

# Proler in Bloomberg Law: AI Notetaking Poses Wiretapping, Discovery and Ethical Pitfalls

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**PRACTICES** AI and Deep Learning, AI and Technology, Litigation

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In a recent article for *Bloomberg Law*, Haynes Boone Counsel [Shayna Goldblatt Proler](#) discusses how companies are increasingly using AI notetaking tools that record, transcribe and organize meeting conversations, but the law hasn't kept pace – creating uncertainty around wiretapping, discovery obligations and attorney ethics.

Read an excerpt below.

## **Notetaking and Discovery**

AI notetaking has created an entirely new category of documents in the discovery process, and their existence raises discovery and evidentiary questions.

From a discovery perspective, courts will need to determine who has possession, custody, and/or control of the notes to decide what must be produced (particularly when vendors have access to or retain data).

Work-product protection may apply to meeting recordings or summaries prepared in anticipation of litigation, but that protection is limited and fact-specific.

Given the prevalence of AI notetaking tools, it's only a matter of time before evidentiary issues like authenticity and accuracy come before the courts. In 2024's *Dixon v. Royal Live Oaks Academy of the Arts*, the US District Court for the District of South Carolina declined to consider auto-generated transcripts at summary judgment because the transcripts contained "errors."

Attorney ethics are unclear. Undisclosed recordings aren't unethical per se if they're legal and not deceitful. But because lawyers can't ethically do what's illegal, undisclosed recording remains unlawful and unethical in all-party states.

Yet even when allowed, using AI notetaking may still draw court ire and skepticism. Some courts, emphasizing candor, have compelled disclosure or imposed sanctions, even when ethics opinions didn't bar recording.

## **Practical Safeguards**

Until courts or legislatures answer key questions, two stopgaps stand out.

The first is requiring all-party consent and providing explicit disclosures whenever AI takes notes. That could include verbal scripts, pre-meeting calendar language, on-screen banners, and roll-call consent, with procedures for late joiners, objections, and revocations. The Otter.ai plaintiffs applaud similar steps from other AI notetakers.

The second is a plan for use and access rights in vendor contracts. The choice to maintain those rights with an AI vendor increases the chances of potential liability and future discovery obligations.

Those steps help capture the benefits of AI notetakers while avoiding the sharp edges of wiretap and ethics risks.

Read the full article on *Bloomberg Law* [here](#).