

SURVIVAL OF THE ARTIFICIALLY FITTEST

How AI Is Rewriting Litigation Strategy and Evidence for the Civil Defense

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Technology has always reshaped the practice of law, but the current speed at which it is evolving is unprecedented. In the last couple of years, artificial intelligence (“AI”) has transformed from an abstract, hypothetical, and extremely daunting curiosity that clients forbade practitioners from using to a nearly mandatory tool that lawyers are expected to utilize. For general counsel, risk managers, claims professionals, and business professionals who oversee claims and litigation, the implications seem immediate and concrete: the teams that embrace these technologies will be equipped to resolve cases or litigate more effectively and efficiently. The teams that do not will be playing catch-up against opponents (and competitors) who already have. With the growing acceptance and implementation of AI in the legal profession, trial attorneys, risk managers, and legal departments must accept that, while AI is not going to steal their jobs, legal professionals who embrace AI will.

WHERE WE CAME FROM — AND HOW QUICKLY THINGS CHANGED

Every generation of legal professionals has faced a technological advancement they believed signaled the beginning of the end. Whether it is the creation of e-mail, digital legal research databases, claims handling software, or LegalZoom, legal professionals have shown their resilience by embracing and incorporating these changes to better our profession. When it comes to AI, document review

presents the perfect case study and illustrative example of how AI can be embraced. Historically, document review meant armies of attorneys and paralegals digging through bankers’ boxes of documents in boardrooms, sifting through millions of pages of documents at substantial hourly rates. Document review was first revolutionized



by digital evidence collection and review, wherein scrolling replaced paper shuffling and “control F” made “find” everyone’s favorite four-letter word.

Now, the next document review revolution is upon us as OCRing quickly becomes a relic of the past with the introduction of Co-Pilot, Harvey, ChatGPT, Claude,

Perplexity, and so many others — which have demonstrated they can draft, summarize, analyze, and brainstorm at a scale no human team could ever match, no matter how much coffee was consumed. Between 2024 and 2025, the percentage of lawyers using some form of generative AI more than doubled. The legal profession quickly abandoned its original skepticism and broadly adopted the use of AI. This adoption paid, and will continue to pay, dividends.

WHAT AI DOES WELL

Here is what most savvy defense practitioners are already doing with AI on a daily basis.

Early case assessment and triaging. Defense counsel can now upload an entire case file — claim notes, incident report, witness statements, police reports, medical records, photographs, repair estimates, trucking logs, text messages, emails, policies and procedures, training materials, handbooks, personnel files, black box downloads — into a secure, closed AI platform and receive an immediate summary of pertinent information. This enables counsel to quickly learn an entire file and have a tailored, interactive roadmap of its contents with easy-to-use hyperlinks to every critical piece of information, so that they can easily navigate even the most voluminous files. Defense counsel can have a structured evaluation of liability, causation, damages, and settlement range within minutes. For outside counsel, in-house counsel, and risk and claims professionals managing hundreds of open

files, this is a transformative triage tool. AI should not be used instead of human review of a file, but rather as a tool to guide and focus human review and help find the proverbial needle in the haystack. AI is essentially going through the bankers' boxes for the lawyers and narrowing the focus to just a few boxes with pre-labeled yellow tabs on all of the most important pages, with a corresponding customized table of contents.

Discovery. AI accelerates the drafting of interrogatories, document requests, and requests for admission, calibrating each set to the specific complaint, defenses, evidence, and testimony. AI can also flag objectionable requests, articulate the legal basis for each objection, and draft responses. AI can also review documents to determine what is responsive and aid in organizing documents in the course of discovery.

Deposition preparation. Defense practitioners can load pleadings, discovery responses, expert reports, and medical records into a closed AI system to generate detailed deposition outlines, anticipate opposing counsel's lines of questioning, and prepare witnesses for specific tactics, including certain techniques like "safetism" and the "reptile theory." Because AI draws on the collective knowledge embedded in thousands of published articles, CLE presentations, and treatises on these very topics, it effectively has access to the strategic thinking of others and can emulate savvy plaintiffs' attorneys so that defense counsel can better defend against such tactics. AI can be especially helpful in preparing for expert depositions because defense practitioners can load voluminous expert files, including the deponent's articles, treatises, publications, CVs, prior depositions, prior reports, etc. and prepare a tailored outline of impeachment questions based on prior inconsistent testimony or opinions given. Similarly, defense counsel can better prepare their own experts and corporate representatives by ensuring that they give testimony that is consistent with their own prior depositions, publications and articles.

Preparing and summarizing record evidence for use in court filings. AI can quickly summarize deposition transcripts and other record evidence for use in motions, providing pinpoint citations and significantly reducing the time spent writing the "facts" section in many motions.

Trial preparation. Through a structured series of prompts, a defense attorney can upload an entire case file and brainstorm trial themes, draft multiple versions of opening and closing arguments, develop cross-examinations tailored to prior depo-

sition testimony, and design jury-selection strategies. One can even upload transcripts evidencing opposing counsel's prior opening and closing arguments or voir dire outlines to enable AI to contemplate the opponent's trial theme and strategy. In a world where "top" trial attorneys for national plaintiff firms set the trial themes and narratives utilized by even the lowest tier of plaintiff attorneys, the trickle-down advantage of dissecting and countering these national themes will be significant.

PLAYING CATCH-UP: THE PLAINTIFFS' BAR HAS HEAVILY UTILIZED AI FOR YEARS

The plaintiffs' bar was quick to adopt and utilize AI early and has invested heavily. Plaintiff firms are using AI to evaluate potential claims by uploading medical records and bills, to prepare demand packages, draft pleadings and discovery, and develop trial strategies. They are maintaining repositories of corporate and expert deposition transcripts, expert reports, handbooks, policies, procedures, training materials, and other key materials to use against defendants on a national scale. They use AI to track jury verdicts and past settlements and have developed algorithms based on such to determine the value of current cases. Thus, despite the ongoing acceptance of AI, defense counsel are already significantly behind the plaintiffs' bar in our strategic implementation and utilization.

THE HUMAN ELEMENT: WHY SEASONED JUDGMENT IS STILL VITAL

At first glance, any legal professional reading this article would ask themselves, "How do I stay relevant?" The simple answer is that AI is a useful tool, but it is not a replacement for experienced professional judgment. The answers and information we receive from AI are only as accurate as the content we provide and the prompting we give it. We have all read the orders where practitioners have been sanctioned for filings containing fabricated case citations generated by AI, with the sanctions growing more severe each time. While AI is a powerful tool, it is the ultimate "yes man," often generating false positives that tell users what they want to hear rather than what they need to hear. These false positives without a thoughtful, seasoned review are worthless.

The firms producing the best results are those that utilize AI as a tool with prudent attorney oversight. Firms should implement structured and specific mandatory verification protocols — requiring independent confirmation of every legal citation

and "fact" written in any document and senior sign-off on AI-assisted work product. This careful deployment and utilization of AI creates a competitive advantage—making lawyers more efficient and effective—without the liability.

THE ECONOMIC EQUATION: LOWER COSTS FOR CLIENTS

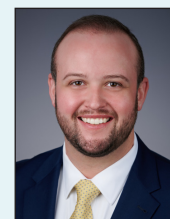
With AI reducing the time required for discovery, depositions, file analysis, motion practice, and medical chronologies, clients naturally expect to see a commensurate reduction in their litigation costs and attorneys' fees. Strategy and defense development billing entries will become the norm, rather than pure drafting and review, requiring an evolving mindset of what qualifies as an attorney task for traditional billing relationships. This could lead to recalibrating and reimagining fee arrangements, especially since firms will be expected to absorb the costs associated with utilizing this new technology.

TIME TO GET WITH THE TIMES

The legal profession is changing, and AI is unquestionably here to stay. Those who embrace it now will be best positioned for what comes next. Practical first steps include forming an AI committee to evaluate platforms and develop specific verification protocols and guidelines for responsible use of AI. The firms and defense teams that invest today in scalable processes, disciplined attorney oversight, and advanced technology will deliver superior results at a lower total cost and likely expand their business as a result of such. AI's true superpower is not efficiency alone — it is the ability to make legal teams more creative, more imaginative and more effective, provided they learn to handle the technology responsibly.



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