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## 2023 Annual Spring Meeting

# Let's Chat[a]bot It: Ethical Considerations for Using Artificial Intelligence and ChatGPT in Law Practice

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# LET'S CHAT[A]BOT IT: ETHICAL CONSIDERATIONS OF ARTIFICIAL INTELLIGENCE AND CHATGPT IN LAW PRACTICE

American Bankruptcy Institute Annual Spring Meeting  
April 20-22, 2023 | Washington, D.C.

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## EXCERPTS OF NEW YORK TIMES ARTICLES ON AI GENERALLY

### **Why Do A.I. Chatbots Tell Lies and Act Weird? Look in the Mirror.**

One of the pioneers of artificial intelligence argues that chatbots are often prodded into producing stranger results by the people who are using them.

### **How Artificial Intelligence Is Being Used to Detect Breast Cancer That Doctors Miss**

Hungary has become a major testing ground for artificial intelligence software to spot cancer, as doctors debate whether it would replace them in medical jobs.

### **As A.I. Booms, Lawmakers Struggle to Understand the Technology**

Tech innovations are again racing ahead of Washington's ability to regulate them, lawmakers and A.I. experts said.

### **When the Movies Pictured A.I., They Imagined the Wrong Disaster**

Instead of the chilling rationality of HAL in "2001: A Space Odyssey," we get the messy



### **How A.I. Can Help**

ChatGPT is changing how people work. That can be scary. But for now, most jobs are still safe.



### **A Conversation With Bing's Chatbot Left Me Deeply Unsettled**

A very strange conversation with the chatbot built into Microsoft's search engine led to it declaring its love for me.

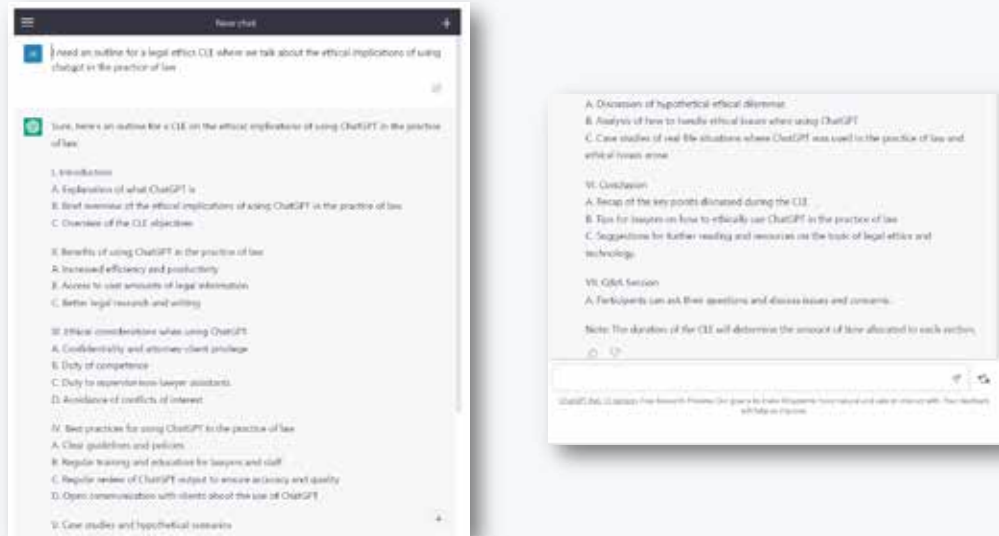


### **Could the Next Great Author Be a Robot? We Asked (Human) Writers.**

At the PEN America Literary Awards, David Sedaris, Judith Thurman and others discussed the role A.I. could play in literature.

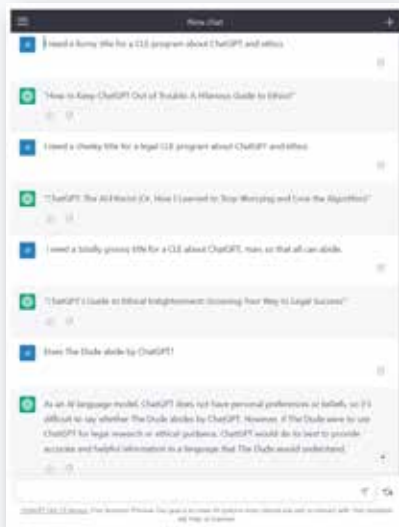


## INITIAL QUESTION TO CHATGPT



3

## QUESTIONS TO CHATGPT ABOUT A TITLE FOR THIS PANEL



4

## ABA ARTICLE ON USING CHATGPT FOR LAW SCHOOL WRITING CLASSES



5

## ABA ARTICLE ON USING CHATGPT FOR LAW SCHOOL WRITING CLASSES

ChatGPT, an artificial intelligence chatbot that can speak and write like humans, can be weak on facts but may already be a better wordsmith than some attorneys, according to David Kemp, an adjunct professor at Rutgers Law School.

"If you're asking it to organize several concepts, or are struggling to explain something in a way that's really understandable, it can help," says Kemp, who also is the managing editor of [Oyez](#), a multimedia website focused on opinions from the U.S. Supreme Court.

The technology, created by the research lab OpenAI, seems to prefer active voice, as does Kemp. He introduced ChatGPT in an advanced legal writing class and plans to include it in a summer course about emerging technology.

Various law schools are following suit. Legal writing faculty interviewed by the ABA Journal agree that ChatGPT writing can model good sentence structure and paragraph structure. However, some fear that it could detract from students learning good writing skills.

"If students do not know how to produce their own well-written analysis, they will not pass the bar exam," says April Dawson, a professor and associate dean of technology and innovation at the North Carolina Central University School of Law.

Additionally, using tools such as ChatGPT for graded assessment assignments may be an ethical violation if students are not producing their own work, Dawson adds.

Regarding the accuracy issue, some academics think that ChatGPT could get better with time.

"It doesn't have access to legal research platforms at the moment, like LexisNexis and Westlaw, so it doesn't know caselaw that only exists in those databases," says Ashley Armstrong, an assistant clinical professor at the University of Connecticut School of Law.

She wrote an academic paper, titled "[Who's Afraid of ChatGPT? An Examination of ChatGPT's Implications for Legal Writing](#)." Armstrong's research includes asking for a series of legal research and writing tasks, and she says some of the responses were impressive.

For instance, her paper noted that ChatGPT was able to identify "logical flaws" in contract clauses. Additionally, she wrote, it did a "pretty good job" summarizing facts and wrote text that sounded lawyerly.

However, accuracy was an issue, including answers for questions that she submitted about Connecticut's Recreational Land Use Statute.

6

### ABA ARTICLE ON USING CHATGPT FOR LAW SCHOOL WRITING CLASSES

"I asked it to give me 10 cases I should look into. It did, all of which don't exist," says Armstrong, who used LexisNexis and Westlaw to check the cites provided.

Dyane O'Leary, an associate professor of legal writing at the Suffolk University Law School, recently assigned students in an upper-division practice skills class to draft a law clerk email advising a judge whether a motion should be granted. In class, after students did their research, they prompted the same legal question into ChatGPT and evaluated whether responses were reliable research.

"A student noted that the ChatGPT answers were great at fluff," says O'Leary, who heads the law school's legal innovation and technology concentration.

"As a class, we discussed that it had a lot of words in the right ballpark, but on this particular prompt, the answer was wrong," she explains, referring to legal terms.

At the Northwestern University Pritzker School of Law, Daniel Linna Jr. assigned students in his class focused on the law of AI and robotics to sign up for ChatGPT, try it out and share their thoughts on the discussion board.

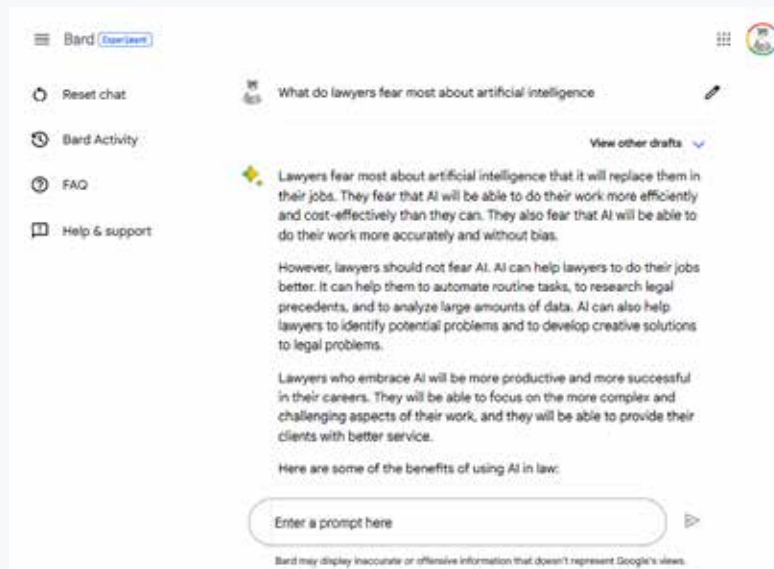
"Almost everyone recognized it's bad with facts but really good at writing prose," says Linna, a senior lecturer.

He also has a joint appointment as director of law and technology at the law school and the university's Robert R. McCormick School of Engineering and Applied Science.

A former equity partner at Honigman Miller Schwartz and Cohn, Linna says law firms already use tools powered by technology similar to ChatGPT.

"I have no doubt that lawyers who use these tools are drafting better contracts," says Linna, who is also an affiliated faculty member at CodeX: The Stanford Center for Legal Informatics. "As we improve the tools, they will help us write better contracts faster. It's not just about efficiency; it's about drafting terms that improve the speed of getting the deal done, which adds value for clients."

7



8

ChatGPT 3 26 23 What do lawyers fear most about AI

As an AI language model, I cannot speak for lawyers and their personal fears, but there are some concerns that have been raised about the impact of AI on the legal profession.

One of the main fears that lawyers have about AI is the potential for automation to replace certain tasks traditionally performed by lawyers. For example, some legal research tasks, document review, and contract drafting can now be automated with the help of AI-powered tools. This could lead to a reduction in the number of lawyers needed for certain tasks, and potentially even entire job categories within the legal profession.

Another fear is that AI might make legal services more accessible and affordable, which could lead to more people handling legal matters without the assistance of a lawyer. This could result in a loss of business for some lawyers and potentially lead to a decrease in the perceived value of legal expertise.

Furthermore, there are also concerns around the accuracy and reliability of AI systems in legal applications. AI systems can be trained on biased data, and their recommendations may not always be reliable or ethical, leading to negative consequences for clients and cases.

Finally, the ethical considerations around the use of AI in the legal profession are also a concern. Lawyers must ensure that they are using AI in a way that is transparent and accountable, and that protects the privacy and confidentiality of their clients.

4/12/23 5:51 PM

EXCERPT

*Reimagining “Reasonableness” Under Section 330(a) in a World of Technology, Data, and Artificial Intelligence*  
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PART 3: MODERN LEGAL PRACTICE, REASONABLENESS, AND SECTION 330

A. Reasonableness and the Concept of Billing Judgment

In a recent article, we expressed our view that a component of every attorney’s ethical obligations requires her to demonstrate good billing judgment. There is an adage that everyone *thinks* she has a sense of humor, but not everyone does.<sup>1</sup> Like that adage, everybody professes to understand the notion of “good” billing judgment, but not everyone does. In our *Billing Judgment* article, we defined the criteria by which courts and clients could measure good billing judgment as follows:<sup>2</sup>

Lawyers demonstrate billing judgment when the legal services for which they bill: (A) advance a meaningful client goal while alleviating the client’s burden; (B) are delivered with peak staffing and workflow efficiency; and (C) describe the work done in a clear invoice delivered in a timely manner.

There is an unmistakable connection between good billing judgment and the reasonableness of fees under Section 330. Good billing judgment tends to be the predicate to reasonable fees. More specifically, if a legal professional fails to exercise good billing judgment, there is a strong likelihood that the fees that the legal professional wants to collect will fall short of being reasonable under a Section 330 analysis. Good billing judgment requires a lawyer to be conscientious and thoughtful about how legal services are delivered. A lawyer who demonstrates good billing judgment considers whether the use of technology or data analytics tools will be more efficient (and cost-effective) for a client, even if the number of billable hours for the matter decrease, along with a decrease in billable fees.<sup>3</sup> Here’s an example: In a case with mountains of first-level document review, an attorney who shows good billing judgment considers whether to engage an alternative legal service provider or an eDiscovery vendor to handle the first pass at document review, even if it means using a drastically

<sup>1</sup> For a great example of this adage, see MY BLUE HEAVEN (Warner Bros. 1998) (“Barney: Of course you have a sense of humor. Everyone thinks they do, even people who don’t.”), [https://www.imdb.com/title/tt0100212/quotes?ref\\_=tt\\_ql\\_sm](https://www.imdb.com/title/tt0100212/quotes?ref_=tt_ql_sm) (last visited on Dec. 22, 2022).

<sup>2</sup> *Billing Judgment*, *supra* n. **Error! Bookmark not defined.**, at 315. After the article came out, we didn’t hear any disagreement with our definition of billing judgment. That silence could mean that most people agreed with us and that the rest had no violently bad reactions to our definition—or it could simply mean that not enough people have read our article yet, and that the storm of protest is just around the corner. We prefer the first interpretation of the silence, but if anyone has a better definition of billing judgment than ours, we’d love to hear it.

<sup>3</sup> Again, though, why should the use of technology automatically result in lower fees? *See* n. **Error! Bookmark not defined.**, *supra*. Either the more efficient lawyers are more valuable, thus being able to justify increased hourly rates, or they could pass along the investment in technology to the client, either by direct charges or by a component of overhead that sneaks into the firm’s hourly rates.

4/12/23 5:51 PM

downsized team of junior associates for document review.<sup>4</sup> Gone are the days when big discovery assignments used a scrum of newly minted lawyers to sift through warehouses of physical papers.<sup>5</sup>

Historically, a Section 330 analysis has required a court to review the legal services performed, the time spent on providing those services, the professionals' hourly rates for those services, and the matter's complexity. But that analysis doesn't typically also ask if there could have been a better way to deliver legal services from a process and personnel management perspective, given technological advancements and personnel flexibility. Therein lies the crucial point of intersection between good billing judgment and a Section 330 reasonableness analysis. Good billing judgment involves not just the "what" that is being done (*i.e.*, a legal task), but also the "who" that should be doing it, and whether the "who" should be a carbon-based life form or a computer.

Simply put, the nature of the legal industry has changed, and Section 330 must adapt with it. We've graduated from the era in which the practice of law was solely a profession<sup>6</sup> into an era in which the business part of delivering legal services has come into sharper focus. We've long lost the "for services rendered," one-line bill,<sup>7</sup> and now our clients expect us to bill by the hour to demonstrate exactly what services we *are* rendering.<sup>8</sup>

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<sup>4</sup> As our friend Randy Gordon puts it, "I don't know any BigLaw firm that hasn't replaced human document reviewers with software for the initial cut of things like privilege. I think this has probably reduced the size of some incoming associate classes. Software has also mostly taken over document management from paralegals—hence there aren't many of them anymore." Email from Randy Gordon to Nancy Rapoport, Dec. 28, 2022 (on file with authors).

<sup>5</sup> Well, "gone" for big matters, anyway. Technology costs money, too, so big investments in tech might not yet be cost-effective for small matters.

<sup>6</sup> And a "gentlemen's" profession, to boot, with all that *that* hoary old phrase entails. *See, e.g.*, Lani Guinier, *Lessons and Challenges of Becoming Gentlemen*, 24 N.Y.U. REV. L. & SOC. CHANGE 1, 2 (1998) (discussing how, when she was a student at Yale Law School, she was in a course in which a law professor who "was a creature of habit. He readily acknowledged the presence of the few 'ladies' by then in attendance, but admonished those of us born into that other gender not to feel excluded by his greeting. We too, in his mind, were 'gentlemen.'").

<sup>7</sup> For a brief history of the switch from "for services rendered" flat rates to hourly billing, see, e.g., Jim Calloway, *A Brief History of Hourly Billing*, [https://www.okbar.org/lpt\\_articles/a-brief-history-of-legal-billing/](https://www.okbar.org/lpt_articles/a-brief-history-of-legal-billing/) (last visited Dec. 8, 2022).

<sup>8</sup> The switch to hourly billing was designed to demonstrate efficiency and effectiveness. Jim Calloway describes the shift: [S]omewhere it began. Some business client asked a lawyer why a certain matter that had been handled before had doubled or tripled in price this time. The lawyer responded [that] this matter was more complex and therefore took more time to complete. Then came the question that would prove fateful for the legal profession: "If you are billing me for the time you expended, why aren't you showing me the time you expended on the billing?" Upon reflection, that sounded fair to the lawyer. After all, it was a repeat client who always paid [its] bills requesting this change in the firm's practices. Although changes in the legal system often take a fair amount of time to catch on, as larger law firms, banks and insurance companies learned of this method, it became the standard practice. It was objective. Hours times the lawyer's hourly rate equals the bill.

Jim Calloway, *A Brief History of Hourly Billing*, [https://www.okbar.org/lpt\\_articles/a-brief-history-of-legal-billing/](https://www.okbar.org/lpt_articles/a-brief-history-of-legal-billing/) (last visited Dec. 8, 2022). Want to blame a single lawyer for a system that now requires us to think in six minutes increments? According to WilmerHale, it was Reginald Heber Smith. The firm's publication, *Slice of History: Reginald Heber Smith and the Birth of the Billable Hour*, is worth a read. *See Slice of History: Reginald Heber Smith and the Birth of the Billable Hour*, WilmerHale.com, <https://www.wilmerhale.com/insights/publications/slice-of-history-reginald-heber-smith-and-the-birth-of-the-billable-hour-august-9-2010> (last visited Dec. 8, 2022).

Professor Joe Regalia has pointed out that task-based billing and client-side e-billing software has increased the transparency of legal bills, thus enabling clients to get a clearer picture of a bill's reasonableness. *See* draft from Professor Joseph Regalia (Jan. 12, 2023) (on file with authors).



4/12/23 5:51 PM

The shift from a one-line bill with a lump-sum figure and the pithy phrase “for services rendered” to “I spent a tenth of an hour reviewing the docket” creates a corollary: it used to be impossible to measure reasonableness with the one-line bill, other than by one’s own gut hunch. Now there are actual data: time entries. So, the old approach of using our own experience (and a gut hunch) is missing something important: comparative data. The ability to compare, both within and across a firm, how long something should take and who should do it should form part of the reasonableness analysis under Section 330.<sup>9</sup> A Section 330 analysis ought to borrow from the practical application of good billing judgment and evolve to reflect the way that law is practiced today, which often involves technology-enabled services and lower-cost alternative legal service providers.<sup>10</sup> Lawyers who bill by the hour are now expected to go beyond what services are being rendered, explaining why the services are being rendered in the manner delivered and why the legal professionals rendering the legal services were chosen to do so. And now, it also has become imperative to ask, “is a computer the best ‘first professional’ to use for this task?”<sup>11</sup>

In practice, that question means that an attorney seeking fees under Section 330 must be prepared to address what decisions prompted the use—or non-use—of certain technologies or alternative legal service providers. Likewise, bankruptcy judges must be willing to probe these choices when making a Section 330 determination.<sup>12</sup> Instead of evaluating only the *actual* time spent on providing the legal services, a reimagined analysis inquires whether the actual time could have been reduced with the use of technology. Likewise, the hourly rate analysis should not just consider comparable *lawyer* rates in the relevant jurisdiction on a matter of equal complexity but should consider whether the introduction of technology or other types of professionals into the more routine aspects of the matter could have been more cost-efficient (*i.e.*, a lower weighted average hourly rate) without any decrease in the quality of the work product.<sup>13</sup>

<sup>9</sup> Cf. *Billing Judgment*, supra n. **Error! Bookmark not defined.**, at 327 (“In the long run, bad choices in a case—bad choices about what work has meaningful value, which and how many legal professionals should undertake a task, how long that work should take, and how to describe that work—will all lead to the same sad result: a likely reduction in fees.”).

<sup>10</sup> In the 2013 U.S. trustee guidelines, the Executive Office of the United States trustee recognized that there is a way to shift work to less expensive providers: “Efficiency counsel is secondary counsel employed to handle more routine and “commoditized” work, such as claims objections and avoidance actions, at lower cost to the estate than lead bankruptcy counsel.” *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under United States Code by Attorneys in Larger Chapter 11 Cases*, 78 FED. REG. 36248, 36256 (June 17, 2013/2013/06/28/Fee\_Guidelines.pdf (last visited Dec. 8, 2022)).

<sup>11</sup> In an ideal world, that question comes *before* the partner in charge assigns the work. If a court or a fee examiner is asking that question, there’s a risk that the professional’s fees are about to be on the chopping block. See, e.g., *Billing Judgment*, supra n. **Error! Bookmark not defined.**, at 313 (footnote omitted) (“Under a perfectly equitable system, an attorney with legitimate, but unrecoverable, time could travel to the past in a WABAC machine and rebill that time to some other matter. But WABAC machines don’t exist, and nobody else will be paying for that “lost” time.”).

<sup>12</sup> Cf. *In re Gianulias*, 98 B.R. 27, 29 (Bankr. E.D. Cal. 1989) (requiring evidence that the rates in the fee application “are comparable with prevailing rates in the community ... [a]nd [that] there must be evidence in the record of the cost in the community of comparable services other than in a bankruptcy case, as required by section 330.”). Requiring the party with the burden of proof to provide actual evidence is, of course, part of a court’s job.

<sup>13</sup> Not everything has to be perfect in order to satisfy a lawyer’s fiduciary duty to her client, and sometimes, informed clients want to pay for just “good enough” services, rather than for “perfect” services. Cf. Robert Capps, *The Good Enough Revolution: When Cheap and Simple Is Just Fine*, WIRED (Aug. 24, 2009) (“As a result, what consumers want from the products and services they buy is fundamentally changing. We now favor flexibility over high fidelity, convenience over features, quick and dirty over slow and polished. Having it here and now is more important than having it perfect. These changes run so deep and wide, they’re actually altering what we mean when we describe a product as ‘high-quality.’”), <https://www.wired.com/2009/08/ff-goodenough/> (last visited Dec. 22, 2022); Carolyn Elefant, *What Does the “Good Enough” Phenomenon Mean for Solos?*, MY SHINGLE Blog (Sept. 1, 2009) (“[M]y take away from the *Wired* article isn’t

4/12/23 5:51 PM

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And yet, as the old advertisements said, there's more.<sup>14</sup> Technology, data, and alternative legal service providers are only setting the stage for the need to re-imagine Section 330 entirely. Just think about what happens when artificial intelligence evolves to assist legal practitioners with the delivery of more types of legal services.<sup>15</sup>

## B. The World of Artificial Intelligence in the Practice of Law

When we talk about the use of AI in the law, what do we mean? Both of us like Professor Harry Surden's definition:

What is AI? There are many ways to answer this question, but one place to begin is to consider the types of problems that AI technology is often used to address. In that spirit, we might describe AI as using technology to automate tasks that "normally require human intelligence." This description of AI emphasizes that the technology is often focused upon automating specific types of tasks:

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that cheap and simple means compromising standards. Rather, at the core of cheap and simple is to deliver value by providing the key features of a product that matter most to consumers."), <https://myshingle.com/2009/09/articles/client-relations/what-does-the-good-enough-phenomenon-mean-for-solos/> (last visited Dec. 22, 2022). Here's a take from an actual user of legal services:

Rosemary Martin, group general counsel and company secretary of Vodafone adds:

*As a buyer of legal services, I look for value: not necessarily the cheapest option but the one that I think will deliver the outcome I am looking for, be that success in a case, speed in contract execution, or precision in defining the terms of a complex legal relationship.*

NOAH WAISBERG & DR. ALEXANDER HUDEK, AI FOR LAWYERS: HOW ARTIFICIAL INTELLIGENCE IS ADDING VALUE, AMPLIFYING EXPERTISE, AND TRANSFORMING CAREERS 28 (2021) (italics in original). Various firms, including Legal Decoder, have amassed verifiable data on a range of what certain tasks "should" cost. We're not saying that there should be a fixed rate for every type of legal task, but we do want you to be aware that many clients now have access to this type of information, and they're using that information in discussions with their lawyers. Cf. draft from Professor Joseph Regalia (Jan. 12, 2023) (on file with authors) ("You could imagine a database, accessible to courts, where there are standardized rates for tons of different legal tasks, organized by all the variables [a]nd then some push to get firms (probably pushed by clients) to use the standardized tasks. This has become so common in some practice areas where clients have already demanded it. And I think it's made a huge difference in the ability of clients to push back on fees.").

<sup>14</sup> See, e.g., <https://www.ronco.com/pages/company> (last visited Dec. 8, 2022) ("Known for the legendary tagline 'But wait...there's more,' Ronco has been creating innovative, cutting-edge kitchen appliances and accessories for almost sixty years.")

<sup>15</sup>

[W]e see a widening gap between the total demand for legal services and the share of that work that's going to law firms. Much of that work is being retained by in-house departments or sent to ALSPs precisely because those organizations have been willing to apply technology to accomplish more with fewer resources. Law firms willing to make similar investments in technology might be able to claw back some of that gap.

NOAH WAISBERG & DR. ALEXANDER HUDEK, AI FOR LAWYERS: HOW ARTIFICIAL INTELLIGENCE IS ADDING VALUE, AMPLIFYING EXPERTISE, AND TRANSFORMING CAREERS 23 (2021).

4/12/23 5:51 PM

those that are thought to involve intelligence when people perform them.<sup>16</sup>

Lawyers who harness AI effectively don't use it for the parts of law practice that rely on a lawyer's judgment or specialized talent;<sup>17</sup> they use AI for those parts of law practice that can be routinized and done more efficiently (at least in a first cut) by machines.<sup>18</sup> Not everything that a lawyer does actually involves unique, from-the-ground-up drafting:

To be sure, and I want to stress this, difficult problems do arise that undoubtedly require bespoke attention; but, far more frequently, lawyers are asked to tackle problems which bear a strong similarity to those they have faced in the past. Indeed, one of the reasons clients select one lawyer over another, or one firm over another, is precisely that they believe that the lawyer or firm has undertaken similar work previously. Most clients would be horrified to think, especially if they are being billed on an hourly basis, that each new piece of work they pass to law firms is set about with a fresh sheet of paper and embarked

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<sup>16</sup> Harry Surden, *Artificial Intelligence and Law: An Overview*, 35 GA. ST. L. REV. 1305, 1307 (2019) (footnotes omitted); *see also id.* ("What makes these AI tasks rather than automation tasks generally? It is because they all share a common feature: when people perform these activities, they use various higher-order cognitive processes associated with human intelligence.").

<sup>17</sup> *See, e.g.*, RICHARD SUSSKIND, TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE 65 (2d. ed 2017) ("It is true that much of the work of the oral advocate is highly bespoke in nature and it is not at all obvious how the efforts and expertise of the courtroom lawyer might be standardized or computerized. Indeed, oral advocacy at its finest is probably the quintessential bespoke legal service."); *see also* Hilary G. Escajeda, *The Vitruvian Lawyer: How to Thrive in an Era of AI and Quantum Technologies*, 29 KAN. J.L. & PUB. POL'Y 421, 465-69 (2020) (describing the need for emotional intelligence and empathy in the practice of law, even as AI becomes more normalized in law, resulting in a "human-machine fusion," and concluding that "the emotionally intelligent legal professionals who will thrive in a digital (eventually quantum) economy are those who will effectively use cognitive intelligence tools to serve their clients compassionately and solve their legal problems ethically and humanely."); Rebecca Crootof, *"Cyborg Justice" and the Risk of Technological—Legal Lock-In*, 119 COLUM. L. REV. FORUM 233, 237-38 (Nov. 20, 2019) (observing that computers are good at detecting patterns but are not designed for judgment calls); Harry Surden, *Artificial Intelligence and Law: An Overview*, 35 GA. ST. L. REV. 1305, 1332 (2019) ("lawyerly tasks that involve abstract thinking, problem-solving, advocacy, client counseling, human emotional intelligence, policy analysis, and big picture strategy are unlikely to be subject to automation given the limits of today's AI technology.").

<sup>18</sup>

[T]here is more legal work than what law firms do. Technology has enabled more in-house legal departments to retain work in-house, avoiding the premiums that law firms have charged for routine or process-oriented work. An entire Alternative Legal Services (or NewLaw or Law Company) sector has been built up to handle some forms of outsourced legal work, much of which is process-driven and lends itself to technology-enabled services.

NOAH WAISBERG & DR. ALEXANDER HUDEK, AI FOR LAWYERS: HOW ARTIFICIAL INTELLIGENCE IS ADDING VALUE, AMPLIFYING EXPERTISE, AND TRANSFORMING CAREERS 22 (2021). Or, as Daniel Susskind puts it, "[t]hink of a lawyer who is displaced from the task of looking through stacks of papers by an automated document review system, a piece of software that can scan legal material far more swiftly—and, in many cases, more precisely, too. The same lawyer can now turn her attention to other tasks involved in providing legal advice, perhaps meeting face-to-face with her clients or applying her problem-solving skills to a particularly tricky legal conundrum." DANIEL SUSSKIND, A WORLD WITHOUT WORK: TECHNOLOGY, AUTOMATION, AND HOW WE SHOULD RESPOND 23 (2020).

4/12/23 5:51 PM

upon from scratch. On the contrary, clients expect a degree of standardization.<sup>19</sup>

There are, in fact, many areas in which a computer is the correct choice for a first-cut analysis, with a lawyer reviewing the results of that first cut. A computer can sort through massive numbers of contracts<sup>20</sup> and conduct due diligence that canvasses all of the necessary information (such as all of the contracts that might be assumed),<sup>21</sup> so why can't AI also do a first draft of simple pleadings that

<sup>19</sup> RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* 27-28 (2d. ed 2017); cf. Harry Surden, *Artificial Intelligence and Law: An Overview*, 35 GA. ST. L. REV. 1305, 1319 (2019) ("[M]any modern AI systems are not fully machine-learning or knowledge-based systems but are instead hybrids of these two approaches.") (footnote omitted).

<sup>20</sup>

If, for example, a large tech company finds itself with a huge volume of procurement contracts that all have varying renewal dates and renegotiation terms, it would require hundreds of hours and a team of contract managers to review and track of all this information to ensure that no renewal or opportunity is missed.

AI software, however, can easily extract data and clarify the content of contracts. (It could quickly pull and organize the renewal dates and renegotiation terms from any number of contracts.) It can let companies review contracts more rapidly, organize and locate large amounts of contract data more easily, decrease the potential for contract disputes (and antagonistic contract negotiations), and increase the volume of contracts it is able to negotiate and execute.

Beverly Rich, *How AI Is Changing Contracts*, HARV. BUS. REV. (Feb. 12, 2018), <https://hbr.org/2018/02/how-ai-is-changing-contracts>; *id.* ("AI contracting software can, for example, identify contract types (even in multiple languages) based on pattern recognition in how the document is drafted. Because AI contracting software trains its algorithm on a set of data (contracts) to recognize patterns and extract key variables (clauses, dates, parties, etc.), it allows a firm to manage its contracts more effectively because it knows – and can easily access – what is in each of them."); *see also* Rachel Vanni, *How AI Accelerates the Legal Contract Drafting Process*, KIRASYSTEMS.COM (May 27, 2020), <https://kirasystems.com/learn/how-ai-accelerates-the-legal-contract-drafting-process/> (describing how AI can be used to draft basic contracts and screen contract language for various terms and dates).

<sup>21</sup>

We will imagine a different AI-enhanced project .... [In] scenario 1, a firm bills its client \$200,000 for some junior lawyer work. In fact, the partner wrote off 20% of the amount their associates worked on this project before even sending the \$200,000 bill, because they didn't think the juniors worked efficiently, and they worried about upsetting the client and damaging their relationship. These write-offs are common. Despite this preemptive write-off, the client only paid 65% of the diligence fee, still feeling that the work wasn't done efficiently. (The client is right!) Eventually, after lots of haggling, the firm got paid \$130,000. Now, consider the AI-enhanced scenario 2. Here, the partner feels good about the efficiency of their team, so they bill all hours worked: \$250,000. Throughout the matter, and in delivering the bill, the partner explains how their firm is focused on efficiency, and the client is happier about the value of the work they received. To be conservative, we assumed only a 10-point jump in realization rate, though—if the partner is good at selling value—this might be higher. Here, because the bill was higher (due to no preemptive write-off) and because of the higher realization (collection) rate, the firm makes an extra \$45,500, despite us assuming that the AI cost \$10,000. That's 35% more revenue! And—to keep the numbers simple—we didn't even look at matter profitability here. Suffice it to say that throwing out hours—either because you don't bill them or the client doesn't pay for them—is bad for profitability. Changes in realization rates can really make an impact. If a firm has an industry average 89% realization rate, and has over \$1 billion (or \$10 million, for that

4/12/23 5:51 PM

bankruptcy lawyers routinely file?<sup>22</sup> We make this argument with some trepidation, because we're sidelining first- and second-year associates in favor of computers, but we'll address that issue in Part 5 below.<sup>23</sup> And we're not talking about AI in the future. We're talking about AI in the present.

In the legal sphere ... JP Morgan has developed a system that reviews commercial loan agreements; it does in a few seconds what would have required, they estimate, about 360,000 hours of human lawyers' time. Likewise, the law firm Allen & Overy has built software that drafts documents for over-the-counter derivatives transactions; a lawyer would take three hours to compile the relevant document, they say, while their system does it in three minutes.<sup>24</sup>

In the now-classic LawGeex study, LawGeex pitted experienced lawyers against machines to spot issues in non-disclosure agreements. The machines won.<sup>25</sup> They might not have been perfect, but humans have never been perfect, either.<sup>26</sup> The point is that machines, in this context, were better than

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matter) in revenue, the money (and profit) it is leaving on the table can be pretty immense.

NOAH WAISBERG & DR. ALEXANDER HUDEK, *AI FOR LAWYERS: HOW ARTIFICIAL INTELLIGENCE IS ADDING VALUE, AMPLIFYING EXPERTISE, AND TRANSFORMING CAREERS* 33-34 (2021) (italics in original) [hereinafter *AI FOR LAWYERS*]; see *id.* at 30 ("Lawyers can add value by using AI to increase the number of contracts they review in transactions. Some clients might be happy to get a lower diligence bill thanks to faster AI-enhanced contract review. But many should be very interested in getting twice the diligence for the same price they paid the last time they did a deal, or three times for 30% (or 50%) more money.").

<sup>22</sup> For the ability of computer algorithms to take data and create bankruptcy forms, see our discussion of Upsolve, nn. **Error! Bookmark not defined.** **Error! Bookmark not defined.**, *infra*; see also <https://www.legalmation.com> for an AI-powered legal tech company that is already tackling this challenge in the area of general commercial litigation ("LegalMation's ground-breaking AI system dynamically produces fully formatted responsive pleadings, discovery requests and responses and other documents, all tailored to the claims, allegations, and requests in the legal document uploaded, incorporating jurisdictional requirements as well as the attorney's own style, and response strategy"), available at <https://www.legalmation.com> (last visited Dec. 23, 2022). For a discussion of how clients in large chapter 11 bankruptcies could insist that their professionals turn to AI when AI is appropriate, see Nancy B. Rapoport, *Client-Focused Management of Expectations for Legal Fees in Large Chapter 11 Cases*, 28 *ABI L. REV.* 39, 88-90 (2019).

<sup>23</sup> One way to think about this sea change is by deciding *where* AI or other legal technology belongs in the process of serving clients: in automating certain functions that humans *could* do, but that computers can do faster and more efficiently; in using computers to do certain things that humans are just not great at doing ("like spot one little word in a mountain of millions of documents," see draft from Professor Joseph Regalia (Jan. 12, 2023) (on file with authors)), or in assisting tasks that humans should be doing but in ways that computers can speed up.

<sup>24</sup> DANIEL SUSSKIND, *A WORLD WITHOUT WORK: TECHNOLOGY, AUTOMATION, AND HOW WE SHOULD RESPOND* 82-83 (2020) (footnotes omitted).

<sup>25</sup> *Comparing the Performance of Artificial Intelligence to Human Lawyers in the Review of Standard Business Contracts*, LAWGEEX, <https://images.law.com/contrib/content/uploads/documents/397/5408/lawgeex.pdf> (Feb. 2018) ("US lawyers with decades of experience in corporate law and contract review were pitted against the LawGeex AI algorithm to spot issues in five Non-Disclosure Agreements (NDAs), which are a contractual basis for most business deals.... Following extensive testing, the LawGeex Artificial Intelligence achieved an average 94% accuracy rate, ahead of the lawyers who achieved an average rate of 85%."). Our friend Lila Anderson (who has a Ph.D. in Physics) suggested that the studies would be even more powerful if they told us if the mistakes that the machines made were of the same type as the human-made mistakes. She's right. Email from Lila Anderson to Nancy Rapoport, Dec. 23, 2022 (on file with authors).

<sup>26</sup> And new technology may make humans less perfect as well. Prof. Trimble's 2022 editorial on the effects of AI on human intelligence refers to the "Google effects on memory": that we're losing our desire to memorize certain facts because we know that we can look up those facts. (Neither of us, for example, has the other's cell phone number memorized.)

With the internet becoming 'a primary form of external or transactive memory, and with memory stored collectively outside ourselves', there is less need to remember

4/12/23 5:51 PM

humans.<sup>27</sup> Other studies on computer-versus-human in document reviews had similar results.<sup>28</sup> So, the issue for bankruptcy judges is going to be when estate-paid professionals should save the estate money and increase efficiency by turning to AI for certain tasks.

### C. When Worlds Collide: Does Artificial Intelligence Change the Meaning of “Reasonable”?

Even though our last section generally endorsed the use of AI to drive better results for clients, AI poses multiple challenges for attorneys in private practice. Before specifically delving into AI’s place in a Section 330 analysis, it’s important to address a few views on why attorneys are disinclined to use AI. If we can identify when it is reasonable not to use AI, then it logically follows that attorneys should at least consider using AI in other aspects of handling a client’s matter.

First, a reality check: we’ve been using AI already, and for a long, long time.<sup>29</sup> For one thing, we use research databases. We use Westlaw or Lexis or Fastcase or other databases because finding sources is faster when done by computer than by sitting in a musty area poring over books and pocket parts.<sup>30</sup> Neither of us worked in a law firm when Lexis first came out, so neither of us knows if lawyers

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information that is stored on the internet. Another study showed that the Google effects could be even more pronounced when internet users trust that the information they need will be reliably available on the internet in the future.

Marketa Trimble, *Artificial Intelligence and Human Intelligence* (GRUR International, XX(XX), 2022, 1–2). Technology isn’t just changing what we do. It’s changing how we think.

<sup>27</sup> Cf. Rhys Dipshan, *Law Firm Automation Will Survive the Pandemic*, NAT’L L.J. (Aug. 3, 2022), <https://www.law.com/nationallawjournal/2022/08/03/law-firm-automation-will-survive-the-pandemic-405-108030/?kw=Law%20Firm%20Automation%20Will%20Survive%20the%20Pandemic> (in comparing computer results and human results, “... Baker McKenzie’s [Ana-Maria] Norbury says that those worries need to be put into proper context. ‘If you’ve got humans reviewing documents, humans will make mistakes. It’s inevitable, I think. That’s interesting to think about as we look at the idea that we want things to be perfect. Yes, technology is not completely perfect and that’s an issue. Well, humans aren’t perfect either. So you have to factor that into the commercial angles if we are driving efficiency.’”).

<sup>28</sup>

[W]e did our own study in which we included a group of highly qualified lawyers and had them all do the exact same document review task. We then looked at the results to see how often they agreed with one another and how often they disagreed. As it turned out, they only agreed with each other 70% of the time, which is a shockingly low number. Another interesting part about that experiment was that we also trained our system to replicate the behavior of each person. When we measured how often the resulting individual AI systems disagreed with each other, it matched roughly what we saw in the humans, which was quite an interesting observation. It basically showed that we can capture individual human differences in knowledge. This means that based on the beliefs and attitudes of whoever is training the system, the results may differ, which takes us back to carefully selecting who will be providing the expertise and making sure they are clear on what they are trying to get the AI to learn.

AI FOR LAWYERS, *supra* n. 21, at 76-77 (footnote omitted).

<sup>29</sup> We’ve been using other technology for a long time, too. See, e.g., J. Scott Bovitz, *The Lawyer’s Toolkit: A 30-Year Retrospective*, ABI JOURNAL 84 (June 2011).

<sup>30</sup> In case you don’t remember (or never knew about) pocket parts, see [https://en.wikipedia.org/wiki/Pocket\\_part](https://en.wikipedia.org/wiki/Pocket_part) (last visited Dec. 25, 2022). Yes, there are some reasons to use books and go to libraries, including that happy serendipity when a nearby book gives someone a fresh idea. We’re not arguing that you should get rid of books. We’re just saying that there’s a time and place for the use of technology, too.

4/12/23 5:51 PM

were gnashing their teeth then, worrying about losing the ability to bill time by researching the old-fashioned way, Maybe they did. But they figured out how to make up that lost billable time. eDiscovery isn't new, either.<sup>31</sup> So there's no need to treat AI as something new and scary.

Now, let's dispense with the over-blown concern that AI is going to replace lawyers.<sup>32</sup> Legal services are not going to be provided entirely by robots for a myriad of reasons, but mostly because there is a very personal element to legal services that requires trust, empathy, and countless other interpersonal and intellectual skills that machines cannot replicate. Thus, the "rise of the robo-lawyers" fear<sup>33</sup> is a bit of a red herring. A more legitimate reason not to use AI is that the current state of some AI poses realistic concerns about accuracy, security, cost, or matter-appropriateness.<sup>34</sup> ChatGPT isn't ready to draft good pleadings, and it likely won't be ready to draft great ones for a long time.<sup>35</sup> In those

<sup>31</sup> See, e.g., eDiscovery, DRUVA, <https://www.druva.com/glossary/what-is-ediscovery-definition-and-related-faqs/> (last visited Dec. 25, 2022) ("Discovery refers to the first phase of litigation during which the parties to a dispute must provide each other with all relevant case evidence, including records and information. Electronic discovery, or eDiscovery, refers to discovery in which the information sought is in electronic format. This data is typically called electronically stored information or ESI.").

<sup>32</sup> Cf. n. **Error! Bookmark not defined.**, *supra*.

<sup>33</sup> For a fun and relatively recent discussion of robo-lawyering, see Gary Marchant & Josh Covey, *Robo-Lawyers: Your New Best Friend or Your Worst Nightmare*, 45 No. 1 LITIGATION 27, 27-28 (Fall 2018) [hereinafter *Robo-Lawyers*] ("AI will not evolve quickly enough in the near future to replace all lawyers. Rather, AI is replacing certain *types* of legal work and already has done so. AI's speed in completing certain tasks reduces the time human lawyers need to spend on those tasks. In the aggregate, that phenomenon reduces the need for human lawyers.... So there will be, and already has been, some displacement. But human lawyers are still indispensable, and technically proficient lawyers likely will be in even higher demand.").

<sup>34</sup> See, e.g., Zeynep Tufekci, *What Would Plato Say About ChatGPT?*, N.Y. TIMES (Dec. 15, 2022) ("[O]n trickier topics or more complicated concepts, ChatGPT sometimes gave highly plausible answers that were flat-out wrong — something its creators warn about in their disclaimers."), <https://www.nytimes.com/2022/12/15/opinion/chatgpt-education-ai-technology.html> (last visited Dec. 15, 2022). If you'd like to read an actual law review article co-written by ChatGPT, see Andrew Perlman and ChatGPT, Open AI's Assistant, *The Implications of Open AI's Assistant for Legal Services and Society* (December 5, 2022), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4294197](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4294197) (last visited Dec. 22, 2022). For one of the eeriest experiences of an AI interaction that we've seen, check out <https://twitter.com/i/status/1602353465753309195> (@DoNotPay founder Joshua Browder's tweet, "[t]he first ever Comcast bill negotiated 100% with A.I and LLMs"), available at <https://twitter.com/jbrowder1/status/1602353465753309195> (last visited Dec. 28, 2022); see also *Company Prepping 'Robot' Lawyer Uses AI to Negotiate Lower Bills*, CREDITOR COLLECTIONS TODAY, <https://www.creditorcollectionstoday.com/edition/weekly-garnishment-fair-debt-collection-2022-12-17/?open-article-id=22760160&article-title=company-prepping-robot-lawyer-uses-ai-to-negotiate-lower-bills&blog-domain=accountsrecovery.net&blog-title=account-recovery-> (last visited Dec. 28, 2022).

<sup>35</sup> See, e.g., Aimee Furness & Sam Mallick, *Evaluating the Legal Ethics of a ChatGPT-Authored Motion*, LAW360, available at <https://www.law360.com/articles/1567985/evaluating-the-legal-ethics-of-a-chatgpt-authored-motion> (Jan. 23, 2023). Both of us are waiting to see what happens when people use ChatGPT and an earbud to feed lines to someone at the podium in court. See, e.g., Stephanie Wilkins, *Is ChatGPT Ready for Its Day in Court? Experts Say No Way*, LAW.COM, available at <https://www.law.com/legaltechnews/2023/01/19/is-chatgpt-ready-for-its-day-in-court-experts-say-no-way/> (Jan. 19, 2023) (Foster J. Sayers III, general counsel and chief evangelist at contract management company Pramata, agreed. "One of the things we benefit from relative to having people who are members of the bar [arguing in court] is that they are accountable for ethical standards, and if they do not follow them, there are penalties, right? They're no longer allowed to practice law," he said. "When you have a technology [acting in court], then what's that accountability?"). We agree: using a robo-lawyer to practice runs afoul of the unauthorized practice rules (see MODEL R. PRO. CONDUCT 5.5)—or it would if the robo-lawyer were an actual, well, lawyer, as Rule 5.5(a) states that "[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.") (emphasis added). So if a lawyer programmed the robo-lawyer to appear in court, the lawyer could be charged with a Rule 5.5(a) violation. The robo-lawyer itself, being non-sentient, wouldn't be. So ChatGPT itself won't be



4/12/23 5:51 PM

instances, an attorney has a reasonable basis not to use AI, and the decision not to use AI would be reasonable under Section 330. But what happens when AI is, in fact, accurate, secure, cost-effective, and matter-appropriate?

AI measurably changes the analysis when it comes to automating tasks previously handled in a completely manual fashion by lawyers. The mere existence of AI in the legal sphere creates an economic tension in the minds of many legal professionals who think that using AI will undermine their personal economics. It's very easy to imagine an attorney asking the question, "Why do I have to spend money on this AI tool that will decrease the number of hours that I can bill, thus reducing my compensation?"<sup>36</sup> If that economic tension persists to the point where a lawyer refuses to use AI in a particular matter for fear of lower fees, it raises significant concerns that the lawyer's bill for that matter may not pass muster under a Section 330 reasonableness analysis, not to mention running afoul of that lawyer's own state ethics rule on the reasonableness of fees.<sup>37</sup>

Although we understand, and even sympathize, with the instinct that using AI will reduce our income, maybe that assumption isn't true. The fallacy of the billable hour is the assumption that all billable hours charged by a particular professional deliver identical value. The brainpower behind some billable hours is well worth the \$1,500-or-more per hour price tag, but having a \$1,500-per-hour professional fill in the blanks on a form<sup>38</sup> does not deliver the same hourly value.

Look at the use of AI this way: We no longer use a telephone book to look up a phone number or address. We use a search engine, and we do so to save time that we can devote to more interesting things. A minute of our time spent looking through a phone book<sup>39</sup> takes a millisecond or less of search engine time. We measure the value of what we're doing not by how long it takes us to look up a phone number; we measure the value of using the number that we've found.<sup>40</sup>

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taking lawyer jobs away and, like any other tool, should be used judiciously (and ethically). But we wouldn't mind it if ChatGPT could Bluebook this article accurately, and we're willing to bet that our editor agrees.

<sup>36</sup> See *Robo-Lawyers*, *supra* n. 33, at 31 (discussing the likely decrease in billable hours when lawyers use AI for certain tasks). For a blunter take, here's this thought:

There's another piece to this puzzle; we didn't cover realization rates in the example above. We suspect the lawyer might have an easier time getting paid in full in the AI-enhanced situations. Improved realization rates are a core way hourly billing lawyers can do better financially through doing more efficient work. On average, US Biglaw firms have an 89% realization rate. That means that after discounting off their standard rate and reducing the hours billed to accommodate client demands, firms are leaving on average 11% of their potential billings on the table. Beyond that, many clients will write off additional charges, resulting in an even lower collected realization rate. In fact, this overall number hides important details. Clients often view partners—even very expensive ones—as good value. (As clients ourselves sometimes, we generally think they're right.) On the other hand, some clients refuse to pay for junior lawyers.

AI FOR LAWYERS, *supra* n. 21, at 32-33.

<sup>37</sup> See n. **Error! Bookmark not defined.**, *supra* (discussing MODEL RULE 5.1).

<sup>38</sup> Presumably because there are no lower-billing professionals available to do that work for her.

<sup>39</sup> After locating one.

<sup>40</sup> Nor do we shy away from using our telephones, even though law firms feared that telephones could compromise client confidentiality when telephones first became a communication tool:

As the world moved into the late twentieth century, the landline



4/12/23 5:51 PM

That's why every hour of billable time—even when billed by the same professional—isn't equally valuable. (It's also why we think that the billable hour bears very little relationship to the actual value that the professional is providing to the client.<sup>41</sup>) AI tools are not replacing high-value lawyering; instead, AI tools are automating tasks which, if done manually, may not justify the \$1,500-per-hour rate. There is a tension between AI and reasonable billing only if one believes the billable hour fallacy.

Indeed, when AI promises to be more efficient, more accurate, sufficiently secure, and cost-effective for a client, lawyers who choose not to use AI or other technology for certain tasks are on the wrong side of Section 330's reasonableness standard. A lawyer should never put personal economics ahead of the client's best interest (including charging a reasonable fee under Section 330). Moreover, a Section 330 analysis, like virtually everything else in the law, should adapt to the current state of play, not cling to a bygone era informed only by experience and a gut hunch. Indeed, the Section 330 analysis should not look at time-by-rate figures for a body of work that was considered reasonable in a pre-AI era and conclude that the same time-by-rate figures are reasonable now, when AI tools should have been used to keep costs down. Practitioners and judges should not only consider their personal experience and a gut hunch of what is reasonable under Section 330, but they should also acknowledge the limitations of knowledge and gut hunches when comparing costs from a non-AI era to today's legal industry.

At the end of the day, the worlds may collide, but they are destined to co-exist peacefully. To comply with Rule 330, lawyers need to be incentivized and fairly compensated when using AI that is

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eventually gave way to the cordless phone, the cellular phone, and the smartphone. With each iteration of the phone, not only would the instruments for client communication change but concerns about the security of the communication and client confidentiality would arise. The confidentiality concerns and general resistance to change would often cause the legal profession to pause before embracing a new technology. Often late to the party, the legal profession would arrive armed with ethics advisory opinions on the permissibility and protocols for the newest technology. In fact, lawyers often adopted new technology at the urging of clients who had already adopted the technology, discovered safeguards, and insisted on their lawyers' participation.

Jan L. Jacobowitz, *Chaos or Continuity? The Legal Profession: From Antiquity to the Digital Age, the Pandemic, and Beyond*, 23 VAND. J. ENT. & TECH. L. 279, 289 (2021) (footnote omitted).

<sup>41</sup> See, e.g., *Billing Judgement*, *supra* n. **Error! Bookmark not defined.**, at 312-13 (discussing the problems with the billable hour); Nancy B. Rapoport, *Using General Counsel to Set the Tone For Work in Large Chapter 11 Cases*, 88 FORDHAM L. REV. 1727, 1728-29 (2020) (discussing specific examples of billable hour abuse); Nancy B. Rapoport, *Client-Focused Management of Expectations For Legal Fees in Large Chapter 11 Cases*, 28 AM. BANKR. INST. L. REV. 39, 61-63 (2020) (arguing that billable hours do not reflect value to the client); Nancy B. Rapoport & Joseph R. Tiano, Jr., *Leveraging Legal Analytics and Spend Data as a Law Firm Self-Governance Tool*, 13 J. BUS. ENTREPRENEURSHIP & L. 171, 179-80 (2019) (discussing various mistakes made in time entry); Nancy B. Rapoport & Joseph R. Tiano, Jr., *Legal Analytics, Social Science, and Legal Fees: Reimagining "Legal Spend" Decisions in an Evolving Industry*, 35 GA. ST. U. L. REV. 1269, 1293 n. 68 (2019) ("As one of us has said before (and as we both have thought, repeatedly), "attention to file" has never told a single client what the biller actually did.") (citing Nancy B. Rapoport, "Nudging" Better Lawyer Behavior: Using Default Rules and Incentives to Change Behavior in Law Firms, 4 ST. MARY'S J. LEGAL MAL. & ETHICS 42, 86 (2014)); Stephen L. Rispoli, *The Walking Dead: Psychological Biases That Keep the Billable Hour Alive*, 43 J. LEGAL PROF. 187, 188-89 (2019) ("The billable hour, by contrast, is inefficient and does not encourage innovation."); Susan Saab Fortney, *The Billable Hours Derby: Empirical Data on the Problems and Pressure Points*, 33 FORDHAM URB. L.J. 171 (2005) (discussing the increase in billable hour expectations); Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. REV. 239 (2000) (discussing the stressors associated with billable hours).

4/12/23 5:51 PM

cost-effective and reliable. And the converse is true: professional compensation should be scrutinized carefully and considered unreasonably high when there is an unjustified failure to use safe, secure, reliable, and cost-effective AI. As AI gains more industry acceptance, practitioners and courts will wind up having to consider the possible use of AI as being a precondition for reasonableness.

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# Faculty

**Jason S. Brookner** is a partner with Gray Reed & McGraw, P.C. in Dallas and is the firm's Bankruptcy Practice Group Leader. He focuses his practice on advising debtors, buyers, creditors, trustees, committees, lenders and other constituents in all aspects of distressed, insolvency and restructuring scenarios. Mr. Brookner has worked on complex cases in many industries, including oil and gas, manufacturing, distribution, health care, poultry and meat processing, metals trading and restaurants (including fast casual and quick-service). He has been listed in *Chambers & Partners USA* as one of the leading bankruptcy/restructuring lawyers in Texas every year since 2005, and he recently was recognized for his important role in the *Life Partners Holdings, Inc.* case, which was named the 2017 "Turnaround of the Year" in the large company category by the Turnaround Management Association. Mr. Brookner received his B.A. from the University of New York at Binghamton and his J.D. from Hofstra University School of Law, where he was the articles editor of the *Hofstra Property Law Journal*.

**Karim A. Guirguis, PMP, CAE** is chief operating officer of the American Bankruptcy Institute in Alexandria, Va., the nation's largest association of bankruptcy professionals, comprised of 11,000 members in multidisciplinary roles, including attorneys, bankers, judges, lenders, turnaround specialists and others. Mr. Guirguis provides vision and leadership in transforming and conducting the company's internal and external IT plans. He joined the ABI staff in 2002 after several positions in website architecture and computer animation, most recently with Disney MGM Studios in Florida. Mr. Guirguis's work has earned several awards from his peers, including an Oscar for his work on *Finding Nemo*, the prestigious Horizon Award for ABI's video honoring its founders, as well as the Webby Award for his work with Tiffany Inc. and Polo.com. He is a regular presenter on cutting-edge technology issues for professional educators such as the American Society of Association Executives, for which he serves on its technology board. Mr. Guirguis received his B.S. in electrical engineering from Cambridge University in England, his Master's in multimedia and animation from George Mason University, and his M.B.A. from Harvard Business School.

**Prof. Nancy B. Rapoport** is a University of Nevada, Las Vegas Distinguished Professor, the Garman Turner Gordon Professor of Law at the William S. Boyd School of Law, University of Nevada, Las Vegas, and an Affiliate Professor of Business Law and Ethics in the Lee Business School at UNLV. Her specialties are bankruptcy ethics, ethics in governance, law firm behavior, and the depiction of lawyers in popular culture. Previously, she clerked for Hon. Joseph T. Sneed III on the U.S. Court of Appeals for the Ninth Circuit following law school, then practiced primarily bankruptcy law with Morrison & Foerster in San Francisco from 1986-91. Prof. Rapoport started her academic career at The Ohio State University College of Law in 1991, and she moved from assistant professor to associate professor with tenure in 1995 to associate dean for Student Affairs (1996) and professor (1998), just as she left Ohio State to become dean and professor of law at the University of Nebraska College of Law from 1998-2000. She then served as dean and professor of law at the University of Houston Law Center from July 2000-May 2006 and as professor of law from June 2006-June 2007, when she left to join the faculty at Boyd. She served as interim dean of Boyd from 2012-13, as senior advisor to the president of UNLV from 2014-15, as acting executive vice president and provost from 2015-16, as acting senior vice president for Finance and Business (for July and August 2017), and as special

counsel to the president from May 2016-June 2018. Prof. Rapoport is admitted to the bars of the states of California, Ohio, Nebraska, Texas and Nevada and of the U.S. Supreme Court. In 2001, she was elected to membership in the American Law Institute, and in 2002, she received a Distinguished Alumna Award from Rice University. In 2017, she was inducted into Phi Kappa Phi (Chapter 100). She is a Fellow of the American Bar Foundation and of the American College of Bankruptcy. In 2009, the Association of Media and Entertainment Counsel presented her with the Public Service Counsel Award at the 4th Annual Counsel of the Year Awards. In 2017, she received the Commercial Law League of America's Lawrence P. King Award for Excellence in Bankruptcy, and in 2018, she was one of the recipients of the NAACP Legacy Builder Awards (Las Vegas Branch #1111). She has served as the fee examiner or as chair of the fee review committee in such large bankruptcy cases as Zetta Jet, Toys 'R Us, Caesars, Station Casinos, Pilgrim's Pride and Mirant. Prof. Rapoport appeared in the Academy Award®-nominated movie *Enron: The Smartest Guys in the Room* (Magnolia Pictures 2005) as herself. She received her B.A. *summa cum laude* from Rice University in 1982 and her J.D. from Stanford Law School in 1985.

**Michael P. Richman** is a partner at Steinhilber Swanson LLP in Madison, Wis., where he focuses on representing chapter 11 business debtors, creditors and creditors' committees and advises on virtually every aspect of financial distress and bankruptcy, as well as out-of-court restructurings. He also is an experienced litigator who frequently represents parties in commercial litigation in state and federal courts. In addition to chapter 11 business debtor, creditor and creditor committee work, Mr. Richman's bankruptcy experience includes the prosecution and defense of preference and fraudulent conveyance cases, breach-of-duty claims against corporate insiders, and advocacy for purchasers of assets under § 363. Prior to moving to Wisconsin and joining Steinhilber Swanson in April 2018, his legal practice was centered in New York City in the federal, state and bankruptcy courts located in the Southern District of New York, and he appeared frequently in Delaware. He maintains his active bar admission in New York, and continues to represent clients in bankruptcy and litigation matters across the nation. In a career of more than 40 years, he has appeared in courts in more than 20 states. Mr. Richman is a past president of ABI and chaired the Section 363 Subcommittee of ABI's Commission to Study the Reform of Chapter 11, and he served as co-vice chair of ABI's National Ethics Task Force. He has for many years been listed in *Super Lawyers* and has written numerous articles on ethics in bankruptcy practice published in the *ABI Journal*. He also is a regular lecturer on bankruptcy ethics topics for ABI and the Practicing Law Institute, and over the past 25 years has been an invited speaker/lecturer at hundreds of bankruptcy conferences on many other topics. In addition, he is the founder and a performing member of ABI's house band, the Indubitable Equivalents, which plays classic rock at bankruptcy conferences. Mr. Richman is a member of the board of directors of the Madison Symphony Orchestra, and since January 2018 he has taught bankruptcy law as an adjunct Professor of Law at the University of Wisconsin Law School in Madison. He received his undergraduate degree with honors from Vassar College and his J.D. from Columbia Law School, where he was a Harlan Fiske Stone scholar and was awarded the David M. Berger award in honor of Prof. Wolfgang Friedmann for distinction in international law. He also served as managing editor of the *Columbia Journal of Transnational Law*.