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**Generative AI in Practice 2.0:
Clients are Using GAI.
What Does That Mean For Their Attorneys?**

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Generative AI in Practice 2.0: Clients Are Using GAI. What Does That Mean For Their Attorneys¹

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“It's important to clarify that AI is not fully replacing attorneys, but it's significantly changing how people interact with legal information and perform certain legal tasks.” Courtesy of Gemini 3-20-25

I. Defining Artificial Intelligence (AI)

- A. Computer systems performing traditional human tasks
- B. Computer systems compile, aggregate, large amounts of data, process it and generate responses based upon it. These responses can be words, visuals, decisions, etc.

II. Definitions within AI²

A. General Terms

1. AI (Artificial Intelligence): Term referring to the field of computer science focused on creating intelligent machines capable of mimicking human cognitive functions like learning and problem-solving.
2. Generative AI: Algorithms which can create new content such as text, images, pictures, synthetic data (DALL-E, Chat GPT, Gemini, Co-Pilot)
3. Artificial General Intelligence (AGI): Artificial General Intelligence (AGI): Hypothetical AI with human-level intelligence and ability to apply its intelligence to an intellectual human task.

¹ Gemini and Perplexity assisted various aspects of research and sourcing. All sources provided by generative AI were verified by the author. Any verbiage was reviewed, edited, and revised. The contents of this document is not and should not be construed as legal advice and does not constitute an official legal opinion or recommendation.

² Definitions in part assisted by Gemini.



4. AI Assistant: An AI assistant is a type of AI system designed to assist users by performing tasks based on their requests. These systems are typically reactive, meaning they require user input to function. AI assistants use natural language processing (NLP) to understand commands and provide support with tasks such as scheduling, sending messages, or answering questions. (Perplexity, Notebook LM)
5. Algorithm: A set of instructions that a computer follows to perform a specific task. In AI, algorithms are often designed to learn and improve over time.
6. Machine Learning: A type of AI where algorithms can learn from data without explicit programming.
7. Deep Learning: A subset of machine learning inspired by the structure and function of the human brain. Deep learning models use artificial neural networks with many layers to process information.
8. Data Science: A field that combines computer science, statistics, and domain knowledge to extract insights from data. Data science plays a vital role in training and developing AI models.
9. Big Data: Large and complex datasets that traditional data processing techniques are inadequate for handling. Big data is often used to train AI models.

B. AI Processes

1. Natural Language Processing (NLP): This field of AI deals with the interaction between computers and human language. NLP tasks include speech recognition, text translation, and sentiment analysis.
2. Computer Vision: A field of AI that enables computers to interpret and understand visual information from the world, like images and videos. Applications include facial recognition and object detection.
3. Machine Translation: The use of AI to translate text from one language to another automatically.

C. AI Applications

1. Chatbot: A conversational AI program designed to simulate conversation with human users. Chatbots are often used for customer service applications.



2. Generative AI: AI models that can generate new data, such as images, text, or music.

D. Other Relevant Terms

1. AI Ethics: A branch of ethics concerned with the development and use of AI in a responsible and beneficial way for society.
2. Bias: In AI, bias refers to prejudice reflected in data or algorithms, which can lead to discriminatory outcomes.
3. Hallucinations: Factually inaccurate, irrelevant, nonsensical and/or fabricated responses by AI.

III. AI Legal Platforms

A. CoCounsel

B. Casetext

C. Spellbook

D. Westlaw (Westlaw Precision)

1. AI-Assisted Research: Westlaw Precision offers a feature called "AI-Assisted Research" powered by generative AI. This uses a large language model (LLM) to help legal professionals find answers to complex research questions. The LLM can analyze vast amounts of legal documents and case law, identify relevant information, and even provide summaries or highlight key points [2, 3].
2. Improved Search Functionality: AI is likely used behind the scenes to enhance Westlaw's search capabilities. This might involve techniques like natural language processing to understand user queries more effectively and surface more relevant search results.

E. Lexis+ AI Legal Assistant. Key Features

1. Conversational Search: Unlike traditional keyword-based search, Lexis+ AI allows lawyers to ask questions in natural language. The AI



can understand the context and intent behind the questions and retrieve the most relevant legal documents and information.

2. **AI-powered Summarization:** Legal documents and case law can be lengthy and time-consuming to read. Lexis+ AI can automatically summarize these documents, helping lawyers grasp the key points quickly.
3. **Drafting Assistance:** Lexis+ AI offers features to assist with legal document drafting. It can analyze vast amounts of legal precedents and contracts to identify patterns and generate first drafts that lawyers can then review and refine.

IV. Uses in the Legal Profession

- A. **Legal Research and Case Analysis:** AI-powered legal research platforms can analyze vast amounts of legal documents and case law. They can identify relevant precedents, highlight key arguments, and even predict the potential outcome of a case based on historical data. This frees up lawyers' time for more strategic tasks.
- B. **E-discovery and Document Review:** E-discovery involves identifying, collecting, and producing electronically stored information (ESI) relevant to a legal case. AI can automate much of this process by reviewing massive amounts of documents to find pertinent information. This can significantly reduce the time and cost associated with e-discovery.
- C. **Contract Review and Analysis:** AI can streamline contract review by identifying boilerplate language, flagging potential risks, and ensuring consistency across agreements. This can help lawyers negotiate better contracts and avoid costly errors.
 1. **IBM Watson Discovery and Contract PodAI:**
 - a. “IBM business partner [ContractPodAi](#) offers an end-to-end contract management solution designed by lawyers for lawyers. The solution aims to dissolve traditional complexity around contract management by providing a single platform designed to augment a legal department’s ability to assemble, approve, sign and manage their inventory of contracts. Using IBM Watson technologies, ContractPodAi helps counsel easily and cost-effectively manage any contract throughout its lifecycle.”³

³ <https://www.ibm.com/blog/watson-discovery-contractpodai-legal-excellence/>



2. “Enterprise businesses often have a serious volume of contracts, sometimes millions, stored within multiple repositories from multiple years. In some industries, contracts must be preserved indefinitely. ContractPodAi’s platform gives counsel a core repository for contracts and enables a streamlined approach to creating new agreements and managing existing ones. It can also analyze a business’s historical inventory of contracts to provide insight into patterns and uncover best practices. And in an e-discovery event, contract management systems are indispensable for cost, risk mitigation and legal defense.”⁴

D. Litigation Support and Strategy: AI can analyze legal arguments and predict the persuasiveness of different approaches. This can help lawyers develop more effective litigation strategies and improve their chances of success.

E. Due Diligence and Compliance: AI can assist with due diligence tasks by analyzing large datasets to identify potential risks and ensure compliance with regulations. This can be especially helpful in areas like mergers and acquisitions.

F. Presentations on Legal Topics: Every attorney attends and sometimes presents legal programs. AI can assist in content generation for such programs. For example, it can provide standard definitions of terms, help search for cases applicable to the topic and offer insight on common uses of particular legal tools.

G. Supplement vs Supplant

1. Scholars have suggested Ai should be viewed as a supplement to litigation methods for lawyers, not a supplanting.⁵
2. Others offer it as a valuable tool to assist and supplant mundane tasks such as preparing initial witness questions or a complaint.⁶

V. You ARE using AI Now!

A. Examples

a. Outlook

⁴ Id.

⁵ Kwan Yuen IU & Vanessa Man-Yi WONG, “ChatGPT by OpenAI: The End of Litigation Lawyers?” (February 2, 2023) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4339839

⁶ Andrew Perlman, “The Implications of ChatGPT for Legal Services and Society,” (February 29, 2024) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4294197



- b. PDF
- c. Google/Gemini
- d. Social Media
- e. ChatGPT, Gemini, Co-pilot, etc.

B. Categories of Use in Law⁷

- a. Unstructured data analysis and due diligence. AI can uncover background information – contract analysis, document review, electronic discovery.
- b. Legal research and analytics: Recent evolution of AI in law focuses the AI on legal research specifically.
- c. Practice management applications such as billing and document automation.
- d. Drafting

VI. Pros and Cons of AI in the Practice of Law

A. Benefits

- 1. Efficiently performs repetitive tasks
- 2. Reduces human error
- 3. Increases efficiency
- 4. Augments human intelligence. Specific to the legal industry
- 5. Access to Justice: Legal representation in a civil matter is beyond the reach of 92% of the 50 million Americans below 125% of the poverty line. Globally, there are an estimated 5 billion people with unmet justice needs. The justice gap between access to legal services and unmet legal needs constitutes two-thirds of the global population, and these justice needs extend from minor legal matters to more grave injustices.⁸

⁷ Ronald Yu & Gabriele Spina Ali, “What’s Inside the Black Box? AI Challenges for Lawyers and Researchers,” *Legal Information Management*, Volume 19, Issue 1, March 2019, pp. 2 - 13
DOI: <https://doi.org/10.1017/S1472669619000021>

⁸ NYS Bar Association Task Force on Artificial Intelligence, Report and Recommendation to NYSBA House of Delegates, April 6, 2024 at 20, <https://nysba.org/app/uploads/2024/02/Task-Force-on-AI-Report-final.pdf>



B. Detriments/Risks⁹

1. Widen Justice Gap: Those with access to AI can achieve more. Lesser fortunate communities may not be able to access AI and thus not take advantage of it as much.¹⁰
2. Data Privacy: The more use of AI means the more data is collected, stored and potentially used for nefarious purposes.
3. Security: Is the ghost in the machine and will it jeopardize not just computer security but actual security. (e.g. Ring, Simply Safe)
4. Reduction in creativity: Just as AI may foster creativity and innovation (e.g. create a rap song using a Shakespearian sonnet) many may decide to use AI instead of thinking or creating themselves.
5. Data Bias: AI based on neural networks identify recurring patterns on existing datasets. It then makes future predictions based on those patterns. This methodology creates a strong risk that AI may reiterate and even amplify biases and flaws and datasets.¹¹
6. Inference and predication: algorithms are not good that distinguishing between causation and correlation. This creates a risk that conclusions may be based on wrong inferences. A simple example might be that everyone who drinks water dies. There is a correlation but no causation. AI may not be able to distinguish.

VII. How are Clients Using AI

- A. Drafting basic contracts or documents (letters)
- B. Legal research
- C. Document review
- D. Searching answers to frequent questions

⁹ Id.

¹⁰ Id.

¹¹ Yu/Ali at 4.



E. Challenging their attorney's advice!

VIII. Suggestions on Attorney Response to Client Use of AI

- A. Educate Clients on AI Limitations: Inform clients about the limitations of AI in providing legal advice. While AI can offer general information and insights, it lacks the nuance and personalized judgment that a human attorney can provide. Emphasizing the importance of human expertise in complex legal matters can help clients understand the value of direct attorney-client interaction.
- B. Enhance Client Communication with AI Tools: Leverage AI to improve communication with clients. For example, AI-driven chatbots can provide instant responses to routine queries, freeing attorneys to focus on more complex issues. This can enhance the client's experience by offering timely and personalized communication.¹²
- C. Personalize: Highlight the benefits of personalized legal services that AI cannot replicate. This includes offering tailored advice, handling sensitive or complex legal issues, and providing emotional support during stressful legal process.
- D. Efficiency: By using AI to automate routine tasks, attorneys can reduce costs and increase efficiency. This can lead to more competitive pricing for clients, making direct attorney services more appealing compared to relying solely on AI tools.
- E. Educate on Risks: Attorneys should educate clients about potential risks associated with using AI for legal advice, such as privacy concerns, data security issues, and the possibility of receiving inaccurate or outdated information.
- F. Trust and Relationships: Fostering client relations is and always has been key to lawyering. Emphasize the *counselor at law* as well as the *attorney at law* aspect of your practice.

IX. Ethical Touchpoints

- A. Transparency and Duty to Disclose: Attorneys should be transparent about their use of AI tools in client work. This includes disclosing when AI is used to assist in tasks such as document drafting or research. Obtaining informed consent from clients is crucial, especially if AI tools handle sensitive information.¹³

¹²<https://powerpatent.com/blog/how-ai-can-transform-client-relationship-dynamics-in-law-firms-2/>; see also, <https://legal.thomsonreuters.com/blog/does-ai-add-value-to-client-communication-and-service/>

¹³ <https://www.esquiresolutions.com/litigators-weigh-need-to-disclose-ai-use-to-clients/>



B. Following is a review of state bar views over the ethical duty to communicate with clients means in the context of artificial intelligence:

1. **California:** Disclosure of generative artificial intelligence tools is not strictly required, but lawyers should weigh ethical duty to communicate use “based on the facts and circumstances, including the novelty of the technology, risks associated with generative AI use, scope of the representation, and sophistication of the client.” State Bar of California, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (Nov. 16, 2023)
2. **District of Columbia:** Lawyers have an ethical duty to communicate use of artificial intelligence tools if the lawyer intends to bill the client for out-of-pocket costs. District of Columbia Bar, Ethics Opinion 388 (Attorneys’ Use of Generative Artificial Intelligence in Client Matters) (April 11, 2024).
3. **Florida:** Lawyer’s obligation to see informed client consent to use artificial intelligence tools depends on risk involved and client expectations. Lawyers are obligated to seek client consent if client confidential information will be disclosed as input to artificial intelligence tool. Florida Bar Ethics Opinion 24-1 (Jan. 19, 2024)
4. **Kentucky:** “Routine use” of artificial intelligence tools need not be communicated to client, unless client is being charged for AI-related costs or court rule requires disclosure to client. Client informed consent is required if confidential information will be provided as input to artificial intelligence tool. Kentucky Bar Association, Ethics Opinion KBA E-457 (March 15, 2024).
5. **New Jersey:** AI-related changes to billing practices must be communicated to clients. New Jersey State Bar Association, Task Force on Artificial Intelligence (AI) and the Law: Report, Requests, Recommendations, and Findings (May 2024).
6. **New York:** Lawyers should consider including in the retainer agreement a statement that artificial intelligence tools may be utilized in your representation of the client and seek the client’s acknowledgement. Lawyers may not rely solely on content generated from artificial intelligence tools. Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence (April 6, 2024).
7. **Pennsylvania:** Lawyers must inform clients of the use of artificial intelligence tools, providing explanations of how tools are used and their potential impact on case objectives. Lawyers must disclose AI-related expenses to clients. Pennsylvania Bar Association and Philadelphia Bar Association, Joint Formal Opinion 2024-200 (Ethical Issues Regarding the Use of Artificial Intelligence) (June 2024).



8. **Texas:** No definitive recommendations but notes guidance from Florida and California bar regulators that lawyers communicate adequately with clients about use of artificial intelligence tools. State Bar of Texas, Taskforce for Responsible AI in the Law Interim Report (2024).
9. **Utah:** Seek and obtain client consent prior to using generative artificial intelligence tools such as ChatGPT. Treat AI-generated outputs like a draft from a law clerk. Utah State Bar Association, Using ChatGPT in Our Practices: Ethical Considerations (2023).
10. **West Virginia:** Lawyers should consult with clients prior to using artificial intelligence tools during representation and should obtain client consent for use in writing. West Virginia Bar Association, Legal Ethics Opinion 24-01 (2024).

C. Law Firm Policies

1. Consider AI policies for non-attorneys at your firm
2. Consider confidentiality policies for non-attorneys when using open source AI
3. Copyright including educating on copyright and use of AI sources

X. AI Cases – Don't let this be YOU

A. Mata v. Avianca, Inc. Mata v. Avianca, Inc., 2023 WL 4114965 (S.D.N.Y. June 22, 2023):

1. Summary:¹⁴ Plaintiff Roberto Mata asserts that on August 27 or 28, 2019, he was severely injured when a metal service tray struck his left knee during an overnight flight from El Salvador to John F. Kennedy Airport in New York. Defendant Avianca, Inc. ("Avianca") moves to dismiss the Complaint pursuant to Rule 12(b)(6), asserting that Mata's claim is time-barred under the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Done at Montreal, Canada, on 28 May 1999, reprinted in S. Treaty Doc. 106-45, 1999 WL 33292734 (1999) (the "Montreal Convention").
2. Plaintiff attorney used the generative AI tool ChatGPT for legal research. However, ChatGPT provided the lawyer with fabricated case citations, and the attorney failed to verify them before submitting a motion to the court. The court sanctioned the attorney for this, highlighting the importance of careful review when using AI tools in legal settings.
3. Court Decision:

¹⁴ Facts and quoted language are from the case at 2023 WL 4114965 (S.D.N.Y. June 22, 2023)



- a. “In researching and drafting court submissions, good lawyers appropriately obtain assistance from junior lawyers, law students, contract lawyers, legal encyclopedias and databases such as Westlaw and LexisNexis. Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings.”
- b. “[The attorneys] 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.”
- c. Court Dialogue with offending attorney:

“THE COURT: Did you say, well they gave me part of Varghese, let me look at the full Varghese decision?

MR. SCHWARTZ: I did.

THE COURT: And what did you find when you went to look up the full Varghese decision?

MR. SCHWARTZ: I couldn't find it.

THE COURT: And yet you cited it in the brief to me.

MR. SCHWARTZ: I did, again, operating under the false assumption and disbelief that this website could produce completely fabricated cases. And if I knew that, I obviously never would have submitted these cases.”

B. Park v. Kim, 91 F.4th 610 (2nd Cir. Jan. 23, 2024):

1. Background:¹⁵ Patient brought action in diversity against physician, alleging medical malpractice. The United States District Court for the Eastern District of New York, Pamela K. Chen, J., 2022 WL 3643966, dismissed action, after adopting the report and recommendation of Lois Bloom, United States Magistrate Judge, 2022 WL 4229258. Patient appealed.
2. “We separately address the conduct of Park's counsel, Attorney Jae S. Lee. Lee's reply brief in this case includes a citation to a non-existent case, which she admits she generated using the artificial intelligence tool ChatGPT. Because citation in a brief to a non-existent case suggests conduct that falls below the basic obligations of counsel, we refer Attorney Lee to the Court's Grievance

¹⁵ All quotes and summary are from Westlaw Park v. Kim, 91 F.4th 610 (2nd Cir. Jan. 23, 2024):



Panel, and further direct Attorney Lee to furnish a copy of this decision to her client, Plaintiff-Appellant Park.”

3. Court found the attorney presented a false statement of law to court, which fell well below basic obligations of counsel, by relying on generative artificial intelligence.
4. Pertinent Aspect of the Decision: *“All counsel that appear before this Court are bound to exercise professional judgment and responsibility, and to comply with the Federal Rules of Civil Procedure. Among other obligations, Rule 11 provides that by presenting a submission to the court, an attorney “certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances ... the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.”¹⁶*

XI. Future of AI Regulation in the United States

- A. Executive Order 14110 (Signed 10-30-23): Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence
 - a. Goals
 - i. Promoting competition and innovation in the AI industry
 - ii. Upholding civil and labor rights and protecting consumers and their privacy from AI-enabled harms
 - iii. Specifying federal policies governing procurement and use of AI
 - iv. Developing watermarking systems for AI-generated content and warding off intellectual property theft stemming from the use of generative models
 - v. Maintaining US place as a global leader in AI
 - b. Implementing
 - i. DHS develop AI-related security guidelines
 - ii. Dept Veterans Affairs start AI technology to reduce occupational burnout among healthcare workers

¹⁶ Fed. R. Civ. P. 11(b)(2); see also N.Y. R. Pro. Conduct 3.3(a) (McKinney 2023) (“A lawyer shall not knowingly: (1) make a false statement of ... law to a tribunal.”)



- iii. Department of Commerce's National Institute of Standards and Technology (NIST) develop generative AI focused resources
- B. Repeal EO 14110 January 20, 2025
- C. State Laws: Absent federal action it is likely state laws on AI will impose a range of regulations and requirements with far reaching implications.
- a. **New York State**:
 - i. **A.768/S.1962**: Enacts the "New York artificial intelligence consumer protection act", in relation to preventing the use of artificial intelligence algorithms to discriminate against protected classes.
 - ii. **A.3411/S.934**: Requires the owner, licensee or operator of a generative artificial intelligence system to conspicuously display a warning on the system's user interface that is reasonably calculated to consistently apprise the user that the outputs of the generative artificial intelligence system may be inaccurate and/or inappropriate.
 - iii. **A.3265**: Enacts the New York artificial intelligence bill of rights to provide residents of the state with rights and protections to ensure that any system making decisions without human intervention impacting their lives do so lawfully, properly, and with meaningful oversight.
 - iv. **A.3356**: Enacts the "advanced artificial intelligence licensing act"; providing for regulation of advanced artificial intelligence systems (Part A); requires registration and licensing of high-risk advanced artificial intelligence systems and related provisions regarding the operation of such systems (Part B); establishes the advanced artificial intelligence ethical code of conduct (Part C)
 - v. **S. 6578**: Establishes the artificial intelligence training data transparency act requiring developers of generative artificial intelligence models or services to post on the developer's website information regarding the data used by the developer to train the generative artificial intelligence model or service, including a high-level summary of the datasets used in the development of such system or service.