PROMISES AND PERILS: THE ROLE OF ARTIFICIAL INTELLIGENCE IN THE COURTS

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I. INTRODUCTION

English computer scientist Alan Turing posed the seemingly straight-forward question, "[c]an machines think?" in his paper *Computing Machinery and Intelligence*.[1] At the time of Turing's writing

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1. A. M. Turing, *Computing Machinery and Intelligence*, 59 MIND 433, 433 (1950).

in 1950, the idea of a machine capable of imitating the reasoning and intellectual capabilities of a human was merely aspirational. In the nearly three-quarters of a century since *Computing Machinery and Intelligence* was published, artificial intelligence ("AI") has become a common, and often unseen, aspect of everyday life.[2] Map applications and predictive text on cellular phones, voice recognition on smart home devices, and product recommendations on retailer websites are just a few of the numerous ways that an average person might regularly encounter AI.[3] Despite its increasing ubiquity in modern technology, AI is still little understood by the general public and is often viewed with a mix of suspicion and wonder.[4]

In his 2023 Year-End Report on the Federal Judiciary, U.S. Supreme Court Chief Justice John Roberts expressed his belief that technologies such as artificial intelligence will continue to transform the work of the courts and his reticence at adopting such technologies without addressing their potential risks.[5] It is without question that artificial intelligence offers potential benefits in the form of increased efficiencies and that courts and legal practitioners have an obligation to promote "the just, speedy, and inexpensive" resolution of cases.[6] This must be balanced against a legal practitioner's competing ethical obligations to stay abreast of technological changes in the legal field, preserve the confidentiality of clients' protected information, act in good faith, and ensure the veracity of representations to the court.[7] The need to maintain the integrity of the judicial process and to ensure a fair and transparent process for those involved is paramount to the court's responsibilities.

This Article will consider the ways in which AI can be incorporated into the work of the court and the potential perils that must be accounted

2. *See* Brian Kennedy, Alec Tyson, & Emily Saks, *Public Awareness of Artificial Intelligence in Everyday Activities*, PEW RSCH. CTR. (Feb. 15, 2023), https://www.pewresearch.org/science/2023/02/15/public-awareness-of-artificial-intelligence-in-everyday-activities/.

3. *See id.*; *see also* EUR. COMM'N HIGH-LEVEL EXPERT GRP. ON A.I., A DEFINITION OF AI: MAIN CAPABILITIES AND SCIENTIFIC DISCIPLINES 1 (2018), https://ec.europa.eu/futurium/en/system/files/ged/ai_hleg_definition_of_ai_18_december_1.pdf; George Socha, *What Will AI Mean for You?*, JUDICATURE, Autumn 2017, at 6, 7; Emily Rumick, *What Happens When Robots Lie? Combatting the Harmful Threats of AI-Generated Disinformation While Harnessing its Potential*, 25 J.L. SOC'Y 146, 154 (2025).

4. *See* Michelle Faverio & Alec Tyson, *What the Data Says About Americans' Views of Artificial Intelligence*, PEW RSCH. CTR. (Nov. 21, 2023), https://www.pewresearch.org/short-reads/2023/11/21/what-the-data-says-about-americans-views-of-artificial-intelligence/.

5. JOHN G. ROBERTS, JR., 2023 YEAR-END REPORT ON THE FEDERAL JUDICIARY 1–7 (2023).

6. *See* FED. R. CIV. P. 1; MODEL RULES OF PRO. CONDUCT r. 3.2 (AM. BAR ASS'N 2024).

7. *See, e.g.*, MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8, 1.6, 3.3 (AM. BAR ASS'N 2024); FED. R. CIV. P. 11(b).

for in implementing such technologies. Section II will lay a foundation of what constitutes AI and the types of AI that are most likely to be adopted by courts. Section III will look at the types of judicial and legal functions that are best suited for AI assistance, as well as specific concerns related to the adoption of AI tools by litigants and the courts. Section IV will offer best practices for how courts might incorporate AI into their work and how to avoid potential pitfalls and risks.

II. WHAT IS AI?

Artificial intelligence is not a single technology, but a broad category of technologies developed to approximate human reasoning and problem solving.[8] "AI is the term used to describe how computers can perform tasks normally viewed as requiring human intelligence, such as recognizing speech and objects, making decisions based on data and translating languages. AI mimics certain operations of the human mind."[9] AI technologies can be classified into three categories: narrow AI, general AI, and superintelligent AI.[10] Narrow AI, also known as weak AI, are systems designed to perform a specific task, such as a chatbot or an email spam filter.[11] General AI, or strong AI, are more complex systems capable of performing multiple tasks and learning to solve new problems with no or minimal human intervention.[12] The third category is superintelligent AI, which is AI that far outperforms human beings and remains the subject of theory.[13]

8. *See generally* Kay Firth-Butterfield & Karen Silverman, *Artificial Intelligence—Foundational Issues and Glossary*, *in* ARTIFICIAL INTELLIGENCE AND THE COURTS: MATERIALS FOR JUDGES 6 (Am. Ass'n for the Advancement of Sci. ed., 2022), https://www.aaas.org/sites/default/files/2022-09/Paper%201_AI%20Foundational%20Issues_NIST_FINAL.pdf; EUR. COMM'N HIGH-LEVEL EXPERT GRP. ON A.I., *supra* note 3.

9. N.Y. STATE BAR ASS'N, REPORT AND RECOMMENDATIONS OF THE NEW YORK STATE BAR ASSOCIATION TASK FORCE ON ARTIFICIAL INTELLIGENCE 12 (2024), https://nysba.org/wp-content/uploads/2022/03/2024-April-Report-and-Recommendations-of-the-Task-Force-on-Artificial-Intelligence.pdf.

10. *Id.* at 12–13.

11. Linda Tucci, *What Is Enterprise AI? A Complete Guide for Businesses*, TECHTARGET (Oct. 29, 2024), https://www.techtarget.com/searchenterpriseai/Ultimate-guide-to-artificial-intelligence-in-the-enterprise; *see also* Rumick, *supra* note 3, at 154; Brian L. Frye, *The Lion, the Bat & the Thermostat: Metaphors of Consciousness*, 5 SAVANNAH L. REV. 13, 18 (2018).

12. N.Y. STATE BAR ASS'N, *supra* note 9, at 13; *see also* Tucci, *supra* note 11; Frye, *supra* note 11, at 19–20.

13. N.Y. STATE BAR ASS'N, *supra* note 9, at 13; *see also* Thomas S. Ulen, *Disruptive Technology, Work, and Innovation*, 29 KAN. J.L. & PUB. POL'Y 339, 364–65 (2020); Manuel Alfonseca et al., *Superintelligence Cannot Be Contained: Lessons from Computability Theory*, 70 J. A.I. RSCH. 65, 66, 69 (2021).

This Article will focus only on narrow or weak AI, which is the only type of AI that is currently available. Among the technologies that are poised to most impact the practice of law in the coming years are generative AI and large language models ("LLMs"). An LLM is a machine-learning network that is trained through data inputs, and information that is predicted by the computer becomes an output.[14] At a basic level, generative AI is a type of narrow AI that creates models with the ability to create new content, such as text, images, videos, and new data.[15] Simple models of generative AI have existed since the early chatbots of the 1960s, but advancements in machine learning and LLMs in recent years have resulted in more capable and accessible generative AI models.[16] The technology relies on a subset of machine learning called "deep learning," which uses multi-layered models to simulate the complex decision-making process of the human brain.[17] Deep learning models can identify patterns and structures within large, unstructured sets of training data.[18] When presented with a natural language prompt by a user, generative AI can produce an original output from predictions based on the identified structures and patterns.[19]

An LLM is a variety of AI that uses natural language processing to recognize and generate human-sounding text.[20] LLMs are trained on large collections of data and identify patterns between words and phrases.[21] LLMs are capable of contextual understanding; generative AI

14. N.Y. STATE BAR ASS'N, *supra* note 9, at 16; *see also* Francesco Contini, *Unboxing Generative AI for the Legal Professions: Functions, Impacts and Governance*, INT'L J. FOR CT. ADMIN., Aug. 20, 2024, at 1, 4; John Villasenor, *Generative Artificial Intelligence and the Practice of Law: Impact, Opportunities, and Risks*, 25 MINN. J.L. SCI. & TECH. 25, 30 (2024).

15. N.Y. STATE BAR ASS'N, *supra* note 9, at 16; *see also* Villasenor, *supra* note 14, at 25.

16. N.Y. STATE BAR ASS'N, *supra* note 9, at 15; *see also* Jake Karr & Jason Schultz, *The Legal Imitation Game: Generative AI's Incompatibility with Clinic Legal Education*, 92 FORDHAM L. REV. 1867, 1871–72 (2024); Meghan J. Ryan, *Ghost-Hunting in AI and the Law*, 99 TUL. L. REV. 121, 150–51 (2024); Jason Davidson & Hilary G. Buttrick, *SAY WHAT?! When ChatGPT Gets It Wrong: Examining Generative AI, Section 230 of the Communications Decency Act, and the Essence of Creativity*, 30 RICH. J.L. & TECH. 143, 147 (2023).

17. Firth-Butterfield & Silverman, *supra* note 8, at 18–19; *see also* Villasenor, *supra* note 14; Rumick, *supra* note 3, at 155–56; Samuel Mallick, *Generative AI in the Law*, 42 CORP. COUNS. REV. 157, 158 (2024).

18. *See* N.Y. STATE BAR ASS'N, *supra* note 9, at 16.

19. *Id.*; Firth-Butterfield & Silverman, *supra* note 8, at 14, 44; Mallick, *supra* note 17.

20. N.Y. STATE BAR ASS'N, *supra* note 9, at 16–18; *see also* Contini, *supra* note 14.

21. N.Y. STATE BAR ASS'N, *supra* note 9, at 16; *see also* Amy Cyphert, Samuel J. Perl, & S. Sean Tu, *AI Cannibalism and the Law*, 22 COLO. TECH. L.J. 301, 302–03 (2024); Seán Clarke, Dan Milmo, & Garry Blight, *How AI Chatbots Like ChatGPT or Bard Work—Visual Explainer*, GUARDIAN (Nov. 1, 2023, 8:00 AM),

models and LLMs are not mutually exclusive technologies and can complement one another.[22]

Generative AI and LLM programs are now readily available on the internet and are accessible to any person with an average technological understanding. With a prompt of only a few sentences, a user can generate an email, a piece of music, a logo for a small business, or countless other new forms of media. In a more professional context, researchers and businesses can utilize generative AI to quickly analyze and summarize data, draft documents, or engage with customers and clients.

New generative AI models are becoming available to the public at a rapid rate. Industry leaders in the United States include OpenAI's ChatGPT, Microsoft's Azure, and Google's Gemini, while in January 2025, the Chinese startup DeepSeek released DeepSeek R1, a generative AI model that was touted as capable of operating on par with ChatGPT but at a fraction of the cost.[23] DeepSeek R1 is able to conduct high-level operations such as reasoning, in which the AI explains how it arrived at its answer.[24] Despite concerns over transparency, data collection, intellectual property infringement, and national security,[25] DeepSeek's AI assistant quickly rose to the status of one of the most downloaded apps on Apple's iPhone store in 2025.[26]

Generative AI can provide benefits and increase productivity in a wide variety of industries. One report by the Organization for Economic Cooperation and Development ("OECD") notes that there is a deepening and broadening use of AI technologies in data-intensive sectors such as

https://www.theguardian.com/technology/ng-interactive/2023/nov/01/how-ai-chatbots-like-chatgpt-or-bard-work-visual-explainer (explaining how LLMs use predictions).

22. *See* N.Y. STATE BAR ASS'N, *supra* note 9, at 18.

23. Matt O'Brien, *What Is DeepSeek, the Chinese AI Company Upending the Stock Market?*, ASSOCIATED PRESS, https://apnews.com/article/deepseek-ai-china-f4908eaca221d601e31e7e3368778030 (Jan. 27, 2025, 6:57 PM).

24. *Id.*

25. *See New Downloads of DeepSeek Suspended in South Korea, Data Protection Agency Says*, REUTERS (Feb. 17, 2025, 3:15 AM), https://www.reuters.com/technology/south-koreas-data-protection-authority-suspends-local-service-deepseek-2025-02-17/; *Italy's Regulator Blocks Chinese AI App DeepSeek on Data Protection*, REUTERS (Feb. 4, 2025, 12:02 PM), https://www.reuters.com/technology/artificial-intelligence/italys-privacy-watchdog-blocks-chinese-ai-app-deepseek-2025-01-30/; *Australia Bans DeepSeek on Government Devices Citing Security Concerns*, REUTERS (Feb. 4, 2025, 4:34 PM), https://www.reuters.com/technology/australia-bans-deepseek-government-devices-citing-security-concerns-2025-02-04/; Byron Tau, *Researchers Link DeepSeek's Blockbuster Chatbot to Chinese Telecom Banned from Doing Business in US*, ASSOCIATED PRESS, https://apnews.com/article/deepseek-china-generative-ai-internet-security-concerns-c52562f8c4760a81c4f76bc5fbdebad0 (Feb. 5, 2025, 11:10 AM).

26. O'Brien, *supra* note 23.

finance, insurance, and on-line consumer platforms.[27] In the field of international trade, AI technologies can enable greater supply chain efficiency by streamlining and automating smart manufacturing predictions.[28] AI is already being used in the healthcare sector to review health insurance claims, assess patients' medical records for evidence of prior diagnoses, and make determinations on health insurance claims.[29]

Generative AI is not without its risks. AI programs are limited by the quality of their inputs and users, and can produce inaccurate outputs or "hallucinations."[30] Hallucinations "happen because LLMs, in their most vanilla form, don't have an internal state representation of the world[.] . . . There's no concept of fact. They're predicting the next word based on what they've seen so far—it's a statistical estimate."[31] It is also possible for generative AI models to return biased outputs based on societal biases represented in the algorithm's training data.[32] AI models may be trained on material that infringes authors' copyrights and other rights or breaches confidentiality.[33] In addition, the use of AI in fields such as law and healthcare may raise ethical concerns if humans are not involved in providing legal and medical advice.[34] These issues are ripe for litigation before the courts.

27. Janos Ferencz, Javier López-González, & Irene Oliván García, *Artificial Intelligence and International Trade: Some Preliminary Implications* 12 (OECD, Policy Paper No. 260, 2022), https://doi.org/10.1787/13212d3e-en.

28. *Id.*

29. *See* Brian P. Dunphy & Samantha P. Kingsbury, *EnforceMintz—Artificial Intelligence and False Claims Act Enforcement*, MINTZ (Feb. 8, 2024), https://www.mintz.com/insights-center/viewpoints/2406/2024-02-06-enforcemintz-artificial-intelligence-and-false-claims.

30. *See* Cyphert et al., *supra* note 21, at 305–08; *see also* Colleen V. Chien & Miriam Kim, *Generative AI and Legal Aid: Results from a Field Study and 100 Use Cases to Bridge the Access to Justice Gap*, 57 LOY. L.A. L. REV. 903, 940–41 (2024).

31. Lucas Mearian, *What are LLMs, and How Are They Used in Generative AI?*, COMPUTERWORLD, https://www.computerworld.com/article/1627101/what-are-large-language-models-and-how-are-they-used-in-generative-ai.html (Feb. 7, 2024) (quoting Jonathan Siddharth, CEO of Turing); *see also* Eliza Mik, *Caveat Lector: Large Language Models in Legal Practice*, 19 RUTGERS BUS. L. REV. 70, 92–95 (2024).

32. N.Y. STATE BAR ASS'N, *supra* note 9, at 25–26; *see also* Cyphert et al., *supra* note 21, at 303–04; Fredric I. Lederer, *Here There Be Dragons: The Likely Interaction of Judges with the Artificial Intelligence Ecosystem*, JUDGES J., Winter 2020, at 12, 13; Hadar Y. Jabotinsky & Michal Lavi, *AI in the Courtroom: The Boundaries of Robolawyers and Robojudges*, 35 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 286, 331–39 (2025).

33. N.Y. STATE BAR ASS'N, *supra* note 9, at 30, 49; *see also* Chien & Kim, *supra* note 30, at 939–40.

34. *See* N.Y. STATE BAR ASS'N, *supra* note 9, at 28.

III. PROMISES OF AI IN THE COURTS

The promise of AI is that it has the potential to create a more efficient, accessible, and fair legal process by helping court users navigate the legal system without the need for costly counsel, assisting court staff in managing a constantly increasing caseload, and providing judges with quick and easy access to objective information and tools for effective decision-making. In recent years, courts in the United States and abroad have begun to incorporate AI tools into their normal course of business. These early programs illustrate the potential beneficial uses of the technology and the perils of unrestrained implementation.

A. Access to the Court

1. Use of AI by Non-Lawyers

AI has the potential to offer legal tools that increase access to justice in the American legal system.[35] The cost of hiring counsel and the often intimidating and confusing nature of court procedures can be barriers to those wanting to litigate a claim in court.[36] These problems are heightened for low-income individuals. A recent study by the Legal Services Corporation found that seventy-four percent of low-income households in the United States experienced at least one civil legal problem within the span of a year.[37] The problems experienced included consumer, housing, medical, and education matters.[38] AI tools can help to reduce litigation barriers for these individuals and others by providing legal information prior to filing, avoiding the cost of consulting a lawyer, and reducing wait times.[39] For example, a generative AI model trained on a large body of legal filings could draft a simple complaint to initiate a case.[40]

35. *Id.* at 40.

36. LEGAL SERVS. CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 49–52 (2022), https://justicegap.lsc.gov/resource/2022-justice-gap-report/; Chien & Kim, *supra* note 30, at 909–12; Benjamin Minhao Chen & Zhiyu Li, *How Will Technology Change the Face of Chinese Justice?*, 34 COLUM. J. ASIAN L. 1, 8–9 (2020).

37. LEGAL SERVS. CORP., *supra* note 36, at 32.

38. *Id.* at 33.

39. Jumpei Komoda, *Designing AI for Courts*, 29 RICH. J.L. & TECH. 145, 161–62 (2023); *see also* John Villasenor, *How AI Will Revolutionize the Practice of Law*, BROOKINGS INST. (Mar. 20, 2023), https://www.brookings.edu/articles/how-ai-will-revolutionize-the-practice-of-law/; Mia Bonardi & Dr. L. Karl Branting, *Certifying Legal AI Assistants for Unrepresented Litigants: A Global Survey of Access to Civil Justice, Unauthorized Practice of Law, and AI*, 26 COLUM. SCI. & TECH. L. REV. 34, 50 (2024) (noting that the global legal aid community considers AI assistance beneficial, though not perfect).

40. Villasenor, *supra* note 39.

There is a risk, however, that those untrained in the law may not be able to assess whether advice provided by AI is correct or not, particularly when current AI tools are prone to hallucinating or making mistakes. One report by the New York State Bar Association notes that "early generative AI tools have been unable to consistently provide accurate legal advice to their users."[41] This report observes that "[w]here generative AI may make it easier for those without a lawyer to find an answer to a legal issue, it may make it harder for them to find the correct answer."[42] If people who do not have legal representation turn to generative AI for legal advice, would they be "better served by at least having a chatbot to assist them?"[43]

While AI technologies can improve access to the courts if they are readily available to all users of the courts, it is possible that reducing barriers to filing cases might increase the number of frivolous filings, creating an additional burden on the courts.[44] The easy availability of AI tools might benefit those seeking to abuse or take advantage of the courts.

2. Use of AI by Lawyers

AI is "poised to fundamentally reshape the practice of law."[45] In the legal field, generative AI tools can assist with performing repetitive tasks, reducing human error, increasing efficiency in reviewing high volumes of information, and creating early drafts of legal documents for attorneys to review.[46]

Case management software using AI is now available to coordinate and assist with the various tasks of running a law practice.[47] These programs make it relatively easy to streamline disparate business tasks, such as billing, scheduling, customer file organization, and document management, into a single system.[48] Pro bono organizations can use AI to screen potential clients more quickly, summarize large amounts of

41. N.Y. STATE BAR ASS'N, *supra* note 9, at 41.
42. *Id.*
43. *Id.* at 44.
44. Komoda, *supra* note 39, at 162; Villasenor, *supra* note 39.
45. Villasenor, *supra* note 39.
46. *See* Mallick, *supra* note 17, at 159–60; Joe Regalia, *From Briefs to Bytes: How Generative AI Is Transforming Legal Writing and Practice*, 59 TULSA L. REV. 193, 200–01 (2024). *See generally* Christopher C. Shattuck, *AI and Emerging Technology Can Increase Law Practice Efficiencies*, 96 WIS. LAW. 47, 47 (May 2023).
47. *See* Regalia, *supra* note 46, at 201; *see also* Shattuck, *supra* note 46, at 48.
48. Shattuck, *supra* note 46, at 48.

information from documents, and analyze thousands of existing court forms.[49]

Legal research services such as Lexis/Nexis and Westlaw are developing new ways to utilize AI algorithms in their search features.[50] These companies also offer tools to assist with other common, but often time-consuming tasks, such as drafting and reviewing documents.[51] Similar to the shift from attorneys spending long hours paging through legal reporters in law libraries, to performing most legal research using online databases in their offices, the incorporation of AI into basic legal tasks offers the potential for increased efficiency and productivity.[52] Such advantages could offer greater freedom for lawyers to offer low cost or pro bono services to clients who might otherwise be precluded from obtaining representation. Similar tools, if made free and publicly available, might facilitate individuals competently prosecuting and defending simpler actions, such as traffic offenses, without the need for attorney representation.

Lawyers can use AI to extract and summarize vast amounts of information and create first drafts of motions. The New York State Bar Association's Task Force on Artificial Intelligence lists a number of ways in which lawyers are currently using AI tools, including to: draft and edit documents, conduct legal research, review contracts, utilize predictive analytics, provide chatbots for legal advice, brainstorm, summarize legal narratives, and convert "legalese" into plain language.[53] Areas of the law in which generative AI holds promise in the future include: law firms outsourcing work to AI tools that normally would take junior lawyers much longer to perform, such as drafting answers to complaints, affirmative defenses, and discovery requests; writing first drafts of pleadings in high-volume litigation in the retail, automotive, and

49. N.Y. STATE BAR ASS'N, *supra* note 9, at 41–42.

50. *See, e.g.*, Benjamin Joyner, *Thomson Reuters Plans to Spend Big in AI. Here's How*, LAW.COM (Dec. 2, 2024, 5:48 PM), https://www.law.com/2024/12/02/thomson-reuters-plans-to-spend-big-in-ai-heres-how/.

51. Westlaw offers WestCheck and Lexis/Nexis offers BriefCheck to analyze citations in a draft. *Check Citations with WestCheck*, THOMSON REUTERS, https://www.thomsonreuters.com/en-us/help/drafting-assistant/drafting-assistant/westcheck/check-citations-with-westcheck-drafting-assistant (last visited Apr. 23, 2025); *Using Shepard's BriefCheck on Lexis*, LEXISNEXIS, https://supportcenter.lexisnexis.com/app/answers/answer_view/a_id/1090314/~/using-shepards-briefcheck-on-lexis (last visited Apr. 23, 2025). Westlaw's Drafting Assistant is a tool to assist with drafting and proofing legal documents. *Drafting Assistant*, THOMSON REUTERS, https://legal.thomsonreuters.com/en/products/drafting-assistant (last visited Apr. 23, 2025).

52. *See* Samuel D. Hodge, Jr., *Revolutionizing Justice: Unleashing the Power of Artificial Intelligence*, 26 SMU SCI. & TECH. L. REV. 217, 227–28 (2023).

53. N.Y. STATE BAR ASS'N, *supra* note 9, at 48; *see also* Shattuck, *supra* note 46.

insurance sectors; analyzing case details and large databases of past verdicts and settlements in order to settle cases faster; screening incoming cases to see if records are missing; and summarizing voluminous documents to create demand letters.[54] Lawyers and self-represented litigants are already using generative AI tools to draft legal documents and perform legal research, creating benefits of time-saving and channeling a large volume of information.

Of course, attorneys must review any AI-created initial drafts to verify the accuracy of all information contained within. Lawyers must be cautious especially when relying on generative AI to draft briefs for submission to courts. Within the legal profession, generative AI tools such as ChatGPT and Gemini have come under scrutiny, with several high-profile situations involving hallucinations, such as citations to non-existent judicial opinions, and inaccurate or fabricated information.

The first notable court decision involving generative AI hallucinations was *Mata v. Avianca, Inc.*, in which attorneys relied on generative AI to research and write a brief, which included non-existent judicial opinions, as well as fake quotes and citations.[55] The court held that the attorneys acted with subjective bad faith and violated Federal Rule of Civil Procedure 11, and imposed a penalty of $5,000.[56] The *Avianca* court also required the attorneys "to inform their client and the judges whose names were wrongfully invoked of the sanctions imposed."[57]

In reaction, individual judges have started to issue standing orders requiring attorneys to take certain actions, including imposing certification requirements that generative AI has not been used or, if generative AI was used, that an attorney checked all language for accuracy.[58] This approach is not without its critics, who argue that such orders have the negative consequence of imposing unnecessary costs and creating a chilling effect on legitimate uses of AI tools.[59]

54. Maria Dinzeo, *Lawyers Drowning in Cases Are Embracing AI Fastest—and Say It's Yielding Better Outcomes for Clients*, LAW.COM (Dec. 4, 2024, 2:08 PM), https://www.law.com/corpcounsel/2024/12/04/lawyers-drowning-in-cases-are-embracing-ai-fastestand-say-its-yielding-better-outcomes-for-clients/; *see also* Regalia, *supra* note 46, at 213–16 (discussing the potential benefits of generative AI for legal writing).

55. 678 F. Supp. 3d 443, 448 (S.D.N.Y. 2023).

56. *Id.* at 464–66.

57. *Id.* at 466.

58. Maura R. Grossman, Paul W. Grimm, & Daniel G. Brown, *Is Disclosure and Certification of the Use of Generative AI Really Necessary?*, 107 JUDICATURE, no. 2, 2023, at 68, 69; Cyphert et al., *supra* note 21, at 313–14; Raymond H. Brescia, *New Governance and New Technologies: Creating a Regulatory Regime for the Use of Generative Artificial Intelligence in the Courts*, 26 N.C. J.L. & TECH. 1, 27–38 (2024).

59. Grossman et al., *supra* note 58, at 68.

In cases involving attorneys, prohibitions already exist against making misrepresentations to courts that should dissuade intentional bad acts and encourage attorneys to perform adequate due diligence in confirming the correctness of AI-generated submissions. An attorney has an obligation under Federal Rule of Civil Procedure 11 to sign all pleadings, motions, and other papers before the court with assurances that the pleadings are not frivolous, nor will cause unnecessary delay or increased litigation costs, and that the pleadings are stating facts based on existing law and sufficient evidentiary support.[60] Reliance on generative AI tools to create pleadings, motions, or other documents filed with the court that are not reviewed by a human or are not verified in any manner would violate Rule 11.[61] Thus, it seems that individual standing orders for lawyers might be duplicative of Rule 11 obligations.[62] Because rules of professional conduct do not apply to *pro se* litigants who might be relying on AI tools, individual judges' standing orders would be applicable and useful for *pro se* litigants.

In addition to Rule 11, ethics rules, and AI requirements imposed by individual judges, generative AI also raises ethical issues with the possibility of attorney-client privileged information, attorney-work product, intellectual property, and other protected information being used as inputs to generative AI and LLM tools. Because open AI tools could save such proprietary information and make it available to all users,[63] the possibility of disclosing such information through AI tools is extremely concerning. Other concerns include lack of accuracy, bias, generative AI-enhanced evidence, and deepfakes.[64]

Because generative AI does not evaluate the accuracy of information, provide legal reasoning, have ethical duties, or value the rule of law, members of the legal community must proceed with caution.

60. FED. R. CIV. P. 11; *see also* FED. R. CIV. P. 26(g) (imposing similar requirements to discovery-related documents); MODEL RULES OF PRO. CONDUCT r. 3.3 (AM. BAR ASS'N 2024) (duty of candor).

61. Grossman et al., *supra* note 58, at 74; *see* Park v. Kim, 91 F.4th 610, 614–16 (2d Cir. 2024) (holding that an attorney violated her professional obligations under Federal Rule of Civil Procedure 11 by not confirming the accuracy of a fictitious case created by ChatGPT before including the case in a submission to the court).

62. Grossman et al., *supra* note 58, at 74.

63. A.I. RAPID RESPONSE TEAM, NAT'L CTR. FOR STATE CTS., GUIDANCE FOR THE USE OF AI AND GENERATIVE AI IN COURTS 4 (2024), https://www.ncsc.org/sites/default/files/media/document/AI-Courts-NCSC-AI-guidelines-for-courts.pdf.

64. *Id.* at 6.

B. The Work of the Court

1. Administrative Tasks

Courts are currently evaluating how to incorporate AI tools in court administration and case management functions. For example, the federal judiciary has recently appointed an AI Task Force.

By using AI tools, courts may be able to improve the efficiency of organizing large amounts of information and sifting through documents to create summaries that can assist judges and court staff.[65] AI can assist with organizing docket information and improving search functions of voluminous court filings.[66] Most courts in the United States have already transitioned from manual paper filings to electronic filing systems,[67] but searching court databases still remains cumbersome and can be improved with AI tools.

Regarding the interactions of courts with the public, historically courts have provided information and communications through a human representative of the clerk's office or a judge's chambers. Court users have been able to receive individualized responsive legal services through these personal interactions. There may be a benefit of increased efficiency if courts are able to utilize AI tools to send automatic notifications to parties or to respond to inquiries from the public. The ability of humans to provide tailored advice might be diminished or lost, however, if court-provided services are transitioned to AI platforms.[68] An AI chatbot may never be able to provide the same degree of nuanced professional advice as a human and may make mistakes without human interaction, but for some people who have simple questions about navigating the legal process, a court-provided AI platform might improve access to information for unrepresented members of the public.

Some courts have adopted AI technologies to provide basic legal services to non-lawyers, such as easy access to legal information during the pre-trial phase to help potential litigants better understand their claims and the legal options available; to provide relevant statutes, documents, and templates; and to navigate the court's process.[69] A few

65. *See id.* at 17; CONF. OF STATE CT. ADM'RS, GENERATIVE AI AND THE FUTURE OF THE COURTS: RESPONSIBILITIES AND POSSIBILITIES 12–13 (2024), https://cosca.ncsc.org/__data/assets/pdf_file/0018/103392/COSCA-Policy-Paper_AI_P2.pdf.

66. *See* A.I. RAPID RESPONSE TEAM, *supra* note 63, at 17; JOINT TECH. COMM., INTRODUCTION TO AI FOR COURTS 7 (2020), http://www.ncsc.org/__data/assets/pdf_file/0013/20830/2020-04-02-intro-to-ai-for-courts_final.pdf.

67. Cary Coglianese & Lavi M. Ben Dor, *AI in Adjudication and Administration*, 86 BROOK. L. REV. 791, 798–801 (2021).

68. Komoda, *supra* note 39, at 165.

69. *Id.* at 149–51.

courts in the United States and internationally have started to offer information to the public through AI-assisted tools, including by installing kiosks in courthouses and by sending AI-generated information to the public. Potential litigants are able to input questions into court-provided AI tools, which provide information on legal services based on responses to the users' questions. State courts in Florida, Colorado, Arizona, California, and New Jersey, for example, allow users to interact with chatbots or guided questionnaires capable of answering common questions and helping with simple tasks, such as paying fines and scheduling court dates.[70] AI systems of this type have been implemented by courts in Canada and the People's Republic of China.[71]

Unlike human court staff, AI systems can be available twenty-four hours a day, seven days a week.[72] Many of these services are available online, free of charge, and do not require a user to visit a courthouse in person.[73] With the increased availability of resources and information, AI technologies offer the potential to decrease unnecessary filings and make legal services more affordable and accessible.[74]

2. Legal Research

Just as practitioners outside of the courthouse are using AI tools to assist in the preparation of cases, judges may be well-positioned to take

70. *See, e.g.*, ELEVENTH JUD. CIR. OF FLA., https://www.jud11.flcourts.org/ (last visited Apr. 23, 2025); ARIZ. JUD. BRANCH, https://www.azcourts.gov/ (last visited Apr. 23, 2025); Colorado Resource Network, www.coloradoresourcenetwork.com/ (last visited Apr. 23, 2025). The Los Angeles traffic court website uses an online avatar called "Gina" to provide assistance in multiple languages on tasks such as paying traffic tickets and scheduling a court date. *Traffic*, L.A. CT., https://www.lacourt.org/division/traffic/traffic2.aspx (last visited Apr. 23, 2025). In 2019, the New Jersey Courts launched the Judiciary Information Assistant to provide answers to user questions. *Notice to the Bar: Judiciary Adds Chatbot to Its Website—Launching the Judiciary Information Assistant (JIA)—Expanding the Use of Technology to Provide Quality Service*, N.J. CTS. (Sept. 9, 2019), https://www.njcourts.gov/sites/default/files/notices/2019/09/n190909a.pdf.

71. Komoda, *supra* note 39, at 149–51. British Columbia's Civil Resolution Tribunal utilizes "Solution Explorer" to provide legal information and resources to plaintiffs and defendants based on user prompts and the issues of a specific case. *Solution Explorer*, CIV. RESOL. TRIBUNAL, https://civilresolutionbc.ca/solution-explorer/# (last visited Apr. 23, 2025). Many courthouses in the People's Republic of China have installed machines that provide users with plain language explanations of legal concepts, estimations on the costs of litigation, and other information. Chen & Li, *supra* note 36, at 9–11; *see also Robot Gives Guidance in Beijing Court*, CHINA DAILY (Oct. 13, 2017, 7:03 AM), https://www.chinadaily.com.cn/china/2017-10/13/content_33188642.htm.

72. *See* CIV. RESOL. TRIBUNAL, 2023/2024 ANNUAL REPORT 2 (2024), https://civilresolutionbc.ca/wp-content/uploads/CRT-Annual-Report-2023-2024.pdf.

73. *Id.*

74. *Id.* at 1–2, 16 (noting that only 22.7% of Solution Explorer explorations resulted in the filing of a claim).

advantage of AI to increase efficiency in chambers. The scale of the caseloads carried by most judges requires a balancing of speed and detail that can be difficult to manage. For example, a core responsibility of every judge is drafting a high volume of orders and opinions that clearly communicate the court's directives and determinations. This process is an amalgamation of multiple disparate skills. Before the judge can write the first word of a draft, she must understand the facts of the case and the relevant law. She must weigh the respective arguments and evidence presented by the parties. Finally, she must reach a determination that is fair, unbiased, and legally correct. All of this must be done with the intention of providing an efficient resolution for the parties and an awareness of the numerous cases still in the queue. AI tools can assist judges in every stage of this process.

In a complex case with multiple claims, active motion practice, and large amounts of discovery, identifying relevant facts and laws can be a challenge. Though the arguments provided by the parties are of value, a judge cannot simply accept the representations and legal interpretations of the parties and must conduct her own legal research on the issues of a case. In doing so, judges may rely on many of the same commercially and publicly available tools as practitioners, such as AI-powered legal research tools and document reviewers.

Regarding judicial work within chambers, judges must manage filings and evidence in a manner that allows for them to be properly weighed and considered. Possible uses of AI by the courts include: searching large databases for specific information; creating first drafts of orders, speeches, job interview questions, position descriptions, performance evaluations, or policy provisions; composing emails and memoranda; and generating images for presentations.[75]

In the United States, it is not common practice for judges to use AI tools to analyze and summarize case-related documents. It has been reported that some foreign courts in India and Brazil have been using AI tools for tasks such as analyzing case-related documents and generating summaries of relevant facts and laws for judges to use.[76]

Judges may also utilize AI technologies to handle non-substantive administrative chambers' tasks. For example, judges can use AI to manage hearing schedules and to send email and text reminders to

75. A.I. RAPID RESPONSE TEAM, *supra* note 63, at 17; Ray Worthy Campbell, *Artificial Intelligence in the Courtroom: The Delivery of Justice in the Age of Machine Learning*, 18 COLO. TECH L.J. 323, 341–43 (2020).

76. Komoda, *supra* note 39, at 153–54 (discussing technologies used by Indian and Brazilian courts).

litigants of upcoming dates.[77] Judges can generate AI transcripts of hearings, which are automatically sent to counsel.[78] These AI-assisted procedures may reduce the day-to-day workload of a judge's staff in chambers, although it is perhaps controversial because it could mean eliminating certain jobs in the courthouse, such as court reporters.[79] AI tools may have the added effect of reducing the need to issue warrants against parties who fail to appear for court dates and may reduce the potential for disputes over the interpretation of rulings by making AI transcriptions of hearings quickly available to counsel.[80]

3. AI in the Courtroom

Courts should treat party submissions that might have been produced with generative AI or LLMs with a degree of skepticism. As generative AI becomes more sophisticated, judges will struggle more to identify what content was created by a program. The inability to easily discern AI-generated language or evidence creates a problem of verification for the court that is likely to manifest in at least two ways.

The first is through the unintentional submission of fake statements of law and facts by parties relying on generative AI tools to perform research and drafting. Generative AI using large language models can generate inaccurate outputs or hallucinations.[81] Hallucinations are common occurrences and can be difficult to identify without independent verification.[82] Lawyers who fail to apply proper due diligence in using AI tools might file submissions with a court including misstatements of the law or wholly fabricated cases and statutes.[83]

77. Alex Ebert, *Judges Urged to Embrace AI, but Not When Writing Opinions*, BLOOMBERG L. (June 20, 2024, 3:16 PM), https://news.bloomberglaw.com/artificial-intelligence/ai-gray-zone-experts-urge-judges-to-use-tech-cautiously.

78. *Id.*; *see also* Campbell, *supra* note 75, at 342.

79. *See* Sean La Roque-Doherty, *Reporter Resistance*, A.B.A. J., June–July 2024, at 9, 9–10, 12. *See generally* Allyson Brunette, *Leveraging GenAI Tools in Courts Contains Opportunities and Challenges*, THOMSON REUTERS (Apr. 9, 2024), https://www.thomsonreuters.com/en-us/posts/government/leveraging-genai-tools-courts/ (noting court reporters require years of training and some courts struggle to hire reporters).

80. Ebert, *supra* note 77.

81. Mik, *supra* note 31, at 92; Cyphert et al., *supra* note 21, at 305–06. Some LLMs developed specifically for the legal industry claim to eliminate or reduce the occurrence of hallucinations through restricting training data to trusted content, such as legal research databases. *See* Adam Allen Bent, *Large Language Models: AI's Legal Revolution*, 44 PACE L. REV. 91, 129–30 (2023).

82. Mik, *supra* note 31, at 95–101.

83. *See* Benjamin Weiser, *ChatGPT Lawyers Are Ordered to Consider Seeking Forgiveness*, N.Y. TIMES (June 22, 2023), https://www.nytimes.com/2023/06/22/nyregion/

The second concern for the court involves malicious submissions of fabricated evidence. Generative AI is capable of producing realistic and convincing media that can be presented to a court as authentic evidence.[84] Such evidence might include fabricated audio recordings that convincingly mimic a person's voice or a written document that falsely adopts the purported author's writing style.[85] Images can be enhanced with AI, or can be completely fabricated, leading to the "emergence of deepfakes (convincing false pictures, videos, audio, and other digital information) generated by AI."[86] On its face, the AI-generated evidence could appear indiscernible from authentic evidence. As the potential for AI-generated evidence increases, courts will likely be required to spend additional time and resources in resolving challenges to the authenticity of evidence.

One report by the National Center for State Courts provides some helpful tips for judges to discern when generative AI has been used to create a document:

- References to cases that do not sound familiar, cannot be found through traditional legal research, or have unfamiliar citation formats.

- At first read, AI text may sound impressive and well written, but there are often structural issues. AI content tends to be overly formulaic and lacks natural transitions between topics. Once you strike out all the words that are meaningless filler, there may not be a lot of substance left. AI is also not mindful of grammar rules or basic punctuation although that is improving.

- AI is designed to recognize patterns and replicate them as accurately as possible so look for repetitive patterns in the writing. Perhaps the most obvious sign of AI-generated content is the use of repeated words, phrases, or the same sentence structure used regularly in different paragraphs within the same document.

lawyers-chatgpt-schwartz-loduca.html; *see, e.g.*, Mata v. Avianca, Inc., 678 F. Supp. 3d 443, 450–51 (S.D.N.Y. 2023); Park v. Kim, 91 F.4th 610, 614 (2d. Cir. 2024).

84. *See* Willie J. Epps Jr. & Jonathan M. Warren, *Artificial Intelligence Now Being Deployed in the Field of Law*, JUDGES' J., Winter 2020, at 16, 18.

85. *See id.*; Grossman et al., *supra* note 58, at 72–74; Regalia, *supra* note 46, at 224.

86. A.I. RAPID RESPONSE TEAM, *supra* note 63, at 9.

- Often AI generated content is written in the general sense, glossing over facts and figures and may be lacking details, unnatural phrasing, lack of natural transitions between topics, or errors that a human is less likely to make. It often uses alliteration to articulate an appealing word arrangement.

- The absence of relevant very recent on-point case citations may indicate the use of AI generated content. OpenAI models are trained on massive data sets that are not continually updated so if recent relevant cases are not cited, it may be due to the AI being trained on an earlier dataset.

- Humans use idioms and slang frequently. AI often uses these phrases and words incorrectly. If you spot an idiom that feels a bit off and seems forced into the text it is likely a sign it was created with GenAI.[87]

In addition, courts should diligently apply the rules of evidence in order to prevent the admission of deepfakes and digitally-altered evidence in cases.[88] Further, "judges may need to consider requiring expert testimony to determine the authenticity and reliability of audio, videos, and images that are challenged."[89]

Court reporting may also benefit from AI technologies that allow for integration with case management systems and more efficient preparation of transcripts, such as real-time transcription.[90] These tools allow for digital searches, which can save countless hours sifting through pages of exhibits, transcripts, and briefs for specific details.[91] Some courts, including the U.S. Court of International Trade, have transitioned to almost exclusively using digital recordings and AI-

87. *Id.* at 7.

88. Federal Rule of Evidence 901 provides a mechanism for courts to determine the authenticity of evidence. FED. R. EVID. 901. There is some debate as to whether Rule 901 adequately protects against the submission of evidence falsified through AI. *See generally* Daniel J. Capra, *Deepfakes Reach the Advisory Committee on Evidence Rules*, 92 FORDHAM L. REV. 2491 (2024); Nate Raymond, *US Judicial Panel Wrestles with How to Police AI-Generated Evidence*, REUTERS (Apr. 19, 2024, 6:35 PM), https://www.reuters.com/legal/transactional/us-judicial-panel-wrestles-with-how-police-ai-generated-evidence-2024-04-19/.

89. A.I. RAPID RESPONSE TEAM, *supra* note 63, at 9.

90. Michael Murray, *The Rise of AI in Court Reporting Technology*, LAW.COM (Jan. 12, 2024, 9:24 AM), https://www.law.com/legaltechnews/2024/01/12/the-rise-of-ai-in-court-reporting-technology/?slreturn=20250120172808; Komoda, *supra* note 39, at 154–55.

91. Murray, *supra* note 90.

generated court transcripts, rather than in-person court reporters, during hearings.[92] The U.S. Court of International Trade provides these AI-generated court transcripts free of charge to litigants.[93]

4. Judicial Decision-Making

A more controversial topic is whether courts should rely on AI for decision-making. Federal and state courts in the United States are considering how to incorporate AI into the workings of chambers, and currently very few courts have opted to rely on AI for any substantive decision-making functions. It is critical for judges to exercise independence, integrity, and impartiality in decision-making. The human aspect of a judge's decision-making must be respected and not replaced by reliance on generative AI tools.

The New York State Bar Association's Task Force on Artificial Intelligence reports that "there are only a few examples of robo courts or AI judges being utilized to resolve disputes, and those trials have had mixed results."[94] The Task Force questioned whether AI arbiters might decide small claims court matters or arbitration matters in the future when all parties consent to an AI arbiter.[95]

The Task Force cited examples of a reported robo court in Estonia for small claims procedures, and an automated system to assess government payments in Australia that failed.[96] The Estonian example is drawn from a March 2019 article in the magazine *Wired* that reported that the Estonian Ministry of Justice and Digital Affairs tasked the country's chief data officer to design a "robot judge" that could adjudicate small claims disputes of less than €7,000 in an effort to work through a backlog of cases before the Estonian courts.[97] The article described a program that would allow parties to upload evidence and for a decision to be rendered by algorithm.[98] The AI-generated decision would be appealable to a human judge.[99] Though the article did not provide details as to how

92. *See* La Roque-Doherty, *supra* note 79, at 10 (discussing the trend of courts replacing stenographic court reporters with digital recording systems). Some foreign courts have also adopted AI tools for real-time transcription of proceedings. *See* Chen & Li, *supra* note 36, at 15–16.

93. U.S. CT. INT'L TRADE, TRANSCRIPT ORDER FORM, https://www.cit.uscourts.gov/sites/cit/files/FormTranscriptOrder.pdf.

94. N.Y. STATE BAR ASS'N, *supra* note 9, at 46.

95. *Id.* at 46–47.

96. *Id.*

97. Eric Niiler, *Can AI Be a Fair Judge in Court? Estonia Thinks So*, WIRED (Mar. 25, 2019, 7:00 AM), https://www.wired.com/story/can-ai-be-fair-judge-court-estonia-thinks-so/.

98. *Id.*

99. *Id.*

the algorithm would reach its decision or what data would be used for its training, it predicted that a pilot program would be launched, focusing on contract disputes, by the end of 2019.[100]

Though the Estonian project has gained attention as the first example of judicial decision-making by an algorithm,[101] it appears likely that the project never existed in the way it was presented in the *Wired* article. In reality, the pilot project was designed only for uncontested claims.[102] In 2022, the Estonian Ministry of Justice and Digital Affairs issued a statement denouncing the 2019 *Wired* article as "misleading" and stating that "[t]here hasn't been that kind of project or even an ambition in [the] Estonian public sector."[103]

In an interesting and perhaps frightening example, China has reportedly been using robo courts with non-human "AI Judges" for several years.[104] In 2014, China introduced its "smart court" initiative that included a goal of reforming the Chinese judicial system through the incorporation of technology.[105] Among the basic principles identified in the Supreme People's Court's *Fifth Five-Year Reform Outline* was to "make full use of modern scientific and technological means such as big data, cloud computing, and artificial intelligence to solve reform problems and improve judicial efficiency."[106] Among the programs implemented is "Wise Judge," a system developed by the Beijing High People's Court to assist judges in ensuring that similar cases receive similar judgments.[107] Wise Judge draws on "China Judgments Online,"

100. *Id.*

101. *See, e.g.*, Jasper Ulenaers, *The Impact of Artificial Intelligence on the Right to a Fair Trial: Towards a Robot Judge?*, ASIAN J.L. & ECON., July 21, 2020, at 1, 13–14; Tara Vasdani, *From Estonian AI Judges to Robot Mediators in Canada, U.K.*, LAW360 CANADA (June 13, 2019, 11:47 AM), https://www.law360.ca/ca/articles/1748405/from-estonian-ai-judges-to-robot-mediators-in-canada-u-k-.

102. Katrin Nyman Metcalf & Tanel Kerikmäe, *Machines Are Taking Over—Are We Ready?*, 33 SING. ACAD. L.J. 24, 33 (2021).

103. *Estonia Does Not Develop AI Judge*, ESTONIA MINISTRY OF JUST. & DIGIT. AFFS. (Feb. 16, 2022, 11:55 AM), https://www.justdigi.ee/en/news/estonia-does-not-develop-ai-judge.

104. Tara Vasdani, *Robot Justice: China's Use of Internet Courts*, LAW360 CANADA (Feb. 5, 2020, 11:07 AM), https://www.law360.ca/ca/articles/1750396/robot-justice-china-s-use-of-internet-courts; *see also Beijing Internet Court Launches Online Litigation Service Center*, BEIJING INTERNET CT. (July 1, 2019), https://english.bjinternetcourt.gov.cn/2019-07/01/c_190.htm [hereinafter BEIJING INTERNET CT.].

105. Changqing Shi, Tania Sourdin, & Bin Li, *The Smart Court—A New Pathway to Justice in China?*, INT'L J. FOR CT. ADMIN., Mar. 11, 2021, at 1, 2, 8.

106. Paper Government Affairs, *Full Text of the Supreme Court's "Five-Year Reform Outline": Authoritative Interpretation*, PAPER (Feb. 27, 2019, 5:07 PM), https://www.thepaper.cn/newsDetail_forward_3051310.

107. Shi et al., *supra* note 105, at 9; Haiyan Wang, *AI and Administration of Justice in China*, INT'L REV. PENAL L., 2023, at 5, 19.

a system that publishes judgments from courts throughout the country.[108] In the context of criminal cases, the Shanghai High People's Court has developed "Intelligent Auxiliary System of Criminal Case Handling," a tool that draws on a large pool of judicial data to ensure that judgments issued by Shanghai judges are consistent with those in other parts of China.[109]

In 2019, the Beijing Internet Court launched an online litigation service center that offered access to an AI judge.[110] China's internet-based robo courts operate 24 hours per day, 365 days each year, and have handled millions of legal transactions, including by using non-human robo judges in the form of 3D holograms who have asked questions during hearings, accepted evidence, and issued dispositive judgments.[111] These robo courts facilitate filing, mediation, court hearings, and inquiries on cell phones.[112] Litigants can appeal the robo court judgments to human judges.[113]

The Supreme People's Court of China in 2022 directed all courts within China to "develop a competent artificial intelligence system by 2025 to provide all-round AI support in efforts to improve legal services and uphold justice."[114] Several courts in China have already taken steps toward this objective by implementing AI systems that generate draft judgments for human judges to revise before issuing.[115]

Conversely, the recently-passed European Union Artificial Intelligence Act recognized that the use of artificial intelligence by the judiciary should be considered high-risk.[116] This is because of the recognized "risks of potential biases, errors and opacity."[117] The legislation specifically noted that "[t]he use of AI tools can support the

108. Shi et al., *supra* note 105, at 9.
109. *Id*. at 9–10.
110. BEIJING INTERNET CT., *supra* note 104.
111. Vasdani, *supra* note 104; *see also* BEIJING INTERNET CT., *supra* note 104; *Beijing Internet Court Launches AI Judge*, SUPREME PEOPLE'S CT. OF PEOPLE'S REPUBLIC OF CHINA (June 28, 2019), https://english.court.gov.cn/2019-06/28/c_766675.htm; *The Technical Applications in Smart Trials of Beijing Internet Court*, BEIJING INTERNET COURT (Dec. 21, 2021), https://english.bjinternetcourt.gov.cn/2021-12/21/c_494.htm.
112. BEIJING INTERNET CT., *supra* note 104.
113. Vasdani, s*upra* note 104.
114. *Chinese Courts Must Implement AI System by 2025*, SUPREME PEOPLE'S CT. OF PEOPLE'S REPUBLIC OF CHINA (Dec. 12, 2022), https://english.court.gov.cn/2022-12/12/c_838810.htm.
115. *See* Akiko Yoshinaga, *China's Judiciary Accelerates Use of AI; Aims to Speed Up Cases, Add Perceived Fairness*, JAPAN NEWS (Aug. 6, 2024), https://japannews.yomiuri.co.jp/science-nature/technology/20240806-202833/.
116. Regulation 2024/1689 of 13 June 2024, art. 6(2), annex III ¶ 8(a), 2024 O.J. (L) 1, 53,128.
117. *Id*. at 18, recital ¶ 61.

decision-making power of judges or judicial independence, but should not replace it: the final decision-making must remain a human-driven activity."[118]

Clearly, a robo court with no human oversight raises questions about the rule of law and fundamental rights to a fair trial, equality under the law, and the right to have a human judge exercise discretion to decide a matter fairly and justly.

Another issue of critical importance is the type of AI platform that a court uses. If judges are considering using generative AI tools to summarize briefs, documents, or other court filings for use by the court in drafting opinions, it is imperative to understand that any information entered into a generative AI tool can "become visible to the company operating the platform and to other users."[119] Open AI systems normally retain any information entered to train the database.[120] Judges, judicial staff, and law clerks should be warned to avoid inputting confidential or non-public information into open AI systems, "including draft decisions and opinions, when using tools that use open models."[121]

Courts might consider developing closed AI systems, which "are those created using specified datasets, so they are typically more secure and do not share prompts or results beyond the intended system."[122] In considering whether to adopt AI tools that use open versus closed training models, courts should evaluate the "intended use of the tool, type of information and data that may be shared, and available financial and personnel resources to develop, manage, and support a closed AI tool."[123]

In criminal cases, several AI tools have been used by courts in an effort to impact sentencing and bail determinations.[124] Risk assessment algorithms are tools designed to predict a criminal defendant's likelihood of recidivism and the potential success of alternatives to incarceration.[125] They do so by identifying statistical correlations between a specific group trait and the criminal offending rate for that group, allowing for low-risk offenders and those with a greater potential for rehabilitation to be sentenced to programs other than long and costly periods of

118. *Id*.
119. A.I. RAPID RESPONSE TEAM, *supra* note 63, at 8.
120. *Id*.
121. *Id*.
122. *Id*. at 15.
123. *Id*.
124. *See* Hodge, *supra* note 52, at 236–38; *see also* JAMES REDDEN & DUREN BANKS, CRIMINAL JUSTICE TESTING & EVALUATION CONSORTIUM, ARTIFICIAL INTELLIGENCE APPLICATIONS FOR CRIMINAL COURTS 7 (2020), https://cjtec.org/files/5f5f943055f95.
125. Hodge, *supra* note 52, at 236–38; *see also* Komoda, *supra* note 39, at 155–57.

incarceration.[126] A risk assessment analysis is one factor for a judge to consider and should not be the sole factor used in reaching a judgment or bail decision. In cases in which a prior judgment has been ordered expunged, AI can help to combat the broad and rapid proliferation of information about the conviction.[127]

In the United States, some laws have been passed that prohibit courts' over-reliance on AI in criminal contexts. Utah enacted a law in 2024, for example, that prohibits a court from relying solely on an algorithm or a risk assessment tool score to make any determination about pretrial release, to determine whether to approve the defendant's diversion to a non-criminal diversion program, or when making any decision regarding probation.[128]

AI promises to improve efficiency and fairness in the work of the court, but judges and court staff should avoid over-reliance on an imperfect technology that is not yet able to fully live up to its promises. AI's ability to process large amounts of data and to present its analysis in an easily understood manner does not mean that the technology is incapable of mistakes or is not susceptible to manipulation. Algorithms can provide inaccurate information for a variety of reasons, such as "incomplete datasets, partial categorizations, inaccurate and unjust assumptions, extractive business models, reductionist understandings of identity and culture, and generally odious aesthetics about the human value of automation."[129]

Adding to the risk of inaccurate information is the reality that most AI users do not fully understand how a particular algorithm reaches a certain result. This issue is more than lay users not understanding the complex computer science of the algorithm. AI systems can reach conclusions that even their designing engineers do not fully understand.[130] Thus, courts should be wary of relying too heavily on AI tools for decision-making.

126. Stephanie Domitrovich, *Artificial Intelligence Stepping into Our Courts: Scientific Reliability Gatekeeping of Risk Assessments*, JUDGES J., Winter 2020, at 31, 31.

127. Lederer, *supra* note 32, at 12, 14.

128. UTAH CODE ANN. §§ 77-2-5(11), 77-18-105(9)(b), 77-20-205(9)(b).

129. Mike Annany, *Seeing Like an Algorithm Error: What Are Algorithmic Mistakes, Why Do They Matter, How Might They Be Public Problems?*, 24 YALE J.L. & TECH. 342, 348 (2022).

130. Komoda, *supra* note 39, at 174.

IV. BEST PRACTICES

A. Establish an AI Policy for the Court

One important first step that courts can take in reducing the risks associated with AI technologies is to develop an internal AI policy for the court. This policy should outline the parameters for the use of AI in court work by judges and staff, in both open AI and closed AI settings. The AI policy should identify the court's goals and needs, and how AI can assist with the work of the court, addressing the issues of effectively automating repetitive functions, data analysis, summarizing, drafting, and other tasks.[131] The court's AI policy should specifically address the use of generative AI and should set forth parameters of use by court staff. Risks to be addressed in the AI policy should include hallucinations, data security, copyright infringement, and confidentiality. The policy should determine how best to mitigate these risks, among other issues.

Some suggestions that a court should consider in developing an AI policy include the following, as outlined by the National Center for State Courts:

- [T]he policy's purpose and scope: to whom it applies, to what technologies it applies, how it can be used, such as requiring the use of secure and encrypted networks when accessing or transmitting data through AI tools, and requirements about the use of court data for training AI tools;
- [A]cceptable uses of AI that are responsible and ethical and comply with all applicable laws, regulations, and policies . . .;
- [P]rohibited uses of AI that would jeopardize the court's network or potentially disclose confidential information;
- [S]taff should not access, collect, use, or disclose personal or sensitive information beyond what is necessary for authorized business purposes;
- [W]hat data protection laws, regulations, or policies apply to the use of personally identifiable information and the data privacy and security measures that should be implemented or that employees should follow to protect the court's data;

131. A.I. RAPID RESPONSE TEAM, *supra* note 63, at 13.

- [H]ow to ensure that AI-generated content is not biased and does not reflect discrimination based upon race, ethnicity, gender, age, or other protected classes;

- [W]hen to update and patch AI tools to protect against vulnerabilities and security risks, if not already covered in another security policy;

- [M]echanisms to monitor whether the policy is being followed, and plans for what to do if the policy is violated (security and HR).[132]

Some courts have established AI guidelines and policies, including courts in Ohio, Illinois, Delaware, Arizona, Maryland, South Dakota, New York, Kentucky, New Jersey, Connecticut, Kansas, Idaho, Louisiana, and Utah.[133] Other individual state and federal judges have issued standing orders regarding the use of generative AI, and the federal judiciary is currently exploring the development of a federal court AI policy.

B. Develop an AI Platform for the Court

Courts should consider developing closed AI tools to meet their specific needs. This serves two important purposes. First, though all courts have some common functions, such as managing dockets and scheduling hearings, the specific needs of individual courts can vary greatly. The involvement of judges and court staff in the design of a closed AI tool would allow for the algorithms to be tailored to the specific needs of the court and would ensure that relevant concerns, such as data security and confidentiality, would be considered. Second, the involvement of judges and court staff in the design process would allow for the eventual users of the tool to develop an understanding of how the tool works.

The importance of understanding the tool does not end with the design process. Just as attorneys that practice before the court have a continuing obligation to stay educated on relevant technologies, judges

132. *Id.*

133. *See State Court Guidelines and Policies*, NAT'L CTR. FOR STATE CTS., https://www.ncsc.org/consulting-and-research/areas-of-expertise/technology/tri-ncsc-ai-policy-consortium/ai-policy-resources/state-activities/resource-center/state-court-guidelines-and-policies (last visited Apr. 23, 2025).

and court staff should take appropriate steps to remain knowledgeable as the technology that they are using continues to evolve.[134]

C. Proceed with Caution

It is important to remember that AI cannot replace the acquired knowledge and wisdom of legal professionals. If a court adopts an outward-facing AI tool that provides information to the general public, it must be made clear to the user that the court is not providing legal advice, and the user should be encouraged to consult an attorney for further advice beyond basic legal information.

To ensure reliability and to preserve the integrity of the court, judges and court staff must ensure that humans are engaged in the review of any content created with AI tools.[135]

V. CONCLUSION

The proliferation of artificial intelligence tools used by courts and attorneys is inevitable. AI is already a component of the word processing software used to draft opinions, the legal research services used to find caselaw, and countless other technology tools that are used each day. As lawyers adopt AI tools to assist with the preparation of cases, external sources of AI will become a greater presence in courtrooms and in chambers. It is reasonable to expect that AI will increase in its ubiquity as the technology continues to develop.

AI promises to make the work of the court more efficient, but these promises are not without their perils. AI is not fully understood and is an imperfect technology that is not immune from abuse. Courts must be vigilant against the improper use of generative AI technologies by those outside of the courthouse and must cultivate an understanding of the AI technologies used within the courthouse. Judges and court staff must supervise the use of generative AI tools and review content produced with generative AI for inaccuracies. With proper attention and consideration, generative AI can help make the legal system more just, speedy, and inexpensive.

134. *See* Hon. Herbert B. Dixon Jr., Hon. Allison H. Goddard, Maura R. Grossman, Hon. Xavier Rodriguez, Hon. Scott U. Schlegel, & Hon. Samuel A. Thumma, *Navigating AI in the Judiciary: New Guidelines for Judges and Their Chambers*, 26 SEDONA CONF. J. (forthcoming 2025) (manuscript at 4), https://thesedonaconference.org/sites/default/files/publications/NavigatingAIintheJudiciary_PDF_021925_2.pdf.

135. *Id.* at 4–5.