

AI Unveiled:

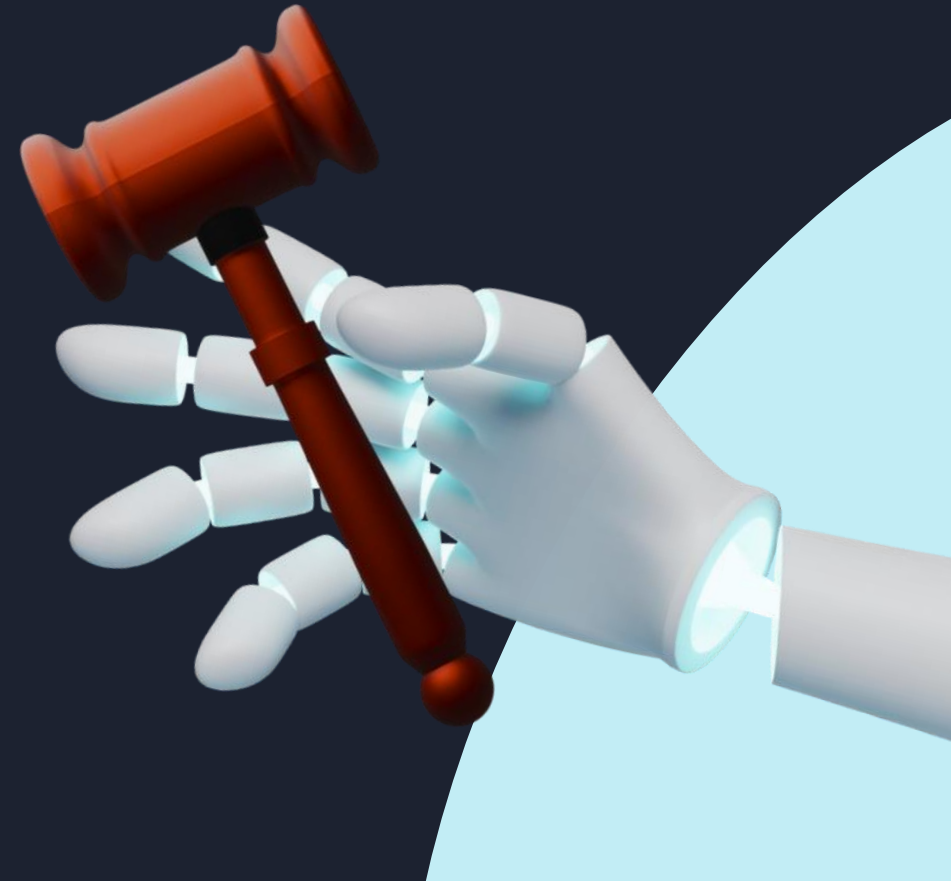
Legal Implications and Ethical Considerations

The Florida Bar



Jordan Turk

Attorney & Legal Technology Advisor, Smokeball



Housekeeping



Ask Questions

Ask us questions using the **Q&A** (1)
Engage with attendees with **Chat** (2)



Post-webinar Survey

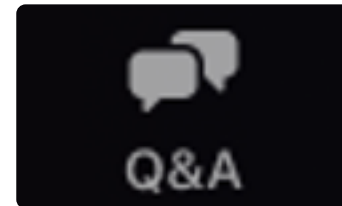
There will be a short post-webinar survey shared at the end of the presentation. We truly appreciate your feedback as it helps us improve our future CLE offerings.



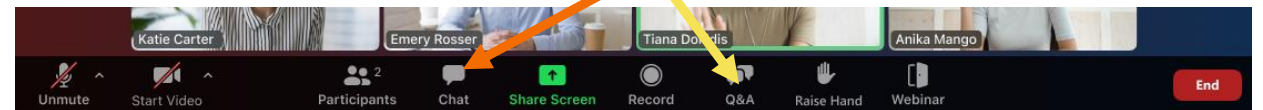
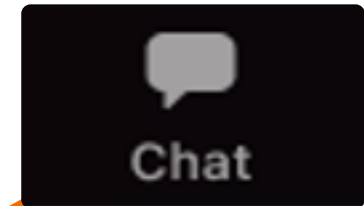
Recording & Slides

Recording and slides will be available after the presentation.

(1)



(2)





Jordan L. Turk

Attorney and Legal Technology Advisor, Smokeball

- JD, University of Arkansas School of Law
- BA, The University of Texas at Austin
- Practicing Family Law Attorney in Texas
- Host of Smokeball's [Hacking Law Firm Success](#)



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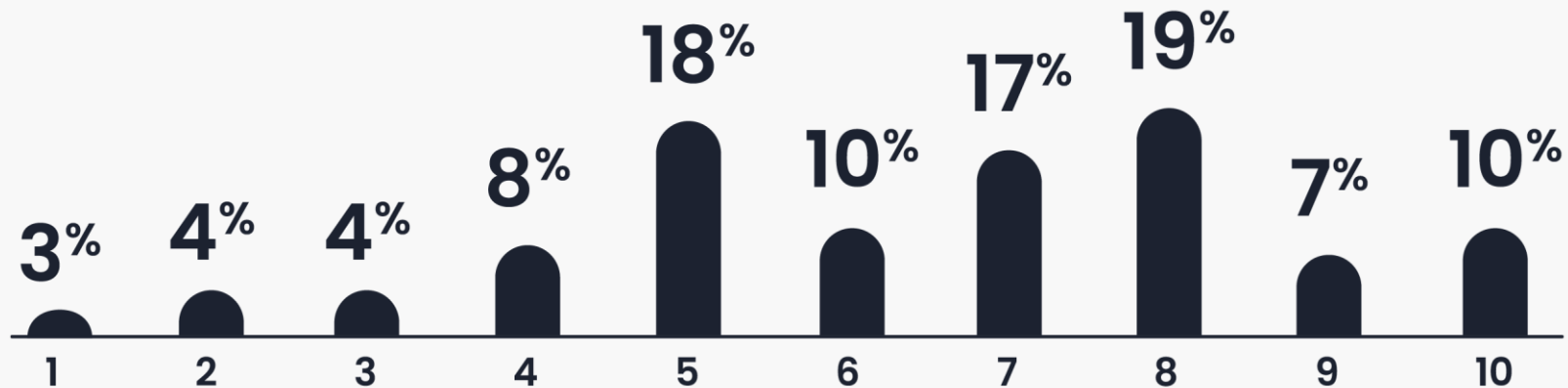


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On a scale of 1 to 10, how much do you believe AI is transforming or will transform the legal profession?

1 = No impact 10 = Complete Transformation



Source: [Smokeball's State of Law Report](#)

What areas are most likely to be affected by AI in the next 5 years?

Legal Research
30%

Document Creation
25%

eDiscovery
15%

Communications
7%

Client Intake
6%

Matter Management
4%

Workflows
4%

Contract Analysis
3%

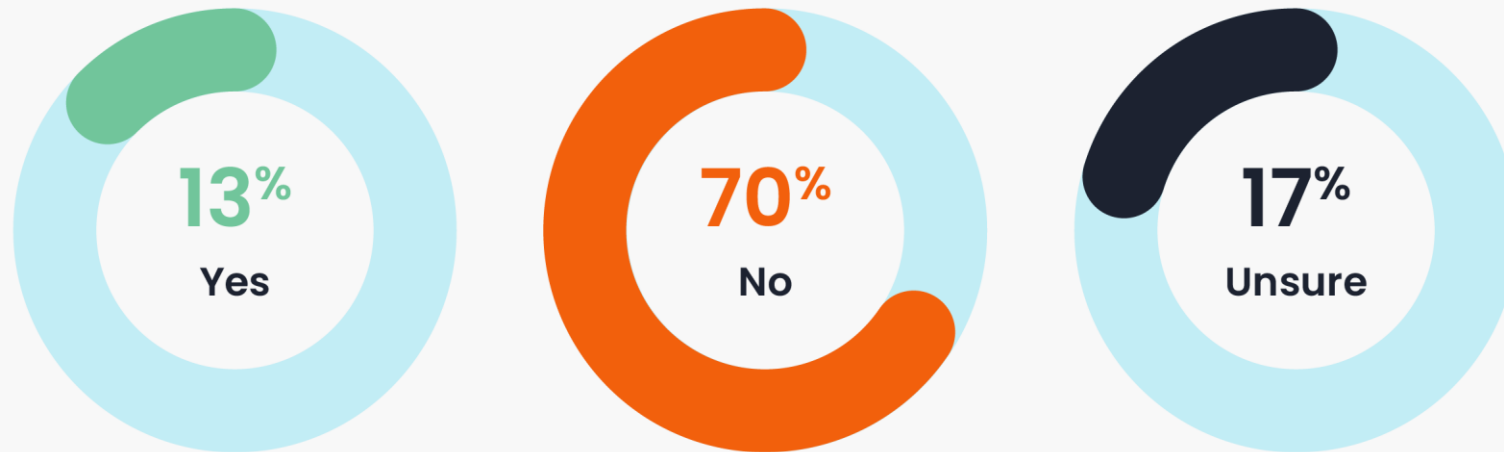
Invoicing and Billing
2%

Time-tracking
2%

Calendaring
2%

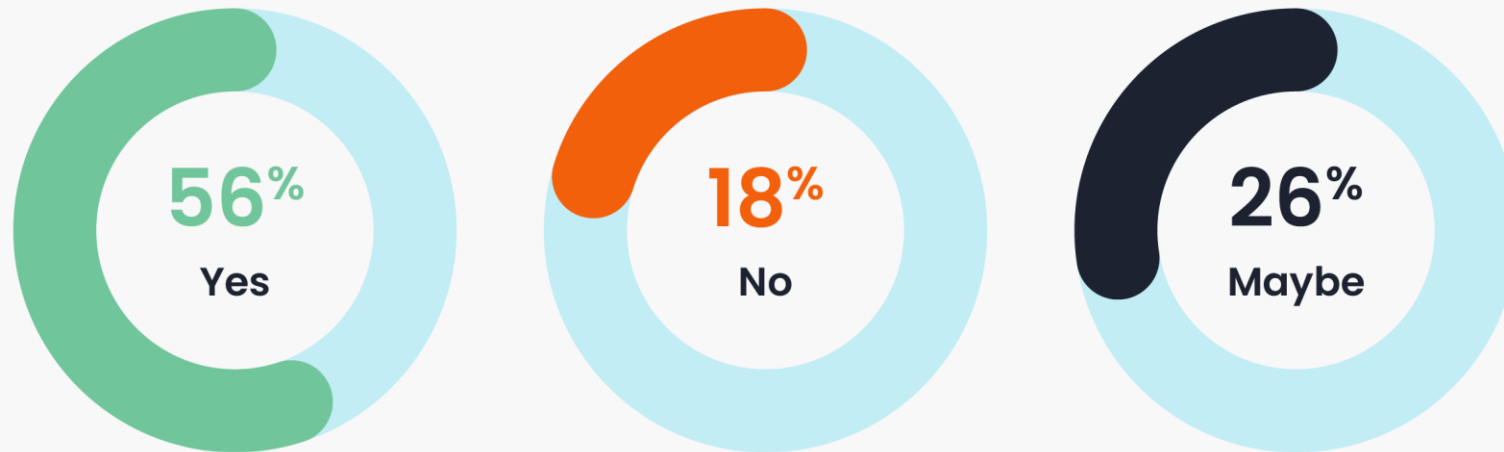
Source: [Smokeball's State of Law Report](#)

Do you perceive Artificial Intelligence to be a threat to your job?



Source: [Smokeball's State of Law Report](#)

Do you have ethical concerns for the use of AI in the legal industry?



Source: [Smokeball's State of Law Report](#)

AGENDA

- **Part 1: Key Challenges**
 - Florida Opinions
 - Social and Ethical Considerations
 - Economic Impacts
 - Intellectual Property
 - Privacy and Confidentiality
 - Liability
- **Part 2: The Problem**
- **Part 3: Precedent**
- **Part 4: The Bias Sphere**

EXTRACTIVE AI

Finds relevant results within existing data.

GENERATIVE AI

Creates new content from existing data.

Key Challenges:

- ✓ State Bar Rules
- ✓ Social and Ethical Considerations
- ✓ Economic Impacts
- ✓ Intellectual Property
- ✓ Privacy and Confidentiality
- ✓ Liability

State bars like Florida are trying to be proactive.

**FLORIDA BAR ETHICS OPINION
OPINION 24-1
January 19, 2024**

Advisory ethics opinions are not binding.

Lawyers may use generative artificial intelligence (“AI”) in the practice of law but must protect the confidentiality of client information, provide accurate and competent services, avoid improper billing practices, and comply with applicable restrictions on lawyer advertising. Lawyers must ensure that the confidentiality of client information is protected when using generative AI by researching the program’s policies on data retention, data sharing, and self-learning. Lawyers remain responsible for their work product and professional judgment and must develop policies and practices to verify that the use of generative AI is consistent with the lawyer’s ethical obligations. Use of generative AI does not permit a lawyer to engage in improper billing practices such as double-billing. Generative AI chatbots that communicate with clients or third parties must comply with restrictions on lawyer advertising and must include a disclaimer indicating that the chatbot is an AI program and not a lawyer or employee of the law firm. Lawyers should be mindful of the duty to maintain technological competence and educate themselves regarding the risks and benefits of new technology.

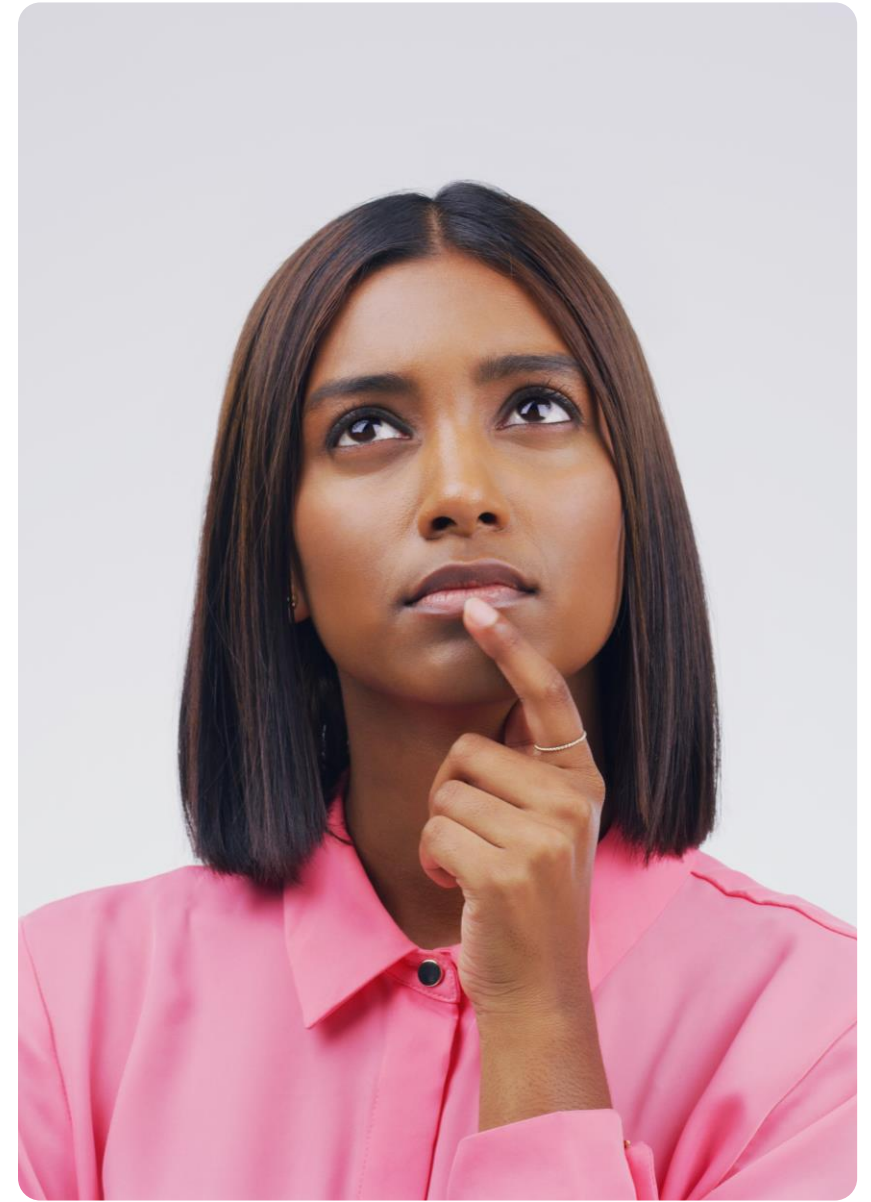
- RPC:** 4-1.1; 4-1.1 Comment; 4-1.5(a); 4-1.5(e); 4-1.5(f)(2); 4-1.5(h); 4-1.6; 4-1.6 Comment; 4-1.6(c)(1); 4-1.6(e); 4-1.18 Comment; 4-3.1; 4-3.3; 4-4.1; 4-4.4(b); Subchapter 4-7; 4-7.13; 4-7.13(b)(3); 4-7.13(b)(5); 4-5.3(a)
- OPINIONS:** 76-33 & 76-38, Consolidated; 88-6; 06-2; 07-2; 10-2; 12-3; ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 498 (2021); ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 93-379 (1993); Iowa Ethics Opinion 11-01; New York State Bar Ethics Opinion 842
- CASES:** *Mata v. Avianca*, 22-cv-1461, 2023 WL 4114965, at 17 (S.D.N.Y. June 22, 2023); *Bartholomew v. Bartholomew*, 611 So. 2d 85, 86 (Fla. 2d DCA 1992); *The Florida Bar v. Carlon*, 820 So. 2d 891, 899 (Fla. 2002); *Att’y Grievance Comm’n of Maryland v. Manger*, 913 A.2d 1 (Md. 2006)

The Florida Bar Board of Governors has directed the Board Review Committee on Professional Ethics to issue an opinion regarding lawyers’ use of generative artificial intelligence (“AI”). The release of ChatGPT-3 in November 2022 prompted wide-ranging debates regarding lawyers’ use of generative AI in the practice of law. While it is impossible to determine the impact generative AI will have on the legal profession, this opinion is intended to provide guidance to Florida Bar members regarding some of the ethical implications of these new programs.

Social and Ethical Considerations

Some examples:

- Use of facial-recognition software for identification purposes;
- Implicit biases of AI developers and implicit biases contained in the data used to train the AI;
- Increased spread of misinformation through bots;
- Reliance on chatbots (such as [ChatGPT](#)) that hallucinate in key areas like financial, medical, or legal advice;
- Use by key decision makers such as judges; and
- Users who are unable to differentiate as a tool and personify instead.



Economic Impacts

- How do we address the transition period as AI takes over?
- Exponential growth of AI in the next few decades— job loss from AI will significantly outpace jobs created by AI and our governments are not prepared to deal with that.
- The International Monetary Fund (IMF) warned that nearly 40% of jobs across the globe could be affected by the rise of AI, with high-income economies facing the greater risk.*
- **Consider measures that may address issues caused by mass unemployment.**
 - Perhaps universal basic income and/or universal healthcare.

**Source: <https://www.cnn.com/2024/01/15/imf-warns-ai-to-hit-almost-40percent-of-global-employment-worsen-inequality.html#:~:text=The%20International%20Monetary%20Fund%20warned,markets%20and%20low%20income%20countries>*

Intellectual property

New frontier of AI-created inventions (music, code, photos, etc.):

- ChatGPT has been trained on a large data set belonging to others.
- Output could result in infringing content such as modifying or reproducing all or parts of copyrighted works without permission.
- Already seeing some lawsuits over assertion of intellectual property rights such as [Getty's suit against Stable Diffusion](#).
- Google data scraping lawsuit (see next slide)
- Additionally, issues in what rights can be inserted by users in the output created by AI.





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Google hit with class-action lawsuit over AI data scraping

By **Blake Brittain**

July 11, 2023 8:09 PM CDT · Updated 9 days ago



The eight plaintiffs in Tuesday's lawsuit, identified by their initials, said Google misused content they posted to social media and information shared on Google platforms to train its chatbot Bard and other generative AI systems.

The content identified in the lawsuit ranged from photos on dating websites to Spotify playlists and TikTok videos. One of the plaintiffs, J.L., described as a best-selling Texan author and investigative journalist, said Google also copied her book in full to train Bard.

AI Copyright Issues Similar to the Monkey Selfie Case

- Photographer David Slater was on assignment in Indonesia when Naruto, a crested macaque, snapped several photos of himself with Slater's camera (*see right*)
- Slater included these photos in a book he published
- PETA sued photographer Slater and his publishing company on Naruto's behalf, arguing that publishing and selling the photos infringed on Naruto's rights under the Copyright Act
- 9th Circuit affirmed that Naruto lacked standing to claim copyright infringement since he is an animal
- Generally, for animals and AI, no human involvement = no copyright protection



Privacy and Confidentiality

- Data input in platforms (such as ChatGPT) and the resulting output becomes part of the collective data used to train and create further outputs.
- Inserting private or confidential data as an input results in sharing of that data.
- Considerations of breach of obligations of privacy/confidentiality.

Ethical Implications Confidentiality (Florida Rules)

Rule 4-1.6 Confidentiality of Information

(a) Consent Required to Reveal Information. A lawyer must not reveal information relating to a client's representation except as stated in subdivisions (b), (c), and (d), unless the client gives informed consent.

Rule 4-1.9 Duties to Former Clients, Comment

Lawyers owe confidentiality obligations to former clients, and thus information acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the client without the former client's consent.

Privacy and Confidentiality

Some other considerations:

- Voice and Face Recognition
 - Circumvention of legal procedure – i.e. unlock devices without consent.
- Prediction
 - AI analysis of online behavior to reveal emotions and beliefs and then manipulate.
- Profiling
 - Unconsented categorizing of individuals – used to limit access to credit, employment, insurance coverage, housing or social services.



Michael Cohen says he unwittingly sent AI-generated fake legal cases to his attorney

DECEMBER 30, 2023 · 8:20 AM ET

By The Associated Press



Another NY lawyer faces discipline after AI chatbot invented case citation

By Sara Merken

January 30, 2024 2:42 PM CST · Updated 7 days ago



The Thurgood Marshall courthouse is pictured in New York, New York, U.S., March 25, 2019. REUTERS/Carlo Allegri

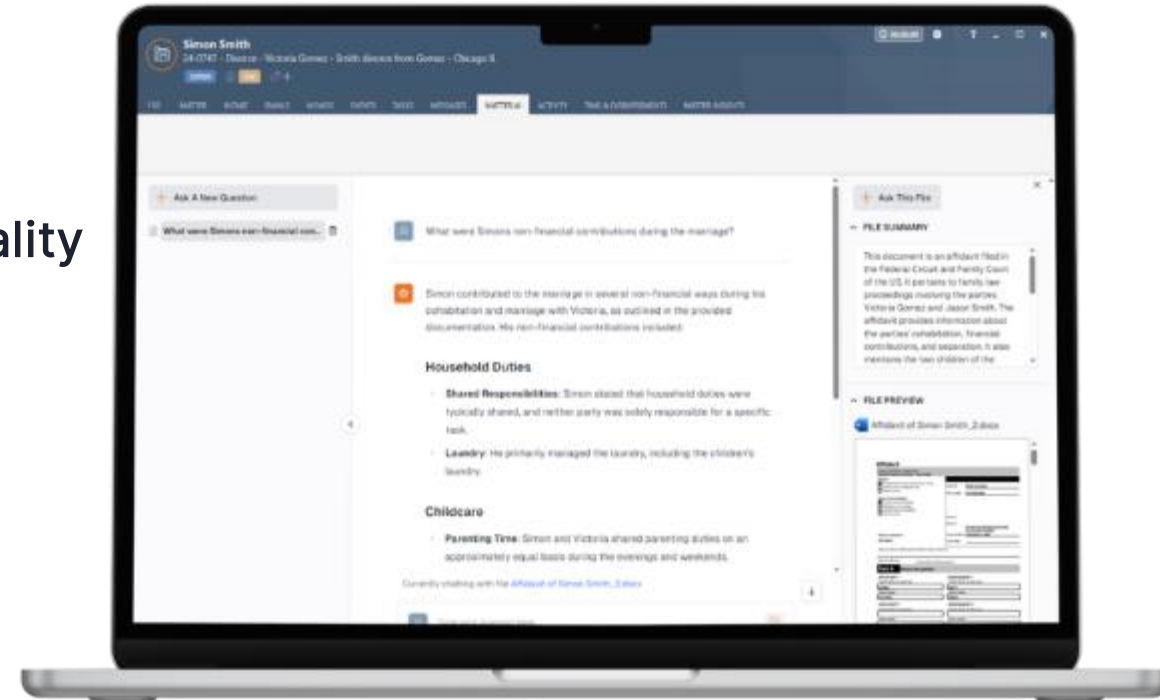
[Purchase Licensing Rights](#)

Liability

- **Who is responsible for losses/damages caused by AI error?**
 - Self-executing machine/code can't be liable. Some person or legal entity must be liable, but there is now ambiguity in line of causation/fault.
 - Was the manufacturer at fault? The creator of the software? The owner of the product?
- **Forethought important to address ambiguity.**
 - Put into agreements should disputes arise.

What Can I Do?

- Look for legal-specific companies who have guardrails in place to protect client confidentiality
- Start including an AI provision in your fee agreements



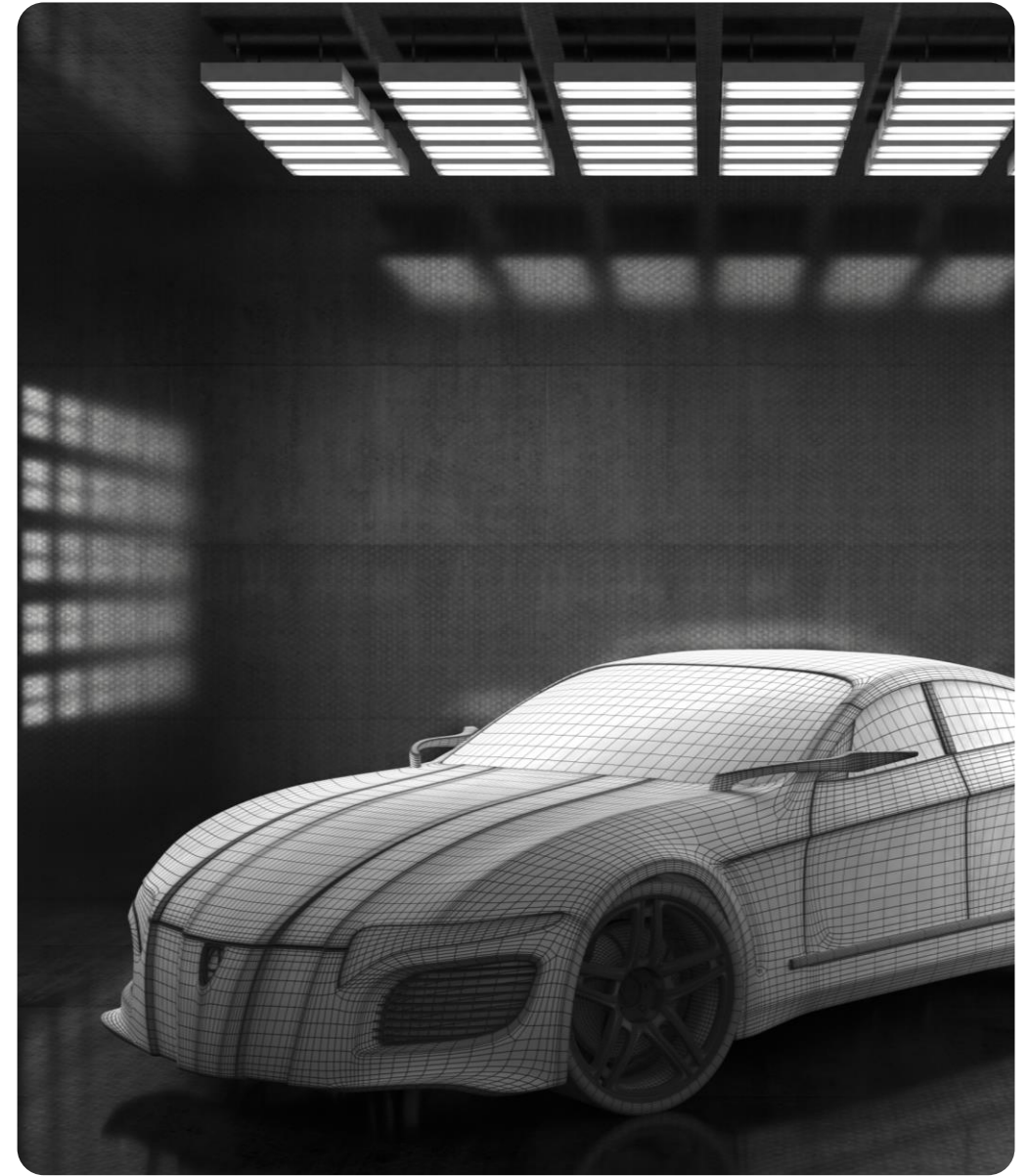


THE PROBLEM

The Problem

ADVENT & USAGE: LLMS

- Definitions (LLM, GenAI, Transformers)
- Issue:
 - Advent of LLMs into practice like adding a massively more powerful engine to a car
 - Without upgrading (a) steering, (b) braking, (c) guidance systems
 - Destination: Where do we want to GO?
 - CLIENT [USER] CENTRIC (ethical imperative)
 - Duty to improve the administration of law





PRECEDENT



Principles Supporting the Use of AI in Alternative Dispute Resolution

The American Arbitration Association®-International Centre for Dispute Resolution® (AAA-ICDR®) is committed to pioneering the thoughtful integration of artificial intelligence (AI) in alternative dispute resolution (ADR). We aim to enhance ADR practices through AI, balancing innovation with our enduring commitment to legal integrity and service excellence.

At its core, AI analyzes information. The recent evolution of more efficacious generative AI systems has made AI more relevant to legal and dispute resolution processes. The analytic function is central to ADR, as is the efficiency associated with automation. Recognizing AI's role in ADR requires consideration of the many use cases presented by this technology.

The following principles guide the AAA's approach and empower the use of AI in alternative dispute resolution—both at the AAAi Lab and throughout the ADR ecosystem. When integrating AI into dispute resolution frameworks, we believe in adherence to these principles. This list is not exhaustive, but each principle is fundamental to ADR AI:

PRINCIPLES

- I. COMPETENCE
- II. CONFIDENTIALITY
- III. ADVOCACY
- IV. IMPARTIALITY
- V. INDEPENDENCE
- VI. PROCESS IMPROVEMENT

Legal AI Principles

~LEGAL ETHICAL PRINCIPLES

- Competence
- Confidentiality
- Advocacy
- Impartiality
- Independence
- Process improvement



6 Principles & Best Practices for Legal Professionals

AMERICAN ARBITRATION ASSOCIATION-ICDR NOV' 2023

I. Competence

Competence in integrating AI into ADR frameworks requires legal professionals, arbitrators, and mediators to ensure they are proficient with AI technologies and understand the risks, benefits, usages, and ethical considerations. Avoiding shortcuts that compromise quality and continuously testing and updating one's knowledge is critical as AI technologies evolve rapidly.

II. Confidentiality

Safeguarding sensitive data is critical in ADR, as in business and the law. The integration of AI should not compromise this principle. Preventing unauthorized access, leakage, or misuse of confidential data is essential. Special care is needed with large datasets, opaque machine learning models, and uncertain data protocols.

III. Advocacy

When using AI tools, an advocate should promote accuracy, expedience, and candor; align AI applications with the best interests of clients and the justice system's integrity; and champion responsible AI use as an essential component of advocacy.

6 Principles & Best Practices for Legal Professionals

AMERICAN ARBITRATION ASSOCIATION-ICDR NOV' 2023

IV. Impartiality

ADR neutrals must scrutinize AI data impartially, avoiding over-reliance on technology or outputs provided by one party or one vendor.

V. Independence

While AI can provide valuable insights, ADR professionals must exercise independent judgment. ADR professionals should not unthinkingly rely on AI outputs, but evaluate all critically based on expertise, experience, and judgment. Professionals remain solely responsible for their work product.

VI. Process Improvement

Embrace AI as a tool for enhancing the accessibility, efficiency, and fairness of ADR. Continuously seek to improve ADR administration, services, and related legal frameworks through innovative applications of AI.



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PRINCIPLES

- I. COMPETENCE
- II. CONFIDENTIALITY
- III. ADVOCACY
- IV. IMPARTIALITY
- V. INDEPENDENCE
- VI. PROCESS IMPROVEMENT

OUR COMMITMENTS

We lead by example at the AAA-ICDR. We are actively investigating AI tools that may improve the process for all participants in a dispute.

In exploring AI, we aim to:

- Prioritize the parties, advocates, and organizations that use our services
- Implement frequent updates in the beta and production stages
- Apply diligence and testing before any product release
- Adopt sound, flexible methodologies responsive to feedback and evolving standards
- Use AI in a manner consistent with the AAA-ICDR's mission, vision, and values

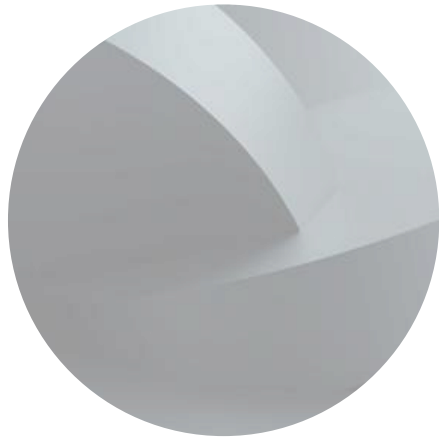
We believe AI has boundless potential to transform alternative dispute resolution positively. We are committed to harnessing our rich, nearly 100-year legacy to design processes and solutions to uphold principles of justice, fairness, and equity central to ADR.

Precedent

TAKEAWAYS

- Legal AI principles incorporate, adapt, and extend legal ethics principles
- Applying active duties to new sphere
- Adapted to context (here ADR)
- **ACTION:** Fast moving (i) explore, test v.(ii) productize/practice implementation

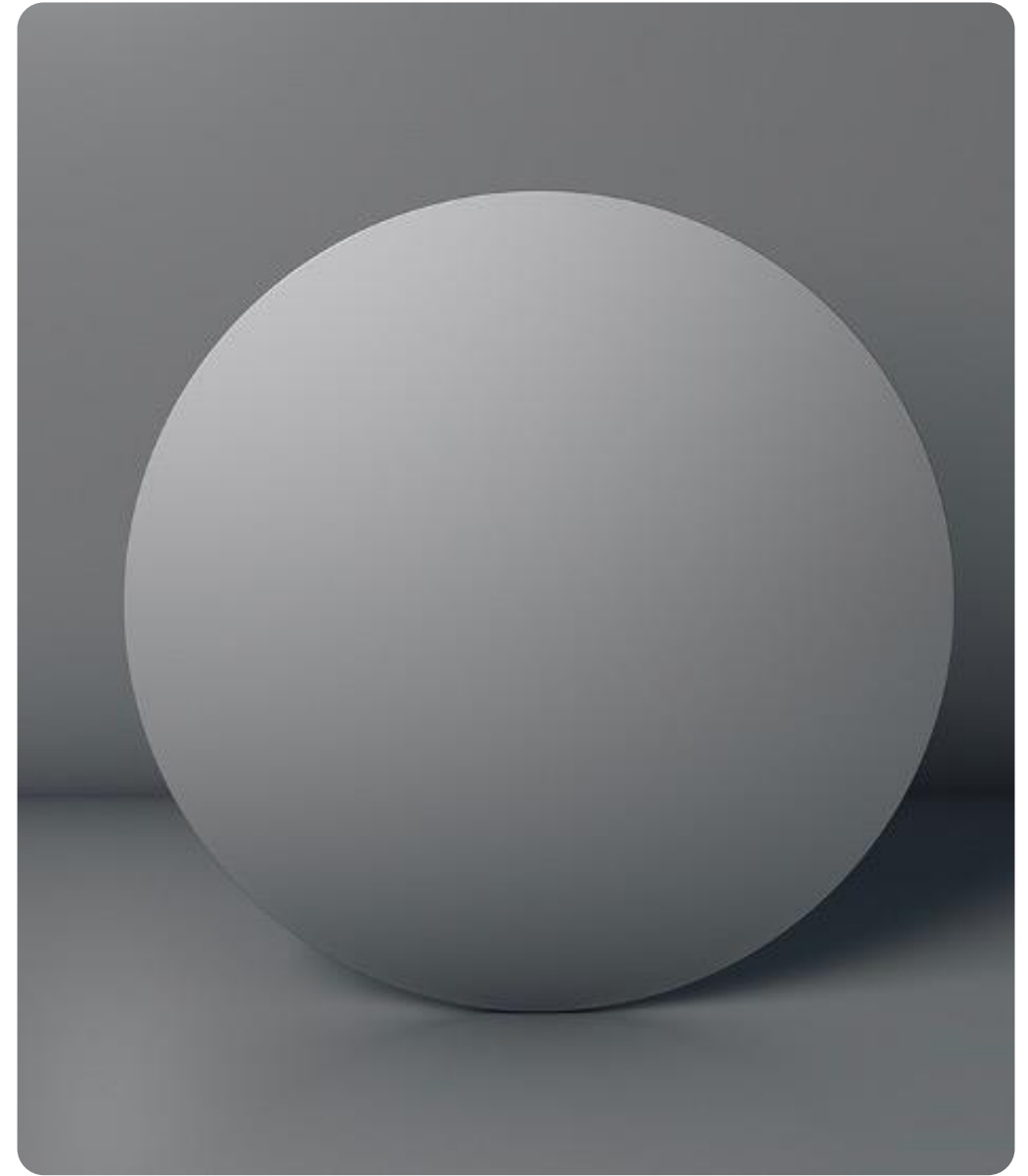




The Bias Sphere

COMPLIANCE > AI COMPLIANCE

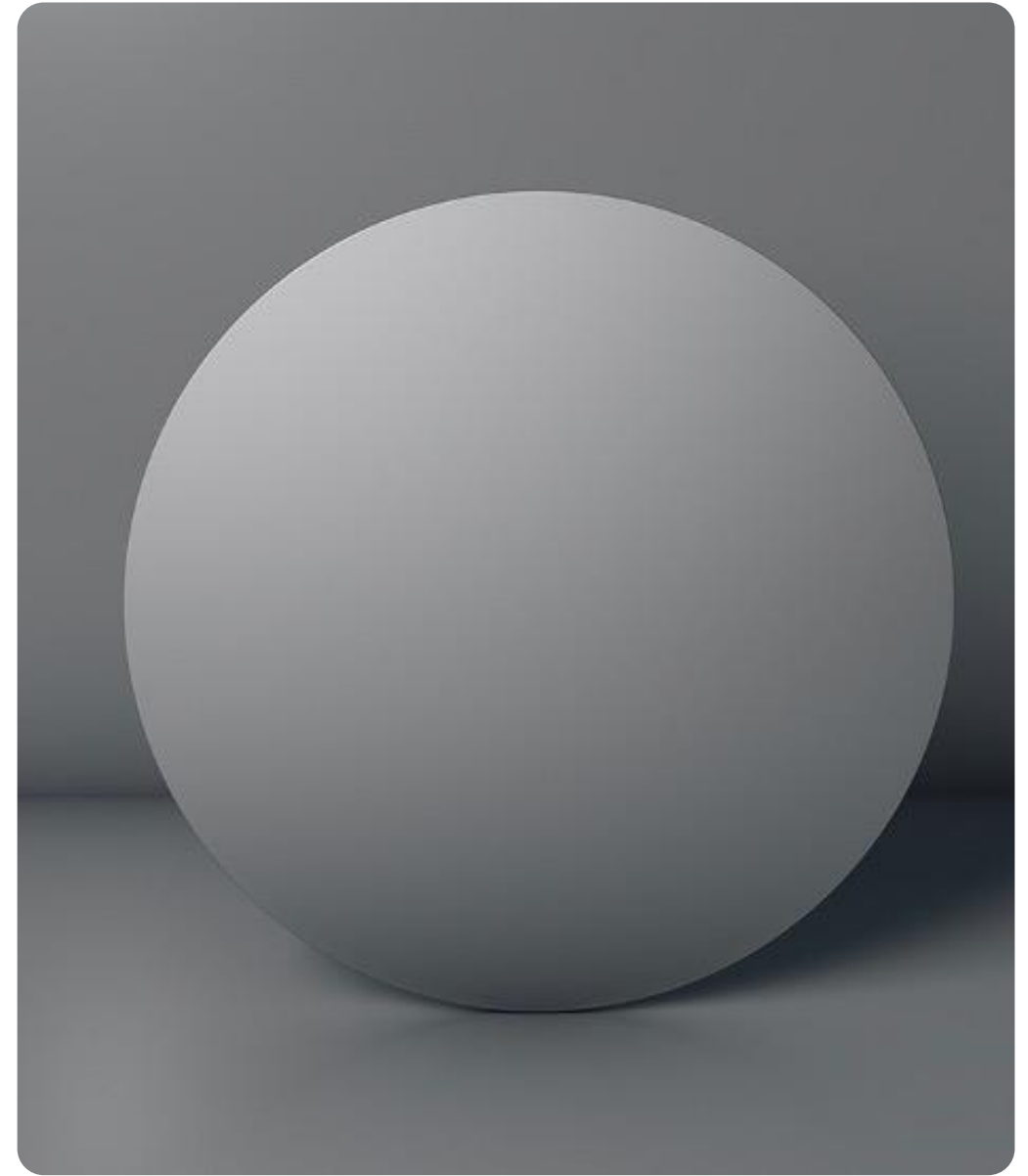
- Unilinear models of anti-discrimination are bound to fail
- SV Caltrain example
- Bias is a sphere; can, and will happen in every direction
 - Any enterprise
 - Any AI model



The Bias Sphere

COMPLIANCE > AI COMPLIANCE

- Achieving, seeking equilibrium (a point of 0, 0, 0 bias) requires constant monitoring and adjustment
- Leveraging anti-bias technology





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Questions?

