Glenn Baum:

Okay, I think we'll get rolling. Welcome to AI and Access to Justice. My name is Glenn Baum and I'm the Data and Technology Training Manager at The Legal Aid Bureau of Buffalo. Today's presentation is pending CLE approval and I believe that we'll be able to offer the CLE that was described in the session description. I will be providing a CLE code and some instructions on how to use the code near the end of the presentation, so pay attention. To receive the CLE credit, you must be present during the entire session and complete the form found on the Access to Justice Commission website. I'll link to it in the chat near the end of the session as well.

This session will be recorded and the recording will be made available under Permanent Commission on Access to Justice website, which is where you found the agenda. However, you'll only be able to receive the CLE for the live presentation here. As per questions, please feel free to pop those into the chat box as we go along. We'll try to answer them as we go along or at the end of the presentation, depending on where they fit in. If you're not sure where the chat function is, at least on mine, it's near the top of my screen and it is just in the general toolbar. You want to keep that open. You want to open it and keep it open so that you can see questions as they come in that might prompt you to add a question. Also, we'll be putting links or whatever in special information into that same chat box.

Now, let me introduce our two presenters for this session. They both come to us from Paul, Weiss, Rifkind, Wharton & Garrison, and they're the Co-Chairs of the Digital Technology Advisory Group for the firm. They're Katherine Forrest and Catherine Nyarady. You can find their bios on the link from the agenda, but for now I'm just going to let them take it away. So please lead us on Katherine.

Hon. Katherine B. Forrest:

All right. Thank you so much, Glenn, and it's really a pleasure to be here. Finding ways to access justice is really something that is near and dear to both my and the other Catherine's heart as well as to the Paul, Weiss firm. We're very pleased to be able to make a presentation on how AI can enhance the access to justice. And so we'll go through some of that today.

One thing that we are going to do as part of our agenda is talk about how we are in a transformative moment in access to justice with AI. That AI is providing us with some tools that is going to open up opportunities to access justice more fluidly than ever before, and we'll talk about that. We're going to go through a very brief explanation of AI and tools for civil litigators, really to lay the groundwork for some of our other discussion on algorithmic bias, generative AI being a game changer, and the regulatory horizon.

Now, let's talk about the fact that we are in a transformative moment in the access to justice. In the civil law area, justice is something that has been hard to come by because of, for pro se litigants in particular, because of an inability to navigate the court system. There's also delays in the court system for all litigants and AI is providing tools, which is going to really be an absolute game changer for all litigants. Generative AI is the part that we're going to be focusing on along with algorithmic bias, but generative AI is in fact transformative. Why? Because the tools are going to allow litigants, civil litigants who are both pro se litigants, but also overworked and heavy docketed individuals who are seeking to provide their clients with access to justice in the civil law system. The new tools with generative AI that are coming down the pipe are research opportunities where these AI tools can perform really extraordinary levels of research.

There are some kinks to be worked out, and we'll talk about that. It's not ready for prime time yet, but it will be very soon. The AI generative tools will be able to draft papers, and by that I mean papers that will be fileable in court and it will allow individuals to be heard, truly heard in new and effective ways. So it's a game changer for the unrepresented, but I also want to say that it's a game changer for those, again,

who may have very heavy civil dockets and are looking for ways to provide more opportunities for their clients to receive justice than ever before.

Generative AI is going to change the way that law is practiced and the way that law is dispensed. Now, right today, we've got accuracy concerns that remain. In other words, if you're to do, and we'll talk about this more in a moment, a research memo, you might come out with some errors in that research memo. You might come out with citations that don't quite meet what you're looking for, but those issues are being worked on very, very carefully and effectively by the tool makers. There are also some confidentiality issues that are real. There are privacy issues that are real. The terms of use for these generative AI tools say explicitly that confidentiality is not guaranteed. That obviously has implications in terms of the attorney-client privilege, but there are also issues where a pro se litigant may be willing to, understanding the risks, take certain risks in order to have the opportunity to have a more level playing field.

In our view, in about a year or two, there's going to be some legal dust coming down and settling on accuracy, confidentiality. And also a very important question, which we're not going to be dealing with here today, which has to do with the copyright infringement issues involved in training these tools. We're not going to deal with that. That will be dealt with by the courts. What we'll talk about a little bit is how those tools in fact can help with the access to justice.

But before we get there, let's talk very briefly about artificial intelligence and tools for civil litigators. I wanted to just set the stage by giving a very brief, very high level overview of AI. I know that from the agenda and syllabus for this program, you folks are also receiving other instruction in this, so I won't spend much time on this, but some of the ways in which AI runs into some issues for litigants, it has to do with the structure of the AI tools, the algorithmic structure. I wanted to just very briefly explain what that is so you have some idea as to what we're talking about.

AI, whether you're talking about generative AI or the issues that relate to algorithmic bias. AI is essentially a series of tools which are about finding patterns in data and making predictions based upon that data. So it finds patterns and it makes predictions and the predictions become predictive answers. One example I give is I say to people, if you want to understand it, you think just a little bit about coming up with the best bread recipe ever. And so that's your task. You want to have the best bread recipe ever. So what you do is you've got the internet, which is full of various bread recipes, and let's assume that you're not going to be looking at any copyrighted bread recipes. And so your data sets the entire internet. What's going to happen is the algorithm that's been constructed is going to, as I call it, whizz and whir over all of the data on the internet looking for bread recipes.

And the pattern that will rise to the top are the ingredients, the flour, the water, yeast, salt, whatever else people want to put in their bread, and there will be weightings or amounts associated with each of those inputs. For instance, flour will rise to the top. You need four cups of flour. That's got a high weighting. Water has a certain amount of weighting, maybe a cup and a half of water. Yeast, maybe it's very powerful, but you only need a teaspoon, et cetera, et cetera. Those are the weightings and the output is the best bread recipe. So the data set becomes very important to assessing what the pattern is that's going to be learned.

Choosing the data set is critical in all of AI, and that becomes a very important issue for all litigants who are dealing with artificial intelligence tools for them to understand, because data sets are chosen, they're chosen by whomever is either a designer of the tool or a user of the tool. One thing that you want to know as a litigator, where some of the issues that we'll be talking about in terms of housing and credit and lending and education and the way that these tools may impact your clients is that the data set that is being used with the tool can be extraordinarily important. There's a question about how it

was selected, who selected that data set? What is the derivation of it? Did it come from the internet? Did it come from the internal data set that a company may have had based upon a prior set of systems?

For instance, an employer may have had a data set about who were the "best employees" that related to a snapshot of that company that's five years old. So there may be a timeframe issue. That may result in some underrepresentation, but also the data set is only a snapshot in time. So there are necessarily going to be representation. There's an historical context for every single data set from that snapshot, and that historical context will result in how that data then establishes patterns. Data sets as a result can have regional variations. So the kind of data set that you might find being used for a credit and lending tool, or an education assessment, or a human resources tool, that may give rise to certain kinds of claims. There can be regional differences that are important. So you want to know what was the data set that was used, who selected it, and what might be the embedded biases in that data set.

Now, AI tools today may lead to a variety of civil claims, but they can also be incredibly efficient tools. So while we're talking about civil claims that certain clients may have and may bring to you or want to understand more about, I also want to make sure that we don't say that the technology itself is a problem. The technology itself can lead to efficiencies, to innovation, to the faster ability for certain populations to be able to get access to credit, to get access to housing, employment, medical treatment, education, insurance, and other kinds of benefits. But those same efficiencies have a flip side, and some of these tools can actually bring with them certain kinds of problems. They can be problems where the tool is making important and dispositive decisions about whether or not an individual is getting access to certain kinds of credit, whether an individual is getting access to housing, or is getting advertisements, which may be indicating to that individual of certain housing opportunities.

There may be tools which are indicating to the medical provider, whether particular individuals or individuals from a population or a demographic group should be obtaining or accessing or being able to receive certain kinds of medical treatment. Same thing with insurance, whether or not certain insurance is provided may be decided by a tool today, as well as other kinds of benefits.

So data sets, again, discern patterns. That's what they do. And the patterns can tell us who are good credit risks and who are not good credit risks, but how that data set was selected can result in whether or not there are biases embedded in that data set. So the data set can tell you who's more likely to actually meet their rent payments or not, but if the data set has got embedded biases, it may just be plain unfair. The data set may tell you who is the profile, what's the profile of the best employee, but if that data set's five years old, it may be all women and it may be no people of color. So you've got to ask where again did the data set come from.

I know I'm harping on the data set, but it's just so critical to civil issues and to the effective use, the positive use of AI tools. Also, whether or not teaching assessments are accurate and for certain kinds of life insurance, who will die and at what age. All of this information that's used today with AI tools comes from patterns assessed in data sets. I'm now going to turn the stage over to Catherine Nyarady, who will talk to you about some other issues relating to AI tools and algorithmic issues.

Catherine Nyarady:

Thank you, Katherine. So talking for a minute about in civil litigation, discovery of the data sets or the algorithm. As Katherine mentioned, the algorithm and the data set that's used to train the AI tool, establish the output, and the output will be whatever the user of that tool wants it to be. And some examples that we heard of, who are the best candidates to interview for this job? Who should we give credit to, and at what terms? So the output is what the user wants it to be. The algorithm is typically, not always, but usually the algorithm and the AI tool is created by someone other than the user. You know, you have companies that are creating the tools and then selling them to industry. And then there

are of course, are inputs that the industry itself when they're using these tools are putting in, but the algorithm, how it's formed and the data set that's used to train the algorithm are going to impact the output. If you're going to challenge the result of that tool that's then used in industry, during litigation, you may need discovery of that tool.

Now, are you going to get it? I think the odds are that you will get something. The courts are struggling and just starting to see these requests. And we are talking about software, we're talking about code, computers, so it gets difficult in terms of discovery. There's lots of issues that pop up. One question that comes up is, are you going to understand it? Even if you get full production perhaps of the algorithm, are you going to be able to understand what it is, what it's doing? You may very well need expert resources for that. And has the tool user, the industry user maintaining the data said that the tool was trained on?

Now, if the tool was trained by a third party and the user is merely licensing that tool, it may be that the user who's perhaps having an issue with the output doesn't even have the data set, doesn't have access to it. And we've seen contracts, licensing contracts where there is not even the ability for the user to request and get access to the training data. That's going to be an issue that needs to be dealt with by the courts when these come up. And then can you tell the changes that are made over time?

One of the things, and we'll talk about this in a little bit, but regulators very much are focusing on testing the tools and doing impact assessments and trying to figure out if there are problems with the tools. And then the idea is to allow industry to go back and the tool creators to go back to try to address these issues. And if there are changes made over time, even if you get production of the tool, is that the tool that was actually in effect, the waiting, the bread recipe that Katherine was talking about, what was the recipe back during the time period that you're interested in for any litigation purposes? Because it could have been changed over time. There were tweaks that could be made to the system. And also, was there a record kept of what changes were made and when? Go to the next slide.

Accuracy versus fairness. There's an interesting aspect to these AI tools that comes up, that they can be accurate but not fair. Those two things are not necessarily, they don't go hand in hand. They can, but they don't. It's an interesting concept, where the tool can work, it can be accurate, the math can be right, everything is being performed accurately, but the output could still have a disparate impact. And so this concept of even if the tool is looking at all of the data that's been provided and it's working properly in that context, is the output fair. The design of the algorithm, can you explain how it was designed? Can someone down the chain, whether it's the user or the person who created the AI tool, can they explain the output and the decisions and the weighting or is it a black box? Is it the kind of thing where the algorithm has been functioning for so long and as Katherine says, whizzing and whirring over this data and no one actually knows exactly how the outputs are coming to be. It's a black box.

The selection of data sets, as Katherine mentioned, who's responsible for choosing them? Is it internal data? Is it external? Where did it come from and who decided which factors to emphasize or not? And the overall traceability of the algorithm designs and the data set retention. Again, retention of the data sets is not something that is happening all the time. A lot of the regulation that we're seeing proposed, it talks a lot about what needs to be retained and for how long. Because we're talking about huge volumes of data. And impact assessments in terms of when you have entities, whether the creator or the tool or the user, pressure testing these tools and doing impact assessments on whether or not the output is fair, are they keeping the results of those and how often are they doing it and what kind of records are they keeping? And then that leads also to records of modifications. Next slide.

There's the potential obviously for bias and discrimination in the output. It could be intentional, but odds are it's not. Odds are it's more the computer is putting together all of the data. It's seeing trends, it's seeing patterns, and it's doing it in a way where it can process a lot more data than any human ever

could. They might see trends that are not appreciated by a human. So the human that's inputting the data set might not appreciate how it's going to impact the output. So these can be embedded biases. It could be from the data set. Again, Katherine mentioned, depending on what time period you're pulling the data from and how, if you're limiting it by geography, if you're limiting it by date and whether humans are making adjustments in terms of the weightings, but the tool is only as good as the data.

So any inaccuracies that are in the data are going to be drawn forward. And any historical inequities that are in the data, again, the computer's going to learn that and it's not going to be able to make the human calculation that we make of that's wrong or that's not causation and not carry it forward. The computer is just going to take all the data and kind of spit it back out, if you will, and make decisions based on the data that it's fed. Again, with the black box tools, it's very hard, even if you're seeing bias in the output, it's very difficult to understand what in the programming is leading to that and then trying to fix it becomes difficult. The impact assessments are key. People using these tools need to continually be testing them to see how the output is.

And the contractual allocation of responsibility. This is an interesting one. A lot of the regulations that are being drafted, there's not very many that have been enacted yet. I mean, we're still catching up. The law is catching up with technology, but a lot of the drafting is struggling with this and how to allocate responsibility, because sometimes if you license in an AI tool, a lot of times there will be an indemnification of some sort. Does the indemnification cover only the training data? If there's an issue with the training data, ultimately, does it cover any use of the tool? And if it were to be that these indemnities hold up, you could end up with an entire industry that licensed a tool and an indemnification falling back onto a smaller company who created the tool and maybe can't satisfy all of the indemnification requests. So regulators are trying to spread responsibility across players and across all of the entities that really are kind of touching the AI tool in the chain.

Let's look at some specific examples. Start with credit and lending. Again, what are examples that could lead to bias data sets, even unintentionally? If your data sets are narrowed by geography, if you're using zip codes, it could be a proxy for race or income levels and socioeconomic factors. If you're using schools that were attended, are there names that show that it's a women's college that could lead to gender issues, family characteristics, job categories, and how much information is there that's being fed into the initial training? How broad was it?

To give you an example of some of the litigation that has been coming on these issues, there was a case where HSBC had used algorithmic modeling and they were intentionally targeting, they were alleged to intentionally target borrowers in predominantly minority areas for some of its products. There was another case also against HSBC that their AI tools were making racially discriminatory assumptions. There was a case in New York where someone was actually asking DFS, trying to get discovery. Here we're seeing that on databases that were compiled, AI uses and the algorithm that was used in these databases and decisions that are flowing from that.

Regulatory, the concern often goes back to the weighting of the data, especially in credit and lending and how is that being done. We did see one instance where there was an insurance company that went to the CFPB, wanted a No Action Letter. They were planning on using AI for pricing and underwriting loans, and they wanted assurances that what they were planning to do. They explained the system, they explained how they were going to use AI, and they wanted assurances that this was okay from a regulatory perspective. Interesting, the New York AG, they opposed, and in part it was about what data is relevant to credit worthiness and how should each of these be weighted? And so they did not like the idea of having a No Action Letter that just kind of gave blanket authority to the insurance company to use AI.

We saw a letter from the DC Attorney General as well talking about seeing... and this was in 2021, so some of these go back even a couple of years that these actions and these letters and draft regulation has been coming, this had to do with lending algorithms. They say, "We're calculating higher interest rates for borrowers who attended historically Black colleges and universities." Again, there was something in that data set that perhaps was using the college names and leading to these results.

Human resources, this is a big one. AI has been used for a while by human resources. When you pushed a job opening, sometimes nowadays, especially on the internet, you get thousands of resumes. And so they're trying to go through those and pull out, who should we talk to? Who should we interview? Who should we hire? And so you have a scoring system for the candidates. Depending again on names, zip codes, college names, all of these things, sometimes it can lead to bad results. As Katherine said earlier, depending on what data set you were using, it may be that you took resumes... and this happened, this is the Amazon example. They were relying on 10 years of resumes from applicants and hiring and evaluating who got hired, who did well at the company, that kind of thing. The algorithm ended up favoring male candidates over female candidates.

You can see how that might happen if you took a period of time where perhaps people who were promoted or in positions of seniority at the company were mostly men. And so then the computer is fed this data and the computer comes to the conclusion that, well, men must be better employees than women because that's all it can see. It just can make these predictions based on the data it has. And you're losing to some extent, depending on how much you're relying on AI, you may be losing that human judgment element. Somebody sitting down, if you have a resume or an application that's atypical, in the AI world, it may fall to the bottom, it may be weeded out. Whereas if a person was looking at all of this, you can make those judgment calls. So to some extent too, looking into how much is the tool relied on. Are there human checks or human involvement in the process as well? And so again, the AI, it has the ability to lead to inaccurate decision making and keeping track of how the tool is working and what the results are can be critical.

Again, we see another example of a case that the AI tool was alleged to disproportionately disadvantage people who are Black over the age of 40 and who had disabilities in the employment context. Next slide. We're seeing the EEOC very active with respect to this issue. They're having hearings, they're trying to get information about how the tools are being used from the stakeholders, and they're trying to provide guidance on how best to use the algorithms. As Katherine said, this technology, at least in my view, is here to stay. And it does make a lot of things more efficient in the workplace. The question is, how do we make it fair and how do we pressure test these systems on an ongoing basis? And so the EEOC is very active in that.

In insurance, next slide, we're also seeing a lot of activity, insurance. One thing to be aware of, and this probably was true historically as well before AI, but for the AI system, there could be algorithms that are acceptable in one state but not in others. The states vary. We have a chart here for you. States vary in terms of what factors they think are acceptable to look at and are not. Okay, next slide.

This was a case, and again, you can see it was back in 2008. So people have been thinking about these issues for a while. This was against Geico and they were using education and occupation. The allegation was that that those resulted in being a proxy for race. One of the things that the court, you can see here in the last bullet, one of the things that the court pointed out was that Geico had continually reevaluated the characterizations and gotten input and made changes to its system. And so here we see a court reacting to the good faith efforts, if you will, of the person or the entity using the technology to try to track any problems with the output and working on that.

Again, with insurance, the regulators are active in this area. Colorado was the first to pass a bill relating to this. And of course, it's a noble cause in terms of making sure that the algorithms, if you're using

external data sets to train these AI tools, that they don't unfairly discriminate. And then the devil's in the details. Now, they're in the process of trying to create regulations. They're in conversations with stakeholders, they're having meetings trying to bring to life, if you will, the bill and figure out how to enforce this and what is the best way to enforce it that is even-handed between protecting consumers and also not making it overly burdensome for industry. We have there a list of, you can see throughout the country, other states are also coming up with drafts similar to the proposed Colorado law.

Education, I think we touched on this briefly already, but not just college, but especially in college admissions, when they look at previous admissions data, again, the computer only knows what it's told. When you look at the historic data, you're going to have perhaps a student body that doesn't reflect what you want it to be today. The quote there kind of says it all, "Humans code these systems and humans are encoding their own biases into these algorithms, whether intentional or not." This leads to colleges where they're marketing, where they're putting their recruiting efforts. Next slide.

In DC, the bill, the Stop Discrimination By Algorithms Act. It's across many industries that they're trying to target. One of them is education specifically. The DC AG, part of this quote that I thought was interesting, it says, "The so-called artificial intelligence is the engine of algorithms that are in fact far less smart than they are portrayed." And so I think, again, there's concern as to how these systems are trained and what are they learning.

The last thing I'll say before I turn it back to Katherine is I don't know if people saw, there was article in Bloomberg this morning that California has now also is trying to introduce a new law, and they are trying to monitor all employers and industries with any automated decision making tools, job applicants. I thought it was interesting that some of the proponents of the bill are quoted as saying, "It's never going to be perfect. Let's make sure we're clear about that. It's going to be a work in progress forever." I think that's true because even as these regulations are being introduced, the technology just keeps advancing every day. We're seeing in the press new things that are happening with these systems, including generative AI. With that, I'll pass it back to Katherine.

Hon. Katherine B. Forrest:

All right, so we'll do just a little bit more on the regulatory horizon for AI in terms of algorithmic bias. As Catherine has said, there is activity at the federal level, the state level, there's a lot of international activity to address algorithmic bias. So it's very important if you've got a case where there's a question as to whether or not an AI tool has ended up with a result for a client where there's been a potential problem, that you look to see whether or not there's a regulatory scheme that may have been recently enacted that could cover it.

President Biden has got the AI blueprint, the AI Bill of Rights, the FTC is also taking a hard look at AI along with the EEOC. So there's lots and lots right now of regulatory activity all over the place in the United States. The EU is ahead of us. They've got a number of initiatives that are being used in the EU to try and influence the U.S. in terms of declaring certain kind of decision making that impact people's lives as high risk. That would then have implications for what the users of the tool have to do, how they have to comply with certain regulations. We don't yet have anything like the EU AI Act yet, but there's some attempt by the EU to make that sort of the gold standard.

Let's go back now to generative AI and access to justice because as I said before, with AI generally and with generative AI in particular, this is a transformative moment in terms of access to justice. So you've all heard, I'm sure about ChatGPT. You can't open a newspaper or magazine or look at your phone without seeing it. I just want to talk a little bit about it and how it can be helpful potentially to accessing justice in the civil arena.

First of all, as background, generative AI, which is what ChatGPT is, is really something called a foundation model, meaning that these tools are trained and they can do all kinds of things, not just one thing, not just write fourth graders papers or write for the teacher the test that the kids will take. They can do all kinds of things. And so it's blown away really the idea that AI tools are very narrow or have to be very narrow. One tool for the human resources area, another tool for the credit and lending. Generative AI is a tool which will have a multiplicity of uses.

Another issue with this generative AI is that it's capacities and capabilities are expanding with the speed of light. The velocity of change of improvement is extraordinary. So whatever the problems are today, watch, because in the next six months, there's going to be yet another version. And then six months after that, things today are going to look like they're really, really very far in the past.

Now, there are dozens of different kinds of generative AI tools, and I say that because the licensing fees are going to become expensive for certain kinds of tools, and there will be tools that are going to be very good and very useful tools that will be licensed out in the next year or so that will be less expensive. But you may also be able to maintain some access to the ChatGPT tool itself. But there are lots of these kinds of tools.

Now, how do these tools work well and why now? Why are we seeing it now? We're seeing it because there's been advances in how these tools do what they do. We're not going to get into it, but they use a modeling called neural network, which is designed to try to replicate the human brain, which we barely understand or hardly understand ourselves. But in any event, they're trying to replicate that as well as being built on the huge amounts of data that are now accessible with the internet and large data sets. So these tools actually scrape information from the internet that can actually implicate a variety of other legal issues, such as capturing personal and private information, photographs of people, which can essentially become biometric information. It can also capture copyrighted material.

It does, by the way, capture, these generative AI tools, what people post in their social media if it's accessible to the public. So if there's a social media account and you've got pictures of your friends and family up there, their photographs can be pulled into the generative AI tool. Anything that's accessible can be pulled in. And it uses this content to generate predictions, to gather facts and to learn in ways that we really don't understand.

So in the civil law area, assuming that these issues, these legal issues about copyrighted material and other things get resolved, the privacy issues get resolved, what are you going to be able to do with generative AI? Well, first of all, you can ask generative AI, and I've actually experimented with some, as has Catherine, some of the more advanced versions of these tools. You're going to be able to ask these tools all kinds of things, research questions, to give you source citations, to do research memos in seconds, to prepare legal memoranda, you can upload documents and have it give you certain deposition questions and prepare cross-examination outlines.

Now, right now, today, there are inaccuracies with these tools. There are confidentiality issues with these tools. So there's a lot left to be done in terms of development, but that is happening. The development is happening. And so for civil law, there's going to be a real tsunami of available tools that may be able to help you, but also pro se litigants.

So what are the pros in terms of access to justice? Well, it means that more individuals who are pro se are going to be able to take depositions because they don't have to be lawyers, they just have to ask questions. And generative AI will give them the ability to ask certain kinds of questions. Now, of course, court reporting costs and other things may still be an issue, but they're going to at least have some questions that they can ask. There's going to be better pro se filings. There'll be assistance with law groups that are assisting litigants that have heavy caseloads and providing efficiencies. And now, there'll be a kind of evening of the playing field between big law, which has had lots of access to lots of

individuals who can perform legal research, write briefs, and others who haven't had those kinds of resources.

Some of the cons however are the license fees are yet to be determined. Certain legal issues really need to be resolved, like the copyright infringement, the privacy, the biometric, and courts could then be inundated with additional filings, slowing access to justice itself. Also, there's the issue of deepfakes. Generative AI can also be used to create audio and video that is not real. And so the implications of that is that number one, the content is literally fake. That can be funny. It can be also quite hurtful if it's used to create revenge porn or something like that. But it can also be used to put different people at the scene of an event. And so we're already seeing that populating the internet today where so-and-so political figure is alleged to have said or done something, and it may or may not be true. So there are going to be issues about going to the videotape and seeing whether or not an event occurred. Well, is that videotape in fact a deepfake? Or listening to the tape recording. Is that in fact the right tape recording? Is it true?

There'll be issues in terms of civil litigation about whether privacy rights have been invaded, whether there's a right of publicity or a name and likeness claim that has been invaded, and whether there has been, in fact, an intentional infliction of emotional distress. There are some state regulations right now that are starting to appear with respect to deepfakes. But a lot of this right now, originally, it was oriented towards revenge porn, but now it's increasingly oriented towards intentional misuse of digital content in order to create real problems. So we're going to see in the next few years is we're going to see additional legislation in this way, in this area as well. And I think what we're going to see ultimately is some legislation that will assist us in having some guardrails.

All right. Now, what I'd like to do is I'm going to stop sharing my screen, and I'd like to then go back to... I think you can see me now, right? I've stopped sharing the screen.

Glenn Baum:

Yup.

Hon. Katherine B. Forrest:

And see if there are any questions from the audience. We'd love to be able to answer questions with our last, just couple of minutes now. And I do see, Glenn, that there are some questions. I'm going to take one from an individual who's asking about non-English litigants. What I'm going to say is that these tools actually understand a variety of languages. And so for instance, if it's Spanish, that's a language that these tools do understand. So there's going to be additional capability with these tools for individuals who are not as proficient. Catherine, do you want to, there's several of these here, go down the list?

Catherine Nyarady:

There was a question about whether legal services offices should be developing their own custom generative AI tools like law firms. A couple of points there. I mean, one is depending on how much development work you do, that can become expensive and complicated. But I think there is probably a middle ground. One of the most important things I think we would say is confidentiality and knowing the limits of whatever system you're working with. You want to make sure that if you have an AI tool and people are using it for purposes of legal research or cases or drafting, anything, that the information that you're putting in is not then going back in some way to train the underlying tool. A lot of the AI tools, the generative AI, it is going back. And so once you're putting something in the AI tool, the generative AI tool, like ChatGPT, that is going out in some capacity, and people can see that in certain capacities.

Samsung was in the press recently where some of their employees, they had allowed their employees to use this tool. Some of their employees put very sensitive code in the chat and it got out. One of them had put in an audio of a sensitive business meeting and asked somebody to write a summary of it, that got out. And then of course, Samsung immediately said, "All right, stop. Nobody use these tools. Let's think about this." So just by way of example, I think you need to make sure that whatever tool you're using is going to be contained within the legal services offices, so that you're not connected back to having the input go back. Whoever's using the tool needs to really know that and limit what the input is so that you don't have any confidentiality issues.

The second piece really is the accuracy point, which I think these tools are great, but you do need to be testing the results. I mean, we've been playing around with these things. I mean, sometimes you'll get, it'll come back with a case site, case doesn't exist. And it looks good. It's not like it's obvious from the face of it that, "Oh, this can't be a real case." So there are definite limitations to the tools these days. As Katherine said, they're getting better, but there's real limitations.

Hon. Katherine B. Forrest:

Well, Glenn, I think we're out of time.

Glenn Baum:

I think we are.

Hon. Katherine B. Forrest:

Yeah. There are some great questions, but we'll hold them.

Glenn Baum:

And if you wanted to, you could probably just chat a response, which would kind of flow with the thing. But yeah, we will be getting shut down in a minute. Thank you everybody for coming. I think the next thing is, it's not a breakout, everybody can attend it, but I pop the link into the chat box so you can go and find it. But did an excellent job, ladies. Thank you very much.

Hon. Katherine B. Forrest:

Thank you. Thank you for having us.

Glenn Baum:

A lot of information.

Catherine Nyarady:

Our pleasure. Thank you.

Hon. Katherine B. Forrest:

Good luck.