

Trial Briefs

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Should Plaintiffs Be Salivating Over the Recent *White Castle* Decision Addressing Claim Accrual Under BIPA?

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BY PAUL YOVANIC

Over the past five years, the Illinois Biometric Information Privacy Act (BIPA)¹ has caught the attention of businesses in Illinois and globally that look to balance privacy concerns with better safety measures, timekeeping practices, and

consumer experiences. To date, nearly 2,000 BIPA lawsuits have been filed in Illinois. And while it was unlikely the legislature's intent when BIPA was passed in 2008, based on then-existing technologies,

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An Essential Primer on *Forum Non Conveniens*: *Milton v. The Boeing Co.*

BY HARRY DUBNICK

Milton v. The Boeing Co., 2023 IL App (1st) 220647, February 3, 2023

For those who last examined the issue of *forum non conveniens* during civil procedure class in the first year of law school, the Illinois First District Appellate Court recently furnished a useful refresher on the issue in *Milton*

v. The Boeing Co., 2023 IL App. (1st) 220647 (Feb. 3, 2023). In *Milton*, the appellate court granted a permissive interlocutory appeal to determine whether the circuit court abused its discretion in denying a *forum non conveniens* motion that had been brought by Defendant,

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ISBA Allerton Conference 2023— Technology and the Courts: Transforming the Delivery of Justice

BY HARRY DUBNICK & RONALD MENNA

The authors had the privilege of attending this year's Allerton Conference, a biennial conference that considers questions affecting the administration of the legal system in the state of Illinois. This year, the conference gathered to consider, among other things, the question of the effect of artificial intelligence (AI)¹ programs on the courts and the administration of justice.

One main takeaway from the Allerton, which will be reported much more extensively in an upcoming issue of the *Illinois Bar Journal*, is that AI is here to stay, and “resistance if futile”, even if one wanted to do so. More importantly, AI can be an enormous aid in delivering efficient legal services and filling unfilled legal needs—both from court provided systems and attorneys using AI in their practices.

Litigators now, or will soon, use AI² in their everyday practice. Simple forms of AI are, or will soon be, used in: (1) discovery; (2) legal search; (3) document generation; (4) brief and memoranda generation; and (5) prediction of case outcomes.³ AI is here, and like all other technological innovations will be used and integrated into our practices. For example, a group of American academics has developed a machine learning application that claims to be able to predict the outcome of a case at the United States Supreme Court with an accuracy of 70.2 percent, and the voting behavior of individual judges with 71.9 percent accuracy.⁴ Another system predicted the outcomes of the European Court of Human Rights with 79 percent accuracy.⁵

While there were many thoughtful panels at Allerton, this article only discusses the Keynote address, which was delivered by the Honorable Dory Reiling of the Amsterdam District Court (Ret.), Netherlands. Judge Reiling has been working in the field of AI

and its use in EU courts for several years. She began her presentation with a survey of various programs throughout the US, UK, and European Courts of Human Rights.

According to Judge Reiling's keynote, recent survey results within the European courts show that 41 percent of cases are essentially defaults and could be handled by an AI process. An additional 36 percent of matters are simple decisions based on limited facts, which might be handled by guided or flow-chart programming, much like we may have experienced with income tax preparation programs. The program essentially interviews the litigants, presents options to select, and reaches a conclusion. In the survey, 12 percent settle during the process and require some human or judge attention. Only the other 11 percent require a judgment from a judge. Judge Reiling's survey made all conference attendees consider what could be done with judges' time freed from endless status calls and routine motions and the like.

While Judge Reiling discussed the limitations of AI systems in rendering judgments, she emphasized the uses of AI for more functionary court matters. She discussed AI systems based on a check listing process. She also highlighted a system that generates options for parties to choose, which can fashion settlement options that might be agreeable to the parties, without the need of human attention.

Judge Reiling even gave an example of a divorce settlement AI system that is employed in the Netherlands, which has now been used successfully by 35,000 couples. This system allows for non-synchronous “negotiation” with various settlement elements, which facilitate the parties reaching a settlement without the necessity of human judging/facilitator intervention.

In the general discussion after the keynote address, the Allerton panel emphasized several issues regarding the implementation of AI in the court system. These included:

- Issues of ethics and the use of AI and or privacy issues within the method of AI tools;
- Liability for errors, such as faulty citations in ChatGPT (an AI tool that gets a lot of press lately); and
- Responsibility of the parties and their lawyers to ensure the reliability of whatever is presented to the court, whether it be the product of AI or any other method of research or investigation. After all, the lawyers proffering evidence or arguments are licensed human beings, who retain responsibility for whatever is used in court, and who can be held accountable and can have sanctions imposed that will prevent misuses.

Judge Reiling emphasized that in every court provided AI system, it is the judge who makes the final decision.

With all of the discussion of Chat GPT of late, with claims that it can write college essays and pass the bar exam and do incredible things, many at the conference were curious about its actual abilities. Below, we offer an example of a query entered without parameters as to length on a topic of interest at the Allerton Conference. The content produced has not been edited in any way and it provides an interesting example.

Question: List the most obvious uses of AI in the administration of justice

Response:

There are various ways in which AI can be used in the administration of justice. Some of the most obvious uses include:

1. Legal Research: AI-powered legal research tools can help lawyers and judges find relevant case law, statutes, and other legal materials quickly and efficiently. These tools can also assist in legal writing by suggesting relevant cases, statutes, and other sources of authority.
2. Document Analysis: AI algorithms can be used to analyze large volumes of legal documents and extract relevant information such as key terms, entities, and relationships between them. This can be particularly useful in e-discovery, where large amounts of electronic data need to be reviewed.
3. Predictive Analytics: AI can be used to predict the outcomes of legal cases based on past cases with similar characteristics. This can help lawyers and judges make more informed decisions about the likelihood of success in a particular case.
4. Sentencing: AI algorithms can be used to help judges determine appropriate sentences for criminal defendants based on a variety of factors such as the severity of the crime, the defendant's criminal history, and other relevant factors.
5. Risk Assessment: AI can be used to assess the risk of reoffending or flight for defendants in pretrial detention, and to make recommendations to judges regarding release on bail or detention pending trial.
6. Courtroom Assistance: AI-powered chatbots can be used to help litigants navigate court procedures and provide basic legal information. Additionally, AI-powered transcription and translation tools can assist in courtroom proceedings by providing real-time transcripts and translations of proceedings.
7. Cybercrime and Fraud Detection: AI algorithms can be used to detect and prevent cybercrime and fraud by analyzing patterns in data and identifying suspicious activity.

These are just a few examples of how AI can be used in the administration of justice. As AI technology continues to advance, it is

likely that many new uses will emerge in the coming years.

Regenerate response

While it is unlikely that any judge will begin using Chat GPT and other AI tools to write opinions, AI can be useful to expedite routine research and analysis tasks, which have caused monotony for lawyers for centuries. The principal lesson might be that AI tools are here to stay, so it is better to be aware of them, learn to use them and incorporate them into the courts and attorneys' work flows to help to deliver services that have never been available before. ■

1. AI was first described as "allowing a machine to behave in such a way that it would be called intelligent if a human being behaved in such a way". J. McCarthy *et al.*, "A Proposal for the Dartmouth Summer Research Project on Artificial Intelligence (31 August 1955)", in: Jerry Kaplan (red.) *Artificial Intelligence: What Everyone Needs to Know*, Oxford: Oxford University Press 2016.

2. AI can mean many distinct types of systems. Most discussion about the legal system focus on a few types of AI platforms: natural language processing and generation; virtual agents; and machine learning platforms. We see these types of platforms in different systems already: decision trees (*e.g.*, phone prompt systems), machine learning (*e.g.*, Siri and Alexa), limited memory AI (semi-autonomous driving), and large language models (*e.g.*, ChatGPT, HAL3000, and what most people associate with AI).

3. John O. McGinnis and Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 *Fordham L. Rev.* 3041, 3046 (2014). Available at: <https://ir.lawnet.fordham.edu/flr/vol82/iss6/16>.

4. A. D. (Dory) Reiling, *Courts and Artificial Intelligence*, (2020) 11(2) *International Journal for Court Administration* 8. DOI: <https://doi.org/10.36745/ijca.343>, citing, Katz, Daniel Martin *et al.* *A General Approach for Predicting the Behavior of the Supreme Court of the United States* (January 16, 2017). SSRN: <https://ssrn.com/abstract=2463244> or <http://dx.doi.org/10.2139/ssrn.2463244>.

5. Aletras N, Tsarapatsanis D, Preotjiuc-Pietro D, Lamos V. 2016. 'Predicting judicial decisions of the European Court of Human Rights: a Natural Language Processing perspective', *PeerJ Computer Science* 2:e93 <https://doi.org/10.7717/peerj-cs.93>.