OPEN NINTH:

CONVERSATIONS BEYOND THE COURTROOM

AI: SUPPLEMENT OR SUPPLANT

DR. THOMAS CLARKE

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HOSTED BY: FREDERICK J. LAUTEN

>> Welcome to another episode of "Open Ninth: Conversations Beyond the Courtroom" in the Ninth Judicial Circuit of Florida.

Now here's your host, Chief Judge Frederick J. Lauten.

>>**CHIEF JUDGE LAUTEN:** We're here today with Dr. Tom Clarke, the Vice-President of Research and Technology for the National Center for State Courts. Dr. Clarke is a leading expert in court technology. He's worked in Federal and State government positions for the last 21 years as a researcher, applied statistician, and a technology manager. He also has academic and international justice consulting experience, and for the last nine years Dr. Clarke has worked in the court community as a researcher, state court CIO, and now as the Research and Technology Vice-President at the National Center for State Courts.

In recent years Dr. Clarke has represented the courts on several national technical standards committees, Washington State information technology governance and architectural committees, so Dr. Clarke has a strong interest in the use of open national standards, enterprise architecture and service-oriented architectures and their contribution to the solution of significant justice business problems.

Dr. Clarke, welcome to Open Ninth.

>>**DR. CLARKE:** Thank you. Thanks for having me.

>>**CHIEF JUDGE LAUTEN:** Why don't we start by having you tell our listeners, at least briefly, what is the National Center for State Courts and what is its mission?

>>**DR. CLARKE:** Sure, the National Center is a non-profit, and probably the largest non-profit in the United States whose mission is to help the courts improve their performance.

We concentrate primarily on court administration, not on merely legal issues. And we try and help courts operate better.

>>**CHIEF JUDGE LAUTEN:** Great. And how long have you been again with the National Center? I think I mentioned it, but why don't you tell us that again?

>>**DR. CLARKE:** Actually since 2005 so coming up on 13 years.

>>**CHIEF JUDGE LAUTEN:** Fabulous, and your role with the National Center is what?

>>**DR. CLARKE:** I'm the Vice-President for Research and Technology so that means that I lead the practices in those two areas. And our role is primarily to discover and validate new best practices for the courts.

>>**CHIEF JUDGE LAUTEN:** Great. And you've been very helpful to the state of Florida in so many different areas, including our time study for our workload standards in the state and best practices in individual courts, best practices in the circuits, best practices statewide for the administration of a complicated court system. So we have great respect for the National Center. What is the National Center's interest in artificial intelligence?

>>**DR. CLARKE:** Yeah, that's a great question. You know, I guess the place I would start is saying that the courts lack badly in its use of technology.

>>**CHIEF JUDGE LAUTEN:** That's true.

>>**DR. CLARKE:** Yeah, when we've done national surveys, what the public tells us is not do they think the courts are badly managed but they think some of the worst areas that the courts do badly in is their use of technology. So we know that we're not doing a good job there

already, and yet, the pace of technological change is moving faster than the courts are moving to try and catch up, so the gap is getting even wider. And AI is just an example of that, you know. We see, as I'm sure you know, Judge, we see applications of AI in the world all around us nowadays, and yet the courts are doing practically nothing. So we thought that it was time for the National Center to try and facilitate more use of AI by the courts, and in fact, we didn't just wake up one morning and have this idea. It's become so obvious that we need to do this so we've had National Center board members and State Court Administrators and people like your court administrator, Matt, telling us that we need to get involved in this area.

>>**CHIEF JUDGE LAUTEN:** Any reason that the National Center identified for why courts are lagging so far behind?

>>**DR. CLARKE:** Yeah, I think that there are a couple of reasons. First of all as you would know even better than I, the courts are by design a conservative organization.

>>**CHIEF JUDGE LAUTEN:** Right.

>>**DR. CLARKE:** And their mission is to be, you know, fair but steady, not rush to judgment, and lots of checks and balances and due process, and just general conservatism as a governmental agency they're not subject to market influences that might make them more competitive. They have a real hard time competing for resources, for budgets. And so their budgets usually lag. They just don't have the ability to apply technology like other people do. And I think this is actually made twice as bad because in a situation like that, what an organization would normally do is partner with for profit organizations to bring those capabilities to bear, but because of their conservatism, courts have been very reluctant to do that.

>>**CHIEF JUDGE LAUTEN:** It's interesting, yesterday I was giving a presentation and oftentimes we hear, well, government should be run like a business. And my response was, well, if I could run government like a business, I would cut down certain cost centers that have revenue neutrally depleted our resources, and enhance those centers that increased our resources, but that might mean shutting down a family court division or a criminal division and increasing a civil division so people couldn't get divorced or criminal cases couldn't get tried. At some point the public becomes aware that government services and for profit businesses just are not – they're not analogous models, and they'll never be analogous models because their ultimate goal is different. The for profit corporations is just to make a profit and government exists to provide services to a wide range of people. And then in the court system, of course, we're also constraint by the constitution. And so, for example, in a criminal court, the defendant has the right to confront his accuser. We might have the technology to put the witness in the witness stand through a hologram, but that wouldn't be constitutional because the defendant wouldn't be in the same room with the witness testifying against him or her. So you're right, we have these kind of constraints that are imposed upon us. Well, let's move to this. Can you tell our listeners in general, what is artificial intelligence?

>>**DR. CLARKE:** That's probably the single hardest question to answer in this whole podcast. We have actually stopped talking a lot of time about artificial intelligence. Instead we're starting to use the term data science and that's because data science includes not only what people usually mean by artificial intelligence, but also predictive analytics, big data analysis and a number of other kind of buzz words that people hear. In addition to that, it's hard to define artificial intelligence because it's not one thing. From a technical point of view, it's a collection of very different algorithms that are applied to solve problems, where you have to choose if an

algorithm is appropriate to the kind of problem you have. And as I say, there are very different kinds of algorithms. I think most of the time now-a-days, Judge, when people say AI, what they're thinking of is machine learning because that's been so effective for solving problems for the last couple of years thanks to some breakthroughs. And that's a situation where the software trains literally on a data set to come up with the best algorithm for solving a particular problem.

>>**CHIEF JUDGE LAUTEN:** Can you give some examples of how that's happening right now?

>>**DR. CLARKE:** Yeah, one example would be, if you interact with an Amazon speaker, you know, the speaker – actually the speaker is not doing this, but a server farm somewhere in the world is analyzing what you're saying and translating it into something that it can understand and then responding to you and virtually everything that that software is doing in both directions is based on AI.

>>**CHIEF JUDGE LAUTEN:** Interesting. So if I ask what time it is, it analyzes that question and gives me the time. Or if I say play my favorite playlist, it knows which artist to select?

>>**DR. CLARKE:** Yeah, think about what's involved in that. First of all, it has to parse the sound because you're making it with your mouth and somehow convert that into words and sentences, then it's got to understand what you're saying with those words and sentences in context, and you know, there's a lot of context that we take for granted as humans that software doesn't know unless it's taught. And then it's got to solve the actual problem or question that you've asked it.

>>**CHIEF JUDGE LAUTEN:** Wow. Wow, that's fascinating. So how might AI be applied in this very conservative, slow growing, slow to change court system?

>>**DR. CLARKE:** Yeah, well, I think actually the problem is practically endless, but the strategy that we've taken is to start small and simple and learn from those kinds of projects, and then kind of bootstrap up to more significant things. And I'm guessing that you could probably come up with a list of pretty significant problems that it could be applied to too, but I can tell you a little bit about the kinds of things that we've done so far. Our very first project with AI at the National Center was a project with the state of Minnesota for their guardianship and conservatorship cases, and the issue there was executors had to file these annual reports like in a lot of states and the court wanted to know if there was abuse by the executors. And in theory what the court would do is review these reports, a human would review them who is an auditor or something like that and they would look for examples or flags of abuse. And in fact the auditors there had developed a set of so-called red flags that would show a high probability of abuse. So what we did was, because we had a training data set from them, we applied AI to do two things: One, was to try and verify or discount the existing red flags that they were using, and then to try and discover if there were better red flags than what they were using.

>>**CHIEF JUDGE LAUTEN:** Fascinating.

>>**DR. CLARKE:** And um – go ahead.

>>**CHIEF JUDGE LAUTEN:** No, that's fascinating. I'm sorry to interrupt. That's fascinating. Keep going because I want to hire this program right now. I want to buy this program tomorrow, but I want you to finish. What did it do?

>>**DR. CLARKE:** So we found out two things. One, was that most of the red flags that they were using didn't work very well or at all, and just as an aside, that tends to happen a lot in industries, like the courts where they don't base a lot of their current practices on evidence, on data but on kind of subjective impressions accrued over time about what works and what doesn't, and that was true again here. A lot of what they thought worked did not work, and a lot of the things they did come up with is some red flag algorithms that did work pretty well but they were not the kinds of obvious things that anyone would have thought of based on their current experiences. It's just kind of odd things. And then there was kind of a nether ground where some of the red flags that they had been using, if they were tweaked a little bit to be slightly different algorithms, then they would work much better. So that's an example of where machine learning in particular can discover nonobvious things in really complex situations.

>>**CHIEF JUDGE LAUTEN:** But in that example did you have to feed data into a computer database or did you study the problem and then a human being just looked at these annual reports differently than they ever did before?

>>**DR. CLARKE:** No, it's the former. It's typical, just a classic application of machine learning. So they already had a database of thousand reports that had been curated by their human auditors – I can't remember, there were either three or four levels of probability of abuse ranging from, you know, low to nonexistent to high and very probable. I think that there were two levels in between. So we split that, like it's usually done with machine learning, we split the database in half and we trained on the first half, and what we're training on is for the AI algorithm to correctly classify annual reports into those categories and then people would audit just the highest category, the humans would. So we trained on half the database, and then we validated on the other half and it validated well, so the idea here would be, that you would use

the program to review all of the incoming annual reports in the future, decide which ones would fall into that highest, most dangerous category and then human auditors would concentrate their scare resources just on reviewing –

>>**CHIEF JUDGE LAUTEN:** Interesting. So were they filed electronically so the computer immediately went to work?

>>**DR. CLARKE:** Yeah, so that's an interesting question and a good one. Most places people filed these reports, these documents and sometimes paper, but more often now electronic documents and they go into a case management system, document repository but that doesn't give the algorithm the information it needs. You know, it needs certain specific data elements in order to, you know, do its thing and those data elements weren't necessarily available from that normal filing process. They still needed in Minnesota a human to look at those documents and separately enter into a program the specific data elements that the algorithm needed. They did – they have since then done some work on integrating the AI algorithm with their case management system so that some of that could be done automatically instead of having to have manual input because that's again labor intensive and really extensive. And we think that with a little correct programming that could be completely automated. But here's an even cooler idea, Judge. We've got a project that we're trying to get funded now where the software would – instead of waiting for annual reports, think about the lag time. If you only file a report once a year and the court doesn't know what's going on in the meantime, tremendous opportunities for abuse there. But we're trying to get funded a program where the software would interact in real time with financial organizations that track in real time the transactions that people have with credit cards and so forth. And it would tell us, tell the court in real time what those transactions are and flag ones that have high probability –

>>**CHIEF JUDGE LAUTEN:** That's amazing.

>>**DR. CLARKE:** Think how cool that would be.

>>**CHIEF JUDGE LAUTEN:** That would be very cool. This program, is it easily exportable to other states? Right now is it only designed for Minnesota? If Florida wanted it, can we just pick up what you've done and move it to our state, or do you have to design it specifically with Florida in mind?

>>**DR. CLARKE:** Yeah, I think that's a little bit in the eyes of the beholder right now. Minnesota was willing to export the software and they did make it available to the National Center for use in other places as open source, but a couple of states tried to use it that way. Arizona took a look at it and New Mexico took a look at it. Texas took a look at it. The reaction from the techy folks in those states was that they didn't think the program was very well designed so they took the algorithm and rewrote the program themselves. I think that's kind of a danger with open source is that it needs to be managed well and architected well from the very beginning and that didn't exactly happen there, so the answer is kind of yes and kind of no. We still have hopes that a consortium of states could develop a high quality open source version of it that could be used in multiple places. In this particular case, I think that the rules across the states are similar in that that you could get a lot of value out of –

>>**CHIEF JUDGE LAUTEN:** Right, right, well, that would be great because that's a problem in our state and there's a Florida Supreme Court Task Force looking at guardianship abuse. I happen to chair it. So I perked up when you mentioned that particular program. I might call you about that after the podcast. Let's talk about some other areas of artificial intelligence. I've been told in the risk assessment area, would an arrestee, if you release them from jail, would

they likely reoffend? Would they likely reappear in court so that you wouldn't have to require a high monetary bond for people who pretty much – a risk assessment instrument, say they're going to appear? That's an area for artificial intelligence, diversion, maybe sentencing in the future, jury selection. I mean, I'm not sure if the list has a termination point but those are fascinating areas where artificial intelligence might inform the court and the court users.

>>**DR. CLARKE:** Yeah, so risk assessments, diversion decisions and sentencing decisions are all kind of within the same class of problem, which is risk and needs assessment. I think you're probably familiar with the history here, the number of non AI tools that have been developed over the years, almost all of which are proprietary I believe except for the Arnold pre-trial risk assessment instrument. It turns out that these tools are actually pretty badly designed and not very well validated at this point, so that the potential for using AI to improve them is pretty large I think and that's one of the reasons there is interest and probably why you ask the question. It's pretty clear at this point that a well-designed tool could out-perform the human on average. And that's not a criticism of judges or probation officers because it turns out in virtually any field of endeavor that has complex decisions that have to be made, a well-designed tool can out-perform the human. Doctors diagnosing diseases, you name it. It's just that humans aren't very good at making really complex decisions under subjective conditions. But there's a downside to this which you may be aware of already, which is that these tools are only as good as datasets they're trained on and if the datasets had built in biases or discrimination because of the history of what produced that data, then the tools and the AI algorithms will simply reproduce those biases. So that can be a big problem.

>>**CHIEF JUDGE LAUTEN:** So it might be an overstatement to say, well, if we could design artificial intelligence to determine sentences in criminal cases, there would be no bias

because there would be bias in part from the designer or whatever inherently is built into the database that you base the artificial intelligence upon?

>>**DR. CLARKE:** Yeah, that's correct. And there's a second problem too that is maybe even more disturbing given the values that the courts -- that you described earlier. Not all AI algorithms are black boxes, but machine learning is an example of an AI algorithm that is literally a black box. And what that means is the tool will produce results that work but nobody can explain how it works. And that's pretty disturbing for our justice system to have a tool telling you that you need to sentence this person to 25 years in prison but you don't know why.

>>**CHIEF JUDGE LAUTEN:** Yeah, well, I can see defense attorneys having a field day in court. Right now in our circuit especially, and we might lead the state here, but it's statewide, defense attorneys spend an enormous amount of time, money and energy on the intoxilyzer machine that measures the concentration of alcohol in one's breath. And there's battles, and major battles, about we want the algorithm. Of course, it's proprietary so the provider says that's a proprietary – that's our business. If we give you our algorithm and we let go of that, it's like giving someone the coke formula. You can kiss coke cola goodbye. So there's a huge battle over that algorithm. On the other hand, if you're sentencing people based upon an algorithm, I'm sure the defendant would say I have the right to test the validity of the algorithm with my own experts and independently examine its validity, so you would have litigation in this very complex scientific field. And in some ways the courts are moving there. There's a lot of contest over, if you're relying upon some instrument to make any decision, then we need to thoroughly explore how that instrument works. And you would have lawyers probably starting their careers, you know, maybe at Stanford getting a degree in computer

databases and artificial intelligence, and then supplementing it with a law degree and they would probably get paid a lot of money per hour.

>>**DR. CLARKE:** I suspect you're right.

>>**CHIEF JUDGE LAUTEN:** Let's talk a little bit, if we can shift for a moment, let's come down a step or two. So in the future courthouses, for example, now you go into a courthouse and you go to an information desk and you say, I have a case in front of Judge Smith, what floor is Judge Smith on? And can you remind me what time I'm supposed to be there? And you might walk in and instead of seeing – well, right now we have Wayfinding boards so we have databased boards that digitally display information, but in the not too distant future we might have a box like an Alexa and I walk in and say, I'm Fred Lauten, what courtroom am I supposed to be in? And that's not all that far off and that's not all that sophisticated but it's interesting, isn't it?

>>**DR. CLARKE:** And I think is completely doable with current technology. The biggest problem there would be the funding to develop and train the software to do it because when you use products like Alexa which really performed miracles compared to what was possible even five years ago. What people sometimes forget is that there's not just millions but billions of dollars of research that produce that. But the current technology is completely capable of doing something like that.

>>**CHIEF JUDGE LAUTEN:** I went to a presentation at CISCO years ago and I was in Orlando in a room that was painted a particular color and design in a certain way. And we connected with three people in Boston and in California in a room painted the exact same color and design in a certain way, huge high definition monitors, unbelievable sound system. And

after about five – and the way it was designed, after about five minutes, we all felt, literally felt we were sitting in a circular desk in the same place but we were miles apart so witnesses could testify remotely. And then I kind of joked with them, I said, well, this is impressive but what I'd really be impressed with is if you holographed someone here, and they ran out and grabbed a computer and said, we want to show you when we holographed our CEO to a conference in India, and he shared the stage with an Indian designer, AI designer, but he was actually in California. And so we have that technology now; it's just we can't get it into the court system but we really could holograph a witness into the witness box.

>>**DR. CLARKE:** Yeah, you could. I'm not sure that that's the way it's going to actually happen though. Holographs are a real computant resource, expensive and still not that great, but I do think – you know, you were mentioning the physical confrontation clause. I think, in the not too distant future people are going to decide that the courts are a process and not a place, and that virtual hearings are going to become quite common. And as tentative AI, the virtual reality, and the assisted augmented reality devices get better and better, you could envision a world, maybe only ten or fifteen years out where every single participant in a court's hearing is in a different place but they're experiencing the hearing as if they're in the courtroom.

>>**CHIEF JUDGE LAUTEN:** Right. Well, you know, right now in civil, lots of witnesses, particularly expensive expert witnesses appear remotely. They are not in the room because you don't have the confrontation clause in a civil case. And so, you know, we have high definition TVs, and they appear, and one of the challenges to match sound up with speed so that when the expert's lips are moving, it sounds like they're saying the words because there's that delay, and the audio, but that's getting better and better. So I'm with you. Really, not in my lifetime, I think there will be trials where the participants are all somewhere else, and then the

judge is maybe in a courthouse, the lawyers maybe in his or her office, the witness is in his or her place of business. Maybe even the jurors are somewhere else, I'm not sure about that one. They'd probably be in the courthouse, but you're right, and then the trial would be taking place virtually remotely.

>>**DR. CLARKE:** Yeah, it's not even clear that you would need a courthouse at that point.

>>**CHIEF JUDGE LAUTEN:** That's right. I just can't let go of it, you know, just hanging on. So what do you see five years from now? Or is that too far out to even ask? Should I ask you a year from now? Should I ask you five years from now? What do you see down the road?

>>**DR. CLARKE:** Well, let me start with artificial intelligence because that's where began the conversation.

>>**CHIEF JUDGE LAUTEN:** Okay.

>>**DR. CLARKE:** Okay. I think one thing that we're working on right now and we're actually in the second generation of work on is using AI to triage cases as they come in the door of the court, into the best case management process. And we've had some success with that both in civil cases and in domestic relations, family cases, so we think that that's one thing – well, we're pretty sure you'll start seeing courts doing that quite soon. In fact, there are pilots under way right now.

>>**CHIEF JUDGE LAUTEN:** Help me a little bit with triage, sort of in terms of – I think I know what you're talking about. But I want to make sure I'm not assuming anything and our listeners are also understanding it. Triage in terms of what, Dr. Clarke?

>>**DR. CLARKE:** Well, let's take civil first because that's probably a little easier. What well run courts have done for a long time probably is to look at civil cases as they come in the door, decide whether they're simple or complex, whether they have high dollar amounts attached to them in controversy or not. And then if they were simple cases with low stakes, probably treated with a fairly simple expeditious process, whereas just the opposite is true, knowing the dollars that are at stake, lots of complex legal issues, it's obviously going to go through a much more complex process of management inside the court to get it to a resolution. This merely uses data and a trained algorithm to try and predict as the case comes in the door how complex or simple the case will be to get to resolution and put it in an appropriate process that treats it fairly, gives it the appropriate amount of attention but not too many resources. So instead of a cookie cutter process, treating every case like it's the same when they're not, we treat them differently when it's appropriate.

>>**CHIEF JUDGE LAUTEN:** Well, let me guess, we think we do that now based on our intuition and based in part on years of experience, but what you said about the risk assessment instrument now makes me think some AI program might come along and say, well, you think you were doing it well, Judge Lauten, but you really weren't doing it so well.

>>**DR. CLARKE:** Yeah, and in fact, we've already done that, that's true.

>>**CHIEF JUDGE LAUTEN:** Ouch.

>>**DR. CLARKE:** People are typically used in that controversy for civil cases but one pilot we did in Utah put – they differentiated three levels of cases and one of their rules for putting the case in the highest level was that it had over three hundred thousand dollars in controversy. But what we actually found out was that for about half of the cases for three

hundred thousand dollars in controversy, there was no significant court action in the sense that there was zero discovery, no motions, nothing but it turned out actually to be simple cases. And I'm sure the reverse is true too, so yeah, the kinds of things that we typically use, they partly work but they don't entirely work. They don't work as well as we'd like them to work. And we're finding the same thing is true in family cases. That things that we predict are not necessarily things people thought we'd predict.

>>**CHIEF JUDGE LAUTEN:** Interesting. Will machines someday operate the court system where you have judge that's not a human being, not flesh and blood but a machine making a decision?

>>**DR. CLARKE:** I'll tell you honestly, I believe that probably 70 to 80 percent of the cases that come in the court's door now are simple enough that a software algorithm right now could out perform a judge in the sense of being fair and more consistent in applying the law correctly in a cost effective way. But that leaves –

>>**CHIEF JUDGE LAUTEN:** Now, you're scaring me. I'm sorry, I interrupted you, but now you're scaring me.

>>**DR. CLARKE:** I think actually this is good news for the courts because there's always going to be that ten or twenty percent that are more complex cases and truly require a human judge to adjudicate. And I think this actually will make the courts more meaningful and the job of being a judge more fun because if you remove the high volume of simple, repetitive cases that really are not interesting in any legal way and your job becomes dealing with the truly complex interesting cases, that would be more fun I would think.

>>**CHIEF JUDGE LAUTEN:** Well, that might be true. Although one thing that we talk about as judges, and sometimes even teach new judges is, litigants might walk through the door and based on your experience, you almost know, without prejudging the case, but you almost know it's very likely the plaintiff will lose the case and the defendant will win, or vice-versa. And there is value, at least at present in procedural due process so that you listen to both sides so that even the losing party feels like I was listened to although I lost. And so sometimes I've been there letting a person tell me their story even though I realize legally that's not what you think it is. You cannot win legally with what you've explained to me but it's very important that they feel that they told me this and I listened to them and then ruled against them. And when artificial intelligence is doing that, you sort of remove that aspect. Maybe it would be better and more efficient, but I wonder how do you compensate for what I just explained?

>>**DR. CLARKE:** Yeah, that's a great comment because it raised two or three different, but really important issues. So what you're talking about we usually call by the jargon of procedural justice.

>>**CHIEF JUDGE LAUTEN:** Right.

>>**DR. CLARKE:** Or from the user's point of view, procedural satisfaction. And you're absolutely right, it matters – research tells us it matters actually more to the litigant how they're treated than whether they win the case. And it certainly completely influences their view of the courts as a legitimate institution. So that is very important. I guess that you have to balance concerns that research has also showed us that, and puts it in exquisite bias and subjective decisions on the part of judges are more powerful than we had previously thought. So there's a lot of room for just not reaching objective decisions for objective reasons when you have humans involved. So that's one concern. We're also finding, and this was a complete

surprise to me, even as someone who spends his career in technology. Younger people, not always, I want to hasten to say, not always, but under certain conditions actually prefer interacting with software than with humans for certain types of decisions.

>>**CHIEF JUDGE LAUTEN:** Well, that doesn't surprise me. It concerns me, but it's probably a function of my age, but that doesn't surprise me.

>>**DR. CLARKE:** Yeah, but I would still – I mean, if I were involved and I had a high stakes case in terms of money or freedom or something like that, I have to admit, I'd still want to talk to a human.

>>**CHIEF JUDGE LAUTEN:** Right. Well, I'm thinking of a divorce, and you mentioned that there is an AI program in civil and in DR, domestic relations that used to be called divorce. And I'm not sure if let's say a parent needed child support or alimony so that rent could be paid and wasn't receiving it so that the child was in jeopardy or the parent was at risk of being evicted or foreclosed upon in a house and artificial intelligence could get to that case very quickly and make a decision. It might not matter about the procedural due process that we identified earlier. It might be, I need relief and I need it now. And I'll give up that sort of intimacy that you get with a judge to just get a decision one way or the other, and I think I would win so a decision where you must pay your child support, and if you don't, we'll impose sanctions which include jail driven by artificial intelligence. So that might be a higher value than that sort of intimacy that I've described in the procedural due process hearing. So you got to weigh all those things I'm sure.

>>**DR. CLARKE:** Yeah, you do. And this is going to sound strange, I think, but it turns out that litigants value different things about getting their cases resolved. And it's not always

due process and fairness. Well, it's probably always fairness but it's not always due process as courts have traditionally understood it. Sometimes they value speed to resolution more.

>>**CHIEF JUDGE LAUTEN:** Right.

>>**DR. CLARKE:** We have some international research that shows that businesses really need their cases resolved, most of the time, not the big complex stuff like with Apple, or something like that, but for kind of run of the mill business cases, the most important value for them is to get it resolved within 60 days so they're getting certainty about the outcome. And that's more important to them than winning or losing. You can imagine cases involving domestic violence or abuse or something like that where speed to getting them to the right resolution and the right services is more important than due process. And sometimes people value lower costs. You see people going to for profit non-court connected, online dispute resolution mechanisms because it cost less and they're simpler. So yeah, people just have different preferences.

>>**CHIEF JUDGE LAUTEN:** That's fascinating. When do we get the Skynet running the court system?

>>**DR. CLARKE:** Well, I tell you, one project I just want to mention –

>>**CHIEF JUDGE LAUTEN:** I was just joking. I should quickly add that, that was just a –

>>**DR. CLARKE:** Okay.

>>**CHIEF JUDGE LAUTEN:** I'm not really thinking that that's going to happen but artificial intelligence as you described it in part removes the human element in part, although as

you recognize, it might enhance other values that are equally important to the participants. So in a sense it's a tradeoff. It's certainly different and I guess, and correct me if I'm wrong, but what I'm hearing is, Judge, there are pluses and minuses, and you can't discount the pluses and only focus on the minuses. There are real significant advantages to artificial intelligence, but it would be a different delivery system.

>>**DR. CLARKE:** Yeah, I think so, and I'm partly mindful, Judge, of work that we've done in access to justice. I'm guessing you're familiar with this research too that shows pretty consistently that 80 to 90 percent of people with legal problems never – it's not just that they don't come to court, they don't touch the legal system in any way.

>>**CHIEF JUDGE LAUTEN:** Right, that's a big concern.

>>**DR. CLARKE:** And 50 to 60 percent don't even know that they have a legal problem.

>>**CHIEF JUDGE LAUTEN:** Right. And a high percentage of them don't think a lawyer would even help them when they clearly have a legal problem. Somehow the profession has projected this impression that I will hurt you more than help you. I'll take your resources and you won't receive value. The Bar should be and is concerned, but how do we get to that point where that's the impression we're leaving with potential clients? That I won't help you; I'll just absorb your resources and you won't get much value from that.

>>**DR. CLARKE:** Yeah, and I think if it was just a matter of cost or value, there would be things we could do as you're starting to suggest to mitigate those issues. But I think what's shocking is that 50 to 60 percent of those people didn't think they had a legal problem and turned to other resources to get them resolved or just thought it was fate or God's will, or something and

didn't do anything. So I think AI could be useful in a couple of ways. One would be to help people understand when they actually have a legal problem because they're not recognizing that a lot times now. And then directing them to a correct resource and then if all that new volume were to flood the courts in other legal – parts of the legal system, using AI when it's appropriate to solve the simplest things so that our scare resources could again be applied more complex cases or ones where judges and humans are definitely required.

>>**DR. CLARKE:** Fascinating. What is the biggest challenge for implementing AI in the court system? Is it cost or just institutional hesitancy?

>>**DR. CLARKE:** We're finding in our project so far that cost has not been a big issue so I think one thing would be the conservatism of the courts. Although, as we've developed some these examples that I'm telling you about, we haven't had much difficulty finding places where courts were willing to try them out and implement them. I think skillset, lacking the correct resources to do it is probably the bigger problem right now. And the reason that I think the conservatism is more of a problem is because we've restricted ourselves so far that the issue is mostly on the court administration side where I think it's a clear benefit without really challenging any of the legal processes that people have implemented over several hundred years. And we're certainly not trying to usurp what the judge does in any way at all so it's less controversial.

>>**CHIEF JUDGE LAUTEN:** So are you optimistic or pessimistic about artificial intelligence and its use in the court system?

>>**DR. CLARKE:** I guess I'm a little of both. I think AI like all technology in the courts, that the courts' lack of resources to keep up, their lack of resources to do some of these

newer, more exciting things by themselves, for the most part – I mean, your court is actually a glaring exception to what I'm saying, so it's a little odd that I'm saying these things to you, because the Orange County Court in Florida has consistently led the Nation in the use of technology over decades now. So we know it can be done in some places, but most places they completely lack those kinds of resources and expertise and they're never going to be able to do these things on their own. So I guess it can go two ways, a happy ending and a not so happy ending. And the not so happy ending is they just won't keep up and the public support for the courts will drop and their business will continue to migrate to other dispute resolution mechanisms. And the court will shrink what it does in scope and size and number of cases. The happy ending would be if they found creative ways to partner with nonprofit and for profit organizations, not in ways to change their mission and their values, but in ways that leverage the resources and expertise of those kinds of organizations.

>>**CHIEF JUDGE LAUTEN:** Well, this is a shameless plug, but we think we are the first State court to start podcasting in the Nation – court system. I know you all started too right before we did but as a court structure. And we debated for a long time should we do it, how would we do it. When we made the decision to start podcasting, it wasn't really that expensive. It was more a decision about whether or not to venture into the area and for the most part we've gotten very positive feedback. That's a small step. The big step would be artificial intelligence assisting the court in making decisions that now are made by fallible human beings with biases who are working hard and trying their best, and I think doing a fairly good job at it. But you're right, there's all kinds of science now that says risk assessment instruments could be improved upon. Judges have inherent biases that we're always trying to identify and eliminate so I think we can be supplemented greatly by these new technologies and to turn them away is almost

being blind to what the future holds. It's here; it's just not here in this building yet. So obviously we have concerns and some of those are, we're stuck in our old ways, but some of them are the concerns that tend to remove the human element from what traditionally has been driven by a human being managing a problem for the participants in the court system. Doctor, this has been fascinating. I'm going to talk to our folks here about maybe phase two with you because I'm fascinated by this. It's maybe one of the most interesting podcasts that we've done. I appreciate your time. I appreciate your involvement in this area, and we greatly respect what you do nationally and we're very thankful for the time that you took out to talk to us. Thanks so much.

>>**DR. CLARKE:** Thanks for the kind words. The pleasure was all mine, Judge.

>>**CHIEF JUDGE LAUTEN:** Thanks, Doctor.

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