



AMERICAN
BANKRUPTCY
INSTITUTE

Southwest Bankruptcy Conference

General

Artificial Intelligence

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CONCURRENT SESSION

2023



AGENDA

Artificial Intelligence

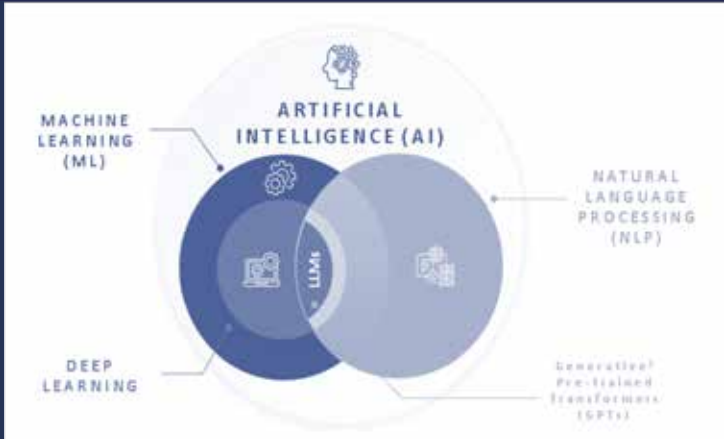
1. Introduce AI and generative AI concepts, current status, and industry interest with emphasis on value potential and future trends.
2. Share how the practice of law can be transformed with AI's role in legal tasks such research, drafting, predicting outcomes and identifying fraud
3. Discuss the impact of AI on legal, ethical and regulatory concerns such as bias and accountability.
4. Share insights into AI's influence on court proceedings and judicial decisions particularly as it relates to bankruptcy

Overview and Definitions

Artificial Intelligence & Machine Learning

Artificial intelligence (AI): "Machines acting in ways that seem intelligent".¹

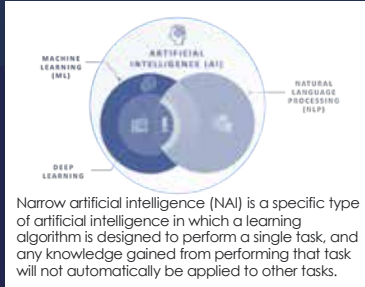
- Machine Learning, Natural Language Processing, Deep Neural Networks and Large Language Models are subsets of AI;
- Machine Learning (ML) - gives computers the ability to learn without explicitly being programmed.
- Natural Language Processing (NLP) - the process of getting computers to understand human language.
- Deep Neural Network (DNN) – multi-layered neural networks able to learn complex patterns from a large dataset.
- Large Language Models (LLM) – AI models, like ChatGPT, trained on vast text data that can understand context and generate human-like text for diverse language tasks



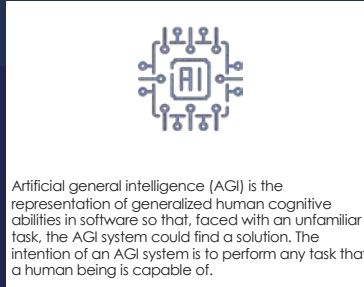
¹Prof Thomas Malone, Director, MIT Center for Collective Intelligence
²Generative AI: branch of AI that focuses on creating new data from existing data.

Where We Are – Reality vs. Fiction

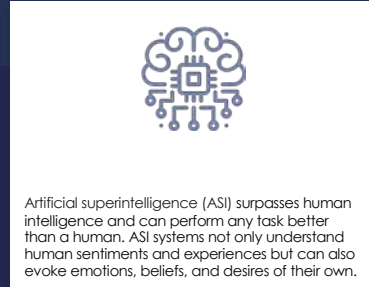
NARROW AI



GENERAL AI



SUPER AI



REALITY

NOW

FICTION

Despite media hyperbole, there is no consensus among experts that these states will ever be achieved. We consider any opinions and timing predictions on this topic to be entirely speculative

Within Narrow AI – Where are We?

We are at a fourth inflection point in the evolution of AI capabilities, each stage being progressively characterized by advancements in algorithmic models, technical approaches, computational power and level of industrialization.

NARROW AI



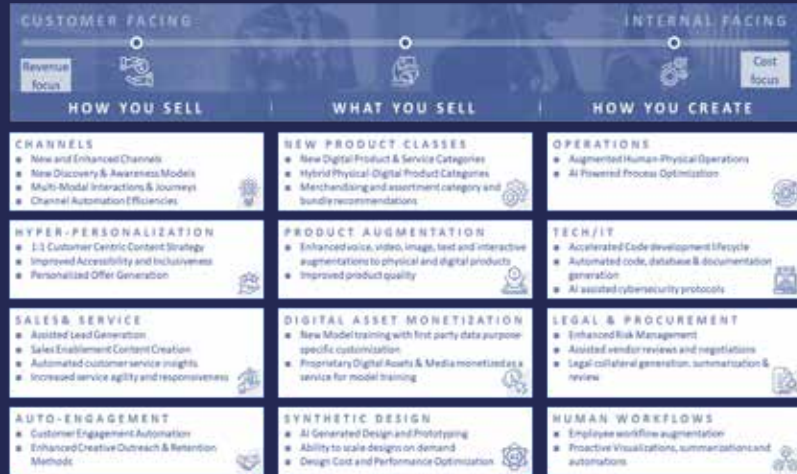
1950s	1980s	2000s	2020s
MIMIC	LEARN	PREDICT	CREATE
Rules-based expert systems, allowing for the imitation and automation of very narrow human tasks.	Statistical learning allows models to learn from data and learn narrow categories of patterns and classifications.	More sophisticated learning models (deep learning) achieve higher levels of accuracy for more complex learning and prediction tasks.	Next generation models generate new multi-modal human like content, training on data from large tracts of public internet.
Training computation scale approaches 100 Million FLOPs (unit measure of computation)	Training computation scale approaches 1 petaFLOP (Quadrillion)	Training computation scale approaches 100 Million petaFLOPs	Training computation scale exceeding 10 Billion petaFLOPs

How we are evaluating business creation with the new class of Generative AI models



A framework for evaluating value creation is to examine use case along three axes focusing on cost and revenue levers depending on business priority

1. How the sales lifecycle with customers can be improved?
2. Can the fundamental product or service being sold be enhanced?
3. How can the business processes of creating the product/service be optimized?



What the Future Looks Like:



HOW AI CAN BE USED TO ASSIST THE PRACTICE OF LAW

AI offers a range of capabilities that enhance efficiency, accuracy, and decision-making:

- E- discovery
- Contract review and analysis, including performing due diligence for a variety of corporate transactions.
- Legal research.
- Developing litigation strategy.
- Predicting which companies are likely to file bankruptcy cases.
- Document generation and review

Using OpenAI for Legal Research

What is OpenAI?

- OpenAI is an example of generative AI. ChatGPT is an AI-powered chatbot from OpenAI that responds to open-ended text queries with paragraphs of text-written answers. It was trained through reinforcement learning from human feedback.
- Tools like ChatGPT are free to use—though, given the high demand, you may have trouble getting in.

Who is Your AI?

- The assistant/intern: proving specific instructions to complete a task (i.e. outline this motion, draft a research memo, reword this letter)
- The coach or the mentor: requesting advice (i.e. where should I go on vacation?; how can provide my associate with constructive feedback)
- Muse: needing creativity (i.e. create a syllabus, write a nice message to a coworker on their birthday)
 - Watch for Hallucinations! (When AI is creative in a way that is wrong)

Open AI drafting demonstration:

Prompting Your AI

- ▀ The beginning of a conversation, an instruction, a request
- ▀ What do you need from it? (i.e. what tone, style, voice)

Example prompt: Draft motion to extend the Bankruptcy Code Section 362 automatic stay to a debtor's officers in a Chapter 11 bankruptcy filed in the Eastern District of California. This motion must provide factual background regarding the director's involvement in the debtor's business and their continued efforts to reorganize the business. Please cite the legal standard for the motion to extend the automatic stay under Ninth Circuit law and summarize and cite to cases from the Ninth Circuit that support extending the automatic stay to the directors.

<https://chat.openai.com/share/70766c42-ef44-4d1d-b4e4-7abb929052c7>

Analyzing the AI Response: Pros v. Cons

Pros	Cons
Generated in a matter of seconds	No contextual understanding
Created outline/template	The complex legal analysis is missing (Pretty far off from a final product, the legal standard and cases are basically worthless)
Language and style- organized, proofread, efficient	Lack of creativity and strategy
	Ethical and confidentiality concerns (Hallucinations- cited to fake cases)

When prompted to complete the research for the motion instead of the motion its response was:

"Remember that legal research can be complex and time-consuming, especially when dealing with specific cases and jurisdictions. If you're unsure about any aspect of your research, consider seeking assistance from a legal librarian or a legal professional who specializes in bankruptcy law within the Ninth Circuit"

AI's influence on the legal profession, court proceedings and judicial decisions

Evidentiary Issues



- Authentication – FRE 901 to 902
- Relevant – FRE 401 to 403
- Hearsay – FRE 801 to 804, 807
- Witnesses
 - Lay – FRE 701
 - Expert – FRE 702

Ethical Issues



- Lawyers
 - FRCP 11/FRBP 9011
 - Unauthorized practice of law
- Judges
 - Administration of justice

Judicial Responses



- AI not used or AI info accurate
- Pro Hac Vice cannot use AI
- Disclose AI use and what AI drafted
- Certify no confidential info disclosed

Impact of AI on Legal, Ethical and Regulatory Concerns

Legal & Ethical Concerns



Is AI going to take the place of lawyers and judges?

NO, but . . .

- What are AI biases and how can biases impact how AI functions?
- Practitioners must understand these biases and be transparent to clients and courts.
- Legal and ethical ramifications to due process rights of litigants become front and center

Privacy & Regulatory Concerns



The compromise of data when interacting with AI and its foundational and reliability impact.

Privacy concerns regarding data and its manipulation or re-use.

Who may be held accountable for these AI issues and functions?

Open Questions



Can AI predict outcomes, settlement values, evaluate legal risks and make decisions? What are the impacts to clients and practitioners?

What ownership rights do creators have whose data (text, art etc) is used to train AI? What is the ownership right on assets created through AI? Do these assets need to be listed on bankruptcy schedules? Can a trustee dispose of these assets?

The Debate: Will AI replace Lawyers?

Maybe . . . But probably not anytime soon!



- While AI has the potential to reshape the legal profession, it seems unlikely that AI will replace lawyers
- Instead, AI will instead can be used as a tool enhance our productivity, accuracy, and strategy.
- AI can't perform tasks that require human judgment, like arguing a case before a jury, offering a creative strategy, or building relationships with clients.
- According to a LexisNexis survey published in March, only 10% of lawyers think that generative artificial intelligence tools, such as ChatGPT, will have a "transformative impact" on the practice of law, and 60% of lawyers have "no plans to use [the technology] at this time,"
- The legal industry is constantly changing, so it's more important than ever to stay informed on the advancements in AI

Panelists



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Faculty

Clarissa Brady is an associate with Stinson LLP in Phoenix and focuses her practice in bankruptcy litigation, representing unsecured creditor committees, corporate debtors, trustees and banks. She has assisted with defending and prosecuting companies and individuals in disputes involving fraudulent transfers, preferences and breaches of fiduciary duty across multiple jurisdictions. She also has experience researching and drafting materials addressing other civil litigation issues including, personal injury, land use, employment and immigration. Ms. Brady is committed to the firm's *pro bono* mission and has assisted clients in seeking U visa and refugee status in the U.S. During law school, she served as a judicial intern for the U.S. Bankruptcy Appellate Panel for the First Circuit and for the U.S. District Court for the District of Hawaii, drafting court opinions and memoranda on a wide variety of bankruptcy, restructuring and creditors' rights matters, as well as other complex litigation matters. Ms. Brady is a member of ABI, the American Inns of Court and the Arizona Bankruptcy American Inn of Court, and she has been published in the *ABI Journal*. She received her B.A. in political science and international relations in 2014 from the University of Arizona, and her J.D. in 2020 from Suffolk University Law School, where she served on the *Suffolk University Law Review*.

Sumeet Gupta is a senior managing director with FTI Consulting, Inc. in Dallas and leads its Digital Transformation practice in the Americas. He specializes in accelerating growth and profitability through technology and data-driven transformations, and his work combines modernizing engineering, harnessing data at scale, reinventing customer experience, and establishing digitally native organizations to build and commercialize new digital products, experiences and businesses that generate billions in annual revenues. Mr. Gupta has more than 20 years of experience helping both privately held and Fortune 500 companies gain competitive advantage through transformative change. His expertise spans across retail, consumer products, health care, technology, travel and hospitality, financial services, and agribusiness. He has led multiple award-winning, high-stakes, high-impact digital assignments advising some of the world's leading companies and PE firms, including Blackstone, Apollo Global, Comcast, Roche-Genentech, Sony, Kaiser Permanente, Verizon, Hawaiian Airlines, Target, Medtronic, UnitedHealthCare, Optum, Kraft-Heinz and Cargill. Mr. Gupta is a frequent speaker at industry events, including Adobe Digital Summit and Salesforce Dreamforce. His work has led to alliance and industry recognition as covered by Gartner, IDC, Forrester, Adobe and Salesforce. Prior to joining FTI Consulting, Mr. Gupta was an executive partner at Publicis Sapient in San Francisco and Minneapolis, and he was the managing director for Sapient's digital transformation business in the Midwest. Before that, he was co-founder of a technology startup that specialized in building high-performance internet platforms and was acquired by a leading organization in Asia. Mr. Gupta received his B.S. in mathematics and his M.S. in mathematics and computer science from the Indian Institute of Technology.

Hon. Sandra R. Klein is a U.S. Bankruptcy Judge for the Central District of California in Los Angeles, appointed April 22, 2011. Prior to her appointment to the bench, she worked for more than 13 years for the U.S. Department of Justice for 13 years, including as a Special Assistant U.S. Attorney prosecuting bankruptcy fraud and other white-collar crimes, and as the Acting Deputy Director of the U.S. Trustee Program's Office of Criminal Enforcement, which assists with bankruptcy fraud investigations and prosecutions across the country. She also was a litigation associate with O'Melveny &

Myers LLP and began her legal career as a judicial law clerk to Hon. Lourdes G. Baird of the U.S. District Court for the Central District of California and Hon. Arthur L. Alarcón of the U.S. Court of Appeals for the Ninth Circuit. Judge Klein has served as chairperson of her court's Community Outreach Committee since its inception in 2013, and as a member of the Ninth Circuit Public Information and Community Outreach Committee since 2015. She also is co-chairperson of the National Conference of Bankruptcy Judges (NCBJ) Diversity, Equity & Inclusion Committee, and a member of the Federal Bar Association, the Los Angeles Chapter's Board of Directors, the Los Angeles Bankruptcy Forum's Diversity, Equity and Inclusion Committee, and the Loyola Law School Board of Governors. From 2010-20, she was a member of the Women Lawyers Association of Los Angeles (WLALA) Board of Governors. Judge Klein is a co-founder and co-leader of a Girl Scout troop for girls experiencing homelessness, and she created and implemented the Girl Scout Justice Patch Program to teach girls about legal history, legislation, justice, and the role of lawyers and judges in the community. She has received numerous awards, including the 2021 NCBJ President's Award for Exceptional Service, the 2019 Girl Scouts of Greater Los Angeles Woman of Distinction Award, the 2018 NCBJ Public Outreach Award and the 2018 WLALA Distinguished Service Award. Judge Klein received her Bachelor's degree *magna cum laude* in music education from the University of Lowell in Massachusetts, her J.D. *magna cum laude* from Loyola Law School in Los Angeles, where she was admitted to the Order of the Coif and served as a senior note and comment editor for the *Loyola International and Comparative Law Journal*, and her M.B.A. with honors from UCLA's Anderson School of Management in Los Angeles.

Aram Ordubegian is a partner with Arent Fox LLP in Los Angeles and chairs the firm's Cannabis Industry Practice Group. He also is West Coast Team Leader of the firm's Bankruptcy and Financial Restructuring Group. Mr. Ordubegian has broad-based reorganization and bankruptcy litigation and appellate experience in a wide area of insolvency matters from various perspectives, including representation of businesses and high-net-worth individuals facing financial distress, purchasers of assets, individual and corporate creditors, creditors' committees, trustees, and parties to out-of-court workout transactions with debtors before, during and after bankruptcies. He has advised businesses in connection with debt-restructuring, securitization, trust formation, acquisitions, divestitures and wind-downs in connection with financially distressed assets, and he has advised corporations, limited liability companies and partnerships on creditors' rights, governance and control issues. Mr. Ordubegian has represented a variety of high-income individuals, including business executives and insiders of insolvent corporations, real estate developers, physicians, and entertainment and sports industry members, in their pre-bankruptcy workout negotiations with creditors. Prior to joining Arent Fox, he was a partner at the bankruptcy boutique firm of Weinstein, Weiss & Ordubegian, LLP in Los Angeles, where he had practiced since 2000. From 1996-2000, he was an associate at Shapiro & Miles LLP (now Miles & Bauer LLP) of Costa Mesa, Calif., where he represented primarily secured creditors in bankruptcy cases. Mr. Ordubegian received his B.A. from California State University at Northridge and his J.D. from Loyola Law School.