required to place each plaintiff in a RUG allocated more hours than each was receiving as of December 31, 2015.

Pursuant to Ark. R. Civ. P. 30(b)(5), this Notice of Deposition incorporates a request under Ark. R. Civ. P. 34 that the individuals designated by the agency to be deposed produce at the time and place of the deposition any documents relied upon in preparation for this deposition, including,
but not limited to, writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained.

DATED: November 15, 2017

/s/ Kevin De Liban
Kevin De Liban (2012044)
kdeliban@arlegalaid.org
LEGAL AID OF ARKANSAS, INC.
310 Mid-Continent Plaza, Suite 420
West Memphis, AR 72301
P: (800) 967-9224 x. 2206
F: (870) 732-6373

CERTIFICATE OF SERVICE

I, Kevin De Liban, certify that on November 15, 2017, I sent a copy of this Notice of Deposition via e-mail to Rich Rosen at Rich.Rosen@dhs.arkansas.gov and David Sterling at David.Sterling@dhs.arkansas.gov.

/s/ Kevin De Liban
Kevin De Liban