

## Generative AI Is The Hot New Practice At Law Firms

By Tracey Read

*Law360 (May 12, 2023, 3:52 PM EDT)* -- For DLA Piper partner Bennett Borden, chief data scientist of the firm's newly created artificial intelligence and data analytics practice, practicing law in the age of generative artificial intelligence is like being a kid in a candy store.

"It's a very interesting time where this confluence of technology, ethics and law come together," Borden told Law360 Pulse. "The world of ethics is particularly important here, because we're doing things we've never done before. Very often, the business leaders and the compliance and legal folks in companies struggle to understand the tech. And the tech people — the data science folks — don't necessarily understand the legal or ethical concerns. So what's particularly needed now is people who can bring all that together."

DLA Piper is one of multiple firms that have recently started new AI-focused practices or reconfigured existing practices to cover generative AI, which uses algorithms to produce new text, voices, images and videos based off existing data. Often, the results can simulate real-life human interactions, such as the popular ChatGPT developed by OpenAI.

On Wednesday, Troutman Pepper became the latest entrant, announcing it has formed a 16-member Generative AI Task Force to help the firm and its clients safely use the disruptive tools and technologies in the artificial intelligence space.

Generative AI is "taking hold in the public consciousness in mainstream media and everywhere, and so I think a lot of firms want to get into the space, and we see firms starting to invest in AI," said Eric D. Vandavelde, co-chair of Gibson Dunn & Crutcher LLP's AI practice, one of the earliest existing such groups in BigLaw.

Karen Andersen, a partner with legal recruiting firm Major Lindsey & Africa, said demand for attorneys with either a data analytics background or regulatory expertise has exploded over the past six to nine months.

"All of us are kind of tripping over ourselves learning what we can on this front right now," Andersen said.

Lately she's been advising potential law students to pick up a class or two in data analytics to pad their resumes and help at job interviews.

"And maybe instead of getting a JD MBA, they get a JD and a master's in data analytics, while they're going to law school," she added. "Folks are going to have to get themselves up to speed and figure out the ramifications in their practice area for generative AI. It's with us now, and it's only going to continue."

Borden, who is based in Washington, D.C., joined DLA Piper in March alongside 10 other data scientists and data science-credentialed lawyers whom he had worked with at his prior firm. He previously worked as a chief data scientist and partner at Faegre Drinker Biddle & Reath LLP.

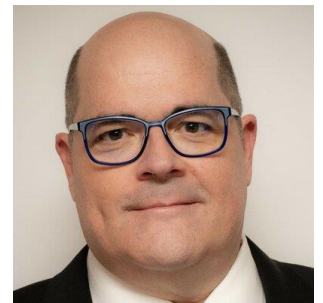
Borden began his career at the CIA, using data analytics and machine learning to describe, predict and influence human and organizational behaviors.

Now, he uses that expertise to help clients develop AI systems and algorithmic models in a legal and ethical manner, and conduct discovery and internal investigations, including the verification of AI systems and detection of algorithmic bias, according to the firm.

Borden said that contrary to popular belief, AI won't replace lawyers. If used correctly, it can augment and extend the capability of lawyers.

"Our analogy at the firm is, 'It's Iron Man, it's not Terminator,'" he said. "Think about what Iron Man is. It's a really smart person surrounded by incredible technology, extending the capabilities of that very smart person. That's what we're trying to do. People ask me all the time, is AI gonna replace lawyers? No. But lawyers who use AI are going to replace lawyers who don't use AI."

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**BENNETT BORDEN**  
DLA Piper

### **An "Enormous Uptick" in Demand**

Gibson Dunn, one of the earliest entrants in this space, launched its AI practice group about five years ago. Its three co-chairs are Cassandra L. Gaedt-Sheckter and Vivek Mohan in Palo Alto and Vandeveld in Los Angeles.

Gibson Dunn has more than 80 attorneys working in the AI practice group in some capacity, with around 20 focused on this area full-time.

"What's so interesting about this space is that it's multidisciplinary," Gaedt-Sheckter said. "The risks span everything from copyright to employment. It's not just the big tech companies. We're working with clients who are developers of the AI products, including generative AI products, but we're also advising those who are deploying them. That could be even our own firm, so it really does span across industries."

Mohan, who returned to private practice after working for Apple Inc., where he was a senior attorney on the company's global privacy law and policy team and head of information security law, called AI one of the hottest groups at Gibson Dunn.

"We have rebooted this practice over the last year," Mohan said. "We reclassified. It used to be an industry practice group, which means the practice was oriented around working with companies that were developing artificial intelligence technologies, and helping them think about legal considerations."

Now, Gibson Dunn's AI practice is classified as a regulatory practice, meaning attorneys work with not just

companies that are developing AI, but ones that are deploying it as well.

"We're seeing just an enormous uptick in volume over the last year," Mohan said. "The reality is that it is no longer just the companies at the cutting edge that are thinking about these issues. From old-line widget codes to brand new tech startups, everyone has to think about how to harness the power of this, and how to manage the risks. We're also in the midst of a completely dynamic regulatory landscape."

Last month, the Federal Trade Commission, U.S. Department of Justice, Consumer Financial Protection Bureau and the U.S. Equal Employment Opportunity Commission released an unprecedented joint statement expressing concerns about AI's effects on civil rights, fair competition, consumer protection and equal opportunity.

"We already see how AI tools can turbocharge fraud and automate discrimination, and we won't hesitate to use the full scope of our legal authorities to protect Americans from these threats," FTC Chair Lina M. Khan said in the regulators' statement. "Technological advances can deliver critical innovation — but claims of innovation must not be cover for lawbreaking. There is no AI exemption to the laws on the books, and the FTC will vigorously enforce the law to combat unfair or deceptive practices or unfair methods of competition."

In New York City, there is already a law on the use of AI and employment decisions.

"We started this group ahead of virtually every other peer in this space," Gibson Dunn's Vandavelde said. "ChatGPT in generative AI has really created this buzz, but we've been doing a lot of AI-adjacent or algorithmic decision-making work — advising and counseling and handling regulatory matters for our tech clients and our non-tech clients — for many years."

In early 2020, Debevoise & Plimpton LLP rebranded its cyber privacy practice — which included some AI and data management work — into a data strategy and security practice, after co-chair Avi Gesser joined the firm from Davis Polk & Wardwell LLP.

New York-based Gesser, who is also a former task force director for the DOJ's Criminal Division, said the firm used to deal with mainly AI governance and compliance issues in the insurance and financial services sectors.

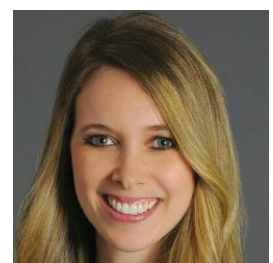
"But when generative AI issues came up, such as ChatGPT in particular, a lot of existing clients came to us on these issues, but a lot of new clients came to us, as well, because we had already built out a capability to help on these issues," he said.

Gesser said the ethical and regulatory compliance issues are starting to converge, and people are worried about privacy.

Clients of Debevoise wonder whether people at the company are sharing confidential personal information about their clients with these AI providers, and are they allowed to do that? And should they do that? Do they need to provide notice to the individuals whose data is being shared or being used in these AI tools?

"In order to answer those questions, you need experts in privacy and cybersecurity and intellectual

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CASSANDRA L.  
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Gibson Dunn

property, but also, you need experts in particular areas of the law, like employment law or corporate governance, banking, insurance and securities," Gesser said. "At Debevoise, we have experts in all those areas. And we have a core AI team that's focused on the AI issues and the privacy and cybersecurity issues. But then we have a broader team that we consult with, who help us on those other issues."

### **How Firms are Building their Teams**

Gesser said that to provide good AI advice to clients, a firm must have a team doing that work day in and day out.

"I think investing in a practice group that is doing this work predominantly is important, and that's how we've built this practice," he said. "We've been able to attract people with strong backgrounds in either AI or cyber, privacy, or related skill sets who have come to the firm for this practice."

Besides experts in different fields who are able to work collaboratively, Gesser stresses the importance of staying on top of AI issues.

"I listen to at least an hour of AI podcasts every day and probably read another hour of materials," he said. "We have a team here who really loves this stuff and are excited about it. I think that makes a big difference."

Gibson Dunn also has advice for would-be attorneys looking to get into the AI space.

"We have associates with Ph.D.s in cognitive neuroscience," Vandavelde said. "We have associates who, since they were in law school, have honed in on this area, it's the area they want to practice in, and they are really at the top of their game and really thought leaders across the whole space. It's taking hold in the public consciousness in mainstream media and everywhere, and so I think a lot of firms want to get into the space and we see firms starting to invest in AI."

Vandavelde, who has a computer science degree and worked as a software engineer before becoming a lawyer, said a technical, neuroscience background is helpful for attorneys hoping to work in the AI space, but it's not necessary.

Gaedt-Sheckter agrees.

"I think passion for this area is probably the thing that you need the most," she said. "There's no class that can teach you how to monitor the various regulations and keep up to date and understand the nuances of the technology as it's changing so quickly, especially with generative AI. Having the passion and the confidence to dig into this area is really what I've seen in our associates that really gets them far."

### **Waiting for the Dust to Settle**

Katherine Forrest, a former judge for the Southern District of New York and deputy assistant attorney general in the DOJ's Antitrust Division, joined Paul Weiss Rifkind Wharton & Garrison LLP in January as a litigation partner and co-chair of the firm's new digital technology group.

The group advises clients on all things digital, especially AI.

Right after she started her new role, Forrest — who is the author of the book, "When Machines Can be Judge, Jury and Executioner: Justice in the Age of Artificial Intelligence" — made a presentation to the group warning of a tsunami of AI issues coming.

"After I arrived, generative AI exploded," Forrest said. "The world of ChatGPT absolutely exploded, like two weeks after, making me seem like I was prescient beyond belief."

The group began doing presentations in the insurance, financial services, retail and automotive industries, and now have a booming AI client base in many sectors, she said.

"It started with algorithm issues, concerns about AI tools and what are best practices," she said. "What are compliance issues that might be coming down the pike? What's the regulatory horizon? What are governance issues? We give a lot of advice to a lot of different kinds of clients about generative AI. A lot of, what is it? What does it really mean? How does it really work, what the risk analysis is."

Forrest noted clients are also concerned about the possibility of Microsoft including generative AI in its Office Suite, as well as active regulatory initiatives all over the United States and the rest of the world, including the AI Act in Europe, which calls generative AI a high-risk tool.

"What I see is a lot of activity about tools that relate in any way to decisions about particular human beings' access to jobs, to insurance, to credit and lending, etc.," she said. "And a lot of regulatory law. I think that we are going to see over the next 18 months some dust settling in the regulatory environment, which I think will be very welcomed by a lot of companies who want to do the right thing, but don't yet have clarity on exactly what they should be doing."

DLA Piper's Borden called generative AI one of the most "amazingly wonderful disruptive technologies since the computer."

However, although it can create amazing content, the problem is that generative AI does not understand the meaning of the words it spouts out, so guardrails must be put in place — especially for accuracy and unintended bias.

"With lawyers, like any other tool, it can give you a head start, but it's still up to us in our professional ethics to make sure that what it's saying is true," Borden said, adding, "And it doesn't necessarily have to be a human. Some of the really interesting tech that we're working on right now is pitting one generative AI system against another so they both spit out an answer and they argue over who's ready to come to a consensus."

--Editing by Nicole Bleier.