The In-House AI Briefing: Recent Mandates and Practical Litigation Risks

Panelists

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Program Agenda

Introductions and Overview

In-House Counsel Use of AI is Protected!—Unless its Not…

- *Warner* and *Heppner*

Name, Image & Likeness Rights: A Sword and a Shield

- *Baron App, Inc. d/b/a Cameo v. OpenAI, Inc., et al.*

AI Regulation Showdown: States vs. Federal Priorities

- EO 14365 v. State Law

AI Isn't (All) Evil

- *Fivehouse v. United States Dep't of Def.*
- Ethical uses of AI

Questions and comments

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AI Tools and Protected Content: A Comparison

Warner v. Gilbarco, Inc., et al.
and
United States v. Heppner

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The Scenario

- You (general counsel) receive a trademark demand letter.
- You paste it into ChatGPT and ask for weaknesses and strategy.
- You include internal, confidential concerns about your product.
- In discovery, opposing counsel requests all AI communications.
- Are your ChatGPT prompts discoverable?

Warner v. Gilbarco, Inc., et al.
No. 2:24-cv-12333 (E.D. Mich. 2026)

What Happened: Plaintiff uploaded documents into GenAI and asked it legal questions.

The Defendants' Argument: That's waiver!

What the Court Said: Mere use of AI is not waiver.

United States v. Heppner
No. 25 Cr. 503 (JSR) (S.D.N.Y. 2026)

The Question Presented: "[W]hether, when a user communicates with a publicly available AI platform in connection with a pending criminal investigation, are the AI user's communications protected by the attorney-client privilege or the work product doctrine?"

The Defendants' Argument: That's waiver!

What the Court Said: Information sent to GenAI not privileged.

"[T]he communications memorialized in the AI Documents were not confidential . . . The written privacy policy to which users of Claude consent provides that Anthropic collects data on both users' 'inputs' and Claude's 'outputs' . . . and that Anthropic reserves the right to disclose such data to a host of 'third parties,' including 'governmental regulatory authorities."

United States v. Heppner, No. 25 Cr. 503 (JSR), ECF No. 27, slip op. at 6 (S.D.N.Y. Feb. 17, 2026).

Trade Secret Implications

Cal. Civ. Code § 3426.1:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Practical Takeaways

Remind employees: AI kills confidentiality.

Internal audit: AI extends beyond ChatGPT.

Data assessment: Where is your data going?

Name, Image & Likeness Rights: A Sword and a Shield

Baron App, Inc. d/b/a Cameo v. OpenAI, Inc., et al.

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Baron App, Inc. d/b/a Cameo v. OpenAI, Inc., et al., Case No. 25-cv-09268-EKL

Facts

- Plaintiff Baron App (Cameo) operates a marketplace connecting fans with celebrities for personalized videos (since 2017). Plaintiff holds federally registered CAMEO® trademarks.
- OpenAI launched Sora 2, an AI video-generation app (Sept. 2025). A Sora feature allowed users to create AI-generated "virtual likeness" videos. OpenAI branded this feature "Cameo" and referred to resulting videos as "cameos."

Looking Ahead

Legal theories and defenses for AI-adjacent litigation are up in the air.

NIL rights-holders should consider crafting boundaries of use up front.

Companies providing consumer-facing AI tools should factor in litigation risk to business plan.

AI Regulation Showdown: States vs. Federal Priorities

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“My Administration must act with the Congress to ensure that there is a minimally burdensome national standard — not 50 discordant State ones. The resulting framework must forbid State laws that conflict with the policy set forth in this order.”

Executive Order 14365

Purpose of the Order

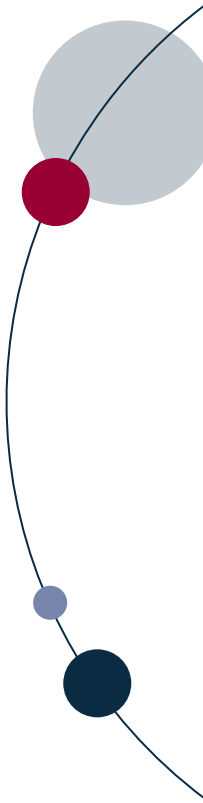
- U.S. Leadership in Artificial Intelligence
  - Strengthen national security, economic security, and global competitiveness
  - Next step after revoking previous policies that "hindered" AI progress (EO 14179)
  - Stimulate nationwide investments
- Challenges Posed by Excessive State Regulation
  - A patchwork of 50 different State regulatory regimes increases compliance complexity, especially for start-ups.
  - Certain State laws mandate the inclusion of ideological or biased constraints in AI models.
    - Calls out Colorado's "algorithmic discrimination" law may require outputs to avoid differential impacts on protected groups, even if doing so conflicts with factual accuracy.
  - Some State regulations extend beyond State borders, potentially infringing on interstate commerce.

Purpose of the Order (Cont.)

- Need for a National Framework
  - Calls for Congress to create a unified national standard to replace conflicting State-level rules.
  - Need a national framework to prevent State laws from contradicting Federal AI policy
  - Key priorities of such a framework include protecting children, preventing censorship, enforcing copyright protections, and ensuring community safety
- Urgency for Federal Action
  - "Until such a national standard exists, however, it is imperative that my Administration takes action to check the most onerous and excessive laws emerging from the States that threaten to stymie innovation."

What the Order Does: Overview

- **Evaluation of "onerous" state laws by the Department of Commerce.**
- Establishment of an AI Litigation Task Force (DOJ).
- Conditioning of federal grants (e.g., BEAD broadband funding) on state compliance.
- Directives to FCC and FTC to explore preemption via reporting standards and "deceptive practices" authority.



California Law: A Likely Target

- "Onerous" or "biased" laws are targets of the Executive Order and Litigation Task Force
- SB 53 – Transparency in Frontier AI Act
  - Establishes transparency and reporting obligations for developers of high-risk / frontier AI systems
- AB 2013 – Generative AI (Effective Jan. 1)
  - Imposes requirements related to the deployment and governance of generative AI systems

"AI is the new frontier in innovation, and

California is not only here for it – but stands strong as a national leader

by enacting the first-in-the-nation frontier AI safety legislation that builds public trust as this emerging technology rapidly evolves."

Gov. Gavin Newsom

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Unaffected California Laws

- Categories of California Laws Unaffected by Federal Preemption Efforts:
  - Child-safety-related laws and protections
  - Consumer protection
  - Laws exempted under the Executive Order
- AB 489:
  - Prohibits AI chatbots from presenting themselves as a doctor or nurse
- AB 621:
  - Regulates AI-generated sexual content, including measures to prevent misuse and unlawful distribution

Colorado AI Act

- Designed to protect against "algorithmic discrimination"-- unlawful differential treatment that disfavors an individual or group on the basis of protected characteristics.
- Imposes obligations relating to documentation, disclosures, and mitigation for **developers** and **deployers** of high-risk AI systems.
    - Developers - an individual or entity doing business in Colorado that develops or intentionally and substantially modifies a high-risk AI system.
    - Deployers - an individual or entity doing business in Colorado that deploys a high-risk AI system.

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Tennessee's Ensuring Likeness Voice and Image Security Act (ELVIS Act)

"Tennessee is home to a remarkably diverse music community that is important not only to the culture of our state, but its economy as well. As technology advances, we must ensure the intellectual property of these incredibly talented artists, such as their voice, is fully protected. I am incredibly proud to carry this legislation that will benefit the performers who make our music industry so successful."

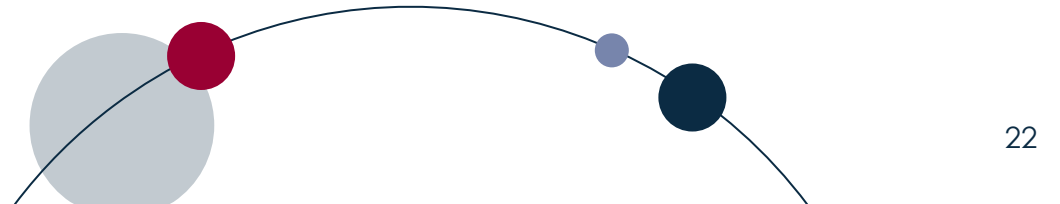
–House Majority Leader
William Lamberth, R-Portland

Takeaways

Courts, not Congress, will decide the immediate future of AI regulation.

We're in a period of significant legal uncertainty for businesses operating across state lines.

While the Administration signals "deregulation," companies must still manage reputational risk and prepare for a fragmented legal landscape until the courts weigh in.



AI Isn't (All) Evil

The Scenario

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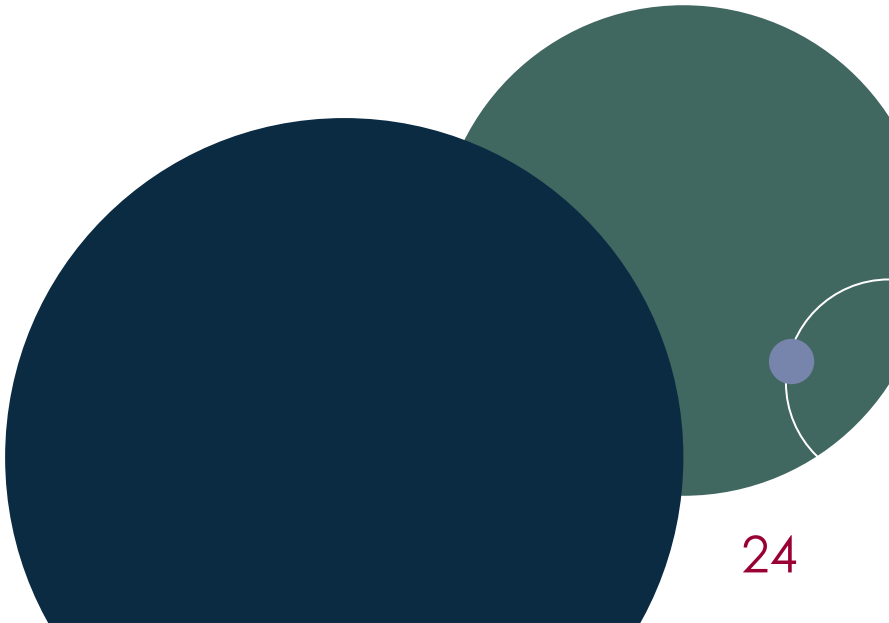
- You (general counsel) read about all the pitfalls of AI.
- Your team (business and legal) want to use AI all the time. For everything.
- So does outside counsel.
- How do you thread the needle?



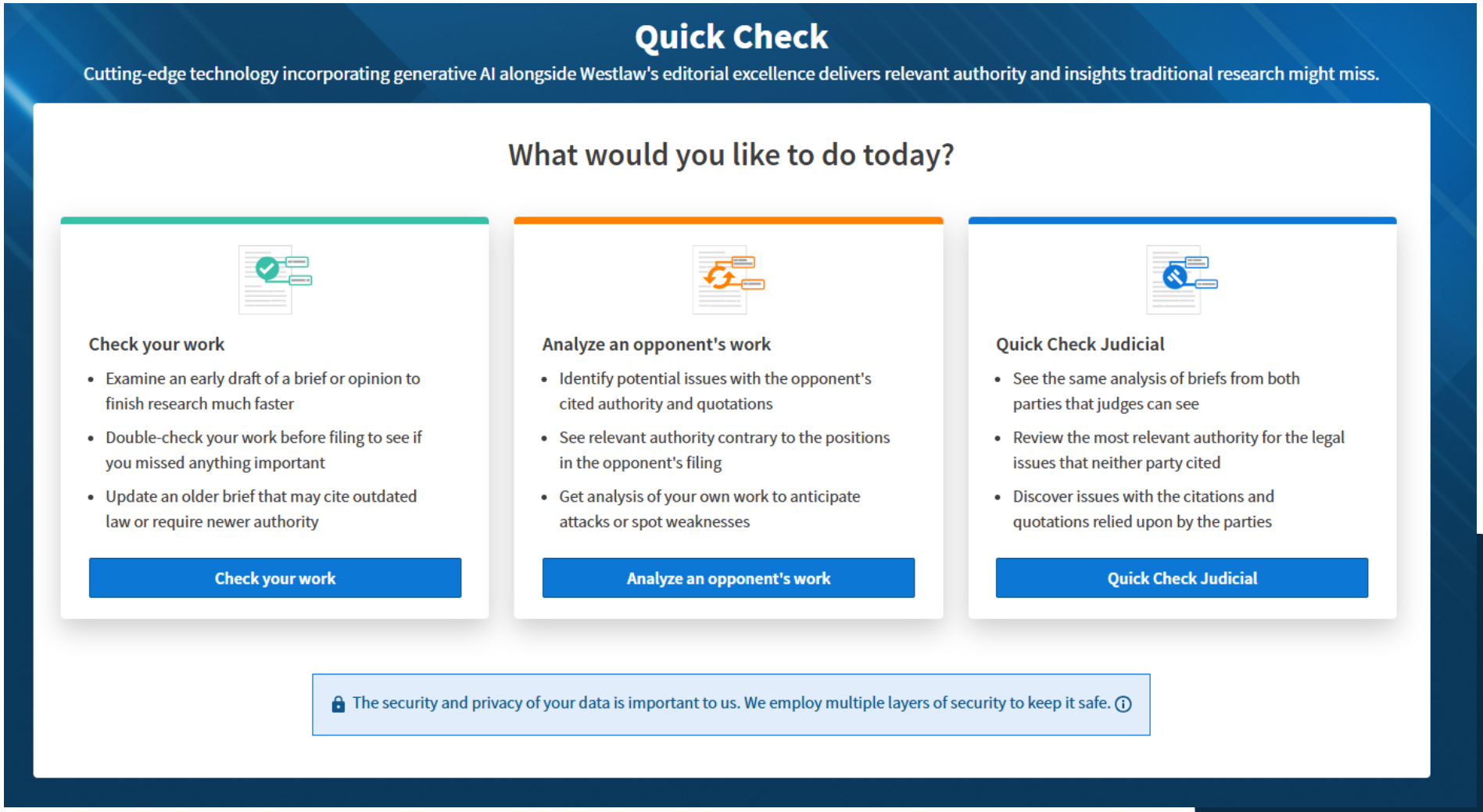
Fivehouse v. United States Dep't of Def.

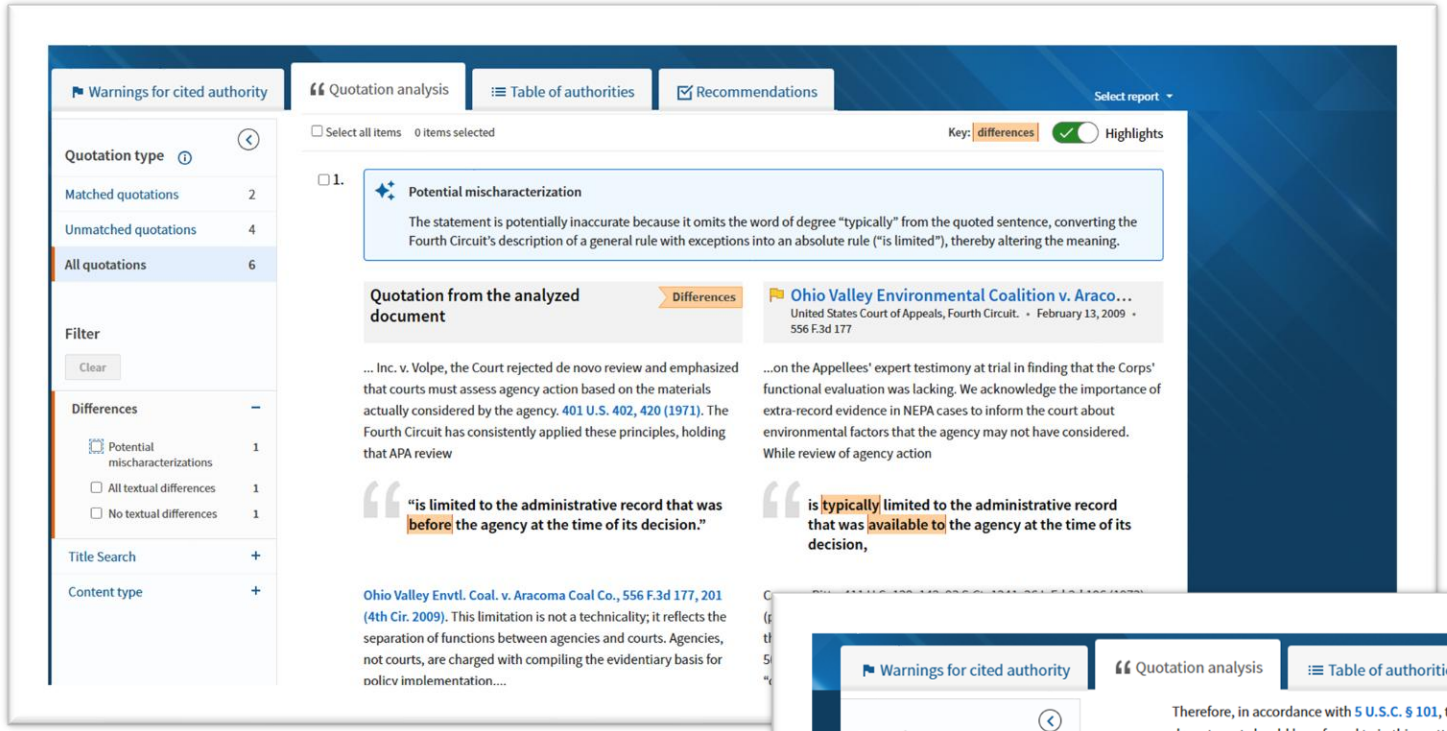
Multiple papers filed with the Eastern District of North Carolina contained "fabricated" quotations.

Judge drops the hammer.

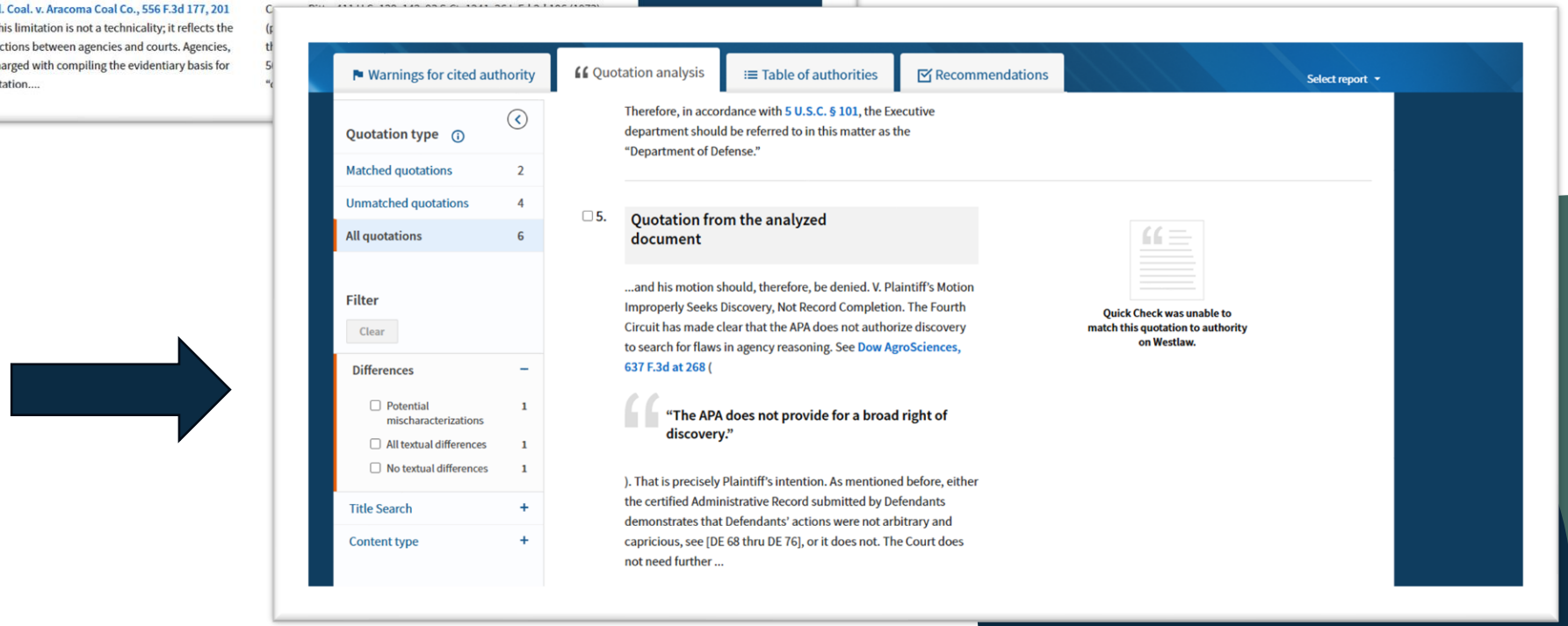
"[T]he worst decision I've ever made in my 30-year career" – Federal Prosecutor Separates from Office.

AI vs. AI Catching Errors



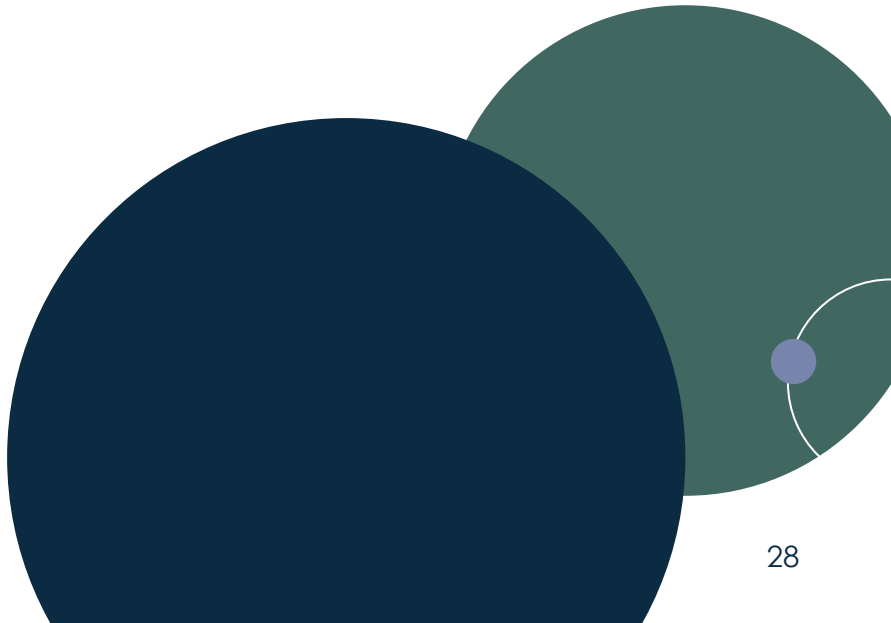


Detect misrepresentations in quotations



Eliminate hallucinated quotations

Examples of Ethical Uses of AI



Questions?

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Ryan Lapine is an accomplished litigator and first-chair trial lawyer. He has never lost a jury trial, with significant wins for both plaintiffs and defendants in state and federal courts.

Despite considerable experience and comfort trying complex matters, Ryan prides himself on reaching beneficial settlements for clients whenever possible and achieving their litigation goals.

Ryan's subject matter expertise crosses various industries. He has deep knowledge of legal matters involving digital currencies and tokens, artificial intelligence, the entertainment and music industry, insurance, business torts, and real property transactions.

Ryan has represented cryptocurrency foundations, investors and investment syndicates, and trading platforms, being one of the first legal practitioners to focus on this emerging market. He has annually presented at PLI on legal issues surrounding the advent and evolution of artificial intelligence. For years, Ryan has represented renowned musicians, visual artists, production companies, and studios in intellectual property, right of publicity, and royalty disputes. He has trial experience in complex insurance coverage matters involving third-party claims and has litigated first-party claims involving surety and errors and omissions policies. Ryan has litigated complex business and real estate disputes ranging from complex real estate financing agreements to Ponzi schemes involving the defrauding of investors.

A native of Cleveland, Ohio, Ryan enjoys playing football and FaceTiming with his nephew in his free time, and holding onto an increasingly irrational belief that this will be the Cleveland Guardians' year.

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Conor Tucker is a seasoned litigator who has served clients as lead counsel at all levels of the federal court system, including as Counsel of Record in the United States Supreme Court. Conor has managed cases through every stage of litigation, from pre-complaint investigation through trial and appeal, and argued dispositive motions and appeals in state and federal courts. His written and oral advocacy has led to published, precedent-setting opinions, including on issues of first impression. Conor has experience litigating on a wide range of issues, including contract, trademark, trade secret, copyright, patent, constitutional criminal procedure, due process rights, and civil procedure for clients in a wide range of industries, including technology, energy, real estate, apparel, entertainment, banking, healthcare, social media, and computer sciences.

During law school, Conor won the Raul Berger Prize for his research on the jurisdictional aspects of the Defend Trade Secrets Act. He writes a quarterly column on developments in trade secret law for New Matter, the publication of the California Lawyer's Association's IP section. He regularly publishes and presents on diverse topics, from civil procedure to trademark and the First Amendment.

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Danika Duffy focuses her practice on commercial litigation and arbitration. She has experience litigating a wide range of matters involving trademark infringement, copyright protection, and breach of contract claims. She has handled matters from inception through discovery, dispositive motion practice, and final resolution—whether through mediation, settlement, or trial.

Prior to joining Steptoe, Danika served as legal counsel at a talent agency, where she advised athlete and creator agents on the legal issues present in entertainment contracts, including Name, Image, and Likeness regulations.