

Better, Faster, Stranger: What Attys Think Of Our AI Future

By Chris Villani

Law360 (November 27, 2024, 2:49 PM EST) -- During a demonstration this summer on the potential for artificial intelligence in the legal profession, retired U.S. Bankruptcy Judge Frank Bailey asked ChatGPT to generate a complaint in a fake breach of contract suit.

Exactly 53 seconds later, the complaint was done, complete with an introduction, a description of the parties, information about jurisdiction with a citation to the applicable law, and an outline of the phony allegations.

"It looks terrific," said an attorney watching the presentation at the Pioneer Public Interest Law Center office in Boston.

Judge Bailey examined the complaint more closely and rendered his verdict: "This is a very serviceable complaint."

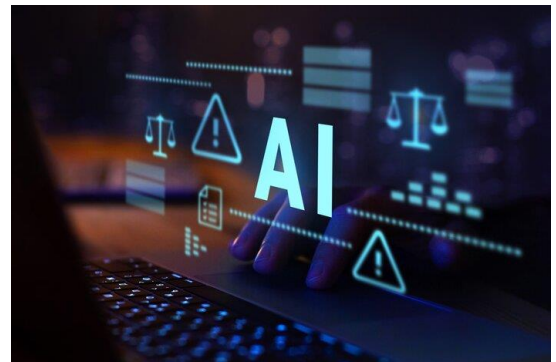
Whether attorneys like it or not, the AI revolution is already underway. The question is how it will change the business of law — and how soon.

For many firms, the technology promises new efficiencies. At Sullivan & Cromwell LLP, AI Discovery Assistant, or AIDA, has effectively eliminated first-level document review by humans and made work cheaper for the firm and its clients. The firm said it has trained the software on dozens of past cases and "dramatically" increased the speed of discovery, freeing up its attorneys to do more "high-end work."

"You're talking about projects that would have taken weeks or months, and doing it in hours," litigation partner Matthew Schwartz told Law360. "That comes with very significant cost savings."

While stressing that Sullivan & Cromwell is careful to make sure that client data is protected and that the technology does not "hallucinate" facts, Schwartz said the firm has encouraged its attorneys to test how AI can help.

"We want to allow our lawyers to experiment with other AI programs and let them see how it can



Artificial intelligence can lead to new efficiencies at law firms, as evidenced by Sullivan & Cromwell LLP's AI Discovery Assistant, which has effectively eliminated first-level document review by humans so attorneys can do more "high-end work." (iStock.com/anyaberkut)

improve our practice," he said. "We sort of let people experiment a little bit."

The Pioneer Public Interest Law Center experiment hinted at what the future could look like. After the breach of contract complaint was created, a legal intern moved on to discovery and asked the software to come up with a list of interrogatories directed at the fictitious defendant. That document took 46 seconds to draft. The software then answered the discovery questions, which took less than 30 seconds but involved ChatGPT essentially making up facts.

A Texas lawyer pursuing a wrongful termination lawsuit against Goodyear Tire & Rubber Co. recently ran into similar troubles and ended up being sanctioned for submitting a brief that included citations to nonexistent cases

"Now we are in a dangerous area," Judge Bailey noted with a chuckle.

Finally, ChatGPT generated a motion to dismiss in less than 50 seconds, with accurate case citations.

"You can't just sign this and file it," Judge Bailey said, "but it's a quite credible job."

The transformative potential of the technology cannot be overstated, Judge Bailey said during the presentation.

"Everybody is up in arms about what AI is going to mean for the legal profession and is it going to change everything in the next three, six, nine, 12 months? Probably not," he said. "Is it going to change the entire world in the next 10 years? Most definitely."

Morgan Lewis & Bockius LLP is among the many firms beginning to test AI products themselves. Intellectual property partner Rachelle Dubow said it has allowed the firm to "get in on the ground floor."

"We don't view it as a tool that is going to replace our lawyers," Dubow said. "We think this tool and tools like it are going to enhance our ability to develop exceptional client service in the most efficient way."

Dubow said the firm has a small "task force" testing various uses for AI technology. She said no one is using AI to draft contracts, but AI has proven to be useful in document review. It can scan existing agreements to determine whether the terms of a new agreement are in line with the market or whether there is certain leverage to be gained in the transaction, Dubow said.

"All of that is going to be possible in the shorter term, rather than the longer term," she said.

Attorneys, and even defendants, are seeing the potential for AI and other newer technologies. The president of the Massachusetts Bar Association has touted the ability for AI to make the justice system more accessible for litigants who do not have an attorney, which is a large majority in areas like family law. In a recent insider trading case, a defendant with tech know-how developed his own AI program to help with discovery and fighting the charges against him, which were eventually dropped.

By far the two biggest concerns attorneys flagged in using AI technology are the need to protect client information that could be compromised by entering it into an AI system and the potential for hallucinations.

"AI technology is going to provide you with an answer to any question you ask," Dubow said. "Whether the answer is accurate or not, it will always answer the question."

Judge Bailey told Law360 that there is "no question" that AI is being used increasingly throughout the legal field, and bigger firms have been developing their own platforms, which better safeguards client confidentiality.

In addition to hallucinations and protecting client data, he raised another concern: attorneys using AI to "know" more than they actually do.

"Let's say I am a lawyer that doesn't know anything about intellectual property litigation, but my client calls and asks me a question about it," Judge Bailey said. "What I should do is say, 'I have no experience in that and let me give you a name or a list of names.'"

Instead, a lawyer could throw their query into the firm's AI platform and try to learn "enough" to keep the client and generate those fees, which Judge Bailey said could run afoul of ethical rules.

K&L Gates LLP white collar partner Hayley Trahan-Liptak said her firm has a focus group that meets regularly to assess how AI is impacting both their clients and their own work. The firm uses a popular AI platform called CoCounsel, which Trahan-Liptak described as a "smart Google," to summarize documents and identify passages that a lawyer might be looking for.

But the program is not perfect, she said.

"It's hard to really analyze hidden messages like sarcasm, the things that don't necessarily come across in the written word that you really need a human to understand," Trahan-Liptak said. "I think those programs are trying to accomplish that, but actually doing that is going to take some time to recognize that nuance."

Nelson Mullins Riley & Scarborough LLP litigator Melissa Nott Davis said that AI is also likely not going to be a worthy substitute for in-court practitioners anytime soon.

"As long as we still have jury trials, there is going to be a personal element of the presentation of evidence to a jury that is still going to matter," Davis said, adding that she could envision firms ramping up trial practices because they are better insulated against emerging technologies.

"Where folks are worried that it's going to take fewer transactional lawyers to do the same work because we have an AI tool, it does make sense as a long-term business planning thing to think about where the growth is going to be and what the firm might want to do to be able to hold market share," she said.

While attorneys say that AI has reduced the number of associates that might be on a case or redirected some of their work from document review to other areas, Dubow said her message to younger attorneys is that AI "is not going to replace you."

"These are tools that are going to enhance the way we practice," she said. "But it's not going to replace the need for human beings to think through and devise strategies, to negotiate with opposing counsel, or to problem-solve. These are human skills that we are going to continue to need."

Davis said AI has continued to pop up in her practice, whether it's through document review or helping to summarize dense scientific studies that are often used in product liability cases.

But she said she is not ready to fully turn over the reins to AI.

"I am a little skittish about it," Davis said. "I'd worry about whether it's getting the case law right. I am not ready to let it draft anything."

The hesitancy to embrace AI isn't limited to attorneys, Schwartz said, noting that AI is "still in its infancy when it comes to the law." Many clients, he said, are completely against AI being used by their lawyers. But others are asking questions and showing more interest in the technology.

The Sullivan & Cromwell litigation partner predicted that AI will see an "inflection point" similar to what happened when the Cloud was introduced as a way to store information digitally.

"We were told, 'no, no, no,' you can't use the cloud," Schwartz said. "Then, overnight, a deluge of clients said, 'not only can you use the cloud, you have to use the cloud. I think that's what's going to happen with AI.'"

Firms need to be ready when the scales tip to AI becoming the norm, he said.

"The firms who are putting in the time to understand AI now and are ready to hit the ground running when that point comes, they will be in a better position than the firms that don't put in that work," Schwartz said. "That's just my feeling."

--Editing by Nicole Bleier.