Preparing for Artificial Intelligence in the Legal Profession

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One of the very hot topics so far in 2017 is artificial intelligence (AI) and its potential disruptive impact on the legal profession. Questions ranging from, "Will AI replace lawyers?" to "Does it make sense to attend law school with the rise of AI?" to "How will AI impact the delivery, cost, and quality of legal services?" are being asked by those in and around the legal industry.

IN FACT, THE INTERSECTION OF AI AND THE LAW HAS recently captured the attention of major media outlets including The New York Times ("A.I. is Doing Legal Work. But It Won't Replace Lawyers, Yet"[1]) and The Atlantic ("Rise of the Robolawyers"[2]). In addition, nowadays you would be hardpressed to attend a legal conference without a session, panel, or presentation on AI.

This article reviews the basics of AI, key use cases for AI in the legal profession, some primary AI-related legal issues, and steps that your law firm or in-house legal department may want to take to become AI-ready.

AI 101 for Lawyers

In his book "The Fourth Industrial Revolution,"[3] Klaus Schwab, executive chairman and founder of The World Economic Forum, begins by briefly reviewing the three earlier industrial revolutions that transformed our society and then devotes the remainder of the book to describing how our world recently entered a whole new era in which we will witness unprecedented major and rapid technological innovations. According to Schwab, these innovations will largely center in the physical, digital, and biological areas. AI has the potential to be a disruptive force in our "Fourth Industrial Revolution."

Like many newer and transformational technologies, there is no uniform definition for AI. An October 2016 report issued by the White House called "Preparing for the Future of Artificial Intelligence" states the following: "Some define AI loosely as a

computerized system that exhibits behavior that is commonly thought of as requiring intelligence. Others define AI as a system capable of rationally solving complex problems or taking appropriate actions to achieve its goals in whatever real world circumstances it encounters." In addition, the concept of machine learning is an application of AI based on the premise that systems can learn by having access to data.

Leading technology companies are making major investments in the AI space and are actively recruiting AI talent. For example, last September my company, Microsoft, announced the formation of the Microsoft Artificial Intelligence and Research Group —consisting of more than 5,000 computer scientists and engineers—under the leadership of Microsoft Executive Vice President Harry Shum.

While AI has certainly received much attention and hype so far this year, it is important to remember that the AI field is very much in its infancy—which provides various opportunities and challenges for the legal profession.

Use Cases for AI in the Legal Profession

There are a number of potential applications for the utilization of AI systems in the legal industry—especially as they relate to the automation of repetitive and routine tasks to help lawyers provide superior legal counsel at a higher level. Let's review a non-exhaustive list of those use cases.

Conducting Legal Research

As most lawyers know, conducting legal research can be a tedious, monotonous, and time-consuming task. However performing timely and comprehensive legal research on a particular matter—especially as the law continues to evolve— is critically necessary and important for lawyers as they serve their clients. AI systems may be able to aid lawyers by performing legal research on relevant case law and applicable statutes in a faster and more thorough manner than what lawyers may be able to do on their own. Such AI systems may also be powerful enough to use data to predict the outcome of litigation and enable lawyers to provide more impactful advice to their clients in connection with dispute resolution issues.

Administrative Legal Support

I was recently asked if I had an administrative assistant. I said yes, I do, and my administrative assistant's name is Cortana— Microsoft's high-powered personal digital assistant. While the person who asked the question chuckled at me, the reality is that lawyers will increasingly be able to rely upon AI-powered digital assistants that become smarter as they learn more about you to perform the various necessary administrative functions that are part of any legal practice. Do you need to follow up with others, schedule travel, set up a meeting, or manage expenses (including in-house counsel's review of outside counsel invoices)? Some of my Microsoft legal department colleagues have even developed an AI-powered chatbot tool that they use along with their automatically generated out-of-office e-mail response when they are away from the office without any e-mail access. All of those tasks, and more, can be performed by digital assistants and free up time for you to provide higher value-added legal services to your clients.

Legal Document Generation and Review

An AI system may serve as a virtual concierge for the intake of client information and the preparation of standard and routine legal documents and agreements for the benefit of your clients. In addition, lawyers specializing in contract negotiation

matters would appreciate an AI system that could provide a fast and thorough contract comparison whenever there is a battle of the forms between contracting parties regarding which standard contract terms should be utilized. An additional welcome step would be for an AI system to suggest suitable fallbacks or alternative contract provisions from a contracting party's repository of negotiated contracts to help address a particular contractual issue.

Performing Due Diligence

All lawyers know that conducting a comprehensive due diligence review in connection with the huge amounts of data that are part of any merger, acquisition, or other sophisticated corporate transaction is absolutely necessary. An AI system may provide an opportunity to perform such due diligence in a faster, cheaper, and more thorough fashion instead of relying on a high-priced and bleary-eyed team of lawyers.

Promoting a Stronger Compliance Culture

A sophisticated AI system with the capability to actively identify and analyze data patterns regarding internal company matters and employee activities may be helpful to an organization's compliance department. Using such a system could help organizations thwart the kinds of damaging highprofile ethics and integrity issues that have unfortunately become commonplace over the past few years.

Building More Robust Cybersecurity

AI systems with built-in data analytics capabilities can provide all organizations with the ability to become more cybersecure. For instance, AI systems could be utilized by law firms—which are increasingly being targeted by cybercriminals—to monitor and assess the data involving attempts to penetrate their information technology infrastructure so they can proactively identify trends and patterns and close security gaps to attain more robust cybersecurity. Law firms may be able to use such AI tools to their advantage by demonstrating to potential clients that they are more cybersecure than their competitors.

Complying with e-Discovery Requirements

Properly managing the production of the massive volumes of electronically stored information is of paramount importance during the litigation process. There are many e-Discovery technology solutions available in this growing marketplace. As an example, the Microsoft legal department uses the e-Discovery features of the Microsoft Office 365 cloud computing solution to improve the accuracy and usefulness of discovery results and save time and money—$4.5 million annually. AI-fueled systems could further transform e-Discovery technology solutions by providing additional levels of efficiency and cost savings to lawyers and legal departments tasked with managing their e-Discovery needs.

Enhanced Self-Help Legal Resources

Law firms, in-house legal departments, and non-profit legal aid organizations are increasingly providing legal self-help resources directly to their clients via web portals as a form of de-lawyering. Clients may often resist using those resources since they may lack a personal touch. An AI-powered chatbot and/or digital assistant could serve as a personal navigator to help clients utilize such self-help resources and may drive greater usage and adoption by clients.

Potential AI Legal Issues

Because AI is still an emerging technology, the various legal issues associated with it are also emerging. In the coming months and years lawyers will have plenty of opportunities to advise their clients on issues such as the following, and many others.

Data Privacy

In order for AI systems to provide valuable services, fundamentally they need to have access to and use large amounts of data. AI systems will also probably generate significant amounts of information. As a result, a buyer of AI-related services should understand how an AI solutions provider protects and uses its data. Since the AI world does serve to increase the surface area for potential targets for cybercriminals and because data privacy laws continue to evolve—for instance the European Union's new General Data Protection Regulation takes effect in May 2018—consumers of AI-related services should carefully evaluate AI providers and clearly understand what specific steps they take to appropriately safeguard data.

Law Enforcement Access to Data

Because the amount of data continues to grow and our laws have not been updated to keep pace with the change in the technology landscape, during the past few years we have seen various legal challenges between technology companies and the U.S. government pertaining to law enforcement access to data. Such challenges will likely become more common with the rise of AI systems. For instance, there was a recent well-publicized matter involving a search warrant request for Amazon to provide data involving its AI-powered Echo device as part of a murder case.[4]

Lack of Regulatory Framework & Standards

Since AI is still very much in its early stages, there are no meaningful AI-related laws or standards that can be relied upon—although given AI's dependence on data, applicable data privacy laws will be relevant. From a regulatory perspective, some may view AI as the Wild West. While this lack of an AI regulatory framework or standards can create some confusion and ambiguity, it does provide opportunities for lawyers to help build and develop this area from the ground up.

Legal Ethics

As lawyers use AI systems to deliver legal services, how do they ensure that they still comply with legal ethics rules such as the American Bar Association (ABA) Model Rules of Professional Conduct? Are lawyers exercising competence as required by ABA Model Rule 1.[1] when they use AI systems to provide legal advice? How are a lawyer's responsibilities for nonlawyer assistance in ABA Rule 5.3 affected by AI systems? As AI systems are increasingly used by lawyers, it will be interesting to see whether the ABA Model Rules will evolve to specifically address AI use by lawyers and if state legal ethics associations will issue ethics opinions on AI—just like they have done for cloud computing.

Intellectual Property Protection

Elements of an AI system may be subject to intellectual property protection—including patents. Presumably companies that are developing and investing in AI technologies are also devising their AI intellectual property strategies and seeking patents where applicable. As AI becomes more popular and advanced, only time will tell whether we will see AI patent litigation that is reminiscent of the smartphone patent litigation wars that we have witnessed in the past.

Liability As lawyers adopt AI systems to render legal advice to clients, it is inevitable that such systems will make mistakes that may result in damages. How will liability be determined in such situations? Will lawyers be subject to negligence or malpractice claims from clients? How do lawyers mitigate these risks and other potential liability issues associated with AI?

Become AI-Ready

In all likelihood, AI will be a transformational technology that impacts all industries, not just the legal profession. These are some steps that lawyers can take to become AI-ready.

Establish an AI Legal Center of Excellence

Appoint members of your law firm or legal department who can serve as your team's subject matter experts on AI to your AI Center of Excellence. Provide them with opportunities to train up and learn more about AI so they can be an AI Center of Excellence resource to other lawyers and your clients.

Embrace the Growth Mindset and Learn from Others

Remember there is so much to learn about AI, and this technology will continue to evolve and develop. Invest the time and energy to understand the basics of AI and how lawyers can use it as a tool to provide high-quality legal services. Since AI is currently such a top of mind subject, be sure to collaborate with fellow lawyers at law firms, in-house legal departments, and non-profit legal organizations to understand how they plan on deploying AI in their delivery of legal support. In addition, actively use social media resources like LinkedIn and Twitter to follow and keep abreast of developments in the AI space. Also, gain knowledge by attending AI-focused sessions and panels that are part of CLE programs, conferences, and webinars.

Don't Be Afraid to Fail

Traditionally, many lawyers have been viewed as being conservative and resistant to change. There may be a concern among lawyers that leveraging AI systems as part of their practice may be too risky. While there is no doubt that there will be some growing pains associated with AI, lawyers should not fear AI, as the potential long-term benefits in leveraging AI to help automate aspects of their legal services far outweigh the potential risks.

Develop Appropriate Internal AI Practices

As AI technology continues to evolve, consider developing some thoughtful guidelines and practices as to how your law firm or company may use AI as part of its business. Perhaps such procedures can be incorporated into your law firm's or company's overall technology strategy to address other disruptive Fourth Industrial Revolution innovations like cloud computing, the Internet of Things, big data, etc.

Over the next few years it will be fascinating to observe the impact that AI will have on the legal profession. Although some are of the mindset that AI may serve to replace lawyers and other legal professionals, I believe AI will result in a redeployment of legal resources and free up time for lawyers to perform more mission-critical work for their clients. While AI may offer lawyers leading technology and data-driven tools to provide efficient, quick, and impactful legal counsel to clients, AI is still not a substitute for a lawyer's own empathy, judgment, instinct, and personal relationship with clients.

1. Steve Lohr, A.I. Is Doing Legal Work. But it Won't Replace Lawyers, Yet, N.Y. Times, (March 19, 2017), https://www.nytimes.com/2017/03/19/technology/lawyers-artificial-intelligence.html?_r=0 (https://www.nytimes.com/2017/03/19/technology/lawyers-artificial-intelligence.html?_r=0)

2. Jason Koebler, Rise of the Robolawyers: How Legal Representation Could Come to Resemble Turbo Tax The Atlantic (April 2017), https://www.theatlantic.com/magazine/archive/2017/04/rise-of-therobolawyers/517794/ (https://www.theatlantic.com/magazine/archive/2017/04/rise-of-therobolawyers/517794/)

3. Klaus Schwab, The Fourth Industrial Revolution, (World Economic Form 2016).

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