

Artificial Intelligence and Juvenile Defense

Kristi Nickodem

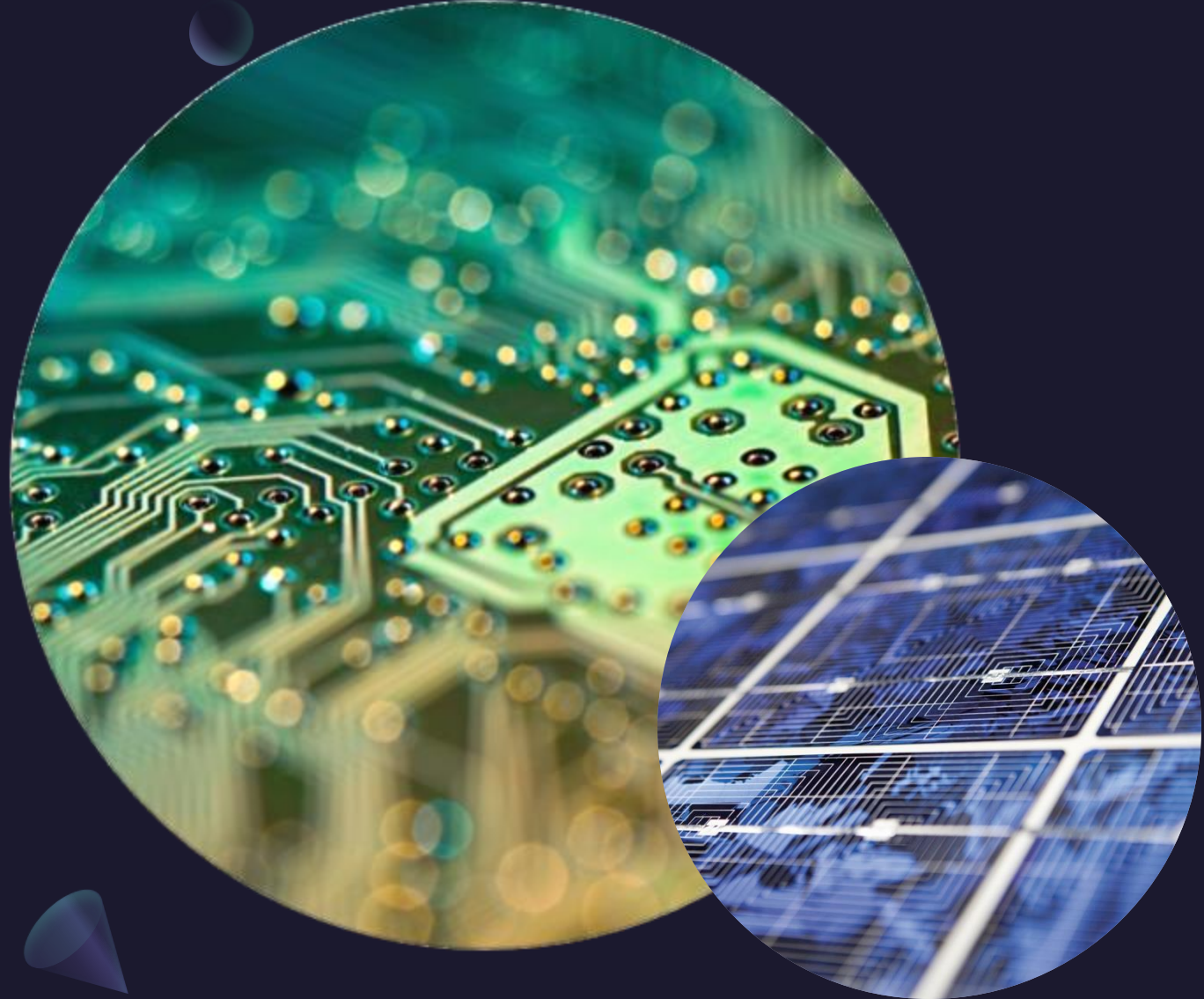
Robert W. Bradshaw Jr. Distinguished
Term Assistant Professor of Public Law
and Government

Timothy Heinle

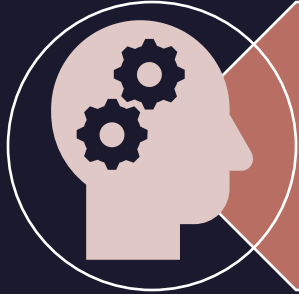
Albert Coates Term Professor of
Public Law and Government

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.



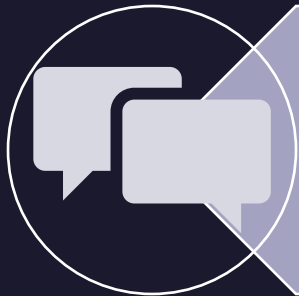
Ethical Issues Involving AI



Competence



Confidentiality



Communication

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 512

July 29, 2024

Generative Artificial Intelligence Tools

2024 FORMAL ETHICS OPINION 1

[◀ Previous Opinion](#)

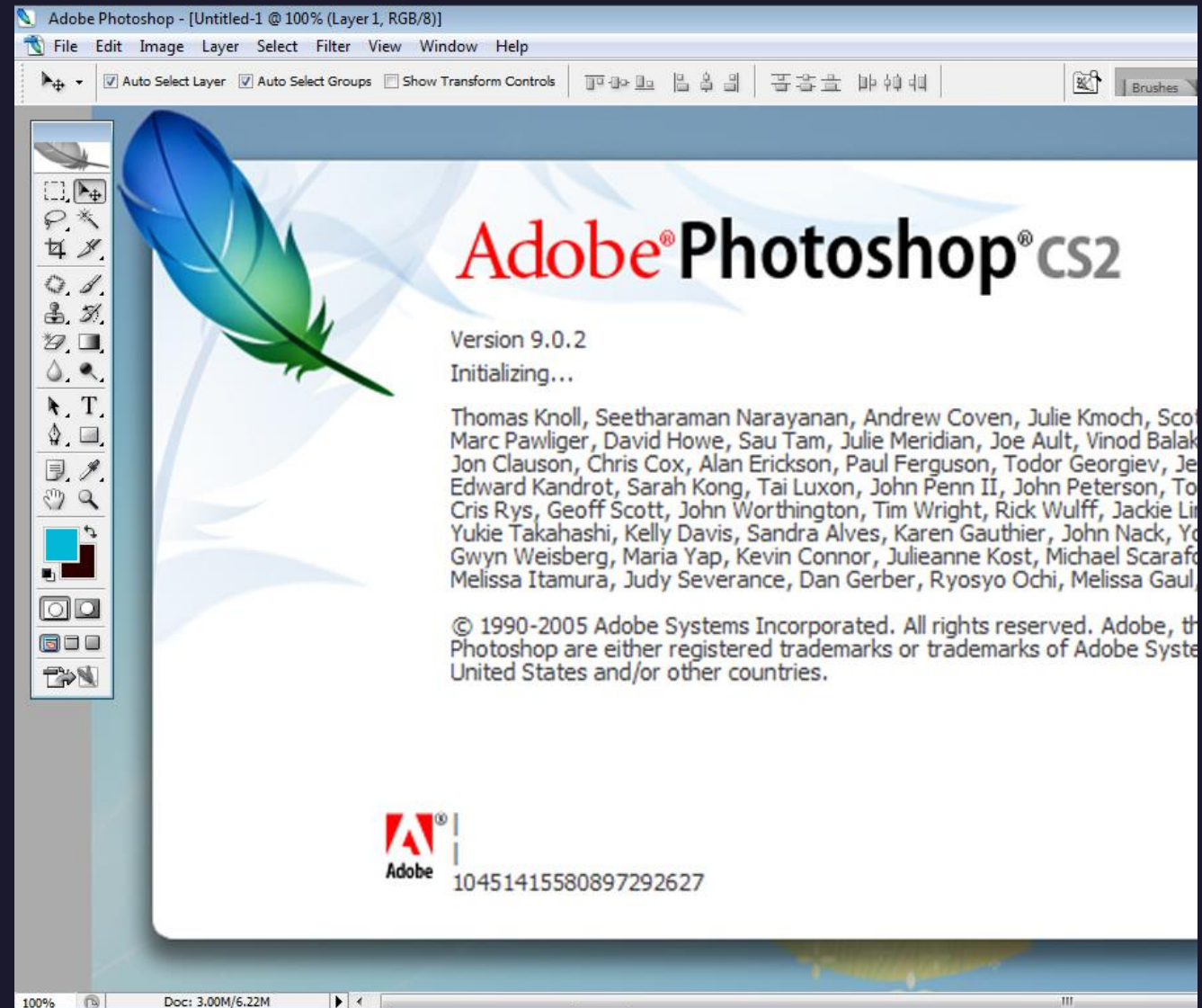
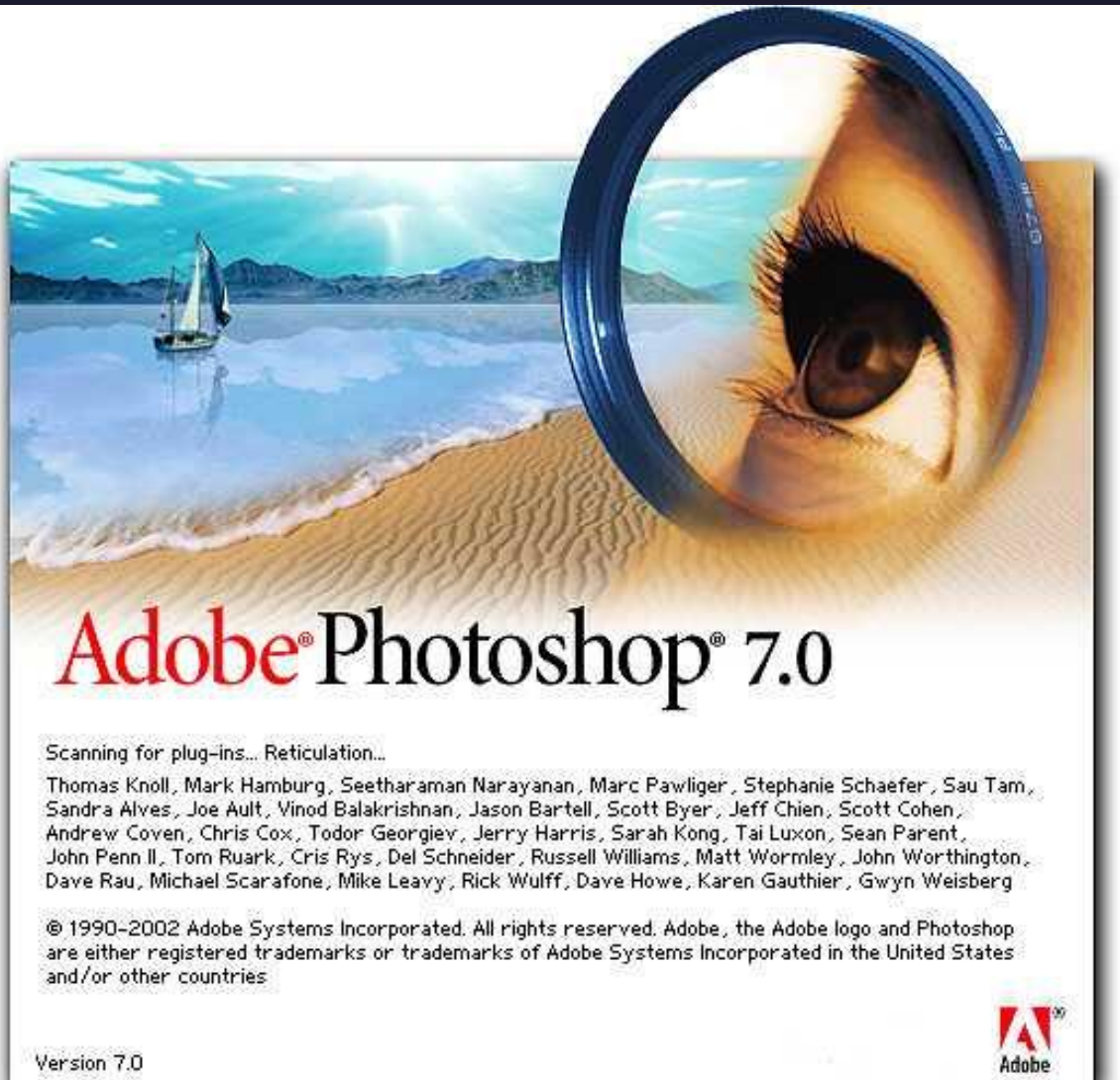
[Next Opinion ▶](#)

USE OF ARTIFICIAL INTELLIGENCE IN A LAW PRACTICE

Adopted: November 01, 2024

Opinion discusses a lawyer's professional responsibility when using artificial intelligence in a law practice.

What's possible with generative AI?



Flux AI

Gemini

Copilot



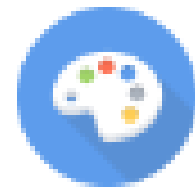
Midjourney

Adobe

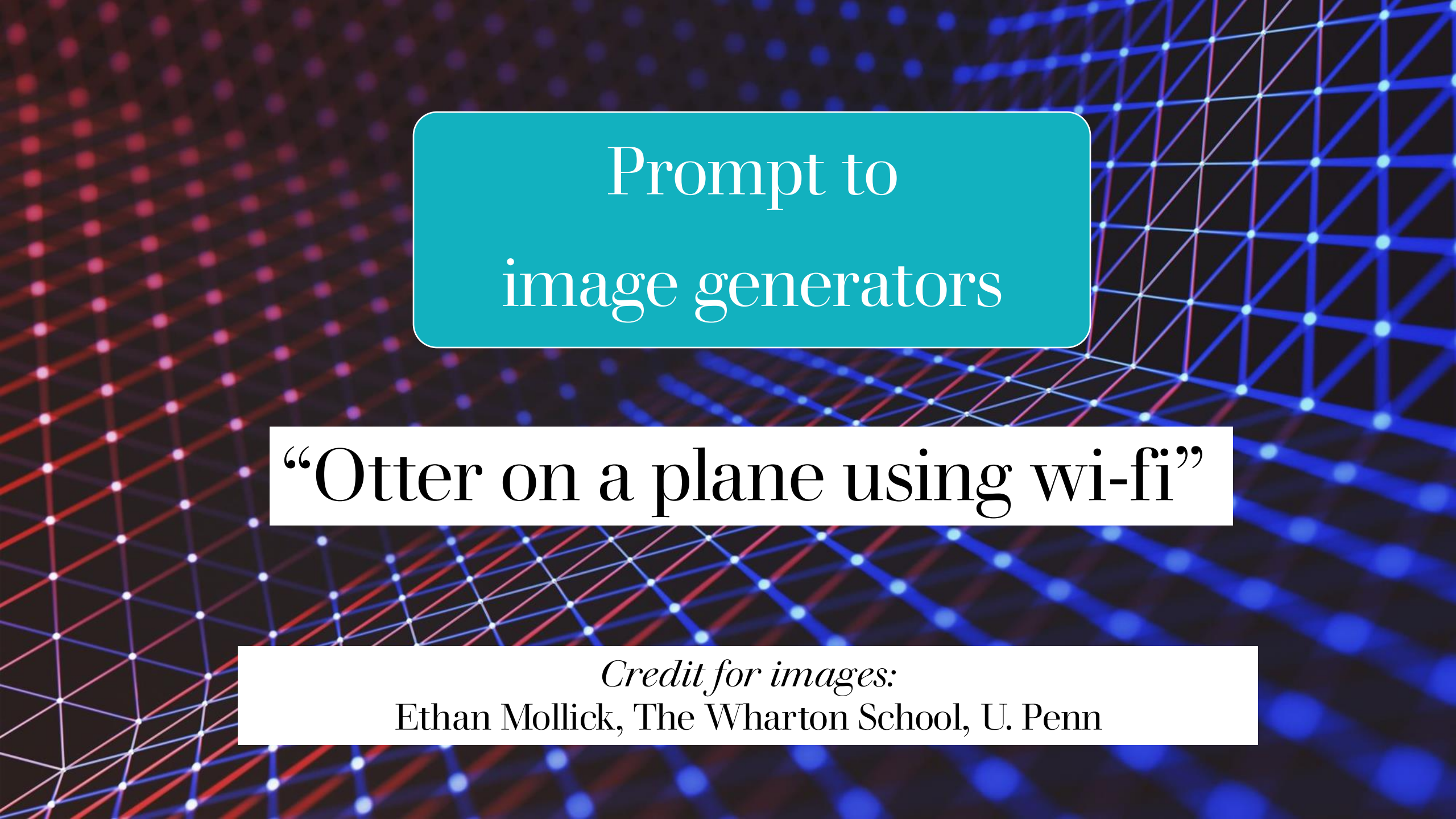
Firefly

 OpenAI

DALL-E 3



Stable Diffusion



Prompt to image generators

“Otter on a plane using wi-fi”

Credit for images:
Ethan Mollick, The Wharton School, U. Penn





Adobe
Firefly

 **invideo**

Pika

Veo 3

runway

 **OpenAI**
SORA

 **synthesia**

 **KlingAI**





|||||

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



Microsoft's VASA-1 can deepfake a person with one photo and one audio track

• Upload image, or pick one below

Upload



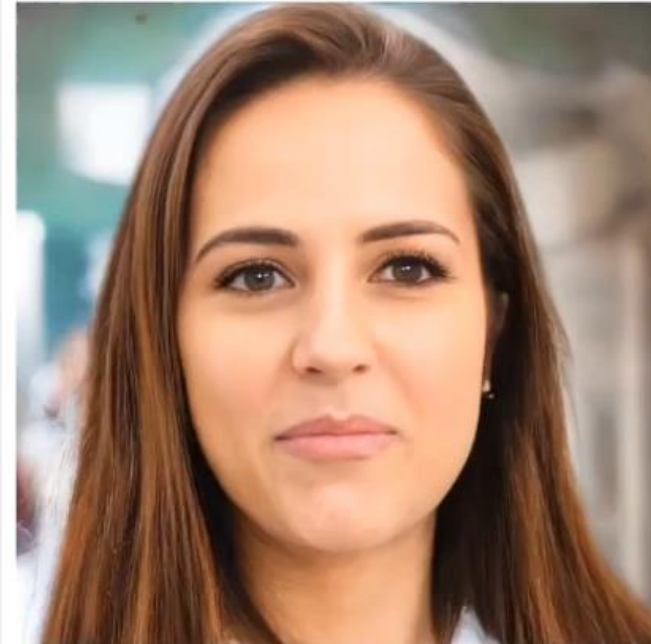
• Upload audio, record audio, or generate by TTS

Upload

Generate

Record

Talking face video live stream



Pitch: 0.00
Yaw: 0.00
Roll: 0.00
X: 0.00
Y: 0.00
Z: 1.00
Gaze X: 0.00
Gaze Y: 0.00

Reset



What's happening across the country?

AI 'Nudify' Websites Are Raking in Millions of Dollars

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

Meta's platforms showed hundreds of "nudify" deepfake ads, CBS News investigation finds

AI 'Deepfakes': A Disturbing Trend in School Cyberbullying



Clothoff.io



**UNDRESS ANYBODY WITH
OUR FREE SERVICE!**

The ClothOff neural network is a breakthrough in AI

 **Launch App**

 **Telegram Bot**

A rise in AI- generated CSAM

The AI-Generated Child Abuse Nightmare Is Here

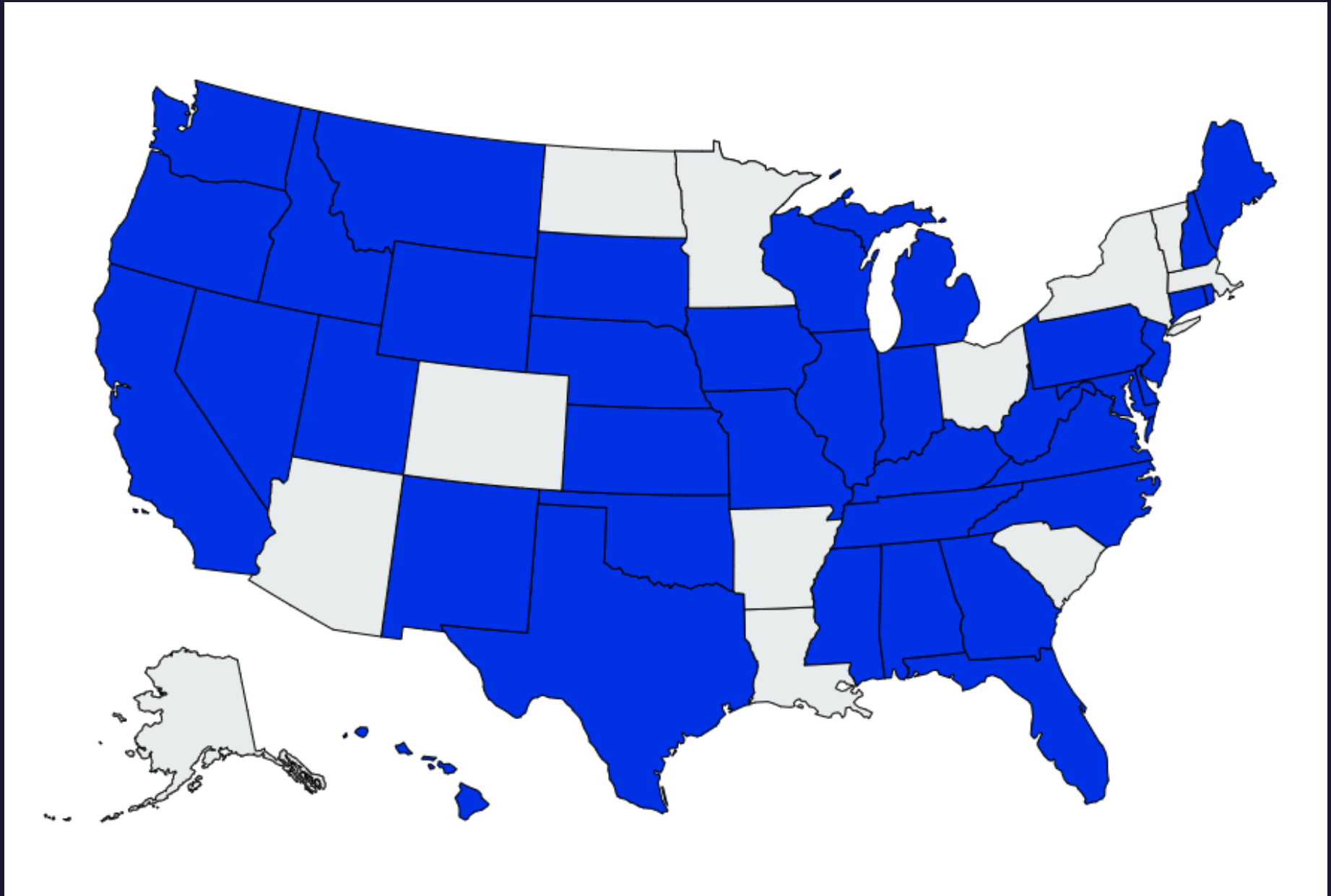
New Jersey teen sues classmate for allegedly creating, sharing fake AI nudes

Study uncovers presence of CSAM in popular AI training dataset

Explicit deepfake scandal shuts down Pennsylvania school

54 Attorneys General Call on Congress to Study AI and Its Harmful Effects on Children

State laws
criminalizing
AI-generated
or computer
edited CSAM



**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

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

**AN ACT TO ESTABLISH SEXUAL EXTORTION OFFENSES, TO UPDATE OFFENSES
RELATED TO SEXUAL EXPLOITATION OF A MINOR, TO UPDATE SEX
OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS, AND TO
CLARIFY THE OFFENSE OF DISCLOSURE OF PRIVATE IMAGES.**

"§ 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~~ 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

- Class D felony

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.

- Class E felony

“Sexual activity”
G.S. 14-190.13(5)

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



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

2) Image. – A photograph, film, videotape, recording, live transmission, digital or computer-generated visual depiction, including a realistic visual depiction created, adapted, or modified by technological means, including algorithms or artificial intelligence, such that a reasonable person would believe the image depicts an identifiable individual, or any other reproduction that is made created, adapted, or modified by electronic, mechanical, or other means.

Important Amendments to the “Revenge Porn” Statute



July 17, 2017 [Jeff Welty](#)

Print

The General Assembly has amended G.S. 14-190.5A, the “revenge porn” statute. The statute now (1) applies to live streams as well as recordings, and (2) is not limited to images captured in the course of a “personal relationship.” However, it still leaves open questions about various types of digitally-generated images.

The original statute. The revenge porn statute was enacted in 2015. Jessie Smith wrote about it [here](#). In general terms, the statute makes it a crime to disclose private, sexually explicit images of another without the other’s consent.

Minor offenders: first offense is a misdemeanor, subsequent offense is a Class H felony

Taylor Swift deepfakes spark calls in Congress for new legislation

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

Alexandria Ocasio-Cortez recounts horror of seeing herself in 'deepfake porn'



**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.

Unlawful to “use an interactive computer service” to “knowingly publish” or threaten to publish an “intimate visual depiction” or a “digital forgery” of an identifiable individual.

Creates seven separate federal offenses:

1. publications involving “authentic” intimate visual depictions of adults;
2. publications involving authentic visual depictions of minors;
3. publications involving digital forgeries of adults;
4. publications involving digital forgeries of minors;
5. threats involving authentic intimate depictions of adults or minors;
6. threats involving digital forgeries of adults; and
7. threats involving digital forgeries of minors.

How are courts responding?

Litigators Must Do Court-by-Court Homework as AI Rules Flourish

District 25 Administrative Order

NORTH CAROLINA
CABARRUS COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2024 JUL 23 P 3:26

IN RE:

CABARRUS CO., C.S.C.

GENERATIVE ARTIFICIAL INTELLIGENCE AND
ITS USE IN THE SUPERIOR COURT OF
CABARRUS COUNTY (DISTRICT 25).

ADMINISTRATIVE ORDER¹

The undersigned Senior Resident Superior Court Judge for Judicial District 25 (Cabarrus County) enters this administrative order to guide the use of generative artificial intelligence (AI) in the Superior Court in District 25:

1. Technological Competence. "A lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with the technology relevant to the lawyer's practice." Comment 8, Rule 1.1 of the Revised Rules of Professional Responsibility. The landscape of generative AI is changing rapidly. Whether a lawyer uses AI tools or not, generative AI is increasingly used by lawyers and others in society. Understanding its uses, benefits, and challenges will soon be essential to the practice of law if it is not already so.
2. Permissible use of Generative AI. Attorneys and *pro se* parties are permitted to use generative AI tools for legal research, drafting documents, and assisting in the discovery process provided that they do so consistent with the Rules of Civil Procedure and their professional responsibilities. Those using generative AI should be mindful of:
 - a. Duty under Rule 11 of the Rules of Civil Procedure. Attorneys and *pro se* parties using generative AI tools must confirm the accuracy and reliability of the work produced by these tools. They are ultimately responsible for everything submitted in a case whether assisted by generative AI or not. Attorneys and *pro se* parties must understand that these tools hallucinate and can produce inaccurate information. The Opinion and Order on Sanctions in *Mata v. Avianca, Inc.* should be a cautionary tale for lawyers using AI tools. [chatGPT-sanctions-ruling.pdf \(courthousenews.com\)](#)
 - b. Duty under Rule 26 of the Rules of Civil Procedure. Attorneys and *pro se* parties may employ generative AI to assist in the discovery process provided that they do so consistent with Rule 26(g) of the Rules of Civil Procedure. For a lawyer or a *pro se* party to make a "reasonable inquiry" into the information that they submit, he or she must be familiar with the AI tools that they use in crafting or responding to a discovery request. They must also understand that they are ultimately responsible

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?

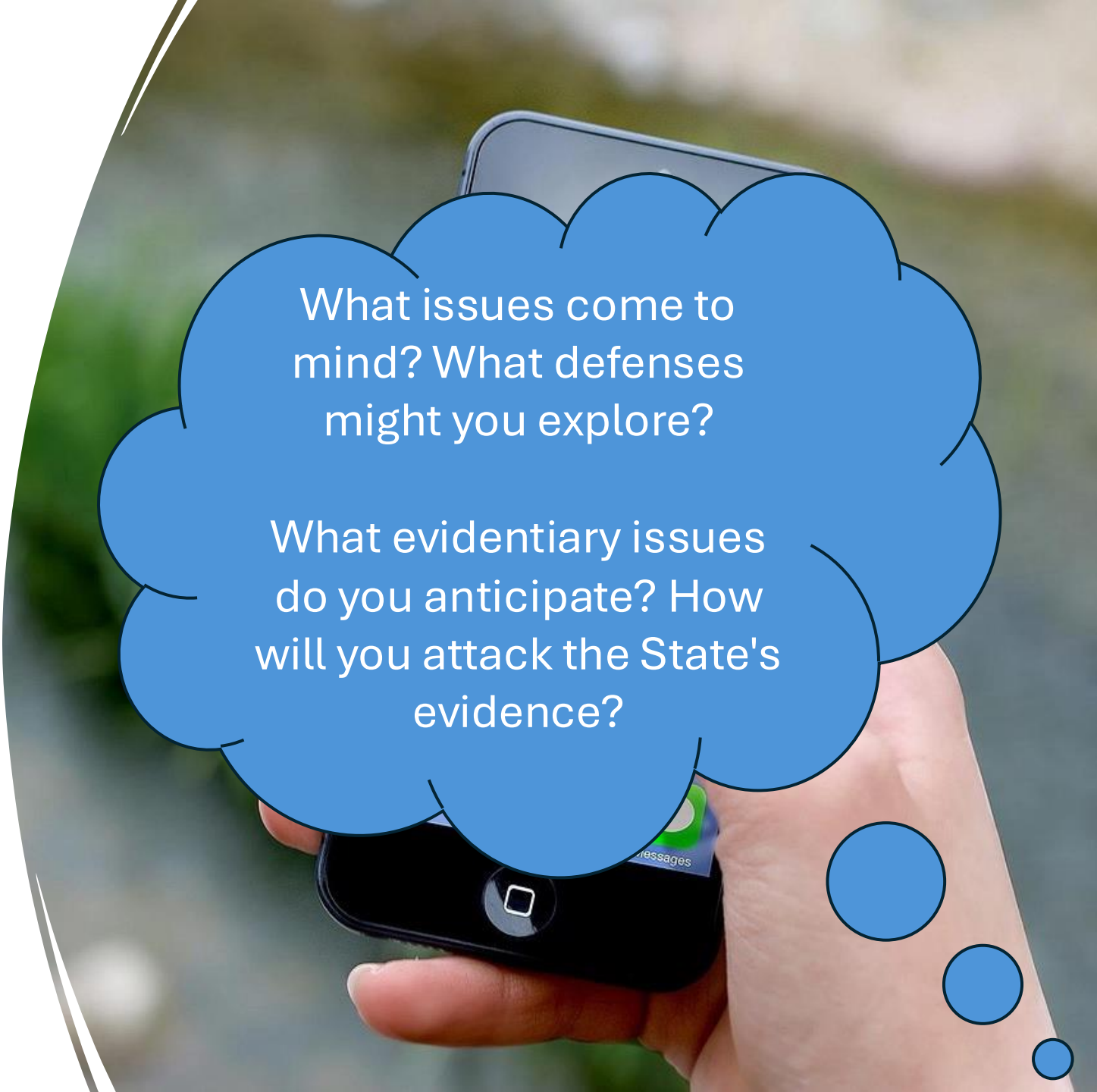


How could this
come up in
your cases?

Scenario #1

A petition has been filed alleging the juvenile, Jonny, used an AI app on his smartphone to create a nude deepfake of a classmate based on a picture the classmate posted on Instagram. Jonny allegedly shared the deepfake with a different classmate.

You represent Jonny at adjudication.



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

What evidentiary issues do you anticipate? How will you attack the State's evidence?

I'm going to call in
a fake threat to get
school canceled
so I don't have to
take this test.

Digital
Communications
(social media,
texts, emails)

Party at Jenny's
tonight. Who's
in?



Authenticating digital communications

Proponent must show evidence is what proponent says it is.

- Testimony of a knowledgeable witness, or...
- Circumstantial factors (e.g., distinctive characteristics) that show the purported author wrote the statement.

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?

Rule 901

First Amendment Issues

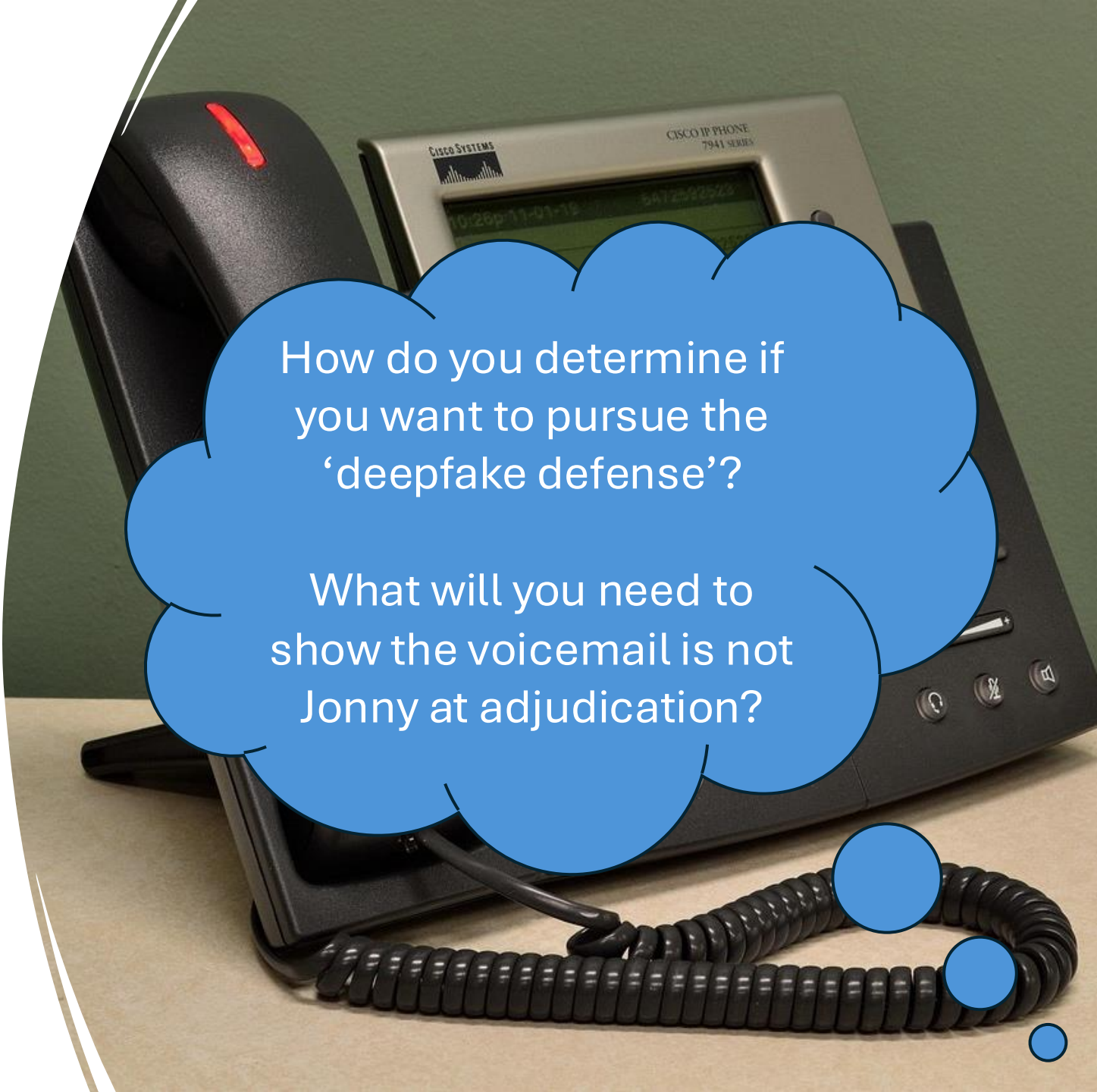
- *Miller v. California*, 413 U.S. 15 (1973)
- *New York v. Ferber*, 458 U.S. 747 (1982)
- *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002)
- Highest courts of six states have upheld nonconsensual pornography laws against First Amendment challenges



Scenario #2

Your client, Jonny, allegedly left an anonymous voicemail for the school principal where he said, “Revenge is going to be sweet. See you at the football game.”

Through discovery, you receive a copy of the voicemail, which does sound like Jonny. Jonny denies it is him and believes someone created a deepfake of his voice.



How do you determine if you want to pursue the ‘deepfake defense’?

What will you need to show the voicemail is not Jonny at adjudication?

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





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





This stuff is happening. How do you address it?

Identifying an expert

- Ask! (colleagues, OJD, Listserv)
- Forensic Resources database (Sara Olson, IDS)

FORENSIC RESOURCES OFFICE OF INDIGENT DEFENSE SERVICES

Browse All Experts

This database includes **state and defense experts** searchable by name or area of expertise. The list was compiled based upon the experts' work in prior cases or requests to be added, and is not based on any assessment of whether an expert is qualified or is the appropriate expert for a specific case. If you are searching for an expert to retain you must do your own due diligence to evaluate the expert.

Search within Experts



Sort By

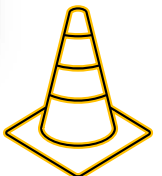


Select Expert Type

Select Expert State



<https://forensicresources.org/>



\$ Paying for an Expert

Motion for expert funds

Ex parte likely available

- 6th amendment implicated

Discoverable by DA?

- Calling witness
- Admitting report
- Exercising discovery rights

STATE OF NORTH CAROLINA File No.(s)

County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Indigent Defendant Or Respondent

Highest Original Charge (Criminal) Or Nature Of Proceeding (Civil)

**APPLICATION AND ORDER FOR
DEFENSE EXPERT WITNESS FUNDING IN
NON-CAPITAL CRIMINAL AND NON-CRIMINAL
CASES AT THE TRIAL LEVEL**
G.S. 7A-314(d), 7A-454, 7A-498.5(f), 15A-905(c)(2)

INSTRUCTIONS: Use this form only if you are representing an indigent person at state expense, or if you have been retained but the Court has entered an Order finding your client indigent for purposes of obtaining expert assistance, and then only in a case in which the Court is responsible for approving funds for experts, i.e., non-capital and non-criminal cases at the trial level. Do NOT use this form in case types where counsel must seek prior approval for expert funding from the Office of Indigent Defense Services (IDS) (e.g., potentially capital cases). Do NOT use this form for non-expert flat fee services, such as polygraph examinations, medical procedures, lab testing, or defense-requested sentencing plans; to seek prior approval for such services, the attorney should submit a motion and proposed Order to the Court.

The attorney for the defendant or respondent completes Section I and to the Court. If permitted by case law, the attorney for the defendant is approved, the Court completes Section II and the attorney provides Section IV after services are rendered to apply for payment. The receipts, to IDS Financial Services, PO Box 2448, Raleigh, NC 276

I. D

Based on the factual showing in the attached supporting motion as defendant or respondent named above requests funding for the following and accurate.
☐ Check here if request and motion are being submitted ex parte.

Name And Address Of Expert

Total Amount Of Funding Requested (time and expenses)
\$

AOC-G-309

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
[] COUNTY DISTRICT COURT DIVISION
FILE NO. []

STATE OF NORTH CAROLINA)
)
v.) EX PARTE MOTION AND ORDER
) FOR FUNDS TO HIRE AN EXPERT
)
[JS, A JUVENILE])

NOW COMES the Juvenile, by and through his counsel, and respectfully moves this Honorable Court, pursuant to N.C. Gen. Stat. § 7A-454, Article I of the North Carolina Constitution, and the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, for an ex parte Order allowing him to retain the services of a competent and qualified physician, psychologist or psychiatrist to assist counsel in the preparation of his defense.

As grounds for this Motion, the Juvenile alleges:

Forecasting Potential Changes to the Federal Rules of Evidence

- Many possible outcomes
- Proposed Rule 707 (reflects R. 702)
 - Gatekeeper function
 - Sufficient data
 - Reliable methods reliably applied
 - Helps trier of fact
- Considering R. 901 (authentication)
- May be model for N.C. changes

**ADVISORY COMMITTEE
ON
EVIDENCE RULES**

May 2, 2025

For now...what about Jonny?

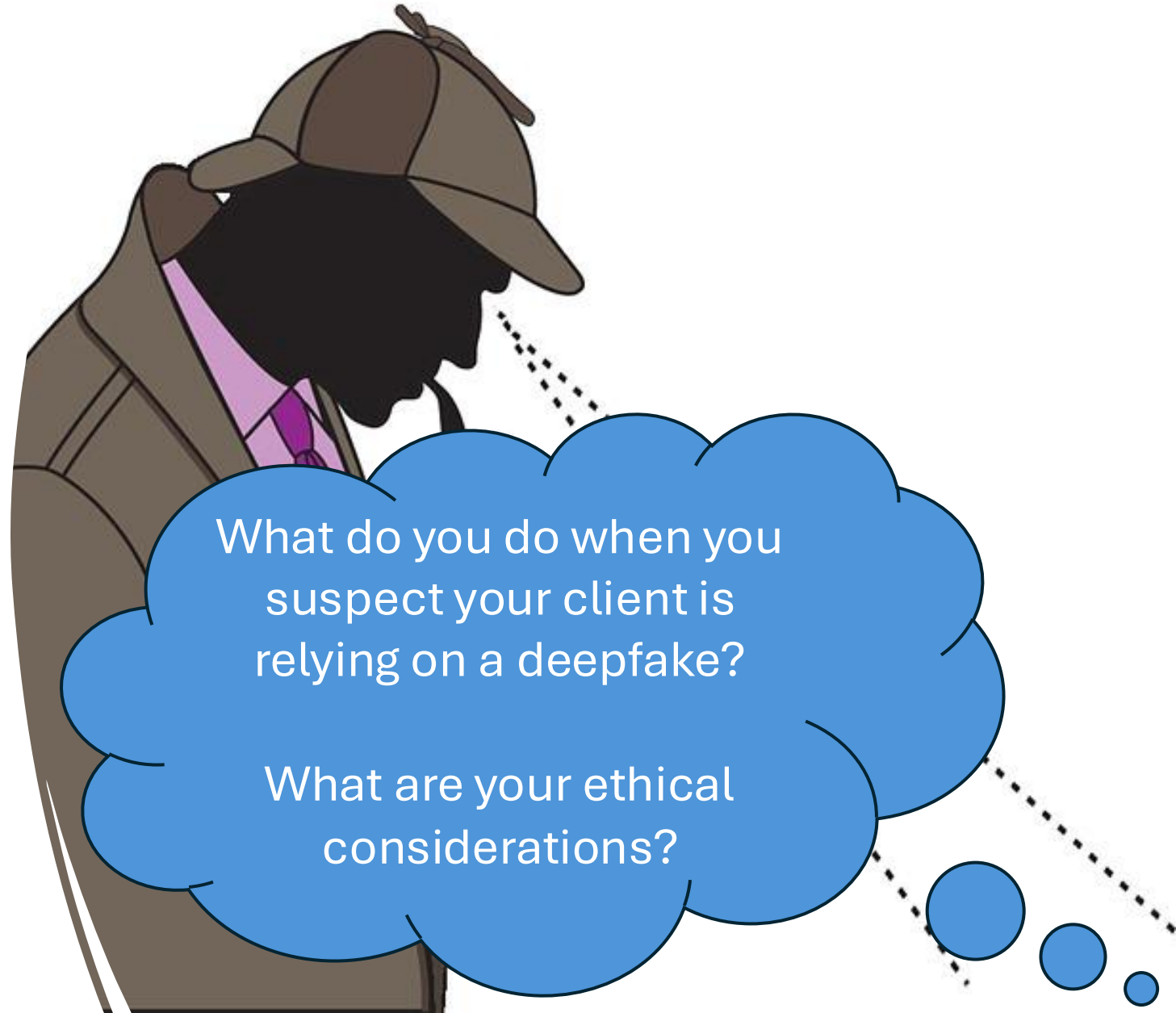
- Get expert + funding
- Establish authenticity, foundation, and reliability
 - High level of scrutiny
 - Need competent witness
- Decide when to raise issues (e.g., in limine)

Consider in both
directions



Scenario #3

Jonny is accused of defacing school property with graffiti. He says it was not him, but he took a picture of the kid who did do it. You see the picture and suspect it has been created or altered using AI.



Spotting Deepfakes

Facial skin

Eyes and
eyebrows

Glare on
glasses

Facial hair

Blinking (too
much, too
little)

Lip
movements

Hands and
hand
movements

Lighting,
shadows,
reflections

Text

Zoom in on
background



Competent

Confidant

Candor

“[Thinking about these] responsibilities, it becomes apparent that the conscientious attorney is faced with what we may call a trilemma—that is, the lawyer is required to know everything, to keep it in confidence, and to reveal it to the court.”

Before hearing

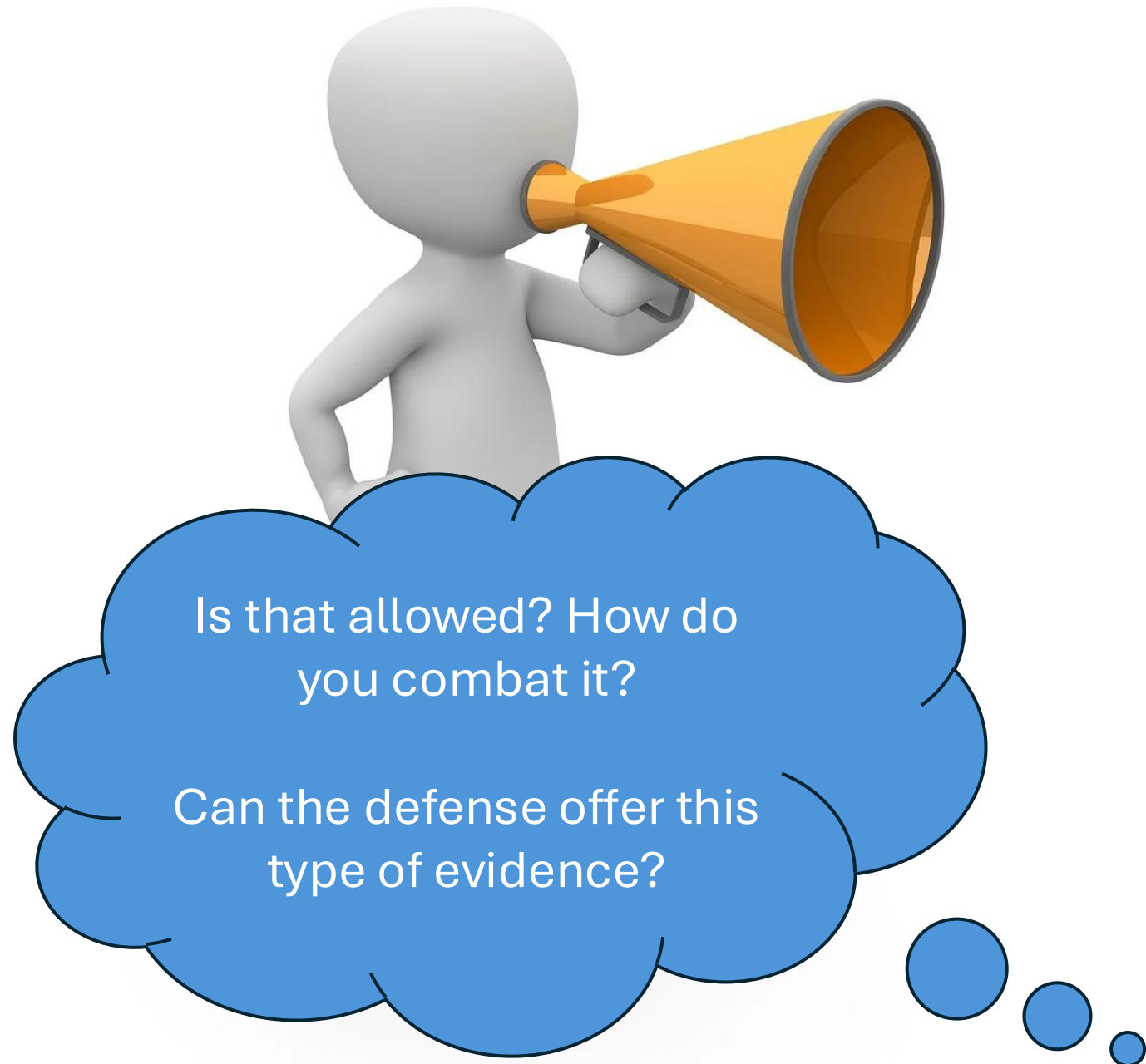
- Talk to your client (R. 1.4, Communication)
- Be prepared (R. 1.1, Competence)
- Don't wait, even when difficult (R. 1.3, Diligence)

At court

- Shall not offer evidence lawyer knows is false (R. 3.3(a)(3), Candor to Tribunal)
- May refuse to offer such evidence, other than criminal defendant's testimony lawyer reasonably believes is false (*Id.*)

Scenario #4

The State wants to use AI to enhance audio/visual evidence to make the evidence clearer for the trier of fact to understand. The State is openly acknowledging its use of AI to enhance certain images and videos.



Is that allowed? How do you combat it?

Can the defense offer this type of evidence?

“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

Matter of Weber

Annotate this Case

[*1]

Matter of Weber

2024 NY Slip Op 24258

Decided on October 10, 2024

Surrogate's Court, Saratoga County

Schopf, S.

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

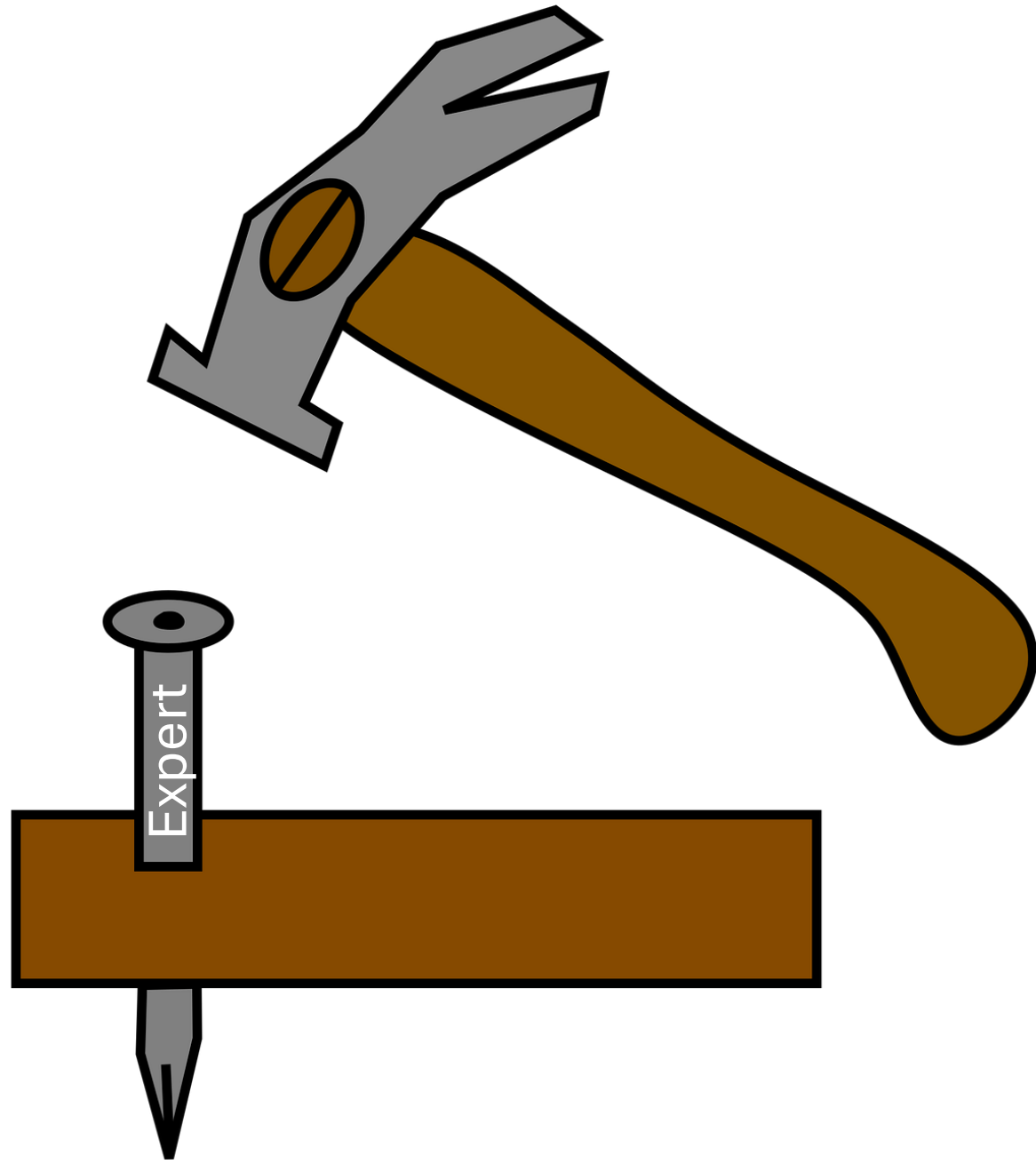
Decided on October 10, 2024

Surrogate's Court, Saratoga County

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

Draft One





Final Takeaways

Do your
homework in
cases involving AI
evidence



The background is a dark blue gradient with a fine grid pattern. Overlaid on this are several patterns of bright blue dots and lines, resembling a particle simulation or a data visualization. These patterns are more concentrated on the right side of the image, with some lines curving upwards and outwards.

Expect change,
stay informed

Questions?

About AI? Nickodem@sog.unc.edu

About evidence? Heinle@sog.unc.edu

About both AI and evidence? Both of us 😊