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CLIFFORD'S NOTES

THE QUANDARY OF AI

Algorithms must align with human values and ethical standards

By BOB CLIFFORD

Artificial Intelligence is quickly taking hold in every profession, and the legal profession is no exception, raising many complex issues, particularly involving ethics, to which lawyers have few answers. Northwestern Medicine told Crain's Chicago Business it has been using AI for years to communicate with patients as well as to read reports from MRI, X-ray and ultrasound procedures to help doctors quickly identify patients who need follow up care. Will this impact medical malpractice cases? The first is yet to come as of this issue.

In March 2023, PricewaterhouseCoopers gave 4,000 of its legal professionals access to an artificial intelligence platform, becoming one of the latest firms to introduce generative AI technology for legal work.

Joshua Browder, CEO of DoNotPay, initially announced on X (formerly Twitter) his company was sending a smartphone equipped with a program that could listen in on arguments made in court then whisper formulated responses in real time through headphones to a defendant facing a traffic ticket. The State Bar of California threatened to bring charges against Browder for the unauthorized practice of law, and he dropped the idea of the robot lawyer.

Attorneys swear an oath to uphold the law – how does a computer simulate that?

As I wrote in the last edition of Chicago Lawyer, AI algorithms also are being used to try to predict the amounts of damages awarded in personal injury cases, despite the fact data may be slim or skewed given widespread confidentiality of settlements. Such a prediction also does not consider the emotional impact, pain, suffering and sorrow on the victim and the victim's family. This could result in conclusions perceived as unfair or insensitive.

Legal professionals must carefully consider the ethical implications of using AI in making decisions to ensure algorithms are designed to align with human values and ethical standards, and that they are transparent and explainable. This requires ongoing evaluation and testing of the algorithms' accuracy, reliability and bias.

The use of AI is dependent upon algorithms that use complex statistical models to analyze large datasets, and the results they produce can be difficult to interpret. There is also the potential for bias in the data used to create AI algorithms that rely on historical data to learn and make predictions. If the data is biased, the algorithm will perpetuate that bias. If lawyers don't reveal their use of AI, the lack of transparency can raise questions about the fairness and impartiality of the results as well as taking steps to ensure privacy when a lawyer shares a client's information with a social media platform. Where does that data go?

Criticisms of reliance upon AI also include the lack of emotional intelligence or being able to connect to a jury when a computer is doing the legal work. AI has limited understanding of the context of complex matters, such as when to make timely objections and limited interpretation of legal precedent. Certainly, the computer's inability to pick up unspoken nuances that occur in a courtroom demonstrates the lack of creativity or strategy.

E. Kenneth Wright, Jr., presiding judge of the First Municipal District in the Circuit Court of Cook County, authored an article for the Chicago Bar Association in which he asserted that "AI may significantly increase access to justice" in cases involving $10,000 or less that generally involve self-represented litigants. "AI and Civil Small Claims Matters," CBA Record, May/June 2023. Wright goes on to say that "One benefit is that AI may help identify legal issues, outline options, and highlight the value of speaking with an actual attorney. … Even when legal problems do not lend themselves to straightforward solutions, technology can reduce costs by automating facets of legal representation, including the collection of information and documentation." Still, Wright expressed concerns about privacy of information and attorney-client privilege with an AI platform.

One might chuckle about an AI computer called Watson in 2011 beating the all-time "Jeopardy" champion and current host Ken Jennings after Watson's creator, IBM, fed more than 200 million pages of documents – from encyclopedias to the Bible – into its synthetic brain. It led to Watson receiving the "Person of the Year" by Webby Awards that honors internet achievement.

But there is nothing funny when AI becomes the central focus of lawsuits and legal research without actual lawyers getting in the trenches and doing the work. AI can't listen, empathize, advocate or understand the emotions and politics involved in legal matters. Therefore, while AI can assist in automating routine tasks and making legal research more efficient, it can't replace the critical thinking and problem-solving skills human lawyers use to represent human clients. CL

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AI is among the topics to be discussed in a two-hour free ethics webinar Feb. 15 titled "Ethics 2024: Questions from the Trenches." **Robert Clifford** will moderate questions submitted by lawyers across five states. It will feature Cook County Circuit Court Judge **Mary Cay Marubio**, UIC Law Professor **Kevin Hopkins** and ARDC Director of Education **Melissa Smart**. Register at **www.cliffordlawcle.com.**