ISSN: 2755-6190

Review Article

Open Access Journal of Artificial Intelligence and Technology

AI and the "Milli Vanilli" Factor in the Court

John McClellan Marshall

Senior Judge, Fourteenth Judicial District of Texas Honorary Professor of the University, UMCS, Lublin, Academician, International Academy of Astronautics, Poland

Corresponding author
John McClellan Marshall, Senior Judge, Fourteenth Judicial District of Texas Honorary Professor of the University, UMCS, Lublin, Academician, International Academy of Astronautics, Poland.

Received: February 23, 2026; **Accepted:** March 02, 2026; **Published:** March 09, 2026

ABSTRACT
The advent of the technology known as artificial intelligence, or "AI", has the potential of altering the authenticity of evidence offered to support or refute a legal issue in court. Put another way, it permits manipulation of "reality" to the extent that what appears to be true is in fact misleading at best and, in fact, false. The result is that the court or jury may be misled into an erroneous decision in a judicial proceeding. At the threshold, the issue is whether or not the judge should require the lawyers to provide background information on the AI-generated evidence and the level of depth to ensure authenticity of the evidence offered.

Keywords: Fraud Upon the Court, Authentication, Identity, Techno Evidence, Surreality

Introduction

It has long been axiomatic in law school and in the later practice of law that it is the obligation of the party that is offering evidence in support of a claim or defense to assume the burden of proof on the issue at hand. For example, in an automobile accident case, it is common for the plaintiff to present photographs of the scene, the damage to the vehicles, and the injuries, if any, to the client. For lawyers, however, the ethical issue clearly has always been one of whether the evidence that is offered contributes to a proper process, or creates, a "fraud upon the court". The advent of AI, whether as a research tool or as the medium for the creation of an evidentiary presentation, presents the practicing attorney with additional duties in trial preparation that were unknown ten years ago. Popular culture provides additional cautionary examples of the ability of AI to deceive a court or jury. In the 1980's, the rock band Milli Vanilli was a hit, but was not what it appeared to be. It was exposed as non-existent, because, although they were live performers, they were in fact lip-syncing from recorded sound tracks. The extent of the deception became apparent in July 1989 when the hard drive got stuck in the middle of a concert and repeated the same line "Girl You Know It's."over and over.[1] Similarly, the recent revelation that a popular rock band, "Velvet Sundown", is solely the creation of AI, including the pictures of the band members and their musical compositions, should serve as a warning as to authentication issues in court.[2] The motion picture "The Net" deals with the problems of authenticating who a person actually is. Obviously, a birth certificate is a good starting point, but if government records should have been tampered with, there is a serious problem. Court records, if the person should be an adult, are similarly useful, but some government records, such as Social Security numbers, are not readily available. The point is that with the ability of modern computer hackers to invent people, a lawyer should not simply take even the "identity" of his or her own client at face value. In a trial, the problem of identity lies at the foundation of such matters as who is a witness and what is the substance of his or her testimony. For example, in a deposition, just as in court, it is important that the witness be sworn to tell the truth. The first step in that process is to ask

[1]McIntyre Hugh. "Music's Biggest Scandal the Story of Milli Vanilli Detailed in New Documentary", Forbes. 2023.

[2]"AI 'Band' The Velvet Sundown Officially Confirm They're AI-and a Provocation", Rolling Stone. 2025.

Citation: John McClellan Marshall. AI and the "Milli Vanilli" Factor in the Court. Open Access J Artif Intel Tech. 2026. 2(1): 1-4.
DOI: doi.org/10.61440/OAJAIT.2026.v2.25

the witness for a full name and address on the record. In a rather notorious case in Dallas, a criminal defendant, being prosecuted under the name "John Smith" [not his real name], who was a prominent member of the community, was on trial. When he took the stand in his own defense, his lawyer asked his name. The defendant replied, "Sam Jones." After a brief recess, his lawyer, understandably, was stunned to find out that his client had been living and doing business for 30+ years under a false identity and was in fact a deserter from the US military. At least he was being truthful on the stand.

Another example, which came into vogue during the pandemic, is the extensive use of the Zoom platform for hearings and even trials. The problem is that there is a potential for there to be "cue cards" outside the range of the camera to prompt the witness. This was demonstrated in a trial when the witness, who had a Hispanic surname, was being examined. When the question was asked, she would pause and look to her left, then look back at the camera with an answer in flawless English. After a couple of minutes, the court asked her what she was looking at, to which she replied that she was looking at a monitor that had all of the participants on it. Her lawyer, in the background, broke eye contact with the court and began to study the floor. She was instructed to stop looking away for the remainder of the examination. On the next question, her reply was in pidgin-Spanish in which she said that she didn't speak English so well, at which point her testimony ended. In a more recent, case, during a deposition the lawyer for the plaintiff was examining the defendant. The defendant had a cell phone sitting on the table, and the defendant looked at it from time to time. The lawyer asking the questions realized that there was a possibility that the witness was receiving information on the screen, so he grabbed the phone and, sure enough. The deposition was halted, and the situation was sent to the court for proper action. The point is that the authenticity of the "Jones" testimony, the "Hispanic" witness, and the cell phone intrusion could have been clarified by a proper inquiry in the former and an instruction in the latter case to leave cell phones outside. Particularly in the latter instance, the technological component to the testimony could be outcome determinative.

An early hint that something might be changing in the technology of trial presentations came in the late 1980's when a plaintiff offered video evidence of injuries that made it impossible to carry groceries in the right arm, so it appeared to be carried in the left arm. Upon objection by the defense, the court allowed the full video to be played for the jury. As the camera panned back, it showed a mirror with the legend "Objects may be closer than appearing", so that it was apparent that the plaintiff was carrying groceries in the right arm, not the left. At that point, the outcome of the case was predictable. Moving forward into the 21st Century, one of the most frequently cited benefits of modern technology has been the introduction of what might be termed "techno evidence" into the judicial process. Techno evidence can be defined simply as "that information that would not be available to the trier of fact (whether judge or jury) no matter how smart the investigator, in the absence of modern technology".[3] Put another way, if it should be evidence that cannot be deduced by the employment of sheer brain power by a human being, it may be deemed to be admissible in court because of its seemingly intrinsic trustworthiness.

The simplest and most common example of techno evidence is evidence derived from DNA. Without technology, the fact that DNA exists would not be available. It should be noted that the definition of admissibility as to DNA evidence has varied with the improvement in technology that has expanded both detail and accuracy. That said, the expansion of "techno evidence" in the trial context creates an additional level of difficulty in terms of authenticating images and data. A variation of the use of such platforms as Zoom is the introduction of virtual reality technology to prepare evidence for presentation, particularly in accident reconstruction. Holograms that purport to represent an accident sequence are available. Also, from time-to-time courts have been confronted with deposition testimony from a witness who has died since the deposition was taken. In such cases, some lawyers have created an image of the deponent, including voice simulation, to "testify" in court using virtual reality AI. The problem in both cases is that there is no practical method to test the authenticity of the images offered in court. This is compounded by the tendency of "bots" to respond by creating an answer or image that it thinks the lawyer wants to hear or see. As a result, the court and jury are at the mercy of the conditions and information that the lawyer fed into the algorithm externally without knowing, or being able to find out, what they were. The ethical issues presented by such use of AI are obvious.

In addition, the replacement of video recording or photographic images by digital images places a new burden on the party offering them. A conscientious opponent will likely object, forcing the trial court to allow voir dire of the witness as to when, where, and how the image was created, and, if appropriate, whether any modification was made in preparation for trial. Because modern images contain metadata that would confirm or deny any modification, the authenticity of the image is by definition in issue, and the offering party should be prepared to support the offer. In effect, the burden on the offering party, whether plaintiff or defendant, has shifted to demonstrating what the image or document is not, i.e. not modified, not taken at a later date, not false in its representation. In other words, the offering party probably must prove these negatives as to the image offered by going behind the image itself into the metadata to validate its digital origins. The same problem would apply to a document that appears to be an original, but which, even if signed in a different color ink, may have been modified. In such cases, expert testimony might be needed to authenticate such documents or images. In a personal injury matter, for example, the hospital records, as well as photographs and x-rays, if any, would need to be authenticated, especially if they are digitally produced or stored. The authentication of an MRI, because it is ab initio artificially created by magnets and stored digitally, would need to include such things as the proper maintenance and calibration of the machine that created it and the storage protocols. In such a situation, the testimony often involves an "expert witness" whose function is to explain the technical aspects of the treatment to the lay persons on the jury, or even the

[3]See Marshall John McClellan. "Techno evidence: The Turing Limit 2020", Journal of AI and Society. 2021.

court. In effect, the expert witness serves as an extension of the technology that is being described. The presentation of techno evidence is, therefore, a two-step issue. First, the witness must be qualified under the well-established "credentials-methodology" structure.[4] At this point in the proceedings, the judge is in the position of "gatekeeper" in deciding whether the evidence is "authentic" enough to be admitted. In the practical, legal context, the problem of the impact of evidence on perception is the subject of the evidentialist debate among scholars. At its most basic, evidentialism posits that epistemic justification is the product of evidence [i.e. facts]. Conversely, the justification for disbelief is also the product of evidence.[5] In those activities that inherently involve decision-making, the quality of the decision can be affected by a variety of factors. For example, the "hungry judge effect" describes the gradual diminution of the quality of decisions over a given period of time.[6] A dose of "legal realism", however, challenges the traditional view that legal judgments can be mechanically or logically derived from official legal materials, such as statutes or cases.[7] Indeed, it has been pointed out that "The life of the law has not been logic; it has been experience."[8] Such external factors as ideology or policy preferences of the judge, inherent biases, and even intuition can, and often do, impact this process.[9] Another example of external, human factors in the decision-making process occurred in a divorce case, the judge, after hearing the usual evidentiary presentation, denied the divorce, to the astonishment of the lawyer and his client. The next day, the judge contacted the lawyer to inform him that the order had been modified to grant the divorce and apologized because he and his wife had had a large disagreement the morning before the hearing. Such can be the impact of the human factor.[10]

The current rules of civil and criminal procedure prescribe the steps by which evidence must be authenticated before allowed in a trial. For example, if a photograph is offered, it must be shown that the witness recognizes it as an accurate portrayal of what it shows. In the event that the image is digital, the possibility of manipulation has to be excluded, which means that the judge as "gatekeeper" must understand the technological potential of authentication. In this context, the concept of "virtual reality", already in vogue with some in the legal community, effectively has been translated by the imposition of AI into a surreality that may or may not enhance the accuracy of the perception of the viewer.[11] Surrealism, as an artistic doctrine, rejects logic, reason and natural order. It uses techniques such as dreamlike or ghostly qualities, juxtaposition (a method for rejecting harmony in their work), and incorporates surreal objects and subject matter.[12] In fact, what may be happening is an increasingly rapid, and unstructured, intellectual revolution, the end of which is not readily foreseeable. . .in other words surreality fueled by machine technology rather than human artistic input.[13] The legal consequence, i.e. perception of the judge or jury, is obvious, though the extent of potential error is not. This situation in effect potentially sacrifices authenticity for theatricality and crosses the line from virtual reality to surreality. In the modern trial context, however, the expert witness probably should address the characteristics of the machine that was used to create the evidence. A failure to do so could well invalidate the expert testimony and the integrity of the evidence that was offered as a whole. The issue may not be traditional AI in the sense of "artificial intelligence", but it could well be a matter of "Augmented Intelligence" when the human witness is testifying from machine-generated evidence. For the lawyer, it is vital that the evidence that is presented to the finder of fact, whether judge or jury, must be authentic on its face or subject to authentication.

As an example, the recent advent of "chatbots", such as ChatGPT, has become fashionable in the day-to-day operation of the practice of law. This form of "research assistant" is both fast and convenient in terms of its ability to search data bases or compose documents, and some lawyers see it as transformational.[14] A problem inherent in the use of chatbots as "research assistants" is their ability to "hallucinate" facts or even "create" other "books" internal to the programming unbeknownst to the user.[15] The result of such "hallucination" can well be erroneous conclusions, if that is what is sought in the inquiry. This debate, a very timely one in the legal community, is already injecting caution into the discussion relative to the authenticity of what the chatbot discovers.[16]

Even though there is an increasing willingness to depend upon the accuracy of the machine, that dependency creates the illusion of an authenticity that has to be explored. It is the AI-driven disconnect between the human and the machine that fosters the

[4]Daubert V. Merrell Dow Pharmaceuticals, Inc., 509 US. 579. 1993.

[5]Earl Conee, Richard Feldman. "Evidence", in Quentin Smith, ed., Epistemology: New Essays. 2009. 83-104.

[6]Andreas Glöckner. "The Irrational Hungry Judge Effect Revisited: Simulations Reveal That the Magnitude of the Effect is Overestimated",Judgement and Decision Making. 2016. 11: 601-610.

[7]John McClellan Marshall. "Examining Judicial Decision-Making: An Axiological Analytical Tool," 29 Studia Iuridica Lublinensis. 2020. 3: 55-65.

[8]Oliver Wendell Holmes. Jr., The Common Law, Boston. 1881. 1.

[9]Glöckner. supra at 602.

[10]Actual experience related to the author by The Hon. H. Dee Johnson, Jr. in 1976, then the attorney in question.

[11]Surreality can be defined as the modification or morphing of objective reality into a substitute, alternative reality generated by AI software, impacted of course by the inherent biases of the creators.

[12]For an example of the distortion of reality through the influence of surrealism, see Salvador Dali's famous paintings The Persistence of Memory (1931) and The Melting Watch also known as Soft Watch at the Moment of First Explosion. 1954.

[13]See, John McClellan Marshall. "AI: Surreality in the Law", Iustitia [Journal of the Polish Judges Association]. 2005.

[14]Derouen Brenda, "The Future of Law? How Chat GPT Is Changing My Law Practice", 86 Tex. BarJ. 2023. 542.

[15]See Mata V, Avianca. Case No. 1:22-cv-01461 (US District Court for the Southern District of New York) June 2023, cited in Law 360 for an example of the consequences of reliance on chatbots that can "hallucinate". 2023.

[16]See Browning John G. "New and Improved? The Risks of Using ChatGPT", 86 Tex.BarJ. 2023. 544.

problem in the modern context. Current cases reflecting the use of ChatGPT, or similar AI platforms, to compose documents based upon its own research, and the occasional modification of language, for example, from "and" to "or", can impact the presentation and outcome of a case dramatically. Unfortunately, they also reflect a certain laziness on the part of some practicioners that leaves too much to the machine. . .an ethical problem of massive import. After all, the "bot" program reflects the inherent biases of the programmer of which the user is likely ignorant. Further, the machine has the tendency to respond with an answer or a composition that it believes is what the inquirer wanted. The degree to which those factors are present create an almost impossible barrier to the determination of what is "reality" and what is "surreality". When coupled with the potential for the machine to "hallucinate" without warning, the outcome can carry the "Milli Vanilli Factor" to new extremes.

Acknowledgments

The preparation of this article was not funded by any source other than the author.

No human or animal experiments were conducted in the research for this article.

There are no known conflicts of interest involved in the preparation, or ownership, of this article.