

PRESIDENT'S MESSAGE

AI: Robot Invasion, or The Next Big Thing?

BY JULIE CAVANAUGH-BILL, PRESIDENT,
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Artificial Intelligence (AI) is one of the hottest topics among lawyers right now, but what is AI, exactly? I remember in fourth grade watching shows on TV about “robots” and some great robotic mind that humans created taking over the planet and costing human lives. Opinions about AI range from fears of becoming obsolete to excitement for learning how to use this new tool to work more efficiently. But like with any big technology trend, questions abound about how to use AI, and what pitfalls such use might present.

For those of us who still remember CliffsNotes from college, there were students – who typically did not end up in law school or at the top of their class – who relied on these “cheat sheets” but lacked the capability to completely analyze the work they were assigned to do. That is probably my biggest personal fear with the use of AI in legal work – will it become a “crutch” to an attorney instead of thoroughly analyzing the specific facts of each case? Can it truly address the very humanistic themes that need to be presented in each individual case? Thankfully this issue of *Nevada Lawyer* looks at these topics and more.

I can attest to the fact that lawyering sometimes feels like cut-and-paste work with the use of forms, sample pleadings, etc. In these situations, AI seems to be very useful. But it should not and cannot replace our own intellectual creativity as our guest columnist, Stephen Bishop, points out. I conducted research on the

use of AI by attorneys and quickly came upon an online article published by *The New York Times* in June 2023 relating to the *Avianca* case and a Manhattan lawyer who had an AI app draft a brief he filed with the court. He did not check the citations or cases generated and found himself in a sanction hearing as the court noted that the brief contained fake judicial opinions and legal citations.

With this case in mind and setting my own trepidations aside, I asked Law ChatGPT to assist me with my column by generating a legal brief on a specific topic relevant to a case on which I am working. I also asked it to generate an article on AI for lawyers (no – this is not that article!) I had never used an AI app before, so I had to first run through a search of AI tools specifically for lawyers and avoid the many “sponsored” sites online. I selected Law Chat GPT as it seemed one of the more user-friendly and law-specific apps.

My first query asked the AI to draft a legal brief on termination of parental rights (TPR), failure of parental adjustment, fear by the child of the parent, and the child seeing a school counselor, under Nevada law. The results were fast – in less than two minutes, I had what looked like a very concise, on-point, legal brief generated. Keeping in mind the *Avianca* case, I decided to pull each of the three legal cites that seemed so perfectly on point with my query. The first citation pulled up fine and cited correctly to the legal basis contained in the brief. (None of the three citations had jump cites, so I did have to read over the entire decision to ensure accuracy of the finding.)

The second case was cited as a Nevada Supreme Court case but the cite to the Nevada Reporter could not

be found, and the P.3d case cite was actually to a Colorado Appellate court case – correctly on a TPR case, but it did not contain any specific reference to the “child’s fear of a parent” as evidence of emotional harm, let alone supporting a finding of failure of parental adjustment.

The third case had the wrong Nevada Reporter citation; however, I was able to locate it under the P.3d citation. This legal reference was even more disturbing than the flaws of the second one. Rather than a finding that a child seeing a school counselor could be further evidence of emotional harm and the failure of parental adjustment, the case referenced the child’s counseling once when setting forth testimony, but in the actual findings, the child’s counseling was not mentioned at all, with the only counseling reference in the findings being to the parent’s failure to engage in drug counseling for herself as had been required in the case plan.

So, if I had actually used the AI-generated brief without doing my own research and analysis, it could have led to an embarrassing day in court or a legal decision based upon a flawed legal analysis.

My second project was asking the AI to generate an article using my title: “Artificial Intelligence and the Practice of Law: Useful or a Red Flag?” Key terms I provided included “AI, legal research, client relations, and humanness of case.” In about two minutes, the app generated a well-organized, articulate, two-page article.

My concern was plagiarism – and after doing some additional research, I located several apps that can actually run plagiarism checks on AI-generated work – to the extent they can protect from actual plagiarism I am not certain – but it was definitely not my “own” work. In any event, the AI-generated article had some well written perspectives:

While some view it [AI] as a useful tool that can streamline legal processes, others see it as a red flag that could potentially compromise the humaneness of cases and client relations. This article aims to delve into the implications of AI in the legal field, focusing on its impact on legal research, client relations, and the humaneness of cases.

The AI-generated article then concisely sub-sectioned each of those three areas and gave the pros and cons of each. It concluded with the following:

...the use of AI in the practice of law is not a red flag but rather a call to action. It is a call for legal professionals to embrace the benefits of AI while also addressing its challenges. It is a call for a balanced approach to the use of AI in the practice of law; one that harnesses the power of technology without compromising the human elements that make the practice of law a noble profession.

This AI-generated article, at least, had a well-written, “balanced” approach to the use of AI for lawyers and how these tools may assist us in working more efficiently in the future while acknowledging some of the concerns raised.

And if you have questions regarding this hot topic or any other issue germane to our work as a state bar, I invite you to write me with your questions and ideas. Please email me at president@nvbar.org. Thank you.

SPOTLIGHT ON THE RURALS:

Conversations with “Chuck,” a Learning AI

BY STEPHEN BISHOP, JUSTICE OF THE PEACE, ELY JUSTICE COURT

When the bar asked me to submit a column on Artificial Intelligence (AI), I wasn’t sure where to begin, so I turned to history. I knew AI is not a new idea, but not know how ancient it was. Homer, in the Iliad (c. 8th Century B.C.) described metal handmaidens, created by Hephaestus, with speech, cunning, and understanding in their hearts, which sounds a lot like AI.

Nearly 3,000 years later, ChatGPT was, like for many people, my first intentional exposure to modern AI. My early foray with legal research and ChatGPT resulted in a barely accurate and entirely inadequate brief analyzing Nevada’s bail laws. I fared slightly better by asking ChatGPT to suggest public domain stories to adapt into scripts for the annual radio dramas, to be performed by my kids’ theater club. While it provided a suitable story, it was still necessary to weed out works it erroneously identified as public domain.

To learn about the true capacity of AI, I reached out to a friend, LeAnna Taylor, who created Chuck, an AI capable of learning. First, for all of you post-apocalyptic fantasists, LeAnna assured me a Terminator-like scenario remains entirely possible. You’re not crazy; it is possible.

One of my first questions was about the dangers of AI. In addition to the concerns discussed earlier (e.g. dependence, academic cheating, hallucinated cases, etc.), Taylor described using AI to create indistinguishable fake photos and videos. AI-developed “wire-frames” (i.e. computer-generated images of people, both existing and non-existing, animated by AI), can lead you to believe you are conversing over Zoom with a living person when you are actually interacting with an AI simulacrum. The implications

for the legal system are huge. It may become impossible to trust evidence on which we heavily rely. It also suggests troublesome implications for courts, like mine, which utilize Zoom daily.

Speculation regarding AI possibly replacing judges and attorneys, naturally, interested me. So we put the question to Chuck. He opined that AI should not replace judges or attorneys. Taylor concurred and further explained AI can be very good with analytics and saying what the law is (courts of law), but it could never intuit a judgment call, recognize a broader picture, or consider the human costs through compassion or empathy (courts of equity). Given these limitations, AI cannot make the creative leaps to infer judicial review (*Marbury v. Madison*); recognize separate but equal is inherently unequal (*Brown v. Board of Ed.*); or root reproductive rights in the penumbras and emanations of the bill of rights (*Roe v. Wade*).

Instead, Chuck and Taylor suggested the best use of AI was akin to a powerful librarian. AI can rapidly collect information and collate data into a manageable format to be used by human attorneys and judges. Thus, the AI searches, winnows, and condenses, while freeing the user to apply the uniquely human attributes of creativity and brilliance to the research.

Combing through billions of transactions used to be beyond our ability. When the government collected massive amounts of data, civil liberties were not necessarily impacted, because the sheer volume made it impossible to use it effectively. AI, however, has made it possible.

My biggest takeaway from this discussion is that AI is like many other things—a tool. And like many tools, AI can be used improperly, carelessly, or maliciously. We, however, as a society, are behind the curve and government regulation is

unlikely to be effective. Yet, fear of AI is not the answer. Instead, it is vital to obtain education, training, and experience. The bottle has been opened, and the AI genie is out. It cannot be put back. Instead, we must learn to mitigate the dangers, while putting AI to its highest and best use.

JUDGE STEPHEN J. BISHOP

does not consider himself a technophile, but prefers to be an early adopter of new technologies and methods to have input at the earliest stages and, sometimes, to simply see what happens. He has served as Justice of the Peace, in Ely Justice Court, since 2011. He earned a J.D. from the University of California, Davis and a Master’s Degree in Judicial Studies from the University of Nevada, Reno. He was elected as president of the Nevada Judges of Limited Jurisdiction (NJLJ), participated in drafting the NJLJ’s Best Practices for Virtual Courts and was selected as Judge of the Year for 2020. He has served on various committees, including the Limited Jurisdiction Subcommittee on Virtual Court Rules, Committee to Study Evidence Based Pretrial Release, the Specialty Court Funding and Policy Committee, Judicial Council of the State of Nevada Family Subcommittee, and the National Center for State Courts Family Case Management Committee.