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RoboLaw

Artificial intelligence is rapidly disrupting every industry in America and every sector of society – and the courts are not exempt.

RoboLaw: Coming soon to your courtroom

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Artificial intelligence (AI) is rapidly disrupting every industry in America and every sector of society – and the legal system and the courts are not exempt. Indeed, there are already a number of court functions and elements of legal practice that are being transformed by AI, with much more to come over the next decade.

Even though AI has been around since the late 1950s, its recent emergence and prevalence is the result of some important leaps forward in how AI operates. Until recently, AI was rule-based, in that machines implemented instructions coded by a human programmer.

Today, most AI is data-based, in which the machine is not instructed what to do by any human, but rather learns itself how to solve problems or accomplish tasks by processing data and experience. This new approach known as machine learning is radically expanding the utility and capabilities of AI.

Machine-learning AI already permeates our daily lives. Examples of this include internet search engines, voice capabilities on our smart phones and home speakers, Google Maps, ride-sharing apps like Uber and Lyft, online shopping and music sites that predict our preferences, etc.

But machine-learning AI also has application to the courts.

Recently, U.S. Supreme Court Chief Justice John Roberts was asked "Can you foresee a day when smart machines, driven with artificial intelligences, will assist with courtroom fact-finding or, more controversially even, judicial decision-making?"

The Chief Justice replied: "It's a day that's here and it's putting a significant strain on how the judiciary goes about doing things."

There are three primary domains in which AI interacts with the judiciary and court system: AI in legal practice and court operations, AI as evidence and legal claims against AI applications.

AI in Legal Practice and Court Operations

Although still in its early days AI is already being implemented in legal practice and judicial operations.

Technology-assisted review (TAR) for electronic discovery was one of the first legal applications, and is now quite advanced and common. Courts are often asked to weigh in on the appropriateness and conduct of TAR in specific cases.

Other AI-enabled tools are also being used for legal research, either from stand-alone vendors, or established legal research databases like Westlaw and Lexis.

problem that the United States and other jurisdictions face.

An even more fundamental change is the use of AI to help make judicial decisions, not just advocate for and inform such decisions. A handful of judges have started using AI systems such as IBM's Watson to sift through the large records in many cases and recommend decisions on specific issues or even the entire case.

The cohort of judges using AI on the bench is expected to grow rapidly.

AI as Evidence

The second major category of AI application for the courts is the use

by governments for various functions. AI algorithms will increasingly be used as evidence in toxic tort causation inquiries, antitrust analyses, discrimination cases and many other types of cases.

Legal Claims Against AI Applications

The last category of AI interactions applicable to the courts is when legal claims are made against AI applications. These can be safety claims in tort or product liability, which we are already starting to see with autonomous vehicles and AI medical devices. There may also be legal claims of bias or discrimination against AI applications.

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These AI research programs were initially used by private law firms, but now are being marketed to and used by judicial staff as well.

Perhaps most provocatively, several vendors now market AI brief-writing systems that are targeted to specific judges, which integrate data on previous decisions, favorable and unfavorable arguments, and other available data about specific judges, to customize and target a brief to make it most appealing to an individual judge.

Online dispute resolution (ODR) systems are a subject of active investigation by both private companies and courts in the United States and elsewhere. These systems will employ AI to provide quick and inexpensive preliminary decisions, especially in simpler cases, without any initial involvement by human lawyers or judges. Such ODR systems could help address the major access to justice

of AI algorithms as evidence. The first major use has been algorithms to assist judges in sentencing, recidivism risk assessment and pre-trial detentions.

The use of such AI algorithms raise issues about whether they should be used, how and when they should be used, and who gets access to the underlying algorithm code and data, which often are proprietary.

The Wisconsin Supreme Court recently decided such issues in its Loomis *v.* Wisconsin decision holding that algorithms can be used in sentencing but cannot be the exclusive factor, and that criminal defendants are not entitled under due process to obtain access to the underlying algorithm and data.

Other state courts have held that it may be a due process violation not to disclose the underlying algorithm used

Other AI uses may raise privacy legal claims. Intellectual property will become a big issue for the courts – for example, how does copyright and patent law apply to inventions or creations in which AI was all or part of the design function?

In all of these types of cases, as in the other domains of AI and the courts described above, judges and court staff will soon start seeing more and more applications of AI in the process and substance of their work, and will need to become sophisticated consumers of this soon-to-be ubiquitous technology in order to promote and protect the justice function of our court systems. AOPC

(Gary Marchant is a past speaker at the Pennsylvania State Trial Judges Conference where he spoke about how AI is being used in the legal industry.)