

# What Law Faculty Need to Know About Artificial Intelligence

June 12, 2019

## Welcome & Introductions

April Dawson  
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Central University School of  
Law  
Chair, Webinar Committee,  
AALS Section on  
Technology, Law & Legal  
Education



# Logistics

- Format
- How to ask questions
- Webinar will be recorded and available for on-demand viewing

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### Christoph Henkel

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## Law & Technology



Note from Ruth: There is a book I forgot to mention that if people are interested in the way things are changing called *Tomorrow's Lawyers* by Richard Susskind. It's a short, thought-provoking book, a little too focused on business / corporate career paths (just my opinion :)), but I think he raises some important issues for law schools to think about (as well as lawyers and law firms). I use it as a the text for my law and tech class.

# Ripped from the Headlines

## Legal Tech's Predictions for 2019 in Innovative Technologies

Still have questions about how artificial intelligence, blockchain, and other innovative technologies will be regulated or applied practically? Next year may be the one you find the answer.

By **Zach Warren** | December 20, 2018 at 11:30 AM

Commentary

## Artificial Intelligence Is Ready for the Legal Industry's Attention

The legal market for AI once comprised only the wealthiest firms and legal departments. Not anymore. AI's expansion could affect everyone.

By **Rhys Dipshan** | June 02, 2019 at 06:00 PM

Analysis

## 2017: The Year Legal Tech Grew Up

From AI and automation to analytics and law firm M&As, Casetext CEO Jake Heller wraps up the year's most important legal tech trends.

By **Jake Heller, Casetext** | December 20, 2017 at 08:00 AM

## Many Businesses Are Expected to Move Forward With Machine Learning in 2018

Industries are in the early stages of AI adoption, but many organizations are in search of the professionals needed to bolster their machine-learning efforts.

By **Ed Silverstein** | December 28, 2017 at 09:50 AM

## How AI And Machine Learning Are Transforming Law Firms And The Legal Sector

# AI is the All the Buzz!

**Bloomberg  
BNA**

**eDiscovery  
Resource Center™**

Source: Digital Discovery & e-Evidence: News Archive > 2017 > 12/21/2017 > Industry News > Professional Liability:  
Who Is Liable for Faulty Artificial Intelligence in Health Care?

17 DDEE 656

## **Professional Liability**

### **Who Is Liable for Faulty Artificial Intelligence in Health Care?**



By Sara Merken

Using artificial intelligence in health-care treatment decisions raises questions concerning who is liable and what standards to apply if a patient is harmed.

Page printed from: <http://www.law.com/newyorklawjournal/sites/newyorklawjournal/2017/11/13/a-i-in-discovery-the-future-is-now/>

## AI in Discovery: The Future Is Now

### **How AI's Opportunities Will Augment Rather than Replace Lawyers**

There are a number of conceivable applications for AI in legal, but there remains societal barriers to overcome.

By William Davis, Adherent | October 05, 2017 at 08:00 AM | Originally published on [Legal Technology News](#)

Source: Digital Discovery & e-Evidence: News Archive > 2017 > 12/21/2017 > Regulatory News > Tech Policy:  
Lawmakers Propose National Policy to Oversee Artificial Intelligence

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## **Tech Policy**

### **Lawmakers Propose National Policy to Oversee Artificial Intelligence**



By Michaela Ross

Members of Congress of both parties called Dec. 12 for a federal initiative on artificial intelligence (AI), cross-party legislation aimed at ensuring innovation in the emerging

**The New York Times** | <https://nyti.ms/2nbs0eE>

## **TECHNOLOGY**

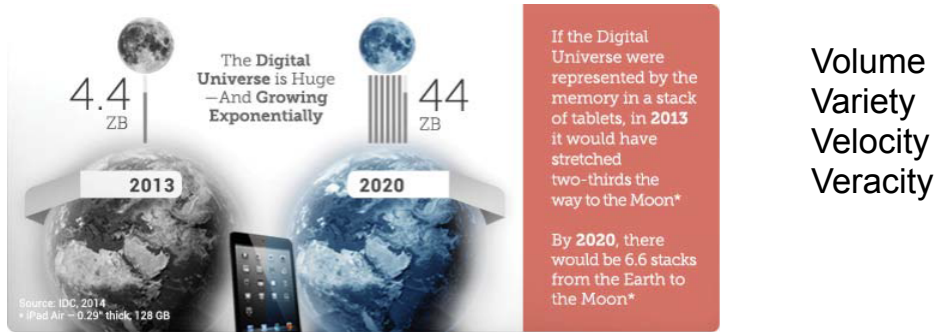
### **A.I. Is Doing Legal Work. But It Won't Replace Lawyers, Yet.**

By STEVE LOHR | MARCH 10, 2017

## Law Practice – The Good Old Days ...?



# The Game Changer - Big Data



## Big Data: Velocity

ExxonMobil's Employees create 5.2 million new email messages every single day.

By 2020, web-based business transactions will reach 450 billion deals per day.

Walmart processes 1 million customer transactions every hour, which are stored in databases of over 2.5 petabytes.

The volume of business data worldwide, across all companies, doubles every 1.2 years.

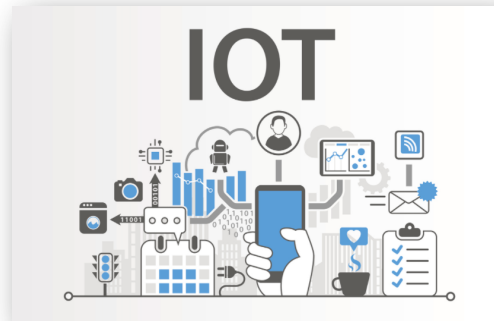
From Legal Tech Presentation 2018, TransPerfect Legal Services

# Big Data: Variety





# The Internet of Everything: IoT



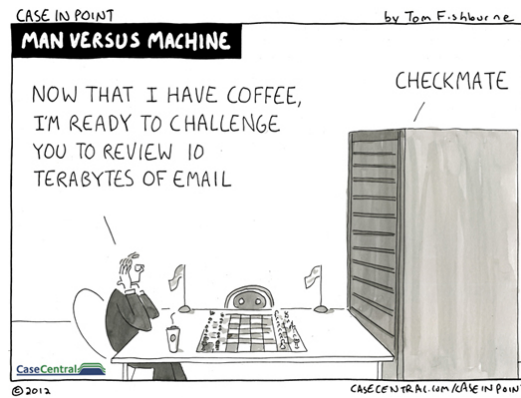
## Big Data: Privacy



# Evolving Ethical Obligations for Attorneys

- **ABA Model Rules of Professional Conduct Rule 1.1 Competence** A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
  - **Comment [8] Maintaining Competence:** To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. (Amended in 2012)
- **CA Ethics Opinion re Technical Competence in E-Discovery:** The State Bar of California Standing Committee on Professional Responsibility & Conduct Formal Opinion No. 2015-193.
- **To date, 36 States Have Adopted the Duty of Technology Competence in Some Form** <https://www.lawsteeblog.com/tech-competence>
  - **Florida** now requires 3 of the 33 credit hours required every 3 years must be in approved technology programs
- **Duties of Competence and Confidentiality**

## Machine Learning in Law: Technology Assisted Review (“TAR”)



# Technology Assisted Review 2.0

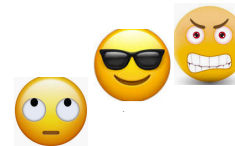


**TAR 2.0:** Umbrella term used to describe various **machine learning** predictive technologies that can be used to:

- get a window into large amounts of data,
- eliminate irrelevant information and
- organize data for greater review efficiency and accuracy

Challenges: \$\$, access, protocol disputes

- Predictive Coding
- Continuous Active Learning
- Near-Duplicates
- Email threading
- Categorization
- Prioritization
- Concept Search & Clustering
- Communication, Emoji and "feeling" analysis
- Privilege Analysis
- Facial Analysis





# What are Courts Saying?



“The Court recognizes that [computer-assisted review is not a magic, Staples-Easy-Button, solution appropriate for all cases](#). The technology should be used where appropriate, but it is [not a case of machines replacing humans](#): it is the [process used](#) and the [interaction of man and machine](#) that the courts need to examine.” *Da Silva Moore v. Publicis Groupe et al*, 2012 US Dist LEXIS 23350 (S.D.N.Y. Feb. 24, 2012) at 17.

## **Not Mandatory (yet?)**

Court cannot force a party to use technology assisted review, in this case predictive coding, and defendant could “use the search method of its choice.” *Hyles v. City of New York*, S.D.N.Y Magistrate Peck, Aug. 1, 2016

# Broader Application of AI in Legal Practice



Kira speeds the identification and analysis of clauses and other data



#### Due Diligence

Save 20-50% of time spent on contract review, without sacrificing accuracy. In 2019 alone, Kira was trusted on over \$100 billion in transactions.

[Read more](#)



#### Contract Analysis

Identify contract clauses, regardless of how they are phrased, across your entire repository. Improve obligation management and compliance.

[See how](#)



#### Lease Abstraction

Kira can dramatically accelerate the preparation of accurate and comprehensive lease summaries.

[Learn more](#)

ROSS

## ROSS Intelligence

## Artificial Intelligence in Legal Research

**How Watson helps lawyers find answers in legal research**  
**ROSS Intelligence takes Watson to law school**

<https://medium.com/cognitivebusiness/how-watson-helps-lawyers-find-answers-in-legal-research-672ea028dfb8>



eBrevia uses industry-leading artificial intelligence, including machine learning and natural language processing technology, developed in partnership with Columbia University to extract data from contracts, bringing unprecedented accuracy and speed to **contract analysis**, **due diligence**, and **lease abstraction**.

# Cybersecurity & Privacy

Cyber Security Statistics for 2019

on March 21, 2019 |

News

## CYBERSECURITY STATISTICS FOR 2019



- Data Breaches: prevailing wisdom: not a matter of “if,” rather “when.”
  - **There were 8,854 recorded breaches between January 1, 2005 and April 18, 2018.** (Source: Identity Theft Resource Center)
  - **IoT attacks were up by 600% in 201.** (Source: Symantec)
  - <https://www.cyberdefensemagazine.com/cyber-security-statistics-for-2019/>
- Regulations
  - EU General Data Protection Regulation – Effective May 2018
    - French Data Protection Authority fined Google \$57 million (€50 million) for GDPR violations related harvesting and use of personal data
  - California Consumer Privacy Act (“CCPA”) – Effective Jan 2020
  - Many others
- Private right of actions / class actions

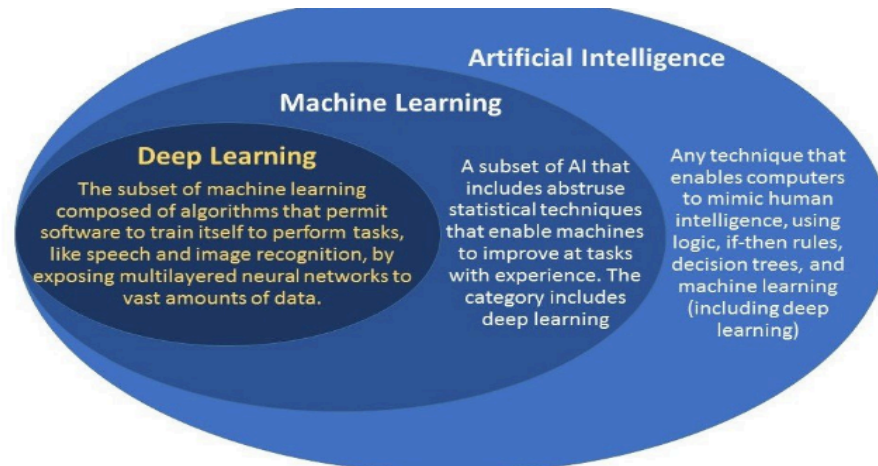




# Definition of Artificial Intelligence

- No universal definition
- Newer field in science and engineering
- Multiple subfields or subsets
  - General (i.e. machine and deep learning)
  - Specific (i.e. self-driving cars, disease diagnosis, law)
- AI is relevant to virtually any intellectual task

# What is the difference between AI, Machine and Deep Learning

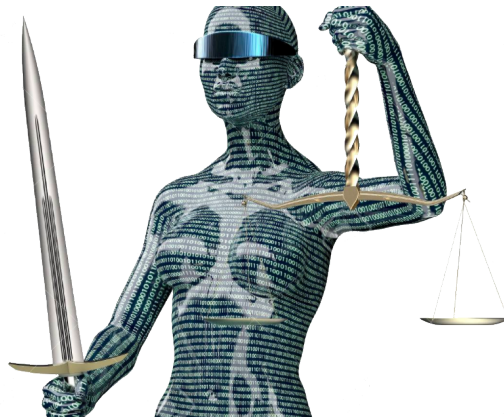


Source: <https://www.geospatialworld.net/blogs/difference-between-ai%E2%BB%BF-machine-learning-and-deep-learning/>

# AI Impact

- Changes, adaptations and innovation
- Less administrative and drudge work
- Move to more strategic legal tasks
  - Emotional intelligence
  - Advanced problem solving skills
  - Creative solutions
- Autopilot argument
- More rather than less lawyers will be needed  
*(Technology creates jobs, i.e. cyber, privacy and compliance lawyers)*
- New branches of law

## A2J: Access to Justice



# Challenges

- Limitations
  - Natural language processing (*OpenAI & GPT-2*)
- Responsible use
  - Algorithmic accountability
  - Computational negligence
  - Biases in algorithmically organized systems (*data selection by privileged actors*)
  - Review of software-driven actions
- Transparency, privacy and data control

# Algorithm - Risks

- ABA Article: The Use of AI in Gauging the Risk Recidivism
  - Bias / fairness
  - [https://www.americanbar.org/groups/judicial/publications/judges\\_journal/2019/winter/the-use-artificial-intelligence-gauging-risk-recidivism/](https://www.americanbar.org/groups/judicial/publications/judges_journal/2019/winter/the-use-artificial-intelligence-gauging-risk-recidivism/)
- *Every Algorithm Has a Point of View*, Susan Nevelow Mart, Sept.-Oct. 2017, at 40, available at <http://scholar.law.colorado.edu/articles/723/>
  - Comparison of legal research tools

# Technology competence & Malpractice

- Lawyers must be competent to make the initial choice of whether and how to use technology in any matter.

*“This is an important ... since in 2019 it is impossible for lawyers to practice law without encountering – and thus necessarily gaining an understanding of – technology in one form or another. And the failure of lawyers to understand how a given technology works and how it will affect their clients’ matters is a violation of the duty of competence at best, and malpractice at worst.”*

(Source: N. Black, *The Daily Record*, April 25, 2019; Robert Ambrogi, *Above the Law*, May 20, 2019)

- Lawyers must also understand a client’s use of technology

# Intersection of Law & Technology





## Questions & Answers



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# Upcoming Webinars

- Ideas for Using Legal Tech to Address Access to Justice Issues (*June 19*)
- Cybercrime: A look at the dark web, means of attack and methods to protect yourself from these attacks (*June 26*)
- Tech Productivity Tips for Law Faculty (*July 10*)

For full list: [www.aals.org/sections/list/technology-law-and-legal-education/](http://www.aals.org/sections/list/technology-law-and-legal-education/)

## Wrap Up

Survey – Your Feedback is Important!

Please consider joining the Section on  
Technology, Law and Legal Education

Feel free to contact me directly  
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Thank you for your attendance!

# Thank You!

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