

# Why Lawyers Must Responsibly Embrace Generative AI

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“AI won’t replace lawyers, but lawyers who use AI will replace lawyers who don’t.”<sup>2</sup>

June 14, 2023<sup>3</sup>

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DOI: <https://doi.org/10.15779/Z389K45V33>

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2. Suzanne McGee, *Generative AI and the Law*, LEXISNEXIS, 2023, <https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/> (noting the widespread popularity of this catchphrase in the legal industry).

3. This article’s research and drafting commenced in early 2023, with the initial version published on the Social Science Research Network (SSRN) on June 14, 2023. Significant developments have been incorporated throughout multiple revisions, with the most recent substantive updates completed in spring 2024. This process is not, and cannot be, exhaustive given the rapidly evolving nature of AI. Our updates represent a carefully curated selection of the most impactful changes and discussions in the legal AI landscape, but they should not be considered a comprehensive account of all developments in this area. We encourage readers to consult regularly updated resources such as Law.com’s *Tracking Generative AI: How Evolving AI Models Are Impacting Legal*, which tracks the ongoing impact of evolving AI models on the legal industry. Readers are advised to approach all sources, including this article, with an understanding of the rapid pace of change in this field and to supplement their knowledge with the latest legal and technological developments.

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## INTRODUCTION

The release of OpenAI's ChatGPT<sup>4</sup> in late 2022 triggered a global artificial intelligence ("AI") race that continues to transform society.<sup>5</sup> Microsoft's Vice Chairman, Brad Smith, equated generative AI ("GenAI")<sup>6</sup> with the invention of the internet.<sup>7</sup> Many predict this technology could potentially overshadow some of the most significant technological advances in history.<sup>8</sup> Amid this rapidly evolving landscape, legal professionals face a unique challenge regarding the best way to responsibly harness this power.

Historically, the legal industry has been characterized by its cautious approach to new technologies. However, the extraordinary pace at which GenAI has impacted a wide range of industries has pushed the legal industry to accelerate its response and embrace technological change with a new sense of urgency. The American Bar Association ("ABA") Model Rules of Professional Conduct (the "Rules" or "Model Rules") reinforce this imperative, mandating that lawyers stay informed about relevant technologies to provide competent representation to clients.<sup>9</sup> This mandate underscores the pressing need for the legal profession to not only acknowledge but actively engage with GenAI. This has, unsurprisingly, sparked debate among legal professionals, with some experts raising serious risks and concerns with the widespread integration of AI technology into the practice of law.<sup>10</sup>

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4. ChatGPT, (the "GPT" stands for "generative pre-trained transformer") is an AI chatbot developed by OpenAI. It is optimized for dialogue through Reinforcement Learning with Human Feedback (RLHF), a technique that refines its responses based on human input and preferences. Users interact with it by submitting various prompts to receive responses. For a detailed timeline of ChatGPT's enhancements and capabilities, visit OpenAI's blog: <https://openai.com/blog>. The release of ChatGPT prompted many companies to launch their own AI solutions, including Google with Bard AI (now called Gemini), Anthropic with Claude, Meta with Llama, and Microsoft with Bing AI.

5. See Karen Hao, *What Is ChatGPT? What to Know about the AI Chatbot*, WALL ST. J. (May 16, 2023, 6:40 PM), [https://www.wsj.com/articles/chatgpt-ai-chatbot-app-explained-11675865177?mod=Searchresults\\_pos1&page=1](https://www.wsj.com/articles/chatgpt-ai-chatbot-app-explained-11675865177?mod=Searchresults_pos1&page=1).

6. Eben Carle, *Ask a Techspert: What is Generative AI?*, GOOGLE (APR. 11, 2023), <https://blog.google/inside-google/googlers/ask-a-techspert/what-is-generative-ai/> (defining GenAI and noting it can take what is learned from examples and create entirely new content).

7. See Danny D'Cruze, *India Today Conclave 2023: Microsoft President Brad Smith says AI could be as big as Internet*, BUSINESS TODAY (Mar. 18, 2023), <https://www.businesstoday.in/technology/news/story/india-today-conclave-2023-microsoft-president-brad-smith-says-ai-could-be-as-big-as-internet-373869-2023-03-18>.

8. See Brief of the Chicago Patent Attorneys as Amici Curiae in Support of Petitioner at 3-4, *Thaler v. Vidal*, 2023 U.S. S. CT. BRIEFS LEXIS 1282 (Apr. 18, 2023) (statement of Aaron V. Gin, Ph.D.) (noting GenAI as a revolutionary and disruptive technology that is rapidly expanding in usage and applicability); see also Jack Kelly, *Goldman Sachs Predicts 300 Million Jobs Will Be Lost or Degraded by Artificial Intelligence*, FORBES (Mar. 31, 2023), <https://www.forbes.com/sites/jackkelly/2023/03/31/goldman-sachs-predicts-300-million-jobs-will-be-lost-or-degraded-by-artificial-intelligence/?sh=17a3a02a782b>.

9. MODEL RULES OF PRO. CONDUCT r. 1.1, cmt. 8 [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_1\\_competence/comment\\_on\\_rule\\_1\\_1/?login](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/?login).

10. See, e.g., Dr. Lance B. Eliot, *Is Generative AI Such As ChatGPT Going To Undermine The Famed Attorney-Client Privilege, Frets AI Law And AI Ethics*, FORBES (Mar. 30, 2023, 7:00 AM),

This leads to a dilemma for the legal profession: Should it maintain its traditional technological gatekeeping approach or fully embrace GenAI? On one hand, this technology offers the potential to revolutionize the practice of law.<sup>11</sup> On the other, it presents significant challenges, including the valid risks of generating biased or inaccurate information and raises additional complex ethical dilemmas in areas such as client confidentiality and professional conduct.<sup>12</sup>

This article advocates for the responsible adoption of GenAI within the legal field, highlighting its transformative potential to significantly enhance the practice of law.<sup>13</sup> We explore real-world applications showcasing how early adopters have successfully integrated GenAI into their operations while managing the associated risks.<sup>14</sup> We discuss the myriad of advantages GenAI can bring to the legal industry, but also confront the common arguments against its adoption. We extend our analysis to strategies for effective risk management and legal compliance, emphasizing the challenges of adopting GenAI while preserving the principles and values that define the legal profession.

Most importantly, we provide a comprehensive framework to aid legal professionals in navigating the complexities of GenAI adoption while maintaining alignment with legal, ethical, and industry standards and best

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<https://www.forbes.com/sites/lanceeliot/2023/03/30/is-generative-ai-such-as-chatgpt-going-to-undermine-the-famed-attorney-client-privilege-frets-ai-law-and-ai-ethics/?sh=5d2dac71ea7> (discussing the application of GenAI within the legal industry and analyzing various risks associated with its use); see also Margaret Osborne, *The Godfather of AI Now Warns of Its Dangers*, SMITHSONIAN MAGAZINE (May 4, 2023), <https://www.smithsonianmag.com/smart-news/the-godfather-of-ai-now-warns-of-its-dangers-180982108/> (reporting AI pioneer Geoffrey Hinton, also known as the ‘Godfather of AI,’ left Google to publicly discuss the dangers of AI).

11. See, e.g., AM. BAR ASS’N HOUSE OF DELEGATES, RESOLUTION 112 (2019), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/112-annual-2019.pdf> (describing how we are “clearly on the cusp of an AI revolution” in the practice of law).

12. See, e.g., Tracy Duplantier, *AI and Ethical Concerns for Legal Practitioners*, LEXISNEXIS (Jan. 8, 2024), <https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/ai-and-ethical-concerns-for-legal-practitioners>.

13. This article is the result of a rigorous, several-months-long endeavor by our dedicated human authors, whose expertise was augmented, but not replaced, by GenAI technology. While GenAI proved invaluable in sparking ideas and structuring some of the arguments, it was ultimately the effort and intellectual rigor of our authors that brought this work to life. In sections where GenAI directly contributed to the draft, we have carefully attributed those portions and their corresponding prompts. However, the final content is a testament to thorough human oversight, ensuring that every assertion, argument, and conclusion meets the standards of accuracy, clarity, and coherence that are the hallmarks of our profession.

14. In fact, it’s not just law firms embracing this new era of legal practice. Federal judges have issued orders requiring explicit disclosures relating to the use of GenAI in legal proceedings. See Isha Marathe, *Judges, Attorneys React to Federal Court Generative AI Order: Too Hot, Too Cold, or Just Right?*, LEGALTECH NEWS (Jun. 1, 2023), <https://www.law.com/legaltechnews/2023/06/01/judges-attorneys-react-to-federal-court-generative-ai-order-too-hot-too-cold-or-just-right/> (noting U.S. District Judge Brently Starr in the Northern District of Texas issued a standing order requiring attorneys to file mandatory certifications attesting that they did not use GenAI tools, such as OpenAI’s ChatGPT or Google’s Bard, in drafting their court filings. Or, if they did use GenAI, attorneys must disclose that and confirm its output “was checked for accuracy, using print reporters or traditional legal databases, by a human being.”); see also Responsible AI in Legal Services, *Analysis of AI use in Courts*, RAILS (Mar. 14, 2024), <https://rails.legal/resource-ai-orders/> (tracking court orders, local rules, and AI guidelines).

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practices.<sup>15</sup> We propose concrete strategies for implementing GenAI in the legal industry, including tailored training programs, comprehensive policy frameworks, and actionable guidelines. These recommendations are designed to empower legal professionals to leverage technological opportunities while upholding the highest standards of legal practice and professional ethics.

### THE IMPERATIVE FOR RESPONSIBLE ADOPTION OF GENAI IN THE LEGAL INDUSTRY

While we acknowledge the concerns surrounding this technology, an outright ban of GenAI in the practice of law is not a viable solution.<sup>16</sup> Lawyers who do not embrace GenAI will increasingly lag behind other lawyers who leverage it. Moreover, the failure to be proactive in this domain may pose serious risks of its own, beyond mere inefficiency and stagnation. These potential risks include security vulnerabilities, inadequate digital safeguards, negative impacts on talent acquisition and retention strategies, and decreased client satisfaction.

Legal professionals should instead adopt a nuanced and balanced approach that leverages the benefits of GenAI while minimizing its potential risks.<sup>17</sup> We stand at a critical juncture in terms of AI's impact on our profession.<sup>18</sup> Legal professionals have a tremendous opportunity to leverage this technology to drive

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15. See, e.g., *Empowering Responsible AI Practices*, <https://www.microsoft.com/en-us/ai/responsible-ai>; *AI Ethics*, <https://www.ibm.com/artificial-intelligence/ethics>; Google, *AI principles*, <https://ai.google/principles/>; *Responsible AI*, <https://www.intel.com/content/www/us/en/artificial-intelligence/responsible-ai.html>.

16. See *Advances in AI: Are We Ready for a Tech Revolution?*, before the U.S. House Comm. on Oversight and Accountability, Subcomm. on Cybersecurity, Info. Tech., and Gov't Innovation (2023) (statement of Aleksander Mađry) (recognizing the adoption of AI comes with many risks, but ultimately opining the risks are “manageable,” and emphasizing the need to seize this opportunity now); see also Louis Lehot, *Key Legal and Operations Risks for Enterprise AI*, LEGALTECH NEWS (Apr. 24, 2023), <https://www.law.com/legaltechnews/2023/04/24/key-legal-and-operational-risks-for-enterprise-ai/> (arguing companies that use AI must be aware of the risks that come with it, but if used responsibly businesses “can mitigate these risks and reap the benefits of this powerful technology”).

17. See Orly Lobel, *The Law of AI for Good*, Univ. of San Diego School of Law – Legal Studies Research Paper Series, No. 23-001, Jan. 26, 2023, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4338862](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4338862); see also *Advances in AI: Are We Ready for a Tech Revolution?*, before the U.S. House Comm. on Oversight and Accountability Subcomm. on Cybersecurity, Info. Tech., and Gov't Innovation (2023) (Statement of Scott Crowder) (stating trustworthiness is key to AI adoption and recommending companies must recognize the importance of establishing best practices and creating internal corporate governance for AI bias mitigation); see also Mary Pratt, *Shadow IT is increasing and so are the associated security risks*, CSO, <https://www.csoonline.com/article/575457/shadow-it-is-increasing-and-so-are-the-associated-security-risks.html>.

18. See Mađry, *supra* note 16; *Biden-Harris Administration Announces New Actions to Promote Responsible AI Innovation that Protects Americans' Rights and Safety* (May 4, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/04/fact-sheet-biden-harris-administration-announces-new-actions-to-promote-responsible-ai-innovation-that-protects-americans-rights-and-safety/> (announcing \$140 million in funding to launch seven new national AI research institutes, the “new [i]nstitutes . . . will advance AI R&D to drive breakthroughs in critical areas, including climate, agriculture, energy, public health, education, and cybersecurity”).

innovation, bolster efficiency, and even contribute to a more equitable society.<sup>19</sup> By striking the right balance with a careful, strategic, and ethical approach, legal professionals can embrace GenAI responsibly and reap the full benefits of this transformative technology.<sup>20</sup> This approach necessitates a comprehensive understanding of both the capabilities and limitations of GenAI, coupled with robust governance frameworks and ongoing education within the legal community.

#### DISSECTING THE NAYSAYERS: COMMON ARGUMENTS AGAINST GENAI

In 2023, early arguments against using GenAI in the legal industry raised several common concerns (each a “Naysayer Argument”), many of which still persist in 2024: (1) the technology was not specifically designed for legal work;<sup>21</sup> (2) the possibility of running afoul of legal ethics and professional standards; (3) the potential for inaccurate or hallucinated results;<sup>22</sup> (4) the perpetuation of biases and discrimination;<sup>23</sup> (5) concerns over safeguarding sensitive information and

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19. See *Artificial Intelligence, Automation, and the Economy* (Dec. 3, 2016), <https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/Artificial-Intelligence-Automation-Economy.PDF> (noting advanced automation can be compatible with productivity, high levels of employment, and more broadly shared prosperity; and open up new opportunities for individuals, the economy, and society).

20. A report surveying lawyers about the opportunities and potential risks of using GenAI within law firms found that a majority surveyed (82%) believe GenAI technologies, such as ChatGPT, can readily be applied to legal work. See *ChatGPT and GenAI within Law Firms: Law Firms see potential, eye practical use cases and more knowledge around risks*, THOMSON REUTERS (Apr. 17, 2023), <https://www.thomsonreuters.com/en-us/posts/technology/chatgpt-generative-ai-law-firms-2023/>.

21. See, e.g., Isha Marathe, *An Insurer Sent Law Firms a ChatGPT Warning. It Likely Won't Be the Last*, LAW TECHNOLOGY NEWS (Apr. 13, 2023), [https://www.law.com/legaltechnews/2023/04/13/an-insurer-sent-law-firms-a-chatgpt-warning-it-likely-wont-be-the-last/?utm\\_source=email&utm\\_medium=enl&utm\\_content=20230417&utm\\_campaign=morningminute&utm\\_term=law](https://www.law.com/legaltechnews/2023/04/13/an-insurer-sent-law-firms-a-chatgpt-warning-it-likely-wont-be-the-last/?utm_source=email&utm_medium=enl&utm_content=20230417&utm_campaign=morningminute&utm_term=law).

22. See, e.g., Steve Whiter, *ChatGPT: Weighing AI's Risks and Rewards for Law Firms*, LAWYER MONTHLY, (Apr. 28, 2023), <https://www.lawyer-monthly.com/2023/04/chatgpt-weighing-ais-risks-and-rewards-for-law-firms/> (noting that “AI tools are known to fabricate information,” causing “hallucinations.”); *FTC Chair Khan and Officials from DOJ, CFPB, and EEOC Release Joint Statement on AI* (Apr. 25, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-chair-khan-officials-doj-cfpb-eoc-release-joint-statement-ai>, (outlining their commitment to enforce their respective laws relating to AI and acknowledging some of the existing concerns).

23. For example, if trained on biased data, it may perpetuate those biases in responses or in decisions it makes. See Keith A. Call, *Focus on Ethics & Civility: The Day Your Life Changed Forever*, 36 UTAH BAR J. 53, (2021); see also Louis Lehot, *Key Legal and Operational Risks for Enterprise AI*, LAW TECHNOLOGY NEWS (Apr. 24, 2023), <https://www.law.com/legaltechnews/2023/04/24/key-legal-and-operational-risks-for-enterprise-ai/> (“Another of AI’s most significant legal risks is the potential for bias. AI systems are as good as the data they are trained on. If that data is biased, the AI system will also be biased. This can lead to outcomes that violate anti-discrimination laws. For example, an AI hiring system trained on historical data that reflects biased hiring practices may perpetuate that bias and result in discrimination against certain groups.”).

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maintaining client confidentiality;<sup>24</sup> and (6) various legal risks, such as intellectual property infringement or employment law violations.<sup>25</sup>

These arguments often assume that the risks associated with using GenAI cannot be effectively managed. Moreover, they overlook the technology's potential to positively transform the profession when used with proper safeguards.<sup>26</sup> The core apprehension surrounding GenAI's use in the legal profession appears to stem not from the underlying technology itself, but from the lack of existing policies or regulations to effectively govern its responsible use.

Allowing employees in any industry to operate in an unregulated “wild west” environment without appropriate guidelines is not the answer. In the legal industry, the proper use of technology is amplified because of the sensitive and confidential nature of the client information. Nevertheless, the outright prohibition of GenAI in legal settings is not a viable solution.<sup>27</sup> To the contrary, such a ban risks leaving the legal sector ill-equipped to manage the inevitable use of GenAI.<sup>28</sup> Banning GenAI technologies is also impractical given their increasing incorporation into widely-used tools, from Microsoft Office applications to internet browser plugins.<sup>29</sup> In fact, leading providers in this space

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24. See Call, *supra* note 23.

25. See e.g., Theresa Weisenberger, *Generative AI Tools Can Present IP Risks, But They're Manageable*, BAKER HOSTETLER (Mar. 21, 2023), <https://www.ipintelligencereport.com/2023/03/21/generative-ai-tools-can-present-ip-risks-but-theyre-manageable/>.

26. In a recent analysis, OpenAI's Tyna Eloundou, Sam Manning, and Pamela Mishkin, and Daniel Rock found “large language models such as GPT[s] could have some effect on 80% of the U.S. workforce.” They also predict AI models will “heavily effect 19% of jobs, with at least 50% of the tasks in those jobs ‘exposed.’” Notably, they anticipate that “*higher-income jobs would be most affected.*” See David Rotman, *ChatGPT is about to revolutionize the economy. We need to decide what that looks like*, MIT TECH REVIEW (Mar. 25, 2023), <https://www.technologyreview.com/2023/03/25/1070275/chatgpt-revolutionize-economy-decide-what-looks-like/> (emphasis added); see also Erik Brynjolfsson et al., *Generative AI at Work*, (Nat'l Bureau of Econ. Resch., Working Paper No. 31161, 2023).

27. It's unrealistic and impractical to think that law firms (or any organization) could completely ban the use of GenAI. A formal ban is unlikely to be effective, and could instead lead to less transparency and heightened risks associated with the technology's inevitable usage. See generally Misty Griffith, *The Future is Now: Language-Based, Generative AI and the Legal Profession*, N.H. BAR ASS'N, <https://www.nhbar.org/the-future-is-now-language-based-generative-ai-and-the-legal-profession/> (last visited Mar. 6, 2024) (“The genie is out of the bottle. It is now the responsibility of legal professionals to carefully consider how to harness the power and potential of AI ethically, and in ways that may enhance the future of the legal profession.”); see also Cameron Coles, *11% of data employees paste into ChatGPT is confidential*, CYBERHAVEN (Feb. 28, 2023), <https://www.cyberhaven.com/blog/4-2-of-workers-have-pasted-company-data-into-chatgpt/> (“Despite a growing number of companies outright blocking access to ChatGPT, usage continues to grow exponentially.”); see also Stefanie Schappert, *Workers regularly post sensitive data into ChatGPT*, CYBERNEWS, (Jun. 16, 2023), <https://cybernews.com/security/workers-regularly-post-sensitive-data-into-chatgpt/> (reporting workers were inputting data into GenAI tools an average of 36 times per day, which is only expected to increase over time).

28. See Isha Marathe, *Attorney Education Still the Biggest Hurdle to AI, Machine-Learning Adoption*, LEGALTECH NEWS (Apr. 11, 2023), <https://www.law.com/legaltechnews/2023/04/11/attorney-education-still-the-biggest-hurdle-to-ai-machine-learning-adoption/> (noting that a majority of survey respondents cited a lack of education as the biggest obstacle to AI and machine-learning adoption).

29. See Team8 CISO Village, *Generative AI and ChatGPT Enterprise Risks*, TEAM8 (Apr. 2023), <https://team8.vc/wp-content/uploads/2023/04/Team8-Generative-AI-and-ChatGPT-Enterprise-Risks.pdf>

have announced GenAI solutions for legal professionals. For instance, LexisNexis announced in October 2023 their solution “Lexis+ AI,” which they described as “the only legal generative AI solution with citations linked in its responses, providing trusted legal results backed by verifiable authority.”<sup>30</sup> Several law firms are reportedly already exploring this product, including Baker McKenzie, Reed Smith LLP, and Foley & Lardner LLP, as well as some corporations and even U.S. courts.<sup>31</sup>

In light of these developments and the rapidly evolving technological landscape, a more realistic and practical approach is necessary. This approach hinges on the responsible use of GenAI to maximize its benefits and minimize its risks. This should involve thorough risk assessments, creating ethical AI policies and guidelines, enhancing decision-making transparency, and prioritizing comprehensive training and education for all stakeholders. Many organizations across a wide range of industries are proactively doing this or planning to do this.<sup>32</sup> Explicit GenAI policies are already becoming the market standard across several industries, including the legal sector.<sup>33</sup> Yet, despite this momentum, skepticism regarding the integration and application of GenAI remains, especially within the legal industry.

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(“the incorporation of ChatGPT and other GenAI systems into third-party applications . . . is fast becoming ubiquitous and contributes to the rapid expansion of the risk surface”).

30. *LexisNexis Launches Lexis+ AI, a Generative AI Solution with Linked Hallucination-Free Legal Citations* (Oct. 25, 2023), <https://www.lexisnexis.com/community/pressroom/b/news/posts/lexisnexis-launches-lexis-ai-a-generative-ai-solution-with-hallucination-free-linked-legal-citations>; see also Alison Manchester, *5 Ways Lexis+ AI’s Second-Generation Legal AI Assistant Will Transform Legal Work*, LEXISNEXIS (Apr. 24, 2024), <https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/ways-that-lexis-plus-ai-will-transform-legal-work> (describing the launch of Lexis+ as a “watershed moment in the legal industry.”).

31. Steven Lerner, *LexisNexis Releases GenAI Tool to Public*, LAW360.COM (Oct. 25, 2023), <https://www.law360.com/pulse/articles/1735130>.

32. *Id.* (predicting GenAI specific enterprise policies will become an industry best practice); see also Ironclad’s GenAI Policy (Apr. 24, 2023), <https://explore.ironcladhq.com/rs/528-QBH-821/images/Generative-Artificial-Intelligence-Policy.pdf> (“We believe it is essential to establish clear guidelines for the responsible use of AI. This policy provides guidelines for using AI in a way that protects Ironclad’s proprietary information and with applicable laws, regulations, ethical standards, and Ironclad’s company values.”).

33. The authors of this article originally made this prediction in the spring of 2023; see also Isabel Gottlieb, *Corporate AI Legal Policies Race to Keep Up With Technology*, BLOOMBERG LAW (Aug. 28, 2023), <https://news.bloomberglaw.com/artificial-intelligence/corporate-ai-legal-policies-race-to-keep-up-with-technology> (noting “organizations are leveraging a combination of frameworks and existing rulebooks for privacy and anti-discrimination laws to craft AI governance programs,” and also looking to the National Institute of Standards and Technology’s AI risk management framework.); see also Stephen Conmy, *Ten Steps to Creating an AI Policy*, CORPORATE GOVERNANCE INSTITUTE (Mar. 1, 2024), <https://www.thecorporategovernanceinstitute.com/insights/guides/creating-an-ai-policy/> (providing a guide to assist boards with developing an AI policy); see also Athena Alliance, *AI Playbook for the Boardroom* (Feb. 27, 2024), [https://athenaalliance.com/aa\\_events/ai-playbook-for-the-boardroom-02-27-2024-3-2-2024/](https://athenaalliance.com/aa_events/ai-playbook-for-the-boardroom-02-27-2024-3-2-2024/) (hosting an event to help guide leadership on how to craft AI governance policies).



## Why Lawyers Must Responsibly Embrace Generative AI

### I. NAYSAYER ARGUMENT 1: GENAI WAS “NOT DESIGNED” FOR LEGAL WORK AND THEREFORE PRESENTS SIGNIFICANT RISKS.

Some skeptics contend that GenAI tools, like ChatGPT, were not specifically designed for legal work, so their use for legal tasks presents significant risks. This argument represents a narrow perspective that ignores the successful adoption of many other technological tools that have been seamlessly integrated into the practice of law. For instance, Microsoft Word was not “designed” for legal work. Neither were iPhones, computers, or even the internet. Yet, all have undeniably become critical tools for legal work.<sup>34</sup> This faulty logic would also exclude additional widely adopted tools in the legal industry. A more nuanced and holistic perspective is needed to responsibly and effectively integrate technology into the legal industry.

Reflect on this critical insight:

“Despite all of the fanfare, **the AI itself is just a tool**. Whether that tool is made by OpenAI, Microsoft, Google or any number of other technology companies—and whether or not it is implemented today, tomorrow or a year from now—is **less important than the work companies need to do behind the scenes to make sure their houses are in order to maximize the value of these tools.**”<sup>35</sup>

This observation is pivotal, highlighting that the essence of technological adoption should be based on an assessment of the tool’s potential value, applicability to current needs, its long-term viability, and the presence of well-defined policies and risk assessments. The original intent behind a tool’s design is merely one element within a broader and more comprehensive decision-making framework. Such a factor, on its own, should not warrant the outright exclusion of a tool from an entire industry, particularly when its broader application has the potential to yield significant benefits.

### II. NAYSAYER ARGUMENT 2: GENAI TOOLS LIKE CHATGPT RAISE CONFIDENTIALITY AND OTHER ETHICAL RISKS WHEN USED IN THE LEGAL INDUSTRY.

The evolution of GenAI poses new challenges and opportunities for the legal industry. This section explores how the ethical guidelines established by the Model Rules of Professional Conduct apply and adapt to modern technological advancements, particularly focusing on lawyers’ existing competency, confidentiality, and other ethical obligations.

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34. See, e.g., Ellie Margolis, *Surfin’ Safari – Why Competent Lawyers Should Research on the Web*, 10 YALE J.L. & TECH. 82, 107 (2007) (“[t]here is little doubt that the internet has become a major tool in a legal researcher’s arsenal in the last two decades . . . it can safely be said that research via the internet is a standard technique used by a majority of lawyers in a majority of jurisdictions throughout the country.”).

35. Vivek Jetley, *What Needs to Happen before the Promise of GenAI Becomes a Reality for Businesses*, FORBES (Apr. 28, 2023, 9:00 AM), <https://www.forbes.com/sites/forbestechcouncil/2023/04/28/what-needs-to-happen-before-the-promise-of-generative-ai-becomes-a-reality-for-businesses/?sh=30787c675660> (emphasis added).

### A. *Evolution of Ethical Standards for Technology in Law:*

Chief Justice Burger’s remarks from fifty years ago ring true today: “*the advocate must know how to use the tools of [their] trade.*”<sup>36</sup>

Although GenAI’s technological capabilities are new, the ethical issues it raises are not. Lawyers incorporating technology into their practice must continue to adhere to their professional and ethical obligations. The use of any technology, including GenAI, does not exempt lawyers from adhering to these standards. The Model Rules were adopted long before AI, but are intended to be adaptable to modern times. Model Rule 1.1 states: “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”<sup>37</sup> In the context of using GenAI, lawyers need to understand the technology and exercise their informed professional judgment when using it.<sup>38</sup>

As the national leader in developing and interpreting standards of legal ethics, the ABA convened a Commission on Ethics 20/20 to study issues relating to the evolving role of technology in the legal industry.<sup>39</sup> Their final report highlighted the following significant conclusions:

- Technology and globalization have transformed the practice of law in ways the profession could not anticipate in 2002. Technology affects nearly every aspect of legal work, including how we store confidential information, communicate with clients, conduct discovery, engage in research, and market legal services. Even more fundamentally, technology has transformed the delivery of legal services by changing where and how those services are delivered (e.g., in an office, over the internet, or through virtual law offices), and it is having a related impact on the cost of, and the public’s access to, these services.<sup>40</sup>
- Subsequently, communications and commerce have become increasingly globalized and technology-based. Lawyers must understand technology in

36. See Christopher A. Suarez, *Disruptive Legal Technology, COVID-19, and Resilience in the Profession*, 72 S.C. L. REV. 393, 417 (2020), (quoting Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 233 (1973) (internal quotation marks omitted)).

37. MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS’N 2009).

38. See Sara Merken, *New York lawyers sanctioned for using fake ChatGPT cases in legal brief*, REUTERS (Jun. 22, 2023, 1:28 AM), <https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22> (lawyers ordered to pay a \$5,000 fine for submitting a legal brief that included six fictitious case citations generated by an AI chat bot).

39. Lori D. Johnson, *Navigating Technology Competence in Transactional Practice*, 65 VILL. L. REV. 159, 167 (2020) (“The process for recommending and adopting amendments to the Model Rules included a comment period, open meetings, public hearings, and other methods for obtaining feedback on the proposed resolutions from diverse segments of the bench, bar, and academy”); see also *ABA Comm’n on Ethics 20/20 INTRODUCTION AND OVERVIEW* (2012) (noting in 2009, then-ABA President Carolyn B. Lamm created the Commission to tackle the ethical and regulatory challenges and opportunities arising from new 21st century realities. She charged the Commission with conducting a plenary assessment of the ABA Model Rules of Professional Conduct and related ABA policies, and directed it to follow these principles: protecting the public; preserving the core professional values of the American legal profession; and maintaining a strong, independent, and self-regulated profession.).

40. See AM. BAR ASS’N, *ABA COMM’N ON ETHICS 20/20, INTRODUCTION AND OVERVIEW* (2012) (describing the various changes that have occurred as a result of new technology and globalization).

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order to provide clients with the competent and cost-effective services that they expect and deserve.<sup>41</sup>

- In some situations, a matter may require the use of technology that is beyond the ordinary lawyer's expertise. For example, electronic discovery may require a sophisticated knowledge of how electronic information is stored and retrieved. Thus, another development associated with technology is that lawyers are increasingly disaggregating work by retaining other lawyers and nonlawyers outside the firm (i.e., outsourcing work to lawyers and nonlawyers) to perform critical tasks. Technology also permits the integration of these otherwise disaggregated work streams, encouraging clients and lawyers to outsource elements of a representation.<sup>42</sup>
- In light of these changes, the Commission concluded that additional modifications to the Model Rules and other policies were necessary, in order to help lawyers continue to ethically serve their clients, who rightfully expect their lawyers to respond nimbly to legal problems that arise in a 21st century marketplace. Because of the bewildering pace of technological change, the Commission believed it was important to make explicit that a lawyer's duty of competence, which requires the lawyer to stay abreast of changes in the law and its practice, included an obligation to understand the benefits and risks of new technology.<sup>43</sup>

Subsequently, in 2012, Comment 8 to Model Rules of Professional Conduct 1.1<sup>44</sup> was revised to explicitly state: “a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.”<sup>45</sup> The addition of this language establishes the affirmative obligation that lawyers have to stay up to date with relevant technology in order to provide competent representation.<sup>46</sup>

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41. *Id.* (emphasis added).

42. *Id.*

43. *Id.*

44. See MODEL RULES OF PRO. CONDUCT r. 1.1, cmt. 8; see also Judith L. Maute, *Facing 21st Century Realities*, 32 MISS. C.L. REV. 345, 369 (2013) (stating “deliberate ignorance of technology is inexcusable . . . [I]f a lawyer cannot master the technology suitable for that lawyer's practice, the lawyer should either hire tech-savvy lawyers tasked with responsibility to keep current, or hire an outside technology consultant who understands the practice of law and associated ethical constraints.”).

45. MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (AM. BAR ASS'N 1983); see also AM. BAR ASS'N, ABA COMM'N ON ETHICS 20/20, INTRODUCTION AND OVERVIEW (2012) (stating “the Commission believes that it is important to make explicit that a lawyer's duty of competence, which requires the lawyer to stay abreast of changes in the law and its practice, includes understanding relevant technology's benefits and risks. Comment [6] of Model Rule 1.1 (Competence) implicitly encompasses that obligation, but it is important to make this duty explicit because technology is such an integral – and yet at times invisible – aspect of contemporary law practice. The phrase “including the benefits and risks associated with relevant technology” would offer greater clarity regarding this duty and emphasize the growing importance of technology to modern law practice.”).

46. See e.g., AM. BAR ASS'N, ABA COMM'N ON ETHICS 20/20, INTRODUCTION AND OVERVIEW (2012); see also Nicole Yamane, *Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands*, 33 GEO. J. LEGAL ETHICS 877, 884-85 (2020) (“Reading the Model Rules in modern times indicates that in order for lawyers to provide competent legal representation to clients, they must have a basic understanding of how the AI programs they use operate and not automatically accept the results the AI program produces as true.”); see also AM. BAR ASS'N HOUSE OF DELEGATES, RESOLUTION 112 *supra* note 11 (stating under Rule 1.1, “lawyers also must have a basic understanding of how AI tools operate.”).

The vagueness in this language leaves room—apparently deliberately—for future technologies that did not exist at the time of drafting.<sup>47</sup> Legal experts have noted the addition of just these nine words—“including the benefits and risks associated with relevant technology”—to the Model Rules, resulted in significantly expanding the practical scope of what today’s ethical lawyers must understand and confront.<sup>48</sup>

### *B. The Critical Role of Technological Competence in the Practice of Law*

In recognition of this increasingly expansive obligation, at least 40 state bar organizations have adopted similar guidelines regarding a lawyer’s duty of technological competence.<sup>49</sup> Bob Ambrogi, a well-respected legal technology and innovation expert, declared that the widespread adoption is one of the most significant recent developments in legal technology.<sup>50</sup> The duty of technological competence extends beyond basic proficiency in communication and research tools: it includes understanding how technological advancements are transforming the legal industry. Lawyers must be able to navigate a terrain

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47. The Chief Reporter of the Commission wisely recognized “the specific skills lawyers will need in the decades ahead are difficult to imagine,” and further concluded the duty of technological competence is “far broader than simply protecting client information or cyber security.” See Jamie J. Baker, *Beyond the Information Age: The Duty of Technology Competence in the Algorithmic Society*, 69 S.C. L. REV. 557, 561 (2018); see also Steven M. Puiszis, *Perspective: Technology Brings a New Definition of Competency*, BLOOMBERG LAW (Apr. 12, 2016, 7:25 AM), <https://news.bloomberglaw.com/business-and-practice/perspective-technology-brings-a-new-definition-of-competency/>.

48. Randy L. Dryer, *Litigation, Technology & Ethics: Teaching Old Dogs New Tricks or Legal Luddites are no longer welcome in Utah*, 28 UTAH BAR J. 12, 13 (May - Jun. 2015) (stating “[o]ur clients are increasingly technologically competent, and the newly adopted comment requires us to be likewise” and recognizing today’s lawyers must become “conversant with a new lexicon - filtering, deduplication, machine learning, predictive coding, metadata, and seed sets - and adept at utilizing the related technologies or associating with someone who does); see also Raymond H. Brescia, *Teaching to the Tech: Law Schools and the Duty of Technology Competence* 62 WASHBURN L.J. 507, 516 (2023) (analyzing the Commission’s recommendations relating to Model Rule 1.1).

49. Many states follow the ABA’s approach, with some adopting Rule 1.1 verbatim. Other states provide additional guidance or requirements. For instance, in 2015, the State Bar of California issued an influential opinion holding that a lawyer is “not competent to handle complex cases involving ESI without sufficient understanding of the technical skills, knowledge, and aptitude required to conduct e-discovery” (see CAL. STATE BAR STANDING COMM. ON PRO. RESP. & CONDUCT, Formal Op. No. 2015-193 (June 30, 2015) (emphasis added)); see also Benjamin M. Redgrave & Erica B. Zolner, Redgrave LLP, *Litigation, Technology, and Ethics: The Importance of Technological Competence*, THOMSON REUTERS PRACTICAL LAW, (Jan 5, 2022) <https://www.redgravellp.com/litigation-technology-and-ethics-importance-technological-competence>.

50. See Johnson, *supra* note 39; see also Bob Ambrogi, *The 10 Most Important Legal Technology Developments of 2013*, LAWSITES (Dec. 30, 2013), <https://www.lawnext.com/2013/12/five-important-legal-technology-stories-2013.html> (describing how lawyers’ technology competence turned “from dalliance to necessity”); see also Bob Ambrogi, *The Decade in Legal Tech: The 10 Most Significant Developments*, LAWSITES (Jan. 1, 2020), <https://www.lawnext.com/2020/01/the-decade-in-legal-tech-the-10-most-significant-developments.html> (reporting the past decade has witnessed significant upheaval in legal ethics and regulation driven in part by technological advancements).

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riddled with new and complex legal questions, such as algorithmic bias and cybersecurity threats.<sup>51</sup>

In line with these developments, the ABA recommended that bar associations provide continuing legal education resources on technology, and some states even require it.<sup>52</sup> The ABA also strongly encouraged law schools to incorporate legal technology into their curricula, and even established its Center for Innovation to further these goals.<sup>53</sup> Lawyers must approach tools leveraging new technology, including GenAI, with a critical eye. They should not blindly trust the accuracy of these tools and they are responsible for independently verifying the outputs. Understanding the responsibilities and limitations of using technology is essential for lawyers to leverage it effectively and competently within the legal industry.

### *C. Professional Conduct in the AI Era: Ethical Challenges for Legal Practitioners*

When using GenAI, lawyers must exercise reasonable care in analyzing the output, and must be held accountable.<sup>54</sup> The duty of competence regarding new technology is well-established in the legal industry. For example, in 2007 the Yale Journal of Law & Technology published an article titled “*Surfin’ Safari – Why Competent Lawyers Should Research on the Web*,” arguing that lawyers have a new obligation to use online research platforms, rather than solely relying

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51. See Raymond H., *supra* note 48 (discussing an in-depth analysis of these shifts and their implications for legal education. Professor Raymond H. Brescia’s recent paper on this is invaluable.).

52. See ABA COMM’N ON FUTURE OF LEGAL SERVS. REPORT ON THE FUTURE OF LEGAL SERVICES IN THE U.S., at 43 (2016) (noting “the Florida Bar Board of Governors, for example, has approved a mandatory technology-based continuing legal education requirement”); see also Amy B. Cyphert, *A Human Being Wrote This Law Review Article: GPT-3 and the Practice of Law*, 55 U.C. DAVIS L. REV. 401, 426-27 (2021), (noting West Virginia adopted the new Comment 8 to Model Rule 1.1 and changed the language from “a lawyer *should* keep abreast” to “a lawyer *must* keep abreast” of changes to the practice of law, which includes the benefits and risks associated with relevant technology).

53. See, e.g., ABA, *Task Force on Law and Artificial Intelligence, AI and Legal Education*, [https://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/artificial-intelligence/ai-in-legal-education/](https://www.americanbar.org/groups/leadership/office_of_the_president/artificial-intelligence/ai-in-legal-education/) (Mar. 1 2024) (recognizing the significant impact of AI on the legal profession, “[l]aw schools must grapple with new approaches to legal education produced by AI.”); see also ABA, *Big problems (and benefits) of generative AI are here* (Aug. 9, 2023), <https://www.americanbar.org/news/abanews/aba-news-archives/2023/08/problems-and-benefits-of-ai/> (describing the ABA’s approach to AI as “proactive,” citing to the adoption of Resolution 604, which reminds lawyers of their obligation to stay abreast of new technologies); see also ABA, *2024 Midterm Innovation Trends Report*, p. 5 (Mar. 1 2024), <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/2024efi-midterm-itr.pdf> (reporting it has become “imperative for law schools to educate law students about AI and its broad implications on the practice of law,” which includes how to use the tools that leverage AI, how to understand how AI-related issues impact substantive areas of law to be able to competently advise clients, and its overall impact on the career opportunities for legal professionals).

54. See, e.g., Isha Marathe, *Judges, Attorneys React to Federal Court Generative AI Order: Too Hot, Too Cold, or Just Right?*, LEGALTECH NEWS (Jun. 1, 2023), <https://www.law.com/legaltechnews/2023/06/01/judges-attorneys-react-to-federal-court-generative-ai-order-too-hot-too-cold-or-just-right/> (citing to the now infamous example of a New York attorney who filed a legal brief that included cases fabricated by ChatGPT and was ultimately sanctioned by the court).

on books.<sup>55</sup> The author argued that the ethical duties of competence and diligence require lawyers to conduct legal research when representing a client, including the use of the internet.<sup>56</sup> The article further opined that not using technology to perform legal research may constitute a lack of diligence, because online tools provide lawyers with the most up-to-date picture of the law, as opposed to books that cannot be updated in real time.<sup>57</sup> This highlights the need for lawyers to keep abreast of relevant technology in order to maintain the skills needed to competently represent their clients.

Indeed, several courts have penalized attorneys for neglecting essential duties in connection with electronic legal research, such as the failure to Shepardize (a process critical for reviewing the subsequent treatment of) cited case law.<sup>58</sup> As technology continues to advance, lawyers have to monitor, analyze, and use new tools more than ever.<sup>59</sup> The proper use of technology is fundamental in order for attorneys to represent clients competently. Most recently, we've seen a similar evolving obligation to use electronic discovery tools.<sup>60</sup> This means that lawyers must be technically competent. They cannot blame technology, or their lack of technological competence, for their failure to competently represent clients.<sup>61</sup> One court declared such professed incompetence

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55. Ellie Margolis, *Surfin' Safari – Why Competent Lawyers Should Research on the Web*, 10 YALE J.L. & TECH. 82, 107 (2007-2008) (“There is little doubt that the internet has become a major tool in a legal researcher’s arsenal in the last two decades . . . it can safely be said that research via the internet is a standard technique used by a majority of lawyers in a majority of jurisdictions throughout the country.”).

56. *Id.* at 110-11 (stating “[i]t would be extremely difficult, if not impossible, to provide today’s judges with what they need . . . without using the internet as part of the research process. A lawyer who fails to research on the web will not find all of the relevant sources and will likely fall below the standard of competence by any measure.”).

57. Cheryl B. Preston, *Lawyers’ Abuse of Tech.*, 103 CORNELL L. REV. 879, 906 (2018) (citation omitted).

58. *See* Margolis, *supra* note 55, at 92 (citing, for example, “[c]ounsel is admonished that diligent research, which includes Shepardizing cases, is a professional responsibility” and “[i]t is really inexcusable for any lawyer to fail . . . to Shepardize all cited cases,” (internal citations omitted)); *see also* Redgrave & Zolner, *supra* note 49 (highlighting trends in recent case law demonstrating courts are willing to impose severe sanctions for deficiencies in technological competence).

59. *See, e.g., Ethical Prompts*, HARVARD LAW SCHOOL CENTER ON THE LEGAL PROFESSION (Mar.-Apr. 2023), <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/generative-ai-in-the-legal-profession/ethical-prompts/> (noting lawyers must adapt and properly use new technology tools, which are not a substitute for critical legal thinking and need to be integrated in conjunction with human oversight); *see also* ABA COMM. ON ETHICS & PRO. RESP., Formal Op. 483 (2018) (describing counsel’s duty to monitor for and respond to data breaches).

60. Preston, *supra* note 57 (“Many courts now encourage or require lawyers to conduct discovery in digital formats. A California ethics opinion states that if an attorney lacks the required competence for proper e-discovery, she should (1) acquire sufficient learning and skill before performance is required; (2) associate with or consult technical consultants or competent counsel; or (3) decline the client representation.”) (internal quotations omitted).

61. *See, e.g., James v. Nat’l Fin. LLC*, 2014 Del. Ch. LEXIS 254, at \*34, (Dec. 5, 2014) (discussing a lawyer who committed discovery violations, some of which involved the misuse of technological tools, stated in his defense to the Court, “I have to confess . . . I am not computer literate. I have not found presence in the cybernetic revolution. I need a secretary to help me turn on the computer. This was out of my bailiwick.”).

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was “not a valid excuse,” and recommended sanctions against an attorney for failing to meet his obligations under the Model Rules, stating in part:

“[D]eliberate ignorance of technology is inexcusable . . . [I]f a lawyer cannot master the technology suitable for that lawyer’s practice, the lawyer should either hire tech-savvy lawyers tasked with responsibility to keep current, or hire an outside technology consultant who understands the practice of law and associated ethical constraints.”<sup>62</sup>

Other Courts have agreed with this principle and issued sanctions under similar circumstances where counsel violated their ethical responsibilities by not remaining “sufficiently technologically competent.”<sup>63</sup>

Other critics have argued that the use of GenAI to support legal work poses ethical concerns under Model Rules 1.4,<sup>64</sup> 1.6,<sup>65</sup> 5.1 and 5.3.<sup>66</sup> These Rules generally emphasize the importance of effective communication between attorneys and their clients, confidentiality of information, and the duty of supervision to ensure support staff and other team members are complying with the rules of professional conduct.<sup>67</sup>

However, existing rules already require lawyers who use ChatGPT, Claude, or analogous GenAI tools to implement a range of safeguards to stay within their professional boundaries.<sup>68</sup> Take, for instance, the duty to supervise non-lawyer

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62. Judith L. Maute, *Facing 21st Century Realities*, 32 Miss. C.L. Rev. 345, 369 (2013) (emphasis added).

63. *Disciplinary Couns. v. Valenti*, 165 Ohio St. 3d 49, 51 (2021) (the Supreme Court of Ohio agreed with the Board of Professional Conduct’s conclusion that counsel was not “sufficiently technologically competent” in her representation and imposed a six-month suspension on her license to practice law, although stayed the suspension on the condition that she partake in technology training, among other requirements).

64. RULE 1.4 requires reasonable consultation with clients about methods and choices for accomplishing the client’s objectives. That should include accurately communicating the availability, effectiveness, risk, and overall impact on costs of relevant AI systems, including obtaining competencies for effective operation. Depending on the intended use—e.g., e-discovery or regulatory reporting—the potential impact of inaccurate communication may be significant, and poses client risk. See Julia Brickell et al., *AI, Pursuit of Justice & Questions Lawyers Should Ask*, BLOOMBERG LAW (Apr. 2022), <https://www.bloomberglaw.com/external/document/X3T91GR8000000/tech-telecom-professional-perspective-ai-pursuit-of-justice-ques>.

65. RULE 1.6 (A), with limited exceptions, states, “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent . . . .” Rule 1.6(c) states, “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” Rafael Baca, *Model Ethics Rules as Applied to Artificial Intelligence*, LAW PRACTICE TODAY (Aug. 14, 2020), <https://www.lawpracticetoday.org/article/model-ethics-rules-as-applied-to-artificial-intelligence/>.

66. MODEL RULES OF PRO. CONDUCT r. 5.1-5.3 cmt. (AM. BAR ASS’N 1983) (5.1 and 5.3 impose certain supervision requirements on lawyers to ensure subordinates and third parties are in compliance with ethical rules).

67. See Linda Henry, *The Intersection of AI and the Model Rules of Professional Conduct* (Feb. 5, 2019), <https://www.jdsupra.com/legalnews/the-intersection-of-artificial-87577/>.

68. For example, the lawyer’s duty of competence extends to understanding the technology used, including its limitations and potential for biased outputs. In tandem with this, the duty to supervise non-lawyer assistance, such as technology-generated content, requires lawyers to not automatically accept such content as reliable. Instead, they should engage in a careful review process to ensure accuracy and reliability before sharing with others, including clients and courts. Lawyers must also be vigilant about the potential for biased language in these tools. See Amy B. Cyphert, *A Human Being Wrote This Law*

assistants and assistance. This duty suggests that lawyers should not assume information produced by others (e.g., paralegals, junior lawyers, or technology) is accurate. Instead, lawyers must exercise reasonable oversight to determine when and how to use technology and carefully review its outputs beforehand.<sup>69</sup> The same standard of supervision and review applies to work produced by GenAI. In 2012, the title of Model Rule 5.3 was updated to make clear the rule encompassed any “non-lawyer assistance,” opening the door for all types of assistance, whether human or not.<sup>70</sup> This includes work produced by GenAI tools and, therefore, requires lawyers to supervise the output of any information generated.<sup>71</sup> In fact, ABA professional guidelines also caution against the underutilization of AI, suggesting that doing so may be an even “greater danger.”<sup>72</sup>

Moreover, lawyers also have a duty to combat bias in their practice, which is particularly relevant in the use of GenAI tools which sometimes produce biased outputs.<sup>73</sup> The ABA recognized the risk of bias in the development and use of AI, stating it “potentially implicates professional ethics.”<sup>74</sup> In 2019, the ABA passed Resolution 112, urging legal practitioners to proactively address the ethical and legal ramifications of AI use.<sup>75</sup> Resolution 112 emphasizes three key

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*Review Article: GPT-3 and the Practice of Law*, 55 U.C. DAVIS L. REV. 401, 405 (2021) <https://advance.lexis.com/api/permalink/4676fdbd-9df2-44ef-8d13-91af81688a10/?context=1000516> (describing the professional obligations regarding duty of competence, supervision, and to combat bias).

69. *Id.*

70. See Yamane, *supra* note 46, at 884 (concluding under Rule 5.3, AI could be considered a “nonlawyer” that is being delegated work by the lawyer, triggering the lawyer’s duty to ensure that the work product produced by the AI program is competent) (emphasis added); see also AM. BAR ASS’N HOUSE OF DELEGATES, RESOLUTION 112 (2019), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/112-annual-2019.pdf> (directly stating lawyers must oversee the AI tools used in legal services in order to meet their ethical standards).

71. AM. BAR ASS’N HOUSE OF DELEGATES, RESOLUTION 112 (2019), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/112-annual-2019.pdf> (noting, at the same time, lawyers shouldn’t underutilize AI either, as that could cause them to “serve their clients less efficiently.”); see also Kate Beioley & Christina Criddle, *Allen & Overy introduces AI chatbot to lawyers in search of efficiencies*, FINANCIAL TIMES (Feb. 14, 2023), <https://www.ft.com/content/baf68476-5b7e-4078-9b3e-ddf710a6e2> (noting Harvey AI comes with a disclaimer that its use should be supervised by licensed legal professionals as it does still “hallucinate” or provide inaccurate or misleading information, which users need to fact check. A majority of the documents drafted are used as a starting point, which lawyers then review and improve).

72. AM. BAR ASS’N HOUSE OF DELEGATES, RESOLUTION 112, p. 7, (2019), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/112-annual-2019.pdf> (stating it’s easy to see why “the greater danger might very well be the underutilization of, rather than overreliance upon, artificial intelligence.”).

73. *Id.*

74. AM. BAR ASS’N, *Resolution on AI in the Practice of Law* (2019), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/112-annual-2019.pdf> (recognizing the adoption of Model Rule 8.4(g), as well as the requirement that lawyers consider how bias in the use of AI “could create risks for clients.”).

75. AM. BAR ASS’N, *Adopted Revised Resolution 112* (2019), <https://perma.cc/A3EM-NWAU>; see also Dr. Lance B. Eliot, *Is Generative AI Such As ChatGPT Going to Undermine the Famed Attorney-Client Privilege, Frets AI Law and AI Ethics*, FORBES (Mar. 30, 2023 7:00 AM),



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issues: (1) addressing bias, explainability, and transparency in automated decisions made by AI; (2) promoting ethical and beneficial uses of AI; and (3) establishing appropriate controls and oversight over AI systems and vendors.<sup>76</sup> It also makes clear that lawyers need to be aware of how AI can be used in the practice of law, as it allows lawyers to provide better and more efficient legal services.<sup>77</sup>

In the summer of 2023, the Equal Employment Opportunity Commission (“EEOC”) settled<sup>78</sup> a novel hiring discrimination lawsuit against iTutor for \$365,000.<sup>79</sup> Some claimed this was the agency’s first ever AI-based antidiscrimination settlement,<sup>80</sup> though it does not appear that iTutor used an AI system for its hiring practices. Nevertheless, it underscores the EEOC’s active scrutiny of AI and other automated systems in hiring practices, in line with its 2023-2027 Strategic Enforcement Plan.<sup>81</sup> We expect this to lead to a significant increase in litigation concerning the use of algorithms and automated systems in the workplace.

Similarly, ABA Resolution 604, unanimously adopted at the ABA’s 2023 Midyear Meeting, directs organizations that design, develop, deploy and use AI, including lawyers and firms, to follow specific guidelines addressing accountability, transparency, and traceability.<sup>82</sup> These developments provide a valuable roadmap for the responsible use of AI in the practice of law. To navigate the challenges associated with GenAI and to minimize the risks, the legal industry is actively developing strategies such as the formation of specialized AI

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<https://www.forbes.com/sites/lancealiot/2023/03/30/is-generative-ai-such-as-chatgpt-going-to-undermine-the-famed-attorney-client-privilege-frets-ai-law-and-ai-ethics/?sh=5d2dacf71ea7>.

76. *Id.*

77. *See supra* note 72 at 4 (“The end result is that lawyers using AI are better counselors for their clients. In the next few years, the use of AI by lawyers will be no different than the use of email by lawyers—an indispensable part of the practice of law.”).

78. Annelise Gilbert, *EEOC Settles First-of-Its-Kind AI Bias in Hiring Lawsuit*, BLOOMBERG LAW (Aug. 10, 2023, 6:21 AM), <https://news.bloomberglaw.com/daily-labor-report/eecoc-settles-first-of-its-kind-ai-bias-lawsuit-for-365-000>.

79. U.S. EEOC Press Release, *EEOC Sues iTutorGroup for Age Discrimination* (May 5, 2022), <https://www.eeoc.gov/newsroom/eecoc-sues-itutorgroup-age-discrimination> (showcasing EEOC Chair Charlotte A. Burrows referring to this case as “an example of why the EEOC recently launched an Artificial Intelligence and Algorithmic Fairness Initiative. Workers facing discrimination from an employer’s use of technology can count on the EEOC to seek remedies.”).

80. *See, e.g.*, Gilbert, *supra* note 78.

81. *See* EEOC, *Draft Strategic Enforcement Plan*, 88 Fed. Reg. 1379 (Jan. 10, 2023).

82. Jay Reeves, *ABA Adopts Guidelines for AI Usage*, LAWYERS MUTUAL (May 9, 2023), <https://www.lawyersmutualinc.com/blog/aba-adopts-guidelines-for-ai-usage> (emphasizing that AI systems should remain under human control and oversight, and individuals should be held accountable for the consequences caused by use of AI products and services, and developers should ensure the transparency and traceability of their AI products and services).

task forces,<sup>83</sup> AI governance policies,<sup>84</sup> and comprehensive training.<sup>85</sup> Institutions from academia (like MIT) to law firms are actively contributing to this evolving AI governance.<sup>86</sup> The ABA's recent creation of a Task Force on Law and Artificial Intelligence focusing on AI-related biases, client confidentiality, and access to justice, is a notable example.<sup>87</sup>

In tandem with these important initiatives, technological safeguards are also being implemented to help mitigate risks, such as the unauthorized sharing of confidential or otherwise sensitive information.<sup>88</sup> For instance, OpenAI's policy modifications, which include the ability to disable the user's chat history in ChatGPT and the introduction of an enterprise-focused model with enhanced security features, act as tangible safeguards against unintended data use or disclosure.<sup>89</sup> This expands the ability for lawyers to leverage GenAI while protecting client confidences.

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83. See Thomas Spigolon, *Baker Donelson's AI Group Focuses on 'Questions Coming to Our Clients'*, LEGALTECH NEWS (Jul. 24, 2023) <https://www.law.com/dailyreportonline/2023/07/24/baker-donelsons-ai-task-force-focuses-on-questions-coming-to-our-clients/> (establishing a team to address concerns about the use of GAI); see also Christopher Deubert and Amanda Novak, *Anticipating What ChatGPT Means for the Workplace*, LAW360 (Mar. 2, 2023, 2:37 PM), <https://www.law360.com/articles/1579453/anticipating-what-chatgpt-means-for-the-workplace> (noting companies need to evaluate and discuss appropriate uses of AI which should include human review of the findings, as well as restrictions on the types of information that may be provided to the tools).

84. See, e.g., Ironclad's Generative Artificial Intelligence Policy IRONCLAD (Apr. 24, 2023) <https://explore.ironcladhq.com/rs/528-QBH-821/images/Generative-Artificial-Intelligence-Policy.pdf> (requiring, among other restrictions, that employees must opt out of letting GenAI tools use any data inputted for training purposes, must use specific accounts, must comply with confidentiality obligations and business codes of conduct, and cannot input any confidential information into the system).

85. See Jackie Snow, *ChatGPT Can Give Great Answers. But Only If You Know How to Ask the Right Question*, WALL ST. J. (Apr. 12, 2023, 11:00 AM), <https://www.wsj.com/articles/chatgpt-ask-the-right-question-12d0f035> (noting some companies are now hiring prompt engineers, individuals that have the background and skills to effectively communicate with AI systems.); see also Amanda O'Brien, *ALM Media, Law Firms Playing Catch-Up with Training, Looking for ROI on current Tech Tools*, THE LEGAL INTELLIGENCER (Jul. 31, 2023), <https://www.law.com/thelegalintelligencer/2023/07/31/law-firms-playing-catch-up-with-training-looking-for-roi-on-current-tech-tools/>.

86. Some recent examples include MIT's proposed principles for the responsible use of GenAI in the legal field, Troutman Pepper's formation of an AI task force, Baker Donelson's formation of a client AI team, and Eversheds Sutherland's announcement of their GenAI roadmap.

87. Tracey Read, *ABA Launches Task Force to Study Promise, Peril of AI* (Aug. 28, 2023, 1:52 PM), <https://www.law360.com/articles/1715488/aba-launches-task-force-to-study-promise-peril-of-ai> (reporting that the Task Force will also explore how to develop "resources to make the technology more accessible to lawyers and judges.").

88. See, e.g., Eliot, *supra* note 75 (recommending ways to mitigate risks when using GenAI technologies); see also *Proactive Risk Management in GAI*, DELOITTE (2023), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/deloitte-analytics/us-ai-institute-responsible-use-of-generative-ai.pdf>; see also Nat'l Inst. of Standards and Tech., *AI Risk Management Framework (AI RMF 1.0)* (Jan. 2023), <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>.

89. See Sharon Nelson, et al., *Lawyers Breathe a Sigh of Relief: They Can Turn off Chat History for ChatGPT*, ABOVE THE LAW (May 2, 2023 1:43 PM), <https://abovethelaw.com/2023/05/lawyers-breathe-a-sigh-of-relief-they-can-turn-off-chat-history-for-chatgpt/>; see also *New ways to manage your data in ChatGPT*, (Apr. 25, 2023), <https://openai.com/blog/new-ways-to-manage-your-data-in-chatgpt>; *Introducing ChatGPT Enterprise* (Aug. 28, 2023), <https://openai.com/blog/introducing-chatgpt-enterprise> (announcing the launch of ChatGPT Enterprise, which offers enterprise-grade security and privacy, unlimited higher-speed GPT-4 access, longer context windows for processing longer inputs, advanced data analysis capabilities, customization options, and more).

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In parallel, a number of third-party vendors are developing solutions to allow legal professionals to have secure access to enterprise-level GenAI models, while still protecting confidential information.<sup>90</sup> These and future advancements help safeguard privileged attorney-client communications and other confidential data. The technology and developments in this space are evolving rapidly. Based on the current trajectory, we anticipate that a majority of law firms and organizations will adopt custom GenAI tools, and prohibit inputting confidential information into public GenAI tools, which will reduce confidentiality concerns.<sup>91</sup>

### III. NAYSAYER ARGUMENT 3: LAWYERS' ACCESS TO GENAI WILL LEAD TO DABBLING IN OTHER PRACTICE AREAS IN WHICH THEY ARE NOT COMPETENT.

The notion that lawyers adopting GenAI tools, like ChatGPT, will result in “dabbling” in unfamiliar practice areas lacks convincing evidence.

The legal profession has never operated in an informational vacuum. To the contrary, lawyers have accessed a wide array of resources for decades. Even before the internet and digital databases existed, law libraries were the cornerstone for legal research, stocked with case law, statutes, legal journals, and countless other valuable resources. Over time, legal professionals transitioned to electronic databases like Westlaw, LexisNexis, and Bloomberg Law, which all offer more efficient ways to review and analyze legal materials. Lawyers now have access to more technology and information than ever before.<sup>92</sup> If all of these existing platforms and resources have not led to rampant “dabbling,” then attributing such tendencies solely to the emergence of GenAI distracts from the more important ethical issue: that lawyers must use all of these tools responsibly.

As discussed previously, the use of GenAI does not change an attorney’s ethical duties within their practice of law. As Greg Lambert, Chief Knowledge Officer at Jackson Walker, LLP, cautioned: the number one rule since the birth of the internet is “don’t do anything stupid” online.<sup>93</sup> Lawyers bear the professional responsibility to use technological resources with the same level of care and ethical rigor as in any other area of their practice. Thus, attorneys should proactively engage in a careful evaluation when deciding whether and how to best employ GenAI tools into their practice. This process should take into

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90. See, e.g., Microsoft’s Azure OpenAI Service, <https://azure.microsoft.com/en-us/products/ai-services/openai-service>.

91. For instance, PwC employed Harvey for their M&A tasks, but noted all customer data is segregated and uses encryption tools to protect access to client information. See Cristina Criddle, *Law firms embrace the efficiencies of AI*, FINANCIAL TIMES (May 4, 2023), <https://www.ft.com/content/9b1b1c5d-f382-484f-961a-b45ae0526675>.

92. See Amy B. Cyphert, *supra* note 52 (recognizing while ChatGPT may currently be the newest AI tool, many lawyers may not realize how much the use of AI has *already* impacted the field of law, pointing to examples of commonly utilized electronic databases such as Lexis and Westlaw.)

93. See Suzanne McGee, *Generative AI and the Law*, LEXISNEXIS (2023), <https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/>.

account many variables, such as the attorney's proficiency with emerging technologies, client expectations, and the professional obligations that govern the practice of law.

In addition to these ethical imperatives, the use of GenAI does not exempt organizations or their lawyers from complying with other laws and regulations. The White House articulated this point in its recent AI report, stating, “[f]irms that utilize AI are not freed of the responsibility of abiding by antifraud, antitrust, and antidiscrimination laws, as well as workplace safety and health regulations.”<sup>94</sup> Existing laws and regulations apply to the use of GenAI and any other new technologies, just as they apply to any other practices. For instance, New York City's Local Law 144 regulates the use of automated employment decision tools to prevent algorithmic bias, requiring independent bias audits and transparency. Similarly, the Colorado AI Act regulates high-risk AI systems to prevent discrimination, imposing compliance obligations on businesses using AI for employment purposes. These laws exemplify the regulatory landscape that lawyers must navigate, ensuring AI tools are used ethically and in compliance with anti-discrimination laws.<sup>95</sup> Additionally, many more states have pending AI-related legislation, reflecting a broader trend towards establishing additional legal frameworks for AI governance.<sup>96</sup>

In April 2023, the Civil Rights Division of the U.S. Department of Justice, the Consumer Financial Protection Bureau, the Federal Trade Commission, and the U.S. EEOC issued a joint statement regarding AI, reiterating (among other things) “[t]echnological advances can deliver critical innovation – but claims of innovation must not be cover for lawbreaking. There is no AI exemption to the laws on the books . . . .”<sup>97</sup> This declaration again emphasizes the level of user accountability that comes with utilizing GenAI tools.<sup>98</sup>

In addition to these existing laws and regulations, GenAI is also subject to additional terms of use imposed by the technology providers themselves. For

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94. *The Impact of AI on the Future of Workforces in the European Union and the U.S.*, (2022) <https://www.whitehouse.gov/cea/written-materials/2022/12/05/the-impact-of-artificial-intelligence/>.

95. NYC Dep't of Consumer & Worker Prot., *Automated Employment Decision Tools (AEDT)*, NYC.gov, <https://www.nyc.gov/site/dca/about/automated-employment-decision-tools.page> (last visited Sept. 13, 2024); Cobun Zweifel-Keegan & Andrew Folks, *The Colorado AI Act: What You Need to Know*, Int'l Ass'n of Privacy Profs. (May 21, 2024), <https://iapp.org/news/a/the-colorado-ai-act-what-you-need-to-know>.

96. Cobun Zweifel-Keegan & Ashley Casovan, *US State AI Governance Bills: Reflecting on the 2024 Cycle with a New Resource*, Int'l Ass'n of Priv. Profs. (May 23, 2024), <https://iapp.org/news/a/u-s-state-ai-governance-bills-reflecting-on-the-2024-cycle-with-a-new-resource>.

97. *Id.* (“[w]e have come together to make clear that the use of advanced technologies, including [AI], must be consistent with federal laws,” . . . “[w]e will continue to raise awareness on this topic; to help educate employers, vendors and workers; and where necessary, to use our enforcement authorities to ensure AI does not become a high-tech pathway to discrimination.”).

98. *See also* AM. BAR ASS'N, *ABA Resolution 604* (Feb. 6, 2023) [https://www.americanbar.org/news/reporter\\_resources/midyear-meeting-2023/house-of-delegates-resolutions/604/](https://www.americanbar.org/news/reporter_resources/midyear-meeting-2023/house-of-delegates-resolutions/604/) (noting the importance of human accountability, especially as it relates to potential discriminatory impact of certain AI systems).

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instance, OpenAI’s usage policy includes a comprehensive list of “disallowed usages” of their models. This encompasses activities such as the creation and dissemination of disinformation, illegal content, and any material that can be classified as hateful, harassing, or violent.<sup>99</sup> It also explicitly states the unauthorized practice of law or offering tailored legal advice without having a qualified person review the information is prohibited.<sup>100</sup> These, and similar policies, operate as additional guardrails towards ensuring lawyers leverage GenAI safely and responsibly.

Thus, while GenAI technology is new, changing rapidly, and carries inherent risks, there are already existing laws and codes of conduct that address its responsible use.<sup>101</sup> The Biden Administration made it clear that AI is an important priority and there are “growing efforts” on Capitol Hill to draft legislation regulating this technology.<sup>102</sup> In May 2023, OpenAI CEO Sam Altman testified before Congress, discussing the potential impacts of artificial intelligence on society and the need to regulate it.<sup>103</sup> Shortly after this hearing, the White House announced a series of initiatives regarding responsible AI use, including three new national frameworks:<sup>104</sup>

AI is one of the most powerful technologies of our time, with broad applications. President Biden has been clear that in order to seize the opportunities AI presents, we

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99. See, e.g., OpenAI, *Usage Policies* (Jan. 10, 2024), <https://openai.com/policies/usage-policies>.

100. *Id.* (“OpenAI’s models are not fine-tuned to provide legal advice. You should not rely on our models as a sole source of legal advice.”).

101. See, e.g. The State Bar of California Standing Committee on Professional Responsibility and Conduct, *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*, (Nov. 16, 2023), <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf> (This guidance was developed by the Committee on Professional Responsibility and Conduct to assist lawyers in navigating various ethical complexities associated with the use of GenAI in their practice.).

102. Subsequent to the drafting of this article, on October 30, 2023 the Biden Administration issued a comprehensive Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. This order emphasizes the critical need for safe, responsible, and equitable use of AI technologies. It sets forth clear standards and requires federal agencies to proactively evaluate AI risks and develop comprehensive guidelines to mitigate potential harms while maximizing benefits, particularly within the context of the workforce. The order underscores the importance of understanding AI’s practical applications to successfully navigate its responsible deployment. *Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>.

103. On May 16, 2023, Sam Altman testified before Congress, laying out a proposed three-part plan that included (1) the creation of a new government agency charged with licensing large AI models, including the power to revoke the licenses for noncompliance; (2) the creation of safety standards for AI models, including evaluations of their dangerous capabilities, and (3) the requirement of independent audits, by independent experts, on various metrics. Mr. Altman further stated he believes the benefits of the tools deployed “vastly outweigh the risks,” but acknowledged ensuring their safety is “vital.” See Cat Zakrzewski, et al., *OpenAI CEO tells Senate that he fears AI’s potential to manipulate views*, THE WASHINGTON POST (May 16, 2023), <https://www.washingtonpost.com/technology/2023/05/16/ai-congressional-hearing-chatgpt-sam-altman/>.

104. See Alexandra Kelley, *White House Releases New AI National Frameworks, Educator Recommendations*, NEXTGOV (May 23, 2023), <https://www.nextgov.com/emerging-tech/2023/05/white-house-releases-new-ai-national-frameworks-educator-recommendations/386691/>.

must first manage its risks. To that end, the Administration has taken significant action to promote responsible AI innovation that places people, communities, and the public good at the center, and manages risks to individuals and our society, security, and economy. This includes the landmark Blueprint for an AI Bill of Rights and related executive actions, the AI Risk Management Framework, a roadmap for standing up a National AI Research Resource, active work to address the national security concerns raised by AI, as well as investments and actions announced earlier this month. Last week, the Administration also convened representatives from leading AI companies for a briefing from experts across the national security community on cyber threats to AI systems and best practices to secure high-value networks and information.<sup>105</sup>

In July 2023, the White House also announced a voluntary commitment from seven major AI companies (including Amazon, Google, Meta, and Microsoft) to establish additional guardrails on the use of AI.<sup>106</sup> In October 2023, the Biden Administration issued a comprehensive Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.<sup>107</sup> This order underscores the importance of safely and equitably using AI technologies, mandates federal agencies to assess AI risks, and establishes guidelines to balance potential harms with benefits, especially in workforce contexts.

The ongoing contributions and developments in the public and private sectors reflect a collective pursuit of technological advancement within the bounds of ethical and legal frameworks. This approach, paired with existing and forthcoming legal regulations and guidance, plays a crucial role in deterring users, including attorneys, from dabbling beyond their professional capabilities and established boundaries.

#### IV. NAYSAYER ARGUMENT 4: BECAUSE OF THE AMOUNT OF CROSS-CHECKING AND VERIFYING REQUIRED, GENAI WILL NOT PROVIDE ANY TIME OR COST SAVINGS WITHIN THE LEGAL INDUSTRY.

The argument that adopting responsible practices when using AI tools will automatically negate the time and cost-saving benefits of GenAI is flawed.<sup>108</sup>

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105. The White House, *Biden-Harris Administration Takes New Steps to Advance Responsible AI Research, Development, and Deployment* (May 23, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/23/fact-sheet-biden-harris-administration-takes-new-steps-to-advance-responsible-artificial-intelligence-research-development-and-deployment/>.

106. Sabrina Siddiqui, *White House Says Amazon, Google, Meta, Microsoft Agree to AI Safeguards*, WALL ST. J. (Jul. 21, 2023), <https://www.wsj.com/articles/white-house-says-amazon-google-meta-microsoft-agree-to-ai-safeguards-eabe3680?mod=djem10point>.

107. Exec. Order No. 14110, 88 Fed. Reg. 75191 (Nov. 1, 2023); *see also* The White House, *Fact Sheet: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence* (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/>.

108. It's important to recognize that we are in the early stages of the AI revolution. As time progresses, one can reasonably anticipate significant advancements in terms of accuracy and capabilities. *See generally* Brief of the Chicago Patent Attorneys as Amici Curiae at 16-17, Thaler v. Vidal, 2023 U.S. S. CT. BRIEFS LEXIS 1282 (Apr. 18, 2023) (statement of Aaron V. Gin, Ph.D.) (predicting the advancement and improvement of GenAI over time).

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This argument erroneously assumes that GenAI, by its very nature, will inherently lead to inefficiencies. ChatGPT shattered records and reached 100 million users in only two months, becoming the fastest technological adoption in history because of its remarkable value and impact on organizations, including increased efficiencies, among many other benefits.<sup>109</sup> The legal industry is replete with inefficiencies and manual workflows, which GenAI technologies could significantly improve.<sup>110</sup>

### A. Beyond the Misconceptions: GenAI Advantages and Benefits

#### 1. Increased Efficiency in Legal Processes

GenAI tools can offer tremendous time savings for some of the most tedious legal tasks. For example, identifying and extracting data during discovery: “AI will vastly accelerate this process, doing work in seconds that without AI might take weeks.”<sup>111</sup> This technology can also quickly produce initial drafts, providing attorneys with content to work off of, rather than a blank slate. It can even predict arguments opposing counsel is likely to advance.<sup>112</sup> While this content will—of course—need to be reviewed and augmented by human lawyers, the gains to efficiency are likely to be extraordinary.<sup>113</sup> GenAI may therefore reduce billable hours in some areas and across certain tasks. This will free up time for lawyers to focus on the high-level strategic work that AI cannot replicate (or, at least, not yet).<sup>114</sup>

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109. See Charley Grant, *ChatGPT Is Causing a Stock-Market Ruckus*, WALL ST. J. (May 9, 2023), [https://www.wsj.com/articles/chatgpt-is-causing-a-stock-market-ruckus-4b7cc008?mod=article\\_inline](https://www.wsj.com/articles/chatgpt-is-causing-a-stock-market-ruckus-4b7cc008?mod=article_inline) (noting in comparison, TikTok took nine months to reach that milestone and Instagram took 30 months); see also Brad Smith, *Meeting the AI moment: advancing the future through responsible AI*, MICROSOFT (Feb. 2, 2023), <https://blogs.microsoft.com/on-the-issues/2023/02/02/responsible-ai-chatgpt-artificial-intelligence/> (describing how GenAI will change *almost everything*, including humanity’s ability to “think, reason, learn and express ourselves,” and further predicting it will improve productivity and reduce the drudgery in many jobs); EXEC. OFF. OF THE PRESIDENT, *AI, Automation, and the Economy* (Dec. 2016), <https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/Artificial-Intelligence-Automation-Economy.PDF> (“Technological progress is the main driver of growth of GDP per capita, allowing output to increase faster than labor and capital. One of the main ways that technology increases productivity is by decreasing the number of labor hours needed to create a unit of output.”).

110. Jessica De Perio Wittman & Kathleen Brown, *Taking on the Ethical Obligation of Technology Competency in the Academy: An Empirical Analysis of Practice-Based Technology Training Today*, 36 GEO. J. LEGAL ETHICS 1, 4-5 (citing a Clio study highlighting inefficient how attorneys can be in their day-to-day practice and how technology can solve or significantly decrease this).

111. John Villasenor, *How AI will revolutionize the practice of law*, BROOKINGS (Mar. 20, 2023), <https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/>.

112. *Id.*

113. See *id.* (“AI will make it much more efficient for attorneys to draft documents requiring a high degree of customization—a process that traditionally has consumed a significant amount of attorney time. Examples include contracts, [court filings], responses to interrogatories, summaries for clients of recent developments in an ongoing legal matter, visual aids for use in trial, and pitches aimed at landing new clients. AI could also be used during a trial to analyze a trial transcript in real time and provide input to attorneys that can help them choose which questions to ask witnesses.”).

114. See, e.g., Criddle, *supra* note 91 (“It definitely reduces the billable hours,” says Richard Robinson, founder and chief executive of Robin AI. But he points out: “The best firms want to be paid for

## 2. *Enhanced Productivity*

According to an early study analyzing GenAI’s real-world impact in the workplace, which involved over 5,000 customer agents at a software firm, AI assistance *increased their productivity by 14 percent*.<sup>115</sup> This improvement was measured by the number of customer issues the agents were able to resolve per hour.<sup>116</sup> This improvement was both quantitative and qualitative. Additional benefits included improved customer sentiment, reduced requests for managerial intervention, and improved employee retention.<sup>117</sup>

## 3. *Widespread Economic Benefits*

The White House recognized the broad economic potential of AI, noting its capacity to automate tasks with greater speed and accuracy across various industries.<sup>118</sup> This technological advancement supports enhanced task automation and creates new roles and opportunities that would have been unimaginable without AI.<sup>119</sup> OpenAI has estimated that “around 80% of the U.S. workforce could have at least 10% of their work tasks affected” by the introduction of large language models, and that “approximately 19% of workers may see at least 50% of their tasks impacted.”<sup>120</sup> This projected effect was observed across all levels of income, with higher-paying jobs potentially facing more significant changes.<sup>121</sup>

### *B. Shifting Perspectives: Leveraging GenAI to Augment Workplace Enhancement and Societal Advancement*

While much of the media attention has focused on the risks of using new AI tools, it’s important to emphasize this technology also has the potential to

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high-level strategic work, things that fundamentally, at least today, no AI is trying to replicate—like high-level negotiations, insights into what’s happened in other [similar] deals in the market.”)

115. Brynjolfsson et al., *supra* note 26 (studying the staggered introduction of a GAI-based conversational assistant using data from 5,179 customer support agents and concluding that AI assistance improves customer sentiment, reduces requests for managerial intervention, and improves employee retention; also noting that at early stages of GenAI, lower-skilled workers experience the greatest benefits).

116. *Id.*

117. *Id.*

118. *The Impact of AI on the Future of Workforces in the European Union and the U.S.*, *supra* note 94, (stating the benefits of AI “could span industries, providing workers with time for new tasks and firms with greater speed and accuracy through automation” and discussing the broader impact on jobs); *see also* WORLD ECONOMIC FORUM, THE FUTURE OF JOBS REPORT 2023 (Apr. 30, 2023)[https://www3.weforum.org/docs/WEF\\_Future\\_of\\_Jobs\\_2023.pdf](https://www3.weforum.org/docs/WEF_Future_of_Jobs_2023.pdf) (predicting they expect demand for AI and Machine Learning Specialists will grow by 40% (or 1 million jobs) and a 30-35% increase (or 1.4 million jobs) for roles such as Data Analysts and Scientists, Big Data Specialists, Business Intelligence Analysts, Database and Network Professionals, and Data Engineers).

119. *See Id.*

120. *See* Tyna Eloundou et al., *GPTs Are GPTs: An Early Look at the Labor Market Impact Potential of Large Language Models*, ARXIV Working Paper No. 2303.10130v5 (August 22, 2023), <https://arxiv.org/pdf/2303.10130.pdf>.

121. *Id.*



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augment and enhance the way we work, leading to new jobs and other benefits for society.<sup>122</sup> This is often referred to as “the race between automation and augmentation,” with AI catalyzing new job opportunities that are created from its use.<sup>123</sup> We have seen new jobs emerge, including “prompt engineers,” individuals who are particularly skilled at framing the queries for GenAI systems, some with annual salaries of more than \$300,000.<sup>124</sup> In a recent public statement, PricewaterhouseCoopers (PwC) acknowledged this shift. PwC stated that it is not aiming to replace workers with GenAI; instead, they want to “optimize their jobs by automating time-consuming, repetitive tasks.”<sup>125</sup> This same approach can be used in the legal industry by leveraging GenAI and similar technologies to augment the way lawyers practice law. Industry experts predict that the lawyers who learn how to leverage this human-technology collaboration successfully will benefit most from these tools.<sup>126</sup> As noted in the introduction, and it warrants repeating here, the phrase “*AI won’t replace lawyers, but lawyers who use AI will replace lawyers who don’t*” succinctly captures AI’s transformative impact on the legal industry.<sup>127</sup>

Indeed, many companies are supporting this human-machine-augmented collaboration,<sup>128</sup> which combines “humans and machines in a way that leverages the respective strengths of each.”<sup>129</sup> Below are examples of some of the expected efficiencies and advantages on the horizon:

- **Enhanced Document Review and Contract Management:** Lawyers and professionals will be able to quickly and accurately identify and extract

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122. *The Impact of AI on the Future of Workforces in the European Union and the U.S.*, *supra* note 94 <https://www.whitehouse.gov/wp-content/uploads/2022/12/TTC-EC-CEA-AI-Report-12052022-1.pdf>.

123. *Id.* at 20 (providing examples such as digital assistant engineer, warehouse robot engineer and content-tagger on social media).

124. AN OVERVIEW OF THE EMPLOYMENT LAW ISSUES POSED BY GENERATIVE AI IN THE WORKPLACE LITTLER MENDELSON (May 9, 2023), [https://www.littler.com/files/genai\\_littler\\_report.pdf](https://www.littler.com/files/genai_littler_report.pdf) (reporting “[a]ready, demand has emerged for “prompt engineers,” individuals skilled at framing exactly the right type of queries to coax generative AI platforms to generate cogent and accurate responses, at annual salaries currently over \$300,000.” Report authored in part using ChatGPT).

125. Angus Loten, *PricewaterhouseCoopers to Pour \$1 Billion into Generative AI*, WALL ST. J. (Apr. 26, 2023), <https://www.wsj.com/articles/pricewaterhousecoopers-to-pour-1-billion-into-generative-ai-cac2cedd>.

126. See John Villasenor, *How AI will revolutionize the practice of law*, BROOKINGS (Mar. 20, 20230), <https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/> (stating “[f]or attorneys, getting the most out of AI tools will involve far more than just pushing a button. AI is most effective when it is used to complement human skills, and the people who learn how to leverage this collaboration well will get the most mileage out of AI tools.”).

127. See McGee, *supra* note 93 (noting this is popular catchphrase making the rounds right now as more professionals comment on the integration of GenAI into the legal industry.).

128. See Nitin Mittal et al., *Fueling the AI Transformation: Four Key Actions Powering Widespread Value from AI, Right Now*, DELOITTE, 17(2022), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/deloitte-analytics/us-ai-institute-state-of-ai-fifth-edition.pdf>.

129. Patrick Huston and Natalie Pierce, *AI — Cybersecurity Solution or Threat?*, THE ACC DOCKET (Dec. 6, 2022), <https://docket.acc.com/ai-cybersecurity-solution-or-threat>.

critical information from large volumes of documents.<sup>130</sup> GenAI can also review contracts for potential risks, possibly catching problems that may be overlooked by human reviewers. It can even manage contracts across their entire lifecycle.<sup>131</sup>

- **Increased Focus on High-Value Work:** Increased automation will allow attorneys to dedicate more time and energy to strategic and higher-value work.<sup>132</sup> The 2018 LawGeex landmark AI vs. human lawyer study<sup>133</sup> illustrates the impressive capabilities this technology has and how it can be used to effectively streamline certain legal processes.<sup>134</sup>
- **Boost in Employee Productivity:** Early studies examining the productivity effects of GenAI in mid-level professional writing tasks found the group using GenAI completed tasks 37% faster, with roughly comparable quality.<sup>135</sup> Furthermore, as they repeated the tasks, the quality of the group leveraging GenAI technology increased significantly faster.<sup>136</sup>
- **Enhanced Human Resources Efficiency:** The adoption of GenAI can broadly transform human resources, offering organizations the ability to optimize recruitment practices and overall HR operations for greater efficiency and effectiveness. For instance, organizations will have the

130. Daniel Czarnecki, *Transforming Legal Operations: How AI is Augmenting Small Law Firms*, AI/ML ADVANTAGES IN BUSINESS (Apr. 2, 2023), <https://www.linkedin.com/pulse/transforming-legal-operations-how-ai-augmenting-small-czarnecki/>.

131. See Natalie Pierce & Stephanie Goutos, *AI at Work: Building a Future-Ready Workforce*, LEGAL BUSINESS WORLD (Nov. 2023), [https://www.legalbusinessworld.com/\\_files/ugd/b30d31\\_23ac14902c604758ad6f48fea78b783b.pdf](https://www.legalbusinessworld.com/_files/ugd/b30d31_23ac14902c604758ad6f48fea78b783b.pdf) (describing how Ironclad has successfully leveraged this technology).

132. Trudy Knockless, *'This Is a Rocket Ship': How GenAI Will Transform Legal Departments*, LAW.COM (Mar. 31 2023), <https://www.law.com/corpocounsel/2023/03/31/this-is-a-rocket-ship-how-generative-ai-will-transform-legal-departments/> (quoting Stephen Mar, general counsel of Odeko, who added legal leadership needs to recognize this as a “critical strategic imperative for 2023.”).

133. See LAWGEEX, *COMPARING THE PERFORMANCE OF ARTIFICIAL INTELLIGENCE TO HUMAN LAWYERS IN THE REVIEW OF STANDARD BUSINESS CONTRACTS* (Feb. 2018) (reporting a study where an AI system trained on thousands of contracts outperformed experienced lawyers issue spotting in contracts. The AI system achieved an average 94% accuracy rate vs. the lawyers' average rate of 85%. Even more impressive, LawGeex far outperformed when it came to speed of review. On average, the human lawyers took 92 minutes (and up to 156 minutes) and the AI system only needed 26 seconds). See also Kyree Leary, *The Verdict Is In: AI Outperforms Human Lawyers in Reviewing Legal Documents*, FUTURISM (Feb. 27, 2018), <https://futurism.com/ai-contracts-lawyers-lawgeex> (observing this experiment “may actually understate the gain from AI in the legal profession. The lawyers who reviewed these documents were fully focused on the task: it didn't sink to the bottom of a to-do list, it didn't get rushed through while waiting for a plane or with one eye on the clock to get out the door to pick up the kids.”).

134. See also David Lat, *The Ethical Implications of AI*, ABOVE THE LAW (Feb. 21, 2020), <https://abovethelaw.com/law2020/the-ethical-implications-of-artificial-intelligence/> (stating “AI has the potential to transform the legal profession in so many positive ways,” predicts ethics attorney Megan Zavieh. “If we can start to ‘push down’ the work that takes up too much of our time to AI products, much as we've done with other forms of technology in other areas, we can free up lawyer time to do the things we do best: the legal analysis and arguing in court that can't be replaced by robot lawyers.”).

135. See Josh Bersin, *New MIT Research Shows Spectacular Increase In White Collar Productivity From ChatGPT* (Mar. 7, 2023), <https://joshbersin.com/2023/03/new-mit-research-shows-spectacular-increase-in-white-collar-productivity-from-chatgpt/> (discussing a recent study by two economic PhD candidates at MIT, which found that a group of white-collar workers using ChatGPT completed tasks 37% faster with roughly similar quality).

136. Shakked Noy & Whitney Zhang, *Experimental Evidence on the Productivity Effects of General Artificial Intelligence* (MIT, Working Paper, (Mar. 2, 2023), [https://economics.mit.edu/sites/default/files/inline-files/Noy\\_Zhang\\_1.pdf](https://economics.mit.edu/sites/default/files/inline-files/Noy_Zhang_1.pdf); see also Bersin *supra* note 135 at 1 (reporting ChatGPT made it easier to improve work quickly using the tool).

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potential to streamline hiring practices and leverage GenAI to reduce labor and other costs.<sup>137</sup>

- **Increased Emphasis on Efficiency:** There is a growing emphasis on organizations leveraging technology to increase efficiency in the workplace.<sup>138</sup>
- **Economic Growth Predictions:** Goldman Sachs predicts GenAI “could drive a seven percent (or almost \$7 trillion) increase in global GDP and lift productivity growth by 1.5 percentage points over 10 years.”<sup>139</sup> Further, they estimate AI could automate one-fourth of current work tasks, particularly in the legal industry.<sup>140</sup>
- **Narrowing the Access-to-Justice Gap:**<sup>141</sup> The legal industry will also have the potential to substantially narrow the existing access-to-justice gap.<sup>142</sup> The widespread adoption of GenAI could revolutionize legal service delivery, enabling more providers to offer affordable services.<sup>143</sup>

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137. According to the Society for Human Resources Management (SHRM), nearly 80 percent of organizations polled have used or plan to use AI for HR purposes within the next five years. Algorithmic systems have already transformed how businesses operate by reducing the time it takes for companies to fill open positions. In addition to the time savings, nearly three in five organizations reported the quality of their recruits was higher because of their integration of AI into their hiring process. See Allen Smith, J.D., *Could Regulation of AI Be on the Horizon*, SHRM (Apr. 12, 2023), <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/ai-commerce-department-request-for-comment.aspx>; see also Pierce & Goutos, *supra* note 131 (noting Oracle announced the use of GenAI capabilities to improve HR functions; Coca-Cola announced it was using GenAI to grow its global music platform made available at a variety of festivals; and ADP shared it had incorporated GenAI into its payroll app, allowing it and its customers to leverage several new capabilities).

138. Knockless, *supra* note 132 (quoting former Google legal operations chief, Mary O’Carroll: “doing things the old way will no longer cut it, as expectations will increase sharply and quickly,” and recognizing this is not something that can be ignored).

139. Global Economics Analyst, Jan Hatzius et al., *The Potentially Large Effects of AI on Economic Growth (Briggs/Kodnani)*, GOLDMAN SACHS, 1 (Mar. 26, 2023), [https://www.key4biz.it/wp-content/uploads/2023/03/Global-Economics-Analyst\\_-The-Potentially-Large-Effects-of-Artificial-Intelligence-on-Economic-Growth-Briggs\\_Kodnani.pdf](https://www.key4biz.it/wp-content/uploads/2023/03/Global-Economics-Analyst_-The-Potentially-Large-Effects-of-Artificial-Intelligence-on-Economic-Growth-Briggs_Kodnani.pdf) (“[t]he large share of employment exposed to automation from generative AI raises the potential for a boom in labor productivity that significantly increases global output,” and quoting Global Chairman and CEO of EY, who recently stated businesses “waiting to implement a risk mitigation strategy for AI do so at their own peril.”).

140. *Id.* at 6-7, 10 (predicting that 44% of legal work could be automated and nearly all legal activities may be complemented or replaced by AI).

141. The “access-to-justice” gap refers to the significant disparity between individuals’ legal needs and their ability to satisfy those needs through the legal system. This gap is primarily attributed to the high cost of legal representation and advice, which renders the judicial process inaccessible to a substantial portion of the population. See Leonard Wills, *Access to Justice: Mitigating the Justice Gap*, AM. BAR ASS’N (Dec. 3, 2017), <https://www.americanbar.org/groups/litigation/resources/newsletters/minority-trial/access-justice-mitigating-justice-gap/>.

142. See Sarah Martinson, *As States Toy with Reform, Legal Tech Cos. Fill Justice Gap*, LAW360 (Jul. 2022), <https://www.law360.com/pulse/articles/1484682/as-states-toy-with-reform-legal-tech-cos-fill-justice-gap> (noting that millions of low-income Americans cannot afford to hire an attorney, and therefore do not get adequate legal help for 92% of their substantial civil legal problems).

143. For instance, in 2020, Utah approved a regulatory sandbox program to explore alternative business models for improving access to justice, finding potential for success. See AM. BAR ASS’N CTR. FOR INNOVATION, *Innovation Trends Report*, 35-40 (2022), <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/aba-cfi-innovation-trends-report2022.pdf>; see also ABA COMM’N ON THE FUTURE OF LEGAL SERVICES, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE U.S. 1 (2016), <https://www.srln.org/system/files/attachments/2016%20ABA%20Future%20of%20Legal%20Services%20-Report-Web.pdf> (quoting ABA President William C. Hubbard, “[w]e must open our minds to

C. *History's Guide to Success: Embracing Technological Advancements in the Workplace*

Our economy has consistently adapted and even thrived in response to technological advancements. In fact, a large part of the productivity growth experienced in the 20<sup>th</sup> century was due to the transition from human labor to technological solutions.<sup>144</sup> While some may still fear the “rise of the robots,” recent studies indicate that robot adoption can actually *boost* employment in certain contexts.<sup>145</sup> For instance, many small and midsize manufacturers have successfully used robots to improve product quality, enhance operational efficiency, and expand into new product lines.<sup>146</sup> Robots can also perform jobs that are dangerous or otherwise undesirable to humans, such as sorting garbage, boosting safety, efficiency and morale in the workplace.<sup>147</sup>

Similar advantages can be found across a broad spectrum of industries. For example, 150 years ago, nearly half of all American employees worked in agriculture.<sup>148</sup> Today, this number has dropped to less than two percent, largely

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innovative approaches and to leveraging technology in order to identify new models to deliver legal services. Those who seek legal assistance expect us to deliver legal services differently. It is our duty to serve the public, and it is our duty to deliver justice, not just to some, but to all”); *see generally* ORLY LOBEL, *THE EQUALITY MACHINE: HARNESSING DIGITAL TECHNOLOGY FOR A BRIGHTER, MORE INCLUSIVE FUTURE* (2022), (arguing for the potential of technology to create a more equitable society). There is also a need for more freely accessible case law, which Harvard Law School aims to help solve with their Caselaw Access Project. *See generally* HLS News Staff, *Harvard Law School launches Caselaw Access project*, HARVARD LAW TODAY (Oct. 29, 2015), <https://hls.harvard.edu/today/harvard-law-school-launches-caselaw-access-project-ravel-law/> (quoting Harvard Law School Dean Martha Minow “Using technology to create broad access to legal information will help create a more transparent and more just legal system.”).

144. Anna Waldman-Brown, *Automation Isn't the Biggest Threat to US Factory Jobs*, WIRED (May 1, 2022), <https://www.wired.com/story/robots-automation-jobs-manufacturing-labor-germany-us/> (noting economist Carl Benedikt Frey found “American productivity grew by 400 percent from 1930 to 2000, while average leisure time only increased by 3 percent.”).

145. *See, e.g.*, Niels Martin Brochner, *Will AI Replace Lawyers?*, FORBES (May 25, 2023), <https://www.forbes.com/sites/forbestechcouncil/2023/05/25/will-ai-replace-lawyers/?sh=429411cb3124> (observing there were similar fears of taking work away from lawyers when the internet became available, but noting ultimately “the internet gave back tenfold with new practice areas such as privacy and IT law.”); *see also* Amar Hanspal, *Here's why robots are actually going to increase human employment*, WORLD ECONOMIC FORUM (Feb. 26, 2021), <https://www.weforum.org/agenda/2021/02/world-economic-forum-automation-create-jobs-employment-robots/> (predicting that automation will result in a net increase of 58 million jobs).

146. Waldman-Brown, *supra* note 144.

147. *See* Bryn Nelson, *How robots are reshaping one of the dirtiest, most dangerous jobs*, NBC UNIVERSALNEWS (Apr. 17, 2018), <https://www.nbcnews.com/mach/science/how-robots-are-reshaping-one-dirtiest-most-dangerous-jobs-nca866771> <https://www.nbcnews.com/mach/science/how-robots-are-reshaping-one-dirtiest-most-dangerous-jobs-nca866771> (reporting the high fatality rates associated with sorting garbage and how robots can assist humans with this task).

148. EXEC. OFF. OF THE PRESIDENT, *AI, AUTOMATION, AND THE ECONOMY* 8 (Dec. 20, 2016), <https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/Artificial-Intelligence-Automation-Economy.PDF> (reporting in 1870 “almost 50 percent of American employees worked in

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due to technological advancements.<sup>149</sup> Farms now leverage advanced technologies to assist operations, including “robots, temperature and moisture sensors, aerial images, and GPS technology.”<sup>150</sup> These sophisticated tools and systems have transformed the industry and made businesses more profitable, safer, efficient, and sustainable.<sup>151</sup>

Another great example is the banking industry. In 1970, the introduction of the first Automatic Teller Machines (“ATMs”) sparked widespread predictions that they would end all traditional bank teller jobs.<sup>152</sup> However, these fears proved unfounded; today the U.S. has significantly more bank tellers, employed across more branches, handling different tasks from those of the past.<sup>153</sup> The introduction of ATMs in banking merely reshaped the human element within the industry. The new technology allowed employees to focus more time on strategic items such as relationship building, and less time on manual tasks, such as counting money. This demonstrates how technology can help human roles evolve in the workforce without rendering humans obsolete.

This mirrors the aviation industry’s experience in the 1980s, where autopilot technology initially sparked job loss fears among pilots.<sup>154</sup> Nonetheless, by 1995, airline pilots and flight engineers became among the fastest growing in the U.S. transportation sector, dispelling fears of obsolescence.<sup>155</sup> There are fascinating parallels that can be drawn between the aviation and legal industries. As one expert noted, some in the legal industry may be reluctant to automate more work, particularly concerned about technology’s impact on the reduction of billable hours, which would decrease law firm revenue.<sup>156</sup> Pilots harbored similar apprehensions, yet these concerns never came to fruition:

The pilots feared that fewer engineers meant fewer jobs, but on the contrary, increases in efficiency led to the expansion of the industry through an increased number of flights and passengers. Despite the fact that computers are used [to] track those additional flight paths, human pilots and air traffic controllers are still required for

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agriculture, supplying the Nation’s food,” and that number is less than 2 percent today, due largely to technological advancements).

149. *Id.* at 8-9.

150. Nat’l Inst. of Food and Agric., *Agriculture Technology*, U.S. DEP’T OF AGRIC., <https://www.nifa.usda.gov/topics/agriculture-technology#:~:text=Higher%20crop%20productivity,turn%20keeps%20food%20prices%20down.https://>

151. *Id.*

152. James Pethokoukis, *What the Story of ATMs and Bank Tellers Reveals About the ‘rise of the Robots’ and Jobs*, AMERICAN ENTERPRISE INSTITUTION (Jun. 6, 2016), <https://www.aei.org/economics/what-atms-bank-tellers-rise-robots-and-jobs/> (describing the speculation surrounding the possible elimination of bank teller jobs when ATMs were first introduced).

153. *The Impact of AI on the Future of Workforces in the European Union and the U.S.*, *supra* note 94 (citing James Pethokoukis, *supra* note 152) (recognizing the impact of the ATM machine was not to destroy tellers, actually it was to increase it).

154. *See* Johnson, *supra* note 39, at 161 (noting in the 1980s, the aviation industry “faced a panic” over new technology, fearing job losses or even elimination of their human roles).

155. *Id.*

156. *Id.* at 164.

the higher-level decision making related to weather and other unforeseen obstacles.<sup>157</sup>

The same may be true of the legal industry in the near future. What do these historical trends teach us about the potential widespread adoption of GenAI? They suggest that GenAI, much like previous technological advancements, may be poised to redefine the role of legal professionals, rather than displace them. GenAI is not inherently detrimental to lawyers – to the contrary, it offers an opportunity for the industry to evolve and even introduce new areas of practice, just as the internet did when it became widely adopted.<sup>158</sup> GenAI can automate routine and time-consuming tasks, which can allow legal professionals to concentrate on higher-value and more complex items such as legal analysis, client relationships, and creative problem-solving. It's possible that lawyers could feel more fulfilled and have greater job satisfaction as a result of the changes, though the true impact of GenAI on the legal industry remains to be seen.

Nonetheless, the evolution ahead calls for a thoughtful and strategic approach, centered on embracing new technologies, modernizing legal education, and providing the necessary training. This strategy is designed to equip legal professionals with the requisite skills needed to collaborate effectively with sophisticated AI systems, underscoring the importance of adaptability and continuous learning. Our goal should be not to ban or eliminate GenAI from the legal industry, but instead to skillfully train legal professionals so they understand how to leverage the technology responsibly to enhance their unique skills and, in turn, their practice of law.

#### TRANSFORMING THE WAY WE WORK: HOW EARLY ADOPTERS EMBRACED GENAI TECHNOLOGIES

Entrepreneurs and investors have long anticipated that GenAI will revolutionize business activities across a multitude of industries.<sup>159</sup> Peter Wagner, founding partner at Wing, insightfully captured the growing sentiment towards GenAI in 2023 in a declaration that it's "more than a trend," and shared his belief in a future that is "built on data, powered by AI, and put to work through increasingly autonomous applications."<sup>160</sup> Further, he echoed the now oft-referenced sentiment shared by many: "*We . . . firmly believe humans will not*

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157. *Id.*

158. *See, e.g.,* Steve Lohr, *A.I. Is Coming for Lawyers, Again*, N.Y. TIMES (Apr. 10, 2023), <https://www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html> (describing the impact of transformative technologies like the internet and the personal computer on the practice of law).

159. *See* Criddle, *supra* note 91 (citing Hatzius et al., *supra* note 139).

160. Peter Wagner, *The Wing Manifesto: The AI-First Transformation of Business*, WING VC (Feb. 17, 2023), <https://www.wing.vc/content/wing-manifesto-four-ai-first-transformation-of-business>.

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*be replaced by AI—but humans working with AI will replace humans working without it.*<sup>161</sup>

Additionally, investors aren't just talking about AI, they are pouring their money into it.<sup>162</sup> According to PitchBook, venture capitalists have increased investment in GenAI by 425 percent since 2020, to a staggering \$2.1 billion in 2023, despite broader technology markets declining.<sup>163</sup> PitchBook expects the GenAI market to continue to grow, with countless enterprise applications in the future.<sup>164</sup> Further, it's anticipated that an economic boost will occur much faster than past technologic revolutions—"certainly by 2024"—because GenAI automates cognitive work, as opposed to manual labor, which would take more time to invest in relevant equipment and/or infrastructure.<sup>165</sup> Despite the novelty of this field, many pioneers are embracing GenAI and incorporating it into their workplace.

### EARLY ADOPTERS AND THEIR 2023 INITIATIVES

- PwC uses Harvey AI for mergers and acquisitions, due diligence, and drafting contracts.<sup>166</sup> In March 2023, PwC reported it would give 4,000 legal professionals access to the Harvey AI platform.<sup>167</sup> Additionally, PwC

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161. *Id.*

162. See David Rotman, *ChatGPT is about to revolutionize the economy. We need to decide what that looks like.*, MIT TECHNOLOGY REVIEW (Mar. 25, 2023), <https://www.technologyreview.com/2023/03/25/1070275/chatgpt-revolutionize-economy-decide-what-looks-like/> (noting Venture capitalists and other investors are pouring billions into companies based on GAI, and the list of apps and services driven by large language models is growing longer every day).

163. See Christina Criddle et al., *Investors seek to profit from groundbreaking 'generative AI' startups*, FINANCIAL TIMES (Dec. 9, 2022), <https://www.ft.com/content/9c5f7154-5222-4be3-a6a9-f23879fd0d6a>; see also Deepa Seetharaman & Berber Jin, *ChatGPT Fever Has Investors Pouring Billions Into AI Startups, No Business Plan Required*, WALL ST. J., (May 8, 2023), <https://www.wsj.com/articles/no-business-plan-no-problem-chatgpt-spawns-an-investor-gold-rush-in-ai-6bdbed3c> (stating that “[s]izable deals are coming fast and furious. Eleven Labs, a voice AI startup, recently raised money from Andreessen Horowitz that valued the company around \$100 million . . . Humane, a startup created by two ex-Apple executives, recently raised \$100 million from investors, including Mr. Altman, to make AI-powered wearable devices . . . Character.AI, an AI startup founded by two other former Google employees less than two years ago, raised \$150 million in a recent round that valued it at \$1 billion”); Chris Metinko, *AI Craze Hits New Level As Anthropic Locks Up \$450M, Builder.ai Closes \$250M Round*, CRUNCHBASE NEWS (May 23, 2023) [https://news.crunchbase.com/ai-robotics/venture-funding-startups-anthropic-builder-ai/?utm\\_source=cb\\_daily&utm\\_medium=email&utm\\_campaign=20230523&utm\\_content=intro&utm\\_term=content&utm\\_source=cb\\_daily&utm\\_medium=email&utm\\_campaign=20230524](https://news.crunchbase.com/ai-robotics/venture-funding-startups-anthropic-builder-ai/?utm_source=cb_daily&utm_medium=email&utm_campaign=20230523&utm_content=intro&utm_term=content&utm_source=cb_daily&utm_medium=email&utm_campaign=20230524).

164. PITCHBOOK, EMERGING TECH RESEARCH, VERTICAL SNAPSHOT: GENERATIVE AI VC TRENDS, INDUSTRY OVERVIEW, AND MARKET LANDSCAPE (2023), [https://files.pitchbook.com/website/files/pdf/2023\\_Vertical\\_Snapshot\\_Generative\\_AI\\_Preview.pdf](https://files.pitchbook.com/website/files/pdf/2023_Vertical_Snapshot_Generative_AI_Preview.pdf).

165. Rotman, *supra* note 162 (quoting Anton Korinek, economist at the University of Virginia and a fellow at the Brookings Institution).

166. See Cristina Criddle, *supra* note 91 (noting Harvey segregates all customer data and offers encryption tools to protect access to client information).

167. See Sara Merken, *Legal AI race draws more investors as law firms line up*, REUTERS (Apr. 26, 2023), <https://www.reuters.com/legal/legal-ai-race-draws-more-investors-law-firms-line-up-2023-04-26/>.

announced plans to invest \$1 billion in GenAI in its U.S. operations over the next three years.<sup>168</sup>

- Morgan Stanley is using GPT-4 to power a chatbot that conducts a comprehensive search of their wealth management content.<sup>169</sup> The tool is trained on 60,000 research reports on parts of the global economy, and 40,000 other internal documents, making it an expert on any financial subject that a financial adviser might want to look up.<sup>170</sup> Morgan Stanley equated it as valuable as “having [the] chief strategy officer sitting next to you when you’re on the phone with a client.”<sup>171</sup>
- In August 2023, Silicon Valley-based law firm Gunderson Dettmer launched an internal generative AI chat app with retrieval-augmented generation capabilities called “ChatGD.” Bob Ambrogi reported this launch appeared to make Gunderson Dettmer the first U.S.-based law firm to develop a proprietary internal tool using GenAI technology.<sup>172</sup>
- The law firm “Traverse Legal” launched a client intelligence tool, called Traverse AI, leveraging ChatGPT’s Turbo API.<sup>173</sup> The tool is a chatbot programmed to engage with clients regarding legal issues.<sup>174</sup>
- Stripe is using ChatGPT to improve its custom support operations and to help detect fraud on its community platforms.<sup>175</sup>
- In spring 2023, global law firm Reed Smith introduced a pivotal new role within their firm: Director of Applied AI.<sup>176</sup> This senior-level position will

168. See Loten, *supra* note 125 (noting PricewaterhouseCoopers envision the technology will be used to quickly write reports, prepare compliance documents, analyze and evaluate business strategies, identify operational inefficiencies, and draft marketing materials, among many other applications, and acknowledging other large accounting firms, such as KPMG LLP and Ernst & Young, are likewise investing in GenAI).

169. See *Customer Stories: Morgan Stanley*, OPENAI (Mar. 14, 2023), <https://openai.com/customer-stories/morgan-stanley>.

170. See David Ingram, *These 5 companies say GPT-4 has dramatically changed their priorities at work*, NBC NEWS (Mar. 17, 2023), <https://www.nbcnews.com/tech/innovation/chatgpt-gpt-4-gpt4-openai-access-microsoft-how-to-rcna75116>.

171. Hugh Son, *Morgan Stanley is testing an OpenAI-powered chatbot for its 16,000 financial advisors*, CNBC (Mar. 14, 2023), <https://www.cnbc.com/2023/03/14/morgan-stanley-testing-openai-powered-chatbot-for-its-financial-advisors.html>.

172. Bob Ambrogi, *Gunderson Dettmer Launches ChatGD; First U.S.-Based Firm To Develop Proprietary Internal Generative AI App*, LAWSITES (Aug. 9, 2023), <https://www.lawnext.com/2023/08/gunderson-dettmer-launches-chatgd-first-u-s-based-firm-to-develop-proprietary-internal-generative-ai-app.html>.

173. Rhys Dipshan, *A Lot of Prompt Engineering: How Law Firm Traverse Legal Built a GPT-Powered Client Tool*, LEGALTECH NEWS (Apr. 27, 2023), <https://www.law.com/legaltechnews/2023/04/27/a-lot-of-prompt-engineering-how-law-firm-traverse-legal-built-a-gpt-powered-client-tool/>.

174. *Id.* (stating you “cannot guarantee 100% accuracy, we know that about AI systems. But we also know that about lawyers. And we certainly know that about Google . . . Traverse AI tells every user that they should work with their attorney on any specific legal issue, and that Traverse AI is not a lawyer . . . The reason why the world has adopted GPT in such a historic way, in terms of how many people have been on board in such a short period of time, is because of its stunning accuracy, right? So it’s not perfect, it can be very convincing, even when it’s wrong. But the idea is, compared to Google search, [it’s] a massive leap forward.”).

175. Oversight of A.I.: Rules for Artificial Intelligence: Hearing Before the Subcomm. on Priv., Tech. & the Law of the S. Comm. on the Judiciary, 118<sup>th</sup> Cong. (2023) (statement of Sam Altman, CEO of OpenAI).

176. Cassandre Coyer, *Reed Smith CINO Discusses Firm’s Generative AI Plans, From New Role to Pilot Projects*, THE AMERICAN LAWYER (Apr. 19, 2023),



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report directly to the firm's Chief Innovation Officer and oversee the development and adoption of large language models and GenAI tools.<sup>177</sup>

Baker McKenzie, another global law firm, created a similar position in their firm: Head of Machine Learning.<sup>178</sup>

- Law firm Edelson shared that they are using GenAI to assist with administrative tasks such as drafting communications and press releases and to power an internal chief happiness officer named “Chatty.”<sup>179</sup>
- In February 2023, law firm Allen & Overy announced a partnership leveraging Harvey, “the innovative [AI] platform built on a version of Open AI’s latest models enhanced for legal work . . . Harvey will empower more than 3,500 . . . lawyers. . . with the ability to generate and access legal content with unmatched efficiency, quality and intelligence.”<sup>180</sup> According to Reuters, more than 15,000 law firms are on a waiting list to use Harvey.<sup>181</sup> One partner described working with Harvey as “having an extra junior resource available to you at any time of the day.”<sup>182</sup>
- In March 2023, Fisher Phillips announced they are the “first major law firm to deploy the GPT-4 generated output in the form of CoCounsel,” an AI legal assistant that “performs the tasks most valuable to legal professionals in a single, easy-to-use interface.”<sup>183</sup> Multiple Fortune 50 companies, including Ford Motor and Microsoft, are also using CoCounsel.<sup>184</sup> The Wall Street Journal reported that law firms DLA Piper, Kirkland & Ellis, Skadden, Arps, Slate, Meagher & Flom and Orrick Herrington & Sutcliffe were also a part of the CoCounsel beta group.<sup>185</sup>

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<https://www.law.com/americanlawyer/2023/04/19/reed-smith-cino-discusses-firms-generative-ai-plans-from-new-role-to-pilot-projects/>.

177. *Id.*

178. See Suzanne McGee, *Generative AI and the Law*, LEXISNEXIS (2023), <https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/> (noting as of 2023 the role is held by Danielle Benecke, who has spearheaded a pilot study focused on leveraging GenAI to enhance certain work involving global trade sanctions).

179. See Isha Marathe, *Legal Industry Reacts to Goldman Sachs Generative AI Report: Keep Calm and Panic*, LEGALTECH NEWS (Mar. 30, 2023), <https://www.law.com/legaltechnews/2023/03/30/legal-industry-reacts-to-goldman-sachs-generative-ai-report-keep-calm-and-panic/> (opining GenAI is a “watershed moment for our society, and its impact is likely to be greater than the internet.”).

180. See Allen & Overy, LLP, *A&O announces exclusive launch partnership with Harvey* (Feb. 15, 2023), <https://www.allenoverly.com/en-gb/global/news-and-insights/news/ao-announces-exclusive-launch-partnership-with-harvey> (“A&O has been trialing Harvey (based on GPT-4) in beta since November 2022 under the leadership of a team of lawyers and developers tasked with disrupting the legal industry, called the Markets Innovation Group. At the end of the trial, around 3500 of A&O’s lawyers had asked Harvey around 40,000 queries for their day-to-day client work.”).

181. Merken, *supra* note 167.

182. Erin Mulvaney and Lauren Weber, *End of the Billable Hour? Law Firms Get On Board with Artificial Intelligence*, WALL ST. J. (May 11, 2023), [https://www.wsj.com/articles/end-of-the-billable-hour-law-firms-get-on-board-with-artificial-intelligence-17ebd3f8?mod=Searchresults\\_pos1&page=1](https://www.wsj.com/articles/end-of-the-billable-hour-law-firms-get-on-board-with-artificial-intelligence-17ebd3f8?mod=Searchresults_pos1&page=1) (reporting that attorneys at a firm using AI spend less time locating case law, completing analyses and answering questions clearly and succinctly. Harvey hasn’t replaced the work of lawyers, but instead provides a head start).

183. *Casetext’s CoCounsel is Powered by OpenAI’s GPT-4* FISHER PHILLIPS (Mar. 14, 2023), <https://www.fisherphillips.com/news-insights/fisher-phillips-launches-cocounsel-casetexts-transformative-ai-legal-assistant-tool.html>.

184. See Erin Mulvaney and Weber, *supra* note 182.

185. *Id.*; see also Zach Warren, *Generative AI in law firms: For many, such technologies are still a great unknown*, THOMSON REUTERS (May 23, 2023), <https://www.reuters.com/legal/transactional/generative-ai-law-firms-many-such-technologies-are-still->

- On April 5, law firm Mintz published an article publicly acknowledging the immense value GenAI could provide to the legal industry.<sup>186</sup> On April 12, Deloitte announced the launch of a GenAI practice focused on helping their clients “harness the power” of GenAI to “exponentially enhance productivity and accelerate the pace of business innovation.”<sup>187</sup> On April 28, Mastercard CEO Michael Miebach stated that AI is “something that we cannot afford to ignore,” and that they are exploring additional ways to incorporate GenAI into their organization.<sup>188</sup>
- In May 2023, LexisNexis announced it had created a platform using GPT technology and had “teamed up with some of the country’s largest firms, Baker McKenzie, Reed Smith, and Foley & Lardner.”<sup>189</sup>
- Other law firms, such as Holland & Knight, are focused on developing AI tools in-house.<sup>190</sup> Baker McKenzie stated they have been “baking large language models into existing services on a client-by-client ‘pilot’ basis.”<sup>191</sup>
- In May 2023, IBM announced they expect to pause hiring for roles they foresee replaced by AI in the near future.<sup>192</sup> Shortly after, IBM announced “IBM Watsonx,” a platform offering tools for building AI models and accessing code-generating models.<sup>193</sup> The platform will also provide a toolkit to support the governance of AI and ensure data security and compliance with regulatory and ethical requirements.<sup>194</sup>

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great-unknown-2023-05-23/ (reporting that law firm Holland & Hart has a team of data scientists working on potential GenAI applications for their firm, and that McMillan has begun exploring ways GenAI can be applied in their firm as well).

186. Jeremy D. Glaser & Lorena Niebla, *Benefits and Legal Risks of Embracing Generative AI Applications*, MINTZ P.C. (Apr. 5, 2023), <https://www.mintz.com/insights-center/viewpoints/2911/2023-04-05-benefits-and-legal-risks-embracing-generative-ai> (noting one of the industries that can be transformed by GenAI is the legal industry. Footnote 3 of their article states “[a] portion of this article was generated by ChatGPT.”); see also Bob Tarantino and Noah Walters, *Key legal considerations with generative AI*, DENTONS (Apr. 4, 2023), <https://www.dentons.com/en/insights/articles/2023/april/4/key-legal-considerations-with-generative-ai> (showcasing international law firm Dentons has also published content with disclaimers disclosing some of their content was generated by ChatGPT).

187. *Deloitte Launches Generative AI Practice to Help Clients Harness the Power of Disruptive New AI Technology*, DELOITTE (Apr. 13, 2023), <https://www2.deloitte.com/us/en/pages/about-deloitte/articles/press-releases/deloitte-launches-generative-ai-practice-to-help-clients-harness-the-power-of-disruptive-new-ai-technology.html>.

188. Caitlin Mullen, *Mastercard ‘cannot afford to ignore’ AI, CEO says*, PAYMENTS DIVE (Apr. 28, 2023), <https://www.paymentsdive.com/news/mastercard-ceo-michael-miebach-generative-ai-artificial-intelligence-payments-earnings/648854/>.

189. Mulvaney & Weber, *supra* note 182.

190. Merken, *supra* note 167 (reporting that Holland & Knight is creating an AI tool that it hopes will help lawyers review and modify credit agreements).

191. *Id.* (according to Danielle Benecke, current head of the firm’s machine learning practice).

192. See Brody Ford, *IBM to Pause Hiring for Jobs that AI Could Do*, BLOOMBERG (May 1, 2023), <https://www.bloomberg.com/news/articles/2023-05-01/ibm-to-pause-hiring-for-back-office-jobs-that-ai-could-kill?mod=djemCIO#xj4y7vzkg&leadSource=uverify%20wall> (“Hiring in back-office functions – such as human resources – will be suspended or slowed,” IBM CEO Arvind Krishna said. “These non-customer-facing roles amount to roughly 26,000 workers . . . I could easily see 30% of that getting replaced by AI and automation over a five-year period.”).

193. See Kyle Wiggers, *IBM intros a slew of new AI services, including generative models*, TECHCRUNCH (May 9, 2023), <https://techcrunch.com/2023/05/09/ibm-intros-a-slew-of-new-ai-services-including-generative-models/>.

194. Alvin R. Cabral, *IBM launches generative platform for businesses*, THE NATIONAL NEWS, (May 9, 2023), <https://www.thenationalnews.com/business/technology/2023/05/09/ibm-launches-generative-ai-platform-for-businesses/>.

## Why Lawyers Must Responsibly Embrace Generative AI

- Another company taking advantage of this technology is CarMax, which is leveraging ChatGPT to summarize customer reviews at a rate that was “previously impossible.”<sup>195</sup>
- Many law firms have publicly shared their efforts to establish internal task forces to promote their AI expertise and to coordinate across practice groups.<sup>196</sup>
- In addition to the private sector’s increasing utilization of AI, even the U.S. Government has begun to implement AI “in a range of settings, including improving taxpayer waiting times when contacting the Internal Revenue Service (IRS)”<sup>197</sup> and creating AI competitions to predict patient health outcomes using Medicare data.”<sup>198</sup>

### ADDITIONAL BENEFITS OF GENAI AI ADOPTION IN LAW: UPSKILLING THE WORKFORCE AND EXPANDING OPPORTUNITIES

In addition to the numerous real-world examples of how organizations are using GenAI, there is another enormous potential benefit on the horizon: upskilling the workforce. The existing gap between the skills workers have and those needed for available jobs is widening.<sup>199</sup> The World Economic Forum reports that “six in ten workers will require training before 2027, but only half of workers are seen to have access to adequate training opportunities.”<sup>200</sup>

Executives are encountering challenges in retaining skilled workers and filling higher-paying production roles.<sup>201</sup> This skills gap could result in 2.1 million unfilled jobs by 2030, potentially costing the U.S. economy as much as

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195. Vanessa Ho, *Build: Azure OpenAI Service helps customers accelerate innovation with large AI models; Microsoft expands availability*, MICROSOFT (May 24, 2022), <https://news.microsoft.com/source/features/ai/azure-openai-service-helps-customers-accelerate-innovation-with-large-ai-models-microsoft-expands-availability/> (“Through OpenAI’s API and Azure OpenAI Service, CarMax used GPT-3 to abstractly summarize and fine tune 100,000 customer reviews into 5,000 well-written summaries. The job would have taken CarMax’s editorial team 11 years to complete, said Kevin Hopwood, a principal software engineer at the company.”).

196. Thomas Spigolon, *Baker Donelson’s AI Group Focuses on ‘Questions Coming to Our Clients’*, LAW.COM (Jul. 24, 2023), <https://www.law.com/dailyreportonline/2023/07/24/baker-donelsons-ai-task-force-focuses-on-questions-coming-to-our-clients/> (noting many law firms across the country are promoting their generative AI expertise and providing recent examples of such).

197. The IRS, to address concerns about the long waiting times faced by callers, has implemented an AI-based voice bot system that currently allows taxpayers to set up payments and get notice questions answered. In the next year, this service will be expanded to allow for the bots to retrieve more information about individual taxpayers, further reducing waiting times. See The White House, *The Impact of AI on the Future of Workforces in the European Union and the U.S.*, 2022, <https://www.whitehouse.gov/cea/written-materials/2022/12/05/the-impact-of-artificial-intelligence/>.

198. *Id.*

199. See Jane Thier, *The skills gap is so big that nearly half of workers will need to retrain this decade. These 10 skills are most in demand*, YAHOO! FINANCE (May 1, 2023), <https://finance.yahoo.com/news/skills-gap-big-nearly-half-194829294.html> (“The long-term trend is pretty undeniable that the demand for skills outpaces the supply of skills,” Dan Shapero, chief operating officer of LinkedIn, tells *Fortune*. He added that 2022 was the tightest labor market he’d seen in his 15 years at LinkedIn.).

200. WORLD ECONOMIC FORUM, *The Future of Jobs Report 2023* (Apr. 30, 2023), <https://www.weforum.org/reports/the-future-of-jobs-report-2023/digest>.

201. *Id.*

\$1 trillion.<sup>202</sup> Additionally, there is a shifting emphasis on workers' skills, versus the traditional education qualifications or career background, occurring in the workplace.<sup>203</sup> Collectively, this highlights an urgent need to expand educational and training initiatives, to ensure workers can meet the evolving demands of the job market and fully leverage the advantages of GenAI technology. The legal industry is not immune to the current skills gap phenomenon.<sup>204</sup> Recent trends indicate some junior attorneys face class year reductions, possibly owing in part to a lack of practical experience in line with their class rank.<sup>205</sup> Others have argued the role of training and development for legal professionals has never been "more crucial."<sup>206</sup> Leveraging GenAI technology presents a unique opportunity to bridge this skill gap.<sup>207</sup> This approach not only addresses the immediate skill shortages but also anticipates future regulatory adaptations

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202. Deloitte, *US Manufacturing Skills Gap Could Leave As Many As 2.1 Million Jobs Unfilled By 2030, Deloitte and The Manufacturing Institute Study Finds*, PRNEWswire.COM (May 4, 2023), <https://www.prnewswire.com/news-releases/us-manufacturing-skills-gap-could-leave-as-many-as-2-1-million-jobs-unfilled-by-2030--deloitte-and-the-manufacturing-institute-study-finds-301281967.html>; see also Thier, *supra* note 199 ("[t]he emergence of AI applications like ChatGPT . . . will have a particularly pronounced impact by displacing and automating many roles that involve reasoning, communicating and coordinating").

203. Salesforce, *New Study Reveals Only 1 in 10 Global Workers Have In-Demand AI Skills*, Salesforce (Mar. 6, 2023), <https://www.salesforce.com/news/stories/digital-skills-based-experience/> (reporting "[t]he shift toward skills-based hiring is evident at all levels. Most (82%) people leaders surveyed said that skills are the most important attribute when evaluating candidates. Only 18% said that relevant degrees are the most important").

204. See, e.g., Jessie Yount, *Class Year Adjustments Underscore Lingering Skills Gap Among Associates*, LAW.COM (Apr. 24, 2023), [https://www.law.com/2023/04/24/class-year-adjustments-underscore-lingering-skills-gap-among-associates/?utm\\_source=email&utm\\_medium=enl&utm\\_content=20230427&utm\\_campaign=morningminute&utm\\_term=law](https://www.law.com/2023/04/24/class-year-adjustments-underscore-lingering-skills-gap-among-associates/?utm_source=email&utm_medium=enl&utm_content=20230427&utm_campaign=morningminute&utm_term=law).

205. *Id.*

206. Francis Munda, *Training and Development Strategies for Law Firm Professionals*, Law Crossing (Feb. 9, 2024), <https://www.lawcrossing.com/article/900055311/Training-and-Development-Strategies-for-Law-Firm-Professionals/>.

207. See Deloitte, *US Manufacturing Skills Gap Could Leave As Many As 2.1 Million Jobs Unfilled By 2030, Deloitte and The Manufacturing Inst. Study Finds*, PRNEWswire.COM (May 4, 2023), <https://www.prnewswire.com/news-releases/us-manufacturing-skills-gap-could-leave-as-many-as-2-1-million-jobs-unfilled-by-2030--deloitte-and-the-manufacturing-institute-study-finds-301281967.html> (Deloitte's recommendations for improving the skills, employment, and retention gaps include leveraging advanced technologies to increase workers' digital skills. Others have also suggested that AI may be able to help alleviate the shortage of skilled workers, as we could automate routine tasks as well as human capabilities.); see also John Schwartz, *Can AI Help Solve the Workforce Skills Gap?* FORBES (Apr. 6, 2023), <https://www.forbes.com/sites/forbestechcouncil/2023/04/06/can-ai-help-solve-the-workforce-skills-gap/?sh=2e0c2df9134f>.

regarding the use of GenAI in the practice of law.<sup>208</sup> Preliminary studies reveal substantial benefits in employee upskilling through use of AI technologies.<sup>209</sup>

Law firms have acknowledged this heightened necessity through a variety of strategies. Mirroring trends seen across sectors outside the legal realm, firms are beginning to professionalize the management of their education and training.<sup>210</sup> The establishment of positions such as Directors of Learning & Development is an example of this shift towards a more systematic approach, as well as the increased emphasis on strategic training initiatives and their role in building value in the firm.<sup>211</sup>

Thompson Reuters' GenAI education initiative, launched in April 2023, underscores the pivotal role of upskilling in mitigating the expanding skills gap. Their comprehensive training, which was attended by 14,000 people, covered foundational topics such as the basics of AI, machine learning, and large language models.<sup>212</sup> Thomson Reuters shared shortly after the training that they were already seeing employees better able to solve customer problems and in significantly less time.<sup>213</sup> This initiative clearly demonstrates the potential of GenAI to bridge the skills gap through upskilling.<sup>214</sup>

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208. In some jurisdictions, attorneys are already required to file disclosures regarding their use of the GenAI in litigation. *See, e.g.,* Rabihah Butler, *Generative AI and the courts: Balancing Efficiency and legal obligations*, THOMSON REUTERS (Aug. 28, 2023), <https://www.thomsonreuters.com/en-us/posts/government/generative-ai-courts/> (noting several courts, including those in Texas and Illinois, have issued standing orders or rulings regarding the use of GenAI, each of which “places the onus on the attorney to notify the court of their use of gen AI in detail. The courts also require that the attorney review and confirm the accuracy of the work done by gen AI.”).

209. *See* Erik Brynjolfsson et al., *GenAI at Work*, NAT'L BUREAU OF ECON. RESEARCH (Apr. 2023), <https://www.nber.org/papers/w31161> (studying the staggered introduction of a GAI-based conversational assistant using data from 5,179 customer support agents. The findings reveal that the GenAI significantly increased the performance of less skilled and less experienced workers across various productivity measures. The study concluded low-skill workers are **more** likely to benefit from incorporating behaviors suggested by AI compared to high-skill workers.).

210. David Curle, *AI & lawyer training: The new drivers of professional development*, THOMSON REUTERS (May 31, 2023), <https://www.thomsonreuters.com/en-us/posts/legal/ai-lawyer-training-new-drivers/>.

211. *Id.*

212. Maria Korolov, *Upskilling ramps up as gen AI forces enterprises to transform*, CIO (Dec. 13, 2023), <https://www.cio.com/article/1251391/upskilling-ramps-up-as-gen-ai-forces-enterprises-to-transform.html>.

213. *Id.*

214. For additional recommendations regarding an organization's training and talent strategy relating to AI, *see generally* Athena Alliance, *AI Governance Playbook: A Sustainable Framework for Empowering Leadership in the Age of Exponential Technology*, (2024), <https://athenaalliance.com/ai-governance-playbook/> (highlighting the importance of AI's impact on human talent and workforce planning strategies).

FAILING TO LEVERAGE GENERATIVE AI RESPONSIBLY MAY CREATE SERIOUS  
RISKS

The responsible integration of GenAI is not just a strategic advantage. Widespread adoption of GenAI is increasingly inevitable, and failure to proactively adopt this shift may create serious legal and organizational risks.<sup>215</sup>

It would be naïve to assume that some employees are not already using GenAI tools, such as ChatGPT, to support their work. Recent studies suggest as many as 50% of employees are using GenAI tools at work and a staggering 70% of those have not disclosed this to their employers.<sup>216</sup> This behavior puts organizations lacking proper oversight measures at serious risk. The risks associated with an organization's reluctance to proactively manage the responsible use of GenAI extend beyond what can be fully enumerated here, however may include:

- 1) **Unauthorized disclosure of confidential, sensitive business information, or other intellectual property.**<sup>217</sup> The increasing prevalence of shadow IT—employees using unapproved technological solutions in order to enhance efficiency—has become a significant concern.<sup>218</sup> Recent research suggests that large numbers of employees have submitted sensitive or confidential company

215. See, e.g., Mądry, *supra* note 16 (reiterating this point in his testimony before Congress, stating it is critical to proactively identify the emerging risks associated with the use of GenAI and develop clear, actionable ways to mitigate them.); see also John Sun, *Generative AI Poses Risks, But Outright Bans Aren't The Best Solution*, FORBES, (Sept. 29, 2023), <https://www.forbes.com/sites/forbestechcouncil/2023/09/29/generative-ai-poses-risks-but-outright-bans-arent-the-best-solution/?sh=7d7b62235ed3> (stating organizations “that ban AI risk falling behind competitors who . . . leverage it” and recommending ways to mitigate risks, instead of banning the technology); see also Polymer, *Enterprise security: Do not ban generative AI tools*, (Feb. 26, 2024), <https://www.polymerhq.io/blog/enterprise-security-do-not-ban-generative-ai-tools/>.

216. Richard Hathaway, *U.S.: When It Comes To GenAI, Ignorance Is Not Bliss: Three Risks Your Business Faces By Failing To Regulate Workplace Use Of GenAI*, KANE RUSSELL COLEMAN LOGAN (Apr. 28, 2023), <https://www.mondaq.com/unitedstates/privacy-protection/1309784/when-it-comes-to-generative-ai-ignorance-is-not-bliss-three-risks-your-business-faces-by-failing-to-regulate-workplace-use-of-generative-ai>, (concluding it's inevitable that some of your employees will use, or are already using, generative AI to assist with their work.); see also, Lindsay Ellis, *ChatGPT Can Save You Hours at Work. Why Are Some Companies Banning it?* WALL ST. J. (Mar. 22, 2023), <https://www.wsj.com/articles/despise-office-bans-some-workers-still-want-to-use-chatgpt-778da50e> (“Many companies are still grappling with how to monitor and regulate generative AI in the workplace. More than 40% of nearly 12,000 workers said they use ChatGPT or other AI tools at work . . . [a]lmost 70% said they do so without telling their boss.”).

217. See, e.g., Cameron Coles, *11% of data employees paste into ChatGPT is confidential*, CYBERHAVEN (Feb. 28, 2023), <https://www.cyberhaven.com/blog/4-2-of-workers-have-pasted-company-data-into-chatgpt/>, (reporting that 11% of the data employees paste into ChatGPT is confidential in nature and that the average company leaks confidential material to ChatGPT “hundreds of times per week.”).

218. See Sharon Maher, *What Is Shadow AI And What Can IT Do About It?* FORBES (Oct. 31, 2023), <https://www.forbes.com/sites/delltechnologies/2023/10/31/what-is-shadow-ai-and-what-can-it-do-about-it/?sh=22a9d9fa7127> (describing how shadow IT or shadow AI can result in a “governance nightmare,” and the risk is growing); see also Mary Pratt, *Shadow IT is increasing and so are the associated security risks*, CSO, <https://www.csoonline.com/article/575457/shadow-it-is-increasing-and-so-are-the-associated-security-risks.html>.

information into GenAI tools, such as ChatGPT.<sup>219</sup> Cyberhaven Labs reported the “average company leaks confidential material to ChatGPT hundreds of times per week.”<sup>220</sup> Cyberhaven analyzed ChatGPT usage for 1.6 million workers across various industries and found *thousands* of attempts to paste corporate data directly into it.<sup>221</sup> Following an incident at Amazon where GenAI output mimicked internal company data, Amazon instituted stringent measures to prevent the unauthorized sharing of internal code with GenAI tools.<sup>222</sup> Other organizations have issued similar mandates to reduce the risks of information from being shared with GenAI tools and their training databases.<sup>223</sup> Companies are facing increasing pressure to establish comprehensive AI governance frameworks.<sup>224</sup>

- 2) **Potential Liability for Violations of Privacy, Data Protection, and other laws.** Employers may face liability for negligent or intentional acts committed by their employees within the scope of their job duties, particularly when such actions infringe on privacy, data protection, or other legal obligations. This includes scenarios where employers fail to address the misuse of GenAI by employees, potentially leading to breaches of privacy or data protection statutes.<sup>225</sup> Additionally, according to EEOC guidance, employers may also be responsible for discriminatory outcomes of algorithmic

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219. See, e.g., Mack DeGeurin, *Oops: Samsung Employees Leaked Confidential Data to ChatGPT*, GIZMODO (Apr. 6, 2023), <https://gizmodo.com/chatgpt-ai-samsung-employees-leak-data-1850307376>, (reporting that a Samsung employee “copied the source code from a faulty semiconductor database into ChatGPT and asked it to help them find a fix. In a separate case, an employee shared confidential code to try and find a fix for defective equipment. Another employee reportedly submitted an entire meeting to the chatbot and asked it to create meeting minutes.”).

220. Coles, *supra* note 217.

221. *Id.*

222. Kevin Hurler, *Amazon Warns Employees to Beware of ChatGPT*, GIZMODO (Jan. 26, 2023), <https://gizmodo.com/amazon-chatgpt-ai-software-job-coding-1850034383>.

223. See Dark Reading, *Employees are Feeding Sensitive Biz Data to ChatGPT, Raising Security Fears*, (Mar. 7, 2023), <https://www.darkreading.com/risk/employees-feeding-sensitive-business-data-chatgpt-raising-security-fears> (“JPMorgan restricted workers’ use of ChatGPT, for example, and Amazon, Microsoft, and Wal-Mart have all issued warnings to employees to take care in using GenAI services.”); see also Aaron Mok, *Amazon, Apple, and 12 other major companies that have restricted employees from using ChatGPT*, BUSINESS INSIDER (Jul. 11, 2023), <https://www.businessinsider.com/chatgpt-companies-issued-bans-restrictions-openai-ai-amazon-apple-2023-7>.

224. See Bruno Bastit, *The AI Governance Challenge*, S&P GLOBAL (Nov. 29, 2023), <https://www.spglobal.com/en/research-insights/featured/special-editorial/the-ai-governance-challenge> (noting calls for companies to manage AI-related risks have “grown louder”); see also John P. Mello Jr., *Experts Say Workplace AI Bans Won’t Work*, TECHNEWSWORLD, (Aug. 16, 2023), <https://www.technewsworld.com/story/experts-say-workplace-ai-bans-wont-work-178537.html> (noting if employee usage of technology tools is “outside the controls or visibility of the organization, security teams simply cannot protect the data.”)

225. See generally, Zoe Argento, *Data Protection Issues for Employers to Consider When Using Generative AI*, IAPP (Aug. 9, 2023), <https://iapp.org/news/a/data-protection-issues-for-employers-to-consider-when-using-generative-ai/>.

decision-making tools, even those developed or administered by third parties like software vendors.<sup>226</sup>

- 3) **Inadequate Digital Safeguards.** Organizations should not fall into the trap of assuming that merely prohibiting GenAI technologies ensures their secure use or non-use by employees.<sup>227</sup> This oversight can lead to employees unintentionally sharing confidential or sensitive company information.<sup>228</sup> In 2024, Cisco found that some of the top concerns cited by organizations were that the use of GenAI could potentially harm their legal and intellectual property rights (69%), the risk of sensitive information could be shared publicly or with competitors (68%), and the possibility of receiving incorrect information from GenAI tools (68%).<sup>229</sup> Despite these risks, a significant number of GenAI users still input sensitive data, with 62% admitting to entering details about internal processes, 48% inputting non-public company information, and 45% entering employee names or details, underscoring the urgent need for enhanced digital safeguards and risk management strategies in the era of GenAI.<sup>230</sup>
- 4) **Reputational Risk from Data Breaches.**<sup>231</sup> Now more than ever, the importance of safeguarding client confidentiality cannot be overstated.<sup>232</sup> Clients are demanding that companies protect their

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226. U.S. Equal Employment Opportunity Commission, *The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees*, EEOC (May 12, 2022), <https://www.eeoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence> (stating “if an employer administers a pre-employment test, it may be responsible for ADA discrimination if the test discriminates against individuals with disabilities, even if the test was developed by an outside vendor. In addition, employers may be held responsible for the actions of their agents, which may include entities such as software vendors, if the employer has given them authority to act on the employer’s behalf.”).

227. See generally, Maria Dinzeo, *Corporate Bans of AI Tools Come with Their Own Risks*, LAW.COM, (May 11, 2023), <https://www.law.com/corpcounsel/2023/05/11/corporate-bans-of-ai-tools-come-with-their-own-risks/?slreturn=20240021144344>.

228. See Cisco Systems, Inc., *Cisco Privacy Benchmark Study 2024*, p. 20-23, [https://www.cisco.com/c/dam/en\\_us/about/doing\\_business/trust-center/docs/cisco-privacy-benchmark-study-2024.pdf?CCID=cc000160&DTID=odicdc000016&OID=rptsc032067](https://www.cisco.com/c/dam/en_us/about/doing_business/trust-center/docs/cisco-privacy-benchmark-study-2024.pdf?CCID=cc000160&DTID=odicdc000016&OID=rptsc032067) (noting GenAI puts AI in the hands of many more users and describing the impacts of this).

229. *Id.* at 20-21.

230. *Id.* (reporting “[m]ost organizations have become aware of these risks, with many working to put in place controls that would limit their exposure.”).

231. FTI Consulting, *New FTI Consulting Survey Reveals Leading Corporate Data Privacy Risks, Priorities and Change Initiatives* (Mar. 2020), <https://www.ftitechnology.com/company/press-releases/new-fti-consulting-survey-reveals-leading-corporate-data-privacy-risks>, (finding respondents were concerned about data privacy issues, which could cause “very negative” impacts on organization reputation, investor confidence, business operations and external relationships.”).

232. Matthew Lieberman, *Mind The Trust Gap: How Companies Can Retain Customers After A Security Breach*, FORBES 8, (Dec. 8, 2017), <https://www.forbes.com/sites/forbestechcouncil/2017/12/08/mind-the-trust-gap-how-companies-can-retain-customers-after-a-security-breach/?sh=1683cbbd6c95> (noting only 25% of consumers believe



confidential information or they will take their business elsewhere.<sup>233</sup> A data leak has serious consequences, even if done unintentionally.<sup>234</sup> The ramifications of a data breach extend far beyond mere operational disruptions, posing a significant threat to a company's reputation. Such incidents, regardless of intent, undermine customer trust and loyalty.<sup>235</sup> Harvey Jang, Vice President, Deputy General Counsel and Chief Privacy Officer at Cisco articulates the crux of the matter well: “[p]rivacy has become inextricably tied to customer trust and loyalty.”<sup>236</sup> This statement highlights the need for companies to ensure they adopt stringent data protection protocols. As GenAI technologies become more widespread, the potential for accidental data exposure increases, particularly if employees are not adequately trained. Moreover, even if law firms do not experience a data breach, the reality is clients will increasingly be expecting their lawyers to leverage technology efficiently to better meet their evolving needs.

- 5) **Talent Attraction and Retention.** The next generation of legal professionals have grown up with technology as an integral part of their lives. Law firms that ban or significantly restrict GenAI or similar technology will likely be less attractive to lawyers who place a great value on efficiency and are interested in the significant benefits that AI can provide them. We expect this trend will continue as the use of GenAI becomes increasingly common. As Daniel Tobey, chair of DLA Piper's AI practice, succinctly puts it, “This is an arms race, and you don't want to be the last law firm with these tools . . . It's very easy to become a dinosaur these days.”<sup>237</sup>
- 6) **Competitive Disadvantage.** Law firms that do not embrace GenAI will inevitably lag behind other law firms who do so responsibly.<sup>238</sup> John Villasenor, a professor of electrical engineering, law, public policy, and management at UCLA, compellingly argues that “[l]aw firms that effectively leverage emerging AI technologies will be able to offer services at lower cost, higher efficiency, and with

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companies handle their personal information responsibly and “87% will take their business to a competitor if they don't trust a company to handle their data responsibly”) (emphasis added).

233. *Id.*

234. *See generally* Cisco Systems, *supra* note 228 (reporting 94% of organizations say their customers would not buy from them if they did not protect data properly).

235. *Id.* at 4 (noting the importance of privacy in relation to customer trust).

236. *Id.*

237. Merken, *supra* note 167.

238. *See, e.g.*, ABA Ctr. For Innovation, *2023 Midterm Innovation Trends Report*, AM. BAR ASS'N, <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/aba-cfi-innovation-trends-report2023.pdf> (noting that clients are demanding more efficient and cost-effective legal work, which is a key driver behind lawyers more readily embracing technology).

higher odds of favorable outcomes in litigation. Law firms that fail to capitalize on the power of AI will be unable to remain cost-competitive, losing clients and undermining their ability to attract and retain talent.”<sup>239</sup> His insights highlight the stark reality that organizations that fail to embrace this new technology will fall significantly behind those that do so responsibly. Future requests for proposals (“RFPs”) are likely to increasingly scrutinize how law firms engage with and leverage new technology, such as artificial intelligence, to enhance their delivery of legal services.

Furthermore, by eliminating GenAI from their organization, firms are missing a critical opportunity to monitor, audit, and govern employees’ use of the technology. They are also ignoring an important training opportunity to teach their employees how to properly leverage these new tools.<sup>240</sup> This oversight not only diminishes a firm’s internal capabilities but also places them at a tangible disadvantage compared to forward-thinking competitors who recognize and seize the value of training their employees on GenAI technologies.

#### BEST PRACTICES FOR LAWYERS TO MANAGE RISKS RELATING TO GENAI

As technology continues to evolve, lawyers must evolve with it. While ChatGPT and other similar GenAI technologies are currently new tools, lawyers must always have a foundational understanding of relevant technology, including its limitations and risks, to effectively provide competent legal services.

Management of AI-related risks is currently one of the top challenges for businesses.<sup>241</sup> Lawyers can proactively address these challenges by developing and implementing a set of best practices to encourage the responsible use of GenAI. To guide legal professionals in this effort, we’ve developed an initial “Top 10” list of recommended best practices for leveraging GenAI effectively and legal professionals to responsibly in the practice of law.<sup>242</sup>

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239. John Villasenor, *How AI will revolutionize the practice of law*, BROOKINGS (Mar. 20, 2023), <https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/>.

240. See, e.g. Shelby Hiter, *Risks of Generative AI: 6 Risk Management Tips*, EWEEK (Aug. 15, 2023), <https://www.eweek.com/artificial-intelligence/generative-ai-risks/> (noting it’s important to train all employees on the organization’s AI policy, as a foundation, and then further explain how it applies in practice to respective roles, departments, and use cases. Employees who work with sensitive data and applications should receive “more detailed and frequent training.”).

241. Marianna Wharry, *Public’s Unease with AI Is Creating Another Hurdle for Adoption*, CORPORATE COUNSEL, Sept. 21, 2023, <https://www.law.com/corpocounsel/2023/09/21/publics-unease-with-ai-is-creating-another-hurdle-for-adoption/>.

242. The following compilation of best practices is not intended to serve as an exhaustive or universal directive. Rather, it functions as an initial framework for law firms to begin to strategize about their respective GenAI practices. We recognize that this field is characterized by rapid technological developments and shifting legal landscapes. Therefore, while we made every effort to provide accurate and up-to-date information at the time of publication, we anticipate the parameters for best practices will

- 1) **Prioritize Cybersecurity and Safety** – The 2024 IBM Institute for Business Value report highlights an astounding statistic: 96% of executives say “adopting generative AI makes a security breach likely in their organization within the next three years.”<sup>243</sup> In light of this, it’s imperative for organizations to take proactive measures to mitigate potential negative impacts from the use of AI technologies to ensure its being leveraged in a responsible and compliant manner.<sup>244</sup> Such measures should encompass practices such as implementing systemic audits, using bias detection tools, and the continuous monitoring and assessment of the company’s technology use. At a minimum, employees should be strictly prohibited from entering private or sensitive information into public AI platforms and properly trained on the secure use of the tools.<sup>245</sup> Moreover, beyond the establishment of robust security protocols, it’s crucial to provide comprehensive education to all stakeholders regarding the advantages, limitations, and possible risks associated with GenAI, including the threats posed by social engineering and other sophisticated cyber-attacks.<sup>246</sup>
- 2) **Establish Cross-Functional Teams for Continuous Collaboration** – Assemble a team of cross-functional stakeholders to carefully evaluate the risks and benefits of integrating new technologies into your organization and to continuously monitor it. Ensure team members are from varied backgrounds and across multiple levels of experience to ensure wide-ranging and diverse perspectives are represented. This is particularly important for effective risk mitigation.<sup>247</sup> Legal professionals specializing in

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continue to evolve over time in response to new advancements and legal precedents. Further, the utility of these initial best practices are not uniform across all market segments. Variances in jurisdictional regulations, client expectations, and firm specialties necessitate a customized application of these respective guidelines. For additional examples and use cases, *see* Pierce & Goutos, *supra* note 131.

243. IBM Institute for Business Value, *Generative AI amplifies risk—and resilience*, <https://www.ibm.com/thought-leadership/institute-business-value/en-us/report/ceo-generative-ai/cybersecurity>.

244. *See* John Greenwood, *Novel Social Engineering Attacks Increase by 135% with GenAI Uptake*, THE CYBER SECURITY TIMES (Apr. 6, 2023), <https://www.thecybersecuritytimes.com/novel-social-engineering-attacks-increase-by-135-with-generative-ai-uptake/> (“[c]ybersecurity firm Darktrace reported a 135% increase in novel social engineering attack emails during the first two months of 2023. The firm’s research team found that the emails targeted thousands of its customers in January and February.”); *see also* Pierce & Goutos, *supra* note 131.

245. *See* Pierce & Goutos, *supra* note 131.

246. *See generally* IBM, *Cost of a Data Breach Report 2023*, <https://www.ibm.com/reports/data-breach>.

247. *See generally* TEAM8, *A CISO’s Guide GenAI and ChatGPT Enterprise Risks*, (Apr. 2023), <https://team8.vc/wp-content/uploads/2023/04/Team8-Generative-AI-and-ChatGPT-Enterprise-Risks.pdf>; *see also* Karla Grossenbacher, *Employers Should Consider These Risks When Employees Use ChatGPT*, BLOOMBERG (Feb. 16, 2023), <https://news.bloomberglaw.com/us-law-week/employers-should-consider-these-risks-when-employees-use-chatgpt>.

different areas—such as intellectual property, data privacy, and employment law—can provide insights into various aspects of legal risk that might not be apparent to practitioners working in isolation. This comprehensive view allows for the early identification of potential challenges and the development of effective strategies to mitigate these risks before they materialize.<sup>248</sup>

- 3) **Training and Education** – One of the most critical aspects of successfully integrating GenAI into an organization is comprehensive employee education and training. Beyond general awareness, organizations should establish comprehensive training programs and develop educational materials to ensure employees use GenAI appropriately and in accordance with their respective policies. This may include measures such as hands-on workshops, online learning platforms, or working with specialized consultants who can tailor programs to the organizations' specific needs. At a minimum, employee training should cover the practical applications of AI, and professional and ethical responsibilities. The employee training is also a great opportunity to communicate the company policy on AI to set clear expectations for appropriate use.<sup>249</sup>
- 4) **Cultivate a Responsible AI Culture** – Leaders should strive to foster a culture of responsible AI use throughout the organization. It's important to strike a balance that encourages tone for employees to explore and utilize AI technologies, while still maintaining legal compliance. This initiative must originate from the top, with senior leaders committed to open dialogue, critical inquiries, and constructive feedback. The recent Executive Order on AI made clear that promoting innovation and competition is a top priority, and employers should too.<sup>250</sup> Thus, any approach should not only permit but encourage employees to voice questions and concerns without fear of stifling innovation or subjecting them to any negative scrutiny.

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248. See generally IBM, *AI Alliance Launches as an International Community of Leading Technology Developers, Researchers, and Adopters Collaborating Together to Advance Open, Safe, Responsible AI*, (Dec. 5, 2023), <https://newsroom.ibm.com/AI-Alliance-Launches-as-an-International-Community-of-Leading-Technology-Developers,-Researchers,-and-Adopters-Collaborating-Together-to-Advance-Open,-Safe,-Responsible-AI> (describing the launch of an AI Alliance and the numerous benefits it will provide).

249. See generally Athena Alliance, *AI Governance Playbook: A Sustainable Framework for Empowering Leadership in the Age of Exponential Technology*, (2024), <https://athenaalliance.com/ai-governance-playbook/> (recommending organizations should adopt a learner's mindset by engaging in foundational and continuous AI education).

250. Exec. Order No. 14110, 88 Fed. Reg. 75191 (Nov. 1, 2023); see also The White House, *Fact Sheet: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence*, Oct. 30, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/>.

- 5) **Confidentiality and Privacy Policies** – Companies should develop comprehensive policies and practices that prioritize the protection of sensitive business information, particularly when engaging with third-party tools.<sup>251</sup> Ensure these policies are flexible and living documents, as this technology advances rapidly and they will need to be able to evolve in line with this. Organizations should include practical items, such as an incident response plan in the event any data is compromised.<sup>252</sup>

In addition to formulating these policies, it's equally important to effectively communicate them to all employees. Ensuring that every member of the organization understands the policies, their importance, and their role in maintaining confidentiality is vital for creating a secure information environment. Regular training sessions, updates, and reminders can help keep these policies top of mind and reinforce the organization's commitment to protecting client data.

Firms should also explore the potential benefits of enterprise solutions, which typically offer a more secure framework for handling sensitive information compared to public or third-party options. These solutions can provide an added layer of security and control, minimizing organizational risk.<sup>253</sup> For additional guidance on crafting and implanting these policies, organizations can look to resources such as, the MIT Task Force on Responsible Use of Generative AI for Law. Their published principles and guidelines offer valuable insights regarding the duty of confidentiality, as well as other ethical obligations, in the use of AI applications.<sup>254</sup>

- 6) **Legal Compliance and Ethics Policies** – Work with counsel to establish clear written policies regarding the use of GenAI to ensure legal compliance. Some companies have already done so and have

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251. See generally TEAM8, *A CISO's Guide GenAI and ChatGPT Enterprise Risks*, TEAM8 (Apr. 2023), <https://team8.vc/wp-content/uploads/2023/04/Team8-Generative-AI-and-ChatGPT-Enterprise-Risks.pdf>.

252. See Dark Reading, *supra* note 223 (“[i]n one case, an executive cut and pasted the firm’s 2023 strategy document into ChatGPT and asked it to create a PowerPoint deck. In another case, a doctor input his patient’s name and their medical condition and asked ChatGPT to craft a letter to the patient’s insurance company.”).

253. See Dan Felz et al., *ChatGPT & GenAI: Everything You Need to Know, Part 2*, LAW.COM (Mar. 1 2024) <https://www.lawjournalnewsletters.com/2023/05/01/chatgpt-generative-ai-everything-you-need-to-know-part-2/> (“[a]s an example, Microsoft has announced it is offering an “Azure OpenAI Service” that grants enterprise customers access to OpenAI’s suite of generative AI tools (ChatGPT, Codex, and DALL-E) within an Azure environment. Enterprise solutions are more likely to memorialize confidentiality, privacy, security, and IP terms responsive to needs of enterprise customers in an enterprise-level agreement.”).

254. See MIT, *Task Force on Responsible Use of Generative AI for Law*, (Jun. 2, 2023), <https://law.mit.edu/ai>.

publicly shared their policies and/or guidelines.<sup>255</sup> Regulatory agencies have provided preliminary guidance on AI usage and there will be more comprehensive regulations in the near future.<sup>256</sup> The current administration is dedicated to ensuring the fair use of AI and opposes employing AI in ways that marginalize those who frequently face barriers to equal opportunity and justice.<sup>257</sup> Several organizations have also developed AI risk management frameworks to assist organizations in proper AI risk management.<sup>258</sup> This is a rapidly evolving field, so it is critical to stay abreast of new laws and developments and continue to update policies accordingly.<sup>259</sup>

- 7) **Understand the Risks, Impacts & Limitations** – Understand the risks, potential impacts, and technical limitations. This information should be considered when reviewing any output. Users should also understand the GenAI provider’s terms of service, which should include information regarding how the data collected will be used, including whether or not it may be included in training for future AI models.<sup>260</sup>
- 8) **Trust, but always verify** – Never rely solely on the information in the GenAI output without doing independent verification and due diligence to confirm its accuracy and completeness. In fact, legal professionals have an existing ethical obligation to do so.<sup>261</sup>

255. *Id.* (noting Microsoft published a “Code of Conduct” for its Azure OpenAI Service.); *see also* Ironclad’s GenAI Policy (Apr. 24, 2023), <https://explore.ironcladhq.com/rs/528-QBH-821/images/Generative-Artificial-Intelligence-Policy.pdf>.

256. *See, e.g.*, EEOC, *Select Issues: Assessing Adverse Impact in Software, Algorithms, and AI Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964*, <https://www.eeoc.gov/select-issues-assessing-adverse-impact-software-algorithms-and-artificial-intelligence-used> (making clear the improper application of AI could potential violate Title VII and “employers may be held responsible for the actions of their agents, which may include entities such as software vendors, if the employer has given them authority to act on the employer’s behalf.”).

257. *See supra* note 102 (noting the Biden Administration issued a comprehensive Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence in October 2023); *see also* Ivey Dyson, *How AI Threatens Civil Rights and Economic Opportunities*, BRENNAN CENTER FOR JUSTICE, (Nov. 16, 2023) (recognizing Congress has displayed a growing interest in AI and describing the existing impacts to civil rights, liberties, and economic opportunities).

258. *See, e.g.*, U.S. Dept. of Com., Nat’l Inst. of Standards and Tech., *AI Risk Management Framework (NIST AI RMF 1.0)*, 2 (Jan. 2023) <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>.

259. Principles and guidelines for the responsible application of GenAI in legal work are still in development. *See, e.g.*, Amamir Sheikh, *MIT Task Force Puts Forth Guidelines for Generative-AI Use in Legal Practice*, CRYPTOPOLITAN (Aug. 4, 2023), <https://www.cryptopolitan.com/mit-guidelines-generative-ai-legal-practice/>.

260. Whiter, *supra* note 22 (noting that firms should understand exactly how inputted data is processed and used, including where it is stored, how it may be shared with third parties, and existing security systems to minimize risks of data leaks).

261. *See, e.g.*, AM. BAR ASS’N HOUSE OF DELEGATES, *RESOLUTION 112 (2019)*, <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/112-annual-2019.pdf> (noting lawyers must oversee AI tools used in legal services to ensure they meet ethical standards. They should understand the technology well enough to be able to confirm the AI’s outputs are accurate and complete while protecting client confidentiality).

Attorneys should be aware of the common risks, such as biases or hallucinations, and how those risks may affect the GenAI output.<sup>262</sup> Attorneys should also be aware of the severe consequences that may result if they submit incorrect or hallucinated information to course needs to be reviewed by a court.<sup>263</sup> Institutions like MIT provide guiding principles and frameworks aimed at reducing the risks associated with AI applications and maintaining human oversight.<sup>264</sup>

- 9) **Transparency and Traceability** – Prioritize transparency and traceability. The ABA has urged organizations that design, develop, deploy, or use AI products and services to ensure the transparency and traceability of the products, services, systems, and capabilities.<sup>265</sup> Transparency means ensuring firms understand and can monitor their respective AI systems. Traceability refers to the ability to track and understand the development and deployment of their AI technologies. Leaders should know how AI is being used within their organizations. Similarly, they should be transparent in their use of GenAI. For example, including disclaimers on blog posts or presentations that were prepared with the assistance of AI, to provide proper attribution.<sup>266</sup>
- 10) **AI Leader** – Appoint a dedicated individual within the organization as the primary overseer of GenAI point of contact, to oversee GenAI policies and practices. This will help to ensure a unified approach to the management of GenAI, as well as provide employees a clear route to report risks, address challenges, and contribute to the continuous improvement across the organization.

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262. See Tony Petrucci, "The perils of dabbling": AI and the practice of law (Sept. 11, 2023), <https://www.reuters.com/legal/legalindustry/perils-dabbling-ai-practice-law-2023-09-11/> (describing the risks of the generation of false information and the impact this can have in the practice of law.).

263. *Id.* (summarizing the now well-known case where a NY attorney submitted nonexistent cases generated by ChatGPT to the Southern District of New York and the resulting sanctions that followed).

264. See MIT, *Task Force on Responsible Use of Generative AI for Law*, (Jun. 2, 2023), <https://law.mit.edu/ai/>; see also Girish Chiruvolu, *Security and Best Practices for Lawyers Using Generative Artificial Intelligence and Large Language Models*, AM. BAR ASS'N, GPSOLO REPORT, (Feb. 2024) <https://www.americanbar.org/groups/gpsolo/resources/ereport/2024-february/security-best-practices-lawyers-using-generative-artificial-intelligence-large-language-models/?login>.

265. See, e.g., ABA, *ABA House Adopts 3 Guidelines to Improve Use of Artificial Intelligence* (May 24, 2023), [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/publications/washingtonletter/may-23-wl/ai-0523wl/](https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/may-23-wl/ai-0523wl/).

266. See KPMG, *The Flip Side of Generative AI: Challenges and Risks around responsible use* (2023), <https://advisory-marketing.us.kpmg.com/speed/pov-generativeai-challenges.html> (noting lack of transparency in the company's use of GenAI content can cause harmful reputational issues. For instance, Tech publisher CNET came under criticism recently for using the technology to draft over 70 articles but misrepresented the role of their team of editors in the process).

## CONCLUSION

“Just because we cannot see clearly the end of the road, that is no reason for not setting out on the essential journey. On the contrary, great change dominates the world, and unless we move with change we will become its victims.”

- Robert F. Kennedy, July 2, 1964, Warsaw Poland<sup>267</sup>

As we navigate this transformative era in the legal profession, Robert F. Kennedy’s prescient words resonate with renewed urgency. Though the journey ahead is fraught with uncertainty, it offers an incredible opportunity to embrace new potentials and redefine the practice of law. This paradigm shift challenges us not only to reconsider how we practice law but also to rethink what it means to be a lawyer in the 21st century.

Those who fail to adapt risk becoming casualties of change rather than its beneficiaries. While it’s essential to balance technological advancements with existing professional and ethical standards, the time to act is now. Lawyers who proactively and responsibly integrate GenAI into their practice will set new benchmarks for the legal field. These forward-thinking lawyers will be able to shift their time and efforts away from tedious, administrative tasks and instead focus on more strategic, high-value, and rewarding legal work.

This evolution promises a redefinition of existing legal roles and a transformation in the delivery of legal services, with substantial potential for a more equitable and efficient legal system. As we embark on this essential journey, we must approach it with cautious optimism. The end of the road may not be clear, but the potential benefits are immense: broadened access to justice, a more strategic and impactful legal profession, and a legal system that is both equitable and efficient. By embracing change, we have the power to shape a legal future that is more equitable, efficient, and profoundly impactful than ever before.

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267. See ABA COMM’N. ON THE FUTURE OF LEGAL SERVICES, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE U.S., AM. BAR ASS’N (2016), <https://www.srln.org/system/files/attachments/2016%20ABA%20Future%20of%20Legal%20Services%20-Report-Web.pdf> (noting “as reported in the NEW YORK TIMES, July 2, 1964.”).