Commentary

Time For Lawyers To Become ''Prompt Scientists''? – How AI Is Being Immersed Into The Legal Practice

By
Roy Hadley

[Editor's Note: Roy E. Hadley Jr. is Special Counsel at Adams and Reese in Atlanta. Roy is an advisor and attorney to high-growth businesses, governments, educational institutions, and family/closely held businesses on complex corporate transactions, particularly those involving technology, cybersecurity, artificial intelligence, economic development, telecommunications, outsourcing, and intellectual property. Roy is a frequent speaker, lecturer, and author on privacy, cybersecurity, and data management, and also issues and legal concerns affecting educational institutions. Roy serves as the Adams and Reese HBCU/MSI Team Leader. Any commentary or opinions do not reflect the opinions of Adams and Reese or LexisNexis®, Mealey Publications™. Copyright © 2023 by Roy E. Hadley Jr. Responses are welcome.]

Imagine an attorney feeding information about his/her case into an AI program that returns answers to questions, such as 'Which jurors should I choose, or which ones would be most sympathetic, based on their social media history?' 'What argument would be most persuasive given case law?' 'How should I present my evidence, given the judge's history?'

Generative artificial intelligence programs are becoming more and more sophisticated. We are in the midst of an exponential AI growth, impacting the ways we work, we think, and we live.

AI algorithm programs are content creation and speech recognition tools that can be used to create works – text, audio, code, images, video, etc. – by a user prompting the program with specific questions and data.

Based on the prompt, the chatbot engine spits back an answer, sometimes writing full-length essays and articles, or detailed product descriptions, that are generated from the documents and other materials loaded into the language model or engine. In some ways it is like a human searching through the internet and synthesizing these documents and materials into an answer, only much faster - typically in minutes.

Here comes ChatGPT and Generative AI

The AI craze skyrocketed in late 2022 when OpenAI created ChatGPT. More than 1 million signed up in just five days. Microsoft has Azure AI. Google has Bard. IBM has Watson. There are many AI software programs in existence. AI industry spending value is projected to increase from $86.9 billion in 2022 to reach more than $400 billion by 2027 (MarketandMarkets.com).

Every industry has been impacted by this latest technology manifestation. So, how have lawyers and law firms reacted to the AI growth and immersion into the legal industry?

According to a March 2023 LexisNexis Legal & Professional survey of more than 4,000 lawyers, law students, and consumers, 86% of lawyers were aware of generative AI with 51% of them having either already used it in their work or were planning on doing so. Sixty-one percent of lawyers and 44% of law students also believe generative AI will change law schools and the way law is taught and studied. According to the survey, the top five ways law firms, corporate counsel, and law students are currently or would like to use

generative AI tools in their daily work include: increasing efficiency, researching matters, drafting documents, streamlining work, and document analysis. The survey revealed that a majority of lawyers and law students can see potential in generative AI in advancing the practice of law (77% positive or mixed sentiment toward impact). However, many cite concerns about the ethical implications (87% of lawyers, 91% of law students, and 72% of consumers).

Cautious concern is another way of putting it. But how do we embrace this technology into our law firms, make our practices and representation of clients that much more effective, and our daily operations that much more efficient? Also, how do we advise clients on how they can use AI within their own businesses?

What is Generative AI?

AI is a broad term that encompasses various technologies and systems designed to perform tasks that typically require human intelligence.

Regular AI, also known as narrow AI or weak AI, refers to AI systems that are designed to perform specific tasks or solve specific problems within a limited domain. These systems are trained to excel in a particular area but lack the ability to generalize or think creatively outside of their designated tasks. Think eDiscovery applications and legal search engines like the current versions of Westlaw and LexisNexis.

Generative AI like ChatGPT, on the other hand, refers to a subset of AI that focuses on creating new content or generating original data. It leverages advanced machine learning techniques, such as deep learning and neural networks, to simulate creative and human-like behavior and conversations.

Generative AI models are designed to understand patterns and structures in existing data and generate new content that closely resembles the training data.

In the legal arena, we are seeing almost all of the traditional legal software providers racing to integrate generative AI into their offerings.

AI Immersed into our Legal Operations

AI is not new to the legal profession, it is just that with the advent of generative AI, it has become the new "it" thing. Advances in technology over the last several decades have helped make operations and services more efficient in the legal industry by computer systems and electronic applications analyzing information faster than humans.

For example, take what we learned from the development of E-Discovery. You used to put a bunch of young associates in a room and ask them to review stacks and folders of documents. Now, you scan those documents into a system, type in keywords, and boom, it spits out all the relevant information, and within the context you desire.

Just as E-Discovery improved the litigation process, the latest iterations of generative AI will transform several tasks in the legal workplace, such as:

- Document drafting, review, and other routine data-intensive, legal tasks that could help save law firms time, money, and staffing, and also increase response times to clients for these tasks.
    - AI programs will be able to identify relevant information, recognize mistakes, and spot inconsistencies within a faster time frame than humans. It also eliminates the monotony involved in these tasks.
- Legal research of case law and various state and federal statutes, or comparisons of similar cases and subject matter, analyzing decisions made in different venues.
    - For example, ask your favorite legal software application to "summarize the law related to removing the New York State civil cases to federal court" and it can provide you with a summary of that law. Of course you will need to verify such information, but the AI program provides you with a framework to get started on researching that law.
- Contract and legal document drafting, analysis, review, and proofreading.
    - What about a template for a young construction attorney tasked to create a design-bid build contract? The attorney wants to know what typical fields should be inserted within

that contract, such as scope of work, payment terms, necessary indemnification and clause language, responsibility of parties, change orders, etc. AI can perform this task in minutes, if not seconds.

- Background for article writing and industry thought leadership content – i.e. blog post, LinkedIn write-up, and website articles.
    - What if I want to write a blog article or LinkedIn post on the top 10 cybersecurity concerns for educational institutions? As an education attorney I know what this list should look like, but rather than spend two to three hours brainstorming or scouring the Internet and 50 web sites (like back in the day), I let the AI program provide me a framework. Then I can add my knowledge, expertise and experience to the list generated for the final product. But in less than 30 seconds, AI has provided a great starting point.
- First crack at a brief or an oral argument? AI can do that for me. Again, I will need to shape it into a final product and verify of the accuracy of the information.
- Accounting and billing department assistance
    - AI programs are able to review bills and entries, possibly pull out false entries or erroneous charges, and also research previous matters and charges to ensure they are real charges, or at minimum, flag it for an employee to review. Predictive coding can review and analyze information in real-time and allow for document comparison and organization.
- Time entry – speak the work the attorney covered into an AI program and then AI generates description for what you did to assist in keeping time for you. You can develop a language model and speech recognition engine for that very specific task.

How Does Our AI Use Help Our Clients?

In February 2023, the international law firm of Allen & Overy became the first major law firm to partner with an AI platform – Harvey (by Open AI) to enhance the legal work by more than 3,500 attorneys across 43 offices. Harvey, which received seed funding from the OpenAI Startup Fund, was founded by former lawyers, engineers, and entrepreneurs. PricewaterhouseCoopers also announced a partnership with Harvey in March.

"Harvey is a platform that uses natural language processing, machine learning and data analytics to automate and enhance various aspects of legal work, such as contract analysis, due diligence, litigation and regulatory compliance," according to the Allen & Overy press release. "Whilst the output needs careful review by an A&O lawyer, Harvey can help generate insights, recommendations and predictions based on large volumes of data, enabling lawyers to deliver faster, smarter, and more cost-effective solutions to their clients."

I have a client who employs systems to collect data as part of his business. He and I will often converse about how we can best compile the data and then what are the best practices to use the data for, so he can stay ahead of competitors in his industry.

Before meetings with that client, I have used an AI program to research potential uses for that data and his systems, so I can be prepared to advise him of the best uses. What are some of the risks associated with that data set? How do those risks balance with the potential opportunities to profit off the data collected? These are issues I can quickly vet before I meet with him.

Or I have another client who asked me to amend his company's privacy policy because of both the Virginia Privacy Act and Colorado Privacy Act – acts pertaining to both states in which the client does business.

I consulted an AI program about these acts to ensure the new policy will be properly reflective, but the AI program also returned information about the same act in Connecticut, another state in which my client does business. I was able to say, "I know you didn't ask about Connecticut, but here's another state that applies to what you asked me around privacy issues, and this is something you need to be prepared for."

That's an incredible research tool an attorney can use to be better prepared and deliver more efficient services to a client.

As generative AI becomes more mainstream and integrated into applications, lawyers will quickly learn to evolve into better "prompt scientists" – the more specific question and prompt you can deliver to these AI programs, the more sophisticated and detailed response, and better output, you will receive. We will learn how to manipulate these programs into delivering the answers and content we desire.

You may have some clients who are in a rush to bring AI into their products and services, but there may be inherent vulnerabilities within those applications. We have to be responsible stewards to advise them properly of best uses, and returns vs. risks. The challenge is there won't be a clear yes or no answer, but instead an assessment of risk and return from those AI systems and services integrated into their solutions and operations.

Regulation and Risks of AI

Should there be regulations to protect the general consumer and users of AI? Probably.

But it is a complex question with an even more complex answer. We are in the wild, wild, west, and still in the early infancy of AI. There are so many programs, tools, engines being created every day that is almost impossible to regulate all of the AI use in the ecosphere. We may see the bigger companies such as Microsoft, Google, IBM, being held accountable for their developments, but there are hundreds of thousands of programs being written every day on laptops across the world such that it would be nearly impossible to play watchdog to all of these open-sourced models and engines.

It is on the responsibility of the user to educate themselves on the specific AI program they are using and to verify – I'm going to say everyone's favorite phrase – "fake news" – and be wary of misinformation. Unfortunately, some AI tools have gone rogue, and with any good thing, there's a bad side involved. And we must also remember that current generative AI models have the problem of "hallucinating", or making up answers or information. In fact, lawyers have been called to the carpet for made up citations in briefs they had ChatGPT to write for them.

AI engines have evolved so much that they can fraudulently spoof someone's voice by detecting voice patterns from the Internet or social media. As lawyers, we have to beware of these issues.

Copyright attorneys, buckle up. You're already probably busy and/or going to get busier with copyright violations originating from AI tools. Fake Drake songs. Fake Joe Rogan podcasts. Shutting down these works and holding copyright violators accountable will be a task within your practice.

Or what about a deposition via Zoom when a witness may not be on video but the voice is present. How do we ensure we are not being spoofed and we are talking to the actual person? Another situation for which we have to be prepared.

There is also an issue of information bias through which AI delivers data from algorithmic patterns of which it is trained and developed. Let's say a bank uses an AI program to determine if someone should receive a loan. That program may research race, income, social media history, domicile neighborhood, and then return a decision based on all of these characteristics. Is there an inherent bias, and could a lawsuit originate from a denial of a loan based on an AI program? These are situations yet to be determined and analyzed.

What if the city or a government municipality invested in an AI traffic flow system, and that system malfunctioned, creating a crash? Would that AI company be able to be sued and held responsible in conjunction with the city? Where is the line drawn in terms of the responsible party or parties?

These are all questions that attorneys and law firms have to be wary of, and the best advice is to educate yourself and pay attention to all AI related subject matter and news. There are risks involved, sure, but that's with anything "new". Bias, ethical/moral issues, hallucinations and other issues will always be there.

The beauty of AI, though, is the possibility – to make us work more efficiently, save us time, and truly enhance our professional services. It's time for us to fully embrace those opportunities and think outside the box of what can be possible. ■

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1600 John F. Kennedy Blvd., Suite 1655, Philadelphia, PA 19103, USA
Telephone: (215)564-1788 1-800-MEALEYS (1-800-632-5397)
Email: mealeyinfo@lexisnexis.com
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