The Duty of Technology Competence in the Algorithmic Society
Everyday Algorithms
The Duty of Technology Competence

- ABA Model Rule of Professional Conduct 1.1 provides: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

- In August 2012, comment 8 was amended to provide: “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology ....”
State Adoption
What The Duty Requires Today
A Changing Standard

Exponential Growth of Computing
Twentieth through twenty first century

Logarithmic Plot

- All Human Brains
- One Human Brain
- One Mouse Brain
- One Insect Brain

Year

Calculations per Second per $1,000
Guidance for Complying

WASHINGTON STATE BAR ASSOCIATION

Advisory Opinion: 2215
Year Issued: 2012
RPC(s): RPC 1.1, 1.6, 1.15A
Subject: Cloud Computing
Guidance for Complying

SOCIAL MEDIA ETHICS GUIDELINES
OF THE
COMMERCIAL AND FEDERAL LITIGATION SECTION
OF THE
NEW YORK STATE BAR ASSOCIATION
Guidance for Complying

THE STATE BAR OF CALIFORNIA
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT
FORMAL OPINION NO. 2015-193
Guidance for Complying
Use Reasonable Care
The Future of the Duty in the Algorithmic Society
Relying on Algorithms in Law

RAVEL

Built on top of Watson, IBM's cognitive computer,

Westlaw  LexisNexis
casertext
Introducing Westlaw Edge
The most intelligent legal research service ever
Natural Language Processing
Premature Disruption

Are You Prepared For Disruption?
Lack of Transparency
Bias
When an Algorithm Helps Send You to Prison

By ELLORA THADANAY ISKANI | OCT. 26, 2017

In 2013, police officers in Wisconsin arrested a man driving a car that had been used in a recent shooting. The man, Eric Loomis, pleaded guilty to attempting to flee an officer, and no contest to operating a vehicle without the owner’s consent. Neither of his crimes mandates prison time.

At Mr. Loomis’s sentencing, the judge cited, among other factors, Mr. Loomis’s high risk of recidivism as predicted by a computer program called COMPAS, a risk assessment algorithm used by the state of Wisconsin. The judge denied probation and prescribed an 11-year sentence: six years in prison, plus five years of extended supervision.
Malpractice?
Research Habits
Teaching

Algorithms
Going Forward