Robot, Esquire? The Case of *Lola v. Skadden* and its Potential Application and Ramifications on the Concept of the Practice of Law in the Philippines

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This Essay is an edited version of the Author's final paper for the course entitled, "Robots, Artificial Intelligence, and the Law" at the Ateneo de Manila University School of Law, under Atty. Ignatius Michael D. Ingles.

Cite as 64 ATENEO L.J. 1287 (2020).

I. INTRODUCTION

Robots have captured the imagination of people since the word was first conceived in 1921.[1] With almost a century having passed, robots have undeniably become more of a reality than something that came straight out of a science fiction film. Gone are the days when robots like C-3PO and R2-D2 from *Star Wars* fame were thought of as things that only belonged to a place in a galaxy far, far away.[2] This is best exemplified by robots like Asimo, which has taken on a more conventional robotic form,[3] and Sophia, a robot that has the ability to mimic human mannerisms, which was controversially granted citizenship by the government of the Kingdom of Saudi Arabia in 2017 — a state that has a less-than-stellar record with regard to women's rights.[4]

Although Asimo and Sophia are what most likely first come to mind when one thinks of a robot, robots can take on numerous forms — such as computer software and self-driving cars. For purposes of this Essay, robots will be understood to pertain to any object that is capable of calculation and processing.[5] This is an important factor to note because one of the main discussion points in this Essay pertains to a computer program, which is not conventionally thought of as being a robot.

Withal, the rise of these robots has undoubtedly coincided with the massive strides technology has made in modern times, with three particular technologies being cited as the most significant contributors in robot technology: sensors, actuators, and artificial intelligence (AI).[6] Sensors are,

1. Matt Simon, The WIRED Guide to Robots, *available at* https://www.wired.com/story/wired-guide-to-robots (last accessed Feb. 29, 2020).
2. C-3PO and R2-D2 are iconic characters from the popular Star Wars films. STAR WARS EPISODE IV: A NEW HOPE (Lucasfilm Ltd. 1977).
3. *See* INNOVATIONS Advancing Human Mobility, *available at* https://asimo.honda.com/innovations (last accessed Feb. 29, 2020) & HISTORY OF ASIMO, *available at* https://asimo.honda.com/asimo-history (last accessed Feb. 29, 2020).
4. Noel Sharkey, Mama Mia It's Sophia: A Show Robot Or Dangerous Platform To Mislead?, *available at* https://www.forbes.com/sites/noelsharkey/2018/11/17/mama-mia-its-sophia-a-show-robot-or-dangerous-platform-to-mislead/#519bdb397ac9 (last accessed Feb. 29, 2020).
5. The Author provides his own working definition.
6. Simon, *supra* note 1.

essentially, what enables robots to become more aware of its surroundings, while actuators are the hardware that makes robots perform all sorts of different actions.[7] These are the things that, for example, make a self-driving car know whether or not there is a pedestrian crossing the road in front of it, while making the necessary adjustments to its speed, in order to ensure that it comes to a full stop without hitting the person. Moreover, AI, naturally, develops as sensors continue to improve.[8] These days, with processors getting smaller and more powerful, these "brains" of robots grow exponentially in terms of computing power and, as a result, enable robots to accomplish gradually complicated tasks.

Indubitably, robots, in their current form, were conceived to make life even more comfortable and convenient for humans, especially to those who can afford them.[9] This is especially true for more sophisticated societies, such as Japan, which is the country that is considered to be leading the way in robot technology.[10] Nowadays, robots can be swimming pool cleaners,[11] vacuum cleaners,[12] smart refrigerators,[13] and even personal assistants,[14] among other things. Notably, there is also a rising trend with regard to

7. *Id.*

8. *Id.*

9. *See* Rozina Sabur, Can robots make your life easier? We look at 14 of the best, *available at* https://www.telegraph.co.uk/technology/advice/11863483/Can-robots-make-your-life-easier-We-look-at-14-of-the-best.html (last accessed Feb. 29, 2020).

10. CBS News, Replacing Humans: Robots Among Us, *available at* https://www.cbsnews.com/news/robots-replacing-humans-cbsn-originals (last accessed Feb. 29, 2020).

11. *See* Swim University, 9 Best Robotic Pool Cleaners, *available* at https://www.swimuniversity.com/best-robotic-pool-cleaners (last accessed Feb. 29, 2020).

12. *See* Paul Lamkin, Best robot vacuum cleaners 2020: Roomba, Neato, Roborock and more, *available at* https://www.the-ambient.com/reviews/the-best-robot-vacuum-cleaners-353 (last accessed Feb. 29, 2020).

13. *See* Samsung, It's more than a fridge, it's the Family Hub™, *available at* https://www.samsung.com/us/explore/family-hub-refrigerator/overview (last accessed Feb. 29, 2020).

14. *See* David Priest & Megan Wollerton, The best Amazon Alexa devices for 2020, *available at* https://www.cnet.com/news/the-top-10-amazon-alexa-devices-for-2020-echo-dot-ring-arlo-flex (last accessed Feb. 29, 2020).

automation and the use of robots in fields like caregiving,[15] manufacturing,[16] banking,[17] and transportation,[18] to name a few.

The advent of robotics, however, has raised a multitude of questions. These concerns range from valid and relatively imminent concerns, such as the prospect of robots replacing human jobs,[19] to almost apocalyptic — akin to that of the *Terminator* series of Arnold Schwarzenegger[20] — something that was ushered into mainstream attention by a much-publicized debate between Facebook's Mark Zuckerberg and Tesla's Elon Musk that made its round on the Internet.[21] At the very center of this "spat" between two heads of technological giants was a very simple issue — whether robots will eventually eradicate human life.[22] Musk expressed some worry about the bleak future robots and AI will have, with him pushing for some overarching regulation.[23] Zuckerberg, however, argued that Musk seemed to approach the topic with limited knowledge, and dismissed his counterpart's worries as "irresponsible."[24] This highly publicized spat only further demonstrates how much divergence there is between and among different experts pertaining to robots and AI — even among supposedly the most tech-savvy of people.

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15. *See* Michael Decker, *Caregiving robots and ethical reflection: the perspective of interdisciplinary technology assessment*, 22 AI & SOC'Y 315, 321-22 (2008).

16. *See* Suzie Dundas, Robots Replacing Humans In Manufacturing? Not So Fast, New Study Says, *available at* https://www.forbes.com/sites/suziedundas/2018/11/12/robots-replacing-humans-in-manufacturing-not-so-fast-new-study-says/#7a226df97fb1 (last accessed Feb. 29, 2020).

17. *See* Federico Berruti, et al., The transformative power of automation in banking, *available at* https://www.mckinsey.com/industries/financial-services/our-insights/the-transformative-power-of-automation-in-banking (last accessed Feb. 29, 2020).

18. *See* Matthew Segel, et al., Transportation invests for a new future: Automation is rapidly accelerating and disrupting the industry, *available at* https://www.strategyand.pwc.com/report/transportation-invests-future (last accessed Feb. 29, 2020).

19. CBS News, *supra* note 10.

20. THE TERMINATOR (Orion Pictures 1984).

21. Ian Bogost, Why Zuckerberg and Musk Are Fighting About the Robot Future, *available at* https://www.theatlantic.com/technology/archive/2017/07/musk-vs-zuck/535077 (last accessed Feb. 29, 2020).

22. *Id.*

23. *Id.*

24. *Id.*

Given the countless number of issues — ranging from the practical to religious to legal to philosophical to moral and anything and everything in between — this Essay will be limited to one particular field — the practice of law. In particular, the discussion will be based on the 2015 case of *Lola v. Skadden*,[25] which was rendered by the United States (U.S.) Court of Appeals for the Second Circuit. Put simply, the case tackled an issue pertaining to the definition of "practice of law" with regard to tasks that could be accomplished by a computer — particularly software in that case — even though it was not seemingly the main issue that was posed before the court. More of the case will be discussed in more depth later in this Essay. A brief background into the very concept of the "practice of law" in the U.S. and the Philippines, however, is in order.

II. PRACTICE OF LAW

A. United States

The U.S., being a State with a federal form of government, decentralized the legal practice onto its 50 states, with each state having a different definition of what constitutes the "practice of law."[26] Simply put, each State is responsible for the practice in its respective jurisdiction. The practice covers all possible fields of law. As compared to the British system, however, which features solicitors and barristers,[27] American attorneys do not have a clear delineation between those who appear in court to litigate and those who do not,[28] respectively.

In terms of the practice of law's regulation, its enforcement is vested in the supreme courts of each respective State, with integrated bar associations taking the lead in terms of setting rules for practice.[29] This arrangement arose

25. Lola v. Skadden, Arps, Slate, Meagher & Flom LLP, 620 F. Appx. 37 (2d Cir. 2015) (U.S.).

26. *See generally* American Bar Association, Task Force on the Model Definition of the Practice of Law at app. A, *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-def_migrated/model_def_statutes.pdf (last accessed Feb. 29, 2020) [hereinafter Task Force].

27. Marilyn J. Berger, *A Comparative Study of British Barristers and American Legal Practice and Education*, 5 NW. J. INT'L L. & BUS. 540, 542 (1983).

28. *Id.* at 552.

29. Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 FORDHAM L. REV. 2581, 2582 (1999).

out of the need for lawyers to keep the profession exclusively amongst themselves.[30] In fact, mandatory membership in a bar association, is more often than not, a requirement before one is allowed to practice in a State, something that the U.S. Supreme Court held as constitutional, and not in violation of lawyers' rights.[31] Essentially, the Court posed a straightforward option: join and be allowed to practice, or opt not join and not be allowed to practice[32] — it is a choice to be made, one without any compulsions.

In addition, the unauthorized practice of law is one thing that is generally proscribed in every State, in spite of the fact that there is no single definition for what the practice of law is in the first place.[33] However, the "practice of law" has been generally defined as "providing advice and counsel regarding legal matters, providing legal representation, and drafting legal documents[,]"[34] but this definition, is in no way, authoritative.

Pertinently, regarding the current discussion, a survey of the rules governing the practice found that the word "person" is mentioned. The American Bar Association (ABA)'s Model Rules of Professional Conduct,[35] which serves as the model for ethics rules in most U.S. jurisdictions,[36] makes mention of the word "person" in conjunction with the rules relating to the unauthorized practice of law. But, its use is seemingly limited to distinguish lawyers from those who are not, while emphasizing this distinction.[37] Nevertheless, the constant use of the word "lawyer" connotes acts performed by a natural person. Additionally, the same rules also prohibit non-lawyer interest in law firms.[38] This has led to a finding that "lawyers

30. *Id.*

31. *Id.* at 2582-83 (citing United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217, 222 (1967) & Lathrop v. Donohue, 367 U.S. 820, 843 (1961)).

32. *Id.*

33. Denckla, *supra* note 29, at 2581.

34. Michael Simon, et al., *Lola v. Skadden and the Automation of the Legal Profession*, 20 YALE J.L. & TECH. 234, 260 (2018) (citing Task Force, *supra* note 26, app. A).

35. American Bar Association, Model Rules of Professional Conduct – 1. About the Model Rules, *available at* https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct (last accessed Feb. 29, 2020).

36. *Id.*

37. *See* American Bar Association, *supra* note 35, rule 5.5 (c) (2), (d), & (e) (2).

38. *Id.* rule 5.4.

have effectively prevented machines from 'practicing law' and have precluded non-lawyer investment in the 'practice of law.'"[39]

Given the foregoing, coupled with the discussion and consequent analysis of the *Lola* case later on in this Essay, the importance and potential consequences of the Second Circuit's ruling will be even more apparent. The impact of the case is so significant that the actions of David Lola, the petitioner, are said to have "inadvertently nudged open the floodgates to automation within the legal profession."[40]

B. Philippines

The Philippines, unlike the U.S., adheres to a unitary form of government, which, in effect, has its implications on the practice of law. The 1987 Constitution even vests onto the Supreme Court the power to "[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, *practice*, and procedure in all courts, *the admission to the practice of law*, *the* [*i*]*ntegrated* [*b*]*ar*, and legal assistance to the underprivileged."[41] This means that the Court effectively has control over all aspects pertaining to the practice of law, which is in stark contrast to the powers devolved onto state supreme courts in the U.S.[42] As a result, the more centralized regulation of the practice of law by the Court makes the concept much clearer and delineated. In fact, the Integrated Bar of the Philippines (IBP) was ordained by the Court in 1973 through a *per curiam* Resolution[43] after the power to impose rules to effect the IBP was confirmed by the Philippine legislature through Republic Act No. 6397.[44] In the U.S., bar integration was a result of the formation of associations. Nonetheless, IBP membership is mandatory, which was the subject of a constitutional challenge that the Court dismissed.[45] In terms of practice,

39. Simon, et al., *supra* note 34, at 237.

40. *Id.*

41. PHIL. CONST. art. VIII, § 5 (5) (emphases supplied).

42. *See* Task Force, *supra* note 26, app. A.

43. In the Matter of the Integration of the Bar of the Philippines, 49 SCRA 22 (1973).

44. An Act Providing for the Integration of the Philippine Bar, and Appropriating Funds Therefor, Republic Act No. 6397 (1971).

45. *See* Denckla, *supra* note 29, at 2582-83.

Philippine attorneys are similar to those in the U.S., as there is likewise no distinction between those who appear in court and those who do not.[46]

The regulation by the Supreme Court is best seen in the way that legal ethics is codified under the Rules of Court,[47] whereas in the U.S., as already discussed, the ABA Model Rules serve as precisely that — a model — from which states adopt their own rules.[48] Essentially, States are left to their own devices, when it comes to crafting their respective rules; whereas, all Philippine lawyers are bound by the rules promulgated by the Court. Succinctly, Rule 138 of the Philippine Rules of Court provide that "[a]ny person heretofore duly admitted as a member of the bar, or hereafter admitted as such in accordance with the provisions of this rule, and who is in good and regular standing, is entitled to practice law."[49] What is significant to note here is that the rule explicitly makes mention of the word "person," which is contrasted by the rather loose language employed by the American rules. A subsequent provision limits the practice to Philippine citizens, among other requirements.[50] As to whether these requirements will have an effect on the automation of the legal profession will be part of the analysis portion of this Essay.

Additionally and notably, the Philippines has a jurisprudential definition of what constitutes the "practice of law." This is thanks to the landmark case of *Cayetano v. Monsod*,[51] where in the Supreme Court ruled that the practice "means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training[,] and experience. 'To engage in the practice of law is to perform [ ] acts which are [ ] [usually performed by members] of the [legal] profession.'"[52] This definition will be explored in more depth once more later on in this Essay, particularly in the analysis of the *Lola* case and its potential application to the Philippines.

Now that a background on the concept of the "practice of law" has been provided — both in the American and Philippine contexts — the discussion will now turn to the focal point of this paper — the case of *Lola v. Skadden*.

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46. *See* 1964 LEGAL ETHICS, rule 138, §§ 20 & 21.

47. 1964 LEGAL ETHICS, rules 135-44.

48. American Bar Association, *supra* note 35.

49. *Id.* rule 138, § 1.

50. *Id.* rule 138, § 2.

51. Cayetano v. Monsod, 201 SCRA 210 (1991).

52. *Id.* at 274.

III. *LOLA V. SKADDEN*

The case involved David Lola, a contract attorney and resident of North Carolina, suing for himself and on behalf of others for damages against the defendants Skadden, Arps, Slate, Meagher & Flom LLP and Tower Legal Staffing, Inc.[53] The former defendant is a Delaware limited liability partnership based in New York, while the latter is a New York corporation that provides lawyers on a contract basis to law firms.[54] It is interesting to note that, at the time, the fact that the Second Circuit decided to take Lola's appeal came at a surprise to commentators, given how: (1) seemingly trivial the case was and (2) the U.S. District Court for the Southern District of New York (SDNY), where the case was originally filed, usually disposed of the cases rather easily, speedily, and efficiently given the clarity of the law being applied.[55]

A. Background

Lola alleged that he worked for the defendants for 15 months, doing document review for a particular litigation before the U.S. District Court for the Northern District of Ohio.[56] The focal point of Lola's contention was, *viz* —

> Lola alleges that his work was closely supervised by the Defendants, and his 'entire responsibility ... consisted of[:] (a) looking at documents to see what search terms, if any, appeared in the documents, (b) marking those documents into the categories predetermined by Defendants, and (c) at times drawing black boxes to redact portions of certain documents based on specific protocols that Defendants provided.' Lola further alleges that Defendants provided him with the documents he reviewed, the search terms he was to use in connection with those documents, and the procedures he was to follow if the search terms appeared. Lola was paid $25 an hour for his work, and worked roughly [45] to [55] hours a week. He was paid at the same rate for any hours he worked in excess of forty hours per week. Lola was told that he was an employee of Tower, but he was also told that he needed to follow any procedures set by Skadden attorneys, and he worked under the supervision of Skadden attorneys. Other attorneys employed to work on the same project performed similar work

53. *Lola*, 620 F. Appx. at 38-39.

54. *Id.*

55. Simon, et al., *supra* note 34 at 239.

56. *Lola*, 620 F. Appx. at 39.

> and were likewise paid hourly rates that remained the same for any hours worked in excess of forty hours per week.[57]

Essentially, this case was a labor dispute that was brought about by unpaid overtime wages. The law that was the subject of this case was the Fair Labor Standards Act (FLSA),[58] which mandates that employers pay employees for overtime services rendered.[59] Lola alleged that the defendants had violated the overtime provision under the FLSA, which entitled him to damages.[60] To the defendants, however, Lola was not entitled to overtime pay and moved to dismiss the case.[61] This is because the law exempts licensed attorneys engaged in the practice of law from the overtime pay requirement — being employed in a professional capacity[62] — which, according to them, Lola fell under.[63] The SDNY granted the motion, finding that:

> (1) ... state, not federal, standards applied in determining whether an attorney was practicing law under FLSA; (2) North Carolina had the greatest interest in the outcome of the litigation, thus North Carolina's law should apply; and (3) Lola was engaged in the practice of law as defined by North Carolina law, and was therefore an exempt employee under FLSA.[64]

Thus, Lola appealed the ruling to the Second Circuit.[65] What was at the center of the controversy was the definition of the "practice of law," as it was undisputed that Lola was an attorney licensed to practice in California, but conducted document review in North Carolina, where he had no license.[66]

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57. *Id.* at 40.

58. The Fair Labor Standards Act of 1938, 29 U.S.C. § 201-19 (1938) (U.S.) [hereinafter FLSA].

59. *Id.*

60. *Lola*, 620 F. Appx. at 39.

61. *Id.* at 40.

62. FLSA, § 213 (a) (1).

63. *Lola*, 620 F. Appx. at 40.

64. *Id.* (citing Lola v. Skadden, Arps, Slate, Meagher & Flom, LLP, No. 13-cv-5008 (RJS) (S.D.N.Y. 2014) (U.S.)).

65. *Lola*, 620 F. Appx. at 40.

66. *Id.* at 41.

B. Ruling

First, Lola asked the Second Circuit to come up with a federal definition of the "practice of law."[67] This was quickly declined by the court, as it agreed with the SDNY that "the definition of 'practice of law' is 'primarily a matter of state concern.'"[68] It cited the case of *Kamen v. Kemper Financial Services, Inc.*,[69] which provided that state law should be deemed incorporated into federal common law as a general rule, to wit —

> [T]he Supreme Court explained that 'where a gap in the federal securities laws must be bridged by a rule that bears on the allocation of governing powers within the corporation, federal courts should incorporate state law into federal common law unless the particular state law in question is inconsistent with the policies underlying the federal statute.'[70]

Furthermore, the court discussed what was discussed earlier in this Essay, which was the fact that the regulation of law practice is one that was left to the states. It provided,

> Just as 'there is no federal law of domestic relations,' here there is no federal law governing lawyers. Regulating the 'practice of law' is traditionally a state endeavor. No federal scheme exists for issuing law licenses. As the district court aptly observed, '[s]tates regulate almost every aspect of legal practice: they set the eligibility criteria and oversee the admission process for would-be lawyers, promulgate the rules of professional ethics, and discipline lawyers who fail to follow those rules, among many other responsibilities.'[71]

The court then proceeded to determine a conflict of laws issue, that is the State law to be applied in terms of considering the definition of "practice of law."[72] This was necessary considering that Lola was licensed in California, but undertook the work in North Carolina for a Delaware limited liability, based in New York, for a litigation taking place in Ohio.[73] Ultimately, the court found that the laws of North Carolina were to be used,

67. *Id.*

68. *Id.*

69. Kamen v. Kemper Financial Services, Inc., 500 U.S. 90 (1991).

70. *Lola*, 620 F. Appx. at 41 (citing *Kamen*, 500 U.S. at 108).

71. *Id.* at 42 (citing *Lola*, 2014 WL 4626228 at *4).

72. *Lola*, 620 F. Appx. at 42.

73. *Id.*

considering that it is where the services were rendered, as well as where Lola resided.[74]

The Second Circuit court then looked into the definition of the "practice of law" under North Carolina law. It found, to wit —

> North Carolina defines the 'practice of law' in its General Statutes, Section 84–2.1, which provides that the phrase 'practice law' as used in this Chapter is defined to be 'performing any legal service for any other person, firm or corporation, with or without compensation, specifically including ... the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm[,] or corporation ...' .[75]

The court also provided for North Carolina State law's definition of the concept of unauthorized practice of law, *viz* —

> North Carolina courts typically read Section 84–2.1 in conjunction with Section 84–4, which defines the unauthorized practice of law as follows: Except as otherwise permitted by law, ... it shall be unlawful for any person or association of persons except active members of the Bar, for or without a fee or consideration, to give legal advice or counsel, [or] perform for or furnish to another legal services ... .[76]

From this definition, the important question to be addressed was whether document review fell under the definition of "legal services" — which was something that North Carolina General Statutes did not explicitly provide. To answer this issue, the court consulted a North Carolina State Bar opinion[77] regarding a lawyer seeking legal support services abroad from a non-lawyer or lawyer not authorized to practice in the U.S., which was also relied upon by the SDNY to rule against plaintiff.[78] The lower court ruled that, given the opinion, "any level of document review is considered the 'practice of law' in North Carolina."[79] On this point, the Second Circuit's opinion diverged from that of the lower court. It ruled, in this wise —

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74. *Id*. at 43.

75. *Id*. (citing N.C. Gen. Stat. § 84–2.1 (2016)).

76. *Lola*, 620 F. Appx. at 43 (citing N.C. Gen. Stat § 84-4).

77. N.C. State Bar Ethics Committee, 2007 Formal Ethics Op. 12 (Apr. 25, 2008) (U.S.).

78. *Lola*, 620 F. Appx. at 43-44.

79. *Id*. at 44 (citing *Lola*, 2014 WL 4626228, at *12).

> The district court erred in concluding that engaging in document review per se constitutes practicing law in North Carolina. The ethics opinion does not delve into precisely what type of document review falls within the practice of law, but does note that while 'reviewing documents' may be within the practice of law, '[f]oreign assistants may not exercise independent legal judgment in making decisions on behalf of a client.' The ethics opinion strongly suggests that inherent in the definition of 'practice of law' in North Carolina is the exercise of at least a modicum of independent legal judgment.[80]

The court also noted two North Carolina court decisions[81] that essentially provided that the exercise of legal judgment would partly support of a finding of unauthorized practice of law. It likewise noted decisions of other states on the matter, which likewise found that the exercise of legal judgment as a necessary element to the practice of law.[82]

In reaching its conclusion, the court made its most remarkable disquisition, which is what is most relevant to this discussion. It held,

> The gravamen of Lola's complaint is that he performed document review under such tight constraints that he exercised no legal judgment whatsoever [—] he alleges that he used criteria developed by others to simply sort documents into different categories. Accepting those allegations as true, as we must on a motion to dismiss, we find that Lola adequately alleged in his complaint that he failed to exercise any legal judgment in performing his duties for Defendants. *A fair reading of the complaint in the light most favorable to Lola is that he provided services that a machine could have provided. The parties themselves agreed at oral argument that an individual who, in the course of reviewing discovery documents, undertakes tasks that could otherwise be performed entirely by a machine cannot be said to engage in the practice of law.* We therefore vacate the

80. *Lola*, 620 F. Appx. at 44 (citing N.C. State Bar Ethics Committee, *supra* note 77).

81. N.C. State Bar v. Lienguard, Inc., No. 11– cvs–7288, 2014 WL 1365418, at *6–7 (N.C. Super. Ct. 2014) (U.S.) & LegalZoom.com, Inc. v. N.C. State Bar, No. 11– cvs–15111, 2014 WL 1213242, at *12 (N.C. Super. Ct. 2014) (U.S.).

82. *Lola*, 620 F. Appx. at 44-45 (citing In re Discipline of Lerner, 124 Nev. 1232, 197 P.3d 1067, 1069–70 (2008) (U.S.); People v. Shell, 148 P.3d 162, 174 (Colo. 2006) (U.S.); Or. State Bar v. Smith, 942 P.2d 793, 800 (1997) (U.S.); In re Discipio, 163 Ill. 2d 515, 206 Ill. Dec. 654, 645 N.E.2d 906, 910 (1994) (U.S.); & In re Rowe, 80 N.Y.2d 336, 341–42, 590 N.Y.S.2d 179, 604 N.E.2d 728 (1992) (U.S.)).

> judgment of the district court and remand for further proceedings consistent with this opinion.[83]

Seemingly, out of nowhere, the Second Circuit found that conducting document review, which is what Lola undertook for the defendants, was an act that machines were capable of doing.[84] As a result, it ruled that whatever can be "performed entirely by a machine" cannot be construed to fall under the "practice of law."[85] Barring the aforementioned paragraph, a reading of the entire decision would probably not provide the reader with an inkling that the court would suddenly make a pronouncement that brings with it some significant ramifications, which will be discussed below.

Interestingly, the court's rather spontaneous decision apparently arose from a random question during the oral arguments before the Second Circuit.[86] Judge Raymond Lohier, Jr., who questioned defendant Skadden's lawyer about computerization.[87] In fact, "this line of questioning was the first time in any case where the judges clearly indicated that 'legal' tasks completed by machines were not 'legal' at all and could not be considered the 'practice of law.'"[88] Additionally, "[t]he issue of 'legal work' performed by machines was neither raised at the district court level nor brought up by either party in briefings, and yet it became the deciding factor regarding whether Lola was practicing law."[89] Be that as it may, the decision now serves as a legal springboard to discuss the issue of automation in a legal field that prides itself on its exclusivity and status, which will be discussed next: the analysis of the *Lola* case and its ramifications on the legal profession, especially in the Philippine context.

IV. ANALYSIS AND APPLICATION

A. United States

The fallout from the *Lola* case did not attract much fanfare in legal circles, despite its seemingly significant takeaway. In fact, the Author is aware of the case being subjected to analysis in just two prominent law reviews, namely in

83. *Lola*, 620 F. Appx. at 45 (emphasis supplied).

84. *Id.*

85. *Id.*

86. Simon, et al., *supra* note 34, at 244.

87. *Id.*

88. *Id.*

89. *Id.*

the *Yale Journal of Law & Technology* (YJOLT)[90] and the *Harvard Law Review*.[91] Additionally, the latter feature was a case comment that focused on the FLSA and the misapplication of state law definitions with regard to a federal law rather than the automation holding of the Second Circuit.[92] Nevertheless, the discussion of Michael Simon, Alvin F. Lindsay, Loly Sosa, and Paige Comparato — lawyers who specialize in technology law — in YJOLT is instructive. Aptly titled *Lola v. Skadden and the Automation of the Legal Profession*, it provides a good discussion point for purposes of this Essay and provides basis in determining how the case is seen from the American perspective.

Indeed, there is no debate that technology is advancing at a pace that has never been seen before. What this means to the legal profession, however, is far from settled. Compared to other professions, though, the legal profession is one that has been on the rigid end of adapting to change. In fact, in the U.S., the field is defiant and is seen to have an "unwavering inability to adapt."[93] This is probably best seen in the way that the legal profession is self-regulating, which goes into the discussion earlier in this Essay about each state handling its own affairs. In other words, lawyers make their own rules for how they want to do their jobs.

Nevertheless, the significance of the *Lola* case is that it gets the ball rolling, in such a way that it may force this tight grip on the legal profession to loosen, even if it is against the will of those interested or involved. This is especially true considering that it is a case rendered by a three-judge panel in the form of the Second Circuit, whose decisions are vested with the "law of the circuit," which means subsequent panels in the same circuit must adhere to whatever was handed down before them,[94] but this, of course, has its

90. *See* Simon, et al., *supra* note 34.

91. *Lola v. Skadden, Arps, Slate, Meagher & Flom LLP*, 129 HARV. L. REV. 843 (2016).

92. *Id.* at 847–50.

93. Simon, et al., *supra* note 34, at 257 (citing Jason Tashea, #MakeLawBetter: Keynote address lays out the future of legal services, *available at* http://www.abajournal.com/news/article/makelawbetter_keynote_address_lays_out_the_future_of_legal_services (last accessed Feb. 29, 2020) & Ken Grady, Stagnation And The Legal Industry, *available at* http://medium.com/the-algorithmicsociety/stagnation-and-the-legal-industry-bc801a8b4d38 (last accessed Feb. 29, 2020)).

94. Joseph W. Mead, *Stare Decisis in the Inferior Courts of the United States*, 12 NEV. L.J. 787, 789 (2012).

exceptions.[95] As to whether other circuits will follow suit remains to be seen. Despite this, a precedent has still been handed down.

Not to mention, *Lola* is seen as "extraordinary," as it constituted the first judicial step in distancing the work of lawyers from that of machines.[96] In agreeing with Lola, the Circuit's conclusion was based less on the question of Lola's work and more on the nature of the computer's work. If, after all, a computer could perform the same function as a contract attorney, could that work truly be considered the "practice of law" when performed by a human being instead?[97]

Withal, it is safe to say that the concept of the "practice of law" has definitely been supplemented by *Lola*. What it also does is provide some much needed clarity into what the practice is and is not, particularly when dealing with everyday machines like laptops and desktop computers. Simon, et al., describes the long-term effect of *Lola* best, in this manner —

> *Lola* is a watershed decision that underscores the importance of how the 'practice of law' will be defined in the next few decades. According to the *Lola* decision, if a lawyer is performing a particular task that can be done by a machine, then that work is not practicing law. A fair expansion of that concept would leave any legal task traditionally performed by lawyers at risk of losing legal status simply because a computer would be able to do it. On the one hand, allowing the capabilities of the machines to define the parameters of the 'practice of law' opens the door to greater innovation within the legal field, as such capabilities would not be regulated by rules governing the profession. Under this approach, as machine capabilities improve, more and more tasks will become removed from what we call the practice of law. The more common 'practice of law' interpretation, however, does not distinguish between lawyer and machine, and instead requires that tasks that have been traditionally 'legal' in nature remain within the 'practice.' Historically, this definition of the 'practice of law' has stymied innovation, but has saved attorneys' jobs. Although technology will continue to evolve and some encroachment into the field by machines is inevitable, the latter approach will prove most protective for legal workers.[98]

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95. *Id.* at 794-800.

96. Simon, et al., *supra* note 34, at 247.

97. *Id.* (citing Kathryn Rubino, Second Circuit Sympathetic To Contract Attorneys?, *available at* https://abovethelaw.com/2015/06/second-circuit-sympathetic-to-contract-attorneys (last accessed Feb. 29, 2020)).

98. *Id.* at 248.

Of course, this means that there must be some adjustments needed moving forward. Technology will only continue to evolve and a number of things that were traditionally considered the "practice of law" may no longer be years from now. This poses a problem, especially for those lawyers whose careers are not so much founded on dealing with clients or advocating in court, but based on largely mechanical acts, such as Lola, who was a contract attorney. After all, as was discussed, American lawyers have a multifaceted range of duties, which puts them in a more advantageous position compared to the narrower definition provided for British lawyers. Unfortunately for Lola, though, his specialized legal career choice was effectively deemed not the practice of law by the Second Circuit.[99] In fact, Simon, et al., reported that, in the wake of the ruling, Lola was unable to find reemployment in the contract review industry, as he thinks he was "blackballed," and was considering transitioning to a house building business.[100] Simon, et al., offer numerous suggestions, but they all basically boil down to one thing: "the legal profession needs to stop relying on the obsolete armor that has protected it in the past, overcome its fear of technology, and find the means to wield technology to its greater benefit."[101]

Thus, in terms of the American perspective, there definitely are numerous pros and cons to the Second Circuit's ruling in *Lola* that each have to be weighed and scrutinized individually. Because a precedent was handed down by a federal circuit appellate court, cases similarly handed should probably be decided the same way, again barring some exceptions. Importantly, the ruling shows just how much technology will continue to affect people of all walks of life, with lawyers not being spared from a discussion. What is indubitable is the fact that technology will change and develop regardless if industries do not. In the U.S., things are changing faster than elsewhere, so plans need to be put in place. This is easier said than done considering that 50 states all have different ways of dealing with the legal profession. Nonetheless, the concept of the "practice of law" in the U.S. will definitely be something that will again be subject to modification, as was seen in *Lola* — the question is just a matter of how much it will.

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99. *See Lola*, 620 F. Appx. at 45.

100. Simon, et al., *supra* note 34, at 247-48 (citing Rubino, *supra* note 97 & Alison Frankel, The sad tale of the contract lawyer who sued Skadden (and lost), *available at* http://blogs.reuters.com/alison-frankel/2014/09/17/the-sad-tale-of-the-contract-lawyer-who-sued-skadden-and-lost (last accessed Feb. 29, 2020).

101. Simon, et al., *supra* note 34, at 310.

B. Philippines

Given the U.S. perspective, the *Lola* case's application to the Philippines is not nearly as straightforward. For starters, the Second Circuit's case has essentially no bearing on the Philippines, with American cases being persuasive at best.[102] As such, the discussion herein will only be speculative. This is especially true given the circumstances peculiar to the Philippines, which were discussed earlier. These essentially are: (1) control over the practice of law by the Supreme Court[103] and (2) the already existing jurisprudential definition of the practice of law.[104] Also, another very important factor to determine is the different cultural milieu between the Philippines and the U.S., as those differences have real world socioeconomic and political consequences.

Firstly, to reiterate, the Supreme Court is vested with the power of control over the practice of law.[105] Like many things, it has its pros and cons, and this is another subject altogether. However, some salient points will be discussed below. Compared to the U.S., one advantage to the Court having control over the practice is the ease by which the rules can change. As the Court is likewise given free rein over the rules of procedure,[106] then the justices can just simply decide one day to change the way the court proceedings are conducted, and allow a robot to appear on behalf of a client. This was seen in the way that the Judicial Affidavit Rule[107] and Rules on Electronic Evidence[108] were issued to drastically change the way things are conducted in court in response to changing times. To that end, it is fair to say that the Court is not that rigid when it comes to change. In fact, its propensity to favor technology is seen in the way the Efficient Use of Paper Rule[109] was enacted in response to the threat of climate change,[110] which did away with the conventional use of paper and, instead, mandated the use of e-mail and CDs for particular court documents.

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102. *See* Herrera v. Alba, 460 SCRA 197, 216 (2005).

103. *See* PHIL. CONST. art. VIII, § 5 (5).

104. *See Cayetano*, 201 SCRA at 274.

105. PHIL. CONST. art. VIII, § 5 (5).

106. PHIL. CONST. art. VIII, § 5 (5).

107. JUDICIAL AFFIDAVIT RULE, A.M. No. 12-8-8-SC (Sep. 4, 2012).

108. RULES ON ELECTRONIC EVIDENCE, A.M. No. 01-7-01-SC (July 17, 2001).

109. EFFICIENT USE OF PAPER RULE, A.M. No. 11-9-4-SC (Nov. 13, 2012).

110. *Id.* whereas cl.

However, given the Supreme Court's control over the practice and admission into the practice, there has been a tradition of strict rigidity in terms of the latter. As mentioned earlier, the Rules provide that only Philippine citizens are allowed to practice. So strict is the Court that a very early case had to determine whether an American was allowed to practice in the Philippines, even when the Philippines was still under American rule.[111] Nowadays, foreign lawyers are prohibited from practicing in the Philippines altogether,[112] and cannot even technically be admitted into any Philippine law school. This raises questions with regard to automation, as a robot may eventually acquire a "citizenship" — akin to a corporation that is granted a nationality under the laws — which all the more creates issues if the robot ends up performing acts that constitute the "practice of law" under the *Cayetano* doctrine.

Overall, in terms of the Supreme Court, the *Lola* decision has virtually zero influence. This is especially true given the existence of the ruling in *Cayetano*, which will be discussed next. Regardless, it was still important to discuss the apparent advantages and disadvantages of Supreme Court control over the practice of law, as sentiments can change very quickly and rules may one day be put in place that will enable the automation of the legal profession, without the need for anything else other than the will of the highest court of the land.

With regard to the *Cayetano* doctrine, this is where *Lola* may find some sort of application. To emphasize, the "practice of law" was held to be "any activity, in or out of court, which requires the *application* of law, legal procedure, knowledge, training[,] and experience. To engage in the practice of law is to perform [ ] acts which are [ ] [usually performed by members] of the [legal] profession."[113]

First, what is interesting is that the Supreme Court required that there be an application for it to be considered practice.[114] Compare this to the finding of the SDNY in *Lola*, such that the exercise of legal judgment is an essential requisite to the practice of law.[115] This makes both declarations quite

111. In Re Shoop, 41 Phil. 213 (1920).

112. Rappler, Drilon: Allow foreign lawyers to practice in PH, *available at* https://www.rappler.com/nation/85384-drilon-proposal-foreign-lawyers-philippines (last accessed Feb. 29, 2020).

113. *Cayetano*, 201 SCRA at 274 (emphasis supplied).

114. *Id.*

115. *Lola*, 620 F. Appx. at 45.

consistent with each other. A lawyer exercising his or her legal judgment is an application of one or a combination of those things enumerated in *Cayetano*. As such, the exercise of legal judgment is akin to the application of law, legal procedure, knowledge, training, and experience. What is likewise notable is the fact that those activities may be done in and out of court, which further shows that Philippine lawyers are similarly situated to American lawyers in terms of duties.

Second, the doctrine consists of two sentences. The second sentence is arguably vague, as it provides that the "practice of law" is deemed as engaging in acts that are "usually performed" by those in the legal profession. The word "usually" connotes that those acts must be performed on a regular basis. It, then, becomes more of an inquiry into the habituality of the act rather than its nature, as compared to the first sentence. Perhaps the Supreme Court wanted to cover not just those acts that not only involve the application of legal knowhow, but also to acts that lawyers habitually undertake. Consequently, the declaration potentially extends the concept of what constitutes the practice to something like document review, which is undoubtedly something that lawyers do on a regular basis. Nonetheless, the Author believes that the two sentences should be read in conjunction with each other, such that the acts performed habitually must likewise be an application; otherwise, it creates an absurd situation where just about any act that most lawyers habitually perform will be considered a practice. Moreover, as it was provided for by *Lola*, document review may or may not involve the exercise of legal judgment. This especially true considering that the case was remanded to determine whether Lola's document review tasks did or did not involve any exercise of legal judgment, which meant that the Second Circuit's ruling did not create binding precedent that document review cannot be considered a practice of law.[116] Thus, in terms of *Lola*'s application, document review may constitute the practice of law, if it involves the application of law and the like. The bigger question, however, is the applicability of the declaration regarding things that can be entirely performed by machines — that is, those are that cannot be considered to be a practice of law.

The doctrine in *Cayetano* seems like it has enough breadth to accommodate the machine doctrine of *Lola*. This is because, first, if a machine is capable of performing a task entirely, then it can no longer be said that the lawyer is performing an application of legal knowledge, as the latter connotes the use of mental faculties rather than the performance of

116. Simon, et al., *supra* note 34, at 246-47.

merely mechanical acts. Second, the habituality requirement is rendered useless if the act does not include an application, as already discussed earlier. What this means, at least in the Philippine context, is that the *Lola* doctrine jives with the what the Supreme Court provided in *Cayetano*. In the event a similar case is brought before the Philippine courts that pertains to an act done entirely by a computer, then the *Lola* doctrine may be used to help dispose of the case.

Lastly, in terms of socioeconomic and political differences, this last factor is not so much legal, but it may likewise contribute in the discussion of automation of the legal profession. This is because it is of no doubt that the Philippines is not as technologically advanced compared to countries like the U.S., Japan, Korea, the members of the European Union, and Singapore. This means that automation, in the general sense, may not so quickly sweep society as it does in the aforementioned. More people in developing countries also need employment, which makes automation less of an incentive, when labor is a much cheaper alternative. All in all, this factor is likewise important in considering automation.

V. CONCLUSION

To conclude, the science of robotics will definitely continue to evolve, and change the face of technology as we know it. At the rate things are going, robots will continue to become integral parts of society, especially as they begin to perform more and more complex tasks. The legal profession is one that is deeply rooted in tradition, be it in the Philippines or in the U.S., but the rise of robots puts the profession in a compromising situation. History provides that those things that are stubborn to change will find itself one day ruing that decision, and perhaps the *Lola* case should already serve as a warning for things to come. Indeed, robots will probably end up being capable of performing tasks entirely independent of humans, and may even be capable of thinking and processing information on its own. This inevitability should already keep those involved in the legal profession on their guard, and ready to adapt when the situation arises. If not, obsolescence is a real and looming possibility.