[Kevin Szczepanski]: Welcome back to *Cyber Sip*. We have back with us today Jessica Copeland, partner of the Bond, Schoeneck & King firm. You remember, Jessica joined us last time to talk about AI governance. We're going to have a special talk today about AI governance for lawyers because, and I won't speak for you, Jessica, as lawyers, I think we both know that lawyers can sometimes be a challenging audience when it comes to recommending…

[Jessica Copeland]: No!

[Kevin]: …I know, it's hard to believe, but we're going to talk about how AI impacts lawyers. But just as a reminder, I know we introduced her on a recent episode, but in addition to being a partner at Bond, where she chairs the firm's AI committee and the firm's cybersecurity and data privacy practice,. Jessica is a certified information privacy professional, US, and I have to ask you, how do you pronounce the C-I -P -P? I say "sip." Do you say…

[Jessica]: I say "Sip-US."

[Kevin]: Okay, that's what I say too. So CIPP U -S. And by the way, I had a recent conversation with someone who told me all the different ways that "CISO" can be pronounced. I've heard see-so, siss-o ,and C-I -S-O…

[Jessica]: I've heard "sizzo." I say "see-so."

[Kevin]: "Sizzo." Okay. Yeah, that's what I say. Which do you think is more common?

[Jessica]: Now, I will also say that I still say "Florida" and "orange" because I grew up in Long Island. So I don't think that you should ever ask me how to say things.

[Kevin]: I say, "orange." I've beaten out the pronunciation "orange." I've beaten that out of myself. I now say orange. So I think I'm closer now. Maybe I've gone too long. I've gone east with the pronunciation. All right, so let's dive into this. And before we talk about AI for lawyers, I know for those of you that didn't see our initial episode, we talked about AI, you can go back to that episode and check it out. Kyla is going to put a link up here for you, but we probably should give at least a brief overview, Jessica, what is generative AI and why should lawyers be considering incorporating generative AI into their practices?

[Jessica]: Sure. So generative AI is the newest, latest development of artificial intelligence. Artificial intelligence is technology that lawyers and many industries have relied upon for several decades. For the lawyers in the room, if you will, an example of artificial intelligence that you are probably very well accustomed to is the prediction of words in your email. If you start drafting an email or a text message or a search prompt in Google for the last several years—before generative AI—the tool would predict what word you're actually seeking pretty well. And so generative AI builds upon that, uses the technology that is …the

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algorithm that goes into the artificial intelligence, and overlays this natural language exchange to generate a more substantive response to a query as opposed to just predicting the next word.

[Kevin]: So what are the practical applications of AI for law firms? I mean, obviously, Lexis and Westlaw and CaseText are not technically AI, certainly not generative AI. But we as lawyers are familiar with the use of technology and apps to make our legal research more efficient. Where are we headed and what should we be thinking about incorporating today? What are the technologies that every law firm or even certain kinds of law firms should be considering?

[Jessica]: Well, and so it depends on what you're looking for. Are you looking for a tool that all attorneys and administrators and staff can utilize, such as a chat bot like ChatGPT, but one that is secure and within your environment? Or are you looking for content creation and a tool that would maybe be a drafter of a contract, a draft of a merger agreement, or maybe a draft of a deposition outline? And those vary depending on the area of practice. You know, trusts and estates, I'm sure there are many generative AI tools that will create a will or an estate plan. And so it really depends on what practice of law you're in, and how, from a law firm management standpoint, you want to deploy these tools and to whom you want to deploy the tools.

[Kevin]: So let's say I come to you and I say, Jessica, we're starting to think about AI. We don't know what we don't know. We have a policy in place that tells our employees, our lawyers, what they can use AI for, what they shouldn't use AI for. In fact, maybe let's start there. Before we talk about anything else, let's talk about the importance of having an AI policy or at least an AI, a written AI position in place if you're practicing law.

[Jessica]: Sure. So whether in the legal industry or outside, if you're looking to adopt generative AI tools, it is essential to have a policy in your workplace that will identify how to identify, select, and adopt the tool, as well as acceptable uses of those tools. And so creating a policy, I've had the benefit of working internally at my firm as part of the AI committee. And externally, so I also am chair of the AI practice group for Bond. And so externally, we are preparing strategy and policy for our clients in this space. And so for law firms, as you know, it is important for us to have policies that are compliant with the applicable laws and also permit use of advanced technology in a safe and secure manner.

[Kevin]: Right, so let's suppose further that, okay, we've got that policy in place, we've told our employees how they can and can't use it, we have a process in place for internal training, internal reporting of impermissible uses, we're set there. But we are one of those firms that you mentioned earlier. We've got a litigation component to our firm that drafts a lot of documents that we think could be more efficiently done by AI. Discovery motions, or more basic motions. We also have a significant commercial-lending practice and we deal with hundreds if not thousands of very dense contracts and we find ourselves reviewing them and we're thinking maybe we need to look for an AI product that can search through all these contracts not in a matter of hours or days but in a matter of seconds to make us more efficient, more cost effective. And our clients are even asking us for this, right? Because a lot of people think, well, AI is something we need to be careful about. There are clients out there who are going to ask you to use AI and are going to mark you down if you're not using it, because your competitors are. How do we sit down and start talking about what products to look at, how do they work, and whether we should be incorporating them into our practice.

[Jessica]: Well, I'm sure much like me, you have had several reach-outs through LinkedIn of the tool-owners promoting solutions for law firms. And the first step that I always take is invite my security manager and start the security assessment process at a fundamental level, at a, you know, where do you host your data? Where, how do you collect data? What data are you collecting of our firm? Are you going to create a document based on our document management system? Do you attach to that document management system? Does your tool have that capability? And how does the data flow? What security measures do you have in place that will protect the data from a breach, but also restrict through contract, use of that data to train the model or in any way transfer ownership of the data to that company.

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[Kevin]: And the data flow and the use of data is critically important because you're essentially allowing a third party, if this is how the process works, you're allowing a third party to access your computer system and to access that proprietary data. So you're creating a potential legal risk, you're creating a potential information security risk, may overlap at some points, but you've really got to be careful that whoever you partner with in the generative AI world is not only using a recognized data privacy and data security standard that is mapped to either whatever regulatory requirements we need to comply with or some recognized industry standard like NIST, but you've also got to make sure that whatever company you're working with is willing to stand by its product and services so that if something goes wrong, they're going to make good. So that's a kind of fancy, you know, many words for one way of talking about indemnification. So what's your, what are you seeing out there when it comes to AI products and services? Are these companies willing to stand behind their product and indemnify a law firm if something goes wrong?

[Jessica]: In the event of a data breach? I've seen a variety. I do think that there's an understanding of these technology companies that poses such a risk to the legal industry, the risk of losing attorney-client privileged information, that they are more willing to indemnify or potentially remove or exclude data breaches from a limitation of liabilities within the policy or within the contract. And so I am seeing more negotiation power than you would expect. But as with everything, it varies. It varies on the size customer that you are as a law firm compared to the size company that the tool owner is.

[Kevin]: I think what, and I wonder your take on this—and that makes perfect sense, I've seen that as well. What concerns me is that we have some large companies out there, and thank goodness for the Amazons and the Microsofts of the world, they have such leverage and such R &D capability, they're able to roll these products out relatively quickly. But I'm concerned that it's just becoming, we're like kids in the candy store, like, do you want AI? Here, for just $5 .99 a month, you get this AI product. And so we're buying it like consumers. We're not buying it like careful lawyers or businesses. We're not going back to step one saying, do I really need this? Okay, what does it do? How does it work? What data does it sweep up? How is that data safeguarded?

[Jessica]: You know, one thing that I have been advising clients in the legal industry as well is to survey your workforce. I mean, don't bite off more than you can chew and certainly don't purchase licenses for the entire workforce if only 10 people are going to use it. Because the reality is, unless they're necessarily required to, which I don't know that we're in that place yet, I don't foresee 100% adoption within every firm or company that I advise.

[Kevin]: Mm -hmm. It's a great idea.

[Jessica]: I think that you'll probably have pockets, maybe 25%, maybe to 75% if you're a tech-savvy company or if you're a boutique firm that focuses primarily on tech sector clients and you're more willing to adapt or adopt it. But I would start there and understand before we buy in, because you're right, it's being advertised left and right at fairly reasonable pricing.

[Kevin]: Right.

[Jessica]: But do you need 500 licenses to Copilot? Probably not.

[Kevin]: Yeah, probably not. So, and I know it's early in the process. We talked about some of the uses, drafting, motion drafting, document review. In your experience, Jessica, thus far, where are you seeing law firms using AI and are there areas where you're seeing law firms choose not to use AI, even though there's an option to do so?

[Jessica]: Yeah, so I would say predominantly the front runners on the AI tools are Lexis Plus AI. So if you're a Lexis user, they have rolled out their AI feature. And so firms feel safe and comfortable that it's just the next iteration and the same type of security measures of utilizing Lexis or Westlaw if you're a Westlaw subscriber, apply. And so that gives you a safer environment to test out the generative AI tool. The other areas are if your firm is a user of the Microsoft 0365 suite with the availability of Copilot. Again, if you're logged in under your firm name, your username and password, then any content that you enter into Copilot is retained within that tenant. And so it creates those guardrails, the safeguard to protect the data, much like any email you write to a client is protected. And so I've seen a pretty quick adoption there. Where I haven't seen as much adoption is in the practice area specific solutions, like contract drafting.

[Kevin]: I was taking a note as we were talking earlier and I wanted to ask you about the large…big law versus the large regional firms like yours and mine. Part of, I think, what I had thought at the very beginning of the deployment of generative AI, the announcement of generative AI, is that it would be a way for either a mid-size boutique firm or even a larger regional firm to compete with big law because now all the resources that big law has in terms of lawyers are equalized in the form of technology. But I'm not sure that's happening in quite the way I thought it would and maybe some of the experts thought it would. What are you seeing, and do you think that the use of generative AI is just going to make big law that much faster? Or do you see it as a way in which smaller firms can compete with big law?

[Jessica]: You know, that's an interesting analysis because my view is that big law has… likely have resources to throw at evaluating these tools that the mid-sized firms might not be able to. And so there are also the resources of creating their own LLM with their database that might be, you know, financially easily absorbed by big law, but maybe something that takes a pause moment for smaller law firms. And so I think much like the early adoption of Westlaw and Lexis and having the ability to just dive right in decades ago, maybe before smaller to mid-sized firms could, I think you'll probably see a similar effect. And that's what I've been gleaning from my former colleagues in New York.

[Kevin]: Yeah, no, I think that's the right point. I think that there was initially some thought that generative AI would be the great equalizer. And I think that's certainly a possibility. I think we're going to see examples of that. But you raised the flip side, which is why wouldn't big law be able to react more quickly to the development of AI than smaller firms? And it's interesting. We can talk about this later. Maybe over a glass of wine, but I mean it's just the access…

[Jessica]: You said the magic word, Kevin. It's right downstairs. It's so easy.

[Kevin]: Yeah, I know I know it's five o 'clock somewhere Exactly. I know thank goodness for those of you that don't know we have a great new restaurant in the lobby of our building and Members of Bond and Barclay Damon have been seen… I mean I haven't seen it myself, but I've heard that they have been seen down there, but I think it raises in my mind an access to justice issue. And I haven't thought carefully about this, but are we going to see a greater disparity between individuals who can afford law firms who really leverage this technology and individuals who cannot? And how that's going to shake out, I'm not sure we know, but if you were sitting here today and you had to put your predictive lenses on, what would you say about it?

[Jessica]: I would say it's not going to be the equalizer that you're optimistically seeing it to be. And I think that part of that is also the one point you made at our first episode was what clients are looking for. And there is a spectrum of what clients are looking for. And I would guess that the client base in the multinational big law law firms are pushing harder on them to create efficiency because of their billing rates. And so are more willing to allow for their outside counsel to utilize these tools. Whereas the firm structure, the client base that we might have, there'll be certain percentage of clients that want you to, but there might be a certain percentage of clients that restrict you from it. And so that I think will play a part in this larger discussion.

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[Kevin]: I think that's right. We had a retreat earlier this year and a speaker who is a general counsel of a larger organization, took the view that, yeah, you should be ready for clients like me to come to you and say, how are you employing AI to make your practice more efficient? And when am I going to see the savings from use of AI as opposed to you having a dozen lawyers look at millions of pages of documents? But I hadn't thought of that. I think that's a great point you make, that there's a spectrum here. And there may be other clients who have more of a reticence. And they're just plain more concerned about their data. They may have a concern that their data is being plugged into a system that cannot ensure that it is reasonably safe. And they're going to maybe it's the healthcare industry, for example, they're going to be more reluctant because if something goes wrong, yeah, we can try to push to redirect liability to the party that's ultimately responsible, but in the first instance, if something goes wrong, it's the holder of the data, it's your client. They're the ones that are going to have to report or disclose the breach to the affected patients or customers. They're the ones that are going to have to face the regulators and your AI provider may or may not be standing right there with you in the process.

[Jessica]: And frankly, you can indemnify all you want, but you can't indemnify against reputational harm.

[Kevin]: No, once that horse has left the barn, it's very hard to bring it back. And clients rightly will look and say, wow, I trusted you with my data. And that's it's interesting. I had a… she's coming up on a future episode. I don't know if you know Jody Daniels, Jody and Justin Daniels do a podcast. It's "She Said Privacy, He Said Security," they do a wonderful job. And they just wrote a book about… it's called "Data Reimagined, Building Trust One Byte at a Time."

[Jessica]: I love it. I love the title. I need to look at this.

[Kevin]: And it's terrific. I commend it to you. You should reach out to Jody and Justin. I think they've captured the heart of the message we've all been trying to send. First, we like, you need to protect your data because if you don't, you're going to suffer a data breach. And we tried to scare our colleagues and clients into compliance. And the 2.0 effort was we tried to scare them a little bit more with the financial cost that it would take to repair the harm. But I think where this is really going to lie and where it should lie is just the ultimate question of trust. Can your clients trust you with their data? And if they find that they can't, that's a hard, that's a hard, hard argument to remake. I don't know how you go about reconvincing someone that you can be trusted. It takes a long time trust is what do they say trust is easily broken and very hard to repair.

[Jessica]: Very true.

[Kevin]: So we're almost to the end. One, I want to give you the last word. If you're sitting here today and you could say one thing to a law firm out there that is thinking about incorporating AI into their practice, what would you tell them?

[Jessica]: Start slow and methodical. Look to the solutions that you know are secure and safe, such as utilizing Copilot within your Microsoft environment, because again, that is an easily understandable tool to deploy. And if you are logged in with your username and password, then like I said before, the content that you enter, on Copilot is treated the same way as when you send an email or you're in a Teams chat. And so that is frankly the safest environment at this stage—and I'm not paid by Microsoft, I promise—to start playing around with it and seeing whether it's actually beneficial and how it's beneficial.

[Kevin]: First we test, then we trust. Great advice. We're going to leave it there. Jessica, thank you for joining us again. I love talking AI with you, especially AI for law firms. We need all the help we can get.

[Jessica]: Same here. Thank you so much for the opportunity, Kevin. This has been fantastic.

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[Kevin]: I appreciate that and thanks to all of you for joining us for another episode of *Cyber Sip*. We are back soon with another episode.

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