



Artificial Intelligence in the Law: the Use of Predictive Coding in Discovery

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Introductions



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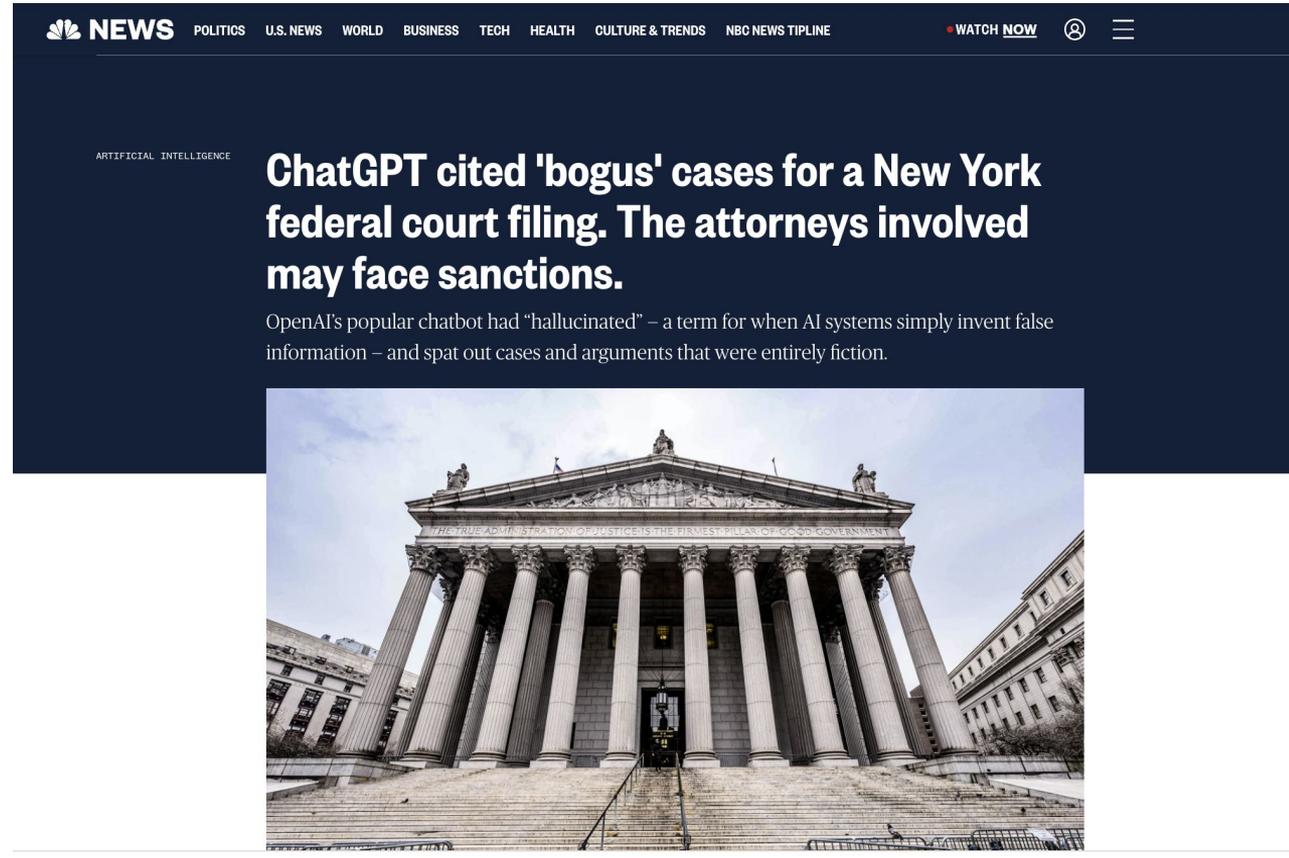


Agenda

- Ethical Obligations
- What is AI?
- Using AI in Practice
- Barriers to Adoption
- Where do we go from here?

The ChatGPT Brief and Ensuing Debacle

*Citation: Mata v. Avianca,
Inc., 1:22-cv-01461,
(S.D.N.Y.) Feb. 22, 2022*





Ethical Obligations (Technical Competence)

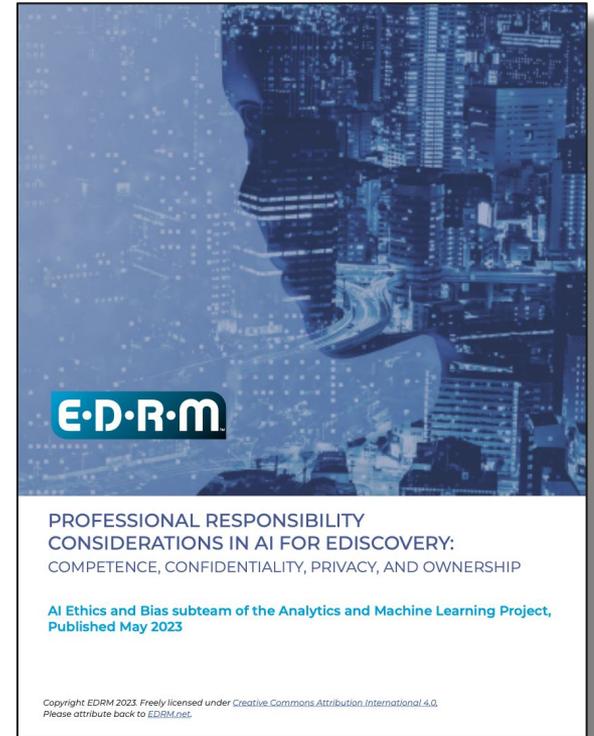
ABA Model Rule of Professional Conduct 1.1 -- ABA and most states find that lawyers have an ethical obligation to:

- Understand the risks created by the technology.
- Stay abreast of how technology can assist and harm clients.



Professional Responsibility Considerations in AI

- Competence
- Confidentiality
- Privacy
- Ownership





What is AI?

Artificial Intelligence (AI) systems learn which words, terms, and phrases may be of interest, identifies documents that share that language, and floats them to the top of the pile for the human reviewer to evaluate.

Machine learning (ML) refers to software that automatically improves as it is used. It relies on previously processed data to make predictions about data or classify the data.



Technology Assisted Review (TAR)

Technology Assisted Review combines technology and processes that enables prioritizing or coding a collection of documents using a computerized system that harnesses human judgements of one or more SME's on a smaller set of documents and then extrapolates those judgements to the remaining document collection (e.g., responsiveness)

AI in Use: Intelligent Search

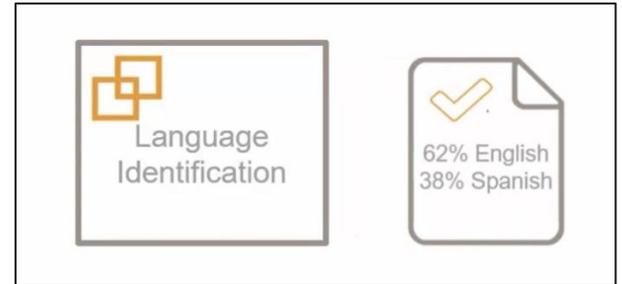
- Finding similar documents
- Email threading
- Social networks analysis
- Concept clustering/themes





AI in Use: Content Augmentation

- Document summaries
- Language identification & translation
- Audio transcription (and other mixed media files)
- Image recognition





AI in Use: Content Extraction

- PII identification (PII, PHI, PCI...)
- Entity extraction
- Sentiment analysis

Automatically find names of
people, places, products,
and organizations in text
across many languages.



AI in Use: Technology Assisted Review (TAR 1.0)

TAR 1.0: Subject matter expert (SME) codes a control set for relevance and then trains against that control set. When the training is done, the system ranks the remaining documents and orders them by the likelihood of relevance.

Requires a sample, or control set, to train the model and predict performance metrics.



AI in Use: Predictive Coding (TAR 2.0/CAL)



TAR 2.0 (CAL): Continuous active learning or CAL, is a form of supervised machine learning. The computer uses a search engine and relevance ranking to repeatedly select the next-most-likely-to-be-relevant documents for review, coding, and training; and continues to do so until it can no longer find any more relevant documents.

Learns from the coding decisions of the practitioner.



Using AI in Practice

- **Early Case Assessment:** Gain rapid insight into the validity of a claim and its potential ramifications. Quickly assess the entire universe of data and home in on what really matters.
- **Scoping:** defining scope of discovery and negotiating ESI protocols.
- **Document Review:** Speed up the process and improve the accuracy of reviewing documents (relevancy, privilege).



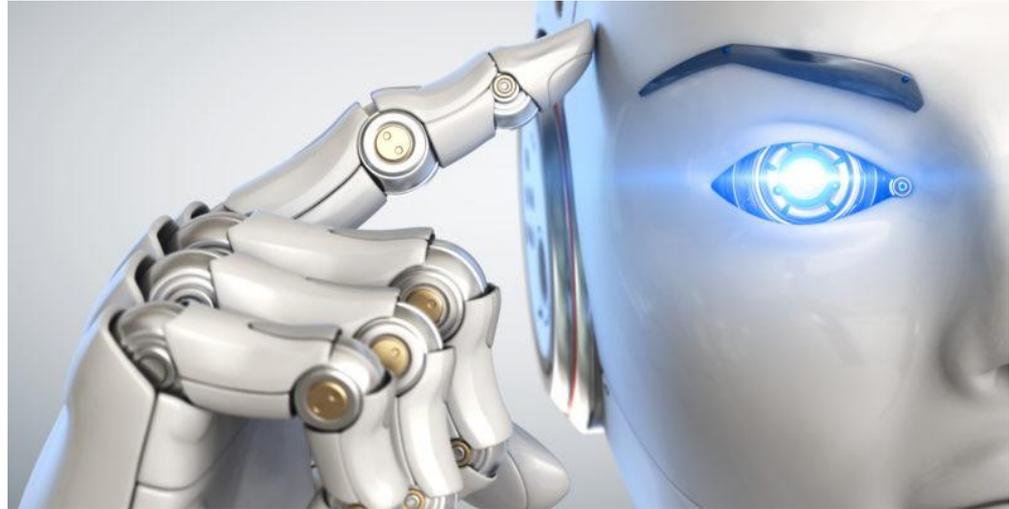
AI/TAR has been approved in court.

In 2012, Judge Andrew Peck ruled in *Da Silva Moore v. Publicis Groupe & MSL Group* No. 11 Civ. 1279 (ALC) (AJP) approving the use of "computer-assisted review."

In 2015, U.S. Magistrate Judge Andrew J. Peck noted in *Rio Tinto PLC v. Vale S.A.*, 306 F.R.D. 125 (S.D.N.Y. 2015), that "the case law has developed to the point that it is now black letter law that where the producing party wants to utilize TAR for document review, courts will permit it."

Barriers to Adoption

- Technical limitations
- Cost factors
- Trust in the technology





Where do we go from here?

- In late 2022, OpenAI released the first widely available AI chatbot. It reached with 100 million users in two months, the fastest user base growth in history.
- Already, the legal industry is starting to incorporate this technology to its work models, allowing attorneys to streamline and facilitate their work. But how will it affect the practice of law?



Thank you!

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