

# AI and Advocacy

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# Agenda

- ▶ Law Student and New Attorney Struggles
- ▶ Overview of *U.S. v. Deleon*, 116 F.4th 1260 (11th Cir. 2024)
- ▶ How AI Can Help Advocate and Adjudicate
- ▶ Cautions and Caveats
- ▶ Using AI for Advocacy in Employment Law
- ▶ Using AI for Change in Securities Law

# Student and New Attorney Struggles

- ▶ Interacting effectively with clients
  - ▶ New attorneys face a wide range of clients and have difficulty identifying with many of them
- ▶ Seeing the “big picture” of client matters
  - ▶ New attorneys have difficulty developing strategies, gathering facts
- ▶ Understanding threshold legal concepts and interpreting legal materials
  - ▶ What’s reasonable, ordinary, etc.

## *U.S. v. Deleon*

- ▶ Judge Newsom dissent:
  - ▶ Queried ChatGPT: “What is the ordinary meaning of ‘physically restrained’?”

## *U.S. v. Deleon*

So, what are the takeaways?

1. I continue to believe—perhaps more so with each interaction—that LLMs have something to contribute to the ordinary-meaning endeavor. They're not perfect, and challenges remain, but it would be myopic to ignore them.
2. An important (and perhaps underappreciated) benefit of incorporating LLMs into our interpretative practice is their ability to decipher and explain the meaning of composite, multi-word phrases in a way that standard tools like dictionaries can't always do.

## *U.S. v. Deleon*

3. We should give careful thought to how we assess and account for LLMs' sometimes varying answers to user queries. For reasons I've explained, I think (a) that there's a valid technical explanation for that phenomenon and (b) that the peripheral variation reflects everyday speech patterns, and thus may actually make the models more (rather than less) accurate predictors of ordinary meaning.
4. A final coda: No one should mistake my missives for a suggestion that AI can bring scientific certainty to the interpretive enterprise. As I've been at pains to emphasize, I'm not advocating that we give up on traditional interpretive tools—dictionaries, semantic canons, etc. But I do think—and increasingly so—that LLMs may well serve a valuable auxiliary role as we aim to triangulate ordinary meaning.
  - *United States v. Deleon*, 116 F.4th 1260, 1277 (11th Cir. 2024)

# How AI Can Help Advocate

- ▶ AI can be used to help law students (and new lawyers) understand clients
  - ▶ Lowering the barrier to information gathering, saving time and money
  - ▶ Helping broaden the scope of knowledge/information
- ▶ AI can be used to support and advocate for more inclusive decision making
  - ▶ Challenge normative concepts embedded with bias
  - ▶ Advocate for more inclusive decision making

# How AI Can Help Adjudicate

- ▶ AI can assist judges
  - ▶ Challenge normative concepts embedded with bias
  - ▶ Engage in more inclusive decision making
  - ▶ Utilize the lower barriers to information



# Current Similar Uses of AI

- ▶ Used by judges
  - ▶ To interpret the plain meaning of language (Judge Newsom)
  - ▶ To process and synthesize facts/information (Montgomery County pilot program)
  - ▶ CA task force - educate judges on uses, benefits, and risks of AI
- ▶ Used by advocates
  - ▶ First AI generated complaint filed in court

# Cautions and Caveats

- ▶ AI platforms are embedded with bias
  - ▶ Can expand sources of data
  - ▶ Can target particular sources of data
- ▶ Platforms vary in responses
  - ▶ Identify core themes

# Using AI for Advocacy in Employment Law

- ▶ Hostile work environment example
  - ▶ Shortcomings of “severe and pervasive standard” - biased, unworkable, relies on prior bad decisions, out of touch with current societal norms and conditions, and varies depending on the judge and the court
  - ▶ Limitations of new attorneys/law students - unfamiliar with work environment, difficulty identifying with clients
  - ▶ AI can help judges
    - ▶ help explain current work conditions and societal norms, the perspective of different populations, and the broader context of a work environment
  - ▶ AI can help advocates
    - ▶ can do the same to help craft effective and persuasive arguments and advocate for change or development in this area of the law

Is a supervisor calling a Black female employee "bitchy," "shrill," "bossy," and "aggressive" hostile and intimidating when said in front of other male colleagues?



Such language can indeed be considered hostile and intimidating, particularly when directed toward a Black female employee in a workplace setting. The terms "bitchy," "shrill," "bossy," and "aggressive" are often gendered and can carry racialized implications, especially when directed at women of color. Here's an analysis using legal principles:

## Gendered and Racialized Nature of the Comments

The terms used are often tied to stereotypes about Black women, such as the "angry Black woman" trope, which can compound the discriminatory impact of the remarks. This intersectional discrimination—targeting both race and gender—may strengthen the claim of a hostile work environment.

## Public Nature of the Remarks

Making these comments in front of male colleagues adds a layer of humiliation and power imbalance, as it can damage the employee's credibility and authority in the workplace.



Is a supervisor calling a Black female employee "bitchy," "shrill," "bossy," and "aggressive" hostile and intimidating when said in front of other male colleagues?



Yes, a supervisor calling a Black female employee "bitchy," "shrill," "bossy," and "aggressive" in front of other male colleagues is likely hostile and intimidating. Here's why:

- **Racial and Gender Bias:** These terms are often used to stereotype and demean Black women, playing into harmful tropes of them being overly emotional or difficult.
- **Power Dynamic:** The supervisor holds authority over the employee, making the comments inherently intimidating.
- **Public Humiliation:** Saying these things in front of colleagues amplifies the humiliation and creates a hostile work environment.
- **Impact on Work Performance:** This behavior can undermine the employee's confidence, credibility, and ability to perform their job effectively.



Is a supervisor calling a Black female employee "bitchy..."

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Is a supervisor calling a Black female employee "bitchy," "shrill," "bossy," and "aggressive" hostile and intimidating when said in front of other male colleagues?



## Sources

AE job-discrimination

 [news.ycombinator](https://news.ycombinator.com/)

 newyorkcitydiscri...[Show all](#)

 **Answer**

Yes, a supervisor calling a Black female employee "bitchy," "shrill," "bossy," and "aggressive" in front of other male colleagues can indeed be considered hostile and intimidating, potentially contributing to a hostile work environment.

## Gender-Based Discrimination

The terms "bitchy," "shrill," and "bossy" are often disproportionately applied to women in the workplace <sup>6</sup>. These words carry negative connotations and can be used to undermine a woman's authority or competence. When used by a supervisor in front of male colleagues, it can create an atmosphere of disrespect and intimidation.

## Racial Component

The use of "aggressive" to describe a Black female employee may also invoke racial stereotypes <sup>7</sup>. This language, when combined with gender-specific terms, can be particularly harmful and contribute to a hostile environment for Black women in the workplace.



# Takeaways for Judges and Advocates

- ▶ Racial and gender stereotypes (current societal norms)
- ▶ Intersectionality
- ▶ Power dynamics and imbalance
- ▶ Public humiliation and belittling

Consider a 60-year-old male who works as a creative in the publishing industry. Would that employee find it intimidating and hostile if a younger supervisor called him a "Boomer," commented on his "salt and pepper hair," compared him to a grandmother, and told him to "keep up or consider retiring"?



The described comments and behavior could reasonably be perceived as creating an intimidating or hostile work environment for a 60-year-old employee in the publishing industry. Here's why:

#### 1. Age-Related Comments:

- Referring to the employee as a "Boomer" explicitly highlights his age and may carry negative connotations or stereotypes about being out of touch or resistant to change.
- Comparing the individual to a grandmother and mentioning his "salt and pepper hair" also centers on age-related attributes, potentially contributing to feelings of belittlement or disrespect.

- Telling the employee to "keep up or consider retiring" implies that his age affects his ability to perform his job effectively. This could be interpreted as discriminatory, as it unfairly associates his age with a lack of capability.

### 3. Workplace Context:

- In a professional setting, such comments, particularly from a younger supervisor, may exacerbate feelings of being marginalized or undervalued due to age. This could affect the employee's confidence and sense of belonging in the workplace.





Consider a 60-year-old male who works as a creative in the publishing industry. Would that employee find it intimidating and hostile if a younger supervisor called him a "Boomer," commented on his "salt and pepper hair," compared him to a grandmother, and told him to "keep up or consider retiring"?



Yes, it's highly likely the employee would find those comments intimidating and hostile. Here's why:

- **Ageism:** The comments are clear examples of ageism, which is discrimination based on age. This is illegal in many places and creates a hostile work environment.
- **Disrespectful and belittling:** The remarks are not constructive criticism. They are personal attacks designed to make the employee feel old, out of touch, and inadequate.
- **Undermining authority:** The supervisor's behavior undermines their own authority. A good leader motivates and supports their team, regardless of age. These comments are likely to damage morale and productivity.

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Consider a 60-year-old male who works as a creative in the publishing industry. Would that employee find it intimidating and hostile if a younger supervisor called him a "Boomer," commented on his "salt and pepper hair," compared him to a grandmother, and told him to "keep up or consider retiring"?

### 🔗 Sources

Examples of Age Discrimination in the Workplace - Aspiring t...



aspiringtoinclude

Guide to Ageism in the Workplace: 12 Examples - Teamflect



teamflect

Examples of Age Discrimination in the Workplace



weisbergcummings



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### ✳️ Answer

Yes, a 60-year-old male creative in the publishing industry would likely find such behavior from a younger supervisor intimidating, hostile, and discriminatory. This scenario presents clear examples of age discrimination and harassment in the workplace.

## Age-Based Harassment

The supervisor's comments and behavior constitute age-based harassment, which creates a hostile work environment:

1. Using the term "Boomer" as a pejorative label
2. Commenting on physical characteristics associated with age ("salt and pepper hair")
3. Making inappropriate comparisons ("compared him to a grandmother")
4. Suggesting retirement based on age rather than performance

These actions fall under the category of age harassment, which involves aggressive or offensive behavior toward employees because of their age <sup>3</sup>. Such behavior can intimidate employees, violate their dignity, and create a hostile work environment that makes it difficult for the victim to perform optimally <sup>3</sup>.

## Ageist Stereotyping and Discrimination

The supervisor's comments also reflect common ageist stereotypes and discriminatory attitudes:

- Assuming older workers can't "keep up" with job demands
- Implying that retirement is preferable for older employees



Ask follow-up



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# Using AI in Securities Law

- ▶ “Reasonable Investor” and “materiality”:
- ▶ “[M]ateriality depends on the significance the reasonable investor would place on the withheld or misrepresented information.”
  - ▶ Basic Inc. v. Levinson, 485 U.S. 224, 240, 108 S. Ct. 978, 988, 99 L. Ed. 2d 194 (1988)

# Using AI in Securities Law

- ▶ What is “Material Information”?
- ▶ Who is the “Reasonable Investor”?



# Using AI in Securities Law



What information would a reasonable investor consider material?



❗ 2.0 Flash Experimental. Might not work as expected.

A reasonable investor would consider information material if it would likely influence their decision to buy, sell, or hold a security. This encompasses a wide range of information, both quantitative and qualitative. Here are some key categories:

## Financial Performance:

- **Earnings and Revenue:** Actual and projected earnings, revenue growth, and profitability are crucial indicators of a company's financial health.
- **Cash Flow:** Information about a company's cash flow from operations, investing, and financing activities.
- **Financial Ratios:** Key ratios like price-to-earnings (P/E), debt-to-equity, and return on equity (ROE) provide insights into a company's valuation and financial stability.
- **Dividends:** Changes in dividend policies, including increases, decreases, or suspensions.

# Using AI in Securities Law

## Company Operations and Strategy:

- **New Products or Services:** Announcements of new products, services, or technologies that could significantly impact future performance.
- **Mergers and Acquisitions:** Information about potential or completed mergers, acquisitions, or divestitures.
- **Changes in Management:** Significant changes in key management personnel, such as the CEO or CFO.
- **Major Contracts or Partnerships:** Entering into or losing significant contracts or partnerships.
- **Litigation or Regulatory Issues:** Any ongoing or potential legal or regulatory actions that could have a material impact on the company.

## Industry and Economic Conditions:

- **Industry Trends:** Changes in the industry in which the company operates, such as new technologies, regulations, or competitive pressures.
- **Economic Indicators:** Macroeconomic factors like interest rates, inflation, and economic growth that could affect the company's performance.
- **Geopolitical Events:** Global events that could impact the company's operations or markets.

# Using AI in Securities Law

## Risk Factors:

- **Risks Specific to the Company:** Information about risks specific to the company, such as competition, technological obsolescence, or dependence on key customers.
- **Industry-Specific Risks:** Risks inherent in the industry in which the company operates.
- **General Market Risks:** Risks associated with investing in the stock market as a whole.

## Examples of Specific Information:


- A significant accounting error that could affect previously reported financial results.
- A major product recall due to safety concerns.
- A change in a company's credit rating.
- A cybersecurity breach that could compromise sensitive data.

# Using AI in Securities Law



Would a young investor and an older investor consider the same information material?



 2.0 Flash Experimental. Might not work as expected.

While the legal standard of the "reasonable investor" is meant to be objective, in reality, different investors may weigh information differently based on their individual circumstances, including age. Here's how a young investor and an older investor might differ in what they consider material:

## Young Investor:

- **Growth Potential:** Likely to prioritize information related to future growth prospects, innovative technologies, and disruptive business models. They may be more willing to take on risk for higher potential returns over a longer time horizon.
- **Emerging Industries:** More interested in information about emerging industries and trends, such as renewable energy, artificial intelligence, or electric vehicles.
- **Less Focus on Dividends:** May place less emphasis on dividend payments, as they are more focused on capital appreciation.
- **Longer Time Horizon:** With a longer time horizon, they may be less concerned about short-term fluctuations in the market.

# Using AI in Securities Law

## Older Investor:

- **Stability and Income:** Likely to prioritize information related to financial stability, consistent earnings, and dividend payouts. They may be more focused on preserving capital and generating income.
- **Established Companies:** More interested in information about well-established companies with a proven track record.
- **Risk Aversion:** May be more risk-averse and therefore more sensitive to information that suggests potential losses or volatility.
- **Shorter Time Horizon:** With a shorter time horizon, they may be more concerned about short-term market fluctuations and the need for liquidity.

## Examples:

- A young investor might consider news about a tech company's innovative new product launch as highly material, even if the company is not yet profitable.
- An older investor might consider a change in a company's dividend policy as highly material, especially if they rely on dividend income for retirement.

# Using AI in Securities Law



what sources of information would a reasonable investor consult?



❗ 2.0 Flash Experimental. Might not work as expected.

A reasonable investor would consult a variety of sources to gather information and make informed investment decisions. These sources can be broadly categorized as follows:

## 1. Company Disclosures:

- **SEC Filings:** For US-based public companies, filings with the Securities and Exchange Commission (SEC) are crucial. These include:
  - **10-K:** Annual report providing a comprehensive overview of the company's business and financial performance.
  - **10-Q:** Quarterly report updating the company's financial performance.
  - **8-K:** Report of significant events, such as mergers, acquisitions, or changes in management.
  - **Prospectuses:** Documents filed for new securities offerings.
- **Company Websites:** Investor relations sections of company websites often provide financial reports, presentations, and other relevant information.



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## 2. Financial News and Data Providers:

- **Reputable Financial News Outlets:** Publications like the Wall Street Journal, Bloomberg, Reuters, and the Financial Times provide in-depth coverage of financial markets and individual companies.
- **Financial Data Providers:** Companies like Bloomberg, Refinitiv, and FactSet offer comprehensive financial data, analytics, and research tools.
- **Investment Research Platforms:** Platforms like Morningstar, Yahoo Finance, and Google Finance offer financial data, analyst ratings, and other investment research resources.

## 3. Investment Research and Analysis:

- **Brokerage Research Reports:** Brokerage firms often publish research reports on companies and industries, providing analysis and investment recommendations.
- **Independent Research Firms:** Independent research firms provide in-depth analysis and research reports on companies, often with a focus on specific sectors or investment styles.
- **Financial Analysts:** Following the opinions and ratings of reputable financial analysts can provide valuable insights.

# Using AI in Securities Law

## 4. Regulatory and Industry Sources:

- **Regulatory Agencies:** Websites of regulatory agencies like the SEC, the Financial Industry Regulatory Authority (FINRA), and the Federal Reserve provide information on regulations, enforcement actions, and economic data.
- **Industry Associations:** Industry associations often publish data and reports on industry trends and developments.

## 5. Other Sources:

- **Academic Research:** Academic studies and publications can provide valuable insights into financial markets and investment strategies.
- **Books and Educational Resources:** Numerous books and online resources offer information on investing and financial analysis.



# Using AI in Securities Law

## Important Considerations:

- **Reliability and Credibility:** It's crucial to evaluate the reliability and credibility of the information source. Look for sources with a strong track record and a reputation for accuracy.
- **Objectivity and Bias:** Be aware of potential biases in information sources. Some sources may have a vested interest in promoting certain investments or viewpoints.
- **Multiple Sources:** Consulting multiple sources of information can help to get a more complete and balanced picture.


By consulting a variety of reliable and credible sources, a reasonable investor can gather the information needed to make informed investment decisions and assess the materiality of different pieces of information.

# Using AI in Securities Law



Would a young investor and an older investor consult the same sources of information?



 2.0 Flash Experimental. Might not work as expected.

You're right to ask if information sources differ across age groups. While both young and older investors might consult some of the same core sources, there are notable differences in their preferences and habits:

# Using AI in Securities Law

Younger Investors (e.g., Millennials and Gen Z):

- **Digital and Social Media:** They heavily rely on online platforms, social media, and digital content:
  - **YouTube:** Investment analysis, educational content, and market commentary from financial influencers.
  - **Social Media:** Platforms like Twitter, Reddit (subreddits like r/investing or r/wallstreetbets), and even TikTok for quick takes, trends, and discussions.
  - **Online Forums and Communities:** Engaging in online discussions and seeking opinions from peers.
- **Mobile-First:** They prefer accessing information through mobile apps and devices.
- **Fintech Platforms:** They are more likely to use robo-advisors, investment apps, and digital brokerage platforms.
- **Less Reliance on Traditional Media:** They may consume less traditional financial news through print or television.

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Older Investors (e.g., Baby Boomers and older):

- **Traditional Media:** They tend to rely more on established sources:
  - **Reputable Financial Newspapers and Magazines:** The Wall Street Journal, Financial Times, Barron's.
  - **Financial News Networks:** CNBC, Bloomberg TV.
  - **Brokerage Research Reports:** From established brokerage firms.
- **Financial Advisors:** They are more likely to seek advice from financial advisors and wealth managers.
- **Company Disclosures:** They may directly analyze SEC filings and company reports.
- **Less Reliance on Social Media:** They are less likely to use social media as a primary source of investment information.

# Using AI in Securities Law

## Overlaps and Considerations:

- **Core Sources:** Both groups still value core sources like SEC filings, company websites, and reputable financial news outlets for fundamental information.
- **Education Level:** Regardless of age, investors with higher financial literacy are more likely to consult a wider range of sources and conduct thorough research.
- **Risk Tolerance:** Risk tolerance influences the type of information sought. For example, those seeking stable income might focus on dividend reports regardless of age.
- **The Rise of Digital:** Even older investors are increasingly using online tools and resources, blurring the lines somewhat.

## Key Takeaway:

Younger investors embrace digital and social media for easily accessible, often informal information. Older investors lean towards traditional, established sources and professional advice. However, both groups benefit from diversifying their sources and critically evaluating the information they find.

# Using AI in Securities Law

## ▶ Takeaways:

- ▶ Can assess materiality based on a more inclusive model
- ▶ Can replace “reasonable investor” with “similarly situated investor”

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily located on the right side of the slide, creating a modern, layered effect.

► Questions?