AI is making its way into the courtroom and legal process

Is the U.S. headed towards an AI-driven "smart court," as the Center for Strategic and International Studies calls China's frequent use of automated, digitized court proceedings? Not quite, experts say. However, these predictions aren't entirely off the mark. "AI is really reaching all aspects of the law," said Wayne Cohen, managing partner at Cohen & Cohen While the current use of AI in the U.S. legal industry operates intensely behind the scenes, it's inching further into the front lines of the courtroom.

Cohen said AI plays a role in most of the research, writing and jury exhibit creation that goes into trial preparation, as well as office administration, trial summaries and translations.

It also helps kick the can down the road when processing lawsuits. From the bench, judges can generate searchable PDF transcriptions from audio recordings and make informed judgments that day. And with AI's ability to flag contradictions, it can bolster or hinder the credibility of the prosecution or defense. When judges make rulings, "they can do it with a lot of accuracy, and it's supported by the evidence that they heard in their courtroom," said Jackie Schafer, a former attorney general for the state of Washington.

Schafer founded Clearbrief in 2020, which runs on AI that's designed to scan documents and identify citations, in addition to creating hyperlinked chronological timelines of all of the dates mentioned in documents for swift reference. Jason Boehmig, CEO of digital contract company Ironclad said AI can review a company's legal contracts, learning its preferred language and drafting and negotiating contracts in the organization's historic legal voice. Business contracts are at the forefront of legal innovation. "It's an area where we can afford to experiment," he said. On the spectrum of the legal system, the businesses on either end of the contract arguably have less to lose than, say, an individual whose basic freedoms are at stake.

In all of these applications, experts say the ideal situation is for humans to review AI's work. The notion of keeping the human in the loop is far from unique to the legal industry, but the significant ramifications coming out of the justice system make human oversight all the more critical.

In weighing what can be gained versus lost in the use of AI in the legal system, the improvement of access to justice and the simultaneous upholding of due process are at the forefront. "Most people that need legal services don't have access to them," said Boehmig. "AI is leveling the playing field because it's allowing the lawyer all kinds of support for a fraction of the cost of human capital," Cohen said. The concept that the world of legal representation will pass along their savings to those they represent may be idealistic, but some experts take a hopeful view. More affordable representation could become a greater threat in the courtroom. Cohen said, "When an individual sues a corporation, normally the corporation has much better access to better lawyers, more resources, better support. Now, it sort of tips the scales." Schafer also notes that litigants representing themselves without the presence of an attorney are able to use AI technology to appear more professional to judges and juries. "They can come more prepared, even if they don't have legal training," Schafer said.

The expectation of due process makes accuracy with AI a pivotal question, hence the need for an "AI sandwich," as Cohen puts it, or humans on either side of AI outputs. For example, Mata v. Avianca was a New York case decided this past June where lawyers submitted fake quotes and citations created by ChatGPT. The attorneys were fined for going rogue, and the legal industry got a clear message that such a manipulation of AI is unacceptable.

For U.S. laws, which are complexly layered with local, state and federal expectations, there's only so much AI will be able to accomplish in the near term. For example, Schafer envisions small-time traffic tickets that have digital evidence can potentially be automated, but anything that requires critical human judgment cannot.[…]