**AI In the Courts- EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am still Tain Kell.*

Tain, sometimes we record episodes full of case citations, statutes and substantive law

*That’s true – but sometimes we record episodes that really just constitute “deep thoughts” – kind of like that old SNL sketch, “Deep Thoughts” with Jack Handy*

Today’s episode: 1) will not be as bizarre as the SNL sketches; but 2) will address a growing trend that judges across Georgia (and the nation) are seeing more and more

*Artificial Intelligence has made its way into our lives and some people are excited about its possibilities and capabilities – but others are convinced it is another example of 1984 come to life.*

And regardless of which of those camps you are in concerning AI – it is obvious that it is appearing more and more in our courtrooms. Today’s episode idea came from a Georgia judge who recently had some experience with AI-generated pleadings being filed in the judge’s courtroom.

*So as we jump into the world of AI in our courts, please remember that we always want you to share your thoughts on episode topics - e-mail us with good episode ideas at goodjugepod@gmail.com.*

Artificial Intelligence is a hot topic in many areas of our lives

Like we said in the intro, there are some people who have embraced AI and others who are deathly afraid of it taking over the world

But our focus today is going to be on how AI is being used in our courts and misused in our courts

Before we dive in too deeply to specific examples, let’s make sure that we are all on the same page as to what we are talking about when we reference “AI.”

Some “simple definitions” of AI consist of some version of the following:

 “the science of making machines that can think like humans”

A more involved definition would consist of some version of “machine learning that simulates human intelligence through the use of algorithms, data, and computational power.”

At its core, AI “learns” through constantly reading the internet (or other data sources) and taking more data than any of us could ever absorb in a lifetime, and then using that data to “reason” an answer to some question

Today, we are thinking about AI in a very specific manner – using AI programs such as Chat GPT to create legal filings.

But please understand that AI is being discussed as a potential way of handling other issues with courts – such as sentencing decisions, assistance to self-represented litigants, electronic discovery (i.e. document review), and actually helping to decide cases.

While that may be an interesting path to discuss, that is not what we are focusing on today. Today, we are focusing on the trend that has developed where parties use AI to actually create legal filings and the problems surrounding that practice as it currently exists

Most people refer to this technology as “generative AI” – back to our definitions – generative AI is defined as the use of AI to create new content such as text, images, music, audio and video

So today’s episode is going to focus on generative AI – but since we are lazy talkers, we are going to use the term “AI” throughout

There are obvious flaws in any of these definitions of AI – not in the definitions themselves – but in the underlying premise

The most obvious problem is that the internet is filled with “junk” or just patently wrong information

And if the AI tool you are using is filled with wrong information, the results are also going to be wrong

Another obvious problem is that AI is based upon algorithms – the machine is “told” how to think about the data it receives. It is incredibly susceptible to fraud, fakes, wrong information, biases written into the algorithms, etc.

As an example, a large company that you all know, tried to use AI as an HR screener – they uploaded 10 years’ worth of resumes into the AI system that had been submitted to the company – but they failed to realize that the vast majority of those resumes were from men. So when the AI system began ranking new applicants, it was automatically downgrading any resume that included a degree from all-women colleges, participation in groups that included the word “women” and other clearly discriminatory activities

You see, the machine “learned” that resumes usually come from men – that was all that the machine had been “taught” in the data uploads.

So it favored resumes of men applicants. Not the desired outcome but a reality based upon what data the system had been given

In another situation, X (formerly known as Twitter) tried using an AI chatbot to make posts to the site. The chatbot would read “articles” and then post “news” to the site.

It reported that a famous NBA player was accused of vandalizing homes by throwing bricks through their windows. Why would the AI make such an allegation (which was completely untrue)?

Because it misinterpreted an article that criticized the NBA star of “putting up bricks” during a recent game (“Putting up bricks” or “laying bricks” in the basketball world is a term that means the player is not shooting well or is taking bad shots during a game), it concluded that the NBA star was throwing bricks into people’s homes, vandalizing them

AI can have serious difficulty in understanding terms of art, analogies, and other non-literal phrases and words

And while there are literally hundreds of examples of AI “getting it wrong,” we want to turn our focus on how that applies to courts and legal proceedings

While we may each have our own thoughts on whether AI is great or the end of civilization as we know it, we do not think it is going away. So we must consider how we should think about AI in the legal arena.

Like many tools (particularly electronic tools) that have been developed and employed in the legal field, harnessing or learning how to best use these tools is going to be important to the legal community

And, frankly, learning these lessons **quickly** is going to be even more important – before it proliferates every aspect of court filings

In recent years, law schools are working to determine how best to limit the use of generative AI in the educational arena (outlawing the use of generative AI in the classroom). But a recent ABA report indicated that a significant number of law schools are offering clinics or classes to teach law students how to use AI in their practice.

Judges are starting to pass uniform rules on the use of AI (which we will discuss later) and some are even issuing standing orders banning the use of AI in court filings – or requiring disclosure by the lawyer/party that AI was used to generate the filing.

But before we can address our suggestions on how to look at AI in courtrooms, we need to make sure that everyone understands how generative AI can be used in the context of legal filings

A judge friend of the Pod recently forwarded to us a brief in a civil case that was filed in the judge’s court. The case involved contract issues. The brief filed by the lawyer looked like a legitimate brief – had all the proper headings, page breaks, etc. The factual recitation appears to have been written by the lawyer – it included a generally correct recitation of the facts of the case (i.e. party names, dates, etc.). But the problem began when the legal arguments were addressed.

In the body of the brief, there were several citations to authority that the brief asserted supported the legal argument being pursued by the lawyer

**[DISCLAIMER - understand we are changing names, citations, etc. that appeared in the case – we can discuss the issue without discussing the exact case or facts of the case. So don’t look up the cases cited because we made up the citations to ensure we were not discussing an actual pending case!]**

There was only one problem – the cases cited either did not exist or were not even remotely related to the legal point that the lawyer asserted they stood for

Let us give you a few examples:

1. In one citation, the brief included a **quote** for a basic premise of contract law – then it cited a case. The case cite in the brief was *Jones v. Jones*, 291 Ga. 123, 125 (1999). When you look that case up in Westlaw, the actual case that was cited was *Jones v.* ***State*** and the real case dealt with some criminal law matter involving a murder prosecution – it had absolutely nothing to do with contract law. So the citation kept one correct name of a party, falsely claimed that the other party shared the same name as the appellant, and then cited legal principles that not only did not appear in the case – they are not even remotely related to what the cited case was about!
2. The next cite which the brief also included in quotation marks – as if the language it was citing appeared verbatim in the case – was *Smith v. Smith*, 205 Ga. 308 (1943). When you look up that case, the names of *Smith* do not appear – it was a citation to a case involving a governmental entity and a company – and it had absolutely nothing to do with the contract issue it was quoted to have stood for – the case that appeared at that citation dealt with some taxation/mandamus issue. The quoted language appeared nowhere within the actual case – and the case had nothing to do with the topic of contracts

This pattern continued throughout the brief. Language that was highly relevant to the case being considered was quoted as coming from precedent – but the case that appeared at that citation was not the case being quoted, had nothing to do with the issue at trial, the secondary cite (like SE2d) did not match the secondary cite that appeared in Westlaw, and the problems went on and on.

Stated another way, if the principles of law being cited and quoted as coming from specific precedent were just false. It was not a grammatical error or a typo – the brief simply made up the principle of law or made up the citation.

Sometimes, there was a case that appeared when you looked up the citation (i.e. there was a case that began at 205 Ga. 132) – but the case did not involve the parties cited and/or the issue for which it **quoted**

After review, it appeared to the judge that something was wrong – because the legal principles being cited were surprisingly on point and were contrary to what the judge understood the law to be. So the judge looked up the citations and learned that those cases did not exist.

If we are all being honest with ourselves, there are times when we transpose numbers in a citation or cite the *Jones* case when we meant to cite the *Smith* case. But that is NOT what was happening here – the brief was filled with quotations from cases that simply do not exist.

And quoting language that appears nowhere in the case being cited

After further inquiry, the judge learned that the lawyer who submitted the brief used some version of Chat GPT to perform the legal research and without checking behind the results from the generative AI source, pasted the citations – and quoted language – into the brief

For some of you older school listeners, think of this analogy to AI-generated briefs. Assume you have a brief due and you ask an associate to draft the brief for you. That happens all the time.

At the end of the day, you review the associate’s work and you sign your name to the bottom of the brief. YOUR NAME – not the associate’s name. That signature means something – it means you are submitting these arguments and are representing to the court that the principles of law being cited are true and accurate.

If the associate included a faulty citation, you are keenly aware that any repercussions for that faulty cite are YOUR responsibility – at least with the court. You may sanction the associate for faulty work but you acknowledge that the buck ultimately stops with you.

Even when you perform the research yourself – if you look up a statute and check out the “notes of decisions” that appear at the bottom of the statute, you are under an obligation to actually read the case cited and ensure that it stands for the proposition that the editors of the book or site claim it stands for.

I cannot begin to estimate the number of times that I thought I had found “the” case I needed based upon the “summary” provided in the notes of decisions only to look it up and realize that what the editor of Lexis or Westlaw said the case was about did not appear within the cited case

I am confident that many of you have had the same experience – that it would have been great if the principle cited by the editors of Lexis or Westlaw had appeared in that case – but it just didn’t

Generative AI is similar to the notes of decisions – but on steroids. It creates citations and even quotes the cases – but that case does not exist or the quoted language appears nowhere within the case

And that is how you should look at any AI research – think of it as the summaries that appear in the notes of decisions. Go look them up and ensure that what AI claims the case says is actually what the case says.

This is particularly true if you are **quoting** language from the decision – you are under an obligation to go into the case and ensure you have correctly quoted the case. And if the case is not there when you look it up – or if the case being cited is about a murder prosecution when you are arguing a contract case, chances are that the quoted language would be at least distinguishable.

Before we come across as the “anti-AI” guys, we want you to understand a few things.

AI is the current “hot topic” or buzz word - but at some level, we have been using AI for legal research for years.

Every time you log on to Westlaw or Lexis and look up a word or phrase, you are using AI.

For that matter, every time you perform a Google search, you are using AI

As a side note, both Westlaw and Lexis have new “AI-Enhanced” or “AI-Assisted” research tools that I have found to be very valuable. It allows you to use “plain language” searches to find relevant law. You do not have to be a Boolean expert to find law. That’s great and helpful – but those tools are not “writing” the brief – they are just making traditional legal research easier and less cumbersome. Giving you cases that respond to the search terms – but not “writing” a brief

Programs such as ChatGPT can be asked to create something like a brief – they write the document itself, not merely return potential matches for the user to evaluate

What we are complaining about or pointing out is the danger of AI to write your brief for you. To make the complex legal arguments you had to learn about through law school and prove proficiency with to pass the bar exam.

You know, the stuff that lawyers do!

Blindly relying on AI to perform those complex tasks that lawyers are paid to do is a problem – particularly if you, as the lawyer, do not go behind the AI and actually ensure that what is cited is correct.

If you needed any additional understanding about why blindly using AI to write your brief is a problem, consider this

In 2022, a prior version of ChatGPT took the uniform bar exam and failed, scoring in the 10th percentile.

In 2023, the next version of ChatGPT took the bar exam and passed in the 90th percentile

So as the technology continues to improve, it is possible to imagine a time when the cases it cites in a brief may actually be correct and well-phrased. But we are not there yet – not by a long shot.

So what should we do with/about this new technology?

Some say we should ban the use of generative AI in the context of legal filings altogether. Others are trying to calculate how to allow for its use but require lawyers or parties to disclose that AI was used to generate the legal filing.

Judges across the country are issuing standing orders concerning the use of generative AI. In some, the judges are absolutely banning the use of generative AI. In other jurisdictions, the party is required to disclose whether a particular document was created with the use of generative AI.

Our courts in Georgia need to have a hard conversation about generative AI. It is probably time for all classes of court to develop uniform rules concerning generative AI.

We can advocate for an absolute ban or a disclosure requirement. Both are defensible given the current state of generative AI.

We have read about the arguments concerning banning generative AI. The argument is that if you simply ban its use, lawyers/parties will use AI but not disclose it.

There is an ethical obligation of candor to the tribunal – if we are just going to assume people are going to use it and lie about it, we may be in a bigger pickle than can be resolved with a uniform rule about AI

Our bar is probably also going to have to get involved with providing some guardrails on the use of generative AI in the practice of law

While we have focused on using generative AI to create court documents in today’s episode, understand that lawyers and others are regularly using generative AI to create contracts and all sorts of other documents with legal implications

While we do not have all the answers, we are crystal clear that answers should be developed immediately

*We have not cited all the sources we consulted in the research concerning today’s episode but please know that there are very smart and experienced people across the country currently engaged in this conversation*

We would love your feedback concerning this topic. Please forward your thoughts to goodjudgepod@gmail.com

We come now to the often discussed but rarely duplicated section of our show – the “Tain talks music” section of the show. But I want to reiterate that Tain never, ever looks at these trivia questions before we record – he does not even know what genre we are going to discuss. Heck, he rarely looks at the substantive outlines before we record. With that, Tain, take it away.

Today’s music trivia challenge is a throwback to a great artist, Mr. Stevie Wonder. Stevie was born in May 1950 and his given name is Stevland Hardaway Judkins. He was born in Saginaw, Michigan. When he began recording at the age of 12, he was known as Little Stevie Wonder. So, first question is a true/false:

*Stevie Wonder was blind from birth. True or False?*

*A)* ***True.*** *He was born six weeks early with retinopathy of prematurity, an eye disorder which was exacerbated when he received too much oxygen in an incubator, leading to blindness.*

Beginning in 1963, he dropped “Little” from his stage name. He was a great composer in addition to his amazing performance abilities. In the 1960’s, he had chart hits like “Fingertips, Pt. 2”, “I Was Made to Love Her” and this other 1960’s Stevie Wonder hit that had a bit of a French title. Because Tain is all about some French, I thought he would get this one easily. Name that other 1960’s hit by Stevie Wonder.

1. *My Cherie Amour*

In the 1970’s Stevie Wonder continued to produce chart hits on both the pop and R&B charts. He was a true force to be reckoned with in the decade of the 1970’s when he had a number of hits reach the charts. There are too many to ask you to list them all but I am going to ask you about a few of them and test your 1970’s memory. There are hints – for example, *Signed, Sealed, Delivered, I’m Yours”* was released in 1970 and only reached #3 so I am not going to ask you about that one:

1. This song was from the album “Talking Book” which was released in 1972. Some might say that some athletes have these idiosyncrasies or habits. But this song was a jam. One word title. Name the song:
2. *Superstition*
3. This second big hit from the 1970’s came from the same album, “Talking Book.” It may have been penned as a romantic song but there are occasions when men sing this song to their newborn daughters. The title is not “you are the apple of my eye” but the title of this song has a similar cadence. Name the song:
4. *You Are the Sunshine of My Life*

Stevie had one other #1 in the 1970’s with Sir Duke which came from the iconic album, “Songs in the Key of Life.” But he also had #1’s in the 1980’s. The first one I am going to ask you to recall came from a movie soundtrack – the Woman in Red soundtrack. It deals with calling someone on the telephone to share your feelings. It was #1 in 1984. Name that song:

1. *I Just Called to Say I Love You*

Ok, this song was his last solo #1 and is the question I will end on today. This song was #1 in 1985 and, again, deals with romance. You know – being someone’s lover - but not all the time. Name the song:

1. *Part-Time Lover*

*Have a great day everyone and thanks for listening.*