



Section for Skeptics

4 Concerns About CAL and
Generative AI in Document Review

#1 Accuracy and Defensibility

Skeptical take:

There are too many unknowns with this technology, and I'd rather have eyes on every document. AI may be faster and cost less than linear review, but it's over-inclusive, or underinclusive, or inconsistent.

Plus, the technology feels like a “black box.” I don't understand it, so I can't confidently defend it if challenged by the opposing party. And, specific to Generative AI, multiple judges have already issued standing orders explicitly limiting or prohibiting its use.

Rebuttal:

There is a long list of cases in which predictive coding features (i.e. TAR) have been explicitly approved, allowed, and even required.

AI can be over-inclusive, or underinclusive, or inconsistent — and so can humans performing linear review. Whether you are performing linear review or utilizing AI, all procedures and decisions should be documented. Plus, there's a strong chance that your software and/or service providers have testifying experts who can assist you.

Lastly, the orders regarding Generative AI that I have seen are addressing briefs and motions, not document review (i.e. utilizing features in Relativity) or legal research (i.e. utilizing features in Westlaw).

Takeaway:

Quality control (QC) workflows are critical whether initial coding decisions are made by contract attorneys, associates, paralegals, CAL, or Generative AI.

Project managers should ensure a statistically significant sample of documents have been reviewed, errors corrected, and documentation updated if appropriate.

Regardless of the method used to code documents responsible attorneys should check the work.

Deep dive on defensibility here: [Defensibility of eDiscovery AI in Court](#) by Reveal

#2 Bias

Skeptical take:

Algorithms and AI models contain bias, so the opposing party will challenge the defensibility.

Rebuttal:

Algorithms and AI models do contain bias — because the humans who create them have biases. If humans are the source of bias, it's difficult to argue they'll inherently deliver a superior quality.

eDiscovery's application of these features is unique in the commercial landscape — we do not analyze big data for commercial opportunities, nor do we generate hallucinated insights — we categorize an existing set of documents into buckets (i.e. responsive, non-responsive) and then quality control is performed by experienced eDiscovery and legal professionals.

Finally, software providers focused on the legal market, like Relativity, are uniquely sensitive to the ethical imperatives of defensible processes. Relativity's AI principles reflect priorities like security, privacy, clarity, and fairness. You can read them in detail [here](#).

Takeaway:

No workflow is perfect, but there are defensible workflows. Bias is overcome through sampling and QC processes. In addition, performing an elusion test will help both sides feel more confident in the results that are being produced when using AI as a means to decide documents that should be produced. An elusion test takes a random sample of documents that were below the responsiveness cutoff (predicted below "X") and has an attorney review the sample for responsiveness. The result of the test is the percentage of documents marked responsive from the population. The lower the percentage, the better the result.



Pro Tip: Discuss elusion and validation tests as part of the meet and confer process. This way, there can be agreement on what completion looks like.

#3 Inhibits Attorney Development

Skeptical take:

Discovery is a massive part of a young attorney's training. Replacing attorneys with software will deprive them of crucial lessons in the formative years of their career.

Rebuttal:

Let's be honest, the amount of data that gets collected today is far more voluminous than in days past. No attorney learns new skills by reviewing 2,000 priceline.com emails. Software should be used to eliminate extraneous documents and allow attorneys to focus on substance and strategy. Technology does not deter young litigators' career growth; it accelerates it by allowing them to focus on the big picture.

Takeaway:

Being able to focus on substantive documents more quickly shortens the learning curve for young attorneys — *and* it preserves a vast amount of the matter budget for substance and strategy with merits counsel rather than eating it up with discovery.

ChatGPT can pass the bar exam, but it can't perform a legal assessment of the various dimensions of litigation. ([ABA Journal](#))

#4 Lack of Cost Clarity

Skeptical take:

There is no way to reliably budget for a predictive coding project because there is no way to reliably predict how many documents will need to be reviewed before the model stabilizes.

Plus, lots of eDiscovery vendors charge per gigabyte (or per document) to utilize AI — in addition to the hourly costs of the documents they do review manually.

Generative AI is still so new there's no way of knowing what commercial models will develop, but I've heard rumors of pretty high costs per document.

Rebuttal:

We'll put generative AI aside since most programs are in beta and broader market adoption will take some time.

Linear review is relatively easy to calculate review costs for, and AI-enabled projects are much murkier.

But barring unforeseen circumstances, when a project is well-planned, the linear review cost becomes the “worst case scenario” ceiling.

You may have to review up to a quarter, or a third of the database, but you shouldn't have to put eyes on everything, so there should be significant savings.

And while vendors often have shareholders to please and will find any line item they can to pad margins, there are some partners (like our team at Proteus) that do not invoice for AI review features, further preserving your case budget.

Takeaway:

The growth in data volumes makes putting eyes on every document economically impossible, to say nothing of the logistical challenges and meeting deadlines. As such, using technological means to systematically categorize documents serves to reduce overall costs and prioritize reviews for outside counsel and the document review team alike. While there will be a variable amount of documents that may need to be reviewed before the project is considered completed, these numbers are vastly less than putting eyes on every document.



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