

Thoughts from the Board



The Tip of the Iceberg

Change is difficult and inevitable. While the legal profession is often full of change, those changes are mostly incremental rather than transformative. The emergence of Artificial Intelligence and its potential applications and pitfalls presents the prospect of truly fundamental change for lawyers. As part of a generation that first contemplated AI as represented by HAL in Kubrick's 2001 A Space Odyssey and or Asimov's I Robot series, AI's capabilities and motivations rang more negative and the benefits were secondary. For lawyers, largely generators of guidance and text when not representing a client in an in-person proceeding, a technology that quickly provides written answers to questions has undeniable implications.

A Google search utilizes algorithms to parse through the myriad of internet information associated with specified search terms and prioritizes those searches. The original search engines—think AltaVista, WebCrawler, and the like—made little, or no, effort to somehow sort or rank the results you received. Google's innovation, and key to market dominance, was to rank your results in a meaningful way. AI, like ChatGPT, goes a step further. It recognizes your search terms, ranks search results, and (this is where the magic happens) instantly synthesizes those ranked results into prose designed to answer your specific query. Generative AI, like ChatGPT, OpenAI's family of systems, and others from Google, Meta, and Apple, prepares life-like human prose in response to inputs phrased as questions. Generative AI can create artwork, images, forms, automated emails, and texts. Competent memoranda and pleadings can't be far off.

ChatGPT's haiku on the practice of law:

In courtrooms they stand,
Seeking justice with each word,
Lawyers weave the law.

What this means for those of us that practice law is just emerging and will doubtless be the subject of a great deal of scholarship and analysis. In a legal profession that is just a generation removed from book bound legal research, we now have a technology that can synthesize the myriad of caselaw, statutes, and law review articles, not into a list of those things like Lexis or Westlaw, but into prose that reflects the system's analysis of the source material. This analysis and synthesis is precisely what lawyers get paid to do. AI has no fiduciary duty to a client, is unbound by legal ethics, has no experience personal to itself, and no human insight into the nuances of the problem presented. Despite these deficiencies, it can and will provide answers to the questions posed, irrespective of who poses the questions and why.

Of all of the tools available to aid in the practice of law, it would be difficult to imagine one that carries with it more potential for economizing and streamlining our work and while simultaneously creating immense ethical issues directly proportional to the degree of reliance upon

the tool. Does the user understand and communicate to the client that some of the work product generated was done so utilizing AI? Will AI impact employment patterns in the legal profession itself? Does the AI itself have some implicit bias based upon the utilization of source material that is itself from an era where bias was more prevalent?

This is just the tip of the iceberg. Transformative changes are on the horizon and it is up to us to be as proactive as possible in understanding the benefits and detriments of the technology. If we are to meaningfully participate in shaping the debate, that participation must be grounded in a significant degree of understanding. Each of us should make a concerted effort to at least explore the technology in order to be both good practitioners and stewards of a wonderful profession.

--- Daniel R. Delaney