COMPUTER AND TECHNOLOGY SECTION

Circuits

e-Journal of the Computer & Technology Section
of the State Bar of Texas
April 2024

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Stay tuned for our FREE CLE each quarter!

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Letter from the Chair

By Reginald A. Hirsch

We hope everyone had a great and safe Spring Break. Again, we thank you for being a member of our Section and please help us spread the word by urging your fellow colleagues to join as well.

We continue to provide CLE's to our Section members and we will be providing our latest free CLE next month and look forward to you joining us. You should be receiving an email notice shortly regarding this upcoming free 1-hour CLE.

The Spring 2024 issue of Circuits is an outstanding issue for our members. The variety of articles and material will reward our members with scholarly and practical articles to be utilized in their everyday practice. We have articles and tips including an article by Cragi Ball on his 12 steps for improving your searches with E-Discovery, an article by Pierre Grosdidier on the FTC first time bringing an action to protect sensitive geolocation data, an article by Kevin M. Clark regarding the different perspectives of corporate client and law firms and integrating the two, and an article by John Browning on the multinational Judicial Perspective of AI just to name a few. In addition, we annually send 2 members of the Section to the February ABA Tech show and this year's attendees Mark Unger and Mitch Zoll have provided you with their incites and their review of this year's ABA Techshow. In their article they provide useful information regarding presentations regarding Microsoft Co Pilot, MS Word, Whether Lawyers Should or Should Not Use Chat GPT and Optimizing Your Business Profile. To our great authors, we appreciate your contributions to Circuits and thank you.

I would like again to thank Sally Pretorius and Katie Stahl, our co-editors of Circuits, for their dedication and hard work. You two are the best at "rounding up the wet cats".

This year the State Bar of Texas has honored our Section with a request to take over the programming for the "Adaptable Lawyer Track" held annually at the State Bar of Texas Annual Meeting. This year's meeting will be held at the Hilton Anatole Hotel in Dallas Texas on June 20-21, 2024. The "Adaptable Lawyer Track" will be on June 20, 2024 and will be a full day CLE. We are excited to announce this year our featured presenter will be Brett Burney, who is a well-known author, trainer, consultant and speaker. You can learn more about Brett at About – Burney Consultants LLC. In addition, the Adaptable Lawyer Track will include presentations on

ChatGPT and AI, How to Deal with Social Media companies, A Workshop providing Practical Tips for IOS and Word and More, and of course the famous 60 Apps in 60 Minutes.

With the guidance of our CLE Chair, Grecia Martinez and our CLE subcommittee I can assure you that this will be an outstanding CLE and we look forward to seeing you at the Annual Meeting. This year our social event (TechTok) will be in conjunction with the Corporate Counsel Section and will be right after the conclusion of our Thursday's CLE, so please join us.

Our quarterly annual meeting of the Section and the election of new officers and new council members will take place on Thursday June 20,2024 at the Annual Meeting and we hope you can join us then.

The State Bar of Texas AI Taskforce, which a number of our Section members serve on, will be releasing its final report to the State Bar Board in May and we will advise you of its status.

Our Section has and will continue to examine the issues regarding AI and its usage by lawyers and provide information, resources, and guidance. We as a Section continue to strive to assist Texas lawyers in maintaining their "technical proficiency" and to respond with knowledge and resources regarding these evolving changes.

Reginald A. Hirsch
2023-2024 Chair
Computer & Technology Section
State Bar of Texas

COMPUTER AND TECHNOLOGY SECTION

Dual Dynamics of Legal Operations: Maximizing Value and Minimizing Costs

By Kevin M. Clark

In the legal industry, managing legal operations and spending analysis is a critical task requiring nuanced understanding from both the business and legal firm perspectives. In essence, legal operations revolve around optimizing legal services for businesses and maximizing profitability for law firms, all within the framework of ethical and efficient client service.

CORPORATE PERSPECTIVE: STREAMLINING LEGAL SPEND

From a business or corporate standpoint, legal spend analysis is a strategic process to optimize legal expenses. This process encompasses collecting, analyzing, and interpreting data related to legal costs. The goal is to ensure spending on legal matters contributes positively to the company's overall financial health and business objectives.

Identifying Cost-Effective Strategies

Businesses engage in various practices to streamline legal expenses. These include renegotiating rates with outside counsel, utilizing alternative fee arrangements, and investing in legal technology solutions that automate routine tasks. Moreover, companies increasingly turn to legal process outsourcing (LPO) to reduce costs without compromising quality.

Integrating Technology in Legal Operations

Technology plays a significant role in optimizing legal spend. Tools like contract management systems, e-billing platforms, and legal analytics software enable corporations to gain deeper insights into their legal expenditures. These technologies help identify patterns, predict future costs, and make data-driven decisions.

Aligning Legal Spend with Business Goals

The primary objective for businesses is to align their legal spend with broader corporate goals. This discipline ensures that legal strategies address immediate legal needs and support long-term business objectives such as expansion, compliance, and risk management.

LAW FIRM PERSPECTIVE: ENHANCING BILLABILITY AND PROFITABILITY

For legal firms or outside counsel, the approach to legal spend analysis is distinct yet complementary. The focus is on maximizing billability and profitability while at the same time maintaining the highest standards of client service.

Maximizing Billable Hours

Law firms often emphasize the importance of billable hours as a critical metric for profitability. This task includes efficient time tracking, minimizing non-billable tasks, and ensuring that all client work is accurately accounted for. The challenge lies in balancing billable work with the need to provide value to clients.

Innovative Billing Models

To maintain competitiveness and to continue to meet high client expectations, law firms are increasingly exploring alternative billing models such as flat fees, capped fees, and success-based fees. These models offer clients predictability and transparency while allowing firms to align their services more closely with client outcomes.

Investing in Professional Development

Law firms recognize the value of investing in their attorneys' professional development. Training in client communication, legal technology, and specialized legal domains enhances the firm's ability to provide high-quality, efficient services, thus increasing profitability.

BRIDGING THE PERSPECTIVES

The key to effective legal spend management lies in understanding and balancing the needs of both businesses and law firms. This balance involves open communication, transparency, and collaboration that ensures the efficient delivery of legal services that add value to both parties.

Collaborative Efforts for Cost-Effective Solutions

Open dialogue between businesses and law firms can lead to mutually beneficial solutions. This dialogue includes discussing budget constraints, exploring alternative fee arrangements, and jointly investing in technology solutions that streamline legal processes.

The Role of Data and Analytics

Both sides can leverage data and analytics to make informed decisions about legal spend. For businesses, this means understanding the ROI of legal services, while for law firms, it means identifying areas for efficiency improvements and client service enhancements.

Future Trends and Innovations

As the legal industry continues to evolve, both businesses and law firms must stay abreast of both the technological and economic impact of trends such as artificial intelligence, blockchain, and cybersecurity. Trends in these areas have the potential to significantly impact legal operations and spending management.

MAXIMIZING VALUE AND MINIMIZING COSTS

Legal operations and spend analysis require a balanced approach that considers businesses' and law firms' objectives and constraints. By understanding and respecting each other's perspectives, both parties can work together to achieve efficient, cost-effective, and high-quality legal services. This alignment is not only beneficial for the immediate stakeholders but also contributes to the broader legal ecosystem's health and sustainability.

About the Author

Kevin M. Clark is the Chief Executive Officer at Right Discovery, where he focuses on leveraging technology, design, data, and process to deliver greater insight to attorney teams and superior services to clients.

Integrating AI Into Your Law School Career

By John B. Easton

In recent years, "artificial intelligence" has become a ubiquitous buzzword that has captured global attention.[1] Within the legal field, it has sparked a race among law firms to experiment and innovate, aiming to gain competitive advantages.[2] Yet, how many attorneys, especially emerging legal professionals, truly understand the underlying technology and its current capabilities and limitations? Contrary to current newsworthy examples, ChatGPT is not merely a "super search engine."[3] Instead, it is an algorithm trained on more than 45 terabytes of text data, designed to provide statistically probable results for any given input.[4] This widespread

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1 *See, e.g.*, Jyoti Mann, *4 Tech Giants Mentioned AI a Total of 168 Times on Earnings Calls, Showing Just How Much Attention the Tech is Attracting*, BUSINESS INSIDER (Apr. 30, 2023, 5:15 AM), https://www.businessinsider.com/tech-giants-mentioned-ai-168-times-on-earnings-calls-2023-4 (noting that Meta, Alphabet, Microsoft, and Amazon mentioned the term "artificial intelligence" 168 total times on their earnings calls).

2 *See* Natalie A. Pierce and Stephanie L. Goutos, *Why Lawyers Must Responsibly Embrace Generative AI* (Berkley Bus. L. J. Working Paper, Paper No. 02, 2024), https://ssrn.com/abstract=4477704 ("According to Reuters, more than 15,000 law firms are on a waiting list to use Harvey."); *A&O Launches SaaS Parntership with Microsoft and Harvey*, ALLEN & OVERY (Dec. 21, 202), https://www.allenovery.com/en-gb/global/news-and-insights/news/ao-launches-saas-partnership-with-microsoft-and-harvey (announcing that Allen & Overy launched ContractMatrix, a generative AI tool that can review current contracts and draft new contracts); Robert D. Keeling, et. al., *Replacing Attorney Review? Sidley's Experimental Assessment of GPT-4's Performance in Document Review*, THE AMERICAN LAWYER (Dec. 13, 2023), https://www.sidley.com/-/media/publications/tal213202454432austin.pdf?la=en&rev=fe3fd6b2cf6c426f9c8e32902c91df1e (reporting on Sidley Austin's collaboration with Relativity to test GPT-4 in document review).

3 *See* Benjamin Weiser & Nate Schweber, *The ChatGPT Lawyer Explains Himself*, N.Y. TIMES (June 8, 2023), https://www.nytimes.com/2023/06/08/nyregion/lawyer-chatgpt-sanctions.html (noting that Mr. Schwartz, who infamously used ChatGPT to write a legal brief to the court on behalf of his client, believed the technology was simply a "super search engine").

4 Amanda Hetler, *What is generative AI? Everything you need to know*, TECHTARGET (Dec. 2023), https://www.techtarget.com/whatis/definition/ChatGPT#:~:text=How%20does%20ChatGPT%20work%3F,of%20Generative%20Pre%2Dtrained%20Transformer (explaining that ChatGPT "uses specialized algorithms to find patterns within data sequences" to formulate a response); Kim Martineau, *What is generative AI?*, IBM (Apr. 20, 2023), https://research.ibm.com/blog/what-is-generative-AI; Sue Halpern, *What We Still Don't Know About How A.I. Is Trained*, THE NEW YORKER (Mar. 28, 2023), https://www.newyorker.com/news/daily-comment/what-we-still-dont-know-about-how-ai-is-trained;.

unfamiliarity with artificial intelligence presents a significant opportunity for the legal education system – an opportunity that is critical for navigating a technological revolution.[5]

Overall, law schools must evolve to train and develop "future-proof" job candidates.[6] This involves cultivating "critical thinkers who are creative, adaptive, flexible, open-minded, collaborative, communicative, and capable of working effectively with emerging technologies."[7] Practically, I propose four ways law schools can achieve this by incorporating artificial intelligence into legal education.

First, law schools should offer courses that provide technological competence.[8] For example, SMU Dedman School of Law currently offers a course titled "Artificial Intelligence and Law," which explores the technology in its various forms and addresses the wide range of legal issues it presents. While most artificial intelligence courses are elective and geared toward upper-level students,[9] I suggest that a survey course on artificial intelligence be mandatory for all first-year law students (1Ls). Then, law schools could provide advanced technology courses, such as AI and Healthcare or AI and Cryptocurrency.[10]

Second, existing courses, such as legal research and writing, should incorporate artificial intelligence into their curricula. For instance, a professor could dedicate several lectures to teaching students how to utilize tools like Lexis+AI or Westlaw's generative AI to aid in legal research for assignments. While law students should not be allowed to use artificial intelligence on final exams, which test their knowledge in a pressure-packed environment, they should become proficient in using artificial intelligence to perform routine legal tasks.[11]

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5 *See* Hilary G. Escajeda, *Legal Education: A New Growth Vision Part I – The Issue: Sustainable Growth or Dead Cat Bounce? A Strategic Inflection Point Analysis*, 97 NEB. L. REV. 628, 629 (2019) ("[I]nnovation [in legal education] represents the only firewall to obsolescence.").

6 *Id*. at 650.

7 *Id*. at 651.

8 *See* Brendan Johnson, *Teaching Law and Artificial Intelligence*, 22 MINN. J.L. SCI. & TECH. 23, 39 (2021) (suggesting resources professors can use to teach an AI & Law course, including readable practice guides, longer treatises, high-level overviews, and law review articles on specialized topics).

9 *Id*. at 36.

10 *Id*. at 33-36.

11 *See* Karen Sloan, *AI Improves Legal Writing Speed Not Quality – Study*, REUTERS (Nov. 8, 2023, 1:33 PM), https://www.reuters.com/legal/transactional/ai-improves-legal-writing-speed-not-quality-study-2023-11-08/ (noting that recent studies suggest artificial intelligence increased the speed at which law students could complete legal writing tasks but not the work's quality); Vince Beiser, *AI & the Law . . . & What It Means for Legal Education & Lawyers*, GEORGETOWN LAW (Jan. 2, 2024) (providing

Third, law schools should offer an entrepreneurial start-up course that fosters community engagement and focuses on developing leadership and collaboration skills. This course would benefit from interdisciplinary collaboration between the law school, the business school, and departments such as engineering and computer science. For example, the business school could teach design thinking principles to help students identify legal problems and implement AI-driven solutions.[12] This approach encourages creativity, collaboration, and innovation while reinforcing students' understanding of law and artificial intelligence.

Fourth, law schools should expand their experiential learning opportunities to include partnerships with technology companies. Many Texas law schools already offer clinics focused on business start-ups and entrepreneurial ventures.[13] Modifying these existing programs to include opportunities within the technology industry would provide invaluable real-world experience integrating law with emerging technologies. Moreover, the diverse legal needs of

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Professor Daniel Wilf-Townsend's perspective that law schools should not implement a complete ban on AI, but should be meaningfully implement and teach the technology to aid students in certain contexts, such as legal research).

[12] *See, e.g., BYU Law Develops Free Online Tool to Address Debt Collection*, BYU LAW, https://law.byu.edu/news/byu-law-develops-free-online-tool-to-address-debt-collection/ (last visited Mar. 13, 2024) (sharing how law students in LawX, a legal design lab that seeks to solve one legal challenge each fall semester, developed SoloSuit, a free online tool that helps respond to debt collection lawsuits for people who cannot otherwise afford legal services); Melanie Reid, *A Call to Arms: Why and How Lawyers and Law Schools Should Embrace Artificial Intelligence*, 50 U. Tol. L. Rev. 477, 483 (2019).

[13] *See Austin Entrepreneurship Legal Clinic with Texas C-Bar*, UNIVERSITY OF TEXAS AT AUSTIN SCHOOL OF LAW, https://law.utexas.edu/probono/opportunities/austin-entrepreneurship-legal-clinic-with-texas-c-bar/ (last visited Mar. 15, 2024); *Entrepreneurship and Community Development Clinic*, UNIVERSITY OF HOUSTON LAW CENTER, https://law.uh.edu/clinic/ecdc/homepage.asp (last visited Mar. 15, 2024); *Entrepreneurship Law Clinic*, TEXAS A&M UNIVERSITY SCHOOL OF LAW, https://law.tamu.edu/current-students/experiential-education/clinics/entrepreneurship-law-clinic (last visited Mar. 15, 2024); *Longhorn Startup Clinic – LLC Formation Clinic*, UNIVERSITY OF TEXAS AT AUSTIN SCHOOL OF LAW, https://law.utexas.edu/probono/opportunities/longhorn-startup-clinic-company-formation-presentation-2/ (last visited Mar. 15, 2024); *Small Business and Trademark Clinic*, SMU DEDMAN SCHOOL OF LAW, https://www.smu.edu/law/clinics/small-business-clinic-trademark-clinic (last visited Mar. 15, 2024); *Welcome to the Baylor Law Entrepreneurship Legal Clinic*, BAYLOR UNIVERSITY SCHOOL OF LAW, https://law.baylor.edu/why-baylor-law/academic-overview/experiential-learning/legal-clinics/entrepreneurship-clinic (last visited Mar. 15, 2024).

start-ups will provide students with experience in using technology and innovative thinking to develop adaptable solutions.[14]

It is essential to acknowledge that integrating artificial intelligence into law schools comes with various implications, consequences, and challenges. Revamping current curricula and implementing new programs requires time, resources, and dedication to training faculty to teach new technology-focused skills. Additionally, focusing too heavily on technical skills may inadvertently diminish other critical aspects of legal education, such as critical thinking, writing, and oral advocacy. Nevertheless, incorporating artificial intelligence into law school is imperative, as the broader legal field enters a new era defined by emerging technology.[15] With an open frontier ahead, the legal education system has the opportunity to evolve, providing value for emerging legal professionals and solidifying its role as a leader in AI legal education.

About the Author

John B. Easton, J.D. Candidate (May 2025), SMU Dedman School of Law; B.A., University of Virginia, 2022.

[14] *See* Reid, *supra* note 12, at 486 (noting that Yeshiva University's Benjamin Cardozo School of Law started its own Tech Startup Clinic to teach students how to apply their knowledge of the law to various legal needs technology companies face).

[15] *See* Pierce, *supra* note 2, at 1 ("AI won't replace lawyers, but lawyers who use AI will replace lawyers who don't.").

Why I Attend TECHSHOW and Why You Should Too

By Mark Unger and Mitch Zoll

Last year's ABA TECHSHOW was only the beginning of the GenAI revolution, as ChatGPT had launched in November 2022, just months before TechShow23. This year, the 39th annual ABA TECHSHOW was the year of GenAI, LLM, ChatGPT, Copilot, hope, fear, and confusion all wrapped into a two-day conference in the basement of the Hyatt Regency in Chicago.

Looking over the offerings, it appeared that discussing "AI" was almost a requirement to be a speaker or vendor. Multiple sessions included variations of the same theme: "How to Use AI in Your Practice," "The Ethics of AI"," and "Why AI Will Change the World (…or Won't Change the World)." These were all against the backdrop of Friday morning's keynote by Stuart I. Teicher, who reminded us that our continued faith that big companies will live up to the promise to "keep our data safe" might be clueless, at best. "Oops, my bad"!

While this year was "AI," prior years focused on the cloud, document automation, system efficiency, and a variety of hot topics that fall on the plates of solo and small firms each year as we try to stay ahead of changes in the practice of law. While I can't tell you what next year will bring, I can tell you that this year's annual conference of thought leaders once again proved its value.

The People

It is not hard to state that the best reason to attend TECHSHOW is the people — the attendees, the experts, and the vendors.

As a solo attendee, it is incredibly easy to meet other people. Most folks at TECHSHOW appear to come alone or with only one or two others, so nearly everyone who sits next to you at breakfast or in a session is open to connection. Contrast that with larger state bar meetings where it feels like everyone is there to find "their people" (law school friends or others from their local bar associations".) TECHSHOW is a melting pot of lawyers with a similar interest and purpose and a willingness to share and learn. One attendee said he felt like he was attending a mastermind of like-minded attorneys all collaborating to figure out where the practice of law is going and should go. That's a pretty good pitch to attend!

TECHSHOW is also a gathering of experts, both as speakers and general attendees. These thought leaders and trailblazers share their knowledge freely, whether as a formal presenter or as someone you just find at the bar. I talked with one company founder who said he was there

simply because all of the other company leaders were there, and it was a chance for him to deepen his relationship with those leaders.

That works to your advantage in many ways, as the "people who know" are there and available to answer both your technical and functional questions. For example, I went to visit FileVine to overview the platform and went from talking to the sales team to doing a technical deep dive with Alex McLaughlin, Vice President of Product. Alex talked in-depth about reporting options, document and task automation, and file structure. There wasn't a question I had that he couldn't answer, and as a potential user, that alone is one of the best reasons to attend TECHSHOW. (*)

(*) *In a move to replicate that experience, instead of going to a phone tree and leaving messages like with other companies, users get on Zoom and can screen share and walk through the problem with FileVine experts.*

The experts are also there to talk to one another. I saw Clio reps giving demos to users that turned into live tech support, while at the same time, Hemant Kashyap, Chief Product Officer at Clio, and Karolina Sikorska of InfoTrack, were walking through a demo of InfoTrack's filing and process serving integration with Clio. (These products work so well together that they make filing and process serving as easy as it can be.)

The experts are here because the experts are here. If you are evaluating better ways to use your current technology, or looking for new technology for your firm, you can get your questions answered here.

The Opportunity to Learn about New Technology

There are as many ways to learn about new tools and tips around the hotel as there are inside the education sessions, but the CLE is why we come to TECHSHOW so let us start with the program's sessions.

Planning to attend TECHSHOW can be a little like trying to plan a trip to Disney World. I had to sit down with the brochure and try to map out the sessions I wanted to attend, only to find myself double (and triple) booked, and then trying to figure out what could not be missed, and which sessions must be sacrificed.

I planned to start with speakers that I knew would be entertaining and informative, move to subjects that I knew I needed in my practice, and then look at areas where I didn't have any knowledge or skill and where I could use TECHSHOW to discover new lawyer tech.

If you are going to start with "can't-miss speakers"," you have to start with **Ben Schorr** of Microsoft. With the patience of a man who has run multiple Iron Man triathlons and the wisdom of a man who apparently authored the US Constitution*, Ben Schorr captivated a standing-room-only crowd with an overview and live demo of 'Microsoft's Copilot. There were actual "*oooohs*" and "*aaaahs*" as the friendly crowd learned the latest in Microsoft's offering…. while also learning its limitations.

(*) *In asking Copilot to summarize a Word document containing the "U.S. Constitution" — Copilot summarized it with the information it had, including the fact that the "author" of the document (according to the Word Properties) was none other than Ben Schorr himself. Not missing a beat, Ben quipped, "we named it Copilot, not autopilot"." Reminding the crowd that every GenAI program is a tool to help you get your job done, not a "set it and forget it" tool that can do the work without you.*

Using only the source document provided, Copilot created a PowerPoint first draft of a presentation, one that would have taken a first-year associate four or five hours to complete. The presentation didn't have extensive graphics or images, but each slide had suggested information that could be used to start the presentation. The deliverable was only a start, but it was hours ahead of where you would be if building it from scratch.

Next in my lineup of "can't-miss speakers" was **Barron Henley** of Affinity Consulting. Barron is a Word expert with the comedic delivery of Louis Black, "angrily" questioning the Word Design God's default and design choices, then teaching the audience how to navigate around these must-change settings. Barron's session is not meant to make you an expert in Word in 40 minutes, but it will open your eyes to things you have been fighting with and may save you future headaches.

Another top session for me was **Matt Wetherington** and **Greg Siskind**'s presentation "Effectively and Ethically Integrating Chat-GPT and Similar Tools into Your Legal Practice." This was a bit of a hard mental shift session because it immediately followed **Stuart Teicher**'s "Why Would You?" doom and gloom AI presentation (*), however, Wetherington and Siskind are such experts in the area that they quickly convinced you that AI was not only okay, but that it can do some really cool stuff!

(*) *Teicher's presentation might not have been all doom and gloom, but it really made you think hard about our blind reliance on AI companies. Teicher injected humor — necessary for an 8:00 am presentation — with reasonable questions we need to ask ourselves about our*

reason for believing these companies when they promise to safeguard our information. After walking through stories of Amazon (https://www.theverge.com/2019/7/3/20681423/amazon-alexa-echo-chris-coons-data-transcripts-recording-privacy) , Apple (https://cybernews.com/news/apple-privacy-lawsuit/), Facebook (https://thehill.com/homenews/nexstar_media_wire/4250846-judge-gives-725m-facebook-settlement-final-approval/), Google (https://www.washingtonpost.com/technology/2024/02/05/google-plus-settlement-lawsuit-class-action/), and Microsoft (https://techcrunch.com/2023/06/06/microsoft-settle-ftc-collecting-childrens-data/) willingly storing, reviewing, and sharing personal data they promised they weren't keeping, even after users asked to limit retention of their private data. What makes us think it will be different for AI? That answer wasn't available this year.

I admit I almost missed Wetherington and Siskind because I was doing everything I could to avoid another presentation that started with "There were these lawyers in the Avianca case..." (if you do not know that case and its lessons by now, you need your badge pulled). However, the amount of information Wetherington shared about his use of GPT blew my mind, while Siskind kept the audience in check while reminding us of the ethical considerations. Wetherington's use of GPT in his practice is next level, using "bots" to create a conversational analysis of specific statutes and laws related to his niche practice area. Where so many presenters feel only a half-step ahead of the audience in their AI knowledge, one person at my table noted Wetherington is "the real deal."

Finally, another good session that deserves a shoutout was **Allison C. Johs** and **Gyi Tsakalakis** sharing their expertise with "Google Business Profiles Workshop: Optimizing Your Business Profile." Although not marketed as such, the speakers fully asked the audience to take out their laptops and work through suggested changes to their Google Business Profiles on the fly. The speakers were ready to explain, and debunk, google "tricks" that marketers use, and provided real-world changes that firms can implement to improve their Google visibility. As a true solo who is also head of my firm's IT, Head of Marketing, and Head of Finance…. I appreciated the opportunity to dive in and use the time to make changes that would have immediate benefit, rather than learn things that would just add to my plate later.

What Could Be Better Next Year?

With the people and sessions coming through each year, it is hard to nitpick what I, a beneficiary of the committee's hard work, would change. But if I were to offer suggestions, I think it would be helpful to expand the use of the "tracks" concept a little more. Too many

speakers later in the conference were still referring to the Avianca case as shocking news, and many other sessions started with an overview of "What Is AI?" — consuming the first fifteen minutes of their presentation. I found myself jumping out of a class and finding new ones when the speakers started rehashing basic topics that were not only covered earlier in the conference but were also common knowledge for this user base. This was not a knock on the speaker, but it would be great if TECHSHOW used the Tracks to have ladders of knowledge. If you need level 101 — go to the 8:00 am class on AI. But by 3:00 pm the speakers covering that same topic should be moving fast with advanced techniques.

In fact, one attendee noted the basic level of many of the AI presentations and lamented, "We missed an opportunity to have a real conversation about AI." The lawyers at TECHSHOW are rarely new to the issues facing legal tech. Some of the attendees are arguably on the same level as the speakers – if not more – and looking less for a basic education and more for a mastermind of ideas and advanced thought. An honest use of Tracks and subject material would provide advanced knowledge for attendees who are ready with a way to navigate those advanced topics, while still providing our newbies with a way into the fold.

The problem TECHSHOW faces might not be as easy to solve as it is to articulate. TECHSHOW turns 40 next year. That time when we all enter the "squeeze generation" where we become caretakers of the elders, still parents to the youngsters, and still finding our own path as adults. TECHSHOW works hard to navigate the ability to serve the lawyers just now realizing the power of technology while at the same time providing a mastermind for those who have been coding AI prompts since the first day GPT became public. The advanced users may find more camaraderie amongst the other attendees, while the new users may need more handholding. But as the legal tech market evolves, TECHSHOW still feels poised to take both through the journey.

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TechShow 2025 returns to the spring season (for those who avoided Chicago's frigid temps in February). The event will be held April 2–5, 2025, and registration begins soon.

About the Authors

Mark Unger is a family lawyer, mediator, and consultant in San Antonio, primarily focused on family law. He is the founding member of the Unger Law Firm and is highly involved in the integration of technology and the law. Find Unger on Twitter @miunger or online at unger-law.com.

Mitch Zoll is the C&T Section Secretary & Founder of Zoll Firm, PLLC, Austin.

Lessons from Lousy Lexical Search (and Tips to Do Better)

By Craig Ball

Preparing a talk about search in e-discovery, I set out to distill observations gleaned from a host of misbegotten keyword search efforts, many from the vantage point of the court's neutral expert *née* Special Master assigned to clean up the mess. What emerged feels a bit…dark…and…uh…grouchy: like truths no one wants to hear because then we might be obliged to change–when we all know how profitable it is to bicker about keywords in endless, costly rounds of meeting and conferring.

The problems I dredged up have endured for *decades*, and their solutions have been clear and accessible for just as long. So, *why* do we keep doing the same dumb things and expecting different outcomes?

In the 25+ years I've studied lexical search of ESI, I've learned that:

1. Lexical search is a crude tool that misses much more than it finds and leads to review of a huge volume of non-relevant information. That said, *even crude tools work wonders in the hands of skilled craftspeople who chip away with care to produce masterpieces.* The efficacy of lexical search increases markedly in the hands of adept practitioners who meticulously research, test and refine their search strategies.

2. Lawyers embrace lexical search despite knowing almost nothing about the limits and capabilities of search tools and without sufficient knowledge of the datasets and indices under scrutiny. Grossly overestimating their ability to compose effective search queries, lawyers blithely proffer untested keywords and Boolean constructs. Per Judge John Facciola a generation ago, *lawyers think they're experts in search "because they once used Google to find a Chinese restaurant in San Francisco that served dim sum and was open on Sundays."*

3. *Without exception*, every lexical search is informed and improved by the iterative testing of queries against a substantial dataset, *even if that dataset is not the data under scrutiny*. Iterative testing is *invaluable* when queries are run against representative samples of the target data. Every. Single. Time.

4. Hit counts alone are a poor measure of whether a lexical search is "good" or "bad." A "good" query may simply be generating an outsize hit count when run against the

wrong dataset in the wrong way (*e.g.*, searching for a person's name in their own email). Lawyers are too quick to exclude queries with high perceived hit counts before digging into the causes of poor precision.

5. A query's success depends on how the dataset has been processed and indexed prior to search, challenging the assumption that search mechanisms just 'work,' as if by magic.

6. Lexical search is a sloppy proxy for language; and language is replete with subtlety, ambiguity, polysemy and error, all serving to frustrate lexical search. Effective lexical search adapts to accommodate subtlety, ambiguity, polysemy and error by, *inter alia*, incorporating synonyms, jargon and industry-specific language, common misspellings and alternate spellings (*e.g.*, British vs. American spellings) and homophones, acronyms and initializations.

7. Lexical search's utility lies equally in filtering out irrelevant data as it does in uncovering relevant information; so, it demands meticulous effort to mitigate the risk of overlooking pertinent documents.

Understanding some of these platitudes requires delving into the science of search and ESI processing. A useful resource might be my 2019 primer on Processing in E-Discovery; admittedly not an easy read for all, but a window into the ways that processing ESI impacts searchability.

Fifteen years ago, I published a short paper called "Surefire Steps to Splendid Search" and set out ten steps that I promised would produce more effective, efficient and defensible queries. Number 7 was:

> ***"Test, Test, Test! The single most important step you can take to assess keywords is to test search terms against representative data from the universe of machines and data under scrutiny. No matter how well you think you know the data or have refined your searches, testing will open your eyes to the unforeseen and likely save a lot of wasted time and money."***

In the fullness of time, those ten steps ring as true today as when George Bush was in the White House. Then, as now, marked improvement in lexical search can be achieved with modest tweaks in methodology. A stitch in time saves nine.

Another golden oldie is my 2012 collection of ten brief essays called "Shorties on Search."

But, as much as I think those older missives hold up, and despite the likelihood that natural language prompts will soon displace old-school search queries, here's a fresh recasting of my tips for better lexical search:

Essential Tips for Effective Lexical Search in Civil Discovery

Pre-Search Preparation:

1. **Understand the Dataset**
    - Identify data sources and types, then tailor the search to the data.
    - Assess the volume and organization of the dataset. Can a search of fielded data facilitate improved precision?
    - Review any pre-processing steps applied, like normalization of case and diacriticals or use of stop words in creating the searchable indices.

2. **Know Your Search Tools**
    - Familiarize yourself with the tool's syntax and keyword search capabilities.
    - Understand the tool's limitations, especially with non-textual data and large documents.

3. **Consult with Subject Matter Experts (SMEs)**
    - Engage SMEs for insights on relevant terminology and concepts.
    - Use SME knowledge to refine keyword selection and search strategies.

Search Term Selection and Refinement:

4. **Develop Comprehensive Keyword Lists**
    - Include synonyms, acronyms, initializations, variants, and industry-specific jargon.
    - Consider linguistic and regional variations.
    - Account for misspellings, alternate spellings and common transposition errors.

5. **Utilize Boolean Logic and Advanced Operators**
    - Apply Boolean operators and proximity searches effectively.
    - Experiment with wildcards and stemming for broader term inclusion.

6. **Iteratively Test and Refine Search Queries**
    - Conduct sample searches to evaluate and refine search terms.
    - Adjust queries based on testing outcomes and new information.

Execution and Review:

7. **Provide for Consistent Implementation Across Parties and Service Providers**
    - Use agreed-upon terms where possible. The most defensible search terms and methods are those the parties choose collaboratively.
    - Ensure consistency in search term application across the datasets, over time and among multiple parties.

8. **Sample and Manually Review Results**
    - Randomly sample search results to assess precision and recall.
    - Adjust search terms and strategies based on manual review findings.

9. **Negotiate Search Terms with Opposing Counsel**
    - Engage in discussions to agree on search terms and methodologies.
    - Document agreements to preempt disputes over discovery completeness.
    - Make abundantly clear whether a non-privileged document hit by a query must be produced or whether (as most producing parties assume) the items hit may nevertheless be withheld after a review for responsiveness.

Post-Search Analysis:

10. **Validate and Document the Search Process**
    - Maintain comprehensive documentation of search terms, queries, exception items and decisions. Never employ a set of queries to exclude items from discovery without the ability to document the queries and process employed.
    - Ensure the search methodology is defensible and compliant with legal standards.

11. **Adapt and Evolve Search Strategies**
    - Remain flexible to adapt strategies as case evidence and requirements evolve.
    - Leverage lessons from current searches to refine future discovery efforts.

12. **Ensure Ethical and Legal Compliance**
    - Adhere to privacy, privilege, and ethical standards throughout the discovery process.
    - Review and apply discovery protocols and court orders accurately.

About the Author

Craig Ball of Austin and New Orleans is a court-appointed special master, veteran Texas trial attorney, University of Texas law professor and certified computer forensic examiner. More of Craig Ball's publications on computer forensics and electronic discovery are available at craigball.com and ballinyourcourt.com.

FTC Prohibits the Selling of Sensitive Location Data

By Pierre Grosdidier

In *In re X-Mode Social, Inc.*, the Federal Trade Commission (FTC) stepped in, for the first time, to protect people's sensitive location data from private collection, sale, and disclosure.[1] The FTC defines sensitive location data as geolocation data that reveals a person's precise location in the United States associated with, *inter alia*, medical,[2] religious, correctional, and educational facilities, and facilities that provide shelter or social services to vulnerable groups, like the homeless, victims of domestic violence, refugees, and recovering addicts.[3]

Little prevents private parties from collecting consumers' location data via apps on smart devices and selling the data to third parties. Advertisers value this data with which they can develop market analytics and target messages to specific consumers. The respondents in *In re X-Mode*, a location data broker and its successors, allegedly aggregated data from various sources and sold them to third parties. The respondents also allegedly analyzed the data and categorized them into "audience segments" such as "Size Inclusive Clothing Stores," among others.[4]

The FTC's Complaint alleged that the transacted data included sensitive location data that was not anonymized or that could be deanonymized.[5] It also alleged that the respondents did not sufficiently protect through contractual privacy provisions the data they sold, did not honor consumers' privacy choices concerning the collected data, and did not inform consumers that they would sell the data to government contractors for national security purposes. In one

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1 Complaint, *In re X-Mode Social. Inc.*, FTC Docket No. C-----, File No. 212-3038, 2024 WL 168068 (F.T.C.); (*compare with Carpenter v. United States*, 138 S. Ct. 2206 (2018) (Fourth Amendment protects a person's whereabouts from government prying eyes by requiring a search warrant to access historical cell site location information)).

2 Including reproductive health facilities.

3 Decision, *In re X-Mode Social. Inc.*, FTC Docket No. C-----, File No. 212-3038, at pp. 7-8 (pending).

4 Complaint, *In re X-Mode*, 2024 WL 168068 (F.T.C.), at *1.

5 For example, because location data is timestamped, consumers are easily identifiable from their anonymized night-time location data, which is likely to be that of their home addresses. *Id.* at *3.

particular case, the respondents created and licensed audience segments based on the characteristics of consumers who had visited specific medical facilities and pharmacies.[6]

The FTC alleged that the respondents breached Section 5(a) of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce."[7] The FTC argued that the sale of sensitive location data intruded "into the most private areas of consumers' lives and causes or is likely to cause substantial injury to consumers."[8]

In its decision, which is still pending approval, the FTC barred respondents from selling, licensing, transferring, sharing, disclosing, "or otherwise us[ing] in any products or services" sensitive location data. The decision excepts data that are used to provide services "directly requested" by consumers with their consent.[9]

The respondents must also develop a comprehensive internal program to deal with sensitive location data. This program must develop procedures for identifying sensitive locations, develop a list of such locations and methods for updating this list, develop and implement policies, procedures, and technical measures to prevent the data's use, sale, licensing, transfer, or disclosure, and designate senior officers responsible for implementing and testing the program.[10]

The respondents must also develop and implement policies, procedures, and technical measures to prevent acquirers of respondents' sensitive location data from associating the data with public locations providing services to LGBTQ+ individuals, like bars, and locations that host "political or social demonstrations, marches and protests." The measures must also prevent acquirers from using the sensitive location data to identify a person's identity or the location of his or her home. Respondents must submit third-party incident reports to the FTC within 30 days of knowledge of such incidents.[11]

The Decision also requires respondents to obtain consumers' consent to collect and use their location data,[12] and bars them from collecting the location data of consumers who have refused or withdrawn consent. And, it allows consumers to request the identity of any third

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6 *Id.* at **3-5.

7 *Id.* at **6-7 (citing 15 U.S.C. § 45(a)).

8 *Id.* at *6.

9 Decision, *In re X-Mode Social. Inc.*, File No. 212-3038, at p. 8.

10 *Id.* at pp. 9-10.

11 *Id.* at pp. 10-11.

12 *i.e.*, all location data, not just sensitive location data.

party to whom their location data has been sold or otherwise disclosed. The Decision also contains a number of provisions that require respondents to communicate with consumers regarding the nature of the data collected, the reasons therefor, and the timeframe for deletion. The respondents must also develop a "comprehensive privacy program" to protect consumers' sensitive location data.[13]

About the Author

Pierre Grosdidier is a litigation attorney in Houston. He is board certified in construction law by the Texas Board of Legal Specialization. Pierre's practice also includes data privacy and unauthorized computer access issues and litigation. Prior to practicing law, Pierre worked in the process control industry. He holds a Ph.D. from Caltech and a J.D. from the University of Texas. He is a member of the State Bar of Texas, a registered P.E. in Texas (inactive), a member of the Texas Bar Foundation, a Fellow of the American Bar Foundation. He was the State Bar of Texas Computer & Technology Section Chair for 2022–23 and was elected Medium Section Representative to the State Bar of Texas for the 2023–26 term.

[13] *Id.* at pp. 11–16.

Examining Judicial Attitudes Toward Generative AI: A Comparative Approach (Part I)

By Hon. John G. Browning

I. INTRODUCTION

In his 2023 Year-End Report on the Federal Judiciary, Chief Justice John Roberts devoted the majority of his discussion to artificial intelligence (AI) and its transformative potential for the legal profession and the judiciary.[1] However, he also sounded a note of warning, observing that "any use of AI requires caution and humility."[2] The chief justice noted the instances in which generative AI applications have "hallucinated" non-existent cases, as well as the "concerns about whether entering confidential information into an AI tool might compromise later attempts to invoke legal privileges."[3] Chief Justice Roberts concluded with a statement about how not just lawyers, but also the judiciary, will be impacted by AI, saying that the technology will affect "not only how judges go about doing their job, but also how they understand the role that AI plays in the cases that come before them."[4]

As the chief justice pointed out, the burgeoning use of AI platforms and tools such as ChatGPT has had a seismic effect on the legal profession. This creates both opportunities—generative AI can free lawyers to focus on more complex strategic work by automating many of their less sophisticated and more repetitive tasks—and risks. While the legal media breathlessly reports on the opportunities as firms regularly announce the adoption of a new AI tool or the latest "strategic partnership" with a technology vendor, the risks grab their share of headlines as well.

However, judicial attitudes toward the use of AI vary widely between the United States—where at least 21 different courts have adopted some form of standing order or regulation of attorney use of AI—and courts in multiple foreign countries. As we shall see, a number of foreign courts are not exhibiting a cautious tolerance of attorney AI use, they are actually using generative AI themselves in the course of their judicial duties. Let's examine how judges in other countries are embracing AI.

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1 CHIEF JUSTICE JOHN G. ROBERTS, 2023 YEAR-END REPORT ON THE FEDERAL JUDICIARY, UNITED STATES COURTS (Dec. 31, 2023), https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf.

2 *Id.* at 5.

3 *Id.* at 6.

4 *Id.*

II. JUDICIAL ATTITUDES TOWARD AND USE OF GENERATIVE AI OUTSIDE THE UNITED STATES

A. Colombia

Outside the United States, judges have demonstrated a greater willingness to not only accept the use of generative AI by lawyers, but to do that which is—to date—unprecedented in American courts: to use it in drafting judicial work product. The first reported instance came from Colombia on January 30, 2023. Judge Juan Manuel Padilla Garcia, who presides over the First Circuit Court in Cartagena, issued a seven-page ruling on a case involving the fundamental right to health care of a child diagnosed as autistic.[5] The key legal question at stake was whether the health insurance carrier's requests for copayments or a fee for authorizing a medical procedure constituted an infringement upon the child's fundamental right to health care under Colombian law. In the case in question, the parents of the autistic child were suing the health care carrier for the treatment costs. The judicial ruling would have been just another garden variety health care legal decision, but for a shocking confession by Judge Padilla: he had employed ChatGPT in drafting his opinion.

Judge Padilla's revelation ignited a firestorm of commentary about the efficacy of the use of generative AI tools in judicial decision-making.[6] As for the ruling itself, Judge Padilla's opinion is very matter of fact. He succinctly explained the facts of the case, described the logic of the lower court's decision (referred to as the "first instance" decision in Colombian law), stated the central constitutional issues at stake, listed the pertinent articles of the Colombian Constitution, and cited a precedent of the nation's Constitutional Court addressing a strikingly similar case. Where the opinion differs from more run-of-the-mill rulings is Judge Padilla's explanation of his use of ChatGPT. In the decision, Judge Padilla details his questions (or "prompts") to ChatGPT as well as its responses. Among the questions he posed to the AI tool

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5 Rama Judicial De Colombia Juzgado 1° Laboral Del Circecito Cartagena, Salvador Espitia Chavez (Accioante) v. Salud Total E.P.S. (Accionado), Jan. 30, 2023 (copy of ruling in the original Spanish on file with author).

6 *See, e.g.*, Avalon Zoppo, *ChatGPT Helped Write a Court Ruling in Colombia. Here's What Judges Say About Its Use in Decision Making*, NAT'L L.J. (Mar. 13, 2023), https://www.law.com/nationallawjournal/2023/03/13/chatgpt-helped-write-a-court-ruling-in-colombia-heres-what-judges-say-about-its-use-in-decision-making/?slreturn=20231127152958#:~:text=Current%20and%20former%20judges%20say,clerks%20about%20the%20new%20chatbot; Janus Rose, *A Judge Just Used ChatGPT to Make a Court Decision*, VICE (Feb. 3, 2023), https://www.vice.com/en/article/k7bdmv/judge-used-chatgpt-to-make-court-decision.

were "Is a minor with autism exempt from paying therapy co-pays?" and "Has the jurisprudence of the constitutional court made favorable decisions in similar cases?"[7]

However, Judge Padilla took pains to be transparent about his use of generative AI, and its limitations. He stated that "The arguments for this decision will be determined in line with the use of artificial intelligence (AI). Accordingly, we entered parts of the legal questions posed in these proceedings."[8] Judge Padilla, perhaps anticipating the criticism he would face, hastened to add that "The purpose of including these AI-produced texts is in no way to replace the judge's decisions. What we are really looking for is to optimize the time spent drafting judgments after corroborating the information provided by AI."[9] Judge Padilla made sure to include his own insights into applicable legal precedents, and observed that the AI was only used to "extend the legal arguments of the adopted decision."[10] Once he detailed the exchanges with ChatGPT, the judge then adopted its responses together with his own legal reasoning as grounds for the decision reached.

Judge Padilla was clear that ChatGPT was only to assist and enhance his role as judge in the case—not to replace him. He also pointed out that he "corroborated" the information provided by the AI tool, but did not specify how that corroboration was done. Essentially, he used ChatGPT to streamline his drafting of the judgment, using it to help summarize the status of Colombian law on the issues presented. Since Colombia has a civil law system in which greater emphasis is placed on a legal code rather than case authority—unlike the United States' common law system, which relies more heavily on judicial precedent and assessment of facts in individual cases, such as the credibility of a witness—Judge Padilla was presumably far less constrained in his use of ChatGPT.

Just ten days after Judge Padilla's historic ruling, another Colombian judge embraced ChatGPT. Magistrate Maria Victoria Quiñones Triana, of the Tribunal Administrativo del Magdalena, also issued an order in which ChatGPT prompts and their responses figured prominently.[11] In this

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7 Rama Judicial De Colombia Juzgado 1° Laboral Del Circecito Cartagena, Salvador Espitia Chavez (Accioante) v. Salud Total E.P.S. (Accionado), Jan. 30, 2023 (copy of ruling in the original Spanish on file with author). The author has translated from the original Spanish.

8 *Id.*

9 *Id.*

10 *Id.*

11 Resuelve Solicitud de Realización de Audiencia en el Metaverso, Tribuanl Administrativo del Magdalena (Feb. 10, 2023), https://forogpp.files.wordpress.com/2023/02/2020-014-siett-vs-nacion-policia-nacional-solicitud-audiencia-en-el-metaverso-1.pdf. (version in original Spanish on file with author).

twelve-page ruling, Magistrate Quiñones sought guidance from ChatGPT intended to answer questions of a technical nature regarding the then-novel question of how to carry out a judicial hearing in the metaverse. The case concerned a claim for a direct remedy (a "reparación directa") made by a contractor against Colombia's National Police. Magistrate Quiñones included the text for both her prompts and the ensuing responses, followed by her ruling and the basis for it.[12] Incidentally, in a showcase of the use of technology by the courts, the hearing itself took place on February 15, 2023: facilitated through ChatGPT, held via Meta's Horizon Workrooms, and livestreamed through YouTube. Magistrate Quiñones explained in her order that the parties had agreed to conduct the hearing in the metaverse, and cited to various legal provisions and case law justifying the use of information technologies in judicial procedure.[13] She also explained what the metaverse is and how the hearing would be conducted.[14]

The use of ChatGPT by both Colombian jurists presents certain concerns. While Judge Padilla mentions that the ChatGPT responses were "corroborated," he neglects to provide specifics. What does that mean, especially given concerns about early iterations of ChatGPT having a propensity toward "hallucinations"? Two of the seven pages of his ruling consist of a transcription of four ChatGPT responses to Judge Padilla's prompts; in other words, roughly 29% of the ruling consists of ChatGPT-generated text. The questions posed by Judge Padilla were not just fact-oriented inquiries. Two of the four prompts appeared to go directly to what should be the exclusive province of the court and its independent judgment. One prompt inquired "Should tutela [constitutional] actions in these cases be granted?", while another asks "Is requiring a co-payment in these cases a barrier to access to health services?"[15] In contrast, Magistrate Quiñones' prompts seemed more directed at answering basic questions and supporting her procedural decision to conduct the hearing in the metaverse. For example, one of the prompts asked "What is an avatar?", while others inquired into the most effective methods for verifying the authenticity of those logging into the virtual hearing, as well as verifying the authenticity of the avatars used by attendees.[16]

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12 *Id.*

13 *Id.*

14 *Id.*

15 Rama Judicial De Colombia Juzgado 1° Laboral Del Circecito Cartagena, Salvador Espitia Chavez (Accioante) v. Salud Total E.P.S. (Accionado), Jan. 30, 2023 (copy of ruling in the original Spanish on file with author)

16 Resuelve Solicitud de Realización de Audiencia en el Metaverso, *supra* note 19.

Critics of the judges were quick to point out perceived deficiencies in the rulings. One Colombian law professor replicated the prompts employed by Judge Padilla and received slightly different answers. More concerning, the same professor prompted ChatGPT to provide case authority justifying its answers, only to have the chatbot "invent the facts and ratio decidendi of one ruling, and cite a judgment that did not exist (inventing the facts and the verdict)."[17] In light of such hallucinations by ChatGPT and the acknowledged need by Judge Padilla to "corroborate" (however that might be), one wonders how true the supposed efficiencies of using ChatGPT really are. Another valid concern is that of automation bias. If there is an overconfidence in the certainty of results using generative AI, judges might be more inclined to rely on the results spit out by these AI tools, thereby eroding the ability of judicial officers to make precise, independent judgments. As use of generative AI becomes more widespread, this concern looms even larger.

B. Peru

Colombia is not the only South American nation to have experienced judicial use of generative AI. In March 2023, Judge Frank Paul Flores Garcia of the Corte Superior de Justice of San Juan de Miraflores in the Judicial District of South Lima used ChatGPT in a child support case.[18] In determining the amount that was owed, the judge "invoked" ChatGPT to calculate the value of the child support that was owed by each parent in proportion to their "economic possibilities and personal conditions."[19] In doing so, Judge Flores Garcia, "through the assistance of the Artificial Intelligence platform of Open AI-ChatGPT[s] (sic)," consulted the AI tool to help calculate the proportion of child support that each parent should assume according to their respective capacities.[20] Unfortunately, the judge did not specify the prompts he used or the responses he received. It does show that the judge was likely not familiar with the functionality of ChatGPT, which is not trained to perform precise mathematical calculations.

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17 Juan David Gutiérrez, *ChatGPT in Colombian Courts*, VERFASSUNGSBLOGOUT (Feb. 23, 2023), https://verfassungsblog.de/colombian-chatgpt/.

18 SEI TEI CIA DE SEGUI DA II STAI CIA, EXPEDIENTE: 00052-2022-18-3002-JP-FC-01, CORTE SUPERIOR DE JUSTICIA DE LIMA SUR (Mar. 27, 2023), https://img.lpderecho.pe/wp-content/uploads/2023/03/Expediente-00052-2022-18-3002-JP-FC-01-LPDerecho.pdf (copy on file with author).

19 *Id.*

20 *Id.*

C. Mexico

On March 29, 2023, Magistrate Reyes Rodriguez Mondragón, president of the Superior Chamber of the Electoral Tribunal of the Mexican Judiciary, used ChatGPT in an election case.[21] The case concerned the appeal of a judgment dealing with the use of the expression "ya sabes quien" (literally, "you know who") in pre-campaign advertising by the Morena Party. The legal question addressed by the Electoral Tribunal was whether the use of the expression could be viewed as unfair in light of its potential interpretation as a signal of support for Mexico's President Andrés Manuel López Obrador.[22] In examining the ruling of the lower electoral court, Judge Rodriguez Mondragón argued that the prior judgment should be reversed since it was legally deficient for failing to include a contextual analysis of the use of the expression "you know who."[23] In the hearing, the judge announced that he had been consulting ChatGPT on his cellphone and that when he prompted it regarding the identity of "you know who" in the context of Mexican politics, it referred to President López Obrador and the popularization of that phrase in his 2018 campaign.[24] Judge Rodriguez Mondragón opined, "if the artificial intelligence gives us an explanation of context with motivations, this is what is expected from a court that reasons about the expressions that are analyzed."[25] The judge ended with an explicit invitation to courts to use AI tools like ChatGPT in drafting their rulings, saying that courts are "not complying with the principle and duty of exhaustiveness . . . [and] not providing sufficient reasons . . . when even technology now facilitates a series of information . . . processing databases and all the knowledge that is available to the courts."[26]

On the tribunal, however, not everyone was as taken with ChatGPT as Judge Rodriguez Mondragón. His colleague Judge José Luis Vargas said he would like to think this case was an "isolated example," and "not a forecast of what the jurisprudence of this court will be, because I would be concerned that now our rulings will be taken based on what ChatGPT says."[27] Judge Vargas urged caution, concerned about the perception of the courts if, in the future, ChatGPT were to define cases from start to finish. Warning that the AI tool "still has quite a few errors,"

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21 Sesión Pública – Miércoles 29 Marzo 2023 – TEPJF, Tribunal Electoral del Poder Judicia de la Federación on YouTube, https://www.youtube.com/watch? v=OwaZg3quyls&t=3679s&pp= 2AHfHJACAQ%3D%3D.

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.*

27 *Id.*

he stated "that is the reason why I think we human beings will be in charge of these kinds of positions for a good while."[28]

D. Other AI Use in Spanish-Speaking Countries

Generative AI is also making an impact on other judges in Spanish-speaking countries, although details about their specific uses are sparse. In Berón de Astrada, Argentina, for example, Judge José Osvaldo Ledesma has used ChatGPT to generate an easy to understand paragraph to incorporate into his rulings for less well-educated readers.[29] In April 2023, judges Jimmy López Rojas and Diego Ramirez Cruz of the Fourth Constitutional Chamber of the Departmental Court of Justice in Bolivia presided over a case against three journalists accused of taking photos of a victim of violence without the victim's permission.[30] The judges purportedly consulted ChatGPT during an online hearing, inputting prompts that inquired about whether any "legitimate public interest" was at issue when the woman's photos were posted. They received a ChatGPT-generated response that said "the disclosure of photos of parts of a woman's body on social networks, through the press, and without her consent or authorization, is a violation of privacy and personal dignity."[31] The judges then ordered that the photos be removed from social media. The court record stated that while this "historic" use of ChatGPT was not being done to replace judges, it could nevertheless be useful to "clarify certain concepts."[32]

Raquel Guerrero, the lawyer defending the three journalists, sharply criticized the result, calling ChatGPT's use by the judges "arbitrary" and "a disaster."[33] She added that it

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28 *Id.*

29 *A Court Has Used the ChatGPT to Issue a Sentence*, IMPACT LAWYERS, https://theimpactlawyers.com/articles/a-court-has-used-the-chatgpt-to-issue-a-sentence.

30 *Instead of Looking at the Actual Law, Bolivian Judges Are Sentencing People Using ChatGPT*, REDDIT.COM, https://www.reddit.com/r/ChatGPT/comments/12qteff/instead_of_looking_at_the_actual_law_bolivian/.

31 *Id.*

32 Adam Smith, Anastasia Moloney, & Avi Asher-Schapiro, *AI in the Courtroom: Judges Enlist ChatGPT Help, Critics Cite Risks*, CHRISTIAN SCI. MONITOR (May 30, 2023), https://www.csmonitor.com/USA/Justice/2023/0530/AI-in-the-courtroom-Judges-enlist-ChatGPT-help-critics-cite-risks#:~:text=An%20Indian%20High%20Court%20judge,of%20biases%20and%20false%20results.

33 *Id.*

> can't be used as if it's a calculator that takes away the obligation of judges to use reason and to apply justice and to apply it correctly . . . ChatGPT doesn't stop being a robot. If you ask it in the right way, it will answer what you want to hear.[34]

In early March 2023, five of the ten Court of Appeals judges in Chile who met to help decide how to fill one of the vacancies on that nation's Supreme Court discussed the use of generative AI by the judiciary, even referencing Judge Padilla's experience with it in Colombia.[35] That summer, Chilean legislators convened to discuss the thorny problem of regulating AI. Costa Rican lawmakers did them one better: they had ChatGPT write the law for them![36]

E. South Asia

On March 28, 2023, Punjab and Haryana High Court Judge Anoop Chitkara became the first Indian jurist to use ChatGPT in making a ruling.[37] In considering the bail plea of a defendant accused of rioting and murder. Judge Chitkara was concerned that he might be relying excessively on his own views in assessing whether the allegations involving a high level of cruelty warranted a decision against granting bail. So, he consulted ChatGPT, asking such prompts as "should bail be decided on elements of cruelty alone?" and "Can a crime be committed with an act of mercy or empathy?"[38] The judge maintained that he did not rely on the AI tool to help him decide how to rule; instead, in refusing bail, he sought assistance in justifying his reasoning. As Judge Chitkara acknowledged, "AI cannot replace a judge . . . However, it has immense potential as an aid in judicial processes. The knowledge revolution has started, and these AI platforms have in certain situations demonstrated their capabilities to instantaneously transform queries into outstanding results."[39]

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34 *Id.*

35 Alejandra Zuniga, *Abogados Valoran Uso de Inteligenica Artificial Para Fallos, Pero Sin Que Reemplace Ponderación de Juez*, El Mercurio (Mar. 4, 2023), https://prensa.udd.cl/files/2023/03/pedro-pablo-vergara-el-mercurio.png.

36 *ChatGPT Drafts Law to Regulate AI in Costa Rica, Experts Divided*, Reuters (July 10, 2023), https://telecom.economictimes.indiatimes.com/news/internet/chatgpt-drafts-law-to-regulate-ai-in-costa-rica-experts-divided/101636605.

37 Ajay Sura, *In a First, Punjab and Haryana High Court Uses ChatGPT While Deciding Bail Plea*, Times of India (Mar. 28, 2023), https://timesofindia.indiatimes.com/city/chandigarh/in-a-first-punjab-and-haryana-high-court-uses-chatgpt-while-deciding-bail-plea/articleshow/99068051.cms.

38 Smith, Moloney, & Asher-Schapiro, *supra* note 40.

39 Jayant Bhatt, *The Curious Case of ChatGPT and Chandigarh High Court*, Jayant Bhatt's Post (LinkedIn), https://www.linkedin.com/posts/jayant-bhatt-995318166_hc-chatgpt-activity-7046348696635981824-nDTO.

Not to be outdone, a court in Pakistan used ChatGPT to help determine bail in a case of juvenile kidnapping.[40] In the Phalia Special Court, the judge stated that he had decided to "experiment" with ChatGPT "to see how it can help the justice system to pass crisp and smart judicial orders and judgments in accordance with law based on support and assistance of artificial intelligence and that whether this modern information technology is relevant and helpful in this regard."[41] Noting that courts in China and Dubai were using AI-powered virtual judges, the court stated "Why not Pakistan to also try to take lead in this regard!"[42] And while—in the interest of research—the court reproduced the prompts and ChatGPT's responses, it hastened to add that its decision was based on the application of its "traditional judicial mind," and not "on the answers to be provided by the artificial intelligence program . . ."[43] The court concluded that AI had "great potential" and it hoped that the "experiment" would help to spur the judicial system of Pakistan on toward a "new era for a smart judicial decision making process."[44]

The same Pakistani court embraced the "experiment" of AI use in connection with an appeal. In the appeal of a civil suit concerning specific performance over the purchase of a parcel of land, Judge Munir justified his dismissal of the appeal in part based on his use of ChatGPT, noting that "AI is a new opportunity for courts and judges to be adopted in their decision-making process, of course subject to its compatibility with the Pakistani legal system."[45]

Indeed, Judge Munir devotes nearly half of his twenty-one page ruling to discuss AI in general, its uses and potential to aid in judicial decision-making, and its specific application to this appeal. He provides the prompts given to ChatGPT, its responses, and his analysis of the responses and their application to the facts of the case. He also notes that he is sending a copy of the opinion "to the Law and Justice Commission of Pakistan to consider discussion on Artificial Intelligence in this Civil Appeal as a law reform proposal."[46] As Judge Munir carefully

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40 Abdul Moaziz v. State, FIR No. 15 (Mar. 29, 2023), https://courtingthelaw.com/wp-content/uploads/ChatGPT-4-Abdul-Moaiz-v-State.-FIR-No.-15-2023.-Offence-376iii-511-P.S-Bhagat..-allowed.-29.03.2023.pdf.

41 *Id.*

42 *Id.*

43 *Id.*

44 *Id.*

45 Muhammed Iqbal v. Zayad, etc. (Civil Appeal) (Mar. 28, 2023), https://courtingthelaw.com/wp-content/uploads/DOC-20230413-WA0052..pdf.

46 *Id.*

observed, his experiment was intended not to have AI tools decide, but to see "how much they help, while remaining within the mainstream of Pakistani law, to decide future cases."[47]

F. Great Britain

Judicial attitudes in Great Britain toward the use of generative AI, like those in Canada, have been significantly influenced by the highly publicized hallucinations involving American lawyers. That does not mean, however, that court proceedings in the United Kingdom have been immune to the siren song of ChatGPT. In May 2023, a civil case in Manchester, England made headlines for all the wrong reasons. A "litigant in person" (the British legal term for a party appearing pro se) was confronted over that party's citation of non-existent, fabricated cases.[48] After the other side's barrister had argued that no precedent existed for the position advanced by the pro se litigant, the litigant returned the following day with four case citations. Upon closer inspection, one of the cases was revealed as completely fabricated, while the other three featured actual case names but with cited passages that did not match those in the actual case.[49] For all four cases cited, the paragraphs quoted were completely made up. The judge questioned the litigant, who admitted to using ChatGPT to "find cases that could prove their argument."[50]

However, the British judiciary's attitude toward the use of generative AI took a significant turn with a surprising revelation by a prominent jurist. Speaking in September 2023 at a Law Society conference, Lord Justice Colin Birss, the Deputy Head of Civil Justice and a high ranking appellate judge known for his intellectual property acumen, revealed that he had not only experimented with generative AI, but also used it in drafting an opinion, and found it to be "jolly useful."[51] Without identifying the specific case, Justice Birss stated that:

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47 *Id.*

48 John Hyde, *LiP Presents False Citations to Court After Asking ChatGPT*, L. Soc'y Gazette (May 28, 2023), https://www.lawgazette.co.uk/news/lip-presents-false-citations-to-court-after-asking-chatgpt/5116143.article#:~:text=For%20all%20four%20citations%2C%20the,that%20could%20prove%20their%20argument.

49 *Id.*

50 *Id.*

51 Hibaq Farah, *Court of Appeal Judge Praises "Jolly Useful' ChatGPT After Asking It for Legal Summary*, Guardian (Sept. 15, 2023), theguardian.com/technology/2023/sep/15/court-of-appeal-judge-praises-jolly-useful-chatgpt-after-asking-it-for-legal-summary#:~:text=3%20months%20old-,Court%20of%20appeal%20judge%20praises%20'jolly%20useful'%20ChatGPT%20after,asking%20it%20for%20legal%20summary&text=A%20court%20of%20appeal%20judge,artificial%20intelligence%20%E2%80%9Cjolly%20useful%E2%80%9D.

> I thought I would try it. I asked ChatGPT can you give me a summary of this area of law, and it gave me a paragraph. I know what the answer is because I was about to write a paragraph that said that, but it did it for me and I put it in my judgment. It's there and it's jolly useful.[52]

Justice Birss' importance in shaping the British judiciary's reaction to generative AI cannot be underestimated. In addition to embracing AI's potential himself, he also issued a dissenting opinion in the Court of Appeals' previous decision that an AI cannot be named as the inventor for a UK patent application. Perhaps most significantly, he played a pivotal role as one of the principal authors of the recently-issued guidance on AI for all judges in the United Kingdom (along with Baroness Carr, Lady Chief Justice of England and Wales; Sir Geoffrey Vos, Master of the Rolls; and Sir Keith Lindblom, Senior President of Tribunals). Noting that "the use of Artificial Intelligence ("AI") throughout society continues to increase, and so does its relevance to the court and tribunal system," the Guidance purports to be "the first step in a proposed suite of future work to support the judiciary in their interactions with AI."[53]

The most important aspect of the six-page Guidance is that it clears the path for British judges to make use of AI technology. While it does not explicitly say that it should be used in drafting opinions or judgments, it does note the utility of AI tools in "summarizing large bodies of text," "writing presentations," and "administrative tasks like composing emails and memoranda."[54] It recommends against using AI for legal research and legal analysis, cautioning judges that such tools are "a poor way of conducting research" and "do not produce convincing analysis or reasoning."[55] The Guidance not only cautions about the risks inherent in AI use, it also provides judges with helpful signs that a work may have produced by an AI chatbot.[56]

According to the Guidance, legal representatives of parties do not have to disclose the use of AI, but it does recommend that judges remind lawyers of their obligations to ensure that their

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[52] Bianca Castro & John Hyde, *Solicitor Condemns Judges for Staying Silent on 'Woeful' Reforms*, L. Soc'y Gazette (Sept. 14, 2023), https://www.lawgazette.co.uk/news/solicitor-condemns-judges-for-staying-silent-on-woeful-reforms/5117228.article#:~:text=A%20senior%20figure%20at%20the,legislates%20on%20fixed%20costs%20reforms.

[53] Artificial Intelligence (AI) – Guidance for Judicial Office Holders, Courts and Tribunals Judiciary (Dec. 12, 2023), https://www.judiciary.uk/wp-content/uploads/2023/12/AI-Judicial-Guidance.pdf.

[54] *Id.*

[55] *Id.*

[56] *Id.*

filings with the court are accurate.[57] It also states that both lawyers and unrepresented litigants may be asked to confirm that they have independently verified the accuracy of any research or case citations generated with the assistance of an AI tool.[58] The Guidance also provides useful warnings about privacy and cybersecurity, reminding judges that typing something into a chatbot interface is equivalent to typing something the whole world can see.[59]

This Guidance for British jurists is a good start in helping equip the judiciary to contend with the challenges presented by the increasing use of generative AI in litigation. Equally important, it reflects the marked departure in attitudes toward AI by judges and court systems outside the United States. Rather than adopting the outright bans or mandated disclosures adopted by American courts, courts in the UK and other foreign countries exhibit acceptance, cautious optimism, and an apparently sincere desire to educate lawyers and litigants about the risks presented by the use of generative AI.

About the Author

Hon. John G. Browning is a partner in the Plano office of Spencer Fane, and a former Justice on Texas' Fifth District Court of Appeals. He also serves as the Distinguished Jurist in Residence at Faulkner University's Thomas Goode Jones School of Law, and as the Chair of the Institute for Law & Technology at the Center for American and International Law. The author of 5 books and more than 50 law review articles, Justice Browning is a graduate of Rutgers University and the University of Texas School of Law.

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[57] *Id.*

[58] *Id.*

[59] *Id.*

The One Internet Hack That Could Save Everything

It's so simple: Axe 26 words from the Communications Decency Act.
Welcome to a world without Section 230.

By Jaron Lanier and Allison Stanger

It no longer makes sense to speak of free speech in traditional terms. The internet has so transformed the nature of the speaker that the definition of speech itself has changed.

The new speech is governed by the allocation of virality. People cannot simply speak for themselves, for there is always a mysterious algorithm in the room that has independently set the volume of the speaker's voice. If one is to be heard, one must speak in part to one's human audience, in part to the algorithm. It is as if the US Constitution had required citizens to speak through actors or lawyers who answered to the Dutch East India Company, or some other large remote entity. What power should these intermediaries have? When the very logic of speech must shift in order for people to be heard, is that still free speech? This was not a problem foreseen in the law.

The time may be right for a legal and policy reset. US lawmakers on both sides of the aisle are questioning Section 230, the liability shield that enshrined the ad-driven internet. The self-reinforcing ramifications of a mere 26 words—"no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider"—has produced a social media ecosystem that is widely held to have had deleterious effects on both democracy and mental health.

Abraham Lincoln is credited with the famous quip about how you cannot fool all the people all the time. Perhaps *you* cannot, but perhaps the internet can. Imperfect speech has always existed, but the means and scale of amplification have not. The old situation cannot be the guide for the new.

SECTION 230 WAS created during a period when policy was being designed to unleash internet innovation, thereby maintaining America's competitive edge in cyberspace. The early internet was supported by a variety of friendly policies, not just Section 230. For instance, sales arranged over the internet were often not taxed in early years. Furthermore, the internet was knowingly inaugurated in an incomplete state, lacking personal accounts, authentication mechanisms, commercial transaction standards, and many other needed elements. The thinking was not only that it was easier to get a minimal design started when computing power

was still nascent, but also that the missing elements would be addressed by entrepreneurs. In effect, we were giving trillion-dollar gifts to parties unknown who would be the inevitable network-effect winners.

Section 230 was enacted as part of the 1996 Communications Decency Act, a larger legislative effort within the umbrella 1996 Telecommunications Act. Section 230(c)(1) provides immunity for online services regarding user-generated content, ensuring the companies hosting content are not treated as publishers of this information. Section 230(c)(2) offers Good Samaritan protection from civil liability when the companies—or platforms, as we call them today—in good faith remove or moderate objectionable content.

After President Bill Clinton signed the 1996 Telecommunications Act into law, it was unclear how the courts might interpret it. When the dust cleared, Section 230 emerged as something of a double-edged sword. It could be used to justify censorship, and at the same time be deployed as a corporate liability shield. Most importantly, it provided the runway for the takeoff of Google, Twitter, and Facebook. (And now TikTok—which, being a Chinese company, proves that Section 230 no longer serves American interests.)

The impact on the public sphere has been, to say the least, substantial. In removing so much liability, Section 230 forced a certain sort of business plan into prominence, one based not on uniquely available information from a given service, but on the paid arbitration of access and influence. Thus, we ended up with the deceptively named "advertising" business model—and a whole society thrust into a 24/7 competition for attention. A polarized social media ecosystem. Recommender algorithms that mediate content and optimize for engagement. We have learned that humans are most engaged, at least from an algorithm's point of view, by rapid-fire emotions related to fight-or-flight responses and other high-stakes interactions. In enabling the privatization of the public square, Section 230 has inadvertently rendered impossible deliberation between citizens who are supposed to be equal before the law. Perverse incentives promote cranky speech, which effectively suppresses thoughtful speech.

And then there is the economic imbalance. Internet platforms that rely on Section 230 tend to harvest personal data for their business goals without appropriate compensation. Even when data ought to be protected or prohibited by copyright or some other method, Section 230 often effectively places the onus on the violated party through the requirement of takedown notices. That switch in the order of events related to liability is comparable to the difference between opt-in and opt-out in privacy. It might seem like a technicality, but it is actually a massive difference that produces substantial harms. For example, workers in information-

related industries such as local news have seen stark declines in economic success and prestige. Section 230 makes a world of data dignity functionally impossible.

To date, content moderation has too often been beholden to the quest for attention and engagement, regularly disregarding the stated corporate terms of service. Rules are often bent to maximize engagement through inflammation, which can mean doing harm to personal and societal well-being. The excuse is that this is not censorship, but is it really not? Arbitrary rules, doxing practices, and cancel culture have led to something hard to distinguish from censorship for the sober and well-meaning. At the same time, the amplification of incendiary free speech for bad actors encourages mob rule. All of this takes place under Section 230's liability shield, which effectively gives tech companies carte blanche for a short-sighted version of self-serving behavior. Disdain for these companies—which found a way to be more than carriers, and yet not publishers—is the only thing everyone in America seems to agree on now.

TRADING A KNOWN for an unknown is always terrifying, especially for those with the most to lose. Since at least some of Section 230's network effects were anticipated at its inception, it should have had a sunset clause. It did not. Rather than focusing exclusively on the disruption that axing 26 words would spawn, it is useful to consider potential positive effects. When we imagine a post-230 world, we discover something surprising: a world of hope and renewal worth inhabiting.

In one sense, it's already happening. Certain companies are taking steps on their own, right now, toward a post-230 future. YouTube, for instance, is diligently building alternative income streams to advertising, and top creators are getting more options for earning. Together, these voluntary moves suggest a different, more publisher-like self-concept. YouTube is ready for the post-230 era, it would seem. (On the other hand, a company like X, which leans hard into 230, has been destroying its value with astonishing velocity.) Plus, there have always been exceptions to Section 230. For instance, if someone enters private information, there are laws to protect it in some cases. That means dating websites, say, have the option of charging fees instead of relying on a 230-style business model. The existence of these exceptions suggests that more examples would appear in a post-230 world.

Let's return to speech. One difference between speech before and after the internet was that the scale of the internet "weaponized" some instances of speech that would not have been as significant before. An individual yelling threats at someone in passing, for instance, is quite different from a million people yelling threats. This type of amplified, stochastic harassment has become a constant feature of our times—chilling speech—and it is possible that in a post-

230 world, platforms would be compelled to prevent it. It is sometimes imagined that there are only two choices: a world of viral harassment or a world of top-down smothering of speech. But there is a third option: a world of speech in which viral harassment is tamped down but ideas are not. Defining this middle option will require some time to sort out, but it is doable without 230, just as it is possible to define the limits of viral financial transactions to make Ponzi schemes illegal.

With this accomplished, content moderation for companies would be a vastly simpler proposition. Companies need only uphold the First Amendment, and the courts would finally develop the precedents and tests to help them do that, rather than the onus of moderation being entirely on companies alone. The United States has more than 200 years of First Amendment jurisprudence that establishes categories of less protected speech—obscenity, defamation, incitement, fighting words—to build upon, and Section 230 has effectively impeded its development for online expression. The perverse result has been the elevation of algorithms over constitutional law, effectively ceding judicial power.

When the jurisprudential dust has cleared, the United States would be exporting the democracy-promoting First Amendment to other countries rather than Section 230's authoritarian-friendly liability shield and the sewer of least-common-denominator content that holds human attention but does not bring out the best in us. In a functional democracy, after all, the virtual public square should belong to everyone, so it is important that its conversations are those in which all voices can be heard. This can only happen with dignity for all, not in a brawl.

Section 230 perpetuates an illusion that today's social media companies are common carriers like the phone companies that preceded them, but they are not. Unlike Ma Bell, they curate the content they transmit to users. We need a robust public conversation about what we, the people, want this space to look like, and what practices and guardrails are likely to strengthen the ties that bind us in common purpose as a democracy. Virality might come to be understood as an enemy of reason and human values. We can have culture and conversations without a mad race for total attention.

WHILE SECTION 230 might have been considered more a target for reform rather than repeal prior to the advent of generative AI, it can no longer be so. Social media could be a business success even if its content was nonsense. AI cannot.

There have been suggestions that AI needs Section 230 because large language models train on data and will be better if that data is freely usable with no liabilities or encumbrances. This notion is incorrect. People want more from AI than entertainment. It is widely considered an important tool for productivity and scientific progress. An AI model is only as good as the data it is trained on; indeed, general data improves specialist results. The best AI will come out of a society that prioritizes quality communication. By quality communication, we do not mean deepfakes. We mean open and honest dialog that fosters understanding rather than vitriol, collaboration rather than polarization, and the pursuit of knowledge and human excellence rather than a race to the bottom of the brain stem.

The attention-grooming model fostered by Section 230 leads to stupendous quantities of poor-quality data. While an AI model can tolerate a significant amount of poor-quality data, there is a limit. *It is unrealistic to imagine a society mediated by mostly terrible communication where that same society enjoys unmolested, high-quality AI.* A society must seek quality as a whole, as a shared cultural value, in order to maximize the benefits of AI. Now is the best time for the tech business to mature and develop business models based on quality.

All of this might sound daunting, but we've been here before. When the US government said the American public owned the airwaves so that television broadcasting could be regulated, it put in place regulations that supported the common good. The internet affects everyone, so we must devise measures to ensure that our digital-age public discourse is of high quality and includes everyone. In the television era, the fairness doctrine laid that groundwork. A similar lens needs to be developed for the internet age.

Without Section 230, recommender algorithms and the virality they spark would be less likely to distort speech. It is sadly ironic that the very statute that delivered unfathomable success is today serving the interests of our enemies by compromising America's superpower: our multinational, immigrant-powered constitutional democracy. The time has come to unleash the power of the First Amendment to promote human free speech by giving Section 230 the respectful burial it deserves.

About the Authors

Jaron Lanier is a computer scientist, composer, artist, and author who writes on numerous topics, including high-technology business, the social impact of technology, the philosophy of consciousness and information, Internet politics, and the future of humanism.

Allison Stanger is the Leng professor of international politics and economics at Middlebury College and the author of the forthcoming *Who Elected Big Tech?*

Honing Your Own AI Tools: From RAG's to Riches – Part 1

By Ronald Chichester

> A good tool improves the way you work. A *great* tool improves the way you *think*.
>
> -- Jeff Duntemann

Abstract

Artificial Intelligence ("AI") is like any other tool. AI can be a good tool, or a great tool. As with any tool, you first must get it, and then master it. Secondly, as with any tool, you can either *own* it, or *rent* it. If you rent it, you pay money (as well as data) and cede control over the tool -- and thus an aspect of your practice -- to others. If you own your tool, you must maintain it, but in doing so you can fashion the tool so that it can be exploited in ways that suit you in the long run, and thus benefits your practice more than simply saving money. Currently, AI software is like Lego blocks, from which you can fashion something useful. The building blocks are all around you (for free) in the open source software ecosystem. For the adventurous few, open source software affords you the opportunity to make your AI tools into something that *you* like, and that *you* can use effectively and efficiently – all of which can afford a competitive advantage over your competition. This article is Part 1 of a series of articles that identifies building blocks that are available to you, for free, in a way that you can use in your practice.

Discussion

What is an example of an "AI tool"?

One of the principal AI tools that practitioners utilize are large language models ("LLM's"). A large language model is a type of artificial intelligence (AI) designed to process and generate human-like language. In other words, an LLM is a machine learning model that can understand, interpret, and draft text that is familiar to humans. LLMs are trained on vast amounts of text data, which allows them to learn patterns and relationships within language.

Why Would I Want an AI Tool?

As a lawyer, you may be interested in understanding what a large language model is because it has numerous potential applications in the legal field. For example:

1. Document review: An LLM could be used to quickly review and analyze large volumes of legal documents, such as contracts or court transcripts, to identify key terms, provisions, or issues.

2. Legal research: An LLM could be trained on a corpus of legal texts to provide insights and recommendations on legal precedents, statutes, and regulations relevant to a particular case or issue.

3. Contract drafting: An LLM could be used to generate contracts based on pre-existing templates and clauses, allowing lawyers to focus on tailoring the contracts to the specific needs of their clients.

4. Legal writing: An LLM could assist lawyers in generating legal briefs, memos, or other written communications by suggesting phrases, sentences, or entire paragraphs based on relevant legal principles and language patterns.

5. Compliance monitoring: An LLM could be used to continuously monitor and analyze a company's compliance with laws, regulations, and internal policies, identifying potential issues before they become major problems.

6. Predictive analytics: An LLM could be trained on legal data to predict the outcomes of cases or the likelihood of success for a particular legal strategy, providing lawyers with valuable insights to inform their decisions.

7. Chatbots and virtual assistants: An LLM could be integrated into chatbots or virtual assistants to provide basic legal information, such as answering common legal questions or directing users to relevant resources.

8. Document automation: An LLM could be used to automate the drafting of legal documents, such as pleadings, motions, or other court filings, by analyzing existing templates and generating new documents based on that analysis.

9. Expert witnesses: An LLM could be trained on expert testimony from prior cases to generate summaries or even entire witness statements for lawyers to use in their arguments.

10. Legal decision-making: An LLM could be used to analyze legal precedents and other relevant data to provide insights on how judges might rule in a particular case, helping lawyers make more informed strategic decisions.

A large language model is a powerful tool that can assist lawyers in various aspects of their work, from document review and legal research to contract drafting and predictive analytics.

My Firm is on a Shoe-String Budget, Can I get an LLM for my Law Office?

The answer is "Yes." There are a variety of LLMs available to the public for free. Several large companies, such as Meta (the owners of Facebook) have developed LLMs and released them under an open source license. Note, there are dozens of LLMs available now, and more are being developed all the time. Many of the newer LLMs are "domain-specific" meaning that they are tailored to a specific set of tasks, such as writing software code, or interpreting legal statutes. You should shop around and try different LLMs to see which works best for you.

If all this free software sounds too-good-to-be-true, please understand that the software discussed herein has been released under an open source license. Open source software is a type of software that is made available in source code form, free of charge and with the ability for users to modify, to study, to share, and to distribute the software.[1] In other words, open source software is designed to be transparent, modifiable, and freely distributable. The open source development model is in stark contrast to the way that proprietary software is developed and distributed.

As a lawyer, you may be interested in open source software for several reasons:

1. Cost savings: Open source software is often free or low-cost, which can be beneficial for law firms or legal organizations with limited budgets.

2. Customization: With open source software, users have the ability to modify and to customize the software to meet their specific needs. The ability to modify the underlying source code can be particularly useful for legal professionals who need to tailor their software to fit their unique workflows and practices.

3. Security: Open source software is often considered more secure than proprietary software because the source code is available for anyone to review and audit. This transparency can help identify potential vulnerabilities and fix them more quickly.

4. Community involvement: Open source software often has a large and active community of users, developers, and contributors. This can provide valuable resources and support for legal professionals who may be looking for answers to specific questions or problems related to the software.

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[1] For more about open source licensing, go to the open source initiative website at https://opensource.org/.

5. Flexibility: Open source software can be run on a variety of platforms, including Windows, MacOS, and Linux. This can provide lawyers with greater flexibility in terms of the devices and systems they use for their work.

6. Integration: Many open source software projects are designed to integrate with other open source software projects, which can help legal professionals build customized workflows that meet their specific needs.

7. Learning opportunities: Open source software can provide lawyers with valuable learning opportunities, such as understanding how the software works under the hood and how to modify it to suit their needs.

8. Ethical considerations: As a lawyer, you may be interested in open source software because it aligns with ethical considerations related to the use of technology in legal practice. By using open source software, lawyers can demonstrate their commitment to transparency and accountability in the use of technology. With respect to LLMs, using a local LLM rather than a commercial LLM can obviate problems with the disciplinary rules.[2]

9. Competitive advantage: Using open source software can provide a competitive advantage for law firms or legal organizations that adopt it early on. This can help them stay ahead of the curve in terms of technology adoption and innovation.

10. Future-proofing: Open source software is often designed to be future-proofed, meaning that it can adapt to changing technology and user needs over time. This can

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[2] *See, e.g.*, Texas D.R. 1.05 (regarding the attorney's duty to maintain client confidences). You can obtain a copy of the disciplinary rules at: https://www.texasbar.com/AM/Template.cfm?Section=Home&ContentID=27271&Template=/CM/ContentDisplay.cfm. *See also*, Uri Gal, "ChatGPT is a data privacy nightmare. If you've ever posted online, you ought to be concerned," The Conversation (February 7, 2023), available at: https://theconversation.com/chatgpt-is-a-data-privacy-nightmare-if-youve-ever-posted-online-you-ought-to-be-concerned-199283 (last accessed on March 12, 2024); Matt Burgess, "ChatGPT Has a Big Privacy Problem," Wired (April 4, 2023), available at: https://www.wired.com/story/italy-ban-chatgpt-privacy-gdpr/ (last accessed on March 12, 2024); Dan Goodin, "Hackers can read private AI-assistant chats even though they're encrypted," ArsTechnica (March 14, 2024), available at: https://arstechnica.com/security/2024/03/hackers-can-read-private-ai-assistant-chats-even-though-theyre-encrypted/ (last accessed on March 14, 2024) (regarding chatbot keylogging).

provide lawyers with greater peace of mind when it comes to the longevity of their technology infrastructure.

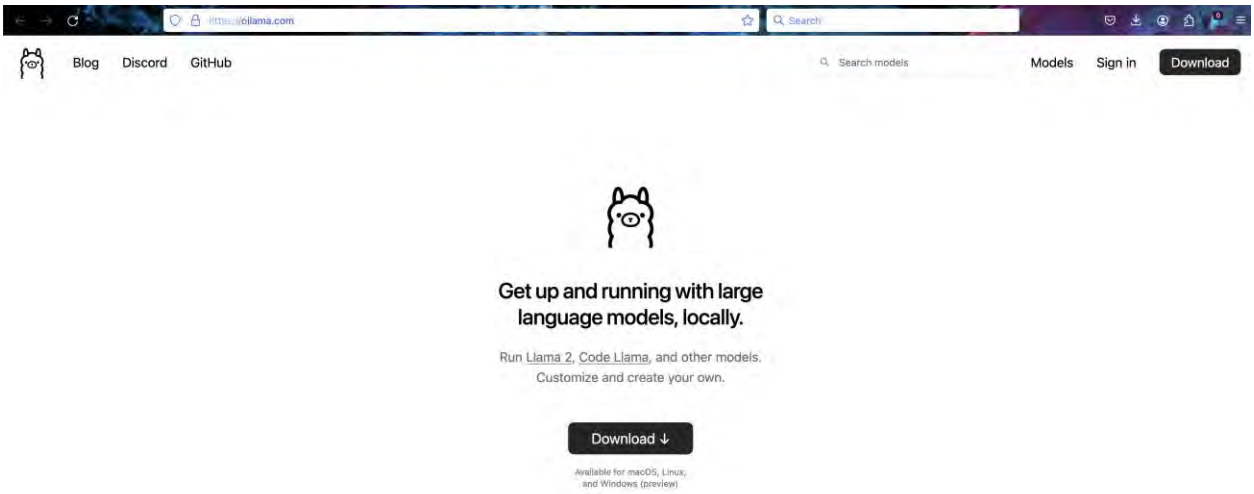
Overall, open source software can provide lawyers with a range of benefits related to cost savings, customization, security, community involvement, flexibility, learning opportunities, ethical considerations, competitive advantage, and future-proofing.

Can I Run an LLM on my Laptop?

The answer is, "Maybe." It depends on the capabilities of your laptop. LLMs are large binary files (the small ones are several gigabytes in size) and using them is computationally intensive. Although you *can* run LLMs on a standard laptop, if might run very slowly. There are chips, called graphics processing units ("GPUs"), that speed up the data processing tremendously. If your laptop has a very good graphics card (*e.g.*, an nVidia 4070), or if you have a Mac with an M1/M2/M3 series processor, then you'll be in good shape. **Hint**: PCs designed for gaming often come with great graphics cards, a reasonable amount of RAM, and a decent central processing unit ("CPU") -- at a reasonable price.

Where Can I Try Out an LLM (for Free)?

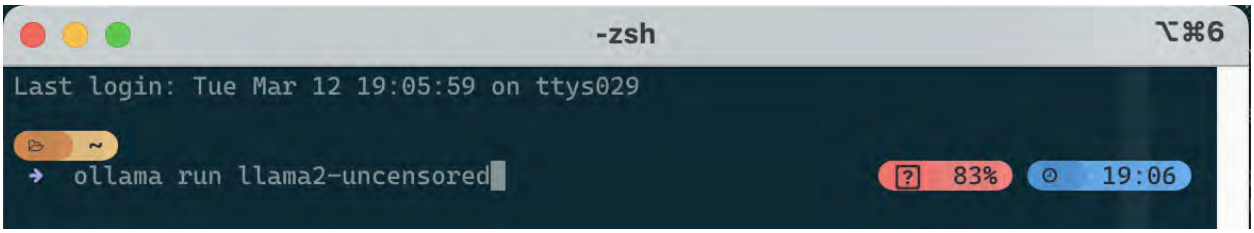
Assuming that your computer is up to the task, and you want something ***EASY***, then you should direct your web browser to Ollama.ai.



Select the "Download" button. (Note, the website will detect your operating system and helpfully steer you to the right download). Ollama works quite well with MacOS and Linux. The Windows version is still in the "Preview" phase (at the time of this writing), but you can run

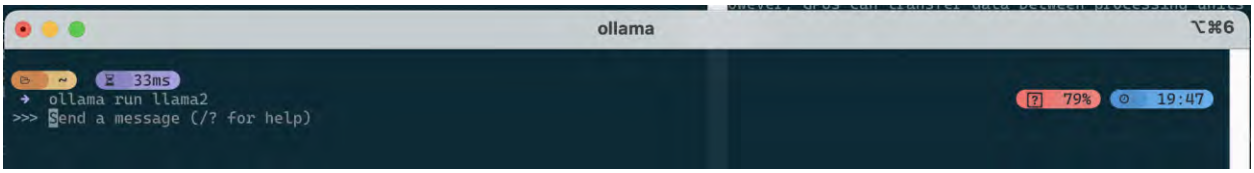
Ollama on Windows via Docker if necessary.[3] In any case, you need to be modestly literate with the command line. Fortunately, there are several web interfaces from which to choose, but you would have to install them manually.[4] For this Ollama demonstration, we're going to use the command line version (because it is easy and completely effective). For the Mac, installation could hardly be easier. You download a standard .dmg file and install it in the normal fashion. Windows users get the ubiquitous .exe file. Linux users get a one-line command, but they can handle that with aplomb. Everything that you need is provided in the downloaded file.

Once you have installed Ollama, open a terminal and simply enter:

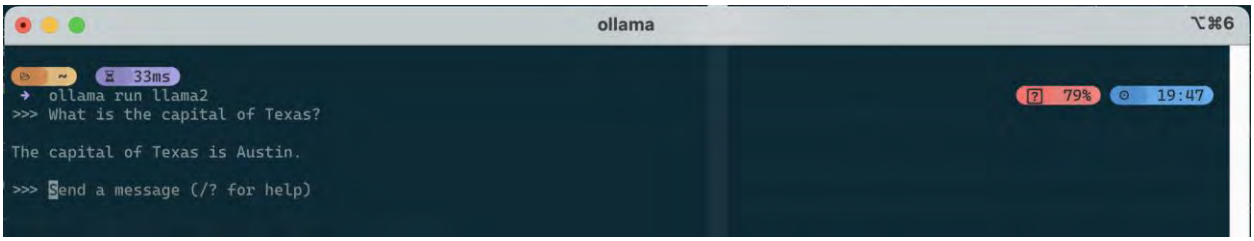


… to download and run the uncensored version of the Llama2 LLM.

Once entered, you will be presented with a "prompt" which prompts you to ask a question:



Enter your question (the message) and press "Enter":



This is a good time to discuss models. In the example immediately above, we're using the *censored* (default) version of the Lama2 LLM that was made by Meta (the corporate owner of

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[3] Docker (https://docker.com) is a way to run complicated software applications easily on any operating system. You can read more about Docker at: https://www.docker.com/. Note, there are hundreds (if not thousands) of YouTube videos on all things about Docker. Docker is also used for DocAssemble (https://docassemble.com) and many other large/complex applications. The Ollama Docker image can be found at: https://hub.docker.com/r/ollama/ollama.

[4] *See*, for example, Open WebUI, which is available at: https://github.com/open-webui/open-webui.

Facebook). The first example above downloaded and ran the *uncensored* version of the Llama2 LLM. LLMs imitate humans, and humans have biases, so it should be no surprise that LLMs exhibit human-style bias. Depending on your application, the built-in bias might be acceptable, if not desirable. In other situations, however, an uncensored LLM might be a better fit for purpose. Uncensored versions of LLMs are the exception, not the rule. Consequently, if you don't see the word "uncensored" in the name of the LLM, you should assume that there is some type of bias.

Currently, Ollama supports seventy different LLMs, and more are added on a regular basis. You can find a list of the LLMs (with a short description of each) here. Just know that LLMs can be censored (or not) and some are tailored to specific "domains" (or not). Llama2 is a "general" LLM that is not specific to any particular area of life. As you might expect of software developers, one of the specific domains is software development. (Legal-specific LLMs are in the works.) If you want a software program to perform a specific task, just tell Ollama to run one of the code-specific LLMs and ask Ollama to write your program by describing (in English) what you want the program to do.

The great thing about Ollama is that you can quickly and easily switch LLMs and try them out. To run a different LLM, simply enter:

```
$ ollama run dolphin-mistral
```

… where the dolphin-mistral LLM is one that is tailored for developing software applications.

Do I ask questions the same way that I do with ChatGPT?

The short answer is: "Yes." However, different LLMs respond better when prompted in certain ways. Indeed, there is a fast-developing methodology for prompting LLMs to get the best performance. That methodology is called "prompt engineering"[5] and will become an important skill for lawyers.[6]

Conclusion

AI is here to stay, so lawyers are encouraged to adopt and become adept with AI tools. So far, we've demonstrated how attorneys can download and use a local version of an LLM (for free). In future articles, we're going to discuss prompt engineering, and provide code that can be

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[5] For example, Meta has provided a guide to prompt engineering specifically for the llama and llama2 family of LLMs, which you can find at: https://www.promptingguide.ai/models/llama.

[6] It is the author's opinion that prompt engineering will become part of the lawyers required technical competence for licensure.

used to query deposition transcripts, court opinions, legal treatises, scholarly articles, etc., in such a way as to get very specific answers to questions in a way that precludes the LLM from "hallucinating."[7]

About the Author

Ronald Chichester is an in-house attorney with JBB Advanced Technologies, LLC in Carrollton, Texas. He is a former Chair of the Computer & Technology Section and the Business Law Section of the State Bar of Texas. He holds a bachelors degree and a masters degree in aerospace engineering from the University of Michigan, and a J.D. from the University of Houston Law Center. He speaks and writes frequently about AI, most recently at the Advanced Business Law Seminar last November. He first got involved with AI in 1984 while he was a graduate student at Michigan. Fortunately, he followed the technology as it rose from a curiosity to ubiquity and continues to write AI-enabled software applications for his own practice.

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[7] The word "hallucination" refers to a situation when the LLMs writes content that is inconsistent with real-world facts or user inputs. *See, e.g.,* Huang, et. al, "A Survey on Hallucination in Large Language Models: Principles, Taxonomy, Challenges, and Open Questions" (November 9, 2023), available at: https://arxiv.org/abs/2311.05232 (last accessed on March 12, 2024). LLMs do not have a sense of reality, so they cannot distinguish fact from fiction. LLMs try to please, but, unless requested in the prompt, will "helpfully" try to give you what you want – regardless of whether the answer is a complete fiction. There have been several cases where lawyers have used AI-generated text from an LLM that hallucinated, such as case law that never existed. Many of those lawyers have been sanctioned. *See, e.g.,* Sara Merken, "New York lawyers sanctioned for using Fake ChatGTP cases in legal brief," Reuters (June 26, 2023), available at: https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/ (last accessed on March 13, 2024).

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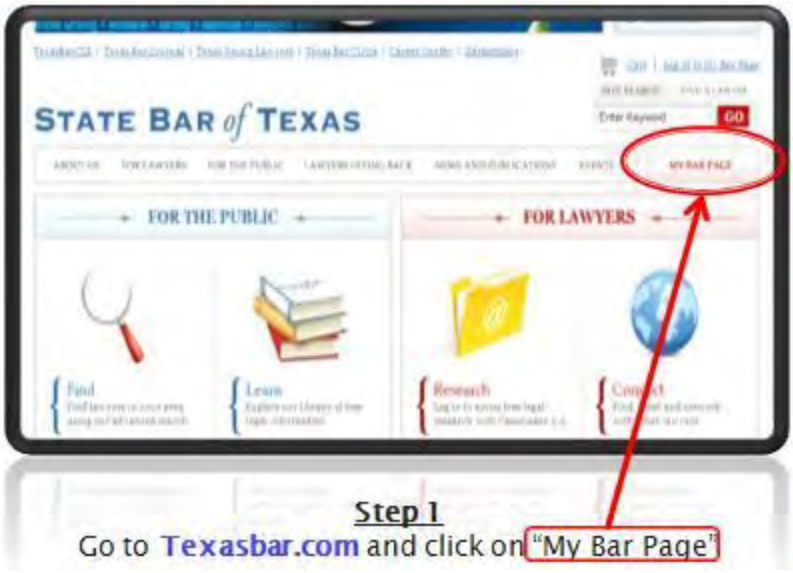

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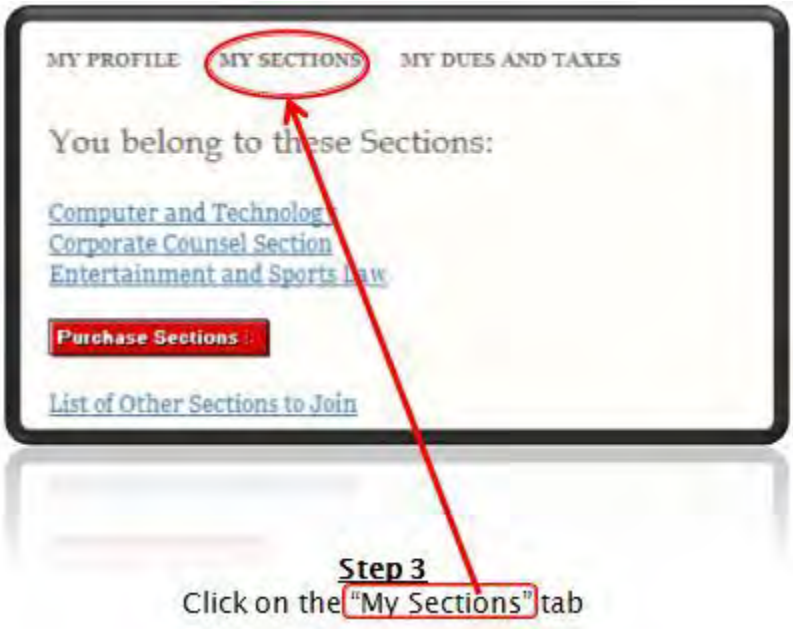

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