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Why Law Firms Must Responsibly Embrace Generative AI

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WHY LAW FIRMS MUST RESPONSIBLY EMBRACE GENERATIVE AI

Natalie A. Pierce and Stephanie L. Goutos¹

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

INTRODUCTION

The legal industry is on the brink of transformative change, driven by the power of artificial intelligence (AI). Brad Smith, Vice Chairman of Microsoft, equates generative AI (GAI)³ with the “invention of the internet.”⁴ The release of OpenAI’s ChatGPT⁵ at the end of 2022 triggered

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² This statement is now becoming oft repeated, as it perfectly summarizes AI’s role in the legal field. See Suzanne McGee, *Generative AI and the Law*, LEXISNEXIS, 2023, <https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/> (noting the widespread popularity of this catchphrase as more professionals comment on the integration of GAI into the legal industry.).

³ Eben Carle, *Ask a Techspert: What is Generative AI?*, Google, <https://blog.google/inside-google/googlers/ask-a-techspert/what-is-generative-ai/>, (last visited June 13, 2023)(defining GAI and noting it can take what it’s learned from examples it’s been shown and create something entirely new based on that information).

⁴ See Danny D’Cruze, *India Today Conclave 2023: Microsoft President Brad Smith says AI could be as big as Internet*, BUSINESS TODAY, Mar. 18, 2023, <https://www.businesstoday.in/technology/news/story/india-today-conclave-2023-microsoft-president-brad-smith-says-ai-could-be-as-big-as-internet-373869-2023-03-18> (last accessed May 11, 2023).

⁵ ChatGPT is a cutting-edge part of the GAI wave, advanced systems that have the ability to produce a wide range of content, including images and text. This technology is widely predicted to redefine the future of work. In March 2023, OpenAI launched a new version of its GAI technology, ChatGPT-4, describing it as more “powerful and predictable than previous versions and capable of analyzing images and handling much larger blocks of text.” See Deepa Seetharaman, *OpenAI Rolls Out New GPT-4 Version of Chatbot ChatGPT*, WALL ST. J., Mar. 15, 2023, <https://www.wsj.com/articles/openai-rolls-out->

a new global AI race that is poised to transform the workplace.⁶ Attorneys predict the rapid emergence of AI will eventually overshadow many of the most significant technological advances in history and completely transform our society over the coming years.⁷ As technology continues to advance at this unprecedented rate, law firms must recognize they are not immune to this disruptive force of change.⁸

The introduction of GAI into our society presents a potential opportunity for a new era of legal practice, among many other advancements.⁹ This idea has sparked much discussion among legal professionals and experts, some of whom have raised serious concerns about integrating this technology into the practice of law, or other professions.¹⁰ While we must consider the legitimate concerns regarding the inherent risks associated with GAI adoption, it's equally critical to recognize the immense value GAI can offer to society, including law firms, if we are able to effectively manage the risks in an ethical, responsible, and compliant manner.¹¹

[updated-version-of-viral-chatbot-chatgpt-f03fea27](#) (last accessed May 5, 2023). Alternatives to OpenAI's ChatGPT have also launched from several companies, including Google and Microsoft.

⁶ See Karen Hao, *What Is ChatGPT? What to Know About the AI Chatbot*, WALL ST. J., Feb. 8, 2023, https://www.wsj.com/articles/chatgpt-ai-chatbot-app-explained-11675865177?mod=Searchresults_pos1&page=1 (last accessed Apr. 28, 2023).

⁷ Brief of the Chicago Patent Attorneys as Amici Curiae at 3-4, *Thaler v. Vidal*, 2023 U.S. S. CT. BRIEFS LEXIS 1282 (Apr. 18, 2023) (statement of Aaron V. Gin, Ph.D.) (noting GAI as a revolutionary and disruptive technology that is rapidly expanding in usage and applicability).

⁸ See, e.g., Suzanne McGee, *GAI and the Law*, LEXISNEXIS, 2023, <https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/> (“according to the results of a survey released by LexisNexis in March, 84 percent of respondents in the legal field believe GAI tools will increase their efficiency, while a majority believe it could advance and *revolutionize the entire practice of law*.”) (emphasis added).

⁹ See Andrew Perlman, *The Implications of ChatGPT for Legal Services and Society*, HARV. L. SCH., CTR. ON THE LEGAL PROF., <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/generative-ai-in-the-legal-profession/the-implications-of-chatgpt-for-legal-services-and-society/> (last accessed May 9, 2023) (exploring the transformative potential of GAI and its implications for the legal industry, including the use of GAI to help with various legal tasks, from research to document generation).

¹⁰ See, e.g., Dr. Lance B. Eliot, *Is GAI Such As ChatGPT Going To Undermine The Famed Attorney-Client Privilege, Frets AI Law And AI Ethics*, FORBES, Mar. 30, 2023, <https://www.forbes.com/sites/lanceeliot/2023/03/30/is-generative-ai-such-as-chatgpt-going-to-undermine-the-famed-attorney-client-privilege-frets-ai-law-and-ai-ethics/?sh=5d2dacf71ea7> (discussing the application of GAI within the legal industry and analyzing various risks associated with its use); see also Margaret Osborne, *The Godfather of AI Now Warns of Its Dangers*, SMITHSONIAN MAGAZINE, May 4, 2023, <https://www.smithsonianmag.com/smart-news/the-godfather-of-ai-now-warns-of-its-dangers-180982108/> (reporting AI pioneer Geoffrey Hinton, also known as the ‘Godfather of AI,’ left Google to discuss the dangers of AI, although he declined to sign the open letter submitted by tech leaders to pause work on AI systems because he doesn’t believe the U.S. should stop its progress as other nations would inevitably continue with it).

¹¹ See e.g., Karen Hao, *What is ChatGPT? What to Know About the AI Chatbot*, WALL ST. J., APR. 11, 2023, https://www.wsj.com/articles/chatgpt-ai-chatbot-app-explained-11675865177?mod=Searchresults_pos1&page=1, (acknowledging the serious limitations and potential risks of GAI technology, including spewing misinformation, and noting several AI experts called for a

There should not be an outright prohibition on GAI within law firms.¹² That would be a short-sighted approach and would put those law firms at a significant competitive disadvantage compared to forward-thinking law firms, as well as alternative legal providers, that choose to embrace GAI. A refusal to be proactive in this domain may also inadvertently produce serious risks. A more nuanced and balanced approach should instead be adopted by law firms, one that harnesses the benefits, while minimizing the potential risks.¹³

In this Article, we explore the reasons law firms should responsibly embrace GAI and why doing so is imperative for the future of the legal profession.¹⁴ We provide several real-world examples of how organizations, including law firms, are already embracing GAI.¹⁵ We highlight the many

pause in the breakneck development of such tools in order to establish safety standards); *see also* Orly Lobel, *The Law of AI for Good*, UNIV. OF SAN DIEGO SCHOOL OF LAW – LEGAL STUDIES RESEARCH PAPER SERIES, NO. 23-001, Jan. 26, 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4338862 (concluding automation has the potential to increase accuracy, inclusion, fairness, access, and efficiency across a broad range of industries); *see also* Andrew Perlman, *The Implications of ChatGPT for Legal Services and Society*, HARV. L. SCHOOL, CTR. ON THE LEGAL PROF., <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/generative-ai-in-the-legal-profession/the-implications-of-chatgpt-for-legal-services-and-society/> (highlighting the rapid adoption of GAI tools by law firms and companies within just a few months of ChatGPT’s release).

¹² *See* Aleksander Mądry, *Advances in AI: Are We Ready for a Tech Revolution?*, Written Testimony, before the U.S. House Comm. on Oversight and Accountability, Subcomm. on Cybersecurity, Info. Tech., and Gov’t Innovation, Mar. 8, 2023, https://oversight.house.gov/wp-content/uploads/2023/03/madry_written_statement100.pdf (recognizing the adoption of AI comes with many risks, but ultimately opining the risks are “manageable,” and emphasizing the need to seize this opportunity now); *see also* Louis Lehot, *Key Legal and Operations Risks for Enterprise AI*, LAW.COM, Apr. 24, 2023, <https://www.law.com/legaltechnews/2023/04/24/key-legal-and-operational-risks-for-enterprise-ai/> (arguing companies that use AI must be aware of the risks that come with it, but if used responsibly businesses “can mitigate these risks and reap the benefits of this powerful technology.”).

¹³ *See* Orly Lobel, *The Law of AI for Good*, Univ. of San Diego School of Law – Legal Studies Research Paper Series, No. 23-001, Jan. 26, 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4338862; *see also* Scott Crowder, Written Testimony, *Advances in AI: Are We Ready for a Tech Revolution?*, before the U.S. House Comm. on Oversight and Accountability (Mar. 8, 2023), <https://oversight.house.gov/wp-content/uploads/2023/03/IBM-Scott-Crowder-House-Oversight-Cyber-Hearing-Testimony-03.08.23.pdf>, (stating trustworthiness is key to AI adoption and recommending companies must have internal governance processes, as well as recognizing the importance to establish best practices for AI bias mitigation).

¹⁴ While the majority of this article was written by our talented human authors, it’s important to acknowledge the collaborative role played by GAI algorithms. We employed these tools to assist us in brainstorming ideas and organize our outline, ensuring a comprehensive exploration of the subject matter. Where GAI was explicitly utilized, we have attributed the tool and the prompts. All of the content has been thoroughly reviewed and edited by our team for accuracy, clarity, and coherence.

¹⁵ In fact, it’s not just law firms embracing this new era of legal practice. At least two federal judges have already issued orders requiring explicit disclosures relating to the use of GAI in legal proceedings. *See* Isha Marathe, *Judges, Attorneys React to Federal Court GAI Order: Too Hot, Too Cold, or Just Right?*, LEGALTECH NEWS, Jun. 1, 2023, <https://www.law.com/legaltechnews/2023/06/01/judges-attorneys-react-to-federal-court-generative-ai-order-too-hot-too-cold-or-just-right/> (noting U.S. District Judge Brently Starr in the N. District of Tex. issued a standing order requiring attorneys to file mandatory

advantages GAI can bring to the legal field, but also confront the common arguments against its adoption. Our analysis includes strategies for mitigating these risks, as well as supporting evidence for why a complete ban on GAI technology is not justified. Most importantly, we articulate how law firms can effectively manage these risks by following organizational best practices, adhering to legal and ethical standards, and using GAI responsibly.¹⁶

We stand at an inflection point in terms of how AI, and particularly GAI, will impact our workforce.¹⁷ Now is the time to ask the difficult questions and develop critical frameworks.¹⁸ Law firms, in particular, have a tremendous opportunity to leverage GAI to drive innovation, bolster efficiency, and even contribute to a more equitable society.¹⁹

However, harnessing this power requires lawyers to embrace this new technology and ensure they are able to use it appropriately. One could argue there's even an inherent responsibility to do so, in order to competently represent clients. By striking the right balance with a careful, strategic, and ethical approach, the legal industry can embrace GAI responsibly and reap the full benefits of this transformative technology.²⁰

certifications attesting that they did not use generative AI, such as OpenAI's ChatGPT or Google's Bard, in drafting their court filings. Or, if they did use it, attesting that its output "was checked for accuracy, using print reporters or traditional legal databases, by a human being.").

¹⁶ See, e.g., Microsoft, *Responsible AI*, <https://www.microsoft.com/en-us/ai/responsible-ai> (last accessed May 9, 2023); IBM, *AI Ethics*, <https://www.ibm.com/artificial-intelligence/ethics> (last accessed May 9, 2023); Google, *AI principles*, <https://ai.google/principles/> (last accessed May 9, 2023); Intel, *Responsible AI Pillars*, <https://www.intel.com/content/www/us/en/artificial-intelligence/responsible-ai.html> (last accessed May 9, 2023).

¹⁷ See Aleksander Mądry, *Advances in AI: Are We Ready for a Tech Revolution?*, Written Testimony before the U.S. House Comm. on Oversight and Accountability, Subcomm. on Cybersecurity, Info. Tech., and Gov't Innovation, Mar. 8, 2023, https://oversight.house.gov/wp-content/uploads/2023/03/madry_written_statement100.pdf; The White House, *Biden-Harris Administration Announces New Actions to Promote Responsible AI Innovation that Protects Americans' Rights and Safety*, May 4, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/04/fact-sheet-biden-harris-administration-announces-new-actions-to-promote-responsible-ai-innovation-that-protects-americans-rights-and-safety/> (announcing \$140 million in funding to launch seven new national AI research institutes, the "new [i]nstitutes . . . will advance AI R&D to drive breakthroughs in critical areas, including climate, agriculture, energy, public health, education, and cybersecurity.").

¹⁸ See Zion Market Research, *\$422.37+ Billion Global AI Market Size Likely to Grow at 39.4% CAGR During 2022-2028*, BLOOMBERG, Jun. 27, 2022, <https://www.bloomberg.com/press-releases/2022-06-27/-422-37-billion-global-artificial-intelligence-ai-market-size-likely-to-grow-at-39-4-cagr-during-2022-2028-industry>.

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

²⁰ A recent report surveying lawyers about the opportunities and potential risks of using GAI and ChatGPT within law firms found that a majority surveyed (82%) believe ChatGPT and GAI *can* readily be applied to legal work. See THOMSON REUTERS, *ChatGPT and GAI within Law Firms: Law Firms see*

DISSECTING THE NAYSAYERS: COMMON ARGUMENTS AGAINST GAI

Common arguments against utilizing GAI in the legal industry often raise concerns such as: (1) the technology not being specifically designed for legal work;²¹ (2) the possibility that the use of GAI may conflict with legal ethics rules; (3) the potential for inaccurate results;²² (4) potential perpetuation of biases and discrimination;²³ (5) risks related to privacy or confidentiality;²⁴ and (6) various IP or other similar legal risks (e.g., employment law) associated with the use of GAI tools.²⁵

However, these arguments often make the assumption that the risks cannot be effectively managed, while overlooking the many benefits and transformative power of GAI technology that is used appropriately with the proper safeguards in place.²⁶

potential, eye practical use cases and more knowledge around risks, Apr. 17, 2023, <https://www.thomsonreuters.com/en-us/posts/technology/chatgpt-generative-ai-law-firms-2023/>.

²¹ See e.g., Isha Marathe, *An Insurer Sent Law Firms a ChatGPT Warning. It Likely Won't Be the Last*, LAW.COM, Apr. 13, 2023, https://www.law.com/legaltechnews/2023/04/13/an-insurer-sent-law-firms-a-chatgpt-warning-it-likely-wont-be-the-last/?utm_source=email&utm_medium=enl&utm_content=20230417&utm_campaign=morningminute&utm_term=law (last accessed May 9, 2023).

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

²³ For example, if trained on biased data, it may perpetuate those biases in responses or in decisions it makes. See Keith A. Call, *Focus on Ethics & Civility: The Day Your Life Changed Forever*, 36 UTAH BAR J. 53, Mar.-Apr. 2021, <https://advance.lexis.com/api/permalink/33df3c03-affb-441f-be16-d95a587599bc/?context=1000516>; see also Louis Lehot, *Key Legal and Operations Risks for Enterprise AI*, LAW.COM, Apr. 24, 2023, <https://www.law.com/legaltechnews/2023/04/24/key-legal-and-operational-risks-for-enterprise-ai/> ("[a]nother of AI's most significant legal risks is the potential for bias. AI systems are as good as the data they are trained on. If that data is biased, the AI system will also be biased. This can lead to outcomes that violate anti-discrimination laws. For example, an AI hiring system trained on historical data that reflects biased hiring practices may perpetuate that bias and result in discrimination against certain groups.)."

²⁴ See Keith A. Call, *Focus on Ethics & Civility: The Day Your Life Changed Forever*, 36 UTAH BAR J. 53, Mar.-Apr. 2021, <https://advance.lexis.com/api/permalink/33df3c03-affb-441f-be16-d95a587599bc/?context=1000516>.

²⁵ See e.g., Theresa Weisenberger, *GAI Tools Can Present IP Risks, But They're Manageable*, BAKER HOSTETLER, Mar. 21, 2023, <https://www.ipintelligencereport.com/2023/03/21/generative-ai-tools-can-present-ip-risks-but-theyre-manageable/> (last accessed May 8, 2023).

²⁶ In a recent analysis, OpenAI's Tyna Eloundou, Sam Manning, and Pamela Mishkin found that large language models such as GPT could have some effect on 80% of the US workforce. They further estimated that the AI models, including GPT-4 and other anticipated tools, would heavily affect 19% of jobs, with at least 50% of the tasks in those jobs "exposed." In contrast to prior waves of automation, it's anticipated that **higher-income jobs would be most affected**. See David Rotman, *ChatGPT is about to*

The core concern surrounding GAI's use in law firms stems not from the technology itself but from the lack of existing policies or regulations to effectively govern its responsible use.

Allowing employees, in any industry, to operate in an unregulated “wild west” environment without appropriate guidelines is clearly not the answer. In the legal industry, the need for proper use is further amplified because of the sensitive and confidential information frequently handled by legal professionals.

However, a blanket ban on GAI in law firms is not the solution.²⁷ Imposing a blanket ban would only leave firms unprepared to address the repercussions associated with the inevitable use of GAI.²⁸ Moreover, such a ban would also be impractical because an increasing number of third-party applications that leverage GAI, from the Microsoft Office 365 suite of tools to various internet browser plugins, are increasingly becoming ubiquitous.²⁹ Instead, many organizations across industries are already taking proactive steps to draft and implement GAI policies governing its responsible use in the workplace.³⁰ We anticipate by the end of this year, organizations having GAI policies will become the market standard across several industries, including the legal sector.

revolutionize the economy. We need to decide what that looks like, MIT TECH. REVIEW, Mar. 25, 2023, <https://www.technologyreview.com/2023/03/25/1070275/chatgpt-revolutionize-economy-decide-what-looks-like/> (emphasis added); see also Erik Brynjolfsson et al., *GAI at Work*, NAT'L BUREAU OF ECON. RESEARCH, 2, Apr. 2023, <https://www.nber.org/papers/w31161> (concluding that “[GAI] working alongside humans can have a significant positive impact on the productivity and retention of individual workers.”).

²⁷ It's unrealistic to think that law firms (or any company) could completely ban the use of GAI. A formal ban would merely lead to less transparency and increased risk surrounding the inevitable use of the technology. See generally Misty Griffith, *The Future is Now: Language-Based, GAI and the Legal Profession*, N.H. BAR ASS'N, <https://www.nhbar.org/the-future-is-now-language-based-generative-ai-and-the-legal-profession/> (“[t]he genie is out of the bottle. It is now the responsibility of legal professionals to carefully consider how to harness the power and potential of AI ethically, and in ways that may enhance the future of the legal profession.”); see also CYBERHAVEN, <https://www.cyberhaven.com/blog/4-2-of-workers-have-pasted-company-data-into-chatgpt/> (“[d]espite a growing number of companies outright blocking access to ChatGPT, usage continues to grow exponentially”) (last accessed May 2, 2023).

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

²⁹ See TEAM8, *A CISO'S Guide GAI and ChatGPT Enterprise Risks*, Apr. 2023, <https://team8.vc/wp-content/uploads/2023/04/Team8-Generative-AI-and-ChatGPT-Enterprise-Risks.pdf> (“the incorporation of ChatGPT and other GenAI systems into third-party applications . . . is fast becoming ubiquitous and contributes to the rapid expansion of the risk surface”).

³⁰ *Id.* (predicting GAI specific enterprise policies will become an industry best practice); see also Ironclad's GAI Policy, Apr. 24, 2023, <https://explore.ironcladhq.com/rs/528-QBH-821/images/Generative-Artificial-Intelligence-Policy.pdf> (“[w]e believe it is essential to establish clear guidelines for the responsible use of AI. This policy provides guidelines for using AI in a way that protects Ironclad's proprietary information and with applicable laws, regulations, ethical standards, and Ironclad's company values.”).

I. Naysayer Argument 1: ChatGPT was “not designed” for legal work and therefore presents significant risks.

Some skeptics contend that because GAI tools, like ChatGPT, were not specifically designed for legal work, their use for legal tasks presents significant risks. Yet, this argument ignores the successful adoption of countless technological tools into legal practice.

For instance, Microsoft Word was not explicitly designed for legal work; neither were iPhones, computers or the internet, yet they have all become critical tools for legal work.³¹ According to the naysayers’ line of reasoning, we should not use these essential and widely-adopted tools in the legal industry, which is clearly impractical. A more balanced, realistic, and holistic perspective is needed to responsibly and effectively integrate new technology into the legal industry.

*“Despite all of the fanfare, **the AI itself is just a tool.** Whether that tool is made by OpenAI, Microsoft, Google or any number of other technology companies—and whether or not it is implemented today, tomorrow or a year from now—is **less important than the work companies need to do behind the scenes to make sure their houses are in order to maximize the value of these tools.**”³²*

Ultimately, the primary considerations for adopting a new technology tool extend far beyond its original design. Factors such as the tool’s potential value, relevance, sustainability, and comprehensive policies and risk assessments should instead be at the forefront. The fact that a tool was not designed specifically for the legal industry is a poor reason to ignore the tool and certainly does not justify a blanket ban.

II. Naysayer Argument 2: ChatGPT raises several confidentiality and ethical risks when used in the legal industry.

The evolution of GAI has posed new challenges and opportunities for the legal industry. This subsection explores how the ethical guidelines established by the Model Rules of Professional Conduct (the “Rules” or “Model Rules”) apply and adapt to modern technological advancements, particularly focusing on lawyers’ existing competency and ethical obligations.

A. Evolution of Ethical Standards for Technology in Law:

Chief Justice Burger’s timeless remarks from fifty years ago ring true today: “*the advocate must know how to use the tools of his trade.*”³³

While GAI’s technological capabilities may be new, the ethical issues raised are not. As some experts have acknowledged, when using technological tools in the practice of law, “lawyers *still*

³¹ See, e.g., Ellie Margolis, *Surfin’ Safari – Why Competent Lawyers Should Research on the Web*, 10 YALE J. L. & TECH. 82, Fall 07-08, <https://advance.lexis.com/api/permalink/92cc2604-94e2-4a6a-9128-b852373d3bf5/?context=1000516>) (“[t]here is little doubt that the internet has become a major tool in a legal researcher’s arsenal in the last two decades . . . it can safely be said that research via the internet is a standard technique used by a majority of lawyers in a majority of jurisdictions throughout the country.”).

³² Vivek Jetley, *What Needs To Happen Before The Promise Of GAI Becomes A Reality For Businesses*, FORBES.COM, Apr. 28, 2023, <https://www.forbes.com/sites/forbestechcouncil/2023/04/28/what-needs-to-happen-before-the-promise-of-generative-ai-becomes-a-reality-for-businesses/?sh=30787c675660> (last accessed May 8, 2023) (emphasis added).

³³ See Christopher A. Suarez, *Disruptive Legal Tech., COVID-19, and Resilience in the Profession*, 72. S.C. L. REV. 393, 417-18, Winter 2020, (citing Warren E. Burger, *The Special Skills of Advocacy: Are*

have the same duties, including duties of supervision and independent judgment.”³⁴ The use of technology does not exempt lawyers from their obligation to comply with ethical standards.³⁵

The Model Rules, the set of legal ethics rules created by the American Bar Association (“ABA”), were adopted long before AI. However, the Rules are intended to be adaptable to modern times.³⁶ Model Rule 1.1 states: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”³⁷ In the context of using AI tools, lawyers need to ensure they understand the technology and exercise their informed professional judgment.³⁸

As the national leader in developing and interpreting standards of legal ethics and professional regulation, the ABA convened a Commission on Ethics 20/20 to study the ethical and regulatory issues relating to the evolving role of technology in the legal industry.³⁹ Their final report contained the following conclusions:

- Technology and globalization have transformed the practice of law in ways the profession could not anticipate in 2002. Technology affects nearly every aspect of legal work,

Specialized Training and Certification of Advocates Essential to Our System of Justice?, 42 FORDHAM L. REV. 227, 233 (1973) (internal quotation marks omitted)).

³⁴ David Lat, *The Ethical Implications of AI*, ABOVE THE LAW, Feb. 21, 2020, <https://abovethelaw.com/law2020/the-ethical-implications-of-artificial-intelligence/> (emphasis added).

³⁵ See also *Id.* (“A lawyer’s duty of competence and diligence includes the duty to use tools and technology where appropriate. So at a certain point in time, a lawyer might have an ethical duty to affirmatively use AI, where that AI is accurate, reliable, and essential to serving the client effectively.”).

³⁶ See Nicole Yamane, *AI in the Legal Field and the Indispensable Human Element Legal Ethics Demands*, 33 GEO. J. LEGAL ETHICS 877, 889 (2020), <https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2020/09/GT-GJLE200038.pdf> (arguing that in the future, a lawyer’s refusal to use technology that makes legal work more accurate and efficient may be considered a refusal to provide competent legal representation to clients).

³⁷ MODEL RULES, R. 1.1 (2009).

³⁸ See Sara Merken, *New York lawyers sanctioned for using fake ChatGPT cases in legal brief*, REUTERS, Jun. 22, 2023, <https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/> (U.S. District Judge P. Kevin Castel in Manhattan ordered lawyers Steven Schwartz, Peter LoDuca and their law firm Levidow, Levidow & Oberman to pay a \$5,000 fine in total for submitting a legal brief that included six fictitious case citations generated by an AI chat bot).

³⁹ Lori D. Johnson, *Navigating Technology Competence in Transactional Practice*, 65 VILL. L. REV. 159, 167 (2020) <https://advance.lexis.com/api/permalink/1adddb31-fe27-41b6-aa78-da3ec758ff68/?context=1000516> (“the process for recommending and adopting amendments to the Model Rules included a comment period, open meetings, public hearings, and other methods for obtaining feedback on the proposed resolutions from diverse segments of the bench, bar, and academy.”); see also ABA COMM’N ON ETHICS 20/20, *Introduction and Overview*, 2012, <https://perma.cc/M3MZ-YRJN> (noting in 2009, then-ABA President Carolyn B. Lamm created the Commission to tackle the ethical and regulatory challenges and opportunities arising from new 21st century realities. She charged the Commission with conducting a plenary assessment of the ABA Model Rules of Professional Conduct and related ABA policies, and directed it to follow these principles: protecting the public; preserving the core

including how we store confidential information, communicate with clients, conduct discovery, engage in research, and market legal services. Even more fundamentally, technology has transformed the delivery of legal services by changing where and how those services are delivered (e.g., in an office, over the internet or through virtual law offices), and it is having a related impact on the cost of, and the public's access to, these services.⁴⁰

- Subsequently, communications and commerce have become increasingly globalized and technology-based. *Lawyers must understand technology in order to provide clients with the competent and cost-effective services that they expect and deserve.*⁴¹
- In some situations, a matter may require the use of technology that is beyond the ordinary lawyer's expertise. For example, electronic discovery may require a sophisticated knowledge of how electronic information is stored and retrieved. Thus, another development associated with technology is that lawyers are increasingly disaggregating work by retaining other lawyers and nonlawyers outside the firm (i.e., outsourcing work to lawyers and nonlawyers) to perform critical tasks. Technology also permits the integration of these otherwise disaggregated workstreams, encouraging clients and lawyers to outsource elements of a representation.⁴²
- In light of these changes, the Commission concluded that additional modifications to the Model Rules and other policies were necessary, in order to help lawyers continue to ethically serve their clients, who rightfully expect their lawyers to respond nimbly to legal problems that arise in a 21st century marketplace. Because of the bewildering pace of technological change, the Commission believed it was important to make explicit that a lawyer's duty of competence, which requires the lawyer to stay abreast of changes in the law and its practice, included an obligation to understand the benefits and risks of new technology.⁴³

Subsequently, in 2012, [Comment 8 to Model Rule of Professional Conduct 1.1](#)⁴⁴ was revised to explicitly state: “a *lawyer should keep abreast of changes in the law and its practice, including*

professional values of the American legal profession; and maintaining a strong, independent, and self-regulated profession.).

⁴⁰ *Id.*

⁴¹ See ABA COMM'N ON ETHICS 20/20, *Introduction and Overview*, 2012, <https://perma.cc/M3MZ-YRJN> (emphasis added).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ “[D]eliberate ignorance of technology is inexcusable . . . [i]f a lawyer cannot master the technology suitable for that lawyer's practice, the lawyer should either hire tech-savvy lawyers tasked with responsibility to keep current, or hire an outside technology consultant who understands the practice of law and associated ethical constraints.” Judith L. Maute, *Facing 21st Century Realities*, 32 MISS. C. L. REV. 345, 369 (2013).

*the benefits and risks associated with relevant technology.*⁴⁵ The addition of this language clearly establishes the affirmative obligation that lawyers have to stay up to date with relevant technology, *in order to provide competent representation.*⁴⁶

The language was deliberately left vague to account for future technologies that did not exist at the time of drafting.⁴⁷ Legal experts have noted the addition of just these nine words – “including the benefits and risks associated with relevant technology” – to the Model Rules has significantly expanded the practical scope of what today’s ethical lawyer must understand and confront.⁴⁸

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

In recognition of this increasingly expansive obligation, at least 40 state bar organizations have adopted similar guidelines regarding a lawyer’s duty of technological competence.⁴⁹ The widespread adoption of this comment has been declared by Bob Ambrogi, a well-respected legal

⁴⁵ MODEL RULES, R. 1.1, CMT. 8

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1/competence/comment_on_rule_1_1/?login.

⁴⁶ MODEL RULES, R. 1.1 CMT. 8; *see also* Yamane, *supra* note 39, at 884 (“[r]eading the Model Rules in modern times indicates that in order for lawyers to provide competent legal representation to clients, they must have a basic understanding of how the AI programs they use operate and not automatically accept the results the AI program produces as true.”).

⁴⁷ The Chief Reporter of the Commission wisely recognized “the specific skills lawyers will need in the decades ahead are difficult to imagine,” and further concluded the duty of technological competence is “far broader than simply protecting client information or cyber security.” *See* Jamie J. Baker, *Beyond the Information Age: The Duty of Tech. Competence in the Algorithmic Society*, 69 S.C. L. REV. 557, 561 (2018), <https://advance.lexis.com/api/permalink/0a5fbd0b-aec0-4211-82ac-10d5c2703cbb/?context=1000516>; *see also* Steven M. Puiszis, *Perspective: Tech. Brings a New Definition of Competency*, BLOOMBERG LAW, Apr. 12, 2016, <https://news.bloomberglaw.com/business-and-practice/perspective-technology-brings-a-new-definition-of-competency/>.

⁴⁸ Randy L. Dryer, *Litigation, Tech. & Ethics: Teaching Old Dogs New Tricks or Legal Luddites are no longer welcome in Utah*, 28 UTAH BAR J. 12, May - Jun. 2015, <https://advance.lexis.com/api/permalink/39606dbd-4984-49f9-89fc-1945fa4017ce/?context=1000516> (stating “[o]ur clients are increasingly technologically competent, and the newly adopted comment requires us to be likewise” and recognizing today’s lawyers must become “conversant with a new lexicon - filtering, deduplication, machine learning, predictive coding, metadata, and seed sets - and adept at utilizing the related technologies or associating with someone who does.”).

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

technology and innovation expert, as one of the most significant recent developments in the field of legal technology.⁵⁰

The ABA has recommended that bar associations should provide continuing legal education resources on technology, and some states even require it.⁵¹ The ABA has strongly encouraged law schools to incorporate legal technology as part of their curriculums, deeming the topic “essential,” and the ABA has even established its own Center for Innovation.⁵²

That being said, lawyers should never assume the results produced by GAI are inherently accurate. It is critical for lawyers to understand their responsibilities when using these tools in order to effectively and competently leverage them.

C. Challenges and Professional Obligations when using GAI:

Lawyers must exercise reasonable care in analyzing the content produced by GAI, and will be held accountable for the output.⁵³ As noted above, this duty of competence in relation to new technology is not a new concept within the legal industry.

In fact, in 2007, well before the widespread use of some technological tools had even been developed, Yale Journal of Law & Technology published an article, “*Surfin’ Safari – Why Competent Lawyers Should Research on the Web*,” which argued that lawyers have a new obligation to use online research platforms, rather than solely relying on books.⁵⁴ The author

⁵⁰ See Lori D. Johnson, *Navigating Tech. Competence in Transactional Practice*, 65 VILL. L. REV. 159, 162, <https://advance.lexis.com/api/permalink/1adddb31-fe27-41b6-aa78-da3ec758ff68/?context=1000516>; see also Bob Ambrogi, *The Decade in Legal Tech: The 10 Most Significant Developments*, LawSites, Jun. 2, 2023, <https://www.lawnext.com/2020/01/the-decade-in-legal-tech-the-10-most-significant-developments.html>.

⁵¹ See ABA Comm’n on the Future of Legal Services, *Report on the Future of Legal Services in the U.S.*, AM. BAR ASS’N, 2016, <https://www.srln.org/system/files/attachments/2016%20ABA%20Future%20of%20Legal%20Services%20Report-Web.pdf> (noting “the Florida Bar Board of Governors, for example, has approved a mandatory technology-based continuing legal education requirement”); see also Amy B. Cyphert, *A Human Being Wrote This Law Review Article: GPT-3 and the Practice of Law*, 55 U.C. DAVIS L. REV. 401, 426 (2021), <https://advance.lexis.com/api/permalink/4676fdbd-9df2-44ef-8d13-91af81688a10/?context=1000516> (noting West Virginia adopted the new Comment 8 to Model Rule 1.1 and changed the language from “a lawyer *should* keep abreast” to “a lawyer *must* keep abreast” of changes to the practice of law, which includes the benefits and risks associated with relevant technology).

⁵² *Id.*

⁵³ See, e.g., Isha Marathe, *Judges, Attorneys React to Federal Court GAI Order: Too Hot, Too Cold, or Just Right?*, LEGALTECH NEWS, Jun. 1, 2023, <https://www.law.com/legaltechnews/2023/06/01/judges-attorneys-react-to-federal-court-generative-ai-order-too-hot-too-cold-or-just-right/> (last accessed Jun. 1, 2023).

⁵⁴ Ellie Margolis, *Surfin’ Safari – Why Competent Lawyers Should Research on the Web*, 10 YALE J. L. & TECH. 82, Fall 2007-2008, <https://advance.lexis.com/api/permalink/92cc2604-94e2-4a6a-9128-b852373d3bf5/?context=1000516> (“[t]here is little doubt that the internet has become a major tool in a

rationalized that ethical duties of competence and diligence impose a minimal level of legal research that must be performed when representing a client, which now includes internet usage.⁵⁵ The article also stated that not using technology to perform legal research may constitute a lack of diligence, because online tools provide lawyers with the most up-to-date picture of the law, as opposed to books, which cannot be updated in real time.⁵⁶

Indeed, several courts have penalized attorneys for neglecting essential duties in connection with their electronic legal research, such as the failure to Shepardize cited case law.⁵⁷ As technology continues to advance, lawyers have to monitor, analyze and learn to use new tools more than ever before.⁵⁸ The use of technology has become fundamental in order for attorneys to represent their clients competently. Most recently, we've seen this obligation in the use of electronic discovery tools.⁵⁹ Lawyers cannot blame technology, or their own technological shortcomings, and expect to then avoid the consequences failing to competently represent clients.⁶⁰

One court unequivocally declared such incompetence was “not a valid excuse,” and recommended sanctions for an attorney who failed to meet his obligations under the Model Rules, stating in part:

legal researcher's arsenal in the last two decades . . . it can safely be said that research via the internet is a standard technique used by a majority of lawyers in a majority of jurisdictions throughout the country.”).

⁵⁵ *Id.* (stating “[i]t would be extremely difficult, if not impossible, to provide today's judges with what they need . . . without using the internet as part of the research process. A lawyer who fails to research on the web will not find all of the relevant sources and will likely fall below the standard of competence by any measure.”)

⁵⁶ Cheryl B. Preston, *Lawyers' Abuse of Tech.*, 103 CORNELL L. REV. 879, 906 (citing *Surfin' Safari – Why Competent Lawyers Should Research on the Web*, 10 YALE J. L. & TECH. 82, <https://advance.lexis.com/api/permalink/92cc2604-94e2-4a6a-9128-b852373d3bf5/?context=1000516>).

⁵⁷ *Id.* (citing, for example, “[c]ounsel is admonished that diligent research, which includes Shepardizing cases, is a professional responsibility”; and “[i]t is really inexcusable for any lawyer to fail . . . to Shepardize all cited cases,” (internal citations omitted)); *see also* Benjamin M. Redgrave and Erica B. Zolner, Redgrave LLP, *Litigation, Tech., and Ethics: The Importance of Technological Competence*, THOMSON REUTERS PRACTICAL LAW, Jan 5, 2022 (highlighting trends in recent case law demonstrating courts are willing to impose severe sanctions for deficiencies in technological competence).

⁵⁸ *See, e.g., Ethical Prompts, Harvard Law School Center on the Legal Profession*, THE PRACTICE, MAR.-APR. 2023, HARV. L. SCHOOL CTR. ON THE LEGAL PROF., <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/generative-ai-in-the-legal-profession/ethical-prompts/> (noting lawyers must adapt and properly use new technology tools, which are not a substitute for critical legal thinking and need to be integrated in conjunction with human oversight); *see also* ABA FORMAL ETHICS OP. 483, 2018, (describing counsel's duty to monitor for and respond to data breaches).

⁵⁹ Cheryl B. Preston, *Lawyers' Abuse of Technology*, 103 CORNELL L. REV. 879, 906 (May 2018) (“[m]any courts now encourage or require lawyers to conduct discovery in digital formats. A California ethics opinion states that if an attorney lacks the required competence for proper e-discovery, she should (1) acquire sufficient learning and skill before performance is required; (2) associate with or consult technical consultants or competent counsel; or (3) decline the client representation”) (internal quotations omitted).

⁶⁰ *See, e.g., James v. Nat'l Fin. LLC*, 2014 Del. Ch. LEXIS 254, 34 (Dec. 5, 2014) (in which a lawyer who committed discovery violations, some of which involved the misuse of technological tools, stated in his defense to the Court, “I have to confess . . . I am not computer literate. I have not found presence in the cybernetic revolution. I need a secretary to help me turn on the computer. This was out of my bailiwick.”).

*“[d]eliberate ignorance of technology is inexcusable . . . [I]f a lawyer cannot master the technology suitable for that lawyer’s practice, the lawyer should either hire tech-savvy lawyers tasked with responsibility to keep current, or hire an outside technology consultant who understands the practice of law and associated ethical constraints.”*⁶¹

Other Courts have agreed with this line of reasoning and issued sanctions under similar circumstances where counsel was determined to have violated their ethical responsibilities by not remaining “sufficiently technologically competent.”⁶²

Additional critics have argued that the use of GAI to support legal work poses ethical concerns under Model Rules 1.4,⁶³ 1.6,⁶⁴ 5.1 and 5.3.⁶⁵ These Rules generally emphasize the importance of effective communication between attorneys and their clients, confidentiality of information, and the duty of supervision by lawyers to ensure their support staff and other team members are complying with the rules of professional conduct.⁶⁶ However, existing rules already require lawyers who use ChatGPT, Bard, or similar GAI tools, to implement a range of safeguards in order to stay within their professional boundaries.⁶⁷

⁶¹ *Id.* (citing Judith L. Maute, *Facing 21st Century Realities*, 32 Miss. C. L. Rev. 345, 369 (2013) (emphasis added)).

⁶² *Disciplinary Couns. v. Valenti*, 165 Ohio St. 3d 49, 51 (Apr. 21, 2021) (the Supreme Court of Ohio agreed with the Board of Professional Conduct’s conclusion that counsel was not “sufficiently technologically competent” in her representation and imposed a six-month suspension on her license to practice law, although stayed the suspension on the condition that she partake in technology training, among other requirements).

⁶³ RULE 1.4 requires reasonable consultation with clients about methods and choices for accomplishing the client’s objectives. That should include accurately communicating the availability, effectiveness, risk, and overall impact on costs of relevant AI systems, including obtaining competencies for effective operation. Depending on the intended use—*e.g.*, e-discovery or regulatory reporting—the potential impact of inaccurate communication may be significant, and pose client risk. See Julia Brickell et al., *AI, Pursuit of Justice & Questions Lawyers Should Ask*, BLOOMBERG LAW, Apr. 2022, <https://www.bloomberglaw.com/external/document/X3T91GR8000000/tech-telecom-professional-perspective-ai-pursuit-of-justice-ques> (last accessed Apr. 21, 2023).

⁶⁴ RULE 1.6 (A), with limited exceptions, states, “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent...” Rule 1.6(c) states, “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” Rafael Baca, *Model Ethics Rules as Applied to AI*, LAW PRACTICE TODAY, Aug. 14, 2020, <https://www.lawpracticetoday.org/article/model-ethics-rules-as-applied-to-artificial-intelligence/>.

⁶⁵ MODEL RULES 5.1 AND 5.3 impose certain supervision requirements on lawyers to ensure subordinates and third parties are in compliance with ethical rules.

⁶⁶ See Patrick Law Group, LLC, *The Intersection of AI and the Model Rules of Professional Conduct*, Feb., 5, 2019, <https://www.jdsupra.com/legalnews/the-intersection-of-artificial-87577/>.

⁶⁷ For example, the duty of competence requires the lawyer to understand any technology they use, including its limitations and tendency to produce biased outputs. The duty to supervise non-lawyer assistance requires that a lawyer never simply assume any writing that certain technology has produced is

Take, for instance, the duty to supervise non-lawyer assistance. This duty dictates that lawyers should never assume any information produced by others (e.g., other team members or technology) is accurate. Instead, lawyers must exercise thoughtfulness in determining when and how to use technology and carefully review its outputs before sharing it with clients or presenting it in court.⁶⁸ In 2012, the title of Model Rule 5.3 was updated to make clear the rule encompassed any “non-lawyer assistance,” which opens the door for any type of non-lawyer assistance, whether human or not.⁶⁹ This would clearly encompass work produced by GAI tools and, therefore, require lawyers to supervise the output of any information generated.⁷⁰

Lawyers also bear the responsibility to combat bias in their practice, which requires them to be cautious when using GAI tools, as they can generate biased outputs.⁷¹ The ABA’s notable Resolution 112, passed in 2019, urged legal practitioners to proactively address ethical and legal ramifications of AI usage, focusing on bias reduction, ethical applications, and AI oversight.⁷²

acceptable, but instead should be thoughtful about when to use the technology and always carefully review the outputs before sharing with clients or courts. The duty against bias in the practice of law requires that lawyers are cautious about using GAI, which has been shown to produce language that can be biased. *See* Amy B. Cyphert, *A Human Being Wrote This Law Review Article: GPT-3 and the Practice of Law*, 55 U.C. DAVIS L. REV. 401, 405 (2021), <https://advance.lexis.com/api/permalink/4676fdbd-9df2-44ef-8d13-91af81688a10/?context=1000516>.

⁶⁸ *Id.*; *see also* Douglas R. Richmond, *Watching Out: Lawyer’s Responsibilities for Nonlawyer Assistants*, 61 U. KAN. L. REV. 441, 446 (Dec. 2012) (noting lawyers’ supervisory obligations regarding other lawyers are framed in Rule 5.1 and lawyers’ duties to supervise nonlawyer assistants fall under Rule 5.3. While similar in nature, lawyers are responsible for ensuring that nonlawyer assistants perform their professional duties competently, diligently, faithfully, and honestly, but cannot hold them to the same professional standards as lawyers; Rule 5.3 “requires that nonlawyer assistants’ conduct be “compatible with” supervisory lawyers’ professional obligations, rather than matching them exactly, as is required of subordinate lawyers.”).

⁶⁹ *See* Yamane, *supra* note 39, at 884 (concluding under Rule 5.3, the AI could be considered a “nonlawyer” that is being delegated work by the lawyer, triggering the lawyer’s duty to ensure that the work product produced by the AI program is competent)(emphasis added).

⁷⁰ *Id.* (noting, at the same time, lawyers shouldn’t underutilize AI either as that could cause them to serve their clients less efficiently.); *see also* Kate Beioley et al., *Allen & Overy introduces AI chatbot to lawyers in search of efficiencies*, FINANCIAL TIMES, Feb. 15, 2023, <https://www.ft.com/content/baf68476-5b7e-4078-9b3e-ddf710a6e2> (noting Harvey AI comes with a disclaimer that its use should be supervised by licensed legal professionals as it does still “hallucinate” or provide inaccurate or misleading information, which users need to fact check. A majority of the documents drafted are used as a starting point, which lawyers then review and improve).

⁷¹ *Id.*

⁷² *See* Dr. Lance B. Eliot, *Is GAI Such As ChatGPT Going To Undermine The Famed Attorney-Client Privilege, Frets AI Law And AI Ethics*, FORBES, Mar. 30, 2023, <https://www.forbes.com/sites/lanceeliot/2023/03/30/is-generative-ai-such-as-chatgpt-going-to-undermine-the-famed-attorney-client-privilege-frets-ai-law-and-ai-ethics/?sh=5d2dacf71ea7> (discussing the existing provisions governing attorneys’ ethical duties and noting the ABA passed a little-known but highly notable AI-focused resolution that urges lawyers and courts to address the emerging ethical and legal issues related to the use of AI); *see also* *Adopted Revised Resolution 112* (2019), AM. BAR ASS’N, <https://perma.cc/A3EM-NWAU>.

Resolution 112 emphasizes three key issues: (1) addressing bias, explainability, and transparency in automated decisions made by AI; (2) promoting ethical and beneficial uses of AI; and (3) establishing appropriate controls and oversight over AI systems and the vendors that provide them.⁷³

Similarly, ABA Resolution 604, adopted at the ABA's 2023 Midyear Meeting, calls on organizations that design, develop, deploy and use AI to follow specific guidelines addressing accountability, transparency, and traceability.⁷⁴

These resolutions provides a valuable roadmap for attorneys to leverage the benefits of AI technologies in their practice, while still adhering to important ethical and professional standards. Precise guardrails must be carefully implemented in to ensure the responsible use of GAI systems.⁷⁵ These challenges can be, and *are* actively being addressed through methods such as employee training,⁷⁶ AI governance policies,⁷⁷ and establishing AI task forces.⁷⁸ Some recent examples include MIT's proposed [principles](#) for the responsible use of GAI in the legal field,

⁷³ See *Adopted Revised Resolution 112*, *supra* note 72.

⁷⁴ Jay Reeves, *ABA Adopts Guidelines for AI Usage*, LAWYERS MUTUAL, May 9, 2023, <https://www.lawyersmutualinc.com/blog/aba-adopts-guidelines-for-ai-usage> (emphasizing AI systems should remain under human control and oversight, individuals should be held accountable for the consequences caused by use of AI products and services, and developers should ensure the transparency and traceability of their AI products and services).

⁷⁵ Although it's of note that many organizations, including law firms, do not currently govern what is entered into other technological platforms that could raise similar concerns – such as Google.

⁷⁶ See Jackie Snow, *ChatGPT Can Give Great Answers. But Only If You Know How to Ask the Right Question*, WALL ST. J., Apr. 12, 2023 (noting some companies are now hiring prompt engineers, individuals that have the background and skills to effectively communicate with AI systems.); *see also* Amanda O'Brien, *Law Firms Playing Catch-Up with Training, Looking for ROI on current Tech Tools*, THE LEGAL INTELLIGENCE, Jul. 31, 2023, <https://www.law.com/thelegalintelligencer/2023/07/31/law-firms-playing-catch-up-with-training-looking-for-roi-on-current-tech-tools/>.

⁷⁷ See, e.g., Ironclad's GAI Policy, Apr. 24, 2023, <https://explore.ironcladhq.com/rs/528-QBH-821/images/Generative-Artificial-Intelligence-Policy.pdf> (requiring, for example, that employees must opt out of letting GAI tools use any data inputted for training purposes, must use specific accounts, must comply with confidentiality obligations and business codes of conduct, and cannot input any confidential information, among other restrictions).

⁷⁸ See Thomas Spigolon, *Baker Donelson's AI Group Focuses on 'Questions Coming to Our Clients'*, LAW.COM, Jul. 24, 2023, <https://www.law.com/dailyreportonline/2023/07/24/baker-donelsons-ai-task-force-focuses-on-questions-coming-to-our-clients/> (establishing a 16-member team to address concerns about the use of GAI); *see also* Christopher Deubert and Amanda Novak, *Anticipating What ChatGPT Means for the Workplace*, LAW360, Mar. 2, 2023, <https://www.law360.com/articles/1579453/anticipating-what-chatgpt-means-for-the-workplace> (companies need to evaluate and openly discuss appropriate uses of AI which should include human review of the findings, as well as restrictions on the types of information that may be provided to the tools).

Troutman Pepper's formation of an AI [task force](#), Baker Donelson's formation of a client [AI team](#), and Eversheds Sutherland's recent [announcement](#) of their GAI roadmap.

Additionally, there are significant measures that can considerably mitigate or even negate the challenges associated with the potential breach of the attorney-client privilege or unauthorized sharing of confidential information.⁷⁹ For example, in April 2023, OpenAI announced a new feature which now allows users to turn off chat history in ChatGPT, in order to prevent the information from being used for training or improving their models.⁸⁰ Furthermore, OpenAI is actively developing a new model, specifically designed for businesses who want more control over the use of their data and the management of their end users.⁸¹ Many third party vendors are also working on tools that allow attorneys to access a secure enterprise instance of OpenAI's models, while still protecting clients' confidential information.⁸² The technology and developments in this space continue to evolve rapidly. We anticipate that a majority of law firms will adopt custom, organizational-specific experiences integrated directly into their own applications, which will allow attorneys to access a secure version of OpenAI's models while safeguarding clients' confidential information. Additionally, they are likely to ban the input of any confidential or sensitive business information into any public GAI tools, which will also substantially reduce confidentiality concerns.⁸³

⁷⁹ See, e.g., Dr. Lance B. Eliot, *Is GAI Such As ChatGPT Going To Undermine The Famed Attorney-Client Privilege*, *Frets AI Law And AI Ethics*, FORBES, Mar. 30, 2023, <https://www.forbes.com/sites/lanceeliot/2023/03/30/is-generative-ai-such-as-chatgpt-going-to-undermine-the-famed-attorney-client-privilege-frets-ai-law-and-ai-ethics/?sh=5d2dacf71ea7> (recommending ways to mitigate risks, which involve lawyers being cognizant of the stipulations of using the technology and ensuring compliance); see also DELOITTE AI INST., *Proactive Risk Management in GAI*, DELOITTE, 2023, <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/deloitte-analytics/us-ai-institute-responsible-use-of-generative-ai.pdf>; see also Nat'l Inst. of Standards and Tech., *AI Risk Management Framework (AI RMF 1.0)*, Jan. 2023, <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>.

⁸⁰ See Sharon Nelson, et al., *Lawyers Breathe a Sigh of Relief: They Can Turn Off Chat History for ChatGPT*, ABOVE THE LAW, May 2, 2023, <https://abovethelaw.com/2023/05/lawyers-breathe-a-sigh-of-relief-they-can-turn-off-chat-history-for-chatgpt/>; see also Open AI Announcement, Apr. 25, 2023, <https://openai.com/blog/new-ways-to-manage-your-data-in-chatgpt>.

⁸¹ Open AI Announcement, Apr. 25, 2023, <https://openai.com/blog/new-ways-to-manage-your-data-in-chatgpt>.

⁸² See, e.g., Microsoft's Azure OpenAI Service, <https://azure.microsoft.com/en-us/products/ai-services/openai-service>.

⁸³ For instance, PwC employed Harvey for their M&A tasks, but noted all customer data is segregated and uses encryption tools to protect access to client information. See Cristina Criddle, *Law firms embrace the efficiencies of AI*, FINANCIAL TIMES, May 4, 2023, <https://www.ft.com/content/9b1b1c5d-f382-484f-961a-b45ae0526675>. It has been predicted that GAI-powered tools and other technology could enhance ethical compliance and efficiency, as noted in a case where court costs were lowered due to excess billing which could have been avoided with the use of technology. See Amy B. Cyphert, *A Human Being Wrote This Law Review Article: GPT-3 and the Practice of Law*, 55 U.C. DAVIS L. REV. 401, 425 (2021) (noting the court ruled "there was no need for outsider or third party research. If [AI] sources were employed, no doubt counsel's preparation time would have been significantly reduced") (internal citations omitted). This is just one example that illustrates GAI's potential to gain legal efficiencies and improve ethical compliance. See

III. Naysayer Argument 3: Lawyers' access to GAI will lead to dabbling in other practice areas in which they are not competent.

Another concern raised is the possibility that the use of GAI may lead to “dabbling” by attorneys who think they can fill in gaps in their expertise by consulting with ChatGPT (or other similar GAI tools). This argument, although alarming on the surface, lacks substantial evidence and appears to be mere conjecture. Attorneys *already have* access to Google and many other sources of legal information (such as Westlaw, Lexis, or Bloomberg) that could similarly “lead to dabbling.”⁸⁴ However, as discussed above, the use of GAI does not ameliorate an attorney’s ethical duties within their practice of law.⁸⁵ We must emphasize and promote the responsible use of these technological tools, instead of outright dismissing them.

As Greg Lambert, chief knowledge officer at Jackson Walker LLP, aptly cautioned: “[t]he number one rule since the birth of the internet is ‘don’t do anything stupid’ online,” . . . “[y]ou need to think ahead of time: are you and your client comfortable?”⁸⁶ Attorneys must proactively evaluate whether the use of GAI tools would be appropriate in relevant scenarios, taking into account many variables, which include client expectations and comfort levels with technology.

Beyond professional responsibilities and ethical duties, the use of GAI does not exempt organizations or their lawyers from adhering to relevant laws and regulations. The White House emphasized this point in its AI report, stating, “firms that utilize AI are not freed of the responsibility of abiding by antifraud, antitrust, and antidiscrimination laws, as well as workplace safety and health regulations.”⁸⁷ Existing laws and regulations apply to GAI, as well as any other

also Christopher A. Suarez, *Disruptive Legal Tech., COVID-19, and Resilience in the Profession*, 72. S.C. L. REV. 393, 417-18, WINTER 2020, (noting the interplay between Model Rule 1.1 (competence) and Model Rule 5.1 (fees) is significant, as legal technologies frequently improve efficiency and reduce costs. “Rule 1.5 counsels that lawyers explain to their clients the potential cost savings from using these tools. Only a lawyer with the requisite technological competence could provide these explanations as needed.”).

⁸⁴ See Amy B. Cyphert, *A Human Being Wrote This Law Review Article: GPT-3 and the Practice of Law*, 55 U.C. Davis L. Rev. 401, stating “GPT-3 may be the newest AI tool, but many lawyers may not realize how much the use of AI has *already* impacted the field of law. . . Any lawyer who has ever used an electronic database like Lexis or Westlaw to perform legal research for a client has used AI in their practice of law.”

⁸⁵ Further, as recognized by the ABA Center for Innovation, AI is currently nearly ubiquitous in the LegalTech space . . . you can find it in legal research, eDiscovery, business applications, contract review, due diligence . . . and dozens more.” See ABA Ctr. for Innovation, *Innovation Trends Report 2022*, 23, <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/aba-cfi-innovation-trends-report2022.pdf>.

⁸⁶ See Suzanne McGee, *GAI and the Law*, LEXISNEXIS, 2023, <https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/>.

⁸⁷ The White House, *The Impact of AI on the Future of Workforces in the European Union and the U.S.*, (2022) <https://www.whitehouse.gov/cea/written-materials/2022/12/05/the-impact-of-artificial-intelligence/>.

new technologies, just as they apply to any other practices.⁸⁸ The Biden Administration’s position reinforces the notion that adoption new tools does not release organizations (or lawyers) from their existing obligations under legal and professional standards.

On April 25, 2023, the Civil Rights Division of the U.S. Department of Justice, the Consumer Financial Protection Bureau, the Federal Trade Commission, and the U.S. Equal Employment Opportunity Commission issued a joint statement regarding AI, reiterating (among other things) “[t]echnological advances can deliver critical innovation – but claims of innovation must not be cover for lawbreaking. There is no AI exemption to the laws on the books”⁸⁹ This declaration again emphasizes the level of user accountability that comes with using GAI tools.⁹⁰

Furthermore, the use of GAI technology is subject to the terms imposed by the providers. For instance, OpenAI’s usage policy includes a comprehensive list of “disallowed usages” of their models. This encompasses activities such as the creation and dissemination of disinformation, illegal content, and any material that can be classified as hateful, harassing, or violent.⁹¹ It also explicitly states the unauthorized practice of law, or offering tailored legal advice without having a qualified person review the information is prohibited.⁹² These and other types of similar policies operate as another guardrail to assist law firms in operating GAI safely and responsibly.

Thus, while GAI technology is new, changing rapidly, and carries inherent risks, there are already some existing laws and codes of conduct that address its responsible use, as well as much anticipated regulation on the horizon.⁹³ The Biden Administration has made clear AI is an important priority and there are “growing efforts” on Capitol Hill to draft legislation regulating this technology.⁹⁴

⁸⁸ FEDERAL TRADE COMM’N, *FTC Chair Khan, Officials from DOJ, CFPB, EEOC Release Joint Statement on AI* 9 Apr. 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-chair-khan-officials-doj-cfpb-eeoc-release-joint-statement-ai>

⁸⁹ *Id.* (“[w]e have come together to make clear that the use of advanced technologies, including [AI], must be consistent with federal laws,” . . . “[w]e will continue to raise awareness on this topic; to help educate employers, vendors and workers; and where necessary, to use our enforcement authorities to ensure AI does not become a high-tech pathway to discrimination.”).

⁹⁰ *See also* American Bar Association, Resolution 604, Feb. 6, 2023, https://www.americanbar.org/news/reporter_resources/midyear-meeting-2023/house-of-delegates-resolutions/604/ (noting the importance of human accountability, especially as it relates to potential discriminatory impact of certain AI systems).

⁹¹ *See, e.g.*, OpenAI, *Usage Policies*, <https://openai.com/policies/usage-policies> (last updated Mar. 23, 2023).

⁹² *Id.* (“OpenAI’s models are not fine-tuned to provide legal advice. You should not rely on our models as a sole source of legal advice.”).

⁹³ *See, e.g.*, Subcomm. on Cybersecurity, Info. Tech., and Gov’t Innovation of the H. Comm. on Oversight and Accountability, 118th Cong. 1 (2023) (testimony of Dr. Eric Schmidt et al.), *Advances in AI: Are We Ready for a Tech Revolution?* (stating America must implement an “aggressive, research-forward Federal AI policy” to regulate AI).

⁹⁴ *See* Cat Zakrzewski, et al., *OpenAI CEO tells Senate that he fears AI’s potential to manipulate views*, WASHINGTON POST, May 16, 2023, <https://www.washingtonpost.com/technology/2023/05/16/ai-congressional-hearing-chatgpt-sam-altman/>.

On May 16, 2023, OpenAI's chief executive Sam Altman testified before Congress, laying out a proposed three-part plan that included (1) the creation of a new government agency charged with licensing large AI models, including the power to revoke the licenses for noncompliance; (2) the creation of safety standards for AI models, including evaluations of their dangerous capabilities, and (3) the requirement of independent audits, by independent experts, on various metrics.⁹⁵ Mr. Altman also stated he believes the benefits of the tools deployed "vastly outweigh the risks," but acknowledged ensuring their safety is "vital."⁹⁶

Shortly thereafter, the White House announced a series of initiatives regarding responsible AI usage, including three new national frameworks:⁹⁷

*"AI is one of the most powerful technologies of our time, with broad applications. President Biden has been clear that in order to seize the opportunities AI presents, we must first manage its risks. To that end, the Administration has taken significant action to promote responsible AI innovation that places people, communities, and the public good at the center, and manages risks to individuals and our society, security, and economy. This includes the landmark [Blueprint for an AI Bill of Rights](#) and [related executive actions](#), the [AI Risk Management Framework](#), a [roadmap for standing up a National AI Research Resource](#), active work to address the national security concerns raised by AI, as well as [investments and actions](#) announced earlier this month. Last week, the Administration also convened representatives from leading AI companies for a briefing from experts across the national security community on cyber threats to AI systems and best practices to secure high-value networks and information."*⁹⁸ In July, the White House announced it had reached a deal with seven major AI companies (including Amazon, Google, Meta, Amazon, and Microsoft) to establish more guardrails around the use of AI.⁹⁹

IV. Naysayer Argument 4: Because of the amount of cross-checking and verifying required, ChatGPT will not provide any time or cost savings within the legal industry.

The argument that adopting responsible AI practices will automatically negate the benefits of GAI is not accurate.¹⁰⁰ This argument largely hinges on the assumption that GAI technology will

⁹⁵ *Id.*

⁹⁶ Sam Altman, May 16, 2023, Testimony before the U.S. Senate Comm. on Privacy, Tech., & the Law, <https://techpolicy.press/transcript-senate-judiciary-subcommittee-hearing-on-oversight-of-ai/>.

⁹⁷ See Alexandra Kelley, *White House Releases New AI National Frameworks, Educator Recommendations*, NEXTGOV, May 23, 2023, <https://www.nextgov.com/emerging-tech/2023/05/white-house-releases-new-ai-national-frameworks-educator-recommendations/386691/>.

⁹⁸ The White House, *Biden-Harris Administration Takes New Steps to Advance Responsible AI Research, Development, and Deployment*, May 23, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/23/fact-sheet-biden-harris-administration-takes-new-steps-to-advance-responsible-artificial-intelligence-research-development-and-deployment/>.

⁹⁹ Sabrina Siddiqui, *White House Says Amazon, Google, Meta, Microsoft Agree to AI Safeguards*, WALL ST. J., Jul. 21, 2023, <https://www.wsj.com/articles/white-house-says-amazon-google-meta-microsoft-agree-to-ai-safeguards-eabe3680?mod=djem10point>.

¹⁰⁰ It's important to recognize that we are in the early stages of the AI revolution. As time progresses, one can reasonably anticipate significant advancements in terms of accuracy and capabilities. See generally Brief of the Chicago Patent Attorneys as Amici Curiae at 16-17, *Thaler v. Vidal*, 2023 U.S. S. CT.

inherently lead to inefficiencies.¹⁰¹ Yet, ChatGPT reached 100 million users in only two months (the fastest adoption in history) because of its remarkable value and impact on organizations, including increased efficiencies.¹⁰² Early research indicates that nearly **60%** of organizations are planning to use ChatGPT for learning purposes, and over half are planning pilot cases this year.¹⁰³ A report from Accenture reveals a striking majority of global executives – **98%**– believe AI foundational models will play an important role in shaping their organizational strategies over the next three to five years.¹⁰⁴ The legal industry is undoubtedly replete with inefficiencies and embracing GAI technology could significantly change that.¹⁰⁵

A. Beyond the Misconception: GAI Advantages and Benefits

Time Savings

GAI technology offers tremendous time savings for some of the most tedious legal tasks. For example, identifying and extracting data during discovery – “AI will vastly accelerate this process, doing work in seconds that without AI might take weeks.”¹⁰⁶ GAI technology can also be leveraged to quickly produce initial drafts, providing attorneys with content to work off of, rather than a blank slate, or even predict arguments that opposing counsel is likely to advance. While

BRIEFS LEXIS 1282 (Apr. 18, 2023) (statement of Aaron V. Gin, Ph.D.) (predicting the advancement and improvement of GAI over time).

¹⁰¹ Brad Smith, *Meeting the AI moment: advancing the future through responsible AI*, MICROSOFT (Feb. 2, 2023), <https://blogs.microsoft.com/on-the-issues/2023/02/02/responsible-ai-chatgpt-artificial-intelligence/> (describing how GAI will change *almost everything*, including humanity’s ability to “think, reason, learn and express ourselves,” and further predicting it will improve productivity and reduce the drudgery in many jobs); *see also* EXEC. OFF. OF THE PRESIDENT, *AI, Automation, and the Economy*, 1, (Dec. 2016), <https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/Artificial-Intelligence-Automation-Economy.PDF> (“[t]echnological progress is the main driver of growth of GDP per capita, allowing output to increase faster than labor and capital. One of the main ways that technology increases productivity is by decreasing the number of labor hours needed to create a unit of output.”).

¹⁰² *See* Charley Grant, *ChatGPT Is Causing a Stock-Market Ruckus*, WALL ST. J., May 9, 2023, https://www.wsj.com/articles/chatgpt-is-causing-a-stock-market-ruckus-4b7cc008?mod=article_inline (noting in comparison, TikTok took nine months to reach that milestone and Instagram took 30 months).

¹⁰³ Accenture, *A New Era of GAI for Everyone*, 2023, <https://www.accenture.com/content/dam/accenture/final/accenture-com/document/Accenture-A-New-Era-of-Generative-AI-for-Everyone.pdf#zoom=40>.

¹⁰⁴ *Id.*

¹⁰⁵ Jessica De Perio Wittman et al., *Taking on the Ethical Obligation of Technology Competency in the Academy: An Empirical Analysis of Practice-Based Technology Training Today*, 36 GEO. J. LEGAL ETHICS 1, 4-5 (citing a Clio study highlighting how inefficient attorneys can be in their day-to-day practice and how technology can solve or significantly decrease this).

¹⁰⁶ John Villasenor, *How AI will revolutionize the practice of law*, BROOKINGS, Mar. 20, 2023, <https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/>.

this content will of course need to be augmented by (human) lawyers, it's irrefutable that the gains to efficiency will be extraordinary.¹⁰⁷

Increased Productivity

According to one of the earliest studies to analyze real-world application of GAI in the workplace, which measured the productivity of over 5,000 customer agents at a software firm, having access to AI assistance ***increased the productivity of the agents in the study by 14 percent***, as measured by the number of customer issues they were able to resolve per hour.¹⁰⁸ Additional benefits included improved customer sentiment, reduced requests for managerial intervention, and improved employee retention.¹⁰⁹

Broad Economic Impact

The White House concluded AI's benefits "could span industries, providing workers with time for new tasks and firms with greater speed and accuracy through automation," and the use of AI technology will undoubtedly present "many opportunities to positively transform our economy, including the creation of new jobs that would have never existed without AI."¹¹⁰

Thus, the argument that ChatGPT and similar GAI tools will fail to provide time or cost savings within the legal industry overlooks compelling evidence to the contrary.

¹⁰⁷ See John Villasenor, *How AI will revolutionize the practice of law*, BROOKINGS, Mar. 20, 2023, <https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/> ("AI will make it much more efficient for attorneys to draft documents requiring a high degree of customization—a process that traditionally has consumed a significant amount of attorney time. Examples include contracts, [court filings], responses to interrogatories, summaries for clients of recent developments in an ongoing legal matter, visual aids for use in trial, and pitches aimed at landing new clients. AI could also be used during a trial to analyze a trial transcript in real time and provide input to attorneys that can help them choose which questions to ask witnesses.").

¹⁰⁸ Erik Brynjolfsson, Danielle Li & Lindsey R. Raymond, *GAI at Work*, NAT'L BUREAU OF ECONOMIC RESEARCH, Apr. 2023, <https://www.nber.org/papers/w31161> (studying the staggered introduction of a GAI-based conversational assistant using data from 5,179 customer support agents and concluding that AI assistance improves customer sentiment, reduces requests for managerial intervention, and improves employee retention; also noting that at early stages of GAI, lower-skilled workers experience the greatest benefits).

¹⁰⁹ *Id.*

¹¹⁰ The White House, *The Impact of AI on the Future of Workforces in the European Union and the U.S.*, 2022, <https://www.whitehouse.gov/cea/written-materials/2022/12/05/the-impact-of-artificial-intelligence/>; see also WORLD ECONOMIC FORUM, *The Future of Jobs Report 2023*, Apr. 30, 2023, <https://www.weforum.org/reports/the-future-of-jobs-report-2023/digest> (predicting they expect demand for AI and Machine Learning Specialists will grow by 40% (or 1 million jobs) and a 30-35% increase (or 1.4 million jobs) for roles such as Data Analysts and Scientists, Big Data Specialists, Business Intelligence Analysts, Database and Network Professionals, and Data Engineers).

B. Shifting Perspectives: Harnessing GAI to Augment How We Work and Create New Opportunities in Society

“I do not see AI replacing an attorney,” says Joel Murray, an attorney with the law firm of McKean Smith; however, he noted, if it’s properly developed, “AI can be another means by which attorneys can increase their productivity, and obtain optimal results for clients.”¹¹¹

While much of the media attention has focused on the risks of using new AI tools, it’s important to emphasize this technology also has the potential to augment and enhance the way we work, leading to new jobs and benefits for our society.¹¹² This dynamic is often referred to as “the race between automation and augmentation,” with AI serving as the catalyst for new job opportunities that are created from the use of the technology.¹¹³ We are already seeing new jobs emerge, including “prompt engineers,” with salaries currently over \$300,000.¹¹⁴ PricewaterhouseCoopers (PwC) has also acknowledged this sentiment in a recent public statement. PwC is not aiming to replace their workers with GAI; instead, they want to “optimize their jobs by automating time-consuming, repetitive tasks.”¹¹⁵ This same approach can be used in the legal industry by leveraging GAI and other similar technologies to augment the way lawyers practice law. Industry experts have already predicted the lawyers who learn how to leverage this human-technology collaboration successfully will get the most out of these tools.¹¹⁶ As we noted in our introduction, but it warrants repeating, this phrase perfectly captures AI’s role in the legal field: *“AI won’t replace lawyers, but lawyers who use AI will replace lawyers who don’t.”*¹¹⁷ Many companies are already supporting this human-machine-augmented collaboration,¹¹⁸ which

¹¹¹ See Suzanne McGee, *GAI and the Law*, LEXISNEXIS, 2023, <https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/> (describing some of the human aspects of law practice that AI is not likely to replace.).

¹¹² The White House, *The Impact of AI on the Future of Workforces in the European Union and the U.S.*, 2022, <https://www.whitehouse.gov/cea/written-materials/2022/12/05/the-impact-of-artificial-intelligence/>.

¹¹³ *Id.* (providing examples such as digital assistant engineer, warehouse robot engineer and content-tagger on social media).

¹¹⁴ LITTLER REPORT, *An Overview of the Employment Law Issues Posed by GAI in the Workplace*, 9, May 2023, https://www.littler.com/files/genai_littler_report.pdf.

¹¹⁵ Angus Loten, *PricewaterhouseCoopers to Pour \$1 Billion Into GAI*, WALL ST. J., (Apr. 26, 2023), <https://www.wsj.com/articles/pricewaterhousecoopers-to-pour-1-billion-into-generative-ai-cac2cedd> (last accessed May 1, 2023).

¹¹⁶ John Villasenor, *How AI will revolutionize the practice of law*, BROOKINGS, Mar. 20, 2023, <https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/> (“[f]or attorneys, getting the most out of AI tools will involve far more than just pushing a button. AI is most effective when it is used to complement human skills, and the people who learn how to leverage this collaboration well will get the most mileage out of AI tools.”).

¹¹⁷ See Suzanne McGee, *GAI and the Law*, LEXISNEXIS, 2023, <https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/> (noting this is popular catchphrase making the rounds right now as more professionals comment on the integration of GAI into the legal industry.).

¹¹⁸ See Nitin Mittal et al., *Fueling the AI Transformation: Four Key Actions Powering Widespread Value from AI, Right Now*, DELOITTE

combines “humans and machines in a way that leverages the respective strengths of each.”¹¹⁹ Here are examples of just some of the expected GAI efficiencies and benefits on the horizon:

- Lawyers and other professionals will be able to quickly and accurately identify and extract critical information from large volumes of documents.¹²⁰
- Increased automation will allow attorneys to focus more of their time and energy on strategic and other higher-value work.¹²¹ The 2018 LawGeex landmark AI vs. human lawyer study¹²² illustrates the impressive capabilities technology has and how it can be used to more effectively streamline certain legal processes.¹²³
- Employee productivity will improve. Early studies examining the productivity effects of GAI in mid-level professional writing tasks found that the group using GAI was 37%

(2022), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/deloitte-analytics/us-ai-institute-state-of-ai-fifth-edition.pdf>.

¹¹⁹ Patrick Huston and Natalie Pierce, *AI — Cybersecurity Solution or Threat?*, THE ACC DOCKET, Dec. 6, 2022, <https://docket.acc.com/ai-cybersecurity-solution-or-threat>.

¹²⁰ Daniel Czarnecki, *Transforming Legal Operations: How AI is Augmenting Small Law Firms*, AI/ML ADVANTAGES IN BUSINESS, Apr. 2, 2023, <https://www.linkedin.com/pulse/transforming-legal-operations-how-ai-augmenting-small-czarnecki/>.

¹²¹ Trudy Knockless, *This Is a Rocket Ship: How GAI Will Transform Legal Departments*, LAW.COM, (Mar. 31, 2023) <https://www.law.com/corpcounsel/2023/03/31/this-is-a-rocket-ship-how-generative-ai-will-transform-legal-departments/> (quoting Stephen Mar, general counsel of Odeko, who added legal leadership needs to recognize this as a “critical strategic imperative for 2023.”).

¹²² See LAWGEEX STUDY, *Comparing the Performance of AI to Human Lawyers in the Review of Standard Business Contracts*, (Feb. 2018), <https://images.law.com/contrib/content/uploads/documents/397/5408/lawgeex.pdf> (reporting a study where an AI system trained on thousands of contracts outperformed experienced lawyers issue spotting in contracts. The AI system achieved an average 94% accuracy rate, vs. the lawyers’ average rate of 85. Even more impressive, LawGeex far outperformed when it came to speed of review. On average, the human lawyers took 92 minutes (and up to 156 minutes), and the AI system only needed 26 seconds.). See also Kyree Leary, *The Verdict Is In: AI Outperforms Human Lawyers in Reviewing Legal Documents*, FUTURISM (Feb. 27, 2018) <https://futurism.com/ai-contracts-lawyers-lawgeex> (observing this experiment “may actually understate the gain from AI in the legal profession. The lawyers who reviewed these documents were fully focused on the task: it didn’t sink to the bottom of a to-do list, it didn’t get rushed through while waiting for a plane or with one eye on the clock to get out the door to pick up the kids.”).

¹²³ See also David Lat, *The Ethical Implications of AI*, ABOVE THE LAW, (Feb. 21, 2020), <https://abovethelaw.com/law2020/the-ethical-implications-of-artificial-intelligence/>, (“AI has the potential to transform the legal profession in so many positive ways,” predicts ethics attorney Megan Zavieh. “If we can start to ‘push down’ the work that takes up too much of our time to AI products, much as we’ve done with other forms of technology in other areas, we can free up lawyer time to do the things we do best: the legal analysis and arguing in court that can’t be replaced by robot lawyers.”).

faster at completing tasks with roughly similar grades (level of quality), and as they repeated their tasks, the ChatGPT group's quality went up significantly faster.¹²⁴

- Organizations will be able to streamline their hiring practices.¹²⁵
- There will be an increased emphasis in organizations to leverage technology and be more efficient in the workplace.¹²⁶
- Goldman Sachs has predicted GAI “could drive a seven percent (or almost \$7 trillion) increase in global GDP and lift productivity growth by 1.5 percentage points over a 10-year period.”¹²⁷ Further, they estimate one-fourth of current work tasks could be automated by AI, particularly in the legal industry.¹²⁸
- The legal industry will have the potential to substantially narrow the existing access-to-justice gap.¹²⁹ Wide adoption of GAI has the potential to radically transform the way we deliver legal services, which would allow more providers to affordably do so.¹³⁰

¹²⁴ Shakked Noy & Whitney Zhang, *Experimental Evidence on the Productivity Effects of GAI*, MIT, Mar. 2, 2023, https://economics.mit.edu/sites/default/files/inline-files/Noy_Zhang_1.pdf.

¹²⁵ According to the Society for Human Resources Management (SHRM), nearly 80 percent of organizations recently polled have used or plan to use AI for HR purposes within the next five years. Algorithmic systems have already transformed how businesses operate by reducing the time it takes for companies to fill open positions. In addition to the time savings, nearly three in five organizations reported the quality of their recruits was higher because of their integration of AI into their hiring process. See Allen Smith, J.D., *Could Regulation of AI Be on the Horizon*, SHRM (Apr. 12, 2023), <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/ai-commerce-department-request-for-comment.aspx> (last accessed May 1, 2023).

¹²⁶ Trudy Knockless, *This Is a Rocket Ship: How Generative AI Will Transform Legal Departments*, LAW.COM, Mar. 31, 2023, <https://www.law.com/corpcounsel/2023/03/31/this-is-a-rocket-ship-how-generative-ai-will-transform-legal-departments/> (quoting formal Google legal operations chief, Mary O'Carroll: “doing things the old way will no longer cut it, as expectations will increase sharply and quickly,” and recognizing this is not something that can be ignored).

¹²⁷ Goldman Sachs, *The Potentially Large Effects of AI on Economic Growth*, Mar. 26, 2023, https://www.key4biz.it/wp-content/uploads/2023/03/Global-Economics-Analyst_-The-Potentially-Large-Effects-of-Artificial-Intelligence-on-Economic-Growth-Briggs_Kodnani.pdf (“[t]he large share of employment exposed to automation from generative AI raises the potential for a boom in labor productivity that significantly increases global output,” and quoting Global Chairman and CEO of EY, who recently stated businesses “waiting to implement a risk mitigation strategy for AI do so at their own peril.”).

¹²⁸ *Id.* at 6, Ex. 5 at 6, Ex. 8 at 10 (predicting that 44% of legal work could be automated and nearly all of legal activities may be complemented or replaced by AI).

¹²⁹ Millions of Americans cannot afford to hire an attorney. See Sarah Martinson, *As States Toy With Reform, Legal Tech Cos. Fill Justice Gap*, LAW360, <https://www.law360.com/pulse/articles/1484682/as-states-toy-with-reform-legal-tech-cos-fill-justice-gap> (noting low-income Americans do not get adequate legal help for 92% of their substantial civil legal problems and the cost of legal assistance is a barrier).

¹³⁰ For instance, in 2020, Utah approved a regulatory sandbox program to explore alternative business models for improving access to justice, finding potential for success. See ABA, CTR. FOR INNOVATION, *Innovation Trends Report*, 40, 2022, <https://www.americanbar.org/content/dam/aba/administrative/center->

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

Throughout history, there are many numerous examples of our economy adapting to, and even thriving in response to, new technology. In fact, a key component of productivity growth in the 20th-century came from replacing workers with technology.¹³¹ While some people may fear the “rise of the robots,” recent studies indicate that robot adoption can actually *boost* employment in certain contexts. For instance, small and midsize manufacturers have been able to successfully leverage this technology to enhance the quality of their products, increase efficiency, and even potentially branch into new product lines.¹³²

Similar advantages can be displayed across a broad spectrum of industries. For example, 150 years ago, *nearly half* of all American employees worked in agriculture.¹³³ Today, this number has dropped to less than two percent, largely due technological advancements.¹³⁴ Modern farms have embraced sophisticated technologies such as “robots, temperature and moisture sensors, aerial

[for-innovation/aba-cfi-innovation-trends-report2022.pdf](#); see also ABA Comm’n on the Future of Legal Services, *Report on the Future of Legal Services in the U.S.*, AM. BAR ASS’N, 1, 2016, <https://www.srln.org/system/files/attachments/2016%20ABA%20Future%20of%20Legal%20Services%20Report-Web.pdf> (quoting ABA President William C. Hubbard, “[w]e must open our minds to innovative approaches and to leveraging technology in order to identify new models to deliver legal services. Those who seek legal assistance expect us to deliver legal services differently. It is our duty to serve the public, and it is our duty to deliver justice, not just to some, but to all”); see also Orly Lobel, *The Equality Machine: Harnessing Digital Technology for a Brighter, More Inclusive Future*, (Public Affairs 2022), <https://ncwba.org/new-book-by-orly-lobel-the-equality-machine-harnessing-digital-technology-for-a-brighter-more-inclusive-future/> (arguing that technology should be leveraged to make society more fair). There is also a need for more access to case law, which Harvard Law School aims to help solve with their Caselaw Access Project. See generally Harvard Law Today, *Harvard Law School launches Caselaw Access Project*, Oct. 29, 2015, <https://hls.harvard.edu/today/harvard-law-school-launches-caselaw-access-project-ravel-law/>.

¹³¹ Anna Waldman-Brown, *Automation Isn’t the Biggest Threat to US Factory Jobs*, WIRED, May 1, 2023 <https://www.wired.com/story/robots-automation-jobs-manufacturing-labor-germany-us/> (noting economist Carl Benedikt Frey found American productivity grew by 400 percent from 1930 to 2000, while average leisure time only increased by 3 percent.).

¹³² *Id.*

¹³³ EXEC. OFF. OF THE PRESIDENT, *AI, Automation, and the Economy*, 8, (Dec. 2016) <https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/Artificial-Intelligence-Automation-Economy.PDF>.

¹³⁴ *Id.*

images, and GPS technology.¹³⁵ These precision agriculture and robotic systems allow businesses to be more profitable, efficient, safer, and more environmentally friendly.”¹³⁶

In 1970, the introduction of the first ATMs sparked predictions that they would end all traditional bank teller jobs. However, we currently have *more* bank tellers in the U.S. than we did 50 years ago.¹³⁷ The introduction of the ATM technology did not obliterate the need for the human aspect of banking. Instead, it allowed banking employees to focus more of their time on strategic relationship building and less on routine, manual tasks, such as counting money.

Similarly, there was a time when the aviation industry was deeply concerned that technology would cause their pilot roles to become obsolete.¹³⁸ However, by 1995, airline pilots and flight engineers were one of the fastest growing sections of the U.S. transportation economy.¹³⁹

There are fascinating parallels that can be drawn between the aviation and legal industries. As one expert noted, some in the legal industry may be reluctant to automate more, particularly concerned about technology’s impact on the reduction to billable hours, decreasing law firm revenue.¹⁴⁰ However, pilots had similar fears, which never came to fruition:

*“The pilots feared that fewer engineers meant fewer jobs, but on the contrary, increases in efficiency led to the expansion of the industry through an increased number of flights and passengers. Despite the fact that computers are used [to] track those additional flight paths, human pilots and air traffic controllers are still required for the higher-level decision making related to weather and other unforeseen obstacles.”*¹⁴¹

The same may very well be true of the legal industry in the near future. What do all of these historical trends teach us? New technology is not inherently detrimental to the future of work. Rather, our society needs to adjust and strategically adapt in order to fully embrace the opportunities presented, while minimizing the associated risks. These trends also provide evidence for the notion that resisting or banning GAI from the legal industry is not the prudent path forward.

¹³⁵ U.S. Dep’t. of Agriculture, NAT’L INST. OF FOOD AND AGRICULTURE <https://www.nifa.usda.gov/topics/agriculture-technology#:~:text=Higher%20crop%20productivity,turn%20keeps%20food%20prices%20down.>

¹³⁶ *Id.*

¹³⁷ The White House, *The Impact of AI on the Future of Workforces in the European Union and the U.S.*, (2022) <https://www.whitehouse.gov/cea/written-materials/2022/12/05/the-impact-of-artificial-intelligence/> (citing James Pethokoukis, *What the Story of ATMs and Bank Tellers Reveals About the ‘rise of the Robots’ and Jobs*, AEI – AEIDEAS, Jun. 6, 2016 <https://www.aei.org/economics/what-atms-bank-tellers-rise-robots-and-jobs/>) (recognizing the impact of the ATM machine was not to destroy tellers, actually it was to increase it).

¹³⁸ See Lori D. Johnson, *Navigating Technology Competence in Transactional Practice*, 65 VILL. L. REV. 159, 161 <https://advance.lexis.com/api/permalink/1adddb31-fe27-41b6-aa78-da3ec758ff68/?context=1000516> (noting in the 1980s, the aviation industry faced a panic over new technology, fearing job losses or even elimination of their human roles).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 164.

GAI, and similar technology, can help attorneys spend less time on administrative or repetitive tasks, and more time on strategic, high-value and more nuanced work.¹⁴² This technology has the potential to improve the way we, as legal professionals, operate – but only if we are willing to deploy the tools responsibly, compliantly, and embrace a future where humans and technology can coexist harmoniously in the legal field.

TRANSFORMING THE WAY WE WORK: HOW ORGANIZATIONS ARE ALREADY EMBRACING GAI

Entrepreneurs and investors are anticipating GAI will revolutionize business activities across a multitude of industries.¹⁴³

Peter Wagner, founding partner at Wing, insightfully captures the growing sentiment towards GAI in a declaration that it's "more than a trend," and shares his belief in a future that is "built on data, powered by AI, and put to work through increasingly autonomous applications."¹⁴⁴ Further, he echoes the now oft-referenced sentiment shared by many: "***We . . . firmly believe humans will not be replaced by AI—but humans working with AI will replace humans working without it.***"¹⁴⁵

Investors aren't just talking about it, they are pouring their money into it.¹⁴⁶ According to PitchBook, venture capitalists have increased investment in GAI by **425 percent** since 2020, to a staggering \$2.1 billion this year, despite broader technology markets declining.¹⁴⁷ PitchBook

¹⁴² See, e.g. Reed Albergotti, *Money pours into AI startups that save countless hours of legal paperwork*, SEMAFOR, May 24, 2023 <https://www.semafor.com/article/05/24/2023/investors-back-ai-startups-that-save-hours-of-legal-paperwork> (describing GAI product that cuts down the work of analyzing, drafting, and negotiating legal documents by quickly digesting and automatically drafting potential changes, saving lawyers an immense amount of time).

¹⁴³ See Cristina Criddle, *Law firms embrace the efficiencies of artificial intelligence*, FINANCIAL TIMES, May 4, 2023 <https://www.ft.com/content/9b1b1c5d-f382-484f-961a-b45ae0526675> (citing to Goldman Sachs' Global Economics Analyst, *The Potentially Large Effects of AI on Economic Growth*, Mar. 26, 2023, https://www.ansa.it/documents/1680080409454_ert.pdf).

¹⁴⁴ Peter Wagner, *The Wing Manifesto: The AI-First Transformation of Business*, WING.VC. Feb. 17, 2023, <https://www.wing.vc/content/wing-manifesto-four-ai-first-transformation-of-business>.

¹⁴⁵ *Id.*

¹⁴⁶ See David Rotman, *ChatGPT is about to revolutionize the economy. We need to decide what that looks like*, MIT TECHNOLOGY REVIEW, <https://www.technologyreview.com/2023/03/25/1070275/chatgpt-revolutionize-economy-decide-what-looks-like/> (noting Venture capitalists and other investors are pouring billions into companies based on GAI, and the list of apps and services driven by large language models is growing longer every day).

¹⁴⁷ See Christina Criddle et al., *Investors seek to profit from groundbreaking 'generative AI' start-ups*, FINANCIAL TIMES, Dec. 9, 2022; see also Deepa Seetharaman, *ChatGPT Fever Has Investors Pouring Billions Into AI Startups, No Business Plan Required*, WALL ST. J., May 8, 2023, <https://www.wsj.com/articles/no-business-plan-no-problem-chatgpt-spawns-an-investor-gold-rush-in-ai-6bdbed3c> ("[s]izable deals are coming fast and furious. Eleven Labs, a voice AI startup, recently raised money from Andreessen Horowitz that valued the company around \$100 million . . . Humane, a startup created by two ex-Apple executives, recently raised \$100 million from investors, including Mr. Altman, to make AI-powered wearable devices . . . Character.AI, an AI startup founded by two other former

expects the GAI market to continue to grow, with countless enterprise applications in the future.¹⁴⁸ Further, it's anticipated that we will experience an economic boost much faster than past technologic revolutions – as soon as the end of 2023 and “certainly by 2024” – because GAI automates cognitive work (as opposed to manual labor, which would take more time to invest in relevant equipment and/or infrastructure).¹⁴⁹ Despite the novelty of this field, many pioneers are already embracing GAI and incorporating it into their workplace. Here are some examples:

- PwC is using Harvey AI for mergers and acquisitions, due diligence, and drafting contracts.¹⁵⁰ In March 2023, PwC reported it would give 4,000 legal professionals access to the Harvey AI platform.¹⁵¹ PwC announced plans to invest \$1 billion in GAI in its U.S. operations over the next three years.¹⁵²
- Morgan Stanley is using GPT-4 to power a chatbot that conducts a comprehensive search of their wealth management content.¹⁵³ The tool is trained not only on 60,000 research reports on parts of the global economy, but also on 40,000 other internal documents from the firm — making it an expert on any financial subject that a financial adviser might

Google employees less than two years ago, raised \$150 million in a recent round that valued it at \$1 billion”); *see also* Chris Metinko, *AI Craze Hits New Level As Anthropic Locks Up \$450M, Builder.ai Closes \$250M Round*, CRUNCHBASE NEWS, May 23, 2023, https://news.crunchbase.com/ai-robotics/venture-funding-startups-anthropic-builder-ai/?utm_source=cb_daily&utm_medium=email&utm_campaign=20230523&utm_content=intro&utm_term=content&utm_source=cb_daily&utm_medium=email&utm_campaign=20230524.

¹⁴⁸ PITCHBOOK, *Emerging Tech Research, Vertical Snapshot: GAI VC Trends, industry overview, and market landscape*, Mar. 22, 2023, https://files.pitchbook.com/website/files/pdf/2023_Vertical_Snapshot_Generative_AI_Preview.pdf.

¹⁴⁹ David Rotman, *ChatGPT is about to revolutionize the economy. We need to decide what that looks like*, MIT TECHNOLOGY REVIEW, Mar. 25, 2023, <https://www.technologyreview.com/2023/03/25/1070275/chatgpt-revolutionize-economy-decide-what-looks-like/> (quoting Anton Korinek, economist at the University of Virginia and a fellow at the Brookings Institution).

¹⁵⁰ *See* Cristina Criddle, *Law firms embrace the efficiencies of artificial intelligence*, FINANCIAL TIMES, May 4, 2023, <https://www.ft.com/content/9b1b1c5d-f382-484f-961a-b45ae0526675> (noting Harvey segregates all customer data and offers encryption tools to protect access to client information.).

¹⁵¹ *See* Sara Merken, *Legal AI race draws more investors as law firms line up*, REUTERS, Apr. 26, 2023, <https://www.reuters.com/legal/legal-ai-race-draws-more-investors-law-firms-line-up-2023-04-26/>.

¹⁵² *See* Angus Loten, *PricewaterhouseCoopers to Pour \$1 Billion Into GAI*, WALL ST. J., Apr. 26, 2023, https://www.wsj.com/articles/pricewaterhousecoopers-to-pour-1-billion-into-generative-ai-cac2cedd?mod=Searchresults_pos2&page=1 (noting they envision the technology will be used to quickly write reports, prepare compliance documents, analyze and evaluate business strategies, identify operational inefficiencies, and draft marketing materials, among many other applications, and acknowledging other large accounting firms, such as KPMG LLP and Ernst & Young, are likewise investing in GAI)(last accessed May 23, 2023).

¹⁵³ *See* Morgan Stanley, OpenAI, Mar. 14, 2023, <https://openai.com/customer-stories/morgan-stanley> (last accessed May 23, 2023).

want to look up.¹⁵⁴ Morgan Stanley equated it as valuable as “having [the] chief strategy officer sitting next to you when you’re on the phone with a client.”¹⁵⁵

- Law firm Traverse Legal launched a client intelligence tool leveraging the GPT-3.5’s Turbo API, called Traverse AI.¹⁵⁶ The tool is a chatbot programmed to engage with clients regarding legal issues.¹⁵⁷
- Stripe is using ChatGPT to improve its custom support operations and to help detect fraud on its community platforms.¹⁵⁸
- Global law firm Reed Smith introduced a pivotal new role within their firm: “Director of Applied AI.”¹⁵⁹ This senior-level position will report directly to the firm’s Chief Innovation Officer and oversee the development and adoption of large language models and GAI tools.¹⁶⁰ Baker McKenzie created a similar position in their firm: Head of Machine Learning.¹⁶¹

¹⁵⁴ David Ingram, *These 5 companies say GPT-4 has dramatically changed their priorities at work*, NBCNEWS.COM, Mar. 17, 2023, <https://www.nbcnews.com/tech/innovation/chatgpt-gpt-4-gpt4-openai-access-microsoft-how-to-rcna75116>.

¹⁵⁵ Hugh Son, *Morgan Stanley is testing an OpenAI-powered chatbot for its 16,000 financial advisors*, CNBC.COM, Mar. 14, 2023, <https://www.cnbc.com/2023/03/14/morgan-stanley-testing-openai-powered-chatbot-for-its-financial-advisors.html>.

¹⁵⁶ Rhys Dipshan, *A Lot of Prompt Engineering: How Law Firm Traverse Legal Built a GPT-Powered Client Tool*, LEGALTECH NEWS, Apr. 27, 2023, <https://www.law.com/legaltechnews/2023/04/27/a-lot-of-prompt-engineering-how-law-firm-traverse-legal-built-a-gpt-powered-client-tool/> (last visited May 2, 2023).

¹⁵⁷ *Id.* (stating you “cannot guarantee 100% accuracy, we know that about AI systems. But we also know that about lawyers. And we certainly know that about Google . . . Traverse AI tells every user that they should work with their attorney on any specific legal issue, and that Traverse AI is not a lawyer . . . The reason why the world has adopted GPT in such a historic way, in terms of how many people have been on board in such a short period of time, is because of its stunning accuracy, right? So it’s not perfect, it can be very convincing, even when it’s wrong. But the idea is, compared to Google search, [it’s] a massive leap forward.”).

¹⁵⁸ Written Testimony of Sam Altman before the U.S. Senate Comm. on Privacy, Tech., & the Law, May 16, 2023, <https://www.washingtonpost.com/documents/0668f6f4-d957-4b94-a745-2aa9617d1d60.pdf> (last accessed Jun. 1, 2023).

¹⁵⁹ Cassandre Coyer, *Reed Smith CINO Discusses Firm’s GAI Plans, From New Role to Pilot Projects*, THE AMERICAN LAWYER, Apr. 19, 2023, <https://www.law.com/americanlawyer/2023/04/19/reed-smith-cino-discusses-firms-generative-ai-plans-from-new-role-to-pilot-projects/>.

¹⁶⁰ *Id.*

¹⁶¹ See Suzanne McGee, *GAI and the Law*, LEXISNEXIS, 2023, <https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/> (noting the role is currently held by Danielle Benecke and she has spearheaded a pilot study focused on leveraging GAI to enhance certain work involving global trade sanctions).

- Law firm Edelson shared they are using GAI to assist with administrative tasks, such as drafting communications and press releases, as well as to power an internal chief happiness officer named “Chatty.”¹⁶²
- In February 2023, law firm Allen & Overy announced a partnership leveraging Harvey, “the innovative [AI] platform built on a version of Open AI’s latest models enhanced for legal work . . . Harvey will empower more than 3,500 . . . lawyers. . . with the ability to generate and access legal content with unmatched efficiency, quality and intelligence.”¹⁶³ According to Reuters, at the time this article was published, more than 15,000 law firms are on a waiting list to start using Harvey.¹⁶⁴ One of the partners described working with Harvey as “having an extra junior resource available to you at any time of the day.”¹⁶⁵
- In March 2023, Fisher Phillips announced they are the “first major law firm to deploy the GPT-4 generated output in the form of CoCounsel,” an AI legal assistant that “performs the tasks most valuable to legal professionals in a single, easy-to-use interface.”¹⁶⁶ Law Firm Orrick Herrington & Sutcliffe is also using CoCounsel,¹⁶⁷ as are multiple Fortune 50 companies, including Ford Motor and Microsoft.¹⁶⁸ The Wall Street Journal reported

¹⁶² See Isha Marathe, *Legal Industry Reacts to Goldman Sachs GAI Report: Keep Calm and Panic*, LEGALTECH NEWS, Mar. 30, 2023, <https://www.law.com/legaltechnews/2023/03/30/legal-industry-reacts-to-goldman-sachs-generative-ai-report-keep-calm-and-panic/> (opining GAI is a “watershed moment for our society, and its impact is likely to be greater than the internet.”).

¹⁶³ See Allen & Overy, LLP, *A&O announces exclusive launch partnership with Harvey*, Feb. 15, 2023, <https://www.allenoverly.com/en-gb/global/news-and-insights/news/ao-announces-exclusive-launch-partnership-with-harvey> (“A&O has been trialing Harvey (based on GPT-4) in beta since November 2022 under the leadership of a team of lawyers and developers tasked with disrupting the legal industry, called the Markets Innovation Group. At the end of the trial, around 3500 of A&O’s lawyers had asked Harvey around 40,000 queries for their day-to-day client work.”).

¹⁶⁴ See Sara Merken, *Legal AI race draws more investors as law firms line up*, REUTERS, Apr. 26, 2023, <https://www.reuters.com/legal/legal-ai-race-draws-more-investors-law-firms-line-up-2023-04-26/> (last accessed Apr. 28, 2023).

¹⁶⁵ See Erin Mulvaney and Lauren Weber, *End of the Billable Hour? Law Firms Get on Board with AI*, WALL ST. J., May 11, 2023, https://www.wsj.com/articles/end-of-the-billable-hour-law-firms-get-on-board-with-artificial-intelligence-17ebd3f8?mod=Searchresults_pos1&page=1 (reporting that attorneys at a firm using AI spend less time locating case law, completing analyses and answering questions clearly and succinctly. Harvey hasn’t replaced the work of lawyers, but instead provides a head start.”).

¹⁶⁶ See Fisher Phillips, *Casetext’s CoCounsel is Powered by OpenAI’s GPT-4*, Mar. 14, 2023, <https://www.fisherphillips.com/news-insights/fisher-phillips-launches-cocounsel-casetexts-transformative-ai-legal-assistant-tool.html>.

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

¹⁶⁸ See Erin Mulvaney and Lauren Weber, *End of the Billable Hour? Law Firms Get on Board with AI*, WALL ST. J., May 11, 2023, https://www.wsj.com/articles/end-of-the-billable-hour-law-firms-get-on-board-with-artificial-intelligence-17ebd3f8?mod=Searchresults_pos1&page=1 (“Fortune 50 companies such as Microsoft and Ford Motor tested a product called CoCounsel, which harnesses GPT-4 technology to prepare depositions, perform contract analysis and quickly complete legal research.”).

that law firms DLA Piper, Kirkland & Ellis, Skadden, Arps, Slate, Meagher & Flom and Orrick Herrington & Sutcliffe were also a part of the CoCounsel beta group.¹⁶⁹

- On April 5, law firm Mintz published an article publicly acknowledging the immense value GAI could provide to the legal industry.¹⁷⁰ On April 12, Deloitte announced the launch of a GAI practice focused on helping their clients “harness the power” of GAI to “exponentially enhance productivity and accelerate the pace of business innovation.”¹⁷¹ On April 28, Mastercard CEO Michael Miebach [stated](#) AI is “something that we cannot afford to ignore” and they are exploring additional ways to incorporate GAI into their organization.¹⁷²
- In May 2023, LexisNexis announced it had created a platform using GPT technology, and had “teamed up with some of the country’s largest firms, Baker McKenzie, Reed Smith and Foley & Lardner.”¹⁷³

¹⁶⁹ *Id.*; see also Zach Warren, *GAI in law firms: For many, such technologies are still a great unknown*, THOMSON REUTERS, May 23, 2023, <https://www.reuters.com/legal/transactional/generative-ai-law-firms-many-such-technologies-are-still-great-unknown-2023-05-23/> (reporting Holland & Hart has a team of data scientists working on potential GAI applications for their firm and McMillan has begun exploring ways GAI can be applied in their firm as well).

¹⁷⁰ Jeremy D. Glaser and Lorena Niebla, *Benefits and Legal Risks of Embracing GAI Applications*, MINTZ P.C., Apr. 5, 2023, <https://www.mintz.com/insights-center/viewpoints/2911/2023-04-05-benefits-and-legal-risks-embracing-generative-ai> (noting one of the industries that can be transformed by GAI is the legal industry. Footnote 3 of their article states “[a] portion of this article was generated by ChatGPT.”); see also Dentons, *Key legal considerations with GAI*, Apr. 4, 2023, <https://www.dentons.com/en/insights/articles/2023/april/4/key-legal-considerations-with-generative-ai> (showcasing international law firm Dentons has also published content with disclaimers disclosing some of their content was generated by ChatGPT).

¹⁷¹ Deloitte Press Release, *Deloitte Launches GAI Practice to Help Clients Harness the Power of Disruptive New AI Technology*, Apr. 13, 2023, <https://www2.deloitte.com/us/en/pages/about-deloitte/articles/press-releases/deloitte-launches-generative-ai-practice-to-help-clients-harness-the-power-of-disruptive-new-ai-technology.html>.

¹⁷² Caitlin Mullen, *Mastercard ‘cannot afford to ignore AI, CEO says*, Payments Dive, Apr. 28, 2023, <https://www.paymentsdive.com/news/mastercard-ceo-michael-miebach-generative-ai-artificial-intelligence-payments-earnings/648854/>.

¹⁷³ Erin Mulvaney and Lauren Weber, *End of the Billable Hour? Law Firms Get on Board with AI*, WALL ST. J., May 11, 2023, https://www.wsj.com/articles/end-of-the-billable-hour-law-firms-get-on-board-with-artificial-intelligence-17ebd3f8?mod=Searchresults_pos1&page=1.

- Other law firms, such as Holland & Knight, are focused on developing AI tools in-house.¹⁷⁴ Baker McKenzie stated they have been “baking large language models into existing services on a client-by-client ‘pilot’ basis.”¹⁷⁵
- In May 2023, IBM announced they expect to pause hiring for roles they foresee replaced by AI in the near future.¹⁷⁶ Shortly after, IBM announced “IBM Watsonx,” a platform offering tools for building AI models and accessing code-generating models.¹⁷⁷ The platform will also provide a toolkit to support the governance of AI, ensure data security, and compliance with regulatory and ethical requirements.¹⁷⁸
- Another company taking advantage of this technology is CarMax. Using ChatGPT, CarMax is leveraging the language model to make it easier for their customers to find the information they need, now generated quickly at a rate that was “previously impossible.”¹⁷⁹
- In June, Oracle [announced](#) the addition of GAI-powered capabilities to improve their existing HR functions, Coca-Cola [announced](#) it is using GAI to grow its Coke Studio platform and taking advantage of additional GAI opportunities.

¹⁷⁴ Sara Merken, *Legal AI race draws more investors as law firms line up*, REUTERS, Apr. 26, 2023, <https://www.reuters.com/legal/legal-ai-race-draws-more-investors-law-firms-line-up-2023-04-26/> (Holland & Knight is creating an AI tool that it hopes will help lawyers review and modify credit agreements, partner Josias Dewey reported).

¹⁷⁵ *Id.* (according to Danielle Benecke, current head of the firm’s machine learning practice).

¹⁷⁶ See Brody Ford, *IBM to Pause Hiring for Jobs that AI Could Do*, BLOOMBERG, <https://www.bloomberg.com/news/articles/2023-05-01/ibm-to-pause-hiring-for-back-office-jobs-that-ai-could-kill?mod=djemCIO#xj4y7vzkg&leadSource=uverify%20wall> (last visited May 2, 2023) (“[h]iring in back-office functions – such as human resources – will be suspended or slowed,” IBM CEO Arvind Krishna said. “[t]hese non-customer-facing roles amount to roughly 26,000 workers . . . I could easily see 30% of that getting replaced by AI and automation over a five-year period.”).

¹⁷⁷ See Kyle Wiggers, *IBM intros a slew of new AI services, including generative models*, TECHCRUNCH, May 9, 2023, <https://techcrunch.com/2023/05/09/ibm-intros-a-slew-of-new-ai-services-including-generative-models/>.

¹⁷⁸ Alvin R. Cabral, *IBM launches GAI platform for businesses*, THE NATIONAL NEWS, May 9, 2023, <https://www.thenationalnews.com/business/technology/2023/05/09/ibm-launches-generative-ai-platform-for-businesses/>.

¹⁷⁹ Vanessa Ho, *Build: Azure OpenAI Service helps customers accelerate innovation with large AI models; Microsoft expands availability*, MICROSOFT, May 24, 2022, <https://news.microsoft.com/source/features/ai/azure-openai-service-helps-customers-accelerate-innovation-with-large-ai-models-microsoft-expands-availability/> (“Through OpenAI’s API and Azure OpenAI Service, CarMax used GPT-3 to abstractly summarize and fine tune 100,000 customer reviews into 5,000 well-written summaries. The job would have taken CarMax’s editorial team 11 years to complete, said Kevin Hopwood, a principal software engineer at the company”).

- Many law firms have publicly shared their efforts to establish internal task forces or similar working groups to promote their AI expertise and coordinate across practice groups.¹⁸⁰
- In addition to the private sector's increasing utilization of AI, even the US Federal Government has begun to implement AI "in a range of settings, including improving taxpayer waiting times when contacting the Internal Revenue Service (IRS)¹⁸¹ and creating AI competitions to predict patient health outcomes using Medicare data."¹⁸²

ADDITIONAL BENEFITS OF AI ADOPTION: UPSKILLING WORKERS AND EXPANDED OPPORTUNITIES

It is critical for legal professionals to stay attuned to the transformative power of emerging technologies, such as GAI. While GAI might diminish billable hours in some areas, it will also create additional opportunities for human lawyers to focus on the high-level strategic work that AI cannot replicate (or, at least, not yet).¹⁸³ The pace of adoption will undoubtedly vary among organizations and even across law firms, but this is not simply about keeping up with a trend. Legal professionals have an obligation to proactively engage with these technological advancements and find responsible ways to harness their potential in order to best service our clients and successfully drive our profession forward.¹⁸⁴

Beyond the numerous real-world examples of how organizations are already using GAI, there's another potential enormous benefit on the horizon: upskilling the workforce. We are currently

¹⁸⁰ Thomas Spigolon, *Baker Donelson's AI Group Focuses on 'Questions Coming to Our Clients'*, LAW.COM, Jul. 24, 2023, <https://www.law.com/dailyreportonline/2023/07/24/baker-donelsons-ai-task-force-focuses-on-questions-coming-to-our-clients/> (noting many law firms across the country are promoting their GAI expertise and providing recent examples of such).

¹⁸¹ The IRS, to address concerns about the long waiting times faced by callers, has implemented an AI-based voice bot system that currently allows taxpayers to set up payments and get notice questions answered. In the next year, this service will be expanded to allow for the bots to retrieve more information about individual taxpayers, further reducing waiting times. *See* The White House, *The Impact of AI on the Future of Workforces in the European Union and the U.S.*, 2022, <https://www.whitehouse.gov/cea/written-materials/2022/12/05/the-impact-of-artificial-intelligence/>.

¹⁸² *Id.*

¹⁸³ *See e.g.*, Cristina Criddle, *Law firms embrace the efficiencies of artificial intelligence*, FINANCIAL TIMES, May 4, 2023, <https://www.ft.com/content/9b1b1c5d-f382-484f-961a-b45ae0526675> ("It definitely reduces the billable hours," says Richard Robinson, founder and chief executive of Robin AI. But he points out: "The best firms want to be paid for high-level strategic work, things that fundamentally, at least today, no AI is trying to replicate — like high-level negotiations, insights into what's happened in other [similar] deals in the market.").

¹⁸⁴ *See, e.g.*, Jessie Yount, *Class Year Adjustments Underscore Lingering Skills Gap Among Associates*, LAW.COM, Apr. 24, 2023, https://www.law.com/2023/04/24/class-year-adjustments-underscore-lingering-skills-gap-among-associates/?utm_source=email&utm_medium=enl&utm_content=20230427&utm_campaign=morningminute&utm_term=law ("[t]he trend reflects a bigger problem, as firms struggle to rightsize their talent pools and appropriately assess skill levels . . . [h]iring is still going on in a strategic way for corporate associates

grappling with a skills gap: a shortage of workers with the appropriate skills to fill available jobs.¹⁸⁵ The World Economic Forum reports “six in ten workers will require training before 2027, but only half of workers are seen to have access to adequate training opportunities.”¹⁸⁶ The COVID-19 pandemic eliminated approximately 1.4 million U.S. manufacturing jobs, undoing more than a decade of gains.¹⁸⁷ Surveyed executives have reported difficulties in filling higher paying production roles and in finding and retaining skilled workers for more specialized roles.¹⁸⁸ This gap is expected to leave 2.1 million jobs unfilled by 2030, costing the U.S. economy as much as \$1 trillion.¹⁸⁹ The legal industry is not immune to this skills gap phenomenon.¹⁹⁰ Recent trends indicate some junior attorneys are facing class year reductions, possibly owing in part to a lack of practical experience in line with their class rank.¹⁹¹ Attorneys would be wise to begin to develop new skills to effectively and responsibly use GAI within their profession.

By leveraging this technology appropriately, we have an enormous opportunity to increase workers’ digital skills and significantly improve this skills gap.¹⁹² The World Economic Forum

in the five- to seven-year range. Firms are looking for someone who isn’t just doing due diligence or ancillary pages, but the core documents of a deal. Someone who has the fundamental training and skills to hit the ground running . . .”).

¹⁸⁵ Jane Thier, *The skills gap is so big that nearly half of workers will need to retrain this decade. These 10 skills are most in demand*, YAHOO! FINANCE, May 1, 2023, <https://finance.yahoo.com/news/skills-gap-big-nearly-half-194829294.html> (“[t]he long-term trend is pretty undeniable that the demand for skills outpaces the supply of skills,” Dan Shapero, chief operating officer of LinkedIn, tells *Fortune*. He added that 2022 was the tightest labor market he’d seen in his 15 years at LinkedIn.”).

¹⁸⁶ WORLD ECONOMIC FORUM, *The Future of Jobs Report 2023*, Apr. 30, 2023, <https://www.weforum.org/reports/the-future-of-jobs-report-2023/digest>.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Deloitte, *US Manufacturing Skills Gap Could Leave As Many As 2.1 Million Jobs Unfilled By 2030, Deloitte and The Manufacturing Institute Study Finds*, PRNEWswire.COM, May 4, 2023, <https://www.prnewswire.com/news-releases/us-manufacturing-skills-gap-could-leave-as-many-as-2-1-million-jobs-unfilled-by-2030--deloitte-and-the-manufacturing-institute-study-finds-301281967.html>; see also Jane Thier, *The skills gap is so big that nearly half of workers will need to retrain this decade. These 10 skills are most in demand*, Yahoo! FINANCE, May 1, 2023, <https://finance.yahoo.com/news/skills-gap-big-nearly-half-194829294.html> (“[t]he emergence of AI applications like ChatGPT . . . will have a particularly pronounced impact by displacing and automating many roles that involve reasoning, communicating and coordinating”).

¹⁹⁰ See, e.g., Jessie Yount, *Class Year Adjustments Underscore Linger Skills Gap Among Associates*, LAW.COM, Apr. 24, 2023, [Class Year Adjustments Underscore Linger Skills Gap Among Associates](#).

¹⁹¹ *Id.*

¹⁹² Deloitte’s recommendations for improving the skills, employment, and retention gaps include leveraging advanced technologies to increase workers’ digital skills. Others have also suggested that AI may be able to help alleviate the shortage of skilled workers, as we could automate routine tasks as well as human capabilities. See Deloitte, *US Manufacturing Skills Gap Could Leave As Many As 2.1 Million Jobs Unfilled By 2030, Deloitte and The Manufacturing Inst. Study Finds*, PRNEWswire.COM, May 4, 2023, <https://www.prnewswire.com/news-releases/us-manufacturing-skills-gap-could-leave-as-many-as-2-1-million-jobs-unfilled-by-2030--deloitte-and-the-manufacturing-institute-study-finds-301281967.html>;

anticipates nearly a quarter of all jobs will change as a result of AI, digitization and other economic developments. Preliminary studies examining the impact of GAI in the workplace reveal the tremendous positive impacts that GAI and similar technologies can have on upskilling employees.¹⁹³ David Autor, MIT labor economist and a leading expert on the impact of technology on jobs, is optimistic about the ability for GAI to help many people gain skills to compete with those who have more education and expertise. If we are able to leverage GAI in this manner, the implications for our workforce could be extraordinary.

FAILING TO LEVERAGE GAI CREATES SERIOUS POTENTIAL RISKS

In his testimony before Congress, Dr. Aleksander Mądry stated it's critical we proactively identify the emerging risks associated with the use of GAI and develop clear, actionable ways to mitigate them.¹⁹⁴ The shift towards GAI is inevitable and, thus, even if law firms or other organizations wish to ignore this impending paradigm shift, their reluctance to be proactive in this domain could inadvertently foster risks of their own. It would be naïve to assume that some employees are not already using GAI tools, such as ChatGPT. According to recent research, as many as half (50%) of employees polled admitted to using GAI at work; however an alarming 70% did not disclose this to their employers.¹⁹⁵ Some risks of not embracing and adapting to GAI may include:

1. **Unauthorized disclosure of confidential information, sensitive business information, or other intellectual property.**¹⁹⁶ The rise of "[shadow IT](#)," which is

see also John Schwartz, *Can AI Help Solve The Workforce Skills Gap?* FORBES, Apr. 6, 2023, <https://www.forbes.com/sites/forbestechcouncil/2023/04/06/can-ai-help-solve-the-workforce-skills-gap/?sh=2e0c2df9134f>.

¹⁹³ See Erik Brynjolfsson et al, *GAI at Work*, NAT'L BUREAU OF ECON. RESEARCH, Apr. 2023, <https://www.nber.org/papers/w31161> (studying the staggered introduction of a GAI-based conversational assistant using data from 5,179 customer support agents. The findings reveal that the GAI significantly increased the performance of less skilled and less experienced workers across various productivity measures. The study concluded low-skill workers are *more* likely to benefit from incorporating behaviors suggested by AI compared to high-skill workers.).

¹⁹⁴ See, e.g., testimony of Dr. Aleksander Mądry, *Advances in AI: Are We Ready for a Tech Revolution?* Subcomm. on Cybersecurity, Info. Tech., and Gov't Innovation of the H. Comm. on Oversight and Accountability, 118th Cong. 1 (2023).

¹⁹⁵ Richard Hathaway, *U.S.: When It Comes To GAI, Ignorance Is Not Bliss: Three Risks Your Business Faces By Failing To Regulate Workplace Use Of GAI*, KANE RUSSELL COLEMAN LOGAN, Apr. 28, 2023, <https://www.mondaq.com/unitedstates/privacy-protection/1309784/when-it-comes-to-generative-ai-ignorance-is-not-bliss-three-risks-your-business-faces-by-failing-to-regulate-workplace-use-of-generative-ai> (concluding it's inevitable some of your employees will use, or are already using, GAI to assist with their work.); *see also*, Lindsay Ellis, *ChatGPT Can Save You Hours at Work. Why Are Some Companies Banning it?* WALL ST. J., Mar. 22, 2023, <https://www.wsj.com/articles/despite-office-bans-some-workers-still-want-to-use-chatgpt-778da50e> ("[m]any companies are still grappling with how to monitor and regulate generative AI in the workplace. More than 40% of nearly 12,000 workers said they use ChatGPT or other AI tools at work . . . [a]lmost 70% said they do so without telling their boss.).

¹⁹⁶ See e.g., Cameron Coles, *11% of data employees paste into ChatGPT is confidential*, CYBERHAVEN, <https://www.cyberhaven.com/blog/4-2-of-workers-have-pasted-company-data-into->

when employees turn to technological tools that are not endorsed or supported by their organization in order to maximize efficiency or gain other similar benefits, is a growing concern. Reports have already emerged about employees submitting sensitive confidential company information to tools like ChatGPT.¹⁹⁷ Cyberhaven Labs recently analyzed ChatGPT usage for 1.6 million workers across various industries and detected *thousands* of attempts to paste corporate data into ChatGPT.¹⁹⁸ Moreover, employees copied data *out* of ChatGPT even more, at a nearly 2-to-1 ratio.¹⁹⁹ Companies like Amazon have explicitly instructed their employees not to share internal code with ChatGPT, following an incident where ChatGPT was found to be mimicking internal Amazon data.²⁰⁰ Similar mandates have come from various other organizations.²⁰¹

2. **Potential liability for potential violations of privacy and other data protection laws.** Generally, employers may be held liable for negligent acts committed by their employees within the scope of their job duties. Employers may also be held liable for intentional misconduct of an employee if they were aware the employee had a propensity to commit the intentional act, or if the intentional act was furthering the employer's purposes. Employers who know their employees are using GAI or fail to train their employees on GAI could face potential liability if an employee violates privacy or data protection laws while using GAI.
3. **Lack of proper monitoring and auditing of organizational digital safeguards.** If law firms are operating under the false assumption that their employees are not using the GAI technology because it is prohibited, they are missing a critical opportunity to

[chatgpt/](#) (reporting that 11% of data employees paste into ChatGPT is confidential in nature and the average company leaks confidential material to ChatGPT “hundreds of times per week.”).

¹⁹⁷ See, e.g., Mack DeGeurin, *Oops: Samsung Employees Leaked Confidential Data to ChatGPT*, GIZMODO, Apr. 6, 2023, <https://gizmodo.com/chatgpt-ai-samsung-employees-leak-data-1850307376> (last accessed May 2, 2023) (reporting a Samsung employee “copied the source code from a faulty semiconductor database into ChatGPT and asked it to help them find a fix. In a separate case, an employee shared confidential code to try and find a fix for defective equipment. Another employee reportedly submitted an entire meeting to the chatbot and asked it to create meeting minutes.”).

¹⁹⁸ Cameron Coles, *11% of data employees paste into ChatGPT is confidential*, CYBERHAVEN, <https://www.cyberhaven.com/blog/4-2-of-workers-have-pasted-company-data-into-chatgpt/> (last accessed May 2, 2023).

¹⁹⁹ *Id.*

²⁰⁰ Kevin Hurler, *Amazon Warns Employees to Beware of ChatGPT*, GIZMODO, Jan. 26, 2023, <https://gizmodo.com/amazon-chatgpt-ai-software-job-coding-1850034383>.

²⁰¹ See Dark Reading, *Employees are Feeding Sensitive Biz Data to ChatGPT, Raising Security Fears*, Mar. 7, 2023, <https://www.darkreading.com/risk/employees-feeding-sensitive-business-data-chatgpt-raising-security-fears> (“[JPMorgan restricted workers' use of ChatGPT, for example, and Amazon, Microsoft, and Wal-Mart have all issued warnings to employees to take care in using GAI services.”).

- effectively monitor and audit the usage of the technology, as well as train their employees on how to properly leverage the tools.
4. **Reputational Risk** (i.e., if an employee inputs confidential client information).²⁰² Now more than ever, clients are demanding that companies protect their personal information or they will take their business elsewhere.²⁰³ A data leak has serious consequences, even if done unintentionally.
 5. **Talent Attraction and Retention:** The next generation of legal professionals have grown up with technology as an integral part of their lives. Law firms that ban or significantly restrict GAI technology will likely alienate or be less attractive to tech-savvy lawyers who place a great value on efficiency and the significant benefits that GAI provides to their legal practice.
 6. **Competitive Disadvantage.** Law firms not embracing GAI will inevitably lag behind other law firms who do so responsibly.²⁰⁴ As John Villasenor, Senior Fellow at the Center for Technology Innovation at Brookings, concluded “law firms that effectively leverage emerging AI technologies will be able to offer services at lower cost, higher efficiency, and with higher odds of favorable outcomes in litigation. Law firms that fail to capitalize on the power of AI will be unable to remain cost-competitive, losing clients and undermining their ability to attract and retain

²⁰² FTI Consulting, *New FTI Consulting Survey Reveals Leading Corporate Data Privacy Risks, Priorities and Change Initiatives*, Mar. 2020, <https://www.ftitechnology.com/company/press-releases/new-fti-consulting-survey-reveals-leading-corporate-data-privacy-risks>, (finding respondents were concerned about data privacy issues, which could cause “very negative” impacts on organization reputation, investor confidence, business operations and external relationships.”).

²⁰³ Matthew Lieberman, *Mind The Trust Gap: How Companies Can Retain Customers After A Security Breach*, FORBES, Dec. 8, 2017, <https://www.forbes.com/sites/forbestechcouncil/2017/12/08/mind-the-trust-gap-how-companies-can-retain-customers-after-a-security-breach/?sh=1683cbbd6c95> (noting only 25% of consumers believe companies handle their personal information responsibly and “87% *will take their business to a competitor if they don’t trust a company to handle their data responsibly*”)(emphasis added).

²⁰⁴ See, e.g., ABA Ctr. for Innovation, *2023 Midterm Innovation Trends Report*, AM. BAR ASS’N, <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/aba-cfi-innovation-trends-report2023.pdf> (noting clients are demanding more efficient and cost-effective legal work, which is a key driver behind lawyers more readily embracing technology).

talent.”²⁰⁵ This succinctly encapsulates the imminent future state of the legal industry and why law firms must responsibly embrace GAI technology.

BEST PRACTICES FOR LAW FIRMS TO MANAGE RISKS RELATING TO GAI

A Deloitte study recently reported that management of AI-related risks is one of the top challenges for businesses.²⁰⁶ Law firms can take a proactive approach now by developing and implementing best practices that encourage the responsible use of GAI.²⁰⁷ Here is a “Top 10” list of best practices for GAI use:²⁰⁸

1. **Cybersecurity and Safety**– Prioritize cybersecurity and take proactive measures to minimize any negative impact of GAI usage across the organization to ensure it’s leveraged in a responsible and compliant manner.²⁰⁹ This includes prioritizing items such as bias prevention, regular monitoring and evaluation of the organization’s use of the

²⁰⁵ John Villasenor, *How AI will revolutionize the practice of law*, BROOKINGS, Mar. 20, 2023, <https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/>.

²⁰⁶ See Nitin Mittal et al., *Fueling the AI Transformation: Four Key Actions Powering Widespread Value from AI, Right Now*, DELOITTE, Oct. 2022, <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/deloitte-analytics/us-ai-institute-state-of-ai-fifth-edition.pdf>.

²⁰⁷ To address the growing concerns around the responsible and ethical use of AI in the legal profession, law.MIT.edu has assembled a Task Force “to develop principles and guidelines on ensuring factual accuracy, accurate sources, valid legal reasoning, alignment with professional ethics, due diligence, and responsible stewardship of artificial intelligence. This task force will act as a vanguard, proactively identifying potential pitfalls and crafting robust solutions to uphold the highest standards of legal practice.” See *Task Force on Responsible Use of Generative AI for Law*, COMPUTATIONAL LAW, Jun. 2, 2023, <https://law.mit.edu/ai>.

²⁰⁸ Please be aware this list of best practices is not intended to be exhaustive, but rather as a starting point for law firms to begin to strategize about their organizational practices surrounding the use of GAI. These recommendations were drafted to the best of our ability with the information we had at the time we published the article. While we have made every effort to provide accurate and up-to-date information, we expect information will continue to evolve over time as new developments emerge in this rapidly changing field. Additionally, it is important to note that best practices vary across markets, and this list may not be appropriate for all situations or all law firms. We encourage you to exercise your own judgment and seek additional guidance as necessary to ensure that these practices are suitable for your specific needs and circumstances.

²⁰⁹ See John Greenwood, *Novel Social Engineering Attacks Increase by 135% with GAI Uptake*, THE CYBER SECURITY TIMES, Apr. 6, 2023, <https://www.thecybersecuritytimes.com/novel-social-engineering-attacks-increase-by-135-with-generative-ai-uptake/> (“[c]ybersecurity firm Darktrace reported a 135% increase in novel social engineering attack emails during the first two months of 2023. The firm’s research team found that the emails targeted thousands of its customers in January and February.”).

technology, as well as ensuring employees are educated about social engineering attacks and trained to recognize suspicious communications or other types of threats.²¹⁰

2. **Cross Functional Teams** – Establish a team of cross-functional stakeholders to carefully evaluate the various risks and benefits of integrating new technologies into the organization. Such an evaluation should include determining the necessary policies and procedures that need to be established.²¹¹ While policies will vary across organizations, stakeholders should prioritize the following considerations: (1) prospective application of GAI within their organization; (2) potential risks linked to such applications; (3) identification of any existing gaps; (4) criteria for GAI usage including who can use it, for what purposes, and under what circumstances; (5) circumstances where GAI use would be inappropriate; (6) existing applications potentially affected by GAI use; (7) best practices for employee engagement with GAI; (8) comprehensive strategies for training; (9) plans for risk mitigation and crisis response; and (10) the overall impact of GAI on the organization's culture.²¹²
3. **Training** – Beyond general awareness, firms should establish comprehensive training programs and materials to ensure employees use GAI appropriately. This may include items such as hands-on workshops, online learning platforms, or working with consultants who specialize in this area and can tailor programs to the organizations' specific needs.
4. **Culture** – Foster a culture of responsible AI use by encouraging employees to explore the technology, determine how to use it effectively, and experience the various potential risks and limitations. This starts with leadership setting the right tone for employees to

²¹⁰ See, e.g., Greg Hatcher, *Navigating the Risks and Opportunities of ChatGPT*, LAW.COM, May 1, 2023, <https://www.lawjournalnewsletters.com/2023/05/01/navigating-the-risks-and-opportunities-of-chatgpt/?slreturn=20230402102057> (last accessed May 2, 2023); see also Matthew J. Morgan, *Are You Concerned About GAI Becoming A Cybersecurity Risk?*, FORBES, May 3, 2023, <https://www.forbes.com/sites/forbestechcouncil/2023/05/03/are-you-concerned-about-generative-ai-becoming-a-cybersecurity-risk/?sh=650be9221d44> (advising companies should raise awareness about the potential risks associated with GAI, including educating employees on the risks of social engineering attacks so they are able to identify phishing e-mails and other types of threats.).

²¹¹ See TEAM8, *A CISO'S Guide GAI and ChatGPT Enterprise Risks*, Apr. 2023, <https://team8.vc/wp-content/uploads/2023/04/Team8-Generative-AI-and-ChatGPT-Enterprise-Risks.pdf> (recognizing not all GenAI risks are limited to the realm of cyber security, and thus mitigating potential risks requires a comprehensive holistic risk management strategy, taking into account factors such as privacy and data protection, intellectual property exposure, sector-specific regulations and AI ethics).

²¹² *Id.*; see also Karla Grossenbacher, *Employers Should Consider These Risks When Employees Use ChatGPT*, BLOOMBERG, Feb. 16, 2023, <https://news.bloomberglaw.com/us-law-week/employers-should-consider-these-risks-when-employees-use-chatgpt> (advising that prudent employers should include prohibitions on employees referring to or entering confidential, proprietary, or trade secret information into AI chatbots or language models, such as ChatGPT.).

feel empowered to raise doubts, concerns, or questions regarding AI systems, in a manner that does not stifle innovation.

5. **Confidentiality and Privacy Policies** – Develop policies and practices to protect client or other sensitive business information from being entered into third-party tools.²¹³ Ensure these policies are flexible and living documents, as this technology continues to advance rapidly. Organizations should include an incident response plan in the event any data is compromised.²¹⁴ Consider acquiring an enterprise solution, which poses less organizational risk.²¹⁵ For additional guidance, the MIT Task Force on Responsible Use of Generative AI for Law has published helpful principles and guidelines regarding the duty of confidentiality in the usage of AI applications.²¹⁶
6. **Legal Compliance and Ethical Policies** – Work with counsel to establish clear written policies regarding the use of GAI, in order to ensure responsible use and legal compliance. Some companies have already done so and publicly shared their policies and/or guidelines.²¹⁷ Regulatory agencies have started to provide preliminary guidance and we anticipate further regulations in the near future.²¹⁸ Several organizations have also developed AI risk management frameworks to assist organizations in proper AI risk

²¹³ See generally TEAM8, *A CISO's Guide GAI and ChatGPT Enterprise Risks*, Apr. 2023, <https://team8.vc/wp-content/uploads/2023/04/Team8-Generative-AI-and-ChatGPT-Enterprise-Risks.pdf>.

²¹⁴ See Dark Reading, *Employees are Feeding Sensitive Biz Data to ChatGPT, Raising Security Fears*, Mar. 7, 2023, <https://www.darkreading.com/risk/employees-feeding-sensitive-business-data-chatgpt-raising-security-fears> (“[i]n one case, an executive cut and pasted the firm’s 2023 strategy document into ChatGPT and asked it to create a PowerPoint deck. In another case, a doctor input his patient’s name and their medical condition and asked ChatGPT to craft a letter to the patient’s insurance company.”)

²¹⁵ See Dan Felz et al., *ChatGPT & GAI: Everything You Need to Know, Part 2*, LAW.COM, <https://www.lawjournalnewsletters.com/2023/05/01/chatgpt-generative-ai-everything-you-need-to-know-part-2/> (“[a]s an example, Microsoft has announced it is offering an “Azure OpenAI Service” that grants enterprise customers access to OpenAI’s suite of generative AI tools (ChatGPT, Codex, and DALL-E) within an Azure environment. Enterprise solutions are more likely to memorialize confidentiality, privacy, security, and IP terms responsive to needs of enterprise customers in an enterprise-level agreement.”).

²¹⁶ See MIT, *Task Force on Responsible Use of Generative AI for Law*, Jun. 2, 2023, <https://law.mit.edu/ai>.

²¹⁷ *Id.* (noting Microsoft published a “Code of Conduct” for its Azure OpenAI Service.); see also Ironclad’s GAI Policy, Apr. 24, 2023, <https://explore.ironcladhq.com/rs/528-QBH-821/images/Generative-Artificial-Intelligence-Policy.pdf>.

²¹⁸ See, e.g., EEOC, *Select Issues: Assessing Adverse Impact in Software, Algorithms, and AI Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964*, <https://www.eeoc.gov/select-issues-assessing-adverse-impact-software-algorithms-and-artificial-intelligence-used> (making clear the improper application of AI could potential violate Title VII and “employers may be held responsible for the actions of their agents, which may include entities such as software vendors, if the employer has given them authority to act on the employer’s behalf.”).

management.²¹⁹ This is a rapidly evolving field so it is critical to stay abreast of new laws and developments and continue to update policies accordingly.²²⁰

7. **Understand the Risks, Impacts & Limits** – Develop a comprehensive understanding of the risks, potential impacts, and technical limitations. This information should be considered when reviewing any output. Users should also understand the terms of service, which will provide information regarding how the data entered will be used.²²¹
8. **Trust, but verify** – Never rely on the information provided by GAI without doing independent verification and due diligence.²²² Be aware of the risks, such as hallucinations, and how that may affect the GAI output. MIT has recommended adherence to the Duty of Accountability and Supervision to maintain human oversight over all usage of AI applications.²²³
9. **Transparency and Traceability** – Prioritize transparency and traceability. The ABA has urged organizations that design, develop, deploy, and use AI products and services to ensure the transparency and traceability of their AI products, services, systems, and capabilities.²²⁴ Transparency means ensuring you understand and can monitor the AI systems.²²⁵ Traceability refers to the ability to track and understand the development and

²¹⁹ See, e.g., U.S. Dept. of Com., Nat’l Inst. of Standards and Tech., AI Risk Management Framework (NIST AI RMF 1.0), 2 (Jan. 2023) <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>.

²²⁰ Principles and guidelines for the responsible application of GAI in legal work are still in development. See, e.g., Amamir Sheikh, *MIT Task Force Puts Forth Guidelines for Generative-AI Use in Legal Practice*, CRYPTOPOLITAN, Aug. 4, 2023, <https://www.cryptopolitan.com/mit-guidelines-generative-ai-legal-practice/>.

²²¹ Steve Whiter, *ChatGPT: Weighing AI’s Risks and Rewards for Law Firms*, LAWYER MONTHLY, Apr. 2023, <https://www.lawyer-monthly.com/2023/04/chatgpt-weighing-ais-risks-and-rewards-for-law-firms/> (noting firms should understand exactly how inputted data is processed and used, including where it is stored, how it may be shared with third parties, and existing security systems to minimize risks of data leaks).

²²² “When Photoshop came on to the scene a long time ago, for a while people were really quite fooled by Photoshopped images and then pretty quickly developed an understanding that images might be Photoshopped. This will be like that, but on steroids.” Sam Altman, May 16, 2023, Testimony before the U.S. Senate Comm. on Privacy, Technology, & the Law, <https://techpolicy.press/transcript-senate-judiciary-subcommittee-hearing-on-oversight-of-ai/>.

²²³ See MIT, *Task Force on Responsible Use of Generative AI for Law*, Jun. 2, 2023, <https://law.mit.edu/ai>.

²²⁴ See also American Bar Association, Resolution 604, Feb. 6, 2023, https://www.americanbar.org/news/reporter_resources/midyear-meeting-2023/house-of-delegates-resolutions/604/ (noting the importance of transparency and traceability in the context of AI).

²²⁵ See KPMG, *Responsible AI and the Challenge of AI Risk*, 2023, <https://advisory-marketing.us.kpmg.com/html/speed/pdfs/8970-AI-Risk-Survey.pdf> (finding lack of transparency is a serious risk and posing the question: “Does company management understand and agree with how predictions are made?”).

deployment of AI technologies.²²⁶ NIST has stated “explainable AI” is one of the important properties that characterize trust in AI systems.²²⁷ Ensure you know exactly how AI is being used within your organization. Similarly, be transparent in the organization’s use of GAI. For example, include disclaimers on any blog posts or presentations that were prepared with the assistance of AI.²²⁸

10. **AI Leader** – Appoint a responsible individual within the organization as the primary GAI point of contact, so that one person has primary responsibility for GAI policies and practices. This will also provide employees a clear route to safely escalate risks/concerns, discuss challenges, and continue to improve.

CONCLUSION

“Just because we cannot see clearly the end of the road, that is no reason for not setting out on the essential journey. On the contrary, great change dominates the world, and unless we move with change we will become its victims.”²²⁹

Drawing inspiration from Robert F. Kennedy’s timeless words during his Farewell Statement in Warsaw, Poland, we are reminded that embracing change is not only necessary, but vital for progress. The future of work in the legal industry is intertwined with the responsible adoption of generative AI.

Throughout our article, we have critically examined and dismantled common arguments against GAI, emphasizing the need to strike the delicate balance between embracing its potential and upholding professional and ethical standards. The responsible embrace of GAI empowers legal professionals to transcend mundane administrative tasks, freeing them to direct their focus towards strategic, high-value, and more nuanced work. This paradigm shift not only fuels productivity and efficiency, but also holds the promise of revolutionizing the accessibility and quality of legal services. Informed and proactive engagement with the technology that clients increasingly rely on

²²⁶ See American Bar Association, Resolution 604, Feb. 6, 2023, https://www.americanbar.org/news/reporter_resources/midyear-meeting-2023/house-of-delegates-resolutions/604/ (explaining the importance of document key decisions made with regard to the design and risk of data sets, procedures, and outcomes).

²²⁷ See American Bar Association, Resolution 604, Feb. 6, 2023, https://www.americanbar.org/news/reporter_resources/midyear-meeting-2023/house-of-delegates-resolutions/604/ (citing NIST Artificial Intelligence, Explainability, <https://www.nist.gov/artificial-intelligence/ai-fundamental-research-explainability>).

²²⁸ See KPMG, *The Flip Side of GAI: Challenges and Risks around responsible use*, 2023 <https://advisory-marketing.us.kpmg.com/speed/pov-generativeai-challenges.html> (noting lack of transparency in the company’s use of GAI content can cause harmful reputational issues. For instance, Tech publisher CNET came under criticism recently for using the technology to draft over 70 articles but misrepresented the role of their team of editors in the process).

²²⁹ See ABA Comm’n. on the Future of Legal Services, *Report on the Future of Legal Services in the U.S.*, AM. BAR ASS’N, 2016, <https://www.srln.org/system/files/attachments/2016%20ABA%20Future%20of%20Legal%20Services%20Report-Web.pdf> (noting “as reported in the NEW YORK TIMES, July 2, 1964.”).

is essential for lawyers to competently counsel and guide their clients through the complexities of the modern world.²³⁰

The time to embrace the transformative potential of GAI is now. Law firms that seize this opportunity will position themselves at the forefront of the evolving legal industry and help to shape a future where humans and technology coexist harmoniously, leading to a more innovative and client-centric legal profession.²³¹

²³⁰ Jessica Lipson, Partner and Co-Chair of the Tech., Data & IP Department at U.S. law firm Morrison Cohen, reported she is receiving more questions about legal technologies than ever before, largely due to the public interest in GAI's development. See THOMSON REUTERS, *ChatGPT and GAI within Law Firms*, 11, Apr. 20, 2023, <https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2023/04/Chat-GPT-Generative-AI-in-Law-Firms-2023.pdf>.

²³¹ In crafting the conclusion of this article, we, of course, collaborated with ChatGPT, which provided invaluable assistance in generating the text. The output was then meticulously refined and edited by human minds. The prompts used included: "Can you summarize why law firms must responsibly embrace generative AI?" along with a high-level summary of the article's outline, to eloquently encapsulate the final conclusion.