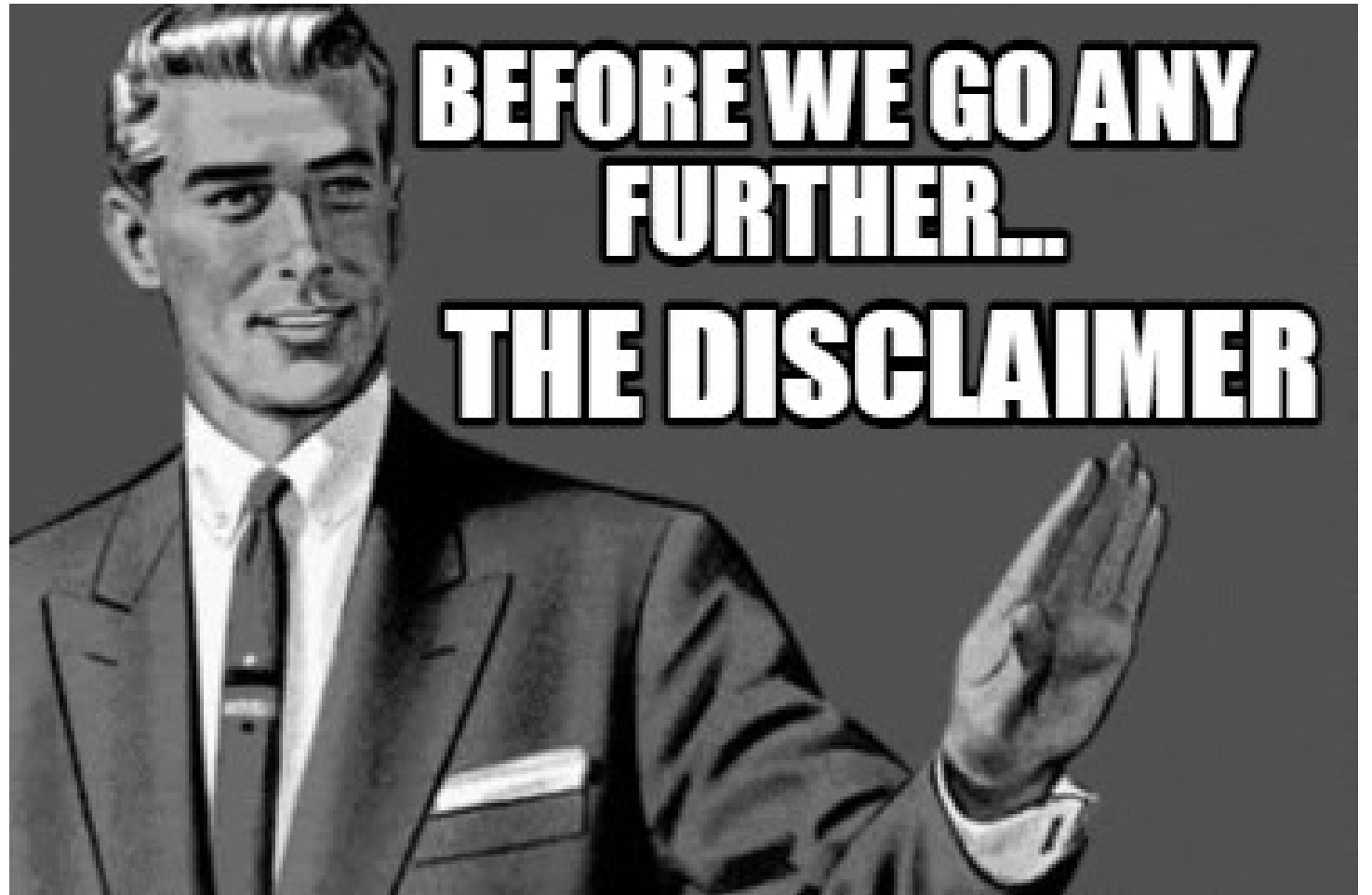


Use of Artificial Intelligence in Legal Practice

Bryan Nickels, CAHO, State of Idaho OAH

Disclaimer

- Thoughts and opinions expressed in this presentation are mine alone, and not those of the Office of Administrative Hearings and/or the Office of the Governor



A.I.



Lawyers lawyerin'

Big Goals

What is it

How is it being used in the legal community

What are the pitfalls

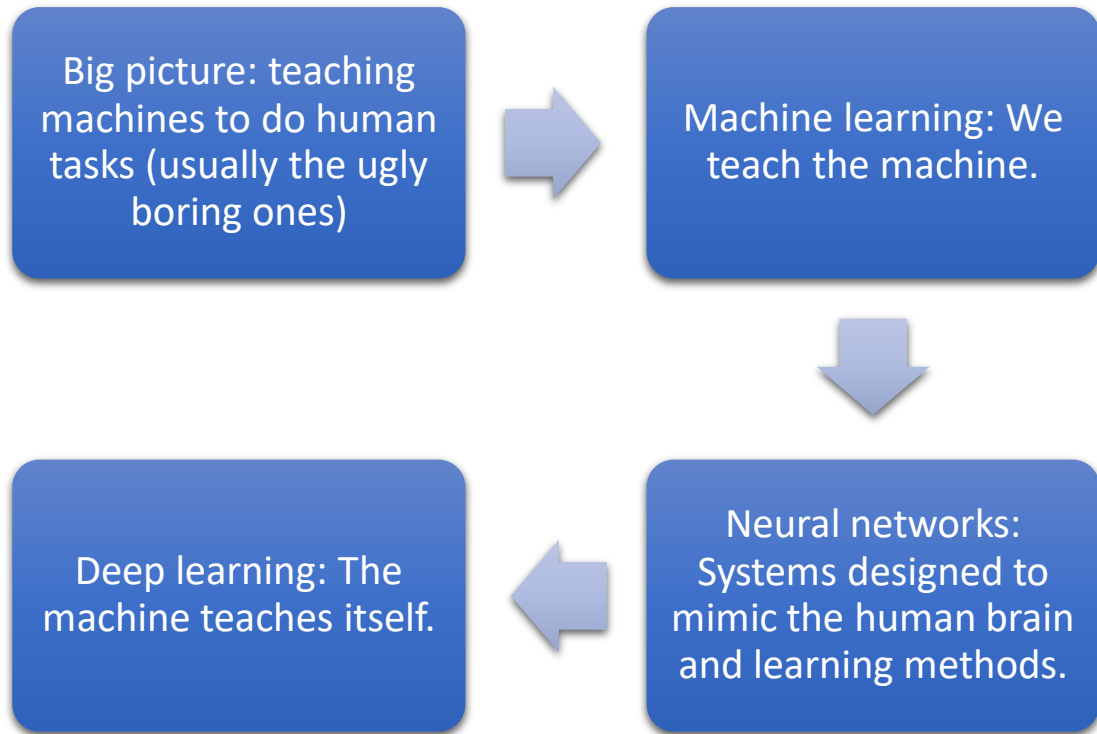
What responses are being developed

How you can address it

What Is “A.I.”, Exactly?



Machine Learning, Neural Networks and Deep Learning



The Most Immediate Impact to the Legal Profession: Generative A.I.


- Utilizes “Large Language Models”, which is a fancy way of saying “we initially taught it by uploading a huge amount of language data into it”.

- Huge: millions, even billions, of data sets

- Can generate natural-language responses in a number of contexts.

(e.g., “GPT”: Generative Pre-trained Transformer)

GPT Passes the Bar!



GPT-4 Passes the Bar Exam

35 Pages • Posted: 15 Mar 2023 • Last revised: 5 Apr 2023

[Daniel Martin Katz](#)

Illinois Tech - Chicago Kent College of Law; Bucerius Center for Legal Technology & Data Science; Stanford CodeX - The Center for Legal Informatics; 273 Ventures

[Michael James Bommarito](#)

273 Ventures; Licensio, LLC; Stanford Center for Legal Informatics; Michigan State College of Law; Bommarito Consulting, LLC

[Shang Gao](#)

Casetext

[Pablo Arredondo](#)

Casetext; Stanford CodeX

Date Written: March 15, 2023

Abstract

In this paper, we experimentally evaluate the zero-shot performance of a preliminary version of GPT-4 against prior generations of GPT on the entire Uniform Bar Examination (UBE), including not only the multiple-choice Multistate Bar Examination (MBE), but also the open-ended Multistate Essay Exam (MEE) and Multistate Performance Test (MPT) components. On the MBE, GPT-4 significantly outperforms both human test-takers and prior models, demonstrating a 26% increase over ChatGPT and beating humans in five of seven subject areas. On the MEE and MPT, which have not previously been evaluated by scholars, GPT-4 scores an average of 4.2/6.0 as compared to much lower scores for ChatGPT. Graded across the UBE components, in the manner in which a human test-taker would be, GPT-4 scores approximately 297 points, significantly in excess of the passing threshold for all UBE jurisdictions. These findings document not just the rapid and remarkable advance of large language model performance generally, but also the potential for such models to support the delivery of legal services in society.

Image Generators

- Generates images from text inputs using text-image pairing inputs
- “Chief Justice John Roberts parasailing while in judge robes”



ChatGPT

- (Currently) one of most well-known generative AI systems
- Free to use
- How fast? Fast.
- “Write a recommendation for letter for a 3rd year law student for a judicial clerkship who is graduating 4th in her class, was editor of law review, and did pro bono work for homeless charities”
- 20 seconds



But Is It Any Good?

I am writing to enthusiastically recommend [Student's Name] for a judicial clerkship position within your esteemed court. [Student's Name] is a third-year law student at [Law School], and I have had the pleasure of serving as [his/her] professor in [relevant courses] and [his/her] faculty advisor for the Law Review.

I have been consistently impressed with [Student's Name]'s academic prowess and dedication to the field of law. [He/She] consistently ranks among the top students in [his/her] class, currently standing at an impressive fourth position out of [number] students. This remarkable academic achievement underscores [his/her] exceptional analytical skills, commitment to legal scholarship, and work ethic.

One of [Student's Name]'s most notable accomplishments during [his/her] time at [Law School] was [his/her] role as the Editor of the Law Review. [He/She] approached this position with unwavering diligence and a keen eye for detail. Under [his/her] leadership, the Law Review published high-quality articles that have made meaningful contributions to the legal community. [Student's Name] exhibited excellent organizational abilities, superb legal writing, and an acute understanding of complex legal issues, making [him/her] an ideal candidate for a judicial clerkship position.

But Is It Any Good?

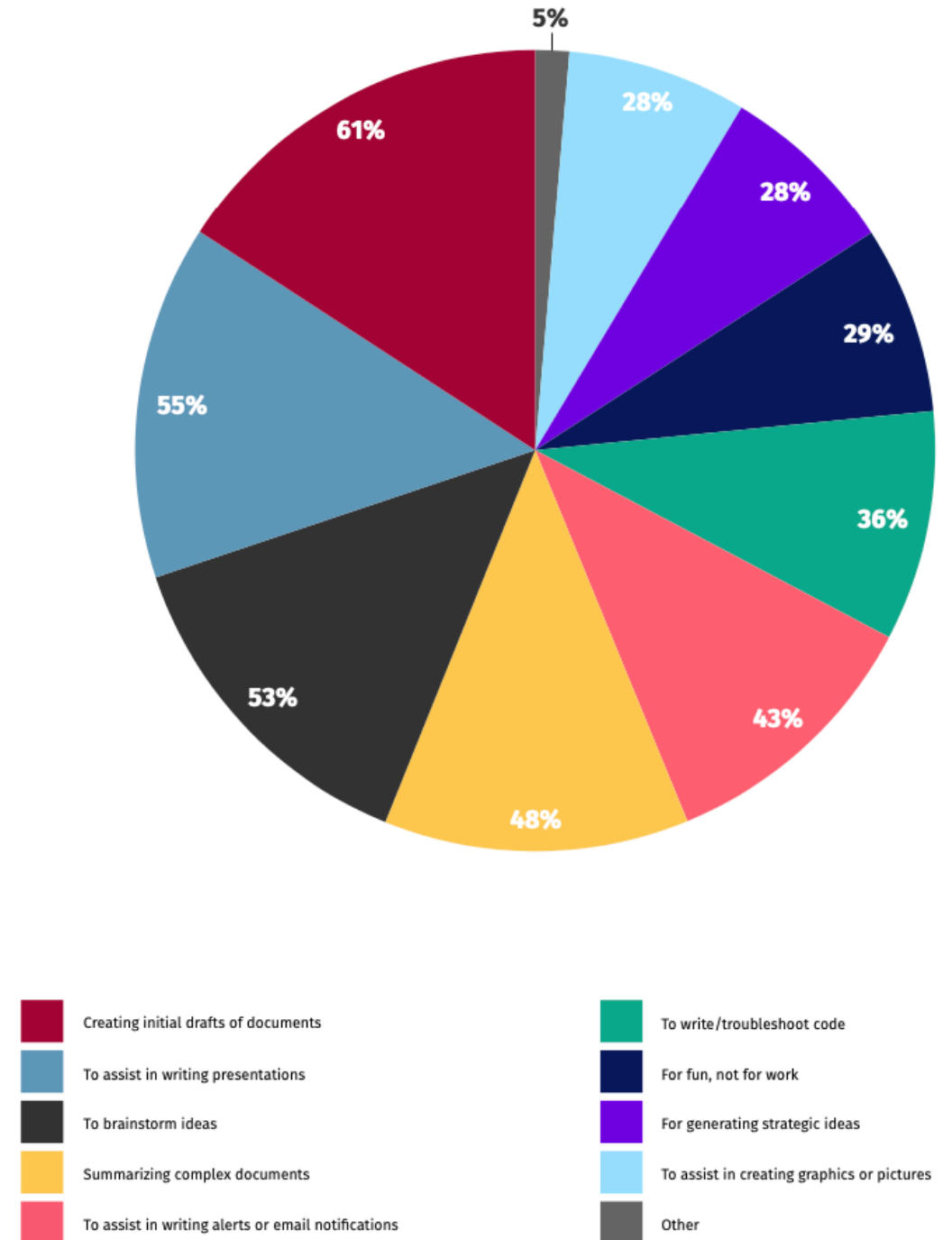
Furthermore, [Student's Name] has demonstrated [his/her] commitment to public service and social responsibility through [his/her] extensive pro bono work with homeless charities. [His/Her] compassion, dedication, and strong sense of justice shine through in [his/her] work with these organizations, where [he/she] has made a significant impact on the lives of vulnerable individuals. [His/Her] pro bono efforts exemplify [his/her] deep-rooted values and sense of duty as a future legal professional.

In summary, [Student's Name] is an exceptional candidate for a judicial clerkship position due to [his/her] academic excellence, editorial leadership, and dedication to public service. I have no doubt that [he/she] will make a valuable contribution to your court, and I wholeheartedly recommend [him/her] for this prestigious opportunity.

Please feel free to contact me at [your email] or [your phone number] if you require any further information or have any questions regarding [Student's Name]'s qualifications. Thank you for considering [him/her] for this vital role, and I am confident that [he/she] will excel in any capacity within your court.

Uses in a Law Office

- Recent survey shows top 4 anticipated uses:
 - creating initial drafts,
 - assist in writing presentations,
 - “brainstorm ideas,” and
 - summarizing complex documents.



What It *Is* Being Used For

- Briefing.
- But sometimes with disastrous results.

Lawyer who cited cases concocted by AI asks judge to spare sanctions

By Sara Merken

June 8, 2023 3:59 PM MDT · Updated 4 months ago



ChatGPT logo is seen in this illustration taken March 31, 2023. REUTERS/Dado Ruvic/Illustration// [Acquire Licensing Rights](#)

June 8(Reuters) - A New York lawyer on Thursday asked a Manhattan federal judge not to sanction him after he included [made-up case citations](#) generated by an artificial intelligence chatbot in a legal brief.

The Problem: Hallucinations

Like human brains, can “hallucinate”

AI hallucinations refer to false perceptions or interpretations generated by artificial intelligence systems.

Examples: Misidentifying objects, generating fictional content, or producing inaccurate results.

Legal context: caselaw

The Other Problem: Tired Lawyers

A thick yellow horizontal bar spans the width of the slide, with a vertical yellow bar extending downwards from its right end.

- Example query: “Summarize a landowner's duties to a trespasser under Idaho law for a legal brief, including caselaw citations”



I. A Landowner's Duties to Trespassers under Idaho Law

Under Idaho law, a landowner's duties to trespassers are generally limited compared to those owed to invitees or licensees. The duty owed to a trespasser primarily involves refraining from willful or wanton conduct that could cause harm. The legal framework governing a landowner's duties to trespassers can be summarized as follows:

A. Duty to Refrain from Willful or Wanton Conduct

1. **Willful or Wanton Conduct Defined:** In Idaho, a landowner owes a duty to trespassers not to engage in willful or wanton conduct that may cause harm. Willful or wanton conduct is typically characterized as reckless, intentional, or grossly negligent behavior.
 - *Goodwin v. L.K. Comstock & Co., 140 Idaho 526, 530 (2004).*

B. Absence of Duty to Warn or Make Premises Safe

1. **No Duty to Warn:** In general, landowners in Idaho are not obligated to warn trespassers of potential dangers on the property, nor do they need to make the premises safe for trespassers.
 - *Goodwin v. L.K. Comstock & Co., 140 Idaho at 530.*

C. Exception for Known Trespassers

1. **Exception for Known Trespassers:** An exception to the limited duty arises when the landowner has actual knowledge of frequent trespassers on the property. In such cases, the landowner may be under a duty to exercise reasonable care to avoid injuring known trespassers.
 - *Goodwin v. L.K. Comstock & Co., 140 Idaho at 531.*
2. **Duty to Exercise Reasonable Care:** If the landowner knows of frequent trespassers, they must exercise reasonable care, which may include giving warnings or taking measures to prevent harm, but only if such actions are reasonably necessary under the circumstances.
 - *Goodwin v. L.K. Comstock & Co., 140 Idaho at 531.*

D. Minors as Trespassers

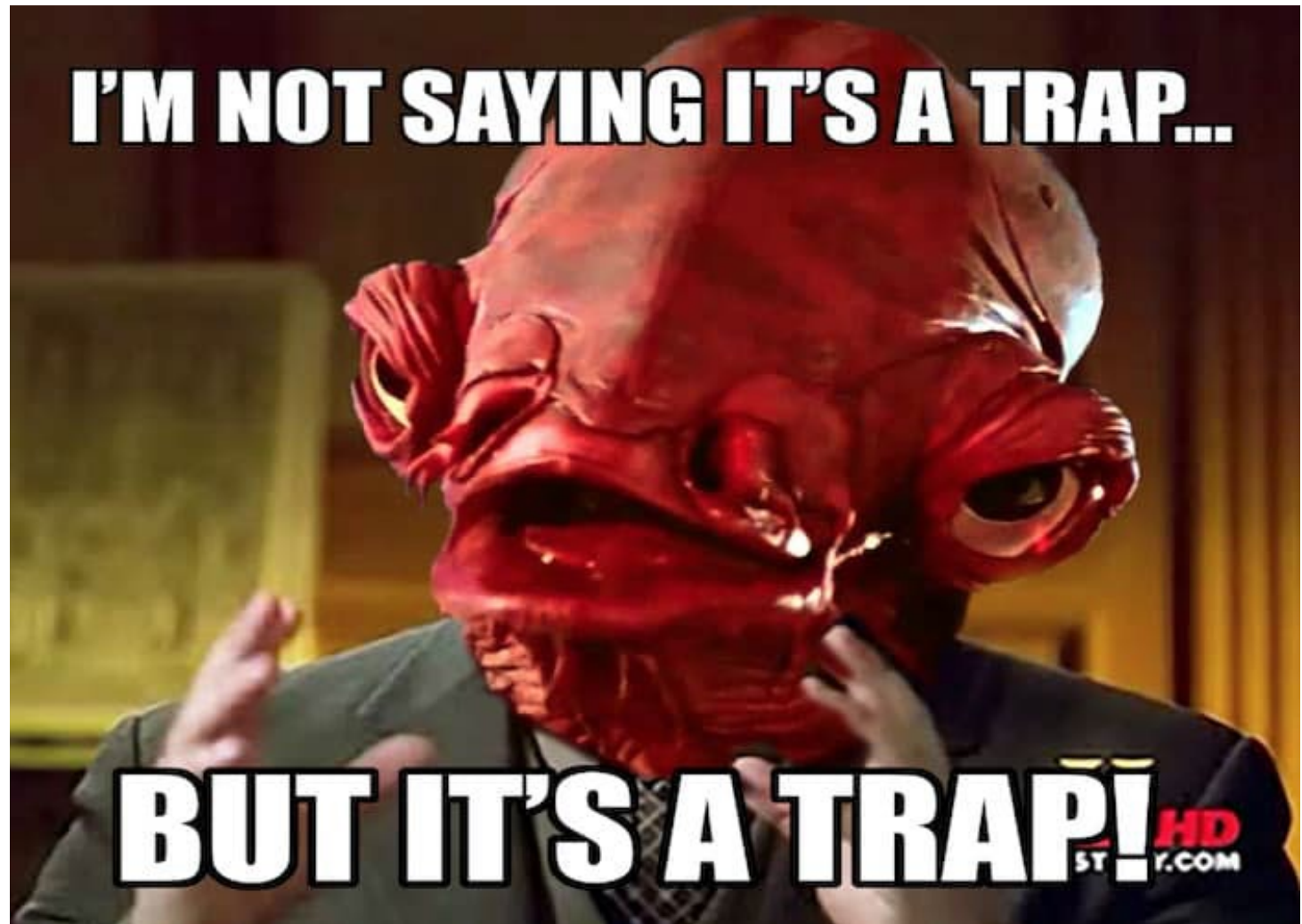
1. **Special Consideration for Minors:** Idaho courts recognize that special care may be required when dealing with trespassing minors. If a landowner knows or should have known that minors frequently trespass on the property, there may be a heightened duty of care to prevent harm to minors.
 - *Mabie v. Hyzer, 141 Idaho 42, 47 (2005).*

In conclusion, under Idaho law, a landowner's duties to trespassers are generally limited to refraining from willful or wanton conduct. Landowners are not typically required to warn or make their property safe for trespassers. However, there is an exception when the landowner knows of frequent trespassers, in which case a duty to exercise reasonable care may arise. Additionally, special consideration is given to trespassing minors, potentially imposing a heightened duty of care.

Oh No:
Neither Case
Exists



OAH's
Approach:
Proactive
Caution



Statutory Charge: Protect Independence

Idaho Code sec.
67-5282(1)(g)

(1) The chief administrative
hearing officer shall:
...(g) Protect and ensure
the decisional
independence of hearing
officers

Solution:
Bar Use by
ALJs (at least
for a while)



STATE OF IDAHO

OFFICE OF ADMINISTRATIVE HEARINGS

Policy No.:	23-1
Date:	January 12, 2023
Effective Date:	January 12, 2023
Re:	Use of artificial intelligence

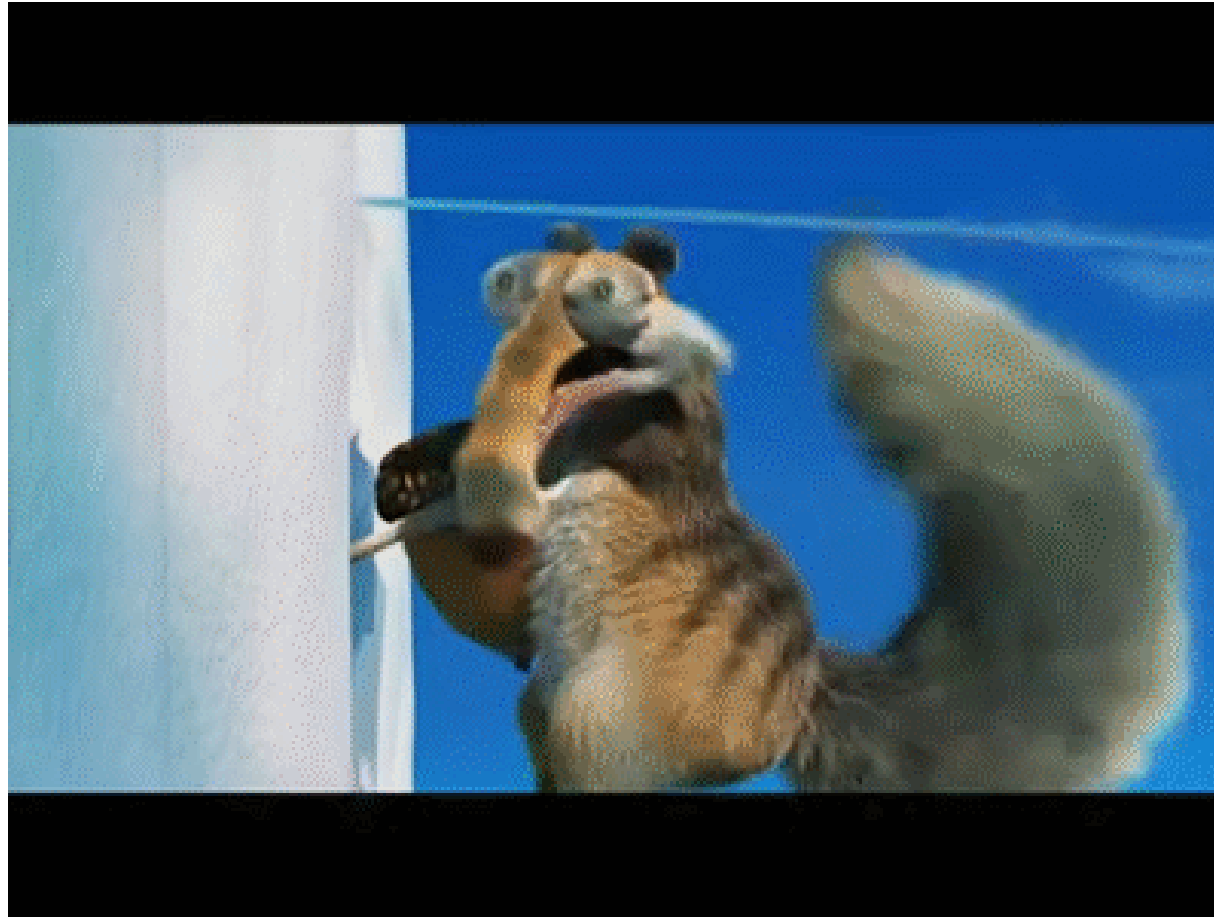
PURPOSE: To prohibit, on an interim basis, the use of artificial intelligence (AI) by Hearing Officers in preparing orders (including, but not limited to, preliminary orders, recommended final orders, and/or proposed final orders).

APPLICABILITY: All in-house and contract Hearing Officers.

AUTHORITY: I.C. §67-5201(21)(b)(i) & (iii); §67-5282(1)(f), (g), & (h)

POLICY: Hearing Officers, whether in-house or contract, are prohibited from utilizing artificial intelligence and/or chatbots (including, but not limited to, ChatGPT) in drafting, finalizing, or otherwise preparing orders to be issued by the Hearing Officer, including, but not limited to, preliminary orders, recommended final orders, and/or proposed final orders. This policy is interim in nature, until such time as the Code of Conduct is updated to address the use of artificial intelligence in such drafting.

But, What About...?



Next Issue: Party Usage

- Broad grant of authority to ALJs in Idaho's APA regarding conduct of proceedings:
- I.C. sec. 67-5242(3)(a)
- “(3) At the hearing, the presiding officer:
 - (a) Shall regulate the course of the proceedings to assure that there is a full disclosure of all relevant facts and issues, including such cross-examination as may be necessary.
- But, goal of balancing the preservation of integrity of contested case proceedings with individual attorney practice innovations
- Solution: Certification, if ALJ so chooses.



STATE OF IDAHO

OFFICE OF ADMINISTRATIVE HEARINGS

Policy No.: **23-12**

Date: July 12, 2023

Effective Date: July 12, 2023

Re: AI Disclosures

PURPOSE: To authorize and standardize AI disclosure statements, in the hearing officer's discretion.

APPLICABILITY: All in-house and contract Hearing Officers.

AUTHORITY: I.C. §67-5282(1)(g) & (h)

POLICY: In accord with IRAP 510 regarding prehearing conferences' objectives to "establish procedure at hearings" and "addressing other matters that may expedite orderly conduct and disposition of the proceeding," hearing officers are permitted to request disclosure statements from parties (whether represented or self-represented) regarding the use of artificial intelligence in the preparation of briefing and other written submissions. The decision whether to request such disclosure statements, and for which submissions, is solely within the discretion of the hearing officer.

The recommended AI disclosure language is as follows:

I certify that no portion of this filing has been drafted by generative artificial intelligence, or otherwise that any language drafted by generative artificial intelligence contained herein—including quotations, citations, paraphrased assertions, and legal analysis—has been checked for accuracy, using print reporters or traditional legal databases, by a human being before it has been submitted to the Hearing Officer. I understand that by signing this filing, I am responsible for the contents herein, regardless of whether generative artificial intelligence drafted any portion of this filing.

Alternatively, hearing officers, in their sole discretion, may elect to preemptively include a provision regarding the use of artificial intelligence in any order to the parties, substantially providing the same directive regarding the use of artificial intelligence. The recommended language is as follows:

Use of Generative Artificial Intelligence: No portion of any filing in this matter will be drafted by generative artificial intelligence—including quotations, citations, paraphrased assertions, and legal analysis—unless it has been checked for accuracy, using print reporters or traditional legal databases, by a human being before it is submitted to the Hearing Officer. Any party who signs any filing in this case will be held responsible for the contents thereof, regardless of whether generative artificial intelligence drafted any portion of that filing.

Approved:

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of loops and a final horizontal stroke.

Chief Administrative Hearing Officer

One more thing...



Attorneys Can Be Reported to the Bar by Judges and ALJs For AI Misuse

- I.C. sec. 67-5282(1)(f) – CAHO to establish Code of Conduct
- Code of Conduct largely mirrors Judicial Canons
- OAH Canon 2.13(B): “An Administrative Hearing Officer having knowledge or who has received information that a lawyer has committed a violation of the Idaho Rules of Professional Conduct that raises a substantial question regarding the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority consistent with the Idaho Rules of Professional Conduct.”





Misuse of Generative AI in Briefing

IRPC 1.1, “Competence”

and

IRPC 3.1, “Meritorious Claims and Contentions”

and

IRPC 3.3, “Candor to the Tribunal”

and

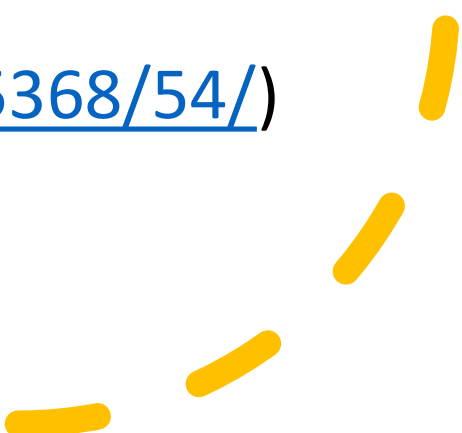
IRPC 4.1, “Truthfulness in Statements to Others”

and

IRPC 5.1, “Responsibilities of Partners, Managers,
and Supervisory Lawyers”

A large orange circle is positioned on the left side of the slide, partially overlapping the text.

Ethical/Sanction Issues Developing Quickly

- Joe Pirtle presentation to Appellate Section, 9/14 (slidedeck available at: <https://isb.idaho.gov/wp-content/uploads/9-14-23-APL-A.I.-Appellate-Section.pdf>)
 - Key case he discussed – Mata v. Avianca (<https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2022cv01461/575368/54/>)
- 
- A series of yellow dashed lines are located in the bottom right corner of the slide, forming a curved shape.

Key Ethical Takeaways

1

If you use it, double-check it.

2

Legal Research & Writing, Week 1:
Never cite anything
you haven't read.

3

If you spot an error:
withdraw,
substitute, errata,
etc.



The Revolution Will Not Be CLE'd

- AI will appear in several legal contexts in the not-distant future:
 - Communications
 - Presentations
 - Discovery/document management (creation and review)
 - Research
 - Billing (creation and review)
 - Briefing (especially transactional)
 - Analytics (potential trial results/awards)
 - ADR (e.g., online landlord/tenant dispute resolution in Ada)
 - Hiring

Big
Takeaway:
Stay on Top
of All of It!





Questions?