Want to Know More About AI?

ABA JOURNAL

The *ABA Journal* has long followed timely trends in the legal profession, and artificial intelligence is no exception. Over recent years, and recent months, it has remained steadfast in report-

ing and analyzing various ways AI affects us judges and lawyers. A useful all-purpose article is "The Future of Law Firms (and Lawyers) in the Age of Artificial Intelligence" taken from a 2020 law review piece. It summarizes everything you need to know about AI and the legal system, especially practical topics like how AI is used in everyday legal practice, who are the providers of AI and related ethical issues, as well as AI in our everyday lives. Find it at https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/27/1/the-future-law-firms-and-lawyers-the-age-artificial-intelligence/

In addition, below are more helpful ABA Journal links regarding various AI topics:

Artificial Intelligence and Robotics—this link is a virtual clearinghouse of 47 ABA Journal pieces related to AI and automation technology questions in law practice, Including AI briefs, Chat GPT language/conversations, and AI taking law school exams (C- average).
https://www.abajournal.com/topic/artificial_intelligence_robotics

ABA House of Delegates Resolution 604—at the ABA Midyear Meeting in February 2023, its House of Delegates passed a resolution introduced by the its Cyber Security Task Force. It recognizes the important ongoing need to watch and regulate AI practices in the legal system. Among other provisions, it calls on AI providers to ensure AI systems and products are subject to human control, and promulgates a standard in which law firms should be accountable for harm from use of AI. Resolution 604 is one of several AI-related resolutions from the ABA House of Delegates in recent times. https://www.abajournal.com/web/article/aba-house-adopts-3-guidelines-to-improve-use-of-artificial-intelligence

Five Things Lawyers Should Know About Artificial Intelligence—from 2021, this short article presents a basic approach for lawyers and judges to obtain technical knowledge regarding AI-affected legal issues and compliance. It points out the need for future AI templates, policies, and continued discussion. It concludes there is a "reckoning" on the horizon as we continually rely on AI.
https://www.abajournal.com/columns/article/5-things-lawyers-should-know-about-artificial-intelligence

The Case for ChatGPT: Why Lawyers Should Embrace AI—an experienced AI lawyer and consultant argues recently that the new language conversational AI is nothing to be afraid of. The article delineates the practical uses and advantages of ChatGPT, including streamlining legal tasks and reducing errors. It maintains a great potential is yet to be fully realized, and lists current software products using or allowing ChatGPT.
https://www.abajournal.com/columns/article/the-case-for-chatgpt-why-lawyers-should-embrace-ai

Meet Harvey, BigLaw Firm's Artificial Intelligence Platform Based on ChatGPT—hot off the presses (figuratively of course), the London-based big firm Allen and Overy announced that it developed its own ChatGPT AI program to do multitudes of tasks among its 3,500 lawyers all over the world. For example, the program could be asked to instruct a U.S. client how to open a bank in Europe, and a set of Powerpoint slides would be produced ready for presentation. Find the press release here:
https://www.abajournal.com/news/article/meet-harvey-biglaw-firms-artificial-intelligence-platform-based-on-chatgpt

BOOKS

Judges, Technology and Artificial Intelligence: The Artificial Judge

Tania Sourdin, *Judges, Technology and Artificial Intelligence: The Artificial Judge* (Edward Elgar Publishing 2021).
https://www.e-elgar.com/shop/usd/judges-technology-and-artificial-intelligence-9781788978255.html
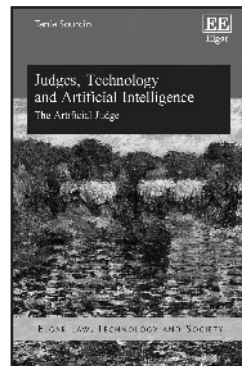
Australian law professor Tania Sourdin published this forthright 2021 book to aid lawyers and judges as the age of AI comes upon us. It covers material all over the world and outlines pertinent topics that assist practitioners, including the role of judges and technology, working with AI generally, and ethical issues. It shows illustrative examples of AI being used in positive ways by courts by understanding the role and function of any AI program and the overall advantages for judges in the long run.

Automating Inequality: How High-Tech Tools Profile, Police and Punish the Poor

Virginia Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor* (St. Martin's Press, 2018),
https://us.macmillan.com/books/9781250074317/automatinginequality

This award-winning 2018 book from Professor Virginia Eubanks covers large topics in the legal system related to algorithmic profiling and exclusion that raise issues of equality and dis-

crimination. The book investigates real case studies in several states to illustrate problems that are not largely addressed by policy-makers. For example, one state denied Medicaid benefits for eligible children for "failure to cooperate" when the application had minor errors.

When Machines Can Be Judge, Jury, and Executioner: Justice in the Age of Artificial Intelligence

Katherine B. Forrest, *When Machines Can Be Judge, Jury, and Executioner: Justice in The Age of Artificial Intelligence* (World Scientific, 2021).

https://books.google.com/books?id=OJIqEAAAQBAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false
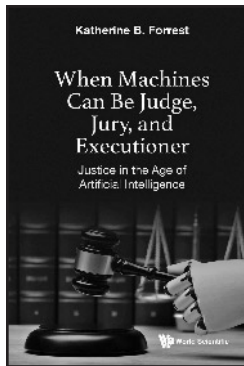
Former federal judge Katherine Forrest has been working and writing to study various AI issues in the law in recent years. In 2021, she put forth this timely explanation about how AI has influenced life and liberty determinations in the criminal justice system. She worries that "even as we claim to prefer a nuanced theory of justice, we have developed, implemented, and given the reins to certain AI tools that act against our best interests." The book focuses on AI-centered risk and needs assessments for bail decisions and the use of lethal autonomous weapons in drones during warfare. It presents a great outline of the dilemma between the human judge, with rules, facts, and discretion and the AI program, with no moral aptitude but dependent on the software developer for what it "knows."

The Reasonable Robot: Artificial Intelligence and the Law

Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* (Cambridge University Press 2020).

https://www.google.com/books/edition/The_Reasonable_Robot/iILoDwAAQBAJ?hl=en&gbpv=0

This 2020 book starts with an ominous epigraph from the famous physicist Stephen Hawking: "The rise of powerful AI will be either the best or worst thing ever to happen to humanity. We don't yet know which." Ryan Abbott, a professor, patent attorney, and physician, puts forth a detailed case that AI should have legal neutrality, analogous to corporations' status to contract and own property, but not entitled to moral rights like human beings. The book discusses tax, torts, intellectual property, and criminal law to argue that AI is now assuming the tasks that humans used to do. If humans don't get out of the way, Abbott says, we may miss out on some real progress. So, he would answer Hawking that we do know that AI can be good, but we do not yet know whether we want to fully use it.

Research Handbook on the Law of Artificial Intelligence

Woodrow Barfield & Ugo Pagallo (eds.), *Research Handbook on the Law of Artificial Intelligence* (Edward Elgar Publishing, 2018).

https://books.google.com/books/about/Research_Handbook_on_the_Law_of_Artifici.html?id=s8YguAEACAAJ

Two professors, one from the U.S. and one from Italy, put together this thorough 2018 compendium of international articles that covers a wide and interesting array of topics about AI and law.
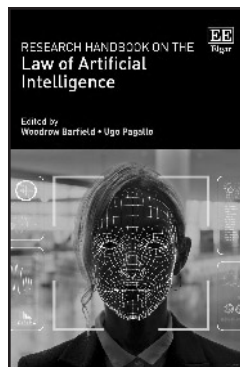
It is especially valuable for discovering the history of AI, and understanding its relevance and standing as the next technology to affect the legal system. As far back as the 1980's scholars were theorizing about computers and potential new issues impacting what courts had to decide, such as 4th Amendment searches and civil discovery. The various writers afford readers a prudent review of the AI world we all are facing, whether learning algorithms and regulating it, or adjudicating rights and applications. This book purports to be a handbook—whether it fills that role or not, there is something for every AI reader.

LAW REVIEW ARTICLES
Chief Justice Robots

Eugene Volokh, *Chief Justice Robots*, 68 Duke L. J. 1135 (2019) https://scholarship.law.duke.edu/dlj/vol68/iss6/2.

Abstract: Say an AI program someday passes a Turing test, because it can con-verse in a way indistinguishable from a human. And say that its developers can then teach it to converse—and even present an extended persuasive argument—in a way indistinguishable from the sort of human we call a "lawyer." The program could thus become an AI brief-writer, capable of regularly winning brief-writing competitions against human lawyers. Once that happens (if it ever happens), this Essay argues, the same technology can be used to create AI judges, judges that we should accept as no less reliable (and more cost-effective) than human judges. If the software can create persuasive opinions, capable of regularly winning opinion-writing competitions against human judges—and if it can be adequately protected against hacking and similar attacks—we should in principle accept it as a judge, even if the opinions do not stem from human judgment.

Artificial Intelligence, Legal Change, and Separation of Powers

Andrew C. Michaels, *Artificial Intelligence, Legal Change, and Separation of Powers,* 88 U. Cin. L. Rev. 1083 (2020)
https://ssrn.com/abstract=3459069.

Abstract: A number of prominent contemporary legal scholars have recently argued in favor of replacing at least some human legal decision making with Artificial Intelligence ("AI"), assuming that AI technology improves to a level these scholars deem appropriate. This article disagrees, particularly as regards Article III judges, for two main reasons. First, human judges must strike a delicate balance between stability and change; that is, between respect for precedent on the one hand, and adapting the law to unforeseen circumstances on the other, thus playing an important role in shaping the law that is not adequately considered in this literature, and that an AI judiciary may not be able to adequately replace. Second, the loss of human judges would likely lead to a loss or diminishment of the human legal community, such that fewer people would be paying attention to the law. This community of people with strong incentives to pay attention to the law is built around the Article III judiciary, and the diffusion of knowl-

edge throughout this community may be a significant source of the judiciary's power to fulfill its role as a check on the other two branches. The potential benefits of an automated judiciary can be better achieved in other ways, and likely do not justify the risks. At the least, these concerns are not adequately addressed by those advocating for AI judges, and should be seriously considered in the context of any effort to automate parts of the judiciary.

A Legal Perspective on the Trial and Tribulations of AI: How Artificial Intelligence, The Internet of Things, Smart Contracts, and Other Technologies Will Affect The Law

Iria Giuffrida, Frederic Lederer & Nicolas Vermeys, *A Legal Perspective on the Trial and Tribulations of AI: How Artificial Intelligence, the Internet of Things, Smart Contracts, and Other Technologies Will Affect the Law,* 68 CASE W. RES. L. REV. 747 (2018)
https://ssrn.com/abstract=3527033.

Abstract: As history has shown us, every technological advance is accompanied by legal questions. We believe that our modern high-technology era will be faced by an unusual number of such questions growing out of what we will undoubtedly term, "artificial intelligence" ("AI"), but which in fact is the combination of advanced algorithms, important pools of data, usually referred to as "big data," and the many technologies that exploit these. Some questions are versions of traditional issues, such as tort liability for semi-autonomous or autonomous auto- mobile collisions. Others may be termed novel: when, if at all, might a "computer" statement be hearsay or a "computer" be liable for tortious injury—or even murder—or might it be sued for breach of copyright because the "computer" is considered a "person"? How will we define a "smart contract;" what knowledge and skills will a responsible lawyer need to know to avoid a successful malpractice suit? This Article is only an introduction to that task. It aims to add to the already numerous publications and journal articles written on the topic of law4 and AI by honing into what we believe to be the crux of the issue: AI-enabled devices exist in a technological ecosystem. Therefore, we cannot simply address the impact of a given technology without establishing how it will interact with others, more importantly how data will be generated, shared, used, and monitored by AI-enabled devices. The aim of this Article is to contribute further to a basic and useful understanding of the legal problems to be generated by that ecosystem, leaving to later articles more detailed discussions of those problems and related ones such as the critical and numerous privacy issues raised by these and related technologies. Of course, anticipating the future does not easily lend itself to exhaustive prediction. What is absolutely sure is that the combination of the technologies addressed in this Article will change the world beyond anything most of us can anticipate and that the legal professions are unprepared for the legal consequences.

Servers and Waiters: What Matters in the Law of AI

Ignacio N. Cafone, *Servers and Waiters: What Matters in the Law of AI,* 21 STAN. TECH. L. REV. 167 (2018)
https://ssrn.com/abstract=3253928.

Abstract: The European Parliament's recent declaration that robots are "electronic persons" illustrates the widespread uncertainty about how to regulate robots and artificial intelligence (A.I.) agents. This article aims to confront that uncertainty. To date, most regulations have treated robots and A.I. agents either as tools or people, making questionable assignments of rights and responsibilities. Instead, regulations should reckon that robots and A.I. agents escape this dichotomy. The law must assign rights and responsibilities for entities with characteristics that exist on a continuum between tools and people. This article describes this continuum through three characteristics that help us consistently place robots and A.I. agents along it: emergence, embodiment, and social valence. It proposes a framework for analogizing A.I. entities to existing entities that the law already understands, thereby creating a baseline for assigning rights and responsibilities for their actions.

AI/ESQ.:Impacts of Artificial Intelligence in Lawyer-Client Relationships

Chris Chambers Goodman, *AI/ESQ.: Impacts of Artificial Intelligence in Lawyer-Client Relationships*, 72 OKLA. L. REV. 149 (2019)
https://ssrn.com/abstract=3434140.

Abstract: Whether we admit it or not, lawyers increasingly are working with machines in many aspects of their practice and representation, and it is important to understand how artificial intelligence can assist attorneys to better provide justice while recognizing the limitations, particularly on issues of fairness. This article examines current and future uses of technology to address how identity influences decisions about charges, defenses, credibility assessments, and communications in lawyer-client relationships. The article recommends that lawyers take affirmative steps to interact with AI technology developers to serve the interests of justice and fairness more fully.

OTHER ARTICLES
10 Things Judges Should Know About AI

Jeff Ward, *10 Things Judges Should Know About AI*, JUDICATURE 103, NO.1 (2019)
https://judicature.duke.edu/articles/10-things-judges-should-know-about-ai/

Judicature is a journal about the judiciary published by Duke University. Jeff Ward, a law and technology professor, wrote this 2019 article to allow judges to begin the inevitable journey into AI. With each of the 10 things, the article has a "Why is this important?" section that consistently gives the judge reader a practical application for everyday practice. It does not purport to teach about the details of AI, but rather to introduce the more relevant aspects of machine hegemony in the 21st century. It is a short engaging capsule that benefits any judge of any background.

AI Is Becoming More Conversational. But Will It Get More Honest?

Chad Metz, *AI Is Becoming More Conversational. But Will It Get More Honest?* N.Y. TIMES, January 10, 2023
https://www.nytimes.com/2023/01/10/science/character-ai-chatbot-intelligence.html?smid=em-share

Two former Google researchers built a website called Character.AI in which the human user can have a conversation with anyone who the user wants to invoke or concoct, living or dead. So, we could have a chat with George Washington, William Shakespeare, Dr. Martin Luther King, Jr., or some imaginative figure.

Chad Metz, a technology reporter, wrote this fascinating article for the New York Times, in which he raises an issue about accuracy. Is the machine character saying what the historical figure would really say? Not exactly, say the makers, but it is plausible conversation—not always right. While ChatGPT is designed for a question-and-answer format, Character.AI seeks an open-ended conversation. Those of us who are still scratching our heads about AI programs talking at all will undoubtedly be even more intrigued. The article leaves us with some expert opinions that such talking AI programs will reach a plateau after all the text on the Internet is exhausted. Who knows?

Microsoft Announces New Multibillion-Dollar Investment In ChatGPT-Maker OpenAI

Ashley Capoot, *Microsoft Announces New Multibillion-Dollar Investment In ChatGPT-Maker OpenAI,* CNBC January 23, 2023 (updated February 4, 2020)

https://www.cnbc.com/2023/01/23/microsoft-announces-multibillion-dollar-investment-in-chatgpt-maker-openai.html

This is a short CNBC news article regarding the significant step by Microsoft toward AI talking platforms and the most well-known, ChatGPT. The producer, Open AI, will use Microsoft's cloud platform for its other products, and Microsoft will incorporate OpenAI in many of its models to compete against Google search platforms.

Why We Need To Focus On The Positives Of AI

David Newman, *Why We Need To to Focus on the Positives of AI,* FORBES, February 20, 2020

https://www.forbes.com/sites/danielnewman/2020/02/06/why-we-need-to-focus-on-the-positives-of-ai/?sh=292546e975ae

Not everything about AI is foreboding, says this *Forbes* 2020 article. There are very good things to gain from AI in our business and personal lives, it maintains, specifically automation of regular tasks, assisting human decision making, and "sensor-fed awareness of environmental context in real time." We should take the larger view, it argues, by seeing its value in the efficiency of cutting employee time on time-consuming work, and cutting edge marketing approaches tailor-made for customers and locales. The most interesting advantage are the improvements it affords for our safety, like using robots as first responders in dangerous places, providing health care access to remote areas, enabling smart phones to alert law enforcement, and assisting elderly with everyday questions.

RoboCourt: How Artificial Intelligence Can Help Pro Se Litigants and Create a "Fairer" Judiciary

Justin Sbyder, *RoboCourt: How Artificial Intelligence Can Help Pro Se Litigants and Create a "Fairer" Judiciary*, 10 IND. J. L & SOC. EQUITY 200 (2022)

https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1136&context=ijlse

This 20-page law journal article is decidedly less cumbersome and academic than typical law reviews. It adeptly outlines the dilemmas and obstacles that the system faces regarding pro se civil litigants and explains the opportunities that AI provides, including implementing AI into the judiciary. The author, a recent law school graduate, foresees the time when courts will develop their own AI, provide more access to justice for low-income citizens and improve efficiency of courts. It serves as an excellent and concise review of key literature studying the problem of access and the effects a of AI.

PODCASTS

Is Ethical AI Possible?

44 minutes (2023)
The Gray Area
https://open.spotify.com/episode/0Zyexhty6AEbINudjfnuRB?si=zZ3amJ6gQxK_6FCTq7nL9g&context=spotify%3Ashow%3A6NOJ6IkTb2GWMj1RpmtnxP&nd=1

Host Sean Illing talks with Timnit Gebru, founder of the Distributed AI Research Institute. She studies the effects of artificial intelligence and is an outspoken critic of companies developing new AI systems. Sean and Tinmit discuss the power dynamics in the world of AI, the discriminatory outcomes that these technologies can cause, and the need for accountability and transparency in the field.

How Artificial Intelligence is Transforming the Legal Profession

32 minutes (2021)
Engaging Experts: How Artificial Intelligence is Transforming the Legal Profession, 32 minutes (2021)
https://podcasts.google.com/feed/aHR0cHM6Ly9mZWVkcy5idXp6Byb3V0LmNvbS8xNDEzMzY0LnJzcw/episode/QnV6enNwcm91dC03NjAzMTQ0?sa=X&ved=0CAgQuIEEahcKEwi48_mgirv9AhUAAAAAHQAAAAAQLA

AI is more complicated and far-reaching than most people realize. In reality, it is impacting not just the tech industry, but also the legal field—among others. So, what do litigators, attorneys, or other legal professionals need to know about the increase of AI in 2021 and beyond? Russ Rosenzweig sits down with Dr. Chris Mammen, a partner at Womble Bond Dickinson (US) LLP, a transatlantic law firm that provides services to corporate, individual, and nonprofit clients, to discuss everything from IP law to the ethical implications of artificial intelligence. Dr. Mammen talks about how expert witnesses benefit IP lawyers, whether copyrights can be applied to AI, and what the future of AI holds for attorneys and litigators.

Living with AI: Challenges of Living with Artificial Intelligence

https://podcasts.google.com/feed/aHR0cHM6Ly9mZWVkcy5idXp6Byb3V0LmNvbS8xNDEzMzY0LnJzcw/episode/QnV6enNwcm91dC03NjAzMTQ0?sa=X&ved=0CAgQuIEEahcKEwi48_mgirv9AhUAAAAAHQAAAAAQLA

This is a UK site listing a number of podcasts over the last two years. The material is engaging and covers driverless cars, security, ethical issues, trustworthiness of drones, robots, and others. The series involves panels and experts from many fields. The podcasts average about over 50 minutes, and some are over an hour.