The Ethics of AI and Machine Learning in Legal Practice

Webinar

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Mindy is the litigation team lead in the Analysis unit at Bloomberg Law. She is responsible for developing the litigation-related content on the Bloomberg Law platform. Before assuming that role, Mindy was a legal ethics reporter for Bloomberg Law. She practiced law for 16 years as a commercial litigator. She also counseled colleagues and clients regarding legal ethics issues. She has presented numerous programs both for the ABA’s Center for Professional Responsibility and the DC Bar about ethical issues faced in the practice of law, including ethical issues relating to social media and cloud computing, and ethics and integrity. Mindy is a past Chair of the ABA’s Center for Professional Responsibility’s CLE Committee.

Clinton Stauffer, Product Manager, Bloomberg Law

Clinton is a member of the product team at Bloomberg Law and specializes in applying machine learning technology to build new products for litigators. Before joining Bloomberg, he practiced intellectual property and commercial law.

Dan Elliott, Proposal Manager, Honigman LLP

Dan’s day job is as Proposal Manager in the Business Development Department at Honigman LLP. At Honigman, he is responsible for cross-functional collaboration on current and prospective client requests. Dan’s other work consists of three positions with the ABA YLD (Member of the Innovation Team, Editor for ABA Publications, Liaison to the Standing Committee on Technology and Information Systems). Prior to this work, Dan was a Legal Business Analyst at Elevate Services where he applied his finance and operations acumen learned from his joint JD-MBA studies.
The Ethics of AI and Machine Learning in Legal Practice

Agenda

• What is AI and Machine Learning?

• Attorney Ethics Surrounding AI and Machine Learning

• AI and Machine Learning Considerations
What Is AI and Machine Learning?

• In its simplest form, **Artificial Intelligence** is the overarching description for technologies that use computers and software to create intelligent, human-like behavior

• **AI** examples in everyday life

  – Voice assistants (Siri, Alexa, Google Assistant)
  – E-mail spam filters
  – Auto-correct
  – Product recommendations (Amazon, Netflix, Spotify)
  – Search ranking (Google)
  – Fraud detection (credit card transactions)
  – Navigation
  – Smart home devices (e.g., thermostats)
What is AI and Machine Learning?

Machine Learning (ML) is the application of algorithms to perform a specific task without using explicit instructions.

Two types:

**Supervised Learning**
- Trained using known outcome data (i.e., the “right answer”)
- Applications: Classify, predict an outcome or result
- Examples: Labeled images, housing prices

**Unsupervised Learning**
- Identifies the structure of the data and relationships between items
- Applications: Suggesting and recommending similar items
- Examples: Purchase data, page views
Applications in the Legal Industry

E-Discovery & Predictive Coding

- Scenario: Technology-assisted review (TAR) tools to manage e-discovery
  - Analytics and data structuring (or even Boolean searching)
  - Predictive coding

- Challenges
  - Time to review
  - Cost of review
  - Lack of accuracy
  - Lack of transparency
Legal Research

- Finding relevant precedent for your issues and arguments
  - **Example:** *Bloomberg Law Points of Law*

- Improving efficiency and cutting down on non-billable tasks
  - Legal document analysis (e.g., brief/motion analysis, complaint analyzer, clause classification)
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Analytics

• Formulating litigation strategy
  – Example: Bloomberg Law’s Judge Analytics

• Business development and intelligence
  – Informed outside counsel hiring decisions
  – Client intelligence
  – Assessment of adversary
Compliance

- Compliance breaches and threat detection
  - Large volumes of data – i.e., chats, emails, phone recordings
  - Tedious and time-consuming task
  - AI can:
    1. Identify unusual patterns of behavior
    2. Separate true risks from false positives

- Keeping up to date
  - Laws and regulations are constantly changing
  - Obligated to understand and comply with regulations around the world
  - AI can:
    1. Identify relevant laws and regulations
    2. Analyze and alert on regulatory changes
Challenges

Data Quality

• Tasks may require domain expertise
• Training data must match the real-world application
• Possibility of bias

The Black Box Problem

• With more sophisticated, higher-performing algorithms, there can be a lack of transparency into the decision-making process
• It is often difficult to understand why the output was generated

Debunking the Myth of the Robot Lawyer

• Augment and assist attorneys with select tasks
Ethics Rules

• ABA Model Rules vs. rules in each jurisdiction

• Rule 8.5 – Choice of law

• Rule 1.1 – Competence
  – Comment includes keeping on top of “benefits and risks associated with relevant technology”
Ethics Rules

- AI = simpler stuff, too
- Duty to be diligent remains – Rule 1.3
- Must supervise
  - Rule 5.1 – Supervisory responsibilities
  - Rule 5.3 – Supervising non-lawyers
Ethics Rules

- Duty to communicate to clients – Rule 1.4

- “Reasonably consult with the client about the means by which the client's objectives are to be accomplished”
- “Keep the client reasonably informed”
- Explain things so the client can give informed consent
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Will humans still need to practice law?

VS.
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Relevant

Same Topic

Similar

Same Topic

Different Viewpoint

Same Viewpoint

Politics
Barr's a No-Show at House Panel as Mueller Fight Splits Parties

By Billy House, Chris Strohm, and Steven T. Dennis
May 2, 2019 4:00 AM Updated on May 2, 2019 9:24 AM

- Attorney general avoids Mueller after a Senate appearance
- Kevin Stritz calls for Barr's resignation, Trump praises him

3 Takeaways From Barr Testimony
The Ethics of AI and Machine Learning in Legal Practice
All of this to say, you need to understand how AI tools use Machine Learning to determine the information you consider.

Questions to consider asking your AI vendors:

1. How does the tool learn over time?  
   – What type of machine learning algorithms does your product use?

2. What kinds of data can your system ingest?

3. How frequently are your algorithms updated?

Recommended book: *Human + Machine: Reimagining work in the age of AI* by Paul Daugherty and James Wilson
Q & A