**The Constitutional Limits on Application of AI in the Judicial Practice (Resume)**

**Professor Dr. Tzong-li Hsu**

1. **Trial Project in Taiwan: Aborted Prematurely**

In August 2023, Taiwan's Judicial Yuan proposed a trial project to reduce judges' workload by using AI to draft judgment templates for simple, large-quantity of criminal cases such as "driving under the influence" and "assisting fraud." The AI's role was limited to assisting with drafting, leaving core judicial decisions（e.g. fact-finding, sentencing）to human judges. However, public and legal professionals raised concerns about risks, such as generative AI errors and fears of replacing human judges, viewing the initiative as premature and lacking a legal basis. Facing widespread distrust, the Judicial Yuan postponed the project indefinitely.

**II. AI as a Tool for "Augmented Intelligence" to Assist Judges**

In the short term, current technology only allows AI to serve as an auxiliary tool for judges, acting as an augmentation of human intelligence. The core tasks of fact-finding, legal interpreting, and sentencing remain decisions reserved for human judges. Even if AI serves solely as a supportive tool for judges, risks such as AI hallucination and the potential biases of replicated systems still exist, requiring careful consideration and effort to overcome.

Key-considerations such as

1. **Does the use of AI as an auxiliary tool require legal authorization?**
The need for authorization depends on the extent of assistance. Simple tasks like data processing may not need explicit authorization, but searching for relevant past sentencing information (e.g., as a reference for sentencing), --even judges are not bound by its suggestions-- due to path dependency, judges may still be significantly influenced, making the factual impact on judgment outcomes undeniable. Thus, whether to permit AI as an auxiliary tool for judges should ultimately be decided by legislators through legal enactment.
2. **The framework law should design specific guidelines separately for system development and system usage.**

 For system development, the framework law should establish guidelines for outsourced IT vendors, addressing issues such as data feeding, data anonymization, and resolving conflicts with intellectual property rights. For system usage, it should provide reference guidelines for judicial personnel to ensure judicial independence, procedural fairness, and the protection of citizens' litigation rights.

1. **Does the use of AI require transparency?**
Yes, if AI has a factual influence on a judge's decision-making process, the judgment must disclose the use of AI as a reference tool. Furthermore, the "black box" nature of AI systems must be revealed to allow public scrutiny of potential systemic biases.
2. **Should AI use be restricted to minor cases only?**
3. **Can individuals request that AI not be used based on the right to a fair trial?**

**III. AI as a True Judge: The So-Called "AI Judge"**

In the future, if technical challenges and ethical concerns are resolved, AI could potentially operate autonomously as a decision-maker, akin to depictions in science fiction—what is termed the "AI judge."

Key considerations such as,

1. **Does this require constitutional amendment?**
Yes. The constitution currently presumes that judges are human. Even with the broadest interpretive approaches, replacing human judges with AI represents a transformative paradigm shift that goes beyond traditional interpretations. A constitutional amendment would be necessary to address this.
2. **legal authorization is, of course, needed**
3. **Transparency Requirements:**
Transparency would be even more critical for AI judges than for AI tools, as autonomous decision-making entails greater responsibilities.
4. Human judges Reservation?

Should certain domains (e.g. deprivation of personal liberty) be reserved for human judges while others are entrusted to AI judges?

At the very least, final rulings should be reserved for decisions made by human judges. This is because AI is built through the feeding of pre-existing data and inherently tends to follow established patterns. It cannot be expected to make judgments that deviate from traditional rulings. Therefore, it is essential to preserve the final decision-making authority for human judges. Only in this way, as seen in Taiwan, can significant changes like the legalization of same-sex marriage and the abolition of adultery laws become possible.

1. **Right to a Trial Free from AI Judges:**
Would individuals have the right to request exemption from being judged by an AI?

**IV. Judicial Yuan’s i-Justice Project**