Generative AI &
the Practice of Law

I. Generative AI Models

Kathryn Olon

What is Generative AI?

Program

A computer program that uses data and other available sources of information to create new content such as pictures, videos, and text.
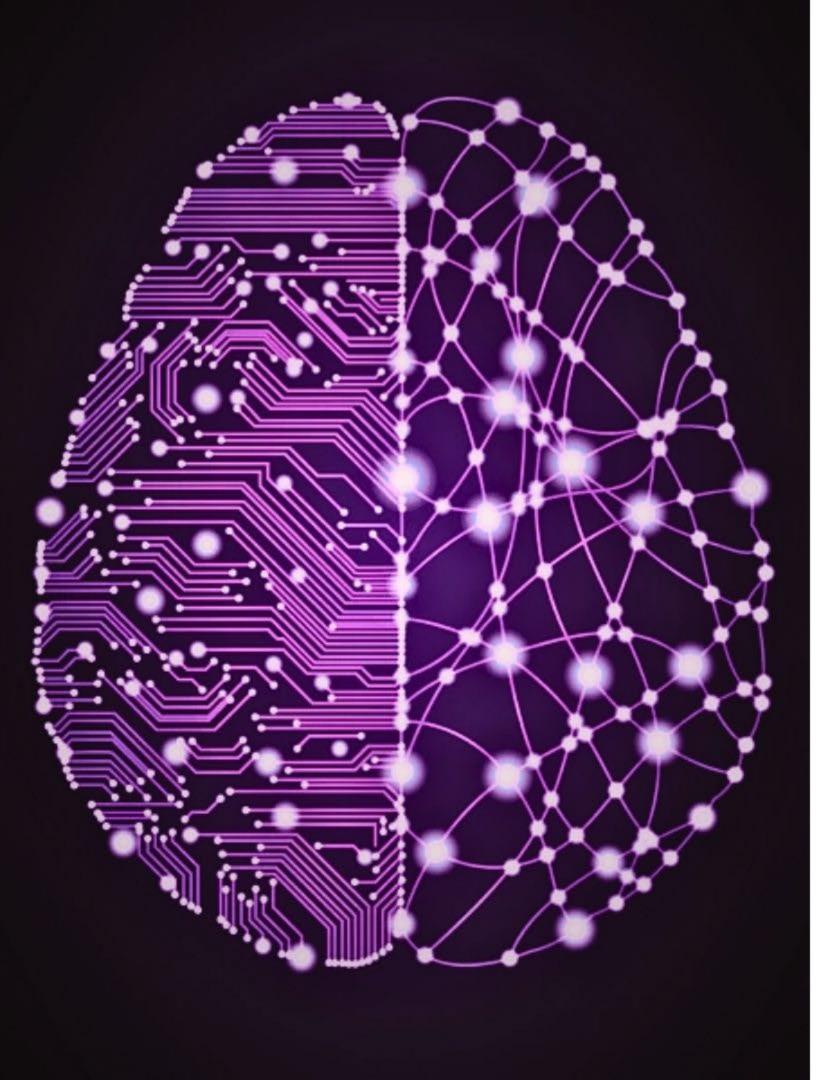
Teachable

It can be taught information on complex subjects including languages, chemistry, and biology.

Machine learning

It is machine-learning-based, meaning it is reliant on data and approximation methods.
- The more data the model has, the better results it will provide.
- It is **flexible** and **trainable**.

"Machine-Learning-Based"

"Machine-learning-based" means the program uses data to learn patterns.

Generative AI analyzes the data fed to it, recognizes patterns, and then uses these patterns to make decisions.

In law, generative AI may be helpful by identifying changes in the law based on recognized patterns.

Source: Morgan Gray, A Primer on AI in Law (2024).

Teaching a generative AI model language.

Bag of Words

Words and how many items they appear within a specific document.

Term & Inverse Document Frequency

Counts words, but more weight is given to rare words.

N-Grams

N-Grams represent words and the words surrounding those words.

- Helps to build up contextual language to build up meaning.
- Helps the model understand context and what things mean.

Context matters.

The model learns and catches up with the language we use as humans by analyzing existing text to determine what should be generated next.

For example, auto-suggest and autocorrect. The model predicts what is next by analyzing:

- Words similar to the word;
- Words that are commonly associated with the word.

Source: Morgan Gray, A Primer on AI in Law (2024).

ChatGPT

ChatGPT and similar programs are a more complex AI model than previously discussed.

Users input a prompt into the model, and the model generates the most likely answer to the prompt based on probability calculations.

The model generates one word at a time and circles back with each word, giving the most probable answer.

This is how the model may sometimes go awry. Users assume it is "thinking," but it is merely using probability to generate the most likely response. However, this response might be wrong.

There are two primary types of generative AI models.

"Greedy Generation" models output answers that are most likely given in response to prompts. This is most useful in determinative tasks.

"Creative Generation" models create text, images, and videos in various creative styles to generate personalized content. This is most useful in tasks requiring creative writing.

One issue with ChatGPT is that the user does not know which of these two models will produce the answer to their prompt.

However, the more information provided to the model, the greater the likelihood the model will produce a correct answer.

Source: Morgan Gray, A Primer on AI in Law (2024).

Be careful when using generative AI products.

Due to the nature of the technology, tasks better suited for generative AI include writing emails, answering simple questions, providing general knowledge, and responding to precise, concise prompts.

Tasks that are complex, nuanced, or highly detailed are less suited for generative AI at its current stage of development.

II. Generative AI & Legal Ethics

Seth Trott

AI and its issues are not new to the legal sector.

AI products have been in use.

AI has long been incorporated into the back end of search engines and other software products often used by legal practitioners.

Generative AI is novel.

Generative AI is relatively new and seen today in legal research tools, search engines, contract analysis, document review programs, and the like.

Hallucinations occur & biases exist.

Cites case law that does not exist or is incorrect, perhaps seeing patterns that either are not there or that humans cannot perceive.

Make-believe cases and faulty analyses.

Generative AI can create convincing but fictional case law, resulting in inaccurate citations and faulty legal analyses. Lawyers using this technology risk relying on false interpretations of the law, which can mislead both courts and clients.

Courts react.

Disclosures & Verifications

Some courts are requiring attorneys to disclose when generative AI tools are used in filings or sign a verification that all citations and arguments have been reviewed by the attorney if generative AI was used.

Sanctions

In <u>Mata v. Avianca, Inc.</u>, the Southern District of New York sanctioned attorneys and fined them $5,000 each for submitting a brief written entirely by ChatGPT. The brief contained fake citations, which the attorneys continued to stand by.

Suspensions

In <u>People v. Crabill</u>, the Colorado Supreme Court suspended an attorney for one year and one day for failing to check the case citations provided by ChatGPT. He instead solely relied on the technology to create the brief, which was held to violate the state's Rules of Professional Conduct.

Ethics still matter.

1.1   Competence

1.4   Communication

1.6   Confidentiality

1.7 & 1.9   Conflicts & Information

3.1   Meritorious Claims & Defenses

3.3   Candor Toward the Tribunal

5.1 & 5.3   Supervision

5.5   Unauthorized Practice of Law

8.4   Misconduct (Truthfulness)

Ethical considerations when using generative AI.

Competence

Lawyers are expected to maintain a baseline understanding of the technologies they use, including generative AI. As AI becomes more sophisticated, staying competent will require deeper technological knowledge and further training.

Communication

Lawyers are required to inform the client of the benefits, risks, and limits of the use of generative AI. Lawyers must also determine whether the permissible use of generative AI would serve the client's objectives in the representation.

Confidentiality

Generative AI tools handle vast amounts of sensitive client data. As AI systems become more integrated into cloud-based environments, the risk of data breaches increases. Lawyers must ensure AI vendors adhere to stringent confidentiality and security standards.

Ethical considerations when using generative AI.

Conflicts & Information

Lawyers cannot reveal information relating to a representation of a current or former client or from using that information to the disadvantage of a current or former client. Generative AI tools, which rely on large language models, may inadvertently use insights from one case to inform another.

Meritorious Claims & Defenses

Check any citations and legal arguments a generative AI tool provides to ensure merit. The responsibility to maintain the credibility of any legal argument ultimately falls on the attorney, even if a generative AI tool performed the research and drafted the document or argument.

Candor Toward the Tribunal

Lawyers are obliged to ensure generative AI does not alter or invent evidence. If it does, the lawyer must take reasonable remedial measures. Lawyers must be both proactive and reactive in not presenting false statements or false evidence to a tribunal.

Ethical considerations when using generative AI.

Supervisory Standards

The same ethical rules that apply to lawyers who employ paralegals, junior associates, or outside consultants also apply to generative AI tools. Think of the tool as someone working in your office. Lawyers must make reasonable efforts to ensure, like humans, the AI tool can satisfy and adhere to ethical standards.

Unauthorized Practice of Law

Generative AI tools are currently created by humans, and the programmers are most likely not attorneys. Lawyers must make efforts to prevent AI tools from giving unauthorized legal advice. A human element must always be present in legal work.

Misconduct (Truthfulness)

Lawyers must avoid making false or misleading statements. This includes statements made to a tribunal, in marketing, and when interacting with clients. Generative AI tools could inadvertently provide inaccurate or misleading information, perhaps giving an impression of false expertise or offering incorrect legal conclusions.

Use it to augment, not replace.

Become competent.

Generative AI will become a core component of your everyday practice. Understanding the mechanics of both generative AI as a technology and the specific products you use can better help you spot issues and avoid ethical pitfalls.

Remain skeptical.

Hallucinations happen. If using generative AI to research and draft documents or portions of documents, be sure to check the content for accuracy. You may need to sign a court-mandated verification in the near future.

III. The Future of Generative AI & Legal Practice

Julia Gromacki

What the future holds.

Predicted Transformations

Automation of Routine Tasks.
Tasks like contract review, document analysis, and e-discovery become faster and more cost-effective.

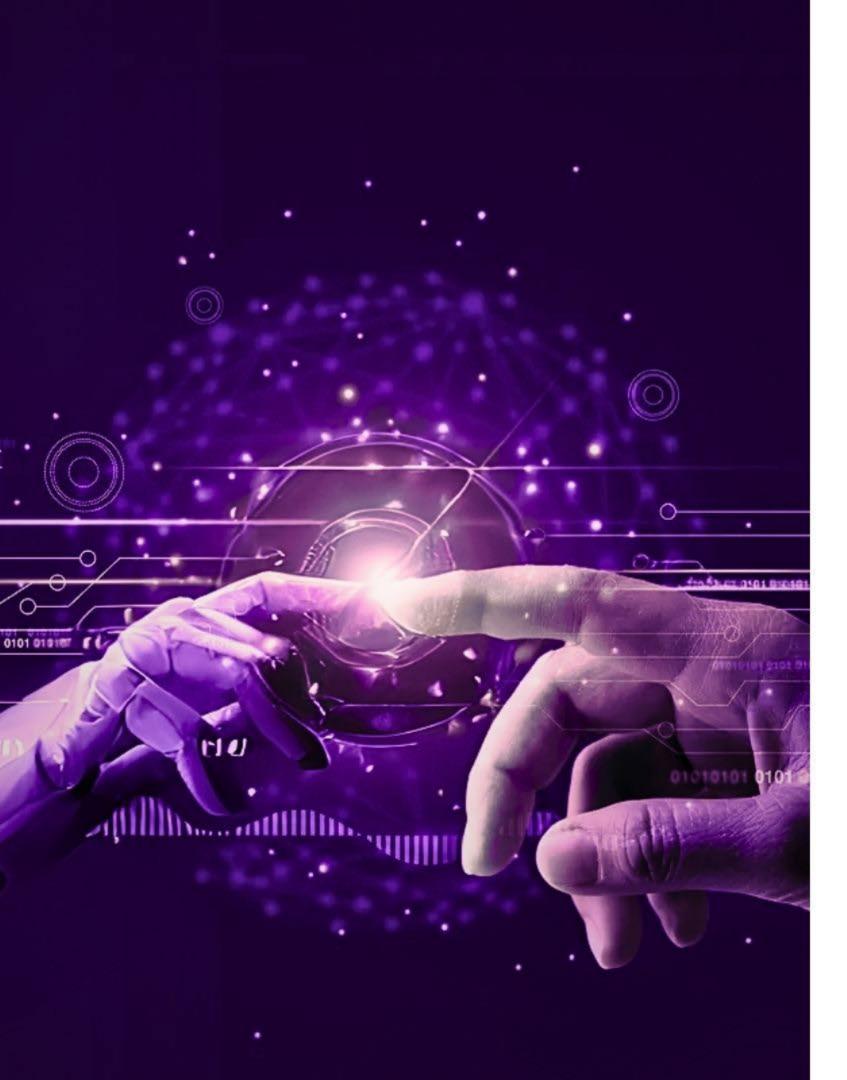**Enhanced Decision-Making.**
Enables data-driven insights by analyzing large datasets, which supports strategic legal decisions.

Human-AI Collaboration

AI will not replace lawyers; it complements our abilities, allowing us to focus on complex problem-solving and client strategy.

Affordability & Accessibility

As generative AI becomes affordable, smaller firms and solo practitioners will benefit, as the software democratizes advanced tools across the profession.

Broader adoption faces hurdles.

Psychological Barriers

Awareness & Education. Lack of understanding of generative AI's capabilities and limitations creates resistance.

Change Aversion. Breaking established workflows can feel disruptive and challenging.
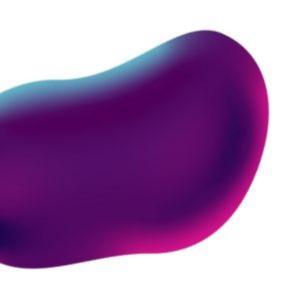
Skill Gaps

Knowledge & Training. Lawyers need skills to use generative AI effectively; insufficient training limits the technology's potential.

Job Security Concerns

Fear of Replacement. Concerns about generative AI reducing roles persist, though the technology aims to complement, not replace, human expertise.

Data Privacy & Compliance

Maintaining Trust. Ensuring that generative AI tools meet strict data privacy and ethical standards is essential for client trust.

Best practices for your practice.

Understand generative AI's capabilities & limitations.

Use generative AI as a support tool, not as a replacement for legal expertise.

Vet product providers.

Ensure compliance with data privacy and security standards; select transparent providers with robust security protocols.

Ensure continuous oversight.

Always review and verify AI-generated outputs to maintain accuracy and ethics.

Stay informed.

Keep up with AI regulations and ethical guidelines to ensure responsible and effective use of generative AI in legal practice.

Things to consider as we look ahead.

Generative AI is an ally.

Generative AI will support and amplify our expertise, freeing us to direct our attention to more complex, client-focused work.

Commit to ethical standards.

The responsible use of generative AI requires vigilance in data privacy, compliance, and accuracy.

Adapt & evolve.

Continuous learning is essential to stay aligned with advancements in generative AI and evolving legal regulations.

Enhance your value to clients.

Generative AI-driven insights enable us to provide higher-quality and more efficient service, setting new industry standards in client support.

IV. Demonstration & Questions