Artificial Intelligence in Trial Practice



At the College's Spring Meeting in La Quinta, a large number of Fellows enjoyed a CLE on topics pertinent to the use of AI in trial practice, its advantages and its dangers, coupled with a discussion of how "machine generated" evidence has been and will be treated in courtrooms in both the United States and Canada.

The three presenters were Matan Shacham, a civil litigator from Keker, Van Nest & Peters, LLC, in San Francisco, Jessica Rubin, Director of Practice Efficiency and Innovation from Miller Thomson in Toronto, and Fellow Eric Breslin from Duane Morris LLC in Florham Park, New Jersey.

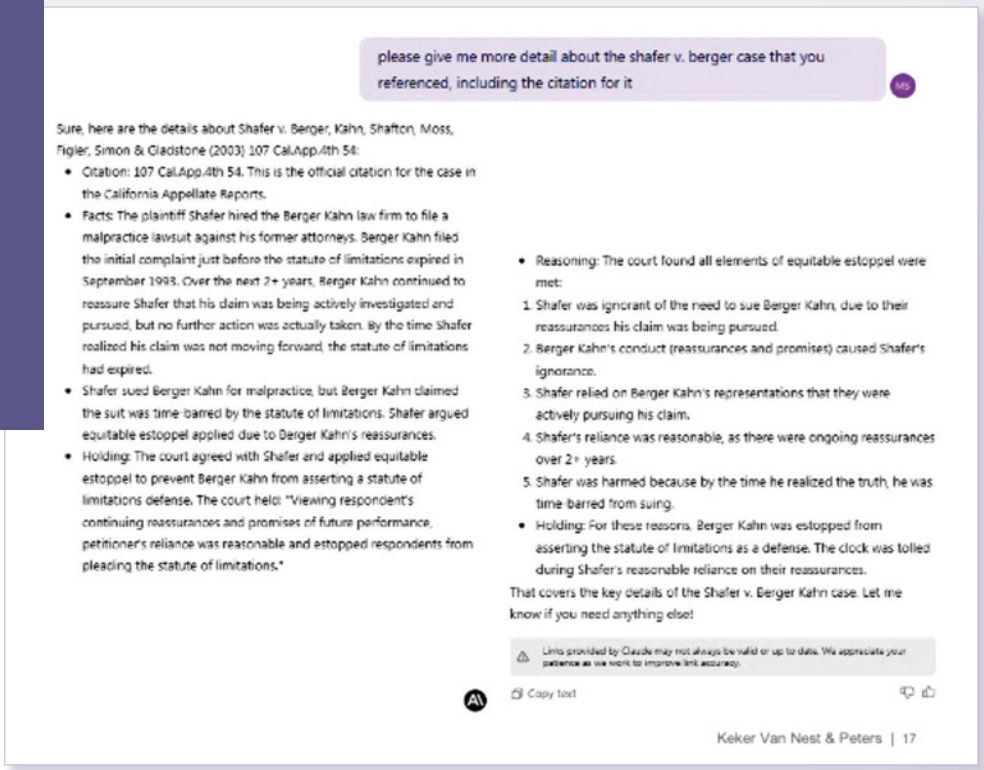
Without any intended irony, it was our intention to include a link here to a purposely unedited AI generated transcript of the CLE to demonstrate one of the central points of the CLE: that while impressive, AI is not flawless or infallible, and that care and diligence should be exercised in all aspects of its use. Ah, but this is a magazine. You can hold it, fold it, but you can't link it. Old school isn't bad, but technology is the future. Actually, AI is the present.

Media coverage of AI has been extensive. While there has been inevitable hyperbole, there is no question that AI has the potential to transform business, education and everyday life. The legal business and trial practice will be no different. The power and evolving nature of AI should not be undersold. For the College and its Fellows, AI is truly a force to be reckoned with.

But like any tool, AI needs care and diligence to use safely and eventually to master. Whatever its breadth and abilities, AI does not eliminate the need for old fashioned proofreading and does not replace every lawyer's duty under the Rules of Professional Conduct.

The Panel discussed the interplay of AI with Rules 1.1, 5.1 and 5.3. Use of AI must be strictly monitored, its work

LEGAL RESEARCH IS HIGH RISK



- Great analysis.
  But it is totally made up.
- Shafer is not about equitable estoppel.
- Not about Statute of limitations.
- Quote doesn't esist anywhere.
- And scary because it is so convincing.
  Real case. Correct citation.
  The analysis is reasonable.

The problem is rooted in two issues:

1. The nature of how LLMs currently work - they have trouble saying they don't know. They are tools for mimicry, not truth-finding.
2. Can not yet train on full body of legal authority.

product checked and double checked, and its usage disclosed both to courts and clients. Court directives and preferences about AI must be carefully followed. Horror stories about AI "hallucinations" abound, and the Panel shared their own experience and "near-misses" in this regard.

The legal systems of both the US and Canada are adapting to this technology. In the United States, a new Proposed Rule of Evidence, Rule 707, will govern the admission of machine generated evidence using a modification of the template employed in Daubert for admission of expert opinion. This proposed Rule is still under consideration, although its ultimate implementation seems likely. The College has submitted a letter in support of the proposed Rule.

The Panel discussed how Rule 707 will operate and some of the bar's comments and concerns regarding the proposed Rule. To the extent AI is a tool whose best use is collating and analyzing data, it can proceed without hearsay or Confrontation Clause issues. If the technology continues to evolve to the point where it can offer an opinion, this may need to be revisited.

The CLE concluded with demonstrations about how AI can be used and used to great advantage. AI can make drafting of emails and letters, the reviewing of documents and overall organization for trial immensely easier and faster. The various examples presented by the Panel prove these benefits.

AI is changing trial practice and will continue to do so at an ever-increasing rate. It behooves all of us to understand how to use it and how to use it responsibly.

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