

The Times They Are A-Changin': The Rise of Generative AI in the Legal Profession

By Nicole Case



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Special thanks to Stephen Breidenbach for his excellent contributions and insights on this piece.

*Come gather 'round people
Wherever you roam
And admit that the waters
Around you have grown
And accept it that soon
You'll be drenched to the bone
If your time to you is worth savin'
And you better start swimmin'
Or you'll sink like a stone
For the times they are a-changin'*

Bob Dylan

The legal profession is on the brink of a technological revolution. The introduction of generative AI platforms in the legal world, while truly revolutionary, has left many attorneys with more questions than answers. Some are embracing the new tools and have already begun to integrate new systems into their daily work lives¹, while others are concerned about the accuracy of the generated information, along with other ethical issues.² Some judges are requiring attorneys to disclose their use of generative AI in the preparation of court filings, while others are forbidding its use all together.³ Wherever you fall on this ever-moving spectrum, one thing remains true—generative AI not just coming, it's already here, and all evidence suggests that it's here to stay. Attorneys who understand the promises and pitfalls of generative AI platforms will undoubtedly be ahead of the curve. Bob Dylan said it best, "... admit that the waters around you have grown ... and you better start swimmin' or you'll sink like a stone."

What is AI?

Artificial intelligence (AI) refers to the simulation of human intelligence in machines.⁴ One of the goals of AI is to mimic human cognitive activity.⁵ AI systems leverage intelligent algorithms that classify, analyze, and make predictions from large amounts of data.⁶ These algorithms are trained using large datasets so that they can identify patterns in data, make predictions, and recommend actions.⁷

AI first appeared in the 1950s, a time when scientists, mathematicians, and philosophers began

to develop programs designed to mimic the problem-solving skills of a human.⁸ As time went on, AI became more and more popular, being integrated into several industries such as technology, banking, marketing, and entertainment.⁹ Today, AI is likely a huge part of your everyday life with examples including Siri, Alexa, email spam filters, Netflix recommendations, self-driving cars, and even a Google search.¹⁰

What is Generative AI?

While AI technology has already established its presence in our everyday lives, generative AI (GenAI) is a more recent phenomenon. GenAI is a form of AI that can create a wide variety of data, such as images, videos, audio, text, and 3D models.¹¹ It does this by learning patterns from existing data and then using this knowledge to generate new and unique outputs.¹²

Although GenAI research can trace its history back to the 1960s,¹³ GenAI gained huge notoriety upon the launch of a GenAI platform known as ChatGPT in November of 2022.¹⁴ Created by OpenAI (an AI research and deployment company established in 2015), ChatGPT can be used to organize, summarize, or write new text in response to a user's questions and/or instructions.¹⁵ ChatGPT and other similar services are developed using: (1) information that is publicly available on the internet, (2) information that OpenAI licenses from third parties, and (3) information that OpenAI's users or human trainers provide.¹⁶

GenAI in the Legal Space

Virtually all law firms are already using some form of AI.¹⁷ AI is baked into legal research platforms like Westlaw and Practical Law.¹⁸ These tools use AI to help provide insight faster with visualization tools and data-driven charts so users can easily interpret and share information.¹⁹ What's *new* is the use of GenAI.²⁰ GenAI platforms specifically designed for the legal profession include Harvey AI²¹, CoCounsel²², Lexis+ AI²³, and Westlaw Precision²⁴, all claiming to assist with drafting, research, and other legal tasks.

Lawyers Jumping on the GenAI Wagon

With AI on the rise, some lawyers are considering stepping up their AI game and integrating GenAI into their daily practices to automate routine tasks and streamline workflows.²⁵ Certain major law firms have already announced that they have created their own internal versions of ChatGPT.²⁶ In August of 2023, Dentons and Addleshaw Goddard announced that they are launching secure chatbots based on GPT technology.²⁷ Law firms Orrick, Herrington & Sutcliffe, which has about 1,150 lawyers, and Fisher Phillips, with more than 500 lawyers, are now using CoCounsel²⁸ while several global firms including DLA Piper and Allen & Overy are using Harvey AI.²⁹ Global law firm Baker McKenzie even appointed a new head of Machine Learning, a role designed to develop questions of how to combine machine learning and other types of AI with the firm's expertise to create new services.³⁰ A growing number of legal startups are also now applying machine-learning techniques to tasks such as document review and other litigation preparation techniques.³¹

Advantages

Time and Cost Savings:

GenAI possesses the ability to swiftly analyze vast volumes of legal documents, expedite research and due diligence, draft and manage contracts and other original content based on a user's prompt.³² Needless to say, these systems save time and allow attorneys to focus on more intellectual endeavors. With high hourly rates for attorney services, some clients are encouraging their attorneys to use these tools to automate tedious tasks, thereby lowering their bill.

Better Decision Making

With GenAI platforms still in the works, it's possible that they can be programmed not only to pull information from legal databases like Westlaw and Lexis³³, but also from a firm's own repository of data³⁴, thus helping lawyers make better decisions and preventing duplicating work within a firm.

Increased Capacity:

The more time an attorney saves with GenAI systems, the more time that attorney will have to dedicate to other matters. As such, an attorney would be able to take on a heavier workload, accept more clients, and focus on business development.

Disadvantages

Hallucinated Cases:

A huge concern among lawyers is GenAI's potential to hallucinate facts and create erroneous outputs.³⁵ By now, we have all heard about the scandal involving New York personal injury attorney Steven Schwartz, who used ChatGPT to write a legal brief, only to realize a bit too late that the bot completely fabricated the cases.³⁶ The scandal left many lawyers, judges, and other legal professionals concerned about the accuracy of ChatGPT and other GenAI platforms.

Bias:

A common misconception about the use of AI is that with the removal, or reduction, of human decision making, comes a decision clean from implicit bias. On the contrary, AI algorithms (in general) can collect biased historical information, which means that the AI system may also inadvertently produce biased results.³⁷ When this in-

formation is used in the practice of law, it can lead to unfair outcomes and perpetuate discrimination.³⁸

Ethical Concerns:

As the legal profession continues to navigate these advancements in GenAI, and lawyers consider integrating these systems in their daily practice, ethical considerations emerge as a pivotal point of discourse. AI (in general) will raise complex and challenging ethical questions that implicate a variety of ethical responsibilities including those regarding competent representation (Model Rule 1.1), client communication (Model Rule 1.4), client informed consent (Model Rule 1.6), protection of client property (data) (Model Rule 1.15), and client confidential information (Model Rule 1.6). Lawyers must also understand the risks that any form of AI can pose to client confidential data, and to inadvertently waiving attorney-client and attorney work product privileges.³⁹ The use of GenAI may raise the same concerns, particular the duty of competence, since it literally produces output that has historically been generated by an attorney. Needless to say, the use of GenAI as a "shortcut", especially considering the potential for GenAI to hallucinate cases as discussed above, raises serious questions about a lawyer's competence.⁴⁰

Reduced Workforce:

With GenAI's potential to save time and resources, it begs the question: Will firms look to reduce the number of attorneys in their employ? Current research and discussions on GenAI suggest that it cannot replace the job of lawyers, since it needs human oversight to work.⁴¹ Indeed, GenAI only works when a user inputs a prompt. Still, some attorneys and other legal professionals remain concerned that the prospect of increased efficiency and time saving will result in less humans in the office.

Disclosures

Transparency is of paramount importance in this dance between man and machine. Disclosures regarding the use of generative AI in legal processes are not just procedural niceties but ethical imperatives. Attorneys should consult with the management team of their law practice and/or partners and colleagues, inquiring into whether their workplace has established policies and procedures governing the use of GenAI platforms.

When submitting court filings, attorneys should first and foremost review their judge's rules, if any, regarding the use of GenAI. Some judges have issued protocols governing the use of GenAI in court filings, issuing either disclosure instructions or per se restrictions.⁴² In May of 2023, a Texas district judge issued a requirement that lawyers in cases before him must certify that they did not use artificial intelligence to draft their filings without a human checking their accuracy.⁴³ In July of 2023, a New York district judge issued a similar requirement that counsel, while not prohibited from using ChatGPT or other tools, "must at all times personally confirm for themselves the accuracy of any research conducted by these means."⁴⁴

A Look Towards a Frightening Future: Q* and Beyond

Beyond just GenAI, which has already been released in various forms, the next generation of AI platforms is also starting to take shape. OpenAI, the same company who created ChatGPT, has been working on a new kind of AI system, known internally as Q* (pronounced "Q-star").⁴⁵ While the technical makeup of this new

system is not yet clear, as in what *exactly* Q* will be able to do, the research and early stages of Q* reportedly marks a major, and perhaps frightening, step towards OpenAI's goal of making systems that are *generally better than humans at doing a wide variety of tasks*.⁴⁶ Concerns surrounding this research breakthrough (within OpenAI itself) led to the temporary termination of OpenAI's CEO, Sam Altman, in September of 2023, as the board feared that Altman might charge ahead with releasing Q* before OpenAI had enough time to implement adequate safety protocols.⁴⁷ The termination of Altman arguably revealed that OpenAI may be *afraid* of its own technology's potential capabilities, a revelation that has left many concerned for what's to come.

At this stage, knowing very little about the specific details of Q*, except that its goal is to be better than humans at a variety of tasks, it's difficult to predict how it might impact the legal profession. Questions remain regarding whether systems such as Q* will ultimately be integrated into a legal professional's daily work life, and if so, what that might look like.

Conclusion

The introduction of GenAI platforms in the legal profession is akin to wielding a double-edged sword. It opens the door to the prospect of increased efficiency, better decision making, and increased capacity, while simultaneously raising ethical issues of competence and confidentiality, along with potentially biased results and reduction in workforces. As GenAI continues to permeate through the legal space, and more law practices invest resources into its integration, attorneys must ensure that they are informed on the latest GenAI news and maintain a basic understanding of how these systems work. Only then can attorneys safely and competently integrate these systems into their practice. No matter how foreign the concept of AI might seem to some legal professionals, it's more important now than ever that we "admit that the waters around [us] have grown ... for the times they are a-changin'." ☺

Endnotes

- ¹Maria Laus, *Big Law Embracing Generative AI: Firms Seek Top Talent to Harness the Power of AI*, JD JOURNAL (Nov. 7, 2023), <https://perma.cc/59M5-CC46>.
- ²Rabihah Butler, *Generative AI and the courts: Balancing efficiency and legal obligations*, THOMSON REUTERS (Aug. 28, 2023) ("According to a recent Thomson Reuters Institute survey report on gen AI use among law firms, 15% of law firm respondents said their firms have issued a warning around generative AI or ChatGPT usage at work, including 21% at large law firms and 11% at Midsize law firms.").
- ³Ryan Groff, *How can I disclose or describe my use of generative AI to a court*, CASETEXT, <https://perma.cc/2UHS-TPVH> (last visited Nov. 19, 2023).
- ⁴Jake Frankenfield, *Artificial Intelligence: What It Is and How It Is Used*, INVESTOPEDIA (Apr. 24, 2023), <https://perma.cc/8RU8-2WYZ>.
- ⁵*Id.*
- ⁶*What is AI and How can Law Firms Use it?*, CLIO, <https://perma.cc/9SAT-ZWJ9>.
- ⁷*What is AI and How can Law Firms Use it?*, *supra* note 7.
- ⁸Rockwell Anyoha, *The History of Artificial Intelligence*, HARVARD BLOG: SPECIAL EDITION ON ARTIFICIAL INTELLIGENCE (Aug. 20,

2017), <https://perma.cc/JC66-TWRR>.

⁹*Id.*

¹⁰Alyssa Schroer, *Artificial Intelligence. What is Artificial Intelligence (AI)? How Does AI Work?*, BUILTIN (Jul. 27, 2023), <https://perma.cc/H8UB-9B5F>.

¹¹*All Things Generative AI: First, What is Generative AI?*, generativeai.net, <https://perma.cc/MXB6-BDUN> (last visited Nov. 19, 2023).

¹²*Id.*

¹³Matt White, *A Brief History of Generative AI*, MEDIUM (Jan. 7, 2023), <https://perma.cc/FH49-425L>.

¹⁴Suzanne McGee, *Generative AI and the Law*, LEXISNEXIS (May 11, 2023), <https://perma.cc/3ZGS-V8KD>.

¹⁵Michael Schade, *How ChatGPT and Our Language Models Are Developed*, OPENAI, <https://perma.cc/D5YA-DPC7> (last visited Nov. 19, 2023).

¹⁶*Id.*

¹⁷*How law firms can use AI to level up their business*, REUTERS (Sept. 25, 2023), <https://perma.cc/DG9W-UYRT>.

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.*

²¹Harvey AI, established in 2022, is powered by OpenAI's GPT-4 model and assists with contract analysis, due diligence, litigation, and regulatory compliance and can help generate insights, recommendations, and predictions based on data. *See Harvey AI: A Glimpse Into The Future Of Legal Technology*, LEX247 (Oct. 3, 2023), <https://perma.cc/5R85-ZPYP>. *See also* Kate Rattray, *Harvey AI: What We Know So Far*, CLIO BLOG, <https://perma.cc/EGZ9-FQ89> (last visited Nov. 19, 2023).

²²CoCounsel, an AI legal assistant developed by Casetext, assists with extracting contract data, contract policy compliance, drafting correspondence, and summarizing case files. *See CoCounsel: The legal AI you've been waiting for*, casetext.com, <https://perma.cc/BTS2-49PX> (last visited Nov. 19, 2023).

²³Lexis+AI, a GenAI tool developed by LexisNexis, uses conversational search, drafting, summarization, document analysis, and linked hallucination-free legal citations. *See Lexis+ AI: Transform Your Legal Work*, LEXISNEXIS, <https://perma.cc/3EEC-R8N4> (last visited Nov. 19, 2023).

²⁴Westlaw has developed their own version of GenAI, with AI-Assisted Research on Westlaw Precision, combining generative AI with Westlaw Precision's industry-leading legal content. *See Westlaw Precision now has generative AI*, THOMSON REUTERS, <https://perma.cc/847E-5JPN> (last visited Nov. 19, 2023).

²⁵*What is AI and How can Law Firms Use it?*, *supra* note 7.

²⁶Alex Su, *The lawyers are leaning into AI*, OFF THE RECORD (Aug. 6, 2023), <https://perma.cc/TY4R-Z8W9>.

²⁷*Id.*; Matt Reynolds, *'The Real Game-Changer': Dentons is latest major firm to launch GPT-powered chatbot*, ABAJ. (Aug. 14, 2023), <https://perma.cc/6F4L-TYJQ>.

²⁸Sara Merken, *Legal AI race draws more investors as law firms line up*, REUTERS (Apr. 26, 2023), <https://perma.cc/GWB3-UQLN>.

²⁹*Id.*

³⁰McGee, *supra* note 15.

³¹*Law firms climb aboard the AI wagon*, ECONOMIST (Jul. 12, 2018), <https://perma.cc/5XL6-Q623>.

³²Sterling Miller, *Benefits of generative AI: I didn't know it could do that!*, THOMSON REUTERS, <https://perma.cc/9XEC-FHA6> (last

visited Nov. 19, 2023); Mark Witten, *Applying generative AI to law: Opportunities and risks*, QUEEN'S LAW, <https://perma.cc/Z6R2-52K5> (last visited Dec. 11, 2023).

³³How law firms can use AI to level up their business, *supra* note 18.

³⁴Witten, *supra* note 33.

³⁵Hon. Katherine B. Forrest, *AI and the practice of law*, 4C N.Y.Prac., Com. Litig. in New York State Courts § 79:3 (4th ed.).

³⁶Kyle Schnitzer and Priscilla DeGregory, 'Humiliated' NY Lawyer who used ChatGPT for 'bogus' court doc profusefully apologizes, NEW YORK POST (June 8, 2023, updated June 9, 2023), <https://perma.cc/J3AA-KUKL>. See Daniel W. Linna Jr. and Wendy J. Munchman, *Ethical Obligations to Protect Client Data when Building Artificial Intelligence Tools: Wigmore Meets AI*, ABA (Oct. 2, 2020), https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/27/1/ethical-obligations-protect-client-data-when-building-artificial-intelligence-tools-wigmore-meets-ai/.

³⁷*AI and the Law: What are the Ethical Considerations*, CLIO, <https://perma.cc/N5PE-9VKJ> (last visited Nov. 19, 2023).

³⁸*Id.*

³⁹*Id.*

⁴⁰See MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 1983).

⁴¹Will AI take over lawyer jobs? 3 reasons to object, THOMSON REUTERS (Sept. 29, 2023), <https://perma.cc/VT9X-TV3T>.

⁴²Groff, *supra* note 4.

⁴³Jacqueline Thomsen, *US judge orders lawyers to sign AI pledge, warning chatbots 'make stuff up'*, REUTERS (June 3, 2023), <https://perma.cc/REM3-8VY8>.

⁴⁴Groff, *supra* note 4 (Example Orders: US District Court for the Southern District of New York).

⁴⁵Mark Sullivan, *Should we be afraid of Q*, OpenAI's mysterious AI system?*, FAST COMPANY (Nov. 29, 2023), <https://www.fastcompany.com/90989422/openai-q-mysterious-ai-system>.

⁴⁷*Id.* (emphasis added).

⁴⁸*Id.*

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the administration of justice. For this reason, the GRC invites its members who are government attorneys and judges to review these frameworks and to take any other steps necessary to satisfy themselves with regard to compliance, including consulting the appropriate ethical authority in their agencies or organizations. ☉

Endnotes

¹See Guide to Judiciary Policy, Vol. 2A, Ch. 2, Commentary to Canon 4 (Mar. 12, 2019).

²See Guide to Judiciary Policy, Vol. 2A, Ch. 2, Canon 4A(2).

³Guide to Judiciary Policy, Vol. 2B, Ch. 2 ("Advisory Op."), No. 50: Appearance Before a Legislative or Executive Body or Official (June 2009).

⁴See Advisory Op. No. 93: Extrajudicial Activities Related to the Law (June 2009).

⁵*Id.*

⁶See Guide to Judiciary Policy, Vol. 2A, Ch. 2, Canon 4A(3).

⁷See Guide to Judiciary Policy, Vol. 2A, Ch. 2, Canon 4A(2); Advisory Op. No. 50.

⁸See Advisory Op. No. 93.

⁹*Id.* (referencing Advisory Op. No. 50 (suggesting that a judge should not testify before a legislative committee on social legislation)).

¹⁰*Id.*

¹¹*Id.*

¹²See Guide to Judiciary Policy, Vol. 2A, Ch. 2, Canon 5.

¹³See Advisory Op. No. 93.

¹⁴*Id.*

¹⁵The Code of Conduct for Judicial Employees does not apply to Supreme Court Justices, federal judges, or employees of the United States Supreme Court, the Administrative Office of the United States Courts, the Federal Judicial Center, the Sentencing Commission, or the federal public defenders' office, as each of these groups has its own codes and standards. See Guide to Judiciary Policy, Vol. 2A, Ch. 3, Sec. 310.10(b).

¹⁶Guide to Judiciary Policy, Vol. 2A, Ch. 3, Canon 4.

¹⁷*Id.*, Canon 4(A).

¹⁸Advisory Op. No. 92.

¹⁹Guide to Judiciary Policy, Vol. 2A, Ch. 4, Canon 4.

²⁰5 U.S.C. §7211. See also <https://www.afge.org/globalassets/documents/manuals/2021-lobbying-dos-donts.pdf>

²¹See https://www.dol.gov/sites/dolgov/files/SOL/files/How-To-Keep-Out-Of-Trouble_2021.pdf

²²18 U.S.C. §1913.

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