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Trends and Developments

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Summit Law Group, PLLC is active in matters relating to commercial dispute resolution, including business, employment, IP and environmental litigation and arbitration. The firm teams up with trusted service-providers to enable it to provide clients with leading-edge technology, project management and process improvement.

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Minority Report: The Future of Legal Services and AI

Imagine a future world where mutant beings, called 'precogs', foresee crime before it occurs. Tapping into their collective brainpower, the government's Precrime Division can apprehend suspects who have not yet committed any offence – though, we are assured, they will.

The stuff of science fiction? So far, yes: it's the plot of a story by Philip K. Dick, later turned into a Steven Spielberg film, Minority Report. But the predictive power of artificial intelligence (AI) is already reality for parts of the legal industry, and it has massive implications for how lawyers use data to predict and protect their clients' futures.

Indeed, at Legalweek New York 2018, eDiscovery service-provider Consilio polled 105 legal and technology professionals on their opinions about AI. A whopping 93% reported that AI is likely either to help or create more opportunities within the legal industry. Many respondents anticipated that adopting AI would help them save time (35%) and reduce

costs (28%). A total of 62% said that AI is already affecting their day-to-day work, and nearly all – 95% – expected that AI would influence their work within the next five years.

Despite this recognition of AI as a growing influence, attorneys are generally reluctant to ride the leading edge of AI adoption. They often adhere to more traditional methods that are clearly accepted by the courts, citing concerns about the defensibility of costly newer technologies. In fact, according to a 2017 survey by Thomson Reuters, fewer than 50% of firms have adopted AI approaches, and of those firms, most are likely to be just scratching the surface of the technology's capabilities.

What is AI?

According to the Grossman-Cormack Dictionary of Technology-Assisted Review, AI is an "umbrella term for computer methods that emulate human judgement", including "machine learning". Machine learning uses "a computer algorithm to organise or classify documents by analysing

their features". With machine learning, no human tells the computer what 'rules' it should apply; rather, the algorithm itself learns, through its experience, how it should perform a task such as classifying or sorting documents, recommending songs or movies (Spotify, Netflix), and searching the internet (Google, Baidu).

To simplify, AI is essentially the ability of computers to perform tasks that were historically thought to require human intelligence, such as learning and problem-solving. One familiar example of AI is IBM's Watson, which is capable of parsing natural language to answer questions, much as it did while beating two former champions of the TV quiz show Jeopardy! back in 2011. ROSS, an advanced legal research tool built on IBM's Watson technology, has been hailed as the world's first artificially intelligent attorney. With its ability to read and process more than a million pages per minute, ROSS's primary function, thus far, has been legal research. Another AI tool, CARA, from the legal research company Casetext, claims that lawyers can use it to forecast opposing counsel's arguments by analysing their approaches in former cases.

Are Lawyers Actually Using AI Today?

AI is already influencing the way that law firms at the forefront of the intersection between law and technology are conducting legal work, starting with initial investigations and building through the data-intensive litigation-discovery process. These approaches are improving efficiency and accuracy, and eliminating some repetitive and unrewarding tasks.

Advanced Pattern-Detection Tools

When a company first suspects misconduct or when an opponent initiates litigation, lawyers must quickly sort through piles of information to get to 'the good stuff' and find out what really happened.

But where do you start? The first sweep of data collected as part of an investigation or for litigation may not seem to reveal any meaningful connections – at least none that are discernible to the human eye. Lawyers are stuck reviewing documents one at a time, without the benefit of an holistic overview of the complete data set.

Advanced data analytics tools, powered by AI, can make sense of the tangle of data in ways that the human mind cannot.

For example, at the start of an investigation or discovery, an attorney may try to search through a set of documents using keywords. But what if those keywords don't find anything because the subjects are using jargon, abbreviations, slang or, even more difficult to determine, code words?

This is where AI tools can step in to fill the gap. These futuristic tools use text analytics to identify topics, concepts and related words within emails and other documents. They can quickly give investigators a clear view of the themes or trends that exist within the data, advising them about the patterns of that data or the keywords they should leverage for additional searches.

AI-driven tools can help in a variety of internal investigations. For example, a product called Riskcovery™ can review exemplar documents selected by an organisation and its counsel, and use its algorithms to identify documents that are conceptual matches based on predefined criteria. While the software can be customised, it also has predefined taxonomies that enable it to flag documents that may indicate problems under the Foreign Corrupt Practices Act, the Bribery Act of 2010, Title VII, securities laws, anti-money laundering laws, insider trading regulations, confidentiality and trade secrets policies, harassment and discrimination policies, and more.

The tool then categorises those flagged documents for further review and re-analysis. A dashboard translates data into visualisations, revealing previously unrecognised patterns and trends that lawyers can use to mitigate immediate risks before triggering a more formal investigation, inquiry, audit or litigation. These visualisations can, for example, highlight records of outlier transactions, such as irregular expenses for travel or entertainment, that may be indicia of illicit dealings. Its linguistic-analysis techniques can also mine text for hidden meanings. In one case, a seemingly innocent conversation about a birthday party turned out to be the co-conspirators' code word for activities adverse to their employer.

Another important pattern-detecting tool is concept clustering. Often used in winnowing down the field of relevant documents for discovery during litigation, it finds textual similarities in documents and groups conceptually related documents into clusters. These tools commonly offer visualisations of areas where documents of interest live, so they can be prioritised for early assessment or first-round document review.

Technology-Assisted Review (TAR)

AI offers some of its most impressive aid to attorneys in document review, a mostly time-consuming, mind-numbing litigation task.

TAR is one of the most powerful – and, initially, controversial – analytics tools to emerge in the last decade. At first, lawyers and courts were sceptical of its use, as it seemed to rely on an inscrutable "black box" of unknowable algorithms. But after U.S. Magistrate Andrew J. Peck gave the technology his blessing in *Da Silva Moore v. Publicis Groupe*, *287 F.R.D. 182* (S.D.N.Y. 2012), a cascade of approving opin-

ions followed. Some courts have even encouraged litigants to employ TAR in their work. Judge Peck has more recently declared its use of "black letter law" (*Rio Tinto PLC v. Vale SA, 306 F.R.D. 125, 126* (S.D.N.Y. 2015)).

Depending on the eDiscovery platform, two varieties of TAR are currently available. TAR 1.0 algorithms were the first to emerge on the scene, whereby an algorithm randomly selects a sample of documents, called a "seed set", from a data collection. An attorney reviews the seed set for relevance and feeds the results back to the algorithm, which randomly selects another sample set of documents for review. This feedback loop repeats until the algorithm attains an acceptable threshold of predictive accuracy. At that point, the algorithm applies the logic it has learned from the attorney across the remaining uncoded documents, ranking them according to their likely responsiveness.

The newer application, TAR 2.0, uses a continuous active-learning algorithm. TAR 2.0 runs concurrently with the human review, continuously observing and learning as lawyers code documents. As it learns, the algorithm selects documents from the database that it believes are responsive and moves them to the top of the lawyers' pile for review. This process continues, with the algorithm continuously learning and improving its analysis based on feedback from the human review team. At some point, the relevancy of the documents remaining in the "pile for review" drops off significantly. After that point, the remaining documents are sampled to determine the likely percentage of remaining relevant documents. Once an acceptable percentage is attained – depending on agreement with opposing counsel, the client's risk appetite, etc. – the review process comes to a halt.

Both TAR versions can lead to material cost savings in discovery. The elimination of non-responsive documents from first-pass review can dramatically reduce human review time and, consequently, litigation spend. Moreover, the consistent, non-biased TAR engine can vastly reduce the risk of human error, whether from reviewer inattention, fatigue or simply an inconsistent application of review criteria among reviewers. Finally, TAR also enables legal teams quickly and accurately to grasp the key legal issues and facts in a matter, which facilitates more robust early case assessments.

Is AI Going to Replace Lawyers?
No, but technology has and will continue to impact and reduce what work lawyers should actually do. Since a 2011 study by Maura R. Grossman and Gordon V. Cormack, "Technology-Assisted Review in E-Discovery Can Be More Effective and More Efficient Than Exhaustive Manual Review", there have been indications that TAR could surpass the former gold standard of human review in both effectiveness and cost. Yet, while it is true that AI accelerates pattern detection in investigations and discovery, making them easier and more cost-effective, it is not a panacea. Although

computers may be more consistent than humans in applying their rules, the technology used in the law is still only as good as the humans overseeing the machines.

Independent human judgement is still, as ever, required for the ethical practice of law. Blind trust in technology's competence would equate to malpractice. Furthermore, organisations still need strategic, informed consultation from actual human eDiscovery specialists, who have, like their machine counterparts, ingested volumes of data over the course of their long experience with clients. They can synthesise all of this experience – in a way that machines still cannot – into smart strategies that customise the approach, workflows and tools to the project at hand.

How Will AI Shape the Practice of Law in the Future?
Where will AI take us next? The best guess is that information governance is poised for disruption, based on AI's ability to ingest, process and analyse data rapidly.

For example, AI is expected to facilitate the creation and maintenance of data maps. It has been difficult and time-consuming, thus far, to train algorithms to look for specific records. But machine learning has a significant advantage: it can sift through unstructured text, learning about the content as it proceeds, regardless of the specific words or language used. Also, as new data is created and stored in an organisation's system, AI tools can track that data and alert lawyers to its presence. AI will also be able to assist in cleaning and organising stored data: it will help organisations choose which old data is ripe for disposal, eliminate duplicate data and sift through stored data to assign it to appropriate categories. It can learn how to sort documents correctly by studying a few documents that humans have already grouped and then receiving and assessing feedback, similar to the way a TAR algorithm learns to review documents.

It is also expected that TAR algorithms will become even more sophisticated, helping attorneys to isolate precisely those documents protected by attorney-client privilege or work product doctrine. While TAR can currently identify attorney names and perform a preliminary privilege assessment, it can still be stymied by the distinction between legal and business advice.

At some point, lawyers who remain reluctant to adopt technology such as AI will face professional risk, especially when that technology is shown to be more reliable than human intelligence. But, for now, the lawyers already embracing AI will find themselves on the leading edge for their clients to attain greater productivity, efficiency and cost reduction – and, perhaps most importantly, rooting out clients' risks before those risks become liabilities. It is not exactly the way imagined by Philip K. Dick, but it is not too far off.

(For law firms to stay on the leading edge of AI and other technologies, it is vitally important to partner with state-of-the-art technology vendors. We are grateful to Consilio for their assistance in providing these services to our clients and educating us about AI.)

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