



Part IV: AI ADOPTION AND ETHICAL CONSIDERATIONS FOR IN-HOUSE

by Sterling Miller

AI has a wide range of uses to help you get more done in less time with limited resources. But can in-house counsel navigate the possible dilemmas of having a machine do work typically done by an attorney? We tackle this and other questions in the fourth and final part of our series.



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PART IV: ARTIFICIAL INTELLIGENCE: ADOPTION & ETHICAL CONSIDERATIONS FOR LEGAL DEPARTMENTS

"It's like the beginning of the beginning of the beginning."

Artificial intelligence (AI) is spreading quickly in the legal world. Lawyers, both in-house and outside counsel, are finding new and innovative ways to capture the opportunities AI offers in terms of reducing cost and increasing quality. The adoption of AI is putting the legal marketplace on the cusp of a revolution, with in-house lawyers highly incentivized to lead the way. Much like email changed the way we do business every day, AI will soon become ubiquitous – an indispensable assistant to practically every lawyer. Those that do not adopt and embrace the change will get left behind in some manner. In addition to lowering costs, those

that do embrace AI will ultimately find themselves freed up to concentrate on the two things there always seems to be too little time for: thinking and advising.

Welcome to the final article of this series on artificial intelligence and in-house legal departments. In earlier articles, I discussed what AI is and its current and future application by legal departments. In our final installment, I will discuss some of the ethical dilemmas associated with AI and what you – as an in-house lawyer – should be doing next regarding AI.

WHAT'S ALL THE HUBBUB, BUB?

As we saw in Part III of this series, there is a wide range of uses (and potential uses) for AI in the provisioning of legal services. While use for e-discovery is the most common and best understood, we are already seeing AI used for such things as contract drafting and management, detection and prevention of fraud and other improper employee behavior, for M&A due-diligence reviews, and for litigation analysis and prediction of results. All of these are powerful tools in the hands of in-house counsel, as they potentially solve two huge problems: 1) lack of budget and 2) lack of manpower. If the use of AI can provide less expensive legal services (either used internally or purchased through a law firm), the value is immediately apparent. If the use of AI can free up current staff from spending time on transactional tasks, the value (if not immediately apparent) is exponentially greater than merely paying less for legal services.

Freeing up attorney time gives you and your business clients better access to better and more involved legal services (i.e., attorneys who can dedicate more time to thinking through problems and advising clients) and is a huge boost to morale as attorneys freed from drudge work will become more valuable generally and more satisfied with their jobs. The latter part of this equation cuts down on lawyer attrition. The combination of these benefits will allow in-house legal departments to actually deliver on the old CEO/CFO demand of "doing more with less." Historically, this usually means everybody works harder and things get left on the side or get done in a less than ideal manner. AI opens up the possibility of actually increasing service while spending less money. If the promise of AI actually delivers this, then there is truly reason for in-house counsel to welcome the arrival of AI in all its forms.

SO, WHAT'S THE CATCH?

Of course, it's not that easy. At least not yet. As with many new and revolutionary technologies, a significant issue revolves around cost, i.e., the cost of getting the AI resources up and running. In fact, at the 2017 [Legalweek Conference](#), the chairman of the board of the [Corporate Legal Operations Consortium](#), Connie Brenton, cautioned attendees about the reality of cost vs. the novelty of AI. In an article written about the 2017 Legalweek Conference, Rhys Dipshan used Cisco as an example of the current high cost of implementing AI on a large enterprise

level. In that story, he reported on Cisco's implementation of AI applications in the virtual assistant and contracting space. Cisco estimated the cost for 500 users to be around \$250,000 plus the need to hire two-and-a-half full-time employees internally to implement the tools for a basic system.

The ROI of AI will be heavily fact dependent for each organization, depending on what AI tools the department wants to utilize, the amount of customization needed, the

number of users, and so forth. But of course, over time, as adoption increases and [Moore's Law](#) takes over, the power

of AI will increase and the costs will come down, probably dramatically within the near future.

ETHICAL DILEMMAS AND AI

Cost is not the only issue in-house legal departments must contend with when considering the use of AI tools. Lawyers must still stay involved and, ultimately, take whatever output from AI resources and apply good old-fashioned human legal analysis to come up with the actual legal advice. Not only is this just a good idea, it's also what is required under the professional ethical canons – certainly here in the United States. According to Wendy Chang, a member of the ABA's Standing Committee on Ethics and Professional Responsibility:

"In using technology, lawyers must understand the technology that they are using to assure themselves they are doing so in a way that complies with their ethical obligations – and that the advice the client receives is the result of the lawyer's independent judgment."²

In short, lawyers cannot ignore their ethical obligations and abdicate to technology.

Lastly, and from the school of "You're Not Serious, Right?" comes a report that the European Parliament is considering legislation

to give robots legal status as "electronic citizens" in Europe, governing how humans will interact with robots, 'droids, bots, and other artificial intelligence. From the EU report:

"The most sophisticated autonomous robots could be established as having the status of electronic persons with specific rights and obligations, including that of making good any damage they may cause."³

If robots/AI get status as "persons," you can only imagine the red tape and restrictions that may follow – gumming up the works for in-house legal departments and others trying to take advantage of AI. While it seems far-fetched, it's worth keeping an eye on this development. Alternatively, a better plan might be to simply adopt the three laws of robotics from Isaac Asimov's science fiction classic, *I, Robot*: "1) A robot may not injure a human being or, through inaction, allow a human being to come to harm; 2) A robot must obey the orders given it by human beings except where such orders would conflict with the First Law; and 3) A robot must protect its own existence as long as such protection does not conflict with the First or Second Laws."⁴

WHAT SHOULD I DO NEXT REGARDING AI?

The future use of AI in the legal realm is both exciting and overwhelming. As with any new technology, there will be early adopters – seeking to gain an edge by being the first to use the technology and carve out a niche, and the costs will be high at first and then drop drastically as the technology becomes more common and in wider use. If I were in charge of a legal department today, this is what I would do with respect to AI:

1. **Partner with innovative and trusted outside counsel.** Find out which of my outside law firms are using AI or intend to use AI and volunteer to be part of any experimental use of the product – in exchange for a low cost point. If the tests work, you can be a reference for the firm – something very valuable when they are attempting to capitalize on their "AI prowess."
2. **Identify an internal AI champion.** Study up on AI use by in-house legal departments, looking to stay abreast of the latest developments and uses of AI. You may even seek volunteers in the department to help with this task, naming someone to be in charge of AI for the department, i.e., an AI "champion." Their role will be to learn all there is to learn about AI and how it might best be used in your department.
3. **Keep learning and researching.** Find a continuing legal education program on AI and/or attend a trade conference

on legal technology. This way you will begin to delve deeper into the opportunities around AI and see firsthand what innovations and developments are coming in the form of AI. Check out the [International Association for Artificial Intelligence and Law](#).

4. **Take baby steps.** Find one use for AI in your legal department and start there. Don't feel you have to go all-in on AI. It's perfectly fine to start small and take your time. Look at all of the processes and work you do today in your department and determine if there is something that is a good candidate for AI assistance. Perhaps the next due diligence project? Or maybe a tool to assist with internal investigations? Or contract management? No matter what you select, be sure to dedicate the time needed to learn how to properly use the tool. Don't let this be someone else's job. Make it a priority to learn and understand how the technology works and what it can do. And encourage others in the department to do the same.
5. **Create an AI village.** Make a good friend in your company's IT department, someone with an interest in AI who can help you get resources and be supportive of Legal's use of AI technology. Make sure they are part of your thinking team and that you bring them in on the big decisions. The more

vested they are in the success of your use of AI, the better off you will be. Offer to let them use Legal for some experiments of their own around AI. A willing test subject might be worth

a lot to someone in IT who's trying to convince the company as a whole to take a more active interest or bigger investment in the technology. Be their champion as well.

CONCLUSION

This discussion of ethical dilemmas and considerations along with a checklist of next steps concludes our series on AI in legal departments. While this series will not make you an expert by any means, you should now have a solid understanding of what AI is, how you can benefit by its use in your legal department, and what steps you should be taking now to take advantage of this exciting development. Artificial intelligence just may well be the final frontier in terms of how legal services are utilized and provided. My childhood dream of a talking/interactive computer

is now reality. As in-house counsel, don't run away from AI and don't ignore it. Embrace it as, ultimately, it will allow you to do the things lawyers love to do most: thinking, analyzing, and counseling, while leaving the grunt work to your newest coworker, the computer. Not only can your new coworker do wonders for your bottom line and free up attorney time, it also can allow you to carve out a niche as a leader and innovator at your company, and boldly go where no legal department has gone before.

¹ "[Lawyers Could be the Next Profession to be Replaced by Computers](#)," CNBC.com, posted February 17, 2017 (Dan Mangan)(quoting Noory Bechor, CEO of [LawGeex](#), a leading AI-powered platform for contract review)

² "[Rise of the Machine: Artificial Intelligence in the Practice of Law](#)," ABA *Litigation News*, Winter 2017, Vol 42 No. 2 (Daniel Wittenberg), page 27 (human involvement is still required to interpret data, render legal advice, and fulfill ethical obligations).

³ "[Robots Could be Given Legal Status as 'Electronic Persons' in Europe](#)," *The Mirror*, posted January 13, 2017 (Luke Edwards).

⁴ "[Handbook of Robotics](#)," 56th Edition, 2058 A.D.

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