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Transcript

Speaker 1

It's time for the Outspoken Cyclist, your weekly conversation about bicycles, cyclists, trails, travel, advocacy, the bike industry, and much, much more. You can subscribe to our weekly podcast at outspokencyclist.com or through your favorite podcasting app to listen anytime. Now here's your host, Diane Jenks.

Speaker 2

Hello and welcome to The Outspoken Cyclist. I'm your host, Diane Jenks. Thanks for tuning in today. I try to convey really pertinent, honest, and accurate information all the time. But today, I'm sort of being schooled by my guest, and I appreciate him taking me to task. Attorney Peter Wilborn is the founder of Bike Law. His brother was killed in a bicycle crash many years ago, and that is what led Peter to focus his career on representing cyclists and their families on what Bike Law calls your worst day. Our topic for this episode is AI and how it is impacting bicycle related cases, not usually for the better. Peter explains in this our last scheduled episode about safety for this season, how AI is being used by not only the average person but by some attorneys and their firms, and those answers are often incomplete, misleading, and perhaps not up to date on current law. Ask an AI bot to answer a legal question and what you get back is not going to be sound legal advice. In fact, according to Peter, you might end up losing a case that is winnable, and it's not always about money. You'll hear that there is no substitute for the expertise of an attorney whose career has been focused on bike law. Hello, Peter. Welcome back to The Outspoken Cyclist. It's been a long time since we spoke. How are you?

Speaker 3

I'm doing great. And thanks so much for, I don't know how many years it's been, but continuing doing what you're doing.

Speaker 2

It's going to be 17, 16. I don't know. This show will be number 702.

Speaker 3

I think I was probably on show 300 or something.

Speaker 2

Well, go back and look. I didn't even do that. So I want to talk to you about a piece you wrote And apparently it's an ongoing conversation that you're having about bike crashes and AI. Now, it never occurred to me that somebody would go to AI and say, how can I whatever with a bike crash? It seems to me if you're in a crash, you need an attorney and you are an attorney. So why would somebody think AI has answers and wouldn't that vary state by state? And secondly, What would AI say that would be quote unquote sound legal advice?

Speaker 3

Well, I'm going to push back a little bit against you. I think that I'm surprised you'd be surprised. People go to AI all the time for everything. WebMD, obviously people are asking about medical issues, legal issues. And so I find asking about the law and legal rights probably is done by a lot of people a lot of the time. And so I would be surprised that anyone doesn't understand or wouldn't realize how often AI is being used as a resource. I will also say from the beginning, at Bike Law, Rachel and I, or anyone in our network, we're not against, and in fact, we're very much in favor of as many people having legal information as possible. This is not in any way a jurisdictional issue. We have been fighting for cyclists for 28 years now, and it is very important to us that it be done not only by our office, but lawyers generally, which is a problem. I think few lawyers know what they're doing in this field. But what we're finding is well-intended groups, well-intended individuals are putting out legal guides that are very clear to us are AI generated. So people are putting themselves out there to give legal information. And Diane, quite recently, you told people or you were on a post telling, encouraging people to share information. I can tell you the information that you were encouraging folks to share was 100% AI generated. So this is a real, real problem. And I think people don't know what they don't know, one. And 2, I don't think they know that the things they're reading from, again, very well-intended people, very well-intended groups is AI. I mean, I can spot it a mile away. I can spot it when other lawyers use it. In fact, we have filed motions against other lawyers for using AI. We have won and actually been awarded sanctions. In other words, other lawyers have had to pay my attorney's fees for their misuse of AI. I think AI is the biggest topic in the law now. And I've spent a lot of time, a couple of years now really focusing on it and better understanding how it is abused.

Speaker 2

Wow, okay. I know what post you're speaking of, and Rachel and I had a back and forth about it. And I really thought that this guy was, and he doesn't make any money doing this, he's not an attorney, but was trying to offer good advice.

Speaker 3

Well, I think, and we can go in very specific, individuals are one thing. that can people judge things on their relationship or their respect or knowledge of a particular person. The bigger problem, Diane, is that groups are doing this, very well-intended groups. I

want to make it very clear what you said about someone not having a financial motivation. We absolutely agree with you. I think part of the problem is that it's very difficult to judge the quality of information when it's coming from a really good source. We love these groups. We love these advocates. They are absolutely crucial to our movement and have been for decades. The bike advocacy movement has long been, 50 plus years, a volunteer movement. So it is not at all, for us, it's not smelling a rat. There are no rats out there. It's people really trying to help people understand a very complicated, very nuanced issue, and they're relying upon AI. And I'd like to spend this time explaining kind of in detail why that's a problem.

Speaker 2

Okay, and that's what I want you to do. So the first question I have is an AI response may actually have a disclaimer that says the information given isn't binding legal advice. And you say that is not necessarily so.

Speaker 3

Oh, it's absolutely not so. You cannot disclaim really much of anything. If you spend, there are guides, legal guides out there that are hundreds of pages long and they have a tiny italicized part that says this is not legal advice. Look, it is what it is. People are reading these guides and this advice at face value. And they should, right? I mean, we understand why someone is consuming this information with open ears. Look, I think the first thing we need to do is go back to the beginning. What is AI? What is AI doing? I think there's a massive misunderstanding of how AI functions. AI does not research anything. You don't give it a question and it doesn't go out into the to the internet, to the vast body of all human knowledge and research the question. That's not how AI works. AI is based on what's called an LLM, which is a large language model. So what AI has done, it's consumed billions and billions of words, and it breaks those words into what is called tokens. And what it does at every new token, it makes a prediction. It predicts what that next token in that word is going to be. And then it gets into a probability distribution, like what is more likely to have occurred. Now, even when AI goes out and will link to a particular website, that does not mean it's doing research. All it's doing is it's increasing its LLM model, which frankly, it should be known, it only digests up to a certain time. AI is not a constantly learning model. It does its database creation as of a certain date. It stops. A lot of them are 18 months behind. Then it will go out and will look for websites and it will include those tokens. But again, all it's doing is predicting words. It's not doing research. Why is this a problem? Well, there is a California bias. What that means is because more is written about bigger places, right? it is going to give a result that is skewed for the law in California or the law in New York. You see this in the guides and the advices out there. You'll hear about Texas, you'll hear about California, you'll hear about New York, Illinois. Why? Well, it's not because there's a bias in AI. It's because most of the tokens, most of the predictive models are based upon frequency of use of these concepts and words. Alabama, where is Alabama left? Alabama is a very difficult bicycling jurisdiction that's going to be left out of the

conversation completely. Tennessee as well has very difficult problems practicing bike law in Tennessee. That's not going to be picked up predictively by AI. So we have to start and look at what is it? The other thing AI does, it has overconfidence bias. It's designed to be conversational. It's designed to give a person what it is they're looking for. It does not give a neutral analysis, even if you asked it. So the biggest problem we find with legal AI is it's overconfident. It gives people the responses they want to hear, and it makes it appear like the legal process after a bike crash is straightforward, that it's something that can be done by a civilian. And after 28 years of doing this, thousands of bike cases within the Bike Law network, I can absolutely tell you that that is not the case.

Speaker 2

So let me reintroduce you and we will keep going. This is fascinating. And I am not an AI user per se, so I'm learning all kinds of stuff. I know a lot of people who are using it for a variety of things. I'm just not one of them yet, and I'm hoping maybe I won't be. We're speaking with Peter Wilborn. He is the founder and head attorney at Bike Law. We've spoken with him. We've spoken with Rachel. Actually, we spoke with Rachel recently. And so this is part of our series on bicycle safety. And this is a topic I had no idea was even going to be part of the series until you posted that information. Okay, we have what is AI? It has an overconfidence bias, which makes perfect sense to me. What's next?

Speaker 3

Well, decision overconfidence, as I said, it's not doing research. It's predicting tokens of words. It is not even what it says it is. And again, the biggest problem we're finding is with other lawyers. Other lawyers are misusing this stuff and getting themselves in a lot of trouble. It is very common, right? I mean, we're seeing within our world, which is the bicycle advocacy world, we're seeing more and more people giving guides, explaining what to do after a crash, explaining that the insurance claims process works this way. And the biggest problem is it looks correct. If you don't know, and if you don't know a lot, it looks very, very impressive. It formats things, it quotes to statute sites and to codes, some of which are hallucinations. Those tokens don't know whether that citation to a statute is correct or not. What it does is it predicts that after a certain word, let's say sidewalk writing, that it is often that you'll see this code site come up, but AI has not read the code itself.

Speaker 2

Wow. So this is a question that I have about the law by state? It changes by state? Or is there something that is relatively fundamental about the law when it comes to a bike crash?

Speaker 3

Diane, you've been doing this a long time, and I think you've picked on issue number one. Bike laws vary by zip code, right? I mean, look at the e-bike regulation. E-bike regulation differs by zip code, sidewalk riding differs by zip code. So while there are general principles, they are applied wildly different, right? There's case law that applies the general principles differently. There are also really important statutes and laws that we use in favor of cyclists that don't say the word bicycle or bicyclists or vulnerable road user anywhere near them. So the AI models are going to miss that absolutely completely. Sidewalk, I mentioned sidewalk riding. Road positioning is another one that's missed almost completely. Let's talk about a really important one. And this is the first one that jumped out to me and Rachel. Is there are different standards of negligence in the United States. We hear about comparative negligence. Well, there are two types of comparative negligence, but let's focus on the most usual one. That's called modified comparative negligence. What that says is that you can prevail in an accident claim, provided that you're less than 50% at fault, okay? However, if you're deemed to be 49% at fault, what that means is your recovery is conceptually reduced by the 49% of your fault. So just because you win, and this is completely missing out of the analysis, that doesn't mean you win 100%. But the biggest problem is there's something called contributory negligence that exists in Maryland, Virginia, North Carolina, and Alabama. What that says is if you are 1% at fault, you are barred recovery most of the time. The problem is most juries, most courts, most opposing counsel are going to see that the very act of riding a bicycle alone is at least 1% your fault, right? There are all kinds of things that can really hurt against that 1%. If a cyclist is making an insurance claim the way these guides tell them to do it, they may be giving up that 1% at fault in the first sentence of a recorded statement with an insurance company or a statement to a police officer. That is a big problem. Statute limitations are enormously complicated. Usually, let's say most places it's around three years, but there have been changes in that. Florida went from four years to two years. It's not guaranteed that AI is going to pick up that legislative change, and it has. But the question is, how soon did it do so? Tennessee is a one year statute limitations. Is AI when it's reading a general nationwide survey, is it picking up or not, that's really important. Now let's talk about claims against the government. That statute of the statute of limitations, when you have to bring a claim and how, can vary from years to months, depending on where you are. Sometimes in a state such as Virginia, there's a certain statute for claims against the state. There's another statute for claims against counties that would be completely missed. I think again, the biggest issue is when you read these guides, it looks like this is something you can do. It is this overconfidence in a process. That is the front side of a bike case, right? That's the negligence, who's at fault. There's a huge problem on the backside of a case, which is what you do if you recover money. Lots of people want to get paid back when you get money, including your medical providers, including your insurance company, and spoiler alert, including the federal government. Including Medicare, Medicaid, Tricare, which is the insurance available for armed services members. How those processes are dealt with is extraordinarily nuanced, extraordinarily complicated. If you look at the guides that are circulating out there, it's

made to appear like it's work of a minute. We have had cases where we have fought against the federal government for years to prevail on a particular case. We have 28 years of experience doing so, and some of these fights take an awfully long time.

Speaker 2

Okay. Mind boggling, actually. In the work that you do, let's make it specific to the work you do because you defend cyclists and their families when the cyclist especially has been killed um where AI is appropriate is there anything that AI can do that would assist your work no never and

Speaker 3

I can tell you lawyers are using it for tasks all the time. And I'm not just talking, here we're talking about other lawyers. We can see it from a mile away. I think here's the problem. It can be 99% correct, right? It's never 100% correct. It's gonna look 100% correct. But no, I do not find any use. And I think what's happening among good lawyers is I think there was this time where it was the monorail came to town in which we were all taking the ride for the first week and really thinking this is great and then realizing it's just not working. And so I find that the better lawyers are moving away from AI. There are times in our practice where AI is used to automate repetitive tasks, but when we're doing something substantive, we avoid it. Now, there are times if you can use it correctly, you may find that it's part of a workflow. For example, I use an AI program, which is legal specific, costs a lot of money. And what it's doing is it's checking particular citations of case law, but it's doing so within a defined data set, and that data set is actually case law. So the LLM there has been modeled or trained only on actual, actually the law, right, on case law. Very expensive, not available to civilians, right? They're not going to use that. So in that situation, we will take a brief that we wrote, we will submit it to AI, and we'll say check these citations. Then we'll go back and we're going to check the citations ourselves.

Speaker 2

So that brings up a question for me about there are databases for attorneys for case law. Is that where this particular model, which is not open to the general public, has received all this data? Is it just like a data dump and then it goes out and looks for it?

Speaker 3

No, so what's happening actually is lawyers are moving away from the paid databases, and they're moving more to consumer grade databases because they're free. And they give results that are more argumentative. In other words, results that are more persuasive to lawyers. So because it's available to consumers, lawyers are ditching the more expensive databases. So the difference would be this, if you're using a legal database, the AI is limited to the large language model learning of the words used in that data set. But no, lawyers are moving away from that. They're using the Clauds, the ChatGPTs, the Gemini, and so forth. Now, there are ways of training AI that it can be

more effective. But the more you know about a subject, the more you realize how dangerous it can be.

Speaker 2

My question was about the one you, when you do use it, the one you are paying for that's quite expensive that I can't go out and just get.

Speaker 3

Right.

Speaker 2

Did that come from... databases that already existed and it's just making it more efficient for you.

Speaker 3

That's absolutely right.

Speaker 2

That's what I was trying to get to.

Speaker 3

Absolutely. There are two large legal publishing house that if you look in a lawyer's office, you'll see all of those books, mostly the West Publishing Company, right? Right. Exactly. So it has already had that data set and exactly right. So if I have a case and it will say this quotations on page 63 of the case, AI is going to pull up that page 63 for me and make sure that the quotation that I cited is exactly the same.

Speaker 2

Okay, I want to take a maybe left or right turn, and I'm not sure where to go with this, but we have seen some incredibly high profile crashes in the last three weeks, four weeks from Hannah Rapp, and I know that you're working on that case, two young men on a cycling university team. It's just the number of people who are literally being mowed down is exponentially, it seems, growing. Where is legislation at any level or advocacy at any level that's having any impact whatsoever? Do you see any?

Speaker 3

Well, whatever's being done ain't working.

Speaker 2

Oh, that is so true.

Speaker 3

And how do we know that? Because no one ever calls us on a good day. Rachel and I do not get calls to go out and ride on a beautiful Sunday. The rides we're getting are the kind of tragedies that you're talking about. We have been involved in a large percentage of those cases that you hear about. Now, I will say a big difference from us and other lawyers and other advocates is we really focus on the criminal process. That is very, very important to us. And getting back to AI or touching on AI, there is no way to do that without having that human touch, without having those relationships with prosecutors, the relationship with law enforcement. As an aside, to take a right or left turn, the more progressive agenda about law enforcement. And I'm not going to make, I'm not making a political judgment about it, right? I mean, I'm not saying it's not worthwhile, nor am I saying it's worthwhile. I'm being completely neutral as to this question. However, when there is a general push in the advocacy world against law enforcement, or law enforcement of traffic laws, that makes our job increasingly difficult. I mean, as you probably know, the LABs a couple years ago, I think 2020, took out enforcement as one of the five E's in rating bicycle-friendly states and communities. To us, that was a real error because we work with and look to law enforcement to help us when we're trying to prosecute drivers. I understand people can have different opinions, and I understand that enforcement of bike laws is really poor. But when we need the police on our side, when we need drivers to be charged with serious things, our first ally in that fight is going to be with police officers. So how do you develop those relationships? How do you speak to police officers in such a way that can create someone that may be against you or against your community into an ally for you? So that is something that a machine can never do. And that is something that you really have to put the best interest of a client and a client's family first, as opposed to some overarching political consideration.

Speaker 2

I can certainly see where the difference between using law enforcement when it's necessary and then excessive legal problems. I mean, you know, people are conflating it so that all law enforcement is bad when we know it's really effective and important, especially when it comes to bike crashes.

Speaker 3

Well, I think we have to take a much more narrow view. The question is, our job is not to change the world. Our job is to make cycling safer for of every walk of life, every background. But I think the bicycling advocacy movement tries to do way too much with way too little. So our job should be, what can we do from a legal perspective by lobbying legislatures, by getting greater enforcement that's actually going to help improve cycling safety? Because I agree with you, what we're seeing around the country is an epidemic, an epidemic that is a public health disaster. And it's a real problem. So my call on the bike community, the bike advocacy world is, hey, everyone, let's focus our interest on that.

Speaker 2

And I'm 100% with you. And it's interesting, this series that I've been doing, almost everybody has come back to me and said, well, we need a groundswell movement to get people to see what's happening. And I don't know if that's going to happen. I think drivers are a problem. We know that we have distracted drivers, under the influence drivers, licenses that are suspended and just ***** *** people.

Speaker 3

Well, I mean, you said groundswell. Let me put you on the spot. Who are the leaders?

Speaker 2

Who the heck knows? And that is a really good question.

Speaker 3

So, I mean, look, if you want to change the attitude of what, 200 million drivers in the country, Why don't we try to identify five people in the bike advocacy world that are making a difference for this? And I'll wait. And this is why I brought up the issue of enforcement. Who is doing that work? What are the priorities? Who are our leaders? And I think the bike advocacy world, starting from the grassroots, moving up, should be able to coalesce around voices. around voices that most of us know the names, people who are accessible, people that, in my opinion, have the right priorities. We're still looking. So I think the question is, what can you do? What can the leaders, the thought leaders in our community do to rally around the few voices that can really make a difference? I believe the bicycle advocacy world has for too long been largely a voluntary group. Not professionals, very educated professionals. And they may be professionals in bike infrastructure planning. They may be professionals in that regard. But I'm really talking about... the leaders, folks with a voice that are speaking more or less consistently towards the same goal. This is where the frustration when you see the *** moving in a direction that is tilting in the political winds from this direction to that direction. Don't forget the *** was primarily a vehicular cycling movement until a decade ago, right? And it was going completely in the wrong direction. a long time. And now the question is, is it really pushing an agenda that is making cycling safer? I will point out that People for Bikes does a great job. It's an industry group who's designed to make cycling safer for a commercial end to sell more bicycles, to have a healthier cycling community. Look, they're not advocates generally. but they do a very good job because they have the resources to meet a very specific objective. An industry should be part of the leadership of the bike world, but it shouldn't be the leaders in the bike world.

Speaker 2

Well, unfortunately, the industry has never been cohesive enough to have a big enough voice. So I agree with you, there need to be other voices, but certainly the industry could have a bigger voice than it has. People for Bikes is the best we've had in the last 50 years, but it still is not making a difference. So you're talking about who are the leaders? Who do you think might be a leader? Besides you.

Speaker 3

Well, no, I mean, I think that's a little bit rhetorical. I think that we've moved outside of just representing cyclists to making a larger impact, for example, on social media, because I think there's the vacuum there. I mean, you've spoken to Rachel and Rachel Maney a number of times. I think she's done a great job of stepping up. I think some others have as well. But that's not our job primarily, right? And I do think there's a leadership vacuum.

Speaker 2

But you're not telling me anybody who might fill it. And I've been racking my brains over the same thing. You would like either some popular LeBron James or somebody who really has been impacted in a way that other issues like breast cancer or Parkinson's. So you have Davis Finney, for example, who is a great advocate for Parkinson's and has a huge following for the work that he's doing. I think you have to define.

Speaker 3

The mission, and I think that's part of the problem. What is the mission of the bike world? I think first and foremost, the mission of the bike world should be safety.

Speaker 2

I agree.

Speaker 3

If you build it, they will come. Without safe streets, without safe places to ride. everyone's heard of safe routes to school, but it will be a half a mile that's perfect that ends up that dumps kids out in really dangerous places. The other thing is the world has, to a certain extent, is leapfrogging over. the cycling world. And if you go to any elementary school, you're not seeing bicycles anymore. You're seeing scooters and e-motos. They're not even e-bikes. And they're in the hundreds. I mean, I would think the ratio at a lot of elementary schools might be 10 to 1, 10 e-motos and scooters to every one bicycle. So the market has moved past us. And again, I think we need a more forward-looking, more cohesive look to how do we make cycling safer.

Speaker 2

And we do have an issue with emotos that goes way beyond what we're talking about here. Emotos are really not bicycles.

Speaker 3

I think the vulnerable Rd. user statute approach has been good. I think for what it is, I mean, the question is what are we expecting from that legislative change? But the few things it does, it does well. Now in the cases that we've had, we've had to explain to prosecutors that there is such a thing and how to use it. It is not being used in a vacuum

by itself. Prosecutors are not turning to those laws and prosecuting drivers under VRUs without being led in that direction. And again, for bike advocates, do you have the relationship with those prosecutors? It's very easy to say there's this law and people are biased against bikes and they're not using those laws. The question is our job is to make that connection. We can lobby in the state house. I think the bike world does an okay job at that. But then how do you use the vulnerable road user law in a way that makes cycling safer? And that's done in the trenches. That's done on a case by case way.

Speaker 2

We've been speaking with Peter Wilborn. He is bike law. You can go to bikelaw.com. There's a lot of information out there. I think that as I remember talking to Rachel, you make a call to them and they pick up the phone. So you're real people. And I think that is the real difference that we need to stress that you need to talk to professionals, not rely on AI and the internet to get answers.

Speaker 3

Well, I think if we move on to the next question, I think the question is, what are you getting when you speak to a lawyer? And I think that what matters to us is the justice component. I mean, we're doing these cases, a lot of these cases pro bono. We're going to juries. We've had three jury trials in the last four months. two in Florida, one in Maryland, we've had really, really good results where money was not the issue, right? Those were cases that was really important to prosecute drivers that either killed or catastrophically injured people with no accountability, right? There has to be accountability to make the road safer. That's the position that we take. It cannot just be about money in a civil case. That's another way these AI guides are missing it completely. They're missing the of bringing a case, even with, even if there's no money involved. Because if it's just a game, not a game, but if it's just a process between a claimant and insurance company, that is never going to break out of that very small vacuum into the world of making a difference where we're impacting judges, impacting prosecutors, impacting defense lawyers, and most importantly, impacting jurors.

Speaker 2

Very interesting point. Justice. Wow. Peter, it's always enlightening to speak with you, and I appreciate it. It's bikelaw.com. Peter Wilborn. I'm going to let you get on with your day, and we will talk again this time, not years in between. How's that?

Speaker 3

Diane, thanks so much for your work. You've been around a long time, and I think you're doing great work.

Speaker 2

Thank you, and thank you for your work, and thanks to Rachel, too.

Speaker 3

See ya. Bye-bye.

Speaker 2

Bye. My thanks to Peter Wilborn for joining me today. I always learn so much from him. As artificial intelligence becomes more and more ubiquitous, I really appreciate Peter's expertise and his willingness to share it with straightforward information. I also found his questions, who are the leaders in the fight for cyclists, and What can the thought leaders in our community do to rally around the few voices that can really make a difference? Thought provoking. Perhaps you have ideas about what is going to make cycling safer, and if so, I hope you share them with your local advocacy organizations or with your local law enforcement people. For more information about Bike Law, the work they do, and some sound advice, log on to bikelaw.com. And remember when you call, a real person will answer the phone. My thanks to you for listening. Remember that you can subscribe to my podcast on your favorite app so you never miss an episode. You can follow us on Facebook, Instagram, and LinkedIn and find photos, links, and a written transcript of every episode at outspokencyclist.com. Each episode is also available on my Substack in both audio and usually video versions. And when you subscribe, you'll get a notice about added commentary too. After all, there's never too much Outspoken Cyclist. As we do each fall, we look to nonprofits that can use our help. And in our next series of episodes, we'll begin exploring some of the organizations that might be worthy of your support for end of year giving. I hope you are enjoying some early fall riding. Don't forget to vote on November 3rd. And until next time, remember, there is always time for a ride. Bye bye.

Speaker 1

Thanks for joining us today on The Outspoken Cyclist with Diane Jenks. We welcome your thoughts and contributions on our Facebook page, or visit outspokencyclist.com to leave a comment on any episode. We will be back next week with new guests, topics, conversations, and news in the world of cycling. Subscribe to the show in your favorite podcast app and you'll never miss an episode. The Outspoken Cyclist is a copyrighted production of DBL Promotions with the assistance of WJCU-FM Cleveland, a service of John Carroll University. Thanks again for listening, ride safely, and we'll see you next week.