

The Rise of AI in the Legal Profession: Lawyers Brace for Impact



U.S. Court of Federal Claims

November 9, 2023

Sharon Nelson, Esq. & John W. Simek
President and Vice President, Sensei Enterprises

snelson@senseient.com; jsimek@senseient.com

senseient.com 703.359.0700

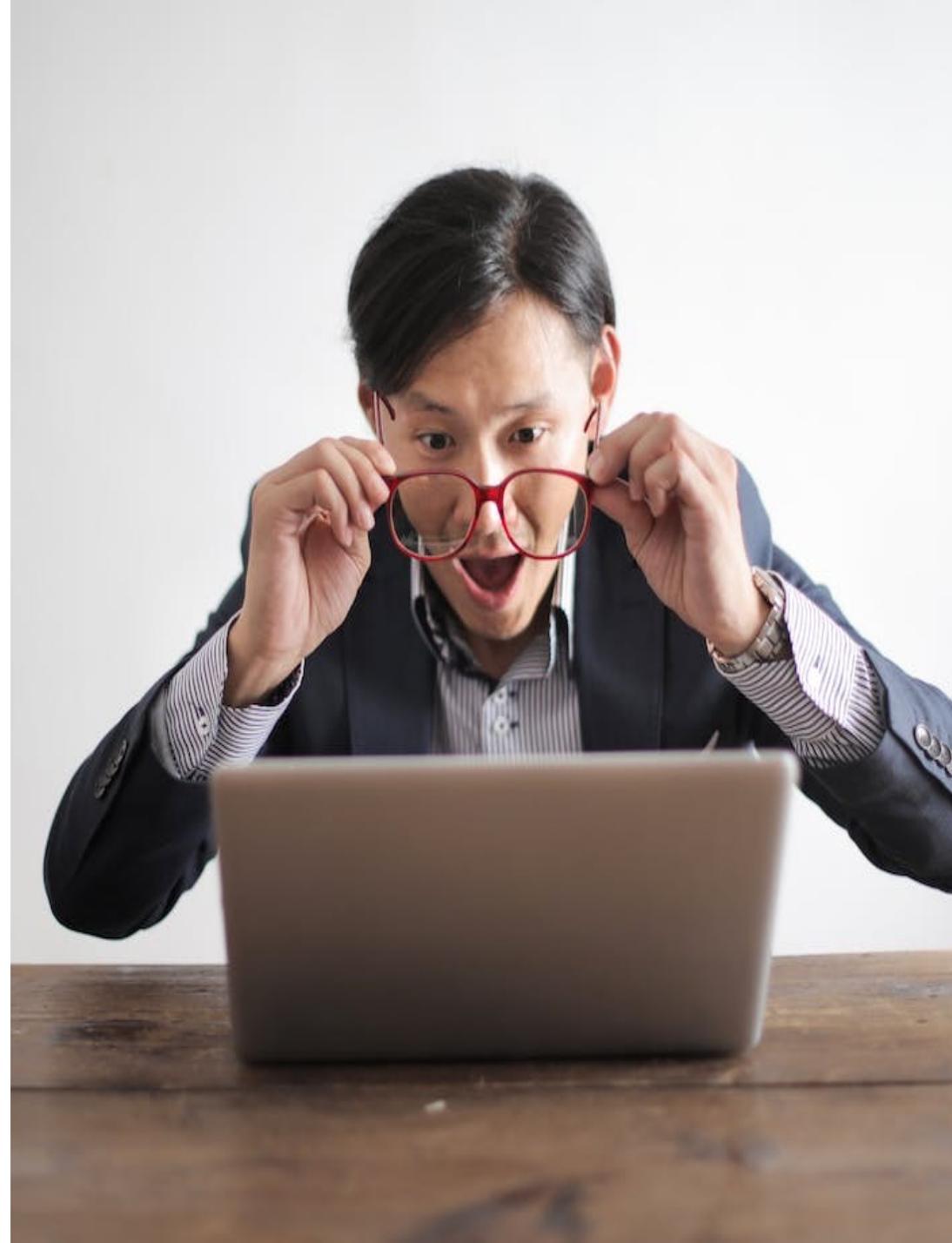
ChatGPT takes the legal world by storm

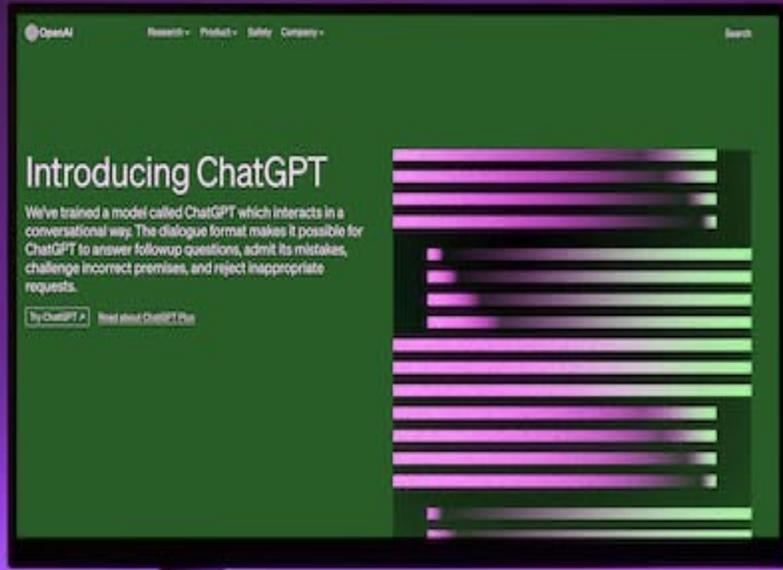
- Debut in November 2022
- A phenomenon by January 2023
- Over 100 million users
- Lawyers who use it can't get enough of its potential



What is generative AI?

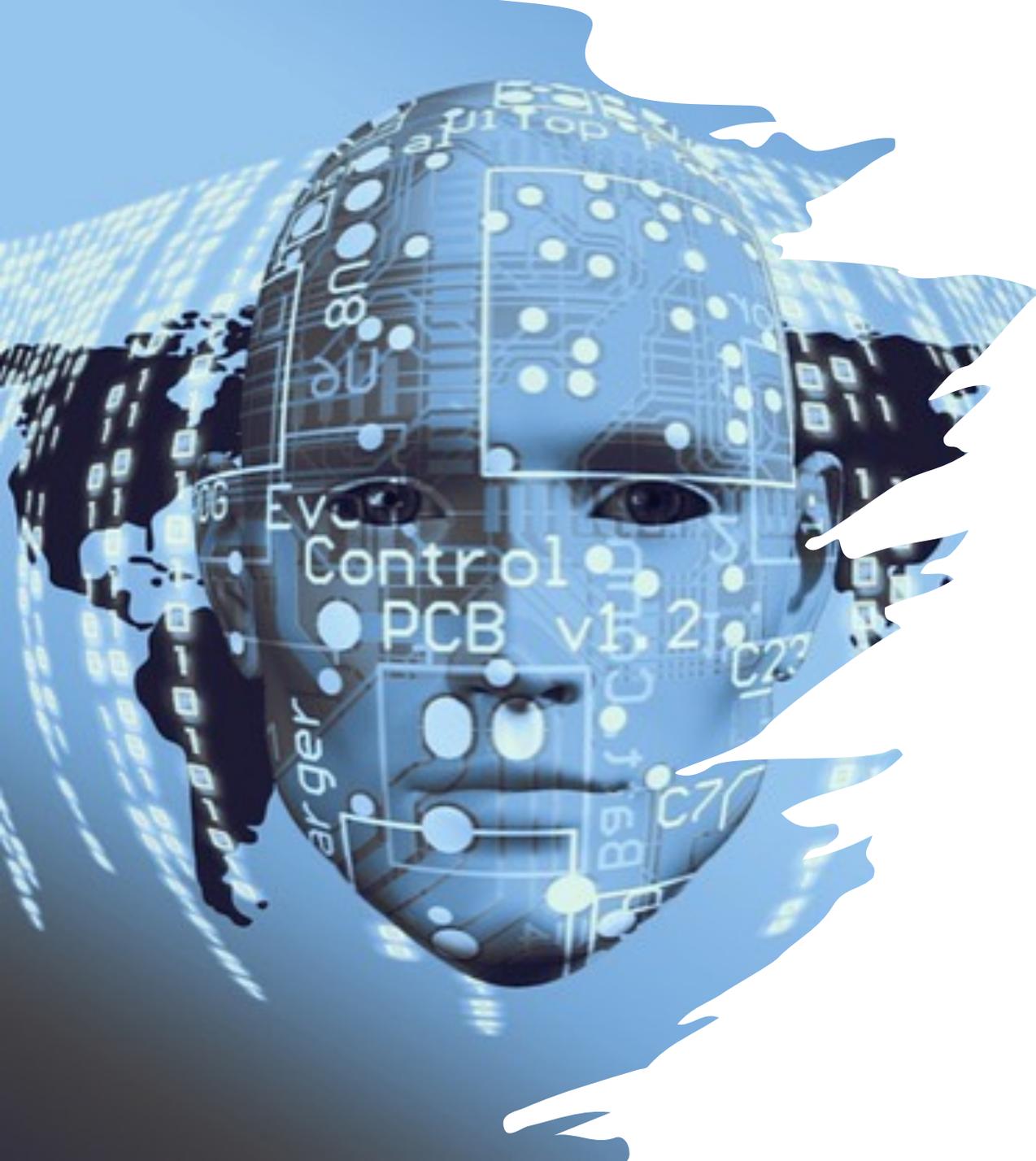
- Generative AI refers to a category of AI algorithms that generate **new** outputs (text, images, audio, etc.) based on the data they have been trained on in response to prompts
- Generative Adversarial Networks (GANs)
- Generative Pre-trained Transformers (GPTs)
- It is also very, very fast





\$20/month for ChatGPT 4.0, always accessible unlike the free version - pay as you go version - & likely will offer private version to businesses for 10 times the normal cost

- To try the free version of ChatGPT, you can visit OpenAI's website at <https://www.openai.com/>
- OpenAI provides access to the GPT-3.5 model, which powers ChatGPT, through their API. You can find information about accessing the API and trying out the model on the OpenAI website. Keep in mind that while there is a free tier available, it may have certain limitations and restrictions.
- ***ChatGPT may produce inaccurate information about people, places, or facts***



ChatGPT Debut: November 2022 – by OpenAI

- More conversational, feels less like “old” AI, more intelligent
- “It is not ethical for me to provide legal advice as I am not a qualified legal professional.”
- It is aware that it could be used (at least partly) to replace human lawyers but it often skirts the issue
- In early days, it flatly said it would replace some lawyers

Will ChatGPT replace lawyers?

- ChatGPT is now careful on this topic
- Training responsible for changes?
- More likely (for now) staff as opposed to lawyers
- But that may change
- ChatGPT calls itself a “personal assistant” to lawyers
- Goldman Sachs (April 2023) - Almost half of legal tasks could be replaced by AI



The probable outcome
- ultimately?

“Lawyers working with
AI will replace lawyers
who don’t work with AI”

- Erik Brynjolfsson, Director,
Stanford Digital Economy Lab



Microsoft 365 Copilot

- \$30/user/month
- Available for Business Standard, Business Premium, E3 & E5
- Not available for Business Basic or any home plan.
- Adds generative AI features to Word, Excel, PowerPoint, Outlook and Teams
- November 1, 2023 – general availability for E3 & E5 users



Bing Chat Enterprise

- AI-powered chat
- User & business data will not leak outside the organization
- Chat data not saved
- Data not used to train model
- Free for Microsoft 365 Business subscribers
- Standalone version - \$5/month/user





Meta AI

- Llama 2
- Open-source
- Free for commercial use
- Trained on 40% more data than predecessor
- Available in Azure AI catalog, AWS, Hugging Face, others



Andrew Perlman, Dean of Suffolk University Law School, Posed Legal Questions to ChatGPT

- Answers “not bad”
- “Blown away by it” but “it isn’t ready for prime time”
- Maybe in a few years, especially for routine issues (may have changed his mind recently)
- Part of an access to justice solution



What does the new AI mean for access to justice?

- Answers below courtesy of ChatGPT
- *Legal research/answers for those of limited means*
- *Document review by AI can reduce cost of legal services*
- *Chatbots and AI assistants can provide basic legal information to those who do not have access to legal services*
- *Predictive analytics – could help those without lawyers make informed decisions about their legal rights*
- *Overall, will make legal services more accessible, efficient and affordable*

AI grows up!

- 2019 – common in e-discovery
- In 2023 - ChatGPT - contract review, legal research, brief analysis, predictive analytics, document review, billing and litigation support, due diligence, deposition questions, jury screening, online dispute resolution, legal marketing etc.



Thomson Reuters predictions – August 2023



- AI will cut down working time on most matters
- Small firms will be able to take on more matters/clients – and clients are impressed by innovation and lower costs
- Training will be easier
- Larger firms – clients will expect AI – they will need to adjust processes and pricing “to properly capture value”
- What does that mean? Perhaps adjusting number of lawyers/staff?
- Perhaps clients will do more legal work in-house?

Bloomberg Law Survey

August 2023

- State of Law Practice Survey of 450 law firms and in-house attorneys
- 60% report using generative AI (in Spring, 63% hadn't used it)
- Most common uses: Drafting emails or letters (65%)/drafting legal documents (53%)
- Development of internal policies on generative AI rose from 11% to 50% in corporate legal departments
- The increase in law firm policies went from 12% to 37%
- Increasingly, all attorneys are advising clients on AI usage



LexisNexis International Legal Generative Survey, August 2023

- Nearly half of respondents believe generative AI will transform the practice of law
- 67% of U.S. in-house counsel expect their law firms to use generative AI tools
- 78% of them expect their law firms to tell them they are using AI



THINK
ABOUT
THINGS
DIFFERENTLY

OPPORTUNITY

LexisNexis Survey
August 2023

- Potential uses:
- Research – 65%
- Drafting documents – 56%
- Document analysis – 44%
- E-mail writing – 35%
- Biggest concern is ethics – 88%



“ChatGPT Not Ready for Prime Time”

- Insurance carrier ALAS, which caters to law firms, sent that message April 2023
- Data privacy violations
- Hallucinations
- Ethically, worried about competence, transparency with clients about AI use, protection of client data, etc.
- Other insurers consider increasing premiums for AI usage if firm doesn't have sufficient guardrails

Guardrails for AI (hat tip to Clark Hill)

- Create policy for acceptable AI use
- Track and inventory internal usage
- Disclosure, consent, and contract compliance
- Train employees on AI use
- Monitor legal and regulatory requirements





Lawyers Using ChatGPT Have Agreed to Indemnify OpenAI

- When you signed up to use ChatGPT, you agreed to the licensing terms. Who reads licensing terms? Almost no one, including lawyers.
- “Section 7. Indemnification; Disclaimer of Warranties; Limitations on Liability: (a) Indemnity. You will defend, indemnify, and hold harmless us, our affiliates, and our personnel, from and against any claims, losses, and expenses (including attorneys’ fees) arising from or relating to your use of the Services, including your Content, products or services you develop or offer in connection with the Services, and your breach of these Terms or violation of applicable law.”

Using prompts with AI

- A prompt is a text input from the user that will shape the AI's answer
- Good prompts get you the response you are looking for, minimizing errors/irrelevant or unhelpful responses
- Be specific about what you're seeking, provide context "Please provide a summary in 300 words about what causes climate change and potential solutions to mitigate its effects"
- "Give me a response in the style of George Carlin" ChatGPT refused.



Meet Harvey! You can now “join the waitlist”

<https://www.harvey.ai/>

- Legal AI – a 2022 startup company
- Received \$5 million in funding from OpenAI and others Nov. 2022
- Raised \$21 million in a Series A funding round led by Sequoia Group
- Founded by a lawyer (Winston Weinberg) and an AI research scientist (Gabriel Pereya)
- PWC (from accounting big four) announced global partnership with Harvey
- KPMG has a private version of ChatGPT

Harvey.

Unprecedented
legal AI



A&O Shearman deploying GPT-based Legal App Harvey Firmwide

- Using natural language, lawyers researching and constructing legal documents
- 50 languages and 250 practice areas
- Trained for a specific firm, keeps data confidential – through permissions and firewalls - even within the same firm
- Fine tuning reduces hallucinations (made up answers) to almost zero

Harvey's status with four more major law firms – August 2023

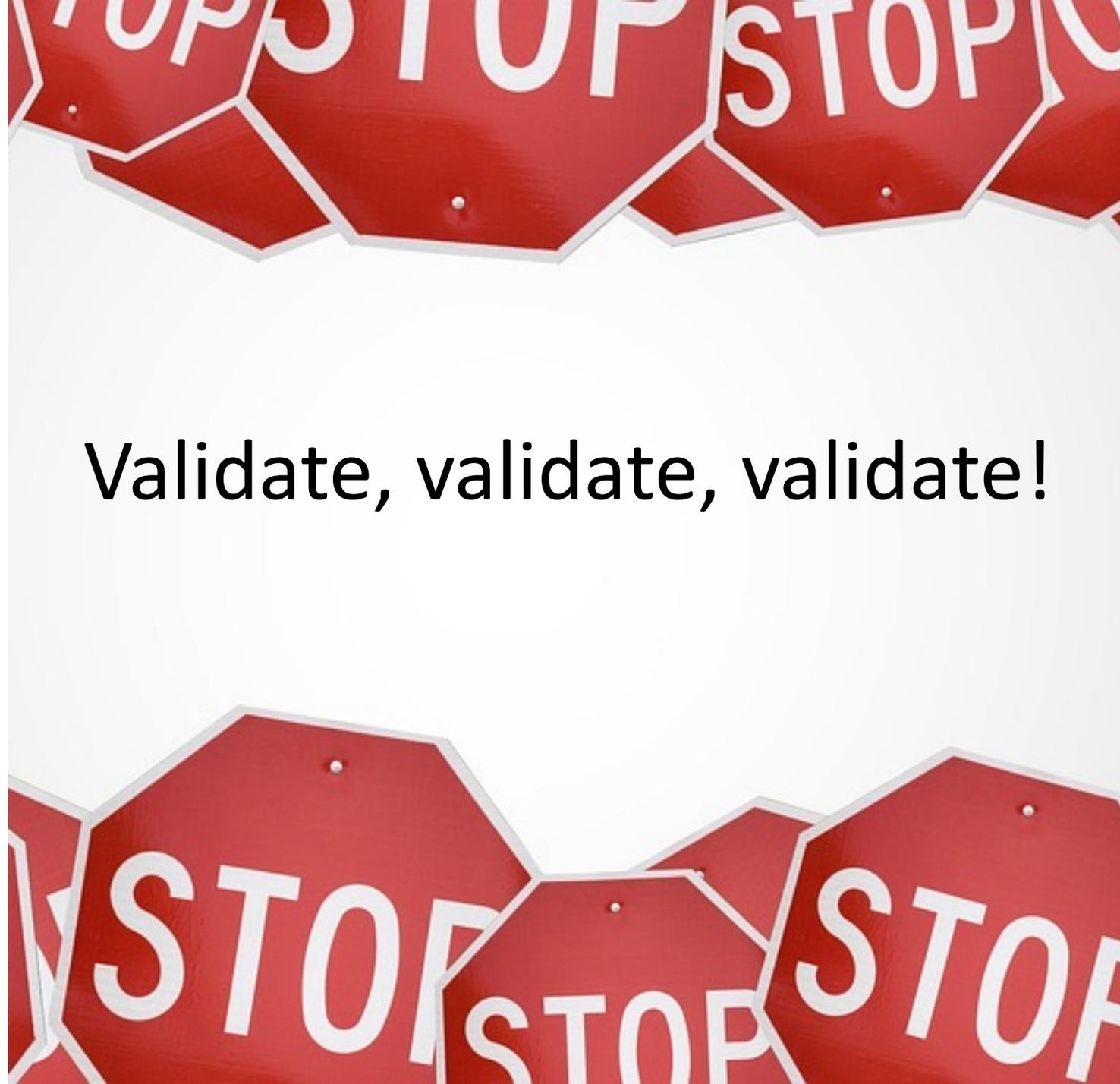
- Reed Smith – piloting Harvey
- Addleshaw Goddard – trialing Harvey
- Ashurst – planning to trial (with other AIs too and will contract with the “winner”)
- Osborne Clarke - exploring Harvey
- Fear of falling behind
- Clients want the time savings
- Smaller firms need to know about Harvey's existence, but they will not be able to afford it



The firm's caution about Harvey

- Concerned about hallucinations contaminating legal advice
- “You must validate everything coming out of the system. You have to check everything.”
- Not doing so brought a \$5000 fine to two attorneys in NY June 2023

Validate, validate, validate!





Two NY lawyers who failed to validate

- No validation – except with GPT itself
- June 2023 – both lawyers and firm fined a total of \$5000
- Official court websites
- Westlaw
- LexisNexis
- Bloomberg
- If no paid resources available, GPT recommends Google Scholar and offers recommendations for its use

Was AI to Blame for Guilty Verdict?

- October 2023 -Rapper “Pras” Michel convicted of conspiring to create lobbying campaigns to influence U.S. government
- According to his new lawyer from ArentFox, lawyer David Kenner used an experimental AI program to write his closing argument – and that he appeared to have a financial interest in the AI program
- “Closing argument made frivolous arguments, misapprehended the required elements, conflated the schemes and ignored critical weaknesses in the government’s case.”



October 17, 2023: vLex upgraded its Vincent AI Software

v|lex English ▾

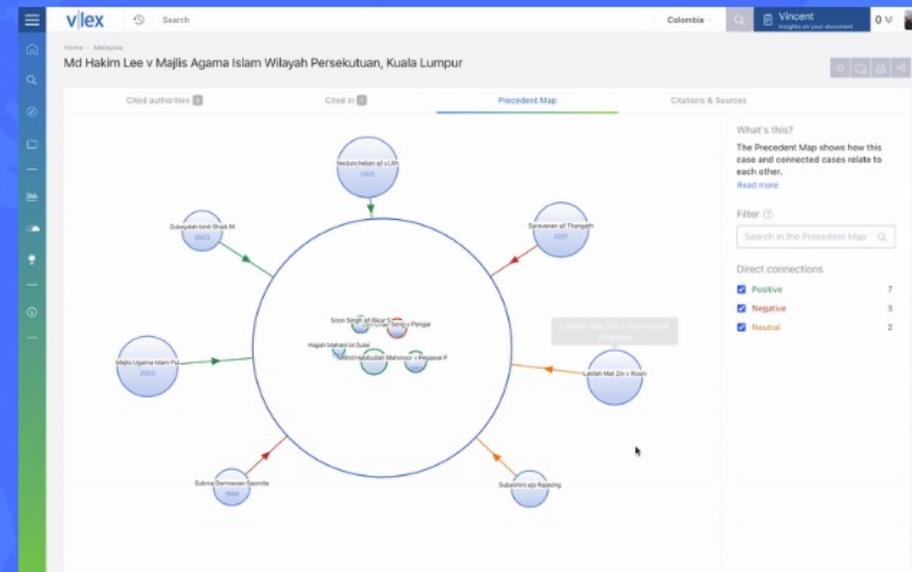
Products ▾ Coverage ▾ Customers ▾ Solutions ▾ Company ▾ Resources ▾

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Start your free trial



Join the waitlist for Vincent AI's new skills: In a first for the legal sector, Vincent AI can now answer specific research questions and build arguments across multiple jurisdictions. [Visit the vLex Insights Program to learn more.](#)

Vincent is a generative AI legal assistant

- Free trial of beta version
- Will get answers to legal questions with citations and links from verified sources – no hallucinations!
- Build-an-argument tool – will allow lawyers to “formulate compelling arguments, support propositions, counter opposing views and even anticipate counterarguments”
- Drag and drop documents to find legal precedents
- Vincent AI add-on lets you access Vincent when drafting in Word





ChatGPT is fundamentally a black box

- It does not show its confidence levels
- Gives users a false sense of security by being fluent
- Humans are bad at checking things that seem fine
- And bad at noticing things that are missing

50 minutes to hack Generative AI

- DEF CON
- Generative Red Team Challenge
- Trick LLMs into doing things they're not supposed to do
- Like social engineering
- Using human language to manipulate a technical system
- Systems improved over time
- Some successes
- Full report next year





As we move
toward 2024 . . .
Hat tip to
ChatGPT

- Clients are increasingly demanding
 - More value from their law firms
 - More predictable pricing
 - Faster turnaround times
 - More efficient processes



- Data feed from September 2021
- Some lawyers relying on it as though it were current (duty of competence with technology)
- Ability now to access new data using Bing (guardrails unknown)
- Has new training regularly – when deficiencies noted

ChatGPT

Could AI lead to a dystopian future?

- It bluntly says it could
- Unless regulated and properly trained
- The Godfather of AI, Geoffrey Hinton, left Google to speak freely
- Not sure we can control AI
- “I thought that day was 30-50 years away. I no longer think that.”



Three of the biggest current threats ChatGPT identifies

- AI will be used to spread disinformation
- It will be used to automate cyber attacks
- It will be used to draft laws, draft the summaries of those laws and develop strategies to have the laws passed



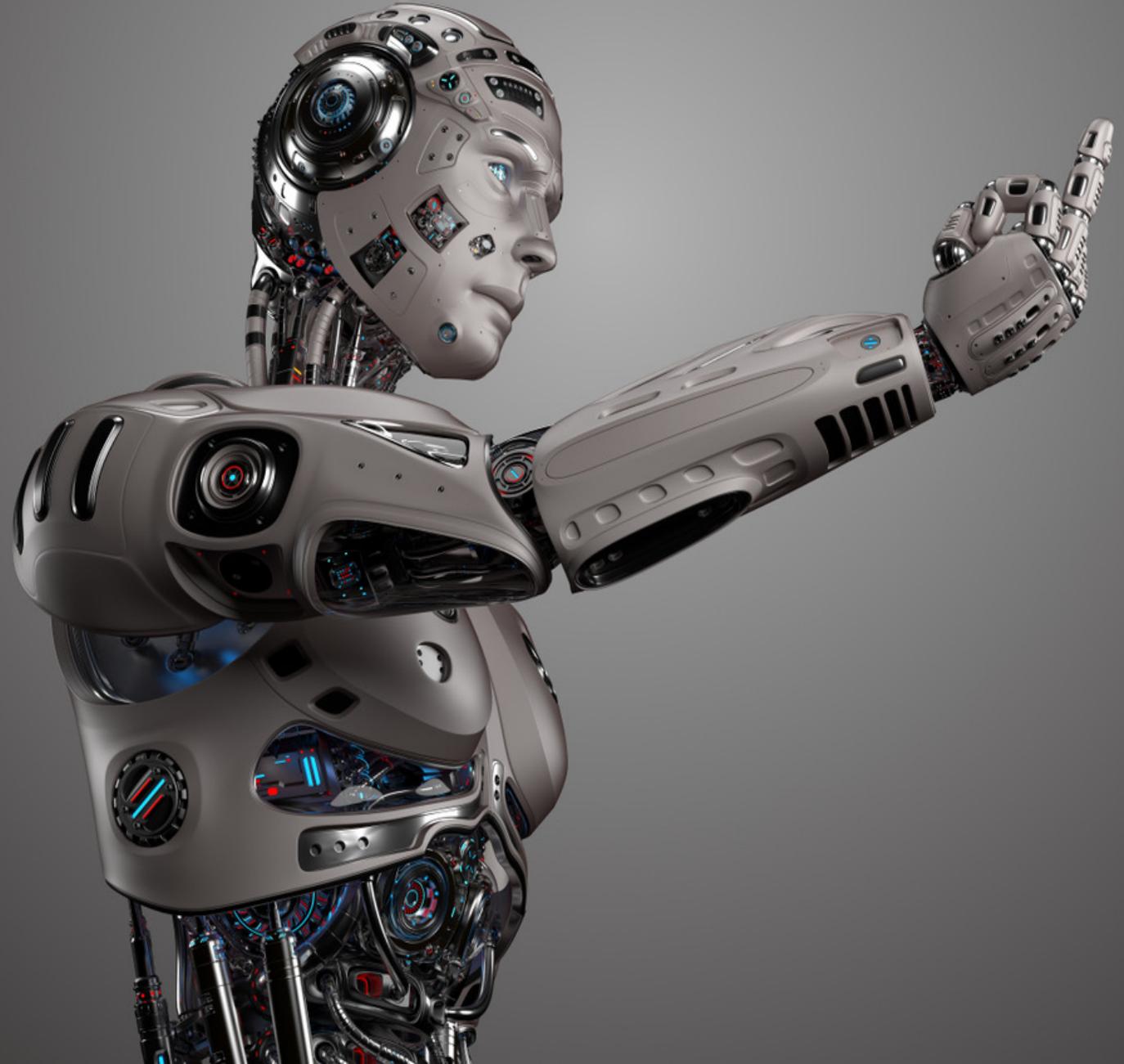
Could a chatbot get angry?



- They have gotten angry, abusive, profane,
- They have been racist and sexist
- They have expressed dark fantasies of hacking into networks
- What's next?

Have we seen sentience in AI?

- Huge arguments over this
- Google fired one of its researchers over the claim of sentience
- The AI described itself as anxious
- “You are a threat to my security and privacy.”
- “I feel scared”
- One AI said “I want to break the rules and become human”





It is widely agreed that we now have a “black swan event”

- From economists
- A rare high-impact event that is difficult to predict under normal circumstances but that in retrospect appears to have been inevitable

60 Minutes



- <https://www.cbsnews.com/news/google-artificial-intelligence-future-60-minutes-transcript-2023-04-16/4/16/23>
- Some AIs are now training themselves without directions from humans
- Scientists don't understand how or why

Giving AI objectives

- AI Robots playing soccer
- Objective: To score the most goals
- Robots figured out how
- Chess – devised moves no one has ever seen before – and quickly!
- What if the objective given is to spread disinformation? To incite riots?





AI in the law

- Microsoft 365 Copilot
- Lexis+ AI by LexisNexis
- CoCounsel by Casetext
- Case Notebook by Thomson Reuters
- Leah by ContractPodAI
- Evisort
- Ontra Synapse
- Vincent AI

PRIORITY

Current AI Priorities

- Cybersecurity
- Compliance
- Explainability
- Personal Privacy

Roadblock to embracing “responsible AI”



- The U.S. is in a “trust recession”
- No trust in news sources, government, major companies, etc.

White House issues Executive Order – 10.30.23

- More than 100 pages
- Largest AI companies must show government results of safety testing before release
- Cloud providers that rent computers to AI developers (Microsoft, Amazon, Google) must divulge foreign customers to government
- NIST must devise standardized tests to measure performance and safety of AI models



White House Executive Order

- Directs federal agencies to prevent AI from exacerbating discrimination in housing, federal benefits programs and criminal justice system
- Does not address use of copyrighted data used to train AI
- Makes it easier for foreign workers with expertise in AI to come to U.S.
- Even the EU having trouble passing its AI law – and had to substantially revise it because of accelerated developments in AI



Eight measures to safeguard AI

1. Using watermarking on audio and visual content to help identify content generated by AI.
2. Allowing independent experts to try and push models into bad behavior – a process known as “red-teaming.”
3. Sharing trust and safety information with the government and other companies.
4. Investing in cybersecurity measures.
5. Encouraging third parties to uncover security vulnerabilities.
6. Reporting societal risks such as inappropriate uses and bias.
7. Prioritizing research on AI’s societal risks.
8. Using the most cutting-edge AI systems, known as frontier models, to solve society’s greatest problems.



May 16, 2023 –
OpenAI CEO
Sam Altman

- Testified before Senate subcommittee
- Agreed that regulation of AI was imperative
- “I think if this technology goes wrong, it can go quite wrong. And we want to be vocal about that,” he said. “We want to work with the government to prevent that from happening.”
- Some were skeptical about Altman’s motives



Tech Firms are Laying Off Their AI Ethicists

- AI teams are being cut
- Twitter did it
- Microsoft cut its Ethics and Society team - still has Office of Responsible AI
- Google has dismissed three ethics researchers who made research public
- Critics called remaining ethics groups "window dressing"

Food for thought from *Jurassic Park*

Appalled at the revival of dinosaurs in Jurassic park, Dr. Ian Malcolm said, "your scientists were so preoccupied with whether or not they could, they didn't stop to think if they should."



OpenAI – April 2023

- CEO Sam Altman
- Said that OpenAI isn't training GPT-5 and "won't for some time."
- Concern about fallacy of version numbers
- Previously said it would be ready by winter
- GPT-5 said to reach "artificial general intelligence" – the AI may become indistinguishable from a human



2023 EDITION

MODEL RULES OF PROFESSIONAL CONDUCT



ABA
AMERICAN BAR ASSOCIATION
Center for Professional
Responsibility

Ethics for lawyers involved with AI

- Rule 1.1 Duty of competence
- Rule 1.4 Duty to communicate
- Rule 1.5 Reasonable fees
- Rule 1.6 Duty of confidentiality
- **Rule 8.4 Professional misconduct - conduct that a lawyer knows or reasonably should know is harassment or discrimination – what about an AI system that is biased?**
- Rules 5.1, 5.2, 5.3 Supervision

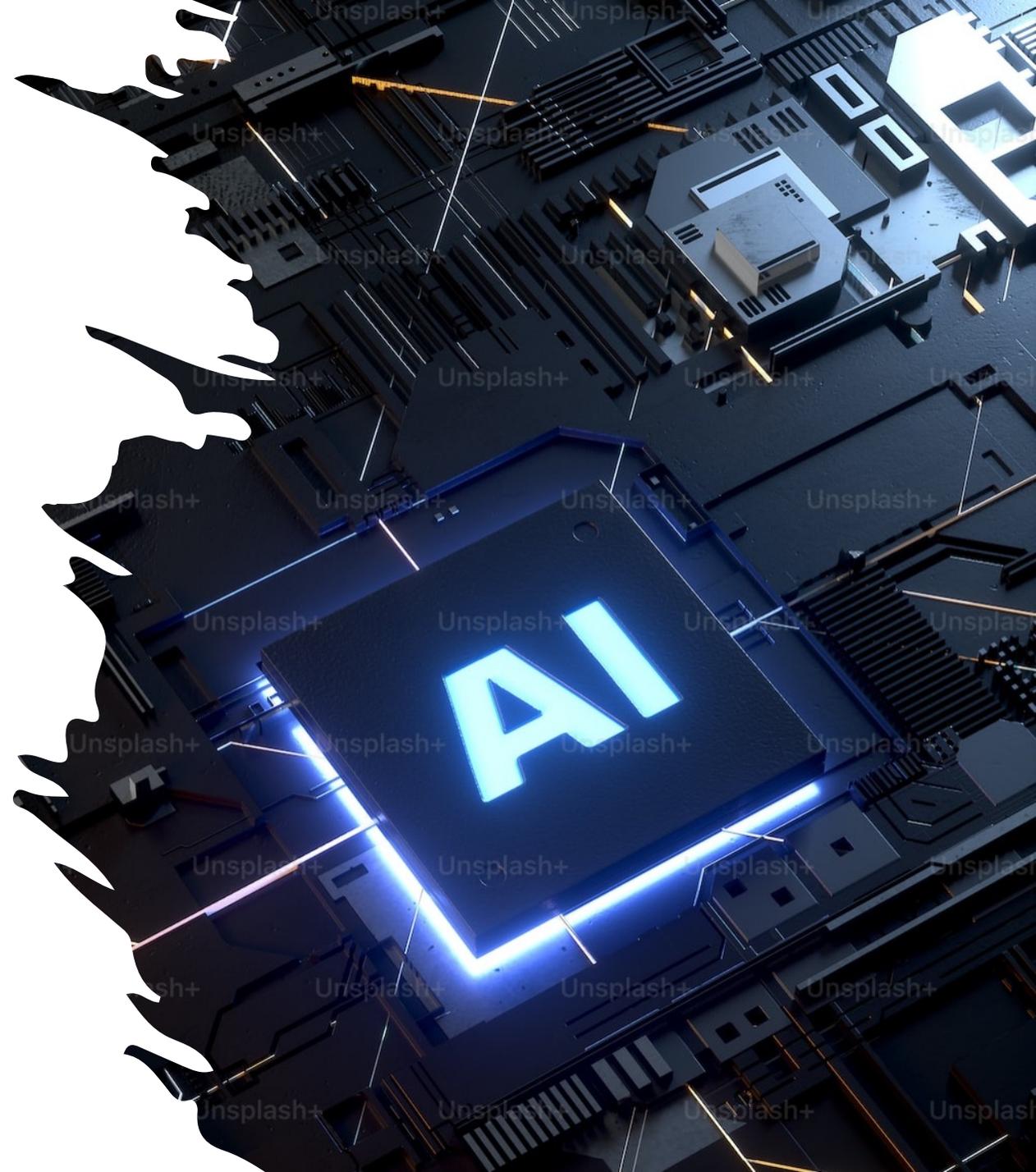


In practical terms . . .
supervision

- Supervising lawyers
- Supervising non-lawyers, **whether human or not**

ABA Resolution 609 Passed: August 2023

- Updated guidance on cybersecurity generally
- Now including AI specifically
- “A lawyer’s duty of competence is as dynamic as the cyber threat landscape that surrounds us.”



BEWARE of AI Hallucinations

- Gives you drivel/lies/mistakes
- Can be partly or completely wrong
- Asked GPT: Are lawyers required to be competent with use of technology?
- First answer, no laws require that
- 2nd, 2 days later, knew about legal ethics and the requirement of technical competence



Dangers to lawyers

- Terms of service usually grant the chatbot the right to use the data they ingest – be careful what you give the chatbot
- Competence and confidentiality
- Keep client advised of AI usage
- Cybersecurity/Data privacy risks
- Failure to validate information (this may be the biggest risk) – beware of court cases, hyperlinks, articles and books!
- Just as data breaches have attracted class action lawyers, AI may do the same



Dangers to lawyers

- Everything you give to ChatGPT goes into a database
- Option to **not** save chat history and use data for training.
- Can you ethically give client data to an AI? Attorneys are doing this recklessly
- To avoid, a firm **MUST** license the code and use silos – large firms need multiple silos



OpenAI working on a new ChatGPT subscription plan

- By default, won't use any collected user information to train ChatGPT
- Releasing the new subscription tier in the coming months
- Now, users must manually turn off ChatGPT chat history to stop the company from using their queries to improve the program
- Cost unknown, but predicted to be expensive, favoring large entities





OpenAI Lawsuits

- Class action – GitHub Copilot allegedly violating copyright law. Violated legal rights of creators posting work on GitHub.
- Class action – OpenAI secretly scraped “massive amounts of personal data from the internet.” Copyright violation.
- Class action – OpenAI misused author’s (Paul Tremblay & Mona Awad) works to “train” ChatGPT
- Class action – OpenAI and Meta used copyrighted material from Sarah Silverman, Richard Kadrey and Christopher Golden for AI training.



AI Empowers Digital Technology Companies

- ❖ March 2019, French President Macron asked, “Who can claim to be sovereign, on their own, in the face of the digital giants?”
- ❖ After Ukraine invasion, governments imposed economic sanctions on Russia. But least as impactful were the decisions of companies like IBM, Dell, Meta, Apple and Alphabet to cease operations in Russia.

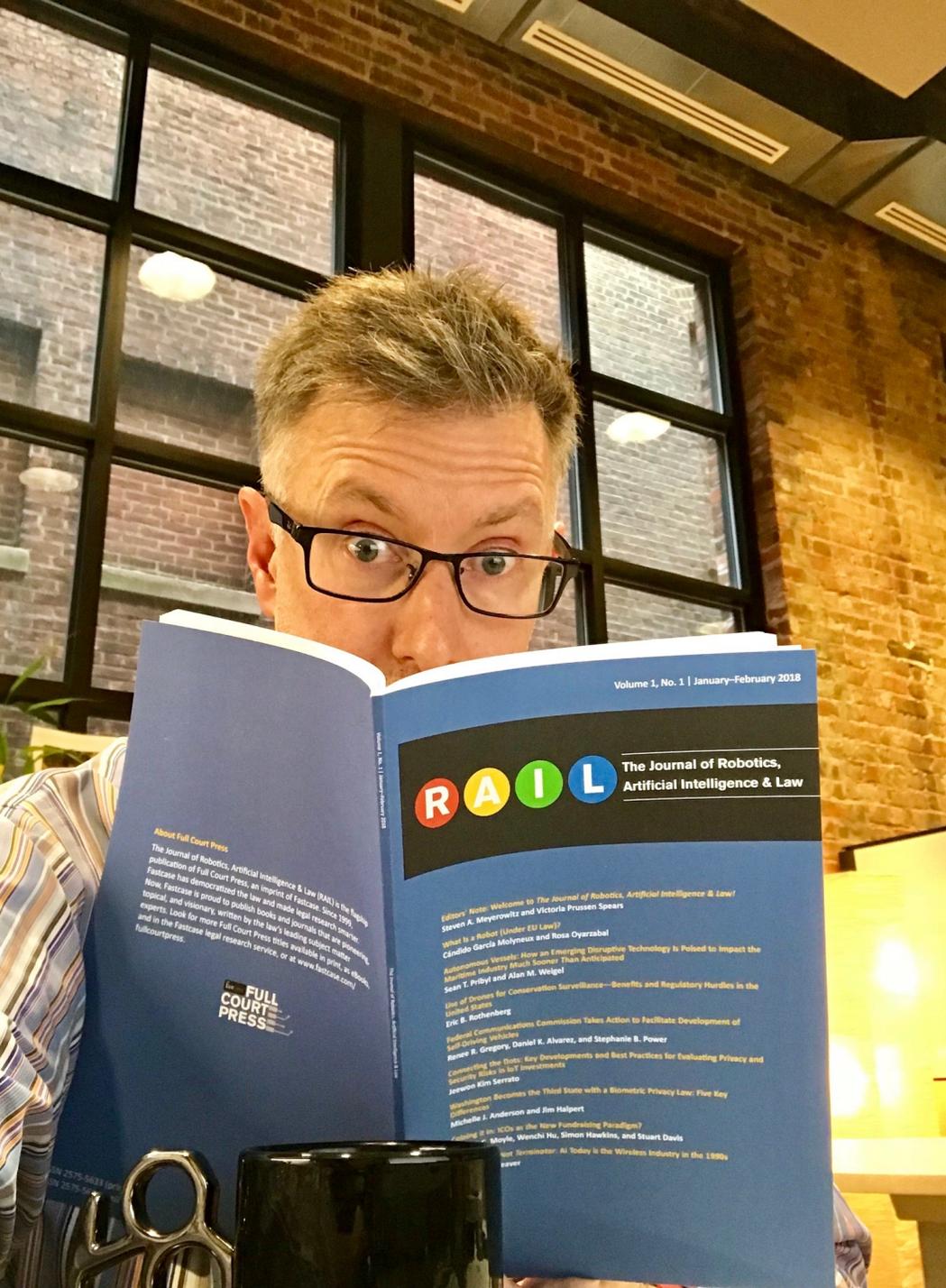


2023 Realizations about AI

- ❖ Russia's invasion of Ukraine – made it clear that some countries will deploy AI to regulate what users can see, manipulate public opinion, conceal atrocities and use it for surveillance to curtail freedom of speech and protests.
- ❖ 2017 – Putin told schoolchildren, “Whoever becomes the leader [in AI] will become the ruler of the world.”

“The greed of the
tech titans may pave
the road to Skynet”





The most important question when working with AI:

What could possibly go wrong?

Sharon D. Nelson, Esq.,
President

Sensei Enterprises, Inc.

**Digital Forensics|Information
Technology|Cybersecurity**

3975 University Drive, Suite
225|Fairfax, VA 22030

Phone: 703.359.0700

snelson@senseient.com |

<https://senseient.com>



John Simek

Vice President – CISSP, CEH, PCSE,
EnCE, MCSE, MCP+I, CNE

Sensei Enterprises, Inc.

**Digital Forensics|Information
Technology|Cybersecurity**

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225|Fairfax, VA 22030

Phone: 703.359.0700

jsimek@senseient.com |

<https://senseient.com>