TECHNOLOGY

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IN THIS ISSUE

The future of the practice of law is undergoing significant change due to artificial intelligence. Read on to learn how your practice and you personally may be directly impacted by these coming-and already occurring-changes.

"The First Thing We Do, Let's Kill All The Lawyers"*

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ABOUT THE COMMITTEE

The Technology Committee keeps the IADC membership current on the use of technology in litigation, whether in the conduct of discovery or in the use of technology in the courtroom. It educates its members on the impact of technology in their practices – on the ways they communicate with each other, with courts and clients, on the systems they use to record and produce their work, and on technological developments in marketing for law firms. The committee provides information to its members on legal developments in the law governing the use and development of technology, in particular on Internet and computer law and related subjects. Through its members, it acts as a resource to the IADC staff and leadership on technology issues facing the organization. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:

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I. Meet ROSS

Meet ROSS. ROSS is an attorney specializing in bankruptcy law. ROSS is currently employed by at least two national law firms. What makes ROSS so unique and such a financially lucrative recruit for these law firms? ROSS is an artificial intelligence program that practices law. ROSS researches case law, reviews court documents, and drafts standardized contracts but does not demand a salary or benefits. ROSS was built from the same IBM Watson framework that was used to defeat two of Jeopardy's greatest champions.[1] Though the algorithms which make ROSS possible become more accurate over time, ROSS does not have a learning curve and works similarly to a search engine or legal research site such as Westlaw or LexisNexis.

ROSS uses sophisticated artificial intelligence to learn and to grow its ability to accurately answer questions. ROSS has the ability to track a new law and can determine whether the new law will affect any of its current cases. This automatic monitoring will allow for attorneys to spend more time litigating and less time researching. In essence, ROSS can do the work of first and second year attorneys for less money in less time.

The legal market is already highly competitive, but now lawyers must learn to compete head to head with computers. Or worse yet, could Shakespeare get his wish with ROSS and similar artificial intelligence programs leading to the death of all the lawyers?

II. Evolution of ROSS

Computerized legal research systems are constantly evolving making it easier for a single person to complete research that once required three or four people. Technology continues to evolve rapidly and with that evolution the science fiction of decades past is becoming a reality today. The technological revolution currently taking place in the field of law began five years ago, with IBM Watson. According to IBM, Watson is a "technology platform that uses natural language processing and machine learning to reveal insights from large amounts of unstructured data."[2] In layman's terms, Watson is a supercomputer.

Watson later moved into the legal realm, and thus, ROSS was born. By taking advantage of the natural language and cognitive computing platform that Watson offers, ROSS can predict the outcome of court cases with a confidence rating, it can assess legal precedents, and suggest readings to prepare for cases.[3] As such, ROSS

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[1] Sharon Nelson & John Simek, HOW WILL WATSON'S CHILDREN IMPACT THE FUTURE OF LAW PRACTICE, 59 MAR Res Gestae 37(2016).

[2] Cognitive Computing Educator Guide, https://developer.ibm.com/academic/resources/cog nitive-computing-educator-guide/ (last modified Feb. 26, 2016).

[3] Sharon Nelson & John Simek, HOW WILL WATSON'S CHILDREN IMPACT THE FUTURE OF LAW PRACTICE, 59 MAR Res Gestae 37(2016).

was described as the "super intelligent attorney."[4]

III. Five Areas of Law on the Verge of an Artificial Intelligence Invasion

Five areas that artificial intelligence could dramatically impact in the near future are: (1) discovery; (2) legal research; (3) document generation; (4) brief and memoranda generation; and (5) prediction of case outcomes.[5]

Artificial intelligence programs are most advanced in performing electronic discovery, or e-discovery.[6] E-discovery is the process by which computer programs search databases for keywords that lawyers consider relevant.[7] As e-discovery becomes more accurate and less expensive, first and second year attorneys face being replaced by artificial intelligence programs like ROSS. Legal search, the process of searching for relevant law, has also often been performed by first and second year attorneys. However, recently artificial intelligence programs have been applied to the task of finding relevant law.[8] These programs not only perform the majority of this work, but they also perform it more efficiently. For example, programs such as ROSS can now evaluate the strength of precedent by considering the number of other cases relying upon it.[9]

The use of legal forms and document templates are not new methods for attorneys. As artificial intelligence programs become more powerful, however, such technology will be able to automate a form, tailor it according to the specific facts and legal arguments, and track its effect in future litigation.[10] Areas of law such as trust and estate will be impacted the most because this area of law has relatively few types of forms and unique factual situations that arise.[11]

IV. Practical and Ethical Implications for Lawyers and Law Firms Utilizing ROSS

While acknowledging that technology is advancing and becoming more reliable, lawyers cannot help but wonder how much reliance will be placed on artificial intelligence, and whether that reliance will muddy the ethical obligations of attorneys to their clients.

The American Bar Association (ABA) has categorized artificial intelligence as either an inanimate tool (like a computer) or as a non-lawyer assistant.[12] An inanimate tool poses no threat under the ABA rules, and non-lawyer assistance is acceptable, so long as lawyers do not share fees with the non-

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[4] *Id.*
[5] John McGinnis & Russell Pearce, *The Great Disruption: How Machine Intelligence will Transform The Role of Lawyers in the Delivery of Legal Services*, 82 FORDHAM L. REV. 3041, 3046 (2014).
[6] *Id.* at 3047.

[7] *Id.*
[8] *Id.* at 3048.
[9] *Id.* at 3049.
[10] *Id.* at 3051.
[11] *Id.* at 3050.
[12] *Id.* at 3060.

lawyers and are unable to interfere with lawyers' professional judgment.[13]

The most basic and core legal ethical duty of competence requires that a lawyer provide the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Model Rules of Professional Conduct 1.1. Comment 8 further emphasizes that in order to maintain the requisite knowledge and skill; a lawyer should keep abreast of changes in law, including the benefits and risks associated with relevant technology.[14] Not all tasks that modern lawyers undertake require the significant exercise of judgment, however, such as drawing up simple wills.[15]

Artificial intelligence programs may replace some of the tasks typically assigned to first and second year attorneys, but the one aspect of the legal profession that artificial intelligence likely cannot outperform a first or second year attorney is in creating the attorney-client relationship. Attorneys bond with their clients and are able to foster relationships of trust and confidence. These relationships allow lawyers to better accomplish the interests and goals of the client.[16] Artificial intelligence programs, such as ROSS, are unlikely to perform this bonding function and thus are unlikely to substantially affect this important aspect of the attorney-client relationship.[17]

Overall, attorneys remain responsible for the ultimate work product, regardless of whether the document was created by artificial or human intelligence. That said, it is important for attorneys to act cautiously by remembering that artificial intelligence programs like ROSS are not subject to discipline and that the attorney still remains responsible for the ultimate work product.

V.   Conclusion

ROSS is a powerful tool that progressive, forward-thinking lawyers have adopted to improve service to their clients. ROSS is also a predictor of things to come. As artificial technology becomes more sophisticated and prevalent, lawyers either need to embrace and leverage this technology or be prepared to suffer the financial consequences from this fierce competition.

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[13] *Id.*
[14] *Id*. at 3060.
[15] *Id.* at 3056.

[16] *Id.* at 3055.
[17] *Id.*

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