

City Attorney's Spring Conference

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LEAGUE OF
**CALIFORNIA
CITIES**

Strengthening California Cities
through Advocacy and Education

Artificial Intelligence

And How it Impacts Your City

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What A.I. is, and What it Isn't

- **Think of algorithms as math, can be infinitely complex, but always replicated if inputs are constant.**
- **Multiple algorithms can work together to create complexity beyond human capacity to fully grasp until experienced (e.g. TikTok or Instagram engagement algorithms).**
- **AI contains many algorithms that assist it in processing large volumes of data, but at its core what makes it different is a capacity to “learn” and modify itself**

A.I. in Local Agencies

- Most companies use AI as a marketing tool, and simply have better quality algorithms today that are difficult to market without the buzzword of “AI”
- Companies are working on generative capabilities for government to assist with areas such as:
 - Security
 - Compliance checks
 - Report writing

How A.I. Can Impact Your Organization

- **PRA: use of LLMs in most orgs is ubiquitous; the logs are subject to disclosure if used for agency work**
- **LLMs reduce costs for vexatious claims and bad faith actors to overwhelm your organization**
- **Agencies will see PRA volume increase exponentially as models run out of good quality data; government records remain a last bastion of “low-background steel” for training data ever since the broader internet became primarily bot-driven during the late 2010s/early 2020s.**

Managing Procurement

- **Negotiate from a position of controlling data flow, and controlling contract termination**
- **In a major vendor breach, industry standard terms such as damages caps make offensive litigation futile**
- **Most vendors are likely to be judgment-proof unless you are working with a publicly traded major vendor such as Google, Amazon, or Microsoft, and in which case, your leverage is reduced**

Managing Procurement

- **Negotiate for termination for convenience, AND for failure of appropriation so you can exit multiple ways.**
- **If your charter doesn't prohibit, opt for teleconference arbitration if you can't obtain venue/jx in your home county (most experienced vendors will agree to venue/jx)**

Drafting Topics

- How to Make Best Use of AI in
 - Issue selection
 - Record review
 - Research
 - Drafting
 - Editing

AI Litigation Tools for Lawyers

- Public tools (ChatGPT, Claude)
 - Free, effective writing assistant; internet searches
 - Cons: Not trained for law; will “hallucinate”; confidentiality
- Off-the-shelf (Lexis+AI, Westlaw Advantage, CoCounsel, Spellbook, Everlaw)
 - Trained on legal databases; confidential; task-specific
 - Cons: Not trained on user information
- Boutique and in-house (Harvey AI)
 - Model trained on client data, customized for needs
 - Cons: Expense

Tasks: Issue Selection

- AI Tools are great at brainstorming
- You can ask them to propose issues
- The more data you provide the prompt, the more detailed the answer
- But you must winnow the result
- For example, providing a complaint to ChatGPT and asking it to outline issues for demurrer and their odds of success.
 - Tip: Consider doing this later in the drafting process

Tasks: Brainstorming

- ChatGPT can quickly plan an itinerary
- Claude can help with deposition preparation:
 - “I am the City Attorney for the City of Pawnee. Several years ago, the City obtained a large open pit in a tax seizure that had been dug out by a condominium developer to host a basement before going bankrupt. Recently, local resident A. Dwyer (who lives next to the pit) fell in and broke both his legs. The incident happened at night, and we suspect he was under the influence of alcohol.
 - A. Dwyer has sued the City for negligence, premises liability, and infliction of emotional distress. Please prepare deposition questions for A. Dwyer related to his claims.”

Tasks: Brainstorming (con't)

- Activities Earlier That Day/Evening
 - Walk me through everything you did on the day of the incident, from the time you woke up until the incident occurred.
 - Where were you in the hours leading up to the incident?
 - Who were you with earlier that evening?
 - Did you consume any alcoholic beverages at any point on the day of the incident?
 - [NOTE TO COUNSEL: This is a key area. Probe thoroughly: what was consumed, how much, over what time period, and where.]
- Plaintiff's Own Conduct
 - [NOTE TO COUNSEL: These questions go directly to comparative fault, assumption of risk, and contributory negligence defenses. Be thorough.]
 - Is there any reason you could not have walked on the public sidewalk or street instead of crossing onto the City's property that night?
 - Did anyone invite you or give you permission to be on the City's property that night?
 - Were there any barriers, fencing, or ropes around the pit that you crossed or circumvented before falling?
 - Did you observe any warning signs or postings before proceeding onto the property?
 - Do you believe your consumption of alcohol that evening had any effect on your balance, coordination, or awareness?

Tasks: Record Review

- AI excellent for sifting large amounts of information (e.g., e-discovery)
- Legal tools can summarize documents at varying levels of specificity (e.g., depo. summaries)
- Provide large databases and ask specific questions
- We gave a legal tool the complete works of Charles Dickens and asked “are there any references to ghosts in this document?”

Tasks: Record Review

Location	Work	Nature of Reference
Pages 4–5	A Christmas Carol	Central subject: Marley's Ghost, ghost story premise
Page 27	Reprinted Pieces	Chapter title: "The Ghost of Art"
Page 53	Bleak House	Chapter title: "The Ghost's Walk"
Pages 55–56	Three Ghost Stories	Entire collection devoted to ghost stories
Page 74	The Haunted Man and the Ghost's Bargain	Work title
Page 195	A Child's History of England	"Ghostly tales" — superstition around Joan of Arc
Page 302	A Child's History of England	"Ghosts walked round the plague pits"
Pages 392–393	Sketches by Boz — Greenwich Fair	Comic theatrical ghost in a fairground melodrama
Page 486	Sketches by Boz — Making a Night of It	Audience member mocking a stage ghost
Page 497	Sketches by Boz — The Boarding-House	Simile: Hamlet seeing his father's ghost
Page 513	Sketches by Boz — The Boarding-House	Simile: ghost of Queen Anne
Page 580	Sketches by Boz — The Steam Excursion	Simile: belief in ghosts vs. seasickness
Page 646	Sketches by Boz — The Bloomsbury Christening	Simile: the ghost in Don Juan

- Unlike Boolean searches, AI prompts can be nuanced and complex, such as: “What is each stories primary theme, and who are their protagonists and antagonists?”
- This capability is now integrated in discovery software such as Everlaw.
- Framing prompts will be an essential lawyering (professional) skill.

Tasks: Legal Research

- Public tools will get general legal concepts right, but legal tools are better for specific questions
- Both ChatGPT and Westlaw give the correct answer to “in California, are monetary exactions imposed by the legislature, such as development impact fees, subject to the *Nollan/Dolan* test?” Westlaw more nuanced.
- More esoteric question, such as the application of CPRA to an attorney investigation into employee misconduct, Off-the-shelf may miss key issues.
- Always treat AI tools as a research starting point
- Can significantly speed up research

Tasks: Drafting

- Generative AI is good at creating first drafts of common documents, such as letters, emails, resolutions, and ordinances.
- Asking ChatGPT to “draft a California ordinance prohibiting short term rentals in the city” will produce a good skeleton
- Legal tools can also review contracts for policy compliance, and suggest revision

Tasks: Editing

- Can feed draft text into LLM and ask it to touch up, reduce word count, change tone, etc.
- LLM's also work well as an advanced “thesaurus” that knows idioms and can make phrasing suggestions.
- Tools like Copilot can suggest language in a Word document as you draft

PITFALLS OF USING AI

Bixler v. Church of Scientology

- Prestigious law firm submitted appellate brief with numerous AI errors in high profile case.
- Opponent identified errors in reply brief.
- Attorney submitted declaration, accepting responsibility, apologizing, and requesting to submit corrected brief.
- Court of Appeal issued order to show cause on sanctions.
- Court has not yet decided on sanctions. Attorney quit.

Most Common AI Errors:

- Citations to authorities that do not support the proposition
- Incorrect citations – case name, reporter, or page numbers incorrect
- Fabricated case law - Citations to authorities that do not exist
- False or non-existent quotes from cases or exhibits

What are AI Errors:

- Errors are not technical glitches
- They result from systemic vulnerability in how AI models work
- Renders believable results that are wrong or completely made up
- Errors happen when AI model does not have enough data, if the data is muddled, uncertain, or conflicting
- Only way to avoid problems is to check the AI output for errors

Grounds for Courts to Punish AI Errors:

- California Rule of Court, Rule 8.204, subdivision (a)(1)(B) requires each brief “[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority.”
- California Rule of Court, Rule 8.1115, subdivision (a) bars citation to unpublished opinions.

Other Grounds for Courts to Punish AI Errors :

- Rule of Professional Conduct, Rule 3.3, subdivision (a)(2) imposes a duty to not “knowingly misquote to a tribunal the language of a book, statute, decision or other authority.”
- Business and Professions Code section 6068, subdivision (d) imposes a duty “never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.”

Federal Court Grounds to Punish AI Errors :

- Rule 11 requires attorneys to sign filings certifying that after reasonable inquiry, the filings are not frivolous, intended to harass, or designed to cause unnecessary delay.
- 28 U.S.C. section 1927 which mandates: “Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs ... because of such conduct.”

Authority for Sanctions:

- Code of Civil Procedure section 128.7
 - Subdivision (b)(2) bars frivolous argument
 - Subdivision (c) authorizes sanctions upon attorneys
 - Subdivision (h) allows sanctions for unnecessary delay, actions that needlessly increase the cost of litigation and to deter improper conduct by attorneys
- Code of Civil Procedure section 907 allows sanctions for a frivolous appeal.
- California Rule of Court 8.276(a)(4) allows sanctions for committing an unreasonable violation of the Rules.

Sanctions, Punishments, and Penalties

- Monetary Sanctions:
 - Fees incurred by the other side
 - Penalty for wasting Court's time
- Rejected filings – strike the offending filing or an errata trying to correct errors
- Disqualification – revoke pro hac admissions
- Dismissal – for repeated offenses
- Bar notification
- Other unique penalties



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