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2019 CLM Cyber, Management and Professional Liability Conference
July 10-12, 2019
Boston, MA

Alexa: Draft a Motion for Summary Judgment



ALEXA: Draft a Motion for Summary Judgment

Hey Google, What is This? Alexa, Get me That! Siri, Find This!

Today these questions and instructions are being broadcasted everywhere—including on TV, radio, and your own home. Artificial intelligence is changing the way lawyers think, the way they do business and the way they interact with clients. This article explores how Artificial Intelligence is transforming the practice of law in this modern era.

According to the [2016 Report on the State of the Legal Market](#), published by Georgetown University's Center for the Study of the Legal Profession and Thomson Reuters' Peer Monitor, demand for legal services was "essentially flat for 2015 ... [and] continues a pattern seen over the last six years." Also "there has been an overall downward trend in the productivity of all categories of timekeepers except associate." The report attributes at least some of this stagnation to business clients' reduced spending—a jaw-dropping 25.8 percent between 2004 and 2014 in inflation-adjusted dollars, the 2015 report noted. With increasing competition in the legal market, law firms are under pressure to invest in innovation.

What is Artificial Intelligence?

Artificial intelligence imitates certain operations of the human mind and is the term used when machines are able to complete tasks that typically require human intelligence. The term machine learning is when computers use rules (algorithms) to analyze data and learn patterns and glean insights from the data. Artificial intelligence is a large factor shifting the way legal work is done.

AI, sometimes referred to as cognitive computing, refers to computers learning how to complete tasks traditionally done by humans. The focus is on computers looking for patterns in data, carrying out tests to evaluate the data and finding results.

Today, [artificial intelligence \(AI\)](#) is beginning to transform the legal profession in many ways, but in most cases it augments what humans do (including (a) reviewing contracts/documents; (b) legal research; and even (c) predicting legal outcomes) and frees them up to take on higher-level tasks (such as advising to clients, negotiating deals and appearing in court),



The following are popular examples of AI that is being used today:

#1 -- Siri

Everyone is familiar with Apple's personal assistant, [Siri](#). She's the friendly voice-activated computer that we interact with on a daily basis. She helps us find information, gives us directions, add events to our calendars, helps us send messages and so on. Siri is a pseudo-intelligent digital personal assistant. She uses machine-learning technology to get smarter and better able to predict and understand our natural-language questions and requests.

#2 -- Alexa

Alexa's rise to become the smart home's hub, has been somewhat meteoric. When Amazon first introduced Alexa, it took much of the world by storm. However, its usefulness and its uncanny ability to decipher speech from anywhere in the room has made it a revolutionary product that can help us scour the web for information, shop, schedule appointments, set alarms and a million other things, but also help power our smart homes and be a conduit for those that might have limited mobility.

#3 -- Tesla

If you don't own a [Tesla](#), you have no idea what you're missing. This is quite possibly one of the best cars ever made. Not only for the fact that it's received so many accolades, but because of its predictive capabilities, self-driving features and sheer technological "coolness." Anyone that's into technology and cars needs to own a Tesla, and these vehicles are only getting smarter and smarter thanks to their over-the-air updates.

#4 -- Amazon.com

[Amazon's](#) transactional A.I. is something that's been in existence for quite some time, allowing it to [make astronomical amounts of money online](#). With its algorithms refined more and more with each passing year, the company has gotten acutely smart at predicting just what we're interested in purchasing based on our online behavior. While Amazon plans to ship products to us before we even know we need them, it hasn't quite gotten there yet. But it's most certainly on its horizons.

#5 -- Netflix

[Netflix](#) provides highly accurate predictive technology based on customer's reactions to films. It analyzes billions of records to suggest films that you might like based on your previous reactions and choices of films. This tech is getting smarter and smarter by the year as the dataset grows. However, the tech's only drawback is that most small-labeled movies go unnoticed while big-named movies grow and balloon on the platform.

#6 -- Pandora

[Pandora's](#) A.I. is quite possibly one of the most revolutionary techs that exists out there today. They call it their musical DNA. Based on 400 musical characteristics, each song is first manually analyzed by a team of professional musicians based on these criteria, and the system has an incredible track record for recommending songs that would otherwise go unnoticed but that people inherently love.

#7 -- Nest

Most everyone is familiar with Nest, the learning thermostat that was acquired by Google in January of 2014 for \$3.2 billion. The [Nest](#) learning thermostat, which, by the way, can now be voice-controlled by Alexa, uses behavioral algorithms to predictively learn from your heating and cooling needs, thus anticipating and adjusting the temperature in your home or office based on your own personal needs, and also now includes a suite of other products such as the Nest cameras.

Statistics re AI In Legal Industry

Technology in the legal industry is 20 years behind every other industry.

In a November 2018 survey conducted by RELX Group, 1000 US senior executives were polled. Of the law firm leaders surveyed, only 44 percent said they offer employee training on the technologies—the least of any industry. Over a quarter (26 percent) of legal industry executives said they do not use

artificial intelligence or machine learning in their work, and 12 percent weren't even aware of machine learning being used in their industry.

The survey also found that 20 percent of legal senior executives do not believe that advanced technologies make their businesses more competitive. In contrast, across all the sectors surveyed, 88 percent of senior executives agreed that AI and machine learning would help their businesses be more competitive.

In the ABA's [2016 Legal Technology Survey](#), 81.4 percent of surveyed attorneys agreed that technology training was very or somewhat important. Just 18.9 percent said that staying on top of technology was not very or not at all important. (We know [a firm or two](#) those respondents might be interested in partnering with.)

A large number of attorneys, 70.5 percent, also have technology training available to them.

But according to [analysis by Mark Rosch](#), that number conceals a significant divide. One-hundred percent of lawyers at firms with more than 500 lawyers and 96 percent of attorneys at firms with 100-499 lawyers had easy access to training. For small firms with two to nine attorneys, only 64.7 percent of lawyers reported access to training. For solos, that number was only 54.3 percent.

This is particularly troubling because, as we see time and time again, that difference in technological competency, can make or break cases—regardless of whether your state bar has a tech competency requirement or not. Failure to understand discovery can lead lawyers to expose their clients to huge, unnecessary costs and put them at a strategic disadvantage. Failure to understand technology can lead to the inadvertent release of sensitive and embarrassing client data. It's not just individual matters that are put at risk here, but careers.

Ethical Issues

ETHICAL DUTY of Lawyers re Technology

In the digital age, lawyers have a duty to be competent not only in the law and its practice, but also in technology.

In a 2012 update to [Comment 8 of Model Rule 1.1](#), explaining attorneys' duty to provide competent representation, the ABA announced that "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology". The Commission also recommended accrediting technology MCLE programs that provide education on safe and effective ways to use technology in law practice (since adopted by the ABA). The revised MCLE requirements are important because they reinforce the fact that the duty is continuing, training is important, and mere exposure to technology is not enough.

In the years following, states have slowly begun adopting the ABA's change, with 28 state bar associations, covering 53.4 percent of America's lawyers, now recognizing attorneys' ethical duty to be competent in technology.

States that require lawyers to maintain technological competency now include:

- Arizona
- Arkansas
- Colorado
- Connecticut
- Delaware
- Florida
- Idaho
- Illinois
- Iowa
- Kansas
- Massachusetts
- Minnesota
- Nebraska
- New Hampshire
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Pennsylvania
- Tennessee
- Utah
- Virginia
- Washington
- West Virginia
- Wisconsin
- Wyoming

Together, those state bars represent 713,975 attorneys, or 53.4 percent of all [1,334,963 lawyers in the United States](#).

There are some notable omissions, of course. The District of Columbia, with its nearly 55,000 bar members, has not adopted a duty of technological competency, according to Ambrogio's list. This is particularly disturbing given the sensitive data government lawyers deal with and how frequently the government is [subject to cyberattacks](#).

California, too, isn't on the roster. The California State Bar is the second largest in the nation, with nearly 170,000 members, and it remains the only state that does not base its ethics rules on the ABA's Model Rules.

However, though California lacks the ABA's technological competency rule, in 2015 the California Bar issued a formal ethics opinion requiring a more narrowly focused form of technological competency: [competency in eDiscovery](#). Under California's Rules 3-100 and 3-110, the bar explained, competent representation requires, "at a minimum, a basic understanding of, and facility with, issues relating to e-discovery".

The obligation to remain technologically competent includes a responsibility to understand how to safeguard the information utilized by that technology. Cyber-attacks have become so commonplace that is no longer a question of whether a lawyer or a law firm will be a victim of an attack, but when. A lawyer who utilizes email, remote access to files, electronic storage of files, or any number of other commonly utilized technology without understanding the vulnerabilities of that technology and how to protect the electronic data utilized by that technology is not only at risk personally, but has also placed that lawyer's clients at risk and may be deemed to have violated ethical duties to that lawyer's clients. By way of example, technology such as encryption of sensitive or privileged electronic communications, encryption of hard drives on computers and mobile devices containing client information, dual authentication to gain access to electronically stored data, malware and antivirus software to protect against viruses, and offsite backup of data have probably already become standards in the industry by which a lawyer will be judged.

Lawyer's Role as a Story Teller

Gerry Spence once said, 'Telling a story is one of the most persuasive means of communication,' The use of AI is particularly relevant to the legal sphere, as its primary function involves looking for patterns in data. [2] Every good lawyer knows that the key to persuasive communication is to tell a story, and deep

within the data lies a story to be pitched to a potential client or to be told to a judge at trial. In order to tell that story, lawyers need to be able to sift through the data.

“For years, lawyers have been stuck with antiquated tools that focus primarily ... on Boolean search. Better tools are needed to truly understand data.” Jay Leib.

According to IBM, 2.5 quintillion (2,500,000,000,000,000,000) bytes of data are created every day, and 90 percent of all data was created within the last two years. In order to tell a good story, lawyers need a way to sift through the data.

Two partners created “Discovery Cracker” which helps develop technology that can turn information into stories. Story Engine is a program that can read through unstructured data and summarize conversations, including the ideas discussed, the frequency of the communication and the mood of the speakers. The company uses the data to build models to analyze behavior and find signs of fraud or litigation.

For example, when investigating securities fraud, the analytic engine of the program can overlay communications between traders discussing that stock-on-top-of-price-movement data to compare the times they both occurred. Perhaps the traders in question also emailed client information to themselves. By comparing these various data points, a clear pattern can quickly emerge—one that might have previously gone unseen or would have been considered circumstantial. These patterns allow financial firms to better understand and identify this behavior to prevent it, and also tell easy-to-follow stories to regulators or judges.

Prediction of Legal Outcomes

Another potential use for data is predicting legal outcomes. In 2014, Chicago-Kent College of Law professor Daniel Martin Katz, then at Michigan State University law school, and his colleagues created an algorithm to predict the outcomes of U.S. Supreme Court cases. It attained 70 percent accuracy for 7,700 rulings from 1953 to 2013.

NexLP offers services where clients use the software to identify patterns in the data. Once any possible issues are flagged, the system can collect the necessary documents for any possible litigation.

Document Review/Contract

Technology that automates tedious tasks, while not a panacea, can free up lawyers’ time to perform higher-level, more intellectually satisfying work for which clients would be willing to pay.

There are several software companies who created AI tools specifically for contract review such as [Kira Systems](#), [LawGeex](#) and [eBrevia](#) that help sort contracts quicker and with fewer errors than humans.

Companies like [eBrevia](#) aren’t seeking to eliminate lawyers, but to make their lives better. Law firms are feeling the pressure from clients, particularly in-house counsel, to lower costs. Artificial intelligence is born out of necessity.

“Companies and their lawyers often have to perform a cost-benefit analysis in areas like legal due diligence,” Nguyen says. “Perform a partial review of a database of documents and keep costs low, or

perform a thorough review and blow through the budget? It's clear we need a solution that increases lawyers' productivity while helping to deliver legal services at the level expected by clients."

The focus for eBrevia's products is on extracting information from data. Clients upload documents to the server, where they search for information and download it sorted according to their preferences. What makes eBrevia different is the program's ability to learn how to do searches more efficiently.

"The machine-learning technology learns from examples," says Nguyen. "It's been taught to recognize and abstract legal concepts like assignment, change of control or renewal. The user would upload documents to the system, and it would return sentences relating to legal concepts that it has learned.

Legal Research

Westlaw and Lexis-Nexis replaced "your grandfather's method" of "Shepardizing" cases. AI enhancements now include "Research Recommendations" and "Folder Analysis" which use your current legal research session to recommend additional cases or statutes related to the issue you were searching. These AI-based enhancements were not designed to replace the work of attorneys but instead the goal was to speed your work and add confidence to your research process so you can spend your time and energy on the creative and intellectual tasks – task that only a human can do.

Help perform due diligence

In law offices around the world, legal support professionals are kept busy conducting due diligence to uncover background information on behalf of their clients. This works includes confirming facts and figures and thoroughly evaluating the decisions on prior cases to effectively provide counsel to their clients. Artificial intelligence tools can help these legal support professionals to conduct their due diligence more efficiently and with more accuracy since this work is often tedious for humans.

Some of the main types of AI used within the legal sector include:

1. Practice management automation

Many of the tools built into billing and wider practice management software are a form of AI.

For example, time-recording programs can log the hours spent by a lawyer in terms of work done in respect of each client, and automatically generate invoices at the end of each month or relevant time period.

2. Predictive coding

This is possibly one of the most advanced forms of AI currently being used by the legal sector. It refers to technology-assisted review used to speed up the e-disclosure process.

Predictive coding software is basically a search algorithm which 'learns' how to rank the relevance of documents, based upon an initial training session where a lawyer tweaks the algorithm. It is then let loose on thousands of documents to determine which ones are most relevant for purposes of disclosure.

3. Document assembly

Contracts can be created by simply answering a few questions and filling out the relevant fields. AI software (for example, Uhura AI) can also be used to read existing contracts and check for any missing clauses.

4. Legal research

The big online legal information resources such as LexisNexis and Practical Law are constantly improving their search algorithms to help lawyers find the most relevant material pertaining to their case.

Some AI tools go a step further and can help lawyers to form a case strategy based on previous outcomes in similar cases (for example, Lex Machina).

5. Drafting legal documents.

The future is here. Imagine software programs that can OCR a complaint, then draft an answer based on the allegations in that complaint, including affirmative defenses, and then draft discovery, all in the course of minutes. That capability exists in a software program called LegalMation.

6. Voice recognition

Digital dictation has improved dramatically over the last two decades, but a host of virtual assistants (for example, Siri) can now carry out various functions, such as booking appointments and searching through documents, through voice alone.

7. DIY law and chatbots

Services such as Rocket Lawyer apply elements of document assembly to help individuals and businesses form their own legal documents, without having to go to a lawyer. Chatbot-style tools can also provide access to basic legal assistance, such as DoNotPay, which helps people appeal parking fines.

Conclusion:

Yesterday's cutting edge technology is today's commonly used technology and is tomorrow's standard of care. Attorneys who fail to stay abreast of technologies that are relevant to the practice of law place themselves and their clients at risk.