Taskforce for Responsible AI in the Law

Interim Report to the State Bar of Texas Board of Directors

Introduction

In 2023, under the leadership of State Bar President Cindy Tisdale, the Taskforce for Responsible AI in the Law (TRAIL) was formed to address the growing impact of Artificial Intelligence (AI) in the legal profession. The taskforce has worked to identify ways that the emergence of new AI technology might affect the practice of law and how lawyers, judges, and the State Bar should respond. The work of TRAIL focuses on crafting guidelines, navigating challenges, and embracing the potential of AI within the legal profession.

This interim report represents an initial step in understanding the integration of AI within the legal profession. It highlights the taskforce's progress and ongoing efforts, underlining the complexity and scope of the work still required. This document serves as a marker of our current understanding and the groundwork laid, pointing towards a comprehensive and more detailed final report. The emphasis is on continued research, collaboration, and thoughtful development in this rapidly evolving landscape. Regulation and technology will both continue to evolve over the course of this work. None of the preliminary thoughts described below should be taken as any formal recommendation, but rather reflect preliminary concepts being considered by the taskforce.

Executive Summary

The TRAIL Interim Report includes a variety of recommendations being considered across different areas of legal practice, with a focus on the ethical and practical integration of AI. These proposals, while still under review and not finalized, cover:

1) **Cybersecurity**: encouraging awareness among lawyers about possible risks associated with using AI tools, including third party access to sensitive information
2) **Education and Legal Practice**: recommending the inclusion of AI topics in professional education for both lawyers and judges and proposing targeting or increasing attorney's continuing legal education (CLE) hours to include AI and technology issues germane to the practice of law
3) **Legislative, Regulatory, and Legal Considerations**: suggesting the review and monitoring of legislation, regulation, and case law relevant to AI in legal practice, and considering the development of AI-focused legislative proposals
4) **Ethical and Responsible Use Guidelines**: developing recommendations regarding generative AI use that address compliance with attorney ethics and advertising regulations, and offering guidance on the ethical use of AI in legal practice
5) **Access and Equity**: proposing support for legal aid providers in accessing AI technology and potential technologies to enhance individual access to the justice system
6) **Privacy and Data Protection**: examining the implications of privacy laws on AI and proposing best practices for handling personal data in AI applications
7) **AI Summits and Collaborative Efforts**: suggesting the organization of AI summits for knowledge sharing and collaboration among stakeholders

Mission Statement

The Taskforce for Responsible AI in the Law is focused on educating Texas practitioners and judges about the benefits and risks of AI and fostering the ethical integration of AI within the legal

profession. The mission of the taskforce is to explore the uncharted frontiers of AI in the legal profession, approaching this new world with caution and optimism and ensuring that technology serves the legal community and the public without compromising the values central to our profession. The taskforce will investigate how legal practitioners can leverage AI responsibly to enhance equitable delivery of legal representation in Texas while upholding the integrity of the legal system, and the taskforce will make recommendations to the State Bar's Board of Directors consistent with this goal.

Vision Statement

The taskforce envisions a future where the integration of AI in the legal profession is both innovative and principled. Striving to lead the way in Texas and beyond, our focus is on crafting standards and guidelines that enhance legal practice through AI, without sacrificing the core values of justice, fairness, and trust. In this bold new era, we will lead with care and optimism, ensuring that the transformative power of AI serves the legal community and the public with excellence and integrity.

Purpose of the Report

This report serves as an interim report to the Board of Directors concerning the work of the Taskforce for Responsible AI in the Law, its preliminary findings, recommendations that are under consideration, and proposed future activities of the taskforce.

Scope and Limitations

The material outlined in this interim report are preliminary thoughts, many of which will require additional investigation. The potential recommendations listed are currently under review and consideration by the taskforce and are reported here to give the board an opportunity to consider the possible recommendations and provide the taskforce with feedback and direction for its work. The topic of AI has attracted the attention of the media, academia, and government. It is a broad issue with implications for almost every facet of society. The taskforce's attention, however, is limited to consideration of the ramifications of AI for the practice of law.

Subcommittee Insights

The taskforce began its work by identifying issues in the legal profession that may be affected by AI. A subcommittee was assigned to each issue. The initial reports from the subcommittees are included as appendices to this report, and what follows is a summary of the issues identified by each subcommittee and the tentative recommendations that may be proposed at a later date for action by the State Bar of Texas or by other stakeholders in the legal sphere. These tentative recommendations are only proposals at this stage; the Taskforce has not reached a consensus on these proposals and is not asking the State Bar Board to take any action at this time.

Cybersecurity

Overview of the Issues

All lawyers and clients rely on information technology, the Internet, and cloud computing, which means that we all face exposure to cybercrime. Cybercriminals could use AI to be disruptive, spread malware, spread disinformation, and commit fraud and theft, but AI can also be a tool to help lawyers and clients predict or protect against cybercriminals' behavior in the future.

Potential Recommendations

The State Bar should help lawyers become more aware of the risks associated with cybercriminals and in particular the use of AI to hide cybercriminal behavior. The State Bar may wish to consider:

1) including cybersecurity and AI training in CLE events for all lawyers
2) creating an AI toolkit on the State Bar's website
3) publishing articles on cybersecurity threats to lawyers and law firms in the State Bar Journal and section publications

The State Bar should team up with the Chief Information Security Officer (CISO) community to learn more about their perspective on cybercriminals' use of AI.

Cybersecurity Concerns

Here are specific AI cybersecurity concerns that should be addressed:

Malware	Malware is software designed to disrupt, damage, or gain access to a computer system. Often employees unwittingly fall victim to email phishing attacks allowing in disruptive malware. Regular cybersecurity training of employees to prevent them from falling for email phishing attacks is recommended since cybercriminals use AI to fool individuals into opening or responding to fake emails.
Business Email Compromise ("BEC" or "Spearphishing")	When a cybercriminal sends an email or phone call posing as the CEO and requests that the CFO wire monies to a bank is an example of BEC. Cybercriminals are using AI regularly to hide their behavior, including using generative AI tools to replicate the voice of an executive to further their criminal act. Regular cybersecurity awareness training is also recommended.

Privacy

Overview of the Issues

How Does Privacy Law Apply to AI?

Privacy laws apply broadly to protect personal data, and AI is no exception. U.S. state consumer privacy laws and sectoral privacy laws may apply based on the involvement of personal data in any component of AI. International privacy laws applicable to many U.S.-based companies, by nature of the company processing international personal data, could also apply to AI. Notably, proposed legislation to regulate AI has acknowledged the application of privacy laws.

Where Is Personal Data in AI?

Personal data can be found in the data sets used to train AI. Personal data can also be input into an AI tool (e.g., submitting personal data in a prompt to ChatGPT). AI can also be used to make recommendations or inferences that affect privacy.

Potential Recommendations

The AI and Privacy Committee will continue its study of how privacy laws apply to AI and consider any specific implications for Texas lawyers in order to provide pragmatic recommendations to the Texas Bar. Contingent upon the committee's work, the taskforce may consider recommendations regarding the following:

1) how to identify when AI uses personal data
2) best practices for protecting personal data involved in AI

Ethics and Responsible Use

Overview of the Issues

The use of AI in the legal profession raises ethical issues that will need to be addressed by the legal profession.

Ethical Lapses and Misuse of Generative AI

Early instances of lawyers using generative AI in drafting have exposed the potential for ethical lapses due to the misuse of generative AI. Notable instances include:

1) In *Mata v. Avianca Airlines* lawyers submitted a brief with fabricated judicial decisions, leading to sanctions.
2) In *Ex Parte Lee*, a lawyer used a generative AI tool that created nonexistent case citations.
3) A Colorado lawyer was suspended for using fictitious cases from ChatGPT in a legal motion.
4) A Los Angeles law firm was sanctioned for using ChatGPT to draft briefs that included fabricated cases.

Risk of Ineffective Assistance of Counsel

There's a concern about the quality of legal representation, as evidenced by a case in Washington, D.C., where a defendant cited ineffective assistance due to their attorney using generative AI for a closing argument without disclosing financial ties to the AI's developer.

Violation of Ethical and Professional Conduct Rules

Texas lawyers face the risk of violating various disciplinary rules, including:

1) Rule 1.01 on providing competent representation
2) rules related to diligence, candor to the tribunal, supervision of work, and protecting client confidentiality
3) potential violation of Rule 1.05 regarding safeguarding client information, especially when using confidential data in AI prompts in unsecure environments
4) ethical considerations in charging reasonable fees for services enhanced by generative AI tools

Need for Ethical Guidance and Oversight

Ethical guidance and oversight are needed regarding the use of generative AI in legal practices. This includes publishing ethics opinions that address appropriate generative AI use and establish what constitutes reasonable fees and costs in relation to AI use and compliance with ethics and advertising regulations.

Recommendations from Other State Bar Associations

Various bar associations, including those in Florida and California, are proposing guidelines for lawyers using generative AI. These guidelines emphasize the need for lawyers to:

1) protect client confidentiality
2) provide diligent and competent representation
3) supervise both lawyers and nonlawyers in their use of AI
4) communicate adequately with clients about AI use
5) ensure compliance with relevant laws, including intellectual property law

Potential Recommendations

1) Consider having the State Bar of Texas (SBOT) Mandatory Continuing Legal Education (MCLE) Committee promulgate a change to the existing MCLE requirements, making it mandatory that 1.0 hour of an attorney's annual MCLE requirement be in technology.
2) Consider requesting that the Professional Ethics Committee of the State Bar of Texas prepare and issue an ethics opinion providing guidance to Texas practitioners on the ethical dimensions of use of generative AI. This might echo the subjects addressed by the Florida and California ethics proposals discussed in this report. In addition, such an opinion might be along the lines of the Professional Ethics Committee's Ethics Opinion 680 in 2018, which addressed attorneys' use of cloud computing technology, and which addressed multiple ethics concerns.
3) Consider requesting that Texas Bar CLE include that, for at least the next year, one of the subjects at any Texas Bar CLE program be in the area of generative AI use.
4) Consider recommending to the Texas Center for the Judiciary that an educational program on generative AI and its ethical dimensions be added to the center's course offerings for Texas judges. This would provide trial and appellate judges with necessary education on attorney use of generative AI and assist in consideration of potential measures for judicial oversight.
5) Consider recommending to the Supreme Court of Texas Rules Committee that it explore Texas Rules of Civil Procedure 13 on the Effect of Signing Pleadings, Motions, and Other Papers and evaluate whether additional language or guidance is necessary to provide Texas lawyers with additional information regarding AI-generated misinformation or hallucinations, as well as to provide Texas judges with adequate remedies regarding same.
6) Consider increasing Texas lawyers' awareness of the benefits and risks of generative AI by increasing the number of CLE offerings and publications regarding this subject. For example, this might include a special issue of the Texas Bar Journal exploring topics related to generative AI.
7) Consider recommending that the State Bar of Texas explore, with one or more AI vendors, a working relationship that would result in a benefit for use by Texas member lawyers. This might, for example, involve discounted access to AI tools, along the lines of the State Bar's previous relationship with Fastcase for legal research.
8) Consider recommending that the State Bar of Texas hold an annual or semi-annual "AI Summit," at which stakeholders from multiple State Bar-affiliated entities could gather to learn about generative AI and share best practices regarding its use. Such an event might also involve

reviewing the work of other state bars and/or other AI taskforces around the country and sharing information regarding the same.

Judiciary

Overview of the Issues

The use of AI in the courts raises ethical and practical issues that should be addressed. These issues include the following.

Standing Orders Prohibiting Litigants from Using GenAI tools Is Not Generally Helpful

Because some attorneys have submitted briefs that contain nonexistent cases, some courts have been entering standing orders that require parties to certify whether any generative AI tool has been used and that all arguments, cited cases and exhibits have been reviewed by a human prior to filing. Because many legal research tools will (or already do) incorporate generative AI into their product, these standing orders may result in litigants disclosing their use of Westlaw, Lexis, Grammarly, etc. This is likely an unhelpful feature, and courts already have the ability to appropriately sanction an attorney for filing a motion or brief that contains false statements. It may also discourage the development and adoption of tools that, used properly, could enhance legal services.

Use of Generative AI Tools by Judges, Law Clerks, and Court Staff

The Texas Code of Judicial Conduct is written using broad language. Arguably, a judge relying solely on an AI tool with no subsequent verification would violate Canon 1 of the Texas Code of Judicial Conduct (upholding the integrity and independence of the judiciary).

AI tools may be helpful in drafting rough drafts of any order, but it is advisable that generative AI tools that have been developed for legal use be utilized, rather than generic generative AI tools that may be developed with nonlegal related material and may not be updated regularly with recent cases and statutes.

Confidentiality and Privacy Concerns

If the decision is made to use a nonlegal developed generative AI tool, caution should be exercised to ensure that only public information is entered and that no sealed, personal health information, or sensitive personally identifiable information is inserted into any prompt.

Security Concerns

As with all software or apps that are installed onto court-issued computers, tablets or other devices, it is recommended that any generative AI tools be vetted prior to use. The terms of service of any generative AI tool should be reviewed for industry standard commitments to quality and relevant representations and warranties, including to determine what, if anything, is done with prompts or documents ingested into the tool. How was the tool validated for accuracy and completeness? Are the prompts or documents used to further train the AI tool? Upon the matter's conclusion, how are the prompt histories or documents ingested into the system deleted? What representations are made regarding the AI developer’s cybersecurity measures?

Training

Judges should make law clerks and staff aware of what, if any, acceptable use of generative AI tools the judge authorizes. If the judge allows law clerks and staff to use appropriate legal-based

generative AI tools, judges and court personnel should be trained on how to use the tool (i.e., how to adequately create prompts).

Evidentiary Issues

An immediate evidentiary concern emerges from "deepfakes." Using certain AI platforms, one can alter existing audio or video. Generally, the media is altered to give the appearance that an individual said or did something they did not. The technology has been improving rapidly.

What is more, even in cases that do not involve fake videos, the very existence of deepfakes will complicate the task of authenticating real evidence. The opponent of an authentic video may allege that it is a deepfake in order to try to exclude it from evidence or at least sow doubt in the jury's minds. Eventually, courts may see a "reverse CSI effect" among jurors. In the age of deepfakes, jurors may start expecting the proponent of a video to use sophisticated technology to prove to their satisfaction that the video is not fake. More broadly, if juries—entrusted with the crucial role of finders of fact—start to doubt that it is possible to know what is real, their skeptic
ism could undermine the justice system as a whole.

Although technology is now being created to detect deepfakes (with varying degrees of accuracy), and government regulation and consumer warnings may help, no doubt if evidence is challenged as a deepfake, significant costs will be expended in proving or disproving the authenticity of the exhibit through expert testimony.

In cases where a party challenges an exhibit as a deepfake or not authentic, judges should consider holding a pretrial hearing to consider the parties' arguments and any expert testimony.

Pro Se Litigants and Generative AI

While there has already been substantial publicity about inaccurate ChatGPT outputs and why attorneys must always verify any draft generated by any AI platform, the bench must also consider the impact of the technology on pro se litigants who use the technology to draft and file motions and briefs. No doubt pro se litigants have turned to forms and unreliable internet material for their past filings, but ChatGPT and other such platforms may give pro se litigants unmerited confidence in the strength of their filings and cases, create an increased drain on system resources related to false information and nonexistent citations, and result in an increased volume of litigation filings that courts may be unprepared to handle.

Potential Recommendations

1) As nonlawyers, pro se litigants are not subject to the Rules of Professional Conduct, but they remain subject to Tex. R. Civ. P. 13. The current version of Rule 13, however, requires that the pro se litigant arguably know, in advance of the filing of a motion, that the pleading is groundless and false. The Texas Supreme Court Rules Advisory Committee may wish to consider whether Rule 13 should be modified.
2) Consider recommending that the State Bar post information for the public on its website about the responsible use of AI by pro se litigants.
3) Consider developing a list of "best practices" for the use of AI in the courts.
4) Consider developing or providing verified tools to guide constructive use of generative AI for pro se litigants.

Governance

Overview

The governance of AI entails rules and standards surrounding the responsible development and use of AI, and the enforcement of such rules. Industry leaders have acknowledged that AI governance or regulation is important and necessary to protect the public. AI governance also includes "soft law" principles that should be used for the development of technology used for the provision of legal services, in courts, or to increase access to justice.

Current State of AI Governance Initiatives

Since 2022, there has been proposed legislation to regulate the use of AI in numerous jurisdictions across the world. Certain trends in the proposed legislation have arisen.

Defining AI

Some of the proposed definitions of AI attempt to focus on generative AI and large language models. There is concern over definitions that are too broad and include common technology like the calculator or that, conversely, are too narrow and could be outdated before the law goes into effect. For example, older types of AI, such as machine learning, can also present risk in legal practice.

High Risk Use of AI

Proposed legislation tends to focus on a risk-based approach where a high-risk use of AI would result in legally significant or similar effects on the provision or denial of (or access to) employment, education, housing, financial or healthcare services, and other significant goods, services, and rights. Variations of the term "legally significant or similar effects" have spread from the E.U. to the U.S. and appear to be a likely standard of measuring the effects of decisions by AI. Whether humans are involved in the decision making also impacts the level of risk. Governance of AI often turns on separating low, medium, and high-risk use cases and applying rules fit to risk level.

Transparency

Proposed legislation in the U.S. and in other countries often seeks to incorporate obligations on deployers and/or developers to make public disclosures of the training data, personal information collected, decision-making process, and impact of the AI output. Competing concerns include intellectual property rights of developers and deployers.

Assessments

Higher risk uses of AI can trigger obligations to conduct and document risk assessments and pre- and post-launch impact testing. In some high-risk cases, red teaming (adversarial testing) of generative AI may become a standard for developers or potentially deployers.

Other Law

Proposed legislation does not purport to override other existing laws like HIPAA, COPPA, consumer privacy, confidentiality, etc.

Issues for Consideration

It is currently unknown what exactly will be required of lawyers and law firms who utilize AI tools. For example, an assessment of high-risk uses of AI and disclosure of AI-based decisions may be required based on proposed legislation.

It is possible that many attorneys and/or law firms could qualify as a deployer of AI, and the use of AI without meeting the prerequisites imposed by statutory obligations such as making appropriate disclosures and conducting a risk assessment could result in a risk of financial and reputational harm.

Potential Recommendations

The AI and Governance Subcommittee will continue studying any proposed AI legislation and other AI governance initiatives to develop pragmatic recommendations to the Texas Bar. The subcommittee will also consider principles and norms that should guide the development of legal AI tools. Contingent upon this committee's work, the taskforce may consider recommendations regarding the following:

1) the tracking and monitoring of legislation and governmental agency regulations for potential publication to Texas attorneys, so that they can use AI in accordance with legal obligations
2) identification of governance trends and the possible consideration of AI-focused legislative proposals in Texas
3) methods for creating and evaluating values and norms for the use of AI in legal technology, including tools to help ensure that results generated by AI tools are valid and unbiased
4) using information gathered in monitoring trends and legislation, provide a sample template allowing attorneys and law firms to evaluate and/or document their use of AI

Employment Law

Overview

Whether you are a Texas lawyer representing Texas employees or Texas employers, or a lawyer litigating on behalf of or against national employers operating in Texas, it is critical to be aware of the many ways in which AI is impacting the modern workplace. Use of AI within law firms for employment or HR purposes can also raise risks and obligations.

Widespread Use of AI in Employment Practices

AI tools are being extensively used by businesses for screening job applicants. AI is also employed in various aspects of human resource management, including recruitment, hiring, training, retention, and evaluating employee performance.

Potential Bias and Discrimination

Despite the potential to eliminate bias, current AI applications might inadvertently perpetuate existing biases, leading to unintentional discrimination. Examples include:

1) AI tools rejecting applicants with resume gaps, potentially discriminating against individuals with disabilities or those who took parental leave
2) overlooking older workers due to smaller digital footprints on social media and professional platforms

Legislative Responses to AI in Employment

There's an increasing trend in city and state legislatures to introduce AI-focused bills. Notable examples include:

1) California's draft AI regulation and legislative proposals to regulate AI's use in employment
2) New York City's Local Law 144 requiring bias audits for automated employment decision tools
3) proposals in other states like Illinois and Vermont focusing on regulating AI in employment decisions and employee monitoring
4) At the federal level, there are proposals like the Artificial Intelligence Research, Innovation, and Accountability Act of 2023 (AIRIA) and the Algorithmic Justice and Online Platform Transparency Act aimed at regulating discriminatory algorithms and allowing government intervention against AI-induced discrimination.

Potential Recommendations

This committee will continue to study what developments may occur in this area. Potential recommendations that the taskforce may later recommend include:

1) advising the Labor and Employment Section to list all legislation and regulations that practitioners in this area should be aware of
2) inasmuch as lawyers are employers as well, recommending that the State Bar publish a listing of legislation and regulations in this area

Family Law

Overview

Texas family law attorneys tend to be early adopters of technology. Family law is a fast-paced field with a high volume of cases, demanding a high level of professional efficiency.

Digital Evidence in Family Law

With over 85% of Americans using smartphones, digital media such as audio recordings, emails, texts, social media posts, and GPS data have become ubiquitous in family law cases. The handling of these extensive and voluminous personal records is a critical aspect of family law practice.

Misuse of Digital Data

Given the emotionally charged nature of family law and the inherent lack of trust between parties, there's a notable issue with the misuse of digital data.

AI's Role in Enhancing Efficiency

AI has the potential to significantly enhance efficiency in family law, similar to past technological advancements like fax machines, scanners, email, and eFiling. However, AI differs in its autonomy, operating without skilled oversight and ethical constraints, and producing sophisticated results.

Use of AI by Self-Represented Litigants

A majority of Texas family law cases involve litigants without legal counsel. Many of these self-represented litigants turn to free online AI solutions to compensate for their lack of legal knowledge.

Legal Aid and AI

Legal aid associations are developing AI avatars to assist clients with inquiries and court preparation.

AI's Potential for Family Law Cases

Family law attorneys should consider utilizing AI to streamline document management, increase efficiency, and enhance communication with clients, while safeguarding courts against potential misuse and avoiding ethical entanglements.

There are many potential benefits of incorporation of AI systems for family law attorneys:

1) **Discovery**: AI document management systems can be used to streamline discovery by proposing and narrowing relevant discovery requests and objections. Voluminous documents can be sorted and scanned to identify responsive records and flag privileged communications that might otherwise escape detection. These systems can eliminate duplication, identify frivolous, repetitious, and bad faith responses, objections, and nonanswers, and then draft requests for sanctions or to compel.
2) **Document Management**: AI systems can independently evaluate records, categorizing them and organizing them by content. These systems can summarize the records as a whole or by category, no matter how voluminous, and then retrieve certain records based on natural language descriptors. Rule of Evidence 1006 summaries can be easily generated and readied for submission in court in lieu of offering separate and numerous exhibits.
3) **Contracts**: AI systems can draft, review, compare, and summarize contracts and drafts, to facilitate the creation of pre- and post-nuptial agreements, AID's, and other settlement agreements.
4) **Improved Communications**: Client hand-holding consumes a significant amount of time for lawyers and staff, particularly in solo and small firms. Online chatbots and virtual assistants can provide simple answers to common client questions, easing the administrative burden on staff, increasing efficiency, and eliminating wasted billable hours. Witness prep for depositions and trial can be bolstered or even replaced with AI training. This is particularly useful for self-represented litigants who have no other source of guidance. Legal Aid services are already implementing online training bots for clients and low income nonclients alike which may soon be made freely available to the general public.
5) **Trial Preparation**: By analyzing strengths and weaknesses of claims, AI systems can identify evidentiary gaps and recommend additional discovery requests, responses, and necessary witnesses. These systems can recommend and create demonstrative exhibits that appeal to certain judges or jurors. Trial briefs can be generated during contested hearings for submission during closing argument. Postjudgment motions can be generated from analysis of transcripts, for use as motions for new trial and polished appellate briefs.
6) **Tracing**: Successful tracing of separate property requires meticulous record keeping and clear presentation of complex concepts. AI can apply and compare various tracing methods and identify potential gaps that could be fatal to a tracing analysis. It can prepare timelines and summaries to bolster the presentation, possibly eliminating the need for expert testimony in some tracing cases.
7) **Social Media**: There is rarely a family law hearing that does not involve social media evidence. Unfortunately, there are many social media platforms, and search features are generally inadequate for sweeping and thorough inspection. AI can continually scan and monitor social

media for useful information about parties or witnesses, or posts indicating bias of potential jurors. This would be of great value in presenting motions to transfer venue under TRCP 257.

Potential Risks

While the potential benefits are numerous, so too are the risks of misuse and abuse. Family law lawyers must be able to anticipate, identify, and respond to these situations.

1) **Falsified Records**: Free AI websites can easily create fake, manipulated, forged, and pseudo documents and records that frequently escape detection. Government records (passports, driver's licenses, search warrants, protective orders, deportation orders) and personal records (medical, drug tests, utility bills, real estate documents, bank statements) can be obtained in seconds, for a minimal cost. Fake emails, texts, audio recordings, and social media posts may be indistinguishable to a nonexpert without application of AI detecting software.
2) **Medical Lay Opinions**: Parental observation and opinion of their child's medical, mental and emotional condition is commonly admitted in family law hearings. The basis for these opinions is explored on voir dire or during cross examination to test the credibility of the parent's testimony. Parents often report relying on input from the children's treating physicians. However, as AI chatbots replace personal interactions with medical professionals, opinions based on doctor's recommendations may be deemed unreliable. This is exacerbated by the recent trend of AI systems being quietly trained by unsophisticated workers to anthropomorphize communications—emoting to show seemingly real empathy and thus soothe frightened patients. Mimicry of empathy and humanity by AI can manipulate human emotion and sway outcomes in imperceptible ways.
3) **Editing of Digital Media**: "Deep fakes" are fictitious digital images and videos. They are created with simple, free apps currently available on both Apple and Android smart phones. With a few clicks or taps, AI can manipulate digital media and create seemingly authentic photos and videos that easily fool unwary recipients. AI detectors flag suspicious files, but they are not foolproof. Attorneys should routinely run all digital photos through AI detectors.
4) **Caller ID spoofing**: Spoofing is the falsification of information transmitted to a recipient phone's display that disguises the identity of the caller. The technique enables the user to impersonate others by changing the incoming phone number shown on the receiving phone. In this way, someone can fabricate abusive, repeated, or harassing calls and texts seemingly originating from one spouse, parent, paramour, child, law enforcement or CPS. The perpetrator can create a mountain of false evidence while hiding behind AI anonymity. AI systems can be instructed to inundate a recipient with nonstop harassing messages or calls, without leaving any digital footprint on the perpetrator's phone or computer. By evaluating years of messages and emails, the AI system can mimic the victim's speech and emoji patterns—a key element of admissibility. Further, AI spoofers can be used to fraudulently obtain or circumvent liability for life-long protective orders under Tex. Code Crim. Pro. 7b for stalking by digital harassment. And because these systems do not work through the service provider, third-party discovery from the phone company will appear to confirm that the calls or messages originated from the spoofed number, lending an air of credibility to the ruse.
5) **Voice Cloning**: Voice cloning apps and websites allow someone to convincingly spoof the voice of any other person with only a single audio sample of the target. Someone with dozens of voicemails and recorded conversations from years of marriage, or even a recorded deposition, can use these systems to create audio files that require an AI detector or forensic expert to detect.

6) **Data Analysis Manipulation**: AI systems can be used to subtly modify large data sets, corrupt legitimate data analysis, and generate false conclusions that appear legitimate and are only detectable by competing expert review. They can fabricate peer review and approval, circumventing the rigorous gatekeeping process that would otherwise be required for admissibility. This allows lay witnesses to present false opinions as verified scientific fact, or as the basis for a law-expert opinion.
7) **Dissemination of Misinformation**: As described above, AI can monitor and find useful social media evidence. However, it can also wield the power of social media to maliciously generate false information and evidence. AI can be unleashed to wage a social media disinformation campaign. It can flood various platforms in a reputation manipulation campaign targeting the judge, opposing counsel, parties, or witnesses. It can untraceably tamper with or poison a jury pool, spreading lies or false legal positions and authority. It can significantly damage the reputation of court participants, enabling the other side to provide negative reputation testimony to undermine the credibility of opposing witnesses. And these efforts could create sufficient taint to legitimately support a motion to recuse or venue transfer motion under TRCP 257.
8) **Facilitated Hacking**: Hackers use AI systems to breach secure cloud databases and obtain unauthorized access to sensitive personal information. Client's financial, medical, or personal communications, including attorney-client privileged emails, could be surreptitiously obtained. Moreover, hackers can target law firms seeking to break into their secure servers, obtaining access to all privileged records and client files. Lawyers should question the source of such information, so as not to run afoul of criminal prohibitions on use of stolen digital data, such as the Texas Penal Code 16.04. Additionally, these systems can hack dating apps and target unwary spouses for romantic entrapment using AI chatbot baiting.
9) **Voluminous Records**: One of the great benefits of AI is the handling of voluminous records: thousands of documents, millions of emails, or decades of bank statements and canceled checks. Through AI analysis, there is the possibility that all could be categorized and summarized, potentially one day without human oversight. However, there remain important questions about the validation of such tools and the ongoing role of human oversight. The committee will explore how to address risks presented by greater use of this technology.
10) **Local Rules and Court Practices**: AI systems can analyze a court participant's public life and social media presence, seeking leverage for inappropriate strong-arming and manipulation. In a similar way, the systems can be unleashed on a judge's personal and professional history, determining personal predilections, biases, and likely outcomes. The old saying, "A good lawyer knows the law. A great lawyer knows the judge," takes on new meaning when the knowledge includes a detailed and thorough psychological and historical evaluation of the judge.

Potential Recommendations

1) Increase Texas lawyers' awareness of the benefits and risks of AI by expanding the number of CLEs and articles regarding same.
2) Consider 1 hour of MCLE per year requirement to meet the technical competency and proficiency requirements of Texas Disciplinary Rules of Professional Conduct, Rule 1.01 Comment 8.
3) Examine and review TRCP 13 Effect of Signing Pleadings, Motions, and Other Papers: Sanctions to ensure that trial and appellate courts have adequate remedies regarding AI- generated misinformation or hallucinations.
4) Increase and support AI integration for low-income and pro bono legal service providers.

5) Annually review AI and its utilization and risk for Texas lawyers.
6) Continually review other State Bar and national legal organizations' reviews and recommendations regarding AI and the legal profession.
7) Periodically review state and federal laws regarding AI and advise Texas lawyers of any changes that would or could affect the practice of law.
8) Ensure that Texas judges are routinely provided with current information regarding the benefits and risks of AI.
9) Begin exploring with AI vendors a working relationship for potential use by Texas lawyers, similar to the State Bar's access to Fastcase.
10) Update predicate manuals to have enhanced materials and examples for offering or challenging digital evidence.

Healthcare

Overview

Complex Regulation of Medical AI

The U.S. Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS), state medical boards and others have overlapping and complementary jurisdiction over AI in healthcare and life sciences. The use of AI in healthcare raises important opportunities for new treatments, improved medical decision making, and access to care and defragmentation of the healthcare system. At the same time, AI in healthcare poses unique risks and challenges to existing regulatory and legal rules such as the learned intermediary and the distinction between devices and practicing medicine. Lawyers in this space will face uncharted territory as the technology evolves.

Dependence on IT, the Internet, and Cloud Computing

Healthcare providers heavily rely on information technology, the Internet, and cloud computing, necessitating the protection of patient data privacy, especially when AI is involved.

HIPAA Compliance and Patient Data Protection

Healthcare providers are bound by the Health Insurance Portability and Accountability Act (HIPAA) to protect patient health information (PHI). They use Electronic Health Record (EHR) systems, such as EPIC and Cerner, where AI is likely utilized to assist healthcare providers and business associates.

Third-Party Software and AI Risks

Given the reliance on cloud computing, it's probable that third-party Software-as-a-Service (SaaS) providers use AI. Large cloud computing providers like Amazon offer AI-as-a-Service (AIaaS) to manage vast data volumes, which healthcare providers and business associates may use. However, the usage of AI by SaaS can pose risks to PHI if healthcare providers do not thoroughly review and negotiate online terms of service, click agreements, and privacy policies.

Complexity of AI in Healthcare

AI is involved in various healthcare aspects, including record keeping, diagnostic imaging, triage, prescription dispensing, billing, staffing, and patient satisfaction evaluation. The integration of AI in healthcare legal departments combines the complexities of healthcare, AI, and the law, necessitating tailored guidance.

Potential Recommendations

1) **Engagement with Healthcare IT Professionals**: The State Bar should interact with Chief Legal Officers (CLOs), Chief Information Officers (CIOs), Chief Privacy Officers (CPOs), Chief Information Security Officers (CISOs), and risk management professionals to understand their perspective on AI use in healthcare.
2) **Public Information and Awareness**: Provide accessible information to lawyers and the public about AI's current use in healthcare, its impact on patient care, and patient rights.
3) **Continuing Legal Education Programs**: Offer CLE programs for lawyers and judges to understand how healthcare providers, device manufacturers, covered entities, business associates, and subcontractors use AI. This understanding is crucial for the protection of safety and efficacy, patient care and rights, physical judgement, and PHI and to assist these entities effectively.

Legal Education

Overview

Importance of Understanding AI in Legal Education

Recognizing the significant influence that AI has on the ethical practice of law and case management in courts, it's essential for law school education to address how AI affects these areas. This understanding is crucial for preparing law students for their future roles as lawyers and judges.

AI as an Educational Tool

AI can be beneficial for law students to better comprehend the practice of law, which would ultimately benefit all lawyers and judges. However, there's a concern that an overreliance on AI could lead to a deficiency in the essential skills and knowledge required for legal and judicial careers.

Experiences with Generative AI in Law Schools

Early experiences with generative AI reflect some of the persistent concerns over its use by law students.

1) The University of Michigan Law School prohibited the use of ChatGPT on student application essays.
2) The University of California Berkeley School of Law adopted a formal policy on the use of AI by students but did not pass an outright ban.
3) In a study analyzing ChatGPT's performance on the bar exam, Chicago-Kent College of Law professor Daniel Katz and Michigan State College of Law professor Michael Bommarito found that the AI got answers of the Multistate Bar Exam correct half of the time, compared to 68% for human test takers.
4) Law professors at the University of Minnesota Law School conducted a study which showed ChatGPT performing on average at the level of a C+ student, earning a low but passing grade in four courses. The same researchers authored a follow-up study, Lawyering in the Age of Artificial Intelligence, in November 2023. It found that while use of AI led to consistent and significant improvements in the speed of law students' work on common legal tasks (enhancing it by as much as 32%), AI did not really improve the quality of the work.
5) Legal writing professors interviewed by the ABA Journal who used ChatGPT in writing classes concluded that the AI tool can model good sentence structure and paragraph structure and aid in summarizing facts.

The use of AI in law schools can present the opportunity for certain efficiencies and familiarize students with technology used in practice, but AI is no substitute for a student's own analysis.

Potential Recommendations

1) **Balancing AI Use with Traditional Learning**: A practical solution suggested is to modify legal education to encourage AI use among law students. At the same time, it is recommended that students be required to orally explain their research papers to ensure they retain critical thinking and understanding skills.
2) **Collaboration with Legal Education Institutions**: The State Bar should collaborate with law school deans and law professors to focus on using AI in practical law courses, thereby enhancing the practical aspects of legal education with AI technology.
3) **Mandatory Continuing Legal Education (MCLE) on AI**: The recommendation includes the State Bar mandating MCLE courses about the ethical and practical uses of AI for young lawyers, particularly in the first five years following their passing of the bar exam.
4) **AI Summit**: Consider recommending that the State Bar of Texas hold an "AI Summit," to which deans of the ten Texas law schools will be invited and encouraged to bolster technology law offerings to students, including but not limited to generative AI.
5) **Mandatory Court on AI for Recent Graduates**: Consider a requirement for recent law school graduates, along the lines of the mandatory Introduction to practice course currently in place, to complete a CLE course on the benefits and risks of generative AI.
6) **Ongoing Study**: Consider ongoing review and study of AI-related issues by the State Bar due to its rapid evolution and the advanced rate of adoption within the legal profession. Such ongoing study could include outreach to Texas law schools and providing guest speakers on the subject of generative AI.

The State Bar should encourage law schools to address AI topics in these Law School Courses:

TOPICS	LEGAL EDUCATION POINTS
1L Courses Which Should Include AI	Legal Research Writing Communication & Legal reasoning Foundation of the Legal profession Civil Procedure Legal Analysis & Persuasion
2L & 3L Courses Which Should Include AI	Administrative Law Basic Federal Income Taxation Business Associations Civil Procedure II Comparative Law Constitutional Criminal Procedure Conflict of Laws Estates and Trusts Evidence International Law Law Office Management Professional Responsibility Remedies

	Secured Transactions

Practical Uses

The legal community in Texas would benefit from a consideration of the possible practical uses of artificial intelligence.

Potential Recommendations

1) **Educational Outreach**: We recommend the development of a self-service presentation (slide deck) covering practical use cases and examples of responsible uses of AI. Bar members can review the presentation themselves, and we also recommend that it be presented at each bar section meeting at least once in 2024. To incentivize participation, we suggest offering CLE credits to attendees.
2) **Bar Magazine Articles**: To ensure that information reaches every member of the bar community, we propose the creation of concise one- or two-page articles that cover similar content to the presentation. These can be disseminated through the bar association's email newsletters or magazines, specifically tailored to cater to a less technical audience. The aim is to provide accessible and digestible insights into the world of AI and its relevance to legal practice.
3) **Paralegal Empowerment**: Recognizing the vital role paralegals play in the legal ecosystem, we recommend dedicating a one-page article in the Texas Bar Journal and Texas Paralegal Journal. This content should be tailored to address the unique perspectives and responsibilities of paralegals, making the integration of AI concepts relevant to their daily tasks.
4) **Community Building**: Fostering a sense of community and shared learning is crucial. We are considering recommending the creation of an AI affinity group that meets quarterly. This group would serve as a platform for members to share success stories, exchange insights, and collectively navigate the challenges posed by AI in the legal profession.
5) **Business Mentor Program**: To bridge the gap between tech-forward lawyers and those seeking guidance, we would like to explore designing a business mentor program for bar members. Experienced lawyers well-versed in technology can mentor another bar member, sharing ideas on how to incorporate tech into their practice. This could be designed in coordination with supporting retiring lawyers who want to transition their practice to the next generation of attorneys.
6) **Scholarship Fund for Upskilling**: Acknowledging the financial considerations of adopting AI tools, we propose the establishment of a scholarship fund. Bar members can apply for funds to purchase AI tools or reduce the cost of upskilling during this period of technology transition for the profession. Additionally, exploring potential bar discounts on AI tools would further support this initiative.
7) **List of Social Media Resources**: We recommend compiling a list of reputable groups and associated social media accounts on LinkedIn and Facebook so that bar members can continue to learn about AI in bite-size amounts over the course of the next few years.

Justice Gap

Overview

The “Justice Gap” refers to the tremendous unmet need for legal services among low-income persons. The Legal Services Corporation (LSC) 2022 Justice Gap Study revealed that 92% of the civil legal

problems of low-income Americans did not receive any or enough legal help. Nearly three-quarters (74%) of low-income households experienced at least one civil legal problem in the previous year. A third (33%) of low-income Americans had at least one problem they attributed to the COVID-19 Pandemic. (https://www.lsc.gov/initiatives/justice-gap-research)

How Might Legal AI Help?

Legal AI technology will impact the justice gap on two fronts. First, by making lawyers more productive and thus allowing them to serve more clients, more quickly. Second, via self-help legal tools, in the form of chatbots, designed to be used directly by consumers. (https://www.lawnext.com/2023/09/thoughts-on-promises-and-challenges-of-ai-in-legal-after-yesterdays-ai-summit-at-harvard-law-school.html)

What Are the Potential Challenges or Pitfalls?

Particularly with respect to consumer self-help legal tools, there will be huge challenges in ensuring that data used in legal AI systems is valid and that legal answers consumers receive can be trusted. The subcommittee will survey Texas legal aid providers regarding how they plan to use AI tools in the provision of client services and also directly to clients in form of chatbots (Texas Legal Services Center is beginning to test chatbot technology as a component of its virtual court kiosks, only for the purpose of helping people use the kiosks (https://www.tlsc.org/kiosks)).

Potential Recommendations

The Subcommittee may study and make recommendations regarding the following:

1) strategies for ensuring that direct-to-consumer legal AI tools provide valid information that is usable and effective in helping solve legal problems
2) how to ensure self-help legal AI tools are accessible to people who may have limited internet access or low proficiency in using computers and mobile devices, or who are non-English speakers
3) ideas for supporting Texas legal aid providers as they build out their own legal AI tools
4) how to address the potential for unequal access to AI technology; that is, that legal aid providers will be shut out of access to expensive AI tools which may be accessible only by big firms and corporations; encourage legal technology vendors to provide low-cost access to such tools
5) the potential for AI technology to help with dispute resolution and dispute avoidance
6) ideas for innovative legal services platforms based on AI

Areas for Additional Research

The taskforce identified areas where additional research would be helpful.

1) **The Use of AI by Texas Lawyers**: The taskforce proposes to poll members of the Texas Bar to gain insight into how quickly the use of AI is spreading in the legal profession, and what AI tools are being used.
2) **The Use of AI by the Judiciary**: The taskforce proposed to poll members of the judiciary to gain insight into how AI is being used by and in the courts.
3) **Practical Application of AI**: The taskforce proposes identifying examples of Texas lawyers and judges applying AI to their work.

4) **Responses to AI in Other States**: Taskforces or committees in several states are studying the implications of AI in the practice of law. The taskforce is monitoring these efforts and will consider the findings and recommendations that result from them.

Collaboration

As the taskforce identified issues that span the legal profession, it became apparent that these issues impact other interest groups such as the courts, law schools, and legal regulators, to name a few. The taskforce is planning to invite other stakeholders to an AI Summit in the spring of 2024 to continue the discussion on the impact of AI on the legal profession.

Conclusion

In conclusion, the Taskforce for Responsible AI in the Law has begun to navigate the complex intersection of AI and legal practice. This interim report marks an initial step in our journey, outlining key areas of focus and preliminary recommendations. As we proceed, our work remains grounded in a commitment to thorough investigation and careful consideration of AI's implications for the legal profession. Our ongoing efforts aim to responsibly integrate AI, balancing innovation with the profession's foundational values and ethical standards. The taskforce will continue to diligently explore these emerging challenges, ensuring our final recommendations are informed, measured, and aligned with the evolving needs of the legal community.

Appendix A

Glossary of Useful Terms

The following definitions and key terms are helpful in understanding the report of the taskforce:

1) **Algorithm**: a step-by-step procedure or set of rules designed to perform a specific task or solve a specific problem
2) **Artificial Intelligence** (AI): the simulation of human intelligence in machines, programmed to think and learn like humans
3) **Bias in AI**: the tendency of an AI model to make decisions that are systematically prejudiced due to underlying assumptions in the algorithm or biases in the training data
4) **Chatbot**: a computer program that simulates human conversation through text or voice interactions, often powered by AI
5) **ChatGPT**: a specific type of generative large language model developed by OpenAI, designed to create human-like text based on the input it receives that utilizes deep learning and has been applied in various fields including natural language understanding, content creation, and conversation simulation
6) **Data Training**: the process of feeding data into an AI model to teach it specific behaviors and patterns, allowing it to learn and make predictions or decisions
7) **Deep Learning**: a subset of machine learning that uses neural networks with three or more layers, allowing for more complex and abstract pattern recognition
8) **Ethical AI**: refers to the practice of using AI in a manner that aligns with accepted moral principles and values, especially in terms of fairness, transparency, and accountability
9) **Generative AI**: AI models that create new, original content such as text, images, or music, based on the data they have been trained on
10) **Large Language Model (LLM)**: a type of machine learning model designed to understand and generate human-like text, used in various applications including content creation and natural language understanding
11) **Machine Learning (ML)**: a subset of AI, where algorithms allow computers to learn and make decisions from data without being explicitly programmed
12) **Natural Language Processing (NLP)**: a branch of AI focused on the interaction between computers and humans using natural language, enabling machines to read, interpret, and respond to human language
13) **Neural Network**: a computational model inspired by the way human brain cells work, used in machine learning to process complex patterns and relationships in data
14) **OpenAI**: an artificial intelligence research lab consisting of the for-profit OpenAI LP and its parent company, the non-profit OpenAI Inc. OpenAI is dedicated to advancing digital intelligence and conducts research on various AI topics including machine learning, deep learning, and natural language processing
15) **Reinforcement Learning**: a type of machine learning where agents learn to make decisions by receiving rewards or penalties based on the actions they take
16) **Supervised Learning**: a type of machine learning where algorithms are trained on a labeled dataset, which means the algorithm has access to an answer key while learning
17) **Unsupervised Learning**: a type of machine learning where algorithms are trained without any labeled response data, learning to identify patterns and structures within the input data

Taskforce for Responsible AI in the Law

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