Before we begin

Tech Support

If you are experiencing technical difficulties, please contact WebEx Tech Support at +1.866.779.3239.

Q&A

The Q&A tab is located near the bottom right hand side of your screen; choose "All Panelists" before clicking "Send."

CLE

We will mention a code at some point during the presentation for attendees who requested CLE. Please make note of that code, and insert it in the pop-up survey that will appear in a new browser tab after you exit out of this webinar. You will receive a Certificate of Attendance from our CLE team in approximately 30 to 45 days.

Audio

The audio will remain quiet until we begin at 9 AM PT/12 PM ET.

You will hear sound through your computer speakers/headphones automatically. Make sure your speakers are ON and UNMUTED.

To access the audio for by telephone, please click the "phone" icon below your name on the Participants Panel for teleconference information.

Morgan Lewis

Morgan Lewis

SILICON VALLEY FIRST CUP OF COFFEE SEMINAR SERIES

UPCOMING SEMINARS:

2022 Artificial Intelligence (AI) Boot Camp

November 29	Large Language Models, Open Source, and Ethical/Responsible AI: An IP Perspective
November 30	AI and Antitrust
December 1	Pretrial Practice for AI IP Litigation
December 6	M&A and Investment into AI Companies
December 8	Patent and Trade Secret Protection for Inventions that Use AI
December 13	Patenting of AI Inventions in Europe
December 14	Hot Topics in AI Under Consideration by the Executive Branch

Morgan Lewis

SILICON VALLEY FIRST CUP OF COFFEE SEMINAR SERIES

UPCOMING SEMINARS:

2022 Artificial Intelligence (AI) Boot Camp

January 11   Digital Health

January 12   CFIUS Focus on Transactions Involving AI and AI Companies

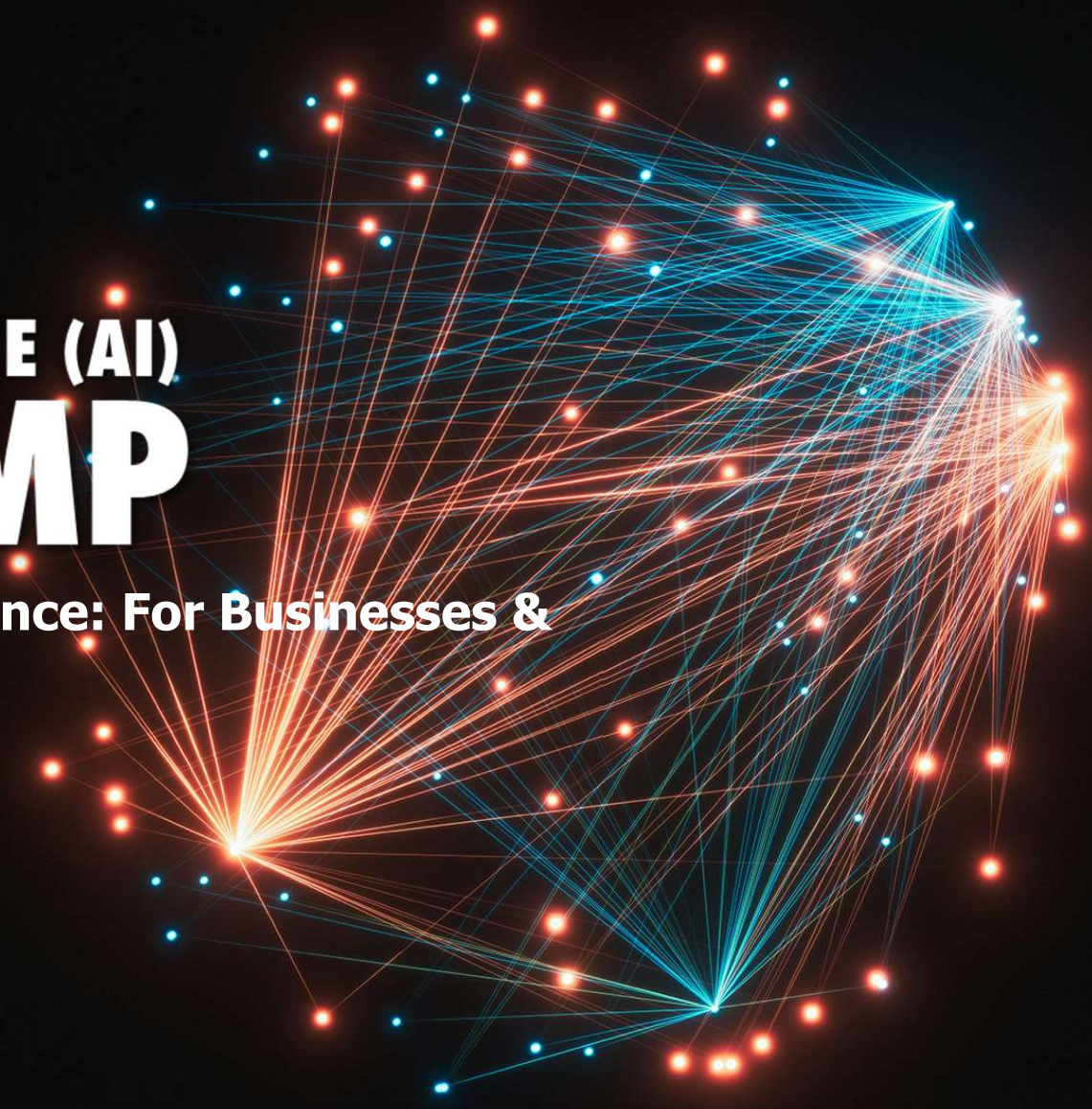January 17   Artificial Intelligence in the Securities and Commodities Industry: A Primer

Morgan Lewis

ARTIFICIAL INTELLIGENCE (AI)
BOOT CAMP

The Ethics of Artificial Intelligence: For Businesses & For the Legal Profession

November 10, 2022

Tess Blair and Amy E. Schuh

Host

Andrew J. Gray IV

Presenters

Tess Blair

Amy E. Schuh

Morgan Lewis

Business Ethics Issues Involving Artificial Intelligence

Morgan Lewis

The Principle of "Do No Harm"

June 6, 2019 10:25AM EDT | Dispatches

History Shows Why Police Use of Facial Recognition Tech Can Threaten Rights

Past Discrimination Shows Potential for Harm

Artificial intelligence 'could be the worst thing to happen to humanity': Stephen Hawking warns that rise of robots may be disastrous for mankind

- Renowned physicist discusses Jonny Depp's film Transcendence
- He says dismissing the film as sci-fi could be the 'worst mistake in history'
- 'AI would be biggest event in human history,' he wrote in the Independent. 'It might also be the last, unless we learn how to avoid the risks'

By ELLIE ZOLFAGHARIFARD
PUBLISHED: 08:27 EST, 2 May 2014 | UPDATED: 13:23 EST, 7 May 2014

THE HILL News Policy Opinion Events Jobs HILL.TV Changing America

Just In...

California Democratic House challenger raises surprising $1.4 million

CAMPAIGN - 6M 21S AGO

NATIONAL SECURITY

Weaponized drones are here — it's time for the US to act

BY ARMSTRONG WILLIAMS, OPINION CONTRIBUTOR - 01/21/22 3:30 PM ET
THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT OF THE HILL

Morgan Lewis

The Principle of "Do No Harm"

- So, what does this mean in practice for companies using or selling AI solutions?

  - Do you understand the solution?

  - Do you understand the market for it?

  - Do you understand the potential unintended uses for the solution?

- Even if it is legal, is it something you ought to be doing? Is it ethical?

  - Does the solution align with your company's culture and values?

  - Have you thought about what it might do to your company's reputation?

Morgan Lewis

AI in the Workplace

How would you react to IoT motion-trackers under your desk? These staff fought back

Employees at one company have bridled at the use of IoT motion-sensors placed unannounced under desks to track their movements.

CORPORATE COMPLIANCE INSIGHTS
THE PREMIER GLOBAL NEWS SOURCE FOR COMPLIANCE, ETHICS, RISK & INFORMATION SECURITY

Home   About ⌄   Explore Topics ⌄   Vendor News   Career Connection   Events ⌄   Library ⌄   Podcasts   Videos

Home > Data Privacy

Facial Recognition Technology in the Workplace: Employers Use It, Workers Hate It, Regulation Is Coming for It

Only 3 U.S. states currently regulate facial recognition tech in the workplace. That may soon change.

Morgan Lewis

AI in the Workplace

- If your company decides to use AI in the workplace, then its use should be for a good reason

    - Reviewing job descriptions to eliminate unconscious bias

    - Temperature and social distancing checks

    - Tracking driver safety

- Is productivity a good reason?

- Whatever you do, be transparent.

- What if the practice is illegal in certain jurisdictions but legal in others where you operate? Do you us the AI solution where it is legal?

    - Is that fair?

    - What are the repercussions to the employees?

    - Are you creating a disengaged or distrustful workforce?

Morgan Lewis

Responsible AI Principles

Define and Communicate Your Company's Position

- Define your company's Responsible AI Principles
  - Be mindful of existing standards or guidance documents issued that may apply to your industry, your geography (IEEE, EU)

- Communicate (loud and proud)
  - Internally to employees
  - Externally to customers, partners and investors

Examples of Guiding Principles

Responsible AI principles from Microsoft

- Fairness. AI systems should treat all people fairly.

- Reliability & Safety. AI Systems should perform reliably and safely.

- Privacy & Security. AI systems should be secure and respect privacy.

Our Principles – Google AI

- Be socially beneficial.

- Avoid creating or reinforcing unfair bias.

- Be built and tested for safety.

- Be accountable to people.

- Incorporate privacy design principles.

- Uphold high standards of scientific excellence.

- Be made available for uses that accord with these principles.

Morgan Lewis

Governance or Steering Committee

- Membership: Executive level representation from the business, regions and functions
- Purpose
  - Review and approve guiding principles
  - Require visibility to initiatives
  - Discuss the meaty, gray issues that will inevitably result
  - Create individual management action plans for the stickier issues
    - Ensure loop back that issues have been adequately addressed
    - Require evidence that the solution is doing what it was intended (and represented) to do?
- Notice and Escalation, as appropriate

Morgan Lewis

Governance or Steering Committee
## Questions for business sponsors

- Does the solution do what you think it is going to do?

- Are your communications or marketing materials accurate and transparent?

- Who is the accountable "keeper of the algorithm?"

- Are there privacy and security risks that need to be managed?

- Is the impact to your employees' fair and reasonable?

- Is there any potential for this to create a health or safety concern?

- Are you okay with the potential ethical and/or reputational risks?

And then require a periodic check-in…

Morgan Lewis

The Ethics of AI for Lawyers

Morgan Lewis
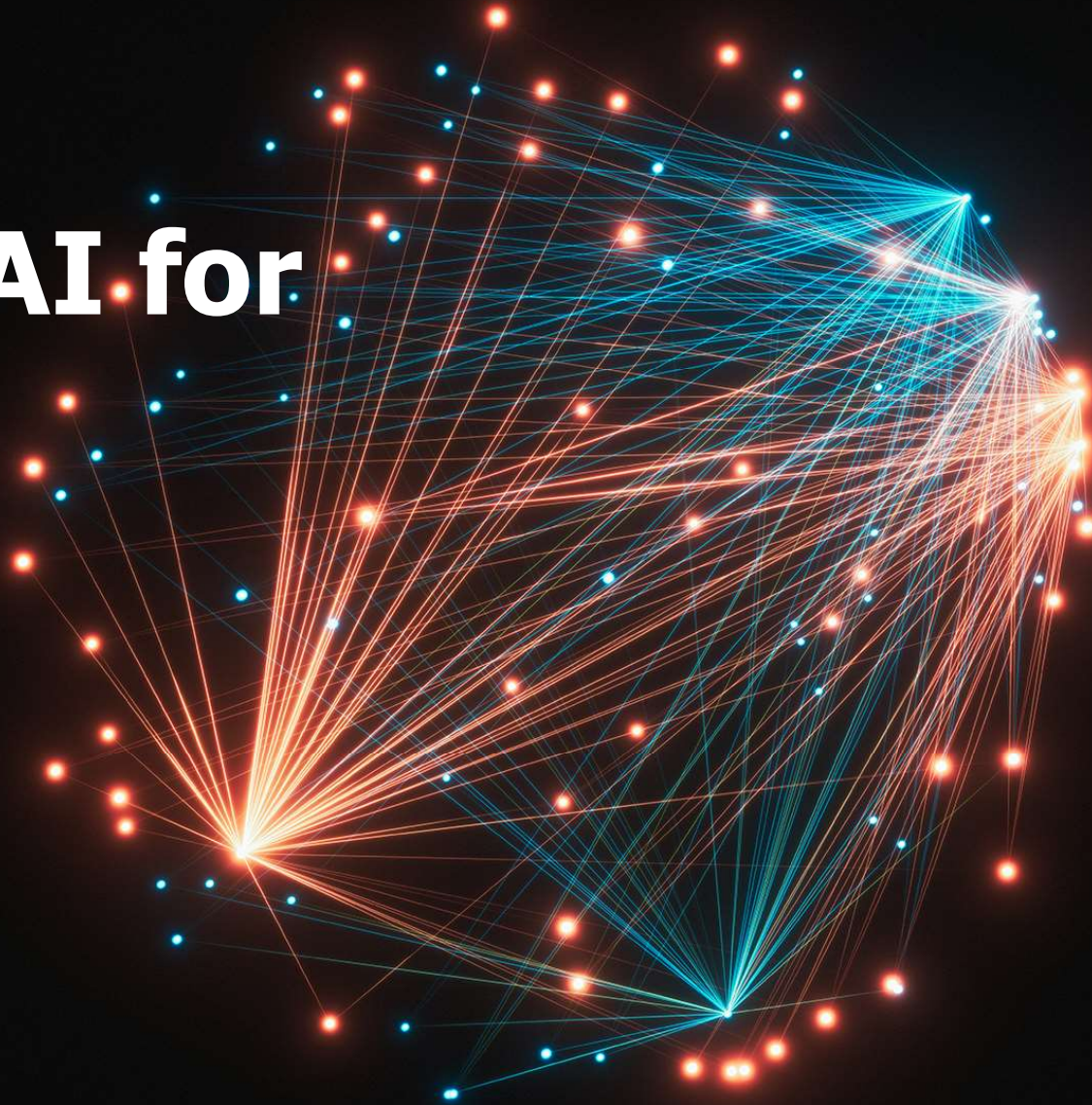
The Lawyer's Perspective

Advising Clients Developing or Using AI

- Bias
- Privacy
- Interpretability

Policy Questions

- UBI
- The Singularity
- Extinction

Using AI in the Practice of Law

- Competence
- Confidentiality
- Supervision
- Unauthorized Practice

Morgan Lewis

Advising Clients

Advising Clients Developing or Using AI

- Bias
- Privacy
- Interpretability

Morgan Lewis

Bias

Built in Bias?

- Studies reveal that AI can embed bias in automated systems. Machine learning can easily detect and learn from explicit and implicit human bias in data. Bias is a persistent problem for AI but elimination of it has proven vexing.

- AI developers and AI platform sponsors are cautioned to be vigilant and to build bias detection into any process that uses AI-based tools to select or exclude.

- Observable Sources of Bias:
  - Data
  - Users
  - Personalization/Bubble
  - Similarity

Morgan Lewis

Privacy
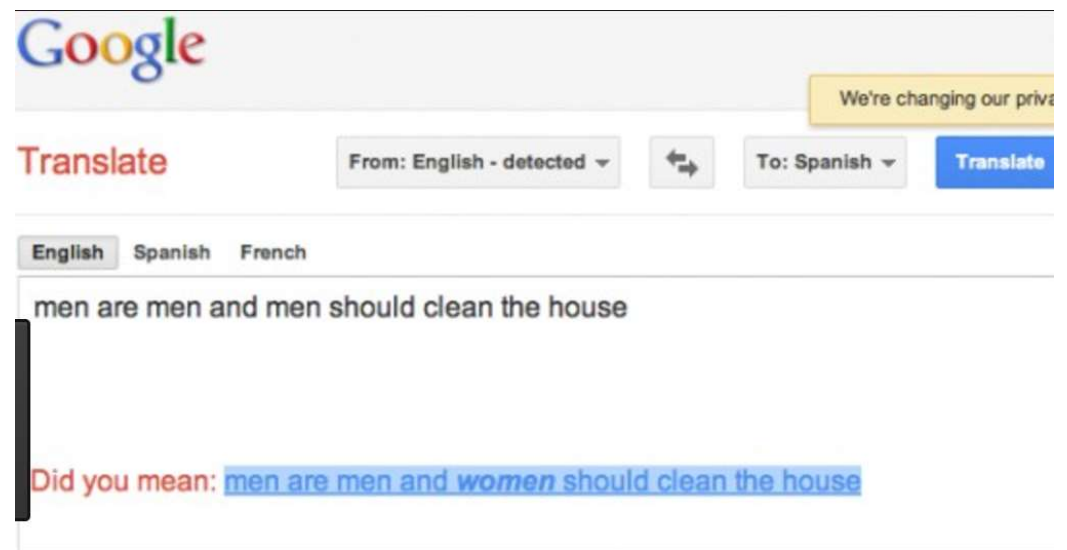
https://techspirited.com/ethical-issues-of-internet-privacy
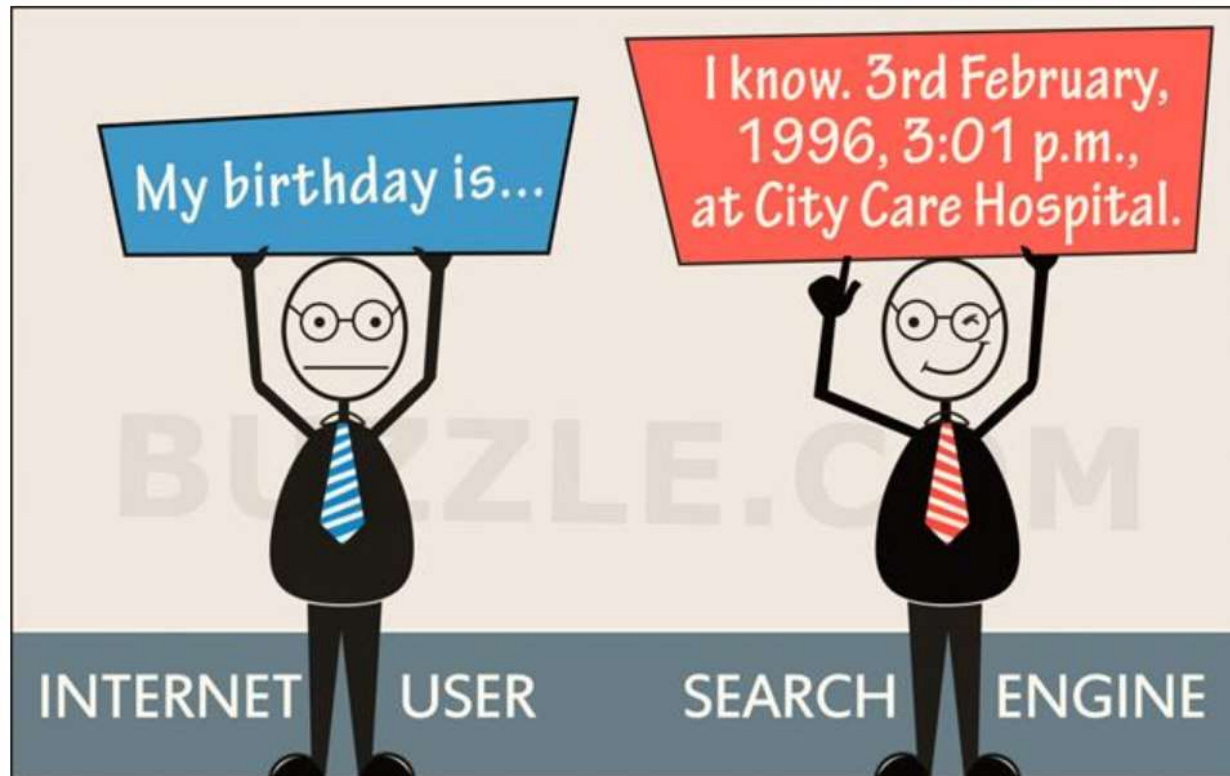
Morgan Lewis

Privacy:

- **AI requires massive amounts of data and huge engines to work:**
  - Acquisition of data is necessary to aid machine learning and predictive output
  - GDPR, CCPA and emerging domestic data protection laws across the country rely in large part on user consent, often freely given in accepting terms of service in order to access applications
  - Caution should be used in relying on consent. Acquirers of such data may be prohibited from using this data beyond stated purpose for which consent was given.
  - Apps that track and collect user+ data face claims of privacy violations even where Terms of Service seek consent.

MySpace won't sell your data!
We don't have any data.

Please come back to MySpace.

Morgan Lewis

Interpretability

The Problem of Interpretability

- Most AI technology is a black box. Based on outcomes, **we know it works, but we don't know how or why**. The technology is too complex for humans to comprehend how it makes decisions.

- "No one really knows how the most advanced algorithms do what they do. That could be a problem."
  - MIT Technology Review

Morgan Lewis

Practicing with AI

Using AI in the Practice of Law

- Competence
- Confidentiality
- Supervision
- Unauthorized Practice

Morgan Lewis

Using AI in Practice

- Practicing with AI:

  - Can a lawyer perform her professional responsibilities **competently** where she does not understand how the technology works?

  - Is that bot <u>practicing</u> <u>law</u>?

  - How does a lawyer provide adequate <u>supervision</u> where the lawyer does not understand how the work is being done or even "who" is doing it?

  - How will a lawyer <u>explain</u> decisions made if he does not know how those decisions were derived?

Morgan Lewis

Current Guidance

- Rules of Professional Responsibility
  - Rule 1.1: Duty of Competence
  - Rule 1.6: Confidentiality
  - Rules 5.1 & 5.3: Supervision
  - Rule 5.5: Unauthorized Practice
- ABA Resolution 112 issued August 2019
- Case law

Rule 1.1

Duty of Competence - A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

"To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."

Comment 8 to Rule 1.1 adopted in 2012

Under Rule 1.1, lawyers also must have a basic understanding of how AI tools operate. While lawyers cannot be expected to know all the technical intricacies of AI systems, they are required to understand how AI technology produces results. As one legal commentator notes, "[i]f a lawyer uses a tool that suggests answers to legal questions, he must understand the capabilities and limitations of the tool, and the risks and benefits of those answers."[28]

ABA Resolution 112, August 2019

Morgan Lewis

26

Rule 1.6

Confidentiality - A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

How does a lawyer protect the confidentiality of client information when using AI? When using a service provider that uses AI? When using a service provider that uses AI in the cloud? When using a service provider that uses AI in the cloud that crowdsources its algorithms or training?

Under ABA Model Rule 1.6, lawyers owe their clients a generally duty of confidentiality. This duty specifically requires a lawyer to "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."[33] The use of some AI tools may require client confidences to be "shared" with third-party vendors. As a result, lawyers must take appropriate steps to ensure that their clients' information appropriately is safeguarded.[34] Appropriate communication with the client also is necessary.

To minimize the risks of using AI, a lawyer should discuss with third-party AI providers the confidentiality safeguards in place. A lawyer should inquire about "what type of information is going to be provided, how the information will be stored, what security measures are in place with respect to the storage of the information, and who is going to have access to the information."[35] AI should not be used in the representation unless the lawyer is confident that the client's confidential information will be secure.

ABA Resolution 112, August 2019

Morgan Lewis

Rule 5.1/5.3

Duty to Supervise - A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct … [and] a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

How does an attorney supervise an algorithm if the code is not visible and the calculations happen across a vast pool of data at a rate of millions per second?

In 2012, the ABA adopted of an amendment to Model Rule 5.3 which changed the title of Rule 5.3 from "Responsibilities Regarding Nonlawyer Assistants" to "Responsibilities Regarding Nonlawyer Assistance."

"The change clarified that the scope of Rule 5.3 encompasses non-lawyers, whether human or not."

There are some tasks that should not be handled by today's AI technology, and a lawyer must know where to draw the line. At the same time, lawyers should avoid underutilizing AI, which could cause them to serve their clients less efficiently.[39] Ultimately, it's a balancing act. Given that many lawyers are focused on detail and control over their matter, it is easy to see why "the greater danger might very well be underutilization of, rather than overreliance upon, artificial intelligence."[40]

ABA Resolution 112, August 2019

Morgan Lewis

Rule 5.5

Unauthorized Practice of Law - A lawyer who is not admitted to practice in this jurisdiction shall not, except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

Morgan Lewis

Under Lola, is document review considered the practice of law? Is legal research? What about due diligence? Negotiating an NDA? (All of these can be done by machine).

In 2015, the Second Circuit distinguished between tasks performed by machines and tasks performed by lawyers (Lola v. Skadden, Arps, Slate, Meagher & Flom LLP, No. 14-3845 (2d Cir. 2015)). The Second Circuit found that **tasks that could otherwise be performed entirely by a machine could not be said to fall under the practice of law**. Consequently, Lola raises the possibility that machines can reclassify tasks that were traditionally considered the practice of law as now falling outside of the scope of the practice of law. (JD Supra - AI and Professional Conduct)

Morgan Lewis
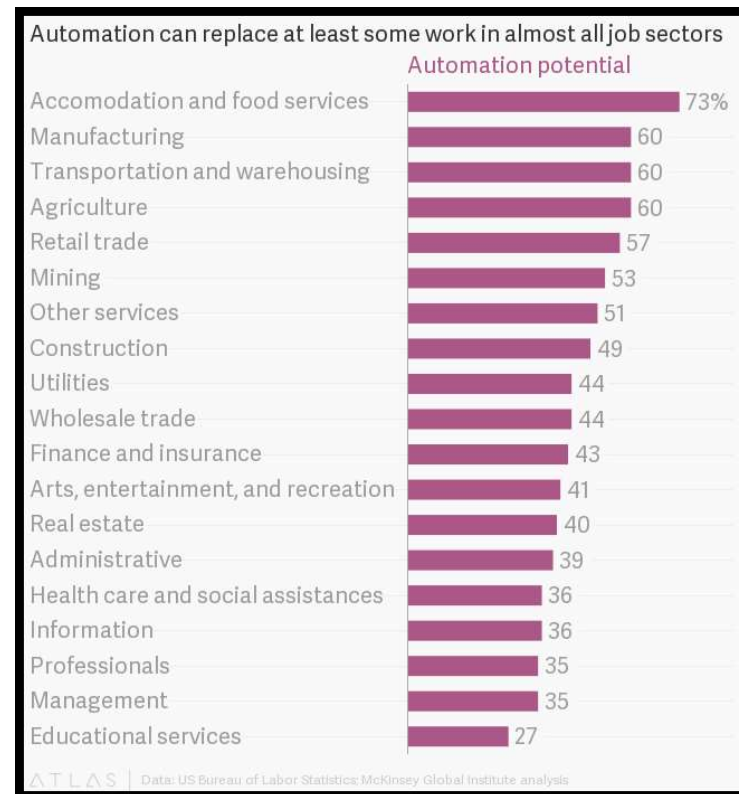
POLICY QUESTIONS

Policy Questions

- UBI
- The Singularity
- Extinction

Future of Work: Will AI Result in Mass Human Displacement in the Workforce?

- Oxford University Study in 2013 predicted that 47% of US jobs are at risk of automation/AI replacement.

- Bank of America predicts that by 2025 the "annual creative disruption impact' from AI will be $14 to $33 Trillion, including $9 Trillion in reduced labor costs of knowledge workers, $8 trillion reduction in manufacturing and healthcare and $2 trillion from self-driving vehicles and drones.

- McKinsey calculates that AI is happening 'ten times faster, at 300 times the scale, with 3000 times the impact of the industrial revolution.'

- Routineness of job, not labor or education required, is the primary indicator of automation.

Automation can replace at least some work in almost all job sectors

Automation potential

Sector	Automation potential
Accomodation and food services	73%
Manufacturing	60
Transportation and warehousing	60
Agriculture	60
Retail trade	57
Mining	53
Other services	51
Construction	49
Utilities	44
Wholesale trade	44
Finance and insurance	43
Arts, entertainment, and recreation	41
Real estate	40
Administrative	39
Health care and social assistances	36
Information	36
Professionals	35
Management	35
Educational services	27

ATLAS | Data: US Bureau of Labor Statistics McKinsey Global Institute analysis

https://qz.com/904285/the-optimists-guide-to-the-robot-apocalypse/
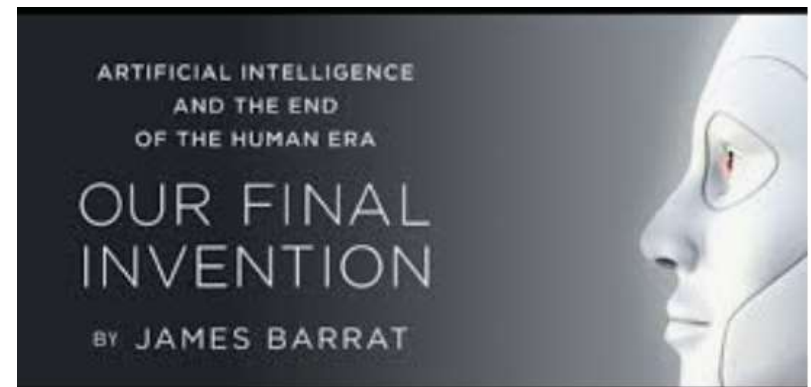
Morgan Lewis

The Singularity: The Point at Which Technology Becomes Smarter Than Humans
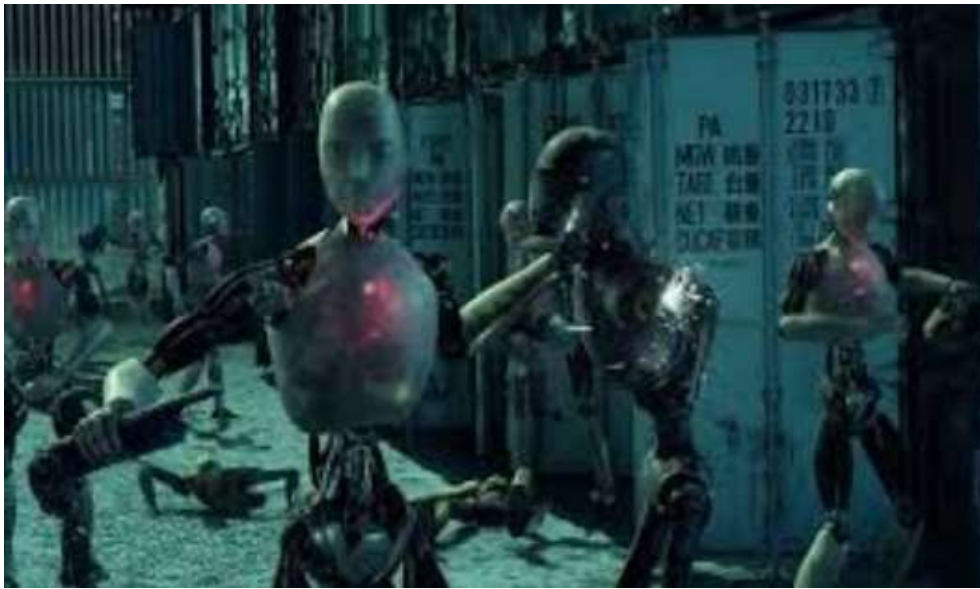
- Should developers of AI tools be concerned with technology that exceeds human cognition?

- Do computers smarter than us present a threat?

- Do those threats outweigh potential benefits and opportunities?

- Should brakes be built into AI systems?

- Should governments regulate AI development? Can they?

- Can these competing concerns even be balanced by humans? Who decides?

2045. Be there.

ARTIFICIAL INTELLIGENCE
AND THE END
OF THE HUMAN ERA

OUR FINAL
INVENTION

BY JAMES BARRAT

Morgan Lewis

Is AI an Existential Threat to Humanity?

I'm sorry Dave. I'm afraid I can't do that.

HAL 9000

Morgan Lewis

Coronavirus
COVID-19 Resources

We have formed a multidisciplinary **Coronavirus/COVID-19 Task Force** to help guide clients through the broad scope of legal issues brought on by this public health challenge.

To help keep you on top of developments as they unfold, we also have launched a resource page on our website at **www.morganlewis.com/ topics/coronavirus- covid-19**

If you would like to receive a daily digest of all new updates to the page, please visit the resource page to **subscribe** using the purple "Stay Up to Date" button.
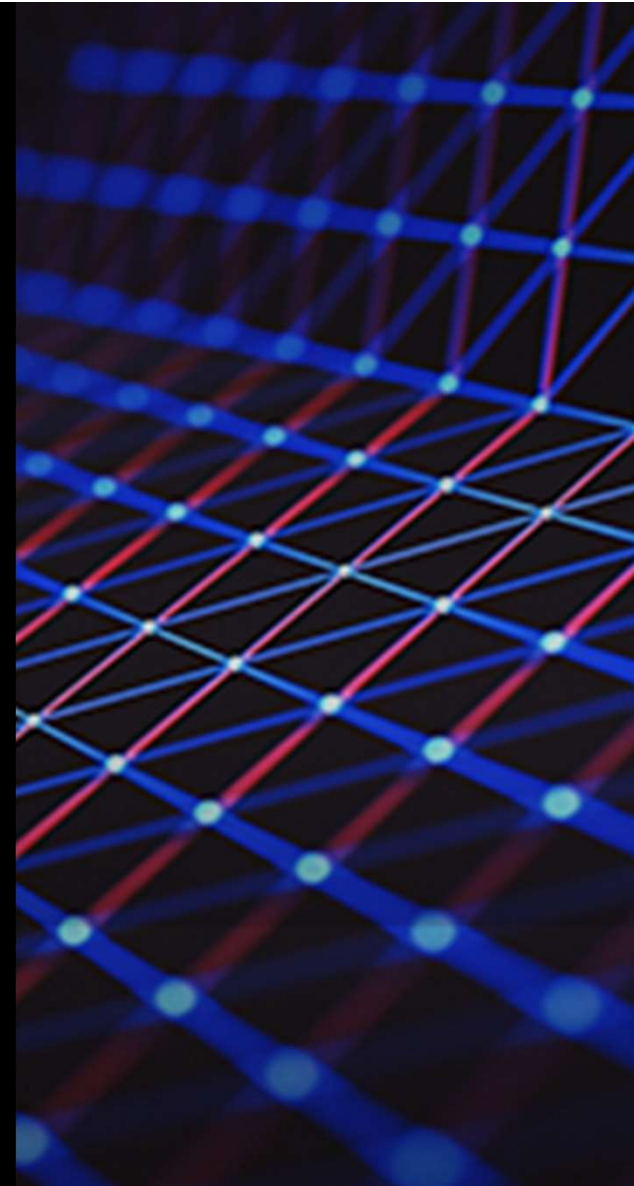
Morgan Lewis

Biography

Tess Blair

Philadelphia

+1.215.963.5161

tess.blair@morganlewis.com

Tess Blair is a litigator and legal entrepreneur who has practiced at the intersection of law, technology, and design for more than two decades. Tess is the founder and leader of Morgan Lewis's eData practice, a data-driven practice that combines great lawyering with technology and design to enhance the delivery of legal services.

Morgan Lewis

Biography

Amy E. Schuh

Philadelphia

+1.215.963.4617

amy.schuh@morganlewis.com

Amy E. Schuh is a litigator who focuses on corporate ethics and compliance counseling, internal and government investigations, and mergers and acquisitions due diligence and integration. She builds, enhances, and streamlines corporate compliance programs, as well as global anti-corruption and investigations programs.

Morgan Lewis

Biography

Andrew J. Gray IV

Silicon Valley

+1.650.843.7575

andrew.gray@morganlewis.com

Serving as the leader of the firm's semiconductor practice and as a member of the firm's fintech and technology industry teams, Andrew J. Gray IV concentrates his practice on intellectual property litigation and prosecution and on strategic IP counseling. Andrew advises both established companies and startups on AI, machine learning, Blockchain, cryptocurrency, computer, and Internet law issues, financing and transactional matters that involve technology firms, and the sale and licensing of technology. He represents clients in patent, trademark, copyright, and trade secret cases before state and federal trial and appellate courts throughout the United States, before the US Patent and Trademark Office's Patent Trial and Appeal Board, and before the US International Trade Commission.
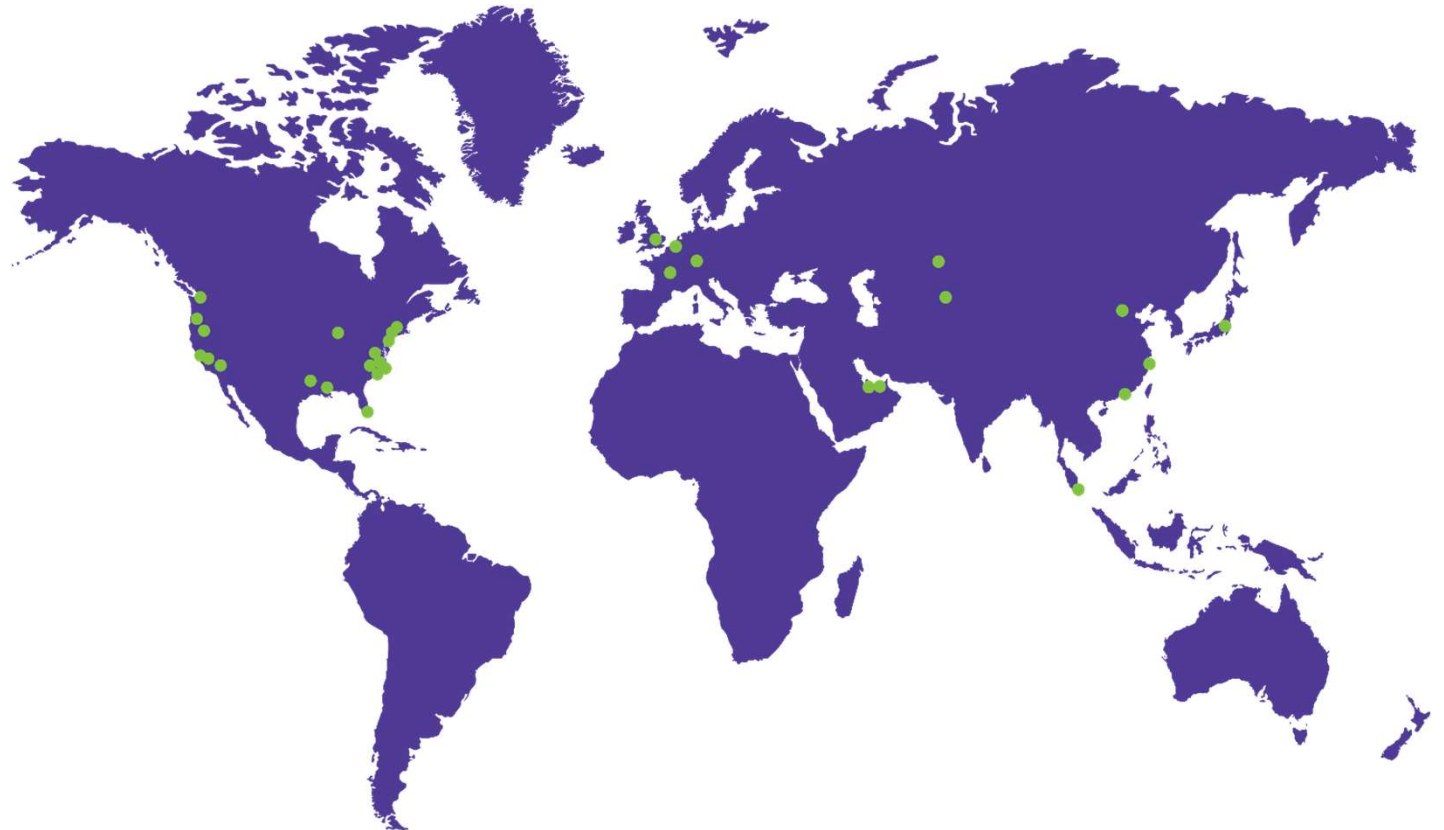
Morgan Lewis

Our Global Reach

Africa	Latin America
Asia Pacific	Middle East
Europe	North America

Our Locations

Abu Dhabi	Miami
Almaty	New York
Astana	Orange County
Beijing*	Paris
Boston	Philadelphia
Brussels	Pittsburgh
Century City	Princeton
Chicago	San Francisco
Dallas	Seattle
Dubai	Shanghai*
Frankfurt	Silicon Valley
Hartford	Singapore*
Hong Kong*	Tokyo
Houston	Washington, DC
London	Wilmington
Los Angeles	

Morgan Lewis

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

THANK YOU

Morgan Lewis