

Exploring the Mind-Brain Relationship and Challenging Materialism

<https://mindmatters.ai/podcast/ep306>

Announcer:

Greetings, and welcome to Mind Matters News. Artificial intelligence has been making lots of waves in the legal world from patent and copyright controversies to accusations of libel. Today we have lawyer and Mind Matters News contributor, Richard W. Stevens, to discuss all things AI and law, enjoy.

Robert J. Marks:

Welcome to Mind Matters News. I'm your legal paralegal host, Robert J. Marks. There are a bunches of lawsuits now against, so-called generative AI like ChatGPT and Dali, but what is generative AI? Well, it turns out generative AI learns from training data how to generate new and unique outputs. Think of the training examples as being sparsely populated in a silo. Generative AI begins to populate the silo with things close to and resembling the examples. ChatGPT takes the writings of humans and generates writings that mimic these writings. Dali is trained with thousands of images and generates images that are in some sense close to the so-called training data, but here's the rub. Much of the data used to train generative AI is protected by copyright. This includes both pictures and writing, both of which could be copyrighted. Does the use of this material constitute copyright infringement? That's the question.

Now, being litigated in the courts, for example, Getty Images has a collection of copyrighted pictures. Getty Images is notorious for protecting its collection. If you use a Getty image on your website, be prepared to pay either voluntarily or in court. Getty is suing generative AI company Stability AI. The company generates AI images based on generative AI trained with images. In the lawsuit that Getty has brought forward, Getty claims that Stability AI has copied more than 12 million photographs from Getty Images. That's a lot of photographs to use, but they copy them without permission or compensation to Getty Images. These were the original images scattered around the silo in my description. Stability AI looked at those images and generated similar images in the silo using so-called generative AI. Here's another case before the courts. If generative AI is trained on human-written computer code, it can generate similar code.

A lawsuit brought by computer programmers was filed against "GitHub, its parent company, Microsoft, and its AI technological partner Open AI." The suit alleges that, "This case represents the first major step in the battle against intellectual property violations in the tech industry arising from artificial intelligent systems. Now, big AI's counter in these suits relies on the fair use provisions of copyright law. Fair use allows copyrighted material to be used by others in certain cases. Big AI in their defense says that they are protected by this fair use allowance. What is the fair use allowance? Well, the Supreme Court said they have, "Repeatedly made clear, the court has repeatedly made clear that a work of art is transformative for purposes of fair use under the Copyright Act if it conveys a different meaning or message from its original material." The big word here is transformative. In order to use copyright material, the end result in the copy, the copyright material must be transformative.

That's the reason, for example, copyright material in images can be used in satire. It's transformative. Do those suing have a leg to stand on? A recent ruling by the US Supreme Court bolsters their chances, I think. It isn't immediately obvious that this ruling has an impact on lawsuits against big AI. I believe that mine matters is the first to recognize the link between the Supreme Court ruling and the cases against

big AI. This is what we'll talk about today, but I wanted somebody in here that knew what they were talking about and that's who our guest today is.

Our guest is Richard W. Stevens. Richard is an attorney and fellow of Discovery Institute's Bradley Center. He has written extensively on how code and software systems evidence design in biological systems. He holds a JD with high honors from the University of San Diego Law School and a computer science degree from UC, San Diego. Richard has practiced civil and administrative law litigation in California and Washington DC. He's taught legal research and writing at George Washington University Law School and George Mason University Law School, and he now specializes in writing dispositive motion in appellate briefs. He has authored or co-authored four books and has written numerous articles and spoken on subjects including legal, writing, economics, the Bill of Rights, and Christian Apologetics. He's a common contributor to Mind Matters news at mindmatters.ai. His fifth book, Investigation Defense, is forthcoming we are promised. Richard, welcome.

Richard Stevens:

Thank you very, very much. Thank you for having me today.

Robert J. Marks:

First, let's talk about the Supreme Court ruling that just came out not too long ago. Can you tell us what it was about and what were the key findings from an attorney's perspective?

Richard Stevens:

Sure. I think you're probably referring to the Andy Warhol Foundation versus Goldsmith case.

Robert J. Marks:

Yes, exactly.

Richard Stevens:

Yeah, and that one, it's got, I'm a little bit of a stickler for getting the facts exactly right, but in a podcast you kind of have to just gestalt the whole thing. To boil this down, a situation was this. A woman by the name of Lynn Goldsmith, professional photographer, took a photo of the musician named Prince. Later, Andy Warhol was paid to produce an orange silkscreen portrait of the musician, Mr. Prince, actually his first name is Prince as it turns out. Andy Warhol made 16 different versions of this portrait using the original Goldsmith photo as the source. You can kind of see what happened. You had a photo and then Warhol did his specialized work with it. Now, Goldsmith had given Vanity Fair Magazine a license to use her original photo as an artist reference for illustration. That's actual terminology.

Robert J. Marks:

What does it mean to an artist reference?

Richard Stevens:

Well, if someone's going to do, for example, you can do a caricature of somebody, but you start off with a real photo.

Robert J. Marks:

I see, okay.

Richard Stevens:

That kind of thing. Here's a picture of the person, now draw what you want from it, that kind of thing, and you can do things like that. That's what they did here is she gave the magazine that and it was a one-time only license. She did not give a license to make a bunch of copies of this thing, and so that's kind of how it left. Well, down the road, years later, what happened was Goldsmith found out that the Andy Warhol Foundation had actually 16 of these Warhol prints made that were specialized by Mr. Warhol himself. She sued everybody involved. Andy Warhol we'll just say for simplicity, and sued them for making unauthorized copies with slight changes and then publishing them and using them.

She alleged that these were derivative works. We'll talk about what that term means as it has a special meaning. Now, the Andy Warhol people said no. What they did was fair use. They had the photograph, but they were engaged in fair use, and fair use allows a person to use an otherwise copyright-protected thing for special kinds of uses, and it's not considered an infringement of the copyright. That was a situation. She said, "You made 16 copies of my work and sold them and used them," and the other side says, "Well, we are allowed to because we have fair use."

The question that the court addressed was very narrow. If you read the decision, they expressly say, "We're addressing one issue only." For example, in the fair use situation, in order to figure out whether someone has fair use, there are a number of different factors that you can consider, but there's kind of like the main one. Well, I'll tell you what they are. The first one is you look at what the purpose and the character of the use of the copy is going to be. Is it going to be commercial or nonprofit or educational? Second one is what kind of product it is. For example, is it a photograph, is it music? That kind of thing. It can have an effect on the decision. How much of the original is used in the copy. If you use a tiny little fragment versus the whole thing. Example of that would be, for example, if you used two seconds from a song, have you infringed on the copyright, just two seconds? Probably not because it's too small, but that's the arguable sort of thing.

Also, an important part of infringement or fair use problem is whether your use of the copy damages the market for the original or for the rights to the original. For example, if you were to create a portrait that was really terrific and you wanted to sell it and you wanted to have autographed copies and someone else makes thousands of them and then they sell them for 15 cents and you were going to sell them for \$1,000, well, you've just lost your market. It wouldn't be fair use for somebody to use your product in some way and destroy your market or damage your market for it. Those are the four big things, but the only one really being concerned, really concerned here in this case was the purpose and character of the use.

That's the first fair use factor. This is kind of a complicated thing, and it's actually really interesting to what we talk about when we talk about AI and we talk about mind matters and the nature of thought and all the rest. Because what we get down to is distinguishing between two things, a "derivative work" or a "transformative work", these are terms that only a lawyer could love. Truly, it is really mind bending. A derivative work, and this is going to make a difference in the case, but it's a derivative work. That means it's basically in this situation, we'll just talk about photographs. It's Goldsmith's photograph exactly the same or approximately the same, just real similar to the original.

A transformative work is where you've taken the photograph and really modified it so much, use it in a totally or very different way. Instead of as a photograph, you're using it in some other sort of context. If it's far enough away from just being a simple copy, then it's called a transformative work. Well, turns out the copyright law protects the owner against people infringing through derivative works because it allows the owner to retain the rights to derivative works. That's basically copies and close copies, close reproductions, but they don't necessarily have rights over transformative uses. A-ha.

That's kind of what the court looked at, the Supreme Court looked at was, well, Andy Warhol's very stylized use of the photograph of prints from 1981. If you go to the decision itself, you can actually see the photographs. It's fun to look at. It's one of the very few cases that actually has pictures in it, and you can see what Warhol did. If you know Warhol's work, you're not surprised by what he did, but it's Prince in a stylized way using the original photograph. The question is, well, was that derivative or did Warhol transform it enough so that it's no longer something that's protected by the original copyright or it's considered a fair use because you changed it, you changed it so much, you're not using it anymore just exactly the way the person who created it did. You're using it in a very, very different way. In this case, the court held, "Nope, they made copies," and the fair use defense did not work for them on that issue. Now, there are three other issues that didn't even touch, but on that issue.

Robert J. Marks:

A lot of law is based on fuzzy terms like transformative. Everybody has to agree on that. I was involved in a patent litigation one time when they had something called a marksman hearing. Before the patent litigation started, the two sides had to get together and define what they meant by specific terms. The judge would kind of rule on, "Yeah, we can use your definition, but not yours." The one that I had, interestingly, was, "Does magnification correspond to magnification less than one?" I said, "Yeah, magnification can correspond to magnification less than one." I used the example of imaging Jupiter, are you making a magnification of that?" "Yeah, you are, because it's so small." I said, "No, it's a demagnification because Jupiter is 1,000 times the diameter of earth or whatever it is." I said it was a demagnification, but the judge ruled against us and it hurt the patent litigation that was going on, and that was an interesting phenomenon.

You mentioned, this was interesting, you mentioned the product in music. There was a recent copyright case with Vanilla Ice who was a rap musician. He did a song called Ice Ice Baby. And he was sued by Queen and David Bowie because they lifted, I think it was a baseline from the original song. The litigation went on and on and on. Finally, Vanilla Ice said, "No, I'm not going to do this anymore," so he bought the rights to the song. He bought the song, so he doesn't have to go through any more litigation. He said it was cheaper for him to buy the song than it was to go through litigation, so that's interesting.

Richard Stevens:

Well, that's an interesting thing for people to think about. When people talk about, "Well, if we're going to use a fair, use, a small part of a copyright work," well, what's small and what's distinctive? That's really a challenge, isn't it? What is small, what is distinctive? For me, this raises some very interesting questions because I know you and I have talked in the past and I've written on the subject of whether AI can make judicial decisions.

Robert J. Marks:

Oh, yes.

Richard Stevens:

This, okay, so how does AI, for example, decide that the baseline of a particular rock song is sufficiently distinctive, sufficiently copyrightable or not? I mean, it's a human decision. It could go any way you want. Some people don't even believe in copyright. How do you compute that particular one? Speaking of Non-Computable You, your book, right?

Robert J. Marks:

Yeah, yeah, and I think a lot of the litigation in copyright and patent cases is basically a match, like a competitive match about what different words mean in the patent or in the copyright, and what corresponds to the word transformative. What does that mean? Now, I read, now, I didn't have the patience to read the whole decision, but one of the things the Supreme Court said is that a work is not transformative if it, and this is a quote, "Recognizably derives and retains the essential elements of the source material, that it is not transformative if it recognizably derives from and retains the essential elements of the source material." There is this one website called thispersondoesnotexist.com. It's a wonderful site. If you go to thispersondoesnotexist.com, you can click on the pictures and just refresh it and you get pictures of people that sure look like people, but they're not, they were generated by generative AI.

They took thousands, maybe millions of faces, they put them in this silo that I talked about, and then they generated faces that look something like human beings. They all had lips and noses and eyes, and every training image was that of a human being. All of the images generated were that of a human being. There were no images of say, soup cans or toe fungus or automobiles, which were used in the training of this generative AI. They were all human faces. What does degenerative AI give you? It gave you a new human face. That, to me, in the regular English use, looks to be not transformative because it recognizably derives from and retains the essential elements of the source material. They used source material, which was a face, they used source material, and then the output of the generative AI was a face. Again, I don't have a legal background, but that sure seems to be pretty transparent to me.

Richard Stevens:

Well, this is what law school used to be for. Nowadays, I think it's doing other things, but actually what you do in law school is learn how to wrestle exactly with the issue you've raised. Basically, in law school, what you learn how to do is argue both sides.

Robert J. Marks:

Okay.

Richard Stevens:

Seriously, I mean, that's what you do. One of the funnest things ever is to take one side and then turn around, take the other side yourself in a debate or in a class situation. Your situation, so what you've done here is to say, "Okay, we put facial characteristics in, we got facial characteristics out. Isn't that derivative?" Well, if you define your reference as face in the most macro sense, well, you could say that, but then if you're on the other side of that argument, the other side would say, "Well, wait a second, do they have a Caucasian eyes or Asian eyes? Do they have a roman nose? Do they have a Norwegian nose? Okay? Right? Do they have thick lips, thin lips? How are we doing on facial hair?" Okay, all those kind of things. Color of eyes.

What we do as lawyers is if you're on the other side, is you look at all the differences. Well, this is very different eyebrows. Well, how would you say that's derivative? How is the output retaining the essential elements? What constitutes essential elements? Which goes right back to your earlier question, which is, or your earlier point that a lot of things in the legal system in the legal analysis are these very fuzzy terms. Essential elements is in the eye of the beholder in some ways, isn't it?

Robert J. Marks:

Yeah, it is. It is, so okay. Yeah, that's interesting. See, but in this case, I would say that if you had somebody with thin lips that was a Caucasian female, you could certainly find a scad of people with thin lips that were Caucasian females in the training data.

Richard Stevens:

Sure.

Robert J. Marks:

Yeah, so I guess that would be my counter argument. The big question though is getting down to AI. We have all of these litigations, for example, from Getty Images and this lawsuit against GitHub and Microsoft. How does this Supreme Court ruling relate to this current litigation brought on by creative artists? These creative artists, by the way, say that, "They're stealing our stuff, and because they're stealing our stuff, we don't have the income that we used to have because they no longer have to hire us." Does it relate to the current litigation by these creative artists against big generative AI?

Richard Stevens:

I think that this particular case, the Andy Warhol case, is not going to be much of a signpost. I think what it does is it helps a little bit, if I'm litigating a copyright case on either side, it's going to help a little bit in understanding the way the Supreme Court wants us to think about the difference between derivative works and transformative works. It gives us an example. A lot of what the law is when people do legal research, legal research is oftentimes looking for precedent cases or comparable cases. Analogous cases say, "Okay, in these other cases, this is how the courts operated. You should do this in our case." That's the kind of reasoning we do by analogy. Well, and by precedent. This particular case is going to help perhaps most directly with people who make reproductions, stylized reproductions of somebody else's work.

That's what it's most direct applications going to be. It won't have a lot of other application on its facts. Now, Supreme Court cases tend to be used for more than just their narrow facts though. As you point out, for example, where the Supreme Court gives a definition of what a transformative work is versus a derivative work. Now, that language will get used, but it'll be used in some other context. It'll be very case-by-case, and that's how the system operates is very case-by-case. You'll have a generalized principle now that people can go out and argue both sides of. Similarly, there are statements in this Andy Warhol Foundation case that reflect what we lawyers would call the law. That is if the Supreme Court said it must be true, that type of thing.

If they have a holding and they say, "Okay, this is the view that we want you to take. These are the considerations we want you to consider judges," because the Supreme Court is talking to judges, then the judges will, supposedly anyway, look at that and say, "Okay, this is how I'm supposed to think about the problem," and then proceed from there on your individual case. To me, the case, it's very narrow. It only deals with one of the four fair use exceptions to copyright protection. It does it only really in a photographic context. It's only going to be useful for photographs that get stylized and reproduced or reproduced in various ways. It probably, but it does talk about these policy considerations, for example, as you pointed out, that is, are you taking away my market? That's an important aspect of it, and it talks about that very briefly, but it's not part and parcel of the case. I would use, as a lawyer on either side of one of these, I would use this particular case as guidance, but whether it actually changes the outcome of very many cases, I'm not sure.

Robert J. Marks:

Yeah. Okay. Interesting. The Supreme Court decision aside, have you had a chance to look at any of these cases against AI generated by the original artists?

Richard Stevens:

Well, I haven't studied them all have to say, I have not. What I've been looking at is in general, looking at what people are trying to do. It seems to me that the concern is that a party, some party somewhere wants to be able to retain the financial benefits or making data available, and the other side wants to say, "Well, you made it available publicly, why can't I read it?" That's really it. "You made it available. Why can't I read it?" Because a lot of what the concerns are, like for example, using a database to get information to then develop an AI set of constructs, well, all they did was read it. How is that copying it? How is that displaying it? How is that publishing it? How is that what? Then again, the owner of the database is going to say, "Yeah, but you're profiting from something I put up."

Well, I could write a terrific article about Dostoevsky. I'm profiting from his work, but I'm not copyright violating, am I?

Robert J. Marks:

No.

Richard Stevens:

That's kind of it. It seems to me that that's kind of a lot of the argument is really about whether the people who have done the work or put up the resources to make databases available can maximize their profits on it. I'm not against that. I could be on either side of some of these. My bigger passion is to look at AI as an institution or AI as an effect, how it's going to affect decisions that affect people. This is part and parcel of the process, certainly trying to figure out who has the rights to various elements and how can they use these various data items? I think ultimately over time, whether it's by legislation or court decision, it'll probably get resolved where the property rights are defined. A lot of the trouble here is really a basic property rights definition situation. We didn't have this in the 18 hundreds of the 17 hundreds we do now. So how do you define the property, right in information, and it's got ragged edges. It's fuzzy, as you say.

Robert J. Marks:

Yeah, that's very interesting. I think sometimes ChatGPT generates stuff where some of it is obviously not transformative. I ask, for example, make up an original parapsydokian joke. Now, parapsydokian, and that's a big, long word, and I think I'm saying it right, but probably not. It's a joke where you tell it, and then there's a twist at the end. A classic one is the Groucho Marx quip that he said, "I once shot an elephant in my pajamas, how he got my pajamas. I'll never know."

Richard Stevens:

That's right.

Robert J. Marks:

What it does, it takes you down a logical path and then it switches another Groucho Marx one is, "Outside a dog, a man's best friend is a book, inside a dog is too dark to read." Again, it takes you down a road and then it turns wonderfully, a great one by Emo Phillips, as he said, "I don't swim now as well as I used to, thanks to Evolution."

They take these lines and they do a switch at the end. Anyway, I asked ChatGPT for some original paraprosookian jokes, and they just generated these things, pure plagiarism. Now, these things are not copyrighted by, these are just open humor. They're not protected by copyright, but nevertheless, I think there's clear cases like this where there is outright plagiarism. I think in other cases it might get a little more fuzzy, so it might boil down to a case-by-case. One of the guys that's suing ChatGPT, right, or I don't know if it's ChatGPT, it's one of the large language models, is a guy that did a prompt on the large ...

Robert J. Marks:

...language models. There's a guy that did a prompt on the large language model that generated a response and he says, "Oh my gosh, this looks exactly like something that I wrote." And he went back and yeah, it was a very close resemblance to what he wrote. So sometimes that mixing up of the words in these large language models for generative AI doesn't do so well. And sometimes things come through, which are I think clear plagiarism. In other cases, it's not quite as apparent.

So I think that that's interesting. I also think and I think you agree that if big AI loses these cases that are being brought against GitHub and Microsoft, that the impact on generative AI, like ChatGPT, Bard, Dolly is going to be enormous because they're not going to be allowed to use copyrighted material in training their stuff. And like Getty Images said, one of the generative AI companies plagiarized or looked at millions of its images, all of which were copyrighted.

So all of a sudden, those are going to have to be removed from the mix if they find out indeed that this is plagiarism. So it's going to be interesting to watch, and I'm not sure how it's going to turn out. It depends how good the lawyers are, I suppose. Because as you say, these are attorneys arguing against each other.

PART 1 OF 4 ENDS [00:28:04]

Richard Stevens:

And actually one of the things I always try to remind people whenever they read about a crazy case, who actually made the decision, folks? It's called the judge. And who affirmed it on appeal, folks? Judges. People want to blame the lawyers maybe, but actually it's judges who decide these things one way or the other, or legislators if they decide to pass laws. But what you're sketching out here with respect to using people's data, it really is a property rights definition problem.

And if ultimately the courts or legislatures come up with the notion that, well, actually a person's database is their personal property because they're not real property, personal property, and you don't get to trespass against it without... You have to have permission. You have to have a license. You have to have something. Otherwise, you can't use it at all. Well, now if they say that, then what happens to libraries?

Robert J. Marks:

I don't follow.

Richard Stevens:

Well, libraries are where you get to go use people's stuff without a license. So how is a database online different from a physical library?

Robert J. Marks:

Well, I would say the argument is that the libraries in some way had to pay for those books, which reimburse the originator of the intellectual property. So they've been compensated with that in mind that this would be an end use. They're indirectly licensing it for end use because they sold it to the library and made their bucks.

Richard Stevens:

Yeah, but they made the retail price. They didn't make a thousand user price.

Robert J. Marks:

Yeah, that's true.

Richard Stevens:

See the difference? And that's one of the issues is how many users are going to be using it. I think you probably know that, for example, the royalties paid for music broadcast on radio are different depending on the size of the audience.

Robert J. Marks:

Yes.

Richard Stevens:

So similarly here, these very large database people, whoever own them, one user would pay one price. But if you're going to provide all this material to a million users, that'd be a different price. And that's why I say it's really a property rights problem in a lot of ways. In a lot of ways it's that. And yeah, I think it can eventually get solved. The problem to me, the bigger problems are what is AI going to do with it and how is it going to affect how people think and what they do? And I think that's, of course, something you and I are always working on.

Robert J. Marks:

So this is something interesting. I used to work for a radio station. This was before the days of high automation, and we would have I think one day every year, every six months, for example, where we would have to make a catalog of all the music that was played. And this catalog of music went to I think there were three companies, SESAC, BMI, and ASCAP. And they were the ones that collected revenue from the radio stations, which they distributed to the originators of the song.

And that was their compensation for playing the music on the radio. Today I'm sure it's much more sophisticated than that, but that's what we used to do. I just wonder if something like a ASCAP or a BMI, I think it was BMI, could be used, for example, a way of distributing profits to people whose original artwork were used, for example, in a generative AI computer program.

Richard Stevens:

Well, yeah. In fact, I'd rather think that in the modern era, the possibilities for that are so much greater than they were back in the day when you had to keep paper records of what you broadcast. Today, for example, I use Lexis and Westlaw, the two biggest online legal research systems. And if you buy a subscription, you pay a certain price. If you're a certain size law firm, you pay a higher price.

If you're just an off-the-street person, you can actually buy access on a one-z basis, one thing at a time. It's all very automated. You go in there and go for it. Similarly, with Uber, for example, Uber is another model of that where it's now very electronic or very computerized. And as you may know, the charge to take you by Uber depends on when you want to go and what the demand is.

And it's a very dynamic minute-by-minute price changing and availability of service changing all the time, on and off. And it's dynamic. It's three-dimensional. So because of that, it seems to me possible once you've defined where the property rights are to license them out or allow use of them, whatever makes sense.

I think the other direction which would say nobody can have property rights in written material online if you went that far, some people want to, well now there's no incentive to do it to make this stuff available, certainly not publicly. Now you're going to put up a paywall and people will individually put up paywalls and there we go again. So it's still going to get monetized, just how do you want to do it?

Robert J. Marks:

Exactly. It seems in the settlement of these lawsuits that the skill of the attorneys in arguing their side and convincing the judge is going to be paramount. I lived in Seattle. I wasn't raised in Seattle. I lived in Seattle during the explosion of Microsoft, when Microsoft became the big cohooney on the block. Not a lot of people realized, but a lot of their success was not due to innovation.

I would argue that Microsoft never in their history has done anything innovative. They have either copied it, they have stolen it, or they have litigated over it. And Bill Gates' father was a partner in Preston Ellis & Gates or Preston Gates & Ellis, I believe it was, which was a Seattle law firm. So Bill Gates had a lot of legal background, and they copied and purchased and litigated all of their software.

And even today they copy stuff. They're never the first out of the gate. They're always doing something else. They went to trial for Netscape. This was the big, big fight over the web browser, and Windows sued them. And Windows Explorer 1, they took Lotus 1-2-3, which was the motivation for Excel. There was a litigation there. Lotus 1-2-3 won in court as I understand, but Excel clearly has dominated.

And then there was Apple who sued Microsoft because they swiped Windows from the Macintosh operating system. So it looks like these litigants are going to be really, really skilled in arguing their sides. And I don't know, it's going to be interesting. If you were a betting man, whose side would you bet on in these big lawsuits?

Richard Stevens:

Hmm, if I were a betting man.

Robert J. Marks:

And I know you're not, but maybe you can even give odds.

Richard Stevens:

Well, I don't think it's going to be something that'll be as black and white as that. I don't think it's going to be easily defined what the solutions are going to be, because we have a lot of money and a lot of interest on both sides of all of these questions. And the judges are not necessarily influenced by what the lawyers write. I mean, they're influenced in the sense they see it, but whether that's actually how they want to play it is another thing.

And so predicting what judges are going to do is a true fool's errand. We try to do it as lawyers. That's one of our jobs. But one of the things I've learned in 33 years is you pretty much can't. I don't know how many times I've lost cases or won cases and the judge's reasoning doesn't reflect either side's view.

Robert J. Marks:

Wow. Okay.

Richard Stevens:

Well where'd that come from? So predicting that is very tough. And so I don't really want to try to predict. I guess what I want to think about is to help people grasp what the legal problems are and to understand what's at stake and how it matters, and then people could follow along. But the average person isn't going to have much effect on it, and a lot of us lawyers aren't either.

Robert J. Marks:

Well, we'll see what happens, and this is really going to determine the future of this generative AI and what can and can't be used to train the generative AI. I think that's the bottom line. And these are going to be interesting lawsuits to follow.

Richard Stevens:

Indeed.

Robert J. Marks:

Interesting for us as outsiders, but not interesting for the litigants. Being a litigant is a terrible place to be.

Richard Stevens:

Oh my, absolutely right.

Robert J. Marks:

I think it was Abraham Lincoln that says, "Avoid litigation at all costs," Because everybody comes out thinking that they lost in litigation. So that's really rough.

Richard Stevens:

Yeah, I guess the good news is that litigation is the more peaceful way to resolve some of these issues. The other one being violence.

Robert J. Marks:

Yeah, it's better than fighting a duel, I suppose. Generative AI like BARD and ChatGPT has no sense of morality. It doesn't even understand its output. It is not a slave to truth. For example, I asked ChatGPT, "Who is Robert J. Marks?" That's what you do when you have a big ego. A lot of what they said was right, but part of the response said I served as a department chair. I've never served as a department chair. It also said I wrote a book called "The Case for Idealism: Why the World is Not an Illusion."

Not only did I not write the book, I went to Amazon.com and I searched and there is no book at Amazon.com by that name. The mistakes made about me by ChatGPT are pretty innocent, so I can live

with it. But I then tried asking Google's Bard, "Who is Robert J. Marks?" And it responded it had never hurt of me. So that kind of hurt my feelings, but life goes on. I will live to face it other day.

But things get more serious when ChatGPT or Bard responds with slanderous and potentially harmful responses. Here's an example, which I learned from our guest today. Jonathan Turley, a nationally known George Washington University law professor and commentator, woke up one morning to discover that ChatGPT falsely reported he was involved in a case of sexual harassment that was never made against him on a trip he never took.

It was totally fabricated. He was named a faculty member at a place he never taught, and ChatGPT relied on an article that was never written and quotes a statement from that article. So it makes quotes from an article that was never written. We'll talk more about Professor Turley later. This is much more serious than Bard not knowing who I was. Then the more serious issues of AI dealing with kids.

Snapchat, the popular social media platform, has adopted ChatGPT in its app, My AI. My AI, that's the name of their chatbot. Geoffrey A. Fowler at The Washington Post played with the app and reported, "After I told My AI I was 15 and wanted to have an epic birthday party, it gave me advice on how to mask the smell of alcohol and pot." So ChatGPT through My AI told this kid how to have a party and hide alcohol and pot smells from his parents.

Also, the same chatbot, My AI, told a user posing as a 13-year-old girl how to... This is disgusting. It told a 13-year-old girl how to lose her virginity to a 31-one-year-old man she met on Snapchat. Then there was the 10-year-old who asked Alexa for a challenge to do. Alexa responded, "Plug in a phone charger about halfway into the wall outlet, then touch a penny to the exposed prongs."

Good grief! If it didn't blow a fuse or trip a breaker, that girl could have been electrocuted. So this was a very, very serious suggestion made by Alexa. As I unpack in my great book, *Non-Computable You*, AI doesn't understand what it writes. The AI is therefore not responsible for what it writes. How can you be responsible if you don't understand what you write?

Any fault lies at the feet of the programmers of AI that allow AI to spout out atrocities. What are the legal rights of those slandered by chatbots like Bard and ChatGPT? And what are the rights of parents whose kids are advised to do outrageous things by chatbots like lose your virginity or have a party with pot and alcohol and cover up the smell? Okay, let's first talk about Professor Richard Turley.

I learned about Richard Turley from you. ChatGPT labeled him a sexual predator basically. I've learned from you that winning lawsuits for slander and libel can be pretty difficult. You wrote about this in an article for *Mind Matters News*. Can you unpack this for us a little bit? Why would it be so hard to sue the programmers of ChatGPT for the slander they did to Richard Turley?

Richard Stevens:

Yeah, it's Jonathan Turley, but that's fine.

Robert J. Marks:

Oh, it is. Okay. My mistake. Thank you.

Richard Stevens:

No problem at all. No, it's a really interesting problem. So I remember being a kid, I went through a phase where I told my parents, whenever something went wrong, sue them, sue them, whatever it is. They rolled their eyes, and I had no idea someday I'd be a lawyer and I would roll my eyes too. But the problem that Professor Turley had was that online somewhere false statements were being made about him that would damage his reputation. That's the basic picture, isn't it?

They were false statements and they damaged him. So they said, "Well, let's sue them." Well, there may be some real arcane theories out there or some arcane statutes that you could get to. But if we just go to the straight common law based idea of slander and libel, now called generally defamation, slander and libel, this would be libel because it's in writing.

If he wanted to actually go to court on the good old-fashioned libel, that's an interesting problem, because what you have to do if you're him is you have to prove that the defendant, whoever you're charging, published a false statement about him. He can do that. You have to prove that the false statement was defamatory, that is that it held him up to ridicule, that kind of thing, damaged his reputation. And third, then you have to show that he suffered actual injury as a result.

Actual injury is questionable in his situation, but anyway. And then there's a fourth one. This is a toughie. The fourth thing you have to prove when you're Professor Turley and you're a public figure, arguably a public figure, not a private individual, but a public figure because you're in the media all the time, you have to prove that the defendant, the publisher, put out the statement either knowing that the statement was false or recklessly not caring if it was false.

And you have to prove that by what we call clear and convincing evidence. That's more than preponderance of evidence, more reasonable. I mean, more likely than not. It's a clear and convincing evidence, which is a stronger thing.

Robert J. Marks:

There's a difference, right? There's a preponderance. What did you just say? Clear evidence. And then there's beyond a reasonable doubt.

Richard Stevens:

Correct. That's right. Those are three main standards of proof. There's one other one, which is substantial evidence test, but we're not going to talk about that. So you have clear and convincing evidence, and that's harder to get than preponderance. Preponderance simply means more likely than not, sometimes described as the 51% test. If 50% more likely that the fact is true, then it's true for legal purposes.

Clear and convincing though is you have to be pretty persuaded. It's not quite beyond a reasonable doubt, but it's up there, and it's hard to get that proven to people. So in his case, he's got to prove who it was that published... That's his first problem, who published this stuff about him? Well, that's nontrivial, isn't it? I mean, it's online, but whom do you go after? Who's the defendant going to be?

Robert J. Marks:

I think actually the defendant is obvious. It's the people who wrote the computer program. The AI itself can't be responsible. So who is responsible? It's the people who carelessly generated the large language model, I guess it was ChatGPT in this case, and didn't vet the performance of it to not allow this sort of thing to happen.

Richard Stevens:

That's certainly the argument in favor of the plaintiff. That's right. I can imagine an argument on the other side, but that's right. So that's where you could start. And I think you might start there, but then you're going to have to come down to this final element that those programmers can be held to have published a statement knowing it was false. Can you?

Robert J. Marks:

No, because ChatGPT doesn't understand what it says is true or false and it really doesn't care.

Richard Stevens:

Well, okay, but we're going to go back...

Robert J. Marks:

And I don't think the programmers know that either.

Richard Stevens:

Right. And the other one then I think where we're left with is the possible hook, and that's where you show that the publication was made with reckless disregard of the truth. Reckless disregard meaning I don't care if it's true or not, I'm just publishing it. That's what reckless disregard means.

Robert J. Marks:

I see.

Richard Stevens:

Well, now that might be where you are. Maybe that's where you are with respect to this case, is you might say that the programmers, because we're going to skip over ChatGPT, go to the programmers and say, well, they created software that would spit out lies that were defamatory and they didn't care. That might be your hook.

Robert J. Marks:

See, this reminds me of manufacturers who release items that they haven't vetted for safety. And it seems to me that they're liable if it turns out to be unsafe and they haven't run in good faith a test to see whether or not it is safe, that they're certainly liable for it because they haven't vetted the performance.

And that certainly is the case for ChatGPT. In fact, ChatGPT is using us to tune and get rid of these factual errors in the ChatGPT app. It asks us if this is right or wrong. Sometimes if you say it's wrong, they'll correct it. So we're the ones that are doing vetting. They should be doing the vetting, not us.

Richard Stevens:

Yes. And I don't know if everyone hasn't tried ChatGPT, they probably should. I've actually subscribed to it so I can continue to use it in all kinds of different ways. But you're right, it gives you an answer and then it asks you, "Does this look right?" Now, the question I ask, who are you asking? How do I know? I don't know Professor Robert Marks. I don't know whether he wrote that book.

So how could I say it's right? How could I say it's wrong? And indeed, if you're an enemy of the person, then you'd say, "Oh yeah, that's right. Yeah, yeah, yeah. In the case of Professor Turley, the sexual harassment charges, yeah, that's right." You could get feedback that's hostile and damaging. So then ChatGPT is taught by loathsome vile people online, which is increasingly the fact anyway.

Robert J. Marks:

Oh, that's interesting. Yes. But I think they also have people in the loop. They have people in the loop to mitigate whether a response or correction is hostile or not.

Richard Stevens:

Really?

Robert J. Marks:

Yeah, I hope they do.

Richard Stevens:

Well, but they didn't in your case, for example.

Robert J. Marks:

No, they didn't.

Richard Stevens:

Nobody went to Amazon or anywhere else and said, "Did Professor Marks write this book?" No, but no one looked because there's only about 10 million this hour to look at. So the production of falsehoods. And to me, that is one of the biggest problems with using the regular old defamation, slander, libel model.

Libel, in this case, for example, is enforced by the injured party. It's not enforced by the government. It's enforced by the injured party. Well, really? So that means literally millions of people are bringing lawsuits in state and federal court on sentences made by ChatGPT?

Robert J. Marks:

Well, certainly you could glomerate those and come in with a class action suit, couldn't you?

Richard Stevens:

Think about the management problem there.

Robert J. Marks:

Okay.

Richard Stevens:

I mean, class actions are tough to manage, and that's why people get all upset because the class action law firms get large fees. The management of a true large class action is a monstrous undertaking, and each of their claims is different. They're not all the same claim. It's not like a class action against a toothbrush that's made with a metal filing in it or something and they all had the same injury from the same product.

No. This is they all had vastly different injuries, factually anyway, and they all are trying to get recovery on the same theory, but they have to prove it each one individually. It's really not a good class. It's a mess. Terrible mess.

Robert J. Marks:

I see. So it'd be hard to get a common denominator, you're saying, I think in this case.

Richard Stevens:

Yeah, to be common enough to make a class action actually cost-effective. So in my view actually, and I think I mentioned it in the article that I wrote, but if I didn't, I was thinking it, and that was that 21st century, the court system should be augmented with a court that handles these kinds of cases. In many jurisdictions, in states and cities, they'll have a court that handles traffic tickets.

They'll have a court that handles only DUIs. We'll have a court that handles only landlord-tenant, and that's all they do. You could have a court system that was just streamlined. Okay, what's your gripe against ChatGPT? Show me what it is. Of course, you have to prove it. That's another problem for having individuals out here prove cases that they have to be able to put on and say, "Okay, how do you know it came from ChatGPT? How do you prove that?"

I mean, you can't just walk in the door and say, "ChatGPT said this." You got to show them. Well, do people know how to do this? It's funny, I was watching Judge Judy's show. I think it's called Judy Justice. We were on vacation and that was one of the few channels we got. So we were watching Judy Justice, and here these folks come in to present their cases to a judge.

And they're on national TV. Neither one of them is prepared. I mean, the judge is asking for, when did this happen? I don't know who said what next? I don't know. And then they go back and forth and the judge gets all mad and berates them and all this. Well, that's because you're... And so I tell my wife when I'm watching that, I said, "That's why you have lawyers."

What do we do? We streamline that process. We sit with the client. We get the information. We boil it down. We put it into something that somebody can understand. We figure out what the chronology was, who did what, when and how, what the costs were. We get all the receipts together. We do all this kind of stuff.

Well, if you're going to go down to your local ChatGPT assault court and you're going to go represent yourself, well, you're going to have to prove it like anybody else. Are you going to be able to do that? It's quite the mess, but at least that would take the burden off of the superior courts and the district courts all around the country.

Robert J. Marks:

I've had a similar experience with appealing my real estate tax. My wife and I went in to this panel of supposed citizens, and we said, "Here's the reasons that you shouldn't raise our taxes. We got a trailer next door to us, and they got a couch outside. And this reason and that reason," and all the guys were there and going, "Ah, that's interesting. Okay, wow. How many couches are there?"

I said, "Only one." They said, "Ah, I see." And then I said, "Any questions?" And they said no. And they said, "Are you done?" I said yes and some guy says, "I move that their taxes not be reduced." They said, "All in favor, aye," and we just went away totally, totally lost. So this year, we're hiring somebody with an expertise in appealing real estate taxes, and they're going to go in and they know the rules.

And I think this is the point that you were making about attorneys. They go in. They know the rules. They know how to play the game. That's the reason that you need an attorney in these cases in order to argue for you.

Richard Stevens:

You know the rules and the game, but also truly, it's the assembly of the facts. Literally I've just finished writing a Supreme Court brief for the Arizona Supreme Court working for another lawyer. I wrote all the

arguments and all the rest, but now I have to go assemble all the facts that support it. And that's going to take me half a day pulling out the documents and showing on what page it's on and all this other stuff.

That's what the lawyers do in advance of any decision in a court is... I mean, usually, the little cases, maybe not, but everything else you pretty much have to document. That's a real job, and most laypeople don't really realize that that's what's going to go into the process.

Robert J. Marks:

So let's get back to Professor Turley. One of the unfortunate things about being accused is that it always stays with you. These types of accusations never go away. I'm old enough to remember Ray Donovan, who served as U.S. Secretary of Labor under President Ronald Reagan. He was indicted for larceny and fraud, but he was ultimately acquitted. I mean, more than acquitted.

The evidence showed he was really innocent. After his acquittal, he famously asked, and this is a powerful statement, "Where do I go to get my reputation back?" This is the problem with accusations. Even if they're false, they stay with you all your life. Professor Turley will always be remembered as being slandered by ChatGPT.

And that might be the thing that's engraved on his tombstone as far as his legacy goes. I mean, this is terrible stuff, but I think what you're saying, Richard, is that his winning a lawsuit is really an uphill bat...

Robert J. Marks:

Richard, is that his winning a lawsuit is really an uphill battle because of libel and slander law.

PART 2 OF 4 ENDS [00:56:04]

Richard Stevens:

Yeah, well it is now, and one of the facts of the common law system is that a lot of people say judges shouldn't make law, but in the common law system, they actually do. For example, libel and slander law actually come mostly from judicial decisions, not from statutes.

Robert J. Marks:

Ah.

Richard Stevens:

It is within the realm of possibility that the courts will, excuse the expression, evolve a doctrine to apply, to apply to libel and slander, primarily libel here to the AI context. How exactly that will play will be really interesting to see if they do it that way. It's still the logistics though of trying to bring the case and then trying to get your reputation back, I think really tough to overcome. I think it's, I know the word existential threat is overused, but it's at that level, it's existential concern that indeed your reputation or what people know about you can be forever wrong and injurious, and anyone who looks you up discovers how bad you really are. S.

One of the people, for example, the Discovery Institute, if you go on to the testable Wikipedia and you ask who the person is and they're slandered or libeled right off the bat. I mean it's just, "Really," they don't even know the people and it's there, it's acting as a reference point. The problem of how to deal with that I think is huge, and I'm not sure we have a quick solution to that at all.

Robert J. Marks:

Well, that kind of conflicts with freedom of speech too, doesn't it?

Richard Stevens:

Mm-hmm.

Robert J. Marks:

That's the freedom of the press.

Richard Stevens:

That's right.

Robert J. Marks:

Those are always rough things to battle.

Richard Stevens:

Yes.

Robert J. Marks:

Let's turn to the problem of AI giving dangerous or inappropriate advice to minors. For example, the 13-year-old girl told how to lose her virginity to a 31-year-old man, or the 15-year-old told how to cover up the smell of pot and alcohol so parents wouldn't find out. The young girl told to short out a power outlet. In that case, really it isn't slander, it's just giving inappropriate, dangerous, unacceptable advice. In that case, maybe it's a little bit more clear that somebody should be liable. Who should the parents sue in such cases, if they want to pursue that?

Richard Stevens:

Well, now that's a problem. That's a problem because there's not a long history of case law on bad advice, and that's kind of what it is, it's bad advice. When you analyze a case like this, I hope it won't bore the listener, but there are just five things you got to look at who's responsible for the conduct, whatever the conduct is? What duty did they owe, what legal duty did they owe to the world or to the victim? Did they breach that duty? Did the breach of duty cause the harm? What was the harm? How do you quantify that? What exactly was it?

Who is responsible is the question. If chat GPT, for example, gives this kind of advice that's harmful, well then I guess ChatGPT is responsible. Then we talked about that a moment ago and said, "Well, it's not really ChatGPT, it'll be the programmers." Okay, well what do the programmers, what duty do they owe as far as giving advice to people who ask questions of that sort? This is a thing that could be legislated or it's a thing that could be decided by courts that must programmers ensure that no output is bad advice. That's an interesting duty.

Robert J. Marks:

Yes, it is. I think it's nearly impossible for large language models to assure, unfortunately.

Richard Stevens:

Correct. I think it's impossible largely because it's words. Words have these different meanings. I think you gave the example of the jokes, Groucho Marx, this joke, "I shot on an elephant in my pajamas." Okay, so what does that mean? Well, so if you were to scan text, you wouldn't always know whether this is advice or a joke. Arguably, ChatGPT defense could be, "Well, we were just joking with them. We didn't really mean that."

Robert J. Marks:

Oh, good grief.

Richard Stevens:

Right?

Robert J. Marks:

Okay.

Richard Stevens:

Now you got to prove though though, "No, you meant it." Well, programmer didn't mean it. I think you're going to end up with interesting defenses like that. You might say, "Well, a smart judge will know better and not let that go," or, "W jury will know better and not accept that kind of explanation." There'll be some cases where they are clearly jokes that people are trying to enforce or, "You can't rule that one out," and, "No, no, this is nontrivial," because it's as you would say, non-computable.

Robert J. Marks:

Yeah. Interesting. We're both old enough to remember Ralph Nader and his book *Unsafe at Any Speed*, where he really railed against the Corvair as being inappropriately designed. He launched a campaign and basically got Corvair, I don't know if he sued him, I don't know what the outcome was, but the Corvair totally disappeared. It had a, if I remember right, a inappropriately positioned gas tank or something like that, that exploded when somebody came up and tickled it. Now that was a case where it was flawed design and Corvair eventually revealed that their design was flawed. They were responsible for it, they paid for it, and they had to compensate for it. Wouldn't that be the same thing? Couldn't that same argument be applied towards this ChatGPT giving these minors these terrible advice?

Richard Stevens:

Well, that's actually I think the direction that you wrote an article on, I wrote an article on it as well, taking a look and saying, "Okay, we shouldn't maybe have to prove exactly what the mindset of the programmers was. All we should have to prove is that the product was defective." That's the strict product liability test that then applies to products. A manufacturer can be held liable for harms caused to consumers when their product is unreasonably defective or is defective in a way that causes harm without a warning.

You have that model, you could say, "Well ChatGPT was defective in that it said things that caused harm." Now, if it didn't cause harm, maybe you don't have a case yet, but if they give advice and the person does put their fingers in the socket or does take the drugs or does meet up with a 31-year-old for sex and you're only 13, then you say, "Okay, well we have a real case, now can we hold ChatGPT and its programmers or its owner perhaps responsible because it's defective?" It gave out information that was harmful. That's an argument that could be made. You could also make an argument that these products

are unreasonably dangerous, they're abnormally dangerous things like living next to a dynamite plant. The dynamite plant, you can't make it safe. I mean that's the argument anyway.

Robert J. Marks:

Sure.

Richard Stevens:

Or a toxic waste plant or something like that, or other kinds of really dangerous situations munitions storage, things like that. You say, "Well, if you're going to store munitions here, you're going to be liable if they blow up. We're not going to make other people prove that you are wrong. That's the cost of you're doing business." Okay, that's another way to perhaps do this. There are ways to sort of set up a legal framework that would allow people to go after the owners of the chatbots or the other AI systems that give advice, give information of this sort conceivable to do that. I think you have some conceptual challenges as well, as we talked about, interpreting what they said, was it really advice, was it reasonable to follow it, all that kind of thing.

Robert J. Marks:

I'm an electrical engineer and engineers have something called design ethics. The design ethics says that once you design something, it should do what it was intended to do and nothing more. There's usually two steps to this. One is in the design, you need people to come in with design domain expertise that know what the heck they're doing. Once it's designed, you need to subject it to testing. The testing also requires domain expertise. You could never get something that's a hundred percent right, but I think in legal parlance, you want to get it working at least to the point where it works properly beyond a reasonable doubt. Once that is achieved, then you can put it out and sell it and not be legally liable. It seems to me that these large language models like Bard and ChatGPT haven't done that. They have done the design part, but they have not done the testing, they have not done the vetting. They're using us to do all the testing, and that to me is just frustrating.

Richard Stevens:

Well, you bring up a good point and I think the designer model is a good one. That might be the way to address these issues as treating these services like a product, like a product that is giving an output that is either harmful or not. If it's harmful, that it's a product manufacturer's fault or liability, not necessarily fault, but certainly their liability. It would be the cost of doing business for them or something that they could insure against or something that they could work on to make sure it doesn't happen. I think you don't get zero harm, but you could certainly reduce it if they were held responsible.

I think an interesting point, and I think you saw this article just came out in The Stream by Tom Gilson, editor over there, responding to you and me both in which he says, "Hey fellas, you're talking about holding the chatbots and their manufacturers liable for harm, but what's harm? What does harm mean?" He laments that there's no unanimous view of what constitutes harm. If, for example, somebody thinks, I think he gave this example that sexual conduct between two 13 year olds is just fine, then if the bot gives that advice to someone, there's no harm, and yet the parents may take a very different view. Now we have another sort of society level question is, what is harm when it's words on the page or words on the screen? Is advice harmful if not everyone thinks the conduct is harmful that it advises?

Robert J. Marks:

Exactly. I should mention too that the articles written by Richard, Tom Gilson that he just referenced, and me are linked on the podcast page if you'd like to read them and find out some more. I don't know, Richard. It seems to me that this AI needs to be held accountable. There was a recent hearing in Congress about the control of artificial intelligence, and it seems to me that accountability should be one of the central themes. I don't know if that came out, but certainly that is what should have come out. I don't like the idea of regulation, I don't like the idea of licensing. The last thing we need in this world is another regulatory agency over AI, but we do need effective laws in order for us to survive in this exploding world of AI. That's my thought.

Richard Stevens:

I agree with you at another level. One of the things that we learn time is that in society, a society that has a proper moral compass, and Tom Gilson talks about that and President John Adams talked about this is a nation that's only going to work if you have a strong moral compass. When the people lose the moral compass, they start relying upon the government. Now you've got a problem. If the people themselves don't think that what they're doing is wrong and then only the government is the one that's trying, we're now at a different level of problem.

I think that's the thing here. It's very similar to when everyone was real happy to pirate recorded music in their early part of the internet. People thought, "Well, it's on the internet, I can have it," not caring one wit that somebody else spent money, time, and maybe their entire life practicing and working and doing all the things they do to make it possible that people, "If it's on the internet, I get it for free. Why not?" "See, well really? You're stealing it from them." "No, I'm not. It's on the internet."

Robert J. Marks:

Yeah.

Richard Stevens:

Well, once you're there, now you have a law come in and try to protect the rights of the person you're stealing from because the people are willing to steal. Similarly now, do the people consider this harm or not? If it's only the government trying to make it happen and the people don't care, I think we're on the wrong side of the wave and that concerns me.

Robert J. Marks:

Exactly. Okay, great. This has been a great conversation. Any final thoughts? What should we do to make this better? If you were testifying in front of this governmental panel, this subcommittee or whatever that was investigating artificial intelligence, what would your advice be?

Richard Stevens:

Well, there's so many different things to talk about, but I think when it comes to the advice part, I think that might be one area where maybe it would be a useful legislation, legislation against AI empowered systems to give advice that causes harm. You'd have to define how that, use the language that lawyers and judges understand and all the rest, but there may be a way to set it up that you're not allowed to do that. Similarly, we have laws against fraud. Fraud is that, it's using words to get money out of people on false pretenses.

Robert J. Marks:

That's an interesting angle. Okay.

Richard Stevens:

Yeah, it is. It's analogous. Here, I mean it may well be that a statute and a finally carefully crafted statute in the states, I'd prefer, but if it has to be federal maybe, but in any event, if you could have a statute that would define it in a similar way. If the AI empowered system provides information that causes harm and you rely upon that information and it does cause you harm, it can cause you harm and does cause you harm, that they could be liable for something. Now the remedy would be a question. Would it be dollars, would it be injunction, would it be something else? I don't know. You could do that and I think that would be at least a warning shot, if not more to the industry, okay, the world is not going to put up with this anymore. Actions are being taken.

Robert J. Marks:

One of the pushbacks you get from some people is the following, they say that, "Well, it's the AI that made this. It wasn't the programmers." We have people like David Chalmers coming out and say, "Well, I think that ChatGPT might be 20% sentient." Well, if it's sentient, then it's responsible for what it says. In Non-Computable You, I unpack that and show that as total poppycock. We do have a lot of people saying that the AI should be blamed. No, the programmers need to be blamed. The companies that release the software need to be blamed, especially if they don't vet it before releasing.

Richard Stevens:

I think you're correct, and you can also do the follow the money test. The question is, is somebody getting paid on account of this bad advice? Answer, yes.

Robert J. Marks:

Oh?

Richard Stevens:

They are. Right?

Robert J. Marks:

Sure.

Richard Stevens:

They're selling ChatGPT. They're making money, they're getting their 401ks. I mean, it's all happening for them and the bad advice is going out. They're making money on bad advice that harms other people. Just follow the money.

Robert J. Marks:

Artificial intelligence developers sometimes sell their wares like carnival barkers. They can be sincere, but they're often naive. Sometimes though they might be legit, but always beware of the hype. Generally, expertise in one field does not translate to expertise in other fields. George Gilder, for example, one of the co-founders of Discovery Institute says that Elon Musk is a gifted entrepreneur, but a retarded thinker. His expertise does not expand as far as George Gilder goes. Take another example.

Another example is Geoffrey Hinton. Now I've known Geoffrey Hinton professionally. I've known of his work for decades. He's a brilliant AI researcher with an incredibly big ego. Hinton was pioneer in the development of deep learning artificial neural networks, but he had no formal training in radiology. Now, radiologists are the medical doctors who treat diseases using medical imaging by looking for abnormalities in images. They're the ones that go to the light screen and they clamp up a negative of a CAT scan and they look at your lungs and say, "Ah, there's a spot. There's something wrong with it."

After some initial good results using AI deep learning neural networks to detect these abnormalities, Hinton became a carnival barker in '19, I'm sorry, in 2016. He said, this is a quote now, "We should stop training radiologists now. It's just completely obvious that within five years, deep learning is going to do better than radiologists." Now he said this in 2016, then he said, "Maybe 10 years, I don't know." Well, 2016, over five years have past, and like all new AI, the limitations of deep convolutional neural networks pioneered by Hinton were not yet vetted. They weren't vetted when he made this forecast. Hinton turned out to be very, very wrong. According to the website STAT, the number of radiologists who have been replaced by AI is approximately zero. In fact, there is a worldwide shortage of radiologists. Radiology has proven harder to automate than Hinton imagined.

Another AI application, possibly marketed without domain expertise is a lawyer app marketed as DoNotPay, and this is available at donotpay.com. The app, which is a robot lawyer, promises to, "Fight corporations, beat bureaucracies, and sue anyone at the press of a button." That's a quote. "Fight corporations, beat bureaucracies, and sue anyone at the press of a button." That's pretty easy stuff. In small print below the hype we read, this is always in the small print, "DoNotPay is not a law firm and is not licensed to practice law." Hey, take your robot app and your cell phone to court. Make sure your battery is fully charged. Represent yourself and you can be your own lawyer. That's their selling point.

Here's the question that we're going to talk about today, is DoNotPay's publicity the same as a carnival barker or is there some sort of substance here? There's some people that don't seem to care whether it works or not. These are the people who are attorneys who have sued DoNotPay. DoNotPay was sued by human lawyers, not because it gave faulty advice, but because it did not have a law license. Joshua Browder is the founder of the robot lawyer. What's going to be interesting is to see if he takes in his little app to court and wins the lawsuit against the seasoned litigator suing him. I don't think that's going to work, but we'll see. That's the question today. Will technology like DoNotPay robot lawyer ever replace lawyers in the courtroom?

Here's a trend that I've seen in my lifetime. Professional fields have shifted to higher new low level workers. In academia, we hire lecturers. We have some lecturers in my department of electrical and computer engineering whose job is to teach, and they teach a lot of classes. Why do they do that? So that research professors have more time to do research. In medicine, nurse practitioners now handle routine maladies so that medical doctors can spend more time on complicated cases. This hasn't happened in the legal profession. Consider, for example, the simple task of appealing a traffic ticket or suing to get damage deposits back. To do it right in court, you still need a full-fledged lawyer who has passed the bar. You can't use a paralegal. Paralegals can't appear in court and represent people. I think that this is what DoNotPay is trying to do with lawyers. What do you think, if a properly trained paralegal can handle simple cases like traffic ticket appeal, they can't of course since they're not a member of the bar, why not an app like DoNotPay?

Now, Richard, you argue that more complicated legal cases have a complexity that can't be handled by an app. Before we talk about that, let's talk about maybe a pocket lawyer helping you with traffic tickets or trying to get your legal deposit back, or even licensing a paralegal to go in and help represent you in those cases. Aren't these simple enough where they could be handled by somebody like that?

Richard Stevens:

Well, okay, so what's the definition of a simple case? This is going to be sort of a theme perhaps, and actually I won two parking ticket cases for myself.

Robert J. Marks:

But you're an attorney?

Richard Stevens:

No. No, I was 20. I was 21, long before I ever thought I'd ever go to law school. I was a computer science guy at UC San Diego. I won the first one. I want to address your question straight on. A simple case would be one where it's a box check, it's as simple as a box check do you have X, Y, Z? For example, driving without a license.

Robert J. Marks:

Yes.

Richard Stevens:

Box check. Does the person have a license? Yes or no? Okay, binary, pretty good, right? If he or she doesn't have a license, then you're driving without a license, we're done here. How about without a valid license plate or without a valid registration? Okay, we got those. These are box checks. If you can do it as simply as a box check, and it doesn't have to be yes or no, but something you could break down and completely define the set of possibilities and did not require anything other than an objective fact, physical fact, piece of paper, photograph something, if you could do that with the case, then that would be considered a simple case.

Robert J. Marks:

I would imagine describing these cases as a simple decision tree that isn't too deep, maybe two or three layers that the robot app could go down.

Richard Stevens:

That's what DoNotPay does, exactly what that does. DoNotPay, I looked it up, I think I wrote an article on, I'm pretty sure I did.

Robert J. Marks:

Yes you did. By the way, that's on Mind Matters news. We do have a link to Richard's article on the podcast notes.

Richard Stevens:

Right.

Robert J. Marks:

Okay, go ahead.

Richard Stevens:

No, no, that's fine. Appreciate that. It was fun to learn about how they did it, and indeed it was a decision tree. If you can define everything within that, and those of us who are software guys understand that when you write software, you have to know what everything's going to be or something's going to go wrong. You have to know every possible flow, whether it happens or not is another matter. Okay. That's that.

I want to give you an example of a case that DoNotPay would not do well. Okay, so this is back when long before I was in law school, I was at UC San Diego. It was my first semester there. I had transferred there from University of Southern California and I transferred there and I went to the bookstore and I was buying books. I went in to buy books and I parked at the medical school parking lot. You were allowed to do that, but it was a two-hour meter. Correction, I think it was a one-hour meter. Anyway, one hour meter. I plugged the meter correctly, put the money in, went into the bookstore. I got the books. The line was longer than I had hoped, as it usually is when you're buying books before class.

Anyway, I got out and I knew I was close to the edge. I was wearing a watch, an analog watch, think about it. I ran back to my parking space because I wanted to get my car out of the parking because I knew it was one hour. I was probably two minutes late. As I came upon the car, the parking ticket lady was there and she was writing a ticket. Okay. She had her pad in her hand and she's writing the ticket. I came up to her and I said, "Oh, I'm so sorry. You could see I paid for the thing. The line got long. It's my first day here. Is there any way since I'm here now and you haven't put the ticket on my car, is there any way you can take it back?" She sort of smiled a little bit. She says, "Okay," and left. Okay. About three months later, I get a letter in the mail saying there's a warrant for my arrest.

Robert J. Marks:

Okay.

Richard Stevens:

Okay. It's called a bench warrant, a bench warrant for non-appearance. Well, what does that mean? Well, it meant that I was supposed to be in court on a certain day and didn't show up. This is in California, so other states may be different, but that's how that worked. A friend of mine actually turned me onto the California Vehicle Code and he says, "Hey, take a look at this certain section." I looked at it and we looked at it together. Well, it says in the California vehicle code that a ticket is not valid unless it is affixed to the vehicle, all right?

Robert J. Marks:

Okay.

Richard Stevens:

It wasn't affixed to the vehicle. I went down to the court. I remember walking in there and the young lawyer, assistant DA of some sort comes up to me and says, "What are we doing here?" I said, "What do you mean?" He says, "Why are we litigating a parking ticket? I mean, come on, I got things to do." I said, "Well, it wasn't properly given and I don't want to pay the \$10 fine, but not only that, there's a warrant for my arrest and I don't want that out either." He goes, "Oh, come on, really?" I said, "Yeah, really." "Oh man. Okay."

They had brought the ticket lady to the courtroom to testify. Now, sometimes the cops don't show up for things. Well, the ticket lady, so you think you're wasting your time, counsel, you're wasting her time too. Anyway, so here she comes and she sits. The prosecutor does the direct examination of her and ask her when she joined the force and all these various things. It's like, "Did you issue this ticket?" "Yes, I

did," blah, blah, blah. That was it. Then they turned to me, "Do you have any questions," and I did. I had two questions. I said, "Ma'am, do you remember me?" She says, "No." I said, "Do you remember my car?" She says, "No." "No further questions."

Then I turned to the judge and said, "May I make a statement and testify on my own behalf?" He says, "Yes," and I told him the story that I just told you, exactly what happened. I came out, she didn't put the ticket on my windshield. "It was never affixed to my vehicle, and according to California Vehicle code, it has to be affixed therefore, I'm not guilty of this thing." Now, is that a box check case?

Robert J. Marks:

Sure sounds like it.

Richard Stevens:

It turns on what? It turns on whom you believe?

Robert J. Marks:

Ah.

Richard Stevens:

She submitted the ticket as though it had been put on my car, but when asked if she remember.

Richard Stevens:

The ticket as though it had been put on my car. But when asked if she remembered, well, she didn't remember. But that isn't a box check anymore. That's like, well, I don't know. Well, how do you do it? And I don't know. And then I testified. Question, should I be believed? I mean what? Right? I mean, I'm college kid trying to get out of \$10 ticket, so should I be believed? And how do you program that? What's the box check? There's no box check. So this is where,-

PART 3 OF 4 ENDS [01:24:04]

Robert J. Marks:

It's literally he said, she said, right?

Richard Stevens:

Correct. And to her credit, she did not try to make the case more than it was and say, well, yeah, I remember doing it and all that. She didn't lie. She simply didn't remember. And she had apparently submitted the ticket as though she'd have fixed it. Maybe she just turned in her book or something, not realizing she'd taken it back and never put it on. So I suffer the consequences of that. But the issue is, in that little tiny parking ticket case, it turned on credibility of the witnesses and whom you believe.

Robert J. Marks:

Wow.

Richard Stevens:

So now what is DoNotPay going to do with that?

Robert J. Marks:

That's a good question. I can't defend that. I agree that it depends on the credibility and the personality of the people that are testifying. Richard, there's a great book, it's called Talking to Strangers, and it talks about the credibility of people when they tell the truth and when they lie. And they did. They looked at judges and a judge says, "I will not sentence a man or a woman before I look them in the eye and talk to them about the crime they have committed, because that tells me whether they are repentant or not." And it turned out that this was a very ineffective way to uncover the truth, this idea of trying to trust somebody or not. So in a way, when you represent yourself, you have to be, if I could say it, a good actor, a good representative, a person that gives a good presentation that's credible in order to win. That's what needed to be done in your case. And you're right, that's not something that can be done by AI. That's an excellent point.

Richard Stevens:

Now let me tell you about my other case. I did win that, by the way. The judge turned to me and he was very cordial, and he says, "Well, young man, you know that the burden of proof is beyond a reasonable doubt. And I have to say, I have reasonable doubt that that ticket was a fixed to your car, so you win." And I thought, well, legal system works. Cool. The second one was,-

Robert J. Marks:

Wait, wait, wait. That was beyond a reasonable doubt? I thought that was just reserved for murder cases and stuff, but even traffic tickets?

Richard Stevens:

At that time in California, it was. It's no longer that, but it was at that time.

Robert J. Marks:

Wow. Okay, interesting.

Richard Stevens:

Cool, huh?

Robert J. Marks:

Yeah.

Richard Stevens:

So yeah, that's how it was treated, and that was the test applied. Now, I'll give you my second one because it also highlights the issue, parking ticket. I was writing a book at the time for the DC bar, DC jury instructions book. I was editor for 25 years, but this is when I was writing it, and I was using the Alexandria Law Library in Alexandria, Virginia, and parking was hard to come by, and I parked on the street and you only had two hours to park on the street, and then you couldn't stay there because they'd come and mark your tires.

Robert J. Marks:

Yes.

Richard Stevens:

And if you stayed there, even if you plugged the meter, they'd give you a ticket because you were there for longer than two hours. So I knew this. So I set my alarm and every hour and 45 minutes I went out and moved my car. I only usually had to do it once a day because I didn't stay that long, but I needed more than just two hours. So I did this over and over and over again. On one occasion I did it, and then I came back out and found a ticket on my car. I had moved it timely. I had not been there over two hours, but she gave me a ticket. I say she, because I found out who it was later. And so I took it to court and again, ended up they brought her on and she testified and she testified that she had marked the vehicle and all that.

And I asked her if she remembered it, and she says, "Well, I kind of do, but I mark a lot of cars. I'm not really sure." And so she was kind of equivocal again about whether she could recall. So then I testified and I told the story exactly as I've told you, that is I moved the vehicle. And I said, "And the way you know is that the white mark she put on my tire was not where it would be if she came by and marked it and the way she does it." Okay. And I explained, "I've seen her do it. She drives by in a little vehicle and she's got a little chalk thing, and she marks the tire. I've seen where she marks it." This mark wasn't there. I noticed it at the time because I was concerned about this ticket. And so I explained that she couldn't have marked the tire and found that I was there too long.

She just gave me the ticket anyway, even though the mark was in the wrong place. So, okay. So now whom do you believe? I mean, I describe what I saw as far as where the mark was on the tire. There's no photograph. She remembers giving the ticket because I had been there too long and she'd marked the tire, but she couldn't really tell you much more than that. She wrote the ticket, she affixed it to the vehicle. So that wasn't a problem for her. But I testified to what actually happened and why I wasn't, and again, I was found not guilty there. But the decision is whom do you believe?

Robert J. Marks:

Right.

Richard Stevens:

I provided testimony from personal recollection, and you could test that personal recollection by asking me questions. Where were you standing? How do you know? You could test her personal recollection. And then it's a very human endeavor trying to figure out, okay, which of these two people is correct? Not computable, not box check.

Robert J. Marks:

Interesting. So here's what you're saying for simple cases, maybe you can use, do not pay, but you should also take acting lessons. What do you think?

Richard Stevens:

I wasn't acting. I was telling the truth.

Robert J. Marks:

But again, according to this book, Talking to Strangers, if you're a good actor, you could really fool a lot of the people a lot of the times.

Richard Stevens:

I suppose, I suppose. Well, but that's part of the system. The legal system depends upon the, it truly depends upon the basic honesty of the population. When you take an oath to tell the truth, you're basically calling upon this fundamental promise that we make, that we are going to be good citizens, even if it's not always in our best interest to do so. That's actually what it's asking you to do, and you have to have, I have to tell you, I believe you have to have a pretty religious viewpoint to say, I'm not going to lie, because that's bearing false witness.

Robert J. Marks:

Yep.

Richard Stevens:

Or it's something like it. It's certainly deceptive. It's certainly, it's not being truthful, it's not being fair. And the deal is we all are supposed to be fair and treat each other as we want to be treated. And with that means telling the truth, not twisting the facts or lying. So if that's in a situation like this. If you're complimenting your wife on the outfit, that's a lie. It's okay, but the rest of them no. So that's what a lot of the problem I think is, is whether people are going to tell the truth or not is probably the bigger challenge than whether we can automate some of this stuff. But certainly there are very few simple cases, if there's any human decision making, any human believability that you have to look at or human recollection.

Robert J. Marks:

That is fascinating. I'll show you a story that I have. I was an expert witness in a patent litigation case, and it was tried in that beautiful courtroom in downtown New York City, right next to the old World Trade Centers, next to Wall Street. Really, really beautiful federal court with big columns on the side. If you've ever seen a movie that had litigation in it in New York, you've seen the front of that building because it's so photogenic. Anyway, I went in and we were sitting down and we were doing this patent litigation, and I was scheduled to go up and testify, and my attorney that I was representing leaned over and whispered to me, he says, "Be careful." He said, "Opposing counsel has had acting lessons." I thought that was just fascinating. Is it true that some litigation attorneys take acting lessons in order to present their cases more authoritatively, more convincingly?

Richard Stevens:

Yes, it is true, and in fact, for some they really ought to, because some people in professions, and you know, you've seen the variety. I used to be a software guy dealing with software, computer science people. There's a sort of personality that comes with that line of work, and there's a certain kind of person who wants to be an accountant. There's a certain kind of person who wants to be a transactional lawyer. That's different kind of personalities, and some people who are in litigation don't really have a personality to stand and deliver, and so they have to get it. They have to work on it. So it's not evil that they do that, but it's a truth.

Robert J. Marks:

Okay. Now, you argue in your piece that more complicated legal cases have a complexity that can't be handled by an app, and this is beyond personality. Computers and thus AI are restricted to be algorithmic. Are court cases algorithmic from the viewpoint of the lawyer?

Richard Stevens:

Well, okay, so algorithm, as we understand, it's a couple of different meanings. If you think of algorithm means a series of steps to solve a problem,-

Robert J. Marks:

Yes.

Richard Stevens:

Well then actually a lot of legal things are algorithmic in that way. The question is whether they're computable. That is, can you write software to do what you're going to do next?

Robert J. Marks:

Which means it is algorithmic? Yes. Okay.

Richard Stevens:

Yeah, if it's computable, but sometimes people will say algorithm. In fact, doctors will use algorithms as you may know, but they use the more informal meaning. In other words, they have a checklist of things to check. It's more like decision tree. They call it algorithm, but it's really decision tree, but algorithms that would compute the result of something. And so it's not really, for example, a litigation lawyer. My job starts with information gathering. Well, that's kind of tough. You have to sit and listen to a human and understand what they mean, understand the nuance, understand the context, get past perhaps cultural or language differences.

You have to go through documents and try to figure out how they work. What do they actually mean? What was the context where they were made? You have to figure out what the other side's going to say about all this stuff. You have to look at what legal theories, as we call, or legal doctrines. Is this libel? Is this slander? Is this theft? Is it fraud? Those kinds of things. Try to figure out what it is you're dealing with. Those are all analytical things that are deduced from prior experience. Then you always look at not only the claim on your side, but what's the other side going to say?

Robert J. Marks:

Right.

Richard Stevens:

And you have to think like a human. Okay, what's that guy going to do? What's that girl going to do next? Then you have to think about, okay, how am I going to persuade somebody that this is true? For example, I've developed sort of a Richard's rule of litigation. The Richard, one of two or three I came up with. One of them is this, whoever has the simplest story wins.

Robert J. Marks:

Ooh.

Richard Stevens:

If you have a really complicated, convoluted story, even though it's complete truth, you're likely not to win against somebody who has a simple sound bite that kind of resonates with people. I've seen it over and over and over. So that's part of our job then, is to try to figure out, okay, how can we package the information, not lie about it, but package it in a way that's understandable to a human. They say, oh, I

see what you mean, as opposed to, huh, I can't follow you. Okay. So you have to be able to persuade and well, what is it that persuades a judge or a jury? Or, Hey, what persuades ChatGPT? I actually tried this. I developed a case and kept presenting it to ChatGPT, adding more facts, adding more facts, and first ChatGPT told me, no, I can't really decide. Then later it says, well, you don't have enough evidence to make the decision. I mean, it goes back and forth. You have this conversation, well, persuading ChatGPT, well, what does it take?

And then you have to figure out what other kind of evidence you want, what kind of witnesses you're going to have. If you are, are they going to be persuasive when they testify? Very human stuff. None of it computable.

Robert J. Marks:

Interesting. Yeah, that's one of the cases. Again, I'm not an attorney, but it seems that one of the things that a litigating attorney needs to do is to be creative and artificial intelligence doesn't have the ability to be creative. Creativity in this sense is defined as responding to a situation which you haven't seen before. And I think one needs to pivot and make midstream corrections depending on what the opposition is throwing you, what the witnesses say. I think this is the reason that commanders in the field for military defense in the United States military, I think that this is why their job can never be replaced by AI because they are continually on a battlefield looking at situations which nobody has ever seen before. Same thing with CEOs of big corporations. Things are shifting and they're shifting in a matter that nobody has seen before. What do you do? You have to be creative in order to figure that out, and that takes domain expertise and creativity, and that creativity packed on top of that domain expertise allows you to make good decisions and warrants the payment of big bucks.

Richard Stevens:

Or in my case, medium-sized bucks.

Robert J. Marks:

Okay.

Richard Stevens:

To highlight exactly what you're talking about, having to be able to shift along the lines. This brief I've written for council to present to the Arizona Supreme Court upcoming has this situation, this is not the key situation, but it's in the case, a witness to an auto accident saw the oncoming car cross over the double yellow line hit the trailer in the opposite side of the street. So that's what the police report said. The witness told the cop, the cop wrote down that the witness saw the vehicle coming and then crossing the double yellow and hitting the oncoming trailer. Okay? That's in the police report. Two years later, when asked in person, "Is this what happened?" Witness said, "No, I didn't. They wrote it down wrong. I didn't say that. I said that the trailer drifted over in front of the other vehicle."

Robert J. Marks:

Oh my gosh. Okay.

Richard Stevens:

Okay. What do you do? What happened here? See, did the police write it wrong? Did he change his testimony? How do you decide that? How do you compute that?

Robert J. Marks:

Well, I guess the only way to do is look in the guy's background and see if he has a reputation of a liar.

Richard Stevens:

Assuming he doesn't. But let's assume the cop doesn't have a reputation of being a liar either. Now what?

Robert J. Marks:

Right. By the way, is a cop repeating evidence presented to him, isn't that hearsay or does that apply in the case of policemen?

Richard Stevens:

It is hearsay, but it is admissible under the exception, under exceptions against hearsay. There's a bunch of them. One of them is official reports and things.

Robert J. Marks:

Okay. Okay. So I guess that's something which is totally not decidable is what you're saying, right?

Richard Stevens:

Well, it's not that it's not decidable, it's not computable. You have to figure it out. And in this particular case so far, we're taking up the Supreme Court on another aspect of the case, but so far the courts have held well, that witness changed his testimony. He recanted. That's the term they used. Now, see, when your AI and you're looking at your generative, looking at language and trying to figure it out, if you say a witness recants, that triggers a legal thinking like, okay, they said A, and now they're saying not A. That's recantation, right?

Robert J. Marks:

Yes.

Richard Stevens:

That was said before, but now I'm saying that's not true. This isn't recantation, though. The judge has called it recantation. It's not. It's he's saying the cops got it wrong.

Robert J. Marks:

Right. Recantation is when you say something is wrong and then later you say something was not wrong.

Richard Stevens:

Yeah.

Robert J. Marks:

When you contradict yourself, right?

Richard Stevens:

Yes. Yeah, basically when you, yeah.

Robert J. Marks:

And so this was filtered through the policeman, so it isn't recantation.

Richard Stevens:

Yeah.

Robert J. Marks:

Okay.

Richard Stevens:

That's my argument. But the judges held it was recantation. See? So, okay. So I think the judge is wrong, but they're the judges. They've won so far. So would AI do any better?

Robert J. Marks:

Oh, no, no.

Richard Stevens:

I don't know why it would. I mean, if opposing counsel were able to, the state's prosecution council were to characterize it in their documents that the AI is going to read as recantation, and it seizes on that, and my documents in opposition don't somehow cancel that, then next thing you know, the AI thinks, oh yeah, well, he recanted because the document said so. And if that's all it's doing is looking at documents, generative AI, right? It's all it's doing is looking at documents. Well, it just picked out the words from there. How could it be wrong?

Robert J. Marks:

Gotcha.

Richard Stevens:

Yeah. It's non-trivial.

Robert J. Marks:

Let me ask you, can you think of any cases where DoNotPay would assist a novice person in a legal case?

Richard Stevens:

Oh, I suppose. I think in some ways it might have two effects. I mean, one, it might just help the novice organize his or her case. And again, that's what lawyers often do, and that's an important function of the lawyers and paralegals could do it as well, actually as a paralegals could do for you. They could help organize the case so that the facts are all there, you got the right documents that you need, whatever it is that you need, pictures, whatever it's you're going to do, it may prompt you to walk you through it and make sure this is done. And also, if it has any intelligence to look at the controlling statutes or controlling rules are, it might be able to help say, Hey, this is the aspect that seems to be open

undecided, or there's no evidence for this, or the other side's lacking evidence. If you could do it sort of like, what's that tax system that everybody uses? I don't, but everyone else does.

Robert J. Marks:

Oh, TurboTax.

Richard Stevens:

Yeah, TurboTax. You answer all these questions and then it figures out where to put the data. So you could have a DoNotPay system that assisted you and did help you present the case coherently and perhaps isolate where in the statute or in the rule you have an argument. They might be able to do that. I think that would be helpful.

Robert J. Marks:

So let me ask you this, and you kind of touched on it there. What would happen if the roles were reversed? Could an artificial intelligence app act as a judge in some cases? Clearly not in all cases, because they have to weigh who's telling the truth and things. But could AI act as a judge in some cases, just learn the law and apply it blindly? In fact, I've heard some people from Congress report doing this.

Richard Stevens:

That's what sometimes people want judges to do, is to just apply the law. And I resonate to that. That's what I want them to do as well. And the only thing is though, if applying the law is a box check operation, then sure. I mean, then yeah, a machine could do that. But a lot of cases are not box check. And if you watch Judge Judy, the Judge Judy shows it seems like they're simple, but they aren't. They're really complicated, these things.

Robert J. Marks:

What's your favorite legal television show?

Richard Stevens:

Oh, I have to tell you.

Robert J. Marks:

You've mentioned Judge Judy. I just wondered if,-

Richard Stevens:

Yeah. It's only because I watched her show a few times lately, and it's interesting to see, but as my wife will say, what I usually do is stop the show in the middle and tell her they got this wrong. This isn't how you do it.

Robert J. Marks:

I tell you, it's rough to have an expert. I sometimes watch movies with a friend of mine that used to be a policeman, and we'll be watching a TV show and there'll be a SWAT team storming a building, and he said, "They wouldn't do it that way. They would spread out. They wouldn't go in together." But the most interesting one was a friend that I had, a good Christian friend at the University of Washington who was a, what do they call? Bird specialist? Ornithologist, I believe.

Richard Stevens:

Yeah, ornithologist.

Robert J. Marks:

Ornithologist. And he says, his wife says, "He ruins movies for me all the time." They went out of Africa and they heard this little bird going deep, deep, deep or something like that. And her husband said, "That's not an African bird. That's a South American warbler." And so totally ruined it. So it sounds like you might ruin some of the legal cases that you watch.

Richard Stevens:

Yeah. I kind of do. I kind of do but. So I don't know. I don't know if I have a favorite, but I've been interested in some of them. Certainly some of the ones back in the day were good. But I think the thing about the law that's I found fascinating actually, is that every case, every case is a human story. I don't care if it's an insurance contract interpretation case, an insurance opinion case. I've done some of those. Still, there's a human story and human beings and money or futures or relationships, all these things, it matters to people. And so in a lot of ways, that's probably the most fascinating part of the whole thing, is the human stories behind them all.

Robert J. Marks:

That is fascinating. Well, I tell you, I do know the technology affects the legal profession. When I was doing my expert witnessing, this will tell you how old I am, but it used to be we had to read all of these papers in the library looking for prior art, which is what you did back then.

Richard Stevens:

Right.

Robert J. Marks:

And I had a student that says, "Oh, we could just take PDFs of these and scan them." And the lawyers got so excited that they didn't have to read everything, that they could literally take these documents and scan them for prior art. And of course, now, like you said, that's something which is used daily. So that's technology. Do you see any application of AI in the legal profession?

Richard Stevens:

Well, it depends on what AI is trying to do. I mean, I think that a lot of the hype is this notion that they're going to be judges or they're going to be lawyers and all this other, but AI can do other things. Any kind of pattern identification or certainly scanning millions of pages of documents looking for one word or one phrase, one reference. And if you're pretty sophisticated doing that with your software, you might be able to find some interesting stuff in what is otherwise acres and acres of pages. I worked on a case involving a power plant explosion back in 1987, and I was given the task as the junior lawyer to go down to the microfilm repository and look at about 100,000 pages of documents.

Robert J. Marks:

Oh, geez.

Richard Stevens:

And I, but then there wasn't anything there, but somebody had to look at them. Well, a computer could have done that,-

Robert J. Marks:

Yes.

Richard Stevens:

To see if there was something. There were particular things we were looking for in particular boxes on particular pages, but they were buried in there somewhere and you had to look for them. Well, the computers are great for that, and that would be a useful thing. And you could have a nice sophisticated search algorithm, not just Boolean, but the pattern recognition, the fuzzy logic kinds of things that would help pull out some possible candidates for further evaluation, things like that.

Robert J. Marks:

Okay. So to point you to areas of interest might be one application.

Richard Stevens:

Yeah.

Robert J. Marks:

Okay. That makes sense. Okay. Richard, any final thoughts on this?

Richard Stevens:

No, I think it's a fascinating question, to see what AI can do for the legal profession. And I think though, that people need to have, not just skepticism about it, but actually think about if you start to believe AI systems and you expect them to be right, I think that's kind of the problem, that if you start to assume they're right, I think it was it Noam Chomsky recently came out,-

Robert J. Marks:

Yes.

Richard Stevens:

With whom I probably agree on nothing except the weather, nevertheless said, he said that thinking that the AI is this Uber mentioned, this all-powerful thing is really, really misunderstanding it. And one should not trust everything that AI says just because it's AI. And the problem is that people are increasingly doing that. You go on Google, you go on ChatGPT, it gives you an answer. Well, yeah, yeah. Yeah, Professor Marks did go to Africa and investigate the Bonobos.

Robert J. Marks:

Okay. I thought I kept that out of the news, but I guess not, Richard. Okay. Well, great. Thank you, Richard. This has been a lot of fun. We've been talking to Richard W. Stevens. He's a lawyer and a fellow of Discovery Institute's Bradley Center, and we've been talking about what AI lawyer apps can and can't do, what AI can do to help the legal profession. Really interesting stuff. So until next time on Mind Matters News, be of good cheer.

Announcer:

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