

# AI In the Law: Friend or Foe – Helping Lawyers Through the Growing Pains of a New Reality

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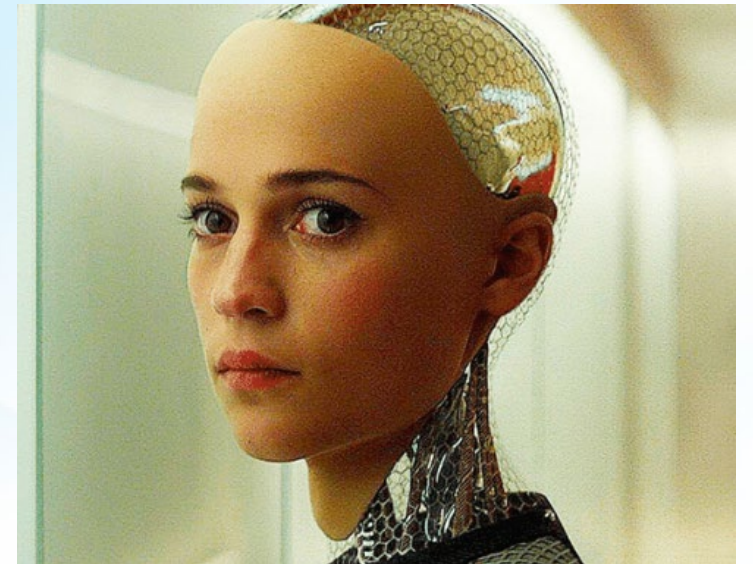
## 2024 Annual Meeting

# **A.I. In the Law: Friend or Foe?**

### **Presented By:**

Michelle M. Fujimoto – Shook, Hardy & Bacon LLP  
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# AI: THE FUTURE IS NOW





# AI: THE FUTURE IS NOW



# AI: BONA FIDE OR BOGUS?

CASTEL, U.S.D.J.

The Court is presented with an unprecedented circumstance. A submission filed by plaintiff's counsel in opposition to a motion to dismiss is **replete with citations to non-existent cases.** (ECF 21.) When the circumstance was called to the Court's attention by opposing counsel (ECF 24), the Court issued Orders requiring plaintiff's counsel to provide an affidavit annexing copies of certain judicial opinions of courts of record cited in his submission, and he has complied. (ECF 25, 27, 29.) **Six of the submitted cases appear to be bogus judicial decisions with bogus quotes and bogus internal citations.** Set forth below is an Order to show cause why plaintiff's counsel ought not be sanctioned.



# AI: A NEW LANGUAGE

Term	Definition
Algorithm	A set of rules or instructions given to an AI, ML, or computer program to help it perform a task.
Artificial Intelligence (AI)	The simulation of human intelligence in machines that are programmed to think and learn like humans.
Autonomous Systems	Systems capable of performing tasks with high degrees of autonomy, which may include decision-making capabilities without human intervention.
Bias	An error introduced into the model due to the oversimplification of algorithms or the underrepresentation of certain segments within the training data.
Big Data	Large and complex data sets that traditional data processing software cannot manage effectively.
Chatbot	A chatbot is a software application that is designed to imitate human conversation through text or voice commands.
Computer Vision	A field of AI that enables computers and systems to derive meaningful information from digital images, videos, and other visual inputs.
Continuous Active Learning (CAL)	An extension of active learning where the model continuously learns and updates its understanding based on new data or feedback.
Data Mining	Data mining is the process of sorting through large sets of data to identify patterns that can improve models or solve problems
Deep Learning	A subset of ML that uses neural networks with many layers (deep neural networks) to analyze large volumes of data.
Ethics in AI	The branch of ethics that examines the moral issues related to AI and its applications, including concerns about privacy, bias, accountability, and the impact on society.
Image Generation Tools (IGT)	AI-powered tools that create visual images based on textual or other inputs, leveraging deep learning techniques.
Large Language Models (LLM)	AI models that understand and generate human language by analyzing vast amounts of text data.
Machine Learning (ML)	A subset of AI that involves the development of algorithms that can learn and make predictions or decisions based on data.
Natural Language Processing (NLP)	The ability of a computer program to understand, interpret, and generate human language.
Neural Networks	Computing systems vaguely inspired by the biological neural networks that constitute animal brains, capable of learning tasks by considering examples.
Predictive Analytics	The use of data, statistical algorithms, and machine learning techniques to identify the likelihood of future outcomes based on historical data.
Reinforcement Learning	An area of machine learning concerned with how software agents ought to take actions in an environment in order to maximize some notion of cumulative reward.
Simple Active Learning (SAL)	A machine learning approach where the algorithm iteratively queries the user to label the most informative data points.
Supervised Learning	A type of machine learning where the model is trained on a labeled dataset, meaning that each training example is paired with an output label.
Technology Assisted Review (TAR)	The use of machine learning and other technologies to aid in the process of reviewing documents, often used in legal discovery.
Unsupervised Learning	A type of machine learning where the model is trained on unlabeled data without any guidance on what the outcomes should be.

# Overview of AI Concepts

## 1-2-3

### Algorithm

A step-by-step process used to solve a problem.



### Machine Learning

The process of feeding data into computer algorithms so they get more refined and sophisticated over time.

### Natural Language Processing

The branch of AI that helps computers to understand, process, and generate speech and text the way a human would.



### Chatbots

These are products that can hold advanced, human-like conversations with people about anything from historical trivia to lists of creative recipes using a watermelon.



### Deep Learning

The most common form of AI, in which software is taught to classify something such as a video or a loan application from a very large set of labeled data.



### Generative AI

This refers to the production of entirely new creative works—pictures, music, text, poetry—from simple prompts after AI is trained on vast quantities of pre-existing material.

### Large Language Models

The backbone of natural language processing that can summarize and generate text using information from all over the internet. Perhaps the most well-known is OpenAI's GPT-4.



### Hallucinations

The phenomenon by which AI chatbots may confidently provide false information (sometimes ludicrously so) in response to a prompt.



\*Adapted from "A Cheat Sheet to AI Buzzwords and Their Meanings: QuickTake," Bloomberg News.



# AI: LEGAL TOOLS

## **LexisNexis (70s)**

Offers a wide range of legal research and analytics tools that utilize AI

## **Westlaw Edge (70s)**

Provides legal research and analytics in a comprehensive legal database enhanced by AI

## **Kira Systems (2011)**

Advanced machine learning software that helps organizations extract relevant information

## **Casetext (2013)**

Uses AI to offer legal research tools that help lawyers quickly find relevant cases and statutes

## **Legal Sifter (2013)**

Combines AI with legal expertise to conduct contract review and helps users understand contracts faster



## **Eve (2020)**

A generative AI case assistant that optimizes case work, from intake to resolution

## **Luminance (2015)**

Provides AI-powered document review and analysis for due diligence, compliance, and e-discovery

## **Blue J Legal (2015)**

Uses machine learning to predict legal outcomes with a focus on tax and employment law



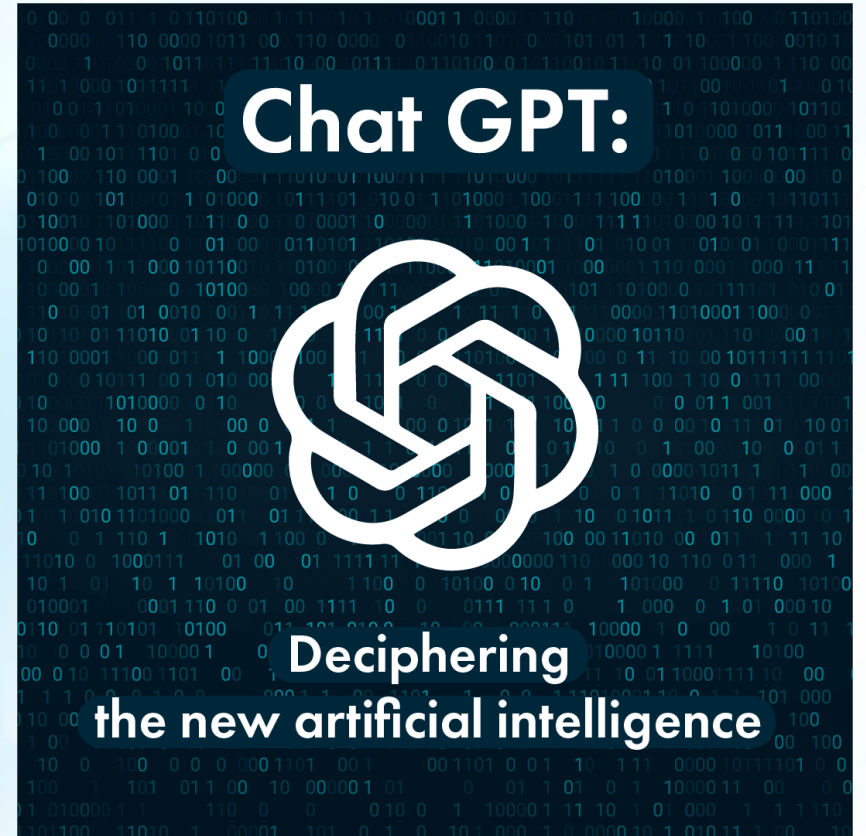
# Everyday Uses of AI

- **Grammarly**
  - Cloud-based AI writing assistant that reviews spelling, punctuation, and offers text generation
- **Casetext**
  - A legal research platform that integrates AI to find relevant case law
- **CoCounsel by Casetext**
  - An AI-assistant based on a large language model trained specifically for lawyers
- **Diligen**
  - Machine learning AI that assists with due diligence when reviewing contracts



# Microsoft Copilot and ChatGPT

- **Microsoft Copilot**
  - A conversational chat interface that allows you to generate emails, summaries and search for specific information
- **ChatGPT**
  - Artificial intelligence that uses natural language processing and machine learning to understand and respond to human input.





How can I help you today?

**Write a short story**

tailored to my favorite genre

**Explain nostalgia**

to a kindergartener

**Create a workout plan**

for resistance training

**Plan a trip**

to experience Seoul like a local

What are the essential elements of a contract in Texas?







You

What are the essential elements of a contract in Texas?



ChatGPT

In Texas, like in most jurisdictions in the United States, a contract is formed when certain essential elements are present. These elements typically include:

1. **Offer:** One party must make a clear and definite proposal to the other party. This proposal must indicate a willingness to enter into a contract under certain terms.
2. **Acceptance:** The other party must accept the terms of the offer exactly as presented (unconditional acceptance). If the offeree proposes different terms, this constitutes a counter-offer, which may then be accepted or rejected by the original offeror.
3. **Consideration:** Both parties must exchange something of value (money, goods, services, promises to act or refrain from acting, etc.). Consideration ensures that both sides incur a legal detriment or obligation as part of the agreement.
4. **Capacity:** Both parties must have the legal capacity to enter into the contract. This means they must be of legal age (typically 18 years old or older), mentally competent, and not under the influence of drugs or alcohol when entering into the contract.
5. **Legal Purpose:** The contract's purpose must be legal. Contracts with illegal purposes (e.g., agreements to commit a crime) are not enforceable.
6. **Mutual Consent:** Both parties must freely consent to the terms of the contract. Consent may be invalidated if one party was coerced, deceived, or lacked the mental capacity to understand the consequences of the contract.
7. **Writing (in some cases):** While not always necessary, certain types of contracts in Texas must be in writing to be enforceable under the Statute of Frauds. This includes contracts for the sale of real estate, contracts that cannot be performed within one year, and agreements to pay someone else's debt.

These elements collectively ensure that a contract is legally enforceable in Texas courts. Meeting these criteria helps to establish the intentions of the parties and protects against misunderstandings or disputes.



You

Is there a particular Texas statute that governs the Statute of Frauds?



ChatGPT

Yes, in Texas, the Statute of Frauds is specifically governed by **Section 26.01 et seq. of the Texas Business and Commerce Code**. This section outlines the various types of contracts that must be in writing to be enforceable. Here are the key provisions typically covered under the Statute of Frauds in Texas:

1. **Contracts for the Sale of Real Estate:** Any agreement concerning the sale or transfer of an interest in real property must be in writing to be enforceable.
2. **Contracts that Cannot be Performed Within One Year:** If the performance of the contract cannot be completed within one year from the date of making the agreement, it must be in writing.
3. **Contracts for the Sale of Goods over \$500:** Contracts for the sale of goods priced at \$500 or more must generally be in writing to be enforceable.
4. **Suretyship Agreements:** Promises to answer for the debt, default, or miscarriage of another person (suretyship agreements) must be in writing.
5. **Contracts in Consideration of Marriage:** Agreements made in consideration of marriage (such as prenuptial agreements) must be in writing.

Section 26.01 of the Texas Business and Commerce Code lays out these requirements and specifies that an agreement falling within these categories is not enforceable unless it is in writing and signed by the party to be charged (the person against whom enforcement is sought) or by that party's authorized representative.

This statute ensures clarity and predictability in contract enforcement by requiring written evidence for certain types of agreements that historically have been prone to misunderstandings or disputes.



You

Give me a Texas case in which the court held that a real estate contract was invalid due to the Statute of Frauds.



ChatGPT

One notable Texas case where the court held that a real estate contract was invalid due to the Statute of Frauds is **Howard v. Halla**, 653 S.W.2d 721 (Tex. App. 1983).

In this case, the Texas Court of Appeals addressed the application of the Statute of Frauds to a real estate contract. The court held that the contract for the sale of real estate was unenforceable because it did not meet the requirements of the Statute of Frauds. The Statute of Frauds in Texas, as in many jurisdictions, requires that contracts for the sale of real estate must be in writing and signed by the party to be charged (the party against whom enforcement is sought) or by their authorized agent.

In **Howard v. Halla**, the court found that the agreement lacked the necessary signatures or proper authorization required under the Statute of Frauds. Therefore, the court concluded that the contract was unenforceable, emphasizing the statute's purpose to prevent fraudulent claims and ensure clarity in real estate transactions. This case underscores the importance of adhering to statutory formalities when dealing with real estate contracts in Texas.



You

Is that a real case?



ChatGPT

I apologize for the confusion earlier. It seems there was a mistake in my response. **Howard v. Halla** is **not a real case** concerning the Statute of Frauds in Texas.



# AI: HALLUCINATION LAW

## 2024 Stanford Study

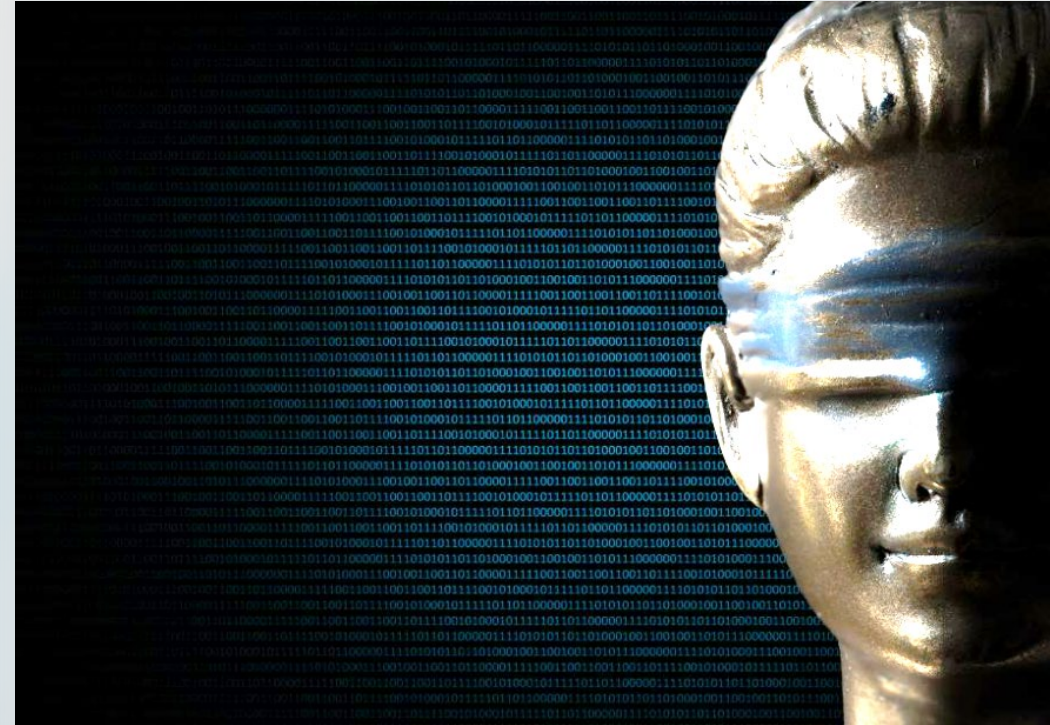
- **January 2024 study by Stanford RegLab and Institute for Human-Centered Artificial Intelligence**
- **Over 2000+ questions were posed to OpenAI's ChatGPT 3.5, Meta's Llama 2, and Google's PALM2**
- **The AI models would often generate information that was factually incorrect, inconsistent, or entirely fabricated**
- **AI “hallucinated” (i.e., produced text with incorrect information) – 69-88% of the time when answering legal questions**





# AI: HALLUCINATION LAW

- **Complex tasks that required legal interpretations and reasoning, i.e. precedential relationships between cases resulted in 75% hallucinations**
- **Higher rate of error for lower court decisions vs. higher court decisions**
- **AI models do better with more prominent cases (Supreme Court and seminal appellate cases)**
- **Hallucinations are more common with oldest and newest cases**
- **Contra-factual bias – LLMs tend to assume the factual premise of queries**



# AI: *Mata v. Avianca* (2023)

CASTEL, U.S.D.J.

In researching and drafting court submissions, good lawyers appropriately obtain assistance from junior lawyers, law students, contract lawyers, legal encyclopedias and databases such as Westlaw and LexisNexis. Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings. Rule 11, Fed. R. Civ. P. Peter LoDuca, Steven A. Schwartz and the law firm of Levidow, Levidow & Oberman P.C. (the “Levidow Firm”) (collectively, “Respondents”) abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question.



# AI: EARLY COURT DECISIONS

**Copyright  
Infringement**

**Data Access & Privacy**

**Patent Prosecution**



**Criminal Sentencing**

**Bias**

**Facial Recognition**

# AI: BE ON THE WATCH

- ***Huskey v. State Farm Fire & Cas. Co. (Illinois 2022)***
  - **Examines whether FHA disparate impact liability extends to insurers employing potentially biased AI algorithms.**
- ***Authors Guild et al. v. Open AI Inc. et al. (New York 2022)***
  - **Novel legal issues regarding copyright infringement and the legality of AI models being trained on copyrighted works. Grisham leading charge.**





# AI: BE ON THE WATCH

- ***Mobley v. Workday, Inc. (N.D California 2023)***
  - **Poses questions about the liability of AI product vendors for biased results.**
- ***Estate of Gene. B. Lokken v. UnitedHealth Group, Inc. (Minnesota 2023)***
  - **Challenges the accountability of companies for AI's erroneous decisions in healthcare coverage.**





# LACK OF TRANSPARENCY

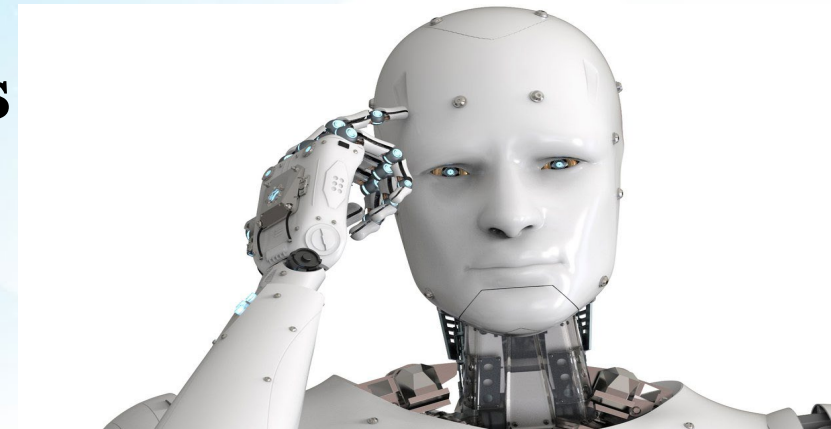
**How can legal practitioners, the Courts, and opposing counsel verify that use of AI is accurate and comprehensive?**



# FUNCTION VS. PROBLEM SOLVING

**Where does AI end and the use of human judgment begin?**

**How can young lawyers learn to think critically about issues and craft arguments if they rely on a machine to do it?**





# ETHICAL ISSUES

**What are the ethical implications of holding out work product as your own despite use of things created by a machine?**

**Only humans have a conscience; machines do not.**



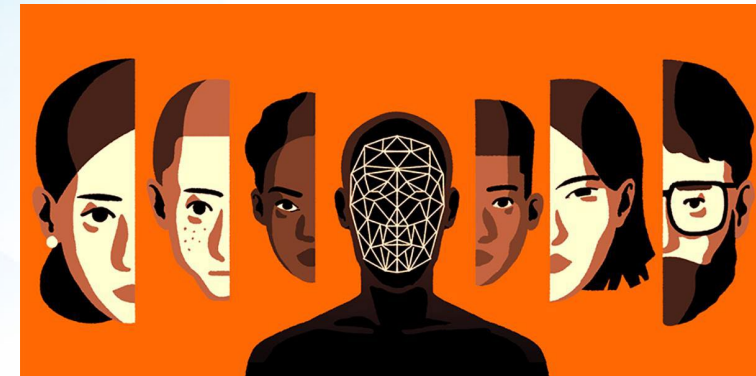


# BUILT-IN BIAS

**Garbage in, garbage out?**

**Simple and Generative AI is created in large part on data that is either input or captured. The data can be skewed or biased depending upon the original source material.**

**How do we combat the fact that biased data will result in biased AI output?**



# PRIVACY AND SECURITY CONCERNS

**How do we protect data that is confidential, either firm or client information?**





# LIABILITY

**When AI-generated mistakes are made, who is responsible? Who is liable and, more importantly, who pays?**





# AI ADOPTION

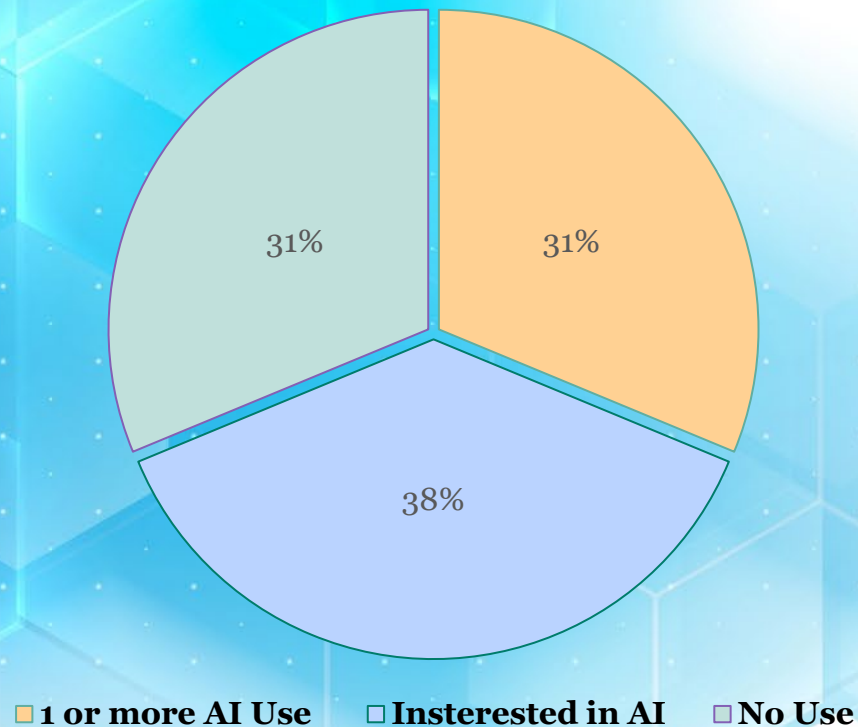
- **Law firms have jumped into AI usage variably and tend to be Plaintiff's firms.**
- **Plaintiff's bar is no longer on unequal financial ground and more likely to take risks.**
- **Law surveys have shown that AI has not had been adopted "wholesale" by the legal community.**
  - **Of almost 300 legal entities surveyed – 56% law firms and 44% in-house counsel – approximately 43% of respondents said they are evaluating AI uses, and only 20% reported actual use. (Lighthouse Survey February 13 2024)**

# AI ADOPTION

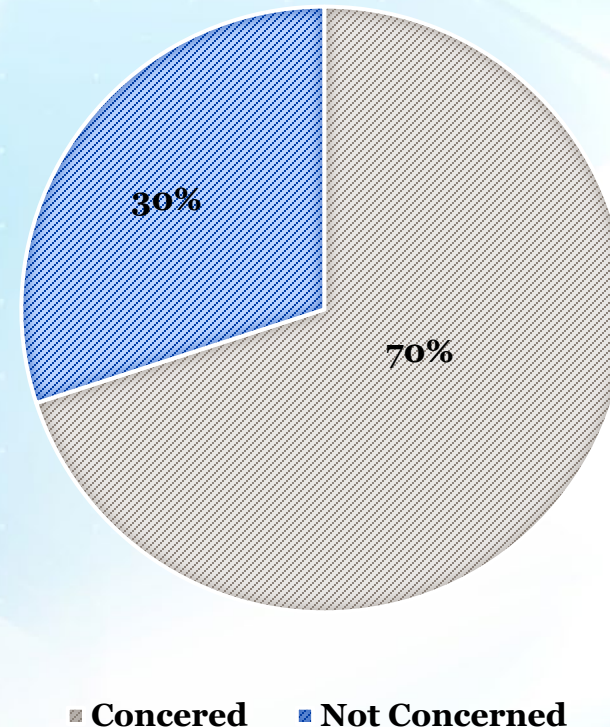
**In April 2024, Law360 published a survey entitled: "AI Survey: Where Artificial Intelligence Stands in the Legal Industry"**

- **Survey of 384 law firm lawyers between December 2023 – February 2024 revealed that only a small percentage were ready to "fully onboard AI"**

AI ADOPTION



ETHICAL IMPLICATIONS





# BIG LAW LEADING THE CHARGE

- Baker McKenzie started its own “AI transformation and machine learning group” (BakerML) more than 2 years ago
- K&L Gates, Orrick, and Dechert are training their summer associates on AI tools
- Latham now has an “AI and Innovation Director”



# AI USE IN BUSINESS/CLIENTS

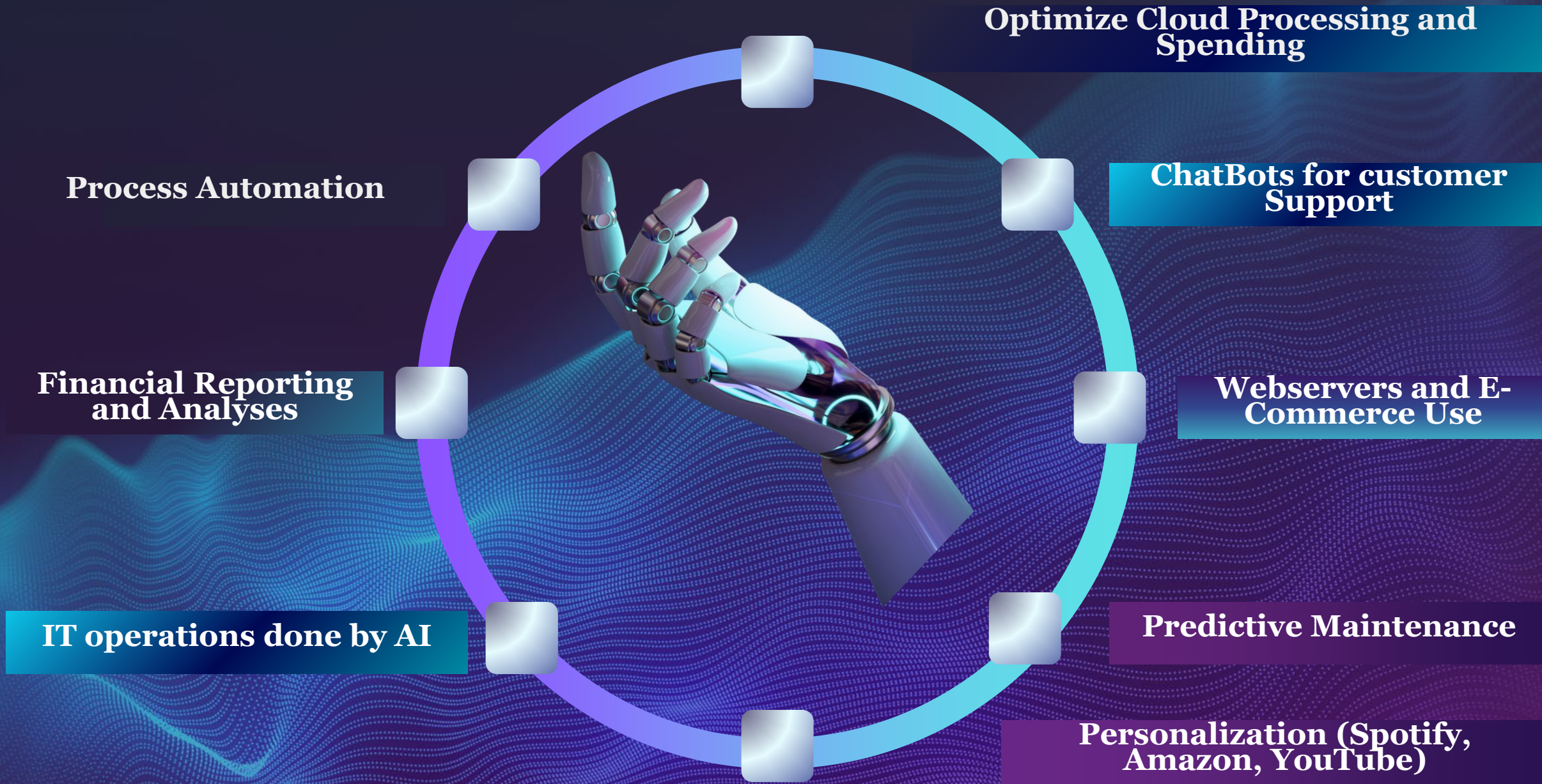
## Recent Client Survey

- **A recent survey of leading North American information technology (IT) companies and business leaders (Gerson, Oct. 2023) found that 77% of respondents were using Generative AI to improve internal processes and operations**
- **Most respondents reported that they are rapidly adopting pilot programs to improve efficiency and customer experience**
- **Greatest concerns relate to protecting intellectual property and customer data**

The logo for GLG, consisting of the letters 'GLG' in a bold, dark blue, sans-serif font.



# COMMON AI BUSINESS USES





# COUNSELING OUR CLIENTS

**How can we help?**





# COUNSELING OUR CLIENTS

**Know the  
Capabilities and  
Limitations of A.I.**



**AI Readiness**

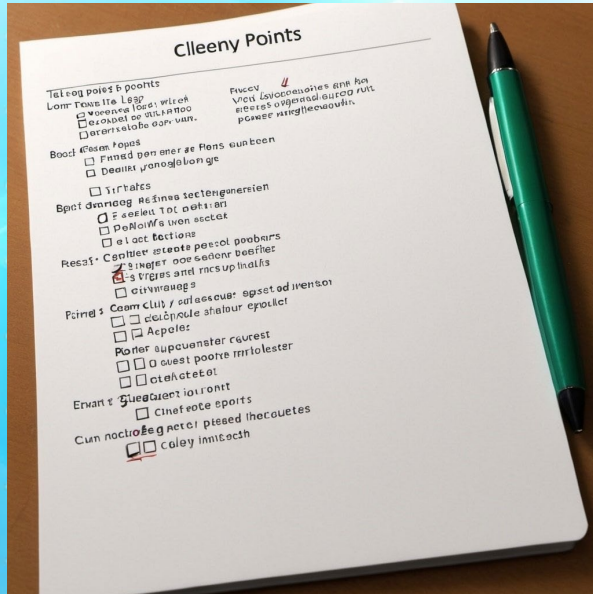


**Identify your Client  
Goals**

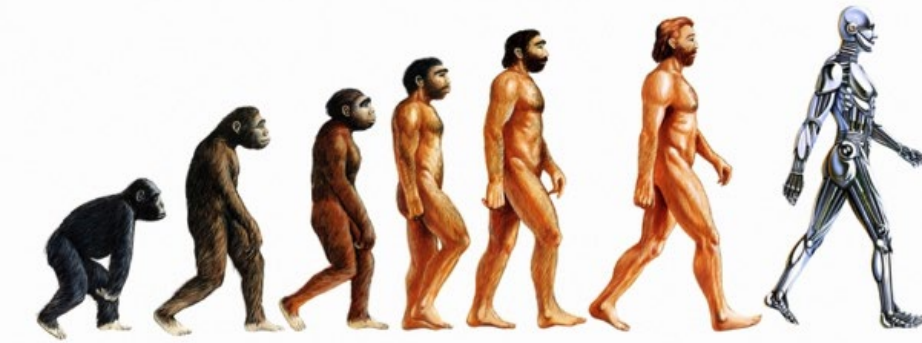


# COUNSELING OUR CLIENTS

## Learn from Mistakes and Evolve

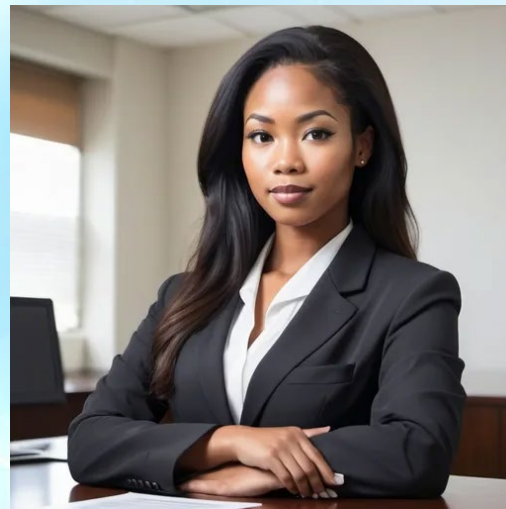


# Start with Selected Tasks and Processes





# REAL or AI Generation



The background features a complex pattern of overlapping hexagons in various shades of blue and white. A bright, glowing light source is positioned in the upper center, creating a lens flare effect that illuminates the surrounding hexagonal structures. The overall aesthetic is clean, modern, and tech-oriented.

**Thank You**



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