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The Promise and Perils of Artificial Intelligence in Document Review and Discovery

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MINTZ GROUP

Introduction

Document review and discovery is one of the primary areas in which law firms and corporate law departments are racing to leverage generative artificial intelligence (‘AI’). That opportunity is particularly promising in complex fraud and asset recovery cases, which usually involve both the analysis of copious amounts of information and a race against the clock. Artificial intelligence tools are a perfect match for these challenges.

However, firms and law departments looking to incorporate generative AI into review and discovery must figure out how best to do so. Integration strategy – always an issue when adopting new technologies – is particularly complex in the case of AI; AI’s combination of superhuman analytical power and increasingly human-like, nuanced communication makes it easy to project on to it more capabilities than it has.

At Mintz Group, we leverage AI tools every day in our discovery, financial analysis and due diligence engagements. Our practical, front-line experience with what AI can and cannot do may provide a useful framework for those grappling with how best to use AI in their own organisations.

Crafting the Man-Machine Partnership

Recently, for example, we were engaged by a law firm to assist with a complex asset recovery matter for a major private equity fund that had been defrauded of \$80 million by one of the fund's portfolio companies. Working closely with the team of lawyers and forensic accountants, we began by piecing together illicit financial flows. While most of those illicit transactions took place entirely outside of the United States, some involved Delaware-based companies with New York bank accounts. This nexus allowed us to rely on the foreign litigation discovery tool of a Section 1782 subpoena to compel U.S. banks to disclose the financial transaction data.

We then worked with our AI partner, Sedra Solutions, to analyse the large amounts of disclosed transaction and other internal data we received along with the forensic data we already had. Sedra's AI tool identified patterns suggesting the principals of the private equity fund's portfolio company had used trade-based money laundering techniques to carry out the fraud. Our team then analysed open-source records to investigate the parties involved in the suspicious trades and discovered that they all attended university with one of the principals. Comparing the company's internal records to trade and customs data, we identified patterns of over-priced invoices for shipments to a network of shell companies in the Caribbean, as well as ghost shipments that never took place. Untangling the shipping transactions and shell company ownerships, we were able to provide the law firm the evidence they needed to secure freezing orders against the accounts before the money could be moved out of friendly jurisdictions—allowing the private equity firm to make a substantial recovery of its lost funds and for the fraudsters to be reported to law enforcement.

AI uncovered the fraud's tell-tale connections and patterns much more quickly than could have been done with conventional analysis, enabling us to then apply other tactics to zero-in on the stolen funds before they could be moved. Too often, the discussion around AI is framed in terms of how AI will replace human judgment. It is more productive, however, to think of AI as a tool to magnify the capabilities of experienced professionals.

Uncovering the Tip of an Iceberg

A closer look at how to balance AI capabilities with the experience of human investigators was provided by another recent assignment, in which we were asked to help conduct pre-acquisition due diligence on a family-owned conglomerate in Central America, as well as on five family members involved in the business. We used AI-powered tools to generate an initial high-level assessment of possible areas of concern. This uncovered some garden-variety litigation and a few minor allegations of anticompetitive behaviour, as well as a single press report claiming that the youngest son had been arrested for owning an illegal gun while riding in a truck with three others—one of whom also had an illegal gun. Our next step was to conduct a public records investigation, in which we found some additional context related to the two business-related issues flagged by the AI platform, but nothing further about the gun charge. We knew, however, that it would be a mistake to not pursue the gun charge further, since criminal records in that jurisdiction were sparse, as they often can be in emerging markets.

We recommended to our client that our investigators make some discreet inquiries to our contacts in the region regarding the company and the family. We quickly discovered that there had long been rumours about the family's ties to organised crime, with several sources independently reporting longstanding suspicions that the family's companies might be money laundering fronts. Digging further, we tapped our network within the country's law enforcement community to gather and confirm information regarding an investigation into the family and their companies' involvement. The source confirmed that not only was there an investigation into the family and their companies' involvement with a major criminal group, but that several company bank accounts had recently been frozen as part of an upcoming criminal prosecution. Needless to say, our client passed on the acquisition.

As with the investment fraud case, AI tools were invaluable in allowing us to quickly identify where to focus our efforts. But we knew that was only the start. Reading the AI-generated report, one could have concluded that the gun charge was an anomaly that didn't warrant derailing a deal. In fact, it was the tip of a risk-filled iceberg.

A Lesson in AI's Limitations

The problems that can stem from an over-reliance on AI were underscored when we were asked by a major publicly traded company to conduct due diligence on a finalist for the company's CFO slot. While the company had been given an AI-generated report on the candidate, it decided to pursue a more thorough investigation. We started with a clean slate, combining our own AI tools with the experience of our investigators. The AI platform we used uncovered two press reports that a woman with the candidate's name and who lived in a community where the candidate had resided had been accused of harassing her neighbours. But we discarded those reports because we knew that candidate we were investigating—who had a very common name—had moved from that community years ago. Further, her spouse's name was different than that mentioned in the articles.

We continued our research, looking into litigation in which the applicant might have been a party. Although she lived and worked in a large metropolitan county, we knew from experience that the county's online court records—on which any AI report would have relied—were woefully incomplete. After sending an investigator to the county courthouse to conduct a hard-copy search, we uncovered that she had been sued by an NGO for which she had served as treasurer, alleging financial misconduct that left the organization on the verge of bankruptcy.

Unsurprisingly, the company terminated the applicant's candidacy shortly thereafter. In addition to avoiding what could have been a disastrous hire, the company was vindicated in its decision to look beyond the AI-generated report it first received: Not only did the report incorrectly flag the harassment allegations, but it failed to uncover the much more serious and relevant financial misconduct allegations.

These errors underscore one of AI's biggest limitations—that it can only work with the data it has ingested. The AI platform had no way of knowing, as our human investigators did, that the CFO had moved out of that community years before, or that her spouse had a different name than that of the woman in the press reports. It was also unable to look beyond

the incomplete county court records it had been fed to uncover the financial misconduct allegations that were only accessible via a trip to the courthouse.

A Tool, Not a Comprehensive Solution

Generative AI is undoubtedly a revolutionary development—and even more so when one considers that the technology is still in its infancy. Given what it is already capable of, it is tempting to view AI as an end-to-end, comprehensive solution. The law firms and corporate law departments seeking to harness AI for discovery and diligence need to take a more measured view, using AI for the things it does best, thereby freeing human investigators to cultivate sources, visit records depositories and all the other things that only experienced professionals can do. In this way, AI technology and human experts can achieve together what neither could do alone.