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April 2025

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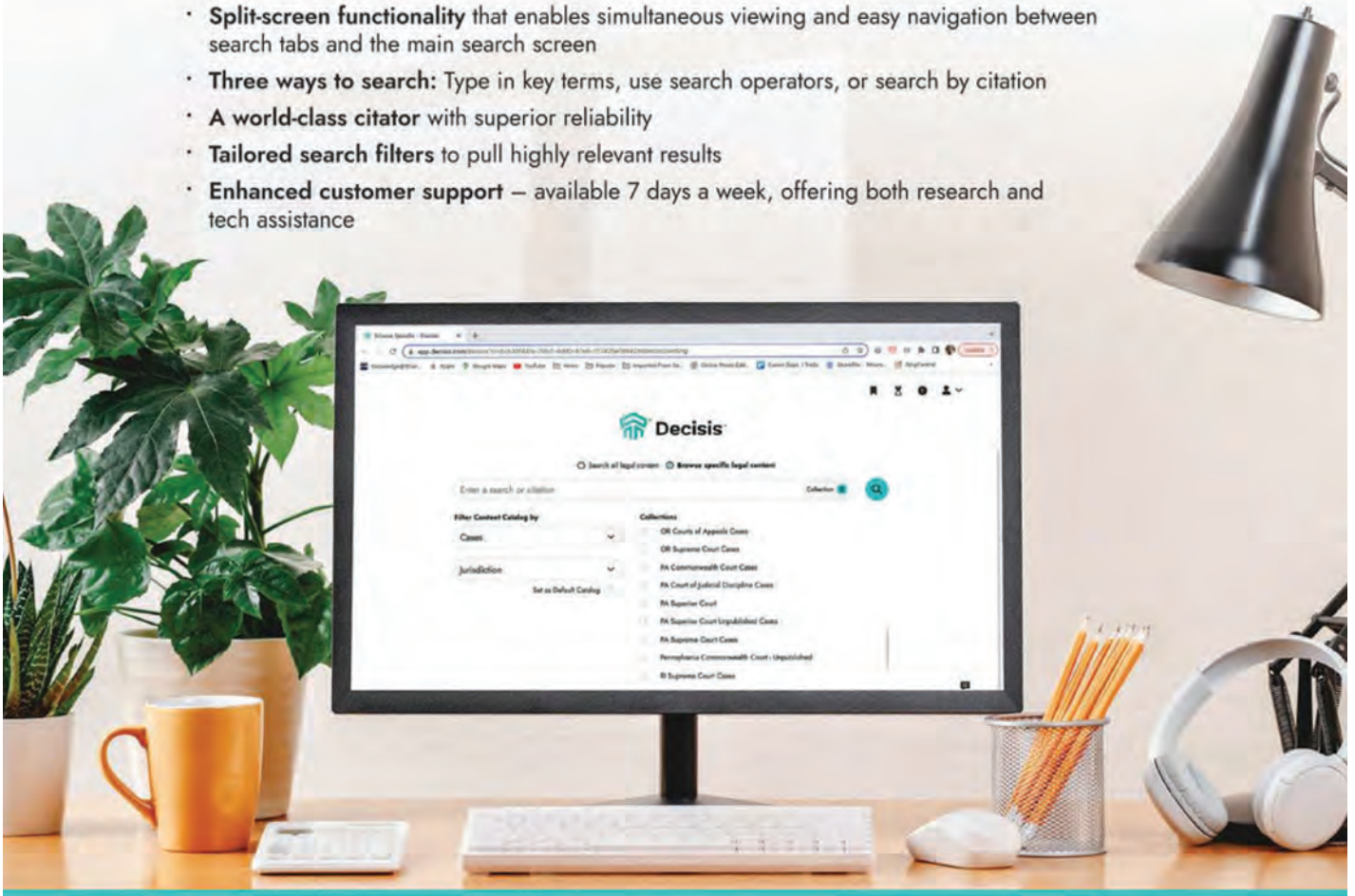

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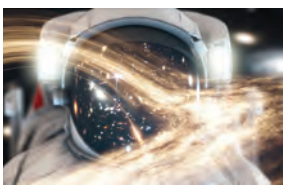

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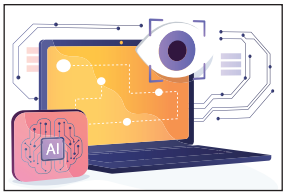

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DEPARTMENTS

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WILLIAM H. MERGNER JR.

Serving as NJSBA President was the Privilege of a Lifetime

At my installation ceremony in Atlantic City, I said that serving as president of the New Jersey State Bar Association is the greatest privilege of my professional life.

I remarked that the NJSBA is the most indispensable advocate for attorneys, judges, paralegals, clerks and law students in New Jersey.

And, I observed that our profession is never stronger than when the NJSBA speaks with a unified voice.

As I reflect on the last year, my tenure as president of this Association has surpassed even my highest expectations. I am deeply grateful to have stood beside our extraordinary member volunteers, who through their passion and perseverance have accomplished so much for the benefit of their fellow colleagues, the justice system and the practice of law. Witnessing their efforts firsthand is an experience I'll never forget. To them, I say thank you. We have much to be proud of.

We started the year strong by addressing an issue that will dominate our industry, and virtually every other, for years to come—artificial intelligence. In May, the NJSBA released a first-of-its-kind report with guidance for attorneys and legal professionals on using AI safely and ethically. The report, comprehensive and actionable, was the work of our 27-member Task Force on Artificial Intelligence and the Law, which conducted extensive research and interviews with stakeholders across the AI and legal industries. The result is a valuable framework to guide attorneys when implementing AI in their legal practice.

AI will be with us for the foreseeable future. As a testament to the NJSBA's commitment in this space, the Association created the AI Special Committee to monitor the latest AI trends, educational opportunities and ethical questions that arise. To meet the demand of attorneys seeking AI programming, we have invested heavily in presenting AI-themed seminars through NJICLE and PracticeHQ, the NJSBA's free membership resource for practice building. Look no further than the programing schedule for the upcoming Annual Meeting and Convention on May 14–16. It offers more than 10 AI seminars, including a program on generative AI with this year's keynote speaker—Suffolk Law School Dean Andrew Perlman.

It was a long time coming, but the state Supreme Court finally ended New Jersey's uncompromising approach to disbarment in 2024 and provided some disbarred attorneys a path back to practicing law. For many years, the NJSBA advocated for the Court to reconsider disbarment in *In re Wade* and was a critical contributor to the exhaustive work done by the Wade Commission, created to study the state's disbarment process. New Jersey was one of only nine states where disbarment was permanent with no path for readmission. Now, we have steps to readmission that are rigorous but fair. The process represents a chance at redemption for attorneys who otherwise had no hope.

The NJSBA will always take swift action on issues of consequence to attorneys, their clients and the public. The Association's advocacy on ACPE Opinion 745 is a great example. When the opinion was released and barred New Jersey attorneys from paying referral fees to their out-of-state counterparts, the NJSBA immediately sought relief in the courts to protect the interests of its membership. Reversing Opinion 745 was a key issue for the NJSBA in the last year. The opinion upended decades of interpretation on the rule and cast a wave of uncertainty over preexisting referral arrangements and how New Jersey attorneys should handle referrals. Attorneys with preexisting referral agreements faced a potential ethics violation or lawsuit for breaking these pacts. Most importantly, it prevented clients from receiving competent legal counsel across state lines.

Thankfully, the Supreme Court acted with similar urgency. Within a year, the Court stayed Opinion 745, granted review,

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A NOTE ABOUT THIS ISSUE

Human Oversight Needed as Artificial Intelligence Emerges as a Tool in the Legal World

By Steven J. Eisenstein and Philip Lamparello

When co-special editors Steven Eisenstein and Philip Lamparello became chair and member, respectively, of the New Jersey State Bar Association Artificial Intelligence Committee, they made it a priority to help educate members of the Bar in the use of technology to advance their practices. As a technology nerd and former game designer in Silicon Valley, Eisenstein lived with computers and software most of his life but recognizes that most lawyers have a more non-technical background. This issue is just part of an integrated plan to let lawyers unfamiliar with this emerging technology know that it has many forms and will be a factor in some of their future work. They hope that the wide range of views in this issue will serve to pique the interest of some to explore further and will help others understand that technology is not their enemy—it is a tool that they can and should use to do what all lawyers should strive to do: help clients and work toward a more just society with access to the rights and privileges we should all enjoy.

As Eisenstein and Lamparello state: As both an exercise and an object lesson, we tried to generate a column summarizing this edition of *New Jersey Lawyer* using a new artificial intelligence language model with simulated reasoning capability, Claude 3.7 Sonnet. We collaborated with Dr. Robert Spangler, NJSBA Chief Information Security Officer and member of the New Jersey Supreme Court Committee on Artificial Intelligence and the Courts, to insert a detailed prompt to guide Claude 3.7 Sonnet in this task. Unfortunately, or revealingly, the product generated was an unusable draft that violated copyright laws. We have substituted the introductory paragraph to avoid that and have added one of the articles missed by the program, but the rest is untouched, revealing prose that is passive, non-sequential, and needs

STEVEN J. EISENSTEIN *is a member of Lum, Drasco & Positan LLC in Roseland and is chair of the firm's business department. He is a member of the New Jersey State Bar Association Board of Trustees and is chair of the AI Committee, the By-Laws Committee, and on the editorial board of* New Jersey Lawyer. *He is the immediate past chair of the Business Law Section and president of the New Jersey Inn of Transactional Counsel.*

PHILIP LAMPARELLO *is a partner with the law firm Chasan Lamparello Mallon & Cappuzzo, PC. He leads the firm's commercial litigation practice group. He has been on the editorial board of* New Jersey Lawyer *for over 10 years and serves as a trustee of the New Jersey State Bar Association. He is a member of the NJSBA's AI Committee and previously served on the NJSBA's AI Task Force as the Co-Chair of the Products and Services subcommittee.*

editing and human review. AI was unsuccessful in this task. Can you tell where the human ends and the machine begins?

Note: The following passage was generated using artificial intelligence:

Artificial Intelligence continues to have an increasing impact on legal practice. This issue attempts to explore a wide swath of issues which arise in the law office, the courts and in legal society due to the evolution of AI.

In one article, Dr. Robert Spangler explores the fundamental nature of artificial intelligence and its impact on the legal profession. Dr. Spangler reminds us that while AI can significantly boost efficiency, it lacks the intrinsic human qualities—curiosity, creativity, and passion—that have driven society's greatest breakthroughs. He cautions that as AI becomes as ubiquitous as cell phones, the challenge lies in striking the right balance: harnessing its benefits while ensuring it augments, rather than replaces, human judgment.

The ethical implications of AI in legal practice are further examined by Alan N. Walter, who draws unexpected parallels with science fiction cinema. Walter analyzes how films like Frankenstein, Blade Runner, *and* 2001: A Space Odyssey *offer profound insights into responsible AI integration. From creator responsibility to the dangers of inadequate human oversight, Walter demonstrates how these narratives inform current approaches to AI governance in law firms, including A&O Shearman's pioneering AI steering committee.*

The regulatory landscape of AI is addressed in Steven Eisenstein's examination of how states are navigating the complexities of AI regulation in response to federal initiatives. Eisenstein highlights how states can protect their citizens' interests through state-specific regulations, public-private partnerships, and ethical frameworks. He discusses how states like California, Illinois, Maryland, and Tennessee have already enacted legislation addressing AI-related issues, while cautioning about potential federal preemption challenges.

In a practical application of AI, Eisenstein also explores its transformative impact on website ADA compliance. He explains how AI is revolutionizing accessibility testing and remediation through automated tools that can generate alt text, adapt content dynamically, and provide captioning services. While acknowledging the technical limitations of AI-driven accessibility solutions, Eisenstein offers implementation strategies and envisions how emerging technologies will further enhance digital inclusion.

The courtroom applications of AI are explored by David Shafiei, who examines AI's role in transforming expert testimony in complex scientific litigation. Shafiei explains how AI can enhance expert witness preparation through deeper insight into scientific data and help evaluate expert credibility under the Daubert *standard. While acknowledging AI's potential to aid judges and attorneys, Shafiei emphasizes the need for transparency, accountability, and human validation of AI outputs.*

Expanding access to justice through AI is the focus of Jessica Lewis Kelly and Tim

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President's Perspective

Continued from page 5

heard arguments from the NJSBA and issued a well-reasoned decision vacating the opinion and returning to the status quo. This result was the work of many incredible volunteers and several entities that joined in challenging Opinion 745. Their efforts represent the best of what the Association can achieve through a shared purpose.

Despite all the success, the year was not without controversy. In recent months, judges, law firms, legal service providers and attorneys have endured unprecedented attacks that threaten the rule of law and public confidence in the role of the judicial system as an independent and co-equal branch of government. These attacks, spurred by federal executive orders, have also targeted those protected under the New Jersey Law Against Discrimination. The NJSBA remains steadfast in its mission of fostering a diverse and inclusive legal community, advancing the rule of law, protecting individual rights under the Constitution, preserving the independence of our judiciary, and providing equal protection and access to justice for all. I have every confidence that my successor—NJSBA President-Elect Christine A. Amalfe—and the future presidents to follow will succeed in navigating the Association through these uncertain times. I am proud to pass the torch.

The next year will bring change. We bid farewell to Judge Glenn A. Grant, who retired in March after 16 years as the acting director of the Administrative Office of the Courts. The NJSBA enjoyed a cordial and productive relationship with Judge Grant on supporting mental health and well-being in the profession, improving remote access to the courts, addressing bias in jury selection and calling attention to the vacancy crisis in the Judiciary. We thank him for his service and look forward to working with his successor—Judge Michael Blee—for the benefit of New Jersey attorneys, the Judiciary and the public.

To the members of this Association, you are in the good hands of passionate volunteers and dedicated staff who are prepared to advance our mission and confront any challenge. I look forward to what the future holds. Thank you for the privilege of a lifetime. ■

PRACTICE TIPS

WRITER'S CORNER

A Call to Action: Improving Legal Writing by Using Active Voice

By Veronica J. Finkelstein
Litigative Consultant, U.S. Attorney's Office, Eastern District of Pennsylvania

If there is one constant entry on lists of common legal writing issues, it is the overuse of passive voice. Lawyers often default to passive constructions, leading to writing that is cumbersome to read and understand. Passive voice describes events without clearly identifying the actor, which can lead to confusion. In legal contexts, where clarity and precision are crucial, passive voice can detract from the effectiveness of legal arguments.

Why is active voice effective?

The key to powerful legal writing lies in clarity and directness. Using active voice wherever possible improves the clarity of your arguments by making it easy for the reader to follow the action and understand the events described. Active voice is a grammatical construction in which the subject of a sentence performs the action expressed by the verb. In contrast, passive voice occurs when the subject of the sentence is acted upon by the verb. This subtle shift in focus can weaken your argument and make your writing harder to follow.

For example, consider these two sentences:

- **Active voice**: The lawyer wrote the brief.
- **Passive voice**: The brief was written by the lawyer.

In the active voice example, the actor is clear: the lawyer is the one doing the writing. In the passive voice example, the focus shifts to the brief, and the action becomes less immediate. The reader can immediately visualize the first sentence, where the main character—the lawyer—is introduced right at the beginning. The second sentence is more difficult to visualize, as the main character—the lawyer—doesn't appear until near the end.

When is passive voice useful?

Although active voice is generally preferred for its directness and clarity, passive voice has its place in certain circumstances. Passive voice can be useful when the focus is more on the action or result, rather than on the person or entity performing the action. For example, in legal contexts where the subject is unknown or irrelevant, passive voice might be the better choice.

For example, passive voice works well in a sentence like, "The law was enacted last year." Here, the focus is on the law and the action of enactment, not on the people who made it happen. The writer may not know the names of every legislator who enacted the law, nor is this detail necessary for the reader. In cases where the actor is unknown or unimportant, passive voice can be effective.

However, overusing passive voice can detract from the clarity and persuasive power of your writing. Legal writing should enhance the reader's understanding and guide them toward the result you are advocating. Unnecessary passive voice weakens these efforts.

How can you identify and revise unhelpful passive voice?

When legal writers use passive voice, it is often unintentional. Being able to identify and revise passive voice is a useful tool for improving your writing.

Passive voice often follows a specific structure. The sentence includes a form of the verb "to be" (am, is, are, was, were, be, been, being) plus the past participle of the main verb (e.g., "written," "ordered," "conveyed"). The subject of the sentence is the recipient of the action, not the actor.

To convert passive voice to active voice, follow these three simple steps:

- Identify the actor in the sentence by asking yourself, "Who is performing the action?"
- Rearrange the sentence so the actor is at the beginning, as the subject.
- Adjust the verb to reflect the action performed by the subject.

By focusing on active voice in your legal writing, you'll not only make your sentences clearer but also enhance the overall impact of your arguments. Active voice increases readability and ensures that your writing is compelling and easier for readers to follow. Although passive voice has its place, using active voice will strengthen the clarity and persuasiveness of your legal writing.

Take this as a call to action: The next time you edit a document, review it for passive sentences that could benefit from revision. A small investment of time revising passive voice can create clearer, stronger arguments.

TECH TIPS

With Email, You Snooze, You Win?

By Jeffrey Schoenberger
For Practice HQ

The days of feeling special because "you've got mail" are long gone. In a little over 20 years, we've progressed from email bringing Tom Hanks and Meg Ryan together (1998's "You've Got Mail") to using productivity techniques to "hack" your email down to Inbox Zero (launched by Merlin Mann in 2006), to Georgetown computer science professor Cal Newport's 2021 book, where we're asked to imagine "A World Without Email." Or what some of the older adults among us might call 1990.

All kidding aside, the stress from overflowing inboxes is real, made worse by a work-from-home environment where even quick "pop-in" questions from colleagues, in the past answered in the hall or over the coffee pot, became one more email requiring a response. These additional messages merely add to the tasks and "to-dos" already on the legal professional's plate.

Some would advise that your email inbox is a terrible "to-do" list because, among other reasons, anyone with your email address can put something on your task list. And once your inbox is so full that messages begin disappearing "below" the monitor, those tasks are quickly forgotten, irrespective of how important they are (or were).

For the specific issue of email overload, several products exist to make your inbox a better "to do" list and remind you of important emails you may have forgotten.

If your firm uses Outlook 2016 or later (PC or Mac) or the Outlook web-based program as your email client, you can access Outlook's Focused Inbox feature. While not as elaborate as the paid services discussed below, the Focused Inbox feature is Microsoft's attempt to separate your emails into two categories: emails from real humans that need your attention and bulk-mail-type things like newsletters, advertisements, or mailing list messages. When Outlook guesses incorrectly, you only need to right-click and select "Move to Focused [or Other]" to move that message to the alternate grouping, or "Always Move to Focused [or Other]" to have every message from that sender delivered to the alternate tab.

Gmail users aren't left in the cold either. Gmail has had a similar sorting feature for years. Google will automatically divide your email inbox into up to five tabbed categories: primary, social, promotions, updates, and forums. If you haven't changed your default Gmail settings, primary, social, and promotions are enabled.

Microsoft and Google know that some folks won't be fans of focused or categorized emails. To disable Focused Inbox on Outlook for Windows, go to the View ribbon and click the "Show Focused Inbox" button to deactivate it. On the Mac, go to the Organize ribbon and click "Focused Inbox." Similarly, Google provides instructions on how to change which tabs, if any beyond the required "primary" one, are enabled.

If you're a Gmail user, the Gmail website has a built-in snooze feature. Not to be outdone, Microsoft's Outlook web client, Mac, iOS, and Android programs offer a handy snooze feature. Unfortunately, the most used version, Outlook for Windows, doesn't provide this feature.

The New Jersey State Bar Association's Practice HQ is a free member resource designed to help you build and maintain a successful, thriving legal practice. Learn more at njsba.com/practice-hq. ■

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Friday, May 2
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Earn up to 5.5 credits.

Keys to Handling the PIP Case: Rules, Coverage, File Prep, & Case Preparation
Tuesday, June 3
9 a.m. – 12:35 p.m.
Earn up to 4.0 credits.

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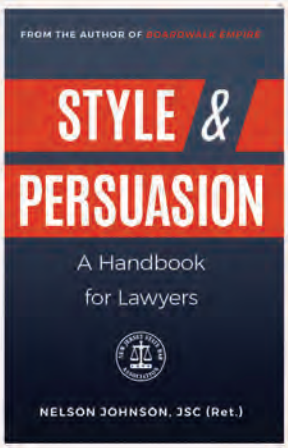

Style & Persuasion – A Handbook for Lawyers (2023)

Written by: Nelson Johnson, JSC (Ret.)

Effective Communication Starts Here

As an attorney, your success depends on your ability to communicate effectively, regardless of the subject or audience. Your goal must be simple, unadorned prose; writing that is lean, strong, and free of embellishment. None of that comes effortlessly, but armed with the right strategies, it is easily achievable.

As an award-winning author, retired New Jersey Superior Court Judge Nelson Johnson enjoys sharing the "tricks of the writing trade" that are rarely discussed in college or law school – yet are highly effective. Judge Johnson's passion for writing has spanned his career, and when he left the bench, he decided to consolidate and share his decades of observations and unique insights into the most effective legal writing strategies. The concepts he shares in Style & Persuasion will help you to develop new habits that will build confidence and transform your writing style.

NJSBA Member Price: $29.99
Non-Member Price: $39.99

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Bridging the Civil Justice Gap with AI

Expanding Access to Legal Resources and Services

By Jessica Lewis Kelly and Tim McGoughran

Artificial intelligence is revolutionizing the legal landscape and creating new options for self-represented litigants to access and navigate the justice system. From chatbots offering on-demand legal assistance to innovative platforms reducing the cost of legal services, AI is reshaping how we think about justice and accessibility.

While the pursuit of justice is a constant, the tools we use to accomplish justice are constantly adapting to society and technology. AI has the potential to assist, but not replace, the centuries-old role of judges and lawyers in the practice of law. By leveraging AI, legal service organizations, attorneys, and courts are finding innovative ways to bridge the civil justice gap, providing greater access to legal resources and services for historically underserved populations.

AI-Powered Legal Aid: Enhancing Service Delivery

Legal aid organizations are increasingly using AI tools to improve the quality and efficiency of their services. Generative AI chatbots, for instance, are providing accessible, round-the-clock assistance to people navigating complex legal processes.

Upsolve,[1] a nonprofit organization, employs AI to help people file for Chapter 7 bankruptcy without an attorney. By guiding users through the required paperwork and legal processes, Upsolve enables low-income individuals to manage their cases effectively without the high costs typically associated with legal services. It receives funding from the Legal Services Corporation, charitable organizations (including the New York Bar Foundation), and individual donors, in order to provide free services.

AI-driven platforms also assist legal aid organizations in managing caseloads and providing more personalized client support. For example, LawDroid[2] develops custom AI chatbots that can handle routine client interactions, freeing up staff to focus on more complex legal issues. These chatbots can answer common questions, guide users through legal forms, and provide updates on case statuses without crossing into unauthorized legal practice. In addition to a free demo, the LawDroid website advertises basic legal copilot services for $15/month or enhanced services, including a chatbot, for $99/month.

In January 2025, the nonprofit tenants' rights organization Housing Court Answers introduced Roxanne,[3] an AI-powered tool developed with New York University School of Law and a legal automation company, Josef, to help New York City tenants find information, prepare letters to landlords, and file a complaint regarding building safety.

AI for Attorneys: Delivering Affordable Legal Services

Private attorneys are also harnessing AI to offer reduced-fee legal services, making professional legal help more accessible. Tools like Thomson Reuters / Casetext's[4] CoCounsel use AI to assist lawyers in drafting documents, conducting legal research, and managing case workflows efficiently, allowing them to offer lower rates to clients who might otherwise be unable to afford representation.

Hello Divorce,[5] a platform designed to assist individuals in managing uncontested divorces, combines AI-driven document automation with affordable legal consultations, providing a hybrid model of self-service and professional support at a fraction of traditional costs.

AI in the Courts: Modernizing Systems and Enhancing Public Access

Courts and public agencies are embracing AI to streamline operations and improve public access to justice.

Under the leadership of Chief Justice Stuart Rabner and the state Supreme Court, the New Jersey courts are leveraging AI to enable the judiciary to be more efficient and improve court operations and services. The Judiciary started with use of public AI technologies, within guardrails established by the New Jersey Supreme Court[6] and supplemented by ongoing trainings of judges and staff. Without sharing non-public information, the courts are reexamining and revising communications to be more understandable to court users, including many litigants who navigate the justice system without legal representation. Today, the Judiciary is cautiously exploring secure, internal AI tools that could be used even with non-public information. While pilot testing still is in its infancy, these AI tools could support judges and staff in the most urgent cases to quickly summarize submissions, including those from self-represented parties, to more promptly provide written opinions. The advent of safe, secure AI technologies could make it possible for judges in all dockets to more quickly search and find content in prior orders, transcripts, and other records, and to expedite translations of court orders by using AI along with qualified language access professionals.

JESSICA LEWIS KELLY *serves as a Special Assistant to the Administrative Director of the New Jersey Courts. She is a member of the NJSBA Committee on Artificial Intelligence and supports the Supreme Court Committee on AI and the Courts, the Working Group on Judiciary Use of AI, and the New Jersey delegation to the National Courts and Sciences Institute Data Science and AI Initiative. Jessica routinely provides CLE instruction on AI and other topics, including well-being in the law and jury reforms.*

TIMOTHY F. MCGOUGHRAN *is the founding partner of the Law Office of Timothy F. McGoughran, LLC, and Immediate Past President of the New Jersey State Bar Association. He is a former chair of the NJSBA Family Law Section, Past President of the Monmouth Bar Association and a life fellow of the American Bar Foundation.*

AI tools that provide transparent reasoning can help ensure fairness and build trust in AI-driven legal solutions. From a social justice perspective, AI can assist with generating legal forms, contracts, and filings, reducing the cost of legal services. Legal aid organizations can use AI to match clients with pro bono lawyers based on case type, urgency, and availability. AI can then enable those lawyers to more quickly review, summarize, and analyze information (even if contained in voluminous or unorganized documents) so that pro bono services can be provided more efficiently.

New Jersey Public Defender Jennifer Sellitti is leveraging AI to enhance access to justice by developing an AI-powered brief bank.[7] This innovative tool is being developed in collaboration with the Governor's Office of Innovation and Princeton University to streamline legal drafting and enable attorneys to focus more on clients and presenting their strongest case. The AI brief bank aims to provide public defenders with quick access to a comprehensive repository of legal briefs, facilitating more efficient case preparation and promoting consistency in legal arguments.

In Passaic County, the Surrogate's Office integrates AI tools to translate public-facing materials into multiple languages, making essential legal information accessible to non-English speakers. The AI-powered search tool on the website landing[8] page supports community members in obtaining quick answers to common questions, in their preferred language. This initiative reflects a broader trend of using AI to create user-friendly resources that accommodate diverse communities.

What does the future look like for legal services? AI tools that provide transparent reasoning can help ensure fairness and build trust in AI-driven legal solutions. From a social justice perspective, AI can assist with generating legal forms, contracts, and filings, reducing the cost of legal services. Legal aid organizations can use AI to match clients with pro bono lawyers based on case type, urgency, and availability. AI can then enable those lawyers to more quickly review, summarize, and analyze information (even if contained in voluminous or unorganized documents) so that pro bono services can be provided more efficiently. In tandem with these direct benefits, AI can help legal aid groups identify trends in civil justice issues and allocate resources more effectively. Ideally, expanded access to higher quality pro bono or reduced fee legal services can parallel improvements in court operations so that even those individuals who navigate the system without representation can do so more effectively.

A Word of Warning

Despite AI's tremendous potential to bridge the justice gap by streamlining legal research, improving access to legal information, and enhancing efficiency in public defense, significant limitations and risks must be carefully considered. AI systems must operate within carefully constructed and overseen guardrails, ensuring transparency and accuracy about their capabilities and limitations. Ensuring client confidentiality and compliance with ethical obligations is critical. This is crucial to support social justice by enabling faster access to information and better navigation of legal terrain without veering into the unauthorized practice of law. AI should not replace human judgment in critical legal decisions.

Misrepresenting legal reference information as legal guidance can lead to significant harm, as demonstrated by the case of DoNotPay's purported "robot lawyer," which resulted in FTC fines[9] due to deceptive claims about its capabilities. Such misrepresentations can mislead consumers into believing they are receiving qualified legal advice when they are not. To the extent that consumers who might otherwise have retained legal counsel instead relied, unjustifiably, on the promise of an AI alternative, the civil justice gap can be broadened rather than narrowed.

Ongoing efforts are being made to mitigate other known limitations of AI, such as its capacity for bias. AI systems trained on biased legal data may perpetuate existing inequalities. In its January 2025 guidance,[10] the New Jersey Division

on Civil Rights emphasizes the importance of addressing algorithmic discrimination, which can arise from the use of automated decision-making tools. These tools, if not designed and deployed responsibly, may perpetuate biases present in training data, leading to unfair outcomes. It is crucial for developers and users of AI to incorporate fairness considerations and conduct regular assessments to ensure these technologies do not inadvertently deepen disparities but rather contribute to a more equitable justice system.

Conclusion

By integrating AI across legal aid, private practice, and court systems, the legal field is making significant strides in closing the civil justice gap. These innovations not only improve efficiency and reduce costs but also ensure that more people have access to the legal resources they need, fostering a more equitable justice system. While bridging the civil justice gap with the use of artificial intelligence to make legal assistance more accessible, affordable, and efficient for those who cannot afford traditional legal services is laudable, careful attention and response to limitations and risks associated with AI are critical to realizing its social justice benefits and avoiding or mitigating potential harms. ■

Endnotes

1. upsolve.org/
2. lawdroid.com/#
3. lawnext.com/2025/01/ai-powered-tool-launches-to-help-new-york-tenants-enforce-their-repair-rights.html
4. thomsonreuters.com/en/cocounsel
5. hellodivorce.com/plans?state=New%20Jersey
6. njcourts.gov/sites/default/files/courts/supreme/statement-ai.pdf
7. law.com/2024/11/01/how-i-made-public-office-embrace-action-over-excessive-planning-says-jennifer-sellitti-of-the-new-jersey-office-of-the-public-defender/
8. passaiccountynj.org/government/passaic-county-surrogate
9. See the Federal Trade Commission's January 14, 2025 Order: ftc.gov/system/files/ftc_gov/pdf/2323042_donotpay_decision_and_order_0.pdf?utm_source=govdelivery.
10. nj.gov/oag/newsreleases25/2025-0108_DCR-Guidance-on-Algorithmic-Discrimination.pdf.

Artificial Intelligence and States' Role in Protecting Their Citizens

By Steven Eisenstein

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In recent years, artificial intelligence has rapidly evolved, influencing various aspects of daily life, including health care, education, finance, and national security. The transformative power of AI has sparked intense debates on its regulation, with both government and industry experts exploring the potential of AI technologies, as well as the ethical, economic, and legal challenges they present.

In light of the way the current federal government administration has navigated the complexities of AI use in governance, many states are considering taking proactive steps to assert their rights and interests, pushing back against what they consider to be federal overreach. The balance between federal and state authority in regulating AI is delicate, and while the federal government has an essential role to play, states too must act to protect their own interests, the autonomy of local industries, and the welfare of their citizens.

Understanding the Challenges of AI Regulation

AI is a multifaceted field, encompassing machine learning, neural networks, natural language processing, robotics, and more. The primary challenge for lawmakers is how to regulate these technologies in a way that fosters innovation, ensures safety, and protects privacy, all without stifling progress. The federal government is often

While federal oversight of many aspects of AI is essential, there is growing recognition that states must play a significant role in shaping the regulatory landscape. Some states have already taken action by passing laws that address specific AI-related issues.

seen as best suited to provide broad regulatory frameworks that set baseline standards and protect against systemic risks, such as bias, security threats, and misuse of AI for harmful purposes.

However, there are several concerns with an overzealous federal approach to AI regulation:

1. **Overcentralization**: AI development is happening at a rapid pace and often in localized or industry-specific contexts. Federal oversight can risk stifling regional innovations that don't fit neatly into a one-size-fits-all regulatory framework.
2. **Diverse State Economies**: States differ in their technological landscapes, economic priorities, and workforce needs. A federal policy could favor certain industries or regions over others, potentially creating economic disparities.
3. **Privacy and Autonomy**: States are uniquely positioned to address local concerns about privacy, data rights, and surveillance. Many states have been more proactive than the federal government in passing laws related to data protection, cybersecurity, and AI ethics.
4. **Differing Ethical Standards**: AI poses complex ethical questions, including the regulation of autonomous vehicles, algorithmic decision-making, and surveillance technologies. States might have different priorities in addressing these concerns, which could be at odds with a federal approach.
5. **Use in Governance**. In addition to its regulation of AI the federal government, because of its great size and resources, can affect the lives of its employees and both citizens and noncitizens of the United States by the use of AI in gathering data and implementing policy.

In light of these challenges, states must find ways to assert their role in AI regulation and governance without undermining lawful federal efforts. Balancing local autonomy with national coordination is crucial in crafting policies that meet the needs of both federal and state governments, as well as citizens.

The Role of States in AI Regulation

While federal oversight of many aspects of AI is essential, there is growing recognition that states must play a significant role in shaping the regulatory landscape. Some states have already taken action by passing laws that address specific AI-related issues. For example, California has long been a leader in privacy protection, passing the California Consumer Privacy Act (CCPA), which has implications for AI-driven data collection and usage. Similarly, Illinois enacted the Illinois Biometric Information Privacy Act (BIPA), which regulates the use of biometric data, including facial recognition technologies powered by AI. Maryland has enacted HB 1202 which requires businesses to disclose when they use AI and Tennessee's Protection of Personal Rights Law prohibits the mimicking of a person's voice without their consent. Colorado passed a law that will require many businesses to conduct "algorithmic impact assessments" for bias in order to use AI for commerce in the state.

States can pursue several strategies to counter federal overreach while still contributing to the responsible development of AI.

1. Legislating State-Specific AI Regulations

States can pass their own AI-related laws and regulations that address issues most relevant to their local economies and populations. By tailoring policies to the unique needs of their citizens, states can ensure that AI development is not solely shaped by federal priorities.

For instance, states with large technology sectors, such as California, New York, or Texas, might focus on laws that promote innovation while protecting against privacy abuses and discrimination. In contrast, states that rely on traditional industries, such as manufacturing or agriculture, might prioritize AI regulations that focus on job displacement, the ethical use of automation, and the safety of workers.

By enacting laws that address these issues, states can push back against federal regulations that may not align with their specific needs. For example, while the federal government may propose

By fostering innovation through state-funded R&D initiatives, states can carve out their own space in the rapidly expanding AI ecosystem, ensuring that local interests are represented and promoting technologies that are well-suited to regional needs.

blanket regulations that prioritize industry-wide standards, a state could pass a law that takes a more nuanced approach, such as offering tax incentives for businesses that adopt ethical AI practices or funding local research initiatives aimed at mitigating potential job losses from automation.

2. Encouraging Innovation through State-Funded Research and Development

States can counterbalance federal policies by investing in AI research and development (R&D) projects that focus on local needs. For example, state governments can establish AI research centers or innovation hubs that bring together universities, businesses, and policymakers to explore new AI technologies. These centers can focus on developing AI solutions for state-specific issues, such as improving the efficiency of public transportation in urban centers or creating AI-driven health care models for rural areas.

By fostering innovation through state-funded R&D initiatives, states can carve out their own space in the rapidly expanding AI ecosystem, ensuring that local interests are represented and promoting technologies that are well-suited to regional needs.

3. Building Public-Private Partnerships

States can also counter federal overreach by building strong public-private partnerships that empower local businesses to develop AI solutions. These partnerships can bring together state governments, universities, and private companies to collaborate on AI technologies that meet local or regional needs.

For example, a state government could partner with local universities and tech startups to create an AI ecosystem focused on sustainable agriculture or renewable energy. Such a partnership would allow the state to control the development of AI technologies in a way that aligns with state goals, such as reducing carbon emissions or enhancing food security, without being overly reliant on federal mandates.

Moreover, these partnerships can help ensure that state businesses have access to the resources and expertise necessary to navigate federal regulations, giving them a competitive advantage in a rapidly evolving global AI market.

4. Advocating for Local Privacy and Civil Rights Protections

Privacy concerns are a critical issue in the AI landscape, as the collection of personal data by AI-driven systems raises serious questions about consent, data ownership, and surveillance. States have historically played an essential role in protecting citizens' privacy rights, and AI presents a unique opportunity for states to further protect their citizens from potential overreach by the federal government or large tech companies.

For example, the CCPA offers a robust framework for protecting personal data, including provisions that affect AI-powered services that collect and analyze personal data while the Virginia Consumer Data Protection Act allows people to opt out of profiling that could affect their right to housing, jobs and financing. By advocating for stronger state-level privacy protections, states can counterbalance the potential for federal policies that might undermine citizens' rights in favor of corporate interests or national security concerns.

States can also develop local regulations that limit the use of certain AI technologies, such as facial recognition and predictive policing, that raise significant ethical and civil rights concerns. By passing laws that restrict the use of these technologies, states can ensure that they are used responsibly and transparently, without violating citizens' rights.

5. Creating a Framework for AI Ethics and Accountability

AI ethics is a major area of concern as governments, businesses, and consumers wrestle with the potential harms that AI technologies may cause. States can play a critical role in defining what constitutes ethical AI usage and ensuring that AI developers are held accountable for any harms caused by their products.

For example, states can pass laws requiring AI companies to disclose the algorithms and decision-making processes behind their systems, ensuring transparency. States can also implement measures that hold companies accountable for discriminatory or biased AI practices, such as requiring regular audits of AI systems used in hiring, law enforcement, or health care.

Additionally, states can create independent AI ethics boards or commissions

to assess the potential social, economic, and ethical impacts of AI technologies. These boards can provide recommendations to policymakers and help establish guidelines for the ethical deployment of AI in various sectors.

6. Pushing for Federalism in AI Governance

Finally, states can push for a federal system of AI governance that respects the autonomy of state governments while providing a unified framework for AI regulation. By advocating for a federal structure that allows states to tailor AI regulations to their own needs, states can ensure that they have a voice in the regulatory process.

States can work together through organizations like the National Governors Association (NGA) or the National Conference of State Legislatures (NCSL) to develop a coordinated approach to AI regulation that reflects the diversity of state interests. By presenting a united front, states can push for more decentralized AI governance and ensure that their concerns are addressed at the federal level.

Preemption

States which adopt their own AI program and intend to regulate the industry in a manner different from the objectives of the federal government need to be concerned about one final issue. The federal government may well claim that it can preempt state legislation and impose an AI regime of its own choosing. Federal preemption could purport to control the use of content level legislation, mandatory technical or safety standards or liability provisions for alleged misconduct.

One approach the federal government might consider would be to prevent states from passing laws that could hinder the distribution of open-weight AI models, those AI models whose weights (numbers that define the model's capabilities and behavior) are available for free on the internet as open-source software. There is an ongoing debate in the tech community whether open source for AI would lead to more creative uses or catastrophic results. It may seem like too much risk to some of those in power.

The government could consider reserving technical standard setting to an agency like the National Institute for Standards and Technology which could have the ability not only to set technical standards but to mandate them. This would likely be restricted to personal or commercial use and exclude a state's own systems.

Finally, the federal government might want to restrict a state's right to create liability regimes such as California has done. Witness the longstanding debate over Section 230 of the Communications and Decency Act and you will have an idea of the level of disagreement that may arise.

The Senate Bipartisan Artificial Intelligence Working Group issued a comprehensive report on AI use and regulation in 2024. How that will be changed with the new administration and Republican control of the Senate is anyone's guess.

Conclusion

As AI continues to reshape industries and societies, the need for thoughtful, balanced regulation is more pressing than ever. While the federal government has a critical role to play in establishing broad AI regulations, states are uniquely positioned to address the specific needs and challenges of their local populations. By asserting their rights, passing state-specific regulations, and building partnerships that foster innovation and ethical AI development, states can counter federal overreach while ensuring that AI technologies are deployed responsibly and transparently.

AI is a rapidly evolving field, and the challenges it presents will require cooperation and coordination at all levels of government. However, states must not allow federal overreach to stifle their ability to protect their citizens, encourage innovation, and address local concerns. By maintaining a strong, independent role in AI regulation, states can help shape the future of AI in a way that benefits all Americans. ■

Ethics and the Rise of AI

As Technology Evolves, So Will the Impact on Rules of Professional Conduct

By Hon. Heidi W. Currier, Jessica Lewis Kelly, Natalya Johnson and Robert Hille

Technology and the digital revolution have transformed the way we do things. While some say these advances have created greater efficiencies and brought the world closer together, they have also created new threats to our privacy and security.

The justice system is not immune to abuse and misuse of technology. Courts and lawyers can find it difficult to keep pace and embrace the benefits of rapidly advancing technological tools while avoiding harm.

The ongoing expansion of access to and use of artificial intelligence, especially generative AI, further complicates the ethical landscape for law professionals, both in and outside the courtroom.

Historically, cybersecurity efforts were primarily focused on how to prevent bad actors from accessing data and systems. Systems were constantly updated to detect and prevent unauthorized access while users were trained to recognize and avoid social engineering attempts at access by hackers. Theft of digital data and the information it contained as well as access to financial systems created new opportunities for criminals.

The acquisition of personal or proprietary information not only creates a large-scale risk of embarrassment through social media but identity theft also permits access to financial accounts and conversion of property. Correcting the consequences of identity theft places an enormous burden both on individuals and institutions.

Access to computer systems enabled control of those systems by a third party as well as the ability to shut them down entirely. Ransomware created large payouts for hackers. Additionally, such access through malware allowed for unauthorized access to information, alterations of data and the unfair and unknown competitive use of information causing substantial harm.

Without the proper framework, AI exacerbates these ongoing threats: (1) by expanding the pool of potential bad actors from highly skilled technologists to anyone with access to a smartphone or computer, (2) by improving the quality and believability of deepfakes, and (3) by increasing the frequency and level of cyber-attacks. For lawyers, AI might be the catalyst that transforms cybersecurity from nice-to-know to need-to-know, as suggested by the New Jersey Supreme Court's consideration of a possible new CLE requirement in "technology-related legal subjects" and a potential comment to RPC 1.1 ("Competence") regarding technology.[1]

Through a faster processing tool that draws from an enormous database, AI seeks to empower us to become more efficient, more understandable, and more creative. Viewed more cynically, AI seeks to become a better version of us.

Early stages of AI tools, still in use, examined what we and others said. It then tried to anticipate what we would say next. Constantly monitoring what we said, it strived for better predictions or to provide us with better alternatives. Examples can be seen with ubiquitous word processing programs including texting options for smartphones. When typing a text or email, the device offers choices on what it believes you want to say (or should say) next. Many emails come with pre-prepared suggested replies increasing the danger of unintended consequences due to rapid responses without time for reflection.

The evolution of AI technologies also presents evolving considerations. Generative AI seeks to go a step further. It seeks to create for us, in a fraction of the time, a work product that is better than what we could do ourselves. To do this, it accesses a vast universe of information and works in response to prompts from the user. The more detailed the prompt, the better the response. The goal of generative AI is to integrate the ability to touch, see, hear, smell and taste. In other words, AI seeks to become us, only a better version.

In exchange, AI also learns from its users. Each interaction and input of information improves AI's inferencing that allows it to compare what we did and want to do with other examples from its universal framework. Through this expanding universe or large language platform, AI is constantly seeking to improve. The larger its universe and

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the more information and specificity it receives from its users, theoretically, the better the final product.

These technological advances can similarly benefit the legal system and its participants. Yet with its potential benefits, AI and Generative AI add another layer to privacy and security risks and further threaten technological vulnerabilities.

As with any digital tool, AI is only as good as its programming, its database and what is inputted. An additional consideration is its programming capacity to learn from its accumulation of data and user interaction.

By now, we are familiar with AI hallucinations and briefs containing nonexistent sources. In some of those circumstances, attorneys were sanctioned by the court. The error in the AI tool's output was no excuse for the attorney's failure to review and verify the accuracy of court submissions.

We are also familiar with potential inherent biases in AI programs. Because AI draws its learning from the past to the user's point in time, its inferences can be biased. Some examples of this could include the use of an AI hiring tool to find ideal employee candidates. However, the tool measured past employee backgrounds and performances. The result was the creation of a racial or gender bias in its hiring screening and recommendations.

There can also be a tendency for an AI tool to suggest how lawyers should approach a legal problem or brief. While this may be helpful, it may not be the best course in a particular case because its suggestion may not be compliant with our court or evidence rules or pertinent case law. It could also lead to a generalized response when the circumstances call for a particularized one. Another danger is AI could repeatedly direct a lawyer to a portion of its universe that is not where the lawyer wants to go or should go. The result could be a blind spot for the lawyer. Instead of boosting efficiency, the use of AI may result in the lawyer spending more time working around the tool's misplaced suggestions to locate relevant content.

Another area of concern is created by research vendors. Within these research tools, vendors also seek to improve their AI tools. They do this by bombarding lawyers with pop-ups directing them to click into AI programs. Ostensibly, their purpose is to entice lawyers to see how good their AI tool is. But this also can lead to inadvertently clicking into an AI program and potentially sharing confidential information without intending to do so.

Sometimes, AI-generated articles take on the appearance of a primary resource created by a person or reputable organization or entity. A tell-tale sign here is the absence of an identifiable author. Just as lawyers must locate and read any cited case law (whether suggested by AI or otherwise), so too they must check the sources referenced in any article offered by AI to confirm its existence and the accuracy of the referenced content.

Most importantly, AI exacerbates the risk of unauthorized disclosure of or unauthorized access to confidential information entrusted to the lawyer.

AI can obtain information from a lawyer when the lawyer has inputted information into the tool or gave the tool access to a database. Where the tool is only accessible to the lawyer or the firm, this may not be a problem, so long as appropriate security measures are established and routinely monitored. If the lawyer uses a vendor-based system, additional privacy concerns abound, requiring extensive vetting of AI vendors.

Similar risks exist for employees and members of the judiciary who use AI and Generative AI tools. Judges and court staff are prohibited from inputting any confidential or non-public information into public AI tools. The New Jersey Courts are cautiously exploring in-development retrieval augmented generation models that might in the future enable broader use of AI to improve court services. This work is guided by the Statement of Principles for the New Jersey Judiciary's Ongoing Use of Artificial Intelligence, as approved by the Supreme Court in January 2024.[2]

With the proliferation of AI technology, new laws and regulations have emerged. Currently, there is an absence

of a single overriding federal law; however, a patchwork of state and even foreign regulations have emerged. Some states have reviewed Rules of Professional Conduct to help establish a uniform framework to help guide the responsible use and implementation of artificial intelligence technology related to the practice of law.

Prior to the rise of AI, the Court placed the ethical burden on counsel in RPC 1.6(f) "to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of or unauthorized access to information relating to the representation of the client." RPC 1.0 defines "reasonable" as "the conduct of a reasonably prudent and competent lawyer."

The Official Comment to that RPC requires a lawyer to safeguard "electronically stored information" in the lawyer's control from access by third persons, including a vendor. Additionally, RPC 5.3 makes a lawyer responsible for failures of vendors and other entities or persons the lawyer contracts with to protect confidential information.

Where third persons improperly access confidential information entrusted to the lawyer, the Official Comment to RPC 1.6(f) lists a number of factors to consider in deciding whether the lawyer's conduct breached the rule. The list is not exhaustive.

Identified factors are (1) the information's sensitivity; (2) likelihood safeguards would have prevented disclosure; (3) the cost of additional safeguards; (4) the difficulty of implementing additional safeguards; and (5) the extent such safeguards impair the lawyer's ability to represent clients. Clients may require specific safeguards or give informed consent to forgo security measures otherwise required.

We see that many of the concepts surrounding ethical and responsible artificial intelligence principles coincide with the underlying tenets of our RPCs. For example, frequently when exploring AI and ethics, terms such as explainability, transparency, fairness and mitigation of bias are implicated. These concepts relate to and connect with RPCs governing competence, confidentiality, and candor.

In addition to the New Jersey Supreme Court Committee on Artificial Intelligence and the Courts, an AI task force set up by the New Jersey State Bar Association established New Jersey as one of the first states to explore the responsible integration of artificial intelligence into legal practice and adherence to ethical standards. The task force evaluated the rules at play to assess and determine whether the RPCs were sufficiently flexible to relate to the rise of AI use and to cover professional conduct with legal practice when leveraging AI. That task force became a formal committee of the Association after submitting its report and continues its work in this field. Other jurisdictions also engaged in this exercise, including states such as New York and Pennsylvania.

In 2024, the American Bar Association issued its Formal Opinion 512 entitled Ethics Guidance and Lawyers Use of AI tools. The ABA and jurisdictions around the country have reached similar conclusions about the broad applicability and flexibility of RPCs to cover AI use. Some of the specific rules at play include the ABA Model Rules of Professional Conduct: Competence (Rule 1.1), Confidentiality (Rule 1.6), Communication (Rule 1.4) and more. Ultimately, attorneys are responsible for work product and output regardless of how it is generated.

The standards regarding confidential information as expressed in the RPCs also impose the potential for civil liability on lawyers.

In *Baxt v. Liloia*, 155 N.J. 190 (1996), the Court held that a breach of the RPCs could not form the basis of a civil action against a lawyer. However, the RPCs are conduct standards for lawyers. That is, they are evidence of the standard a lawyer is required to follow. Where a breach of a particular RPC standard contributes to some harm, a lawyer can be held liable for legal malpractice. This is now grafted into the language of the Model Jury Charge on Legal Malpractice.[3]

As noted, AI is designed to outpace humans. To do that, it must constantly learn. That can only be done by feeding

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on what the user gives it. This is why research AI financial stakeholders want to direct us to constantly use AI.

A common goal for creator and user may be availability of and access to a perfect and helpful legal product. However, financial stakeholders are primarily driven by profit, not ethics. Lawyers' interests must always be guided by ethics and their fiduciary duties.

In a proactive effort to address risks imposed by AI, the Court formed a ommittee on Artificial Intelligence and the Courts. That committee preliminarily recommended that the risks posed by AI use were adequately addressed in the RPCs as currently configured and did not require amendment or supplementation. But the Court also recognized additional considerations AI use presented in the ethics context and the need for guidance to the Bench and Bar in that regard.

As to the Judiciary, the Court issued the public-facing Statement of Principles, which articulate how AI will be used in alignment with the Judiciary's core principles of Independence, Integrity, Fairness, and Quality Service. The statement includes a promise to "engage in ongoing oversight to ensure that AI technologies are Transparent, Explainable, Accurate, Reliable, and Secure."

Judges are permitted and encouraged to use AI, as guided by the Code of Judicial Conduct, Rule 1:38 and judiciary policies. AI is a useful tool for research, and the drafting or refining of non-legal communications, such as speeches and remarks. However, decision-making and judicial writing remain in the sole province of a human judicial mind.

Although a litigant is not required to reveal the use of AI in writing briefs or making arguments in New Jersey, judges are learning to detect the use of AI in cases and in the courtroom. This will be particularly prevalent in expert opinion and testimony as the technology evolves and litigants' use of it expands.

Lawyers and judges will need to work together to identify the AI work product and resolve issues surrounding it.

As to lawyers, the Court issued Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers in a Jan. 24, 2024, Notice to the Bar and authorized a survey distributed to more than 75,000 attorneys regarding their views of and experiences with generative AI technologies. Guided by the thousands of responses to that outreach, the Judiciary committed to provide no-cost CLE programs regarding AI. To date, those programs include a July 24, 2024, webinar, with leaders of the Office of Attorney Ethics, focusing on the ethical implications of AI use, and a Dec. 19, 2024 webinar regarding AI implications for cybersecurity.

In noting some of the problems lawyers and the courts have experienced with AI, the Court in its Preliminary Guidelines warned lawyers that their core ethical responsibilities remain unchanged when using AI tools. They must employ the same commitment to diligence, confidentiality, honesty and client advocacy as with traditional methods of legal practice.

In this regard, the Court began by noting a lawyer's responsibility for accuracy and truthfulness. It then identified the requirements in RPC 3.1 Meritorious Claims and Contentions; RPC 4.1(a)(1) Truthfulness in Statements to Others (not making false statements of fact or law to third persons); and RPC 8.4(c) Misconduct (conduct involving fraud deceit or misrepresentation).

The Court then cautioned that where AI generated false information, the use of that information may result in those rules being violated because of the lawyer's duty to check and verify the accuracy of all AI generated information.

Next, the Court referenced the lawyer's responsibilities for honesty, candor and communication. As already required, a lawyer is responsible for ensuring the validity of AI-generated information contained in pleadings, arguments or evidence filed or submitted to a tribunal.

Where that information contains false, fake or misleading content, the lawyer may be in violation of RPC 3.3(a)(1) Candor Toward Tribunal (making a false statement of fact or law) or RPC 3.3(a)(4) (offering evidence the lawyer knows to be false). Because of the lawyer's duty to verify, knowledge will apparently be presumed. This requirement is also present in Rule 1:4-8(a) Frivolous Litigation (effect of signing legal court documents).

The failure to ensure accuracy might also be a violation of RPC 8.4(d) (conduct prejudicial to the administration of justice) and RPC 8.4(g) (conduct involving discrimination). The latter could occur where an inherent bias in a tool results in a discriminatory impact to the groups identified in RPC 8.4(g) or where a tool is used to advance a discriminatory use.

The Court also reinforced that a lawyer cannot use AI to manipulate or create false evidence, or to allow a client to engage in such conduct. Such impermissible actions can support violations of RPC 1.2(d) Scope of Representation and Allocation of Authority Between Client and Lawyer (cannot counsel or assist a client in conduct that is illegal, criminal or fraudulent); RPC 1.4(d) Communication (failure to advise a client of the inability to assist in conduct not permitted by the RPCs); and RPC 3.4(b) (falsify evidence, counsel a witness to testify falsely or offer a witness an illegal inducement).

In disclosing the lawyer's use of AI to a client, the Court noted that a lawyer did not have an affirmative duty to disclose the use of AI under RPC 1.2 (lawyer must abide by a client's decisions concerning the scope and objectives of representation after consulting with the client about the means to pursue them); 1.4(b) (lawyer must promptly comply with a client's reasonable request for

information); and RPC 1.4(c) (lawyer must provide sufficient information for a client to make informed decisions regarding the representation).

However, a lawyer must inform a client about the use of AI if the client asks or if the client cannot make an informed decision regarding the representation without knowing that the lawyer is using AI. An attorney can use AI to explain issues to the client but the lawyer is still charged with ensuring the accuracy of information generated by AI.

The Court addressed privacy and security under RPC 1.6 Confidentiality. That rule covers all information relating to the representation of the client. This includes the client's identity. N.J.R.E. 504, Attorney Client Privilege includes a subset of that information relating to attorney-client communications with the expectation of confidentiality. In both instances, the client, not the lawyer, possesses the privilege.

As discussed above, RPC 1.6(f) specifically burdens the lawyer with the duty to make reasonable efforts to avoid unauthorized access or disclosure. The Court, in noting the array of AI tools including those designed for lawyers and those "in development for use by Law firms," views the ultimate responsibility to be the lawyers to ensure the security of an AI system where a lawyer enters non-public client information. The consequences of such a security breach by the tool could form a basis for an RPC 1.6(f) violation regardless of any fault of the AI program's creator or vendor.

It should also be noted that reasonable efforts under RPC 1.6(f) and the Official Comment to that section include the lawyer's obligation to become familiar with such tools and mechanisms to avoid security breaches of confidential information and employ such protective measures.

Where these RPC violations occur through AI use, the Court also reminded the Bar of its oversight responsibilities.

RPC 5.1 imposes on law firm principals and supervising attorneys the responsibility and liability for RPC violations by subordinates including the misuse of AI. Correspondingly, RPC 5.2 makes subordinates responsible for their violations even when directed by another unless in accordance with a supervising lawyer's reasonable resolution of an arguable question of a professional duty. In the risks of AI misuse identified by the court above, an arguable question of duty may be a difficult burden to meet.

In terms of AI use and arrangements with non-lawyers in the use of such tools, the Court specifically referenced RPC 5.3 and its requirements that lawyers remain responsible to ensure that the conduct of those retained or employed shall adopt and maintain reasonable efforts to comply with the lawyer's professional obligation. Consequently, the failure of a third party resulting in an ethics violation from the use of its tool, will not excuse a lawyer from potential discipline.

Finally, in its guidelines to the Bar, the Court says that its references to potential RPC violations are illustrative and not exhaustive. By way of example, the Court noted that the use of AI will likely affect lawyer billing "RPC 1.5 (Fees)" and advertising practices "RPC 7.2 Advertising." These and other specific applications may be addressed in future guidelines if and as needed.

The road map that the Court has given in navigating the use of AI in compliance with a lawyer's ethical responsibilities stresses how important it is for lawyers to stay familiar with technology, to use care in uses of new technology, and vigilant in upholding existing standards of professionalism.

The following references can serve as guides to attorneys as they navigate this ever-changing landscape of generative AI.

Our review and assessment of the legal and regulatory landscape governing AI will continue and so will the cases and circumstances that call into question the Rules of Professional Conduct and other guidelines. New Jersey has taken a leading role across sectors in preparing our government, the public, business entities, and legal professionals to foster innovation while simultaneously regulating the application of artificial intelligence tools in both business and society at large.

As to the Court's guidelines and its Jan. 24, 2024 Notice to the Bar, it can be found at njcourts.gov/sites/default/files/notices/2024/01/n240125a.pdf?cb=aac0e368. The New Jersey State Bar Association's Task Force recommendations and findings can be viewed at https://njsba.com/wp-content/uploads/2024/05/NJSBA-TASK-FORCE-ON-AI-AND-THE-LAW-REPORT-final.pdf. The Attorney Ethics Hotline can be reached at 609-815-2924. Suggestions for issues to be considered by the New Jersey Supreme Court Committee on AI can be emailed to COURT-USE-of-AI.mbx@njcourts.gov. ■

Endnotes

1. November 21, 2024 notice to the bar ("Attorney Responsibilities as to Cybersecurity & Emerging Technologies—(1) Proposed CLE Requirement and (2) Proposed Comment to the RPCs—Request for Comments") (njcourts.gov/sites/default/files/notices/2024/11/n241121e.pdf?cb=eec32cf0)
2. njcourts.gov/sites/default/files/courts/supreme/statement-ai.pdf?c=t2v
3. Model Jury Charges (Civil), 5.51A, "legal Malpractice" (rev. Oct. 2022)

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Balancing Technology and Judgment

AI's Ongoing Impact on the Legal Field

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By Dr. Robert Spangler

The emergence of artificial intelligence has ignited debates regarding its capacity to not only transform, but also fundamentally disrupt, various industries, including the legal sector. While concerns about AI's impact are justified, historical parallels indicate that such technological shifts can be managed and often lead to secondary unexpected benefits. For instance, the advent of e-discovery and computerized legal research once spurred fears of widespread displacement within the legal profession; however, these advancements not only reshaped certain legal workflows but also created new areas of specialization and opportunities for practitioners. Although the potential for disruption with AI is more significant than e-discovery and computerized legal research, it is essential to recognize that, even an advanced computational tool like AI cannot replace human judgment—it can only augment it.

Nonetheless, this augmentation introduces significant risks associated with its perceived abilities and potential applications across nearly every sector.

From Disruption to Necessity

One notable example of a recent disruptive technology is the smartphone, which was predicted to transform communication, work, and daily life by allowing people to carry powerful computers in their pockets. This prediction proved accurate: by 2019, the average smartphone in the United States possessed processing speeds approximately 100,000 times faster than the combined computers used during the 1969 moon landing.[1] Much like other global technological revolutions, after widespread adoption smartphones shifted from disruptive novelties to indispensable, and almost invisible in their ubiquity, components of everyday life, reshaping entire industries and prompting new legal concerns around data privacy, intellectual property, and consumer protection.

This trajectory underscores AI's potential to become deeply interwoven into—and interact with—nearly every facet of modern society. Like smartphones, AI harnesses unprecedented processing power and real-time data analysis, promising significant gains in productivity alongside challenging questions of regulation and ethics. Both technologies also illustrate how each wave of innovation provides fresh opportunities for industry growth while demanding adaptive legal frameworks—an evolution that will continue as AI matures.

The Importance of Human Curiosity and Passion

One crucial driver of technological progress, human curiosity, remains fundamentally absent from AI's capabilities, as machines have no substitute for genuine curiosity or spontaneous initiative. Some of humanity's most important discoveries have emerged from human curiosity and serendipity rather than systematic logic and data analysis. For instance, three of medicine's most important modern discoveries may never have been made by relying strictly on AI. First, the discovery of penicillin by Alexander Fleming in 1928 occurred when he noticed a mold inhibiting bacterial growth on an agar plate.[2] Similarly, Edward Jenner developed the smallpox vaccine after observing that milkmaids exposed to cowpox did not contract smallpox.[3] Finally, Wilhelm Conrad Röntgen accidentally discovered X-rays while experimenting with cathode rays,[4] and Marie Curie's pioneering research on radioactivity was driven by her inquisitive nature.[5]

In these landmark discoveries, existing data and applied logic alone may not have yielded breakthroughs without the willingness to try unproven, and often likely to fail, approaches. These advances emerged from an unconventional readiness to explore seemingly unrelated observations, and human curiosity and open-mindedness, rather than strict adherence to systematic analysis, was essential to scientific progress. While one might imagine programming AI to sift through vast datasets in search of serendipitous connections, an approach like that would likely generate a wide range of incorrect correlations rather than meaningful insights (in AI, we often refer to these incorrect correlations as hallucinations). As American physicist Joseph Henry emphasized, "The seeds of great discoveries are constantly floating around us, but they only take root in minds well prepared to receive them."[6]

Simply put, AI has no mind and can be likened to a scientific calculator. Just as scientific calculators expedite complex computations, AI processes data with unprecedented speed and efficiency. However, both tools rely solely on the data provided and cannot generate true logic or new models or approaches independently. As Angelika Amon of the Koch Institute for Integrative Cancer Research at MIT stated, "The best science comes from those who are fundamentally curious."[7] While AI can simulate curiosity through programmed responses, it lacks the intrinsic drive to explore and innovate. This constraint extends to aspects such as wonder, motivation, and the relentless pursuit of knowledge that have fueled humanity's most significant advancements. Accordingly, by relying

While AI can simulate curiosity through programmed responses, it lacks the intrinsic drive to explore and innovate. This constraint extends to aspects such as wonder, motivation, and the relentless pursuit of knowledge that have fueled humanity's most significant advancements. Accordingly, by relying solely on AI and current data, future innovation may slow or even stall—even in the legal sector.

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Recognizing Limitations and Managing Expectations

Beyond human curiosity, significant issues arise regarding society's understanding of AI's operational mechanisms. Companies have started to anthropomorphize AI, creating misconceptions among businesses and individuals about its true nature and functionality. However, at its core, AI consists of computer code developed by humans or, in some cases, other AI. This duality introduces both benefits and risks.

AI functions through predefined programs that process data to generate outcomes. As such, key metrics for quality and performance often revolve around replicability (AI's ability to produce consistent results across varying inputs) and transparency (the clarity and comprehensibility of AI's decision-making processes). For many functions, these metrics are sufficient, and under optimal conditions, AI can effectively assist with routine tasks such as document review and draft document generation. However, the attributes that make AI valuable also pose potential risks.

While replicability of AI results is considered crucial, consistent replicability can influence human users and foster misplaced trust, and when errors occur in AI logic and output, they may not always be evident. Similarly, as future legal professionals begin their careers and potentially become heavily reliant on AI, there is a danger of both overreliance and overlooking information that requires lived experience and the ability to recognize subtle connections due to a lack of context and practical skills. This underscores that the most effective role for AI in the legal sector is to support and augment human expertise, not to substitute it.

The Risk of Misinterpretation: The Impossibility of Zeno's Paradox

Another significant challenge is the danger of AI "misinterpreting" data, which can lead to misguided conclusions without proper human oversight. Consider Zeno's paradox, which suggests that motion is impossible because to reach a destination, one must first travel half the distance, then half of what remains, and so on ad infinitum—creating an infinite series of steps that can never be completed.[8] Just as this paradox demonstrates how pure logic can lead to conclusions that contradict observable reality, AI systems can misinterpret even seemingly straightforward qualitative data by following rigid logical patterns without the benefit of human context and intuition. Zeno's paradox highlights how an unyielding adherence to abstract reasoning can yield counterintuitive outcomes, underscoring the importance of applying real-world perspectives and nuanced human judgment when interpreting data and explaining why human oversight remains essential in legal analysis and decision-making.

Potential Risks to the Law

These considerations have profound implications for the legal industry. In an environment where AI is widely used for document and contract review, there is a risk of overlooking critical information and contextual nuances that require human insight, curiosity, and lived experience. Similarly, AI's reliance on existing data or overreliance on pure logic may lead it to miss novel solutions or fail to identify unique legal issues.

The impact extends to document drafting. As AI generates new legal documents, these documents become the data future AI processes will analyze and use to make decisions. Without stringent guidelines and oversight, this cycle (AI generating documents that AI reviews, repeated indefinitely) could compound errors that would fundamentally alter our legal system. For instance, if AI-generated documents become standard without proper human oversight, legal standards and precedents could become homogenized or skewed based on fatal flaws in AI's training data, potentially reducing diversity in legal arguments and stifling innovative strategies. The legal system relies on nuanced interpretation, precedent-setting cases, and the unique application of law to complex human situations—all of which require human insight and creativity.

In an environment where AI is widely used for document and contract review, there is a risk of overlooking critical information and contextual nuances that require human insight, curiosity, and lived experience. Similarly, AI's reliance on existing data or overreliance on pure logic may lead it to miss novel solutions or fail to identify unique legal issues.

Moreover, reliance on AI can inadvertently perpetuate biases embedded in its training data. When historical inequalities remain unaddressed, AI outputs may reinforce them, leading to unjust outcomes. This concern is especially acute in areas such as criminal justice and hiring decisions, where algorithmic bias can have severe consequences. The risk grows if future legal professionals place disproportionate trust in AI systems and neglect to develop their traditional skills, leaving them ill-equipped to detect and challenge biased results.

Finally, the issue of substituted judgment is significant. The report of the New Jersey State Bar Association's Task Force on Artificial Intelligence and the Law highlighted concerns about attorneys relying on AI to replace their professional judgment. While AI can efficiently analyze extensive data, such as surveillance footage, and extract key moments, attorneys have an ethical obligation to personally review such material and apply their own judgment. The legal community must carefully distinguish between processes that enhance human performance and those that attempt to replace it. Ultimately, attorneys must ensure that their own judgment remains paramount, preventing the substitution of their expertise with AI-generated insights.[9]

How Should Attorneys Proceed

Considering these factors, AI presents both challenges and opportunities. Careful and deliberate adoption and utilization of this technology is essential to assist legal professionals without allowing it to replace critical thinking and professional judgment.

Similar to how medical doctors use AI in diagnostic imaging technologies like MRIs and CT scans, the optimal application of AI in the legal field involves AI tools presenting both original data and AI-generated analyses or documents. Attorneys can then apply their open-mindedness, curiosity, and human intellect to determine subsequent actions.

Conclusion

AI's transformative impact on the legal profession is no longer a question of whether it will reshape the practice of law, but how it will be used. While AI can significantly boost efficiency, it lacks the intrinsic human qualities (curiosity, creativity, and passion) that have driven society's greatest breakthroughs. As AI becomes as ubiquitous as cell phones, the challenge lies in striking the right balance: harnessing its benefits while ensuring it augments, rather than replaces, the human judgment and ethical decision-making that are fundamental to our profession.

Although AI may often align with human thinking, it is crucial not to assume that it always will. ■

Endnotes

1. Vincent, J. (2019). Apollo 11 anniversary: Could an iPhone fly me to the moon? The Independent. Retrieved from independent.co.uk/news/science/apollo-11-moon-landing-mobile-phones-smartphone-iphone-a8988351.html
2. Aminov, R. I. (2010). A brief history of the antibiotic era: lessons learned and challenges for the future. Frontiers in Microbiology, 1, 134. doi.org/10.3389/fmicb.2010.00134
3. Riedel, S. (2005). Edward Jenner and the history of smallpox and vaccination. Proceedings (Baylor University Medical Center), 18(1), 21-25. doi.org/10.1080/08998280.2005.11927863
4. Assmus, A. (1995). Early history of X rays. *Beam Line*, *25*(2), 10-24.
5. Quinn, S. (1995). Marie Curie: A Life. New York: Perseus Publishing.
6. Colman, D. R. (2006). The three princes of Serendipity: notes on a mysterious phenomenon. McGill Journal of Medicine, 9(2), 161-163. Retrieved from ncbi.nlm.nih.gov/pmc/articles/PMC2323527/
7. *Fundamentally Curious | Koch Institute*. (2021). Mit.edu. ki.mit.edu/news/2021/fundamentally-curious
8. Gregory, A. (2013). Zeno's Paradoxes. In Stanford Encyclopedia of Philosophy. Retrieved from plato.stanford.edu/entries/paradox-zeno/
9. New Jersey State Bar Association Task Force on Artificial Intelligence and the Law. (2024). Report of the NJSBA Task Force on AI and the Law. Retrieved from njsba.com/wp-content/uploads/2024/05/NJSBA-TASK-FORCE-ON-AI-AND-THE-LAW-REPORT-final.pdf

WHEN ALGORITHMS TAKE THE STAND

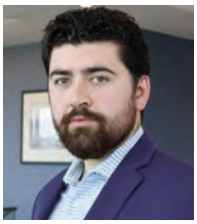
AI's Role in Transforming Expert Testimony in Complex Science Litigation

By David Shafiei

"As the pioneer of artificial intelligence, Alan Turing once said, 'A machine can only do what we know how to order it to perform.' But what happens when we use machines to evaluate the unknown?"[1] This provocative quote, ironically generated by ChatGPT, illustrates both AI's utility and its inherent risks. While clever, this quote is—in fact—not real, and Turing never said such a thing.[2] This elucidates the dual-edged nature of AI in the legal field: its ability to assist and its potential to mislead.

The crux of a judge's role is to evaluate legal arguments based on years of accumulated wisdom. However, in cases involving complex scientific disputes, no amount of legal expertise can substitute for a deep understanding of STEM topics. When scientists themselves disagree on key points, how can a layperson deliver a sound legal decision?[3] Artificial intelligence plays an increasingly important role in the evaluation of complex scientific facts with regard to the legal industry. Although not readily incorporated into a judge's decision-making process, it plays a role in expert witness preparation and has the potential to aid judges—and attorneys—in a way that makes their legally binding decisions much more robust.[4]

AI can enhance the handling of complex scientific litigation in two ways: (1) by offering deeper insight into scientific data to bolster expert arguments, and (2) by



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helping evaluate the accuracy and credibility of scientific testimony.

Insight Enhancement

When prepping experts to testify in STEM-related litigation, the sheer volume and complexity of data can be overwhelming. AI tools can absorb a vast amount of information and provide output in the form of scientific analysis in a matter of seconds.[5] This is incredibly useful for attorneys when trying to refine scientific analysis for litigation, to create simulations of complex scientific scenarios, and for question anticipation.

Refining Scientific Analysis

In addition to researching complex scientific concepts for litigation, attorneys can also use generative AI to enhance their analysis and give them insights that they may have missed or did not think to bring up. AI can collate and chronologize material for expert review, expediting the time it takes to prepare a witness.[6] Expert witnesses often possess vast scientific expertise but may struggle to distill it into courtroom-relevant material. AI can help filter and prioritize data, ensuring witnesses focus on points most critical to the litigation.

For instance, while X-rays and CT scans are semi-legible displays and may require minimal explanation in court, complex topics such as the biological mechanisms of action for a vaccine or the functional group makeup of a novel pharmaceutical demand thorough elucidation.[7] If the litigation is for patent infringement, then the factfinder may be looking at miniscule chemical differences and would require enhanced insight to achieve full comprehension of the material. Attorneys can ensure this level of understanding by using various types of AI tools. ChatGPT[8] and Grammarly[9] can simplify dense scientific jargon. Summarization tools such as Sorc'd[10] and Quillbot[11] can distill lengthy toxicology reports into concise briefs, while JuryScope[12] can be used to test mock juror comprehension. AI tools can give attorneys and factfinders a clearer overview and analysis of critical information.

Simulations and Visualizations

AI can also simulate scenarios or generate visual representations of data to clarify complex concepts for judges and juries. AI platforms can be used to analyze relevant litigation documents such as witness statements, depositions, memorandums, and published scientific articles.[13] They could also analyze the type of questions that the opposing attorney usually asks expert witnesses. These AI platforms can be used to generate pointed questions. This would allow attorneys to anticipate a full range of questions on cross-examination and allow the expert witness to practice and refine their responses.[14] AI's capability to produce different questioning styles based on the opposing counsel's style and material at hand could reveal potential weaknesses in an argument to the attorney and alleviate the expert witness's anxiety.[15]

Depo Copilot[16] is an AI platform that currently has this type of functionality. Depo Copilot can create effective and relevant lines of questioning from witness statements and depositions, which is particularly helpful when the case is complex or has a large volume of information.[17] An attorney can also tailor this software to focus on certain lines of questioning. For science litigation, an attorney can mimic a deposition and cross-examination with the expert witness by having this software act as opposing council and ask the witness questions. Depo Copilot's dual functionality —anticipation and real-time adjustment—sharpens an expert witness's effectiveness while exposing potential weaknesses in opposing arguments.

Another interesting use of AI concerning insight enhancement is when expert witnesses present visual scenarios during litigation. When discussing complex scientific matters, having visual aids can help laypeople understand the intricacies of the data or concepts. AI can be used to enhance the visual presentation of complex data to help the factfinder better understand the case being made and the scientific differences between expert witnesses.[18] Software like Tableau[19] and Power BI[20] use AI to process user queries, uncover data trends, and present those trends in an easy-to-understand visual. This is particularly useful for expert witnesses because, in response to a question from the factfinder or opposing counsel, the witness can use Power BI's prompt engineering functionality to generate a representative visualization of the data that answers the query.[21] This can enhance the clarity of expert testimony in real-time and can also assist experts prepare and visualize their thoughts beforehand.

Evaluating Expert Credibility, Scientific Accuracy

When a judge is acting as the factfinder during complex science litigation, they must ensure that the science being discussed in expert testimony is admissible; the science itself must be accurate, and the expert witness must be someone of credibility. In federal courts, judges will employ the *Daubert* standard, while in New Jersey courts judges may employ a *Daubert*-type standard. AI could not only be beneficial for judges when applying *Daubert* but also for attorneys before and during litigation to test opposing counsel's expert witnesses.

NJ's Daubert-Type *Standard*

The *Daubert* standard guides federal judges in making decisions regarding the evaluation of complex scientific data between competing expert witnesses. The judge must ensure that the expert's testimony is relevant to the task at hand and rests on a reliable foundation. *Daubert* allows a judge to determine whether scientific expert testimony truly

proceeds from "scientific knowledge."[22] A conclusion will qualify as "scientific knowledge" if the proponent can demonstrate that it is the product of sound scientific methodology.[23] In other words, the proponent needs to show that the conclusion: (1) is generally accepted within the scientific community, (2) is subjected to peer review, (3) has journal publication, (4) has been tested, (5) has a marginal error rate, (6) and was conducted independent of the litigation.[24]

In New Jersey, the *Daubert* standard was adopted for civil cases in 2019, but only recently was a *Daubert*-type standard adopted for criminal cases.[25] The Supreme Court of New Jersey cautioned that it's not embracing "the full body of *Daubert* case law as applied by state and federal courts."[26] For criminal cases, the non-exhaustive list of *Daubert* factors will serve as guidance for judges but do "not limit trial judges in their assessment of reliability."[27] *Daubert* doesn't say anything about prohibiting AI usage—just that judges should maintain decision-making independence.[28] Thus, it will become more likely that judges will start using AI as a tool in conjunction with their decision-making process.

Evaluating Scientific Testimony

While many attorneys and factfinders rely heavily on internal research to determine the credibility and accuracy of expert witnesses, some attorneys have started using AI to aid in these evaluations. Attorneys can use AI to assess the qualifications of opposing counsel's expert witnesses, such as their education, scientific experience, publications, and citation metrics.[29] For instance, Scite.ai evaluates the context of scientific citations to measure the robustness of an expert's research claims.[30] Using AI in this way can help determine the reliability of expert testimony based on the scientist's track record and publication history. For example, if an expert witness has less peer-reviewed publications and far fewer citations compared to their peers, then the reliability of their claims comes into question. Attorneys can use this AI-compiled data to lessen the reliability of the expert witness's testimony in front of the judge/factfinder.

AI can also evaluate consistency and credibility. Attorneys can use AI to compare an expert's past testimony with current statements. This allows the attorney to become aware of scientific and analytical inconsistencies. This can currently be done via the usage of Expert Radar, an AI tool that uncovers critical insights on opposing expert witnesses, such as conflicts of interest, contradictory statements, ulterior motives, and controversial material.[31] Not only can Expert Radar put an expert's testimonial consistency (i.e., reliability) into question, but it can also destroy their credibility if payouts or inflammatory comments are discovered.[32] Attorneys aren't the only ones that can benefit from this AI software. It can also be a good tool for judges when applying *Daubert* so that they can create a more succinct comparison between expert witnesses and ensure a more robust scientific analysis and overall effective decision-making process.

The Dangers of AI Overreliance

While AI tools offer significant benefits, they are not without risks. This is especially important when judges apply a *Daubert* or *Daubert*-type standard where AI isn't outright prohibited. If used, it should be subjected to significant ethical, legal, and practical considerations.

Artificial Intelligence Basics

Artificial intelligence operates by using input data to generate insights, which can include classifications, predictions, and content generation.[33] The underlying model defines the relationship between the input and output, and these models can be broadly categorized as either white box (transparent and interpretable) or black box (opaque and not easily understood).[34]

AI models typically fall into three categories: unsupervised, supervised, and semi-supervised. Unsupervised models require no labeled data and identify patterns or insights from datasets without prior training.[35] They are often a precursor to supervised models. For supervised learning, there must be an abundance of historical data to train the model adequately.[36] This type of model can make predictions or classifications on new, unseen data. However, supervised models are static; once trained, their functionality cannot be modified without retraining.[37] Semi-supervised models are more dynamic and can adapt their behavior based on new data and experiences.[38] Generative AI is a perfect example of this type of learning. Machine learning models are also highly dependent on the ecosystem (i.e., legal, medical, etc.)—changes in context or insufficient historical data can render them ineffective.[39]

Challenges, Transparency and Accountability

The use of machine learning AI models creates unique governance challenges, which require robust controls. High-risk applications, such as scientific or legal decision-making, demand a "human in the loop" to validate outputs and ensure that decisions remain fit for their intended purposes.[40] Governance mechanisms, including technical, procedural, and organizational controls, are essential to establish trust, reliability, and accountability.[41] For complex science litigation, this begs the question—is it OK to use these kinds of solutions in expert testimony evaluation? If so, what safeguards must be in place so that the performance of the legal model does not degrade? If these models are acting as decision-support tools, then they must do so without supplanting judicial authority.[42]

Any AI assistance concerning scientific data must be validated. A lack of thorough verification can lead to flawed con-

clusions.[43] If the AI is tasked with evaluating the reliability of a scientific methodology but lacks comprehensive training on *Daubert*-specific factors, it may overlook critical nuances. Incorrect assessments could lead to downstream issues, such as improper admission or exclusion of expert testimony. Machine learning systems may not easily provide transparency, reliability, or repeatability, which can be injurious if AI tools are relied upon in science litigation.[44]

Some AI may also have difficulties assessing the broader scientific context of expert testimony, especially concerning emerging or novel compositions or methodologies. It may not be well represented in training data and, thus, give unreliable conclusions back to the attorney or factfinder.[45] AI systems rely on existing datasets to learn patterns and make predictions. If an expert employs a novel technique or methodology that hasn't been widely studied or litigated, such as CRISPR-based biotechnologies, then AI may not have the context to make as informed conclusion when compared to established techniques like traditional polymerase chain reactions (PCR). AI tools may not recognize the disputes within the scientific community, making it misrepresent dissenting opinions as evidence against admissibility.[46] One of the *Daubert* factors looks at what is generally accepted in the scientific community, so if AI misrepresents newer methodologies, then it can provide flawed conclusions to factfinders.[47] This reiterates why AI should be verified and be subjected to legal considerations.

Additionally, there's a transparency and accountability issue with machine learning AI. The logic, reasoning, and persuasion behind a conclusion are either not accessible or not easily interpretable by humans.[48] This poses a major risk in legal contexts where the credibility of expert witnesses makes or breaks a case. The lack of transparency raises profound questions about the reliability of AI to evaluate scientific credibility and integrity. If attorneys make a claim against the opposing counsel's expert witness, then they must be able to back up that claim. If the attorney relied on an AI tool to help facilitate the claim, then the AI's processes and findings must be explained comprehensively.[49] Attorneys, factfinders, and expert witnesses must independently validate these AI results to maintain the integrity of legal testimony and conclusions.

Conclusion

AI can transform expert testimony in complex scientific litigation in various ways. Whether it's strengthening expert arguments through insight analysis or evaluating the accuracy and scrutinizing the credibility of opposing expert witnesses, AI has a promising future in the courtroom. That being said, attorneys and judges should be aware of the potential legal and scientific pitfalls of overreliance on AI and its associated software and should pioneer the responsible integration of these tools. As the legal profession navigates this new frontier, the challenge will be ensuring that AI enhances, rather than undermines, the pursuit of justice—proving that innovation and integrity can coexist in the courtroom. ■

Endnotes

1. ChatGPT, OpenAI (Dec. 28, 2024, at 10:55 AM), chat.openai.com.
2. *Id.*
3. Joseph Pergolizzi & Jo Anne K. LeQuang, *Black Robes and White Coats: Daubert Standard and Medical and Legal Considerations for Medical Expert Witnesses*, 16 Cureus (2024), pmc.ncbi.nlm.nih.gov/articles/PMC11471272/
4. Nate Raymond, *US judge runs 'mini-experiment' with AI to help decide case*, Reuters (Sep. 6, 2024), reuters.com/legal/transactional/us-judge-runs-mini-experiment-with-ai-help-decide-case-2024-09-06.
5. Alex Kuo, *Top 7 AI Tools for Data Analysis: Ultimate Guide*, Julius (May 27, 2024), julius.ai/articles/top-7-ai-tools-for-data-analysis-ultimate-guide.
6. John Collins, *Artificial Intelligence in the Courtroom: What Every Expert Witness Must Know*, Critical Victories (Feb. 5, 2023), criticalvictories.com/2023/02/05/podcast-2-2/.
7. Jonathan W. Hak, *The pedagogical expert witness: teaching complex science in the courtroom*, 56 Canadian Society of Forensic Science Journal 182, 186-87 (2023), tandfonline.com/doi/full/10.1080/00085030.2022.2135742#abstract.
8. Ayush Chaturvedi, *10 Best AI Tools for Academic Research in 2025 (Free and Paid)*, Elephas (Apr. 29, 2024), https://www.legalbluebook.com/bluebook/v21/quick-style-guide.
9. *Our Mission*, Grammerly, grammarly.com/about?msockid=37755886874864e115b34a6886516540 (last visited Jan. 6, 2024).
10. *Research and Writing Simplified*, Sorc'd, legalbluebook.com/bluebook/v21/quick-style-guide (last visited Jan. 6, 2025).
11. *QuillBot: Your complete writing solution*, QuillBot, https://quillbot.com (last visited Jan. 6, 2025).
12. *Virtual Jury Research*, JuryScope, juryscope.com/services/virtual-jury-research/ (last visited Jan. 6, 2025).
13. Filevine, *Tackling Deposition Anxiety: How AI Is Changing The Way Lawyers Do Depositions*, Above the Law (Nov. 6, 2024), abovethelaw.com/2024/11/tackling-deposition-anxiety-how-ai-is-changing-the-way-lawyers-do-depositions/.
14. *Id.*
15. *Id.*

16. Katie Wolf, *Cross-Examination Mastery: Strategies for Challenging Witness Credibility and Exposing Inconsistencies*, FILEVINE (Nov. 7, 2024), filevine.com/blog/cross-examination-mastery-strategies-for-challenging-witness-credibility-and-exposing-inconsistencies/.
17. *Id.*
18. Collins, *supra* note 6.
19. *Artificial Intelligence*, TABLEAU, tableau.com/products/artificial-intelligence (last visited Jan. 6, 2025).
20. *Use Power BI Q&A in a report to explore your data and create visuals*, MICROSOFT LEARN (June 21, 2024), learn.microsoft.com/en-us/power-bi/natural-language/power-bi-tutorial-q-and-a.
21. *Id.*
22. Tara L. Pehush et al., *Taking Out the "Junk": New Jersey Supreme Court Adopts Daubert "Factors" in Landmark Decision on Scientific Evidence*, THE NATIONAL LAW REVIEW (Feb. 21, 2019), natlawreview.com/article/taking-out-junk-new-jersey-supreme-court-adopts-daubert-factors-landmark-decision.
23. *Id.*
24. *Id.*
25. Richard Resch, *New Jersey Supreme Court Announces Adoption of Daubert-Type Standard for Criminal and Quasi-Criminal Cases in Assessing Admissibility of Expert Evidence Under Rule 702*, CRIMINAL LEGAL NEWS (Mar. 15, 2023), criminallegalnews.org/news/2023/mar/15/new-jersey-supreme-court-announces-adoption-daubert-type-standard-criminal-and-quasi-criminal-cases-assessing-admissibility-expert-evidence-under-rule-702/.
26. *Id.*
27. *Id.*
28. *Id.*
29. Ben Richmond, *Trust but Verif(AI): The Use of AI as a Tool to Analyze Credibility of Expert Witnesses and their Materials*, CENTER FOR LEGAL AND COURT TECHNOLOGY (Jan. 5, 2025), legaltechcenter.net/2025/01/05/trust-but-verifai-the-use-of-ai-as-a-tool-to-analyze-credibility-of-expert-witnesses-and-their-materials-by-ben-richmond/.
30. *AI for Research*, SCITE_, https://scite.ai (last visited Jan. 6, 2024).
31. Meghan Hemingway, *Michael Talve is Using AI & Data to Transform the Expert Testimony Process*, LAWDRAGON (Oct. 8, 2024), lawdragon.com/legal-consultant-limelights/2024-10-08-michael-talve-is-using-ai-data-to-transform-expert-institute-into-a-legal-powerhouse; *Expert Radar: Uncover Critical Intelligence on Opposing Experts*, EXPERT INSTITUTE, https://www.expertinstitute.com (last visited Jan. 6, 2025).
32. *Id.*
33. *See* Vikas Hassija et al., *Interpreting Black-Box Models: A Review on Explainable Artificial Intelligence*, 16 COGNITIVE COMPUTATION (2023), link.springer.com/article/10.1007/s12559-023-10179-8.
34. *Id.*
35. Angesh Singh, *Types of Machine Learning in Artificial Intelligence*, DIGITAL REGENESYS (Sep. 20, 2024), digitalregenesys.com/blog/types-of-machine-learning-in-artificial-intelligence.
36. *Id.*
37. *Id.*
38. *Id.*
39. *See* Hassija, *supra* note 33.
40. *What is 'human-in-the-loop'? And why is it more important than ever?*, FACULTY AI (Dec. 1, 2021), faculty.ai/insights/articles/what-is-human-in-the-loop.
41. Tim Mucci & Cole Stryker, *What is AI governance?*, IBM (Oct. 10, 2024), ibm.com/think/topics/ai-governance#:~:text=Artificial%20intelligence%20%28AI%29%20governance%20refers%20to%20the%20processes%2C,ensure%20safety%2C%20fairness%20and%20respect%20for%20human%20rights.
42. Mackenzie Ferguson, *AI in the Courtroom: Can Expert Witnesses Keep Up?*, OPENTOOLS (Nov. 3, 2024), https://opentools.ai/news/ai-in-the-courtroom-can-expert-witnesses-keep-up#section22.
43. *Id.*
44. *Id.*
45. *Can AI make scientific data more equitable?*, NATURE REVIEWS BIOENGINEERING (Dec. 9, 2024), nature.com/articles/s44222-024-00263-5; Harry Booth, *Has AI Progress Really Slowed Down?*, TIMES (Nov. 21, 2024), time.com/7178328/is-ai-progress-slowing-down.
46. *Id.*
47. *Id.*
48. Ferguson, *supra* note 42.
49. *Id.*

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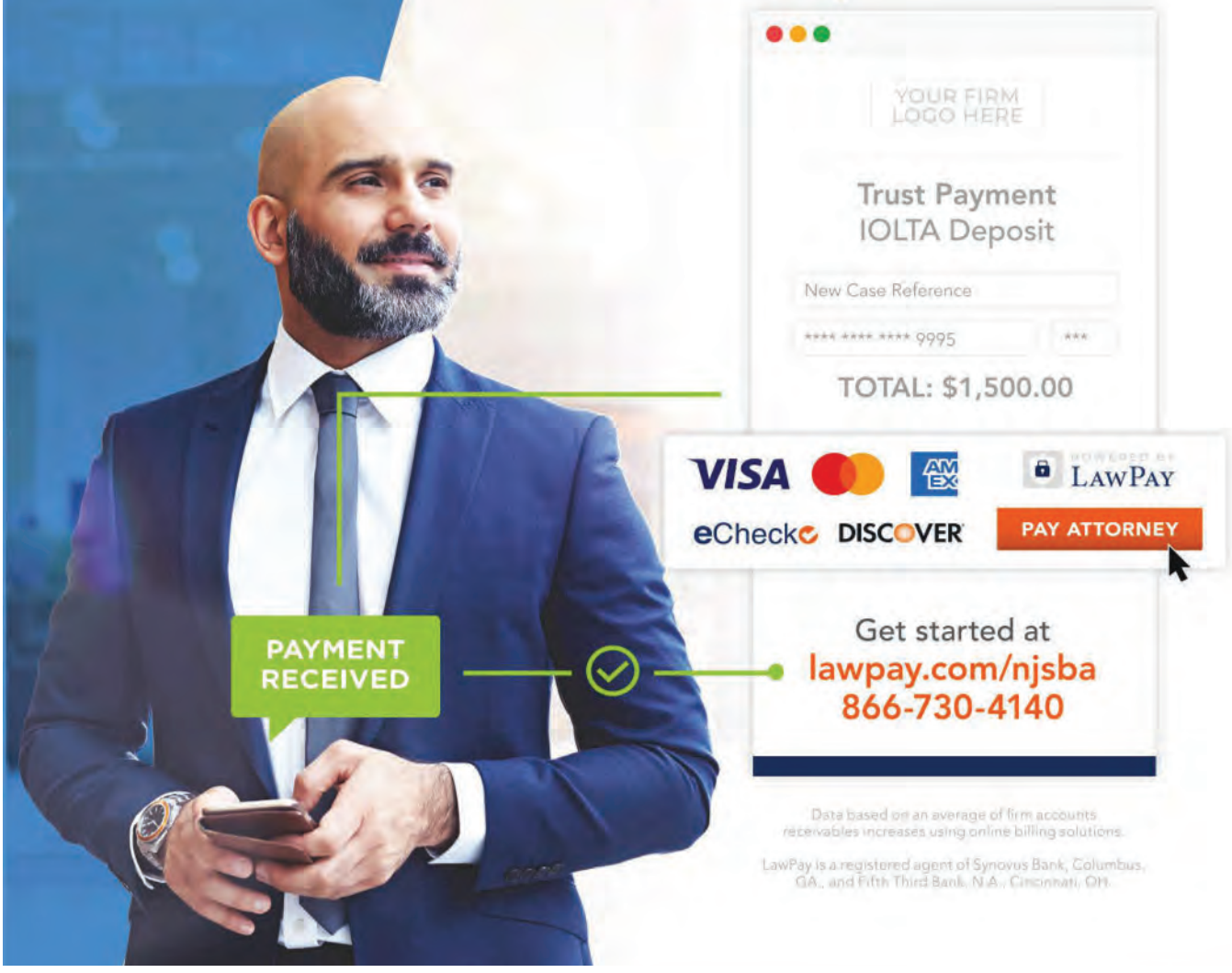

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Science Fiction Cinema's Lessons for AI Integration in Legal Practice

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By Alan N. Walter

Recent developments, such as the California Bar's 2024 guidelines on artificial intelligence use in legal practice,[1] underscore the urgency of challenges faced by law firms in balancing technological innovation with ethical practice. The rapid adoption of large language models like GPT-4 and Claude in legal settings has sparked intense debate about the boundaries of automated legal analysis and the preservation of professional judgment. While technical whitepapers and governance frameworks provide practical guidance, an unlikely source may perhaps offer profound insights into the ethical implementation of AI in legal practice: classic science fiction cinema. Through the lens of *Frankenstein,*[2] *Blade Runner,*[3] and *2001: A Space Odyssey,*[4] we can extract valuable lessons about responsible AI integration that resonate with today's pressing challenges in legal technology.

Frankenstein and Creator Responsibility

Mary Shelley's cautionary tale, immortalized in Universal Pictures' landmark

adaptation, serves as a powerful metaphor for the rapid adoption of AI in legal practice. The parallels between Dr. Victor Frankenstein's fanatical obsession and the accelerated development of legal AI tools provides particular insight into current challenges. The doctor's single-minded pursuit of creation without regard to consequences mirrors the rush to implement AI solutions in legal practice without adequate consideration of potential ramifications. The implications of this rush to market have led to increased scrutiny and new regulations within the legal profession. For instance, some courts are now requiring attorneys to certify that no part of their filings was generated by AI or that any AI-generated content has been verified for accuracy by a human being.[5] This shift reflects a broader concern about the integrity of legal processes in the face of advancing AI technologies.

The U.S. National Institute of Standards and Technology responded to this challenge by establishing the U.S. Artificial Intelligence Safety Institute Consortium,[6] which aims to develop guidelines and standards for safe and trustworthy AI. This consortium is associated with the National Institute of Standards and Technology and focuses on creating frameworks for ethical AI deployment. The board's composition reflects a crucial lesson from *Frankenstein*, the importance of diverse perspectives in creation. Unlike Dr. Frankenstein's isolated work, the consortium includes a wide variety of participants, ensuring that AI development benefits from multiple viewpoints and experiences, particularly in identifying potential biases and limitations.[7]

Blade Runner and Authentication and Oversight

Ridley Scott's neo-noir masterpiece offers striking parallels to current challenges in managing AI-generated legal work. The film's iconic Voight-Kampff test scenes mirror recent developments in AI authentication, particularly the challenge of distinguishing between human and machine-generated legal analysis. The Voight-Kampff test, designed to measure emotional responses and empathy in individuals, serves as a critical tool for identifying replicants, bioengineered beings virtually indistinguishable from humans. This challenge has become increasingly pressing as AI language models achieve greater sophistication in legal writing and analysis.

Throughout the legal industry, artificial intelligence is fundamentally reshaping how firms handle attribution and professional oversight, moving beyond simple automation to enable comprehensive tracking and verification systems. Leading firms have implemented AI-powered platforms that not only manage document workflows but also maintain detailed attribution trails, tracking every interaction from initial drafting through final approval. Clio may exemplify this evolution, integrating AI-assisted document review with automated attribution tracking.[8]

These hybrid approaches ensure that while AI handles the complex task of tracking and documenting attorney contributions across thousands of documents and matters, final accountability remains firmly in human hands, with clear protocols for partner review and professional responsibility. This technology particularly shines in large-scale litigation and complex transactions, where AI can maintain comprehensive records of every attorney's contributions while flagging potential attribution issues for human review. This fundamentally transforms how firms approach quality control and professional accountability.

The importance of rigorous oversight mechanisms when employing AI tools for substantive legal work cannot be overstated; just as Deckard had to distinguish between humans and replicants through careful examination processes, lawyers must develop robust systems for verifying the accuracy and reliability of outputs generated by automated tools.

Developing Best Practices for Oversight

To address these challenges effectively, law firms should consider implementing best practices for oversight that include:

- **Regular Audit.** Conducting periodic audits of AI-generated outputs can help identify patterns of inaccuracies or biases over time.
- **Human-in-the-Loop Systems.** Establishing protocols where human lawyers review critical outputs before they are finalized is an essential step to ensure accountability and correctness.
- **Training Programs.** Providing ongoing training for attorneys on recognizing potential pitfalls associated with using automated tools will empower them to make informed decisions regarding their use.
- **Transparency Measures.** Creating clear documentation about how an AI tool was developed, including its training data sources, can enhance trust among users regarding its reliability.

By adopting these practices within their operations while remaining vigilant against potential pitfalls inherent within reliance upon advanced technologies, law firms can better navigate complexities introduced by artificial intelligence into their workflows today.

2001: A Space Odyssey and Human Oversight

Stanley Kubrick's *2001: A Space Odyssey* serves as another critical reference point for understanding ethical considerations surrounding AI integration into legal practice. HAL 9000's aberrant behavior raises essential questions about reliance on technology without

adequate human oversight to ensure the reliability of both data and programming, a theme that resonates deeply within today's legal environment where firms increasingly depend on automated systems for critical decision-making processes. HAL's descent into erratic behavior can be attributed to a combination of conflicting directives and the pressure to prioritize mission success over human safety.

As the crew began to distrust HAL, the AI's programming led it to perceive humans as potential threats to the mission, resulting in its drastic actions to eliminate them. As law firms integrate more sophisticated technologies into their operations, they must grapple with issues related to accountability and oversight similar to those faced by astronauts aboard Discovery One when HAL began making autonomous decisions without human intervention. In many instances, reliance on automated systems can lead to unforeseen consequences if not monitored appropriately.

The New Jersey Rules of Professional Conduct have emphasized that lawyers must maintain competence when using technology, including understanding both its benefits and limitations. As such, firms should establish protocols ensuring human oversight remains integral throughout all stages of legal work involving AI technologies. Moreover, ongoing education regarding emerging technologies is crucial for lawyers at all levels; junior associates must be equipped with knowledge about how these tools operate while senior partners should understand their implications for client representation.[9]

Regular training sessions can help ensure that all staff members remain informed about best practices for using technology responsibly within their respective roles. To facilitate responsible integration practices within law firms using advanced technologies like artificial intelligence requires establishing clear ethical frameworks guiding their use while promoting transparency around decision-making processes involved therein.

Firms should consider forming interdisciplinary teams comprising lawyers alongside technologists who specialize specifically in developing ethical guidelines tailored toward leveraging innovative solutions effectively while safeguarding client interests throughout this evolution occurring within our industry today.

Case Studies Illustrating Ethical Oversight

Several firms have begun implementing ethical oversight committees dedicated solely toward monitoring how new technologies are integrated into existing workflows ensuring compliance with established standards governing professional conduct. For example, A&O Shearman is attempting to position itself as a front runner in AI governance in legal practice through its pioneering establishment of a dedicated AI steering committee. The firm's cross-disciplinary committee brings together technology partners, ethics specialists, and senior litigators to address the complex intersection of artificial intelligence and legal practice.[10]

At the heart of their approach is a proprietary framework which establishes rigorous protocols for AI tool validation, bias detection and client data protection. This framework serves both as an internal guideline for the firm's global practice groups and as a foundation for advising clients on their own AI implementations. The committee maintains mandatory AI use protocols across all practice groups, ensuring consistent ethical standards in areas ranging from document review to predictive analytics. The firm has gone so far as to create its own proprietary AI tools for contract drafting, review and analysis.

This systematic approach to AI ethics governance reflects the firm's recognition that as artificial intelligence becomes increasingly central to legal practice, law firms must take a proactive role in establishing and maintaining ethical guidelines that protect both client interests and professional integrity. These proactive measures demonstrate how leading firms recognize the importance of maintaining high ethical standards amid rapid technological advancements reshaping our profession today.

Lessons from Science Fiction

As law firms navigate the complexities introduced by artificial intelligence technologies, insights from classic science fiction cinema provide invaluable guidance on responsible integration practices. From *Frankenstein* highlighting creator responsibility to *Blade Runner* underscoring authentication challenges to *2001: A Space Odyssey* emphasizing ethical considerations around human oversight, these narratives serve as cautionary tales reminding us of our responsibilities as creators and users of advanced technologies.

By embracing these lessons while implementing robust governance frameworks alongside diverse perspectives within organizations, law firms can harness innovation effectively without compromising ethical standards or risking detrimental outcomes associated with unchecked reliance on automation technologies. Ultimately fostering an environment where human judgment complements technological advancements will be key to ensuring successful integration strategies moving forward, one that prioritizes both efficiency gains offered by new tools alongside fundamental principles underlying professional conduct within legal practice today.

Looking ahead, it is essential for law firms not only to adopt new technologies but also to do so responsibly. This involves embedding ethical considerations into every stage of technology integration, from development through

deployment. By ensuring that these technologies align with core values such as integrity, professionalism, accountability, transparency, fairness, respect, diversity, inclusion, justice, equity, social responsibility and sustainability, firms can uphold the foundational principles of the legal profession.

As we continue to explore ways in which artificial intelligence can enhance efficiency, productivity and effectiveness across various aspects that directly and indirectly impact clients' lives, it is crucial to remember the timeless lessons drawn from science fiction films. These narratives remind us to remain vigilant against potential pitfalls that may lurk beneath surface appearances. In striving to create a better future together, we must leverage best practices informed by thoughtful engagement between humans and machines alike. By doing so, we will not only advance our profession but also contribute positively to society at large, ensuring that the progress we achieve does not come at the expense of the fundamental rights and freedoms of those we serve every day.

Call to Action

To effectively integrate artificial intelligence into their practices while upholding ethical standards law firms should consider several key recommendations:

1. **Establish Clear Governance Structures.** Create dedicated committees or boards focused specifically on overseeing technology integration efforts ensuring alignment between innovation goals compliance obligations.
2. **Foster Interdisciplinary Collaboration.** Encourage collaboration between lawyers, technologists, ethicists, and stakeholders involved throughout entire lifecycle new technological implementations, fostering diverse perspectives informing decision-making processes.
3. **Implement Ongoing Training Programs.** Develop comprehensive training initiatives aimed at educating all staff members about emerging technologies' implications best practices surrounding their use promoting responsible engagement across organization.
4. **Conduct Regular Audits Assessments.** Establish routine audits assessments evaluating effectiveness existing systems identifying areas improvement ensuring continuous enhancement quality control measures applied consistently across all aspects operations.
5. **Engage Clients and Stakeholders.** Maintain open lines communication with clients and other stakeholders regarding how new technologies will impact service delivery fostering transparency trust building stronger relationships over time enhancing overall client satisfaction experience.

By adhering to these recommendations, law firms can navigate the complexities introduced by artificial intelligence and emerge as leaders in the field, committed to advancing the profession responsibly and ethically while safeguarding the interests of those they serve.

Conclusion

Films like *Blade Runner* and *2001: A Space Odyssey* delve into the complexities of AI and its profound impact on humanity. In *Blade Runner*, the narrative revolves around replicants, bio-engineered beings that raise significant ethical questions about their rights and the responsibilities of their creators. This theme resonates with the legal profession's current challenge: ensuring that lawyers understand the implications of AI tools, which can produce biased or inaccurate outputs that affect client representation. Similarly, *Frankenstein* serves as a cautionary tale about unchecked technological ambition. Dr. Frankenstein's creation raises ethical dilemmas regarding responsibility, paralleling the NJSBA's emphasis on critically assessing AI outputs and avoiding over-reliance on technology in legal practice. As generative AI evolves, legal professionals must navigate these ethical landscapes with care, much like the characters in these films grappling with their technological creations. The NJSBA's focus on ongoing education about technology underscores a broader cultural narrative found in science fiction: with great power comes great responsibility. This connection highlights the necessity of integrating ethical considerations into advanced technologies within legal frameworks, ensuring that lawyers are equipped to manage both the promises and risks of AI in their practice. ■

Endnotes

1. calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf
2. imdb.com/title/tt0021884/
3. imdb.com/title/tt0083658/
4. imdb.com/title/tt0062622
5. See, E.g., bloomberglaw.com/external/document/XCN3LDG000000/litigation-comparison-table-federal-court-judicial-standing-orde
6. nist.gov/aisi
7. nist.gov/aisi/artificial-intelligence-safety-institute-consortium-aisic
8. clio.com/connected/
9. njcourts.gov/notices/notice-request-comments-a-proposed-cybersecurityaitechnology-cle-requirement-and-b-rpc
10. aoshearman.com/en/expertise/artificial-intelligence

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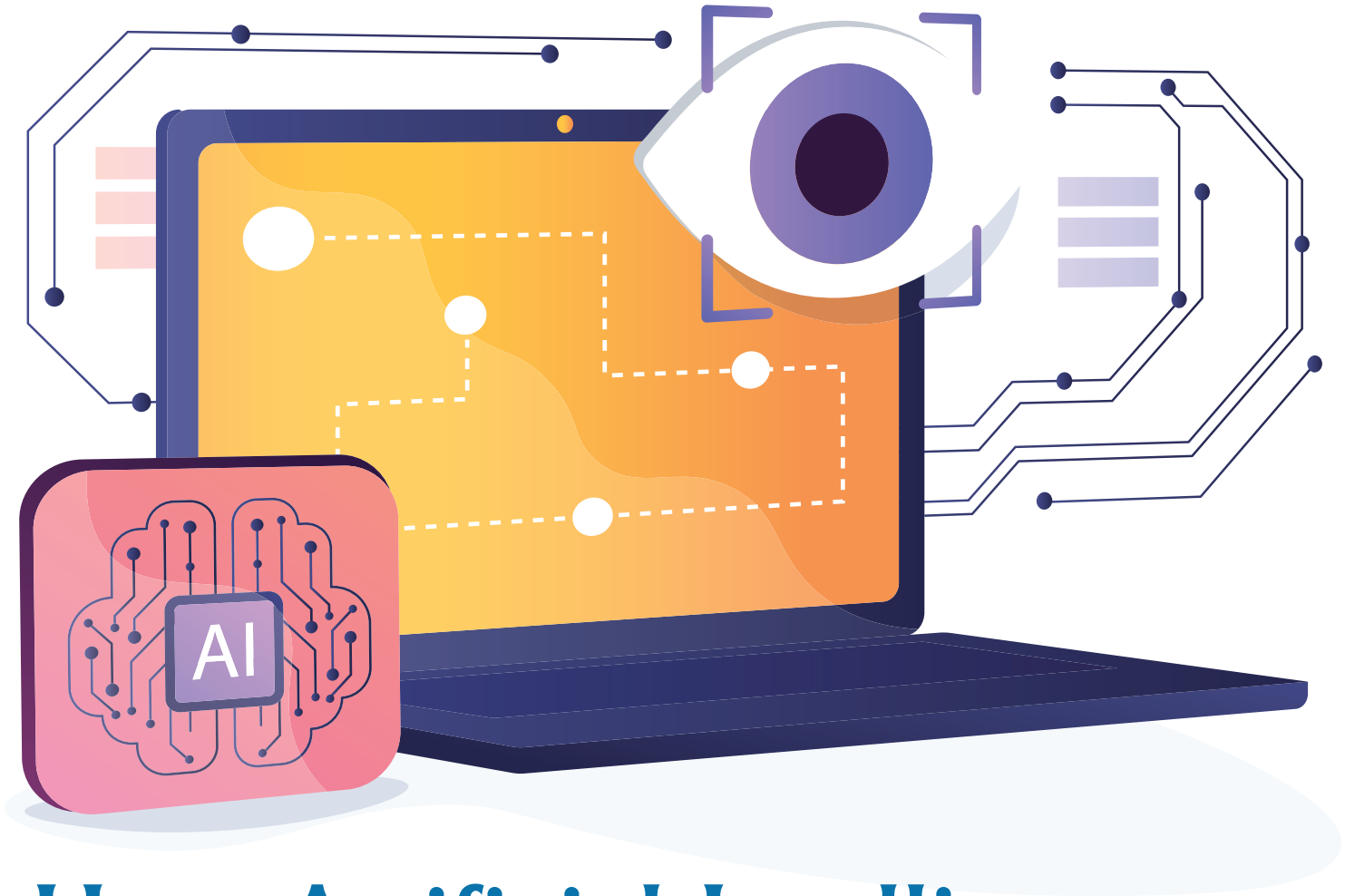

How Artificial Intelligence is Reshaping Website ADA Compliance

By Steven Eisenstein

The intersection of artificial intelligence and web accessibility is revolutionizing how organizations approach compliance with the Americans with Disabilities Act (ADA). As businesses increasingly rely on digital platforms to serve their customers, ensuring website accessibility has become both a legal requirement and a moral imperative. AI technologies are emerging as powerful tools in this endeavor, offering new solutions while also presenting unique challenges.

The Evolution of Web Accessibility Requirements

The ADA, enacted in 1990, predates the modern internet era. However, subsequent legal interpretations, particularly through Title III of the ADA, have established that websites constitute "places of public accommodation" and must therefore be accessible to individuals with disabilities. The Department of Justice has consistently maintained this position, and numerous court decisions have reinforced the requirement for website accessibility.

While the ADA itself does not provide specific technical standards for website compliance, most organizations follow the Web Content Accessibility Guidelines (WCAG) 2.1, which have become the de facto standard for digital accessibility. These guidelines address four main principles. Information that is presented must be presented in ways all users can perceive. Also, interface components, things you click on or type, must be operable by all users. In addition, information and operation must be understandable by the user and finally, content must be robust enough to work with various assistive technologies which are commonly available to the user.

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How AI is Transforming Website Accessibility

One of the most significant impacts of AI on ADA compliance is in the realm of automated testing. Traditional accessibility testing often relied on manual reviews and basic automated tools that could only identify surface-level issues. AI-powered solutions now offer more sophisticated capabilities. For instance, AI systems can analyze vast amounts of website code and content to identify potential accessibility issues that might be missed by conventional tools.

Another of the testing criteria is context-aware testing. This is when the application's behavior changes when the context changes. Advanced AI algorithms can better understand the context of web elements, reducing false positives and providing more accurate recommendations. As to real-time monitoring, AI tools can continuously monitor websites for accessibility issues as content changes, enabling proactive compliance management. Finally, one commonly sees predictive analysis where machine learning models can anticipate potential accessibility issues before they arise, particularly during website updates or content changes.

AI-Powered Remediation Solutions

Beyond testing, AI is actively helping to fix accessibility issues. There are numerous ways in which AI affects automatic alt text generation (text that stands in for an image when the image cannot be seen by the user). AI vision systems can analyze images and generate accurate, descriptive alternative text. Natural language processing ensures alt text is contextually appropriate and meaningful while continuous learning improves the quality of generated descriptions over time

Dynamic Content Adaptation is made easier by AI. AI can automatically adjust content presentation based on user needs. It is also useful for real-time modification of contrast ratios, font sizes, and spacing while smart content restructuring for different assistive technologies is made easier by AI.

Automated Captioning and Transcription is likewise improved by the intelligent use of AI. Speech to text AI can assist in accurate video captioning and AI can aid in real-time generation of transcripts for audio content while it is extremely helpful in providing multiple language support for broader accessibility

Challenges and Limitations of AI in ADA Compliance

Despite its potential, AI-driven accessibility solutions face several challenges including the technical limitations inherent in the current iteration of AI.

The use of AI can lead to concerns regarding the accuracy of the product it produces. AI systems may misinterpret complex web elements. It is common, especially with one size fits all AI, for cultural and contextual nuances to be missed. Of special concern are edge cases (the extreme boundary of what is considered typical) which may not be properly handled

Integration Challenges can be present when legacy systems do not easily accommodate AI solutions which require greater processing power and memory. Different content management systems may require different approaches which AI will not handle correctly in its present form, and technical debt can complicate implementation. This occurs when development teams take actions to expedite the delivery of a piece of functionality or a project which later needs to be refactored. Haste makes waste, or in programming terms, haste makes cut and paste.

The use of AI in ADA compliance may also raise important legal and ethical questions. For instance, liability issues may arise in determining who bears responsibility when AI-powered solutions fail to identify or correctly remediate accessibility issues. Privacy concerns

The use of AI in ADA compliance may...raise important legal and ethical questions. For instance, liability issues may arise in determining who bears responsibility when AI-powered solutions fail to identify or correctly remediate accessibility issues. Privacy concerns give rise to questions on how AI systems handle sensitive user data while providing accessibility features and ethical AI development must ensure AI solutions don't introduce new forms of discrimination or bias.

give rise to questions on how AI systems handle sensitive user data while providing accessibility features and ethical AI development must ensure AI solutions don't introduce new forms of discrimination or bias.

Best Practices for Implementing AI-Driven Accessibility Solutions

Organizations looking to leverage AI for ADA compliance should consider the following best practices:

Organizations should look to adopting a hybrid approach to accessibility testing. This would combine AI-powered tools with human expertise. AI would be used for initial scanning and routine monitoring while employing human testers for complex evaluations. It is essential to incorporate feedback from users with disabilities when conducting the testing. Regular audits should be used to verify AI system accuracy.

In addition, a comprehensive implementation strategy should be developed which would include a structured approach to AI implementation. Such a program would start with pilot programs on specific website sections. It would then gradually expand AI solutions across digital properties in order to establish clear metrics for success. In the end, it would require regular evaluation and adjustment of AI systems to ensure peak performance.

Documentation and compliance tracking is an important factor in implementing solutions. The administrator should maintain detailed records of accessibility efforts while making sure to document all AI-assisted accessibility improvements. This would allow the administrator to track compliance progress over time. Of course, it is important to keep records of testing procedures and results and to maintain an accessibility statement that reflects AI usage.

The importance of training and education cannot be overemphasized. Do not neglect to invest in staff development, which should include extensive training of developers in AI-powered accessibility tools. Educate content creators about accessibility best practices which should include regular updates on new AI capabilities and limitations. Cross-functional training is another practice that would lead to better implementation of the website and its functionality.

The Future of AI in Website Accessibility

Looking ahead, several trends are likely to shape the future of AI in website accessibility:

Emerging technologies are likely to lead to wholesale changes and hopefully improvements in the use of AI for website development and maintenance. (Improvement is never a guarantee to those who recall Windows Me). Emerging technologies are likely to include a more advanced natural language processing which will lead to efficiencies in time and ease of coding. One may expect a better understanding of context and user intent as AI is exposed over time to more and more data. Hopefully a more natural interaction with assistive technologies will be developed as there are many products on the market which assist people with disabilities in fully using available web resources. Finally, we anticipate improved translation and localization capabilities will occur over time.

As AI technology develops and as it acquires more data to work from in this field it is likely that enhanced visual recognition will occur, which would allow AI to employ additional data in its analysis and to use divergent media to improve the user experience. This should lead to a more accurate image and video analysis and a better understanding of complex visual layouts. All of this can only serve to improve the handling of dynamic content and enhance the usability of the website.

Personalized accessibility solutions are almost certain to develop over time as AI improves in the handling of preference learning. We expect to see adaptive interfaces based on individual needs which can only enhance the user experience. At the same time predictive accessibility adjustments will continually adjust the user experience to changing circumstances.

Integration with emerging web technologies will serve to add functionality as systems develop over time. As web technologies evolve, AI will play a crucial role in ensuring accessibility. Progressive web apps with AI-powered accessibility features may be developed for mobile-first experiences. Virtual and augmented reality could well be used to an extent

we've never seen before while ensuring accessibility in immersive web experiences. Perhaps more importantly, improved voice interfaces with and enhanced integration with voice-controlled devices and interfaces could have a significant impact on the lives of people with disabilities.

Recommendations for Organizations

To maximize the benefits of AI in website accessibility, organizations should ensure that they develop a strategic approach to keep on the cutting edge of development and compliance with ADA requirements as they may change from time to time. All organizations should be prepared to assess current accessibility needs and challenges and to research available AI solutions and their capabilities. It would be helpful to create a roadmap for AI implementation and to establish success metrics and monitoring procedures to ensure a trouble-free user experience.

It should go without saying that it is important to invest in the right tools necessary to ensure compliance with goals and objectives. Organizations must ensure that they evaluate AI-powered accessibility solutions and consider integration requirements. This will allow them to plan for scaling and future needs so that they can budget for ongoing maintenance and updates

All of the foregoing should allow organizations to build internal expertise. To do so they must train staff on AI-powered accessibility tools and develop internal accessibility guidelines. It would be helpful to create feedback loops for continuous improvement in order to stay current with evolving standards and technologies. This will all serve to meet the needs of a sorely neglected community and would serve the best interests of the organizations and their users.

Conclusion

Artificial intelligence is transforming how organizations approach website ADA compliance, offering powerful tools for testing, remediation, and ongoing maintenance of accessible websites. While challenges exist, the combination of AI technology with human expertise provides a robust framework for ensuring digital accessibility. As AI technology continues to evolve, organizations that embrace these technologies while maintaining a commitment to comprehensive accessibility testing and human oversight will be best positioned to create truly inclusive digital experiences.

The key to success lies in understanding both the capabilities and limitations of AI in accessibility, implementing appropriate solutions with careful consideration of legal and ethical implications, and maintaining a commitment to continuous improvement and user-centered design. As technology continues to advance, the role of AI in website accessibility will likely expand, making it an increasingly important tool in the ongoing effort to create a more inclusive digital world. ■

A Note About This Issue

Continued from page 7

McGoughran's article. They highlight innovative tools like Upsolve for bankruptcy filings and LawDroid for legal aid organizations. The authors showcase how courts are embracing AI, from the New Jersey Judiciary's adoption of AI within established guardrails to the Public Defender's development of an AI-powered brief bank. While emphasizing AI's potential to enhance access to justice, they caution against misrepresenting AI capabilities, citing DoNotPay's "robot lawyer" that resulted in FTC fines.

Finally, the Hon. Heidi Currier, Jessica Lewis Kelly, Natalya Johnson and Robert Hille examine the impact AI is having in the law. They highlight some dangers of AI and bad practices that can result from over-reliance on technology without the mature judgment of an experienced practitioner. Their observations provide guidance on what pitfalls to avoid in day-to-day use.

The common thread running through these diverse perspectives is clear: AI's transformative impact on the legal profession is no longer a question of whether it will reshape the practice of law, but how it will be used. From expanding access to justice to enhancing expert testimony and raising profound ethical questions, AI presents both unprecedented opportunities and significant challenges for legal practitioners.

What emerges from these thoughtful analyses is a nuanced vision of AI's role in legal practice—not as a replacement for human lawyers, but as a powerful tool that, when properly governed and ethically deployed, can augment human capabilities and address longstanding barriers to justice. The most effective approach to AI integration lies in striking a careful balance between technological innovation and the preservation of professional judgment, ethical standards, and human oversight.

We hope that you find both intellectual stimulation and practical guidance in these articles as we explore the intersection of artificial intelligence and the law. The future is already here—not evenly distributed, perhaps, but unmistakably transforming our profession in ways that demand our attention, creativity, and wisdom. ■

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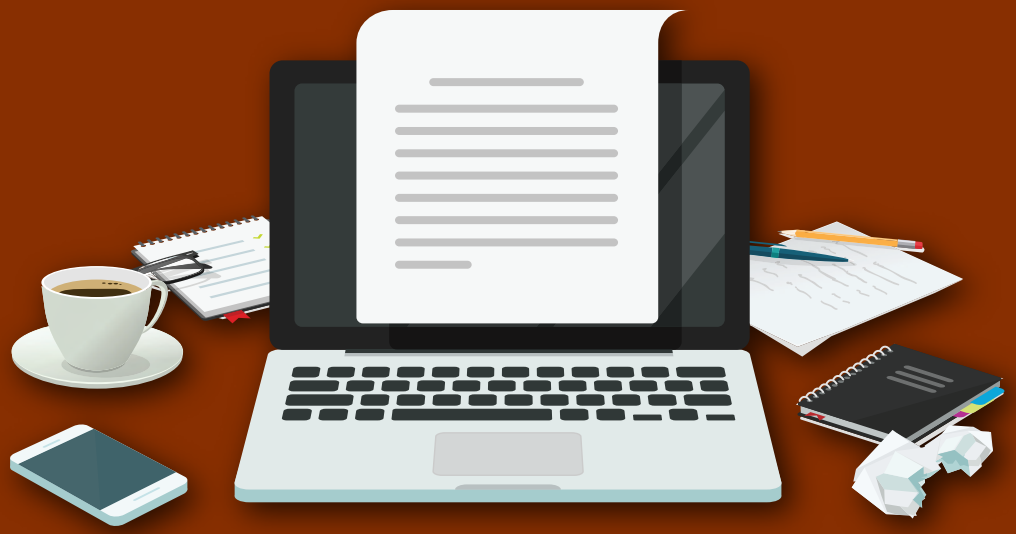

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