Artificial Intelligence for Litigators
Top 5 Myths About This Cutting-Edge Technology

Artificial intelligence (AI) is also known as cognitive computing, where computers can learn how to complete tasks that have been traditionally done by humans. AI is gaining popularity across all industries because it can classify and organize data and it can complete all kinds of tasks in faster and cheaper ways.

In the legal tech space, AI is typically interchangeable with machine learning, the process by which computers seek and recognize patterns in large data sets to evaluate them. AI has applications in the e-discovery, litigation, and transactional spheres.

At Bloomberg Law®, when developing AI tools, we begin by trying to identify the problems that our clients are facing. We then explore how our premier access to big data sets—like court opinions, dockets, and EDGAR filings—can be augmented by leveraging AI tools to better understand and analyze what’s available.

It’s worth noting that the amount of data available is multiplying at an exponential rate, making the need for AI solutions more relevant. A 2013 article in Science Daily alleged that 90 percent of the world’s data had been generated over the preceding two years. While this sounds impossible to believe at first blush, consider how many emails, text messages, and social media posts are produced each day. This behavioral shift has implications when exploring the limits of discoverability.

While AI is starting to be discussed more in the legal industry, much still remains unknown or misunderstood—and that has led to fears and myths that are largely unwarranted.

Myth 1: AI Will Make Lawyers Obsolete

While there are plenty of articles warning about “robot lawyers,” the truth is that lawyers’ jobs are not in jeopardy from AI technologies. In fact, lawyers should think of AI as a way of empowering them to gain access to big data and use it to make better decisions, create actionable intelligence, and tell better stories. With AI, lawyers are able to spend time doing the things that are more intellectually stimulating and challenging—or engaging in more strategic work and business development—and less time bogged down with the tedium of document review. For these reasons, some people say that “AI” should stand for “augmented intelligence” instead of artificial intelligence.

E-discovery has long been the leading edge of embracing technology in the legal space. Today’s junior associates can conduct document review aided in large part by technology-assisted review (TAR) and predictive coding tools. Documents can be not only threaded, batched, and encrypted but also searched more efficiently because a computer can learn relevance and consequently identify concepts instead of keywords.

To be fair, certain parts of a lawyer’s job—especially the pieces that are more mechanical or rote—will, in time, be outsourced to technology. But there is minimal cause for concern, given that clients are pushing back more and more on paying for things that they would deem to be more manual or less sophisticated, and both the billing model and legal industry are changing. A lawyer who uses technology solutions to curb the time spent doing tactical work can offer more transparency to his or her clients and confidently aver that billable time is spent doing “real lawyer work.”
For example, Bloomberg Law’s Points of Law uses AI and machine learning to get to the heart of a court opinion and pull out all of the important and relevant aspects of what a judge says. This helps legal researchers unearth documents that they could not have found previously and more easily identify similarities between court opinions. Built over five years across 13 million court opinions and counting, this application of AI can minimize the number of errors or missed documents that a user might face.

Far from rendering any attorney obsolete, this tool can extend her capabilities, like a better sneaker for a runner or more precise diagnostics for an auto mechanic. Now, the time spent on the logistics of either performing or outsourcing research can be better spent reviewing or acting upon more relevant documents and engaging in more strategic work.

Another good example is Bloomberg Law’s proprietary Docket KeySM docket filing classification system, which uses machine learning to streamline and speed up the research process. Docket Key is a new, unique, and innovative classification system that identifies entries on a docket sheet. This makes locating underlying docket filings easy, quick, and precise by targeting 20 filing type categories, including motions, briefs, orders, and more.

**Myth 2: AI Will Eradicate Human Error**

In an ideal world, developers and data scientists would build tools free from all errors. However, no technological solution is perfect, nor is there a machine in existence with the ability to eliminate human error. However, AI tools can unearth certain details that are undetectable by human eyes, and they can process information at a much quicker rate than human beings.
Additionally, to date, 28 states have adopted the duty of technology competence set forth by the ABA Model Rules of Professional Conduct, requiring that lawyers “keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject” [emphasis added]. As AI becomes more ingrained in legal technology and research tools, lawyers will therefore have an ethical obligation to have at least a passing understanding of it.

There is also a potential ethics question around assigning responsibility if an AI tool makes an error, by missing a key document in review or predicting a litigation outcome that does not come to pass, for example. While lawyers should arguably already be comfortable with the unpredictability of the legal system because even binding law can be interpreted differently by different judges, attorneys will need to make their clients comfortable with the uncertainty of data interpretation.

Finally, there could be ethical concerns with the fee issues that arise from the use of AI tools. Attorneys need to think about—and work with—their clients before deciding how much they can charge for a variety of tasks and work product. Does the use of AI tools warrant higher fees because of the expense and sophistication of the tools? Or does such use warrant lower fees because the scope of the type of work conducted is greatly narrowed? These and other questions could surface as the legal industry transforms.

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**Myth 3: AI Will Complicate the Legal Ethics Arena**

This myth rings true, as the AI revolution will affect legal ethics in a number of different ways. For example, as discussed, AI tools require data, so organizations seeking to use those tools will need to affirmatively convert more of their information into digital formats. Confidentiality concerns may follow, as these data will be processed through third-party providers and potentially vulnerable to discovery.
For example, Bloomberg Law’s Litigation Analytics appeared on the desktops of all Bloomberg Law users when it launched, at no additional cost to subscribers. Litigation Analytics enables users to search millions of legal data points by company, law firm, or judge to better help predict possible outcomes and extrapolate litigation costs. The tool allows users to view litigation history and identify any risks to support due diligence. For forum shopping purposes, researchers can instantly compare active federal district judges and jurisdictions and gain insight into a judge’s actions and trends across jurisdictions within the context of the national average, including how long cases take to resolve.

**Myth 5: AI Is a Magic Bullet That Will Find Everything You Need**

In certain ways, AI is more of an art than a science, especially when dealing with natural language processing. This is because there are nuances in the way that different people write, whether they are a judge writing an opinion or an attorney filing a brief. That said, AI can process data sets involving standardized language much more efficiently than a human.

This is particularly valuable when interpreting statutes, rules, and regulations. To that end, Bloomberg Law offers Smart Code™, which uses machine learning to identify sections of court opinions that reference various laws, rules, and regulations. Approximately 2,500 court opinions added daily to Bloomberg Law are processed through the Smart Code engine, so there is no need to wait for a human editor to painstakingly read and categorize each case. Smart Code’s rating algorithm assigns a “strength of discussion” rating to the court opinion extracts, making it easy for users to find cases that deeply analyze the laws and regulations at issue.
It is worth noting that it takes several years for both legal tech startups and established legal providers to build AI tools and their supporting models. Billions of documents and terabytes of data need to be processed and the machine learning algorithms need to be run and perfected several times before an AI tool can be viewed as commercially viable. So any perceived threats to the industry based on the emergence of AI are still likely decades away. For now, attorneys’ clients will continue to be best served if these tools are supplemented with legal practitioners’ expertise.

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