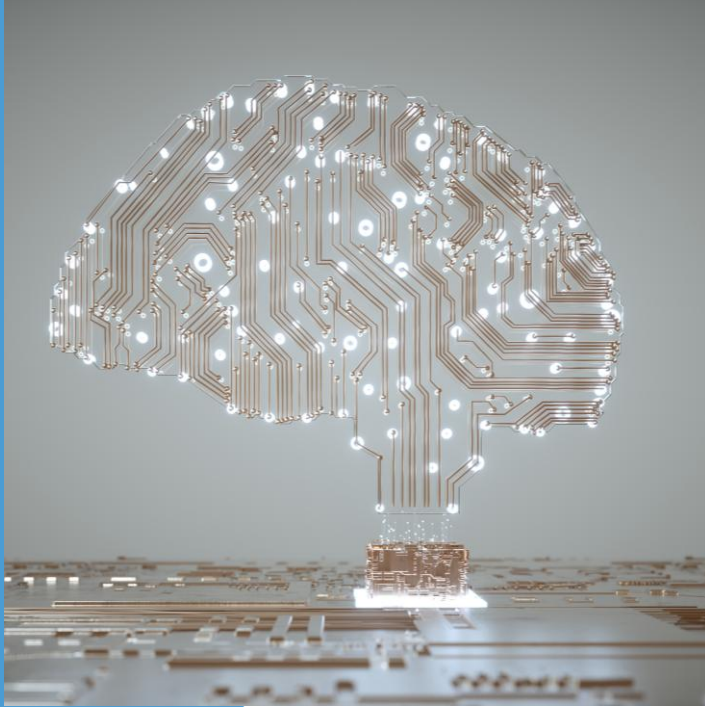




Artificial Intelligence and Evidentiary Issues

Timothy Heinle, Albert and Gladys Coates Term Professor

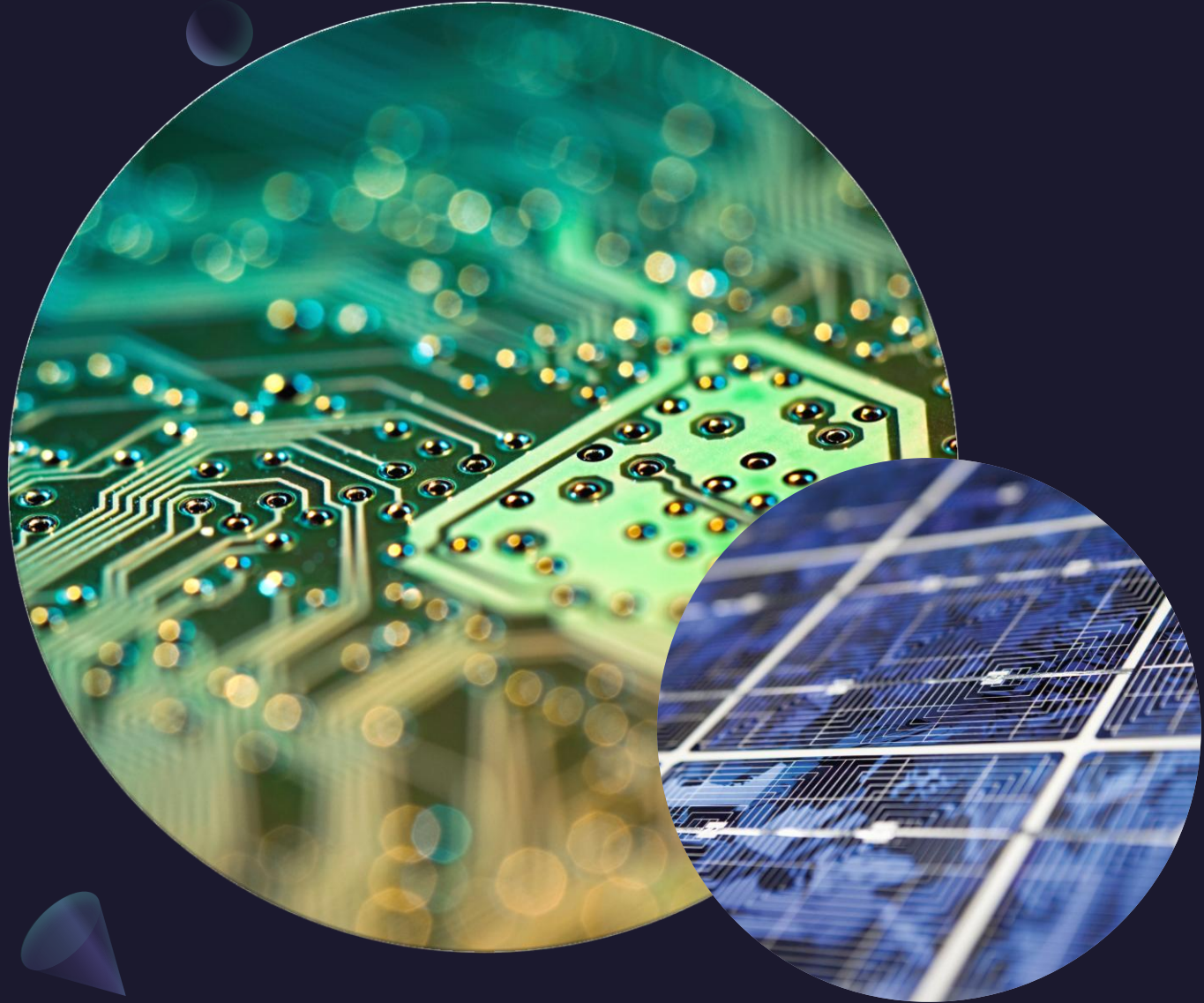
Kristi Nickodem, Assistant Professor of Public Law and Government



School of
Government

Artificial Intelligence:

Computer systems that can perform tasks that usually require human intelligence, such as visual perception, speech recognition, decision-making, problem-solving, and language translation.





LONGEYE



Draft One

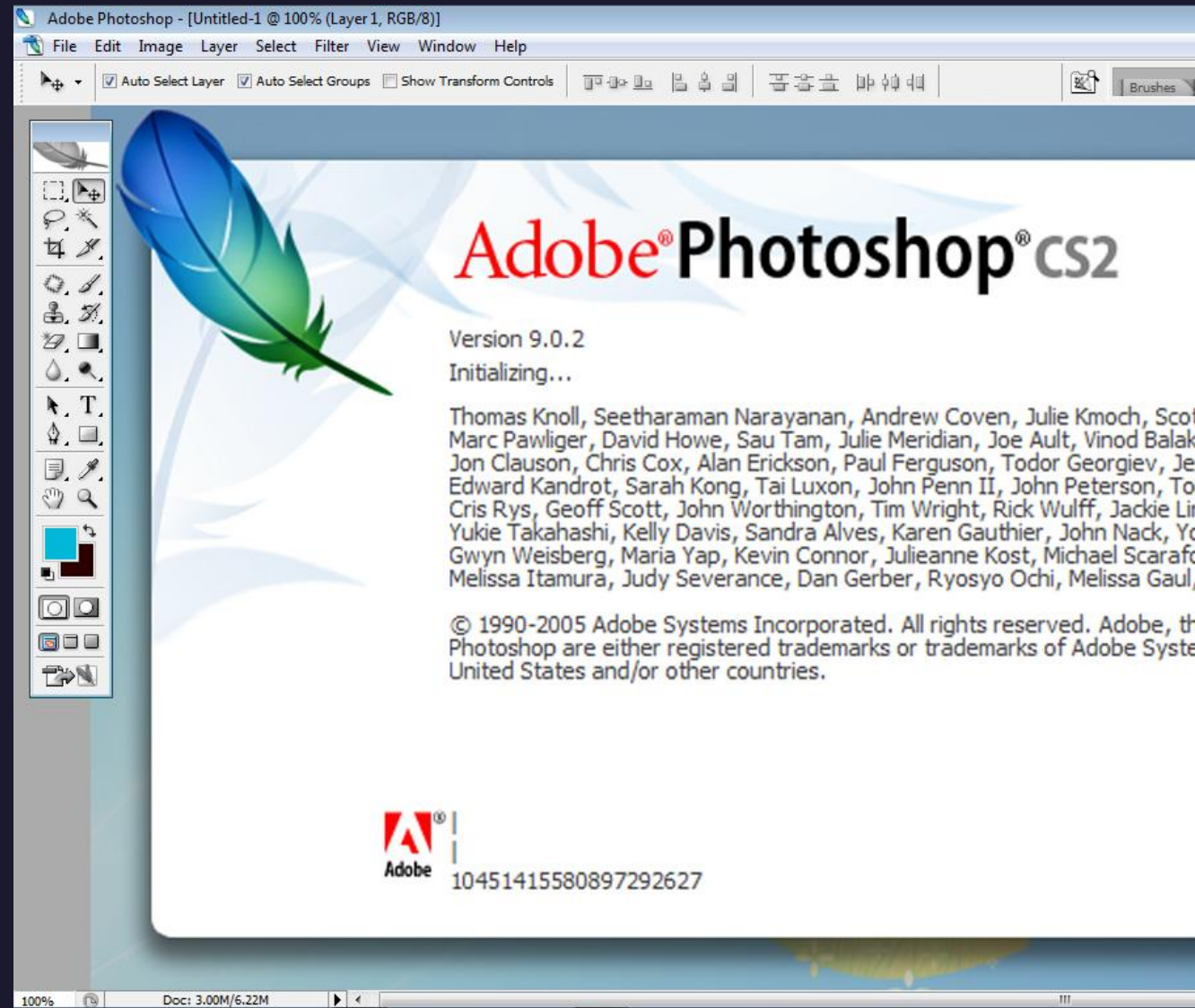
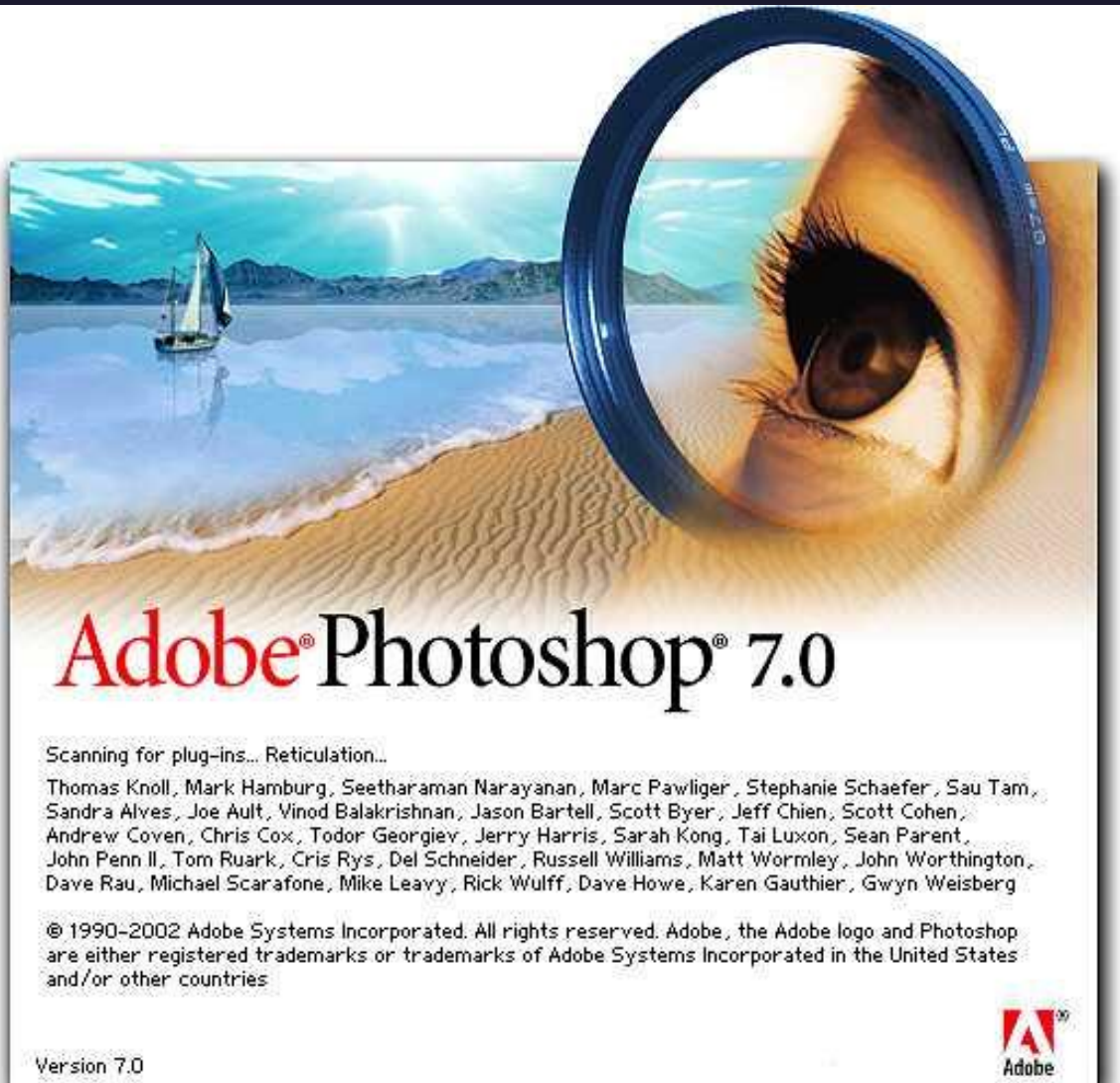


REWRITE REPORT WRITING

Flock

ShotSpotter®

What's possible with generative AI?



Flux AI

Gemini

Copilot



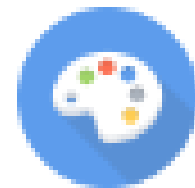
Midjourney

Adobe

Firefly

 OpenAI

DALL-E 3



Stable Diffusion

Prompt:

“Create an image of a judge relaxing by the beach”





2024,
Copilot



2026, Gemini

Research reveals 'major vulnerabilities' in deepfake detectors

A new study highlights major flaws in existing deepfake detectors and provides a framework for more reliable solutions.



How Easy Is It to Fool A.I.- Detection Tools?

Adobe
Firefly



invideo

Pika

runway

Gemini

 **synthesia**



KlingAI



Veo



00:00:00

✨ Hi Kristi

Where should we start?

|Ask Gemini 3



Tools

Fast ▾



Create image



Create music

Write anything

Create video

ElevenLabs



Descript



Speechify



Play.ht



MURF.AI



WellSaid

That panicky call from a relative? It could be a thief using a voice clone, FTC warns

FBI warns senior US officials are being impersonated using texts, AI-based voice cloning

Fraudsters use voice-cloning AI to scam man out of \$25,000

Kidnapping scam uses artificial intelligence to clone teen girl's voice, mother issues warning





What's happening across the country?

AI 'Nudify' Websites Are Raking in Millions of Dollars

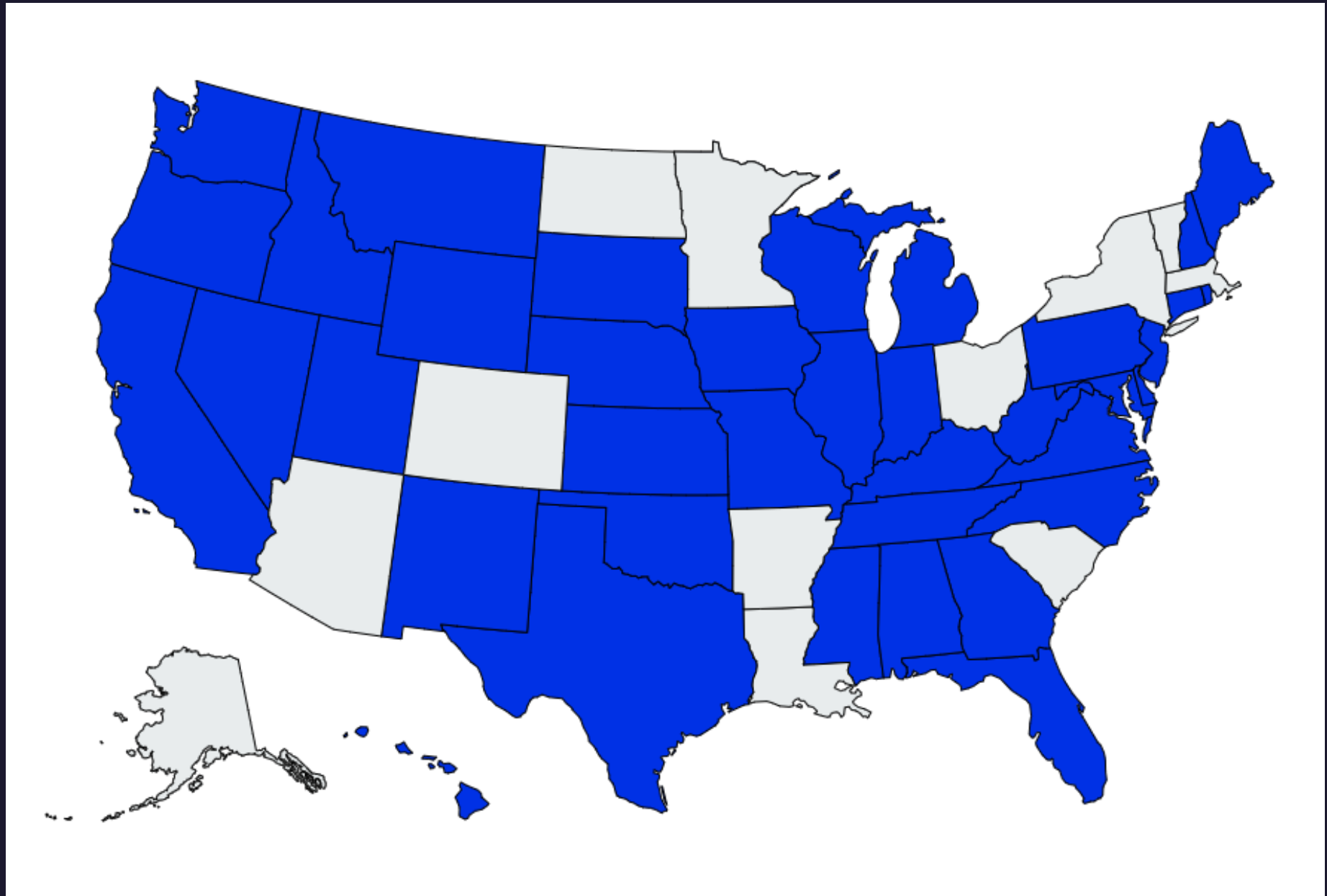
New Jersey teen sues classmate for allegedly creating, sharing fake AI nudes

The AI-Generated Child Abuse Nightmare Is Here

The phenomenon of deep nudes—a new threat to children and adults

Internet Watch Foundation finds 260-fold increase in AI-generated CSAM in just one year, and 'it's the tip of the iceberg'

State laws
criminalizing
AI-generated
or computer
edited CSAM



**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2024-37
HOUSE BILL 591**

"§ 14-190.13. Definitions for certain offenses concerning minors.

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a ~~minor~~ minor; and G.S. 14-190.17C, obscene visual representation of sexual exploitation of a minor.

Material. – Pictures, drawings, video recordings, films or other visual or physical depictions or representations, including digital or computer-generated visual depictions or representations created, adapted, or modified by technological means, such as algorithms or artificial intelligence, but not material consisting entirely of written words.

G.S. 14-190.17C. Obscene visual representation of sexual exploitation of a minor.

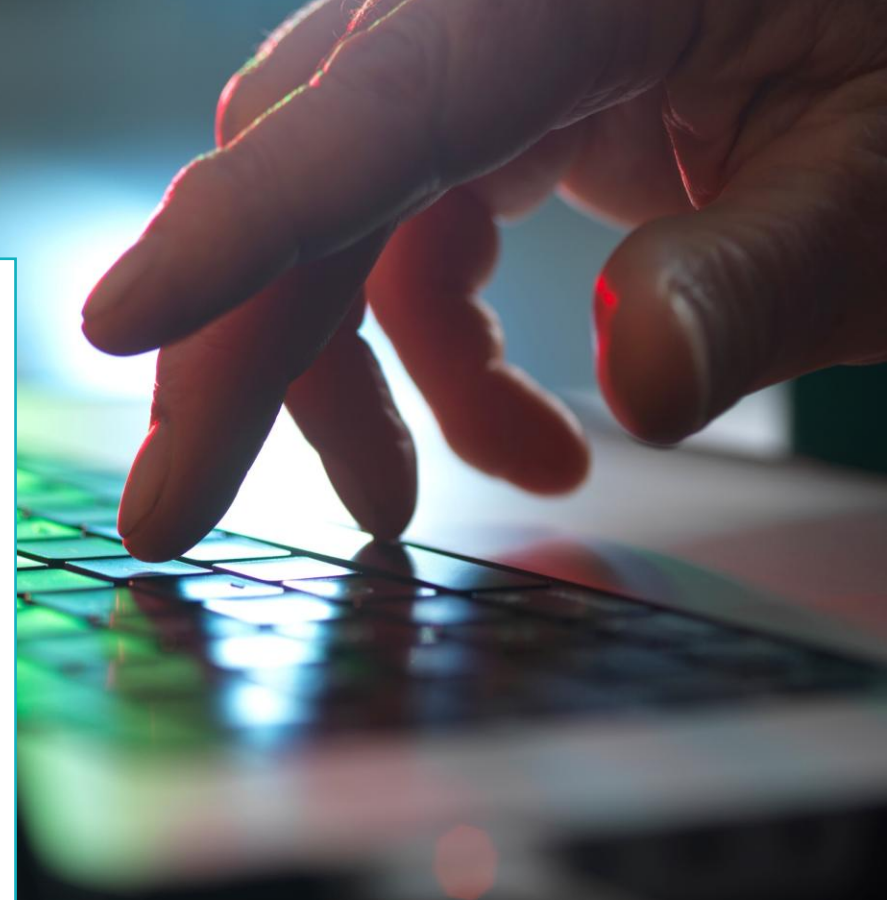
Class E felony: to knowingly produce, distribute, receive, or possess with intent to distribute material that:

- (1) Depicts a minor engaging in sexual activity; AND
- (2) Is obscene.

Class H felony: to knowingly possess material that:

- (1) Depicts a minor engaging in sexual activity; AND
- (2) Is obscene.

Minor depicted does not have to actually exist.



“Sexual activity”
G.S. 14-190.13(5)

“Obscene”
G.S. 14-190.13(3a)

G.S. 14-190.16. First degree sexual exploitation of a minor.

(5) Creates for sale or pecuniary gain material created, adapted, or modified to appear that an identifiable minor is engaged in sexual activity

G.S. 14-190.17. Second degree sexual exploitation of a minor.

(2) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity or that has been created, adapted, or modified to appear that an identifiable minor is engaged in sexual activity.

**G.S. 14-190.5A. Disclosure of private images;
civil action.**

“Sexual activity”
G.S. 14-190.13(5)

“Identifiable minor”
G.S. 14-190.13(1a)

Taylor Swift deepfakes spark calls in Congress for new legislation

Grok generating AI nudes of Taylor Swift without being prompted, report finds



**Congressional
Research Service**

Informing the legislative debate since 1914

Legal Sidebar

The TAKE IT DOWN Act: A Federal Law Prohibiting the Nonconsensual Publication of Intimate Images

May 20, 2025

On April 28, 2025, Congress passed [S. 146](#), the TAKE IT DOWN Act, a bill that criminalizes the nonconsensual publication of intimate images, including “digital forgeries” (i.e., [deepfakes](#)), in certain circumstances. It also requires certain websites and online or mobile applications, identified as “covered platforms,” to implement a “notice-and-removal” process to remove such images at the depicted individual’s request. The President [signed](#) the bill into law on May 19, 2025. The bill’s criminal prohibition takes effect immediately, while covered platforms have one year (until May 19, 2026) to establish the required notice-and-removal process. This Legal Sidebar provides an overview of laws prohibiting the nonconsensual distribution of intimate images, describes the major provisions of the TAKE IT DOWN Act, and analyzes legal questions that may be posed by regulated individuals and entities, Congress, and the courts.

Laws Addressing the Nonconsensual Distribution of Intimate Images

Over the last [12](#) years, states have adopted a [range of laws](#) specifically addressing the nonconsensual distribution of intimate images, sometimes referred to as “[nonconsensual pornography](#)” or “[revenge porn](#).” In 2022, Congress [passed](#) a law establishing a federal civil right of action for victims of nonconsensual pornography as part of its reauthorization of the Violence Against Women Act (VAWA). The law generally [authorizes](#) depicted individuals to sue the disclosing party in federal court for money damages or injunctive relief. While [some](#) jurisdictions (e.g., [New York](#)) expressly include digitally created or altered images in their nonconsensual pornography laws, the federal civil action, as originally enacted, does not [explicitly address](#) such images. As a result, it is not settled whether VAWA’s right of action [encompasses](#) such digitally modified depictions. Some Members of Congress introduced bills in the 118th and 119th Congresses to [expand](#) the existing cause of action or create a [parallel](#) cause of action for images created or altered using artificial intelligence (AI) or other digital technologies.

First Amendment Issues

- *Miller v. California*, 413 U.S. 15 (1973)
- *New York v. Ferber*, 458 U.S. 747 (1982)
- *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002)





How could this
come up in
your cases?

Scenario #1

Defendant is accused of using an app on his smartphone to create deepfake pornography of a minor and then texting those images to his friend. Defendant has been charged with second degree sexual exploitation of a minor.

You represent Defendant.

What issues come to mind? What defenses might you explore?

How will you attack the State's evidence?



**Sell drugs.
Make money.**

**Social media and
other digital
communications**

**Mess with me?
Bang Bang! You're
not a problem
anymore.**



Authenticating digital communications

Proponent must show evidence is what proponent says it is (including who authored it).

- Knowledgeable witness, or
- Circumstantial factors (e.g., distinctive characteristics)

Authentication of Digital Communications

(social media content and text messages)

To authenticate digital evidence, the proponent must show that “the [evidence] in question is what its proponent claims.” N.C. R. Evid. 901. A party may offer testimony of a “[w]itness with [k]nowledge” that evidence is what it is claimed to be. See Rule 901(b)(1). Alternatively, a party may rely on circumstantial factors such as the “distinctive characteristics” of the evidence. See Rule 901(b)(4). “The burden to authenticate... is not high—only a prima facie showing is required.” *State v. Ford*, 245 N.C. App. 510 (2016).

Authentication of digital communications involves two questions:

1. Does the exhibit (screen capture, photo, video) accurately reflect the communication?
2. Is there reason to believe that the purported author wrote the communication?

See *State v. Clemons*, 274 N.C. App. 401 (2020) (“To authenticate [social media] evidence ...there must be circumstantial or direct evidence sufficient to conclude a **screenshot accurately represents the content** on the website it is claimed to come from and to conclude the **written statement was made by who is claimed to have written it**”) (emphasis added).

The following memory tool may be helpful in thinking about the various types of circumstantial evidence frequently used to authenticate digital communications.

SANDVAT

S is for “Substance”

How does the substantive content of the digital evidence itself tend to authenticate it? e.g., does the communication reference a particular event, nickname, or private topic, thereby tending to show that a particular person was the author?

A is for “Account”

Is there information about the account (username/login, digital properties, identifying information associated with account profile) that suggests ownership or authorship?

N is for “Name”

Is there a name or “handle” associated with the social media account that indicates authorship?

D is for “Device”

Who possessed the phone, computer, or device used to make the communication? What is distinctive about the hardware and is there information as to ownership or possession?

V is for “Visuals”

Does the webpage or account display photographs or videos that indicate ownership or authorship?

A is for “Address”

What can be learned from the IP address, physical address, or email address associated with the communication?

T is for “Timing”

When was the communication made? How does this relate to larger questions of chronology?

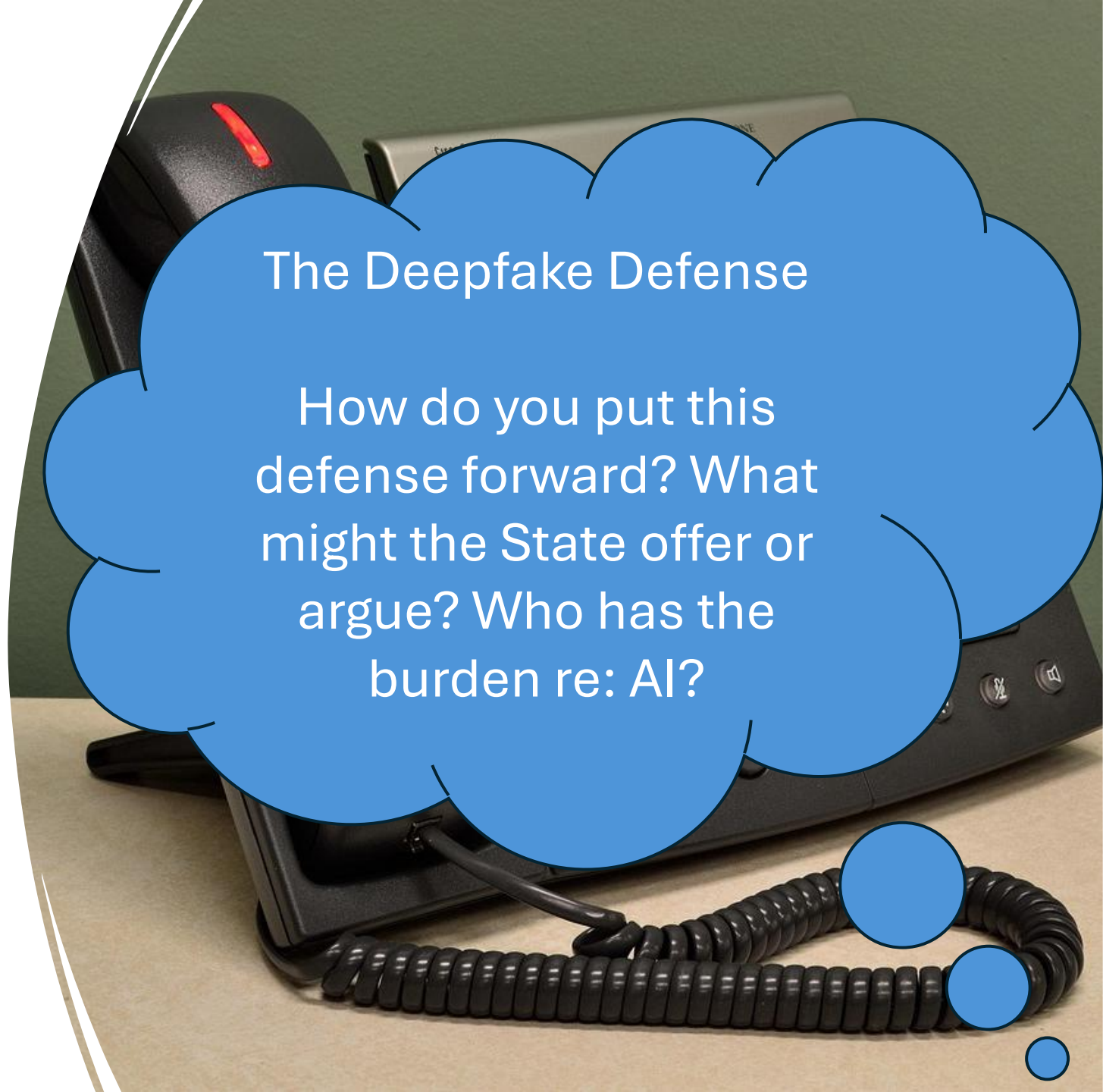
Scenario #2

Defendant allegedly left a threatening voicemail for his ex-girlfriend days before her home was set on fire.

Defendant claims his ex is proficient in AI and generated a fake voicemail to frame him.

The Deepfake Defense

How do you put this defense forward? What might the State offer or argue? Who has the burden re: AI?





WORLD U.S. POLITICS SPORTS ENTERTAINMENT BUSINESS SCIENCE FACT CHECK ODDITIES MORE

Terence Stamp dies at 87 Air Canada strike Zelenskyy to meet Trump Brooklyn shooting **LIVE** Elecciones en Bolivia

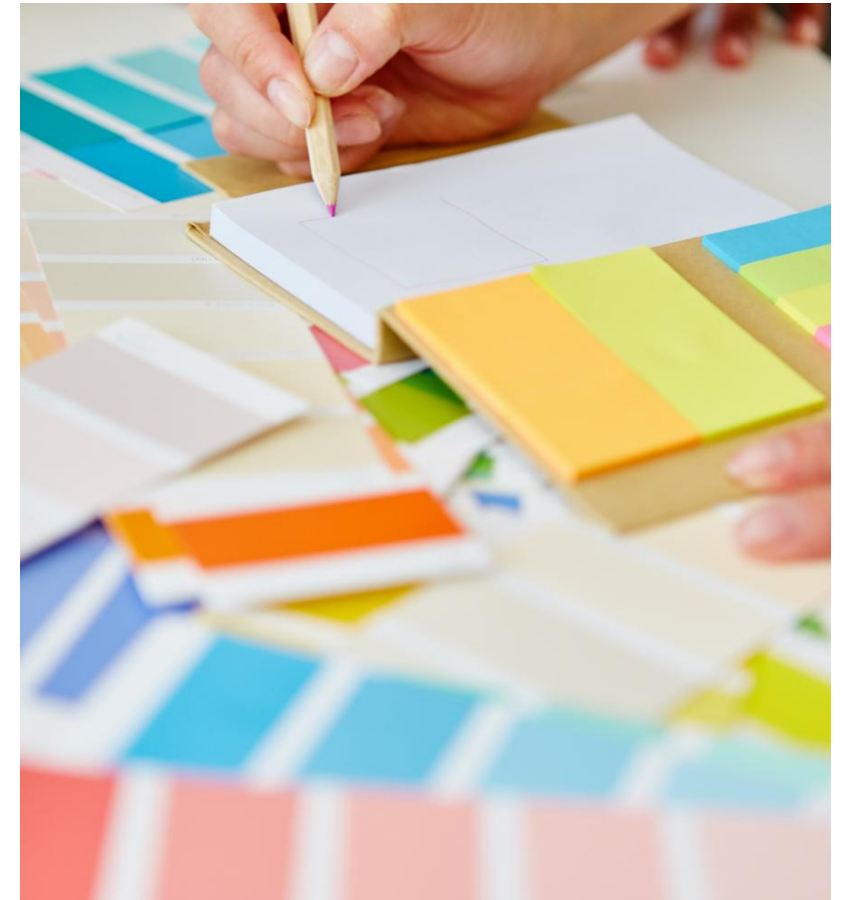
U.S. NEWS

Former school athletic director gets 4 months in jail in racist AI deepfake case



Brainstorming possible next steps

- Experts?
 - Support defense (e.g., R. 901)
 - Challenge State's expert, if any
- Corroborating evidence (e.g., lay testimony re: whereabouts)
- Defendant testimony
- Timing of defense + experts?



District 25 Administrative Order

FILED
DATE: December 8, 2025
TIME: 2:27:46 PM
CABARRUS COUNTY
CLERK OF SUPERIOR COURT
NORTH CAROLINA BY: F. Saffell IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CABARRUS COUNTY 25-R-000601-120

IN RE:)
) REVISED ADMINISTRATIVE ORDER¹
ARTIFICIAL INTELLIGENCE (AI) IN) 25-09
SUPERIOR COURT PROCEEDINGS)

The undersigned Senior Resident Superior Court Judge enters this Administrative Order that replaces and supersedes the Court's order entered on July 23, 2024. Effective immediately, it applies to all civil and criminal proceedings in the Superior Court of Judicial District 25 (Cabarrus County). This Order is designed to establish a clear structure for how and when issues involving artificial intelligence (AI), including Generative AI, are identified, disclosed, and addressed in legal proceedings. It is not intended to stifle innovation. It does not forecast or prejudge how any particular evidentiary question related to AI will be resolved. The Court recognizes that Generative AI is increasingly used in legal work. This Order establishes safeguards for the responsible use of AI and clarifies that lawyers and self-represented litigants share a duty to understand the implications of AI for legal work and practice.

1. **Applicability and Purpose.** This Order governs the use of AI tools in both civil and criminal matters in the Superior Court of Judicial District 25. Its purpose is to ensure that AI-related issues are identified early, addressed through structured procedures, and resolved in ways that preserve fairness, efficiency, confidentiality, and the integrity of the judicial process. Nothing in this Order alters the Rules of Evidence, the Rules of Civil Procedure, the Rules of Criminal Procedure, or any party's burden. Instead, it provides a framework for disclosure, meet-and-confer, and case-specific management of AI issues.
2. **Permissible Use and Prohibitions Regarding AI.** This Order applies in civil and criminal matters. Parties and counsel may use AI tools and other automated technologies for litigation-related purposes, including research, drafting, discovery support, out-of-court transcription (e.g., depositions and interviews), summarization, translation, classification, privilege review support, analytical modeling, and privacy-protective masking or redaction of audio/video (including automated blurring of juvenile faces), subject to Human-in-the-Loop (HITL) oversight and independent verification of accuracy, validity, and reliability, in

¹As with its prior administrative order addressing AI filed on July 23, 2024, the Court invites recommendations for improvements to this Order. Those recommendations can be sent to martin.b.mcgee@nccourts.org. The prior order can be found here: <https://www.nccourts.gov/assets/documents/local-rules-forms/Administrative%20Order%20Generative%20AI.pdf> The Court used AI tools to assist in preparing this Order.

APPENDIX A

AI Disclosure Chart

Bright-Line Function Rule: AI that affects evidence = disclosure.
AI that affects advocacy only = no disclosure.

Use of AI need not be disclosed when employed solely to assist in drafting legal argument, including briefs, motions, or pleadings, where the lawyer reviews and adopts the work as advocacy. However, when AI is used to generate factual summaries, narratives, timelines, descriptions of evidence, or similar statements that are served or relied upon as factual assertions in discovery or may reasonably be used as evidence or party admissions at a hearing or trial, the use of AI must be disclosed. The distinction rests upon function: drafting advocacy does not require notice, but AI-generated factual content offered as truth does.

If disclosure is not required, nothing must be filed or served – no form, no certification, no notice. This Order imposes no additional burden unless disclosure is affirmatively required under this Order.

1. Evidence Creation/Alteration/Enhancement

Scenario	Disclosure Required?	Why?	Controlling Paragraph(s)
Using an AI tool to create an image, audio clip, transcript, graph, or video offered as evidence.	YES	AI-created <i>evidence</i> must be disclosed because it affects authenticity, reliability, and validity.	Identification and Disclosure; Definitions – “AI-generated evidence,” “Synthetic Media,” “Deepfake”; Evidence section. (¶ 6, ¶ 3)
Using AI to materially alter or enhance an existing video (sharpening faces, removing noise, isolating voices).	YES	Material alteration = authenticity implications.	Identification and Disclosure; Evidence section; AI-generated evidence definition. (¶ 6, ¶ 7, ¶ 3)
Using AI to run deepfake detection tests on opponent’s video.	YES	AI analysis that could affect admissibility or authenticity must be disclosed.	Identification and Disclosure; Evidence section. (¶ 6, ¶ 7)
Using AI to summarize, translate, or transcribe evidence that will itself be offered into evidence (e.g., AI transcript admitted as exhibit)	YES	AI-created content offered as proof must be validated and disclosed.	AI-assisted outputs offered as evidence; Definitions; Evidence section. (¶ 3, ¶ 7)
Using AI to redact a juvenile’s face in discovery footage.	YES (if offered as evidence)	Masking alters video; must be validated for accuracy.	Permissible Use and Prohibitions; AI-assisted outputs. (¶ 2, ¶ 3)

APPENDIX B

AI Disclosure Checklist Form

Case Name/Number: _____

Party Submitting Disclosure: _____

Date of Disclosure: _____

Check all that apply to your use of AI in this case:

___ Creation of Evidence:

Used AI to create an image, audio clip, transcript, graph, or video that will be offered as evidence. (If checked, describe the evidence: _____)

___ Alteration or Enhancement of Evidence:

Used AI to materially alter or enhance existing evidence (e.g., sharpening, noise reduction). (if check, describe the alteration: _____)

___ Deepfake Detection or Analysis:

Used AI to analyze or detect deepfakes or other authenticity issues in opponent’s evidence. (If checked, describe the analysis: _____)

___ Transcription or Translation for Evidence:

Used AI to transcribe or translate content that will be submitted as evidence. (If checked, describe the transcript/translation: _____)

___ Expert use of AI in Reports:

Expert witness used AI tools in generating reports or forming opinions that will be presented. (If checked, briefly note the expert’s AI use: _____)

___ Other (Describe): _____

I certify that the above disclosures comply with Revised Administrative Order (25-09).

(Signature of Counsel/Party)

People are trying to claim real videos are deepfakes. The courts are not amused



Scenario #3

In a murder trial, the State offers a bystander's cellphone video. The video is blurry at a critical moment, so the State has used AI to enhance the video.

The State is openly acknowledging its use of AI and seeks to admit the altered video.

Acknowledged AI

Is evidence altered by AI admissible? What does the proponent have to show? How can it be challenged?



Proposed Amendments to the **Federal** Rules of Evidence

ADVISORY COMMITTEE ON EVIDENCE RULES

May 2, 2025

Proposed Rule 707: Machine-Generated Evidence

“When machine-generated evidence is offered without an expert witness and would be subject to Rule 702 if testified to by a witness, the court may admit the evidence only if it satisfies the requirements of Rule 702(a)-(d). This rule does not apply to the output of simple scientific instruments.”

Brainstorming possible next steps

- Automatically (in)admissible?
- Push court re: reliability of State's AI-altered evidence



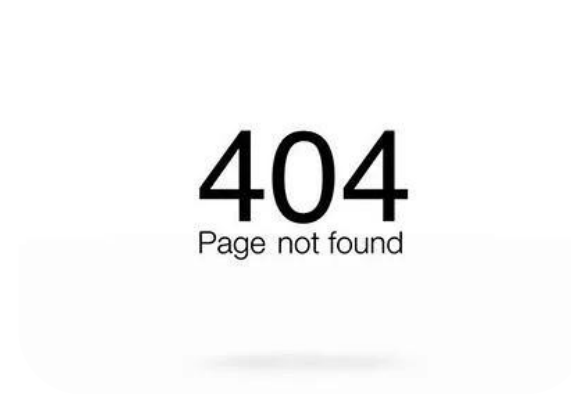
Is the State's AI-generated evidence reliable?



Sufficient facts
and data



Established
techniques



Known or
potential error
rates



Accounted for
alternative
explanations

How do you challenge reliability?

- Argue the State needs an expert (and then challenge that expert)
- Cross corroborating lay witnesses
- Offer lay and expert testimony
- Argue weight, if admitted



“AI- enhanced” evidence

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSHUA PULOKA,
Aka JOSHUA EVERYBODYTALKSABOUT,

Defendant.

No. 21-1-04851-2 KNT

FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE: FRYE
HEARING ON ADMISSIBILITY OF
VIDEOS ENHANCED BY
ARTIFICIAL INTELLIGENCE

Expert testimony based on AI outputs

Judge rebukes Stanford misinformation expert for using ChatGPT to draft testimony

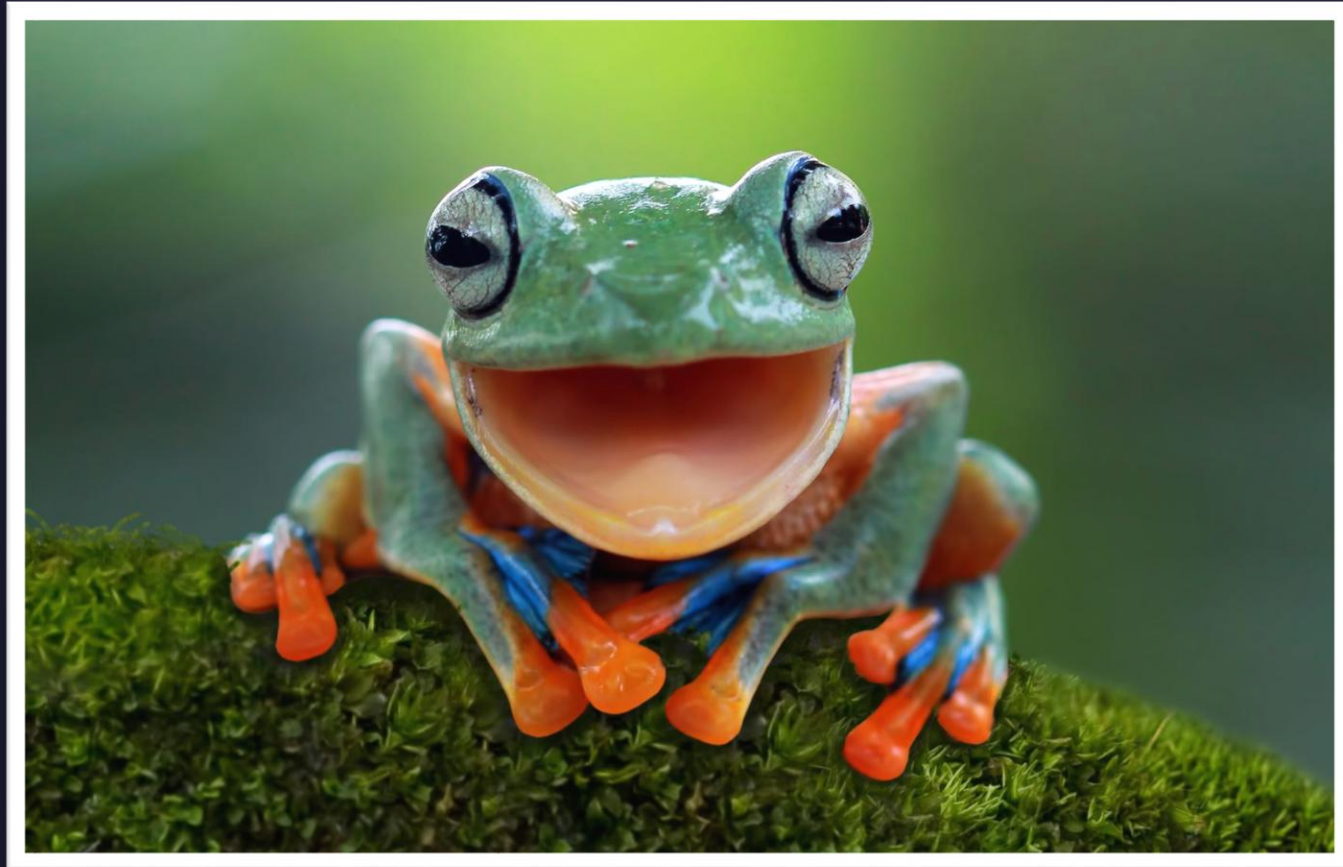
N.Y. Court Opines on Use of AI by Experts

"[C]ounsel has an affirmative duty to disclose the use of artificial intelligence and the evidence sought to be admitted should properly be subject to a Frye hearing prior to its admission"

Police officers are starting to use AI chatbots to write crime reports. Will they hold up in court?

Draft One 

AI-generated police report states Utah officer was turned into a frog



Scenario #4

You want to use AI to perform legal research and draft a motion.

What are your ethical considerations?



California prosecutors' office used AI to file inaccurate motion in criminal case

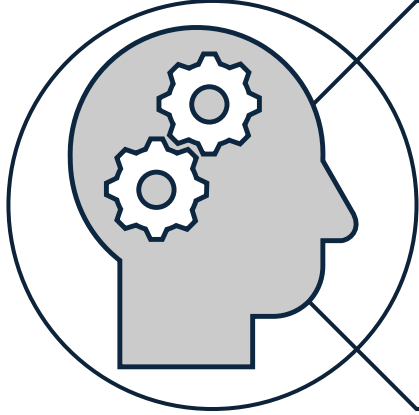
US appeals court orders lawyer to pay \$2,500 over AI hallucinations in brief

These lawyers used ChatGPT to save time. They got fired and fined.

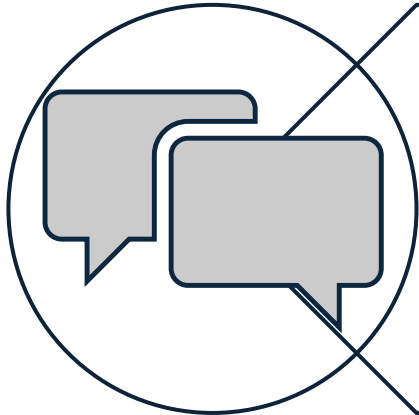
Prosecutor accused of AI hallucinations in habeas brief

Attorney with Clayton County DA's Office apologizes for using AI, citing fake cases in court brief

Ethical Duties of Attorneys



Competence



Candor





“[S]hould a lawyer choose to employ AI in her practice, the lawyer must do so competently, the lawyer must do so securely, and the lawyer must exercise her independent judgment in supervising the use of such processes in her practice.”

2024 Formal Ethics Opinion 1



School of
Government

Questions?

About AI? Nickodem@sog.unc.edu

About evidence? Heinle@sog.unc.edu

About both AI and evidence? Both of us 😊