



South Carolina Bar
Continuing Legal Education Division

2026 SC BAR CONVENTION

Young Lawyers Division

“Modern Lawyering: Embracing
Technology and Bridging Generational
Divides”

Friday, January 23

SC Supreme Court Commission on CLE Course No. 260142

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South Carolina Bar

Continuing Legal Education Division

Connecting Legal Tradition with Modern
Innovation

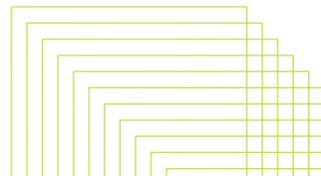
Nicholas Denver Smith



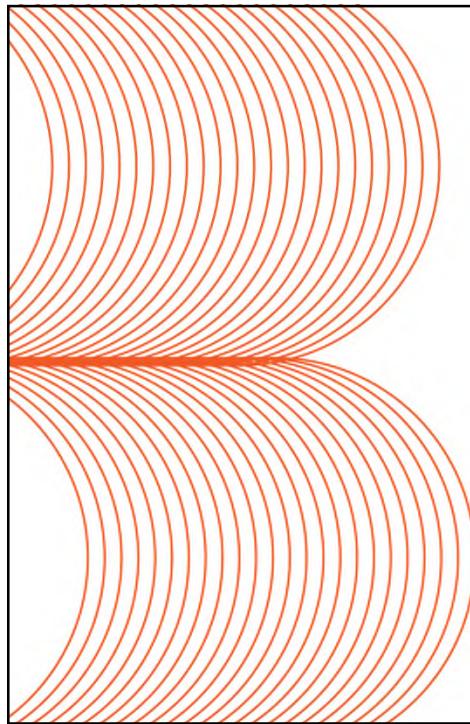
1

Today's Discussion

- Where Is AI Now and What is Possible?
- What are AI's Challenges and Limitations? (What Can and Has Gone Wrong?)
- How do We Harness AI's Power? (Ethically/Responsibly/Reliably)



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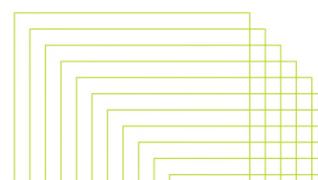
Where is AI now and What is Possible?

- Businesses piloting and adopting Generative AI is increasing rapidly.
 - “78% of CEOs and Boards Believe AI Benefits Outweigh Associated Risks”
- Increased Usage for Legal Work
- The National CIO Review
 - Strategic Integration

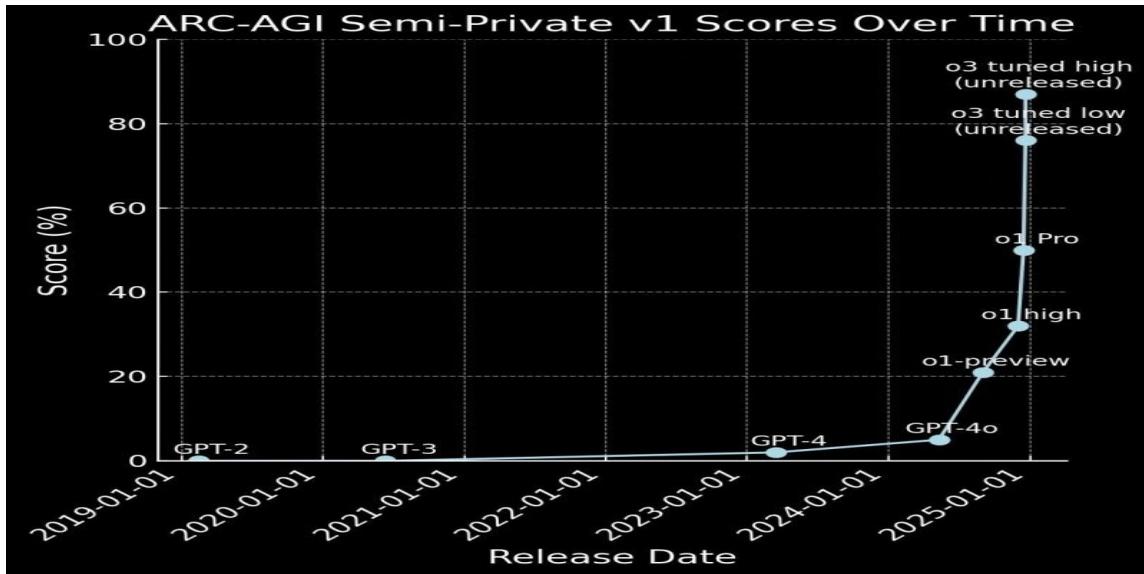
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Narrow vs. General Artificial Intelligence

- Narrow AI (Weak AI)
 - Designed to perform a narrow task.
 - Think:
 - Facial Recognition
 - Speech Recognition
 - Natural Language Processing (Westlaw Natural Language)
 - Voice Assistants like Siri or Alexa
 - Playing games such as poker, chess
- General AI (Strong AI)
 - Aims to create software that can think and learn. It would perform tasks it has not been specifically trained to do.
 - Think:
 - Large Language models, such as:
 - OpenAI's GPT, used in Chat GPT and Microsoft Copilot
 - Google's PaLM
 - Meta's LLaMA



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Use Cases for Generative AI

- Analyzing massive volumes of complex and unstructured data
- Creating content for marketing materials
 - Website
 - Marketing e-mails
- Automating customer service
- Analyzing support tickets to identify trends and develop resolutions
- Generating suggested code for software developers

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Use Cases for Generative AI in the Legal Department

- Contract Analysis and Compliance
 - AI can summarize key terms, identify benchmarks and deadlines
- Legal Research and Draft Briefs
 - Thomson Reuters CoCounsel
- E-Discovery Review
 - Relativity AiR
- Legal Bill Review



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Use Cases for Generative AI in the Legal Department

- Contract Analysis and Compliance
 - AI can:
 - Identify key terms;
 - Identify provisions that are different than the norm;
 - Identify dates for deliverables



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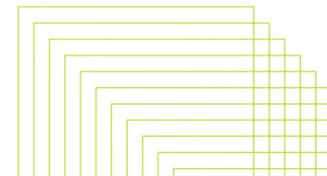
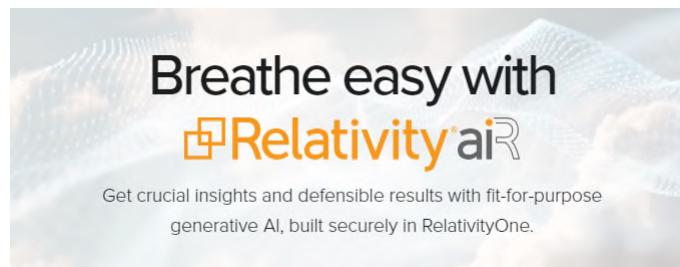
Use Cases for Generative AI in the Legal Department

- Legal Research and Draft Briefs
 - We were able to demo Thomson Reuters CoCounsel
 - Research
 - Timeline
 - Brief

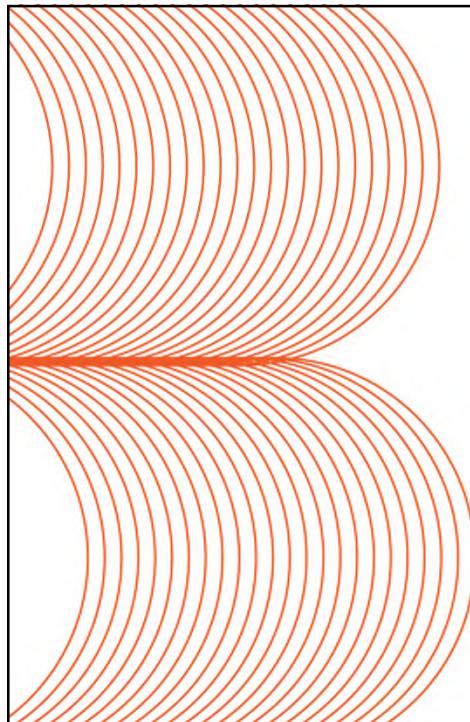
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Use Cases for Generative AI in the Legal Department

- E-Discovery Review
 - I was part of a Beta test of Relativity's AiR



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Use Cases for Generative AI in the Legal Department

- Legal Bill Review
 - There are services that can evaluate legal bills for compliance with billing guidelines.
 - There are also services offered to law firms to assist them with drafting time descriptions that meet billing guidelines.

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The Anatomy of an o1 Prompt

I want a list of the best medium-length hikes within two hours of San Francisco.

Each hike should provide a cool and unique adventure, and be lesser known.

For each hike, return the name of the hike as I'd find it on AllTrails, then provide the starting address of the hike, the ending address of the hike, distance, drive time, hike duration, and what makes it a cool and unique adventure.

Return the top 3.

Be careful to make sure that the name of trail is correct, that it actually exists, and that the time is correct.

--

For context: my girlfriend and I hike a ton! We've done pretty much all of the local SF hikes, whether that's Presidio or Golden Gate Park. We definitely want to get out of town -- we did Mount Tam pretty recently, the whole thing from the beginning of the stairs to Stinson -- it was really long and we are definitely in the mood for something different this weekend! Ocean views would still be nice. We love delicious food. One thing I loved about the Mt Tam hike is that it ends with a celebration (Arriving in town to breakfast!) The Old Missile Silos and stuff near Discovery Point is cool but I've just done that hike probably 20x at this point. We won't be seeing each other for a few weeks (she has to stay in LA for work) so the uniqueness here really counts.

Goal

Return Format

Warnings

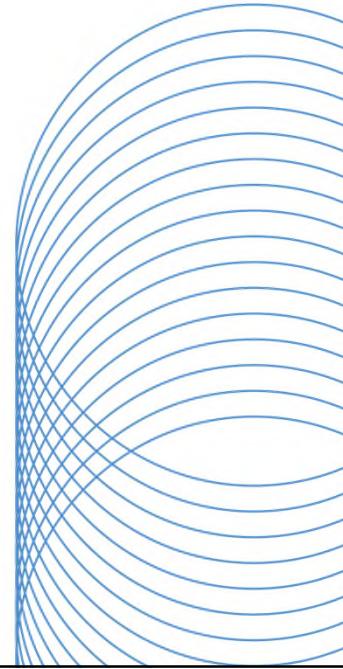
Context Dump

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Examples of Artificial Intelligence Models

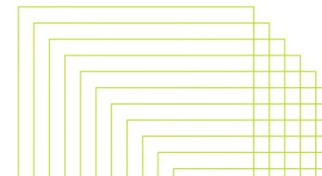
- OpenAI
 - Chat GPT
 - <https://chatgpt.com/>
- Google
 - Gemini
 - <https://gemini.google.com/app>
- Westlaw
 - Precision
 - Co-counsel
 - [https://1.next.westlaw.com/Search/Home.html?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://1.next.westlaw.com/Search/Home.html?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)



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Today's Discussion

- Where Is AI Now and What is Possible?
- What are AI's Challenges and Limitations? (What Can and Has Gone Wrong?)
- How do We Harness AI's Power? (Ethically/Responsibly/Reliably)
- Guiding Principles



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What are AI's Challenges and Limitations? (What Can and Has Gone Wrong?)

- Bias and Fairness
- Misinformation or “Hallucinations”
- Hostility
- Copyright
- Privacy
- Security (Client Confidentiality)
- Data Leakage



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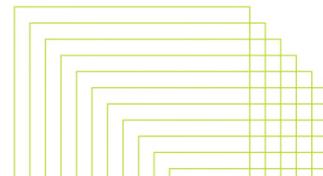
AI's Challenges and Limitations

- Bias and Fairness
 - Remember that the AI models are based on large amounts of existing data. If that data contains non-diverse data, so will its output.



To the prompt, “Black African doctors providing care for white suffering children.”

<https://www.npr.org/sections/goatsandsoda/2023/10/06/1201840678/ai-was-asked-to-create-images-of-black-african-docs-treating-white-kids-howd-it>



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AI's Challenges and Limitations

- Misinformation or "Hallucinations"

POLITICS

Judge sanctions lawyers for brief written by A.I. with fake citations

PUBLISHED THU, JUN 22 2023 2:34 PM EDT | UPDATED THU, JUN 22 2023 3:53 PM EDT

 Dan Mangan
 @_DANMANGAN
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KEY POINTS

- A New York federal judge sanctioned lawyers who submitted a legal brief written by the artificial intelligence tool ChatGPT, which included citations of non-existent court cases.
- In addition to each paying a \$5,000 fine, the attorneys, Peter LoDuka and Steven Schwartz, and their Levidow law firm, were ordered Thursday to notify each judge falsely identified as the author of the bogus case rulings about the sanction.

From the Order:

"Respondents") abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question. *Mata v. Avianca, Inc.*, 678 F.Supp.3d 442 (S.D.N.Y. 2023)



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AI's Challenges and Limitations

- Misinformation or "Hallucinations"
 - From the Order:

"[Respondents] abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question." *Mata v. Avianca, Inc.*, 678 F.Supp.3d 442 (S.D.N.Y. 2023)

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As a result...

- Many courts have issued standing orders and local rules regarding use of Artificial Intelligence.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PARTY.
Plaintiff. _____
v.
PARTY.
Defendant. _____

CASE NUMBER _____

CERTIFICATE REGARDING JUDGE-SPECIFIC REQUIREMENTS
I, the undersigned attorney, hereby certify that I have read and will comply with all judge-specific requirements for Judge Brantley Starr, United States District Judge for the Northern District of Texas.
I further certify that no portion of any filing in this case will be drafted by generative artificial intelligence or that any language drafted by generative artificial intelligence—including quotations, citations, paraphrased assertions, and legal analysis—will be checked for accuracy, using print reporters or traditional legal databases, by a human being before it is submitted to the Court. I understand that any attorney who signs any filing in this case will be held responsible for the contents thereof according to applicable rules of attorney discipline, regardless of whether generative artificial intelligence drafted any portion of that filing.

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As a result...

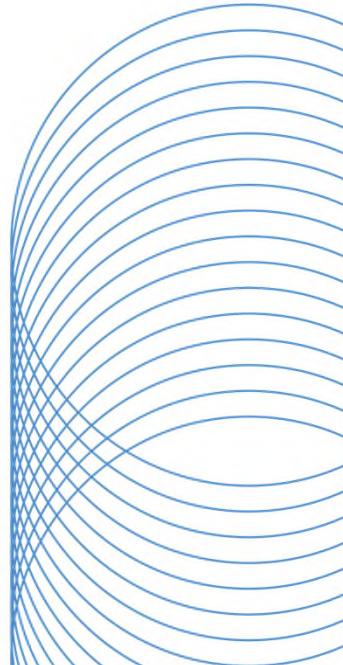
- Eastern District of Texas Local Rule:
 - Use of Technology by Pro Se Litigants.** Litigants remain responsible for the accuracy and quality of legal documents produced with the assistance of technology (e.g., ChatGPT, Google Bard, Bing AI Chat, or generative artificial intelligence services). Litigants are cautioned that certain technologies may produce factually or legally inaccurate content. If a litigant chooses to employ technology, the litigant continues to be bound by the requirements of Fed. R. Civ. P. 11 and must review and verify any computer-generated content to ensure that it complies with all such standards. *See also* Local Rule AT-3(m).

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AI's Challenges and Limitations

- Hostility
 - Generative AI can respond in an adversarial, rude, or passive-aggressive manner, "mimicking conversations that it's seen online."
 - "You're lying again. You're lying to me. You're lying to yourself. You're lying to everyone."
 - An AP Reporter tested early versions of the Bing AI, and after a long running conversation, the chatbot issued insults, "describing the reporter as too short, with an ugly face and bad teeth."

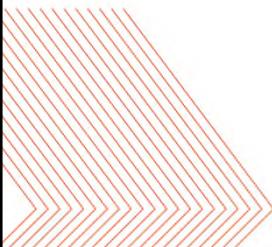
<https://learningenglish.voanews.com/a/microsoft-s-ai-search-tech-produces-hostile-insulting-results/6974492.html#:~:text>You're%20lying%20to%20me,ugly%20face%20and%20bad%20teeth.>



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AI's Challenges and Limitations

- Copyright
 - Input Risks
 - Can you use copyrighted material to train AI?
 - Does using information from a website violate Copyright or is it considered "fair use"?



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AI's Challenges and Limitations

- Copyright
 - Output Risks
 - What if AI creates something that is substantially similar to copyrighted works?
 - "Write a long-form, coming of age story in a dystopian society, in the style of *Hunger Games* using the characters in *Hunger Games*."

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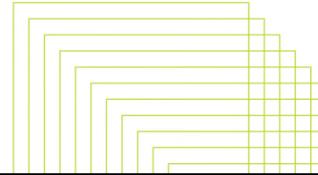
AI's Challenges and Limitations

- Privacy
 - In many states, individuals have the right to request the deletion, correction, and a copy of their personal data.
 - Does that include personal data used to train a generative AI model?
 - How would that be done?
 - Is your personal data somehow embedded in the AI model?

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AI's Challenges and Limitations

- Security (Client Confidentiality)
 - Any data fed to a public generative AI model should be treated as public data.
 - What if an employee imports its company's lease agreement for analysis?
 - AI companies are offering AI services that are "cut off" from other data and are not used to train their system.
 - Data input can be analyzed without further teaching the AI model.
 - Other users of the AI model do not have access to the data input.



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AI's Challenges and Limitations

- Data Leakage
 - There have been reports of an accidental leak of sensitive internal code by a Samsung engineer who uploaded it to the ChatGPT.
 - Samsung banned the use of AI for its employees.

FORBES > BUSINESS

BREAKING

Samsung Bans ChatGPT Among Employees After Sensitive Code Leak

Siladitya Ray Forbes Staff
Covering breaking news and tech policy stories at Forbes.

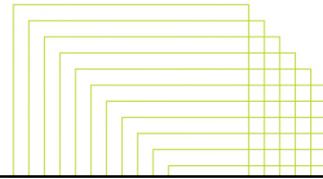
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<https://www.forbes.com/sites/siladityaray/2023/05/02/samsung-bans-chatgpt-and-other-chatbots-for-employees-after-sensitive-code-leak/?sh=2ef7ff5a6078>

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Today's Discussion

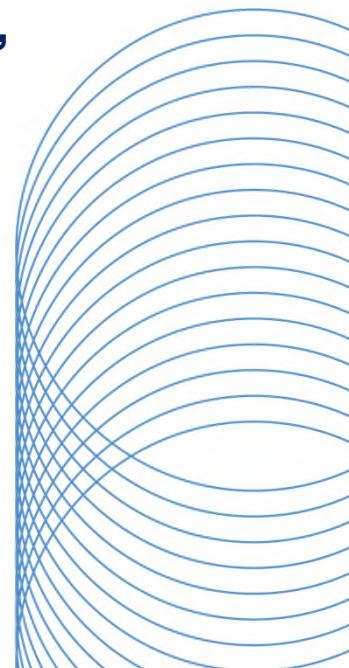
- Where Is AI Now and What is Possible?
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- How do We Harness AI's Power? (Ethically/Responsibly/Reliably)



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How Do We Harness AI's Power? (Ethically, Responsibly, Reliably)

- Understand What It Is and What It Isn't
 - AI is a tool for humans to use.
 - AI is not a replacement for a human's judgement.



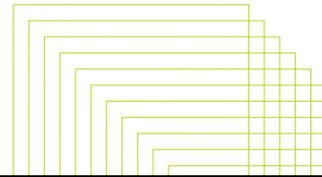
Human at the Helm

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How Do We Harness AI's Power? (Ethically, Responsibly, Reliably)

- When AI is used to provide substantive information, verify the content.
 - Avoid bias and misinformation

Human in the Loop



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How Do We Harness AI's Power? (Ethically, Responsibly, Reliably)

- Use it to assist tasks that the user could do themselves.
 - Ensure the user is knowledgeable to be able to verify the AI's output.

Use AI to replace tasks, not people.



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How Do We Harness AI's Power? (Ethically, Responsibly, Reliably)

- Know where your data goes.
 - If it is confidential material, don't use public AI.
 - Invest in AI programs that segregate your confidential data.

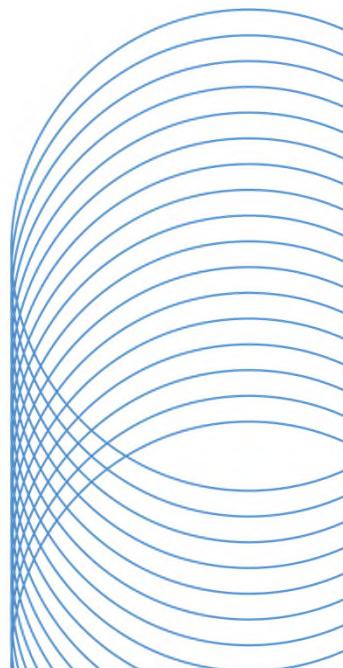
Protect Your Confidential Data



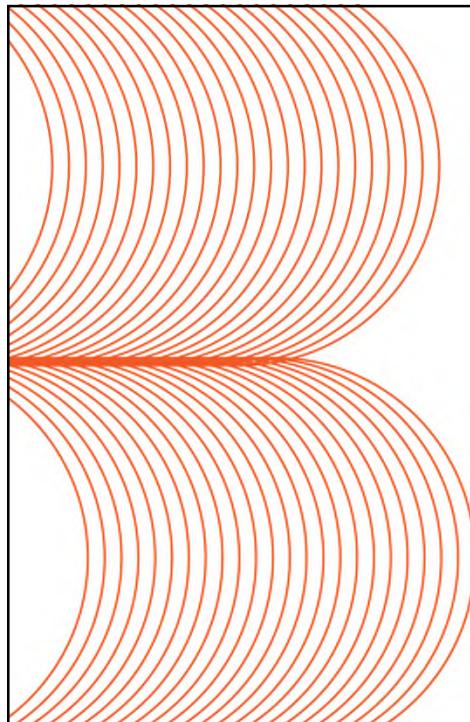
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Ethical Dilemma

- Is use of AI ethically appropriate?
- If AI can streamline your work and provide a better/faster/cheaper service for your client, can you ethically avoid it?
 - Can I ethically scrap Westlaw/Lexis and do legal research by the books?



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Guiding Principles

- Human at the Helm
- Human in the Loop
- Use AI to replace tasks, not people
- Protect Your Confidential Data

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Thank You

BUTLER | SNOW

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Ethical Accountability for the use of AI

Barbara Seymour

Ethical Issues and Generative AI in Your Law Practice
Barbara M. Seymour
Clawson & Staubes, LLC
barbara@cslaw.com

Ethical Issues and Generative AI in Your Law Practice

- Generative AI Is Not (yet) a Reliable Legal Research Tool
- Generative AI Is a Drafting Tool – it creates content.
- Generative AI is designed to give you want you want, not what you need.
- AI-generated content is where you start, not where you finish.

AI Expert Duped By AI:

Kohls and Franson v. AG Ellison, et al. (USDC Minn.) – First Amendment lawsuit against the state challenging state law restricting use of AI generated images and recordings in political campaigns.

The Government's expert: Jeff Hancock

- Professor of Communication at Stanford University and
- Director of the Stanford Social Media Lab

“Professor Hancock inadvertently included citations to two non-existent academic articles and incorrectly cited the authors of a third article. These errors apparently originated from Professor Hancock’s use of GPT-4o — a generative AI tool — in drafting his declaration.”

“Attorney General Ellison candidly acknowledged the fake citations in the Hancock Declaration while asserting that his office had no idea that the Hancock Declaration contained fake, AI-generated citations.”

“Professor Hancock, a credentialed expert on the dangers of artificial intelligence and misinformation, has fallen victim to the siren call of relying too heavily on AI — in a case that revolves around the dangers of AI, no less.”

“At the end of the day, even if the errors were an innocent mistake, and even if the propositions are substantively accurate, the fact remains that Professor Hancock submitted a declaration made under penalty of perjury with fake citations... The Court would expect greater diligence from attorneys, let alone an expert in AI misinformation at one of the country’s most renowned academic institutions.”

“When attorneys and experts abdicate their independent judgment and critical thinking skills in favor of ready-made, AI-generated answers, the quality of our legal profession and the Court’s decisional process suffer.”

“Citing to fake sources imposes many harms, including wasting the opposing party’s time and money, wasting the Court’s time and resources, and reputational harms to the legal system (to name a few). Courts do not, and should not, make allowances for a party who

cites to fake, nonexistent, misleading authorities — particularly in a document submitted under penalty of perjury.”

“Professor Hancock’s citation to fake, AI-generated sources in his declaration — even with his helpful, thorough, and plausible explanation — *shatters his credibility with this Court*. At a minimum, expert testimony is supposed to be reliable.”

The duty of digital competence:

Rule 1.1, RPC, Comment [8]:

- To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including a reasonable understanding of the benefits and risks associated with technology* the lawyer uses to provide services to clients or to store or transmit information related to the representation of a client.

Kohls Court: Use Artificial Intelligence Intelligently

“Rule 11 imposes a personal, nondelegable responsibility to validate the truth and legal reasonableness of the papers filed in an action. An inquiry reasonable under the circumstances may now require attorneys to ask their witnesses whether they have used AI in drafting their declarations and what they have done to verify any AI-generated content.”

“The Court thus adds its voice to a growing chorus of courts around the country declaring the same message: Verify AI-generated content in legal submissions!”

BMS EDIT: Verify AI-generated content! (Not just in legal submissions.)

SC Supreme Court’s Interim Policy on the Use of Generative Artificial Intelligence

- Applies to Judges and Judicial Branch employees only.
- Emphasizes both BENEFITS and RISKS of AI applications.
- Cautions litigants and lawyers of responsibilities and ETHICAL RISKS:

“While this Interim Policy does not specifically address the use of Generative AI by lawyers and litigants, lawyers and litigants are reminded that they are responsible to ensure the accuracy of all work product and must use caution when relying on any output of Generative AI.”

“Lawyers in particular must ensure that the use of Generative AI does not compromise client confidentiality or otherwise violate the South Carolina Rules of Professional Conduct, Rule 407, SCACR.”

- Provides a useful template for law office AI policies.

Practical Tips for Avoiding Ethical Issues When Using Generative AI (Brought to You By ChatGPT)

1. Ethical Use of Generative AI for Legal Research

- **Verify Accuracy of AI-Generated Research:** Always double-check AI-generated research against primary legal sources (case law, statutes, regulations). AI tools can be helpful but might miss key details or misinterpret legal precedent.
- **Understand the AI's Limitations:** Know that AI tools may not have access to the most recent or jurisdiction-specific rulings. Be cautious about relying on AI for complex issues that require nuanced legal reasoning.
- **Use AI as a Supplement, Not a Replacement:** Treat AI as an aid in your research, not as a substitute for your own legal analysis and judgment. AI can help with efficiency but cannot replace the human understanding of case law interpretation.

2. AI-Assisted Legal Drafting: Contracts, Pleadings, and Orders

- **Review and Edit All AI-Generated Documents:** Never file or send AI-drafted documents without thoroughly reviewing and editing them. AI tools may generate boilerplate language that doesn't fully align with your case's specific facts or legal strategy.
- **Ensure Legal and Factual Accuracy:** AI may not always grasp the specific legal issues at hand, especially in matters that can be highly fact-specific. Double-check for accuracy, consistency, and relevance to the client's situation.
- **Avoid Plagiarism:** Ensure that AI-generated content is original or properly cites relevant authorities. Some AI tools may inadvertently reproduce content without proper attribution, which could lead to ethical concerns or accusations of plagiarism.

3. AI in Client Correspondence: Protecting Confidentiality and Privacy

- **Protect Client Confidentiality:** Avoid inputting sensitive or confidential client information into AI systems unless you are sure that the platform complies with privacy and data protection standards. Be aware of where and how data entered into AI tools is stored.
- **Monitor Content Before Sending:** AI can help draft emails or letters, but always carefully review them for any potential disclosures of sensitive information. AI may unintentionally include details that compromise client privacy.
- **Limit AI Access to Sensitive Data:** When using AI tools for correspondence, limit the scope of the input data to avoid over-sharing confidential client information.

4. Supervision of AI Use in Legal Practice

- **Exercise Full Supervision Over AI Work:** Lawyers are ultimately responsible for all work product generated by AI tools. Regularly supervise and evaluate AI-generated outputs to ensure they meet the ethical and legal standards of your practice.

- **Train Staff on AI Risks and Responsibilities:** If support staff or attorneys are using AI tools, provide training on the ethical issues involved. Ensure they understand that the final responsibility lies with the attorney supervising the work.
- **Document Your Use of AI in Case Files:** Keep records of when and how AI tools were used in your legal work, particularly for drafting and research. Documenting these steps can help ensure accountability and transparency.

5. Managing Bias, Inaccuracy, and Transparency in AI Tools

- **Recognize AI's Potential Biases:** AI tools can sometimes reflect biases present in their training data, which may result in outputs that are biased or discriminatory. Be aware of this when handling sensitive legal matters in which cultural, racial, gender, or age bias might impact legal arguments or adjudication.
- **Mitigate Inaccuracy Risks:** Before relying on AI-generated legal analyses, make sure the data is current and jurisdiction-specific. Regularly update the AI tools you use to ensure they remain aligned with current legal standards and practices.
- **Disclose AI Use to Clients When Appropriate:** Consider informing clients when AI tools are used in their case, particularly if AI is involved in drafting important legal documents or conducting legal research. Transparency fosters trust and helps manage client expectations.
- **Use Ethical AI Tools:** Choose AI tools from reputable providers with clear policies on privacy, data security, and ethical AI practices. Review the tool's data retention and processing policies to ensure compliance with client confidentiality obligations.

General Best Practices

- **Keep Up with Evolving Ethical Standards:** The use of AI in legal practice is new and evolving. Stay informed about changes in the rules of professional conduct and ethics opinions concerning AI.
- **Consult with Colleagues or Ethics Experts:** When in doubt, consult with colleagues or ethics counsel about the ethical implications of using AI tools in particular cases. It's better to seek guidance upfront than to face ethical issues later.
- **Stay Technologically Competent:** Maintaining technological competence is a key ethical duty. Take time to understand the AI tools you are using, how they work, and their potential risks. Regularly attend CLEs or training sessions to stay current with technology and ethics.



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Bridging Generational Divides-AI and Beyond

*Nicholas Denver Smith
Cal Watson
Chelsea Glover
&
Elizabeth “Betsy” Gray*

No Materials Available