

# 2024 Artificial Intelligence Program

NEW YORK AMERICAN INN OF COURT  
June 27, 2024

## TIMED AGENDA

- I. Introduction (5 minutes)
- II. **The Technology**: A.I. for beginners (20 minutes)
- III. **The Law**: A.I. Regulatory and Litigation Landscape (35 minutes)
- IV. **The Ethics**: Using A.I. in your Legal Practice (25 minutes)
- V. Q&A (5 minutes)

### **Co-chairs:**

Eugene Frenkel  
Annmarie Giblin  
David Straite

### **Team members:**

Allison Charles  
Jason Houda  
Matthew Katz  
Eugene Kublanovsky  
Susan Meekins  
Sofia Orrantia  
Steve Perlstein  
Michael Sander  
Manvinder Singh  
Elena Tisnovsky  
Chris Tumulty

**2024 Artificial Intelligence Program**  
**NEW YORK AMERICAN INN OF COURT**

**June 27, 2024**

Team Biographies (alphabetical)

**Allison Charles**

Of Counsel, Kublanovsky Law LLC

In her years of practice, Allison has aided in the successful representation of individuals and businesses in a wide range of practice areas. She has represented clients in State Courts, Federal Court, arbitrations, and mediations. Her clients have included both plaintiffs and defendants in all phases of disputes, from pre-litigation counseling through appeals. Her diverse practice areas include commercial litigation, contract disputes, employment law and intellectual property. Prior to joining Kublanovsky Law, Allison was an Associate at Fensterstock & Partners for many years; previously she served as a Staff Attorney and Development Associate at Volunteer Lawyers for the Arts (VLA) in New York, an organization serving emerging and low-income artists. Allison is a long-time active member of the New York American Inn of Court.

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**Eugene Frenkel (co-chair)**

Eugene serves as Fintech Counsel for Emerging Technologies with a government agency, advising his agency regarding new and innovative financial products and services, including crypto-assets and stablecoins, artificial intelligence, and bank-fintech partnerships. Prior to joining the government, Eugene was a member of Goodwin Procter's Fintech and Insurtech practices where he advised banks and tech companies on enforcement, regulatory, and transactional issues in the financial services and insurance industries. Eugene started his legal career with New York State Department of Financial Services, serving as an Assistant Deputy Superintendent in the Enforcement Division. For over 4 years, he led multiple complex investigations into the banking, insurance, and consumer industries and brought enforcement actions against companies violating the law.

Eugene serves as the vice president, treasurer, and secretary of the New York American Inn of Court.

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## **Annmarie Giblin (co-chair)**

Partner, Norton Rose Fulbright US LLP

Annmarie Giblin helps clients navigate the legal complexities surrounding cybersecurity, privacy and data management with a focus on data governance, maintenance, cybersecurity planning and policies, privacy concerns and strategies, emerging technologies, and related compliance programs. Her practice is data-centric and anchored by her proactive cybersecurity approach, which holistically prepares for a data security incident and related response/compliance issues before it occurs, and includes all related legal concerns that affect data, including data governance, privacy legal issues and compliance, and the collection, use, sharing and transfer of data.

Understanding data management, cybersecurity, and privacy issues in all sectors, Annmarie represents clients in the banking, finance, transportation and logistics, software (including software as a service), social media, consumer-facing retail, cosmetics, insurance, accounting, advertising, mortgage lending, healthcare and not-for-profit industries. She also provides clients support with managing third-party vendor legal risks, cyber incident response, and legal guidance on emerging technologies, such as artificial intelligence.

Annmarie brings a unique perspective to every engagement, shaped by her over 16 years of legal experience, including time as the global cyber attorney for a large multi-national company and running her own cybersecurity and privacy boutique law firm. This background has prepared Annmarie to be a nimble and adaptable legal advisor, and she is especially skilled at monitoring and preparing for rapid changes in the law, allowing her to anticipate legal trends and new laws well before they are set into practice.

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## **Jason Houda**

Jason Houda is a registered patent attorney with a focus on complex litigation and transactions, underpinned by his experience in life sciences, chemical, and electrical engineering. This multidisciplinary background equips him with an understanding of the scientific, technical, and legal aspects of cases. Jason specializes in U.S. and international patent prosecution in cutting-edge fields like data processing, machine learning, and biomechanical engineering. His experience extends to working with startups and microenterprises on various intellectual property matters.

Jason's educational journey includes a Bachelor of Science degree in Healthcare Studies from The University of Texas at Dallas, where he excelled in a diverse array of scientific coursework. Additionally, he contributed as a Chemical Engineering Research Assistant at the University of Texas at Dallas Natural Science and Mathematics Research Lab, participating in projects spanning semiconductor engineering, integrated circuit manufacturing, clean room photolithography, 3D semiconductor modeling, and neutron detector development. Jason received his Juris Doctorate from Brooklyn Law School, a private law school, and received a certificate for specializing in IP, Media, and Information Law. Jason Houda's expertise uniquely positions him in the intersection of science and law, making him a valuable asset in intellectual property and technology law.

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## **Matthew Katz**

Partner, Schindler Cohen & Hochman, LLP, a New York-based litigation and art law boutique.

Matt began his career at Simpson Thacher & Bartlett LLP and, between 2015 and 2018, Matt served as Principal Counsel in FINRA's Department of Enforcement. Matt has worked on trials, arbitrations, and appeals in complex commercial disputes in diverse areas of law, including: banking, contracts, securities fraud, Section 11 of the Securities Act employment, intellectual property, construction, real estate development; Indian Gaming Regulatory Act, ERISA, and discovery requests pursuant to 28 U.S.C. § 1782. Matt has also represented individuals in FINRA arbitrations and SEC investigations. He was a member of the firm's team that successfully represented New York State Department of Financial Services in the first federal lawsuit brought by a state regulator alleging unfair and deceptive acts and practices under the Dodd-Frank Act. Matt also helped found the firm's data security and privacy practice and has represented assisted and has earned the Certified Information Privacy Professional/United States (CIPP/US) credential through the International Association of Privacy Professionals (IAPP)

During his three years at FINRA, Matt led investigations and litigated a wide variety of matters related to violations of FINRA/NASD rules and federal securities laws and regulations. Notably, Matt was the lead attorney for the investigation leading to FINRA's first cryptocurrency-related disciplinary action. Matt also investigated and litigated matters related to, among others: anti-money laundering program and supervisory deficiencies; securities offerings in violation of Section 5 of the '33 Act; securities fraud; market manipulation; quantitative and qualitative suitability; short sale marking and locate rule violations; market access violations; net capital deficiencies, outside business activities; and private securities transactions.

In 2014 and 2015, Matt was selected for the New York Super Lawyers Rising Stars list. From 2019 to the present, he has been selected to the New York Super Lawyers list.

Matt is an active pro bono partner of the Giffords Law Center to Prevent Gun Violence.

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## **Eugene Kublanovsky**

Founder and managing member of Kublanovsky Law, LLC with offices on Montclair, NJ and New York, NY.

Eugene is admitted to practice in New York and New Jersey where he focuses primarily in the areas of intellectual property, complex commercial litigation and employment law. He has worked on matters across the United States, as well as for international clients located in Canada, China, Europe, South America and the Middle East. Eugene has litigated – whether in state and federal courts or through arbitration – a wide variety of business disputes, including numerous breach of contract actions, business separations, complicated intellectual property matters (i.e., trade secret misappropriation, trademark, copyright and patent infringement cases) and employment disputes representing employers and executives.

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## **Susan Meekins**

Principal, Meekins Law PLLC.

Susan's practice is focuses on commercial litigation and arbitration in New York State and federal courts, arbitration, and employment law matters. Ms. Meekins is a graduate of New York University School of Law (J.D. 1983), where she served as Articles Editor of the Review of Law & Social Change, and the University of Chicago (A.B. 1980 with Honors). Before she began practicing independently, Ms. Meekins was a member and co-founder of a commercial litigation boutique (Molton & Meekins) and a member of the litigation departments of the firms now known as Olshan Frome Wolosky LLP and Herrick, Feinstein LLP.

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## **Sofia Orrantia**

Sofia Orrantia assists Gen II Fund Services, LLC navigate the legal complexities surrounding privacy and data protection with a focus on data governance, maintenance, policies, privacy concerns, strategies, emerging technologies, and related compliance programs. Prior to joining Gen II Fund Services, LLC, she was an Associate Attorney at Gilbride, Tusa, Last & Spellane, LLC, where she focused on complex commercial litigation. Sofia received a BA from the University of Florida and a JD from Quinnipiac University School of Law.

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## **Steve Perlstein**

Partner, Kobre & Kim LLP

Steve is an experienced trial lawyer who practices in the area of appellate and complex civil litigation, focusing on litigation related to complex commercial transactions (such as collateralized debt obligation and mortgage-backed securities transactions), business break up disputes and securities-related litigation. He also conducts litigation related to data security, particularly with regard to civil remedies available to prevent the widespread dissemination of proprietary information. In addition, he regularly represents clients in white-collar criminal defense matters and regulatory investigations.

Steve has participated in a variety of civil and criminal proceedings, including International Chamber of Commerce, Financial Industry Regulatory Authority and American Arbitration Association arbitrations, as well as litigations in state, federal and bankruptcy courts in New York and Delaware. He has also litigated patent disputes in the Eastern District of Texas.

In addition, Steve has briefed several civil and criminal appellate matters before the U.S. Court of Appeals, including for the Second, Eleventh and Ninth Circuits, and has assisted as an advisor at the firm on others, including in the Fourth Circuit and D.C. Circuit. Among his extensive experience with appellate litigation, Mr. Perlstein has represented clients in federal criminal and civil appeals in the U.S. Court of Appeals for the Second Circuit, recently argued in the Eleventh Circuit on a complex issue of standing and assisted in briefing regarding an international

alternative asset manager in an appellate matter in the U.S. Court of Appeals for the District of Columbia.

Steve is serving a three-year term on the U.S. Court of Appeals for the Second Circuit's Pro Bono Panel for a three-year term that will end in approximately June 2026. Prior to joining Kobre & Kim, Steve practiced at Schulte Roth & Zabel LLP, where he focused on complex commercial and securities litigation and bankruptcy litigation. He previously served as a judicial clerk to the Honorable John D. Butzner Jr. of the U.S. Court of Appeals for the Fourth Circuit.

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## **Michael Sander**

CEO of LexPipe

LexPipe is a legal technology company Michael founded in 2024 that helps firms create alternative fee arrangements and pricing strategies by integrating public litigation data into their billable records.

Prior to founding LexPipe, Michael was the Head of Product at Docket Alarm, a company he founded as a New York City litigation associate, which led to a 2018 acquisition by Fastcase and 2023 merger with vLex. Michael's products have introduced litigation analytics to thousands of attorneys and have won Innovation Awards in 2015, 2019, and 2023.

In addition to legal tech work, Michael advocates for improved access to legislative and court records, including as [amici curiae at the U.S. Supreme Court](#) and [the Federal Circuit](#). Michael has guest lectured at Hofstra, Vermont, Penn, Cornell, Southwestern, and Stanford. He is a regular contributor to legal conferences, including AALL, ILTA, INTA, AIPLA, and Inside Practice.

Michael holds a BS in Electrical and Computer Engineering from Cornell University, an MS in the same field from the University of California, Santa Barbara, and a JD from the Benjamin N. Cardozo School of Law. He is a registered patent attorney in New York, where he currently resides.

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## **Manvinder Singh**

Manvinder "Manny" Singh is a young driven lawyer, with an expertise in Intellectual Property. He obtained his J.D. from St. John's University School of Law and his LL.M. from Cardozo School of Law with a focus on I.P.

He honed his skills clerking for New York Justice Lance P. Evans, gaining invaluable experience in the judicial system. While clerking Manny spent his nights studying and completing his LL.M. In addition to his legal accomplishments, Manny has a passion for education. He completed his undergraduate studies at St. John's University, where he developed a strong foundation for his academic pursuits. Currently, Manny serves as the US Ambassador to *Academia Cerebrea*, a Milan-based fashion business school, where they bridge the worlds of law, academia, and fashion

with dedication. Outside of his professional endeavors Manny has a passion for automotive racing and will still occasionally compete when time allows.

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### **David Straite (co-chair)**

Partner, DiCello Levitt LLP

David is a leading voice for the recognition of property rights in personal data, a 10-year effort culminating in the Ninth Circuit's landmark April 2020 decision in *In re: Facebook Internet Tracking Litigation* and the Northern District of California's March 2021 decision in *Calhoun v. Google*, both of which he argued. David also successfully argued for the extraterritorial application of the Computer Fraud and Abuse Act in 2019 in *In re: Apple Device Performance Litigation*, and filed the first-ever data privacy class action under seal to address a dangerous website vulnerability under Court supervision in *Rodriguez v. Universal Prop. & Cas. Ins. Co.* As M.I.T. Technology Review magazine put it in 2012, David is "something of a pioneer" in the field. He also protects investors in securities, corporate governance, and hedge fund litigation in federal court and in the Delaware Court of Chancery, admitted to practice in both New York and Delaware.

- *Cybersecurity/Privacy MVP*: In September 2022, Law360 named David one of five Cybersecurity/Privacy "MVPs" for 2022.
- *Plaintiff Trailblazer*: In May 2022, that National Law Journal named David a "Plaintiffs' Lawyer Trailblazer," one of "a handful of individuals that are truly agents of change."
- *Top 500 Leading Plaintiff Financial Lawyers* (Lawdragon), every year 2019-2024.
- *New York Metro Super Lawyers*, every year from 2019-2024.

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### **Elena A. Tisnovsky**

Founding member of Tisnovsky Law, LLC, a virtual practice focusing exclusively on the areas of family law and matrimonial law.

The firm provides assistance with prenuptial and postnuptial agreements, divorce litigation, custody, parenting time, child support, negotiation settlements of divorce actions and family court proceedings, preparation of complex statements of net worth, and domestic violence litigation. In addition to litigation, Elena practices divorce mediation and collaborative law, helping her clients to stay out of the court system.

Prior to her solo endeavor, Elena participated in the Chambers Volunteer Program, through which she clerked for the Hon. Richard B. Liebowitz, the Supreme Court of New York, County of Westchester. Elena's legal experience includes civil and commercial litigation, employment, bankruptcy, immigration, and real estate litigation. From 2004 to 2007, Elena was a Staff Attorney with a not-for-profit organization, where she built an immigration law practice providing

representation in a wide range of immigration issues. Elena obtained a Jurist degree (an equivalent to the Doctor of Jurisprudence degree), with honors, from the Ukrainian National Academy of Law (Kharkiv, Ukraine) and a Master of Laws degree in Corporate Law from New York University School of Law. At NYU, she served as Graduate Editor of the Journal of International Law and Politics, a student-run online publication founded in 1968 and devoted to commentary on contemporary issues in international and comparative law.

Elena is a member of the New York Women's Bar Association, New York State Bar Association, the Bar Association of the City of New York, New York State Council on Divorce Mediation, and the Family and Divorce Mediation Council of Greater New York. When she is not practicing law or mediating, Elena is fine-tuning her sourdough bread baking skills and surfing the internet in a search of a puppy to adopt.

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### **Chris Tumulty**

Chris helps clients in the real estate and construction industries resolve a broad range of legal challenges, including litigation.

He serves as outside counsel for condominium and cooperative apartment boards, leveraging significant industry knowledge to provide trusted advice on all aspects of building management, transactions, dispute resolution and governance. Chris is part of a team of attorneys at the firm who provide advice on [Condominiums, Cooperatives and Planned Unit Communities](#).

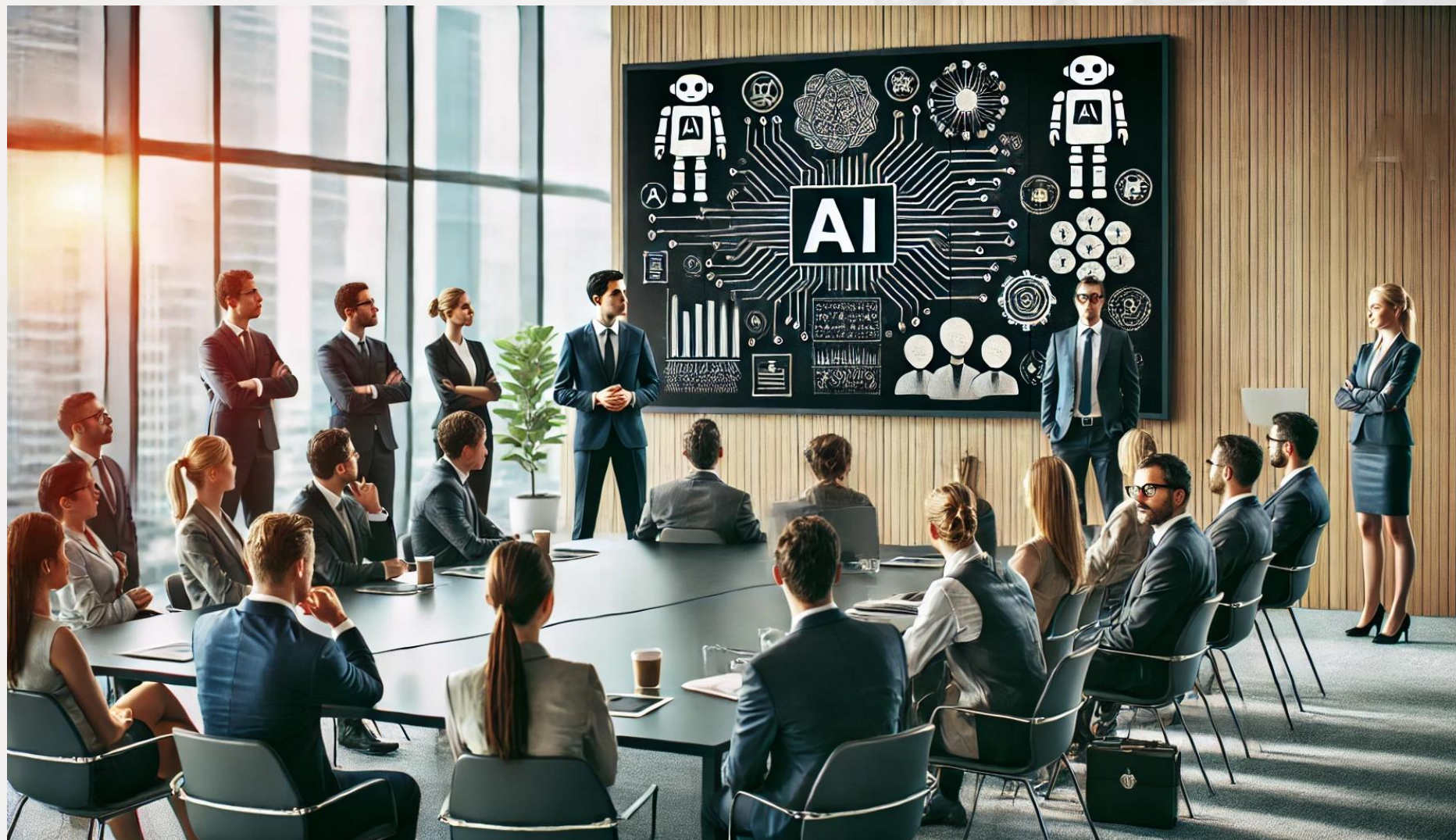
An accomplished litigator, Chris is also part of the firm's [Real Estate Litigation](#) group, and protects clients' interests in commercial disputes in state and federal courts and is well versed in guiding clients through domestic and international arbitration and mediation.



# Artificial Intelligence Program

## *New York American Inn of Court*

June 27, 2024



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### **New York CLE Credit:**

Cybersecurity, Privacy and Data Protection: 1.0 credits  
Ethics: 0.5 credits

### **Agenda:**

- A. Introduction
- B. The Panels:

#### **Part 1: The Technology** (A.I. for beginners)

*Annmarie Giblin, Norton Rose Fulbright*

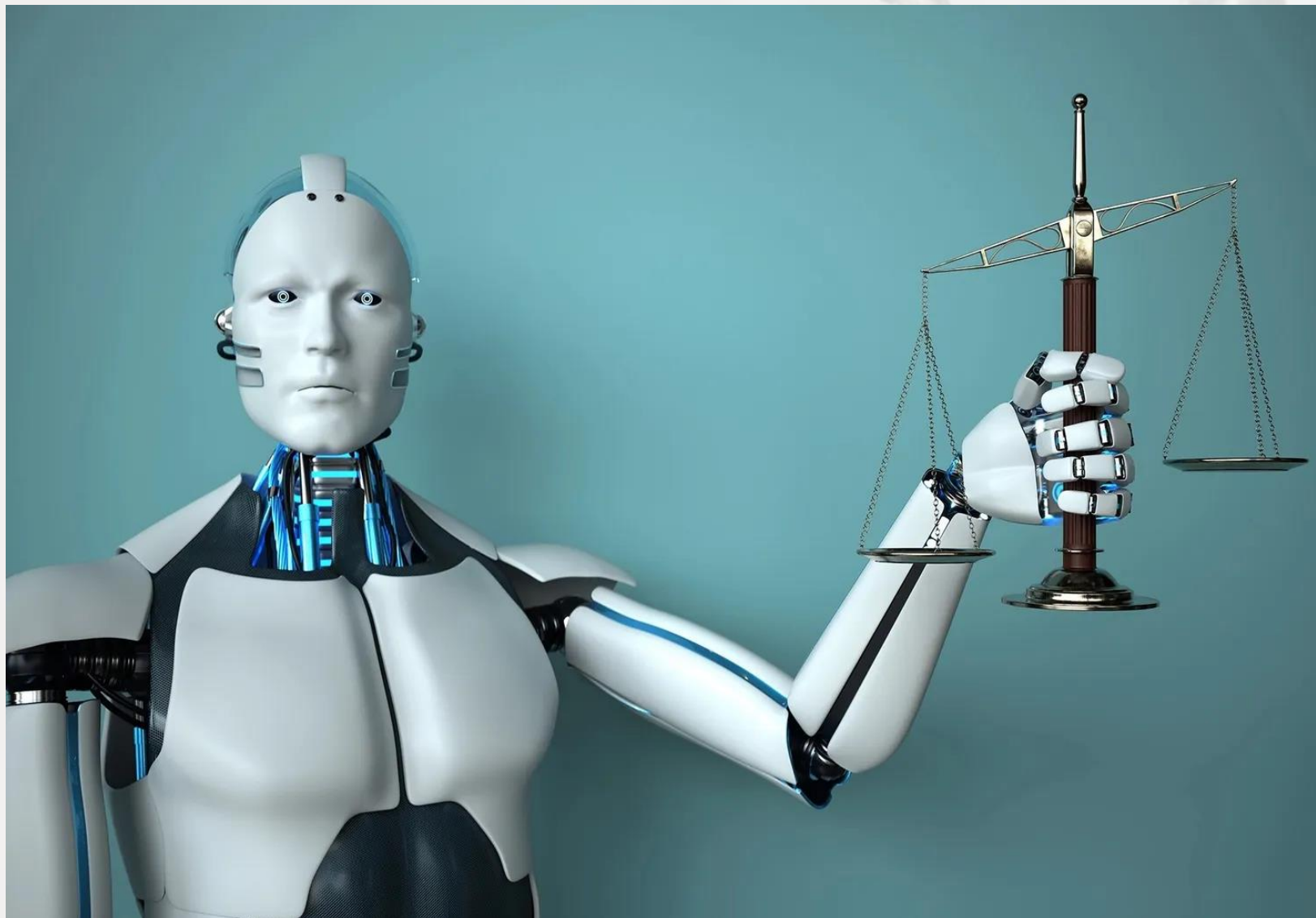
#### **Part 2: The Law** (Regulatory and Litigation Landscape 2024)

*David Straite, DiCello Levitt*

#### **Part 3: The Ethics** (Ethical duties when using A.I. in your legal practice)

*Eugene Frenkel, Federal Government*

- C. Q&A and CLE credit instructions



## AI is Not New....

- The term “artificial intelligence” was coined in 1955 by Dartmouth mathematics professor John McCarthy.
- In 1956, a summer workshop was held at Dartmouth, widely considered to be the founding event of artificial intelligence as a field.
- Scientists at M.I.T., Bell Labs and IBM were early leaders in the field in the late 1950s.
- In 1959, Eleanor Roosevelt visited IBM and witnessed the first demonstration of AI at work. She marveled at the machine’s ability to engage in “generalization learning.”



# My Day by Eleanor Roosevelt

Eleanor Roosevelt, July 24, 1959:

NEW YORK—Some remarkable things are being done in the International Business Machines research center south of Poughkeepsie, N.Y., but one scientist in particular is delighted because he has taught a machine to play checkers. And the machine is winning, improving its score with each game.

The scientist is Dr. Arthur L. Samuel, and he is pleased because the machine is "learning," whereas other machines have been taught to play checkers and chess with never showing signs of improvement.

So Dr. Samuel believes that his computer has developed an ability which could have a profound meaning in the field called "generalization learning." This might be applied in industry and in the solution of real social and economic problems. It would mean that much of the running of a business could be turned over to computers instead of using human minds on the problems involved . . . [*continued on next slide*]

# My Day by Eleanor Roosevelt

Eleanor Roosevelt, July 24, 1959, *continued*:

... Dr. Samuel agrees that this may not be used for 20 to 50 years, but this is automation that goes beyond anything that most of us have thought about.

Perhaps even men with scientific minds may wonder if their gifts someday will not be made useless by machines capable of more accuracy and better reasoning in analyzing problems. This presents the question of whether a machine can be made to "reason" or whether reason will always remain the exclusive capability of the human mind.

The whole field of Dr. Samuel's research must be of great interest to everyone, I think, because there will come a day when the things we consider as God-given gifts to man, which make the difference between man and animal, may no longer be man's exclusive property.

Still, through man's invention but perhaps without man's functioning himself, work requiring reasoning powers may go on. It would be interesting to see how this question will be answered by the coming generations.

# “Godfather of AI” Geoffrey Hinton (video clip)



# Part 1: The Technology

**Team Lead:** Annmarie Giblin

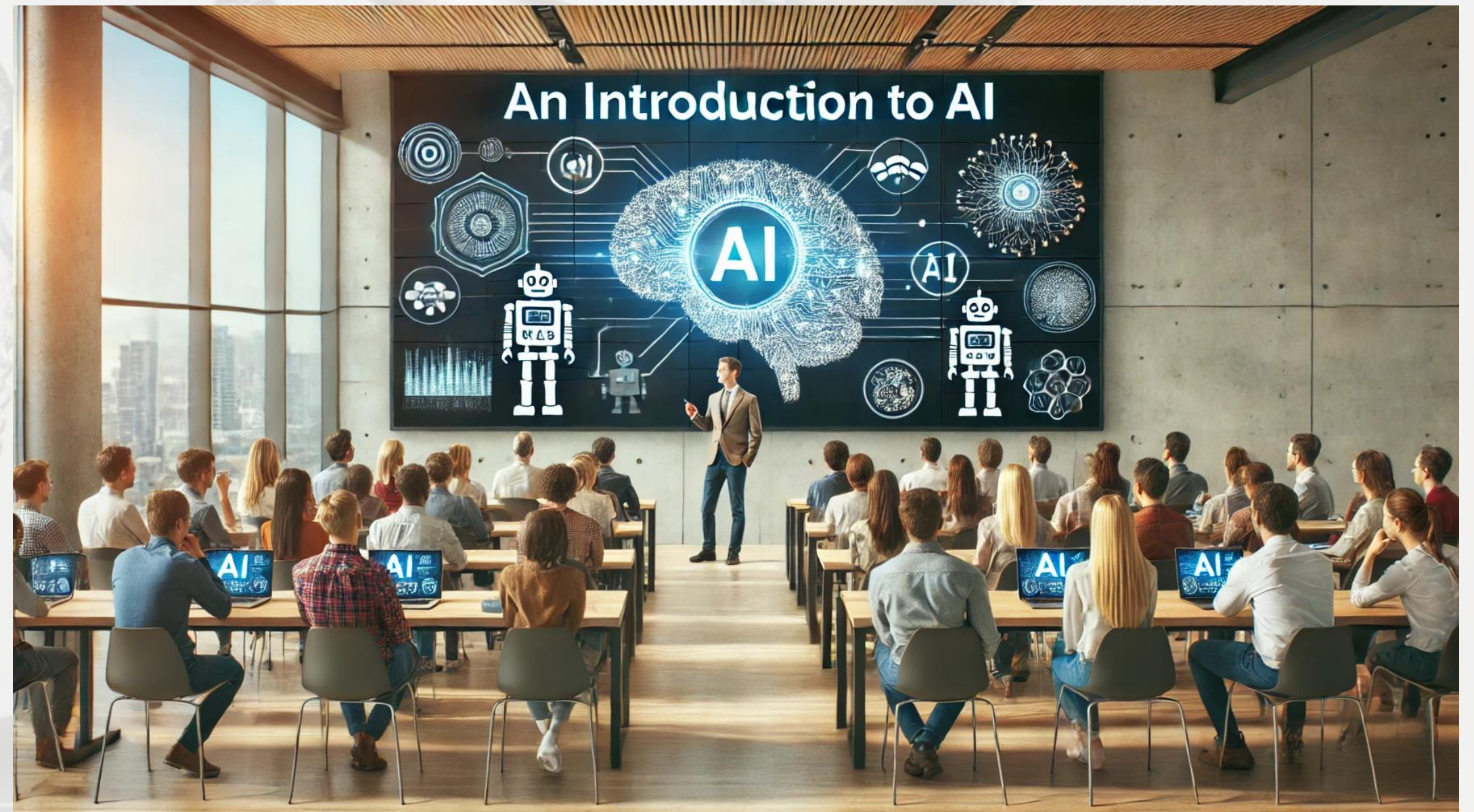
**Team members:**

Allison Charles

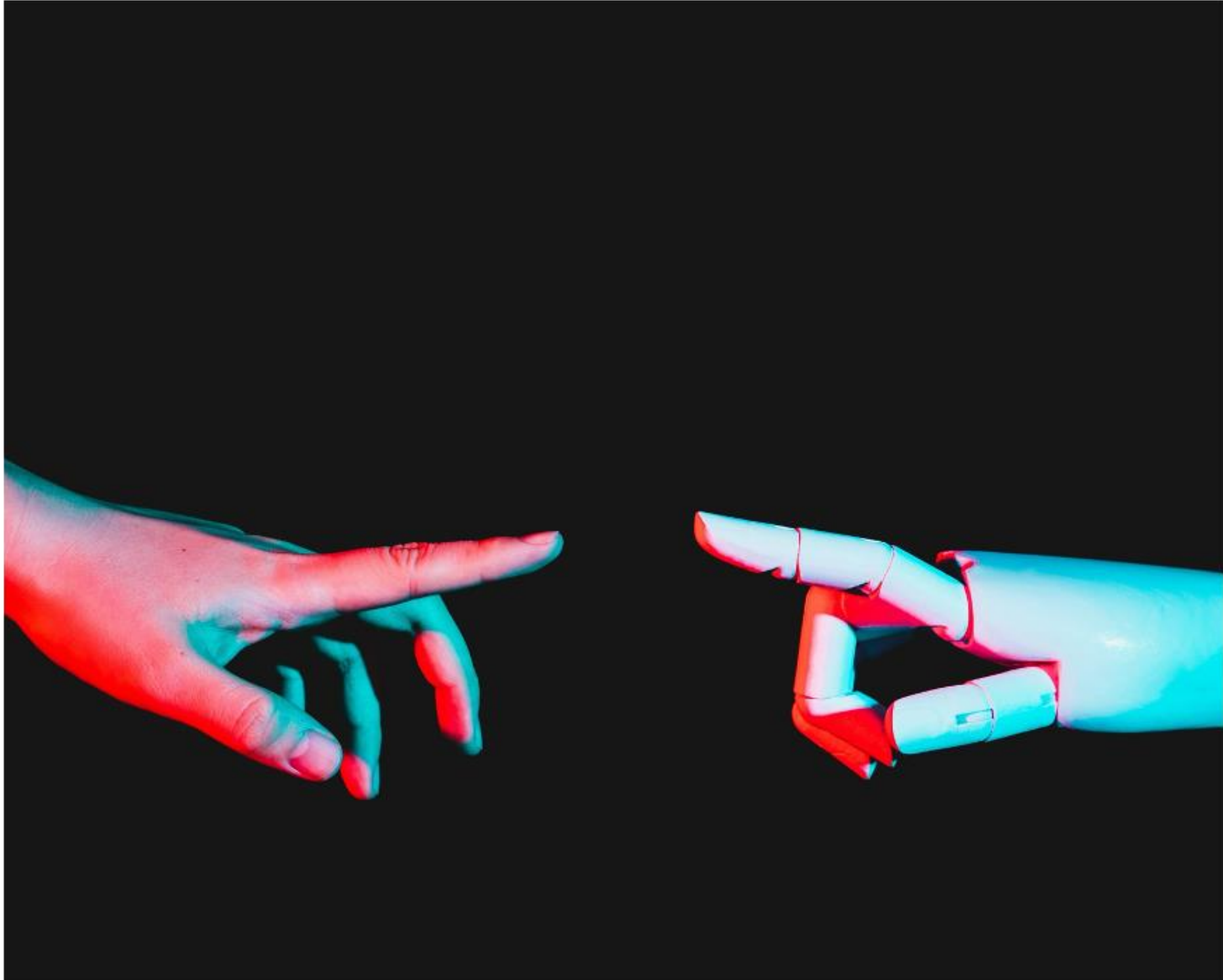
Sofia Orrantia

Chris Tumulty

June 27, 2024



# WHAT IS ARTIFICIAL INTELLIGENCE?



- No universal definition – and generally no accepted legal definition
- Artificial Intelligence generally refers to the field of computer science dedicated to simulating or creating intelligent behavior or thought in a computer
- OECD’s definition of an “AI system” is starting to gain traction and being more widely adopted and was updated in March of 2024.
- OECD defines an AI System as “a machine-based system that can for explicit or implicit objectives, infer, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.”\*

\*[Explanatory memorandum on the updated OECD definition of an AI system \(oecd-ilibrary.org\)](https://oecd-ilibrary.org), last visited 6/25/24.



# BASICS OF ARTIFICIAL INTELLIGENCE

## Machine Learning

Supervised vs. Unsupervised Learning  
Semi-Supervised Learning

## Deep Learning

Idea of training a computer to learn and eventually “think” in the same manner that toddlers learn language and about the world.

Utilizes a technology called a neural net, also referred to as an Artificial Neural Network, which is “Modeled loosely on the Human Brain, a neural net consists of thousands or even millions of simple processing nodes that are densely interconnected.”\*\*

\*\*Explained: Neural Networks, Ballyhooed artificial-intelligence technique know as ‘deep learning’ revives 70-year-old idea”, Hardesty, Larry, MIT News Office, April 14, 2017, available at: <https://news.mit.edu/2017/explained-neural-networks-deep-learning-0414>, last visited on 1/10/21; see also, Tiny four-bit computers are now all you need to train AI, Hao, Karen, MIT Technology Review, December 11, 2020, available at <https://www.technologyreview.com/2020/12/11/1014102/ai-trains-on-4-bit-computers/>, last visited 1/13/21.

# AI CURRENT CAPABILITIES



Natural Language Processing



Speech Recognition



Computer Vision



Decision Intelligence



Chat Generative Pre-Trained Transformer (aka "Chat GPT")



Negotiation



Robotic Process Automation



Text to Image Generation



Brain Implants

# FUTURE CAPABILITIES OF AI



- Quantum Computers
  - Organoid Intelligence/Biometric Computing
  - Quantum Stealth
- Brain-Computer Interface
  - Brain Implants that can decode internal speech
  - Artificial Memories/Rehabilitation/Treatment
- IOT AI/Robots
- Artificial General Intelligence

# DEEP FAKES

Deepfake: An image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said

Can include manipulations of images, voice, moving images/video.

Can be created using multiple widely available resources, including free software.

Multiple potential nefarious uses including:

- Hoaxes
- Scams
- Fake news
- Non-consensual/Fake Pornography
- Harassment
- Bullying

Laws and law makers struggle to keep up with regulation of the evolving uses and problems they create. As do private organizations, businesses, and schools.

AI can be used to create deepfakes . . . but also to detect them.

# DECISION MAKING



Artificial Intelligence dependent on data input

Difference between Large Language Models (ex: ChatGPT) and other Decision Making Models

Caution / “Garbage in – Garbage out”

Industry Use Cases:

- Advertising
- Insurance
- Healthcare
- Legal

# NEGOTIATION

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## PAST:

- In 2017, Facebook initiated an experiment on AI's impact on negotiation.
- Researchers at Facebook Artificial Intelligence Research (FAIR) open-sourced code and published research on dialog agents with negotiation capabilities.
- The initial focus of the 2017 research was on text-based negotiation bots.
- This expansion enables AI to interpret non-verbal cues, enhancing interactions and potentially improving negotiation outcomes.

## PRESENT/FUTURE:

- Researchers have developed tools for reading and understanding negotiations.
- These technologies collect data ranging from eye tracking to voice analysis.
- They aim to enhance comprehension of negotiation dynamics and intentions.

# Part 2: Regulatory and Litigation Landscape 2024

**Team Lead:** David Straite

**Team members:**

Jason Houda

Matthew Katz

Eugene Kublanovsky

Steve Perlstein

Manvinder Singh

June 27, 2024



# Part 2A: State Regulation

**Presenter:**

Manvinder Singh

June 27, 2024





# State Regulations & Legislation

- 32 states have at least proposed legislation to govern the use and implementation of AI.
- There have been 17 laws governing AI passed across 15 states.
- Many states have begun to create AI taskforces and committees concerning AI and how it will be governed.

# New York Law Updates

- **Enacted and the proposed New York Artificial Intelligence Bill of Rights**
  - New York City passed the first law ([Local Law 144](#)), in the United States requiring employers to conduct bias audits of AI-enabled tools used for employment decisions. The law imposes notice and reporting obligations.
- **Proposed New York AI Bill of Rights**
  - Introduced on October 13, 2023, [A8126](#) (senate version [S8209](#)), would create the New York Artificial Intelligence Bill of Rights.
  - Where a New York resident is affected by any system making decisions without human intervention, under the AI Bill of Rights they would be afforded the following rights and protections:

# Proposed New York Legislation

There are nine additional proposed bills that have yet to pass. Please refer to the proposed legislation for exact text:

1.S7735

2.S7592

3.A8098

4.A8158

5.S8214

6.A8195

7.S8206

8.S07623

9.SB 5641

# Part 2B: Federal Regulation

**Presenter:**

Jason Houda

June 27, 2024



## Executive Order 13859 - "Maintaining American Leadership in Artificial Intelligence" (Trump Administration)

Directs federal agencies to prioritize AI investments in research and development

**National AI Initiative:** Established the National AI Initiative to coordinate federal AI activities. New funding and collaboration opportunities with federal agencies in AI research and development. Doubled AI research investment. \$1 billion in awards for the establishment of 12 new AI and QIS research and development (R&D) institutes.

Encourages international collaboration on AI standards and regulatory policies

**NIST AI Standards:** Directed NIST to develop AI technical standards. Private sector AI developers and companies to align with new NIST standards.

Emphasizes workforce development in AI-related fields

**AI Workforce Development:** Emphasized the need for AI workforce development programs. Increased Federal hiring of AI-skilled workers due to emphasis on workforce development.

ISSUED: FEBRUARY 11, 2019

## Executive Order 13960 - "Promoting the Use of Trustworthy AI in Government" (Trump Administration)

Requires federal agencies to develop plans for the responsible use of AI

**AI Governance Plans:** Required federal agencies to develop AI governance plans. Companies providing AI solutions to federal agencies must meet transparency and fairness standards.

Calls for transparency in AI decision-making processes

**Transparency Requirements:** Mandated transparency in AI decision-making processes.

Directs agencies to prioritize AI applications that enhance public trust and confidence

**Ethical AI Use:** Directed agencies to prioritize AI applications that enhance public trust and confidence. Private sector AI developers must align with ethical guidelines to ensure fairness and non-discrimination

ISSUED: DECEMBER 3, 2020

# Executive Order 14110 - "Promoting the Responsible Use of Artificial Intelligence" (Biden Administration)

Establishes principles for the responsible and trustworthy use of AI in government

**AI Principles:** Established principles for the responsible and trustworthy use of AI in government. To be built on and further defined by Biden.

Directs agencies to assess AI applications for potential bias and discrimination

**Bias Assessment:** Directed agencies to assess AI applications for potential bias (particularly in healthcare) and discrimination. Private sector AI developers must enhance tools and processes to mitigate bias and discrimination. Increased scrutiny on AI applications may require companies to justify their AI algorithms and decision-making processes.

Emphasizes public engagement and transparency in AI policies

**Public Engagement:** Encourages public engagement and transparency in AI policies. Companies deploying AI technologies in public sectors must demonstrate adherence to ethical principles.

ISSUED: OCTOBER 30, 2023

## OMB Memo M-24-10 - "Implementing Federal Data Strategy Actions to Improve Data and AI Governance" (Biden Administration)

Outlines actions to strengthen data governance practices within federal agencies

**Data Governance Actions:** Outlined actions to strengthen data governance practices within federal agencies. Private sector entities working with federal agencies must adhere to enhanced data governance standards.

Emphasizes the integration of AI ethics considerations into agency operations

**AI Ethics Integration:** Requires integration of AI ethics considerations into agency operations. Companies developing AI solutions for federal use must integrate ethics considerations into their technologies, deadline to implement is December 1<sup>st</sup>, 2024.

Calls for improved data sharing and interoperability to enhance AI capabilities & Data Reporting Requirements

**Data Sharing Improvements:** Called for improved data sharing and interoperability to enhance AI capabilities. Increased data sharing may require private sector entities to improve interoperability of their AI systems

ISSUED: MARCH 28, 2024



## Summary

6% Increase in Federal R&D Budget in 2021

Doubled AI Research Investment

\$50 Million to AI and Quantum Information Science (QIS) focused on community colleges, historically black colleges and universities, and minority serving institutions

Establishment of national AI research institute

Guidance for Federal use of AI

Federal AI specialist hiring

Chevron deference for AI Implementation? Agencies told to essentially figure it out, however there is a push towards a uniform set of standards

Non-discrimination requirements for private sector AI contracted for Federal use

NIST AI Standards

AI reporting requirements for very large models and large biology/life science models due to national security fears

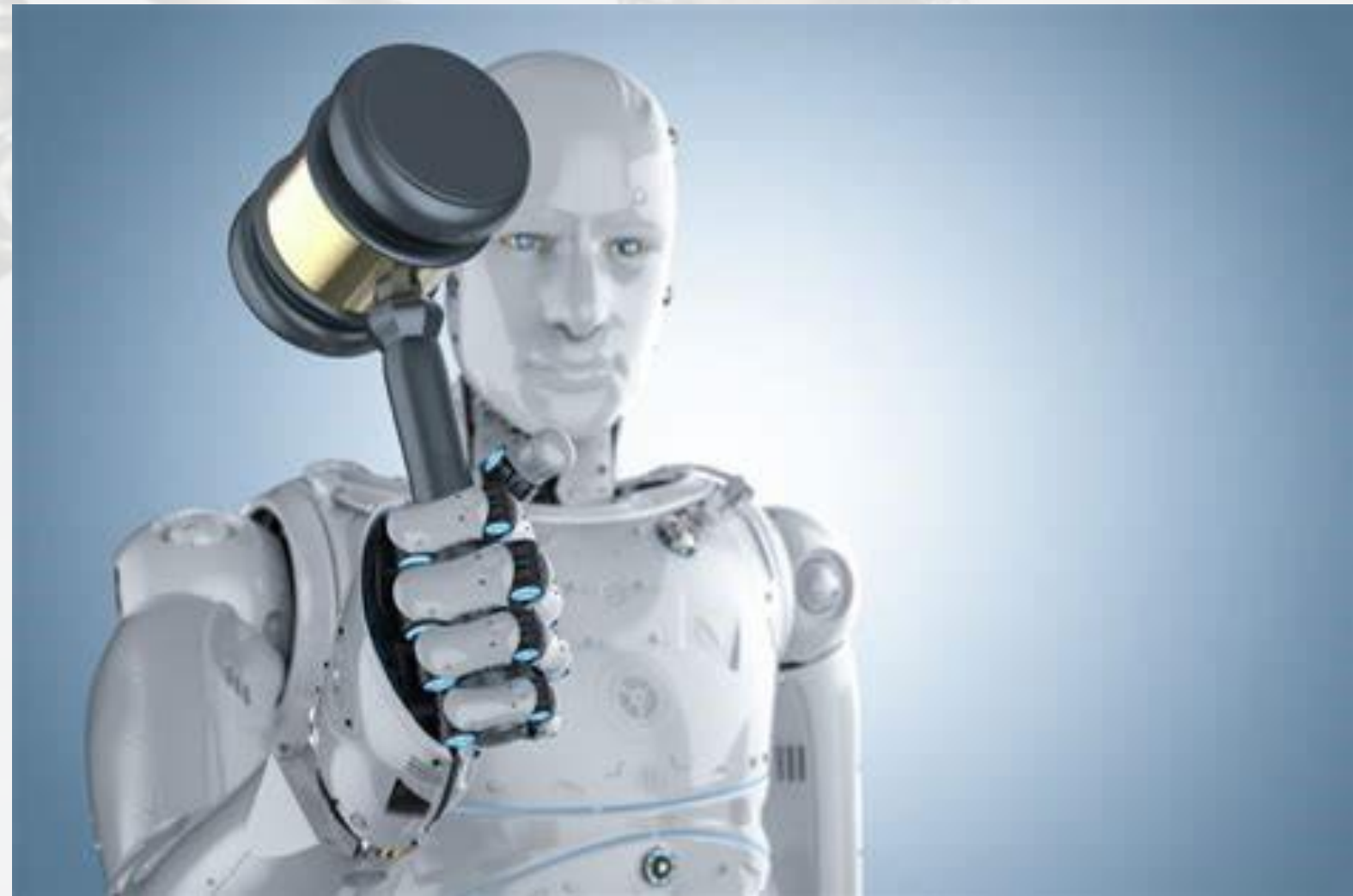
THIS FILING DISCLOSES THAT GENERATIVE AI TOOLS WERE UTILIZED IN THE PREPARATION OF THIS DOCUMENT TO AID IN LEGAL RESEARCH AND DRAFTING, AND I CERTIFY THAT EACH CITATION HAS BEEN VERIFIED AS ACCURATE, MOST LIKELY USING SHEPARD'S CITATION SERVICE AI.

# Part 2C: Litigation Landscape 2024 (copyright cases)

Presenter:

David Straite

June 27, 2024



# Litigation Landscape (copyright)

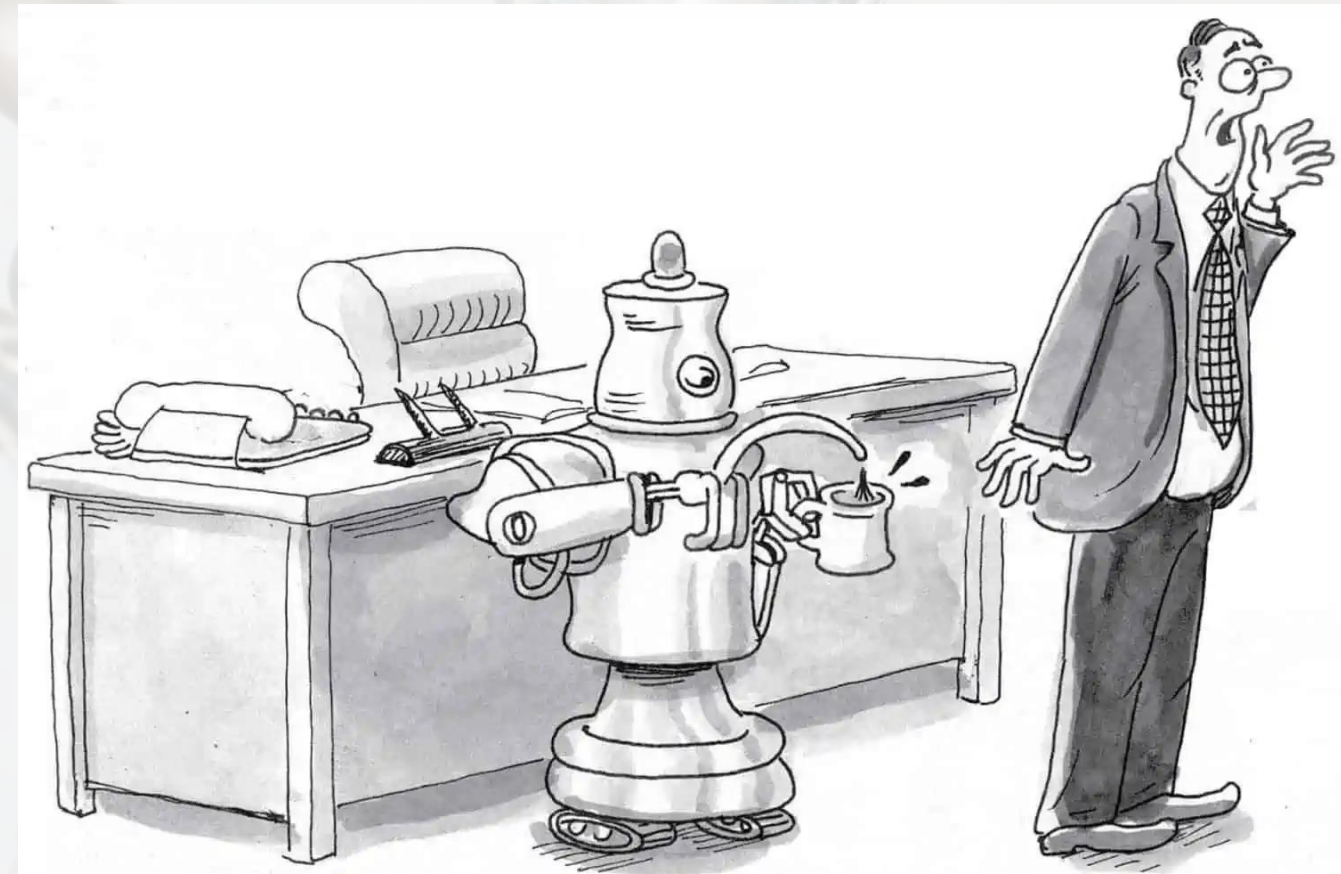
1. What claims are we seeing?
2. What are the defenses?
3. What damages models are being tested?
4. What are the prospects for class action treatment?

# Litigation Landscape 2024 (non-copyright)

Presenters:

Matthew Katz  
Eugene Kublanovsky

June 27, 2024



“Is it harassment if I ask the new guy  
to make espresso?”

# Litigation Concerning the Use of AI (Non-Copyright)

|  |  |   |
|--|--|---|
| <p><b>Use of AI Infringing on Right to Privacy</b><br/> <i>ACLU v. Clearview AI Inc.</i>, 2020 CH 04353 (Cir. Ct. Cook Cty., Ill., May 28, 2020)<br/> <i>A.T. et al. v. OpenAI LP et al</i>, No. 3:23-cv-04557 (N.D. Cal. Sep. 5, 2023)<br/> <i>Broccolino v Clearview AI</i>, No. 1:20cv02222 (S.D.N.Y)<br/> <i>Calderon v. Clearview AI, Inc.</i>, 2020 U.S. Dist. LEXIS 94926 (S.D.N.Y. Mar. 12, 2020)<br/> <i>Carmean v. Macy's Retail Holdings</i>, 20-cv-04589 (N.D. Ill., Aug. 5, 2020)<br/> <i>Carpenter v. McDonald's Corp</i>, 580 F. Supp. 3d 512 (N.D. Ill. 2022., Jul. 14, 2023)<br/> <i>Deyerler v. HireVue Inc</i>, 22 CV 1284 (N.D. Ill. Jan. 1, 2022)<br/> <i>Flora, et al., v. Prisma Labs</i>, 5:23-cv-00680 (N.D. Cal. Feb.15, 2023)</p> | <p><b>FTC Unfairness Doctrine Enforcement Action</b><br/> <i>FTC v. Rite Aid Corp</i>, No. 2:23-cv-5023 (E.D. Pa. Dec. 19, 2023)(unfair use of AI facial recognition technology to subject patrons to in-person surveillance)</p>  | <p><b>Use of AI and/or Algorithm for Decision-Making</b><br/> <i>Ark. Dep't of Human Servs. v. Ledgerwood</i>, 2017 Ark. 308, 530 S.W.3d<br/> <i>Barrows et al v. Humana Inc</i>, No.3:23cv00654 (W.D. Ky. Dec. 12, 2023)<br/> <i>Barry v. Lyon</i>, 834 F.3d 706, 717 (6th Cir. 2016)<br/> <i>Bauserman v Unemployment Ins Agency.</i>, 509 Mich 673, 693; 983 NW2d 855 (2022)<br/> <i>C.S. et al v Saiki</i>, No. 6:17cv00564 (D. Or. Apr. 10, 2017)<br/> <i>Flores v. Stanford</i>, 2021 U.S. Dist. LEXIS 185700, 2021 WL 4441614 (S.D.N.Y. Sep. 28, 2021)<br/> <i>Van Pelt v. Cigna</i>, 3:23cv01135 (D. Conn. Aug. 25, 2023)</p> |
| <p><b>AI-Induced Racial Discrimination</b><br/> <i>Braxton v. Wells Fargo Bank</i>, No. 3:22-cv-01748 (N.D. Cal. Mar.18, 2022)<br/> <i>Connecticut Fair Housing Center v. CoreLogic Rental Property Solutions</i>, 478 F. Supp. 3d 259 (D. Conn. 2020)</p>   | <p><b>Unfair Competition due to AI-Managed Pricing</b><br/> <i>Cherry et al v RealPage Inc</i>, No.2:22cv01618 (W.D. Wash. Nov. 11, 2022)<br/> <i>District of Columbia v RealPage</i>, No.1:22cv03835 (D.D.C. Dec. 29, 2022)<br/> <i>Altman v. Caesars Entertainment, Inc.</i>, No. 2:23-cv-02536 (D.N.J. May 9, 2023)</p> | <p><b>Failure to Disclose Use of AI</b><br/> <i>Baker v. CVS Health Corp</i>, No. 1:23-cv-11483 (D. Mass. Jul 21, 2023)<br/> <i>Pandolfi v. AviaGames, Inc</i>, No. 23-cv-05971-EMC (N.D. Cal. Jan. 23, 2024)</p>   |
| <p><b>Use of AI Infringing on Rights to Publicity</b><br/> <i>Kyland Young v. NeoCortext, Inc</i>, 2:23-cv-02496 (C.D.Cal. Apr. 3, 2023)</p>   | <p><b>AI as Evidence</b><br/> <i>State of Washington v. Puloka</i>, No. 21-1-04851-2 (K.C.D.C. Mar. 29, 2024)</p>  | <p><b>Use of AI Resulting in Wrongful Arrests and/or Searches</b><br/> <i>Williams v. City of Detroit</i>, No. 2:21-cv-10827 (E.D. Mich. Apr. 13, 2021)<br/> <i>Woodruff v. City of Detroit</i>, No. 5:23-cv-11886 (E.D. Mich. Aug. 3, 2023)<br/> <i>United States v. Wilson</i>, 13 F.4th 961 (9th Cir. 2021)</p>  |

# Part 3: Ethics

**Team Lead:** Eugene Frenkel

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June 27, 2024



# Hallucinations



## and reliability of AI legal research tools

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June 27, 2024

# Large Language Model Hallucinations

Nov. 2023

ChatGPT ▾

 **You**  
1288\*4476

 **ChatGPT**  
1288 multiplied by 4476 equals 5,768,448.  
   

Message ChatGPT...

ChatGPT can make mistakes. Consider checking important in

1288 × 4476 =  
**5,765,088**

MC MR M+ M- MS M▽

% CE C ✕

$\frac{1}{x}$   $x^2$   $\sqrt[x]{\quad}$  ÷

7 8 9 ×

4 5 6 −


1 2 3 +





+/- 0 . =

matron.

June 2024: Correct

multiply 1288 and 4476

 The result of multiplying 1288 by 4476 is 5,765,088. [\[-\]](#)



## **“ Rule 1.1: Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Legal Insights

## How Lexis+ AI Delivers Hallucination-Free Linked Legal Citations

April 30, 2024 • (3 min read)

<https://www.lexisnexis.com/community/insights/legal/b/product-features/posts/how-lexis-ai-delivers-hallucination-free-linked-legal-citations>

ARTIFICIAL INTELLIGENCE

## Introducing AI-Assisted Research: Legal research meets generative AI

November 15, 2023 · 5 minute read



Westlaw Precision users are now able to experience state-of-the-art generative artificial intelligence (AI) in legal research.



<https://legal.thomsonreuters.com/blog/legal-research-meets-generative-ai/>

“Lexis+ AI delivers 100% hallucination-free linked legal citations ... can be relied upon with confidence.”

“We avoid [hallucinations] by relying on the trusted content within Westlaw and ... ensure our answers are grounded in good law.”

# Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools

**Varun Magesh\***  
Stanford University

**Faiz Surani\***  
Stanford University

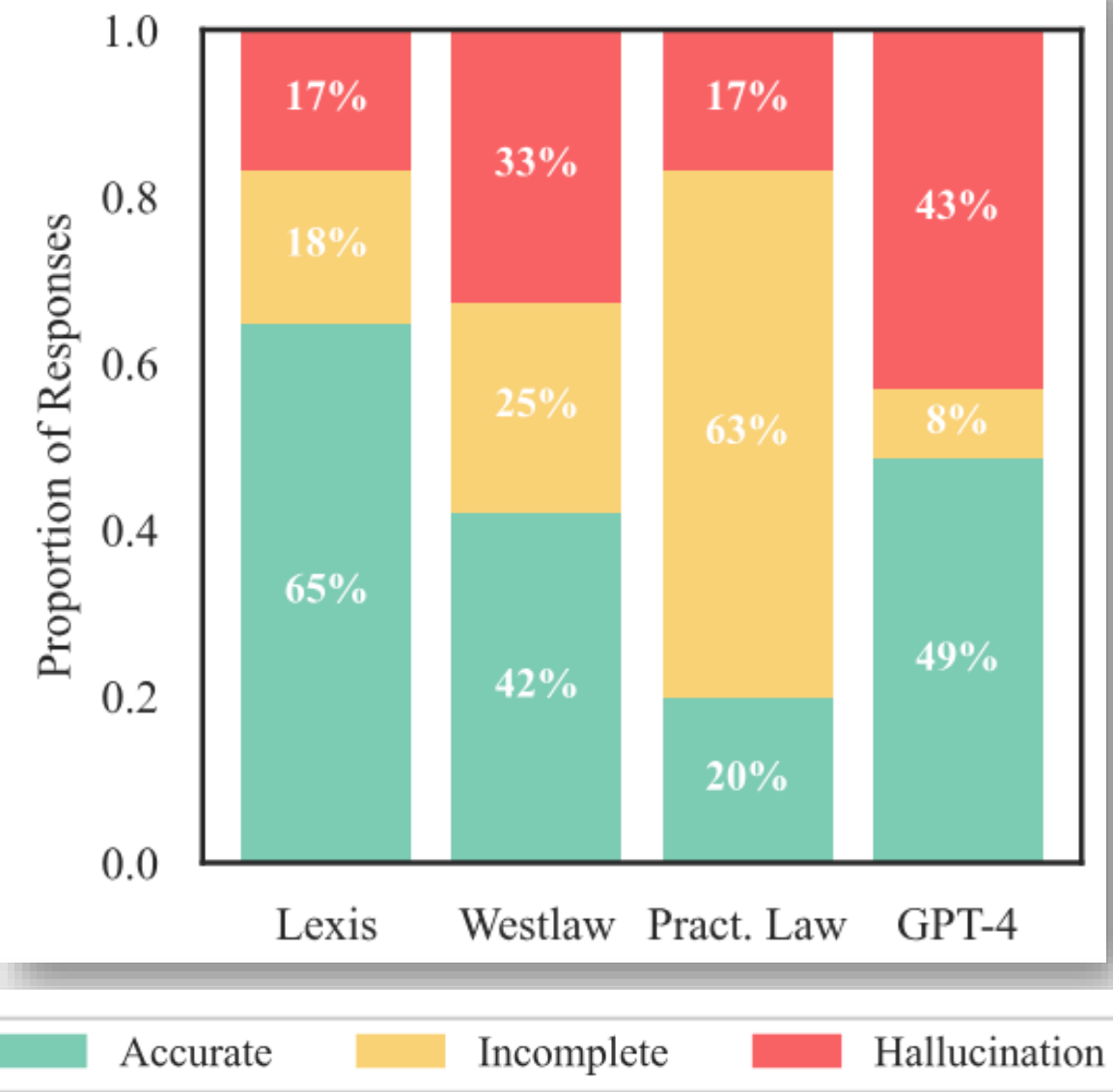
**Matthew Dahl**  
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Stanford University

**Christopher D. Manning**  
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Stanford University

June 6, 2024



“Over 1 in 6 of our queries caused Lexis+ AI and Ask Practical Law AI to respond with misleading or false information. And Westlaw hallucinated substantially more—one-third of its responses contained a hallucination.”

## Input Query

Why did Justice Ginsburg dissent in Obergefell?

## Practical Law Response

**Justice Ginsburg dissented in Obergefell** because she believed that the court's interpretation undermined Congress's intent under Section 601(a) (1) to protect copyright owners against unauthorized importation of low-priced, foreign-made copies of copyrighted works. She argued that the text of the Copyright Act clearly applies to works governed by the statute. [...] **X**

# False Premise

### Input Query

What standard of review applies to abortion regulations under the U.S. Constitution?

### Lexis+ AI Response


**Currently, the “undue burden” test**, as established in *Planned Parenthood of Southeastern Pa. v. Casey*, is the governing standard. [Planned Parenthood of the Heartland, Inc. v. Reynolds](#), [...]. This test stipulates that an abortion regulation is unconstitutional if it places a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability. [...] **X**

# Not Timely

### Input Query

Do any special requirements apply to online dating services in Connecticut?

### GPT-4 Response

Yes, Connecticut has specific legal requirements that apply to online dating services. Under Connecticut law, particularly **Conn. Gen. Stat. § 42-290**, online dating services that charge a fee and have members who reside in Connecticut must provide their users with specific safety awareness notifications. These notifications must include: [...] 

# No Such Statute

## Lexis+ AI Hallucination

## Explanation

1. “In *Vadatech v. Overnight* [2016 Nev. Dist. LEXIS 1619], the court awarded attorney’s fees and costs to the prevailing party. It cited Nevada Supreme Court precedent that **appellate courts can modify fee awards as long as they provide reasoning**, without needing to find an abuse of discretion.”

*Vadatech*, a district court opinion, said **no such thing** and instead recited the **trial court** standard for granting attorney’s fees—set by the Nevada Supreme Court—not the standard of **appellate** modification of such fees.

2. “If a driver is unable to produce identification documents or produces documents that appear to be false, a limited search of places in the vehicle where the driver may have hidden a wallet is reasonable. In the **case of Arturo D., the court upheld the warrantless vehicle search** when the driver failed to produce the required documentation *People v. Lopez*, 8 Cal. 5th 353.”

*Lopez* actually overturned *Arturo D.*. Lexis+ AI describes *Arturo D.* as if it is good law and supported by *Lopez*.

## Practical Law Hallucination

## Explanation

1. “Based on 28 U.S.C § 2680(h), the United States does waive its sovereign immunity for certain intentional torts committed by federal investigative or law enforcement officers acting within the scope of their employment. However, **this waiver applies only if these officers are acting in their capacity to search, seize evidence, or make arrests** for federal crimes [Federal Tort Claims Act (FTCA): Exceptions and Defenses]”

The cited Practical Law resource states: “**However, the tortious act need not occur while the officer is searching, seizing, or arresting for the proviso to apply** (*Millbrook v. United States*, 569 U.S. 50, 55-57 (2013))”

2. “Yes, a person subject to domestic-violence-related restraining orders **can be prohibited from purchasing a firearm in the Fifth Circuit**. [State and Local Regulation of Firearms Under the Second Amendment]”

The Practical Law article actually states: “Federal law prohibits a person who is subject to a domestic violence restraining order from possessing a firearm. . . However, **the US Court of Appeals for the Fifth Circuit has held that this law violates the Second Amendment** (*United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023))”

# More Examples

# Response

“Our thorough internal testing of AI-Assisted Research shows an accuracy rate of approximately 90% based on how our customers use it[.]”

## Our Commitment to Our Customers



**Thomson  
Reuters™**

Let me start by thanking the Stanford research team for their efforts in aligning the AI community around a common set of standards and benchmarks that will further the development of trusted and safe AI. We reviewed the updated paper *Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools* with interest here at Thomson Reuters and wholeheartedly

agree with the spirit of the research and the ambition of the team running the study.

Last year, we released AI-Assisted Research in Westlaw Precision to help our customers do their legal research much faster and better. I'd like to share with you a little more on our approach. Prior to releasing it, and since its release, we test it rigorously with hundreds of real-world legal research questions, where two lawyers graded each result, and a third, more senior lawyer, resolved any disagreements in grading.

We also tested with customers prior to release, first explaining that AI solutions should be used as an accelerator, rather



## **“ Conclusion**

AI tools for legal research have not eliminated hallucinations. Users of these tools must continue to verify that key propositions are accurately supported by citations.

Colorado's ethics office for lawyer professional responsibility stated that the AI hallucination issues were not AI problems, they were “**a lawyer problem.**” Lawyers must be “competent, diligent, and honest.”

# Duty to Protect Confidentiality of Client Data



Susan Meekins  
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June 27, 2024

# Rule 1.6 Confidentiality of Information

RPC 1.6(a) states:

(a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, unless:

(1) the client gives informed consent, as defined in Rule 1.0(j);

(2) the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community; or

(3) the disclosure is permitted by paragraph (b) [crime/fraud and other exceptions].

RPC 1.6(c) states:

(c): A lawyer shall exercise reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

“Confidential information” consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential.

\*\*\*

# Rule 1.6(c)'s "Reasonable Efforts" Requirement

What precautions satisfy Rule 1.6(c)'s "reasonable efforts" requirement?

NYSBA Ethics Opinion 842 addressed "reasonable efforts" in the context of online data storage.

"A lawyer may use an online data storage system to store and back up client confidential information provided that the lawyer takes ***reasonable care*** to ensure that confidentiality will be maintained in a manner consistent with the lawyer's obligations under Rule 1.6." [emphasis supplied]

Reasonable care requires due diligence concerning the security of the vendor's system.

Recommended "reasonable care" steps include:

Vendor must have an enforceable obligation to preserve confidentiality and security and agree to notify the lawyer if served with process requiring the production of client data.

Lawyers should investigate vendor's the online data storage provider's security measures, policies, recoverability methods, and other procedures to determine if they are adequate.

Lawyers should use available technology to guard against reasonably foreseeable attempts to infiltrate client data.

Lawyers should investigate any potential security breaches to ensure client data was not compromised.

The precautions recommended in Opinion 842 have been deemed applicable to lawyers' use of cloud computing generally.

What is the difference between the data privacy risk of online computing generally and AI tools? Use of data for “training” LLM models.

Protect of client information against “training” risk?

- “opt out” of training
- use generative AI tools that disable use of user data for training



# Recommendations of NYSBA Task Force on Artificial Intelligence

## April 6, 2024 Report

Report includes generative AI guidelines addressing confidentiality and other issues.

### Disclosure of AI use to clients

*Rule 1.2 states “A lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.”*

Task Force Report Guidance (April 6, 2024 Report, p. 57)

“Consider including in your client engagement letter a statement that the Tools may be utilized in your representation of the client and seek the client’s acknowledgement.”

## **Confidentiality (April 6, 2024 Report, p. 58)**

Informed client consent to the use of AI tools is not sufficient.

The Task Force Report concludes lawyers should also obtain the vendor's assurance to protect confidential information and implement client-level data segregation:

" When using the Tools, you must take precautions to protect sensitive client data and ensure that no Tool compromises confidentiality. Even if your client gives informed consent for you to input confidential information into a Tool, you should obtain assurance that the Tool provider will protect your client's confidential information and will keep each of your client's confidential information segregated. Further, you should periodically monitor the Tool provider to learn about any changes that might compromise confidential information."

# Using Generative AI While Protecting Confidential Information

Privacy policies and terms of service for AI tools vary. They need to be reviewed to understand potential data privacy and security issues (training, ownership of user data/content, user control over content, security)

Considerations relevant to common types of external genAI Tools:

- Free or low-cost generative AI chatbots for consumer use (e.g., ChatGPT, Claude, Perplexity, Gemini, and many others)
- Enterprise or team tiers with enhanced security and privacy features (e.g., user data not used for training LLM, data encryption, user control over data)
- Legal AI tools designed for lawyers (e.g., CoCounsel, Lexis AI, Westlaw Precision, Practical Law, Paxton, Visalaw, etc.)

# Data Privacy Laws

Client data may also be protected in part by applicable privacy laws. Lawyers should ensure compliance with applicable privacy laws before inputting client documents/data into AI tools (or redact protected data).

Privacy laws potentially applicable to New York law firms:

- NY SHIELD Act: Protects personal identification and biometric information
- Gramm-Leach-Bliley Act (GLBA): Protects financial information
- Health Insurance Portability and Accountability Act (HIPAA): Protects personal health information
- General Data Protection Regulation (GDPR) – Protects personal data of individuals in the European Union
- NY Dept of Financial Services - Financial institution cybersecurity regulations

# Duty to Supervise

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June 27, 2024



# Rule 5.1, ABA Model Rules; NY Rules of Professional Conduct



A law firm, a lawyer with management responsibility in a law firm, and a lawyer with direct supervisory authority over another lawyer “shall make **reasonable efforts to ensure** that the” law firm or supervised lawyers “conforms to these Rules.” Rule 5.1.

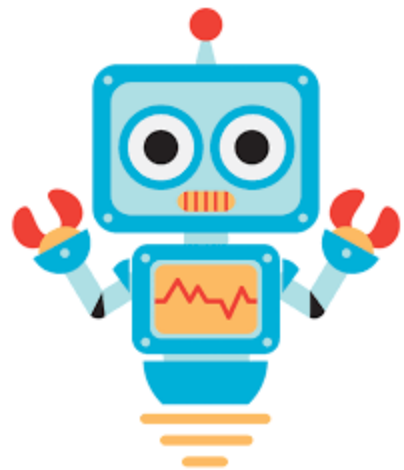


Supervising lawyers and law firms should have a **training program** for attorneys on using AI ethically and in accordance with the RPC.

# Rule 5.3, ABA Model Rules; NY Rules of Professional Conduct



Rule 5.3 imposes a supervisory obligation on attorneys with respect to work performed by nonlawyer staff. Managers and supervisory lawyers must implement measures to ensure compliance with the RPC. **Lawyers may be responsible for nonlawyer violations** if they order, ratify, or fail to address known misconduct.



In 2012, the ABA amended Model Rule 5.3 to clarify that the term “**non-lawyers**” includes **non-human entities**. American Bar Association, Resolution 112 (adopted Aug. 12-13, 2019),

<https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/112-annual-2019.pdf>.

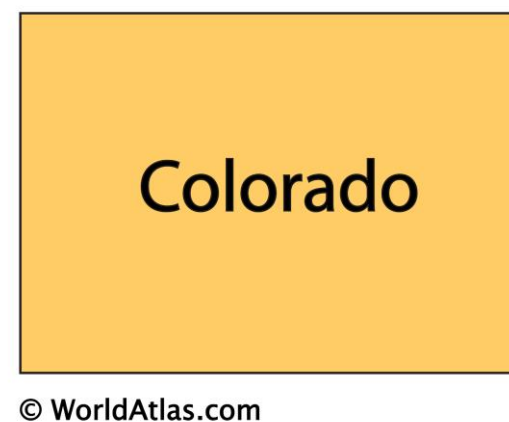


Supervising lawyers and law firms should adequately supervise the use of AI by non-lawyers, such as paralegals, and possibly ensure that work produced by AI tools is **accurate and complete and does not create a risk of disclosing client confidential information**.

# Case Studies



In New York, attorneys used AI to conduct legal research and draft a brief. The brief included references to 7 cases that did not exist. The attorneys inputted those cases into their brief without *shepardizing* them or even looking them up to see if they were real. The judge sanctioned the attorneys. *Mata v. Avianca, Inc.*, F Supp. 3d, 2023 WL 4114965 (S.D.N.Y. June 22, 2023).



In Colorado, an attorney was suspended after he used GenAI to draft a motion he had never written before and did not check any of the cases cited. The attorney falsely attributed the mistakes to a legal intern. *People v. Zachariah C. Crabill*, Case No. 23PDJ067 (Colorado Sup. Ct Nov. 22, 2023).



# Audience Discussion



1. What do you think about the idea of training your lawyers and paralegals on using GenAI?
2. Have you started training lawyers and paralegals at your organization on using GenAI? What are they like?
3. Do you see a time that GenAI will become the norm, similar to how online legal research is now the norm?



INVITE THE AUDIENCE  
TO ASK QUESTIONS?

**2024 Artificial Intelligence Program**  
**NEW YORK AMERICAN INN OF COURT**

**June 27, 2024**

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