**DANNY:** Was that Beauregard? Yeah.

**CRAIG:** Yeah, that's Beauregard.

**CRAIG:**  Hi, I’m Craig Smith and this is Eye on AI.

**CRAIG:** This week, I talk to Danny Tobey, an attorney with the global law firm DLA Piper, which is at the forefront of the changing legal dynamics surrounding artificial intelligence. He talked about the current state of legislation and regulation, how regulatory bodies like the Federal Trade Commission are already tackling issues and what the law firm of the future will look like as AI transforms the economy.

**CRAIG:** Before we begin, I want to mention our sponsor, NetSuite, Oracle's cloud-based enterprise resource planning software to help any business manage their financials, operations, and customer relationships in a single platform.

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**CRAIG:** Now, here’s Danny.

**CRAIG:** Why don't you start by introducing yourself your background what kind of law you've been practicing, and then I'll start asking questions from there.

**DANNY:** Sure. My, my background is fairly broad which I think is why I ended up focusing on AI, because AI as a technology cuts across so many different areas.

**DANNY:** And I don't think it's a coincidence that the two heads of our AI practice, myself and Bennett Borden both came from humanities backgrounds and social sciences backgrounds. E even though we eventually got into tech we came up thinking about philosophy and economics and history and moral theory and all these really interesting aspects of humanity that are being flipped upside down by.

**DANNY:** So, I really came to AI in a really organic way. I had this on the one hand, liberal arts and humanities and social studies background. On the other hand, I was focused a lot on healthcare. I have a medical degree that I got with my law degree and have always focused on products liability and other issues in healthcare.

**DANNY:** So, what are the ways that new biomedical technologies create risk? And, then the third part of my background was, I founded and ran a software company as a student, and it ended up being a multi-year project where I grew it and ultimately exited and sold it to a global publisher and then consulted for a number of years afterwards on the technology side.

**DANNY:** So, all these things kind of came together. And I was representing clients in pharmaceutical and biotechnology space who were saying, hey, we're starting to think about artificial intelligence. What are the rules? And, I said, well, that's very interesting. And, I started researching, and, you know, this was many, many years ago.

**DANNY:** I said, well, there are no rules, and that's very scary. And so, I started writing on the question of AI and safety and liability and how was AI going to challenge a lot of the rules that we have in place to keep products safe and to keep consumers well-treated? And I realized that a lot of the assumptions we had built into the law, like human gatekeepers weren't going to be around all the time as AI got more complex and we needed a new legal regime that could keep up with this technology.

**DANNY:** And I've been working on that ever since.

**CRAIG:** What's new at DLA Piper, I mean, have you sort of announced an AI practice or is this an evolution?

**DANNY:** It's an evolutionary leap for us. We have had what I would call a legal AI practice formally for the last four years.

**DANNY:** And really a lot of us were doing it before that. But that was where we would go out and advise our clients on AI the same way we would on taxes or banking laws. And we would say, okay, these are the rules. These are the risks. We're going to help you set these systems up and have good governance, have compliance, same way we would any product.

**DANNY:** What we realized in helping our clients was. AI was changing the way we were giving legal advice. And we needed not just to be giving them sort of words but translating those words into math and technology because it's great for everybody to sit around and say, AI needs to be fair and it needs to be transparent, and it can't have bias and it needs to be reliable.

**DANNY:** Yeah. You know, we all pat ourselves on the back and say, great, we've come up with a list of AI ethics, but what does that mean? How do you know if your AI is fair? How do you know if your AI is ethical? How do you turn that into a quantitative test that you can. Put an algorithm under and say, yeah, we did it.

**DANNY:** This is a fair algorithm. So, we have partnered with Duke and Stanford Law and a lot of thought leaders on this issue. And the big announcement we made a month ago is we brought in a team of about 10 lawyer data scientists. And this is a team that's been on the ground investigating AI. So now when one of our clients, say a Fortune 50 company, comes to us and says, we've got a thousand algorithms out in the field making - I'm making this up, say insurance making underwriting decisions - algorithms deciding who's going to get insurance, whose claims are paid out, and whose claims are subject to scrutiny.

**DANNY:** How do we make sure that's compliant with all these new laws coming out? Now we can say, okay, here are the laws and here are the controls that we're going to put in place. And actually, as part of our combined legal and computational support, we're going to help you investigate your algorithms to make sure they're actually hitting those marks and getting, you know, a clean bill of health or a good report card.

**DANNY:** And really the marriage of that computational legal practice and our legal advisory practice is unprecedented. I'm not aware of another law firm of this scope and scale that can provide the full package like that. So, it is a phase change.

**CRAIG:** And when you talk about the rules and laws coming out, are you talking primarily about state laws?

**CRAIG:** Let's confine our discussion right now to the United States. GDPR is a whole nother thing, but are you talking about state laws or federal laws and what is the pace of legislation either at the state level or the federal level that you see is this developing rapidly or not?

**CRAIG:** And I have to say from the hearings that have been held in Congress, it's kind of appalling the lack of knowledge of this technology on the part of lawmakers, and I don't know how they're reasonably able to formulate laws without the underlying understanding, even though they have staffs that are talking to experts and that sort of thing.

**DANNY:** Well, it’s getting better, to give credit where credit's due. I think people on the hill and at the state level are getting educated really quickly. I mean, the explosion of interest in AI just in the last few months because of generative AI And general-purpose AI. I think it's a wakeup call.

**DANNY:** And so, I have seen a rapid education process in our politicians. But, you know, I have a lot of sympathy for regulators right now. I mean, AI may be one of the most unregulatable technologies in human history. I mean, you think about something with catastrophic potential like nuclear arms.

**DANNY:** It's relatively hard to make a nuclear weapon. You know, you have to have the materials and those are highly safeguarded. There, it requires a lot of infrastructure even if that infrastructure can be hidden. But there's barriers to entry. AI, I mean, processing power of course is a limiting factor, but it's not so hard for someone to pick up the tools, the basic ingredients of AI, and repurpose them. And it doesn't take much to flip the switch from good to bad. You know, if you have something that's maximizing wellbeing you stick your negative sign in front of it and you're suddenly minimizing it.

**DANNY:** And AI itself keeps changing. So, I know we want to talk domestic, but you know, we will be affected by the Artificial Intelligence Act that is in Europe right now and is the furthest along of all the efforts. And, like GDPR, it's going to affect most Americans that are doing business with Europe or affecting Europeans.

**DANNY:** And, you know, they did a pretty good job over the last couple years putting this regulation together and then ChatGPT comes out and flips the apple cart over.

**DANNY:** And suddenly a law that was really focused on narrow task-specific AI, the stuff we had gotten used to like okay, do I get health insurance or not? Is this dot on my skin benign or malignant? You know, the kinds of narrow focused AI that frankly was already blowing our minds because it was outperforming humans in some cases. They had a pretty good law directed at that. And now suddenly they have to ask, where does ChatGPT leave us? Where does general purpose AI that is unrestricted and can comment on anything under the sun?

**DANNY:** How do we test that? How do we externally assess the safety of that? You know, with the old-fashioned AI, and it's hilarious we can even talk about old fashioned AI, but with the old-fashioned AI from, say, six months ago, we had really reasonable ways to talk about is it working or not?

**DANNY:** We can say, well, this algorithm's going to spit out a yes or no answer, and we can talk about the false positive rate and the false negative rate and ways you can sort of tune between those two for appropriate trade-offs. And, then you could say, okay, this is safe enough. And, you know, bodies in the United States like FDA, were doing a really smart job.

**DANNY:** They would say, look, what's the technology that exists right now before AI? It gets us, let's say, 90% sensitivity and specificity. Okay, well then, an AI product needs to be at least that good. And if you can monitor it and make sure that it's staying above those quality levels, then it's probably a net benefit to patients.

**DANNY:** Well now you’ve got to think about a chatbot where any person can reach out to it and say, hey, diagnose me. What medicine should I take? What home remedies are there? You know, it's just a whole different dilemma. So, I'm very sympathetic to the regulatory challenge.

**DANNY:** And we can talk about some possible solutions there. There are some, but to your question, is it moving quickly? Absolutely. Does it keep hitting, you know, these boulders falling onto the road of new technologies and new surprise outcomes that no one anticipated? Yeah, and that's, that's going to mess with the pace.

**DANNY:** In the US, regulation is happening at the federal level, at the state level. It’s a patchwork. You know, the White House put out a really good blueprint for what they called an AI Bill of Rights. And you know, on the bright side, it was a really thoughtful document and it talked about some of the things that we all agree are problems right now, like biased AI.

**DANNY:** We, all understand at this point that AI, like, like most things in life, is garbage in, garbage out. And if you take a bunch of data that's biased - because historically we discriminated as a society, historically we only promoted certain people. We only treated certain people fairly - then your AI that's learning from that is probably going to reproduce those biases.

**DANNY:** And the White House was very smart and said, we need a solution to that. And other really smart ideas from the White House, like if you're going to be dealing with AI, AI needs to declare itself. It needs to say, hey, you're talking to a chatbot, and this is generated in a certain way.

**DANNY:** So, there were lots of good ideas and that set off a flurry of activity. So, I think a lot of people know by now that NIST [The National Institute of Standards and Technology], which is under the Department of Commerce, put out the first, you know, real voluntary framework across industries for US companies to think about. And they had a level of specificity.

**DANNY:** That's good, that's new. And I think is helping people put tools in place. But you see proposed laws on the Hill talking about algorithmic accountability and impact assessments. You see laws that have already been passed at the state level in Colorado, in New York and other places talking about insurance and employment and all kinds of ways that AI is making automated decisions about people's future.

**DANNY:** And then you've got the regulators. So, FTC and other regulatory bodies have come out and said, look, legislative branch, thank you for the new draft laws you're working on, but we’ve got to deal with this today. And we think under our current authority, we can be out there dealing with privacy breaches from AI and anti-competitive activity from AI and discrimination from AI and safety issues from AI, all of fraud and overstatement of AI claims.

**DANNY:** All the things that AI is causing some mischief on right now, you've got regulators saying, hey, we've had tools to go after these for decades, if not centuries. So, we're not waiting around for new AI shiny laws. We're going to start going after and enforcing these things now.

**DANNY:** So, the answer is all of the above faster than anyone knows how to deal.

**CRAIG:** So, the legislative process is sort of clunking along. Is it following Europe because Europe has been much more responsive and sensitive to these issues, you know, even before AI, just on privacy, on digital privacy. Is the US federal legislative process following Europe?

**CRAIG:** And are there any laws that have been passed that are AI specific at this point? That's two questions. And then the third is have you seen a surge of cases now that are relying on existing fraud laws and things like that?

**DANNY:** Yes, to the last part. So, is the US following Europe?

**DANNY:** No. I wouldn't say that I think it is moving more slowly than Europe, but I don't think that's a following phenomenon. I think you're seeing a real cultural difference in how do we balance technology and regulation. You know, Europe has always struck a different balance than the United States on that.

**DANNY:** And you saw it with GDPR, and you see it with the Artificial Intelligence Act, and I think the AIA, in some respects is, a reflection of European enthusiasm over GDPR. I think there is pride, and not wrongly so, that they set the agenda for privacy with GDPR and the so-called Brussels effect.

**DANNY:** They were able to craft a legislation that changed companies behavior around the world. So, I think there is an appetite in Europe to do that again with AI. The United States has always I think taken an approach that's more hands off and that says, let's let innovators innovate and we don't want to get in the way of that.

**DANNY:** And we want to regulate safety and key issues on privacy. But we don't want to impede our status in the world as being on the true cutting edge and leading. But there is some reaction now and this is not following Europe. I think this is following technological developments.

**DANNY:** I think there's a recognition that the emergent properties of AI are potentially occurring faster than anyone predicted. And there's a great, you know, little example of this, but it's happening again and again. But, you know, Oxford surveyed a bunch of world leading AI experts on when they thought AI would beat the best human players at Go - this is obviously a couple years ago now.

**DANNY:** And you know, you got projections out into the future, you know, decades. And then it happened in real life a couple months after the survey. So, that order of magnitude of misprediction, inability to predict how fast these technologies were going to advance, I think startled everyone. But then, you know, for every example, there's a counter example.

**DANNY:** There were articles, you know, many years ago saying, say goodbye to driver's ed. We're all going to be in fully autonomous vehicles by 2022, 2023. And that obviously hasn't happened, although there's great advances. I think my kids are still going to have to get a driver's license when they come of age.

**DANNY:** So, you know, it's just really hard to predict AI in both directions. We're usually either too soon or too late. We're rarely right. And I think, you know, what was really behind in some respect that the letter that came out recently with lots of signatures - and we can debate whether a moratorium on AI is even feasible - that may have been more of an expressive notional letter than a real policy proposal. But they used the words emergent capabilities from black box algorithms, and that's an important word. I mean, emergent to me means qualities and abilities that we did not predict and that we don't quite understand how they're happening.

**DANNY:** And the ultimate example of an emergent ability is our own human consciousness. Nobody quite knows how you go from a, you know, a few pounds of jelly and electricity in the brain to self-awareness and a consciousness. Well, I don't think that is exactly happening at this stage from the electronic AI.

**DANNY:** I think there is a recognition among a lot of pretty sophisticated people that emergent properties, at least in a lesser extent, things we don't predict and don't quite know how it got from A to Z, are happening. And that's worrisome when the tools are already so widely distributed in society.

**DANNY:** And to me, something that worries me is you've got systems that you want to be well behaved, and you say, okay, we've got them in a sandbox. But everything's connected to everything else. And AI is continuing to surprise us in its ability to maneuver through connected systems. So, I think that's something that is catching a lot of people in politics as a security issue and as a safety issue.

**DANNY:** So, I think people are waking up to that.

**CRAIG:** Yeah. And I want to talk about the letter, but just on the current state of legislation, again, at the federal level, is there any concrete AI specific legislation, significant legislation that's been passed on, you know, regulating what's allowed in terms of false positives maybe, or explainability or any of these issues that researchers are struggling with?

**DANNY:** Not on the level that we're seeing in states. So, the states have put out the types of legislation that you're talking about. So, an industry specific law that says, okay, in insurance or with biometric data or with employment, you're going to have to follow these privacy safeguards.

**DANNY:** You're, you're going to have to follow these anti-discrimination safeguards. And usually those look like forms of self-auditing. So, and there's lots of flavors of this, but the gist is you have got to do design as impact assessments when you're training and developing your models to show that you're thinking about those issues.

**DANNY:** And then once you've unleashed your algorithm out into the wild you need to continually monitor it and the laws disagree on how frequently or who does the monitoring. Is it within the organization? Is it external third party? But that's the basic gist. At the federal level, not so much.

**DANNY:** There, there have been laws passed that speak to AI. You know, that that's what led to the NIST risk framework was a law firm a couple years back that said, okay, we are going to promulgate these voluntary standards. But so far at the federal level, it's really been more of an executive branch both under the last administration and this administration saying, Hey, agencies, here's the big picture problem.

**DANNY:** Go out and roll out these guidelines and rules within your jurisdiction. And so, we're seeing a patchwork coming out from that.

**CRAIG:** But again, rules, guidelines, and regulations are not laws. So, from your point of view they're moot, right? I mean, you can't sue somebody for not following a federal guideline. Is that right?

**DANNY:** No, I would actually not call them moot.

**DANNY:** When, when you see some of the sizes of fines that have been levied already using existing jurisdiction and authority to reach some of these new issues. And you know what, what you see the Regulatory authorities saying over and over again is same song, different verse, you know, discrimination is discrimination, whether it's an algorithm doing it, or a group of people misbehaving.

**DANNY:** And some of these fines, you know, get into big numbers, tens and hundreds of millions in some cases billions. So, n not at all moot. And part of the legal practice is helping our companies make sure that they're doing things the right way so that when, when the regulators come around, they can say, yeah, we've really been thinking hard about this, and here are the controls.

**CRAIG:** Yeah. Well, on that point the fines, those are coming under, I would presume state statutes, I mean, you can't be fined for not following a NIST guideline or White House bill of Rights.

**DANNY:** No, but, but, but think about, for example the FTC. So, the FTC has its mandate to make sure that consumers are not being deceived or treated unfairly.

**DANNY:** If someone is going around selling AI as, you know, magic beans then they don't need an AI law to go out there and do basically a fraud investigation. Same thing with discrimination. So, FTC came out there and said I think they put it out in a tweet actually. They said, hey, we have an existing mandate under section five to prevent unfair deceptive treatment of consumers.

**DANNY:** And by the way, that would include selling racially biased algorithms or using racially biased algorithms that affect consumers. So, the message is loud and clear from the executive branch. They're not waiting for AI specific laws. And rightly so. I mean, some of these things whether you're selling an AI tool and you're saying it's going to make someone taller and handsomer and smarter or a toaster, you know, it's still fraud.

**DANNY:** So, so I think where the federal legislative activity will come into play is really authorizing and in fact mandating some of these controls that, that right now, you know, to some extent they're coming into to regulatory and we can talk about that. But to say horizontally across the board, if you're going to put out an AI that affects people, Basic rights to, you know, you name it, healthcare, a job, education.

**DANNY:** And if it's going to affect more than X people and more than X dollars, then you need to send quarterly reports to someone or annual reports to someone. And you need to disclose these risks for s e c regulations. And, you know, I think, I think we'll see more directives that sort of cut across the board.

**CRAIG:** What about certifications or licenses or that sort of thing, which seems to me you would expect that that algorithms or AI systems have to be submitted to some expert body for testing? And where does that stand?

**DANNY:** Well, I mean, you know, that, that, that's a very European approach in some respects, And it's certainly part of the contemplated regulation in Europe is that there would be a need to have things assessed and certified if, if they fit into, you know, appropriate risk levels not all AI, but, but things that are captured by the regulation.

**DANNY:** You would have to get your, your independent body to put the stamp of, you know, European conformity o on the product. It does happen to a lesser extent in the United States but it's usually just because of our, our political appetite. It, it’s often tied to some kind of federal dollars.

**DANNY:** So, if you think about in healthcare, if you want your customers to be able to get certain incentive payments from h s then you have to have certain certifications of your technology that it's qualifying. So, there's usually some hook in the United States. It's usually not just a blanket.

**DANNY:** Everybody, all comers are going to have to submit to, uh, this inspection. I think one thing you'll see in the United States, almost for sure is voluntary accreditation and certification. And that's, you know, that's more in line with I think political appetite and political philosophy in the United States.

**DANNY:** You know, I think we could have a healthy debate about where self-regulation works and where it doesn't. But I could see a free market of qualified certifying bodies that will put the Good Housekeeping seal on AI. And you know, when AI is a consumer product, maybe that's something you look for.

**DANNY:** I think we're, we're. Legislation has to come in as when AI is being imposed on us, and we may or may not even know it but it's making decisions about our life. That's where someone from above is probably going to have to say, does this, does this pass muster? But, you know, my own law firm, A D L A Piper, we're one of the founders with Mayo Clinic and Duke of the health AI partnership.

**DANNY:** And that's exactly what we're working on, is, you know, helping hospitals have a way to tell good healthcare, AI from bad healthcare, AI. Because you know, it, 2, 2, 2, Cadillacs could be nice and shiny from the outside, and you can't tell the difference unless you know how to open up and look under the hood.

**DANNY:** And so, we're working on voluntary systems to help train hospital procurement officers. Okay? They know how to pick a good CAT scan machine or a good syringe supplier, but they don't right now know how to pick a good medical AI supplier. And so, we're creating curriculums to educate them on that.

**DANNY:** And then down the line, there may be a certification as well to say okay, this is a qualified AI professional who can test and validate. So, I think you will see efforts like that arising pretty quickly in the United.

**CRAIG:** What are the bulk of the cases that you guys handle and are, are they plaintiff cases or defendant cases?

**CRAIG:** I mean, which side are you generally do you generally find yourself on?

**DANNY:** Well, we're, we're an interesting case because you know, most large law firms tend to be defense firms historically. And certainly, that's the case for a lot of what we do. But we do have an affirmative litigation practice that's fairly interesting and innovative where.

**DANNY:** You know, it has to pass a committee and it has to be carefully vetted. But there are cases where we will be bringing affirmative litigation on behalf of pretty large clients. Not, not typically single clients, but our, our, our institutional clients where they do need to bring an A case and we will do that if the circumstances are right.

**DANNY:** With, with respect to ai we have seen really interesting litigation. As a firm, we have worked on class action cases involving the insurance industry and allegations of algorithms that were allegedly producing biased outcomes or using variables that, that ran afoul through, through proxies and other things like that.

**DANNY:** We're helping a client right now, think about products liability litigation for AI enabled products. And then there's IP litigation involving AI that we're seeing. Some of that is infringement and then some of that is what about content that's been created using ai? And we have clients who are very concerned on, on all sides of that issue.

**DANNY:** We have content creators who are worried about generative AI using their content to create new content. And how does that get traced back to the original? But then we have Very well-known generative AI clients who are thinking about it from the other perspective of fair use. And every artist creates new art by looking at the artistic milieu of their time and the great artists that came before them.

**DANNY:** And how is this different? And these are questions that are being actively discussed and litigated and so, so I would say, you know, we have a very dedicated products liability practice. I mean, I think AI products liability is the next wave of products liability. And we're thinking very deeply about that and working with clients on it.

**CRAIG:** Yeah. And the applicable laws in those cases are the existing liability laws or existing fraud laws. Which bucket does it tend to fall into?

**DANNY:** Well, it, it, it can be all of the above. So, for example disputes over AI transactions. You will have representations and warranties about what AI can and can't do.

**DANNY:** And I can tell you in boardrooms across America we're hearing what are we doing about ai? Are, are, are we falling behind? You know, the statistics on the number of companies in America that have already adopted AI or are exploring it, it’s well above 50%. It, it’s extraordinary and private investment doubled in the tens of billions into ai over the last from I think 21 to 22.

**DANNY:** So, everybody is getting marching orders to go out and acquire good AI products and some of those deals are going to go poorly. What's so interesting about our practice is we have the lawyers who have done these sorts of computer related transactional litigations. And then we have the data scientists who are also lawyers on our team.

**DANNY:** Because a lot of times we really have to get in there to understand where did the software, where did the algorithm go wrong to breach this representation and warranty if it did So, I am a strong believer that the law firm of the future has to have in-house both tech savvy lawyers and data analysts and data scientists who are legal savvy.

**DANNY:** And I think one of the cool things we've done is we've managed to find a very large number of people who are both lawyers and data scientists. And having all of that in one brain is really powerful. It, it, it, it lets us kind of not waste time with trying to find outside experts to educate us, but we go straight to the issues.

**DANNY:** So, so I think those transactional disputes are very interesting. We're looking a lot at that. But then you've got, like you said the product's liability litigation, and it's really changing the law and it will continue to change the law. There, there has been for, for the years that I've been doing products liability work, this assumption that there's the product and then there's the human that uses it and then there might even be a downstream human.

**DANNY:** So, think about a medical device. The medical device goes to the doctor. The doctor uses it. It's, it's one. Tool among many the doctor has to make a medical decision and then the patient gets treated. But and this is something I wrote about and actually presented at, at the first triple ai ethics and society meeting.

**DANNY:** But what happens when the ai becomes, we call that doctrine the learned intermediary. So, there's this idea that the doctor or the lawyer or the banker, whoever, there's, there's some usually a fiduciary who stands between the product and the consumer. But what happens when the AI is more learned than the learned intermediary all a sudden you've got doctors and lawyers and accountants and all kind of engineers in a really troubling, tough spot because they have to think, do I override the machine or is the machine looking at a trillion data points and it's seen something I just can't see.

**DANNY:** And I would be causing harm by overriding it. And especially with generative AI and large language models that are drawing from so much data and they can't always articulate the how and the why. It, it, it’s, it's putting professionals in a really tough spot and it's flipping liability on its head.

**DANNY:** Who, who's responsible then for that let's say erroneous or allegedly erroneous advice. When is it, is it the data? Is it the programmer? Is it the AI as some kind of agent of someone, the manufacturer or the doctor or the lawyer? Or does the doctor or lawyer or whoever stand as the ultimate final gatekeeper?

**DANNY:** And, you know, there is a real desire right now. I don't care what industry you're talking about, you know, think national defense And, and ai enabled weapons or think healthcare or insurance. There's this idea that we must always have a human gatekeeper. And that is a really feel good idea.

**DANNY:** And I, and I hope we can do that, and I hope it's true, but I don't know, two to three to five years from now how that's going to work when the AI is so much faster and so much more accurate. At, at some point you say, what role is the person really playing and why are we saddling them with all this responsibility when they don't really have the tools to make a meaningful comment where they deserve that responsibility. So, you know, we are products liability and artificial intelligence and class actions. It, it’s just, where we're spending a lot of our time and helping people get ready for it. And then thinking about how do you prevent those lawsuits by redesigning your, your safety controls.

**DANNY:** But then as we're starting to see that litigation helping the clients and some of our lawyers have, have been involved with the social media work where, where there's claims about you know, algorithmic targeting And, you know, is, is an algorithm neutral? Or is it directing content at people whereby it's, it's no longer just the content maker, but the person who built the superhighway are they sort of now at, at some level of exposure.

**DANNY:** So, these are really important issues and, it it's like you said about politics, getting up to speed. Lawyers have to be. Technical experts at the same time to be in this field. It’s just too complex.

**CRAIG:** Yeah. I do want to talk about the letter and hear your thoughts on that? I mean, to me I didn't take it seriously particularly having Elon Musk's name attached who's, who's shown himself to be such a grand stander.

**CRAIG:** And I found the idea of asking, rather telling open AI to slow down preposterous be because open AI did not create the transformer algorithm. All they did is scale up an existing model or the general architecture was known. And, you know, you could be cynical and say that it's, it's an effort to you know, cause open AI to pause so that the other tech giants can catch up because there's certainly a race on this.

**CRAIG:** I just, I'd like to hear what your take on that letter was.

**DANNY:** Well, you know your points are all well taken, and you know, you can separate the message from the messenger. And sometimes there are useful nuggets even coming from the strangest or most unexpected sources or interesting sources.

**DANNY:** So, you know, I look at that letter and what I see is a great reminder that we need to be thinking very hard about how AI is going to impact society. Do I think it is at all realistic that somehow there's going to be a global pause button on a technology that is so widely distributed and being worked on by so many people.

**DANNY:** And the many of the tools are open and available. And if the good guys tap pause, why do we think the bad guys will you know, and then you get into the issues you raised, which, you know, I would only be speculating, but you know, you raised the point of competitive motivations.

**DANNY:** Who knows? I don't know what's in people's heads, but I, what I take from that letter that I think is valuable is AI is moving faster than anyone thought. And we need to show a great deal of humility with respect to this technology. If you want to be the most fanciful, we are creating life.

**DANNY:** I mean, and it is really that simple. And anytime you are creating life just ask Mary Shelly you want to use humility because it's not been done before. And anyone who thinks they can predict where this is going is selling something or kidding themselves.

**DANNY:** So, that's the most extreme is we are getting to a point where emergent sentient AI is not outside of the question. I think most people at this point think it could happen and they just don't know when. But even, you don't have to be sentient to cause a lot of trouble.

**DANNY:** We use these tools without knowing a hundred percent how they're going to react given the complexity and inscrutability of them. The impacts are possibly huge.

**DANNY:** So, is anyone going to slow down technology? No, I don't. I don't think that's really ever, I'm not sure there's a comparable example where that has worked in history. It was a great way to get everybody focused on this issue because AI is going to challenge us, not just technologically, but philosophically, democratically, morally yeah, we should be thinking very hard about these issues.

**DANNY:** And it's more than just saying AI needs to be safe and responsible. We we're past that, but n now we need to be saying, how do we make it safe? What are the sandboxes? What are the firewalls? What are the forbidden uses? And most importantly, how do we enforce those? Because you can have the best laws on earth, but if you don't have visibility and enforcement, they're not worth the paper they're printed on.

**DANNY:** Yeah. And these are existentially important questions.

**CRAIG:** Yeah. I guess What bothered me is it, it made it sound like no one's thinking about these questions. I can assure you open AI. Is thinking deeply about these questions. I don't know if you remember, they wouldn't release GPT-2 even to researchers because they were so freaked out by its potential misuse.

**CRAIG:** And GPT-4 has all kinds of guardrails, and then there are all these there there's a series of organizations very serious organizations can't, I can't think of all of them right now, but lots, yes. Yeah. That are, that are, you know, that's what they're doing.

**CRAIG:** That's their whole reason for being so …

**DANNY:** And, well, that's exactly right. You know, we, I just want to say, you know, none of my answers are speaking to any one of those folks you named, because you know, obviously we work with a lot of people in this industry and I won't speak to any particular company but I will say that well, I'll just throw a compliment where a compliment is due that I think OpenAI has been incredible on these issues.

**DANNY:** Putting out really thoughtful presentations of the risks being transparent about the technology, phasing the technology and being open to assessment, but like you said, there's just lots of people who have been thinking really hard about this. I just choose to see that letter as a great way to focus attention of maybe people who haven't been paying attention.

**DANNY:** Certainly, all the people you named. Thinking very deeply and with good faith on these issues. And maybe that letter just gets everybody to stop and say, yeah, we need a consensus around this sooner than later.

**CRAIG:** My point is that the people that can do anything about it are already thinking deeply about these things.

**CRAIG:** And the people who are not thinking, have not been thinking deeply about it, is really the general public. And that letter freaked people out. As though, oh my God, no one's thinking about this. if they want to talk to legislators, it could have been done in a less fear mongering way.

**CRAIG:** And the other question I wanted to ask you gave the medical example of a doctor who's working with an AI tool that at some point clearly is going to be more informed than the doctors. I mean, that's already the case but eventually more accurate. How are you guys using generative AI or GPT-4 or any of the other AI tools for research and depositions and things like that, it seems to me that that the legal profession could get a lot of benefit out of out of the hive mind of large language models.

**DANNY:** No, question. And the answer to your question, how are we using it is very carefully.

**DANNY:** We are. On the cutting edge of GPT-4 in the legal profession. This is public. We are working with our longtime friends at Case Text who in turn have licensed GPT-4. And there's a tool called co-counsel that we have been beta testing with them and working with them for some time and now are using it.

**DANNY:** But what we're doing is Testing it to understand it and understand how to use it and where it helps and where we think there's a different approach to problem solving. And that's the secret with any technology. The, you know, I always see these press releases saying, oh, you know, so-and-so's licensed this or that, new off the shelf technology, and we're rolling it out And I get worried.

**DANNY:** I really do because you know, there's an art form to using this technology, you know, asking the right search queries and using it for the right things and knowing where it stumbles is not obvious. You have to learn it and you have to test it. So that's exactly what we're doing.

**DANNY:** We have testing pods. We have a huge number of people across the firm. Taking work that we've done let's call it the old-fashioned way. And we know those matters intimately. We know those documents, those deals, those litigations intimately, and we are testing against the technology to see where it's an add and see where it's a detraction.

**DANNY:** And we're seeing some incredible things. This, this technology GPT-4 broadly and the specific version we're working with, it's going to transform the legal industry. There's no question. And everybody's going to win. clients are going to, and we are going to win because a lawyer is not going to be replaced by AI.

**DANNY:** But lawyers who use AI are going to replace lawyers who don't use AI. That is certain, right? And lawyers who use AI well are going to be the ones who deliver the reliable product at the end of the day. That's what clients need, is good, reliable product. And, you know, it's not just enough to have a hammer, you have to wield it in the right way.

**DANNY:** So, we're working very hard on that, but I can tell you, I remember when you used to have to check your cases in books instead of electronic tools. You know, this is going back 20 years and we haven't replaced lawyers. Last time I checked, there's no shortage of lawyers in America.

**DANNY:** We're just using different tools and a lot of the mundane tasks are, taken up by technology, but we still have tons of people working harder than they've ever worked because it's freed us up to do more work and more good work. So, I'm actually an optimist but I'm a cautious optimist and I have to give a shout out.

**DANNY:** I mean, our chief data scientist, Bennett Borden, who was recruited as a sophomore out of college by an intelligence agency, was a data scientist there on the cutting edge of this stuff. Then became a lawyer and has been on the cutting edge of legal technology, like e-Discovery for, you know, decades.

**DANNY:** And now he's on the cutting edge of AI in law for the last few years. And his approach is the way a software engineer would approach this, where we're going to test it, we're going to define appropriate use cases. We're going to set the dos and don'ts, and we're going to train people to use it the right way.

**DANNY:** And I think, you know, you can kind of take that answer and plop it into any industry and that's the way to go about this. It's there, there is no magic box that anyone should think they can take off the shelf, hit run, and all of a sudden you can lean back and sip pina coladas.

**DANNY:** It's just, that's magical thinking.

**CRAIG:** For now, for now, for now,

**DANNY:** My horizon for making predictions about the future is very narrow. I have a great deal of trepidation when it comes to predicting where technology will ultimately go.

**CRAIG:** That's it for this episode. I want to thank our sponsor, NetSuite by Oracle. If you want to give them a try for a limited time, you can get a full implementation with no payment and no interest for six months. Just go to www.netsuite.com/eyeonai. Be sure to type the EYEONAI so they know the sponsorship is working. If you want a transcript of this show, you can find one on our website, eye-on.ai.

**CRAIG:** And remember, the Singularity may not be near, but AI is changing your world, so pay attention.