

# AI, BIAS & COUNSEL: ETHICAL IMPLICATIONS OF ATTORNEY USES OF AI

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# PRESENTATION OVERVIEW

- ➡ I. Introduction
- ➡ II. Attorney Ethical Obligations
- ➡ III. Bias in Machine Learning Processes

# I. Introduction

- **Artificial Intelligence can help lawyers to better & more effectively represent clients.**
- **But, dangers of mis-representation, bias and discrimination**
- **Can violate ethical rules.**
- **Understanding the opportunities and limitations of AI is crucial for attorney competence**

## II. LEGAL AND ETHICAL REQUIREMENTS FOR EMPLOYING AI

THE RULES

## ABA MODEL RULE 8.4 (G)

- it is professional misconduct for a lawyer to ...  
“engage in conduct that the **lawyer knows or reasonably should know** is harassment or **discrimination on the basis of** race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status **in conduct related to the practice of law.**”

# COLORADO RULE OF PROFESSIONAL CONDUCT, 8.4(G)

It is professional misconduct for a lawyer to:

(g) engage in **conduct**, in the representation of a client, **that exhibits or is intended to appeal to or engender bias** against a person **on account of** that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is **directed to other counsel, court personnel, witnesses, parties, judges, judicial officers**, or any persons involved in the legal process;

# HOW AI IMPACTS THESE ETHICAL DUTIES

- **Duty of Competence/Costs**
- **Duty of Confidentiality**
- **Duty of Communication**
- **Duty of Compliance/Supervision**

# III. UNDERSTANDING BIAS IN MACHINE LEARNING

INPUTS & OUTPUTS  
PROGRAMMING  
& PROGRAMMERS



# SOURCES OF BIAS IN DATA USED FOR MACHINE LEARNING

(HARINI SURESH & JOHN GUTTAG 2020 [HTTPS://ARXIV.ORG/ABS/1901.10002](https://arxiv.org/abs/1901.10002) )

History

Representing

Measuring

# SOURCES OF BIAS IN MACHINE LEARNING DATA

- **Historical bias:** occurs when the world, as it is, is biased
- **Representation bias:** arises when some groups of the population face underrepresentation in the training dataset
- **Measurement bias:** occurs when there are problems with choosing or measuring the features of interest in the dataset

# APPLICATIONS IN THE LEGAL CONTEXT

## History

- Men are over-represented over time in judgeships and legal positions of power

## Representing

- People of color are less well represented in the legal profession at all stages, and white women beyond the entry level

## Measuring

- We measure what counts, and if we don't have data, it does not count

# MORE SOURCES OF BIAS IN MACHINE LEARNING

(HARINI SURESH & JOHN GUTTAG 2020 [HTTPS://ARXIV.ORG/ABS/1901.10002](https://arxiv.org/abs/1901.10002) )

Aggregating

Evaluating

Deploying

# MORE SOURCES OF BIAS IN MACHINE LEARNING DATA

- **Aggregation bias:** arises when the same standard model is applied to groups that have different conditional distributions
- **Evaluation bias:** occurs when evaluation and/or benchmark datasets do not represent the target population
- **Deployment bias:** occurs when a system is used or interpreted in inappropriate ways

# APPLICATIONS IN THE LEGAL CONTEXT

Aggregating

- Consider LSAT score or first time bar passage rates varying with race

Evaluating

- Evaluations of attorneys, judges, and even litigants' claims can be manipulated

Deploying

- Adding humans back in the loop, such as with sentencing decisions

# SO WHAT SHOULD LAWYERS DO?

- ✓ Invest more resources in lawyer-supervised machine learning
  - ✓ Help with initial training of AI
  - ✓ Be involved in post-training auditing
- ✓ Seek out diverse technology design teams
- ✓ Demand diverse data sets
- ✓ Call for a democratization of data
- ✓ Learn enough to understand the limits of AI

# VI. QUESTIONS AND COMMENTS?

“The sooner we realize that we are often already essentially working in organizations of mixed machine and human intelligence, the better we will be to think about the right uses for emerging AI technologies.”

(Former) California Supreme Court Justice Cuellar

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