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NOTES

RECONCILING CONSTITUTIONAL PERSPECTIVES ON TECHNOLOGY AND AI IN THE LEGAL FIELD: TIME TO TEACH AN OLD DOG NEW TRICKS?

Caroline Carrier

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INTRODUCTION

The legal profession has no shortage of cautionary tales, and a shockingly topical one hit national headlines in June of 2023.[1] In the wake of the generative artificial intelligence platform ChatGPT's November 2022 public release, more and more individuals have been flocking to the platform's intuitive, user-friendly layout and beginning to use the system to aid them in academic, personal, and professional endeavors.[2] The platform's release was groundbreaking due to its ability to use machine learning to craft intelligent, well-researched, and, above all, humanlike responses to inquiries.[3] Users can further mold the platform's responses by providing further guidance to hone the results until they are exactly what the user needs, all with significantly less time and effort expended than it would take to produce the answer by oneself.[4]

As law students around the country were being steadfastly warned about the extent to which they were allowed to use AI in an academic setting if at all, personal injury attorney Steven Schwartz was one step ahead of the game and relying heavily on ChatGPT to craft court filings on behalf of a new client suing an airline for negligence.[5] The resulting legal research was pockmarked with legal citations that were not only incorrect but entirely made up, providing quotes from nonexistent judges

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[1] Dan Mangan, *Judge sanctions lawyer for brief written by A.I. with fake citations*, CNBC (June 22, 2023), https://www.cnbc.com/2023/06/22/judge-sanctions-lawyers-whose-ai-written-filing-contained-fake-citations.html.

[2] Dan Milmo, *ChatGPT reaches 100 million users two months after launch*, THE GUARDIAN (Feb. 2, 2023), https://www.theguardian.com/technology/2023/feb/02/chatgpt-100-million-users-open-ai-fastest-growing-app.

[3] Luke Hurst, *ChatGPT: Why the Human-like AI Chatbot Suddenly has Everyone Talking*, EURONEWS (Dec. 14, 2022), https://www.euronews.com/next/2022/12/14/chatgpt-why-the-human-like-ai-chatbot-suddenly-got-everyone-talking.

[4] *See id.* ("Outside of basic conversations, people have been showcasing how it is doing their jobs or tasks for them – using it to help with writing articles and academic papers, writing entire job applications, and even helping to write code.").

[5] Mangan, *supra* note 1.

in nonexistent opinions ruling on nonexistent controversies.[6] Once discovered, Mr. Schwartz apologized profusely and received minor financial sanctions, which the judge noted he felt were particularly necessary due to Mr. Schwartz and his co-counsel's failure to come "clean" of their own volition once concerns were raised about the legitimacy of the filing.[7]

Although Mr. Schwartz's egregious abuse of AI for legal work can logically lead to the conclusion that the legal field's tried-and-true traditional tactics are very much cemented in place and not going to be soon supplemented by AI, that may be the wrong conclusion to draw. As AI continues to grow and find a place for itself in various and numerous places in the world's landscape, it becomes clearer by the day that AI is not going anywhere. To discuss AI's precarious present location on the cusp of legal work, it is first necessary to raise the question of whether if AI and technology belong in our legal field in the first place.

Part I will cover the constitutional controversy that arises when modern developments exceed the scope of the document itself through the dueling viewpoints of formalism and functionalism. Part II will discuss ways in which AI and other forms of radical technology have already begun to appear in the field while also exploring areas that are particularly ripe for AI invasion. Part III will review some of the many major potential implications of introducing AI into our system, including job security, financial uncertainty, and ethics considerations. Part IV will be about existing attitudes toward technology in the legal field by considering recent Supreme Court cases' sway toward functionalism and how the legal field has already begun to take a functionalist approach with the rise of technology that followed the COVID-19 pandemic. Part V will conclude.

I. EXISTING LANDSCAPE

A. Theories of Constitutional Interpretation

The Constitution is considered, in many ways, to be the foundation of the country today.[8] The United States' first legal system sprung directly from the document's text, and changes to that system over the years have been slow, methodical, and always attached in some

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[6] *Id.*
[7] *Id.*
[8] *The Genius of the Constitution,* HERITAGE FOUND., https://www.heritage.org/the-essential-constitution/the-genius-the-constitution (last visited Jan. 21, 2024).

way to the Constitution itself.[9] However, things continue to need to change to keep up with the rapid development of modern society, and these changes are often quick and sometimes unprecedented. Many of today's legal scholars, and often landmark Supreme Court opinions with major implications, grapple with the issue of handling twenty-first-century legal issues, especially technology, while continuing to honor the eighteenth-century document and the intentions and values underscoring it.[10] This becomes a particularly contentious issue when courts must approach modern problems that are entirely outside of the scope of what could have ever been within the Framers' (the authors of the Constitution) expectations for the United States. Dueling constitutional perspectives, primarily formalism and functionalism, find themselves head-to-head when such contemporary concepts must fit into, by force or otherwise, the long-yellowed paper of the Constitution.

The predominant formalist perspective on the Constitution centers around the theory that a constitution is to be interpreted and applied according to the meaning it was intended to have at the time it was written.[11] Championed in modern times by the late Supreme Court Justice Scalia, this textualist adherence is a formalist theory and becomes most hotly debated when trying to fit the puzzle pieces of today's legal climate into a text written during a very different era of history. One example of this is the controversial Supreme Court opinion that had to consider whether the Second Amendment's "right to bear arms" includes modern weapons that are far more destructive than what was available in the era of the Framers.[12] The other predominant perspective, functionalism, prefers a more adaptive approach to the Constitution, centering analysis not on whether today's system necessarily honors exactly what the Framers intended but whether it honors the function and purpose of constitutional ideals while still remaining flexible enough to cover hot topics.[13]

Already obviously at odds with each other, these two popular

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[9] *A Brief History of the American Legal System*, WHISTLEBLOWERS INT'L (Aug. 2, 2022), https://www.whistleblowersinternational.com/articles/uncategorized/uncategorized/a-brief-history-of-the-american-legal-system/.

[10] JEFFREY ROSEN & BENJAMIN WITTES, CONSTITUTION 3.0: FREEDOM AND TECHNOLOGICAL CHANGE 2 (2011).

[11] Caleb Nelson, *What is Textualism?*, 91 VA. L. REV., 347, 348–350 (2005) (describing textualism).

[12] *See* District of Columbia v. Heller, 554 U.S. 570 (2008).

[13] RALF MICHAELS, THE OXFORD HANDBOOK OF COMPARATIVE LAW 342–343 (Mathias Reimann & Reinhard Zimmerman eds., 2006).

camps of thought become significantly implicated when it comes to today's attitudes toward technology. At the time the Constitution was written, developments like electricity, automobiles, and indoor plumbing were not even on the drawing board yet – let alone the airplane, smartphone, or artificial intelligence.[14] Although it is impossible to conclude with any tangible certainty what the Framers would have said had they been able to anticipate these incredible tools, the fact remains that the presence of technology in the legal world is growing and growing quickly. AI specifically raises a number of constitutional concerns, seeing as the text of the Constitution returns time and time again to the importance of vesting power appropriately and ensuring that only qualified and specific mechanisms are available to take care of critical business like adjudicating issues, developing legislation, and carrying out domestic executive functions.[15] The delegation of power outside of the particular enumerated avenues in the document has posed a plethora of constitutional and administrative questions throughout the development of the system.[16] However, little has been promulgated thus far regarding the rising possibility of leaving legal responsibilities in the hands of intangible entities that do not even have hands themselves.

And, as evidenced by recent calls for a sort of ceasefire on the development of AI,[17] the presence of AI has been ballooning in every facet of American culture over the last decade, especially in the last couple of years with the explosion of ChatGPT and similar, user-friendly platforms.[18] As AI has begun to appear more frequently in our lives, dictating our social media habits, entertainment consumption, and even how we do our jobs,[19] unsurprisingly, its presence in the legal field is growing as well.

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[14] Mary Bellis, *Inventions and Inventors of the Eighteenth Century*, THOUGHTCO (Aug. 7, 2019), https://www.thoughtco.com/18th-century-timeline-1992474.
[15] Christopher H. Schroeder & Saikrishna B. Prakash, *The Vesting Clause: Common Interpretation*, THE NAT'L CONST. CTR., https://constitutioncenter.org/the-constitution/articles/article-ii/clauses/347 (last visited Jan. 20, 2024).
[16] *Id.*
[17] Samantha Murphy Kelly, *Elon Musk and Other Tech Leaders Call for Pause in 'Out of Control' AI Race*, CNN BUS. (Mar. 29, 2023), https://www.cnn.com/2023/03/29/tech/ai-letter-elon-musk-tech-leaders/index.html.
[18] Milmo, *supra* note 2.
[19] Bernard Marr, *The 10 Best Examples Of How AI Is Already Used In Our Everyday Life*, FORBES (Dec. 16, 2019), https://www.forbes.com/sites/bernardmarr/2019/12/16/the-10-best-examples-of-how-ai-is-already-used-in-our-everyday-life/?sh=b2b4b7c1171f.

B. Judicial Power and Necessary Change

Article III of the Constitution discusses the country's judicial power, stating clearly that it "shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."[20] The Supreme Court has subsequently defined judicial power as "the right to determine actual controversies arising between diverse litigants, duly instituted in courts of proper jurisdiction."[21] General judicial power also involves making rules in the absence of statutory authorizations, ordering processes, punishing for contempt of authority, and the many facets of adjudication.[22] It is noteworthy that the Framers of the Constitution were sure to vest Congress with the power to continue expanding and developing the judicial branch as necessary.[23] This began with the development of courts themselves, beginning all the way back with the Judiciary Act of 1789,[24] manifesting hugely with the Evarts Act and creation of the modern courts of appeals in 1891,[25] and continuing with nearly 30 subsequent seat expansions to navigate the growth of the federal system.[26] As recently as May of this year, the proposed Judiciary Act of 2023 continues to argue for an expanded system, supporting the addition of four seats to the Supreme Court's bench to reflect the thirteen federal circuit courts.[27] The doling of this power to Congress, and Congress's lack of hesitancy to use it when necessary, implies that the Framers recognized that the system need not be safeguarded from material changes. It reflects the idea that the Constitution and those in charge of enforcing the system in accordance with it are willing to enact substantial alterations as such alterations become beneficial or

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[20] U.S. CONST. art. III, § I.
[21] Muskrat v. United States, 219 U.S. 346, 361 (1911).
[22] Cong. Rsch. Serv., *Overview of Judicial Vesting Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artIII-S1-1/ALDE_00013512/ (last visited Jan. 17, 2024).
[23] *The Judicial Branch*, THE WHITE HOUSE, https://www.whitehouse.gov/about-the-white-house/our-government/the-judicial-branch (last accessed Dec. 12, 2023).
[24] *About the Supreme Court*, U. S. CT., https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/about (last accessed Jan 20, 2024).
[25] *The Evarts Act: Creating the Modern Appellate Courts*, U. S. CT., https://www.uscourts.gov/educational-resources/educational-activities/evarts-act-creating-modern-appellate-courts (last accessed Jan. 21, 2024).
[26] Mark Joseph Stern, *Congress Might Actually Expand the Courts*, SLATE (Feb. 24, 2021), https://slate.com/news-and-politics/2021/02/congress-expand-courts.html.
[27] Paige Moskowitz, *Democrats Reintroduce Bill to Expand U.S. Supreme Court*, DEMOCRACY DOCKET (May 16, 2023), https://www.democracydocket.com/news-alerts/democrats-introduce-bill-to-expand-u-s-supreme-court/.

inevitable.

II. TECHNOLOGY IN THE FIELD

A. As We Know It

The existence or size of benches is not the only thing that has changed in the courtrooms over the years. As technology became less of a novelty and more of a household commonality, it began to appear not only in citizens' personal lives but in their legal dealings as well. A photograph was used as evidence in a case for the first time in the United States in 1860,[28] and by that point, the practice of photographic evidence was already gaining traction internationally.[29] In 1952, prosecuting authorities in a California federal case first used a computer to analyze data.[30] Today, it is impossible to imagine a technology-free courtroom. People have somewhat lovingly referred to our increasing reliance on technology as a new Industrial Revolution.[31]

Even the strictest formalists have not put up much of a fight regarding the implementation of technology in the courts. After all, with the shocking expansion of caseload over the years, especially federally, it would be impossible for the judicial system to stay on top of its necessary and constitutionally supported functions without it.[32] A popular argument that formalists take against the legal field's increasing reliance on technology is that it reflects too much flexibility in the courtroom since they believe that a "court must adhere to the plain text of the statute unless some narrow exception applies."[33] Formal textualists' uncompromising mindsets do not easily reconcile with the legal field's growing reliance on technology, but for the most part, there is little record of substantial toe-dragging.

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[28] *See* Luco v. United States, 64 U.S. 515, 530 (1859).
[29] Suzanne Fisher, *How Photography Entered the Courtroom*, ATLANTIC (Nov. 7, 2011), https://www.theatlantic.com/technology/archive/2011/11/how-photography-entered-the-courtroom/248007/.
[30] Allen Harris, *Judicial Decision Making and Computers*, 12 VILL. L. REV. 272, 272 (1967).
[31] Devon McGinnis, *What is the Fourth Industrial Revolution?*, SALESFORCE (July 5, 2023), https://www.salesforce.com/blog/what-is-the-fourth-industrial-revolution-4ir/.
[32] *What is the Importance Of Legal Technology in the Legal Profession?*, LINKEDIN PULSE (Sept. 9, 2021), https://www.linkedin.com/pulse/what-importance-legal-technology-profession-legodesk/.
[33] Matt Elgin, *COMMENT: Technology & Textualism: A Case Study on the Challenges a Rapidly Evolving World Poses to the Ascendant Theory*, 52 GOLDEN GATE U. L. REV. 97, 123 (2022), https://digitalcommons.law.ggu.edu/ggulrev/vol52/iss2/2/.

B. The Rise of AI

We are on the brink, however, of a new and possibly scarier Industrial Revolution: AI. 2023 is considered generative AI's "breakout year", and less than a year after many AI tools like ChatGPT debuted, over 33 percent of survey respondents say their workplaces are using AI regularly to execute business functions.[34] Funding in the AI-oriented industry, particularly within startup companies, more than doubled from 2022 to 2023, before 2023 was even fully over, likely in the wake of AI products becoming more easily accessible and user-friendly.[35] Further, the market, already worth nearly $100 billion, is "expected to grow twentyfold by 2030, up to nearly two trillion U.S. dollars."[36] That's more than the United States is currently spending on the public education and the gasoline industries – combined.[37] AI is expected to replace 85 million jobs worldwide by 2025 while simultaneously creating jobs (experts project up to 97 million) by expanding industries.[38] Simply put, it's not going anywhere.

The legal bubble is hardly immune to these developments. Research done by experts at New York University, Princeton University, and the University of Pennsylvania found that the legal system is one of the most susceptible to occupational change from the rise in AI.[39] The paralegal position is considered to be one of the most threatened individual positions due to AI's ability to quickly and efficiently conduct research, process data, and complete administrative tasks.[40] Some of this

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[34] *The State of AI in 2023: Generative AI's breakout year*, MCKINSEY & COMPANY (Aug. 1, 2023), https://www.mckinsey.com/capabilities/quantumblack/our-insights/the-state-of-ai-in-2023-generative-ais-breakout-year.
[35] Joanna Glasner, *AI's Share of US Startup Funding Doubled in 2023*, CRUNCHBASE NEWS (Aug. 29, 2023), https://news.crunchbase.com/ai-robotics/us-startup-funding-doubled-openai-anthropic-2023/.
[36] D. Connie Garzon, *What is Artificial Intelligence (AI) and Why People Should Learn About It*, U. CENT. FLA. BUS. INCUBATION PROGRAM, https://incubator.ucf.edu/what-is-artificial-intelligence-ai-and-why-people-should-learn-about-it/ (last visited Dec. 10, 2023).
[37] *Biggest Industries by Revenue in the US in 2024*, IBISWORLD, https://www.ibisworld.com/united-states/industry-trends/biggest-industries-by-revenue/ (last visited Jan. 3, 2024).
[38] Rebecca Stropoli, *A.I. is Going to Disrupt the Labor Market. It Doesn't Have to Destroy It.*, CHI. BOOTH REV. (Nov. 14, 2023), https://www.chicagobooth.edu/review/ai-is-going-disrupt-labor-market-it-doesnt-have-destroy-it.
[39] Steve Lohr, *A.I. Is Coming for Lawyers, Again*, N.Y. TIMES (Apr. 10, 2023), https://www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html.
[40] *Id.*

major change is already happening. Although it is only beginning to infiltrate domestic justice, attorneys and courtrooms internationally are already beginning to embrace AI. In China, simple financial claims are already being decided via algorithms.[41] English courts began using predictive coding, a machine learning tool that identifies relevant documents in discovery-like procedures, to aid litigation as early as 2016.[42] The Court of Kings' Bench in Canada found it necessary to issue procedural rules in June of 2023 requiring litigants to identify whether and how AI has been used in court submissions.[43] Lawyers worldwide are increasingly relying on AI, sometimes with the help of their firms, for low-level document drafting, e-discovery, and due diligence tasks.[44] Even as a law student, I have been required to adhere to exam rules and class procedures that strictly prohibit the use of AI.

Algorithms are not just being used at firms, either. Domestic courtrooms are already relying on a few different types of algorithms to handle different facets of criminal justice, one of the most prolific being the Correctional Offender Management Profiling for Alternative Sanctions, known as COMPAS.[45] This proves that our system is not as afraid of incorporating AI elements into our processes as one might believe. COMPAS began to appear in criminal justice cases as early as 2013, making it one of the earliest domestic appearances of anything AI-affiliated in the courtroom.[46] A privately-designed system, COMPAS inputs data about criminal defendants into a lengthy and nuanced 137-item questionnaire to return a score that generates a quantification of the individual's potential to fail to appear for trial, their risk of becoming a repeat offender upon release, and their likelihood to commit violence following release.[47] The algorithm considers data like current, pending,

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[41] Giula Gentile, *Trial by Artificial Intelligence? How Technology is Shaping our Legal System*, THE LONDON SCH. ECON. & POL. SCI. BLOGS (Sep. 8, 2023), https://blogs.lse.ac.uk/politicsandpolicy/trial-by-artificial-intelligence-how-technology-is-reshaping-our-legal-system/.

[42] Andrew Judkins, *Use of AI in Litigation: A Quick Look at Today and the Future*, NORTON ROSE FULBRIGHT (Oct. 5, 2023), https://www.nortonrosefulbright.com/en/inside-disputes/blog/use-of-ai-in-litigation-a-quick-look-at-today-and-the-future.

[43] *Id.*

[44] John Villasenor, *How AI will Revolutionize the Practice of Law*, BROOKINGS (Mar. 20, 2023), https://www.brookings.edu/articles/how-ai-will-revolutionize-the-practice-of-law/.

[45] Ed Yong, *A Popular Algorithm Is No Better at Predicting Crimes Than Random People*, ATLANTIC. (Jan. 17, 2018), https://www.theatlantic.com/technology/archive/2018/01/equivant-compas-algorithm/550646/.

[46] *Id.*

[47] *Id.*

and prior charges, employment status, community ties, drug involvement, history of juvenile delinquency, and vocational or educational problems, amongst other factors, to return its findings.[48] COMPAS has been used or adapted for use as a judicial tool in multiple states and jurisdictions. Similar algorithms are growing in popularity as well and may have a substantial impact on courtroom outcomes.[49] Courts have used the algorithm to adjust sentencing and sanctions, particularly in the famous instance of Eric Loomis, in which a court overturned a prior plea deal for one year in county jail in favor of a six-year sentence due to COMPAS's prediction that Mr. Loomis was likely to reoffend.[50]

COMPAS and equivalent algorithms are still at use in our courtrooms, but not without due caution. In Loomis's case, the Wisconsin Supreme Court ultimately ruled against Loomis, but filled their opinion with skepticism as to the usage and potential power of algorithms in legal decision making.[51] A landmark ProPublica study in 2016 substantiated a claim that COMPAS is biased against African Americans, returning unwarranted higher recidivism predictions for Black defendants than defendants of other races.[52] Even COMPAS's alleged accuracy rate of 65 percent faltered when a study that asked laypeople to predict a defendant's likelihood for recidivism based on limited information led to the group of 400 returning a 67 percent accuracy rate, surpassing COMPAS's accuracy rate.[53]

The high potential for abuse when any sort of decision making is left up to algorithms caught the attention of Congress in 2021, when the Justice in Forensic Algorithms Act was introduced.[54] The Act highlighted that COMPAS and multiple other algorithms were garnering more use in the criminal justice sphere, and relied on the belief that legislation should

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[48] Eugenie Jackson & Christina Mendoza, *Setting the Record Straight: What the COMPAS Core Risk and Need Assessment Is and Is Not*, 2.1 HARVARD DATA SCI. REV. (2020).

[49] Julia Angwin et al., *Machine Bias*, PROPUBLICA (May 23, 2016), https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing ("Scores like this – known as risk assessments – are increasingly common in courtrooms across the nation… In Arizona, Colorado, Delaware, Kentucky, Louisiana, Oklahoma, Virginia, Washington, and Wisconsin, the results of such assessments are given to judges during criminal sentencing.").

[50] *Id.*

[51] Yong, *supra* note 45.

[52] Angwin et al., *supra* note 49.

[53] Julia Dressel & Hany Farid, *The Accuracy, Fairness, and Limits of Predicting Recidivism*, 4 SCI. ADVANCES1, 1 (2018).

[54] Jule Pattison-Gordon, *Courtroom Algorithms Must Have Transparent Decision-Making*, GOVERNING (May 22, 2022), https://www.governing.com/now/courtroom-algorithms-must-have-transparent-decision-making.

be passed to ensure that software isn't being relied on purely because it's facially smart. [55] If passed, the Act would have prevented hiding any algorithmically-influenced evidence behind trade secrets protection and would have limited use of algorithms to highly-tested formulas, determined by predetermined standards in terms of accuracy and fairness, including potential impact on different demographics.[56] The Act died in Congress, but the progression of this piece of legislation, although ultimately fruitless, indicated shifting attitudes regarding AI in the courts.[57] Previously unbridled support has slowly begun to give way to skepticism and fear.

COMPAS highlights exactly what some citizens are so afraid of when it comes to AI: that technologically "smart" isn't as "smart" as we might hope, and that giving tech too much power is dangerous. Within the States, a June 2023 survey promulgated in the dust of Mr. Steven Schwartz's runaway brief found that a vast majority of lawyers believe that AI is capable of doing legal work.[58] The more contentious figure is the 51 percent of this population that think AI actually SHOULD be allowed, leaving the existing body of legal professionals extremely divided as to how the field should accommodate this new technology.[59]

C. Future Susceptibilities to AI

In the context of the legal world, efficiency is of utmost importance and is thus a growing concern.[60] Considering just how many cases are filed and how many parties seek justice through the courts every year,[61] it is highly critical for the system to be poised to grant judgements quickly and methodically. And if there's one thing AI is designed to do, that one thing is act quickly and methodically. As the world begins to embrace AI, its penchant for efficiency in labor has already begun to manifest, with

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[55] *See* Justice in Forensic Algorithms Act of 2021, H.R. 2438, 117th Cong. (2021).
[56] *Id.*
[57] Jian Micah De Jesus, *Who Framed Roger Rabbit? Probably the Secret Codes*, 76 SMU L. REV. F. 1, 22 (2023).
[58] Zach Warren, *Generative AI in Legal Work - What's Fact and What's Fiction?*, THOMSON REUTERS BLOG (Oct. 25, 2023), https://legal.thomsonreuters.com/blog/generative-ai-in-legal-work-whats-fact-and-whats-fiction/.
[59] *Id.*
[60] *See Understand the Importance of Law Firm Efficiency*, THOMSON REUTERS, https://legal.thomsonreuters.com/en/insights/articles/the-importance-of-law-firm-efficiency (last visited Jan. 22, 2024).
[61] *See* Jack Browning, *Top Court Filing Statistics from Around the Country*, ONE LEGAL (Oct. 16, 2023), https://www.onelegal.com/blog/top-court-filing-statistics-united-states/.

one study finding that reasonable incorporation of AI increases skilled worker productivity by as much as 40 percent.[62] It cannot be denied that this purpose, at least thus far, is being served by the slow introduction of AI into the legal profession and likely will continue to be further served. Nearly every current and in-the-works idea for fitting AI into law is efficiency-centered.

1. Discovery

Discovery, considered one of the most time-consuming litigatory tasks, can be significantly sped up due to AI's ability to peruse a vast amount of documents and isolate the most relevant, produce initial drafts, anticipate arguments, and potentially even cite relevant case law.[63] AI can also expedite document drafting and analysis, which historically consumes substantial time for attorneys.[64] Although human input is almost certainly still going to be needed time to make the final draft court-ready, the process is expected to have the potential to be considerably faster with AI in the toolbox.[65]

A specific problem facing discovery and e-discovery is that domestic traditional processes of keyword filtering and document review host a wide margin for error.[66] It is common for a large amount of the data preserved, collected, and analyzed for e-discovery, especially when a substantial body of documents must be sorted through, to be entirely irrelevant to the case's claims and defenses.[67] Keyword filtering, as currently practiced, is imprecise and clunky, leading to laborious production of unneeded documents and failure to procure the documents needed to successfully complete discovery.[68] AI's machine learning techniques are able to approach this task with technicality and fervor, since algorithms have been developed to sort documents in order by potential relevance with an approach based more on merits than

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[62] Fabrizio Dell'Acqua et. al., *Navigating the Jagged Technological Frontier: Field Experimental Evidence of the Effects of AI on Knowledge Worker Productivity and Quality* (Harvard Bus. Sch. Tech. & Operations Mgt. Unit, Working Paper No. 24-013, 2023), https://ssrn.com/abstract=4573321.
[63] John Villasenor, *How AI will revolutionize the practice of law*, BROOKINGS (Mar. 20, 2023), https://www.brookings.edu/articles/how-ai-will-revolutionize-the-practice-of-law.
[64] *Id.*
[65] *Id.*
[66] SERVIENT, *Artificial Intelligence in eDiscovery: Moving Beyond TAR and CAL*, SERVIENT WHITE PAPERS (2023), https://www.servient.com/ai-in-ediscovery.
[67] *Id.*
[68] *Id.*

verbiage.[69] This could save many hours of document review and allow attorneys to begin substantive work in a faster, more efficient fashion with a narrower chance of significant error.[70]

In terms of just how on-the-horizon such a development is, companies are already dedicating themselves to honing and harnessing the power of AI to then introduce it to law firms to aid in the specific task of discovery. Multiple companies centered around this specific endeavor have already hit the market, attempting to serve as liaisons between this modern technology and law firms and bridge the gap between them.[71] Since, save for Mr. Schwartz's mild financial sanctions, very little has come to fruition in terms of punishing the use of AI to handle legal tasks, it is unsurprising that entrepreneurs are attempting to strike while the iron is hot and get in early on what is poised to become a pillar of future legal development.

2. Stenography

One element that is critical to the functionality of the court system yet often forgotten about is stenography. Judicial review relies on the maintenance of an accurate record of prior proceedings and events like depositions in order to ensure consistency and fairness through the courts and across varying types of litigation.[72] To fulfill this, the judiciary relies on stenographers and/or court reporters to transcribe and memorialize legal proceedings for the sake of the fair carriage of justice.[73] It is difficult to imagine the progression of cases without reliable and traditional records. However, even before COVID-19 changed perspectives on some judicial formalities, the population of stenographers was rapidly declining, leaving many courts scrambling to fill the gaps.[74] A study conducted in 2014 by the National Court Reporters Association concluded that for every 1,120 stenographers that leave the field, only 200 new ones enter.[75] Coupled with the declining enrollment in court reporting academic programs, which consistently don't graduate the majority of their attendees, it is becoming harder and harder to meet demands by courts, attorneys, and the public interest to maintain proper

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[69] *Id.* at 4.
[70] *Id.*
[71] *See, e.g.*, Casepoint LLC, CS Disco, Hyperscience, *et cetera*.
[72] *Why Stenography Is Necessary in Law*, COURT SCRIBES, https://courtscribes.com/why-stenography-is-necessary-in-law/ (last visited Dec. 17, 2023).
[73] *Id.*
[74] Stephen J. Henning & Keith E. Smith, *Court Reporter Shortage Sparks Creative Measures and Widens Door for Blunders*, WOOD SMITH HENNING NEWSROOM (Oct. 21, 2022), https://www.wshblaw.com/publication-court-reporter-shortage-sparks-creative-measures.
[75] *Id.*

court reporting.[76]

Interim creative solutions, like voice writing and statutorily regulated digital recording in certain cases, have raised questions of accuracy and efficacy.[77] Seeing that the legal transcription service is estimated to be worth over $3 billion by 2029, this growing private sector could benefit from a modern solution.[78] AI could solve the problem with ease. Transcription services powered by AI are able to use speech-to-text technology, listen to spoken words, and translate them with accuracy and speed into text instantaneously.[79] The same services, already proven useful in contexts like classrooms, could apply with the same efficacy to other types of audio and video evidence.[80] AI could be used to speedily and efficiently perpetuate a robust set of consistent and searchable records, regardless of how the original material was formatted.

III. IMPLICATIONS OF AI IN THE SYSTEM

Although multiple areas of the legal system could benefit from AI in the efficiency context, increased output is not the only outcome that may result. It is critically important to be aware of some of the other impacts that technology may have on the field in addition to the perceived benefit of improving overall productivity. We turn now to discuss some of the other potential ways that AI could alter the landscape of the existing legal field as it grows in prevalence.

A. Financial Implications

Every year the legal profession changes and adapts substantially, but one pillar of the system that generally remains consistent is billing practices.[81] Billing methods are essential elements of law firms, and ordinarily follow the general formula of clients being charged attorney-specific rates based on the hours their attorneys put into their cases.[82] AI

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[76] *Id.*
[77] *Id.*
[78] Beth Worthy, *Decoding the Future of Legal Transcription: AI Versus Human*, FORBES (July 21, 2023), https://www.forbes.com/sites/forbesbusinesscouncil/2023/07/21/decoding-the-future-of-legal-transcription-ai-versus-human/?sh=2bdbbf621be1.
[79] Danielle Chazen, *How Does AI Fit into the Transcription Process?*, VERBIT, https://verbit.ai/how-does-artificial-intelligence-fit-into-the-transcription-process/ (last visited Jan. 23, 2024).
[80] *Id.*
[81] *How Generative AI Is Disrupting Law Firm Billing Practices*, LEXISNEXIS INSIGHTS (Aug. 23, 2023), https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/how-generative-ai-is-disrupting-law-firm-billing-practices.
[82] *Id.*

obviously throws a significant wrench in this tried-and-true system, especially generative AI since it can produce tangible work product. AI systems accomplishing legal work cannot be traditionally "billed" like attorneys can be, but presently, law firm clients have indicated a willingness to pay law firms for services supplemented by AI.[83] The job of the firm, then, to integrate AI seamlessly and ensure the satisfaction of both attorneys and clients, is to navigate an appropriate payment system that moves away from the billable hour.[84]

Alternative financial systems outside of traditional billing predate AI as a means to accomplish legal work, and could easily be utilized to bridge the existing gap.[85] Some law firms, especially those that prioritize standard transactional work, utilize a flat rate system in which clients are responsible for a predetermined, fixed amount for specific legal services, with no adjustments based on the actual hours put into the final product.[86] This obviously would work well with law firms keen on using AI to handle some of their work, since a mutually-agreed flat rate could allow firms to maximize the capabilities of AI within their practice as long as they still are working towards whatever it is they have agreed to.

Another way to accommodate AI without getting tangled in billing is contingency billing, where law firms are compensated only upon winning a case.[87] Since the payout isn't dependent on time spent, AI can be utilized as a firm feels reasonable, potentially saving attorneys from spending significant time–and thus significant client money if a billing system were being used–on work that AI could be responsible for.[88] Already this option has begun to incentivize firms, particularly plaintiffs' firms, to begin to incorporate generative AI in their work to achieve maximum efficiency and still profit.[89] Some law firms are also partial to a cap fee, or an upper limit to the amount of money a client will ultimately be responsible for at the conclusion of the proceedings.[90] Cap fees are

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[83] Roy Strom, *Associates Can Say 'Domo Arigato' for AI That Isn't Job Killer*, BLOOMBERG NEWS (Dec. 14, 2023), https://news.bloomberglaw.com/business-and-practice/will-ai-steal-associate-jobs-or-have-them-saying-domo-arigato.
[84] *Id.* ("Firms need to start working out new ways to be compensated for the value they provide…If firms want to ensure their lawyers are happy with AI, they need to start work now on that new compensation model.")
[85] LEXISNEXIS INSIGHTS, *supra* note 81.
[86] *Id.*
[87] *Id.*
[88] Christine Schiffner, *Plaintiffs Firms Can't Ignore Efficiency Prospects of Generative AI*, NAT'L L.J. (July 6, 2023), https://www.law.com/nationallawjournal/2023/07/06/plaintiffs-firms-cant-ignore-efficiency-prospects-of-generative-ai/.
[89] *Id.*
[90] LEXISNEXIS INSIGHTS, *supra* note 81.

particularly popular when cases are large and multifaceted to prevent clients from financial obligations in excess of what is reasonable.[91] In the context of AI, this method could be used to ensure law firms are still duly compensated for their work while navigating the fact that they can't use traditional billing methods for any AI work.

Since the radical legal uses of AI don't fit seamlessly into existing billing structures, these alternative mechanisms are, at present, sufficient ways to allow law firms to incorporate AI into their practice without sacrificing reasonable payment. California and Florida have already promulgated guidelines surrounding this issue, directing that "attorneys should not charge clients an hourly rate for any time saved by the use of AI."[92] Florida's guidelines specifically recommend contingent-fee or flat-billing services to financially accommodate the increased efficiency of AI.[93] These alternative payment methods may become more necessary as AI continues to progress in legal work, seeing as clients have already expressed a reluctance to pay exorbitant fees for legal work that is not considered high-value.[94] Clients want firms to leave the more tedious work like legal research up to the machines, thus leaving more attorney manpower for tasks that require more finesse, like strategizing, document preparation, and tasks that require significant face-to-face interaction, like depositions and client relations.[95] The time firms will save by not needing to wade through lower-level tasks themselves means that firms will trend towards working fewer billable hours per client.[96] Work overall then trends toward being faster and more valuable.[97]

Concerns with the financial implications of AI include "double billing," or the issue of whether firms could bill in multitudes for work achieved simultaneously by an attorney and an AI system.[98] There is also already some existing controversy about how research should be billed in the first place, since some firms don't charge clients for research at all and others differ on how much and what types of research are to be

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[91] *Id.*
[92] Karen Sloan, *Lawyers' Use of AI Spurs Ethics Rule Changes*, REUTERS (Jan. 22, 2024), https://www.reuters.com/legal/transactional/lawyers-use-ai-spurs-ethics-rule-changes-2024-01-22/.
[93] *Id.*
[94] Jessie Yount, *How Will AI Disrupt Legal Billing? Early Innovations Offer Some Clues*, AM. LAW. MEDIA (Nov. 13, 2023), https://www.law.com/americanlawyer/2023/11/13/how-will-ai-disrupt-legal-billing-early-innovations-offer-some-clues/.
[95] LEXISNEXIS INSIGHTS, *supra* note 81.
[96] *Id.*
[97] *Id.*
[98] *Id.*

billed.[99] If AI becomes the mechanism handling research, new questions will rise about how–or even if–that research should be compensated.

B. Job Security Implications

The most widespread fear regarding the introduction of AI into any career field is that the technology will become advanced enough to replace people and essentially steal their jobs, with one in four Americans already actively afraid of this outcome.[100] Professionals in the legal field have already begun to raise concerns that, since AI is capable of a lot of work usually left up to paralegals and junior associates, the entire profession may be susceptible to AI that threatens existing careers.[101] The situation is particularly exacerbated since so much of legal work is already concerned with efficiency and getting things done quickly, especially as research is coming out like a recent Goldman Sachs report finding that 44% of legal industry tasks could be automated by AI.[102] AI's capability to be particularly efficient and get things done quickly makes its recent big splash into legal work a perfect storm. If AI and lawyers' handling of it becomes sophisticated enough in handling low-level work, although the current status of matters is still a long way away from this outcome, it is not an entirely unreasonable prospect that AI could overtake paralegals and junior associates, leading to well-oiled machines of firms able to process work at potentially unprecedented speeds.[103]

Although inflammatory headlines may lead to fears about AI-oriented law firms ousting educated professionals, such an issue has not quite come to fruition yet and the profession is actually poised to

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[99] Rachel M. Zahorsky, *Firms Wave Goodbye to Billing for Research Costs*, AM. BAR ASS'N J. (Nov. 14, 2012), https://www.abajournal.com/lawscribbler/article/firms_wave_goodbye_to_billing_for_research_costs.

[100] Kirstie McDermott, *1 in 4 American Workers Fear AI Will Take their Jobs*, VENTUREBEAT (Dec. 5, 2023), https://venturebeat.com/programming-development/1-in-4-american-workers-fear-ai-will-take-their-jobs/.

[101] Pat Murphy, *Silicon Valley Study Pegs Lawyers as 'Most Worried' About AI*, MINN. LAW. (Jan. 24, 2024), https://minnlawyer.com/2024/01/24/silicon-valley-study-pegs-lawyers-as-most-worried-about-ai/.

[102] Joseph Briggs & Devesh Kodnani, *The Potentially Large Effects of Artificial Intelligence on Economic Growth*, GOLDMAN SACHS PUBL'G (Mar. 26, 2023), https://www.gspublishing.com/content/research/en/reports/2023/03/27/d64e052b-0f6e-45d7-967b-d7be35fabd16.html.

[103] Kaustuv Basu, *Paralegals Race to Stay Relevant as AI Threatens Their Future*, BLOOMBERG L. (June 8, 2023), https://news.bloomberglaw.com/us-law-week/paralegals-race-to-stay-relevant-as-ai-threatens-their-future.

incorporate AI dutifully and efficiently without costing anyone's job.[104] The Organisation for Economic Co-operation and Development published a report that claimed legal work is particularly at risk due to how much of it can be automated compared to other fields.[105] The report particularly focused on how some AI systems have reportedly passed the bar exam and other legal licensing tests as well as how the human-like output of generative systems like ChatGPT could effectively replicate work done by an attorney.[106] However, we are at the very beginning of the AI revolution, and except in industries where it is already happening, it is simply too soon to say whether AI is a legitimate threat to anyone's job.[107] Like a lot of other present projections attempting to draw conclusions from the extremely limited existing data, even this alarm-raising report was largely unsubstantiated, with most of their data being based on word-of-mouth and general "worry" amongst lawyers.[108] No firm is yet to publicly bring in AI to actually fill the seat of what used to be a human paralegal or attorney, and until (or if) that day occurs, lawyers' jobs are considered safe.[109]

Since the name of the game in legal work has always been and continues to be efficient and quality work, the fact that AI is not currently replacing paralegals or junior associates does not mean it is not something to be wary, or at least aware, of. Joe Patrice wrote for Above the Law that "attorneys won't lose their jobs to AI, they'll lose their jobs to other attorneys who use AI."[110] Although professionals do not yet need to worry about AI itself overtaking them, not learning how to effectively use AI may ultimately be just as harmful as it continues to grow in prevalence and usability.[111] Tax and finance giant Deloitte publicly issued a new strategy concerning recruiting and retaining legal talent, indicating that familiarity with and ability to effectively use AI is what is beginning

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[104] Joe Patrice, *Lawyers at High Risk of Losing Jobs to Artificial Intelligence Concludes OECD Based On… Nothing But Vibes*, ABOVE L. (July 12, 2023), https://abovethelaw.com/2023/07/lawyers-high-risk-losing-jobs-artificial-intelligence/.
[105] *Id.*
[106] *Id.*
[107] Niels Martin Brochner, *Will AI Replace Lawyers?*, FORBES (May 25, 2023), https://www.forbes.com/sites/forbestechcouncil/2023/05/25/will-ai-replace-lawyers/?sh=a31c8c031243.
[108] Patrice, *supra* note 104.
[109] *See* Brochner, *supra* note 107.
[110] Patrice, *supra* note 104.
[111] *Id.*

to set potential employees apart.[112] As firms begin to slowly unveil AI policies and dip their toes into the waters of allowing their employees to incorporate the radical technology into their work, the responsibility is shifting to the lawyers themselves to get equipped with these new tools and stay ahead of the curve.[113]

Although some AI tools have been built into platforms like Westlaw and used by firms for years, it is the introduction of generative AI into the roster of a firm's tools that is changing the climate.[114] Luckily, most firms that have done so thus far have introduced generative AI only as an internal mechanism to aid employees, not to replace them.[115] Davis Wright Tremaine LLP is one such firm, and in August 2023 it unveiled an internal AI chatbot to assist associates with purely administrative tasks.[116] Attorneys cannot actually create any legitimate work product with the system, since it is "sandboxed," which means limited only to non-client data and information.[117] In order to prevent abuse, Davis Wright has human eyes overseeing attorney use of the tool to ensure it is kept within its desired purposes.[118] Dentons, the world's largest global law firm, also launched chatbots in August 2023, but theirs are a bit more aggressive.[119] They are designed to synthesize key points from attorney-supplied information and begin to anticipate and strategize responses to potential client questions.[120] Further, they are not "sandboxed" away from personally identifiable information, meaning they could potentially be used to generate work product.[121] The firm Gunderson Dettmer Stough Villeneuve Franklin & Hachigian reigned in its new AI tool to be limited to just expanding on subject-matter expertise, designed as an "accelerant," while Australian law firm Allens was very candid in explaining that, in introducing their own chatbot, they really are just trying to acquaint their existing employees with the capabilities of AI and

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[112] *Deloitte Leverages AI to Navigate Workforce Changes Amidst Industry Shifts*, CONSULTING REP. (Jan. 2, 2024), https://www.theconsultingreport.com/deloitte-leverages-ai-to-navigate-workforce-changes-amidst-industry-shifts/.
[113] Patrice, *supra* note 104.
[114] *How Law Firms Can Use AI to Level Up Their Business*, THOMAS REUTERS BLOG (Sept. 25, 2023), https://legal.thomsonreuters.com/blog/how-law-firms-can-use-ai-to-level-up-their-business/.
[115] *See id.*
[116] Isha Marathe, *6 Law Firms That Have Launched Internal Generative AI-Powered Chatbots*, LAW.COM LEGAL TECH NEWS (Sept. 8, 2023), https://www.law.com/legaltechnews/2023/09/08/6-law-firms-that-have-launched-internal-generative-ai-powered-chatbots/.
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] *Id.*

allow their lawyers to get comfortable with AI before it fully takes the profession by storm.[122]

Based on the current climate, firms in general are not introducing generative AI and related tools to try to replace their workforce, hire more leanly, or save salary dollars. Instead, firms are beginning to acknowledge the potential that AI may revolutionize legal work and are incorporating it as an internal tool to help their employees achieve efficiency – not replace them with robots.

C. Ethical Implications

Introducing anything non-human to tackle that which has traditionally been driven and achieved by people necessarily brings a host of complex ethical and theoretical considerations. Particularly when it comes to the law, tensions rise when trying to reconcile AI with what one scholar refers to as the "indispensable human element in lawyering" – the notion that work so unshakably intertwined with people cannot possibly be ethically achieved without at least some input by people.[123] The American Bar Association Model Rules of Professional Conduct, a set of rules and commentaries that provides both mandates and guidance for lawyers were imposed in their current form in 1983, long before the rise of AI and even other forms of technology that have become indispensable to attorneys.[124] However, similar to how the Constitution vested power to allow the system to develop and expand with the passage of time, the Model Rules were drafted with the intent that they would remain adaptable.[125] The writers expressed that "[o]ur desire was to preserve all that is valuable and enduring about the existing Model Rules, while at the same time adapting them to the realities of modern law practice and the limits of professional discipline."[126] It follows that the Model Rules, although dated in publication, are still at the forefront of

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[122] *Id.*
[123] Nicole Yamane, *Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands*, 33 GEO. J. LEGAL 877, 889 (2020).
[124] *About the Model Rules*, AM. BAR ASS'N, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/ (last visited Jan. 26, 2024).
[125] A.B.A. Comm'n on Evaluation of the Rules of Pro. Conduct, *Ethics 2000 Chair's Introduction*, AM. BAR ASS'N (2002), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preface/ethics_2000_chair_introduction/.
[126] *Id.*

governing the ethics of legal work.

Rule 1.1 of the Model Rules, spearheading the Rules' impositions on legal workers, is a competency requirement, mandating that "[a] lawyer shall provide competent representation to a client."[127] Already facially steep, the requirement is made more stringent by Comment 8, which instructs that "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."[128] Many states have adopted some iteration of this rule, and even many of those who haven't are still recognizing the duty of lawyers to maintain critical awareness of the technology they use.[129] This suggests a near coast-to-coast acknowledgement of the lawyer's role as tech grows in the field.

This rule alone foists major responsibilities regarding technology on legal practitioners. Primarily, it becomes the duty of the attorney to be privy to how AI can both help their practice and how it can harm it – meaning that Mr. Schwartz of the ill-fated ChatGPT brief technically violated one of the Model Rules by failing to maintain awareness of the "benefits and risks" of the technology he was utilizing. This level of comprehension requires some baseline understanding of how AI produces the responses that it does, since absent this understanding, a lawyer cannot be said to be using the tool with the requisite competence.[130] Failure to do so may come with consequences beyond just noncompliance with the Model Rules. Already, neglecting commonly used technology, such as e-mail and e-discovery, may suffice for an adversely affected client to bring a claim for legal malpractice and may even cause the negligent attorney to be disbarred.[131]

Rule 1.2 imposes a duty of open communication between lawyer and client, specifically directing that lawyers are to "abide by a client's decisions concerning the objectives of representation" and further "take such action on behalf of the client as is impliedly authorized."[132] Although this rule doesn't explicitly reference technology, it does suggest that to comply, lawyers must be open and candid with their clients about their usage of AI in handling the client's matters. To connect back to Rule 1.1,

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[127] MODEL RULES OF PRO. CONDUCT R. 1.1 (AM. BAR ASS'N 2018).
[128] MODEL RULES OF PRO. CONDUCT R. 1.1. cmt. 8 (AM. BAR ASS'N 2018).
[129] Robert Ambrogi, *31 States Have Adopted Ethical Duty of Technological Competence*, LAWSITES (Mar. 16, 2015), https://www.lawnext.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html.
[130] Yamane, *supra* note 123, at 883–84.
[131] Lauri Donahue, *A Primer on Using Artificial Intelligence in the Legal Profession*, HARV. JOLT DIG. (Jan. 3, 2018), https://jolt.law.harvard.edu/digest/a-primer-on-using-artificial-intelligence-in-the-legal-profession.
[132] MODEL RULES OF PRO. CONDUCT R. 1.2. (AM. BAR ASS'N 2018).

a lawyer may also need to inform clients of the risks of such technology for clients to be fully informed of the entirety of the situation. The fact that lawyers are only to "take such action … as is impliedly authorized"[133] may also be read to mean that if a client is opposed to AI for any reason, the attorney should not use it in their work.

Rule 1.6, in maintaining the sanctity of the relationship between the counsel and the counseled, requires protection for any client's information and indicates that lawyers must "not reveal information relating to the representation of a client unless the client gives informed consent," further specifying exceptions that allow uninformed disclosures in extreme circumstances.[134] In terms of confidentiality, not all AI services are created equal. Returning to the examples in Part III(B), Job Security Implications, above, some AI systems already being utilized in firms are "sandboxed" and unable to access client information. However, some are not.[135] The Terms of Service of OpenAI itself, the platform responsible for ChatGPT, places the responsibility of maintaining confidentiality upon its users, and tells users to take "special care" when utilizing AI.[136] To comply with this Model Rule, attorneys must be particularly careful to ensure that their AI service of choice, even those provided to them by a firm, have measures in place to protect client information, or refrain from using AI in any way that requires the input of potentially sensitive knowledge.

The above are just particularly noteworthy selections of the Model Rules. Inappropriate use of AI could be found to violate many more of the Model Rules, as well as other local rules, requirements, and even long-standing social norms in the field. Another ethical consideration that approaches a theoretical viewpoint is what AI will do to the necessary human element of the legal world. As legal work becomes increasingly performed by technology and less so by human attorneys, we may begin to see a loss of "humanness" in legal work.[137] This becomes especially important when considering that in some international jurisdictions, algorithms themselves are already being trusted to adjudicate cases and handle tasks related to sentencing and judicial outcomes.[138] A loss of humanity in this context could drastically change

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[133] *Id.*
[134] MODEL RULES OF PRO. CONDUCT R. 1.6. (AM. BAR ASS'N 2018).
[135] Marathe, *supra* note 116.
[136] *Privacy Policy*, OPENAI (last updated Nov. 14, 2023), https://openai.com/policies/privacy-policy.
[137] Gentile, *supra* note 41.
[138] *Id.*

the legal landscape, as rules and regulations may need to be altered to accommodate decisions that are not issued by the judicial branch as the Framers would have imagined.[139] The Honorable Judge Ralph Artigliere writes that, even as AI becomes more normalized, the "importance of human judgment, ethics, and morality in complex legal matters" cannot be understated.[140] He furthers that, despite the many strengths of AI, it still lacks the "intuition, initiative, originality, and adaptability" that people bring to the field, which he sees as "qualities [that] are essential in legal work, which often involves unique challenges and strategies that aren't universally shared."[141] Although AI can achieve some tasks for attorneys and can do so well, the field must be aware of the fact that humanity is indispensable to our system,[142] and that we have a responsibility to allow AI to supplement this system–not upset it.

IV. PERSPECTIVES AND ATTITUDES

A. From Bruen *to* Carpenter*: The Supreme Court on Technology and Reworking Precedent*

Although the presence of technology itself in the legal field is hardly anything new, the fact remains that, according to a formalist or textualist perspective, there is always grounds for constitutional controversy whenever anything becomes prevalent that could not have been anticipated by the Framers.[143] As the industry continues to boom, it follows that the courtroom and legislature can expect to have to accommodate more and more technology in the future as we become more reliant on it in other areas of our lives. Attitudes vary widely as to how much leeway the system should allow technological developments, especially the progressive or radical.

Of course, the most important of these attitudes is that of the Supreme Court, since its outcomes bind all lower courts and their interpretation of legal issues become virtually unshakable precedent.[144]

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[139] *Id.*
[140] Ralph Artigliere, *A Message of Hope for Legal Professionals: AI Is Not Coming to Take Your Job*, JD SUPRA (Sept. 18, 2023), https://www.jdsupra.com/legalnews/a-message-of-hope-for-legal-7789808/.
[141] *Id.*
[142] *See* Yamane, *supra* note 123.
[143] *See* Richard A. Posner, *Legal Formalism, Legal Realism, and the Interpretation of Statutes and the Constitution*, 37 CASE W. L. REV. 179, 180–82 (1986).
[144] *See Understanding Stare Decisis*, AM. BAR ASS'N (Dec. 16, 2022), https://www.americanbar.org/groups/public_education/publications/preview_home/understand-stare-decisis.

The current Supreme Court is considered to be the most conservative Supreme bench in 90 years, according to data compiled by professors at the University of Michigan and Washington University in St. Louis.[145] This has led to substantial "earthquakes in the law" stemming from the Supreme Court's decisions.[146] Surprisingly, this has not necessarily led to an influx of conservative decisions on technology. Rather, decisions in the realm of technology can go either way and often seem to place more consideration on modern issues and less on precedent. Regarding how this connects to constitutional issues such as Fourth Amendment protections, Orin S. Kerr wrote for the Harvard Law Review that "the Supreme Court adjusts the scope of Fourth Amendment protection in response to new facts in order to restore the status quo level of protection" and later expanded that "[w]hen changing technology or social practice expands government power, the Supreme Court tightens Fourth Amendment protection; when it threatens government power, the Supreme Court loosens constitutional protection."[147] Kerr's theory on the Fourth Amendment indicates a fact-specific judicial attitude towards constitutional protections, with the Court issuing precedentially unsubstantiated decisions to maintain a comfortable climate based not necessarily on precedent, but on circumstance and the desire to balance competing interests.[148]

The Court's most concrete definition of stare decisis itself, which comes from *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), says the Court can only turn away from precedent if the prior decision is "unworkable or … badly reasoned", and goes on to note that this is most common in constitutional cases.[149] The Court thus leaves itself significant leeway to overturn precedent in the realm of constitutional interpretation when it becomes necessary to do so. This is particularly noteworthy since *Seminole Tribe* also implies that stare decisis, although not an "inexorable command," is the default rule and precedent is only to be overturned when the circumstances absolutely call for it.[150]

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[145] Nina Totenberg, *The Supreme Court Is the Most Conservative in 90 Years*, NPR (July 5, 2022), https://www.npr.org/2022/07/05/1109444617/the-supreme-court-conservative.
[146] *Id.*
[147] Orin S. Kerr, *An Equilibrium-Adjustment Theory of the Fourth Amendment*, 125 HARV. L. REV. 476, 478 (2011).
[148] *See* Darrell Miller, *Equilibrium Adjustment and Second Amendment Doctrine*, DUKE CTR. FOR FIREARMS L. (Jan. 28, 2020), https://firearmslaw.duke.edu/2020/01/equilibrium-adjustment-and-second-amendment-doctrine.
[149] Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 63 (1996).
[150] *See id.* at 63.

Recent dockets have brought cases related to this exact question of whether the Supreme Court's attitudes are disproportionately impacting case outcomes and potentially allowing major changes to be made to precedent in contradiction to the long-accepted theory of stare decisis. Some relatively recent Supreme Court decisions imply that the country's highest level of judicial power is currently finding it necessary to issue aggressive constitutional interpretations and decisions rather than segue the power to enact legal change into Congress, as is more traditional.[151] Since so much constitutional precedent was established before the rise of the quantity and capability of the technology we are aware of today, it is unsurprising that this happens particularly aggressively when cases consider technology. In 2018, the Supreme Court decided in the landmark case *South Dakota v. Wayfair, Inc.*, 585 U.S. ___ (2018), to strike down the physical presence requirement of the Commerce Clause, which had previously been interpreted to hold that states lack the power to tax sales made by companies with no physical presence in the taxing jurisdiction.[152] This decision was due to the pervasiveness of what the internet has done for commerce and the domestic market, and marks the Supreme Court's attempt to eliminate some of digital companies' inherent advantage over the physical market.[153] This case directly asks whether formalism or functionalism is appropriate to adjudicate constitutional questions implicating the Commerce Clause.[154] What is particularly noteworthy about *Wayfair* is that the Supreme Court chose to decide the case by altering previously rock-solid precedent of constitutional interpretation in favor of a new, more functionalist reading.[155] This is in direct contrast to the more formalist reading of previous cases concerning the Commerce Clause.[156] Digging directly into constitutional precedent and altering it when faced with a case that turns on technology indicates a shifting Supreme Court attitude and a new judicial willingness to stray from the existing rigidity of formalist readings. It also leans towards a more functionalist reading when it comes to reconciling the Constitution and technology.[157] Finding ways to

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[151] *See* David P. Fidler, *The Supreme Court Adapts Constitutional Law to Address Technological Change*, COUNCIL ON FOREIGN RELS. BLOG (July 11, 2018), https://www.cfr.org/blog/supreme-court-adapts-constitutional-law-address-technological-change.
[152] South Dakota v. Wayfair, Inc., 585 U.S. ___ (2018).
[153] COUNCIL ON FOREIGN RELS. BLOG, *supra* note 151.
[154] Alice E. Keane, *From Bellas Hess to Wayfair: An Analysis of Supreme Court Jurisprudence on the Physical Presence Rule*, 1 N. AM. ACCT. STUD. 17, 18 (2018).
[155] *Id.*
[156] *See id.*
[157] COUNCIL ON FOREIGN RELS. BLOG, *supra* note 151.

fit together the Constitution and modern technology is, of course, an issue that will only continue to be inflammatory with the growing presence of AI.

Another case from 2018, *Carpenter v. United States*, 585 U.S. _____ (2018), also marks a testament to the Supreme Court's willingness to approach technology-related legal issues from a constitutional and ultimately functionalist perspective.[158] In *Carpenter*, the Court was quick to expand the precedential scope of the Fourth Amendment to protect the very modern problem of cell-site location information in the context of a criminal investigation.[159] The bench's majority opinion held that one's cell-site location data is protected by the Fourth Amendment, even though naturally the Fourth Amendment's commitment to protecting privacy never could have anticipated the type of information concerns that stem from cell phones.[160] Just like *Wayfair*, *Carpenter* is an example of the Court choosing to expand upon existing precedent and read the Constitution functionally and in a fashion that is highly accommodating to modern technological issues.[161] Both *Carpenter* and *Wayfair* were decided by a 5-4 majority after extensive oral argument and analysis, and ultimately both fall in the same vein of indicating a slow yet steady shift towards functionalism over formalism when it comes to the Supreme Court's perspective on the Constitution and technology: that the document can easily be shifted to accommodate modern problems.[162]

As so many conversations surrounding modern technology do, the debate ends up being more about efficiency than anything else. Traditional formalist values resulted from a Constitution-era desire for an efficient and just system. How can these values be reconciled with twenty-first century technology, which is far more efficient than the Framers could have ever dreamed of and aligns more with progressive functionalist values? To even consider such a question, it first becomes important to consider not whether formalist values *should* be utilized when handling the law and technology, but whether formalist values even *can* be utilized in such a context.

Although traditional values may lean more strongly towards a formalist reading of the Constitution out of a desire to adhere to the values that America was built upon, the rapidly changing climate means that conventional adherence to orthodox interpretations of the document

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[158] *Id.*
[159] Carpenter v. United States, 585 U.S. _____ (2018).
[160] *Id.*
[161] COUNCIL ON FOREIGN RELS. BLOG, *supra* note 151.
[162] *Id.*

may reach the "unworkable" extreme of *Seminole Tribe*. A recent example of this is the Supreme Court's radical decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022).[163] The Court relied on "history and tradition" to issue a decision that carrying a pistol in public is a constitutional right guaranteed by the Second Amendment, overturning a New York state law that required one to show a specific need for self-protection in order to receive a concealed carry permit for outside the home.[164] This decision unsurprisingly led to substantial controversy as federal judges appointed by the Reagan, Clinton, George W. Bush, Obama, Trump, and Biden administrations all raised their eyebrows, "warning that history is an unworkable basis for deciding constitutional questions that pushes courts toward unreliable, unreasonable, and unjust conclusions."[165] As history and tradition begin to reach the level of "unworkable," the Court is well within their rights to overturn constitutional precedent in favor of a potentially more functionalist approach.[166] This privilege is implicated particularly when sticking rigorously to a traditional formalist analysis can even be said to be outright improper or incorrect based on its inability to adapt to modern and continuously evolving issues.[167] It is very possible that "[i]n preferring formalism, the Court has undervalued functionalism, a theory that prizes fact-sensitive rules, inductive reasoning, and efficiency."[168]

For example, if the Court in *Wayfair* had taken a strict formalist approach to the issue of the physical-presence requirement of the Commerce Clause, the outcome of the case may have ultimately been counterintuitive. Upholding the physical-presence requirement despite the unprecedented rise of online shopping and the digital market would give internet-based companies a borderline untouchable advantage over strictly physical retailers, ultimately encouraging more and more shopping to take place via the digital market at the expense of the brick-and-mortar retail experience.[169] This could potentially encourage the already-present problem of market monopolization since physical retailers would be subject to different, more prohibitive taxation than

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[163] N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022).
[164] *Id.* at 12.
[165] Clara Fong, et al., *Judges Find Supreme Court's Bruen Test Unworkable*, BRENNAN CTR. FOR JUST. (June 26, 2023), https://www.brennancenter.org/our-work/research-reports/judges-find-supreme-courts-bruen-test-unworkable.
[166] *See, e.g.*, Richard M. Re, *Narrowing Precedent in the Supreme Court*, 114 COLUM. L. REV. 1861 (2014).
[167] *See* Bojan Srbinovski, *The Two Poles of Article III: Formalism and Functionalism in Bankruptcy Jurisdiction*, 71 DRAKE L. REV. 1 (2023).
[168] *Id.* at 1.
[169] *See* COUNCIL ON FOREIGN RELS. BLOG, *supra* note 151.

digital retailers. Chief Justice Roberts's dissenting opinion in *Wayfair* rested on a formalist-adjacent return to separation of powers. He stated that the system had already seen the worst of the damage internet commerce may cause on state tax policy, the problem had already begun to recede, and any remaining discrepancies should be left well within the bounds of Congress's authority.[170] Although not entirely illogical, this formalist view is simply not applicable when considering the sheer size and power of internet commerce and the fact that failing to strengthen protections when necessary could, in pursuit of adherence to tradition, do more harm than good. The fact that *Wayfair* and *Carpenter* themselves made it on the Supreme Court's docket highlight the dangers of trusting Congress to adequately handle technological issues.[171] It was the vague and open-to-interpretation congressional legislation that led to such issues becoming legal in the first place.[172]

Likewise, in *Carpenter*, formalism again proves a borderline improper mechanism for handling a modern problem. Adhering to a traditional reading of the Fourth Amendment may have left cell-site records considerably more up-for-grabs in judicial procedure and investigation. This causes legitimate invasion of privacy issues due to the fact that, just in the past few decades, cell phones have gone from an anomaly to an absolute essential.[173] It is unrealistic to expect a society that is so reliant on cellular technology to allow all cell-site location records to be easily retrievable and not constitutionally protected. The Court's expansion of the Fourth Amendment, which leans functionally instead of formally, reflects an attempt to keep the law adaptable and able to account for unprecedented challenges. In his dissenting opinion, Justice Kennedy wags a finger at the Court for not respecting Congress's legislative intent regarding such data,[174] but again, it was the weakness and ambiguity of Congress's legislative intent that led the question to become so hotly debated in the first place.[175] Although Justices Roberts and Kennedy are not necessarily incorrect to remind the Court of the

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[170] South Dakota v. Wayfair, Inc., 585 U.S. 162, 191 (2018) (Roberts, C.J., dissenting).
[171] Mark Walsh, *Opinion Analysis: Court Expands States' Ability to Require Internet Retailers to Collect Sales Tax*, SCOTUS BLOG (June 21, 2018), https://www.scotusblog.com/2018/06/opinion-analysis-court-expands-states-ability-to-require-internet-retailers-to-collect-sales-tax/ ("The states … urged Congress to come to their rescue, but to no result.").
[172] *See id.*
[173] *See* Thorin Klosowski, *How Mobile Phones Became a Privacy Battleground – and How to Protect Yourself*, N.Y. TIMES WIRECUTTER (Sept. 29, 2022), https://www.nytimes.com/wirecutter/blog/protect-your-privacy-in-mobile-phones/.
[174] Carpenter v. United States, 585 U.S. 296, 321 (2018) (Kennedy, J., dissenting).
[175] SCOTUS BLOG, *supra* note 171.

importance of following Congress's lead and respecting its powers, it is also important to remember such questions that come before the Court sometimes must be judicially resolved to set precedent and resolve the fogginess that can accompany Congress's handling of topical problems.

B. The Existing Shift Towards Functionalism

Had the court taken a formalist *Bruen* attitude in approaching technology-based cases like *Wayfair* and *Carpenter*, it's clear that the outcomes may have been unfavorable, illogical, or, to use *Seminole Tribe*'s language, bordering on "unworkable." This leads to the conclusion that, despite the lack of constitutional anticipation, courts need to begin making room for technology. Strictly text-dependent readings of the Constitution may still be feasible for some areas of the modern docket, but when it comes to ever-pervasive technology, the time is nigh for a shift towards functionalism. The Supreme Court has already begun to pave the way for functionalist decisions, even when it means contradicting former precedent, and it is likely that the rest of the system will follow suit in allowing flexibility and adaptability to inform its attitudes when necessary.

This may sound unrealistic, considering that the legal profession itself is somewhat "renowned for its resistance to change."[176] Such a necessitated functional approach is not as far-fetched as it may initially sound. An example of such necessity already manifested itself majorly in 2020 and beyond, when the COVID-19 pandemic threw a massive wrench into the world and subsequently the justice system, significantly limiting legal work.[177] In recognition of the need to quickly adjust, courts "rapidly adopted supportive technologies that enabled video conferencing and at times the exchange of documentation."[178] Even though courts and judges are often "reluctant to innovate," the overarching principle of due access to justice overcame this hesitance as courts began to conduct sentencing, trials, and the progress of entire cases remotely.[179] And, although now all interested parties are more than able to meet in person, residual functionalism from the pandemic continues to underscore how law is practiced today. Many courts,

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[176] Elaine McArdle, *Practicing Law in the Wake of a Pandemic*, HARV. L. BULLETIN (July 15, 2022), https://hls.harvard.edu/today/practicing-law-in-the-wake-of-a-pandemic/.
[177] Tania Sourdin, et. al., *Court Innovations and Access to Justice in Times of Crisis*, 9 HEALTH POL'Y TECH. 447 (Aug. 30, 2020), doi: 10.1016/j.hlpt.2020.08.020.
[178] *Id.*
[179] *Id.* at 449–51.

especially at the state level, continue to practice remote operations despite the fact that it is no longer absolutely necessary to do so.[180] This even includes high-stakes legal work like criminal procedural hearings.[181] Judges and lawyers have communicated general satisfaction with this transition, and clients are happy as well with the fast, orderly, and coherent systems that don't force them to "fly across the country for a 15-minute oral argument."[182]

Taking the functionalist approach and allowing technology to become not only an element but an instrumental platform for legal proceedings has had numerous benefits, evidencing that it is the correct approach. Speedy collaboration with a legal team in pretrial matters has become both easier and more efficient.[183] Online courts have been instrumental in assisting with often-overwhelming dockets, reducing backup, and facilitating access to justice.[184] Perhaps most notable, justice is no longer restricted to those who can afford substantial travel and bear the cost of time-consuming proceedings, as now courts have become significantly more accessible to some of those previously shut out.[185]

Although it may be true that the Framers and early-stage legal practitioners might balk at the thought of anything like remote justice, the fact remains that this exact type of radical technology has become indispensable to modern society. For the legal field to continue to dig in its heels would mean the system would slowly become outdated, fail to keep up with modern times, and even remain inaccessible – when ultimately, the Framers certainly envisioned a fair system that would dispel justice speedily and efficiently. To adhere to a purely formalist reading and reject technology's help when doing legal work would respect tradition, as well as the "majesty" of the courtroom and legal proceedings.[186] But at a certain point, it would reach the point of being truly "unworkable." Allowing technology in the doors of the courtroom, as the domestic system is already happily beginning to do, may potentially preclude inaccessible justice and the legal system's reputation for refusing to make substantive progress.[187] The transition towards a

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[180] Allie Reed, *Virtual Court Hearings Earn Permanent Spot After Pandemic's End*, BLOOMBERG L. (May 18, 2023), https://news.bloomberglaw.com/us-law-week/virtual-court-hearings-earn-permanent-spot-after-pandemics-end.
[181] *Id.*
[182] McArdle, *supra* note 176.
[183] *Id.*
[184] *Id.*
[185] Reed, *supra* note 181.
[186] McArdle, *supra* note 176.
[187] *See* Sourdin, et al., *supra* note 178, at 448.

functional perspective on technology in the legal system is a major step in the right direction for courts and the general practice of law.

This is not, of course, without its drawbacks. Some scholars fret that a transition to technology-facilitated justice does not afford the proper respect to the judicial system.[188] Some recent attempts to unite technology and law have been ill-fated, leaving progressive lawyers slighted when the programs they invested time, effort, and sometimes money into quickly became outdated and useless.[189] When it comes to the introduction of AI specifically, the concerns enumerated in Part III above about how AI will affect the financial facets of law, its potential for ousting actual people from the career, and whether it can reconcile with the necessary ethical elements of legal work, are all legitimate reasons for lawyers to be hesitant about the field's increasing reliance on technology.

Although valid concerns exist and the legal field itself is historically particularly resistant to any sort of change, technology and AI have become large enough and pervasive enough that to attempt to adhere to "by-the-books" methods instead of embracing the capabilities of technology will ultimately do nothing but harm the practice of law. It leads us to a "crisis of construction," where "fidelity to originalist textualism is greatly complicated or costly, and in some cases yields politically undesirable or untenable results."[190] Formalist attitudes towards technology tend to rely on the concern that our technology today so greatly exceeds anything that could have been foreseen when the Constitution was written.[191] Functionalist attitudes, on the other hand, are more accommodating to the reality of the legal world and its responsibility to keep up with the rest of the world in order to best serve its purposes. This sway towards a functionalist perspective is heavily underscored by the mere fact that, in recent years, full-service law firms and courtrooms have increasingly incorporated technology into their respective practices. This has revealed itself as being a decision for the better, as a noteworthy 84% of firms reported an increase in efficiency resulting from their increased tech usage.[192]

In addition, even when legislation does not enumerate technology

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[188] McArdle, *supra* note 176.
[189] *Embracing Legal Tech: Overcoming Hesitations and Unlocking Opportunities*, TRAACT (Sept. 13, 2023), https://www.traact.com/blog/embracing-legal-tech-overcoming-hesitations-and-unlocking-opportunities.
[190] O. Carter Snead, *Technology and the Constitution*, 5 NEW ATLANTIS 61 (2004).
[191] *Id.*
[192] Allison Lemasters, *What Technology Do Law Offices Use?*, NAT'L L. REV. (Nov. 27, 2023), https://www.natlawreview.com/article/what-technology-do-law-offices-use#google_vignette.

with specificity, courts are using their judicial power to make an appropriate amount of room for technology when it's appropriate to do so. *Wayfair* and *Carpenter* are examples of such cases. In another significant case about what qualifies as a 'computer' for the purposes of computer fraud, the 7th Circuit Court of Appeals acknowledged that the relevant statute itself did not attempt to exhaustively delineate every possible interpretation that may rise in litigation.[193] Instead, the Court wrote that "[a]lthough legislators may not know about trunking communication systems, they do know that complexity is endemic in the modern world and that each passing year sees new developments."[194] The Court of Appeals went on to say that statutes that do not specifically reference particular elements do not mean to exclude those elements – rather, they are intentionally broad to accommodate new progress.[195] This is logical and appropriate functionalism at its finest.

CONCLUSION

We have reached a point where the average American can no longer imagine their daily life without the presence of technology.[196] Many people today can hardly imagine doing their jobs or at least doing their jobs efficiently, without the digital tools technology has equipped them with.[197] It's becoming unrealistic for us to expect people to conduct their legal business without relying on technology the way they do in every other area of life. Formalist adherence to the Constitution has a well-earned spot in legal theory and modern perspectives on the practice and study of law, and likely will continue to serve the legal field in some essential ways. But to expect a strict, originalist mindset to reign over truly twenty-first century issues without ever approaching the cusp of "unworkability" is no longer practical. The esteemed practice of law is here to stay, but so too are tools like generative AI. Rather than pitting the two against each other, the only workable solution is to find a way for them to get along.

It is no overstatement to say that technology in general has

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[193] United States v. Mitra, *405 F.3d 492 (*7th Cir. *2005*).
[194] *Id.* at 8.
[195] *Id.*
[196] Niall McCarthy, *Where People Can't Live Without Technology*, FORBES (Aug. 29, 2017), https://www.forbes.com/sites/niallmccarthy/2017/08/29/where-people-cant-live-without-the-internet-infographic/?sh=46578off43aa.
[197] Julia Edinger, *The Majority of Jobs Now Require Digital Skills, Study Finds*, GOV'T TECH. (Feb. 6, 2023), https://www.govtech.com/workforce/the-majority-of-jobs-now-require-digital-skills-study-finds.

become a genuine pillar to the functionality of society, and although only in the early stages of its presence, it appears as though AI is quickly becoming cemented as an essential element of our lives as well. The legal field is more resistant to change than many other areas, and this may be exacerbated by the fact that introducing anything new implicates major questions of constitutionality and propriety. While functionalist attitudes are inherently more accepting of modernity and more willing to embrace how it can fit into an existing scheme, formalist attitudes prefer time-honored tradition and are less likely to incorporate highly modern things into the field without uncertainty. Despite these substantial concerns, the field has already begun to work past its hesitance and catch up to the current day and age. AI and other iterations of technology have started to crop up across law firms and courtrooms. Although certainly technology has helped legal work move quickly and efficiently, appropriate concerns follow, particularly about questions of ethics and job security in the wake of generative AI. Although these concerns are valid, they are overshadowed by the fact that the entirety of the legal world – championed by the Supreme Court and their binding precedents – is beginning to acknowledge the essentiality of functionality when it comes to technology. COVID-19 further forced a functional approach to the courtrooms and access to justice, and although the pandemic itself is receding, the functionalist approaches it left behind are not. As the field continues to accept that functionality towards technology is the efficient, appropriate, and logical attitude, we will continue to progress while still honoring the truest constitutional value that underscores the system itself: access to justice.

Mr. Steven Schwartz was not the first, and certainly will not be the last, to make headlines for abuse of technology in legal work. But when it comes to the mere existence of technology, it's time to make room for these new advancements and acknowledge all that they are doing and will continue to do in helping lawyers do good, proper work. Reconciling modern technology with our traditional legal system is one example of a time when an old dog actually can learn new tricks.