

New York State Defenders Association

Discovery and Forensic Support Unit



Artificial Intelligence Starter Guide

The purpose of this resource is to briefly introduce you to a few categories of artificial intelligence (AI) tools, highlighting some general benefits and risks of these types of tools. We present some considerations regarding the use of AI in your practice at critical stages including researching before you choose to implement AI tools. We share examples where you may find AI tools useful and where AI can be found in your case via police and third-party use. We also share a non-exhaustive list of links and resources to consider as you thoughtfully interact with AI.

Please note that any of these topics could be a standalone guide and this resource is intended to be a jumping off point and one to revisit, especially in a field that is constantly emerging and where technology moves quicker than the law.



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Questions to Ask When You Hear “AI”

1) What do you mean by “artificial intelligence” or “machine learning?”

Don't let technical language get in your way of understanding exactly how the vendor's product works and what it purports to do. If you are struggling to understand terminology, ask questions. Later, consult with a secondary source and confirm both your understanding and the vendor's claims.

2) What does “Day One” look like with your software?

Using AI is not like turning on a light switch. Getting a timeline on how and when this software will be implemented is essential before committing to a new tool. For a machine-learning program to accept your discovery, for example, those files may need to be prepared in advance. Is this software capable of processing data in multiple formats simultaneously or does it require substantial user input? Does my network have the capacity to use this tool?

3) How does the price change based on the amount of storage and type of software needed?

Vast amounts of data accumulated over many years require vast amounts of storage. If that data is stored in the cloud, that storage space can result in additional charges. How often that data is accessed and used can also change how much the system costs. If a vendor is estimating how much storage is needed, or how much the system will cost, ask how those estimates were calculated and what assumptions were made. Adding AI software to your current workflow or purchasing new software that incorporates AI will add costs to your bottom line. What other features may affect price, and are there costs associated with inputting data into the system, taking it out, or both?

4) Has your tool been validated for its intended purpose and how reliable is it?

It is critical to understand what empirical support there is for the assertions that a vendor makes. If there is no third-party testing or validation, why? Ask what offices currently use the software, then follow up with those offices to see if the tool is actually a time-saver, and how their practice is adapting to it.

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More Questions to Ask When You Hear “AI”

5) Who sees our data and where is it used?

Software using AI will sometimes take user data and use it to train another machine learning algorithm. Such use could result in a breach of confidentiality and present ethical concerns. For example, a client’s personalized education plan may be used to train an AI system on how to analyze and process similar files. Pay attention to the terms of use and the end user license agreement to see how the vendor plans to use your data. You may need to take additional steps to opt-out of data sharing to ensure that sensitive information is not disclosed to third parties.

6) How will our users be trained on the new tech?

Getting your users up to speed should always be considered when buying new software. You will also need to determine how much human review will be required once a tool is used. Will the vendor provide any sort of training? Do they provide support and how much? Involve your attorneys and office staff in these discussions, as they will have valuable concerns and input on how useful the new software will be, or where it may fall short.

7) Have ethical and legal risks been considered?

Review ethics opinions and court rulings to guide your decisions about what is “reasonable” use of AI in your office. Assess each tool and use of AI individually, because some tools may be acceptable for one purpose and dangerous for another. Ensure your AI tools give you control to silo information appropriately, such as discovery subject to a protective order or conflict of interest. AI tools are notorious for being subject to biases and hallucinations so make sure you have safeguards in place to confirm accuracy or address biases. AI tools must be used reasonably and responsibly.^[1] Do not input confidential client information or personally identifiable information unless you are certain the AI system is properly secured to preserve confidentiality and comply with ethical obligations. Be aware of and follow any applicable court rules, state bar guidance, or office policies governing the use of AI in legal practice.

[1] ABA Ethics Formal Opinion 512 <https://nysba.org/wp-content/uploads/1979/07/EthicsOpinion512.pdf>; See also [News Picks from NYSDA Staff September 17, 2024](#)

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Terms to Know	
Term	Explanation
Artificial Intelligence (AI)	A catch-all term referring to the ability of machines to simulate human intelligence. AI applications generally perform tasks involving learning, problem-solving, and decision-making.
Generative AI (GAI)	A tool where a user inputs a prompt, the tool reviews a vast amount of data in a very short time and provides output to the user. The output can be in the form of text that may (or may not) answer the user’s question, an image created based on what the user input, or a host of other responses. One example is predictive text features in cell phone and in word processing software that finishes your sentences for you.
Large Language Model (LLM)	An AI system “trained” to recognize and generate human language. An LLM can translate languages, analyze multimedia, and search through vast amounts of data. An LLM may be* able to review and summarize thousands of pages of medical records.
Training Data	The vast amount of information given to the LLM for analysis. Oftentimes, the full extent and contents of training data remain a mystery (i.e., a police department’s retained reports may serve as training data to automatically generate new reports in the future).
Hallucination	A response from AI that is coherent but contains factual inaccuracies. The AI computes what responses seem correct or are an aggregate of many responses, but the tool lacks the ability to determine whether an output is true. For example, AI may fabricate caselaw or invent new facts when you attempt to use an AI tool like a search engine.

*Caution must be exercised when contemplating AI tool usage to review any sensitive or confidential information and human review of any AI-generated summary for accuracy is a must

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AI Use Examples

Example 1: Using Generative AI (GAI) Tool to Assist with Drafting Motions

The tool may create a passable draft of pleadings but has limitations. You may save some time and energy not stressing over a blank page, but your results will be limited to general output since you must protect client confidentiality by not inputting too much specific information into the tool. You may also limit learning opportunities for less experienced attorneys and/or legal interns, who could create a higher quality draft that is specific to your facts. Regardless of which option or combination of options you choose, both drafts will need to be double-checked by a more senior attorney so the benefits of using a tool may or may not outweigh the risks and financial cost.^[2]

Example 2: Using AI Tool to Transcribe Body-Worn Camera Video

The quality of the output depends on the quality of the input. Poor audio quality means inaccurate transcription, and these systems do not yet (and may never) consistently identify the speaker. As with all AI tools, the user must consider how case information is shared, stored, and relied upon to train AI tools. Users must exercise caution when implementing any AI tool because any AI tool that replaces human work cannot be easily verified.

[2] Lawyer nearly sanctioned for using AI-generated fabricated cases

<https://thehill.com/regulation/court-battles/4544339-judge-sanction-michael-cohen-lawyer-ai-generated-fake-case-citations/>

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AI Use Example

Example 3: AI-Assisted Police Reports

Axon and other companies have developed GAI tools to assist in drafting police reports with an aim of reducing paperwork. Axon's product, Draft One, uses police body-worn camera audio to generate customizable portions of police reports.^[3] As with all police technology, those reviewing the output should review it with a healthy dose of skepticism:

“It does not appear that Axon’s best practices are built into the system by default and police departments can use the technology without affirming that the report was AI-generated or providing an audit trail.”^[4]



[3] Draft One, which aids in drafting police reports <https://apnews.com/article/ai-writes-police-reports-axon-body-cameras-chatgpt-a24d1502b53faae4be0dac069243f418>; News Picks From NYSDA Staff covered this briefly in September 2024 [News Picks from NYSDA Staff September 17, 2024](#)

[4] Ferguson, Andrew Guthrie, “Generative Suspicion and the Risks of AI-Assisted Police Reports,” American University Washington College of Law (July 17, 2024) Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4897632 (cited with permission)

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Resource Links

Bar Guides / Reports

Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence

New York City Bar - Artificial Intelligence and the New York State Judiciary: A Preliminary Path

State Bar of California - Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law

American Bar Association - Guidelines for Legislation and Standards Pertaining to AI

Federal Judicial Center - An Introduction to Artificial Intelligence for Federal Judges

NJ Courts - Legal Practice: Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers

Ethics

American Bar Association - Formal Opinion 512 - Generative Artificial Intelligence Tools

American Bar Association - Formal Opinion 477R - Securing Communication of Protected Client Information

Justia - AI and Attorney Ethics Rules: 50-State Survey

New York City Bar - Formal Opinion 2024-5: Ethical Obligations of Lawyers and Law Firms Relating to the Use of Generative Artificial Intelligence in the Practice of Law

New York State Bar Association - Ethics Opinion 842 - Using an outside online storage provider to store client confidential Information

New York State Bar Association - Ethics Opinion 1020 - Confidentiality; use of cloud storage for purposes of a transaction

American Bar Association - Formal Opinion 498 - Virtual Practice

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Resource Links

Sanctions

Sanctions ordered for lawyers who relied on ChatGPT artificial intelligence to prepare court brief

Deception Inspection: Attorney Faces Discipline for Citing Fake Law

Judge declines to sanction Michael Cohen, lawyer over AI-generated fake case citations

Texas lawyer fined for AI use in latest sanction over fake citations

Colorado lawyer suspended for using AI platform to draft legal motion

Mata v Avianca, Inc - US Dist Court, SDNY, June 22, 2023 678 FSupp3d 443

US v Cohen - US Dist Court, SDNY, March 20, 2024 724 FSupp3d 251

Park v Kim - US Ct of Appeals, 2nd Cir, January 30, 2024 91 F4th 610 117

FedRServ3d 1693

Law Journals & Research

The GPT Judge: Justice in a Generative AI World

The Right to a Glass Box: Rethinking the Use of Artificial Intelligence in Criminal Justice

The Automated Fourth Amendment

How Machines Reveal the Gaps in Evidence Law

Generative Suspicion and the Risks of AI-Assisted Police Reports

Video Analytics and Fourth Amendment Vision

Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools

Noteworthy Cases

People v Reyes, 69 Misc 3d 963 (NY Sup Ct 2020)

Matter of Weber as Tr of Michael S Weber Tr, 85 Misc 3d 727 (NY Sur Ct 2024)

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