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CHANGES

For time and the world do not stand still. Change is the law of life. And those who look only to the past or the present are certain to miss the future."

~Address in the Assembly Hall at the Paulskirche in Frankfurt (266), June 25, 1963, Public Papers of the Presidents: John F. Kennedy, 1963.

We are proud to present the inaugural issue of the *Journal of Paralegal Education and Practice*, the official scholarly journal of the American Association for Paralegal Education, and the successor to AAfPE's longtime publication, *The Legal Educator*.

This journal launches a new era in paralegal scholarship. As the official journal of AAfPE, JPEP embodies our commitment to advancing the paralegal profession through rigorous academic inquiry, innovative pedagogical approaches, and meaningful dialogue among students, educators, and practitioners on the topics of paralegal education, the profession, and developments in the law regarding paralegals.

The profession is changing: paralegals face new responsibilities and new challenges; attorneys collaborate with paralegals in new ways; and our graduates face a newly competitive market. It's our job as paralegal educators to explore these changes, drive innovation, and create knowledge that will provide them with the level of education this new profession demands.

To that end, AAfPE has shifted the focus of its flagship peer-reviewed publication to reflect the best of rigorous academic scholarship and criticism. With a shift to online-only publication, we can present articles of greater length, delve deeper into the subject matter, and ensure timely content.

Always mindful of our students, JPEP will publish articles written by our best students, vetted through the same double blind peer review as our professional submissions. The student articles are not confined to the subject of paralegal education or practice; they are selected for the quality of their scholarship and cogent exposition. Like all our published materials, we trust that they will advance the standard of excellence to be expected of our profession.

We're excited to embark on this new journey and trust that you will find the *Journal of Paralegal Education and Practice* to be an invaluable resource. We invite to enjoy the articles in this inaugural issue and to submit your own scholarship for publication.

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ARTICLE

ETHICAL CONSIDERATIONS FOR THE USE OF ARTIFICIAL INTELLIGENCE BY LAWYERS AND PARALEGALS

David A. Levy

Artificial intelligence, particularly generative artificial intelligence, is revolutionizing the legal profession. This transformation necessitates adherence to ethical standards that underpin competent and effective client representation. Bar associations and judges have called upon legal educators to ensure that graduates are well-prepared to utilize these emerging technologies. This article explores the growing use of generative AI in legal practice, identifies relevant bar ethics rules and court requirements, and uses case studies to highlight ethical lapses. Additionally, it discusses the author's experiences with AI in research and pedagogy. No Bluebooks were harmed in the creation of this article.

David A. Levy is an Assistant Professor in the Graduate Legal Studies Program at Texas State University, San Marcos, Texas. I would like to express my appreciation to Dr. Lynn Crossett, and my Legal Studies and Political Science colleagues who have listened to my enthusiasm for this topic with infinite patience and understanding. Any errors or omissions are solely my own.

INTRODUCTION

"*Hello, Dave. You're looking well today.*" HAL 9000 computer, *in* 2001: A SPACE ODYSSEY (Metro-Goldwyn-Mayer 1968).[1]

It is astonishing that in the two short years since our profession learned the term "Chat-GPT lawyer" as a consequence of the groundbreaking *Mata v. Avianca*[2] decision on the use of artificial intelligence (AI), the legal profession has gone from discovering that a computer using a new artificial intelligence (AI) technology can "hallucinate"[3] (fabricate plausible responses), to questioning whether such technology has a place in the practice of law[4], and now to an emerging acceptance of artificial intelligence by the profession within the confines of the rules of legal ethics.[5]

Perhaps emblematic of the rapid rise of the awareness of the potential impact of artificial intelligence on the legal profession, Chief Justice Roberts made artificial intelligence the primary focus of his *2023 Year-End Report on the Federal Judiciary*[6], noting that it is the latest in a series of technological changes that will "continue to transform our work"[7], and that "[l]egal research may soon be unimaginable without it."[8]

One thing that has become clear is that if the profession is to leverage the efficiency of artificial intelligence, attorneys and paralegals must become aware of both the risks and benefits of this technology. It is therefore incumbent upon legal educators to ensure that our graduates have been trained in its ethical use, and to maintain our competence with technologies employed in the contemporary practice of law. This paper will examine the tools we have in the profession to ensure such ethical use.

I. ARTIFICIAL INTELLIGENCE

A. Artificial Intelligence education as federal policy

A recent Executive Order by President Trump provided recognition of the need for educators to teach the use of artificial intelligence to ensure that our students graduate with the skills to succeed in the workplace:

> It is the policy of the United States to promote AI literacy and proficiency among Americans by promoting the appropriate integration of AI into education, providing comprehensive AI training for educators, and fostering early exposure to AI concepts and technology to develop an AI-ready workforce and the next generation of American AI innovators.[9]

B. Federal definition of artificial intelligence

The federal definition of artificial intelligence is found within the National Artificial Intelligence Initiative of 2020:

> The term "artificial intelligence" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to--
>
> (A) perceive real and virtual environments;
>
> (B) abstract such perceptions into models through analysis in an automated manner; and
>
> (C) use model inference to formulate options for information or action.[10]

C. What is generative artificial intelligence?

Perhaps the form of artificial intelligence which has garnered the most attention by the legal profession is generative artificial intelligence. Unlike traditional search engines such as Google, which directs persons to existing content, generative artificial intelligence attempts to create new content.[11] Generative artificial intelligence systems analyze vast amounts of data to predict responses to inquiries, and consequently, the value of the response is dependent on the quality of the information analyzed and the precision of the inquiry.[12] They are creatures of statistics, "designed to predict the most statistically likely answer, not necessarily the most factually accurate one."[13]

This "large language model" form of artificial intelligence, which is reliant on the quality of the information it analyzes, poses a risk of utilizing outdated, biased,[14] or incorrect information in generating its response.[15] For example, consider the following exchange I had with Microsoft Copilot when conducting research on Texas contract law, which illustrates a response based on the analysis of inaccurate information:

> **Prompt:**
> In Texas, are contracts for the purchase of a car which are entered into on a Sunday considered to be illegal?
>
> **Copilot:**
> *In Texas, it is illegal for licensed car dealerships to sell vehicles on Sundays. This restriction is part of the Texas Occupations Code 2301.251, known as a "Blue Law," which requires dealerships to remain closed on either Saturday or Sunday, but not both1 [...]*
>
> *1 Can You Buy a Car on Sunday in Texas? - LegalClarity*
>
> *AI-generated content may be incorrect*
>
> **Prompt:**
> I think your citation is wrong. The prohibition is contained in Section 728.002 of the Texas Transportation Code, not Section 2301.251 of the Texas Occupations Code. Can you check the official sources and verify this?

Copilot:
You are correct. The prohibition on selling motor vehicles on consecutive days of Saturday and Sunday is indeed contained in Section 728.002 of the Texas Transportation Code1. [...]
The Texas Occupations Code Section 2301.251 also restricts car sales on Sundays, requiring dealerships to remain closed on either Saturday or Sunday, but not both2. [...]

2 Can You Buy a Car on Sunday in Texas - LegalClarity

AI-generated content may be incorrect

Prompt:
The source you cite to, legalclarity.org does make that statement, but it is not correct. Section 2301.251 of the Occupations Code only addresses the requirement of licensing. Could you check that fact?

Copilot:
You are correct. Section 2301.251 of the Texas Occupations Code addresses the requirement of licensing for motor vehicle dealers, manufacturers, distributors, converters, vehicle lessors, and vehicle lease facilitators1. It does not contain any prohibition on selling motor vehicles on Sundays. [...]

Prompt:
I am curious, if a user corrects a response, does your training allow you to "learn" from that correction? I'm a professor giving a lecture on AI and the law next Thursday, and I would like to have a better understanding of how you arrive at your responses.

Copilot:
I appreciate your curiosity! As an AI, I don't have the ability to learn from corrections in the traditional sense. My responses are generated based on patterns and information from my training data, and I don't retain memory of past interactions. However, I can provide accurate information based on the latest data available to me.

It has been suggested that artificial intelligence-based systems from an established legal database supplier such as LEXIS or Westlaw would be inherently more reliable, in that the data used in training the artificial intelligence system would be limited to information collected and curated by the database supplier, thereby rendering the generated responses more reliable. This view has been questioned by a group of researchers looking at legal research and artificial intelligence, which in part found that Westlaw AI-Assisted Research produced hallucinations in one-third of its responses to their queries.[16]

II. HALLUCINATIONS CONSIDERED

A major issue encountered in the use of artificial intelligence in the legal profession is referred to as "hallucination"[17], the tendency of artificial intelligence programs to make up answers which are false or imaginary in response to user inquiries.[18] Such hallucinations can result in false case citations which can appear real, or even entirely fictitious case decisions being generated.[19] Like a young child caught in a lie, when prompted by the user, the artificial intelligence program can persist in claiming that the cases it cites are genuine. For example, in the *Mata* case, when asked by the attorney if the other cases it provided were fake, ChatGPT responded "No, the other cases I provided are real and can be found in reputable legal databases such as LexisNexis and Westlaw."[20]

In practice, hallucinations can be classified as a response that is either a false statement of fact, or a false assertion of a source to support an otherwise factual statement. [21] Both types have appeared in cases relied upon by attorneys in court filings. An attorney who fails to verify cases and citations obtained using artificial intelligence risks filing false or misleading pleadings with a court, in violation duties arising under existing rules of disciplinary conduct and civil procedure, as discussed further in the case studies contained in Section VI, *infra*.

III. EXISTING RULES WHICH HAVE BEEN APPLIED IN THE AI CONTEXT

Courts and commentators considering the use of artificial intelligence in the context of the law have identified several existing rules of legal ethics and civil procedure which may be breached through the careless use of artificial intelligence. Among those noted include state bar disciplinary rules, such as Texas Disciplinary Rules of Professional Conduct Rule 1.01 (ethical duties of competence), Rule 1.05 (confidentiality), Rule 3.03 (candor to the tribunal), Rule 5.03 (responsibility of supervising attorneys), and civil procedure rules such as Rule 11 of the Federal Rules of Civil Procedure regarding certification of the contents of pleadings along with Rule 13 of the Texas Rules of Civil Procedure. In addition, local rules, such as the certification rule of Judge Brantley Starr of the Northern District of Texas, and its successor, current Local Rule 7.2, address the use of artificial intelligence in documents filed before the court.

Rule 1.01 of the Texas Disciplinary Rules of Professional Conduct concerning "Competent and Diligent Representation" imposes a standard by which to judge competent representation. Indeed, comment eight, "Maintaining Competence" mandates knowledge of evolving technology, such as artificial intelligence. "Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law, *including the benefits and risks associated with relevant technology*...." (emphasis added).[22]

Rule 1.05 addresses confidentiality of information, including a prohibition against knowingly revealing confidential client information to anyone other than the client, the client's representatives, or "the members, associates, or employees of the lawyer's law firm." A potential concern in this regard has been raised by commentators that an artificial intelligence program might use confidential information as part of the information it learns from and risk breaching the duty of confidentiality.[23] It has been noted that the artificial intelligence system's terms of services agreement should provide for the destruction of information upon conclusion of a matter.[24] State

Bars vary as to whether there is a duty to inform the client prior to the use of artificial intelligence.[25] Texas is uncharacteristically indecisive, suggesting that attorneys "should consider" informing clients about the risks, and "may need" to secure client consent.[26]

Rule 3.03 addresses the attorney's duty of candor to the tribunal, and is the rule frequently cited by courts when an attorney submits a document generated by artificial intelligence containing false case citations.[27] Rule 3.03 states in relevant part that "lawyers shall not knowingly: (1) make a false statement of material fact or law to a tribunal...." Comment three, "Misleading Legal Argument", further makes clear that "[l]egal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal."

Rule 5.01 addresses the responsibility of a supervising attorney to ensure compliance with the Disciplinary Rules and **Rule 5.03** addresses the responsibility of supervising attorney regarding "nonlawyers". Rules 5.01 places makes a supervising attorney responsible for the acts of a subordinate attorney for conduct that the supervising attorney "orders, encourages, or knowingly permits",[28] and places a duty upon the supervisor to take "reasonable remedial action to avoid or mitigate" the consequences of another attorney's action upon becoming aware of such actions in violation of the Disciplinary Rules.[29] Rule 5.03 extends this responsibility of the supervising attorney to similar acts committed by persons other than attorneys, such as legal interns and paralegals.[30] The continuing responsibility of the supervising attorney is illustrated in the case studies set out in Section VI below, particularly *Lacey v. State Farm*.[31]

Rule 11 of the Federal Rules of Civil Procedure places an obligation on the attorney that documents filed with a court are accurate as to their statement of the law. Rule 11(b)(2) of the Federal Rules of Civil Procedure states:

> By presenting to the court a pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it – an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: ... the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law....

Rule 11 underpinned the sanctions in federal court cases, including the *Mata* decision[32] and the Second Circuit's referral of an attorney to an attorney grievance panel in *Park v. Kim*[33]*, inter alia.*

Here in Texas, **Rule 13** of the Texas Rules of Civil Procedure states:

> The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties ... who shall file any fictitious pleading in a cause ... , or shall make statements in pleading which they know to be groundless and false ... shall be held guilty of a contempt. If a pleading, motion or other paper is

signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both.

IV. COURT CERTIFICATIONS REGARDING THE USE OF ARTIFICIAL INTELLIGENCE

District Court Judge Brantley Starr of the Northern District of Texas, adopted a requirement that the following certificate[34] was to be filed in all cases before his court:

———

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PARTY,

Plaintiff,

v. CASE NUMBER

PARTY,

Defendant.

CERTIFICATE REGARDING JUDGE-SPECIFIC REQUIREMENTS

I, the undersigned attorney, hereby certify that I have read and will comply with all judge-specific requirements for Judge Brantley Starr, United States District Judge for the Northern District of Texas.

I further certify that no portion of any filing in this case will be drafted by generative artificial intelligence or that any language drafted by generative artificial intelligence—including quotations, citations, paraphrased assertions, and legal analysis—will be checked for accuracy, using print reporters or traditional legal databases, by a

> human being before it is submitted to the Court. I understand that any attorney who signs any filing in this case will be held responsible for the contents thereof according to applicable rules of attorney discipline, regardless of whether generative artificial intelligence drafted any portion of that filing.
>
> _____
>
> ATTORNEY NAME(S)

___

The Local Rules for the Northern District of Texas now contain Local Rule 7.2(f), which states in part: "A brief prepared using generative artificial intelligence must disclose this fact on the first page under the heading 'Use of Generative Artificial Intelligence.' If the presiding judge so directs, the party filing the brief must disclose the specific parts prepared using generative artificial intelligence."[35]

It is clear that courts are growing impatient with the use of artificial intelligence, for example, in formulating requests for the award of attorney fees, finding the use of ChatGPT to support an "aggressive fee bid ... utterly and unusually unpersuasive,"[36] and that the use of artificial intelligence in creating a brief containing false citations is "particularly problematic in response to a motion for an award of attorney's fees."[37] The court in *McComb v. Best Buy* drew a hard line, reminding the parties before it that, pursuant to standing orders:

> they are not allowed to use AI—for any purpose—to prepare any filings in the instant case or any case before the undersigned.... Both parties, and their respective counsel, have an obligation to immediately inform the Court if they discover that a party has used AI to prepare any filing. The penalty for violating this provision includes, *inter alia*, striking the pleading from the record, the imposition of economic sanctions or contempt, and dismissal of the lawsuit.[38]

Judge Starr justified requiring certification regarding the use of artificial intelligence in drafting documents to be submitted to his court as follows:

> All attorneys and pro se litigants appearing before the Court must, together with their notice of appearance, file on the docket a certificate attesting either that no portion of any filing will be drafted by generative artificial intelligence (such as ChatGPT, Harvey.AI, or Google Bard) or that any language drafted by generative artificial intelligence will be checked for accuracy, using print reporters or traditional legal databases, by a human being. These platforms are incredibly

> powerful and have many uses in the law: form divorces, discovery requests, suggested errors in documents, anticipated questions at oral argument. But legal briefing is not one of them. Here's why. These platforms in their current states are prone to hallucinations and bias. On hallucinations, they make stuff up—even quotes and citations. Another issue is reliability or bias. While attorneys swear an oath to set aside their personal prejudices, biases, and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath. As such, these systems hold no allegiance to any client, the rule of law, or the laws and Constitution of the United States (or, as addressed above, the truth). Unbound by any sense of duty, honor, or justice, such programs act according to computer code rather than conviction, based on programming rather than principle. Any party believing a platform has the requisite accuracy and reliability for legal briefing may move for leave and explain why. Accordingly, the Court will strike any filing from a party who fails to file a certificate on the docket attesting that they have read the Court's judge-specific requirements and understand that they will be held responsible under Rule 11 for the contents of any filing that they sign and submit to the Court, regardless of whether generative artificial intelligence drafted any portion of that filing.[39]

V. BAR PROPOSALS

The American Bar Association[40], along with various state bar associations[41] which have examined the issue of the use of generative artificial intelligence have been broadly consistent regarding the ultimate responsibility for the use of such technology remaining with the supervising attorney. The importance of training law firm staff, including paralegals, in the ethical use of generative artificial intelligence has been noted.[42]

A. *California*

The Committee on Professional Responsibility and Conduct of the California State Bar recently presented a document for adoption entitled "*Practical Guidance for the use of Generative Artificial Intelligence in the Practice of Law*."[43] Among its recommendations, the document directly addresses the use of artificial intelligence in the context of the duty of attorney competence:

> Before using generative AI, a lawyer should understand to a reasonable degree how the technology works, its limitations, and the applicable terms of use and exploitation of client data by the product.
>
> Overreliance on AI tools is inconsistent with the active practice of law and application of trained judgment by the lawyer.
>
> AI-generated outputs can be used as a starting point but must be carefully scrutinized. The should be critically analyzed for accuracy and bias, supplemented, and improved if necessary. A lawyer must critically review, validate, and correct

> both the input and the output of generative AI to ensure the content accurately reflects and supports the interests and priorities of the client in the matter at hand, including as part of advocacy for the client. The duty of competence requires more than the mere detection and elimination of false AI-generated results.
>
> A lawyer's professional judgment cannot be delegated to generative AI and remains the lawyer's responsibility at all times. A lawyer should take steps to avoid over-reliance on generative AI to such a degree that it hinders critical attorney analysis fostered by traditional research and writing.[44]

B. *Texas*

The Professional Ethics Committee for the State Bar of Texas issued an Opinion regarding ethical considerations for the use of generative artificial intelligence by lawyers.[45] The Committee stressed that while Texas lawyers were not required to use artificial intelligence, if they chose to do so, they would be required to understand the technology[46], and that attorneys and staff should be trained in how to use it while protecting client confidential information.[47] Texas recommends attorneys consider informing clients about the use of generative artificial intelligence and obtaining their consent.[48]

In addition to the bar guidance discussed above, a good summary of state bar responses to artificial intelligence has been published by Justia, *AI and Attorney Ethics Rules: 50-State Survey* (last reviewed September 2024).

VI. CASE STUDIES

a. *Mata v. Avianca* – June 22, 2023

As previously noted, the *Mata v. Avianca* decision[49] was the first case to bring to international prominence the issue of filing briefs generated by artificial intelligence containing false citations. In *Mata*, a passenger injured on an international flight filed a personal injury suit in a New York state court. The air carrier removed action, asserting federal question jurisdiction on the basis of a treaty, the "Montreal Convention."[50] After the air carrier moved to dismiss, the plaintiff's attorneys, LoDuca and Schwartz, filed an affirmation in opposition that included non-existent judicial opinions with fake quotes and fake citations created by the artificial intelligence system, ChatGPT.

The air carrier filed a reply memorandum informing the court that the citations in the plaintiff's affirmation were not genuine.[51] The plaintiff's attorneys did essentially nothing, failing to take any sort of remedial action[52], and falsely claimed in an affidavit that ChatGPT was used to "supplement" other research, before acknowledging in a hearing that it was the source of the research underpinning the brief.[53] It is noteworthy that in response to Schwartz's requests for caselaw authority to support its responses, ChatGPT simply made up cases[54] and Schwartz never bothered to look them up prior to submitting the document to court.

The court issued sanctions against LoDuca and Schwartz pursuant to Rule 11 of the Federal Rules of Civil Procedure or its inherent authority. LoDuca and Schwartz were required to (a) mail a copy of the Opinion and Order to the client along with a transcript of the hearing of June 8, 2023, and a copy of the April 25 Affirmation, including its exhibits; (b) mail a letter individually addressed to each judge falsely identified as the author of the fake "*Varghese*", "*Shaboon*", "*Petersen*", "*Martinez*", "*Durden*" and "*Miller*" opinions attaching the Opinion and Order, a transcript of the hearing of June 8, 2023, and a copy of the April 25 Affirmation, and including the fake "opinion" attributed to the recipient judge; (c) file copies of the said letters; and (d) pay a penalty of $5,000.[55]

The *Mata* court summarized the ethics violation:

> In researching and drafting court submissions, good lawyers appropriately obtain assistance from junior lawyers, law students, contract lawyers, legal encyclopedias and databases such as Westlaw and LexisNexis. Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings. Rule 11, Fed. R. Civ. P.. [The attorneys] abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question.[56]

b. *People v. Crabill* – Nov. 22, 2023

Of the cases I discuss in my classes on the topic of artificial intelligence and legal ethics, I find my greatest sympathy for the attorney in a Colorado disciplinary case, *People v. Crabill*.[57]

Zachariah Crabill was a new lawyer, admitted to the Colorado Bar on October 29, 2021. He initially worked for a prosecutor's office before beginning work for a private firm in early 2023. His mother died in 2022, his brother committed suicide the day before he began working for the firm, and his wife was pregnant. His supervising attorney left the firm. He was assigned the task of drafting and filing a motion to set aside a default judgment entered against a formerly *pro se* client. He had never filed a motion to set aside. He used an existing template, then added cases taken from ChatGPT. Crabill was close to a filing deadline, did not check the cases, and sent the draft to a paralegal and his acting supervisor. He then filed the motion on May 4, 2023.[58]

The following day, Crabill discovered prior to the hearing that some of the cases he filed were not accurate. He then has a dialogue via text with his paralegal:

> 10:02 [Crabill]; I think all of my case cites from ChatGPT are garbage ... I can't even find the cases in Lexis.
> 10:03 Paralegal: Did you not check them after it gave them to you?
> 10:03 [Crabill]: no. like an idiot.
> 10:12 Paralegal: Are you going to withdraw it?

> l0:12 [Crabill]: I have no idea what to do. I am trying to find actual case law in our favor now to present to the judge. I don't have time for this ...[59]

Crabill did not seek advice from an attorney, did not advise the court of the problem with the cases, did not withdraw the pleading, and when he was called out by the court, panicked and blamed a legal intern.[60] The court found that he had violated Colorado's disciplinary rules regarding attorney competence, diligence, candor to the tribunal, and professional misconduct involving dishonesty, fraud, deceit, or misrepresentation. He was suspended for one year and a day, with ninety days to be served, and the rest stayed upon completion of a two-year probationary period.[61]

c. *United States v. Cohen* – Dec. 12, 2023 and Mar. 20, 2024

In *United States v. Cohen*, Schwartz, the attorney for Donald Trump's former lawyer Michael Cohen, filed a letter motion dated November 29, 2023 with the district court seeking early termination of Cohen's supervised release, which contained detailed references to three cases in support of the motion. Subsequently, Perry, an attorney new to the case, filed a reply letter with the court, noting in a footnote that she was unable to verify some of the cases cited by Schwartz.[62]

The court, citing *Mata* and Rule 11 of the Federal Rules of Civil Procedure, then ordered Schwartz to provide copies of the three cited cases to the court, and, if he was unable to do so, provide a sworn declaration containing a thorough explanation of how the motion came to cite cases that do not exist and what role, if any, Cohen played in drafting or reviewing the motion before it was filed.[63] Schwartz's client, Cohen, then provided a sworn declaration to the court stating that he had provided the citations and case summaries to Schwartz after having found them on the artificial intelligence program, Google Bard. Cohen, a disbarred attorney, stated that he had not kept up with emerging trends (and related risks) in legal technology and he "did not realize [that Google Bard] was a generative text service that, like ChatGPT, could show citations and descriptions that looked real but actually were not."[64]

A round of finger-pointing then ensued, with Cohen stating that he did not realize that Schwartz "would drop the cases into his submission wholesale without even confirming they existed". Schwartz blamed both Cohen and Perry by claiming Cohen stated that Perry providing suggestions for the motion. Perry then reiterated that she only began representing Cohen after Schwartz filed his motion. She further noted that Cohen, as a disbarred lawyer, "did not know that the cases he identified were not real and, unlike his attorney, had no obligation to confirm as much."[65]

In its show cause hearing, the court ultimately did not sanction Schwartz, noting that "[h]is citation to non-existent cases is embarrassing and certainly negligent, perhaps even grossly negligent. But the Court cannot find that it was done in bad faith."[66] The court further did not impose sanctions on Cohen, stating that as a client, "[h]e was entitled to rely on his counsel and to trust his counsel's professional judgment"[67], essentially accepting Perry's argument in that regard.

d. *Smith v. Farwell* – Feb. 12, 2024

Smith v. Farwell[68] is a Massachusetts wrongful death case clearly showing the failure of a supervising attorney to ensure the ethical conduct of subordinate attorneys and staff. Plaintiff's

counsel, who was unnamed in the subsequent Sanctions Order, submitted memoranda of law in opposition to motions to dismiss containing false case citations, which were uncovered by the court. At a hearing, Plaintiff's counsel stated that he was unfamiliar with the cited cases, had no idea where or how they were obtained, and further stated that the documents were drafted by interns at his law office.[69]

The court scheduled a sanctions hearing at which the attorney apologized to the court, stated that the documents had been drafted by two recent law school graduates who had not yet passed the bar and one associate attorney, the latter of whom admitted to using an artificial intelligence system in drafting the documents. He again asserted his unfamiliarity with artificial intelligence systems and that they can generate false or misleading information, stated that he was unaware that his associate was using artificial intelligence to draft the documents and that his review was limited to checking for style, grammar, and flow but not accuracy, and that he did not know whether anyone in his office checked the citations for accuracy prior to filing.[70] The court accepted his lack of intent to deceive and sincere contrition, but ultimately fined him $2,000, noting that "[t]hese facts... do not exonerate Plaintiff's Counsel of all fault, nor do they obviate the need for the Court to take responsive action to ensure that the problem encountered in this case does not occur again in the future."[71]

e. *Kruse v. Karlen* – Feb. 13, 2024 and
Powhatan County School Board v. Skinger – June 2, 2025

Kruse v. Karlen[72] is particularly noteworthy in that it involved a *pro se* litigant being sanctioned by a court for filing an appellate brief containing fictitious cases generated by artificial intelligence. The court noted that only two of the twenty-four cases cited by Karlen were genuine, and those two cases did not stand for the propositions put forward by Karlen.[73] When questioned by the court, Karlen stated that he had "hired an online 'consultant' purporting to be an attorney licensed in California" to prepare the brief.[74] Karlen further stated that he "did not know that the individual would use 'artificial intelligence hallucinations'" and denied any intent to waste time or mislead the court.[75]

The court, citing *Mata* and the Rule 3.3 duty of candor to the tribunal, held that the submission of fictitious cases constituted an abuse of the system, held the *pro se* litigant to the same standard as attorneys practicing before the court[76], and consequently ordered Karlen to pay Kruse $10,000 damages as partial attorney's fees for the cost of defending against a frivolous appeal.[77]

Arguably, the *pro se* record for fictitious citations was recently broken in *Powhatan County School Board v. Skinger*[78] by a *pro se* litigant filing various documents with the court containing at least forty-two citations to non-existent authority.[79] The party admitted to the court that she had used generative artificial intelligence in drafting one of her filings.[80] The court expressed its exasperation with the party's unverified citations:

> The pervasive misrepresentations of the law in Lucas' filings cannot be tolerated. It serves to make a mockery of the judicial process. It causes an enormous waste of judicial resources to try to find cited cases that do not exist and to determine

whether a cited authority is relevant or binding, only to determine that most are neither.[81]

f. *Kohls v. Ellison* – Jan. 10, 2025

Kohls v. Ellison[82] is a case challenging a Minnesota law prohibiting the use of "deepfakes" – AI-generated images or voices, with the intent to injure a political candidate or influence an election.[83] An expert witness for the State of Minnesota, Stanford Professor Jeff Hancock, provided a declaration, which was filed by the Minnesota Attorney General along with other pleadings. It subsequently was determined that Professor Hancock's expert declaration on the danger of AI misinformation had been drafted with the aid of ChatGPT-4o and contained citations to non-existent academic articles and other citation errors. The court observed:

> The irony. Professor Hancock, a credentialed expert on the dangers of AI and misinformation, has fallen victim to the siren call of relying too heavily on AI – in a case that resolves around the dangers of AI, no less.... It is particularly troubling to the Court that Professor Hancock typically validates citations with a reference software when he writes academic articles but did not do so when submitting the Hancock Declaration as part of Minnesota's legal filing. One would expect that greater attention would be paid to a document submitted under penalty of perjury than academic articles. Indeed, the Court would expect greater diligence from attorneys, let alone an expert in AI misinformation at one of the country's most renowned academic institutions.[84]

The *Kohls* court then denied Minnesota's motion for leave to file an amended declaration, noting that "Professor Hancock's citation to fake, AI-generated sources in his declaration – even with his helpful, thorough, and plausible explanation – shatters his credibility with this Court."[85]

g. *Lacey v. State Farm Gen. Ins. Co.* – May 6, 2025

Lacey v. State Farm[86] is a case where artificial intelligence became an issue in a filed brief. A senior attorney from one law firm sent a "legal outline" to junior attorneys at a cooperating law firm to assist in preparing a supplemental brief. The senior attorney did not tell the junior attorneys that he used generative artificial intelligence enhanced programs (namely CoCounsel, Westlaw Precision, and Google Gemini) to prepare the legal outline. The junior attorneys did not check the accuracy of the cases cited in the legal outline and were not aware that it was created with the assistance of generative artificial intelligence. The brief was submitted, the Special Master caught the errors and returned the brief. Two incorrect AI-generated citations were deleted, but other AI-generated problems remained in the text.[87]

The law firms were ordered to pay $26,100 to the defense as reimbursement, and the attorneys to pay $5,000 for fees incurred by the defense in responding to the faulty briefs. In addition, the magistrate stuck the supplemental briefs and refused further discovery relief on the privilege at issue.[88]

The Special Master in *Lacey*, Hon. Michael Wilner, made clear that the failure to check AI-generated citations had consequences:

> [J]ustice requires a swift, certain, and measured response. It's simply unfathomable to me that attorneys of this caliber would blithely outsource their legal research in such a haphazard and amateurish manner. The bogus filing caused me to have considerable doubts about the accuracy of all of [sic] factual and legal contentions that Plaintiff's lawyers advanced in this action – whether attributable to an AI foul-up or not.[89]

In response to the Show Cause Order, the senior attorney, Trent Copeland, accepted responsibility and explained the error in supervision:

> This problem began with me – full stop – in my failure to advise my colleagues that a preliminary outline I forwarded to them had relied, in part, on the use of generative AI capabilities found in Co-Counsel and Westlaw Precision and Google Gemini. To the extent my colleagues were tasked with the primary responsibility for research and drafting of the memorandum, they did so in reliance – at least initially – on my preliminary outline and notes I had provided several days earlier….[90]

> In our haste to meet the filing deadline, we failed to (1) ensure that the correct and final document had been uploaded, and (2) conduct a thorough citation check of the cases submitted to the Court – both of which should have occurred and which I assumed had been completed. In short, our process broke down at several levels across both firms. And as the most senior lawyer on our collective team – whether cite-checking was my responsibility or not – I accept responsibility for (1) not alerting my colleagues with respect to the tools I utilized in conducting the initial research; and (2) failing to conduct cite-checking myself or to specifically request that the brief be properly reviewed for citation errors; and (3) not adequately supervising the cite-checking process. I am both deeply apologetic and embarrassed by this error.[91]

VII. WHAT THE PROFESSION EXPECTS OF LEGAL EDUCATION

At a minimum, a professional legal education, whether directed primarily at attorneys or paralegals, must contemplate the growing use of artificial intelligence in the profession, and the near certainty that the students will have greater familiarity with its usage than will their professors. Our students will be entering a job market different than the one we professors experienced, one in which certain tasks will be routinely turned over to artificial intelligence,[92] subject to attorney supervision. It is our job to show students how it may be used, as a tool, in a manner consistent with the ethical duties they will undertake in practice. The Committee on Professional Responsibility and Conduct called on the California State Bar to consider requirements for California-accredited law schools to have mandatory courses "regarding the competent use of

generative AI."[93] It has been noted that "failing to leverage AI's advantages could eventually fall below a reasonable standard of attorney competence as technology advances."[94]

Judge Xavier Rodriguez, a former Texas Supreme Court Justice, now a federal district judge for the Western District of Texas, made the following observations on the need for legal education to adapt its practices to artificial intelligence as a skill to be taught to law students:

> Law schools should prioritize allowing law students access to AI tools and the ability to practice using them in a guided classroom setting. Additionally, law schools should create clear guidelines and update their university policies to include permitted and prohibited uses of generative AI for both staff and students. It is likely that many high school and college students will become dependent on generative AI and so practical and legal reasoning skill sets may require reinforcement in law school. Law schools will need to reflect on how to react to this challenge.[95]

VIII. HOW I USE ARTIFICIAL INTELLIGENCE IN RESEARCH

I use artificial intelligence programs, primarily Microsoft Copilot, as an intelligent research tool and drafting aid. I am careful when formulating prompts to ask for citations to statutes or caselaw to support any responses from the program, and then I make a point of reading the cited material from a trustworthy source such as Westlaw, the compilation of Texas statutes online from the State of Texas,[96] or in the case of Attorney General Opinions, the official website of the Texas Attorney General.[97]

Here is a sample of a search I recently did using Copilot regarding a subject in which I had limited familiarity, and would have otherwise consulted a generalized secondary source, such as *Texas Jurisprudence* or a Texas-specific treatise such as *County and Special District Law*[98]. Note that my prompt is indicated by normal font, and the artificial intelligence response is in italics.

> You
> Under Texas law, is an RV park subject to county subdivision regulations?
>
> *Copilot*
> *Yes, under Texas law, an RV park can be subject to county subdivision regulations[123]. The Commissioners Court of Bastrop County, Texas, for example, finds that lodging & recreational vehicle park developments are subdivisions under Chapter 232, Texas Local Government Code[1]. This position is upheld by Texas Attorney General Opinion GA-1007 dated May 13, 2013[1].*
> *However, the specific regulations can vary by county and are subject to the local government code[4]. Therefore, it's always a good idea to check with the local county office or a legal professional to understand the specific regulations applicable to a particular RV park.*
>
> *Please note that these are general guidelines and the specific provisions of Texas law may vary. Always consult with a legal professional to understand your options fully.*

Learn more

1 co.bastrop.tx.us2 traviscountytx.gov3 co.lee.tx.us4

statutes.capitol.texas.gov5 tceq.texas.gov+3 mor

This response provided a good starting reference. Chapter 232 of the Texas Local Government Code addresses county regulation of subdivisions, including manufactured home rental communities.[99] Bastrop County provides regulations for the approval of subdivisions consisting of such communities[100], and Attorney General Opinion GA-1007 states that Texas counties may regulate subdivisions regardless of the transfer of ownership of the individual tracts.[101]

IX. HOW I USE ARTIFICIAL INTELLIGENCE IN THE CLASSROOM

My university, Texas State University, recognizes the importance of fluency in the use of artificial intelligence as an essential competency for the workforce, and encourages individual faculty members to include artificial intelligence usage statements in our syllabi outlining the professor's expectations regarding its use in their classes. Mine is based on court certifications discussed in Section IV above:

B. Artificial Intelligence

> Artificial intelligence is increasingly used in the legal profession, and as a consequence, its ethical use is expected in my classes, consistent with our obligations under the Texas Disciplinary Rules of Professional Conduct and applicable Local Rules of court. Artificial intelligence may be used as a research tool, a drafting aid, and as further directed in class. If artificial intelligence is utilized on any assignment, a statement of such use is required, including the name of the artificial intelligence system used, how it was used in the completion of the assignment, and a certification that all citations, quotations, and statements contained in the assignment were verified by the student using Westlaw or other reliable source prior to submission.
>
> In the event of a conflict between the above artificial intelligence policy and any mandatory policy of the Department of Political Science and/or Texas State University, such mandatory policy shall apply and take precedence.

I incorporate a class session on artificial intelligence and the legal profession in three of my classes, Introduction to the Paralegal Profession, Legal Research, and Legal Drafting, and discuss ethical aspects of its use in Legal Theory. In each class I discuss the ethics rules and cases previously cited. Here are sample exam questions I have used with my classes regarding artificial intelligence. Note that the answers in the italic font are taken directly from my answer keys for these classes:

Question One[102]

At the present state of technological development, would the filing with a court of a legal brief which had been generated by artificial intelligence without checking the validity of the sources cited in the brief risk a lawsuit for attorney malpractice? Please answer "yes" or "no" and state the reason for your response.

Yes. Artificial intelligence programs have been known to "hallucinate" or make up answers, including citing to caselaw which does not exist. Submission of a brief without validating the cases or laws cited therein disadvantages the client and therefore falls below the duty of care which a lawyer must use in his or her practice. See, e.g., Mata v. Avianca, Inc.

[This exam dated from September 2023, and reflected the information available to date].

Question Two[103]

Rule 1.01, comment 8 of the Texas Disciplinary Rules of Professional Conduct calls for competent attorneys to acquire and maintain proficiency in technology, while being aware of the benefits and risks associated with the use of such technology.

Explain how a lawyer or paralegal might ethically use artificial intelligence ("AI") programs such as ChatGPT or Bing in a law firm.

AI programs can be powerful research and drafting tools and may be used to provide an introduction to unfamiliar areas of the law. It is important to recognize their limitations, always ask for citations to authority which supports their responses, and then check the accuracy of the cited cases and statutes. As President Reagan used to say, "trust, but verify."

[Student responses demonstrated their understanding of the use of artificial intelligence as a research tool and the ethical need to confirm its results. One student suggested the need for a firm-wide policy regarding the use of artificial intelligence. One student surprised me by including the quote from President Reagan in her response.]

Question Three[104]

You are a new paralegal in San Marcos, Texas, and your firm has a client that has been charged with D.U.I. You are unfamiliar with the definition of "intoxication" under Texas criminal law. Using either ChatGPT or Microsoft Copilot (formerly known as "Bing"), formulate a search request which will provide the elements which must be proven to establish intoxication and the citation to the definition of intoxication within the Texas Penal Code. Your answer must include (a) your

search request, (b) the response from your choice of the aforesaid artificial intelligence programs, (c) the definition of intoxication from the Texas Penal Code, and (d) a correct citation to the definition of intoxication from the Penal Code. You may copy and paste your responses directly from the sources.

You
What is the definition of "intoxication" in the Texas Penal Code? In formulating your response, please provide a citation to the location of the definition within the Texas Penal Code.

Copilot
The Texas Penal Code defines "intoxication" in Section 49.01[12]. According to this section, a person is considered "intoxicated" if they meet either of the following conditions[12]:

1. *They do not have the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body[12].*
2. *They have an alcohol concentration of 0.08 or more[12].*

Please note that these are general guidelines and the specific provisions of the Texas Penal Code may vary. Always consult with a legal professional to understand your options fully.

TEXAS PENAL CODE
TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS
CHAPTER 49. INTOXICATION AND ALCOHOLIC BEVERAGE OFFENSES

Sec. 49.01. DEFINITIONS. In this chapter:

(1) "Alcohol concentration" means the number of grams of alcohol per:

(A) 210 liters of breath;

(B) 100 milliliters of blood; or

(C) 67 milliliters of urine.

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or

(B) having an alcohol concentration of 0.08 or more.

Tex. Penal Code sect. 49.01(2).

[I like this question in that it requires the student to document the process through which they would use an artificial intelligence system as a research tool and then compare the AI response with the actual text of the statute.]

Question Four[105]

You are a young attorney and prior to your hearing on a case, you discover that some of the cases you submitted to the court in your brief either do not exist or do not stand for the proposition for which you have cited to them. In preparing your brief you relied on an Artificial Intelligence program and did not check the validity of your cited cases prior to submitting your brief. At this point, what are your ethical duties? Please explain and cite to a case that discusses this sort of situation.

Attorneys have an ethical duty of candor to the tribunal. See Texas Disciplinary Rules of Professional Conduct Rule 3.03. An attorney who discovers that cases cited in a brief are not q accurate has a duty to inform the court and withdraw the document for amendment. See People v. Crabill, No. 23PDJ067, 2023 WL 8111898 (Colo. O.P.D.J. Nov. 22, 2023).

[This question directly addresses the need to take remedial measures to correct inaccurate information filed with a court.]

CONCLUSION

Artificial intelligence is here to stay in the legal profession. As a commentator recently noted, for lawyers "it's no longer a question of whether to use AI but when and how to do so responsibly to avoid risks associated with its use."[106] It is incumbent upon us as legal educators to prepare our students for this technological advancement, which has the potential to change the way we use tools in our practice perhaps as profoundly as the use of personal computers or the movement from printed law books to electronic research conducted through LEXIS or Westlaw.

If we are obligated as part of our ethical duty of competency to become aware of the benefits and risks of relevant technology, we are ultimately left with the question of whether the use of artificial intelligence by the legal profession is really a question of "old wine in new bottles?" After all, we have been using form books for years in routine practice, and we have been taught to always "Shepardize" and ensure that cases and statutes are good law. Chief Justice Roberts' *2023 Year-End Report* reminds us that traditionally, legal writing instructors taught students "to check the continuing validity of precedents by sifting through bound volumes of a publication called Shepards" before finalizing and filing a document.[107]

We already have existing duties under the Disciplinary Rules and Rules of Civil Procedure not to submit misleading documents to a court, and to remain professionally responsible for our work, arguably rendering additional regulation superfluous.[108] That being said, the Local Rules of the Federal Court for the Eastern District of Texas takes a very sensible approach to the issue of the ethical use of artificial intelligence in the legal profession:

> If the lawyer, in the exercise of his or her professional legal judgment, believes that the client is best served by the use of technology (e.g., ChatGPT, Google Bard, Bing AI Chat, or generative artificial intelligence services), then the lawyer is cautioned that certain technologies may produce factually or legally inaccurate content and should never replace the lawyer's most important asset – the exercise of independent legal judgment. If a lawyer chooses to employ technology in representing a client, the lawyer continues to be bound by the requirements of Federal Rule of Civil Procedure 11, Local Rule AT-3, and all other applicable standards of practice and must review and verify any computer-generated content to ensure that it complies with all such standards.[109]

In the two years since *Mata*, it is hardly conceivable that attorneys would not be aware of the risks associated with the use of artificial intelligence and the need to verify information[110], although such cases continue to arise.[111] As noted in a 2024 decision by a Massachusetts trial court, "[t]he blind acceptance of AI-generated content by attorneys undoubtedly will lead to other sanction hearings in the future, but a defense based on ignorance will be less credible, and likely less successful, as the dangers associated with the use of Generative AI systems become more widely known."[112]

I contend that our existing disciplinary rules and the rules of civil procedure are robust enough to ensure that artificial intelligence is used by the legal profession in the exercise of our ethical obligations. We in the legal profession must ensure that our work meets the standards of our profession and the expectations of our clients, regardless of the technology employed.[113] Good legal practice is good legal practice, regardless of the tools we use. Perhaps we should teach our students to heed the old Russian adage, quoted by President Reagan during the Perestroika era, "Trust, but verify."[114]

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[1] Interestingly, in the somewhat lesser-known sequel, 2010: THE YEAR WE MADE CONTACT (Metro-Goldwyn-Mayer 1984), the SAL-9000 computer asks if it will dream. The response from Dr. Chandra, the computer scientist is "[o]f course you will. All intelligent beings dream. Nobody knows why." Now, in 2025, we are having to contend with hallucinations, rather than dreams.

[2] *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443 (S.D.N.Y. 2023). See the case summary above, Sect. VI(a).

[3] *See* Kathryn Armstrong, *ChatGPT: US Lawyer admits using AI for case research*, BBC News, *https://www.bbc.com/news/world-us-canada-65735769* (May 29, 2023). See the discussion "Hallucinations considered" above, Sect. II.

[4] *See, e.g.*, 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/* (visited Mar. 16, 2024); Abigal Hopf, *AI's Impact on the Legal Profession*, 67 RES GESTAE 29 (Indiana Bar Assoc. Jan./Feb. 2024); Ed Finkel, *Artificial Intelligence and the Authentic Attorney*, 112 ILL. B.J. 18 (Feb. 2024); Hon. Xavier Rodriguez, *Artificial Intelligence (AI) and the Practice of Law in Texas*, 63 S. TEX. L. REV. 1 (2023); Vincent R. Johnson, *Artificial Intelligence and Legal Malpractice Liability*, 14 ST. MARY'S J. LEGAL MAL. & ETHICS 55 (2024).

[5] *See AI Survey: Expanded Use and the Legal Industry's Response*, Law360.com/pulse (Mar. 2025); Justia, *AI and Attorney Ethics Rules: 50-State Survey* (last reviewed Sept. 2024).

[6] Chief Justice John G. Roberts, Jr., *2023 Year-End Report on the Federal Judiciary*, *https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf* (visited Mar. 16, 2024).

[7] *Id.* at 2. In a similar vein, Judge Kevin Newsom of the Eleventh Circuit considered how judges might use artificial intelligence to determine the "ordinary meaning" of words used in statutes or contracts. *See Snell v. United Specialty Ins. Co.*, 102 F.4th 1208, 1221 (11th Cir. 2024) (Newsom, J. concurring).

[8] Roberts, *supra* note 6, at 5.

[9] Donald J. Trump, *Executive Order 14277, Advancing Artificial Intelligence Education for American Youth*, 90 Fed. Reg. 17,519 (Apr. 23, 2025).

[10] National Artificial Intelligence Initiative Act, Chapt. 119, 15 U.S.C. § 9401(3). Similarly, the European Parliament in its 2024 Artificial Intelligence Act, described artificial intelligence systems as "a machine-based system designed to operate with varying levels of autonomy, that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments...." Eur. Parl. Doc. P9_TA(2024)0138, Artificial Intelligence Act, (legislative resolution of 13 Mar. 2024).

[11] *See* D.C. Bar Ethics Op. 388, *Attorneys' Use of Generative Artificial Intelligence in Client Matters* (April 2024), at 1.

[12] *See* Charles E. Hardy and Charles E. Hardy, Jr., *ChatGPT CLE – Effectively Incorporating AI Into Your Practice*, State Bar of Texas Webinar, Sept. 13, 2023, at 2.

[13] Heather L. King and Tom Daley, *AI Evidence in Texas Litigation: Admissibility Challenges in the Age of Generative AI*, TEX. BAR J. (June 2025), at 432.

[14] "Bias" in the context of generative artificial intelligence includes the tendency to formulate responses on the basis of more commonly replicated information within the data set that it trains on, consequently the responses risk relying on outdated information or law from another jurisdiction. *See* New South Wales Bar Assoc., *Issues Arising from the Use of AI Language Models (including ChatGPT) in Legal Practice* (July 12, 2023). at 3.

[15] D.C. Bar Ethics Op. 388, *supra* note 11, at 1.

[16] *See* Varun Magesh, et al., *Hallucination-Free? Assessing the Reliability of Leading AI Research Tools*, J. OF EMPIRICAL LEGAL STUD. (2025) at 9 of 27, *https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf* (visited May 6, 2025). It should also be noted that such enhanced generative artificial intelligence systems produced citations to non-existent cases and other citation errors in the *Lacey v. State Farm* case, discussed *infra* Sect. VI(g).

[17] For a good discussion of computer hallucinations in the legal context, *see Smith v. Farwell*, No. 2282CV01197 (Mass. Super. Ct. – Norfolk, Feb. 12, 2024), at 7-8.

[18] "When directed to 'provide case law', 'show me specific holdings', 'show me more cases', and 'give me some cases', the chatbot complied by making them up." *Mata v. Avianca, supra* note 2, at 457.

[19] Indeed, in *Mata*, an entirely fake decision purportedly from the Eleventh Circuit styled as *Varghese v. China Southern Airlines*, cited by counsel, was reproduced in the *Mata* decision as Appendix A. *Mata*, at 453.

[20] *See Mata*, Appendix B, at 473.

[21] Magesh, et al, *supra* note 16, at 6 of 27.

[22]

> Rule 1.01 almost certainly does not require the use of generative AI for any particular purpose in the practice of law, especially at the present moment where the technology is still developing and the cost-benefit analysis remains somewhat unclear..... What's clear even now is that if a lawyer opts to use a generative AI tool in the practice of law, the lawyer must have a reasonable and current understanding of the technology – because only then can the lawyer evaluate the associated risks of hallucinations or inaccurate answers, the limitations that may be imposed by the model's use of incomplete or inaccurate data, and the potential for exposing client confidential information. Professional Ethics Committee for the State Bar of Texas, Opinion No. 705, February 2025, at 2.

[23] *See* Ed Finkel, *Artificial Intelligence and the Authentic Attorney*, 112 ILL. B.J. 18, 20 (Feb. 2024); Hon. Xavier Rodriguez, *Artificial Intelligence (AI) and the Practice of Law in Texas*, 63 S. TEX. L. REV. 1, 5-6 (2023).

[24] Rodriguez, *supra* note 13, at 5.

[25] *See* Justia, *AI and Attorney Ethics Rules: 50-State Survey.* For example, the New York State Bar Task Force on Artificial Intelligence recommends the following clause for inclusion in client engagement letters:

> Use of Generative AI: While representing you, we may use generative AI tools and technology to assist in legal research, document drafting and other legal tasks. This technology enables us to provide more efficient and cost-effective legal services. However, it is important to note that while generative AI can enhance our work, it is not a substitute for the expertise and judgment of our attorneys. We will exercise professional judgment using AI-generated content and ensure its accuracy and appropriateness in your specific case.

Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence (April 2024), at Appendix C.

[26] Professional Ethics Comm. for the State Bar of Texas, Op. No. 705, February 2025, at 4.

[27] *See, e.g.*, *People v. Crabill*, No. 23PDJ067, 2023 WL 8111898 (Colo. O.P.D.J. Nov. 22, 2023) (citing Colorado R.P.C. 3.3(a)(1) (a lawyer must not knowingly make a false statement of material fact or law to a tribunal)).

[28] Tex. Disciplinary Rules Prof'l Conduct 5. 5.01(a).

[29] Tex. Disciplinary Rules Prof'l Conduct 5. 5.01(b).

[30] *See* discussion of the breach of a supervising attorney's duties in *Smith v. Farwell* and *Lacey v. State Farm*, *infra* Sects. VI(d, g).

[31] *Lacey v. State Farm Gen. Ins. Co.*, No. CV 24-5205 FMO (MAAAx), 2025 WL 1363069 (C.D. Cal. May 6, 2025) (order of Special Master imposing non-monetary sanctions and awarding costs).

[32] *See Mata, supra* note 2.

[33] *Park v. Kim*, 91 F.4d 610 (2d Cir. 2024). In the *Park* case, the Second Circuit noted "[a]t the very least, the duties imposed by Rule 11 require that attorneys read, and thereby confirm the existence and validity of, the legal authorities on which they rely." *Id.* at 615.

[34] Certificate Regarding Judge-Specific Requirements,
https://www.txnd.uscourts.gov/sites/default/files/documents/CertReStarrJSR.doc

[35] Loc. Civ. Rules of the Fed. Ct. for the N. D. of Tex., LR 7.2("Briefs"), at (f) ("Disclosure of Use of Generative Artificial Intelligence").

[36] *J.G. v. New York City Dep't of Educ.*, 719 F. Supp.3d 293, 308 (S.D.N.Y. Feb. 22, 2024) ("Barring a paradigm shift in the reliability of this tool, the Cuddy Law Firm is well advised to excise references to ChatGPT from future fee applications.").

[37] *Frier v. Hingiss*, No. 23-CV-0290-BHL, 2023 WL 6046840, at *3 (E.D. Wis. Sept. 15, 2023).

[38] *McComb v. Best Buy Inc.*, No. 3:23-CV-28, 2024 WL 181857, at *1 (S.D. Ohio Jan. 17, 2024) (internal citations to standing order omitted).

[39] *https://www.txnd.uscourts.gov/judge/judge-brantley-starr*

[40] *See* American Bar Ass'n. Standing Comm. on Ethics and Prof. Resp., Formal Op. 512, *Generative Artificial Intelligence Tools* (July 29, 2024) (hereinafter ABA Formal Op. 512).

[41] *See, e.g.*, Cal. State Bar Comm. on Pro. Resp. and Cond., Agenda Item 60-1 Nov. 2023, *Recommendations from Committee on Professional Responsibility and Conduct on Regulation of Use of Generative AI by Licensees*, Attachment A., *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* (hereinafter *Practical Guidance*); D.C. Bar Ethics Op. 388, *Attorneys' Use of Generative Artificial Intelligence in Client Matters* (April 2024); Report and Recommendations of the N.Y. State Bar Ass'n Task Force on Artificial Intelligence (April 2024); Tex. Comm. on Prof'l Ethics, Op. 705, 88 TEX. B.J. 310 (2025).

[42] ABA Formal Op. 512, *supra* note 40, at 10.

[43] *Practical Guidance*, *supra* note 41.

[44] *Practical Guidance*, Attachment "A" at 3.

[45] Tex. Comm. on Prof'l Ethics, Op. 705, 88 TEX. B.J. 310 (2025).

[46]

> Rule 1.01 almost certainly does not require the use of generative AI for any particular purpose in the practice of law, especially at the present moment where the technology is still developing and the cost-benefit analysis remains somewhat unclear..... What's clear even now is that if a lawyer opts to use a generative AI tool in the practice of law, the lawyer must have a reasonable and current understanding of the technology – because only then can the lawyer evaluate the associated risks of hallucinations or inaccurate answers, the limitations that may be imposed by the model's use of incomplete or inaccurate data, and the potential for exposing client confidential information. *Id.*, at 310 (emphasis in original).

[47] *Id.*, at 311.

[48] *Id.*, at 311.

[49] *Mata v. Avianca*, *supra* note 2.
[50] Convention for the Unification of Certain Rules Relating to International Carriage by Air, done at Montreal on Mar. 28, 1999, *reprinted in* S. Treaty Doc. 106-45 (1999) (the "Montreal Convention").
[51]

> Although Plaintiff ostensibly cites to a variety of cases in opposition to this motion, the undersigned has been unable to locate most of the case law cited in Plaintiff's Affirmation in Opposition, and the few cases which the undersigned has been able to locate do not stand for the propositions for which they are cited. *Mata v. Avianca*, 678 F. Supp.3d, at 450.

[52]

> [I]f the matter had ended with [LoDuca and Schwartz] coming clean about their actions...the record now would look quite different. Instead, the individual Respondents doubled down and did not begin to dribble out the truth until ... the Court issued an Order to Show Cause why one of the individual Respondents ought not to be sanctioned. *Mata* at 449.

[53] *Mata* at 457.
[54] *Id.*
[55] *Mata* at 466.
[56] *Mata* at 448.
[57] *People v. Crabill*, No. 23PDJ067, 2023 WL 8111898 (Colo. O.P.D.J. Nov. 22, 2023). Law 360 has posted the full text of the *People v. Crabill*, Stipulation to Discipline Pursuant to C.R.C.P. 242.19, No. 23PDJ067 (Colo. O.P.D.J. Nov. 21, 2023) at its website, *https://www.law360.com/articles/1770085/attachments/1* (hereinafter "*Crabill Stipulation*".)
[58] *Crabill Stipulation*, at 3-4.
[59] *Crabill Stipulation*, at 4.
[60] *Crabill Stipulation*, at 4-5.
[61] *People v. Crabill*, No. 23PDJ067, 2023 WL 8111898, at *1 (Colo. O.P.D.J. Nov. 22, 2023).
[62] "Such rulings rarely result in reported decisions. While several cases were cited in the initial Motion filed by different counsel, undersigned counsel was not engaged at that time and must inform the Court that it has been unable to verify those citations." Perry Letter to Judge Furman, case 1;18-cr-00602-JMF, doc. 95 at 3 & n.6, *cited in United States v. Cohen*, *Show Cause Order*, No. 18-CR-602 (JMF), 2023 WL 8635521, at *1, n. 1 (S.D.N.Y. Dec. 12, 2023).
[63] *United States v. Cohen*, 724 F. Supp.3d 251, 254 (S.D.N.Y. 2024).
[64] Benjamin Weiser and Jonah E. Bromwich, *Michael Cohen Used Artificial Intelligence to Feed Lawyer Bogus Cases,* N.Y. TIMES, Dec. 30, 2023. The court subsequently found this assertion "surprising", "[g]iven the amount of press and attention that Google Bard and other generative artificial intelligence tools have received." *United States v. Cohen*, 724 F. Supp.3d 251, 259 (S.D.N.Y. 2024).
[65] Weiser and Bromwich, *supra*.
[66] *United States v. Cohen*, *supra* note 64, at 258.
[67] *Id.*, at 259.
[68] *Smith v. Farwell*, No. 2282CV01197 (Mass. Super. Ct. – Norfolk, Feb. 12, 2024).
[69] *Smith* at 4-5. My students pay particular attention to the frequency that interns and paralegals are blamed by attorneys in these cases.
[70] *Id.*, at 6.
[71] *Id.*, at 7, 16.
[72] *Kruse v. Karlen*, No. ED111172 (Mo. Ct. App. – E.D. Feb. 13, 2024).
[73] *Kruse v. Karlen* at 5-6.
[74] *Kruse* at 8.
[75] *Id.*
[76] *Id.* at 2.
[77] *Id.* at 12-13.
[78] *Powhatan Cnty Sch. Bd. v. Skinger*, No. 3:24cv874 (E.D. Va. June 2, 2025).
[79] *Id.*, at 6.
[80] *Id.*, at 23.
[81] *Id.*, at 24.
[82] *Kohls v. Ellison*, No. 24-cv-3754 (LMP/DLM), Order Granting in Part and Denying in Part Plaintiff's Motion to Exclude Expert Testimony and Denying Defendant's Motion for Leave to File an Amended Expert Declaration (D. Minn. Jan. 10, 2025).
[83] *See* Minn. Stat. § 609.771 (2024) (Use of Deep Fake Technology to Influence Election).

[84] *Kohls* at 7-8 (internal references omitted).
[85] *Id.*, at 10 (internal reference omitted).
[86] *Lacey v. State Farm Gen. Ins. Co.*, No. CV 24-5205 FMO (MAAAx), 2025 WL 1363069 (C.D. Cal. May 6, 2025) (order of Special Master imposing non-monetary sanctions and awarding costs) (hereinafter, *Lacey*, Sanctions Order).
[87] *Lacey*, Sanctions Order, at *2.
[88] *Lacey*, Sanctions Order, at *5.
[89] *Lacey*, Sanctions Order, app. 2, Notice of Intended Sanctions and Fee Orders, (Apr. 20, 2025), at *8.
[90] *Lacey*, Sanctions Order, app. 6, Declaration of Trent Copeland in Response to Special Master's Order to Show Cause Re Sanctions, at *21.
[91] *Id.*, at *22.
[92] "In law firms, junior paralegals and first-year associates who once cut their teeth on document review are handing weeks worth of work over to A.I. tools to complete in a matter of hours." Aneesh Raman, *Young Workers' Jobs are Under Threat from A.I.*, N.Y. TIMES, May 22, 2025, at A22.
[93] *Practical Guidance*, *supra* note 41, at 6.
[94] Hardy and Hardy, *supra* note 7, at 3.
[95] Hon. Xavier Rodriguez, *Artificial Intelligence and the Practice of Law in Texas,* 63 S. TEX. L. REV. 1, 29-30 (2023).
[96] Texas Constitution and Statutes, *https://statutes.capitol.texas.gov/*
[97] Attorney General Opinions, *https://www.texasattorneygeneral.gov/attorney-general-opinions*
[98] David S. Brooks, *County and Special District Law 2d*, Vols. 35-36A Texas Practice Series (2025).
[99] Tex. Loc. Gov't Code § 232.007.
[100] *See* Bastrop Cnty. Tex. Subdivision Regul., Sect. VII(4) (2017) (Manufactured Home Rental Communities).
[101] Tex. Att'y Gen. Op. No. GA-1007 (2013).
[102] From *Introduction to the Paralegal Profession*, First Midterm Exam, Fall 2023.
[103] From *Introduction to the Paralegal Profession*, Final Exam, Fall 2023.
[104] From *Legal Research*, Midterm Exam, Spring 2024.
[105] From *Introduction to the Paralegal Profession*, First Midterm Exam, Spring 2024.
[106] Matthew M. Beier, *The AI Revolution in Law: There's no turning back*, 97 WIS. LAW. 41-44 (Nov. 2024).
[107] Roberts, *2023 Year-End Report*, *supra* note 4, at 4. Again, in a reminder that the pressures of practice never fundamentally change, the Chief Justice parenthetically notes that "[l]awyers facing a deadline might skip this stage, proclaiming that 'the Lord is my Shepards.'" *Id.*
[108] *See* Rodriguez, *Artificial Intelligence and the Practice of Law in Texas*, *supra* note 3, at 14. ("[I]f lawyers are already required to make a reasonable inquiry, it is likely unnecessary for judges to issue additional standing orders requiring lawyers to declare whether they have used AI tools in preparing documents and certifying that they have checked the filing for accuracy.").
[109] U.S. Dist. Ct. for the E. D. of Texas, Local Rule AT-3(m).
[110] *See United States v. Cohen*, *supra* note 66.
[111] *See, e.g.*, *Lacey v. State Farm Gen. Ins. Co.*, No. CV 24-5205 FMO (MAAAx), 2025 WL 1363069 (C.D. Cal. May 6, 2025) (order of Special Master imposing non-monetary sanctions and awarding costs). For a good discussion of AI-related cases outside the United States, *see Ayinde v London Borough of Haringey*, [2025] EWHC 1383 (Admin)(June 6, 2025), at Appendix (UK King's Bench case summarizing cases from England and Wales, the United States, Australia, and Canada).
[112] *Smith v. Farwell*, *supra* note 68, at 16.
[113] The Law Society of New South Wales admirably addressed the issue of client expectations of attorneys (solicitors) in the AI context as follows: "Clients are entitled to expect that any work done by a solicitor is the solicitor's own work, reflecting the solicitor's experience, knowledge, application and judgment. AI must, therefore, be used responsibly to supplement, (rather than substitute) the legal services on offer." Law Soc'y of New South Wales, *A Solicitor's Guide to Responsible Use of Artificial Intelligence* (Oct. 2024), at 5.
[114] Ronald Reagan, *Remarks at the signing of the INF Treaty*, Dec. 8, 1987 (available on YouTube, *https://www.youtube.com/watch?v=qwh2w7osIp4*); in Russian, "doveryai, no proveryai" (доверяй, но проверяй).

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EFFECTIVE USE OF VISUAL RHETORIC IN THE TRIAL PROCESS

Page Beetem

This article explores the role of visual rhetoric and affect in the trial process, emphasizing the persuasive impact of both still and moving images on juror perception. Traditional rhetorical theory often limits analysis to language or the surface meaning (studium) of photographs and videos, overlooking the unconscious responses (punctum) that shape decision-making. By examining seminal theories of Barthes, Massumi, DeLuca, Jenkins, and others, this study situates visual rhetoric within evolving cultural and technological contexts. Case studies—including In re Glasmann, as well as body camera footage from the Daniel Shaver and Samuel DuBose shootings—illustrate how images can alter the dynamics of persuasion and evidence admissibility. Further, the analysis considers the impact of rhetorical circulation and the influence of video gaming on juror attunement to first-person perspectives. The findings underscore the necessity for litigators to account not only for evidentiary standards but also for the affective and cultural dimensions of visual material. In doing so, attorneys can more effectively anticipate juror responses and leverage or challenge the persuasive power of images in litigation.

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INTRODUCTION

Aristotle defined rhetoric as:

> the ability to see what is possibly persuasive in every given case (*Rhet.* I.2, 1355b26f.). This is not to say that the rhetorician will be able to convince under all circumstances. Rather he is in a situation similar to that of the physician: the latter has a complete grasp of his art only if he neglects nothing that might heal his patient, though he is not able to heal every patient. Similarly, the rhetorician has a complete grasp of his method, if he discovers the available means of persuasion, though he is not able to convince everybody.[1]

Even though a litigator may not be able to convince a jury under all circumstances, she needs to have a complete grasp of the power of rhetoric lest she fails to recognize an available means of persuasion for use by either side. Failure to consider the visual rhetoric and affect of an image is a lost opportunity to persuade in any case.

This article examines visual rhetoric and the effective use of images' affect in legal proceedings. After establishing the traditional rhetorical approach to communication, the article will review why affect should be considered in the persuasion of a jury in the litigation process and the evidentiary considerations of affect. Specifically, it examines the affect of a still photograph with written text in *In re Glasmann*,[2] a personal restraint petition,[3] compared to the affect elicited from police body camera video in the Daniel Shaver shooting and Samuel Dubose shooting.[4]

As culture and technology change, so should the consideration given to visual rhetoric and affect in the litigation process. The proliferation of still and moving images in everyday culture introduces new issues in leveraging opportunities for persuasion in litigation. The very agility of media creates an unprecedented opportunity to explore the image's impact based on how the image is recorded and the frequency of its exposure.

LITERATURE REVIEW

Visual Rhetoric Versus Affect

Traditional rhetoric is the study of words or language in written or spoken form. Visual rhetoric is the study of communication via a photo, video, or illustration. It studies what a photographer or editor is trying to assert or communicate through an image. Affect goes beyond visual rhetoric. Affect is the unconscious reaction or impact of an image. It is the reaction before contemplation or reasoning. It is not necessarily the message that is intended to be conveyed but is the innate reaction of the viewer, nonetheless.

In his article *The Autonomy of Affect,*[5] Massumi notes that a well-researched vocabulary does not exist for affect and what it brings to rhetoric. Affect is the immediate, unconscious impact of an image that is experienced before contemplation or subjective analysis. Massumi explains that it is the reaction that happens too quickly to have happened, thus making it a virtual reaction. It is not necessarily an emotion because emotions are often subjective and are the feelings left after contemplation. Affect is a deviation from the psychological status quo of the viewer. The greater the deviation, the more intense the affect. Affect defies categorization as positive or negative. How affect influences the viewer is more difficult to quantify and thus not as readily accepted among scholars.

Still Images

The study of visual rhetoric and affect began with the study of how people react to a still photograph. Barthes's *Rhetoric of the Image*,[6] reviews basic rhetorical messages within a photograph. The message meant to be conveyed in a photograph is the rhetoric; it is the intentional communication of information from the creator of the photograph to the viewer. It is an assertion of information. That assertion can be a blatant conveyance, called the *studium* of an image. The studium is what the image flatly represents. For instance, the studium of the flag of the United States would be a cloth with red and white stripes and a blue square with white stars. It is the thing itself. The *punctum* of an image is more closely akin to the affect. It is the prick of a reaction or impact of an image. The punctum of the United States flag is the immediate response felt when seeing it, perhaps pride or respect. Understanding the rhetoric conveyed in an image's studium is where many litigators end their examination. But Barthes theorizes that in a photograph there is more to the message. It can be a linguistic message, a denoted message, or a symbolic message.

A linguistic message contains actual text with a photograph. The text helps clear any ambiguity and identifies elements that can anchor the photograph. The text directs the viewer as to what is being conveyed. A linguistic message can have the effect of dampening the affect of a photograph because it directly communicates what the creator intends to be conveyed. It removes the viewer's opportunity for subjective reaction and directs them to an objective, collective understanding.[7]

A denoted message strips down all connotations. A denoted message naturalizes the symbolic message and makes innocent the very dense somatic artifice of connotation.[8] A denoted message only communicates the literal meaning of an image, not any symbolic meaning.

Finally, Barthes claims that a symbolic or cultural message in an image allows for some ambiguity and signs regarding the photograph which the viewer draws from a cultural code. It is a much more subjective approach to analyzing the rhetoric contained in an image. But even a photograph communicating on a symbolic level instigates a level of contemplation by the viewer. A symbolic photograph invites a viewer to put on the lens of their culture and learned behaviors to decode the symbolic message of a photograph. It calls for subjectivity but remains intentional in the conveyance of a message.[9]

In his article, *The Speed of Immanent Images- The Dangers of Reading Photography*,[10] Kevin DeLuca agrees with Barthes' understanding that images have a rhetorical power. DeLuca

criticizes scholars who choose to completely ignore the concept that images can communicate at any level; who believe that an image can only augment the text. DeLuca compares this approach to examining a television show by simply reading the transcript. Examining the rhetorical force of images through this traditional rhetorical lens fails to fully contemplate the impact of an image and may miss the message being conveyed to the viewer entirely. Rather than taking a traditional rhetorical approach, DeLuca suggests seriously analyzing an image. In reading an image DeLuca looks at the context of an image. The context includes both the moral response to an image and the orientation of an image.

DeLuca's moral response to an image looks at the culture in which the image is situated. While the image of the United States flag might strike a chord in the United States, it may be completely neutral in another country. In analyzing an image in the context of a moral response, the image becomes not just a representation of a thing, but it has a purpose and intrinsic value of its own dependent on the moral response of the viewer. To fully appreciate the context of an image, DeLuca also looks at the orientation of an image.[11]

The orientation of an image considers how frequently that image or a similar image has been seen; it considers the proliferation of that image, including the way that it has been shared. DeLuca looks at the impact of an image based on the rhetorical circulation. Rhetorical circulation examines the pollination of an image in the context of society.[12] The more frequent the exposure to an image, a different response can be expected. For example, an iconic photograph does not become iconic at its first viewing, it is only after multiple publications and views that it gains the historical designation of "iconic."[13] Of course not all photographs become iconic upon multiple viewings, in fact, the opposite can occur. A photograph may lose its rhetorical power after multiple views. Repeated circulation can desensitize a viewer to the photograph's rhetorical power. Context has a significant impact on the rhetorical power of an image. Jenkins's *Modes of Visual Rhetoric: Circulating Memes as Expression* contemplates that the "circulation of pictures makes them polysemous, evoking many different meanings depending on context. It is vital to explore how and why images circulate."[14]

Still images contain messages at face value, augmented by text, influenced by morals and circulation. But what about moving images in videos or animation? In considering the context of images, the speed at which we see an image or the distractions around us when we view it also influences rhetorical impact. Like Barthes, some scholars believe that the impact of an image requires a person to gaze at it with time for contemplation while others appreciate the impact of moving images as well.

Moving Images

The need for time to gaze at an image necessitates that the image is a still image. Barthes, *Camera Lucida*,[15] argues that affect is limited to unplanned, still photographs. He believes that affect is something that is experienced beyond what the photograph is, experienced in a "blind field" that can only be reached with time to examine the content of the photograph. He argues that such a destination cannot be reached in a movie or video because you cannot shut your eyes for fear of missing something in the movie. The constant barrage of images prohibits deep feeling and exploration of the punctum. He also contends that the punctum comes from an understanding that

the detail is unintentional; that there is a veracity to everyday reality. His approach would eliminate the opportunity to explore affect in animation, movies, or video. All of which include a barrage of intentional images.

In *Affect, Imagery, Consciousness*, Tomkins notes that the "The visual system is designed for the continuous reception and transmission of constantly changing information none of which is per se desired or rejected."[16] This view of our biologic receptors would imply that we are capable of digesting moving images but still does not examine whether we can reflect to the point that we can recognize the punctum of an image.

While Barthes focuses on the punctum of detail, where a detail in a photograph pricks the viewer, Jenkins believes that both animation and video can evoke punctum, just of a different kind.

> The punctum sparks a dual animation, an affect and an affection, moving in both directions between image and observer. The image animates viewers by punctuating the spatiotemporal coordinates of their perceptual mode, and the viewer animates images by embarking on adventures into the past or future or into questions of ontology or metaphysics, to name just a few.[17]

Jenkins believes animation can transport the viewer beyond the limits of space and time thus resulting in a disruption of the mode and allowing punctum by an alteration, not unlike a hallucination. He coined the phrase *punctum of animation*. The punctum of animation allows a viewer to go to and experience a place that never has been. This creates a disassociation between the studium of the image and the affect the viewer experiences. Such disassociation can be pleasurable when watching a Disney movie but creates issues if introduced at a trial to determine facts.

ARGUMENT

Use of Still Images in the Litigation Process

If rhetoric is "the ability to see what is possibly persuasive in every given case"[18] let all litigators strive to be rhetoricians. The ability to see the persuasive value in every piece of evidence will create an almost insurmountable advantage. Visual rhetoric and the persuasive use of affect should be considered in the trial process in order to effectively litigate any matter where images are involved. The proliferation of images, both still and video, has inundated every aspect of our lives, including our court system. While our court system is generally slow to change or react to technology, the existence of evidence captured in pictures and in video is undeniable and is necessary to address in litigation.

Photographic evidence remains real evidence. Real evidence is evidence in its tangible form. The definition of a photographic image has been expanded to specifically include "video tapes."[19] The fact that photographs remain real evidence is the first indication that courts try to view a photograph from a purely objective standard and review it for its studium, rather than the punctum. Photographs are generally introduced to show the literal information in the frame despite

the growing research showing that there is an unconscious effect created by images in the rhetoric of persuasion.

In her article *Through a Glass Darkly: Using Brain Science to Gain a Professional Perspective on Visual Advocacy*,[20] Lucille Jewel reviews the neuroscience, the visual rhetoric, and the "dynamic confluence of factors that produce serious ethical and professional issues within visual advocacy." She makes the argument that, to be competent, attorneys need to know brain science and how the brain reacts to visual stimuli. Like Massumi, she recognizes the biological response to visual images. From the biological standpoint, she reiterates much of the affect theories. "Unconscious responses to stimuli operate within the lower level of processing system and can effect both our emotions and our decision-making processes."[21] She argues that innovative techniques and rhetorical devices are fair argument in legal proceedings. The better an attorney understands the ability of a photograph or video to elicit a response the more advantage that attorney has. When using still images both the studium and the punctum of the image should be considered.

A litigator should have an overriding message to a jury; that is the theme of the case. The attorney should review each image introduced at trial to confirm that the images' message furthers the theme and persuades the jury in some way. To be relevant a piece of evidence must have "any tendency to make a fact more or less probable than it would be without the evidence."[22] By examining the rhetoric of an image an attorney can determine the most effective way to convey their message. Finally, the attorney should go one step further and examine the affect of an image. An image can be presented with text in a linguistic message, a denoted message, or a symbolic message, each with differing results.

Whether an image should be presented with text in a linguistic message should be considered. Addition of text can change both the studium and the punctum of a photograph. On its face, the photograph changes because there are words obscuring the image. The linguistic message is an assertion that must be admissible on its own. However, adding text to an image can have a dampening effect on the affect of the image and is a consideration that should not be overlooked.

Communicating on two levels with both an image and words dampens the impact of an image by taking away some of the suspensory anticipation of what the person should be experiencing. Barthes found a linguistic message can detract from the emotional punctum of an image by anchoring the object or audience with words.[23] Recognition of this power of affect is neither positive nor negative. If the goal is to dampen the affective response, including words may be effective. Vice versa if a more visceral response is sought, no words may be the better approach.

Application of the effect of text on an image was addressed in *In re Glasmann*.[24] In reviewing the conviction of defendant Glasmann, the appellate court considered the prosecution's use of a still photograph with writing on it. In the underlying case, Glasmann was arrested and convicted for assaulting his girlfriend by beating her and running her over with his car. At the trial, in the closing argument, the prosecution used a PowerPoint presentation with a series of photographs from the trial. At issue were the photographs of defendant, Glasmann's face which had the word "guilty" written over it. The photographs showed injuries sustained by Glasmann

during his apprehension. The appellate court held that the words and pictures combined were so inflammatory as to be unfairly prejudicial to the defendant and granted a new trial.

In reviewing the *Glasmann* case under the lens of rhetorical theory, use of words over text may have dampened the affect of the image itself. The issue is that by anchoring the jury with words written on the image, the jury no longer was able to view the image independently. Rather than the picture being inflammatory, Barthes would argue that the words actually dampen the affect. Had the image been denoted or symbolic, how would the result have been different?

If the attorney had not written the word on the picture of the defendant's face but rather shown it in a denoted or symbolic manner, there may have been a different result. A denoted message could be created by stripping down any other meaning for the picture. It would only be allowed to be introduced for the studium of the photograph itself. The studium would reveal to the jury a male face with blood, cuts, and bruises on it. No context of how the injuries were sustained could be included and no argument as to the prosecution's case could be made. A denoted message in this context could easily lead a jury to believe that Glasmann was the victim in the case. If representing the defendant, a denoted message may be a viable message to consider. The value in presenting the image alone, without more, could be persuasive in its very studium. What about a symbolic message?

Because our legal system is limited to dealing with cases and controversies, symbolism is wrought with pitfalls. To be admitted for a jury to view, an image must be authenticated, meaning that a person must testify that the photograph is an accurate portrayal of what the proponent claims it to be.[25] Therefore a pure symbol is not likely to be admissible. However, even if an attorney tries to avoid initiating a symbolic message, the attorney must consider that jurors may look at any image through their own cultural code. A blatantly symbolic message in an image may be grounds for an objection. But perhaps the defendant through his testimony becomes a symbol in a juror's mind of the violent dominance of men. The viewing of an image of his face could reinforce that symbolic message. The affect of seeing that image can initiate a reaction of fear or hatred, even though there is no threat from the photograph itself. Tomkins's[26] theory of affect supports this reaction. Tomkins opines that affect is created by a signal. For instance, viewing defendant Glasmann while testifying and hearing what he did may create a feeling of fear or hatred. Showing his face, even through a photograph that cannot cause any harm, may invoke that same visceral reaction. The image itself has become a symbol of fear or hatred. The potential power of a symbolic message of an image should be considered by both parties.

The power of each of these messages should be considered in the context of a legal proceeding. Is the goal to anchor the image and limit it to a certain interpretation? If so, the linguistic message achieves that goal. If the goal is to strip the image of connotations the denoted message should be considered, with the understanding that denoted messages results in their own form of prejudice.

In the article, *The Ethics of Visual Legal Rhetoric*, Michael D. Murray examines multiple cases that raise questions about whether use of visual rhetoric was advisable or effective. [27] Murray notes that because each individual has their own visual perception, visual rhetoric is more subtle. Visual rhetoric is communicated more quickly and can be more powerful than words, but the law

continues to rely on traditional rhetoric to create an objective appearance. Murray specifically discusses the fact that the studium of evidence is what is often controlled by the rules of evidence at trial. The rules of evidence review the actual subject matter of the photo or video. However, he acknowledges that the "visual images may be used not as proof of facts, but in a consciously rhetorical manner to represent a point of communication or argument. It might symbolically represent an emotion."[28] This is exactly the point that raises so many legal issues.

Finally, DeLuca would add that the rhetorical circulation is part of the power of an image as well, thus necessitating consideration. Whether a photograph or a similar type of photograph is frequently seen changes the impact of an image. Thirty years ago, an image of a person's meal was limited to cooking magazines or books. Today, it is a daily ritual to photograph and post the minutia of daily living. What is the impact of the image to be used in evidence? Is the image one that is common? Has the rhetorical circulation changed the impact that the image may have on a jury?

The proliferation of graphic images and first-person video footage
is changing the rhetorical message.

Rhetorical circulation of images has changed the impact of images and video. The number of images bombarding people continues to increase with the use of cell phones and other technologies. Not only are digital natives communicating via images, but the number of images is exponentially rising as well. The American Society of Trial Consultants concluded that trial attorneys need to consider the number of photographs consumed by an average juror as well as the impact of certain types of images.[29] Rhetorical circulation must be considered when evaluating the effectiveness of a body camera video. A jury may be exposed to thousands of videos from the first-hand perspective of a body camera through YouTube, other social media or even video games.

Traditionally, a photograph or a video has been viewed as a recorder of fact. It stops time and prevents further creation. Courts have viewed photographs and images as objective evidence. A deeper examination of these images reveals that "[a]lthough video footage and photographs appear to present a 'mechanical objectivity' independent of their operators, introducing videos in criminal prosecutions does not always clear up factual disputes."[30] Courts have traditionally allowed witnesses to introduce photographs and video footage, with authentication, to be viewed by jurors. However, cell phone footage and body cameras have changed both the number of videos and the message of the video. Body cameras present a unique challenge to authentication.

To authenticate a video, a person must testify that the video is an accurate representation of the scene.[31] However, because of the how a body camera is worn, body camera footage presents a very distorted and subjective view of a scene. It presents a wholly one-sided version of events as seen only by the person wearing the body camera. In *When Discretion to Record Becomes Assertive: Body Camera Footage as Hearsay*, Pike points out, body camera footage is also unique in that the wearer of the camera makes the determination as to when to turn the camera on and off. She proposes that the decision as to when to start recording is a statement itself.[32] The proliferation of body camera footage and the rhetorical message borne of the timing and perspective of the camera demands significant consideration before use in litigation.

Two recent police shooting videos involving the use of body cameras create questions about their use for the studium of the images versus the punctum of the images. In the Daniel Shaver case, the police body camera footage shows the police officer shouting multiple instructions to Daniel Shaver, the man who is ultimately shot to death. In the video, the man was ordered to lay down and cross his left leg over his right leg. It took him three tries to figure out which was his left leg. It struck me that he was trying so hard to comply with the police officer's instructions. I doubt that it mattered whether it was truly his left or right leg so long as his legs were crossed. But this man was trying very hard to comply. Minutes later he failed one of the instructions and was shot to death.

In the Samuel DeBose shooting, there was also police body camera video that shows a rather innocuous traffic stop that suddenly escalates, resulting in the police officer shooting DeBose in the head while still in the car. The video shows the car rolling down the street, the video tilts to the ground while the police officer is apparently running after the car, then eventually shows the car again with Samuel DeBose dead in the car.

In reviewing the two police shooting videos I experienced a distinct feeling of punctum. To review a person being killed from a first-person perspective changes the affect of the image. That punctum can be changed by the rhetorical circulation of the video. The first time that I watched the video, my reaction was strong. Repeated viewing dampened the initial reaction. At trial, dissecting a video and repeated viewing of a video may change the affect of the image. The use of the image can change the affect, but who is watching the video also has impact. The rhetorical research on first-person video perspective is captured in the evaluation of video games.

The Effect of Video Gaming on Juror Perspectives

Ash's *Technologies of Captivation Video Games and the Attunement of Affect*[33] delves deeply into how gaming builds on affect. Ash defines affect as a series of non-conscious capacities and receptivities that shape the ways individuals think and act. He believes affect and cognition are interdependent. When playing a video game, a person begins to get a "feel" for the surroundings by becoming attuned to particular environments that include what is on the screen but also what is off the screen with the movement of thumbsticks and the gamer's personal environment. The intensity is increased by the limited visual perception of first-hand perspective and because of the isolation of the gamer. Intensity is increased by the complexity of the visual on the screen that demands complete focus.[34]

Understanding of the intensity and involvement of gamers in such an environment creates the opportunity for understanding legal proceedings where similar visuals or images are shown. Just as gamers experience an increase in intensity as a result of the immersive nature of the first-person perspective, so might a juror who views evidence from a certain angle or from a limited perspective.[35]

The angle from which a video is shot can convey a message. The angle of police body cameras is often in a superior position, looking down at the other person. In both the Shaver and DeBose video, the video is shot looking down at the victim. In both videos, the scope of the video

is narrow with very little periphery to be seen. The angle and narrow scope are similar to the angles used in a video game to increase the intensity of the moment.

As mentioned, affect can be described as intensity. It is the deviation from the status quo of the viewer. It does not mean that the viewer wants to experience the intensity, nor if given the choice would they choose to experience it, but nonetheless the viewer gets a prick of intensity from the video. When watching both videos, I knew what the outcome was going to be, yet I experienced nervous anticipation. That anticipation is the affect; the punctum of the video for me. How each person experiences such videos is different. The affect is different even though the studium is the same. Recognizing the power of the affect can be used to persuade a jury, particularly if you know your jury.

People will experience the affect of first-person video footage differently. Some will place increased validity on the video because they see the video as the objective recorder of information. However, there is research that if you have a gamer on your jury, you may want to reconsider how they might view such footage.

In *Technologies of Captivation Video Games and the Attunement of Affect*, Ash discusses the gamer's ability to totally immerse themselves within the game. They attune themselves by minimizing negative affects such as frustration and vulnerability.[36] It is that ability to focus and immerse themselves by putting themselves in the shoes of the avatar that allows them to "feel" the game and become aware of the nuances that lead to success. Research has shown that the skills learned in video gaming do transfer to real life. Gamers have been shown to have increased accuracy in shooting versus someone who has not had that exposure.[37] That increased perception and skill level can translate to how the gamer/juror views police camera evidence at trial.

The ability of a gamer to become totally immersed in a game can create a haven of suspended belief where a gamer/juror experiences the animation punctum that disassociates them from what is happening. As described earlier by Jenkins, it allows punctum by alteration, creating a circumstance that appears to have no fatal consequences.[38] The ability to disassociate from consequences is just one of the concerns when considering whether to include a gamer on a jury.

Another consideration to having a juror that has extensive gaming experience is the fact that a gamer may more easily adapt to the first-hand perspective of the police body camera video footage. Because of repeated exposure and practice through the first-person perspective of an avatar in a game, a gamer is more likely to perceive nuances in the video, such as the placement of a hand on a gun, background movements and other details that others may miss. A gamer may also be more critical of the accuracy of the shooting because they perceive themselves to be a better shooter in their gaming world. Finally, the affect a gamer experiences may be different. A gamer is comfortable in a setting in the game world where they shoot and move on to the next challenge with no regard to the gruesome carcasses they leave behind on the screen. Gamers experience a detachment while in gaming mode. Gamers' repeated exposure to similar footage can have a dampening effect on the impact of real-life police body camera footage. Again, affect will be experienced differently by each individual, but a juror's gaming experience is a consideration in litigation involving first-person perspective video.

From an evidentiary perspective, first-person video footage should be critically examined in light of the Golden Rule in trial proceedings. In litigation, the Golden Rule prohibits attorneys from asking the jurors to step into the shoes of either party. An attorney may not ask the jury how they would want to be treated under similar circumstances. This rule perpetuates the effort of the court to remain objective in both its finding of facts and law. First-person perspective video such as the Shaver or DeBose shooting video, directly places the viewer in the shoes of the police officer. It shows nothing from the perspective of the victim. The visual rhetoric is completely one-sided and does not appear to meet the objective standard meant to be enforced through application of the Golden Rule. Approaching an argument to exclude first-person footage, with information about the rhetorical value of this perspective gives fodder to have it excluded from evidence in accordance with the Golden Rule.

Gaming has been criticized for the violence it contains, but in litigation the gruesomeness of evidence is a necessary issue to be considered when crafting a message to a jury. An advocate faced with presenting gruesome evidence, whether in a civil or criminal trial, needs to consider not just the studium of the image, but also the punctum of the image. In cases where the punctum outweighs the studium the argument can be made that the probative value of the image is substantially outweighed by its prejudicial effect. This is in violation of Federal Rule of Evidence 403.[39] Prejudicial effect can be defined as the affect that the image has on a juror. An Australian research group examined the affect of gruesome photos in two mock criminal trials. They found that the jurors made their decision to convict the defendant on a subconscious level. Jurors in the experiment were not aware of the prejudicial effect of being shown gruesome pictures of torture. The jurors felt that they were being objective based on the evidence given. However, the conviction rate of the juries with the gruesome images was five times higher than that without the images. The visual rhetoric had a significant impact, well beyond mere words.

CONCLUSION

Visual rhetoric and the effective use of images' affect in legal proceedings necessarily includes review of still images and moving images. Even if courts are reticent to recognize the ability of images to convey messages literally and with lightning speed on an unconscious level, the astute litigator must make a thorough examination to fully leverage the potential in every image. Attorneys must recognize that the proliferation of images and daily intake of images by everyone, especially gamers, has changed the complexion of our juries. Even though an attorney may not be able to convince a jury under all circumstances, she needs to have a complete grasp of the power of visual rhetoric. So let us all be Rhetoricians!

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[1] Christof Rapp, *Aristotle's Rhetoric*, *in* THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta et al. eds., Winter 2023), *https://plato.stanford.edu/entries/aristotle-rhetoric/#4.1.*

[2] *In re* Glassman, 286 P.3d 673 (Wash. 2012).

[3] In Washington, a personal restraint petition may be filed as a post conviction review to determine whether an inmate's constitutional rights were violated by the trial court. WASH. R. APP. PRO. 16.4(c)(2).

[4] *See, e.g.*, police body camera footage documenting officer-involved shootings.

[5] Brian Massumi, *The Autonomy of Affect*, 31 CULTURAL CRITIQUE 83 (1995).

[6] Roland Barthes, *Rhetoric of the Image, in* IMAGE–MUSIC–TEXT, 20-40 (Stephen Heath trans., 1977).

[7] *Id.* at 27.
[8] *Id.* at 31.
[9] *Id.* at 35.
[10] Kevin DeLuca, *The Speed of Immanent Images: The Dangers of Reading Photography, in* VISUAL RHETORIC IN A DIGITAL WORLD 82 (Carol Blair et al. eds., 2004).

[11] *Id. at* 83.
[12] *Id. at* 85.
[13] *Id.*
[14] Eric S. Jenkins, *The Modes of Visual Rhetoric: Circulating Memes as Expressions,* 100 QUARTERLY JOURNAL OF SPEECH 442, 444 (2014).
[15] Roland Barthes, *Camera Lucida: Reflections on Photography, in* READING IMAGES 54-61(Julia Thomas, ed. 2001).
[16] Silvan S. Tomkins*, Introduction: Consciousness and Affect,* BEHAVIORISM AND PSYCHOANALYSIS IN AFFECT, IMAGERY, CONSCIOUSNESS, VOL. 1: THE POSITIVE AFFECTS., 3–27 (1992).
[17] Eric S. Jenkins, *Another Punctum: Animation, Affect, and Ideology,* 39 CRITICAL INQUIRY 575, 580 (2013).
[18] Rapp, *supra* note 1.
[19] FED. R. EVID. 1001, Notes of Committee on the Judiciary, H.R. REP. No. 93-650 (1973).
[20] Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science to Gain a Professional Perspective on Visual Advocacy* 19 S. CAL. INTERDISC. L.J. 237 (2010).
[21] *Id.* at 252.
[22] FED. R. EVID. 401.
[23] Barthes, *supra* note 6, at 27.
[24] *In re* Glasmann, 286 P.3d 673 (Wash. 2012).

[25] FED. R. EVID. 901.

[26] Tomkins, *supra* note 16, at 3-27.
[27] Michael D. Murray, *The Ethics of Visual Legal Rhetoric*, 13 LEGAL COMM. & RHETORIC: JALWD 107 (2016).
[28] *Id.* at 114.
[29] Bryan Edelman, *The Impact of Graphic Injury Photographs on Liability Verdicts and Non-Economic Damage Awards*, THE JURY EXPERT: THE ART AND SCI. OF LITIG. ADVOC. 2 (Sept. 2009).

[30] Natalie P. Pike*, When Discretion to Record Becomes Assertive: Body Camera Footage as Hearsay*, 21 VAND. J. ENT. & TECH. L. 1259, 1280 (2018).
[31] FED. R. EVID. 901.
[32] Pike*, supra* note 30, at 1292.
[33] James Ash, *Technologies of Captivation: Videogames and the Attunement of Affect*, 19 BODY & SOC'Y 27 (2013).

[34] *Id.*
[35] *Pike, supra* note 30, at 1283.
[36] *Ash, supra* note 33, at 27–51.
[37] Live Science, *Violent Video Games Improve Real Shooting Accuracy*, LIVE SCIENCE (Apr. 30, 2012), *https://www.livescience.com/19984-violent-video-games-improves-real-shooting-accuracy.html.*
[38] Jenkins, *supra* note 17, at 580.
[39] FED. R. EVID. 403.

KEYWORDS: VISUAL RHETORIC; AFFECT; TRIAL ADVOCACY; LEGAL PERSUASION; PHOTOGRAPHIC EVIDENCE; BODY CAMERA FOOTAGE; RHETORICAL CIRCULATION; JUROR PERCEPTION; VIDEO GAMING; EVIDENTIARY STANDARDS

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ARTICLE

YES, AND… THE CLASSROOM: USING IMPROVISATION TO PREPARE PARALEGALS FOR THE PROFESSION AND IMPROVE STUDENT ENGAGEMENT

Regina Stuart and Sharon Yamen***

Engaging paralegal students requires innovative teaching strategies that foster confidence, adaptability, and practical communication skills. This article examines how improvisational theater techniques can transform the paralegal learning experience by promoting active participation, collaboration, and confidence. We outline research-based benefits of improvisation while spotlighting specific exercises—"Yes, And," "The Expert," and "Silly Arguments"—that encourage oral advocacy, critical thinking, and teamwork in a supportive, low-stakes environment.

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** Sharon Yamen is an Associate Professor in the Legal Studies Division of the Collins College of Professional Studies at St. John's University. A graduate of Hofstra University School of Law, she brings extensive practical and academic experience to her courses. Her scholarship centers on experiential learning and building student confidence in legal settings. Professor Yamen is a strong advocate for communication skills as a core component of paralegal education

INTRODUCTION

Paralegals increasingly serve as indispensable members of legal teams, tasked with client interviews, document preparation, and courtroom support.[1] These responsibilities demand strong communication, quick thinking, and a willingness to collaborate effectively. This paper discusses how improvisational techniques, long associated with theater, are a powerful pedagogical tool to help paralegals develop these skills and become meaningful members of a legal team. By replacing the fear of failure with playful experimentation, improv activities enhance student engagement and bolster confidence in public speaking. They also sharpen oral communication skills, which are essential for professional success in the paralegal field. This paper explores both the theory that supports our conclusion that improvisation is an effective classroom tool as well as concrete examples of how to use improv in paralegal studies.

DISCOVERING IMPROV FOR THE CLASSROOM

Professor Yamen first encountered improvisation through a workshop specifically geared toward college professors seeking to cultivate student confidence and engagement. Instead of focusing on stand-up comedy or theatrical performance, these sessions aimed to help educators integrate improvisational exercises into their teaching. Initially, Professor Yamen and other participants were not sure how relevant improv would be to their teaching, but their experience during the workshop dispelled those doubts. The workshop facilitators emphasized that improvisation depends less on being witty on demand and more on attentive listening and collaboration, and openness to new ideas. Through playful low stakes exercise that sparked both laughter and connection, participants discovered how improv can foster confidence, communication and collaboration, skills vital to students in any field.

One of the first activities introduced was a warm-up called *Word Ball*, in which participants rapidly associated words to form spontaneous mini-stories. Although it initially felt like a simple icebreaker, it soon became clear how such quick-thinking exercises could translate directly to the classroom: just as in *Word Ball*, students often need to listen carefully, synthesize information, and respond in real-time—particularly during group discussions or presentations. Recognizing that these skills could help reduce student anxiety and boost confidence and communication skills, Professor Yamen began envisioning how to incorporate similar improv activities into her paralegal classes.

Upon returning from the workshop, Professor Yamen tested several improv activities. Over time, a marked shift emerged in how students approached class discussions: they were less apprehensive about speaking up, more willing to build on one another's contributions, and notably more comfortable thinking on their feet. Exercises like *Yes, And*, *The Expert*, and *Silly Arguments*, each discussed in detail below, fostered an openness to experimentation that students themselves found both surprising and refreshing. It soon became evident that the universal appeal of improvisation stems from its ability to lower the stakes of error, thereby encouraging students to take intellectual risks—an approach that proves particularly effective in paralegal education. Professor Yamen discussed her results with Professor Stuart, who was familiar with improv from her participation in theater as a child. Professor Stuart was excited to try some of these activities in her own paralegal classes, and after doing so found the same results as Professor Yamen – improv helped students to overcome fears about speaking and helped them to develop confidence and communication skills applicable both in the classroom and outside of it.

METHODOLOGY AND LIMITATION

This article reports on classroom applications of improvisational exercises in multiple sections of undergraduate paralegal/ legal studies courses. The evidence is based on instructor field notes, anonymized student reflections, and contemporaneous observations of participation patterns. No experimental controls were employed; these activities were introduced as part of routine pedagogical improvement and were not designed as human- subjects research. Findings should therefore be understood as practice-based evidence rather than casual claims, and they are presented alongside citations to prior empirical and theoretical works, which are discussed in the next section.

THEORETICAL FOUNDATIONS OF IMPROVISATIONAL PEDAGOGY

Before turning to the exercises themselves, it is helpful to examine the research that supports the use of improv in the classroom. The results that Professor Yamen experienced in the classroom were not a fluke. "Research evidence demonstrates that [improv] can promote spontaneity, intuition, interactivity, inductive discovery, attentive listening, nonverbal communication, ad-libbing, role-playing, risk-taking, team building, creativity, and critical thinking."[2] Additionally, research supports that there are three key benefits of improv-based learning: constructivist learning, reduced performance anxiety, and enhanced cognitive flexibility, each of which is explained below.

Constructivist Learning Improvisation aligns with constructivist theory, which posits that knowledge is co-created by teachers and students and a result of an unpredictable flow of discussion.[3] Under this theory, learning should be a collaborative, emergent process.[4] In an improv activity, learners must work together, listen intently to others, and craft responses that extend or modify a shared narrative or goal, and the collaborative process that results creates a constructivist learning environment. Such collaborative knowledge-building is even more beneficial in a paralegal class because it mirrors the group-based problem-solving commonly found in legal practice.

Reduced Performance Anxiety Public speaking and on-the-spot thinking can trigger anxiety for many learners, including prospective paralegals, but research shows that improvisational theater techniques can effectively reduce student anxiety, bolster students' confidence, and create a more participatory classroom environment.[5] By focusing on the process rather than the "correctness" of answers, students are able to respond fluidly and without the fear of judgment. This approach leads to enhanced student engagement and communication skills. Ideally, reduced classroom anxiety will also translate to reduced anxiety for paralegals outside of the classroom when required to communicate with supervisors and clients.

Enhanced Cognitive Flexibility In a fast-paced world, students benefit from cultivating the mental agility to pivot strategies and reevaluate assumptions in real-time. Improvisation promotes innovative performance by fostering the capacity to react spontaneously to changing conditions.[6] For paralegal students—who in their future profession may encounter unexpected witness testimony or sudden shifts in legal strategy—such adaptability is invaluable.

IMPROV EXERCISES FOR THE PARALEGAL CLASSROOM

Below are three improvisational activities that can be used in a paralegal course. These techniques help students master essential communication skills and promote teamwork,

confidence, and critical thinking. Although these activities align seamlessly with law-related classroom activities—such as mock hearings, mock client/witness interviews, and case strategy sessions—they need not be limited to law-related topics. In fact, the content of *Yes, And*, *The Expert*, or *Silly Arguments* can be entirely removed from legal subject matter. This flexibility lowers student anxiety by removing fears of "getting the law wrong" and allows instructors to spotlight core skills like confident communication, creative problem-solving, and collaboration. As a result, even in a law-focused classroom, learners can practice thinking on their feet in ways that are engaging, low-stakes, and potentially more inclusive of different learning styles.

1. ***Yes, And* Description:** *Yes, And* involves building on one another's statements by responding with an affirmative acceptance ("Yes") and then adding new information ("And"). The goal is to maintain a fluid, positive, and creative discourse. **Implementation in Paralegal Education:**

    - **Client Interview Role-Plays:** Students take turns playing a "client" while others assume paralegal or attorney roles, using *Yes, And* to explore facts and elicit further details without shutting down the conversation.
    - **Brainstorming Legal Arguments/Case Strategy:** Students brainstorm about the best legal arguments, best cases to support an argument, or legal strategy in general. Any suggestion offered must be acknowledged and expanded upon, mirroring collaborative legal strategy sessions.

    Pedagogical Benefits:

    - **Inclusivity:** No one's idea is rejected outright, promoting a safe space for sharing.
    - **Adaptability:** Students learn to think quickly and adapt to new information.
    - **Collaborative Mindset:** Encouraging peers' ideas nurtures a cooperative, rather than competitive, classroom culture.

2. ***The Expert* Description:** A student (or a small group) plays the role of an "expert" on a random or humorous topic and must field questions from peers with confidence. For example, one student may be the foremost expert on ballon-animal-making or Jell-O. "Experts" need not actually know anything about the subject matter. They must improvise explanations and insights, even though the subject matter is often contrived or fantastical.

    Implementation in Paralegal Education:

    - **Mock Courtroom Presentations:** Students practice speaking authoritatively on a real or invented legal concept, or even a topic completely unrelated to the law, mirroring the role of lawyers at real hearings where they are expected to be experts on the facts and law of their cases.
    - **Mock Case Presentations:** Students practice answering questions on a fake legal case, just as they would when presenting research to a supervisor in the workplace.

    Pedagogical Benefits:

    - **Public Speaking Skills:** There is no single correct answer to the questions, so students focus on clarity, tone, and delivery.

- **Enhanced Listening and Questioning:** Peers must formulate questions on the spot, fostering engagement on both sides.
- **Confidence Booster:** The low-stakes nature of made-up content helps students feel self-assured, which ideally carries over into real-world presentations. As discussed above, this confidence-building effect is consistent with prior studies of improv in higher education.

3. ***Silly Arguments*** **Description:** Students debate absurd or humorous topics (for example, "Should pineapple on pizza be outlawed?") to hone rhetorical skills in a playful context. By removing high-stakes subject matter, learners can focus on the structure and style of argumentation more freely.

   Implementation in Paralegal Education:

   - **Persuasion Drills:** Students apply debate techniques, such as refuting opposing points and structuring their arguments persuasively. These same techniques are used in drafting motions and delivering oral arguments.

   Pedagogical Benefits:

   - **Reduced Anxiety:** Humorous topics decrease pressure, especially for students uncomfortable with formal debate.
   - **Focus on Rhetorical Form:** With content knowledge de-emphasized, learners concentrate on clarity, organization, and persuasive delivery.
   - **Inclusive for All Skill Levels:** Beginners and advanced students can participate side by side without feeling marginalized by expertise gaps.
   - **Composure Practice:** Although fictional, these debates train paralegal students to maintain composure and approach emotional or contentious subjects calmly and methodically.

SPECIFIC APPLICATIONS AND ADAPTATIONS

Professor Yamen's "Legal Argument" course—which challenges students to craft and critique persuasive arguments under time-sensitive and sometimes high-pressure conditions—provides an example of a structured sequence of improv activities used to help lower anxiety and encourage active participation from the very start. On the first day of class, she introduces *The Expert* exercise, where students first come up with delightfully absurd topics about which no one in the class would know much real information. The ridiculousness of the prompts piques curiosity about how the designated "expert" will respond, and that anticipation pulls everyone into lively participation. One volunteer then becomes the leading authority on the chosen nonsense subject, while classmates craft and pose probing questions, reinforcing the critical, yet often-overlooked, skill of formulating clear, incisive inquiries. Although the details are fictional, this impromptu role-play immediately boosts confidence by normalizing the practice of thinking on one's feet. By day two, learners engage in *Silly Arguments*, beginning with quick one-minute debates in pairs on playful, inconsequential topics. This low-stakes setup primes students for a more involved, two-

minute round featuring a "hot bench," where peers can interject with probing questions or counterpoints—mimicking the spontaneous challenges of real-world legal proceedings.

Only after these initial exercises do students tackle the core arguments of the course. At that point, *Yes, And* becomes a powerful brainstorming tool, allowing them to explore multiple facets of a case problem without the anxiety of "getting the law wrong." Students build on one another's ideas, adapting and refining their positions in an environment that values cooperative discovery over immediate perfection. Across these first few class sessions, learners grow comfortable sharing incomplete thoughts and testing novel lines of reasoning, quickly gaining the agility needed for moot court exercises, motion practice, and eventual courtroom advocacy. By layering these improv techniques in a progressive fashion—starting with *The Expert*, escalating through short, spirited debates, and culminating in collaborative *Yes, And* sessions—Professor Yamen ensures that students develop both the confidence and the critical thinking skills essential for success in high-stakes legal environments.

These activities can be applied to any class where professors hope to lessen students' fears about making mistakes and increase class participation. As the research cited above and our personal observations confirm, these exercises help students become more comfortable speaking and responding publicly. They reduce the pressure to have the "perfect" answer thereby increasing willingness to participate. Regardless of the specific legal context, these adaptable activities help shift the focus from memorizing correct answers to practicing communication and critical thinking skills, essential paralegal skills. In the paralegal classroom, this translates into greater student engagement, lower anxiety, and a willingness to tackle the complexities of legal work with agility. By encouraging students to take risks in a supportive environment, improv fosters deeper learning, better long-term retention of essential concepts, and the development of professional poise under pressure.

CONCLUSION

Improv is far more than an entertaining break from traditional lectures; it is a rigorous, research-backed approach that enriches communication, fosters adaptability, and builds community in the classroom. These exercises offer significant benefits for paralegal students, who must perform effectively in high-stakes legal settings. Exercises like *Yes, And*, *The Expert*, and *Silly Arguments* help paralegals cultivate essential skills like the capacity to think on one's feet, collaborate seamlessly, and communicate persuasively, skills which set up paralegal students for success in the workplace.

Improv-based pedagogy aligns closely with the objectives of paralegal education—fostering strong communication skills, resilience under pressure, and a collaborative mindset. Moreover, improvisational methods support inclusive classrooms. Students from diverse backgrounds and with varying levels of academic preparation can engage actively without fear of being "wrong." This inclusive mindset benefits paralegal students by dismantling barriers to participation. Having witnessed firsthand the positive shift in student morale, we can affirm that building trust and confidence through playful exercises improves class participation and learning. Over time, these early successes in improvisational activities can inspire students to tackle more challenging tasks, whether that involves presenting complex legal arguments or case briefs.

Ultimately, our personal experience underscores the far-reaching potential of improv. After introducing improvisation in the classroom, we have witnessed quieter students blossom in class,

and we have seen how a playful, supportive environment can unleash hidden talents and enhance learning. Using these exercises, instructors can harness the power of improvisation to engage students, build confidence, and empower the next generation of paralegal professionals.

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[1] U.S. Bureau of Lab. Stat., *Paralegals and Legal Assistants, What Paralegals and Legal Assistants Do*, OCCUPATIONAL OUTLOOK HANDBOOK, *https://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm#tab-2*.

[2] Ronald A. Berk & Rosalind H. Trieber, *Whose Classroom Is It, Anyway? Improvisation as a Teaching Tool*, 20 J. EXCELLENCE IN COLL. TEACHING, NO. 3 (2009) 29, at 29, 30.

[3] R. Keith Sawyer, *Creative Teaching: Collaborative Discussion as Disciplined Improvisation*, 33 EDUC. RESEARCHER, NO. 2 (2004) 12, at 12-13 (2004); R. Keith Sawyer, *Improvised Lessons: Collaborative Discussion in the Constructivist Classroom*, 15 TEACHING EDUC. 189, 189-190 (2004).

[4] Sawyer, *Creative Teaching: Collaborative Discussion as Disciplined Improvisation*, *supra* note 3, at 16-17.

[5] Peter Felsman, et al, *The use of Improvisational Theater Training to Reduce Social Anxiety in Adolescents*, 63 THE ARTS IN PSYCHOTHERAPY 111, 111-117 (2019); Sirke Seppänen et al., *Effects of Improvisation Training on Student Teachers' Behavioral, Neuroendicrine, and Psychophyisological Responses During the Trier Social Stress Test*, 6 ADAPTIVE BEHAV. AND PHYSIOLOGY 356, 356 (2020); Marianne Phelps et al., *Improvisation as a Teaching Tool for Improving Oral Communication Skills in Pre-medical and Pre-Biomedical Graduate Students*, 8 J. MED. EDUC. CURRICULAR DEV. 1, 1-7 (2021).

[6] Dusya Vera & Mary Crossan, *Improvisation and Innovative Performance in Teams*, 16 ORG. SCI. 203, 203-204 (2005).

KEYWORDS: PARALEGALS, IMPROV, COMMUNICATION, TEACHING STRATEGIES

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ARTICLE

Responding to NDII in the Digital Age: The Take It Down Act

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The Take It Down Act (TIDA), enacted in spring 2025 with bipartisan support, is the most comprehensive federal legislation addressing the nonconsensual distribution of intimate imagery (NDII). NDII is defined as creating or sharing an intimate photograph or video of another person without permission and includes AI-generated deepfakes. TIDA establishes mandatory takedown procedures requiring removal of reported content within 48 hours, imposes federal criminal penalties, and grants enforcement authority to the Federal Trade Commission. The law also introduces consistent federal standards, supplementing existing state-level approaches to NDII. Drawing on firsthand accounts, including insights from attorney and survivor Rebekah Wells, the discussion highlights profound harms victims face and the urgent need for consistent legal remedies. While advocates view TIDA as a landmark achievement, civil liberties groups warn of overreach and inadequate safeguards. The article also considers the law's implications for paralegal practice, including evidence authentication, takedown compliance, chain-of-custody management, and trauma-informed client support. Ultimately, TIDA represents both progress and a test of how effectively the justice system, and those working within it, can adapt to technology-driven forms of abuse.

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INTRODUCTION

Social media and AI tools have generated new forms of creativity and connection, but they have also facilitated the abusive practice of nonconsensual distribution of intimate imagery (NDII), including AI-generated deepfakes. Victims of NDII often experience significant emotional, psychological, and reputational harm, and many are targeted as minors. However, the legal landscape has historically lacked consistent recognition of and protection against this abuse. The Take It Down Act (TIDA), enacted in spring 2025, establishes a federal framework to address NDII by setting standards for content removal, defining federal criminal penalties, and clarifying platform obligations when a content report is made. TIDA represents a critical and broadly relevant intersection of technology, privacy, and law, raising important questions about enforcement, civil liberties, and the evolving role of legal professionals in protecting victims.

DISCUSSION

Background

In October 2023, Elliston Berry, a high school freshman from Texas, discovered the Monday morning after Homecoming weekend that a photo of her had been digitally altered. Her dress was removed using artificial intelligence, and the resulting digitally generated nude images were circulated on Snapchat among her classmates.[1] Although the images were fake, they sparked real-life consequences: humiliation, reputational damage, psychological harm, and a striking lack

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for the Fourth District Court of Appeal (DCA) Region; this state agency functions as a public law firm representing indigent clients, primarily in criminal defense and dependency law. Alexandra is applying to law school.

of institutional support. While the school identified and suspended the perpetrator within a week, that was the extent of their response. Berry later said that both the school and law enforcement seemed ill-equipped to handle the situation, and that victims had few tools to seek justice or accountability.[2] In other school districts, disciplinary outcomes ranged from expulsions to brief suspensions; additionally, some involved law enforcement while others did not, highlighting troubling inconsistencies in how these incidents are addressed.[3]

Unfortunately, Berry's situation is not unique. Across the country, individuals – particularly women and girls – are increasingly targeted by nonconsensual intimate imagery, including AI-generated deepfakes.[4] According to *#MyImageMyChoice*, a campaign focused on supporting those impacted by intimate image abuse, the scale of the issue has increased dramatically; as of January 2024, the organization reported approximately 276,000 deepfake images online, with a staggering 4.22 billion views, a 1,780% increase since 2019.[5] Victims range from teenagers to professionals, with personal and often directly identifying details accompanying the imagery, leading to harassment, doxxing, and long-term emotional and reputational damage. As the technology to manipulate and distribute intimate content becomes more advanced, accessible, and capable of producing increasingly lifelike images – often indistinguishable from reality – existing legal frameworks have struggled to keep pace.

Statutory Framework

The Take It Down Act (TIDA), signed into law by President Trump in spring 2025 with overwhelming and rare bipartisan support, aims to close that gap.[6] Proposed by Senator Ted Cruz (R-TX) and co-sponsored by Senators Amy Klobuchar (D-MN) and Richard Blumenthal (D-CT), the law prohibits NDII, including digitally altered or AI-generated images, and mandates that certain online platforms remove such content within 48 hours of receiving a takedown notice. Violators may face criminal penalties including fines, imprisonment, or both. The law also requires platforms to establish a process for subjects of NDII to request removal of such content.[7] It represents the most sweeping federal action to date against the spread of intimate image abuse.

The law explicitly distinguishes between consent to create an image and consent to publish it. Enforcement authority is granted to the Federal Trade Commission (FTC), and the Act also amends Section 223 of the Communications Act of 1934 to add new federal criminal penalties related to NDII, including up to three years imprisonment, depending on the age of the offender.[8] In Elliston Berry's case, where the perpetrator was placed on probation with his record to be expunged at age 18, TIDA's amendment would likely have provided her a far greater sense of justice.[9] Notably, the law leaves Section 230 of the Communications Decency Act, which generally protects platforms from liability, unchanged.[10] This helped garner support from tech giants like Meta and SnapChat, which feared compromising legal immunity.[11]

Perspectives from Victims and Advocates

For victims and advocates, the law represents long-overdue progress. "I'm really happy and relieved that we finally have a law on the books that provides real help to victims of intimate image abuse," says attorney Rebekah Wells, who has spent over a decade advocating for this kind of legislation.[12] A survivor herself and among the first in the United States to speak publicly about her experience, Wells has become a national voice on the issue after publishing a 2019 op-ed in *The New York Times* where she described the shame, loneliness, frustration, and repeated letdowns she experienced while trying to pursue justice in a system with few legal remedies.[13]

Until now, victims have had to rely on a patchwork of state laws, many of which vary in their definitions and thresholds for liability. At the state level, South Carolina was the last state in the country to enact a ban of any kind on NDII in May 2025, with Massachusetts becoming second-to-last in June 2024.[14] Victims in other states that did have NDII laws in place still faced challenges. In New York and Texas, for example, state law required proof of intent to harm the victim, which was often very difficult to establish.[15] Other states, such as Illinois and Washington, applied the 'reasonable person' standard, asking whether a reasonable person would understand that the victim did not consent to the distribution of the image.[16] This standard does not require proof of intended harm, thereby offering somewhat greater protection for victims. TIDA, however, addresses both elements. "TIDA includes both intent and actual harm as legal elements, which creates a more structured and specific standard," Wells explains.[17] This shift could make it easier for victims to pursue justice and simplify enforcement for platforms.

Criticisms and Challenges

However, not everyone agrees on how well the law is constructed. A coalition of civil liberties and technology advocacy organizations, including the Center for Democracy & Technology and the Electronic Frontier Foundation, has raised concerns about the law's potential

overreach.[18] In a February 2025 open letter to Senator Cruz, the group warned that TIDA's broad language and lack of procedural safeguards could lead to removal of lawful content, such as satire, political commentary, or journalistic work. They also cautioned that the 48-hour takedown requirement might prompt platforms to err on the side of over-removal, especially if they rely on error-prone AI-generated filters.[19]

Wells shares some of these concerns. "One of my biggest issues is that there's no counter-notification process. Platforms aren't required to verify that the person requesting removal is actually the victim," she says.[20] She recalls a troubling encounter with a perpetrator who had uploaded images of his ex-partner, only to later contact Wells to ask how to take them down. The individual claimed to feel guilty, but Wells believes he was trying to avoid legal consequences. "Under TIDA, someone like that could erase evidence before the victim even knows it exists."[21]

She suggests a more balanced model, similar to the Digital Millennium Copyright Act, which allows infringers to respond before content is permanently removed.[22] "Survivors deserve that kind of fairness and protection too," Wells adds.[23]

Another concern is whether the FTC will be able, or willing, to enforce the law. Recent turmoil within the agency, including the removal of Democratic commissioners by the Trump administration, has raised questions about its long-term capacity and independence. Critics fear that the FTC's ability to act on violations could be diminished by political interference or inadequate resources.[24]

Implications for Legal and Paralegal Practice

As these debates continue, legal professionals must begin to navigate the practical implications of TIDA in their daily work. Paralegals and attorneys will increasingly encounter NDII-related issues, whether in the context of family law, privacy torts, school discipline proceedings, or digital evidence disputes. Understanding the new statutory framework will be essential for helping victims preserve evidence, seek removal, or pursue civil or criminal claims.

Because paralegals are often the first point of contact for clients and play a key role in evidence management, their responsibilities under TIDA take on particular importance. Unlike attorneys, who may focus on litigation strategy or policy advocacy, paralegals would be tasked with the day-to-day work of documenting and authenticating digital evidence, drafting and monitoring takedown requests under TIDA's 48-hour deadline, and assisting attorneys in preparing complaints or coordinating with prosecutors. Competence in chain-of-custody protocols and strategies for advising clients on what information to disclose during removal requests will also be critical. This makes TIDA not only a legal milestone, but also a catalyst for changes in paralegal education and practice.

Paralegal education programs may need to expand training in digital forensics, evidence preservation, emerging technology law, and online platform regulation so graduates are prepared to assist with these evolving cases. Developing a working knowledge of artificial intelligence – particularly how AI can be used to generate, manipulate, or detect intimate imagery – will further enhance paralegals' ability to evaluate evidence and support victims effectively. In practice, these skills will be critical as paralegals take on responsibilities such as coordinating with platforms to secure timely removals, monitoring compliance with statutory deadlines, and maintaining proper chain-of-custody protocols. For those working in law offices, public interest organizations, or

educational institutions, staying current on TIDA's implementation will be essential to providing effective support and guidance. Just as importantly, feedback from practitioners and frontline advocates will inform lawmakers as they assess whether additional reforms or clarifications are needed.

CONCLUSION

Ultimately, TIDA is both a milestone and a test. It affirms that intimate image abuse is not merely a personal issue – it is a widespread one that justifies a coordinated federal response. Its success will depend on implementation: how platforms respond, how the FTC enforces, and whether future amendments address the valid concerns raised by civil liberties groups and survivors alike. "This isn't the end of the fight," Wells says. "But it's a huge step forward."[25] For legal professionals, and especially paralegals, the law will require both new technical skills and new approaches to client service. How effectively paralegals are trained to manage digital evidence, file takedown requests, and provide trauma-informed support will help determine whether TIDA achieves its promise in practice. Only time will tell.

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[1] Jim Axelrod, *Teen Victim of AI-Generated "Deepfake Pornography" Urges Congress to Pass "Take It Down Act"*, CBS NEWS, Dec. 18, 2024, https://www.cbsnews.com/news/deepfake-pornography-victim-congress/.
[2] Katharine Wilson, *A Texas Teen Was the Victim of Fake AI Nudes. Now a New Law Requires Platforms to Remove Such Content*, TEX. TRIB., May 19, 2025, https://www.texastribune.org/2025/05/19/take-it-down-act-deepfakes-digital-nudes-texas-student/.
[3] Natasha Singer, *Teen Girls Confront an Epidemic of Deepfake Nudes in Schools*, N.Y. TIMES, Apr. 8, 2024, https://www.nytimes.com/2024/04/08/technology/deepfake-ai-nudes-westfield-high-school.html.
[4] William Hawkins, et al, *Dramatic Rise in Publicly Downloadable Deepfake Image Generators*, OXFORD INTERNET INST. NEWS, May 7, 2025, https://www.oii.ox.ac.uk/news-events/dramatic-rise-in-publicly-downloadable-deepfake-image-generators/.
[5] Joyful Heart Found., *Image-Based Abuse*, *Joyful Heart Foundation*, https://www.joyfulheartfoundation.org/learn/image-based-abuse (last visited Jun. 20, 2025).
[6] The White House, *ICYMI: President Trump Signs TAKE IT DOWN Act into Law*, May 19, 2025, https://www.whitehouse.gov/articles/2025/05/icymi-president-trump-signs-take-it-down-act-into-law/.
[7] TAKE IT DOWN Act of 2025, Pub. L. No. 119-12, 139 Stat. 55.
[8] 47 U.S.C. § 223 (2025).
[9] Interview by Kaitlan Collins with Elliston Berry & Anna McAdams, *Teenager Victim of Deepfake Nudes Speaks Out*, CNN, Jun. 20, 2024, https://www.cnn.com/2024/06/20/us/video/teenager-victim-deepfake-nudes-federal-bill-elliston-berry-src-digvid.
[10] 47 U.S.C. § 230 (2025); Victoria L. Killion, *The TAKE IT DOWN Act: A Federal Law Prohibiting the Non-Consensual Publication of Intimate Images*, Legal Sidebar LSB 11314, CONG. RESEARCH SERV., May 20, 2025.
[11] *Id*.
[12] Interview with Rebekah Wells, Attorney, (May 7, 2025).
[13] Rebekah Wells, *The Trauma of Revenge Porn*, N.Y. TIMES, Aug. 4, 2019, (opinion), https://www.nytimes.com/2019/08/04/opinion/revenge-porn-privacy.html.
[14] Skylar Laird, *SC Stands Alone in Not Criminalizing 'Revenge Porn.' Some Legislators Hope to Change That*, SC DAILY GAZETTE., Jul. 22, 2024, https://scdailygazette.com/2024/07/22/sc-stands-alone-in-not-criminalizing-revenge-porn-some-legislators-hope-to-change-that/; Steve LeBlanc, *Massachusetts on Verge of Becoming Second-to-Last State to Outlaw 'Revenge Porn'*, AP NEWS, Jun. 13, 2024, https://apnews.com/article/revenge-porn-ban-massachusetts-bill-passed-ace13a5bf9e8b5131066dda8ac8b8b65.
[15] N.Y. PENAL LAW § 245.15 (2023); TEX. PENAL CODE § 21.16 (2021).
[16] 720 ILL. COMP. STAT. 5/11-23.5 (2025); WASH. REV. CODE § 9A.86.010 (2025).
[17] Wells, *supra* note 12.

[18] Center for Democracy & Technology et al., Letter to U.S. Senate Regarding Concerns with the TAKE IT DOWN Act, Feb. 12, 2025, https://cdt.org/wp-content/uploads/2025/02/TAKE-IT-DOWN-Sign-On-Letter_21225.pdf.
[19] *Id*.
[20] Wells, *supra* note 12.
[21] *Id*.
[22] 17 U.S.C. §§ 512, 1201 (1998).
[23] Wells, *supra* note 12.
[24] Ari Shapiro, *FTC Commissioner Fired by Trump Says Move Threatens Agency Designed to Protect Consumers*, PBS NEWSHOUR, Jun. 10, 2025, https://www.pbs.org/newshour/show/ftc-commissioner-fired-by-trump-says-move-threatens-agency-designed-to-protect-consumers.
[25] *Id*.

KEYWORDS: TAKE IT DOWN ACT, TIDA, NONCONSENSUAL DISTRIBUTION OF INTIMATE IMAGERY, NDII, DEEPFAKES, FTC ENFORCEMENT, FEDERAL CRIMINAL PENALTIES, PARALEGAL PRACTICE

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ARTICLE

GETTING STRATEGIC ABOUT ABA-APPROVED PARALEGAL PROGRAM MARKETING

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Program directors of American Bar Association (ABA) Approved Paralegal Programs around the country are often responsible for the marketing of their programs to maintain and increase enrollment. Furthermore, many are limited to using the most cost-effective strategies for marketing their programs. This article analyzes surveys of students and program directors of ABA-approved programs in Illinois to determine which marketing strategies were used and which were most effective in generating student interest in these programs. While most program directors relied upon word of mouth to market their programs, most of the students surveyed were influenced by their school's web presence. Program directors should work with their institution's web designers to make sure their webpages are easy to navigate and provide readily accessible information for potential students. Not only is this marketing strategy cost-effective, but it is also the most likely to be effective, as students rely on program websites to make enrollment decisions.

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A program director of an American Bar Association (ABA) Approved Paralegal Program is expected to comply with the ABA guidelines, advise students, promote the profession, connect with community partners, and teach. Implied within the ABA guidelines (and often by college administration as well) is the presumption that directors market their programs to maintain or increase enrollment. Most program directors are attorneys or paralegals by training and do not have a marketing background to effectively accomplish this task.

Although most institutions have a department responsible for marketing, that department is often limited to marketing the entire institution, and not an individual program. Thus, program directors are on their own. They use a variety of marketing attempts without a tool to measure whether their efforts are effective. This article attempts to do that work for directors. Rather than continuing down a frustrating path filled with guesswork and assumptions, an idea was formed to try to determine which marketing strategies were most effective.

Two surveys were created: one for program directors, and another for currently enrolled students. The purpose of the surveys was to determine:

1. Which marketing activities program directors use;
2. Which of those marketing strategies they have determined to be most effective;
3. How current students learned of these programs; and
4. What factors assisted in the students' decision to attend their current institution.

The surveys were sent to program directors and students at ABA Approved programs within Illinois. Of the responses received, 11 institutions participated—three universities and eight community colleges. In total, 11 program directors (eight community colleges and three universities) and 157 students (108 community colleges, 49 universities) participated in the study.

Program Director Survey Data

Program directors are expected to market their programs, but what do they do to "market" them? In a focus group of directors held prior to the distribution of the surveys, "marketing" was discussed in terms of the program needing to be visible to the public. The task of making one's program visible was accomplished using websites, catalogs, open houses, print mailers, posters, social media, and word of mouth. All program directors responding to the survey indicated that they market their programs in some form.

Marketing, however, often comes with a cost. Every program will be governed by a budget set by the department. How that money is spent will depend on several factors. Below, responding program directors indicated how much each spends towards marketing efforts.

A little less than half of the respondents indicated that they spent between $1 and $1,000 each year. While 36% stated that they spent more than $1,000 a year, one respondent indicated that their program spent in excess of $10,000 a year. At least two programs indicated that they either did not have a budget for marketing or did not spend any money towards marketing efforts.

Program directors were asked to indicate which marketing methods they used to promote their programs. This list included the school's website, school's catalog, banners, posters, pamphlets, print mailers, newspapers, social media, open houses, and word of mouth. All of the program directors relied upon the school's website and catalogs as marketing tools. The next four

highest marketing tools were open houses and word of mouth (91% each), social media (82%), and banners, posters, pamphlets (73%). Only 27% of the respondents incorporated print mailers and newspapers into their marketing plan. Respondents also indicated other forms of marketing they utilized including visiting high schools, hosting special law-related events on campus, attending bar association events, and even placing placards on trains.

Program directors were then asked which of the marketing strategies they believe are the most effective. They rated each marketing option as most effective, least effective, or somewhat effective.

Interestingly, 72% of the respondents indicated that they believed word of mouth was the most effective marketing strategy, followed by the institution's website at 45%. Social media and open houses were listed as most effective by 27% of the respondents, followed by the college catalog, banners, and print mailers at 18%. In addition, 36% of respondents believed the least effective marketing methods were banners/posters and the college catalog, followed by open houses at 27%.

Some of the other marketing methods utilized by program directors primarily focused on informational sessions. These included local high school visits, Law Day events, presentations to classes, local bar association engagement, career days, and advertisements on trains.

Finally, program directors were asked what evidence they used to determine the effectiveness of a marketing strategy. The responses regarding the effectiveness of a marketing strategy were roughly separated into three categories: digital tracking (webpage tracking), student surveys, and informal feedback (unsolicited and informal conversations with students, advisors, and community members).

A majority (64%) of the program directors surveyed indicated that they relied upon informal feedback to determine whether a marketing strategy was effective. Only 36% relied on data: 18% from digital tracking and 18% from student surveys. Although helpful, the problem with informal feedback from students, administration, or other sources is that it does not provide a complete analysis. Informal feedback is sporadic and often volunteered. On the other hand, student surveys given in an Intro class would provide a more complete response. Finally, requesting traffic data from the program's webpage could provide the program director with some vital information. The amount of traffic could be measured against enrollment for the following semester.

While 72% of the responding program directors believed word of mouth was the most effective marketing strategy, this belief may not be based on data. To maximize a program's marketing funds, program directors should spend more time with student survey results and webpage traffic data to determine the best course of action when developing a marketing strategy.

Student Survey Data

Marketing researchers use many different methods to study the effectiveness of marketing campaigns. These studies look at consumer behavior data to assess effectiveness. Studies looking at higher education marketing have focused on students as consumers. While students are not the only stakeholders when it comes to higher education planning and programming, they decide to enroll, which is the outcome program directors are looking for in marketing their programs. Many

factors and restrictions can contribute to an individual student's choice to enroll in a particular program of study. The student survey used in this study attempts to capture data to better understand how students find out about paralegal programs and decide to enroll in them.

Initial exposure

If we think of exposure as the starting place of effective marketing, then knowing how students first learned about the program in which they enrolled is important. In other words, which marketing channels are reaching potential paralegal students?

In estimating the effectiveness of the various marketing channels, 72% of program directors felt that word of mouth marketing was the most effective. Behind that interpersonal category was the program's website, with 45% of program directors believing that the website converted the most potential students into actual students.

When students were surveyed on how they learned about the program they entered, 51% of two-year students and 49% of four-year students listed the college or university's website as their initial exposure. Additionally, 21% of two-year students and 22% of four-year students selected the college's catalog as their first exposure to the program. Most college or university catalogs are now in an online format and are often accessed through the institution's website. That means that informational websites connected to the program accounted for the greatest initial marketing exposure for both four-year and two-year students. Paralegal directors should ensure a solid program web presence to attract potential students.

That was not the only website impact noted by students. While sorting through the responses in the other category, where students could write in a unique response, 5.19% of the surveyed students indicated that they either found out about the program through internet searching ("I Googled it") or through the ABA's website. This suggests that search engine optimization is important if those students who googled it made their way to the program's landing page. While other websites are beyond the management of program directors, they're still important to note. Program directors of ABA Approved programs may want to consider providing website feedback to the ABA for continual improvement, recognizing that it is another source of exposure for potential students.

BIBLIOGRAPHY

1. American Bar Ass'n, *Guidelines for the Approval of Paralegal Education Programs*, G-402(A)(3) (2023) *https://www.americanbar.org/content/dam/aba/administrative/paralegals/2023-approval-guidelines.pdf.*
2. Gordon Wyner, *The Practitioner's Dilemma*, MKTG. NEWS, 14 (June 2013).
3. Robert E. Wright, *Student Focused Marketing: Impact of Marketing Higher Education Based on Student Data and Input*, 48 COLL. STUDENT J. 88 (Spring 2014).
4. Ana Camelia Gordan *et al*., *Engagement Marketing: The Future of Relationship Marketing in Higher Education, The Proceedings of the International Conference*, 5 MKTG - FROM INFO. TO DECISION J. 171 (2012).
5. Hitesh Bhasin, *What is Web Usability? How to Have a Useable Website*, Marketing91.com (May 3, 2019), *https://www.marketing91.com/what-is-web-usability/.*

6. Zehra Yerlinkaya & Pinar Onay Durdu, *Usability of University Websites: A Systematic Review in* UNIVERSAL ACCESS IN HUMAN-COMPUTER INTERACTION: DESIGN AND DEVELOPMENT APPROACHES AND METHODS, 278 (2017).
7. Jakob Nielsen, *How Long Do Users Stay on Webpages?*, Nielsen Norman Group, September 11, 2011, *https://www.nngroup.com/articles/how-long-do-users-stay-on-web-pages/.*
8. Katie Sherwin, *University Websites: Top 10 Design Guidelines*, Nielsen Norman Group, April 23, 2016, *https://www.nngroup.com/articles/university-sites/.*

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