AI and the Washington Legal System
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My name is Chris Fox. I am pleased to be your host. Today we are discussing the intersection and integration of artificial intelligence or AI and the legal system. Joining us as guests are Michael Cherry, Drew Simshaw, and Jacqueline Jeske.

Michael is an attorney and presently the chair of the Washington State Bar Association's Practice of Law Board and a former Governor of the Washington State Bar Association. He has been engaged in numerous activities outside of a law practice, including governmental and private sector businesses as a system analyst program manager and technical evangelist. He writes and advises clients, the press, and others on Microsoft's product strategies and licensing directions on Microsoft.

Drew is also an attorney. He is a member of the Gonzaga law faculty. He was previously a supervising attorney with the Institute of Public Representation in Washington DC. He

specialized in communication and technology law and represented public interest organizations in rulemaking and adjudications before federal agencies. He has received awards in recognition of his work for telecommunications for the deaf and hard of hearing and in recognition for his pro bono efficacy on behalf of people with disabilities. He has previously taught as a fellow at Georgetown Law School, and in the communication and technology law clinic at Elon University School of Law. He is a proud member of the AmeriCorps alumni. Presently he serves on both the Practice of Law Board and the Discipline Advisory Roundtable in Washington.

Jacqueline Jeske is an attorney and formerly a judicial officer with the State of Washington. She presently focuses her practice in the areas of arbitration and mediation. Jacqueline is the Chairperson of the Washington State Bar Association Family Law Executive Committee.

I welcome all three of you. Let me begin by asking if you have any opening remarks.

Michael

My interest in this subject artificial intelligence and the law stem out of work that the practice of law board is doing in looking at of our prime responsibilities to the court which is to advise the court on alternative ways in which legal services may be offered to Washingtonians and so one of the things that we're looking into is just how and if artificial-based online legal services should be licensed to practice law in Washington. And we're looking at perhaps using a laboratory or sandbox model to consider whether there's a mechanism to, in fact, do that to allow for a new alternative. to the methods of the practice of law.

Chris

Thank you, Michael.

Drew, before I open it up to your introductory remarks, I wanted to note that you have very recently published in the Yale Journal of Law and Technology an article titled *AI: Access to AI Justice: Avoiding an Inequitable Two-Tiered System of Legal Services.*[1] It is available to our listeners at your Twitter page which is @dsimshaw.

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[1] **Abstract.** Artificial intelligence (AI) has been heralded for its potential to help close the access to justice gap. It can increase efficiencies, democratize access to legal information, and help consumers solve their own legal problems or connect them with licensed professionals who can. But some fear that increased reliance on AI will lead to one or more two-tiered systems: the poor might be stuck with inferior AI-driven assistance; only expensive law firms might be able to effectively harness legal AI; or AI's impact might not disrupt the status quo where only some can afford any type of legal assistance. The realization of any of these two-tiered systems would risk widening the justice gap. But the current regulation of legal services fails to account for the practical barriers preventing effective design of legal AI across the landscape, which make each of these two-tiered systems more likely.

Therefore, this Article argues that jurisdictions should embrace certain emerging regulatory reforms because they would facilitate equitable and meaningful access to legal AI across the legal problem-solving landscape, including by increasing competition and opportunities for collaboration across the legal services and technology industries. The Article provides a framework that demonstrates how this collaboration of legal and technical expertise will help stakeholders design and deploy AI-driven tools and services that are carefully calibrated to account for the specific consumers, legal issues, and underlying processes in each case. The framework also demonstrates how collaboration is critical for many stakeholders who face barriers to accessing and designing legal-

Drew, now if you have some opening comments.

Drew

Sure. Thank you, Chris. I'm honored to be here and excited to be part of this conversation. My research at Gonzaga is focused on the intersection of artificial intelligence with law practice, with professional responsibility and legal ethics, and with legal education. So, I hope I bring to the table some perspective from my time as a communications and technology lawyer in the past with the institute for public representation and in my academic research the article you mentioned is available. I've tagged a link to it at my Twitter page @dsimshaw. The article provides a framework for avoiding what many fear could be the result of ineffectively designed legal AI which is that we might be left with a two-tiered system of legal services. It might be a system where only some consumers are, for lack of a better term, stuck with what might be perceived as inferior legal services driven by technology whereas others are entitled to better services. It could be that only certain members of the profession are able to effectively harness and realize the benefits of legal AI or others fear that the two-tiered system might just end up being the two-tiered system that we find ourselves in today where some but not others are able to access effective legal services.

AI due to insufficient resources, resilience, and relationships. The Article then advocates for regulatory priorities, reforms, and mechanisms to help stakeholders overcome these barriers and help foster legal AI access across the landscape.

So, I'd be happy to incorporate my research in that area into our discussion today and looking forward to it.

Chris

Thank you, Drew.

Let's start Michael with some of the backgrounds of AI and the Legal Lab in the State of Washington.

Michael

The Practice of Law Board falls under the Washington Supreme Court and we are really an entity that exists because of General Rule (GR) 25.

GR 25 puts forward that the Supreme Court will have a board and that the board's responsibility will be to educate the public on legal services, and competent legal services, and we will innovate and provide innovative ideas for new methods of practicing law. And thirdly that we will coordinate complaints and make sure that they get to the right agency. So. it's really in that second requirement or responsibility that the court assigns to us that the lab came up as a concept. A previous innovation idea that the practice of law board promoted was the LLLT program and that has been recently susetted and you know there's a variety of reasons for that. But that doesn't take away our responsibility to continue to come up with new methods of practicing law and our first look at this was to consider just trying to redraft general rule 24 which defines the practice of law. And in association with the RCW the State Bar Act defines the unlawful practice of law. The RCW has the elements of the unlawful practice of law and the General Rule 24 defines the practice of law.

That definition of the practice of law asses a human being practitioner and so the first thing we started doing was looking can we just merely rewrite GR 24 to allow for non-human legal service providers. And in trying to do that it becomes a very interesting question because defining the practice of law is a little bit like the justices that struggle with defining pornography had the same problem when you try to define the practice of law. Everybody has difficulty articulating it, but everybody seems to be very comfortable that they know the unlawful practice of law or the unauthorized practice of law when they see it.

So, Chris. that's where we started from. Was there a way to allow for an automated legal service or the provision of legal services through some sort of automated or artificial intelligence machine learning mechanism.

Chris

Michael, I want to refer to a presentation that you in your capacity as Chair of the Practice Law Board made to the Washington State Bar Association in May of 2021. It is a very comprehensive and informative presentation. You referred to other states and indeed another province including British Columbia, and that they forged ahead or that they're prominent in their utilization of legal labs and legal sandboxes. Can you comment a bit on that?

Michael

Yes, the state of Utah is probably the furthest ahead in terms of operating a lab. And Utah's been very gracious to us and has allowed us to copy and plagiarize their work. But Utah has been operating a legal sandbox for over one year. However, I

must say, and I must point out that in looking at what is happening in Utah, much of the work in Utah relates not so much to AI and the law as much as it does to alternative business structures. Which is lawyers coming forward with new models of operating law firms that are being tested in the sandbox and so Utah has been operating I think they have about 35 different entities operating in their sandbox. Arizona, on the other hand, took a different approach and they just decided that they would entertain alternative business structures and start licensing them without having, in fact, a sandbox. I believe Ontario in Canada is looking at sandbox. British Columbia I believe is considering it as well. California was for a while, and I think they've pulled back on theirs. So, we're not the only state who is looking at how do you wrestle with this question. We unlike Utah, are proposing the best way to do that Is through a mechanism I call data-driven regulatory reform which is to allow us to put forward a hypothesis of what might work and to come up with the criteria to test and evaluate that hypothesis and then based on measuring that data and watching the feedback we will revise and move towards creating some form of regulation.

Chris

Just a final point and then I'd like to turn the conversation to Drew. Michael, regarding Utah's sandbox I note that they have 4 categories of criteria or characterizations of those that have been authorized, ranging from low-moderate. moderate to high risk. Looking at it Utah's site recently, there was 15 in the low and 14 in the low moderate, only 1 in the high risk. And breaking it down. It looked like the majority or the predominance of these legal entities or these legal sandbox entities were in the consumer financial areas, accident injury

areas, and in family law areas. Is that what you're observing and anticipating as well?

Michael

No, this is where we separate a little bit from Utah decided that they would do their risk based on the taxonomy of the type of service and the type of firm that came in so they this model of some different types of firm structures and offerings and then they assigned risks to those categories. But in Washington, we're proposing using a risk model where we look at three different factors of risk. We're trying to provide a ruler to measure risk and so we're asking the applicant to literally tell us what the risks are and tell us the probability of those risks. Then based on that we will develop a score in Washington. We did not feel comfortable that just because you told us the title of what you wanted to do and the type of firm that you were trying to do it that we could adequately assess risk just based on those factors.

Chris

Do you know, Michael, how the revenue is being generated in Utah to fund this program?

Michael

I do not believe in Utah right now that any revenue is being generated from the participants in the lab. Utah went out and they did get a grant to operate the lab for the first year and so up until this point Utah has not had to come up with a mechanism for funding. And, again, we are proposing a different funding structure which is currently being developed. We have not completed the model, but we are

building some   fairly aggressive Excel budget spreadsheets and working through the budgeting, and we will be talking to the Court to see what the what the best funding option is going to be for the lab. I believe it can be Bootstrapped.

But we will differ from Utah that we will charge an application fee and a licensing fee.

Chris

Thank you. Drew, looking at the abstract for your law review article and recalling that you had talked about a two-tiered system, I note that you begin your law review article hoping to close the justice gap. Can you talk more about that?

Drew

Certainly. It's been heralded now for a while that artificial intelligence really could be one of the tools that helps make progress in closing the justice gap. And we're all familiar with the justice gap. By now the statistics are more and more alarming every year in terms of the portion of the population that can't access effective legal services and we've heard AI heralded as a tool that could if properly harnessed increase efficiencies for lawyers to democratize access to legal information and help consumers solve their legal problems where they might not need an attorney or if they do need an attorney it could be AI helps connect them with licensed professionals that can help them with their problem. But while there is that potential for AI to be a tool that helps make progress with the justice gap. there is a potential flip side there if the one or more of the potential two-tiered systems emerged. And in my article, I explain how those systems might

emerge if AI is not effectively designed, or the term I adopt in my article effectively calibrated.

And that is calibrated for the particular consumers that are involved. Each of whom have their own relationship with technology being calibrated for the specific legal issues involved, some legal issues might lend themselves well to AI driven services. Others, either because of the sensitivity or because of because of other reasons, might not be suitable for high reliance on artificial intelligence. And then calibrating for the underlying processes that are involved, can AI help with efficiency in filling out some common forms? Can AI help as it already is across some popular research platforms? Can AI help the legal research process? Is AI appropriate for drafting briefs? Is AI appropriate for making data-driven judgment calls at different points throughout a case? How we steer whether AI is a tool that will help close or might end up widening the justice gap really depends on whether it's properly calibrated for each of those considerations.

I discuss in my article what are the Barriers to that calibration. What are the Barriers to lawyers being able to work effectively with technologists on making sure that this technology is calibrated appropriately? I put those Barriers and into three buckets.

First, the resources that are necessary for doing that. Not all consumers have access to the resources to engage effectively with AI and not all lawyers have the effective resources to do so. It also requires resilience.

Second, a lack of resilience or a lack of being able being having the luxury to experiment with these emerging technologies can inhibit effective design and effective calibration.

And third, a lack of relationships and Barriers to those relationships can also result in ineffective calibration.

So, whether it's being prohibited under the rules of professional conduct from certain business structures that would involve non-lawyers particularly technologists, or whether it's uncertainty with the definition of practice of law and whether a certain service would constitute the practice of law. These Barriers to establishing and maintaining these relationships can inhibit that calibration as well. So, it's from that posture and with that sort of look at the landscape that I conclude that that regulatory sandboxes or laboratories could be particularly effective mechanisms for making those decisions about the most effective way to regulate these technologies from a data driven. from a data- driven posture.

Chris

Drew, the creation of AI to for use in the legal world seems to assume a fair initial cost and a commitment by whoever the developers or entrepreneurs are. How do you see that playing out in terms of not only obtaining the adequate funding but also trying to find that delicate balance between encouragement of entrepreneurship and regulation as Michael was saying with the practice of law.

Drew

Chris, you raise a really important point that I think speaks to you know what I've identified as resource Barriers to effective AI calibration. We've seen a mix of sort of off the shelf AI driven services that lawyers need to be cautious about. There are certainly some tasks for some types of law practice where an off the shelf sort of-one-size-fit-all AI driven tool might be

effective. But those who are using those tools should be mindful for whom were they originally designed. Is this a service that was designed for a particular practice area? Is this a service that was designed for a particular type of law firm and a particular client base that that will be effective for one's own clients and for those consumers that are being served? I might be that an off-the-shelf service that serves one type of legal service might not serve another as well.

In addition to the off-the-shelf type of AI driven tools we are seeing a lot of development happening within law firms that can effectively partner with technologists. They can more effectively tailor the use of AI to their practice areas and to their particular client bases. There's less transparency into how that development is going. Understandably, firms don't want to you know. They want to use those AI driven tools for their benefit and for their clients. One thing we need to think about when we're talking about regulatory reform is how can we design a set of rules where we're really maximizing the ability of those across the landscape to be able to engage with technologists and to be able to overcome those resource Barriers in addition to those resilience and relationship Barriers in order to calibrate AI effectively so that we really realize the benefits of AI and be able to take the time and the resources to be able to design it effectively so that we really realize the benefits from an access to justice perspective and aren't left with AI that's simply better than nothing.

Chris

Michael and Drew, looking at the Washington State Bar Association website it appears there are 29 different sections of that attorneys have indicated a preference. In each section

will have its own perhaps special needs and yet some of those areas of law may not be sufficiently profit motivated for the entrepreneurs. How do the various areas of legal practice not only encourage AI but also work with AI so that the creation of these platforms and the application can be particularly appropriate and sensitive to their needs?

Michael

I think one way that we can look at this is there are a certain number of tools that I'm going to call generic tools that would I think go across the sections. So, for example, most lawyers today - I'm going to guess I really can't prove this - probably are using Office 365 from Microsoft. They're probably doing that because it's the most inexpensive way to purchase Office products Word, Excel, PowerPoint, and Outlook. What they may not be aware of is included in that Office subscription is a discovery program that uses a machine learning to cull the number of documents that need to be reviewed. Most lawyers have a reviewing of documents problem. They have a lot of documents they must review and anything that might help them with that might be useful. So, I think that a starting point for most law firms is going to be with generic off-the-shelf tools. They start there and prove to themselves the value and then from there they can move into free software that would do chat bots. The Practice of Law Board is experimenting with our first chatbot, not in this area of the lab but as part of one of our education tools to teach people about what kind of legal service they might need. Those are very low-cost entry points into using artificial intelligence and machine learning that cross the sections. Firms may want to join in certain jurisdictions to work together on things like, as Drew said, a form filling application if there's a specific group in a specific

court. Let's say they're in Spokane County and there's a certain document that they all must file. They might work together to come up with some automation process using machine learning to make that form easier to fill out and file with the court that might be using macros machine learning and a variety of other tools that they have access to.

Jacqueline

Well, it's good to be here and I've really enjoyed listening to Drew's comments and Michael's as well. I have some of the same concerns. Although my perspective is a bit more basic currently. I've been in practice since 1986 so that was before the use of computers in technology the way we experience it today with Zoom and all the other iterations. I've watched that transition once to a degree and have seen how it spread throughout the legal community and then also spread throughout the justice community.

I'm here today just as practitioner, an arbitrator, a mediator, and a member of the Bar. I'm not here today as the Chair of the Family Law Section of the Bar. I appreciate Chris's introduction but part of my concern dovetails, I think, with the study that was done. My concern is the level of participation by the public, our colleagues, and their clients. Part of our obligation means to undertake service that can be a benefit to the members of the Bar. There is concern among many attorneys and some of the judiciary about two-tier systems within the law. Individuals with great resources access a private system that is tends to be faster, tends to be more conservative-oriented and provides a different level of justice than the average citizen can obtain.

I remember when we began to switch to computers and computer-based systems as a practitioner and how there was a lag for some folks coming on board, particularly for older practitioners. There was a lag for the public and their ability to access those same systems. An example was within the courts when e-filing of document or accessing dockets electronically became available. In many places in our state individuals do not have access to good internet connectivity and to the good resources as mentioned by Drew to be able to connect to those systems.

A lab like this kind of uses the public and the Bar to a degree to figure it out. Not just regarding risk but also to what benefit it might be. I don't think that means that you don't try to improve it because I have seen how that improvement can happen. But I do approach it with some caution. When I think about AI and machine learning. There are nuanced parts of law that do not easily lend themselves to AI learning ability. Those are some of my concerns.

I think that Michael raises many good points. I do tend to be a bit of a skeptic sometimes that's just the nature of having been in practice for a long time. But I can think of many ways in which the intersection of AI and the legal field can be helpful. I know that when I was at the court and still on the bench, I led a group to create a computerized menu for individuals who are non-English speaking, a sort of way finder in the lobbies of the courthouse. We had more than 1000 languages in the county to address. The court designed its wayfinding device that could translate a menu to assist people.

I can imagine AI helping us in similar ways. For example, provide CASA guardian ad item services to a broader group.

Presently, CASA is unable to serve non-English speaking individuals because they can't support the translation costs. That's a resource issue like Drew brought up. I could see how AI could make a difference there. Looking at the data and feedback is very positive, but I am cautious having been on the Bench. Individuals may go to an individual for assistance and at least at some point in the process feel like they have been served well only to find out later when they end up in a pitched battle in the legal system and they look back at the documents perhaps that they were given or helped to craft and realize that they were very poorly served. So, the question is are you looking at that data from a subjective viewpoint or an objective analysis of how well it met the legal need that was at issue in the consumer experience. That is when I get worried about individuals who don't have counsel and then we connect them to AI.

So yes, I think some of those issues will solve themselves. I think people know when something works and it's practical and it's functional and it's helpful and the market part. I suspect it is going to take care of that to a degree, but I also think these young lawyers and they've got a steep climb. It's not like it was when I graduated from law school. I understand why you're getting less participation from those young lawyers because the hill that they are climbing is enormous, both financially and learning how to practice. This issue may not be a high priority for them now. But that may change over time.

Chris

That is well-stated, Jackie. Perhaps Drew can respond to some of your concerns and comments.

Drew

Absolutely. I think Jackie raises some important considerations I think have to do with a term that we haven't used yet. But maybe we should incorporate here, which is the fact that effective AI, especially I think in the legal field, must be an interdisciplinary endeavor. We're concerned with access not only by lawyers across the profession but the consumers too. I mean if lawyers are utilizing AI but that AI isn't accessible or isn't accepted by the ultimate consumer it's not going to be effective. But even if those initial access barriers are overcome, Chris to go back to your question about the unique challenges within different practice areas, service providers really have to ask themselves, what's our relationship with the past in this practice area because that's essentially what lots of AI is doing right? It's using information from the past to help determine what to do in the future whether it's what type of claim to bring or what jurisdiction to pursue. Or how to tailor a particular argument to a judge based on that judge's past behavior. Is the past something that we are trying to present, a status quo that we're trying to maintain? We're trying to say look our case is like those past cases that reached a certain outcome, and we think that's appropriate here as well. That's how lots of lawyers spend their time arguing. AI can really be a democratizing force if that knowledge base is no longer only accessible to large firms who have lots of brain power to put together and share knowledge about judges. For example, if that data is something that can be leveraged effectively across the profession we could see AI as a force to level the playing field and have more lawyers providing more effective services, But we have to be concerned with bias as well because if the status

quo from the past is not something that we want to reinforce we're going to have to keep that in mind when we're designing and interpreting.

AI and AI outputs and those challenges are really going to vary by practice area, so it's really an interdisciplinary endeavor between law, technologists and social scientists who understand the unique challenges that different consumers might face and the ways that data about the past might be reinforcing a status quo that we don't want to be reinforcing.

Chris

Michael?

Michael

And you know there's the possibility that we as a profession are overly condescending of the public as a group that can make sophisticated decisions about services that they want to purchase. And, yes, one person could look at the lab and say that the lab is experimenting on the public but when we look at how decisions get made today about rule changes, they take a long time to propagate rule changes in some cases 5 years. And often if you're taking 5 years to propagate a change then the thing that you're changing when you get done in 5 years isn't the thing that you started out to affect. I think we need to step back a little bit. Yes, some members of the public require a level of protection, but I don't think we can say that all members of the public require the same level of protection and there's a little bit of consumer choice.

I'm not claiming that the path we're heading on is going to affect the access to justice problem. I hope that it will but what

it will do is provide additional consumer choice. Let me put forward the idea that if we don't do something to change it the change is going to happen in any event. There are a lot of legal services that are starting to be offered online and that consumers are using and purchasing, and the complaint rate is very low on these services. Some of these services are in the areas of divorce and immigration. It's across the board of legal services. And they are getting very high grades from the people who are using those services. I don't think doing nothing is an option and I don't think taking the 5 years to change rules that we've been doing in the past has been a particularly good approach either. I think that the lab can be run in a way that still offers consumer protection but moves the profession forward in how we provide service to a public that's becoming more and more sophisticated.

Chris

I noted at the beginning with the introductions that both you Michael and Drew serve on the Practice of Law Board, so you bring your respective skills and background and viewpoints to together in collaboration. I think that's not remarkable and very helpful.

Drew, I noted in the introduction to your law review article that reference to collaboration between legal and technical expertise. Is there room in the tent to bring in even more interest groups, consumer perhaps, into the discussion for collaboration as you develop rules and procedures?

Drew

I think that's a really important point. As you know, it's one thing to acknowledge that effective AI has to be an

interdisciplinary endeavor. It's another to make that happen. Collaboration sounds great in theory but in practice can be a challenge for a lot of service providers. Whereas some firms might have the capacity to hire full time or at least establish a short-term relationship while these services are being developed, relationships with technologists and social scientists with those who can help design and implement AI is a way to overcome some of these risks and avoid some of these risks. Others might not be able to do that. Others might be facing the normal challenges that practitioners face and not have the luxury of being able to establish and maintain those relationships. One door the sandbox might open is to reexamine the law firm ownership and fee sharing and advertising rules. In what ways could we under close supervision of an oversight body and with frequent data reporting proceed in a very cautious manner to explore and supervise those services on a temporary basis to see what the result is so that, as Michael has said, these decisions can be data-driven. And maybe a certain arrangement is simply permitted to continue after engaging with the laboratory. Maybe it gives us some data after a long enough time that we can reexplore the rules and how we want to regulate law practice going forward. So I think to facilitate the sandbox provides some opportunities.

Michael

I'm very fortunate to have just the best board and the membership. I'm just so blessed to have the expertise of Drew and others including members of the public. I've been during the last year speaking out to anybody who will listen to me about this proposal, sections, Bar members, the public and the court. Probably every other week I'm somewhere making a

presentation on this and I get very good feedback on what we're trying to do. But the one stakeholder I will be honest that I am having difficulty bringing to the table is the new lawyer. I presented to law students. But there really is this gap that I'm concerned about which is people who have been practicing probably from let's say one to ten years, who are so concerned with making enough money to pay back their student loans and to get their firms operating.

Remember there's been a serious cultural change in how people become lawyers and become practitioners where more and more graduates are forming their solo firms. They're not starting as associates in firms and then leaving firms to start solos. They're leaving law school to start solos. And because they're so fixed on getting their business going, starting their family, and getting all those things in place, my fear is that you have the older lawyers who have the time to be on these boards and these panels and to do this work who are deciding the future of the legal profession for the new lawyers who will have to live with it. So yes, I think we do need to continue to bring more and more stakeholders and make sure that they're all available to this kind of thing. And the ability for a new lawyer to monitor what's happening in the lab is probably easier for a new lawyer to attend Bar association meetings and debate rules and paper changes.

Chris

Emphasizing what you've said Michael, in terms of reaching out I was introduced to you because you spoke to the Family Law Executive Committee, and Drew, I was fortunate to listen to and observe your CLE on this topic. From my viewpoint, you are both doing what you can. And your availability to

participate in this podcast is an illustration of that. So, I thank you for that.

Jacqueline

I think that Michael raises many good points. I do tend to be a bit of a skeptic sometimes that's just the nature of having been in practice for a long time. But I can think of many ways in which the intersection of AI and the legal field can be helpful. I know that when I was at the court and still on the bench, I led a group to create a computerized menu for individuals who are non-English speaking, a sort of way finder in the lobbies of the courthouse. We had more than 1000 languages in the county to address. The court designed its wayfinding device that could translate a menu to assist people.

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we connect them to AI. So, yes, I think some of those issues will solve themselves. I think people know when something works and it's practical and it's functional and it's helpful and the market part. I suspect is going to take care of that to a degree, but I also think these young lawyers and they've got a steep climb. It's not like it was when I graduated from law school. I understand why you're getting less participation from those young lawyers because the hill that they are climbing is enormous, both financially and learning how to practice. So, this issue may not be a high priority for them now. But that may change over time.

Michael

And Jackie, that's a place where we really have deviated from the Utah model in Washington because part of our risk analysis is also a risk over time, we're acknowledging that the risk in certain areas of the law. The example I use, and I hope I'm correct on this, is the probating of an estate the will may have been drawn up 20 years previously and when it was drawn up it looked perfect, and you don't find the flaws until it's being probated, and the executor comes to court with it. So that is riskier than something that the discovery would happen then maybe a contract that would be discovered in a very short time. So, we're trying to acknowledge that by building it into our risk model. We're also acknowledging that data collection is difficult when we have issues such as confidentiality, but I don't think that excuses us from not trying to collect data which has been a real problem in the past. We just say oh it's confidential and therefore we don't even attempt to collect the data.

Jacqueline

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Chris

I would like to add to this conversation or discussion the Canon for Judicial Conduct 2, Rule 2.2 that will be effective September 1, 2022. It may have some interplay here. Judicial officers should endeavor to identify and provide resource information to assist unrepresented litigants. Is there a segway between that judicial rule and what we're talking about here in terms of making or at least creating potential access to the unrepresented?

Jacqueline

I hear that Chris, but I also worry because when judges speak litigants are very strongly influenced by that. They receive that information or encouragement differently because they see a judge as an authoritative figure and a case may be heard by that same judicial officer and I worry that if judicial officers

aren't careful about how they ensure the right to be heard how they encourage litigants to connect to resources. For example, selecting or pre-selecting certain organizations over others or businesses over others or products over others. I can see all kinds of gray areas there when a judicial officer is trying to be helpful, but you want to make sure that you're not steering litigants to a particular enterprise, for example.

Chris

Michael, does that have relevance to our discussion?

Michael

Yes, I think it does. I think all these things tie together. And not just because we have a common goal of trying to improve the judiciary. We're going to have balance these kinds of situations along the way and trying to figure out the right mix and that it's being fair to all the stakeholders.

Chris

Okay, well we're ending here, and I greatly appreciate all the time that you've devoted and the comments you've provided. Any final or closing comments?

Drew

Thank you for having me. I think this has been an informative discussion and it's been great hearing from both Jackie and Michael. I encourage everyone who's approaching. this topic. Some might somewhat intimidating. Some people joke that they went to law school to avoid math and AI may appear as a form of math. But really, using AI is in a lot of ways at the core of what we do, using information from the past to help guide

what we do in the future, and I think this can go both ways. I think it could a great tool that helps meet a lot of ends, including closing the justice gap and I think it could also if ineffectively used cause new problems. So, I encourage everyone to be active participants in these in these discussions and look forward to continuing to participate in important discussions like this going forward. Thank you again for having me.

Jacqueline

I want to thank Chris for taking the time and the expertise and then the energy to raise this important topic. I well remember when in my law firm, a very high-end progress place, they put computers, or they were transitioning from a word processing pool. If you can remember that then you're my age. They were putting computers on all the attorney's desks. And the paralegal assistants and many attorneys in the firm did not want them on the desk and did not want to be in the position of having to learn how to use them. I recall that today and I quietly smile and think how we could function today with the productivity and the efficiency without those computers. So, I'm sure that Michael is right to a degree the change will come whether we necessarily organize ourselves to help guide it or not. But I do think that it's a nuanced discussion. Perhaps they don't need to take five years, Michael, but maybe they do need to take time. We tend to do things so fast and sometimes when we do that, we miss important pieces and steps. So, I'd be happy to continue to be part of a conversation and every time I listen to Michael and this time to Drew, I feel like I'm learning more.

Michael

The practice of law board is doing its very best to be as transparent about this as we can and therefore, we publish our Blueprint for the Legal Regulatory Lab and data-driven legal research. It's posted at the Washington State Bar Association website, wsba.org. When you get there, look for the Practice of Law Board section of the website and under Innovation. We have posted the Blueprint[2] and will be posting all versions of the Blueprint that have been approved by the Board so that everybody can read them, go through them and ask us questions. Our board meetings are public meetings. If you have a question, you're welcome to come to our meetings and talk to us about what we're doing.

Chris

Thank you, Drew, Michael, and Jackie. With that I will bid you adieu and best wishes as you go forward on a very interesting topic. Take care.

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[2] Blueprint for a Legal Regulatory Sandbox in Washington State (February 11, 2022)