



Presentation to Association of Corporate Counsel

# C-Suite Depositions, Slack/Teams Messaging in Litigation and AI in Design Thinking

January 24, 2024

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Presentation to Association of Corporate Counsel

# Did Your CEO or CFO Just Receive a Notice of Deposition for That Pesky PI Case?

January 24, 2024

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# Presenters



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# Sam Walton's Deposition Notice

- *Wal-Mart Stores, Inc. v. Street*, 754 S.W.2d 153 (Tex. 1988)
- Slip and fall accident
- Trial judge ordered deposition in Fort Worth, TX
- Texas Supreme Court held deposition could be taken in Walton's county of residence





# Sam Walton's Deposition Notice

- Deposition scheduled in Bentonville, AR
- **Sanctions** – Struck pleadings, default judgment and deposition at the courthouse
- **\$39,000** verdict / **\$11.55 million** in fines
- Sanctions upheld by the appellate court



# Other Apex Deposition Examples



Photo Credit: Trevor Cokley / U.S. Air Force



Photo Credit: COM & O



# History

- *Mulvey v. Chrysler Corp.*,  
106 F.R.D. 364 (D.R.I. 1985)
- **Lee Iacocca**,  
Chrysler Chairman
- Defect in a 1975 Dodge Van
- “[T]he courts have a duty to recognize his vulnerability.”





# What Are Apex Depositions?

- High-Level Executive Depositions
- No Unique Personal Knowledge
- Alternate Means of Discovery
- Hardship and Burden

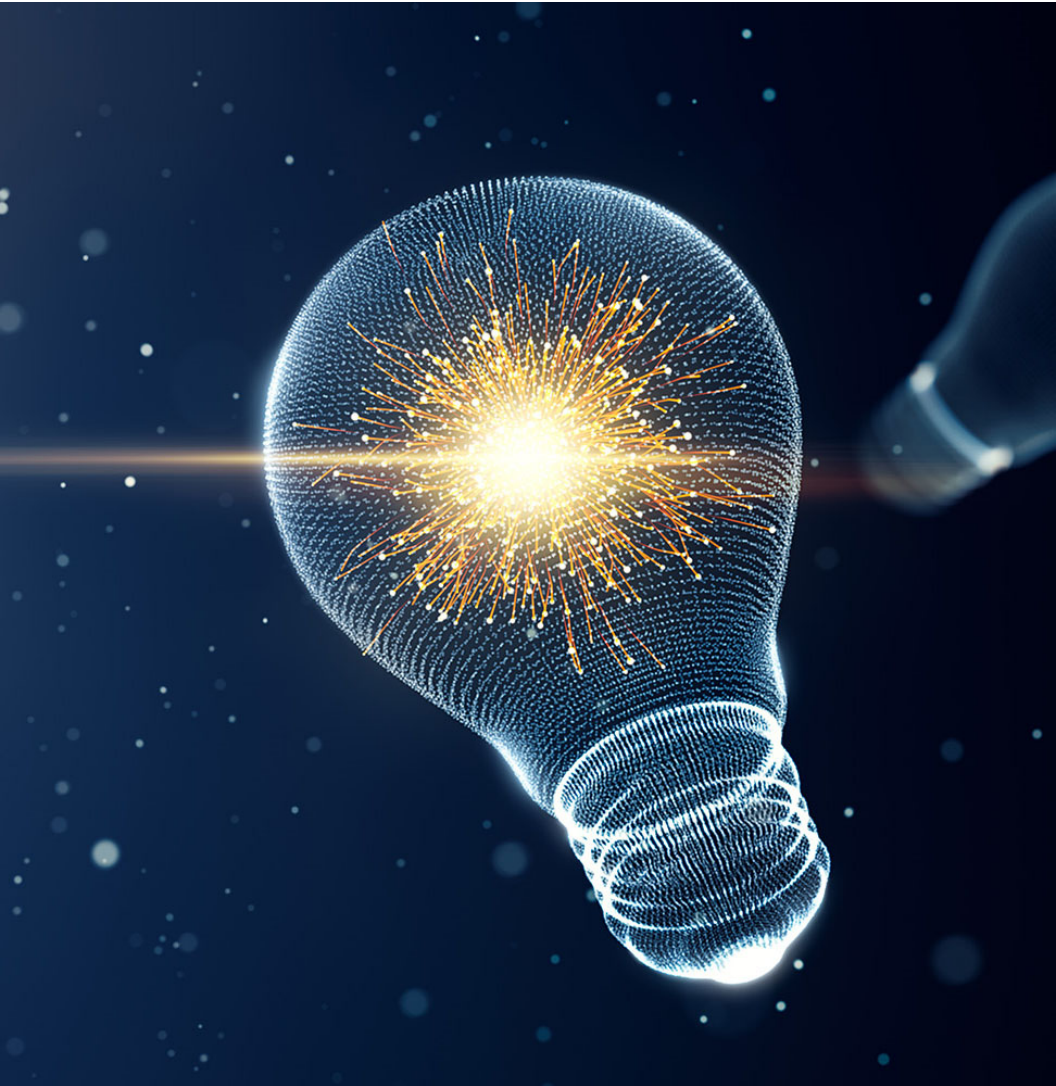




# Discovery Tactic for Plaintiffs

- Leverage and Pressure for Settlement
- Harass, Inconvenience and Burden
- Obtain Prejudicial Irrelevant Information
- Dangers of Forum and Judge Shopping





# Unique Personal Knowledge

- Distinguished From General Knowledge
- Statements Regarding Subject Matter
- Corporate Decisions and Structure





# Alternate Means of Discovery

- Interrogatories and Requests for Admission
- Lower-Level Employee Depositions
- Corporate Representative Depositions



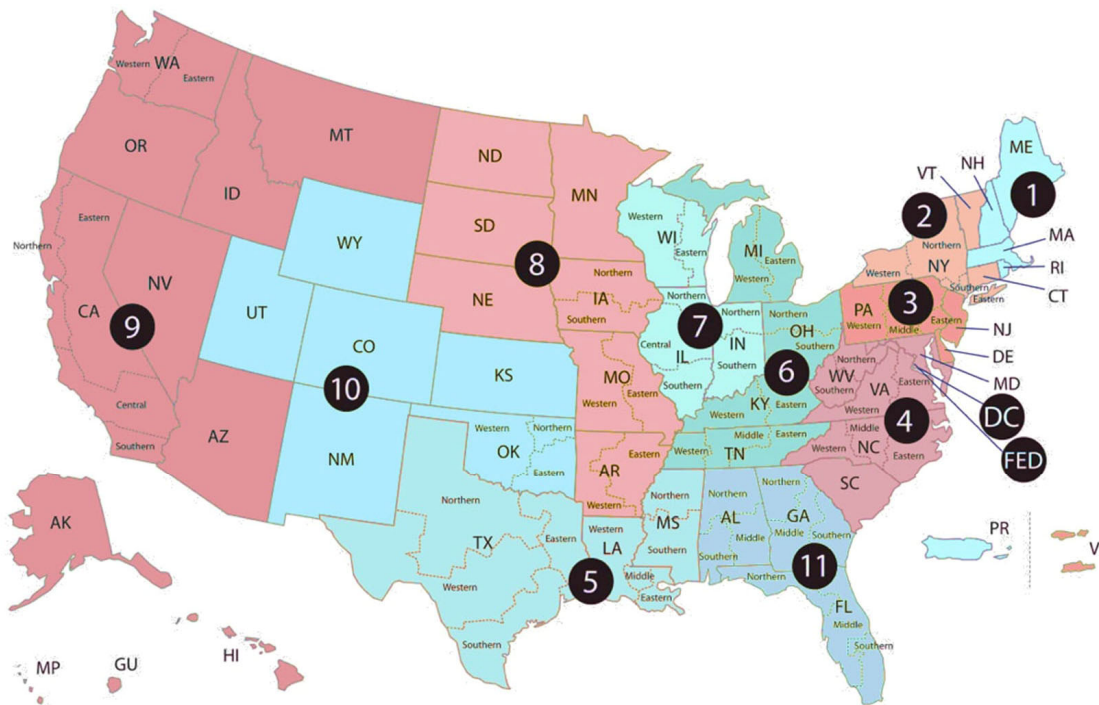


# Hardship and Burden

- Potential for Business Disruption
- Likelihood of Harassment
- Number of Individuals Reporting



# Legal Landscape for Apex Depositions



- 1 Plaintiff must put forth evidence the apex deposition will lead to discoverable materials
- 7  
11 Executive must show the apex deposition will result in disproportionate harm
- 5  
10  
6 Plaintiff must depose a lower ranked executive first
- 4 Executive's burden must outweigh the benefits of the apex deposition
- 2  
8 Executive must show a particularized harm
- 3  
9 Executive must show a particularized harm and the court should balance private and public interests



# Presumption Against Apex Depositions

- 1st, 5th, 6th, 7th, 10th and 11th Circuits
- Strong Citations for Holding Plaintiffs to Their Burden
- New Discoverable Information





# Higher Standards for Defendants

- 2nd, 3rd, 4th, 8th and 9th Circuits
- Varying Higher Thresholds for Executives to Avoid Depositions
- Balancing Harms/Benefits and Public/Private Interests
- Identification of Particularized Harm





# Apex Doctrine in State Courts

- Even more of a mixed bag, ranging from favorable standards to express rejections of the Apex Doctrine
- Need to understand local law, strategies and appellate options
- Texas – Example of strong apex witness protection
- Article – “Why Elon Musk was able to duck a deposition but Satya Nadella was not”



# Jurisdictions Rejecting the Apex Doctrine

- At least seven states have refused to adopt an Apex Doctrine
- Colorado panel predicted the Apex Doctrine “has reached its zenith and has begun to decline”
- Washington Supreme Court – “We conclude that the apex rule is not widely followed; application is inconsistent and its acceptance is waning.”





# Illinois Law

- No Illinois court of review has addressed the Apex Doctrine
- Supreme Court Rule 201(a), (c)
  - Enter protective order “as justice requires”
  - Duplicative discovery should be avoided
- Analogous Federal Rules and Decisions
  - N.D. Ill. and Seventh Circuit Apex Doctrine decisions
  - Annoyance, embarrassment, oppression or undue burden



CONTINUED

# Illinois Law

- Rule 304(b)(5) – “Friendly Contempt”
- Motion for Supreme Court Supervisory Order
- Supreme Court Rule 237 – Appearance of “Party” at Trial



# Protecting Your Executives

- Thorough understanding of applicable jurisdiction
- Identify and provide alternative means of discovery
- Well prepared corporate representative witnesses
- Understand appellate options and leverage points



# Questions?



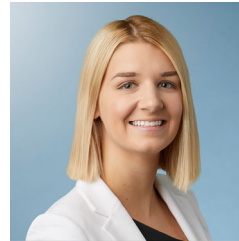
Presentation to Association of Corporate Counsel

# The World of Messaging and Electronically Stored Information Continues to Evolve — Here's What You Need to Know About Those Slack and Teams Messages!

January 24, 2024

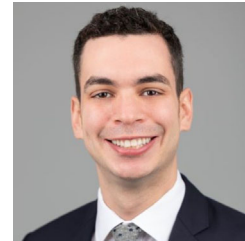
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The Kraft Heinz Company







**By the end of this session, you should know what ephemeral messages are and why your company may need to preserve them.**

- 1 Ephemeral Messages – What Even Are They?**
- 2 How the 2015 Amendments to the FRCP Changed Everything**
- 3 *In re Google Play Store Antitrust Decision***
- 4 The Aftermath of *In re Google Play Store Antitrust Decision***





# What do we mean when we talk about ephemeral messages?

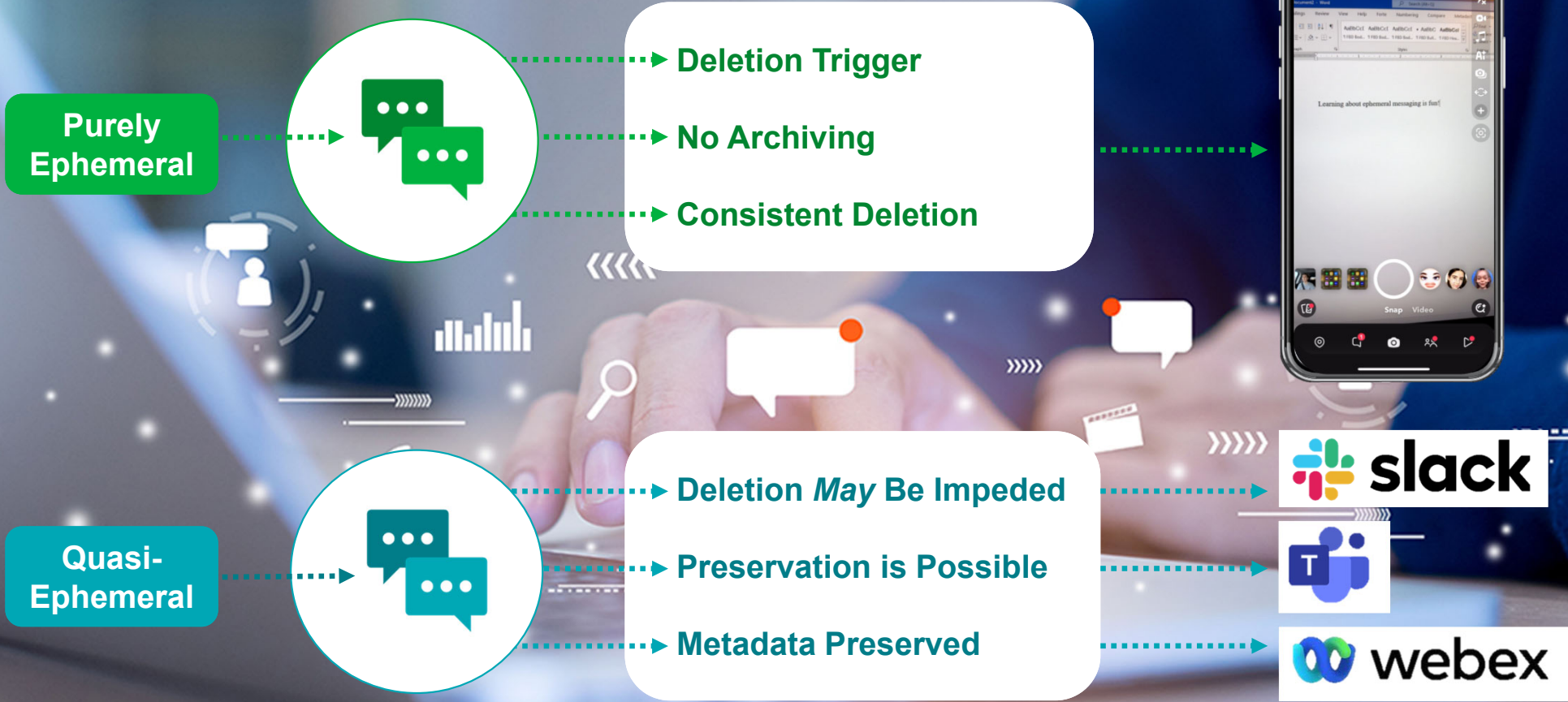
- 1 Ephemeral Messages – What Even Are They?
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*Ephemeral messaging refers to secure written communications between one or more parties that are generally considered **dynamic, nonstatic and lasting a very short time.***





## Slide 32

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**GTM0** I need a background added here, but can't decide what looks best.  
Godhardt, Tess M., 2024-01-17T17:21:22.120



## Why should you care about ephemeral messages?

- 1 Ephemeral Messages – What Even Are They?
- 2 How the 2015 Amendments to the FRCP Changed Everything
- 3 *In re Google Play Store Antitrust Decision*
- 4 The Aftermath of *In re Google Play Store Antitrust Decision*

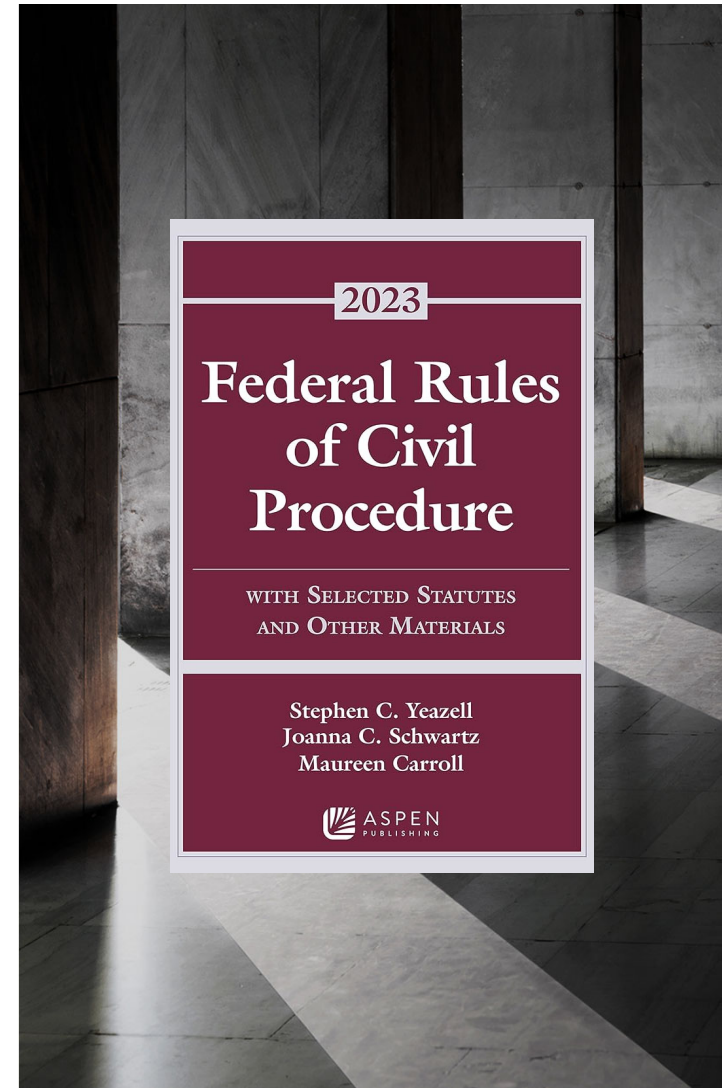


**Ephemeral messages are electronically stored information that is discoverable.**

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*A party may request any electronically stored information ('ESI') . . . stored in any medium from which information can be obtained either directly or indirectly, or if necessary, after translation by the responding party into a reasonably usable form.*

***Fed. R. Civ. P. 34(a)(1)(A).***



# The 2006 Amendments to the Federal Rules of Civil Procedure failed to provide guidance on how to deal with ESI that had been lost or destroyed.





# Amended Rule 37(e) provides for the **imposition of sanctions** for lost or destroyed ESI.

United States Code Annotated  
Federal Rules of Civil Procedure for the United States District Courts (Refs & Amos)  
Title V. Disclosures and Discovery (Refs & Amos)

Federal Rules of Civil Procedure Rule 37

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

Currentness

#### (a) Motion for an Order Compelling Disclosure or Discovery.

(1) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) *Appropriate Court.* A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

#### (3) *Specific Motions.*

(A) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to produce documents or fails to respond that inspection will be permitted -- or fails to permit inspection -- as requested under Rule 34.

(C) *Related to a Deposition.* When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

**(e) Failure to Preserve Electronically Stored Information.** If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.



**No cases involving the duty to preserve ephemeral messages during a litigation hold were brought before the courts following the 2015 amendments.**



**Ability to Retain the Ephemeral Messages**



**Substance of Messages Occurring**



**The Relevancy and Costs of Preserving the Messages**





**In March 2023, the Northern District of California issued an order regarding the preservation of Google Chats.**

- 1 Ephemeral Messages – What Even Are They?
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- 3 *In re Google Play Store Antitrust Decision*
- 4 The Aftermath of *In re Google Play Store Antitrust Decision*



# ***In re Google Play Store Antitrust Litigation* involved the failure to preserve ephemeral chats during a litigation hold.**

Even before the MDL was instituted, the Court directed the parties to coordinate discovery with an eye toward containing costs and burdens. This was largely successful and the parties have managed to work things out, with one major exception. In April 2021, plaintiffs asked Google about a curious lack of Chat messages in its document productions. In October 2021, Google said that Google Chats are typically deleted after 24 hours, and that Google had not suspended this auto-deletion even after this litigation began. Google chose instead to let employees make their own personal choices about preserving chats.

2023 WL 2673109  
United States District Court, N.D. California.

IN RE GOOGLE PLAY STORE  
ANTITRUST LITIGATION

Case No. 21-md-02981-JD  
1  
Signed March 28, 2023

**BACKGROUND**

The MDL action involves multiple antitrust cases challenging Google's Play Store practices as anticompetitive. The plaintiffs are Epic Games, Inc., Case No. 20-cv-05671-JD; the consumer plaintiffs, Case No. 20-cv-05761-JD; the Attorneys General of 38 states and the District of Columbia, Case No. 21-cv-05227-JD; and the Match Group plaintiffs, Case No. 22-cv-02746-JD.<sup>2</sup> An action by software developers was filed and is in the process of settling on a class basis, Case No. 20-cv-05792-JD, and the developer plaintiffs are not part of these proceedings. Plaintiffs allege that Google illegally monopolized the Android app distribution market by engaging in exclusionary conduct, which has harmed the different plaintiff groups in various ways.

Even before the MDL was instituted, the Court directed the parties to coordinate discovery with an eye toward containing costs and burdens. This was largely successful and the parties have managed to work things out, with one major exception. In April 2021, plaintiffs asked Google about a curious lack of Chat messages in its document productions. In October 2021, Google said that Google Chats are typically deleted after 24 hours, and that Google had not suspended this auto-deletion even after this litigation began. Google chose instead to let employees make their own personal choices about preserving chats.

The District Court, James Donato, J., held that operator did not take reasonable steps to preserve text messages on its in-house instant messaging (IM) platform.

Motion granted.

**Procedural Posture(s):** Motion for Sanctions (Discovery).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW RE CHAT PRESERVATION**

JAMES DONATO, United States District Judge

\*1 During discovery in this multidistrict litigation (MDL) case, plaintiffs obtained information indicating that Google did not adequately preserve communications that were exchanged internally on its Chat message system. Plaintiffs say that this shortfall was intentional and deprived them of material evidence. They have requested sanctions under Federal Rule of Civil Procedure 37(e). Dkt. No. 349.<sup>1</sup> After substantial briefing by both sides, and an evidentiary hearing that featured witness testimony and other evidence, the Court concludes that sanctions are warranted.

This decision raised obvious questions that were presented to the Court in a joint statement in May 2022. Dkt. No. 258. With the Court's consent, plaintiffs filed a motion for sanctions under Rule 37 in October 2022, which resulted in substantial briefing by each side, including the filing of declarations and other written evidence. See Dkt. Nos. 340, 349, 367, 373.

The parties disagreed about a number of factual issues, and the Court was unwilling to resolve the disputes on a dry record. Consequently, the Court held an evidentiary hearing over two days in January 2023. Dkt. Nos. 375, 384, 420. The Court received documentary evidence, heard testimony by Google employees Genaro Lopez, Jamie Rosenberg, and Andrew Rope, and took closing arguments by the parties. Dkt. Nos. 415, 440. This record was supplemented by a transcript of the deposition of former Google employee Tian Lim. Dkt. No. 449, and many follow-up submissions, see, e.g., Dkt. Nos. 428, 429, 431, 432. At the Court's direction, Google produced to plaintiffs in February 2023 approximately 52,271



# The Court specifically took note of the differences in Google's preservation policies for its ephemeral messages and email.

## Google One-On-One Chats Preservation Policy

- History Off – Retained for 24 hours.
- History On – Retained for **30 days**.

## Google Group Chat Preservation Policy

- History Off – Retained for 24 hours.
- History On – Retained for **18 months**.

## Google Email (Gmail) Preservation Policy

- No Litigation Hold - Automatically Retained for **18 months**.
- Litigation Hold– **Retained indefinitely**.



9:20 AM

Are we talking about RSA, I have turned on history as per policy.

9:21am

Hi Ethan, can you let me know what the policy you're referring to?

I'd prefer to have history off.

9:22am

Legal/comp can confirm but anything convo regarding RSA I have to have history on

9:23am

I talk about RSA related things all day and I don't have history on for all my chats 😊

9:24am

We cannot delete it. I am also on multiple legal hold

9:25am

Ok maybe I take you off this convo 😊

As am I.....

9:26am

Sry why do you prefer to have history off? I think we should have record of our convo so there are no miscomm/understanding no?

Type a message



**E** Ethan Google

Chat Files Organization Activity LinkedIn



9:26am

I can ping Marie and Michael separately. Included you for visibility

Yes I do prefer history off.

9:28am

Pls keep BD team (me) included on any convo regarding Nothing RSA planning.

I can send an official email to confirm regarding history but that was the training I had received.



9:29am

Of course I'll keep you included. But sounds like we have to keep history on in this convo specifically. But not in our 1:1 chats about RSAs or my 1:1 chats with Marie/Michael about RSAs

So that's why I'd prefer to move away from this group chat.

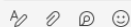
It's just causing more touchpoints on my end but I respect you following your training.

9:30am

Ty 😊 if you feel uncomfortable with history being on here. I understand.

But even if history is off here, these are all saved on servers anyways.

Type a message



**The court analyzed the facts that previous courts had found relevant to the preservation of non-ephemeral messages.**



**Ability to Retain the Ephemeral Messages**



**Substance of Messages Occurring**



**The Relevancy and Costs of Preserving the Messages**





# The Court found Google had the ability to retain the Google chats.



## Ability to Retain the Ephemeral Messages

29. Google has the technical ability to set Chat history to “on” as the default for all employees who are subject to a legal hold, but it chooses not to. Hrg. Tr. at 43:22-43:4, 58:19-24. Google has preserved all Chat messages that had history toggled on, *id.* at 44:12-17, 55:2-4, but for any Chat where history was off, Google left it up to each individual hold recipient to decide which, if any, of those one-on-one or group chats should be preserved, *id.* at 45:20-46:7, 55:11-15.



# The Court found substantive business communications were occurring over Google Chats.



24. The record demonstrates otherwise. An abundance of evidence establishes that Google employees routinely used Chat to discuss substantive business topics, including matters relevant to this antitrust litigation. *See, e.g.*, Hrg. Tr. at 92:19-93:4 (Rosenberg email stating to another Google employee, “You mentioned in our IM chat yesterday that Samsung broached the topic of asking for rev share on the Play Store.”); Hrg. Exh. PX-16 (Rosenberg chat



## Substance of Messages Occurring

31. A “Google Chat Retention FAQs” document that is internally available to all Google employees also advises that the “History ON setting” should be used “[w]hen you are discussing a topic identified in any legal hold notice you’ve received.” Hrg. Exh. DXCH-2; Hrg. Tr. at 34:7-35:1.

32. Google did not check to see if custodians were actually preserving relevant Chats as directed by the hold notice, and did nothing in the way of auditing or monitoring Chat preservation. Hrg. Tr. at 46:8-17. There is no evidence establishing that Google did any individualized follow-up on Chat preservation with the hold recipients, including those designated as custodians. *See, e.g., id.* at 121:17-20.



# The court found the lost ESI was likely relevant and Google had not shown what the costs associated with preserving the chats were.



position.” Comm. Notes, Subdivision (e)(2). It is clear in the record that relevant, substantive business communications were made on Chat that plaintiffs will never see, to the potential detriment of their case. Google says that the

## Ability to Retain the Ephemeral Messages



Another major concern is the intentionality manifested at every level within Google to hide the ball with respect to Chat. As discussed, individual users were conscious of litigation risks and valued the “off the record” functionality of Chat. Google as an enterprise had the capacity of preserving all Chat communications systemwide once litigation had commenced but elected not to do so, without any assessment of financial costs or other factors that might help to justify that decision.



## The Relevancy and Costs of Preserving the Messages



## The court ultimately held Google failed to preserve ESI and should be subject to sanctions.

Consequently, on the record as a whole, the Court concludes that Google did not take reasonable steps to preserve electronically stored information that should have been preserved in the anticipation or conduct of litigation. Fed. R. Civ. P. 37(e). The record demonstrates that the deleted Chat evidence “cannot be restored or replaced through additional discovery.” *Id.* The record also establishes intentionality for purposes of Rule 37(e)(2). The Court concludes that Google intended to subvert the discovery process, and that Chat evidence was “lost with the intent to prevent its use in litigation” and “with the intent to deprive another party of the information's use in the litigation.” Comm. Notes, Subdivision (e)(2).

\*10 The Court has already declined to issue terminating sanctions against Google. This antitrust case will not be decided on the basis of lost Chat communications. The determination of an appropriate non-monetary sanction requires further proceedings. The Court fully appreciates plaintiffs’ dilemma of trying to prove the contents of what Google has deleted. Even so, the principle of proportionality





## What should you do given the *In re Google Play Store Antitrust* decision?

- 1 Ephemeral Messages – What Even Are They?
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**The *In re Google* decision should prompt a review and analysis of relevant ephemeral messaging and litigation hold policies.**



**Determine if any ephemeral messaging policy and training has been implemented.**



**Analyze whether litigation hold(s) address the retention of ephemeral messages.**



**Calculate the potential costs of preservation of ephemeral messages.**



# Questions?



# CHANNEL YOUR INNER SHEDD

Artificial Intelligence as Curation



DESIGN  
LAB powered by  
faegre drinker

**Presented By:**

- Ruben Gonzalez, Faegre Drinker
- Raymond Rushing, Cummins Inc.
- Kevin Morrow, Revantage – A Blackstone Portfolio Company





# AGENDA



**DESIGN  
LAB** powered by  
faegre drinker

- **Introductions**
- **Big Data**
- **Artificial Intelligence**
- **Generative AI**
- **Generative AI as Museum Curator**
- **Risks and New World**
- **Workshop**
- **Questions and Discussion**

# Introducing the Faegre Drinker Design Lab

- **Official Partner:** Faegre Drinker is an official Legal Design Lab partner with Stanford University's Legal Design Lab.
- **Design Thinking and Visual Advocacy:** We help clients succeed through design thinking and visual advocacy.
- **Design Sprints and Training:** We run design sprints for internal and external clients to help solve complex legal issues and create visual advocacy events, seminars, and courses to help lawyers communicate more effectively in all aspects of their profession.



# Today's Panel



**Ruben Gonzalez**  
Faegre Drinker



**Raymond Rushing**  
Cummins Inc.



**Kevin Morrow**  
Revantage

**BEFORE WE  
GET STARTED**





**LET'S TALK DATA**



# 1 How much data is generated every minute?

Source: Domo

 **41,666,667**

messages shared  
by WhatsApp users

 **1,388,889**

video / voice calls made  
by people worldwide

 **404,444**

hours of video streamed  
by Netflix users

 **347,222**

stories posted by Instagram users

 **150,000**

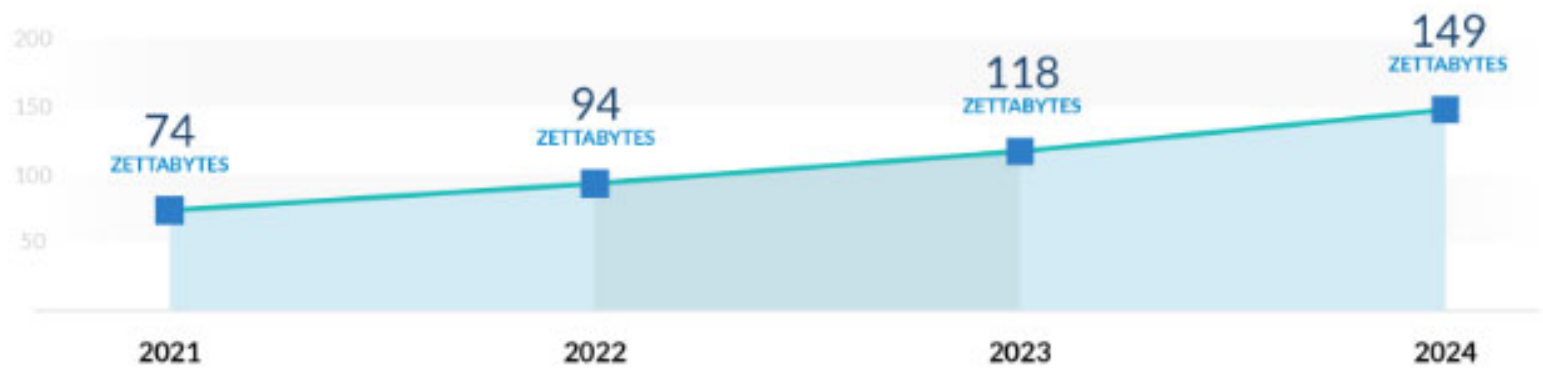
messages shared by Facebook users

 **147,000**

photos shared by Facebook users

## 2 Estimated Data Consumption from 2021 to 2024

Source: IDC / Statista





### 3 Data Growth in 2021

Sources: TechJury, Internet Live Stats, Cisco, PurpleSec

 **2** TRILLION

searches on Google by the end of 2021

 **1.134** TRILLION MB

volume of data created every day

 **3,026,626**

emails sent every second, 67% of which are spam

 **278,108** PETABYTES

global IP data per month by the end of 2021

 **230,000**

new malware versions created every day

 **82%**

share of video in total global internet traffic at the end of 2021

2012



# IN 2012

- Facebook IPO
- Superstorm Sandy
- Space Shuttle Endeavor has its Final Flight
- *Somebody That I Used To Know* is Most Streamed song on Spotify



# DATA IN 2012

## The Library of Congress Becomes a Unit of Measure

- **Twitter “needed just 20 terabytes to back up every tweet that’s ever existed... that’s about twice the estimated size of the print collection of the Library of Congress.”**
- **“A TB, or terabyte, is about 1.05 million MB. All the data in the American Library of Congress amounts to 15 TB.”**
- **“Every Six Hours, the NSA Gathers as Much Data as Is Stored in the Entire Library of Congress.”**
- **“There are 25 Petabytes ( $10^{15}$ ) created every day and thrown into the internet. This is 70 times larger than the Library of Congress.”**

<https://blogs.loc.gov/thesignal/2012/03/how-many-libraries-of-congress-does-it-take/>

What do we do with all of that data?



**CURATE**

**The Evolution  
of Curation  
and Artificial  
Intelligence**

1873

1943

1956

1986

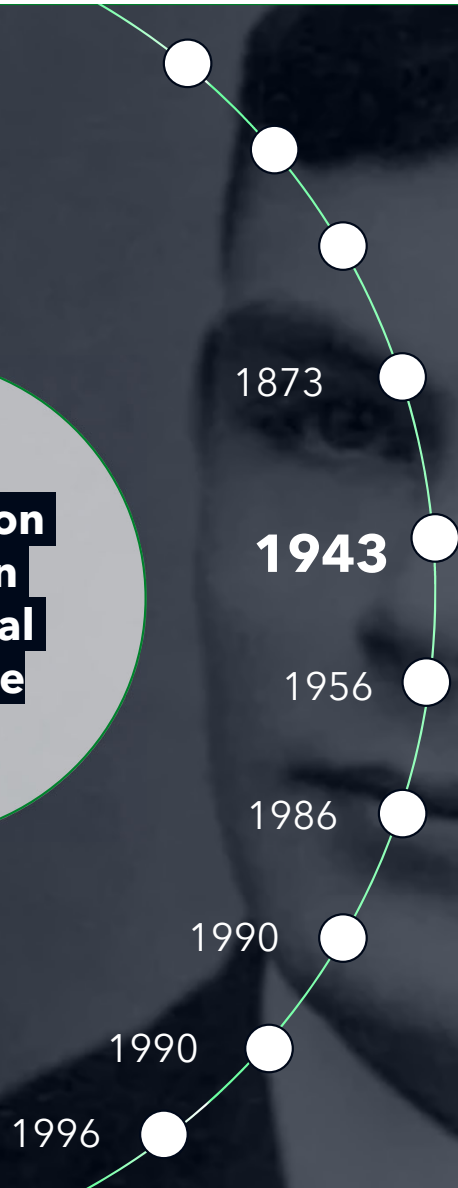
1990

1990

**The Dewey Decimal  
System is Developed  
at Amherst College  
Library**



**The Evolution  
of Curation  
and Artificial  
Intelligence**



# Alan Turing invents the "Turing test"

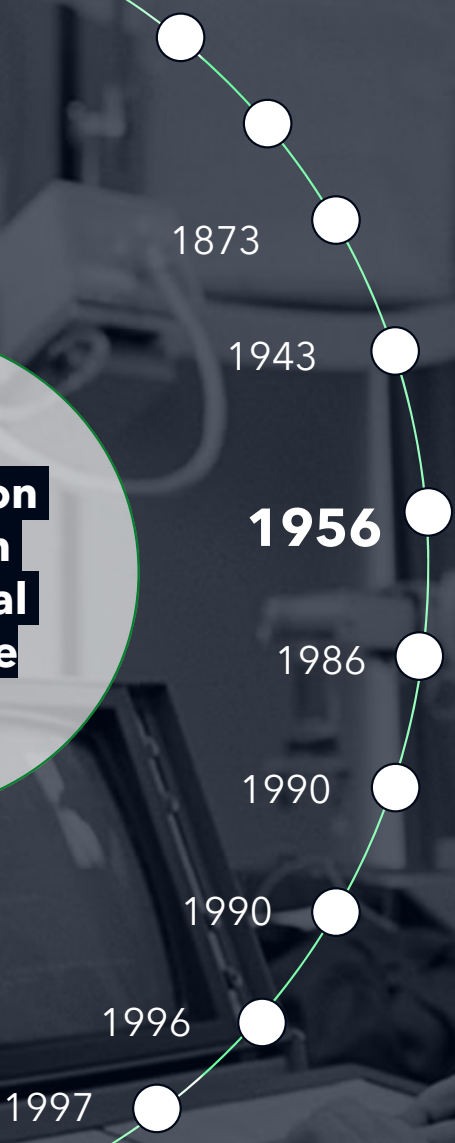
The Turing test set the bar for an intelligent machine: a computer that could fool someone into thinking they were talking to a real person



# Artificial Intelligence

"Artificial Intelligence" is first coined by John McCarthy - Top-Down Rules Based Approach

**The Evolution  
of Curation  
and Artificial  
Intelligence**





**The Evolution  
of Curation  
and Artificial  
Intelligence**



**Johnny No. 5  
debuts in  
Short Circuit**

1873

1943

1956

1986

1990

1990

1996

1997

2002

2011

Welcome to archie.icm.edu.pl

Archie Query Form

Search for:



# Three McGill University Students Build Archie, the first Search Engine

The Evolution of Curation and Artificial Intelligence

Database:  Local FTP  Polish Web Index

Search Type:  Exact  Regular Expression

Case:  Sensitive

Do you want to look up strings only (no sites returned):  
 NO  YES

Output Format For Web Index Search:  Keywords Only  Excerpts Only  Links Only

Search Reset



**The Evolution  
of Curation  
and Artificial  
Intelligence**

1943

1956

1986

1990

**1990**

1996

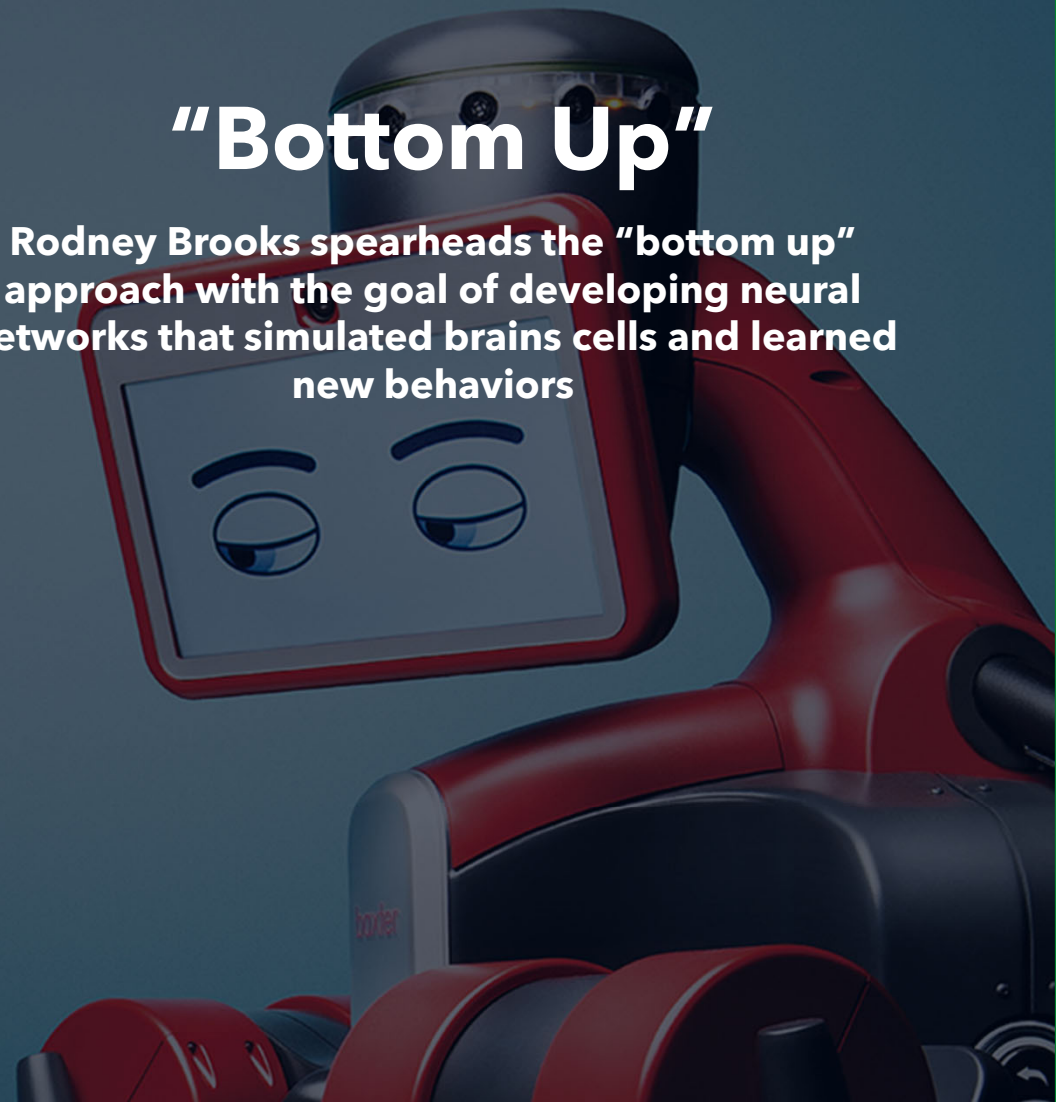
1997

2002

2011

## **“Bottom Up”**

Rodney Brooks spearheads the “bottom up” approach with the goal of developing neural networks that simulated brains cells and learned new behaviors



1956

1986

1990

1990

1996


1997

2002

2011

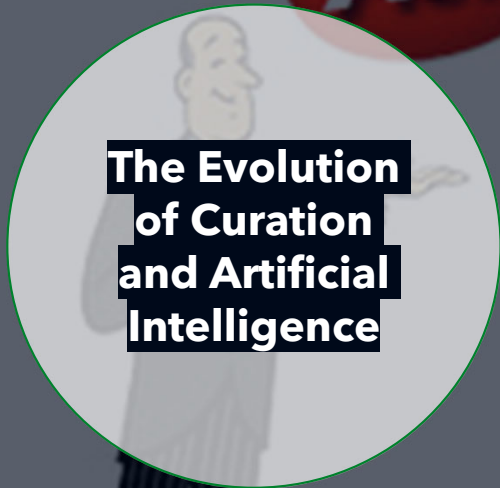
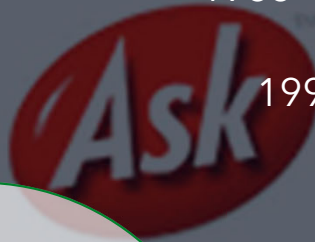
[web](#), [images](#), [news](#), and [lots of answers](#).

Search

Smarts  Advanced

**The Evolution  
of Curation  
and Artificial  
Intelligence**

# Ask Jeeves is Founded



# IBM Deep Blue

IBM develops Deep Blue and faces chess champion Garry Kasparov

**The Evolution  
of Curation  
and Artificial  
Intelligence**

1986

1990

1990

1996

**1997**

2002

2011

GARRY  
KASPAROV

DEEP

1990

1990

1996

1997

2002

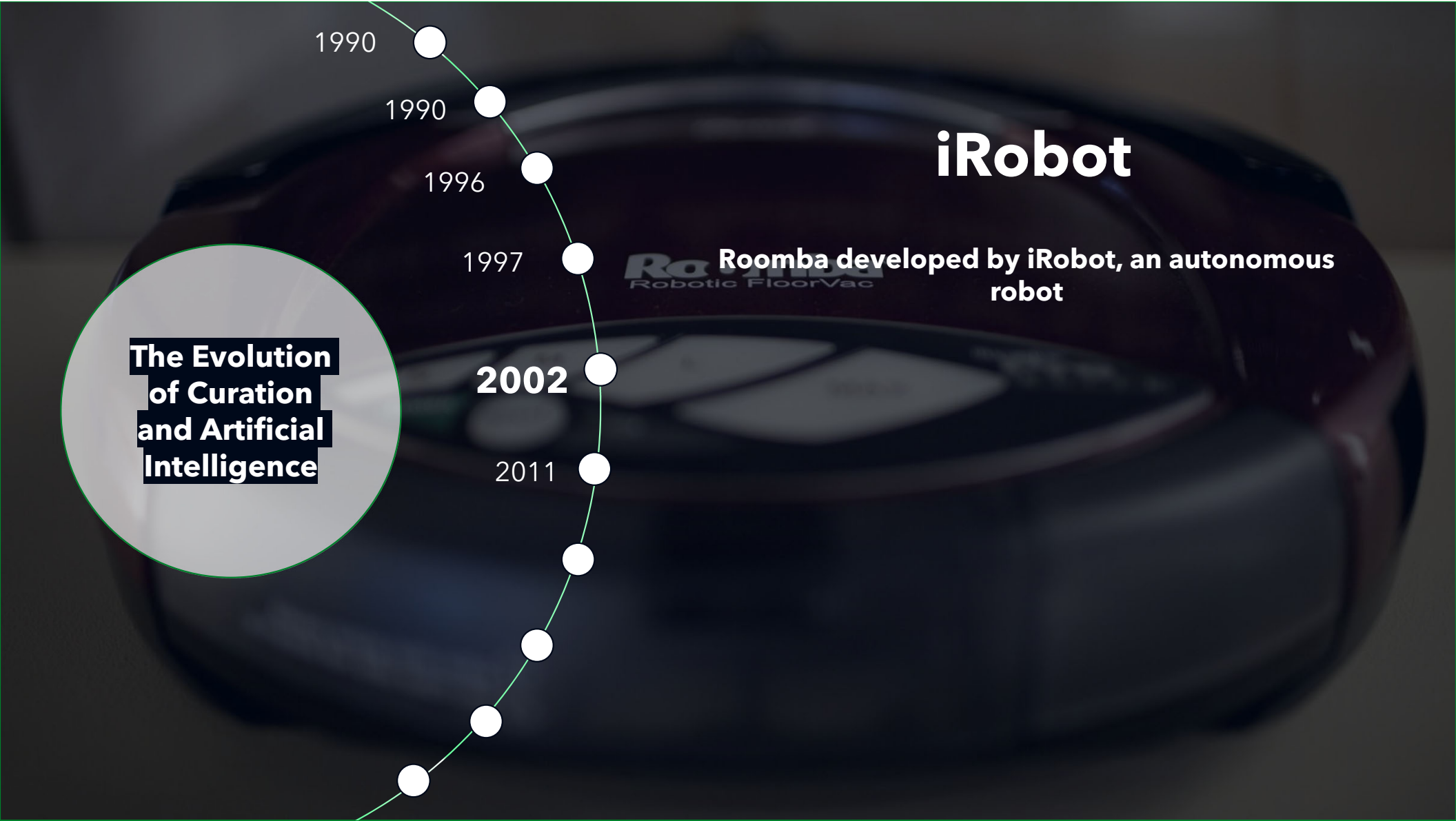
2011

**The Evolution  
of Curation  
and Artificial  
Intelligence**

# iRobot

**Roomba**  
Robotic FloorVac

**Roomba developed by iRobot, an autonomous robot**





**The Evolution  
of Curation  
and Artificial  
Intelligence**

1990

1996

1997

2002

2011

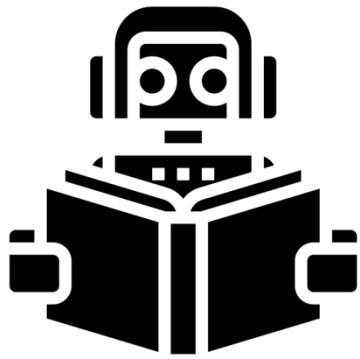
# IBM Watson

IBM develops Watson that took on and won Jeopardy

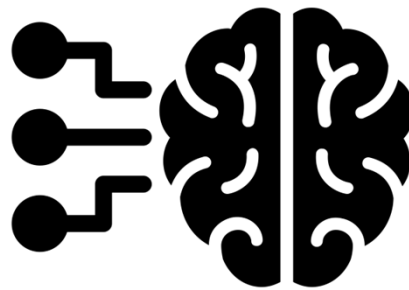


# Artificial Intelligence

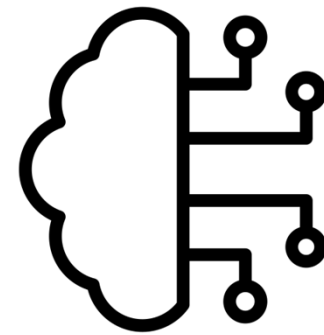
# Artificial Intelligence



**MACHINE LEARNING**

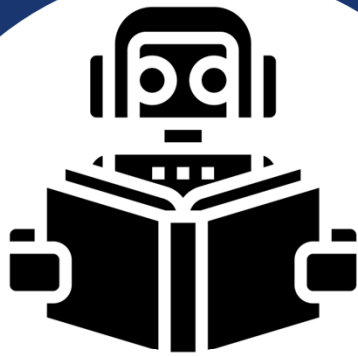


**DEEP LEARNING**



**GENERATIVE AI**

# Artificial Intelligence



**MACHINE LEARNING**

## Machine Learning

- Not your parent's computer that required printing
- Machine Learning is a system that trains a model from input data
- The trained model can make useful predictions for new data based on original model
- With machine learning, you can do Speech Recognition and Visual Recognition

DEEP LEARNING

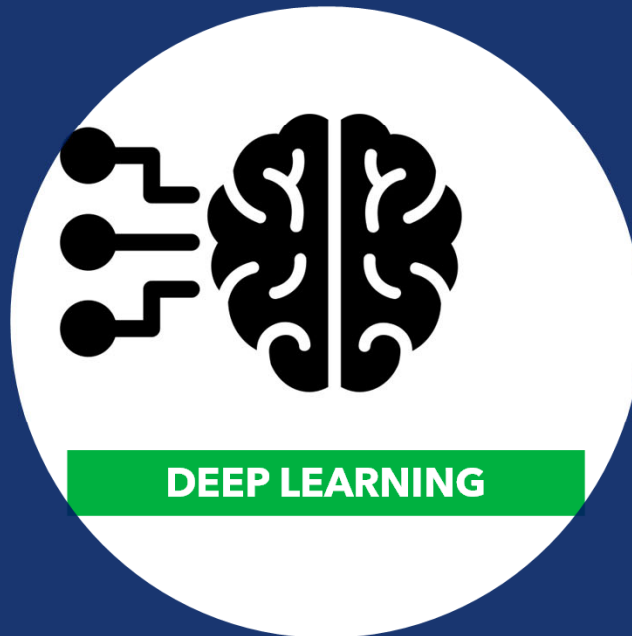
GENERATIVE AI

# Artificial Intelligence

## Deep Learning

- Deep Learning is Brain Like
- Uses neural networks (just like the human brain) to process more information and process more complex data patterns
- Deep Learning also able to make predictions

MACHINE LEARNING



DEEP LEARNING

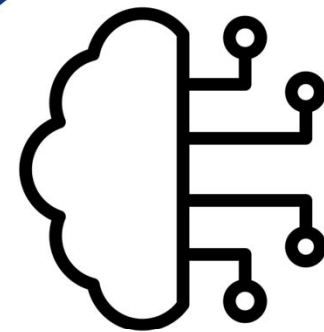


GENERATIVE AI

# Artificial Intelligence

## Generative AI

- A subset of deep learning, generative AI can process structured and unstructured data
- Uses neural networks
- Creates new content based on what it has learned from its model or existing content - in other words - how it is trained
- This training develops a model
- When given a prompt, generative AI uses the model developed through training to create content



GENERATIVE AI

# Visual Recognition





**2015**

**OpenAI is  
Founded**



**OpenAI**



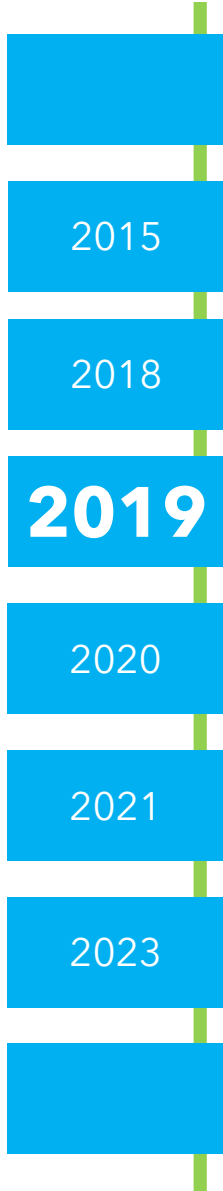
## **GPT-1**

- 117 Million Parameters
- Used books in training module
- Goal to learn next work in a sentence



# OpenAI





## **GPT-2**

- 1.5 Billion Parameters
- Coherent text
- Studied model and mitigated risks





## **GPT-3**

- 175 Billion Parameters
- Model not released
- Drafts emails
- Creates Poetry



# OpenAI



2018

2019

2020

**2021**

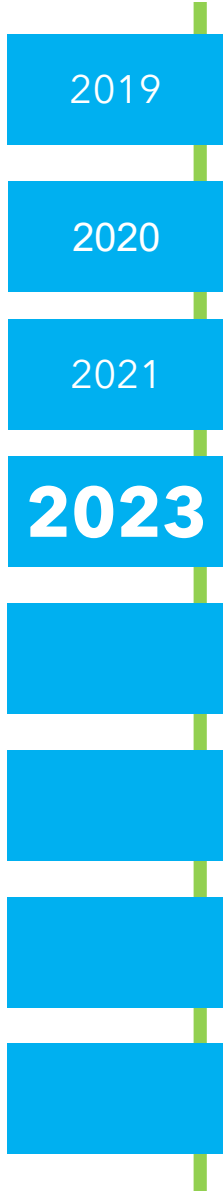
2023

**GPT-3**

- API Released



**OpenAI**



2019

2020

2021

**2023**

**GPT-4  
Released**



**OpenAI**



## MODEL

- Models are trained on publicly available information
- Books, internet, journals, open-source data
- Model is external
- Next word prediction
- *Hallucinations*

## TRAINING

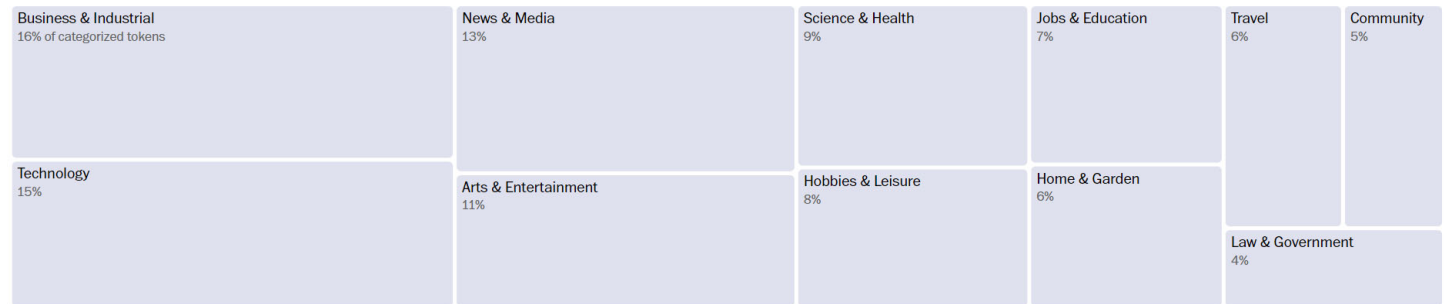
- Large language models
- Images
- Video
- Streetlights, Cats, Jibberish
- Fine tuning?
- Guard rails and bumpers?

## PROMPT ENGINEERING

- Creative and thoughtful prompts can change the content the model creates

# 1

# Understand Models



- **Google's C4 Data Set (Note - OpenAI does not disclose its datasets)**

- 15 Million Websites
  - Journalism
  - Entertainment
  - Software Development
  - Medicine
- Dumpster websites
- Private Voter Registrant Databases
- Western Skew
- Good News (NY Times, WSJ, Wash Post); also bad (RT)

<https://www.washingtonpost.com/technology/interactive/2023/ai-chatbot-learning/>

# 1

# Understand Models

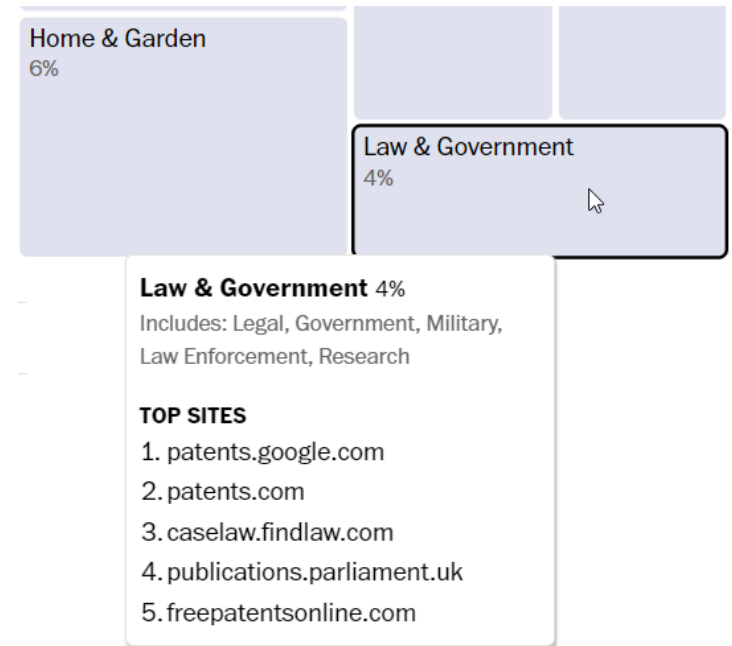


## ▪ Limited Legal Data Set

- Patent heavy
- Case Law
- UK Parliament

## ▪ Opportunity for Fine Tuning

- WestAI
- Disco
- Lexis



# 2

## Understand Training



- **Hallucinations** - Words or phrases that are generated by the model that are often nonsensical or grammatically incorrect
  - Risk of incorrect or misleading information
  - Risk of Incoherent information
- **Causes**
  - Bad Data
  - Noisy Data
  - Lack of Data
  - Model Lacks Enough Context
  - Model Lacks Enough Constraint



# 3

## Understand Prompts

### ▪ **Become a Prompt Generator**

- By tailoring your request for the model, the content created can change
- Good and creative prompting is important
- Follow a framework for better content creation



3

## Understand Prompts



**CREATE: Create Persona**

**CRAFT: Craft Your Question**

**CLARIFY: Clarify Your Goal**

**CLEAN: Clean Your Request**

# Understand Risks

*today is for fun, but understand risks*



- 1. Refusing to Engage:** AI will not replace lawyers but lawyers who refuse to engage will be left behind.
- 2. Confidentiality and Ethics:** Data is shared; our data is generally confidential or licensed.
- 3. Understand Bias:** False or misleading information can be generated if model insufficiently or incorrectly trained.
- 4. Security.** Everything is moving fast and evolving technology or platforms may have vulnerabilities.

U.S.

## Judge Sanctions Lawyers Who Filed Fake ChatGPT Legal Research

Lawyers who sued over alleged airline injury relied on fake cases generated by artificial-intelligence tool

By [Erin Mulvaney](#)

June 22, 2023 5:36 pm ET

## ChatGPT users' credit card details, personal information and chatlogs are LEAKED after AI program was hit by a 'bug'

- Some ChatGPT users may have had their personal information leaked
- Credit card details, first and last names and emails were shown to other users
- [READ MORE: OpenAI confirms bug that let some users see others' chat histories](#)



[AI @ WORK](#) [Tech](#) [Science](#) [Life](#) [Social Good](#) [Entertainment](#) [Deals](#) [Shopping](#) [Travel](#)

Home > Tech

## Whoops, Samsung workers accidentally leaked trade secrets via ChatGPT

ChatGPT doesn't keep secrets.

By [Cecily Mauran](#) on April 6, 2023 [f](#) [X](#) [D](#)

## New York Times sues OpenAI, Microsoft for using articles to train AI

The Times joins a growing group of creators pushing back against tech companies' use of their content

By [Gerrit De Vynck](#) and [Elahe Izadi](#)

Updated December 28, 2023 at 3:20 a.m. EST | Published December 27, 2023 at 9:36 a.m. EST

# CHAT GPT and Bard in Practice

**summarize**

🔄 Reset chat

📘 **Bard Activity is off**  
Some things that require Bard Activity are also turned off, like pinned & recent chats and extensions. Turning off Bard Activity doesn't [delete past data](#).



# Hi, I'm Bard

Tell me what's on your mind, or pick a suggestion.

## Understand

- settle a debate
- economic concepts
- 📍 are we there yet?

## Create

- seasonal recipe idea
- power words for resume
- refund request email

## Explore

- delicious noodles
- give me a shell command
- best beaches in...



Enter a prompt here



● Chicago, IL, USA  
[From your IP address](#) • [Update location](#)

Bard may display inaccurate info, including about people, so double-check its responses. [Your privacy & Bard](#)

LIFESTYLE | TRAVEL

## How Can Hotels Win Over Outdoorsy Millennials? With Halfpipes and Fire Pits.

With bouldering gyms, gear rentals and a focus on community, these spots cater to adventurous travelers who are over sleeping on the ground.





3

## Understand Prompts



**CREATE: Create Persona**

**CRAFT: Craft Your Question**

**CLARIFY: Clarify Your Goal**

**CLEAN: Clean Your Request**

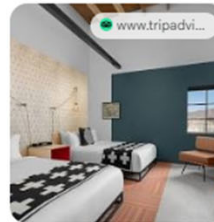


Summarize this article for a busy lawyer that just needs the bullets but provides enough information on each of the hotels: AS A 20-SOMETHING adventurer—limber of spine but short on funds—David Russo spent years pitching his tent in bare-bones campgrounds while rock climbing across North America. But Russo, with a career in e-commerce for outdoor brands and upcoming climbing trips to Las Vegas and France, is no longer in his ...



Sure, here is the summary of the article for a busy lawyer that just needs the bullets but provides enough information on each of the hotels:

- **Evo Hotel Salt Lake City:** This 50-room hotel opened last year and is one of a new breed offering adventure as an amenity and finding success with an outdoorsy millennial crowd brought up on hostels and attuned to cool. Local art adorns the sleek rooms (which start at \$179 a night), but so do ski holders and pegboards for gear. Guests can workshop kick-flips at the indoor skate park or borrow rock shoes in the bouldering gym.



Evo Hotel Salt Lake City

- **Field Station Moab:** This 139-room hotel opened last April near Utah's Arches and Canyonlands National Parks. Guest rooms include bike storage and can run up to \$500 a night over Memorial Day Weekend. Front desk staff dispense advice on fly-fishing and skydiving and can arrange canyoneering tours on Moab's rosy-red sandstone. The brand's second location debuts this May in Yucca Valley, Calif., with a lobby shop that lets travelers stock up on carabiners or browse guidebooks.



Field Station Moab

**CREATE: Create Persona**

**CRAFT: Craft Your Question**

**CLARIFY: Clarify Your Goal**

**CLEAN: Clean Your Request**

**chronology**



Please create a chronology in date and time order beginning with the earliest date that I can use as an attorney in a deposition starting with the most recent events first. On January 1, 2024, Bob was driving his red self-driving Tesla. At the same time he was in his self driving Tesla, he began to worry about what Cheryl Scott said the week before, on December 23, 2023 regarding the frigid cold. Bob began to worry that he would no longer be able to...



#### Chronology for Attorney Deposition:

December 23, 2023:

- Cheryl Scott mentions concerns about frigid cold affecting Tesla charging (indirectly related to later events).

February 2020:

- Historic polar vortex causes freezing temperatures.
- Bob's Tesla struggles to charge in the cold.
- Bob embarrassingly asks Ruben for help charging his Tesla by running a cable through Ruben's basement window.

January 1, 2024:

- **Noon:** Bob drives his red Tesla while worrying about Cheryl Scott's mention of the cold and his past charging issues with Ruben.
- **12:30 PM:** Bob becomes distracted, checking the weather and searching for fast chargers on his phone.
- **12:45 PM:** Bob's Tesla, likely due to distraction, loses control and hits Mike Kanute's cat. The cat survives, the Tesla is severely damaged.

January 2, 2024:

- Bob is forced to scrap his damaged Tesla.

View other drafts



View other drafts



#### Notes for Deposition:

- This chronology presents the events in reverse chronological order, starting with the most recent date (January 2nd) and moving backward.
- You may want to adjust the level of detail depending on the specific focus of the deposition.
- Some events, like Cheryl Scott's comment, may be indirectly relevant and could be mentioned to establish broader context.
- Be prepared to address the potential distraction caused by Bob's past experience and his phone use while driving.

I hope this helps!

**plan**

**You**  
Help me plan an office baby shower.

**ChatGPT**  
Certainly! Planning an office baby shower can be a fun and exciting task. Here are some steps and ideas to help you organize a memorable baby shower for your colleague:

1. **Set a Date and Time:**

- Choose a date and time that works for the mom-to-be. Consider hosting the baby shower during lunchtime on a workday.

2. **Create a Guest List:**

- Compile a list of colleagues who would like to attend. Focus on those who work closely with the mom-to-be.

3. **Select a Venue:**

- Decide whether the baby shower will be held in the office, a nearby restaurant, or another suitable location. Ensure the venue can accommodate your guest list comfortably.

4. **Theme and Decorations:**

- Choose a theme for the baby shower. Common themes include classic storybooks, or a color scheme that matches the venue with balloons, banners, and table centerpieces that match the chosen theme.

5. **Gift Registry:**

- Check if the mom-to-be has a gift registry. Share the registry with colleagues who plan to bring gifts.

6. **Games and Activities:**

- Plan some fun and lighthearted games to keep the atmosphere festive. Ideas include baby bingo, diaper raffle, and guessing games about the baby's gender or birth date.

7. **Food and Drinks:**



## Legal Themed Centerpieces

## Baby Libations – “Mom-Osa” “Baby on Board Punch”

## Baby Legal Quiz

## Bookish Baby Shower Favors

## Case File Invitations

**You**  
I am an attorney and would like to plan a baby shower for a colleague that is also an attorney and I need some unique, creative, and fun ideas for hosting a baby shower in the office.

**ChatGPT**  
That's a wonderful idea! Planning a baby shower in the office can be a special and memorable event. Here are some unique, creative, and fun ideas for hosting a baby shower for your attorney colleague:

1. **Legal-Themed Decorations:**

- Incorporate legal-themed decorations like gavel centerpieces, "Order in the Court" banners, and scales of justice symbols.
- Use legal books as table centerpieces or stack them to create a decorative display.

2. **Case Files Invitations:**

- Send out invitations resembling case files with details presented in a legal document format. Add a touch of humor by incorporating legal jargon.

3. **Baby Libations:**

- Create a mocktail bar with baby-themed drinks. Offer non-alcoholic options with fun names like "Mom-osa" or "Baby on Board Punch."

4. **Legal Lullabies Playlist:**

- Prepare a playlist of legal-themed or pun-filled songs to play during the event. Include songs with baby-related lyrics or titles.

5. **Legal Advice Cards:**

- Set up a station where guests can write legal advice or parenting tips for the expecting colleague. Collect the cards in a baby-themed box for the guest of honor.

6. **Baby Legal Quiz:**

- Host a baby-themed legal quiz or trivia game. Include questions related to parenting laws, famous lawyer parents, or baby-related legal terms.

7. **Diaper Cake Centerpiece:**

- Create a diaper cake using rolled diapers as a unique and practical centerpiece. Decorate it with baby items and legal-themed accessories.

8. **Lawyer Baby Onesies:**

- Have a onesie decorating station where guests can design lawyer-themed onesies for the baby. Provide fabric markers and stencils for creative expression.

9. **Legal-Themed Photo Booth:**

- Set up a photo booth with legal props like gavels, scales, and funny legal-themed signs. It's a great way to capture memorable moments.

10. **Bookish Baby Shower Favors:**

- Give guests mini law book favors or bookmarks as a token of appreciation. Personalize them with a thank-you note.

Remember to consider your colleague's preferences and any office policies when planning the baby shower. With these ideas, you can create a fun and memorable celebration for your expecting colleague.



You are a helpful, funny, creative brainstorm partner. Can you help me brainstorm activities to run with my class of university students, to warm them up at the start of the class?



Of course! I'd be delighted to help you brainstorm some activities to warm up your class of university students. Here are a few ideas to get you started:



1. **Icebreaker Introductions:** Have each student introduce themselves by sharing one interesting fact about themselves or by answering a unique question related to the topic of the day. For example, if you're teaching a history class, you could ask them to share their favorite historical figure and why.
2. **Two Truths and a Lie:** Ask each student to come up with two true statements and one false statement about themselves. Have the rest of the class guess which statement is the lie. This activity is not only fun but also encourages students to learn more about their peers.
3. **Word Association Game:** Start with a random word and have students go around the room, each saying a word that is associated with the previous one. Encourage them to think creatively and quickly. This game can help improve students' thinking on their feet and promote spontaneous ideas.
4. **Group Debates:** Divide the class into small groups and assign them different debate topics related to the subject matter. Give them a few minutes to prepare their arguments, and then have each group present their case. This activity can stimulate critical thinking and active participation.
5. **Brain Teasers or Riddles:** Begin the class with a brain teaser or riddle for students to solve individually or in small groups. This can engage their problem-solving skills and set a playful tone for the rest of the session.
6. **Collaborative Storytelling:** S  < Share > ave each student add on to it, either orally or in writing,  and see how the story

🔄 Regenerate response

< Share >



Certainly! Here are some creativity and connection-focused warm-up activities for an online meeting with lawyers:

1. "Share Your Superpower": Ask each participant to share a unique "superpower" they possess that is unrelated to their legal expertise. It could be a talent, a hobby, or an interesting skill. Encourage them to explain how they acquired or developed that superpower. This activity helps foster connections and highlights the diverse interests and talents within the group.
2. "Virtual Office Tour": Have participants take turns giving a virtual tour of their workspace or home office. Encourage them to share interesting or personal items in their space and explain their significance. This activity offers a glimpse into each participant's personal life and promotes a sense of connection and understanding.
3. "One-Minute Monologue": Give each participant a random topic or theme and challenge them to deliver a one-minute monologue on that topic. It could be anything from their favorite vacation spot to a childhood memory. This activity encourages spontaneity, creativity, and storytelling.
4. "Collaborative Playlist": Create a collaborative playlist where each participant can add a song that reflects their personality or current mood. Share the playlist with the group and allow them to listen to the songs during the meeting. This activity sparks conversations about music preferences and can create a shared sense of enjoyment.
5. "Virtual Scavenger Hunt": Give participants a list of creative and unusual items they can find within their immediate surroundings. For example, they might be asked to find something yellow, something that represents their favorite hobby, or something that starts with the letter "L." Participants can take turns sharing what they found and the story behind the item. It encourages creativity, observation skills, and personal sharing.
6. "Photo Storytelling": Ask participants to find a photo on their device that represents a memorable experience or

Regenerate response

Share

nt see their photo



Thank you, now let's try some brainstorming of solutions. How can I get more members of the public to learn about their rights when it comes to housing, eviction, habitable living conditions, and rent escrow? Please be creative, thoughtful, and weird.



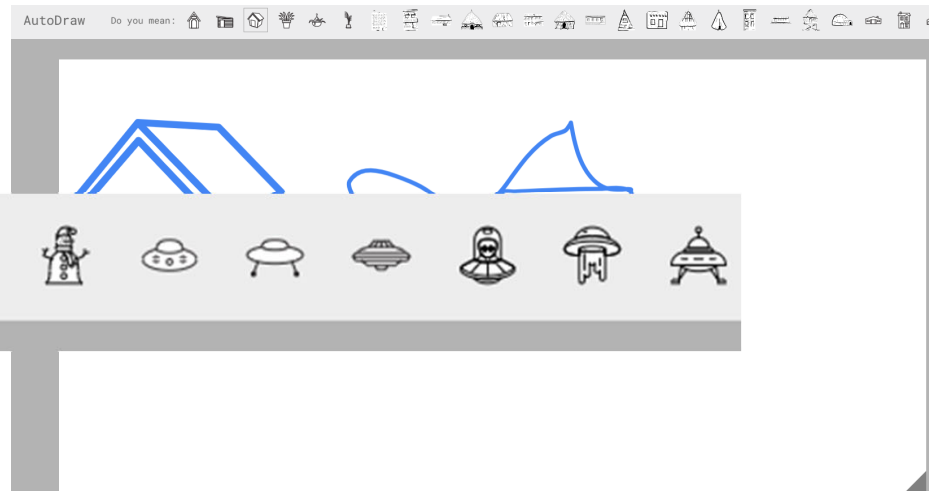
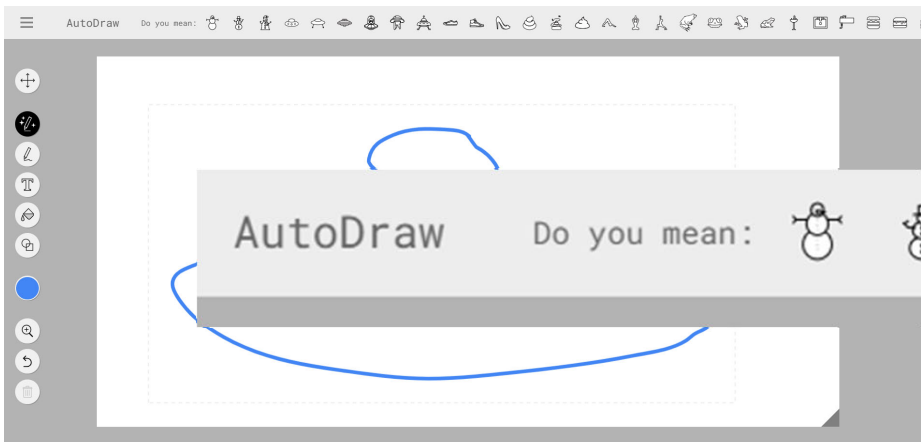
Certainly! Here are some creative, thoughtful, and slightly unconventional ideas to help more members of the public learn about their rights when it comes to housing, eviction, habitable living conditions, and rent escrow:

1. "Rights Roulette" Mobile App: Develop a mobile app that gamifies the learning process. Users can spin a virtual wheel that lands on different housing rights topics. They can then access bite-sized educational content, quizzes, and interactive scenarios to learn about their rights in an engaging and enjoyable way.
2. "Living Room Theater": Organize pop-up immersive theater experiences in public spaces like parks or community centers. Through live performances or interactive installations, these experiences can showcase real-life housing rights stories and legal situations. Audiences can actively participate and learn about their rights while being entertained and emotionally engaged.
3. "Rights Renegade" Street Performances: Hire professional performers dressed as "Rights Renegades" who roam busy city streets and public areas. These performers engage passersby in entertaining and interactive skits, highlighting housing rights scenarios and providing legal information in a fun and approachable manner.
4. "Renters' Rights Raves": Collaborate with local artists, musicians, and DJs to organize themed "Renters' Rights Raves" in unique venues like abandoned warehouses or outdoor spaces. Alongside the music and dance, provide informational booths and legal experts who can engage with attendees and educate them about their rights through informal discussions and creative vis

🔄 Regenerate response

< Share

**[autodraw.com](https://autodraw.com)**



**project review**

☰ Demo document

Remember when you were a careless eight year old kid riding a bike with your friends racing each other around the neighborhood? Remember that feeling of absolute freedom as you felt the wind in your hair and the smile it put on your face? I never thought I would feel that way as a grown up,until my friends presented me a red brand-new bike. At first I was a bit skeptical about the total idea of commuting by bike. One morning a couple of days later, I changed completely my mind. I was stuck at a traffic jam and saw in my rear mirror a man in a suit riding a classy bike with his laptop case in one hand and a handlebar in the other. I figured out it would take him about 15 minutes to get to the office while I was still sitting in my car and waiting for the cars in line ahead to move, even if just for a inch. I was always very afraid of being late for my business meetings. That is when I decided getting on the bike. I haven't regretted my decision so far. One of the best things about cycling is that the bike is perfect for exercising. Just cycling to and from work or to the shops every day is enough to keep you healthy and happy. Besides, its incredibly liberating to be able to get anywhere without loosing time in traffic jams. Also don't forget about the environment benefits. Cycling helps to reduce air

56 All suggestions



**Write faster with GrammarlyGO** Beta

Brainstorm, write, and rewrite with generative AI assistance at your fingertips.

If you use GrammarlyGO, [additional terms](#) apply.

Skip

**Try it out**

• ,until · Add a space

• a · Change preposition

• ,I · Add a space

• ,I · Add a space

• at · Change preposition

# The Future for Lawyers is Bright

## documents management / workflow

- Learning from emails and redlines
- Creating forms
- Better search

## eDiscovery

- Better trial preparation
- Data visualization
- Text and sentiment analysis

## legal research

- Confirm results
- With refining, better place to start over google

## knowledge management

- Match training with skills
- New training for prompt generators

# The Future for Lawyers is Bright

Lawgeex

 Lex Machina

 detangle

[Examples](#) [Legal Terms](#) [Articles](#)

AI-Assisted Research [Precision Research](#) [Content types](#) [Federal materials](#) [State materials](#) [Practice areas](#) [My content](#) [Tools](#)

Welcome to Westlaw's  
**AI-Assisted Research** New

Ask a legal research question just the way you think about it, as if you were giving instructions to a colleague. The best queries are typically 1 to 2 sentences and focus on essential details like the practice area, cause of action, governing law or jurisdiction, remedy, desired outcome or material facts.

AI-Assisted Research uses large language models and can occasionally produce inaccuracies, so it should always be used as part of a research process in connection with additional research to fully understand the nuance of the issues and further improve accuracy.

[Learn more](#)

[How the AI works](#)

[Tips for best results](#)

Jurisdiction: 2nd Circuit 

**Legal question**

Ask your legal research question with more detail for better results

[My recent questions](#) 

## Make sense of legal documents

Detangle gives you the tools you need to understand legal documents. It doesn't replace your attorney, but rather augments so you understand more while spending less.

 DISCO



# CHANNEL YOUR INNER SHEDD

Artificial Intelligence as Curation



DESIGN  
LAB powered by  
faegre drinker

QUESTIONS?

**Presented By:**

- Ruben Gonzalez, Faegre Drinker
- Raymond Rushing, Cummins Inc.
- Kevin Morrow, Revantage – A Blackstone Portfolio Company