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**AI in Law,  
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# Will robots replace lawyers?

- How will AI continue to cut hours worked by lawyers and paralegals?
- McKinsey Global Institute estimated about one quarter of attorney work can be automated
- Attorneys will continue to do higher level work, leading a team that includes a machine
- “[A]utomation has a measurable impact on the demand for lawyers’ time, but one that is less significant than popular accounts suggest.”

Dana Remus & Frank Levy, Can Robots Be Lawyers?: Computers, Lawyers, and the Practice of Law, 30 *Geo. J. Legal Ethics* 501 (2017)

“[T]echnology has been integrated into the very act of practicing law. The core activity of lawyering — that of thinking like a lawyer — is expressed through the technology lawyers use. At its core, technology is not merely a tool of the trade, but it is wrapped up intrinsically in the very thought processes lawyers employ. . . . Modern technology is now entrenched in the core tasks of being a lawyer, and its function, purpose, and future potential cannot be ignored.”

Agnieszka McPeak, Disruptive Technology and the Ethical Lawyer, 50 U. Tol. L. Rev. 457, 471-72 (2019).



# New York lawyers sanctioned for using fake ChatGPT cases in legal brief

By Sara Merken

June 26, 2023 1:28 AM PDT · Updated a month ago



<https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/>

# Texas judge bans filings solely created by AI after ChatGPT made up cases

**MONEY  
WATCH**

BY MEGAN CERULLO

JUNE 2, 2023 / 2:07 PM / MONEYWATCH



“U.S. District Judge Brantley Starr of the Northern District of Texas is specifically requiring that attorneys file a certificate to indicate either that no portion of any document they file was generated by an AI tool like ChatGPT, or that a human being has checked any AI-generated text.”

The Guardian, Betsy Reed, “Colombian judge says he used ChatGPT in ruling,”

<https://www.theguardian.com/technology/2023/feb/03/colombia-judge-chatgpt-ruling>.

## France

- Banned publication of personally identifiable information of judges or clerks that could “be [used] for the purpose or effect of evaluating, analyzing, comparing or predicting their real or supposed professional practices.”
- Punishable by up to five years in prison
- Effect: analytics companies allowed to produce statistics around trends in the law, but not specific to individual courts or judges\*

\*See <https://www.artificiallawyer.com/2019/06/04/france-bans-judge-analytics-5-years-in-prison-for-rule-breakers/>

# The U.S. legal services industry's failure to adapt regulation in response to new technology, as compared to other industries

- **Healthcare**

- Federal: HIPAA
- State health privacy laws (CA)
- FDA – cybersecurity during premarket approval of med devices

- **Education**

- Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA)
- State student privacy laws

- **Consumer setting**

- FTC; federal data privacy laws and enforcement mechanisms
- State privacy laws



# The Access to Justice Gap

“Low-income Americans do not get any or enough legal help for 92% of their substantial civil legal problems.”

Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans*, April 2022, at 7, available at <https://justicegap.lsc.gov/resource/2022-justice-gap-report/>

# The Access to Justice Gap

## Exacerbated by:

- Economic recessions
- Covid-19 Pandemic

“[D]ata suggest that income disparities in the justice gap between low- and higher-income Americans are exacerbated for pandemic-related civil legal problems.”

Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans*, April 2022, at 11, available at <https://justicegap.lsc.gov/resource/2022-justice-gap-report/>

# The Access to Justice Gap

“Empirical results conclusively demonstrate that we can neither volunteer ourselves across the gap nor rely on public services.”

Deno G. Himonas & Tyler J. Hubbard, *Democratizing the Rule of Law*, 16 STAN. J. C.R. & C.L. 261, 268 (2020)

Modest solutions are “not likely to offer the revolutionary sort of change that is needed for the delivery of legal services today.”

Renee Newman Knake, *Democratizing the Delivery of Legal Services*, 73 OHIO ST. L.J. 1, 3 (2012)

# The Access to Justice Gap

“[C]losing th[e] ATJ gap requires both incremental improvement and breakthrough change.”

Georgetown Law Ctr. On Ethics & the Legal Profession, 2020 Report on the State of the Legal Market, 2-3 (2020) <https://www.law.georgetown.edu/news/fundamental-shifts-are-disrupting-the-legal-market-2020-report-on-the-state-of-the-legal-market-from-georgetown-law-and-thomson-reuters-legal-executive-institute/>

# Narrative that legal technology can help to close the access-to-justice gap

- Democratize access to information
- Increase efficiencies (legal research, legal analytics, document generation, etc.)
- Decrease costs
- Unbundled legal services
- Legal self-help
- Connect consumers with attorneys
- Reach untapped markets

# Risk of Exacerbating the Justice Gap through a Two-Tiered System of Legal Services

1. Relegation of some to an inferior tech-driven solution, even in cases where human-driven assistance more appropriate
2. Tech-driven services are superior, but not evenly distributed
3. Tech-driven services don't meet expectations, leaving the status quo two-tiered system

# Overcoming the risk of a two-tiered system through effective “calibration” of legal technology for access to justice

## Essential A2J Calibration Considerations:

- Consumer considerations
- Issue considerations
- Task considerations

# Overcoming the risk of a two-tiered system through effective “calibration” of legal technology for access to justice

## Barriers to Effective A2J Calibration:

- Resource barriers
- Resilience barriers
- Relationship barriers



## Other A2J calibration challenges:

Expectations

Transparency (i.e. the “black box” problem)

Bias

Data-driven conservatism

Data protection issues

## Regulatory uncertainties in U.S. inhibiting calibration – whether use of these technologies (e.g.):

- amounts to unauthorized practice of law
- leads to discrimination
- adequately protects client data
- violates the duty of technology competence
- requires prohibited fee sharing or cross-industry business structures

Opportunities for:

Lawyers

Regulators

Legal Educators

# Shedding the “I went to law school to avoid math” mentality

- Selling selves short
- Lawyers are analytical, logical
- Data-driven law not new
- Empowering

# Elevate creative thinking

- Can AI increase creativity?
- Ed Walters: Tech can help humanize law practice; give “robotic tasks” to robots and reclaim human aspects of lawyering

# Linking to Mindfulness & Well-being

- Katrina Lee (Ohio State): *A Call for Law Schools to Link the Curricular Trends of Legal Tech and Mindfulness*, 48 Toledo L. Rev. 55 (2017),  
<http://ssrn.com/abstract=2937721>
  - Creativity
  - Empathy
  - Openness
  - Compassion

Thank you

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