ARE YOU SMARTER THAN AI?
By Debra A. Dibble, RDR, CRR, CRC, Fellow of the National Court Reporters Association

I was asked to represent the Utah Court Reporters Association to speak at what I was under the impression was a state bar association event. Turned out it was a CyberLaw iSymposium filled with big AI tech lawyers. I was introduced by a gentleman from a large tech corporation, and it quickly became evident that I was about to be fed to the wolves! I squared my shoulders and went into battle, grateful for the training I had participated in over these many years with my Jeopardizing Justice colleagues.

Right off the bat, hands started shooting up and, even though I had said we would do Q&A at the end, I thought, "I'm not going to let them think I'm scared," and I started taking their questions.

I have since been asked for a bullet-pointed list of these topics, and in response have prepared this list of questions asked and my responses with additional material.

THANK YOU to all that will use this information to become informed so you can educate those making critical decisions that have the potential to jeopardize justice and directly impact the protection of the record.

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Topic 1: It is important to understand the difference between ASR and AI. ASR is automatic speech recognition, which translates the spoken word into the written word; this can be a personal, private, closed system, completely contained on a protected, secure network with limited access, and usually personalized to an individual voice. AI, artificial intelligence, uses ASR through its large language models (LLMs), running on mostly unknown, unmonitored servers, where it includes artificial learning which "influences" the decision of what word is selected to represent the spoken word.

Question 1: What if I have a private AI system that is self-contained on my home computer?

Response 1: I can't imagine a laptop computer having the RAM to run a large language model, nor the capacity to incorporate the monster data dumps that are happening daily,

to include the massive amounts of new information being uploaded. But if you have that sort of capacity and you know you can unequivocally guarantee your clients there is no access beyond the walls of your office ... that's a decision you will have to make based on your comfort level and risk tolerance.

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Topic 2:   New rules are being implemented across the country that require attorneys be personally responsible/liable for the risks of their vendors utilizing AI, to include knowing the very detailed specifics of traceability and authentication. If they utilize AI in the production of their transcripts, attorneys will have the responsibility to verify the accuracy and know all the specific information utilized in the creation of said documents/transcripts, such as what large language model(s) were used, how those language models were built, the date the audio was processed through an ASR engine, with which engine it was processed, its certified accuracy percentage, the transcribers who processed it, the chain of custody, the date of testing/certification that confirms that the engine was operating properly, et cetera. I cited the research that 90% of AI companies would not stay in business due to myriad factors, such as insufficient funds and lack of product marketability and/or sustainability, which would make being responsible for this information when their case comes to trial in three years incredibly difficult, if not impossible, let alone whether their evidence would even be admissible if they couldn't provide this information.

Question 2: So we should only use the 10% that stay in business?

Response 2: Yeah, that would work. Are you best friends with Nostradamus? And can I get stock tips from you?

Deep Dive: The traceability of ASR may be the most significant risk ever posed to our justice system. In order for a litigant to later challenge or verify the accuracy of a record, one would need to know all the specific information delineated in Topic 2 above. Will that be available when your case comes to trial?

Question 2A: In addition, I was asked how a court reporter could prove they didn't use AI and how could a court reporter prove their accuracy.

Response 2A: BEST ANSWER OF THE DAY!!   First, a reporter would sign an affidavit that AI was not used in any way to create the transcript. Additionally, a stenographic reporter could get on the stand with their stenographic notes, and said reporter would walk you through every steno outline that would represent every syllable of every word that was spoken, by the correct speaker, in real time as it was said. And those steno notes are as

personal to each individual stenographic reporter as their fingerprints. Each reporter refines their writing to become unique to them. Better than a watermark! SHAZAM!!

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Topic 3: Lots of comments from the group about claims of AI being 80% accurate.

Question 3: Some companies clearly will be better at this than others, so what if we only use the 80% accurate companies?

Response 3: You do understand that that is on ASR's best days, not every time, right? That's the best AI ever gets! So really you're looking at 60%, maybe even 50%. And remember, that doesn't include punctuation or speaker identification or any of the other elements that go into making a record of a proceeding.

But let's just entertain this hypothetical and say it's always 80%. That's good enough for you? You're okay that 20% of your client's testimony is made up, wrong, or just not there? Which 20 words out of every 100 are you okay with being completely left out or created out of whole cloth by a robot, now being represented as evidence in your case. Do you have any idea how many words 20% constitutes in a 300-page transcript? And you're good with that?

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Topic 4: Artificial intelligence lacks controls, oversight, consistency, authenticity, traceability, accountability.

Question 4: What if the government comes up with a "stamp" to certify AI companies?

Response 4: Let's talk about that fantasy world. Yup, if the government vetted all the new companies and their products and found any that didn't hallucinate, didn't have catastrophic dumps, didn't data shift, and had no biases and inaccuracies due to gender, race, dialect, and the other fatal defects in the product, then I guess it would be up to you if you decide to put your license, your case, and your client on the line based on some arbitrary seal of approval.

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Topic 5: Risks of data breaches, violations of attorney-client privilege through disclosures of case/client information, protected information such as HIPAA/PII/highly confidential

data, not to mention names of minor children and protected patent/trade secret/government information.

Question 5: What you are saying was years ago. Now there are opt in/opt out options. What if it gets better?

Response 5: What exactly does opt in/opt out mean? Are they asking you if you want to opt out of being part of training their large language models or opt out of part of their marketing emails? Are they asking you to allow them to use some of your information on some portion of their platform that will be accessible by the world? The information you include to create a summation or search for citations using their ASR functions is still being run through those language models. It's still being sent to who knows where to be accessed by who knows who.   Are they saying they won't save it?   What exactly are they saying they won't do if you opt out? You better read the fine print because, bottom line, you can't really use their product while opting out of becoming a part of their database.

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Topic 6: Discussing laws throughout the country being implemented to hold the legal industry accountable for the use of AI.

Question 6: There is a new California law they are looking at to address these risks.   So if they address them, then this will no longer be an issue?

Response 6:   Not even sure where to go with this. The question was asked in a tone that inferred that this California law was imminent and would alleviate all the concerns and negate all the risks. Yes, many states are looking at possible standards and rules of law to address these concerns. That's exactly the place we are. They are looking at it because they are just now becoming aware or at least acknowledging there are risks, and those risks are even more voluminous than expected. The potential for pitfalls that could jeopardize justice are extensive.   Right now, these laws are putting the responsibility directly on the attorneys to be aware of them, to protect their clients, and to ultimately be liable when things go wrong.

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Some additional bullet points for those who are willing to go where angels fear to tread.

Additional research sites:
Judy Records: We did a search on this repository for cases that were remanded and/or overturned due to inadequate records based on electronic recording. There were nearly 13,000 cases identified. This is a real problem and has been for a lot of years.   Reach out if

you would like a copy of this research and or guidance on how to filter to get specific information for your courthouse, county, state, et cetera. https://www.judyrecords.com

Courtlistener.com

New Jersey Bureau of Statistics. https://www.njoag.gov/about/divisions-and-offices/office-of-justice-data/

Side Hustles: Who transcribes digital records? I get solicitations almost every day for untrained, uncertified operators wanting this work. Watch this video. Pretty sure this does not meet the legal requirements that are recommended when they insist on a "human in the loop." End of discussion! https://www.facebook.com/watch/?v=1198246317751579

Smarter than a 5ᵗʰ grader: Let's see if artificial intelligence can figure out how many Rs are in strawberry ... then we will worry about it taking over the judicial system. https://www.inc.com/kit-eaton/how-many-rs-in-strawberry-this-ai-cant-tell-you.html

AI vs. ASR: Excellent article!! https://miglioreassociates.com/automated-speech-recognition-important-distinctions-to-be-made-between-voice-writing digital and digital reporting/

Consequences: Read this article about how a plaintiff lost the request for a restraining order in a violent domestic dispute due to an electronic transcript that was divided up for transcription and not put back together accurately, missing 55 pages! https://www.dailyjournal.com/articles/366920-make-sure-your-court-reporter-is-really-a-court-reporter.

ChatGPT and Notetaking Apps: When Using ChatGPT or any public-facing AI/ASR tool such as notetaking apps to "summarize," there should be no expectation of privacy. They use cloud-based engines. Your prompts, your inputs, what you "tell" that tool is going to be used for continued reinforcement learning, ongoing training of the model, and for eons of time will be stored at publicly accessible locations to improve long-term output for the model. You're sharing this information with the owners of the model and perhaps all of the users who are benefiting from the training of that model. **This could place client and case information at risk of disclosure, potentially violating clients' rights to privacy and breaching attorney-client privilege.**

Confidentiality Breach/Notetaking App: See this thread on X where myriad examples are shared of companies using apps and having their confidentiality breached. "A VC firm had a Zoom meeting which used Otter AI to record the call, and after the meeting, it

automatically emailed me the transcript, including hours of their private conversations afterward, where they discussed intimate, confidential details about their business,"

Company executives concluded an all-employee meeting and proceeded into executive session to discuss specific employees. That executive session meeting was then summarized and sent to all the employees that had attended the meeting. It goes on and on and on. **Imagine the legal ramifications.**
https://x.com/alexbilyoz/status/1839393095236104598?s=46&mx=2

Data Breaches: Not a possibility ... fact! [California State Bar Breach - 322,525 Bar Disciplinary Records](#)

ABA Formal Opinion 512: Gold mine!
https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf

CertiFAKEation: A real certification is an acknowledgement of what you have witnessed, produced, and prepared, not what an algorithm predicted. Check your certificate! Was it a certified, trained court reporter bound by ethical standards? Make sure your court reporter has a valid license number and is legally practicing in your jurisdiction or your transcript may not be admissible.

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All in all, this experience has left me stunned at the lack of comprehension of the catastrophic impacts that are being introduced through the implementations that are being promulgated by big tech!!!! We must be conversant on these topics and educate, educate, educate!

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