An AI Primer

For Civil Defense Lawyers, In-House Counsel, and Claims Professionals

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A great deal has been written, discussed, and presented about AI. And yet, our appetite to learn more grows insatiably. This piece aims to provide an overview of AI and will attempt to address some of your questions. It would be impossible (and presumptuous on my part) to answer all your questions, partly because AI is a rapidly evolving field. By the time this article is published, it will likely be partially obsolete. But I will do my best to cover as much as I can, and I hope you find my attempts meet your expectations.

First, **some disclaimers**.

This is not a research-based, endnote-heavy piece. In fact, I won't be citing a single source. This is a practicum, not a law review article. If you're looking for citations, you've come to the wrong place. There are numerous articles like that online, and I would recommend conducting a simple Google search to find them.

My views and opinions are based on studying the evolution of AI in the legal sector since the fall of 2022. Every day, I read everything I can about AI, both within and outside of the legal field. Additionally, I have invested considerable time in speaking with those in the AI space, presenting alongside them, writing articles on AI, and immersing myself in the topic. I am not an AI expert. Far from it. I, like you, am curious about AI. Unlike you, I am obsessed with it. That singular focus on learning more about this transformational technology has led me to write articles like this. Pieces like this reflect what I have learned.

Second, **some disclosures**.

I am an AI evangelist. I wholeheartedly believe AI is changing and will continue to change the practice, from top to bottom. I speak from the vantage point that learning about AI and using it ethically, safely, and effectively is a must - a non-negotiable requirement. I recall reading an op-ed piece by a lawyer at a leading firm over a year ago, in which he planted a flag, stating that neither he nor his firm would adopt AI and abdicate their talent, judgment, or acumen. Of course, this inherently misunderstands the tool of AI. If you, like him, are dead set against AI and are prepared to die on that hill, I ask only for the opportunity to share why AI is and will continue to become so integral to your practice. If, in the end, you remain unconvinced, so be it. At least you let me try.

I am a firearms instructor. I am not the inventor of the firearm. The best analogy I can make is that AI is like a loaded gun. It is a powerful weapon with the potential for both good and harm. If used properly, it is an effective and powerful weapon in your arsenal. If misused, it can have catastrophic results. I am here to teach you how to handle, operate, and maintain AI safely and effectively, much like a firearms instructor

teaches how to handle, operate, and maintain firearms safely and effectively. I, however, did not invent or generate AI, much like a firearm instructor did not invent, design, or manufacture the firearm or the bullets it fires. I'm not here to teach you how to create AI. I'm here to teach you how to use it so you don't hurt yourself.

Third, **this is a long piece**.

I've done everything I can to condense this piece, making it more manageable and easier to digest. However, there is a lot to cover, and this piece aims at least to highlight the diverse range of AI-related items and concerns. I am certain I have failed at this attempt miserably, as any attempt to count the grains of sand on a beach, but I have pursued this fool's errand, nonetheless.

I start with the basics, and the article moves to more complex and thoughtful AI-related topics. It is intended for civil defense lawyers, in-house counsel, and claims professionals, addressing the questions and concerns you may have regarding AI. I hope your primary takeaway from this piece is that AI is evolving organically, much like a living organism, and that your understanding of it will require ongoing educational and training efforts. This article is only one piece of a much larger puzzle to learn and understand AI. I am constantly learning about AI, and I invite you to do the same.

So, let's begin, shall we?

What is AI?

Artificial Intelligence (AI) is the ability of a computer or program to perform tasks that typically require human intelligence, such as learning, reasoning, problem-solving, and decision-making. Instead of being programmed for every possible situation, AI systems learn from large amounts of data to identify patterns, make predictions, and act, often with little to no human oversight.

I am sure you have heard many A-related terms, like LLM, closed systems, and the like. I will be using these terms throughout this piece. To avoid confusion and misunderstandings, I would like to define the most common AI terms. The following is an alphabetical glossary of these terms:

Agentic AI: An AI system that solves multi-step problems in real time using large language models (LLMs) and complex reasoning.

Algorithm: A series of instructions that allows a computer program to learn and analyze in a particular way.

Artificial General Intelligence: A type of AI that matches or surpasses human cognitive abilities across a wide range of mental tasks.

Bias: In AI models, bias refers to errors in the output that result from training data that is skewed.

Chatbot: A computer program that conducts a conversation either via text or voice.

Closed System (Closed AI): An AI system that keeps your data, information, and documents within your firm or company (closed) and therefore maintains the confidential nature of your data. To the extent that it trains on your data, the system is closed to your team, and the training datasets do not extend beyond your firm or company.

Data Mining: The process of discovering patterns in raw data and extracting valuable insights from large datasets.

Deep Learning: A type of machine learning that uses deep neural networks with multiple layers to learn intricate patterns, classify data, and make predictions.

Generative AI: Models that create new text, summaries, images, and videos.

Generative Pre-Trained Transformer (GPT): A type of large language model developed by OpenAI. GPT is trained on massive text datasets and can generate coherent and contextually relevant text.

Guardrails: Policies and restrictions placed on AI models to ensure data is handled responsibly and that the model doesn't create disturbing content.

Hallucination: Where AI models generate factually inaccurate or illogical answers due to data and architecture constraints.

Large Language Model (LLM): Forecast word sequences and answer questions based on what they predict the next word, phrase, sentence, and paragraph should be in response to a prompt.

Machine Learning (ML): Algorithms are trained on datasets to learn and make predictions or decisions without being explicitly programmed for every task.

Model Drift. Decline in performance of an LLM over time without adequate updates and changes.

Multimodal Model: An AI model capable of processing and generating multiple types of input and output, such as text, images, audio, and video.

Natural Language Processing (NLP): Tools that understand and generate human language.

Neural Networks: A type of machine learning model designed to mimic the structure and function of the human brain, enabling it to learn complex patterns and relationships from data.

Open System (Open AI): Anything you input into the system becomes part of the system, with the platform training on your data. Therefore, there is no confidentiality when using an open system, and one should not upload confidential, proprietary, or otherwise protected information.

Predictive Analytics: The use of statistical models and AI algorithms to analyze historical data and make predictions or forecasts about future events.

Prompt: The question or query you enter into an AI platform to get a response.

Prompt Engineering: The practice of designing effective prompts to guide an AI model's output. This involves defining roles, specifying formats, adding constraints, and providing examples to enhance the quality, tone, and relevance of responses.

Temperature: Parameters set to control how random a language model's output is. A higher temperature means the model takes more risks.

Training Data: The datasets used to help AI models learn, including text, images, code, and data.

Virtual Assistants: An AI-based application provides support, performs tasks, and answers questions.

This is far from an exhaustive list of AI terms, but it should help you better understand discussions about AI (and the contents of this piece).

Let's move from AI terminology to why AI is such a powerful tool.

No More Secrets

I graduated from the University of Miami in 1997, passed the bar that summer, and was licensed in Florida in September of that year. I was eager to learn everything there was to know about the practice and quickly realized how limited the available resources were.

The internet was rudimentary, both in terms of content and ease of use. There was no social media. No LinkedIn, Facebook, Twitter (X), Instagram or TikTok. No video sharing and no YouTube. No podcasts. No online training videos. No blogs. No substantive legal websites. You could attend CLE in person or buy cassette tapes (later CDs). And the CLE was often lacking because lawyers didn't want to share their secret sauce. The seminars were rudimentary, and the learning consisted of little more than statutes, cases, and regulations, along with their meanings (or, at least, what was supposed to be their meaning). The treatises were few and far between, were expensive, and again, rarely provided any great insights. If you wanted to learn the practice, you joined the firm, and in an apprenticeship model, you slowly learned how to take a deposition, argue a motion, and draft discovery. The idea that you could enter a prompt

and learn how to do any of this was impossible. (The idea that it would one day become a reality was laughable.)

But two things have happened since the Fall of 1997. The rapid advancement of technology and how we perceive our expertise and use it to market ourselves and our practices.

Let's first address the evolution of technology. Today, each of us carries in our pocket or purse a machine that gives us access to all media – television, movies, music, videos, podcasts, social media, books, articles, white papers, news – you name it. We interact with our smartphones to communicate in every imaginable way (calls, texts, emails, instant messages, social media posts) and consume a wide range of content (social media, podcasts, books, videos, audio). Anything we want is in our hands (or on our table, desktop, or laptop).

In addition to a plethora of content, we have grown accustomed to securing all the information for little to no money. Social media is generally free (most platforms have premium subscriptions but are typically reserved for heavy users). Podcasts and YouTube videos are free (if you're willing to sit through commercials). Websites, blogs, and other online resources are available for free. And yes, there has been a recent trend to create subscription-based platforms for this content, but for the most part, a few keystrokes on Google can provide you with a wealth of free content on any topic you desire.

Today, we have access to vast amounts of knowledge, wisdom, and data that were not technologically feasible to share when I first started practicing. We now have the tools to share anything and everything.

With the advent of this technology, there has been an accompanying seismic shift in how lawyers (and most professions) share their expertise. We have transitioned from hoarding all our expertise to sharing it widely through online webinars, podcasts, websites, blogs, social media posts, online roundtables, reels, white papers, articles, and videos. There is no shortage of online media through which to share our knowledge, and there is no limit to how we can do so. Somewhere between 1997 and 2025, we collectively agreed as a profession that there are no more secrets and that we, our practices, and our firms are better served by sharing our expertise publicly to demonstrate to clients and prospective clients how we are the most suitable choice to hire to represent them.

There is an audience, an eager and curious group of clients and prospective clients, who want to hear from us about a myriad of cases and issues. Satisfying their urge and need often results in us securing new clients and new matters. The amount of free content that is available online about every type of case, every type of matter, and every legal issue is astronomical. That young associate in 1997 could go online today and teach themselves just about anything related to the practice. I don't want anyone to

jump to the conclusion that I am advocating for young lawyers to learn the practice this way. An apprenticeship model, combined with strong mentoring, is the most effective approach to becoming a skilled (and even exceptional) lawyer. However, I would never have conceived or imagined the numerous resources available today.

So, what does any of this have to do with AI? I appreciate your indulgence in walking down memory lane with me, and it is this transformation that has not only enabled, permitted, and facilitated the use of AI, but has also generated an exorbitant amount of content and data for it to do what it does.

Let's peek behind the curtain of AI and examine where it obtains its data, which serves as the basis for the outputs generated in response to your prompts.

Large language models, such as ChatGPT and Claude, thrive and rely on as much data as possible. They scrub the internet for any data they can find. They are so data hungry that they are creating their own data to feed their models. And what does this data include? Well, how about:

- Every law firm website
- Every YouTube video by or for lawyers
- Every podcast episode by or for lawyers
- Every legal publication, white paper, or article not behind a paywall or login page
- Every online communication not behind a paywall or login page

Consider, if you will, the vast amount of content we lawyers have created online. How much content has been created for us lawyers online? Think about the free CLE, free training videos, podcasts, articles, checklists, summaries, outlines, PowerPoints, slide decks, audio files, video files, reels, etc., that AI platforms have copied, reduced to data points, and fed to their algorithms to answer your prompts. And yes, there is a lot of content that AI platforms can't access (like ChatGPT can't simply go into Westlaw and copy their database – which explains why the LLMs often hallucinate when conducting legal research), but there is so much more it can access.

Let's take one example to drive this point home. If you handle personal injury matters, you are familiar with the reptile theory. Think about how many videos, podcast episodes, books, articles, white papers, slide decks, sample deposition, and trial outlines there are on this topic, both from the plaintiff and defense perspectives. Then consider an AI model copying all of this – thousands upon thousands of video, audio, and text resources on the reptile theory and running all this content through its algorithms. Then imagine you are sitting at your desk on an LLM and asking it to provide you with an outline of all the topics plaintiff's counsel will ask your client under the reptile theory, including the specific questions they'll ask, and then prompting the platform to provide you with responses that defang the reptile theory. This isn't theoretical. I have entered these and

similar prompts repeatedly and secured a detailed outline, question by question, of what my client should expect to be asked, and then proposed responses that reflect the truth while avoiding the pitfalls of the reptile theory. These detailed responses are due in no small part to you and me, because we have written, spoken, or presented on the reptile theory, and the LLM has processed all that data to tell us exactly how to deal with the traps being set by plaintiff's counsel.

This example illustrates just how powerful AI is – we have made it powerful by sharing everything we have online. When we interact with an LLM, and we ask it something – draft a deposition outline, draft interrogatories, brainstorm legal themes for trial – we are, in a way, asking every person who has ever written, spoken, or presented on that topic to answer the question. Sure, you could walk down the hall and brainstorm with one other lawyer about a given topic. But what if you could brainstorm with tens of thousands of lawyers simultaneously and receive an immediate response specifically addressing your query? You can appreciate why AI is transformational to practice. It changes everything about everything.

So, let's move from why AI is so powerful to some of the popular LLMs.

The Various LLMs

There are several popular LLMs. I personally subscribe to ChatGPT, Claude, Perplexity, and Grok. My firm uses Co-Pilot (as a closed system). There is also Gemini, Llama, and others. What is my personal favorite? It depends on when you ask me. The various models are in direct competition with one another for your subscription dollars, and this horse race means that at any given moment, one platform may outperform another in each task. Right now, my preference is ChatGPT because in my opinion, ChatGPT 5 better serves my brainstorming needs than the latest versions of the other platforms. But a month from now, it could be Claude or Perplexity. And perhaps for you, and your needs, the best platform could be Co-Pilot or Grok.

Each platform comes at a cost, and each firm has limited resources, so you cannot purchase every AI available. I do recommend, though, that you don't rely solely on one platform and run your prompts on two or more of them to secure the best responses for your needs. And remember, approach these platforms as if they are open (unless you or your firm or company purchases a license for a closed model). You have an ethical obligation before uploading or sharing confidential data or information into an AI model to ensure it is a closed model, and it will not share that data or information directly or indirectly with third parties.

ChatGPT

When we think of LLMs, ChatGPT is often the first one that comes to mind. An advanced AI chatbot developed by OpenAI generates human-like text in a conversational

format. It allows you to ask questions, get detailed explanations, brainstorm ideas, write and create images, videos, and code. At the time of this piece, the latest iteration is ChatGPT 5. Launched on August 7, 2025, it offers enhanced reasoning, faster performance, and improved safety features. It processes and analyzes various data types like text, code, and images, can handle more extensive documents, and has reduced hallucinations.

There is a free version. I don't recommend the free version to any LLM because the responses are less comprehensive, the number of prompts is drastically limited, and the output is generally inferior to the paid version. I have the Plus program, which costs $20 a month. It allows for a fair number of prompts via GPT-5, and in addition to text, it generates images and videos. There is a Pro version for $200 a month, which allows for unlimited messages, uploads, image creation, and uses more advanced reasoning algorithms. There are also business models you can license for your firm, including Frontier AI, which relies on your law firm's data in a closed environment.

Claude

Anthropic created Claude, a creative AI platform designed for brainstorming, innovative thinking, and projects that require imagination and unconventional thinking. Like ChatGPT, I have a paid plan for $20 a month (their Pro Plan). They offer a Max plan starting at $100, which provides higher prompting limits and priority access to upgrades. Claude also has business plans that integrate your data and maintain its confidential nature.

Like most platforms, there is a privacy setting that turns off the platform from training on your data. I am not convinced that toggling that setting sufficiently protects your confidential data. When using it (as I do with other LLMs), I treat it as if it were an open model and refrain from uploading or inputting confidential information.

Co-Pilot

Microsoft's AI LLM is Co-Pilot. It integrates with its Office Suite and has become popular among firms and companies. Because it integrates into the Office Suite, you can use it to edit your writing, spreadsheets, and slide decks. Because it integrates with Outlook, it can help you organize, summarize, and rely on your emails and calendar. Our firm uses it (a closed version), and we can upload depositions, medical records, and other confidential documents and have the platform summarize them. Microsoft has a relationship with OpenAI, and Co-Pilot relies in part on ChatGPT (my office version is integrated with ChatGPT 5).

Gemini

Google's LLM is Gemini, touted as your personal AI assistant, like the other models it has developed and business models. It also integrates with all the Google platforms. I have never used the paid version and have little to say about the platform. Google had some hiccups with its various AI platforms, and since one can't buy everything, I never invested in Gemini.

Grok

xAI, which Elon Musk founded, developed Grok. In July 2025, Elon Musk unveiled Grok 4, which he termed the most intelligent AI in the world. Grok offers various subscription levels and pricing options. I pay for their basic model. More expensive models have enhanced features and allow for more prompts. There are business models for your firm or company that rely on your data and keep it confidential.

It's powerful to evaluate images, including medical imaging. Some have used it to upload their MRIs, CT scans, and x-rays, seeking diagnostic answers (Grok will inform you that it is not a doctor and advises that its responses are purely informational, not medical).

Llama

Meta (Facebook) released an LLM named Llama. It integrates into Facebook, and if you use Facebook, you've seen the platform pop up. It's supposed to act as a personal assistant. It describes itself as an idea generator and touts itself as a brainstorming tool. I've used it to brainstorm with mixed results. Like Gemini, I haven't spent much time with the platform to have an opinion about its uses and limitations. I don't know many lawyers who discuss Llama, and I don't know any who use it in their practice.

Perplexity

Perplexity AI, Inc. has created Perplexity. What sets this model apart is that it provides you with the sources for its output. After you enter your prompt, it will provide a list (with links) of the various sources it draws the information from to respond to your query, followed by the response. Where other platforms answer your questions but don't provide source materials, Perplexity does, allowing you to check for hallucinations in real-time and providing sources to review for additional information and background. It is an AI-powered search engine focused on real-time, source-cited information retrieval. In some ways, it's a Google search on steroids.

I pay $20 a month for the Pro Plan. There is a Max plan ($200 a month) that offers unlimited access. And there is an Enterprise Pro model for businesses that provides high-level security and privacy features. As you can see, each model charges approximately the same; each offers a luxury plan, and each includes a business plan that encompasses all the privacy and security features.

Other Platforms

There is no shortage of LLMs, but these are among the most popular and valuable. If your firm or team contracts for a closed AI system, it will likely rely on one or more of these platforms as its engine.

Let's now move on to our ethical obligations regarding the use of these various platforms.

The Ethics of AI

AI brings with it an assortment of ethical dilemmas, quandaries, and issues. The Florida Bar, ABA, and other states have issued a variety of ethics opinions. They largely overlap with one another, and what follows is a summary of the various ethical obligations that accompany the use of AI. Because AI is constantly evolving, whenever a new ethics opinion is released, regardless of its jurisdiction, it is advisable to read and study it. Each state's bar is doing its best to stay abreast of all the ramifications related to AI and developing rules, procedures, and ethical opinions to guide its members on the safe and ethical use of AI. Some states are better than others at staying ahead of the AI curve, and we can learn from what they share about the AI rules of the road.

Learn AI: The first ethics rule is that AI is here to stay, and we have an obligation to learn about it. We don't have to become AI experts or gurus, but we do need to take the time to study it a bit and evaluate whether we, our practices, and clients would benefit from it. Every state bar so far has taken the position that we cannot bury our heads in the sand when it comes to AI. It's not going anywhere. Its role and prominence are increasing. We all have a duty to learn about it.

This reminds me of a letter to the editor I read years ago in the Florida Bar News. The various courts were fully transitioning to a paperless system. A senior lawyer, who had been practicing for almost five decades, stated that neither he nor his assistant knew how to e-file nor wanted to learn. Therefore, he was retiring, blaming the Florida Bar for allowing this to happen. It was the Florida Bar's fault for letting technology happen. It was the Florida Bar's fault for abandoning paper files. And instead of learning this new technology, he left the practice, just like that. AI is not going anywhere, and if you dig in your heels, refusing to learn about it and use it safely, ethically, and responsibly, you may find yourself at a distinct disadvantage to other lawyers who have embraced the technology.

Confidentiality Concerns: An ethical trap is failing to preserve the confidential nature of information and documents. When using an AI platform, you must ensure that

when working with confidential, proprietary, HIPAA-protected, trade secret, attorney-client, work product or other information or documents whose confidential nature you want and need to preserve, that you do not include them in an AI platform that will train on that data (unless it is training on it in a closed system in a closed fashion) or sharing that data with others. I mentioned that the popular LLMs online train on your data, and therefore, that data could appear in response to someone else's query. Even if it does not, this training process erodes the confidential nature of the information. Therefore, ensure that you are using a closed system when using confidential information, or conversely, if it relates to client information, the client has authorized you to use an open model (personally, I would never put that onus on the client or create a situation where I'm asking a client to share private information in an open system, but the Florida Bar ethics rule provides that out). In closed systems, data is not shared, not retained, and is encrypted; audit logs are often available.

Understanding the Tool. If you're going to use AI, you need to know how it works – what it does and doesn't do, how it can help and hurt, and its scope and limitations. The primary issue I am addressing here is the problem of hallucinations – false cases, statutes, and regulations. There have been over a hundred instances where courts have caught fake cases, and the sanctions are becoming more severe and draconian. If you're going to use AI for legal research, you must find those cases and read them yourself and determine if (1) they even exist; (2) they say what AI says they say; and (3) the citations are correct. What has happened is that lawyers have gone to the LLMs, asked them for cases on a topic, and unthinkingly cut and pasted the output in motions and briefs submitted to courts, without determining whether those cases even exist, much less whether they stand for the proposition the LLM claims.

Whenever you use AI for a fact-based question (where you need information and you're relying on the validity of the information), you need to go elsewhere and confirm and corroborate the output. If you are looking for a case on ChatGPT, look up that case on Lexis or Westlaw to see if it exists, and then read it and reference and cite it accurately.

This leads to a larger question about AI – why does it hallucinate? The output is only as good as the input. The old computer term – GIGO – garbage in, garbage out. Remember, I mentioned earlier that LLMs have copied everything publicly available. They have not copied the contents of Lexis or Westlaw platforms; you must pay for access. There's no free, easily accessible online equivalent from which LLMs can copy all the law. So, what do these LLMs do? They copy whatever cases they can find, and it's a far cry from Lexis or Westlaw. And then, because these platforms are designed to answer your questions, they lie and provide fake cases with fake citations with facts that oddly match perfectly with the facts you need and want to win. These models are designed, if need be, to lie to you. So always verify the output.

Training Your Team. If you want your team to use AI, you are responsible for training them and securing the training they need to use AI ethically, safely, responsibly, and appropriately. You and your firm or company cannot simply unleash an AI platform on your team without adequate training. That training includes teaching them the ethical rules and standards for using AI, explaining how AI works, what it can and cannot do, and providing platform-specific training on how the licensed platform you are giving them access to works and how to use it safely, ethically, responsibly, and productively.

Supervising Your Team. Along with training, you want to supervise your team's AI use. You should have an AI-written policy that establishes rules for AI usage, formal policies to train and review AI usage, and have people in place to answer AI-related questions and assist with AI issues as they arise. AI can go wrong in so many ways, and you need to establish and monitor guardrails to prevent that from happening.

Communicating with Clients about AI. If you're going to use AI, be transparent about your usage with them. One or more clients may not want you to use AI. Some may want you to use it more. Have open communications with clients about what AI platforms you're using, how you're using them, and how they benefit from them.

Candor with the Court. Some courts require you to disclose to them if you're using AI and, if so, how you used it for a submission. If so, accurately and fully provide that information. And as noted, do not make misrepresentations to the court by citing fake cases, statutes, or regulations.

Proper Billing. If you use AI, bill only for the time it took to do the task with AI, not the time you would have taken if you had not used AI. For example, if you typically take X time to do Z tasks, but with AI, the tasks take X-Y, then you bill X-Y, not X. A more interesting question is, if AI will save the client money by saving you time, are you ethically obligated to use it? Clients are likely to push firms to adopt AI and share the resulting cost savings.

Avoiding Bias. If you're going to use AI to help you make decisions, ensure AI is not pushing you toward a biased decision.

Staying Abreast of AI Ethics Opinions. AI is constantly changing and evolving. You must keep up with changes that affect your obligations to your clients and the tribunal when using AI.

Now that we have covered the ethics of AI, let's discuss how AI may change the standard of care for us lawyers and other professionals.

AI and the Standard of Care

When we consider AI and the standard of care, the first thought is how misuse of AI falls below the standard of care, and how lawyers are being sanctioned for citing fake

cases. And yes, misuse of AI does fall below the standard of care for lawyers and may lead to legal malpractice claims (especially if a party loses their case as a sanction for their lawyer's AI misuse). However, a larger question looms about AI in the distant and not-so-distant future. One day, will the failure of using AI be considered falling below the standard of care for lawyers? I suspect it will. As AI platforms become better, more capable, more helpful, their output becomes more accurate, with hallucinations diminishing, and what they can do significantly increases. Improves outcomes and saves time; it's hard to imagine those who refuse to use AI not meeting the standard of care. You tried a case, but you didn't use AI to help you select trial themes, pick your jury, design demonstratives, and draft your examinations, and you lost? Maybe not using AI for trial prep one day may rise to the level of malpractice.

Let's consider a comparable – using online legal research. Most lawyers use Westlaw or Lexis. If not, there are other similar (less comprehensive) platforms where you can research case law, statutes, and regulations. You could still go to a physical library and pull physical books from a shelf and research like I did back in law school (I came up when lawyers were transitioning from book research to online research), but does anyone do that, and if you did, would that be considered malpractice? I would never hire a lawyer who conducted research in this manner, and arguably, it would be malpractice if you did (especially if you didn't find that case the opposing counsel did using Lexis).

So, yes, I imagine a time when, sometimes (not all the time), the failure to use AI will violate the standard of care and could give rise to a valid legal malpractice claim.

And while we're discussing standard of care and malpractice, the use (or lack of use) of AI applies equally to other professions. Today, doctors rely on AI to review MRIs, CT scans, and X-rays, make diagnoses, and recommend treatment plans. Overreliance on AI and failure to exercise personal medical judgment can lead to poor outcomes and malpractice. Conversely, ignoring AI may overlook a spot on a film that turns out to be cancerous and spreads, leading to a malpractice claim for failure to diagnose.

For those of you representing professionals in malpractice claims – lawyers, doctors, engineers, accountants, etc. – keep an eye on how AI is and will be affecting, changing, and transforming the standard of care.

From here, let's discuss how to adopt AI.

Adopting AI

Let's say you've heard enough, and you believe your firm or company should explore adopting AI. What does that look like? What is a process that ensures you are doing so in a manner that best serves everyone's needs? Let's dive into this.

AI Committee

Your first step, whether a law firm, in-house legal team, or claims team, is to create an AI Committee. The purpose of the AI Committee is to address everything AI-related for your team. Draft an AI policy? The AI Committee. Evaluate which AI platform to license? The AI Committee. And so on. AI comes with so many issues, avenues, and approaches; you need a dedicated committee to handle everything AI.

Who should be on the Committee? Include your Chief Information Officer, your head IT person, possibly your office manager, your Managing or Administrative Partner, and at least one partner from every practice group or area. The bigger the firm, the larger the committee. Having a place at the table with all the stakeholders is necessary because the AI Committee will be making integral, fundamental decisions that will define and direct the firm. Looking ahead to how ubiquitous and all-encompassing AI will become in the legal field, it is essential that decision-makers and all interested parties are represented.

How often should they meet? Regularly. At least monthly, perhaps bi-weekly or even weekly. And the Committee, when not meeting, should freely engage via e-mail, Teams chats, or other means to stay on top and ahead of AI-related issues.

And what should the AI Committee address?

- **An AI-written Policy**. The Committee should draft a written policy that defines for everyone on the team the scope and proper use of AI. If you haven't provided anyone the greenlight to use any AI yet, then that's the written policy until you do.

- **An Evaluation of AI Needs**. Organizations often initiate AI adoption by evaluating available platforms and then deciding whether to implement those technologies. This is the proverbial putting the cart before the horse. You shouldn't be deciding whether to license a given AI platform before evaluating and determining what your AI needs are. How do you do this? The AI Committee can survey the lawyers and ask them:

  What are your most time-consuming tasks?
  Which tasks are your most tedious?
  Which tasks are most often written down by the firm or clients?
  Which of your tasks requires the most brainstorming?
  Which of your tasks do you believe would best be served by AI?
  How do you want us to use AI?

Have you heard of an AI platform we should consider, and if so, why do you recommend it?

Asking these questions and evaluating the responses will guide the AI Committee on what tasks would best be served by AI. Once you have a list of tasks, group them into categories or buckets. For example, legal research and writing could be one bucket. Summarizing documents (medical records, depositions, employment records, etc.) could be another bucket. Deposition preparations could be another. And so on. By doing this, you know what your AI needs are, and you can go into the marketplace and find the most suitable platforms to meet those needs.

- **An Evaluation of AI platforms.** Once you have defined your AI needs, you can determine which platforms meet those needs. How do you know which platforms to consider for the needs of one or more of your categories?

    - **Research Online.** A few Google searches will help you find several articles written in the last six months with evaluations of various platforms meeting your needs. Folks in the legal tech and AI space regularly review and comment on multiple platforms and compare them to similarly situated platforms. A few minutes online should garner several reputable companies to consider.

    - **Contact Your Peers.** You're not the only person doing this. Some have already gone through this process. Some are going through it now. Ask your peers what platforms they use and why.

    - **See Which Platforms Your Ream Recommended.** You asked your team what platforms they suggested would help. Consider evaluating those.

    Once you have a list of platforms for each of your categories (you may find that some platforms check the boxes for more than one of your categories), then do the following:

    - **Demo**. Ask each AI platform to provide you with a live demonstration online. Not simply a slide deck of what the platform supposedly does, but an actual run-through of its bells and whistles.

    - **Free Short License**. Ask for several short-term licenses (10-30 days) for your team to try and test it.

- **References**. Ask for references you can call and ask about their experiences with their platform.

- **Pilot program**. Instead of going all in on a platform, if the platform allows you to purchase a limited number of licenses, try a pilot program with several lawyers and see if it is worth expanding it beyond them.

Once you have all this information, the AI Committee discusses the pros and cons of each platform, the costs, how intuitive they are, the amount of training involved, and compliance issues like security, privacy, and data protection. At the conclusion of this analysis, the Committee recommends to the firm which AI platforms to secure and why.

- **Procuring AI**. If the firm decides to adopt the Committee's recommendations, the Committee then contracts with those AI vendors. A few things to keep in mind:

  - **Your Data.** Ensure you keep and control your data, that it is protected, and not disclosed to third parties.

  - **Protections.** Review the licensing language closely when it comes to indemnity, insurance, and other clauses imposing responsibilities on the party.

  - **Price.** Scrutinize the pricing, particularly for any increases in later contract years, renewals, and other related costs.

  - **Training.** No one knows the platform better than its creator. Negotiate sufficient training, troubleshooting, and tech support.

  - **Platform Drift.** Ensure that the vendor has accounted for platform drift (without adequate upgrades and input, the platform can degrade) and has a plan to address it.

- **Training.** The Committee, with the assistance of the vendors, needs to train its team on the ethical, practical, and proper use of the AI platforms. Training sessions should be substantive, exhaustive, and tailored toward the knowledge base of your team. Consider offering different levels of training to accommodate varying levels of understanding, competence, and capacity among your team members.

- **Pilot Program.** Before opening any platform to everyone, start with a pilot program and allow a small group to test the platform thoroughly, see for themselves where the issues and hiccups are, and address those before expanding the pilot program to other lawyers and eventually the whole firm.

- **Lather. Rinse. Repeat.** This process of evaluating, selecting, and training on AI platforms is a continuous, ongoing process. The Committee will continually evaluate its AI needs, select platforms to consider that may meet those needs, choose platforms to license, contract for those platforms, and train its team on them.

AI is constantly evolving, changing, and developing. The AI Committee must stay abreast of this and assist the team in staying ahead of the AI curve.

And while we're on the topic of AI platforms, let's discuss the difference between off-the-shelf (out-of-the-box) platforms and custom-designed ones. An off-the-shelf platform, like Lexis AI, is a fully functional platform to which you can upload documents and interact with them on the platform. It is not integrated with your firm's or company's database.

Conversely, a customized platform may very well be integrated with your document management system, where it has evaluated, processed, and manipulated your data to run through its algorithms, so when you enter prompts, your data drives the responses, not simply the platform's data. Your firm may want to allow a platform to access and process all your motions and discovery, so the next time you draft a motion to dismiss, the platform draws from your library of motions to dismiss to provide you with a first draft for you to use and modify. This decision – the overall structure of an AI platform and how integrated it is with your firm's work product- is part of the Committee's analysis and consideration.

Since we have touched upon training and its importance, let's discuss creating an environment to experiment, test, and apply AI.

An AI Workshop.

Learning to use AI is experimental and experiential by nature. Others and I can tell you how to use AI, but until you roll up your sleeves and get your hands dirty, you won't appreciate, much less understand, what AI can do and how to use it. Therefore, after you teach your team the ethics, the do's and don'ts, and how the platform you licensed works, create pods of lawyers, let them experiment with the platforms, and teach the rest of the firm what they learned.

Let's take, for example, ChatGPT. The firm has decided to use an enterprise closed version of ChatGPT. You know LLMs like ChatGPT can help brainstorm when preparing for depositions, but you and the firm only have a vague understanding and appreciation of how to use ChatGPT in this way. To explore the depths of the platform for taking depositions, you create an ad hoc group of lawyers. These lawyers have taken, collectively, hundreds if not thousands of depositions, and you task them to explore how to leverage ChatGPT to prepare for depositions (developing themes, creating outlines, evaluating approaches to deponents, etc.). You tell them to get on Zoom or Teams, one of them shares their screen, and they explore and experiment with prompts, and see which ones work and which don't. After several group roundtables like this, they know how to make the most of the platform to prepare for depositions, and they then train the rest of your team on their approach and prompts.

Firms that take this approach and develop internal mini think tanks to put one or more AI platforms to the test and see what they can do and how they can help handle a variety of tasks, not only to save time but to improve work product and outcomes, will be on the cutting edge of AI adoption.

Before we turn our attention to prompts and prompt engineering, let's take a brief look at where AI is taking us and the profession.

What Clients Want

Most of us in the legal field didn't hear about AI in practice until 2023. Before then, AI's application and usage were primarily limited to data analytics and e-discovery. LLMs had yet to achieve their popularity (and notoriety) and ability to perform tasks that captured our attention and imagination. Think about that a second – it was about two and a half years ago when we started, in earnest, discussing and evaluating AI. And as it is our nature in the legal field, we were slow adopters across the board – clients and firms. At first, clients told us - Don't use AI. And then they said to use AI, but only in limited ways and under specific circumstances. And more recently, clients have begun encouraging their outside counsel to adopt AI, just as they have with the technology. And all this has happened in about a two-year window. In the legal field, that's the blink of an eye. So, what next?

We can anticipate the following from clients in the years to come:

- Expectation that outside counsel will use AI for more and more tasks and pass the savings to them.

- Reduction in outside counsel bills for billing them for tasks that would take less time if they had used AI.

- Requiring outside counsel to license specific platforms or use AI platforms that clients license to perform one or more of their tasks.

- A shift from the billable hours to flat fees, as more tasks become subsumed by AI.

- Less patience with young lawyers billing for tasks clients believe can primarily be handled by AI.

So, where does this leave firms?

How Firms Will React to AI

How are firms reacting and how will they react to AI?

- **AI Adoption**. Firms are adopting AI and training their teams, and their spending on firm technology is increasing to, ironically, be more efficient and bill fewer hours.

- **Alternative Billing Models**. Firms are exploring alternative billing models, billing flat rates for different stages of litigation, now that AI is assisting with more tasks (summarizing records, drafting discovery, etc.).

- **Flattening the Pyramid**. The traditional defense firm operates with numerous paralegals and associates, and fewer partners, with the lower levels of the pyramid handling the more time-consuming, basic tasks, which, increasingly, AI can assist with (and one day, possibly handle largely unsupervised). What happens when most of the tasks generally assigned to young lawyers to handle while they train to become more skilled lawyers essentially vanish?

  Let's consider an example. Let's take a civil defense lawyer with 100 lawyers. There are 30 partners and 70 associates, with 40 paralegals. Let's assume each associate bills 2,000 hours. The least experienced lawyers bill about 1500 hours on what clients may define as more fungible tasks, while the senior associates spend about 500 hours on these tasks. And let's further assume that within five years, the amount of time to perform these tasks, with the assistance of AI, is halved (which, depending on the task, is a conservative estimate). How does that firm keep all those associates? It has to bring in more work or lay off lawyers proportionally. This is the buzzsaw civil defense firms are facing. You can quickly see why some firms are jumping ahead and negotiating flat rates for their cases.

- **Rethinking Training**. The way firms train their teams will invariably have an AI component. Every aspect of the practice can benefit from AI and teaching our teams how to use AI will become second nature.

And how is the Plaintiff's bar using AI? Let's discuss that next.

The Plaintiff's Bar Use of AI.

The Plaintiff's bar is far ahead of the defense bar in their adoption and usage of AI. They jumped on the AI train early and have invested considerable resources and time in developing and utilizing AI. Some plaintiff firms have developed their own AI platforms, and many have mastered using the LLMs. Plaintiff firms are using AI to:

- Prepare demand packages.
- Summarize records.
- Evaluate photos, videos, audio, medical records, and imaging.
- Prepare pleadings and motions.
- Prepare written discovery.
- Prepare for and take depositions.
- Prepare for trial and assist with every aspect of trial.

Plaintiff firms regularly share which AI platforms to use, how to use them, and how AI can improve their work product and outcomes while saving time and money.

Some anecdotes plaintiff lawyers have shared with me:

- Uploading their clients' medical records and images into an LLM to evaluate whether they have a claim (saving them a $5,000 expert medical review and consultation fee).
- Having AI interpret photos from the accident scene to evaluate the cause and force of an auto accident.
- Having AI interpret brain MRI films to evaluate whether a plaintiff sustained a traumatic brain injury.
- Developing a line of questioning for jury selection to deselect defense-favorable jurors.

The plaintiffs' bar is brainstorming with and testing AI, putting it through its paces to see what it can do and how it can serve their needs and those of their clients.

Their incubator approach to learning about what AI can do and what it can't, how it can help, and its limitations, has enabled them to serve more pointed written discovery, take more effective depositions, and perform better at trial.

We, the defense bar, have a lot to learn from how the plaintiff's bar is exploring and pursuing AI. Their reliance on AI provides them with a distinct advantage in and outside the courtroom.

One thing they are doing is learning how to prompt. Let's discuss prompt engineering.

AI Prompts

The way we interact with AI is through prompts. We provide an LLM with information and instructions, and it responds as effectively as possible. The better the prompts, the better the output. There are a few rules for effective prompts.

- **Who are you?** Tell the platform what role it should assume. I typically say:

  "I am a Florida civil defense lawyer."

- **What jurisdiction?** Tell the platform where your case is.

  "The case I am defending is in the Eleventh Judicial Circuit, Florida state court."

- **Who is your client?** Without identifying your client by name, determine whom you represent.

  "I represent a truck driver and his employer, a trucking company."

- **What is the task?** Tell the platform what you need help with.

  "I am deposing the plaintiff."

- **What are the facts?** Describe the facts of the case without providing identifying information.

  "This case involves a car accident. Plaintiff was driving down the highway when traffic suddenly slowed down, applying hard brakes. My client, the truck driver, could not stop in time and rear-ended the plaintiff's vehicle. The plaintiff was driving an Odyssey minivan. Her front airbags were deployed. My driver was driving an F350. The minivan sustained damage to the rear of the vehicle, but most of the rest remained intact. The Ford 350 sustained minimal damage. Plaintiff was taken from the scene by ambulance. She started chiropractic treatment and eventually underwent surgery, undergoing a discectomy at C3-4. She is a nurse. She is claiming lost wages and loss of earning capacity, and to date, has incurred over $150,000 in medical expenses."

- **What do you want**? Specify in detail what output you want.

"Please prepare an outline with topics and subtopics covering all aspects of liability, causation, and damages."

- **How do you want it?** Specify how you want the output.

  "Generate 400-500 questions, separated into sections, with each section going into detail on that topic. Make the questions leading, one fact per question, making each question short and direct."

By providing the AI platform with as much detail as possible and offering it as much guidance as possible, you secure a better response that more closely meets your needs.

Prompting Best Practices

Prompting is both a skill and an art that you cultivate from learning from others and experimenting on your own. There is no substitute for typing different prompts and learning what works as you go. And it isn't until you sit at your computer and type prompts, and modify them, and augment them, and take them in this direction and then in another direction, that you will fully appreciate, understand, and use AI. With this free play approach in mind, let's discuss some best practices.

- **An Anonymous Summary of Your Case**. The more facts an LLM has about your case, the more detailed and relevant the response will be. If you're going to use an LLM to assist during the duration of a case, create a Word document that summarizes the facts of the case (and any pertinent legal issues) in detail, without disclosing names or confidential information. Consider making a three to six-paragraph summary of your case in a Word document, where you cover all relevant information on liability, causation, and damages, and have that ready whenever you want to ask AI to help with the case. This will save you time each time you prompt, eliminating the need to summarize the facts each time you revisit AI to assist on that case.

- **Sample Prompts on the Form and Style of the Desired Output**. Telling AI how you want it to respond to your prompts is often as important as the substance you're seeking. For example, how you want AI to create a deposition outline for an adverse witness would look different than a deposition outline for a favorable witness. So, if you find yourself asking AI about the same tasks repeatedly, create several standard prompts you can drop into larger prompts for those tasks.

  For example, let's stay on the example of deposing a hostile witness, let's say the plaintiff or plaintiff's expert. For those witnesses, we would treat a deposition like a standard cross-examination, and the questions we would ask would parrot the rules for cross-examination. Considering that, you could create the following

prompt, which you would drop into a larger prompt where you ask the LLM to draft a deposition outline.

Proposed Prompt: “Draft each question as a leading question, meaning the question should suggest the answer. Do not include any tags at the end of the questions (avoiding “right,” “correct,” “yes,” and others). Include only one fact per question and make the fact as singular and bite-sized as possible. Have every question lead from the last question and into the following question, and use all potential questions that cover a topic before moving on to the next topic. Each question should be written in the form of a declarative statement. Each question should be in the active voice. Each with 15 words or fewer, preferably 10 words or fewer. Use strong nouns and verbs and few adverbs and adjectives. Go into as much detail as possible, and don’t overlook obvious or basic questions. Go from general to specific. Include questions that the deponent will look foolish for disagreeing with. Include 400-600 questions."

As you can see, this is a very detailed prompt that will secure you concrete questions in a particular style and format. This prompt ensures a deposition outline of questions that are leading and limiting in every form imaginable. Develop a series of these types of prompts and keep them handy to drop them into larger prompts when the need arises.

- **Using Different LLMs**. Try the same prompts in different LLMs. I may have ChatGPT, Claude, Perplexity, and Grok all open at once and copy and paste the same prompts into each to see which provides the best responses. Remember, each has its own proprietary algorithms, and each has its own strengths, so test them simultaneously.

- **Always Assume the Fault Lies with You**. If your prompts are not generating helpful responses, assume you can do a better job with your prompts and keep trying. Often, poor responses are due to prompts not adequately informing the LLM what you want and how you want it.

Now that you have guidance on how to interact with LLMs, let’s discuss different prompts for different tasks, and we’ll do so by walking through a tort case from beginning to end.

An Anatomy of a Tort Case Through Prompts

AI has the potential to assist with every phase of a case from pre-suit through trial. Let’s take a trucking case where a defendant driver rear-ends a plaintiff driving a minivan on a highway. Here, she sustains alleged injuries and undergoes neck surgery. There are

multiple tasks involved in taking that case from inception through the verdict. Let's list those tasks and provide sample prompts to assist with them.

The following prompts assume you have entered a preliminary prompt where you have included a summary of the case (the Word document where you summarized the facts and law), the information about you, the parties, and other items mentioned above, and how you want the response to read (like the prompt for cross-examination). After providing this preliminary information, you can dive into the prompts below.

Before sharing the prompts, a few caveats. First, most platforms, unless you have their premium service, have prompt limits, so keep that in mind. You may want to prompt in the morning, hit your limit, and then pick up later (usually you're timed out for a few hours, though some platforms time you out for the day). Second, save your prompts and responses because they may be helpful later. Most platforms default to keeping your prompts. Third, label each new search so you can easily find it later. Lastly, my prompts often include a number – provide 30 interrogatories, 100 interview questions, 500 deposition questions. I generally use large numbers to secure exhaustive responses from which I can pick and choose.

Presuit Prompts

"Which witnesses should I interview?"

"Which witnesses may have information about the accident?"

"Which witnesses may have information about liability, causation, and damages?"

"Which evidence should I secure?"

"What electronic data should I secure and how?"

"Which third parties may have relevant information?"

"What questions should I ask these witnesses? Prepare a 100-question outline of open-ended questions to use when interviewing these witnesses."

"List 50 documents and items that I should be seeking in this case. List another 50 documents and items that are less common to request in this type of case but would prove helpful for the defense."

"Who may be responsible for this incident and why? Which third parties may be responsible and why?"

Pleadings

For these questions, upload the Complaint. It is a public document, so there is no confidential information you are sharing by uploading it into an LLM (and you may be

using a closed platform, obviating concerns regarding disclosure of confidential information). Some of the queries below are seeking information you will need to verify. For example, if you ask the platform for affirmative defenses, you must confirm that the affirmative defenses are valid. Some will be obvious (comparative fault). Some less obvious (citing a Florida statute with which you are not familiar).

This is a suitable venue to discuss the two primary applications of AI and their respective limitations. I place my prompts into two silos – fact-based prompts and brainstorming-based prompts.

A fact-based prompt is when you ask an LLM to give you verifiable information – where a company is incorporated, how many employees a company has, what Florida law is on negligent security, etc. – you want a detail that needs to be checked and verified before you rely upon it. Remember, LLMs are not Lexis or Westlaw and are not meant as legal research tools, and even when it comes to run-of-the-mill facts, they can make errors. Any prompt seeking information needs to be verified.

A brainstorming prompt is just that – you are asking the platform to help you think through a task – provide me 100 questions for a plaintiff's deposition, provide me 30 categories of documents to request, list 30 themes to use at trial. The platform offers output that you can use when drafting interrogatories, creating a deposition outline, or evaluating how to question a venire or what demonstrative aids best convey your story to the jury. This information isn't necessarily verifiable (some is). Essentially, it augments and supplements your approach to a given task or project. And it is here – the ability to brainstorm an issue – that LLMs shine and give you a leg up on your opponents.

And now, let's discuss the paradox about using LLMs for brainstorming. Conventional wisdom suggests that younger lawyers are more inclined to adopt and rely upon AI. There are more senior lawyers, though, who are better situated to evaluate the output from prompts. I started practicing in 1997. I have handled a wide range of cases and taken depositions of all types. My experience enables me to examine, question, and evaluate prompt responses better than a young lawyer. I can ask an LLM to prepare a detailed deposition outline for a neurosurgeon. I can better assess, than a young lawyer, whether the topics, subtopics, lines of questioning, and individual questions make sense and best serve the client and the case. When using LLMs to brainstorm, ensure that the person entering the prompts has the necessary experience to gauge whether the output is sound and should be utilized.

Let's return to prompts during the pleadings stage. Upload the Complaint and consider the following prompts:

"Is there a basis to move to dismiss this Complaint. If so, why?"

“If I have a motion to dismiss, provide an outline for the motion and draft the motion.”

“What affirmative defenses apply to the causes of action alleged in this Complaint?

“Do I have a counterclaim, crossclaim, or third-party claim, and if so, against whom or for what?”

Motion Practice

AI can assist with motion practice, including motions to dismiss, motions to compel, motions for a protective order, motions for summary judgment, Daubert motions, and preparing for hearings on these motions. Again, any legal research or analysis needs to be confirmed and corroborated. Sample prompts include:

“I have uploaded Plaintiff’s motion ____. What arguments may I raise to oppose it?”

“I have uploaded Plaintiff’s motion ____. What are the strengths and weaknesses of the motion, and how can I respond to or exploit the weaknesses?”

I have uploaded my motion ____. What are the questions the judge will likely ask me about my motion?”

“I have uploaded my motion ____. What are the likely issues the plaintiff will raise in their response, and how can I modify my motion to pre-empt those issues?”

“I have a hearing on motion _____. Prepare an outline for the hearing on the motion.”

“I have a hearing on motion _____. Provide the questions the judge will likely ask and how best to respond to those questions.”

Discovery

Upload the Complaint and Your Answer into the LLM and consider the following prompts.

“Provide 30 interrogatories to serve the Plaintiff.”

“Provide an additional 30 interrogatories to serve the Plaintiff.”

“Provide an additional 30 interrogatories seeking information that is relevant and helpful but not typically asked in a case like this.”

“Provide 30 requests for documents to serve the Plaintiff.”

“Provide an additional 30 requests for documents to serve the Plaintiff.”

“Provide an additional 30 requests for documents seeking information that is relevant and helpful but not typically asked in a case like this.”

“Provide 30 requests for admission to serve the Plaintiff.”

“Provide an additional 30 requests for admission to serve the Plaintiff.”

“Provide an additional 30 requests for admission seeking information that is relevant and helpful but not typically asked in a case like this.”

Upload the other side’s discovery requests and consider the following prompts:

“How should I respond to this discovery?”

“Which requests are objectionable and what are reasonable objections to these requests?”

“What third parties should I subpoena and what documents should I request from them?”

Depositions

LLMs are a powerful tool when preparing for depositions. Effective prompts help you efficiently and effectively prepare for depositions. When drafting deposition prompts, include the Word document that summarizes your case, and the cross-examination prompt referenced earlier, and then consider the following prompts (for an auto case):

“I am deposing the plaintiff. Cover the following topics: (1) liability; (2) causation; (3) damages; (4) litigation history; (5) claims history; (6) accident history; (7) deposition history; (8) work history; (9) medical history; (10) pre-existing injuries and accidents; (11) date of the accident; (12) detailed description of the accident; (13) alleged injuries due to the accident; (14) treatment since the accident; (15) alleged loss of wages and earning capacity; (16) alleged medical expense; (17) past medical expenses; (18) future medical expenses; (19) day in the life before the accident; (20) day in the life since the accident; (21) any physical limitations due to the accident; (22) any expenses due to the accident; (23) address alleged pain and suffering; (24) plaintiff’s social media; (25) plaintiff’s electronic health data; (25) plaintiff’s smartphone and smartwatch data; (26) the damage to plaintiff’s

vehicle; (27) the damage to defendant's vehicle; (28) evidence related to the accident; (29); electronic data from the vehicles; (30) photos and video of the accident; (31) any other topics relevant about the case.

Organize these topics so they flow from one into the next. Generate at least 50 questions for each of these subjects.

Ensure the questions take a defense-oriented approach where each question seeks to elicit a response that serves the defendant on liability, causation, or damages."

"I am deposing plaintiff's treating spinal surgeon. Cover the following topics. (1) Doctor's financial interest in the case; (2) letters of protection; (3) history of work with plaintiff's counsel; (4) amount of practice dedicated to plaintiffs involved in personal injury claims; (5) work performed for patients with insurance, Medicare or Medicaid; (6) reimbursements for procedures; (7) basis for medical charges; (8) Doctor's online presence; (9) social media presence; (10); courses of treatment; (11) diagnoses; (12) prognosis; (13) treatment; (14) evaluation of plaintiff's imaging; (15) evaluation of pre-existing medical conditions; (16) evaluation of prior injuries, accidents and issues; (17) evaluation of medical records referencing unrelated and pre-existing conditions; (18) basis for opinions that injuries are related to accident; (19) conduct Daubert challenge; (20) any facts that undermine or contradict doctor's analysis and opinions; (21) prior Daubert challenges; (22) any limitations, restrictions, suspensions or termination of medical license; (23) money made from expert work; (24) split of expert work between plaintiff and defendant; (25) the full scope of expert opinions; (26) any other topics.

Organize these topics so they flow from one into the next. Generate at least 50 questions for each of these subjects.

Ensure the questions take a defense-oriented approach where each question seeks to elicit a response that serves the defendant on liability, causation, or damages."

I am deposing Plaintiff's accident reconstruction expert. Cover the following topics. (1) Financial interest in the case; (2) history of working on plaintiff matters (3) history of work with plaintiff's counsel; (4) amount of practice dedicated to plaintiffs involved in personal injury claims; (5) what amount of work and type of matters handled for defendants (6) fees, rates, charges for expert work (7) calculations of what expert makes over a year (8) online presence; (9) social media presence; (10); tests performed; (11) scope of evaluation; (12) evidence review (13) evidence not reviewed or examined; (14) evaluation of all data, including all vehicle electronic data, physical data, damage to vehicles, and physical site (15)

evaluation of any items that suggest an alternative explanation; (16) evaluation of cause of accident; (17) evaluation of who caused accident and the injuries sustained due to the accident; (18) basis for opinions that injuries are related to accident; (19) conduct Daubert challenge; (20) any facts that undermine or contradict analysis and opinions; (21) prior Daubert challenges; (22) any limitations, restrictions, suspensions or termination of any licenses; (23) money made from expert work; (24) split of expert work between plaintiff and defendant; (25) the full scope of expert opinions; (26) evaluation of defendant's experts opinions; (27) creation of any PowerPoint, slide deck, demonstratives or video or animation recreation; (28) any other topics.

Organize these topics so they flow from one into the next. Generate at least 50 questions for each of these subjects.

Ensure the questions take a defense-oriented approach where each question seeks to elicit a response that serves the defendant on liability, causation, or damages."

As you see from these prompts, detail is key. The more information and direction you provide the LLM, the better the responses. And press the LLMs to come up with more topics and questions to ask related to those topics until the issues and questions it spews out are no longer relevant or helpful. We don't know what we don't know, and these platforms help us consider subjects and topics we may not have considered.

Trial Preparations and Trial

Trial preparations are time-consuming, challenging, and can be difficult when you don't have a robust team with whom to brainstorm. So much trial preparation involves creativity, imagination, and holistic thinking that is best served by a team rather than an individual. LLMs can fill team gaps by acting as sounding boards and brainstorming aids.

This is a good place to provide additional prompt tips. When communicating with an LLM, view it as another lawyer you are speaking with. What information would you share and how would you share it with another lawyer with whom you are brainstorming the trial? If you're not getting the feedback you're trying to solicit, how would you redirect the conversation with that lawyer? What additional facts or information would you provide to help focus that lawyer on what you really want? View the LLM as if it were anthropomorphic and have a conversation with it much as you would with a colleague. If you walked down the hall, came into the office of a colleague, and plopped yourself into a chair in front of their desk, what would you say? An LLM is like a colleague who is infinitely patient and willing to answer any question you pose to it. Keep that approach in mind.

Upload your case summary and consider the following potential prompts for trial preparation.

Trial Themes

“What are sound bites, catch phrases, cliches, song lyrics, movie lines, lines from television shows, or other phrases that encompass and reflect defense themes in this case. Provide at least 50.”

“Provide 50 themes that summarize, encompass, and reflect the defense case.”

“What 50 themes would most resonate with a jury from the defense perspective?”

“What 50 trial themes will plaintiff’s counsel likely rely upon, and how can I counter them with my trial theme?”

“For the defense trial themes you are offering, how can the plaintiff attempt to inoculate and defang them?”

“What exhibits and demonstratives can I use to reflect and drive home these trial themes?”

“How should I integrate these trial themes in jury selection, opening, witness examinations, and closing?”

Exhibits

“What exhibits should I rely upon at trial and why?”

“What demonstratives should I rely upon at trial and why?”

“How can I tell my story through exhibits and demonstrations?”

“What exhibits will the plaintiff rely upon and why?”

“What demonstratives will the plaintiff rely upon and why?”

“How best can I, through images, videos, audio, documents, and otherwise, tell the defense story?”

Jury Selection

“What is the ideal defense juror for this case and why?”

“What is the ideal plaintiff’s juror for this case and why?”

“Considering the facts of the case, list all the topics and subtopics to cover with the venire.”

“What are common themes to cover with the venire during jury selection?”

“What are the types of questions I should expect plaintiff’s counsel to ask the venire?”

“What are the topics to avoid during jury selection?”

“How can I integrate my themes during my jury selection?”

“What questions will identify biased jurors against the defense? What topics should I explore, and what questions can I ask to elicit bias?

“Once I have a juror who has made a statement that may be construed as bias, what specific questions may I ask the juror to commit them to bias? What questions do I ask, in what order do I ask them, and how do I ask them to preclude opposing counsel or the court from rehabilitating the witness?”

“How do I redirect attacks on helpful jurors to show they are not biased?”

“How do I question the venire to come across as pleasant and professional while seeking out information they may not want to share?”

Opening

“How do I incorporate my theme into the defense opening?”

‘What exhibits should I use during opening?”

“What demonstratives should I use during opening?”

“Create the copy for a slide deck and note what images to use in each slide to present to the jury during opening. Create three slide decks – one with 10 slides, one with 25 slides, and one with 50 slides.”

“Create an outline for opening, with topics, subtopics, and bullet points for each item to share with the jury.”

“What demonstratives will plaintiff’s counsel likely use during opening?”

“What exhibits will plaintiff’s counsel likely use during opening?”

“What issues, facts, and evidence will plaintiff’s counsel address during opening?”

“What issues should I avoid during opening?”

“What issues should I lean into during opening?”

Direct Examinations

“Which witnesses should I call at trial?”

"Which order should I call witnesses at trial?”

“Who should be the corporate representative at trial?”

“What role should the corporate representative play at trial?”

“Prepare the direct examination of _____ for trial. Include a list of topics and subtopics, and a series of questions under each. Include the following topics: _____.”

“Which exhibits and demonstratives should I use with _____ at trial.”

“Prepare the likely cross examination by plaintiff’s counsel of _____ for trial. Include the topics, subtopics, and all the questions in the form and style plaintiff’s counsel will ask them.”

Cross Examinations

“Which topics should I cover with ____ during cross examination?”

“How should I arrange the topics to cover with _____ during cross examination?”

‘What exhibits and demonstratives should I use to cross examine ____, and how should I do so?”

“Prepare a detailed outline for the deposition of _____. Include topics and subtopics and 50 or more questions under each and pose the questions according to the following: (here include the cross-examination prompt shared earlier). Remember that the witness will not want to agree or cooperate, so structure the questions and lines of questioning to take this into account. I have uploaded the deposition of this witness and exhibits I will show this witness. For as many questions as possible, reference the deposition (page and line) or an exhibit and prepare the questions and these cross references in a two-column chart, with the question on the left and the reference to the deposition or exhibit on the right.”

Closing Argument

“How do I incorporate my theme into the defense closing argument?”

"What exhibits should I use during closing?”

“What demonstratives should I use during closing?”

“Create the copy for a slide deck and note what images to use in each slide to present to the jury during closing. Create three slide decks – one with 10 slides, one with 25 slides, and one with 50 slides.”

“Create an outline for closing, with topics, subtopics, and bullet points for each item to share with the jury.”

“What demonstratives will plaintiff’s counsel likely use during closing?”

“What exhibits will plaintiff’s counsel likely use during closing?”

“What issues, facts, and evidence will plaintiff’s counsel address during closing?”

“What issues should I avoid during closing?”

“What issues should I lean into during closing?”

“What objections should I be considering during closing?”

“What arguments may rise to the level of a mistrial or objection during closing?”

“I have uploaded the jury instructions and verdict form. How should I rely on them during closing? How should I use the verdict form during closing?”

Issues for Appeal

“How can I preserve the record for appeal?”

“What are the common issues to look out for and consider that may arise during trial, creating appellate issues?”

If you have a closed system, you can upload deposition transcripts, expert reports, medical records, discovery responses, and other documents, and then have the LLM rely on them to answer the above (or related) prompts. These platforms are effective at reviewing, summarizing, and analyzing documents. For example, you can upload the plaintiff’s life care plan and ask the platform to address any weakness, mistakes, or false assumptions and create a detailed cross-examination for the plaintiff’s life care planner. If you have your own life care planner, you can upload both (in a closed system) and have the platform use your expert’s report to attack the plaintiff’s report and devise a detailed cross-examination based on your expert’s approach to the plaintiff’s alleged life care needs.

These platforms review, summarize, and cull out relevant information much faster (and often more effectively) than we can. Lean into those tasks when using them (but always double-check the output).

There is no limit to how to brainstorm AI. AI can assist with every aspect of litigation (and transactional work). The two big caveats are not to disclose confidential information in an open system, and to the extent you’re using AI for a legal or factual question (i.e., how can I back strike a juror?), confirm the accuracy of the output.

Let’s address what else you can use AI for.

Marketing

You can use AI to improve your firm's marketing. It can help you craft an elevator pitch, improve your firm bio, create a mini bio when you speak, prepare the copy for slide decks for presentations, assist with articles and white papers, and overall streamline your marketing efforts. Here are sample prompts:

> "I have uploaded my bio from my firm's website. Can you make it more effective and write in a manner to catch and keep the attention of the types of clients I want to attract?"
>
> "I have uploaded my bio from my firm's website. What should my elevator pitch be? What should my LinkedIn bio be? What phrase should I use under my photo on my LinkedIn profile?"
>
> "I am presenting on _____. I have included my white paper, which I have prepared. Can you turn this into a (20, 30, 40) slide PowerPoint that uses short, punchy language and proposed images I should use for each slide?"
>
> "Here is my firm's website. How can we improve it? How can we update and improve the copy on it? How about the images? The layout?"

Checklists, Decision Trees, and Case Plans

Many of us will handle the same types of matters again. How do we ensure our checklists, decision trees, and case plans are accurate, up to date, and effective, and consider how the plaintiff's bar has evolved and changed in handling those matters?

These platforms understand and can assist with creating a step-by-step guide for your cases that you can modify, amend, and augment to use with your team, ensuring consistency, improved work product, and avoiding skipped fundamental steps or tasks.

I am in the process of creating checklists for the different types of cases I manage and have observed that LLMs consistently generate comprehensive checklists for a wide range of case scenarios.

> Here are some sample prompts to help you develop checklists for your cases:
>
> "I defend auto cases in Florida. I primarily defend trucking matters throughout the state. I often get involved early in the case, and sometimes on the day an accident occurs. I need a thorough checklist for defending these matters from the date of the incident through trial. Create a checklist, with topics and subtopics, with each topic including a list of tasks and to-dos to address that aspect of the case. For example, one slide may outline the tasks to be completed on the date of the accident and provide a comprehensive list of everything for me and my team to do that day. Provide checklists for every aspect of the pre-suit investigation, from

responding to a demand to preserving evidence, etc. Once the suit is filed, address every aspect of the pleadings, motion practice, written discovery, depositions, expert retention, expert discovery, and then on to and through mediation and trial. Leave nothing to the imagination. Cover every topic imaginable with as much detail as possible. Turn this checklist into a Word document I can edit."

"I am conducting a vehicle inspection. Provide me with a detailed checklist to address every aspect of that inspection."

"I am conducting e-discovery. Provide me a detailed checklist to address every aspect of e-discovery from agreeing to an e-discovery written protocol, to agreed-upon search terms, to scope of search, etc."

Whatever task you are tackling, there is a process to tackle it, there are right ways and wrong ways, and steps and procedures you should follow. Using AI can help ensure we're not skipping a step that can negatively affect us later.

Spend time with your team brainstorming how you can use AI, and see what works and what doesn't, and adopt and teach your team what works.

Now, let's move to deepfakes.

Deepfakes

By now, we're all familiar with deepfakes. It is a document, audio, video, image, or other item that has been created or altered by AI. It could be a video of a politician giving a speech he never gave, or a voicemail of a celebrity they never recorded, or a photo of a scene that never occurred. AI technology has evolved to the point that someone with the right platform and training can create a fake of just about anyone doing just about anything. Even Zoom calls have been orchestrated to appear real when they are fake. Someone (with my permission) created a deepfake video of me for a presentation on deepfakes. Technology exists to fool us all.

Deepfakes will play a larger role in litigation, and the judiciary and the bar will play a larger role in detecting and excluding them. Gone are the days of assuming a photo, audio clip, or video is what it purports to be. That audio of your client making racist remarks on the plaintiff's voicemail may be fake. The surveillance video your client provided you with may be bogus. The photos of the accident or damage to the vehicle may be fake. We must now add verification of evidence to our to-do list.

Courts are struggling with deepfakes, and attempts are being made to update civil procedure rules and evidentiary rules to address them. Deepfakes, I believe, will be the subsequent discovery explosion comparable to the advent of e-discovery. There will be new rules and procedures to test the authenticity of documents, photos, audio, and videos, a new cadre of experts focused on proving (or disproving) the authenticity of

evidence, and motion practice and evidentiary hearings as to whether evidence is authentic. And if it isn't? Motion practice for fraud on the court.

And what duty will we lawyers have? Historically, when a client or opposing counsel sent us a video or audio clip, we generally assumed it was authentic. We can't take that anymore. We have (and will have) to play a role in confirming the evidence we rely upon is authentic and ensuring the evidence opposing counsel is relying upon is authentic.

The additional cost, time, and effort to confirm (or undermine) the authenticity of evidence will become part and parcel of our cases, and hiring experts to address this issue will become more common.

Deepfakes are one of many issues we will need to address in the future of AI. Let's discuss that next.

Future of AI

Before we address the remaining AI issues we need to address today, let's take a peek at where the path of AI is leading us.

Redefine Legal Education

More and more law schools are incorporating AI training into their curriculum. Before long, every law school will not only have one or two AI courses, but it will also incorporate AI throughout its curriculum, much the way law schools teach its students how to use Westlaw and Lexis (both of which, I believe, offer their AI platforms for free to law students, no doubt, to hook them on their more expensive platforms).

I am not suggesting (and certainly not recommending) that AI training supplant or replace how lawyers traditionally learn the law and the practice. Instead, it becomes a supplement and tool in their toolbox to create better work-product in less time.

The concern and challenge is teaching law students to think the way we, Gen X, learned to think, while simultaneously thinking the way one does when relying on AI, and to merge the two approaches. Personally, I think it is easier to teach lawyers of my generation AI skills to overlay their traditional skills rather than teaching law students who are being raised on AI how to think and analyze tasks and cases as we do (while applying AI). There is no question that AI is microwave thinking, whereas traditional thinking is slow cooker thinking. We need both, and we need each to complement the other.

Law students owe it to themselves to learn as much as they can about AI. Law students need to learn how to effectively prompt, learn how to use the various AI platforms (not just the popular LLMs but the law-based ones), and learn it well enough to teach their future firms how to use and adopt these platforms.

And while mastering AI, law students cannot forget the traditional skills we all learned when I went to law school. Old-fashioned thinking and analysis will always play a significant role in the practice.

Redefining the Role of Associates

Associates have typically learned the profession by performing routine tasks billed to clients. AI has threatened that model. More and more tasks usually assigned to young associates will be supplemented (and some replaced) by AI, which may result in law firms hiring fewer lawyers right out of law school and steepening the learning curve and reducing the period from starting at a firm to assuming more senior, complex tasks. We can expect more firms to pass on first-year associates and try to poach more experienced lawyers from other firms.

Redefining Law Firm Roles

As AI and technology's grip in the legal sector deepens, new positions will evolve – tech lawyers whose job will be focused on evaluating, selecting, and training in AI. With AI constantly evolving, firms, especially larger ones, will have a cadre of lawyers focused almost entirely on AI, facilitating its adoption and use within the team.

AI Training

Firms will expect everyone on their team to learn how to use AI ethically, appropriately, efficiently, and effectively. AI adoption at law firms will expand from a select few to everyone, including all partners, associates, and paralegals.

Billing Models

As mentioned previously, AI will disrupt the traditional pyramid model of law firms, significantly reduce fungible billing tasks, and encourage both clients and law firms to transition from a billable model to a flat-rate model. Some firms are already experimenting with this model based on their use of AI. Expect this adoption to continue growing and expanding.

Keeping More Work In House

In-house counsel are not only encouraging their teams to adopt AI to pass the savings on to them, but they are also heavily investing in their own AI platforms to keep more work in-house and keep their legal teams lean. With the C-Suite misunderstanding and overestimating the role of AI in the legal sector, much pressure is being placed on in-house legal teams to adopt AI to reduce the cost of their departments.

Law Firms Going into the AI Business

With the proliferation of AI, more and more firms are developing their own AI platforms and licensing them to other firms and legal departments. Good legal AI requires lawyers to be at the heart of its development, and some firms are partnering with AI developers to enter into joint partnerships regarding a variety of AI platforms. As AI squeezes the billable approach, firms developing their own AI platforms to license will compensate for any revenue loss caused by AI (and yes, the irony isn't lost on me).

New AI Technologies

Speaking of Deepfakes, lawyers will learn how to use AI to recreate accidents and put jurors in the middle of them, through virtual reality, holograms, and life-like recreations.

While keeping the future of AI in mind, let's go back to the present day and focus on the lifeblood of AI – data.

Data, Data, Data

Data is the fuel that runs AI. And quality data is key. Poor, incomplete data is what is creating all the fake cases lawyers have been citing. Garbage in, garbage out. When relying on any AI platform, understanding the data it depends on is essential.

I mentioned that the popular LLMs operate on all the data readily available online, including the data we lawyers have generated and shared, which is a substantial amount. This data, however, can be contradictory, incomplete, or simply incorrect. Therefore, any reliance on this data should be limited and circumspect. LLMs are continually striving to improve their data and the algorithms that process it, thereby enhancing their outputs. The day may come when LLMs can eliminate hallucinations. But that day is not today, and we must appreciate that when weighing outputs.

Even good data can be misconstrued and misused by AI. Lexis and Westlaw both inform users to double-check their AI outputs, and studies putting these platforms through their paces have shown error rates that are more than occasional. Therefore, even pristine data can yield output that misinterprets or misunderstands the data.

Now, the ideal data is one's own, whether one's law firm, legal team, or claims team. It is this data, which has been gathered and amassed over the years, that best serves the team's needs. Let's evaluate a carrier's data and how best to use it.

Carriers are sitting on a mountain of data. Claims data. Settlement data. Trial data. Data on injuries. Data on opposing counsel. Data on jurisdictions. Data on their own outside counsel. What if someone identified this data, gathered it, processed it, and ran it through algorithms? Imagine the power of a carrier's AI platform fueled by its own data?

Let’s consider a carrier that writes auto policies and defends auto cases across the nation. It has processed tens of thousands of auto claims, everything from minor property damage claims to multi-party fatalities, across multiple states, in all types of jurisdictions, with all sorts of plaintiff law firms, with all kinds of plaintiffs, addressing all types of property and personal injuries. If the carrier took the time, resources, and energy to extract key data points from each of these cases, create a database of this data, and then, with the help of an AI company, make a proprietary AI platform based on its own data, it could eliminate the daily guesswork, subjective evaluations and incomplete analysis performed everyday by claims professionals and defense counsel.

What if a carrier identified all its auto cases for the last three years, identified what data to extract from those files, and gathered and saved all that data in a usable format for an AI platform to process and evaluate? For auto cases, relevant data points would include:

- Vehicles involved
- Damage to vehicles
- Rating the damage to vehicles
- Force of impact
- Plaintiff’s firm
- Plaintiff lawyer
- The level of cooperation by plaintiff’s counsel
- Defense firm
- Defense lawyer
- The level of cooperation by defense counsel
- Jurisdiction
- The judge
- Age, sex, profession of Plaintiffs
- Type of witness Plaintiff makes
- Type of witness Defendant driver makes
- Type of witness Defendant company makes
- Plaintiff’s injuries
- Plaintiff’s medical treatment
- Plaintiff’s medical expenses
- Plaintiff’s prospective medical treatment
- Plaintiff’s prospective medical treatment
- Plaintiff’s lost earnings
- Plaintiff’s earning capacity
- Plaintiff’s experts
- Plaintiff’s expert opinions

- Defense experts
- Defense expert opinions
- Demands and Offers
- Settlement amount
- Verdict amount
- Motions filed
- Ruling on motions filed
- How long was the case open
- Any e-discovery issues
- Any spoliation issues
- Any sanctions issues
- Was reptile theory used, and how
- Any surprises during the course of litigation
- What were the legal fees
- What were the costs

Here are 40 data points that a carrier could extract from its files: the more data points, the more useful the historical data. One data point would essentially be useless. One hundred data points would provide a detailed analysis. The more data points, though, the more work it is to identify, extract, and use them. This initial step must be performed manually or, at the very least, a person should verify the data. Skimming through a file and finding 10 data points takes a lot less time than finding 50. The output, though, will be more valuable and helpful with a dataset of 50 data points rather than 10.

If carriers are not already doing this, the time will come when they will review a set of their cases, define what data points they want to extract from them, and extract that data. It will work with an AI provider to create a model of algorithms that process the data and answer questions based on that data. How much is this case worth? Well, you input the relevant facts of your case, the platform compares it to its data set, and provides a settlement range, even providing, if needed, the basis for that range. How effective is this plaintiff's counsel? Enter a prompt. How long will this case take? Enter a prompt. How much will this case cost, including fees, expenses, and settlement? Enter a prompt. That's where AI is headed.

Some plaintiff and defense firms have already developed similar models. Data analytics is key when making informed, reasonable decisions about your cases.

For firms, integrating their document database into an AI platform and then entering prompts to draft discovery and motions based on those drafted by their team is crucial for saving time, effort, and costs, while also enhancing quality control and consistency. Each firm believes its approach and method of litigating and trying cases are

the most suitable for its clients and would prefer an AI platform tailored to its documents, information, and data. AI companies exist that come alongside your firm and make this approach a reality.

As more and more of us adopt AI, the data we rely upon is key, and to the extent that data is ours, securing the relevant data and using it effectively will make the difference between effective AI and garbage AI.

More than simply affecting the practice of law, AI will generate a lot of litigation. Let's discuss that next.

AI Related Lawsuits

The use of AI has already created a myriad of AI-related lawsuits, including:

- **Breach of copyright**. AI platforms have been sued for their alleged copying of copyright-protected materials, including books, videos, audio, etc. Anthropic recently settled a case for over a billion dollars over their alleged misuse of copyrighted books. In addition to these suits, expect IP litigation over third parties using AI and putting out content that is basically the same as someone else's content.

- **Bias**. Employment decisions based on historical employment data that is biased or skewed can lead to discrimination lawsuits. The same can apply to entities, such as banks, that decide whether to make (or not make) loans based on skewed, discriminatory data, potentially leading to lawsuits by disgruntled customers.

- **Bad data**. Health insurers have been sued for denying claims based on AI data, which is allegedly incorrect. A health insurer that regularly denies a given procedure based on bad data may be subject to a class action lawsuit.

- **Data breaches**. When relying on AI, a company is trusting an AI platform to protect its data from breaches. An AI platform with insufficient protection may expose a company to data breaches that are disclosed and shared, potentially leading to lawsuits.

- **Coverage issues**. Policies may exclude coverage for AI-based actions or decisions, creating issues for insureds whose actions resulted in lawsuits, but they may find their insurer won't defend and indemnify them.

- **Malpractice**. As discussed above, the misuse or lack of use of AI may lead to malpractice claims against various professionals (doctors, lawyers, engineers,

etc.).

- **AI Mistakes**. Malfunctioning or hallucinating AI has the potential to create all sorts of problems, leading to litigation. Any product that relies on AI and fails can result in an accident-causing personal injury.

AI will increasingly be the driving factor behind lawsuits, and we, as lawyers, will need to understand how it works to litigate those matters properly.

Conclusion

I want to end where I started – AI is here to stay. Not only to stay, but grow and become more encompassing, more powerful, more useful, and more necessary. Our opposing counsel is using AI. Our competitors use AI. Our clients want us to use AI.

We cannot, however, forget our training, professional judgment, experience, and knowledge, and we cannot simply abdicate or defer to AI. The future of AI in legal is a marriage between us lawyers being lawyers and us lawyers using AI to augment what we can do to produce a better work product in less time. That's the path for us to follow, and the time to walk that path is now, to ensure a responsible and proactive approach toward AI.