AI Use by Legal Professionals

January 30, 2025

GIBSON DUNN

Today's Agenda

01	**AI in Legal Practice**
02	**AI in Contracting**
03	**Risks & Ethics in Practice**
04	**Best Practices: Risk Management**

Key Terms:
Definitions

Artificial Intelligence

Capability of a computer system to **mimic human cognitive functions** – simulate reasoning that people use to learn from new information and make decisions.

Machine Learning / Predictive AI

Subset of AI – employs advanced statistics with the ability to learn from available data, identify patterns and make **predictions** without requiring human intervention.
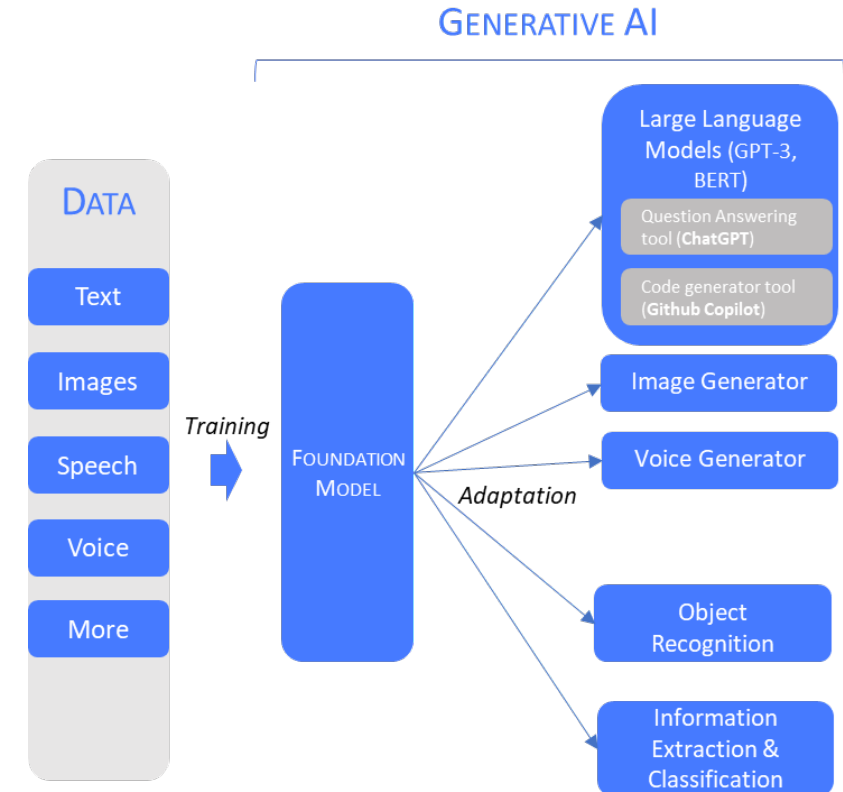
Generative AI

Systems, including **large language models** (LLMs), that process data (visual, textual, audio…), "learn" associations from such data, and generate "new" content ("outputs") in response to user prompts.
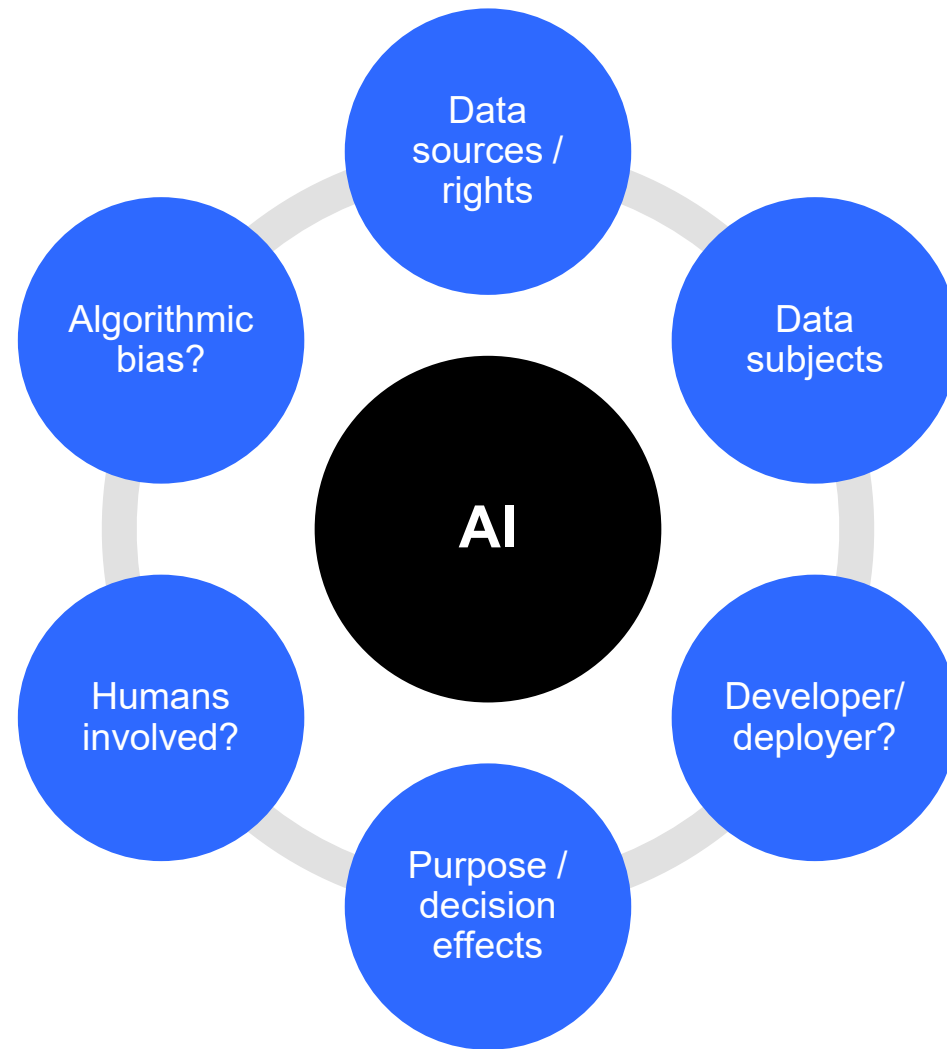
Foundation Models

AI model pre-trained on large amounts of unlabeled and unsupervised data that **can be adapted to many applications/tasks** with or without modification and fine-tuning for other, more specialized AI systems.

AI Agents

Agentic AI gathers and processes data from various sources, such as sensors, databases and digital interfaces, and leverages LLMs and iterative planning to **autonomously solve multi-step problems**, including via APIs.

GENERATIVE AI

DATA
- Text
- Images
- Speech
- Voice
- More

Training → **FOUNDATION MODEL** → *Adaptation*

- Large Language Models (GPT-3, BERT)
  - Question Answering tool (**ChatGPT**)
  - Code generator tool (**Github Copilot**)
- Image Generator
- Voice Generator
- Object Recognition
- Information Extraction & Classification

Overview of AI-specific Considerations

Artificial Intelligence in
Legal Practice

01

Overview of AI & Legal Tech on the Market

Over 1800* current Legal Tech tools with 100*+ launched since the start of 2023 and new ones added each day

Future of AI in Legal Practice

Impact on Legal Profession

- **Evolving Roles**
  - Shift in roles from routine tasks to more strategic, analytical work.
  - Increased focus on AI management and oversight positions.
- **Enhanced Client Services**
  - Higher efficiency and accuracy in legal services leading to improved client satisfaction.
  - Broader access to legal services.
- **Regulatory and Ethical Landscape**
  - Ongoing development of regulations governing AI usage in legal practice.
- **Competitive Advantage**
  - Firms leveraging AI effectively gaining a competitive edge.
  - Importance of staying updated with AI advancements to remain relevant in the industry.

AI Technologies

- **Natural Language Processing (NLP)**
  - Advancements in NLP to enhance legal research and document review.
  - Improved understanding and generation of complex legal texts.
- **Machine Learning (ML)**
  - Increased use of ML for predictive analytics in litigation and case outcomes.
  - Enhanced ability to identify patterns and trends in large data sets.
- **Generative AI Assistants/Agents**
  - Personalized to specific client needs
- **Blockchain Integration**
  - Combining AI with blockchain for secure, transparent legal transactions.
  - Potential for smart contracts and automated compliance checks.

Artificial Intelligence in Contracting

02

AI Capabilities:
The AI Stack
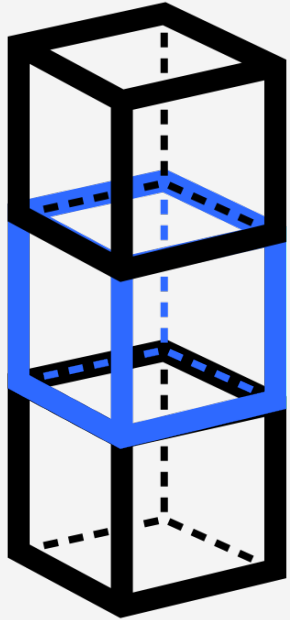
How does AI Work?

- AI systems are tools that use algorithms to learn from data and make predictions.

Understanding the AI "Stack"

- Applications: Software programs that utilize the output of an AI model.

- API Services: Endpoints (APIs) that grant applications access to pre-trained models.

- Powerful Pre-Trained AI Models: Models like GPT-4 that can be adapted for various tasks without starting from scratch.

- Machine Learning Acceleration Software: Tools that expedite the development and deployment of large AI models.

- AI Datacenter Infrastructure: Advanced computing infrastructure, including GPU clusters and high-bandwidth networks, designed for AI workloads.

Four Main Contracting Considerations

Control of the AI System	**Use of Data and IP Ownership**
Legal/Regulatory Risk	**Indemnification and Liability**

Demo: AI in Contracting

Ethics in Practice:
Discussion

03

Ethical Issues with GenAI and other Emerging Technology
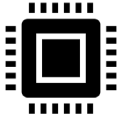
Responsible - The technology is created and operated in a socially responsible manner. Technology's benefits are evaluated in comparison to potential misuses.

Robust & Reliable - The technology produces consistent and accurate outputs, withstands errors, and recovers quickly from unforeseen disruptions and misuse.

Private - User privacy is respected, and data is not used or stored beyond its intended and stated use and duration; users are able to opt-in /out of sharing their data.

Controlled - Technology end-users are evaluated to ensure they are using it as intended and in a non harmful manner, with termination activated when misuse continuously occurs.

Safe & Secure - The technology is protected from risks that may cause individual and / or collective physical, emotional, environmental, and/or digital harm.

Accountable - Policies in place to determine who is responsible for the decisions made or derived with the use of technology.

Collaborative - Technology standards are discussed amongst industry peers, government agencies, academia, standards associations, etc. to co-create ethical standards.

Transparent & Explainable - Users understand how technology is being leveraged, particularly in making decisions; these decisions are easy to understand, auditable, and open to inspection.

Fair & Impartial - The technology is designed and operated inclusively to ensure equitable application, access, and outcomes.

Adaptable - Technology policies are feedback oriented (from both internal and external stakeholders), frequently reviewed, and updated.

GenAI Ethical Guidelines

Formal Opinion 512 - Generative Artificial Intelligence Tools

Report and Recommendations of the New York State Bar Association - Task Force on Artificial Intelligence

Advisory Opinion 24-1

Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law

GenAI Ethical Guidelines

Illinois Supreme Court Policy on Artificial Intelligence, January 1, 2025

Joint Formal Opinion 2024-200: Ethical Issues Regarding the Use of Artificial Intelligence

Statement on the Use of Artificial Intelligence in Australian Legal Practice

Tracking Federal Courts

"The mission of the federal courts to ascertain truth is obviously compromised by the use of an AI tool that generates legal research that includes false or inaccurate propositions of law and/or purport to cite non-existent judicial decisions cited for substantive propositions of law."

- Judge Jeffrey Cole, N.D. Ill.

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Judge Brantley Starr, N.D. Tex. (May 30, 2023)

All attorneys must file a certificate attesting either that no portion of any filing will be drafted by genAI or that any language drafted by genAI will be checked for accuracy, using print reporters or traditional legal databases, by a human being.

Judge Cole, N.D. Ill. (July 21, 2023)

Any party using AI in the preparation of materials submitted to the court must disclose in the filing that an AI tool was used to conduct legal research and/or was used in any way in the preparation of the submitted document.

Judge Padin, D.N.J. (November 13, 2023)

The use of any genAI for any court filings requires a mandatory disclosure/certification that (1) identifies the genAI program; (2) identifies the portion of the filing drafted by genAI; and (3) certifies that the genAI work product was diligently reviewed by a human being for accuracy and applicability

Judge Arun Subramanian, S.D.N.Y. (July 28, 2023)

Attorneys are responsible for providing the Court with complete and accurate representations of the record, the procedural history of the case, and any cited legal authorities. The attorney must at all times personally confirm for themselves the accuracy of any research conducted by these means.

Judge Rozella Oliver, C.D. Cal. (May 9, 2024)

Any attorney who uses genAI to generate any portion of a brief, pleading, or other filing must attach to the filing a separate declaration disclosing the use A.I. and certifying that the filer has reviewed the source material and verified that the artificially generated context is accurate and complies with the filer's Rule 11 obligations.

Judge Stephen Alexander Vaden, U.S. Ct. of International Trade (June 8, 2023)

If any attorney has used AI in the preparation of any materials filed with the Court, must, in a clear and plain factual statement, disclose that AI has been used in any way in the preparation of the filing, and certify, that each and every citation to the law or the record in the paper, has been verified as accurate.

Key Ethical Considerations

Common Ethical Considerations from ABA and State Bar Associations

- **Competence**: Lawyers to provide competent representation to clients and requires legal skill and knowledge necessary for representation, which includes understanding benefits and risks associated with technology used to deliver legal services.

- **Confidentiality**: Lawyers using GenAI must be cognizant of the duty to keep confidential all information relating to representation of a client, regardless of its source, unless client gives informed consent

- **Communication**: Lawyers must "reasonably consult" with client about means by which client's objectives are to be accomplished

- **Fees**: Lawyers' fees and expenses must be reasonable and include criteria for evaluating whether a fee is reasonable. In most instances, the lawyer cannot charge a client for (1) learning how to work a GenAI tool or (2) time saved using a GenAI tool.

- **Duty to Supervise Lawyers and Nonlawyers**: Lawyers to establish clear policies regarding permissible use of GAI, including the provision of training on ethical considerations of any GenAI use.

"With the ever-evolving use of technology by lawyers and courts, lawyers must be vigilant in complying with the Rules of Professional Conduct to ensure that lawyers are adhering to their ethical responsibilities and that clients are protected."

ABA Formal Opinion 512

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Ethics in Practice

Tech Innovations Inc., a multinational technology company, decides to implement an AI-driven software system named "LegalTech" to assist its in-house legal department with contract management, compliance monitoring, and risk assessment.

- **Contract Management:** LegalTech is deployed to review and draft standard contracts, identifying potential legal issues and suggesting clauses. Occasionally, the AI overlooks specific regulatory requirements relevant to different jurisdictions where the company operates.

- **Compliance Monitoring:** LegalTech monitors the company's activities for compliance with industry regulations. However, the AI's alerts can be overly sensitive, flagging activities that are not actual violations, or missing nuanced compliance issues due to limitations in its programming.

- **Confidentiality and Data Security:** LegalTech requires access to confidential company data, including intellectual property and sensitive business information.

- **What are the risks associated with the use of LegalTech?**

- **How can the legal department ensure that AI tools are used ethically and effectively within the company?**

- **What measures should be implemented to review and validate AI-generated outputs?**

- **How can attorneys address potential biases in AI algorithms?**

- **What protocols should be established to safeguard company confidentiality and data security?**

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Best Practices:
Risk Management

04

AI Governance:
Key Questions

Who has responsibility?	How are risks being identified and assessed, and what are the mission-critical risks?
Where is AI being used, and what are the critical AI use cases?	Are adequate resources devoted to AI development, operations, training, compliance and risk mitigation?
How can AI have a positive impact on legal work, and how do we measure success?	How are third-party providers using AI?
What are peers/competitors doing?	Who is keeping up with emerging regulatory/bar guidelines and litigation trends?

Best Practices
Data Ownership Diligence

01

Assessing Ownership

Determine the **ownership status of data assets** involved in transactions, including proprietary data, third-party data, and regulatory data.

02

Understanding Rights
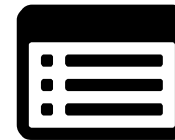
Identify the **rights associated with each dataset**, considering contractual agreements, intellectual property laws, and regulatory requirements.

03

Documentation

Clearly **document data ownership and rights** to mitigate disputes, ensure compliance, and facilitate smooth data transfer and usage for AI-related purposes.

Best Practices
Vendor Management

AI implementations often involve third-party tools.

Vendor management is critical to identify and mitigate risks associated with third-party software and data.
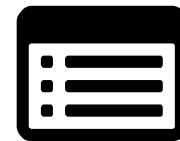
01
Assessing Ownership

Develop **protocols to assess vendor capabilities** and conduct due diligence to ensure compliance with relevant laws, sufficient security measures, and clear contractual agreements.

02
Understanding Rights

Implement **third-party vendor monitoring** measures to ensure adherence to contractual obligations and quality standards. This may involve KPIs, conducting regular performance reviews, etc.

03
Documentation

Update **agreements and engagement letters** to specifically address the use of AI and the potential risks.

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Litigation **Strategy**

"... **class administration is going to be revolutionized by AI** to the end of increasing claims rates and distributions of funding," listing as examples "massive dataset harvesting for notice, finding where people are, finding out how to maximize outreach to them … and claims verification, if that's possible."

U.S. District Judge James Donato (N.D. Cal)
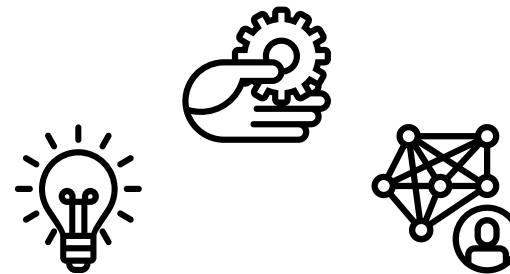
01

Privilege

- Risk of waiving Attorney-Client Privilege / Work Product
- Restrict third party rights
- Internal access controls
- Privilege headers
- Consider inputs

02
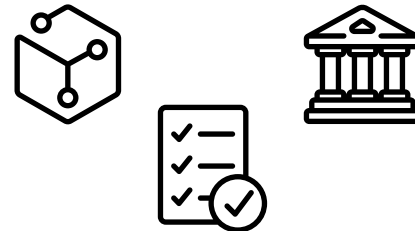
Legal Holds/Spoliation
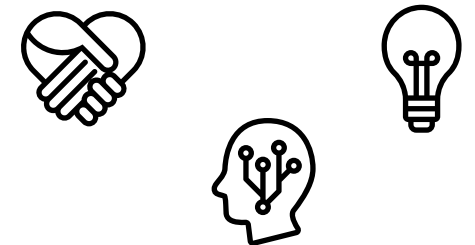
- Preservation of AI-generated materials
- Automatic deletion
- Regulatory activity and guidance (e.g., joint FTC/DOJ guidance on preserving ephemeral messaging)

03

Use of AI tools

- Monitoring public statements and dockets
- Filing lawsuits; submitting comments
- Class administration / settlements

Managing Compliance Risk:
Summary

- The **proliferation of new laws and regulations** governing AI can present challenges for even the most sophisticated legal and compliance organizations.

- **Data rights** and **transparency** are critical to successful AI adoption and governance.

- While we expect AI-specific laws and regulations will generally align with risk management principles, new requirements will **challenge legal and compliance organizations to remain agile**.

- Continued attention to potentially "mission-critical" legal use cases and AI legal and regulatory developments is a **competitive advantage**.

- Given AI's potential for strategic, operational and competitive disruption, **leadership and boards** have a key role to play in overseeing AI adoption and governance.

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