

# AI, ChatGPT, Ethics, and the Law

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# What is Artificial Intelligence (AI)

- AI is the ability of computer systems to perform tasks that normally require human intelligence.
- It is a simulation of human intelligence processes by machines, especially computer systems.
- The goal of AI is for the technology to autonomously make decisions and carry out actions on behalf of a human being

# Types of Artificial Intelligence

- Current functions of AI are referred to as weak or strong.
  - Weak AI performs a limited set of predetermined functions.
    - Also called Narrow AI
  - Strong AI can function autonomously according to a wide set of stimuli
    - Has greater functionality than weak
    - Also called General AI
- Super AI will be capable of exceeding human intelligence.
  - Currently, Super AI is still in the realm of science fiction though it is likely to become scientific fact in the future.

# Categories of Artificial Intelligence

- Four major categories
  - Reactive uses real-time data to make decisions
    - Think GPS in your car offering up-to-the minute changes due to traffic information
  - Limited memory uses stored data to make decisions
    - ChatGPT uses stored memory
    - ChatGPT currently has limited knowledge after September 2021
  - Theory of Mind (ToM) can consider subjective elements such as user intent.
    - “ToM is the ability to infer and understand another's mental state (the beliefs, thoughts, intentions and feelings of another), and use this information to explain and predict human behavior.”
      - <https://www.sciencedirect.com/topics/neuroscience/theory-of-mind>
    - ToM tests show that OpenAI GPT-3.5 is beginning to pass ToM tests at the level of a 9-year-old child.
    - Psychological tests that are normally performed on humans were used on OpenAI GPT 3.5
    - “The tests showed that OpenAI was capable of adding extra detail that showed a surprising level of understanding.”
      - <https://www.discovermagazine.com/mind/ai-chatbot-spontaneously-develops-a-theory-of-mind>
    - This ability seems to have spontaneously developed.
    - Scientists do not know if this means AI has established ToM or if it has found another way around the issue that is specific to computers.

# Categories of AI (Continued)

- Self-aware is the fourth category of AI. It is still in the realm of science fiction.
  - The fears of humanity related to AI often focus on this fourth stage.
  - What would happen if AI became self-aware?
  - We do not really know.

# Some Ways AI is Being Used in Society Today

- AI is not new we have been using it for quite some time.
- The recent attention to AI comes to us due to high profile launches of AI art creation and other tools such as ChatGPT.
- These tools have enabled the average person to use AI in ways that were previously unavailable.
- Users can now directly access AI tools instead of simply using already existing services that use AI to provide things it thinks will interest or aid the end-user.

# AI in Entertainment

- AI is used in streaming music and video.
- Netflix, Amazon Music, Spotify, and similar tools adjust recommendations based on viewing and listening habits of its users.
- These sites look at your use but also at comparable use by others to make recommendations for movies, tv shows, and music.
- These applications also control how much bandwidth is necessary based on predictions and user interaction
- Netflix's AI knows that when a popular show is released it will need more bandwidth to avoid buffering problems. Its systems automatically adjust for these needs ahead of time.

# Voice Assistants

- Siri, Google Voice, Apple Homepod, Google Home, Alexa
  - All of these tools use AI to respond to questions, manage your schedule, and more.
  - With additional hardware, these tools can turn on and off your lights, lock and unlock your doors, adjust your thermostat, start your coffee maker, run your washing machine, let you know what groceries you need and more.

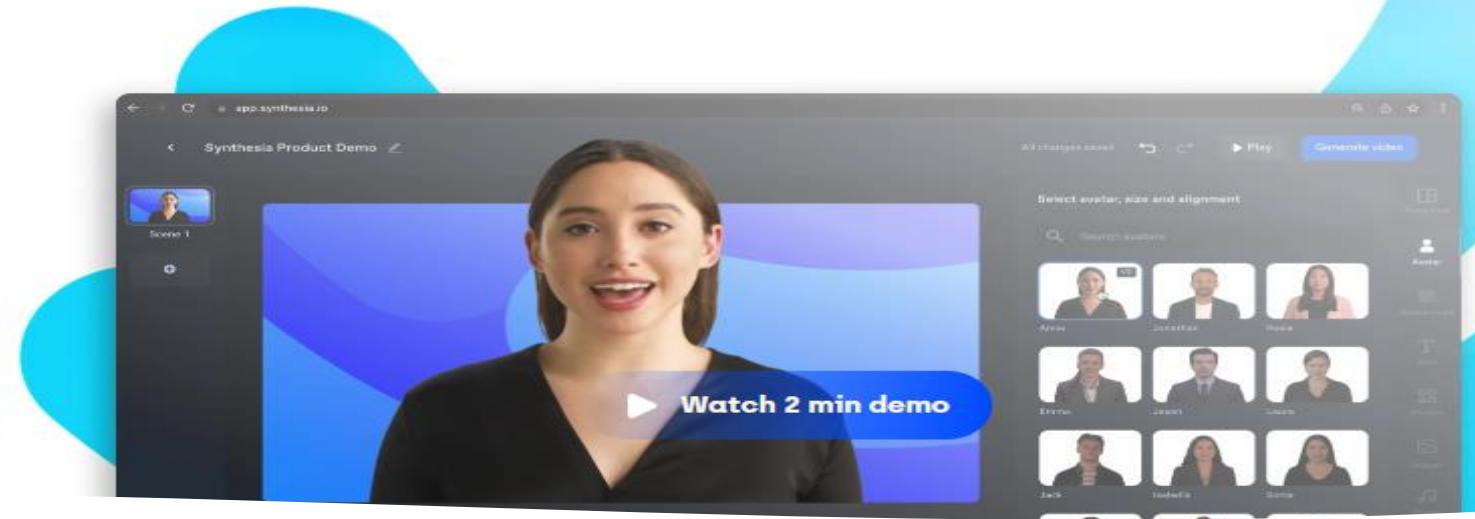


# Vehicles and GPS

- Self-driving cars use AI. These cars predict what other drivers on the road will do in order to avoid accidents.
  - It does this by analyzing the data it has been provided by its creators.
  - There have been accidents which is one of the reasons that self-driving cars must have an alert driver behind the wheel.
  - These automobiles use SLAM (Simultaneous Localization and Mapping) to constantly identify their location and what is around them.
  - Blind spot issues are also being corrected through AI.
- GPS can adjust in real time to let you know about detours, warn you about traffic problems and more.
  - Previously navigation tools had to be updated every year or so by purchasing and manually adding new maps.
  - In China, AI is being used to identify congestion and problem solve on the fly.
  - AI is also used in city planning to create more efficient road design, traffic light deployment, bridge creation, and more.

# Create videos from plain text in minutes

Synthesia is an AI video creation platform. Thousands of companies use it to create videos in 120 languages, saving up to 80% of their time and budget.



## Marketing and Shopping

- Over the past few years, it has begun to feel as if marketers are stalking us throughout our time on the web.
  - Tools that help brands market more efficiently to get the right eyes on their ads are frequently managed through AI.
- Websites use AI to manage what users see, making recommendations for products that might interest them based on various factors.
- It is possible to create marketing and other videos completely via AI. Use a tool such as ChatGPT to create a script, combine that script with a video generating service, and you have created a high-quality video that looks as if it used a real human as a spokesperson.

# Art

- There are a number of tools that allow users to type in words and create a picture. The image is an entirely new picture, based on what the AI learned by reviewing other images.
- This image was created with NightCafe
- I typed in “Lawyers in a room watching a seminar on Technology”
- I used two different style options for these photos.



# Graphic Design

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AI is fundamentally changing graphic design. It is much easier to use AI to create a new logo or sign than it is to have someone take the time to create something for you.

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There are free and low-cost sites that you can use for graphic design

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Learning to use these tools to get what you want takes practice




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EST. 2022

# Medicine

- AI is being used to make clinical decisions
  - What medicine to use
  - What mental health treatment is necessary
  - What physical therapy is best
- AI is also being used to read scans such as MRIs, X-Rays and other imaging results.
  - AI is better at finding things that human beings might have missed
- AI combined with virtual reality is being used in cognitive behavioral therapy. The AI responds to the behavior of the user and adapts accordingly.

# Security and Fraud Prevention

- Phones and computers can be unlocked with Face ID.
- The government uses facial identification to identify suspects in crimes.
- Automated surveillance can constantly watch for problems humans might miss and is available 24/7.
- AI can be used to look for new problems that humans might not have considered.
- It looks for unusual patterns that can be used to identify identity theft or fraud.
  - This is especially common with banks seeking to prevent credit card fraud

# Robotics

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- AI makes robots smarter.
- It helps them avoid obstacles as they are moving around
  - It can identify the best route just as GPS does for your car
- Such robots, in combination with AI, can manage inventory, clean spills, help in manufacturing and more.
  - This leaves human beings to focus on other tasks such as customer service, patient care, and so on.
- AI creates smarter factories. This enables companies to boost productivity while reducing cost.
  - AI is used to optimize the supply chain
  - Adjust how much of a product needs to be made and shipped
  - Design new products
  - And more

<https://www.pennlive.com/entertainment/2023/02/marty-the-robot-escapes-from-a-giant-grocery-store-goes-on-brief-googly-eyed-adventure-parking-lot.html>



# Agriculture

- AI helps identify defects and nutrient problems in the soil.
- This helps farmers adjust the soil with appropriate additives.
- AI controlled robots can harvest at a much faster and more efficient rate than human beings.

# Insurance, Loans and More

- Both the insurance and banking industries have been using AI for quite a few years.
- These and other industries use AI to make decisions about whether to offer service as well as what rates to charge.
- AI is deemed to be better at assessing risk and therefore setting rates.
- AI is better and faster at detecting insurance and financial fraud than human beings due to its machine learning and its lack of fatigue or boredom.
- AI can rapidly analyze claims
- Some believe that in the next few years human underwriters will become a thing of the past, entirely replaced by AI.
  - <https://www.businessnewsdaily.com/10203-artificial-intelligence-insurance-industry.html>

# Customer Service & Chatbots

- AI helps with customer service
- Some companies use chatbots to handle customer service issues.
  - As these tools become more advanced, they will be further integrated into solving problems.
  - For example, when you have an issue with your cable provider right now you might use a chatbot to get only so far. In the future that chatbot will be able to connect to the system and make changes and adjustments for the user.
  - A human intermediary may be unnecessary.
- Many law firms use human controlled chatbots to manage their website leads. These tools will be replaced with AI that will collect the information you need and send you a message letting you know a lead has arrived.
  - Often the human beings operate on a strict script. Properly trained AI will be able to know what questions to ask to get better information.
- Virtual customer service with companies such as Smith AI are used to answer potential client requests and store information in CRM (Customer Relationship Management) tools and book appointments on your calendar.
- Gideon is another chatbot service for law firms.
  - Both tools integrate with practice management and CRM tools such as Clio.

# AI and the Legal Profession

- AI is already transforming the legal profession.
- Introduction of ChatGPT and other tools is speeding up the process
- In 2017 the ABA identified some ways AI can benefit law firms
  - <https://www.americanbar.org/news/abanews/publications/youraba/2017/september-2017/7-ways-artificial-intelligence-can-benefit-your-law-firm/>
- Document review for discoverable and other relevant information with technology assisted review (TAR)
- Legal research
- Contract and legal document analysis
- Proofreading and document organization
- Template creation and management for better document organization and faster documents in general
  - <https://www.clio.com/blog/document-automation-for-lawyers/>
- Due diligence tools such as Diligen help speed up and improve the due diligence research process.
  - <https://www.diligen.com/>

# AI Improves Efficiency

- AI can speed up the discovery process decreasing costs
- Legal research that would take days for even a skilled attorney can be conducted at a much faster pace. Minutes to hours instead of days or weeks.
- Identify errors in contracts for missing information or inconsistent/incorrect language
- Risk assessment is sped up. TAR uses predictive coding that enables lawyers to identify risks early on allowing them to better alert their clients and provide better and more timely advice.
  - These tools enable law firms to quickly find relevant information
  - Receive alerts when relevant information is newly released
  - “Define the universe of data and custodians” so they can be properly protected

# AI Does Not Get Bored or Distracted It Reduces Errors

- Human beings get distracted, bored, and make mistakes. AI does not get distracted or bored. It is less likely to make mistakes when properly trained.
- This results in the potential for error-free documents
  - Maintaining cross references throughout the document's life
  - Consistent use of language even if several different lawyers drafted the document
  - Comparison and automatic learning with contract comparison tools can find missing clauses and conditions as well as inconsistently used terminology or terms that are not yet defined in a single document or a pool of related documents.

# Organization and Logic

- AI helps find holes or gaps in documents including in legal analysis
  - AI learns from repeated analysis. As AI learns from your firm it can help with original contracts but can also in future but similar contracts or documents decreasing drafting time.
  - It can find missing terms, definitions and the like
  - It can fix logical connections that have not been properly established in legal memos to strengthen any weaknesses in the arguments
  - These tools enable attorneys to switch rapidly and easily between different aspects of a document to improve the structure and logical flow

# Attorneys Can be More Creative and Persuasive

- Will AI replace attorneys? Some of us, perhaps. All of us, No.
- AI enhances our abilities by leaving us time to focus on the true brain work leaving us free from the drudgery of the more routine aspects of our profession.
- It enables us to focus on what AI lacks
- AI allows us to conduct research even to the degree of looking at how potential risks and alternative theories impact a case
- We can rapidly conduct “comparative analysis between cases in different states or between state and federal courts”
  - Something that used to take days of scanning now can be done in minutes or hours



# Increase Work/Life Balance and Reduce Stress

- Some aspects of attorney work can be tiring and tedious.
  - Document review
  - Proofreading
  - Legal research
  - Lower-level review
- We can better focus on intellectual analysis which AI cannot do
  - This tends to “dramatically improve attorney work satisfaction”
- However, it is important to remember that AI is not a replacement and still requires review by attorneys to make certain the created work is both ethical and competent.

# Client Relations

- Chatbots can handle initial interviews with clients
- AI can provide data about clients, make certain everything you need is at your hands
  - Data can be automatically stored in the client's file decreasing the need for data-entry.
- Lawyers can focus on clients, have more time to communicate and keep clients informed more rapidly.
- Decreases potential for mistakes or inconsistent results.
- It can also help create blog posts and newsletters to be shared with clients
  - One of the biggest problems lawyers have keeping their websites current is the time necessary to draft content.

# What has Changed Since 2017?

- AI is increasing its ability to optimize various blue-collar professions
- White-collar roles are being dramatically impacted and are transforming professions, including law by aiding workers, including attorneys
- Machine Learning (ML) is better at reviewing contracts than it was in 2017. It has improved learning and can help attorneys identify all relevant documents and think of different ways a topic may be described or referenced.
  - <https://businesslawtoday.org/2022/02/how-ai-is-reshaping-legal-profession/>

# Westlaw Edge & Quick Check

- Launched several years ago, Westlaw Edge better understands the meaning of words than non-AI search tools.
- It no longer simply matches keywords with no context. This leads to better and faster results for legal research.
- Quick Check uses AI to analyze arguments, offer insights, point out relevant authority that the attorney or staff member missed
  - Detects when a case has been indirectly overturned
    - <https://businesslawtoday.org/2022/02/how-ai-is-reshaping-legal-profession/>

# Generate Content and Analyze the Results

- AI's improved algorithms including OpenAI GPT-3 substantially increased what AI can do for lawyers
  - Predict tokens in sequence (audio or text)
    - Take data in context and create results that “seem natural expected and harmonious”
    - Enabled pre-trained tools “using almost 300 billion parameters and half a trillion words”
  - Substantially increases creative writing and journalism with generative text
  - Short prompts to AI enables it to create a story, article, report, or memo
    - AI is not perfect, and it does not understand the way humans do. This can result in odd or random results

# Training AI

- AI must be trained to aid lawyers.
  - Machine learning, a subset of AI, is improving and enabling more advanced assistance in complex activities.
- Some companies are starting to do this training so when you purchase their tools, they are less likely to make mistake than non-legal specific tools such as ChatGPT.
- AI improves with learning and the training process is much faster than it used to be
  - Consider tools such as Dragon Naturally speaking which required substantial training at the beginning.
  - These tools can be improved so that less basic learning is required at the start of its use in a law firm.
  - This speeds up implementation and ease of use.

# Increased Ability to Predict Outcomes

- Lex Machina “predict[s] the behavior of judges, lawyers and parties with Legal Analytics”
  - <https://lexmachina.com/>
- Provides “legal analytics for federal courts of appeals” which “gives users an end-to-end overview of what happens during litigation, from trial all the way through appeal.”
- Outcome Analytics™ “provides damages findings, resolutions and remedies”
  - This helps attorneys understand what happened in a case
  - Or what might happen in a case

# Lex Machina (Continued)

- Case List Analyzer™ looks for cases that are similar to yours. The tool contains practice-specific filters and tags which allows you to “quickly and easily” find relevant cases and “[B]uild [a] comprehensive case list based on [the] actual pleadings”
- Quick Tools compares judges, parties, and law firms to help you create better motions. It can also compare and analyze expert witnesses.
- Attorney Data Engine™ “[C]orrects and adds missing counsel data producing an accurate record of the appearances of your lawyers and your opponent.”
- Sources are transparent so you can see what your work is based on. This includes underlying documents along with definitions of words and sources of data.



# Litigation

- AI can create visual aids for use in litigation or client pitches
- “During trial AI can analyze a trial transcript in real time and provide input to attorneys that can help them choose which questions to ask a witness”
  - <https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/>

# CoCounsel and Casetext (Announced March 2023)

- Based on OpenAI with GPT-4 CoCounsel helps attorneys by allowing them to ask questions they might previously have asked of a junior associate.
  - Instead of asking the associate to research what courts in a specific jurisdiction have handled similar cases, lawyers can ask AI
  - But remember a human being still needs to check the results
- Included in its tools, this service can “handle an array of critical tasks ... at superhuman speed...”
  - Legal research and deposition preparation
    - Provides complete answers with sources in seconds
    - Can create an outline based on completed depositions
  - Minimize risk of missing details during document review
    - Including evaluation for privilege
- Automate contract revision
  - Upload contracts and appropriate policies. In return you will see relevant clauses, conflicts, risks, and recommended revisions.

# AI as Judge?

- AI is already advising judges on bail and sentencing. COMPAS, the Correctional Offender Management Profiling for Alternative Sanctions, and similar tools are being used in many states.
- These tools examine risk of recidivism, help make pre-trial detention decisions, and aid in determination of sentencing and early release.
  - There are many concerns about the fairness of these tools
  - Including racial bias.
  - There are concerns that people will think a computer-generated recommendation must be fair, but bad data in equals bad results out.
  - Much AI lacks transparency and therefore it is difficult to know what it is using to make recommendations. This leads to what is called automation bias.
    - <https://businesslawtoday.org/2022/02/how-ai-is-reshaping-legal-profession/>

# AI as Lawyer

- A website called DoNotPay helps users fight traffic tickets.
  - The company recently tried to use its AI to act as a lawyer in a case. This was not allowed by the court.
    - <https://www.npr.org/2023/01/25/1151435033/a-robot-was-scheduled-to-argue-in-court-then-came-the-jail-threats>
- AI is not a licensed attorney and cannot practice law. Nor does it have the capabilities to competently practice law now.
- Past opinions on tools such as LegalZoom have warned that AI may not be used to replace a lawyer and can easily end up engaging in unauthorized practice of law.

# Large Firms are Using AI

- Top law firms are already using AI to help increase the speed of complicated deals such as mergers and acquisitions.
  - This includes Shearman & Sterling, White & Case, and Orrick.
- The founder of Evisort created his company to help minimize the “tedium of due diligence” that he experienced as a young M&A lawyer.
- Large firms are working with companies that use OpenAI to create firm specific tools to improve their law practice management, decreasing the need for lawyers to focus on such tasks.
- Shearman uses Kira from Litera for due diligence
- White & Case uses AI to help with document review for discovery.
  - Brainspace and Relativity are two tools White uses
- <https://www.businessinsider.com/big-law-firms-using-ai-fast-track-ma-deals-work-2022-10>

# In Summary

- AI can be used to
  - Conduct legal research
  - Improve document management
  - Increase the speed and efficiency of eDiscovery
  - Draft and review content
  - Provide legal information and advice
  - Engage in predictive analytics
  - Create images
  - Aid in due diligence research
  - Assistant in marketing and CRM
  - And more

# Copyright Lawsuits

- A number of lawsuits related to copyright and AI have begun.
  - Microsoft, GitHub and OpenAI are being sued because its code-generating AI system, Copilot trained by using public code. When the AI provides answers using this data it does not provide credit or compensation to the original author
  - Midjourney and Stability AI are being sued because they used millions of artists' work and billions of images (without permission) to train their tools. This is alleged to be a copyright violation
    - <https://www.theverge.com/2023/1/16/23557098/generative-ai-art-copyright-legal-lawsuit-stable-diffusion-midjourney-deviantart>
  - Getty Images is suing Stable Diffusion for using unlicensed images to train its AI.
    - <https://www.vox.com/recode/23580554/generative-ai-chatgpt-openai-stable-diffusion-legal-battles- Napster-copyright-peter-kafka-column>
- At this point the main issue relates to how the companies obtained the data that they used to train their software and whether such use is legally acceptable.
- A tool called Have I Been Trained enables artists to see if their images have been used to train AI. It uses AI to conduct the analysis.
  - <https://haveibeentrained.com/>

# Lemons make Lawsuits?

- Lemonade Inc is an AI-based insurance company.
  - It faced a class action lawsuit in New York for violating laws on the use of biometric data without consent.
  - Lemonade used facial recognition to analyze videos submitted in the claims process.
    - <https://www.jdsupra.com/legalnews/ai-insurance-company-faces-class-action-7991163/>
- The fact Lemonade uses AI and based on big data are part of what makes it appeal to its consumers
- Those same consumers however became concerned when they learned how biometric data was being used.
  - Especially in relation to concern over discrimination based on race and other traits.
- Lemonade denies it has violated any laws and is not using AI to judge people based on physical or personal features.
- A \$4 million settlement was reached in June 2022.
- Lemonade faces additional suits in other locations, including in Illinois where it is alleged to have violated the Illinois Biometric Information Privacy Act by scanning faces without consent.
  - <https://www.classaction.org/news/ai-driven-insurer-lemonade-illegally-captures-ill-residents-biometric-data-class-action-alleges>



# Government Regulation

- Government regulators are behind AI as is common with any newer technology.
- Various government entities have passed laws such as the already mentioned BIPA in Illinois and New York's similar law.
- In Colorado the Division of Insurance passed a bill that restricts how insurers may use external consumer data.
  - The goal is to prevent unfair discrimination based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression.
    - <https://doi.colorado.gov/news-releases-consumer-advisories/division-of-insurance-partners-with-orcaa-to-protect-colorado>

# FTC is Concerned with AI

- In 2022 the FTC issued a report to Congress warning about use of artificial intelligence.
- It sought to warn Congress that AI should be used with “great caution” and that use of AI comes with problems and limitations.
- This includes significant concerns that AI tools can be inaccurate, biased, and even discriminatory by design.
- Also, there are concerns that AI will incentivize relying on commercial surveillance for greater information on consumers.
- AI, the report notes, is not a “solution to the spread of harmful online content” which requires “broad, societal effort” and not a reliance on new technology.
- Congress is focused on how to deal with the many problems that illegal or manipulative content can create such as stalking, fake reviews, drug sales, hate crimes, harassment, misinformation campaigns and more.
- <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-report-warns-about-using-artificial-intelligence-combat-online-problems>

# Problems with AI

- Some see AI as the next big thing. Others see it as an entry to the world of the Terminator
- At this point it is difficult to state what the far-reaching consequences will be, but there are acknowledged problems with AI.

Create an image from text prompt

dystopian society with artificial intelligence



Image generated by Deep AI

# Problems with AI

- I have had many conversation about AI. An early one involved the current President of the Pennsylvania Bar Association, Jay Silberblatt
  - Jay told me he asked ChatGPT an ethics question. The result looked great initially, it even included a cite to a case.
  - The problem? The case did not exist, ChatGPT just made it up.
  - Tools such as ChatGPT answer questions with what seems like great confidence, regardless of whether the answers are correct.
  - In addition, these tools will make things up because they learned that certain things are necessary, such as legal citations. ChatGPT does not understand the context for those citations.
    - Lawyer specific tools do a better job with this problem, but it remains critical to check the work.
- Art AI tools frequently include random squiggles in pictures it creates.
  - Analysis tells us that the AI is reproducing the signatures it sees in art without understanding what their purpose is.

# Bad Data In Equals Bad Results Out

- AI can be biased if the data it is trained on is biased.
  - AI tends to be designed and trained by a narrow spectrum of people.
  - This frequently results in problems that the narrow spectrum did not consider.
    - Law students taking the bar at home were sometimes missed because AI could not see their darker skin
      - <https://venturebeat.com/business/examsofts-remote-bar-exam-sparks-privacy-and-facial-recognition-concerns/>
- The difficulty identifying black individuals has been analyzed by numerous entities including the federal government, the Gender Shades project, and the European Conference on Computer Vision.
  - AI does the worst with black women.

# Bias in Hiring

- In 2015, Amazon attempted to create an AI tool to help with hiring.
- The tool favored white men, even downgrading women whenever the words woman or women appeared in their resumes such as a major in women's studies. It also downgraded women who went to women's colleges.
- "Amazon's computer models were trained to vet applicants by observing patterns in resumes submitted to the company over a 10-year period."
  - Most of these resumes came from men
  - This essentially means that Amazon's system "taught itself that male candidates were preferable"
- The tool even recommended unqualified candidates with what seemed like random results.
  - It "favored candidates who described themselves using verbs more commonly found on male engineers' resumes, such as 'executed' and 'captured'."
  - This is because the AI focused on what it deemed important and not necessarily what was important.
- Amazon tried to edit the programs to make them neutral but there is no guarantee that the AI will not revert to its prior errors. Even programmers do not necessarily know why AI makes the recommendations it makes because AI makes decisions on its own.
- Amazon to its credit did not use the tool
  - <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scrap-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G>

# Bias in Hiring (Continued)

- The problem is that without analysis those involved in hiring may not know that the AI is making biased recommendations.
- AI is often not transparent, so end-users do not know why it is making the recommendations it is making.
  - As noted, even the programmers do not necessarily know why AI creates the recommendations it creates.
- This can and likely will lead to lawsuits based on discriminatory hiring choices
- This has not stopped companies from using AI to make hiring decisions. The CEO of HireVue is using facial recognition and speech analysis in video interviews.
- Goldman Sachs created a resume analysis tool that seeks to match candidates with the best fit for the company.
- LinkedIn, which is the “world’s largest professional network” offers algorithmic rankings of candidates based on their fit for job postings.
  - LinkedIn claims that the service does not replace traditional recruiters
  - The vice-president of talent solutions noted that he would not trust AI to make hiring decisions on its own because the technology is not ready
- Amazon is ready to try again. It is now attempting to develop a new tool that focuses on diversity.

# Bias in Other Areas

- As with AI in hiring the data used by AI in the criminal justice system likely has similar biases.
- The ACLU is currently challenging the use of AI in a variety of places due to its potential lack of fairness and transparency.
- It notes that there is “ample evidence of the discriminatory harm that AI tools can cause to already marginalized groups.”
  - <https://www.aclu.org/news/privacy-technology/how-artificial-intelligence-can-deepen-racial-and-economic-inequities>
- This includes
  - Criminal legal system
  - Housing
  - Workplace
  - Financial systems



# Potential Bias (Continued)

- AI uses data from previous cases which are alleged to “reflect long standing racial disparities in housing and the criminal legal system that are discriminatory towards marginalized communities.”
- The ACLU alleges that people of color get overcharged by millions due to AI tools used by lenders.
  - This allegation is supported by a study done by Berkeley in 2019. The study notes disparities in interest rates for both home-purchases and refinances with a resultant \$765 million in extra interest per year for Latinx and African American borrowers.
    - <https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf>
  - The same study showed that there is potential for reduction in rate disparities and rejection when AI is properly used.
    - There is a 40% reduction in rejection bias when FinTech algorithms are used as compared to face-to-face lenders.
  - Part of the problem is that the lack of transparency in some AI makes it hard to know whether AI is making decisions based on impermissible factors.
  - The Berkley authors recommend testing of systems to avoid illegally discriminatory results.

- In some locations AI is used to predict crimes and identify children who are at risk of abuse.
- During the Trump administration, President Trump sought to use AI to review the “social media accounts of foreigners to determine who might be a ‘threat’.”
- The fact that these algorithms are not transparent means that there could be inherent biases that are enforced more efficiently than before.
- Safeguards are necessary to prevent using such tools, valuable as they may be, in an improper fashion such that they exacerbate inequality or override human decision making
  - <https://www.aclu.org/issues/privacy-technology/will-artificial-intelligence-make-us-less-free>

# Privacy Issues

- As Noted, ChatGPT had a bug in which other users could see the questions asked.
- ProcterU was hacked and exposed the personally identifiable information of 400,000 test takers.
- ExamSoft was hit with a DDOS (distributed-denial of service) attack in an apparent effort to interfere with its use or shut it down.
  - <https://venturebeat.com/business/examsofts-remote-bar-exam-sparks-privacy-and-facial-recognition-concerns/>
- It is critical that companies using AI make certain that their technology is secure.
- Make certain to review the terms of service and privacy considerations for any AI in which you will be entering confidential information.

# Ethics and Artificial Intelligence

- The ethical issues we face due to AI are not that different from the ethical issues we have faced in the past. The duties remain the same.
  - <https://abovethelaw.com/law2020/the-ethical-implications-of-artificial-intelligence/>
  - <https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2020/09/GT-GJLE200038.pdf>
- Under Ethics Rule 1.1 we must be aware of the risks and benefits of technology, properly utilize such technology, and be certain we understand the technology we are using.
- While we are in the midst of an AI boom right now, AI is not new to the legal profession and many attorneys have been using AI knowingly or unknowingly for some time.

- Our ethics rules may not specifically address AI, but just as with the social media boom, we can find guidance in the plain language of the rules as well as their footnotes.
- For example, we have a duty of confidentiality. We know this means that since ChatGPT warns us that we should not use it for confidential items that it would be unethical for us to provide confidential client information to such a tool.
- It is important to review the privacy policies for any AI tools
- Also check to see where the data is stored since data stored in the EU has different privacy protections than data stored in the US. Similarly, data stored in California has different protections than data stored in Pennsylvania.

- The duties of competence and diligence mean that we need to make sure to check the work of AI and not simply rely on the results it spits out.
- Since we frequently do not know exactly why AI is making the recommendations it is making, and we are unlikely to have that sort of knowledge, we need to understand these tools and their inherent risks.
- A lawyer who does not practice in a certain area and puts a question to ChatGPT should make certain that they also check other sources to make sure the answer is correct.
  - Dabbling is still dangerous, even when performed with the help of AI.
  - Due to the apparent confidence with which AI answers questions, it is easy to be tricked by incorrect information.
- Supervise AI as you would a junior associate or paralegal.
  - Make certain that any tasks you give to AI are properly delegated. There are simply some tasks it may be necessary for the attorney to perform. It is fine to perform those tasks with help from AI but not with complete reliance on it.
  - Do not be afraid to delegate some tasks to AI because it can increase efficiency. Especially tasks that do not require the brain power of an attorney. Make sure that the tool works properly with testing, perhaps hiring a consultant as appropriate to you.

- While it is not yet ethically necessary to use AI in your practice (though you likely are using it in some areas without knowing) in time it is likely that the increased efficiency and cost savings of AI will become a requirement.
- When using AI make sure you use reasonable steps to protect client data.
  - Under Pennsylvania ethics rules reasonable steps provide protection for ethics complaints due to loss of confidentiality.
- If you are working with a consultant, make certain that you review that consultant and explain our ethical requirements. If the services being provided do not fit our ethical requirements do not use the consultant or product.
  - Both Lexis and Westlaw offer high-level encryption and multi-factor authentication.
  - Look for similar features in other AI tools.
- There are not many ethics opinions on AI yet, but new opinions will likely come out soon. Keep an eye open for these opinions as they are released.
  - Prior opinions such as PBA's opinion on cloud computing still offer good recommendations for the factors to analyze before choosing a provider.
    - Pennsylvania Bar Association Formal Opinion 202-03

# New Skills and Training

- It is common to bring new technology into a law firm without proper training. This will not work with AI
  - Lack of training is an overall problem with technology and law firms
- Firms will first need to identify the correct tools and lawyers using the tools will need to make sure they are using the correct AI for a task.
- Lawyers will need to learn how to properly construct queries and evaluate the results for relevance, quality, and accuracy
  - Adjust queries as necessary
  - Just as with learning Boolean or natural language searching, proper query development takes time to learn. Be patient.
- Make sure any tools that are utilized protect clients' confidentiality
  - Remember, ChatGPT recently had a leak in which questions but not answers were viewable in other people's accounts
  - ChatGPT warns that you should not put confidential information in its query box.
- Law schools should begin training students so that they can properly use AI upon graduation.
- Train your new employees on how to use your firm's AI.
  - <https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/>

ChatGPT

## How we collect data



Conversations may be reviewed by our AI trainers to improve our systems.



Please don't share any sensitive information in your conversations.



# Conclusions

- As with any evolving technology, be cautious but not afraid of AI.
- Make certain to review the terms of service of any AI you plan on using.
  - Check for proper confidentiality and ownership of data.
  - Be aware of the risk of incorrect or even made-up information.
  - Focus on use of tools specifically made for lawyers since they are more likely to follow our ethical requirements.
    - Still make sure you check their terms of service and privacy policies.
- Look into how AI might improve the efficiency and financials of your law firm and implement it in ways that work for you.
  - This may require the assistance of a consultant or a vendor. Such people must be properly vetted, and our ethical rules must be explained to them if they are not already familiar.

# Thank You

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