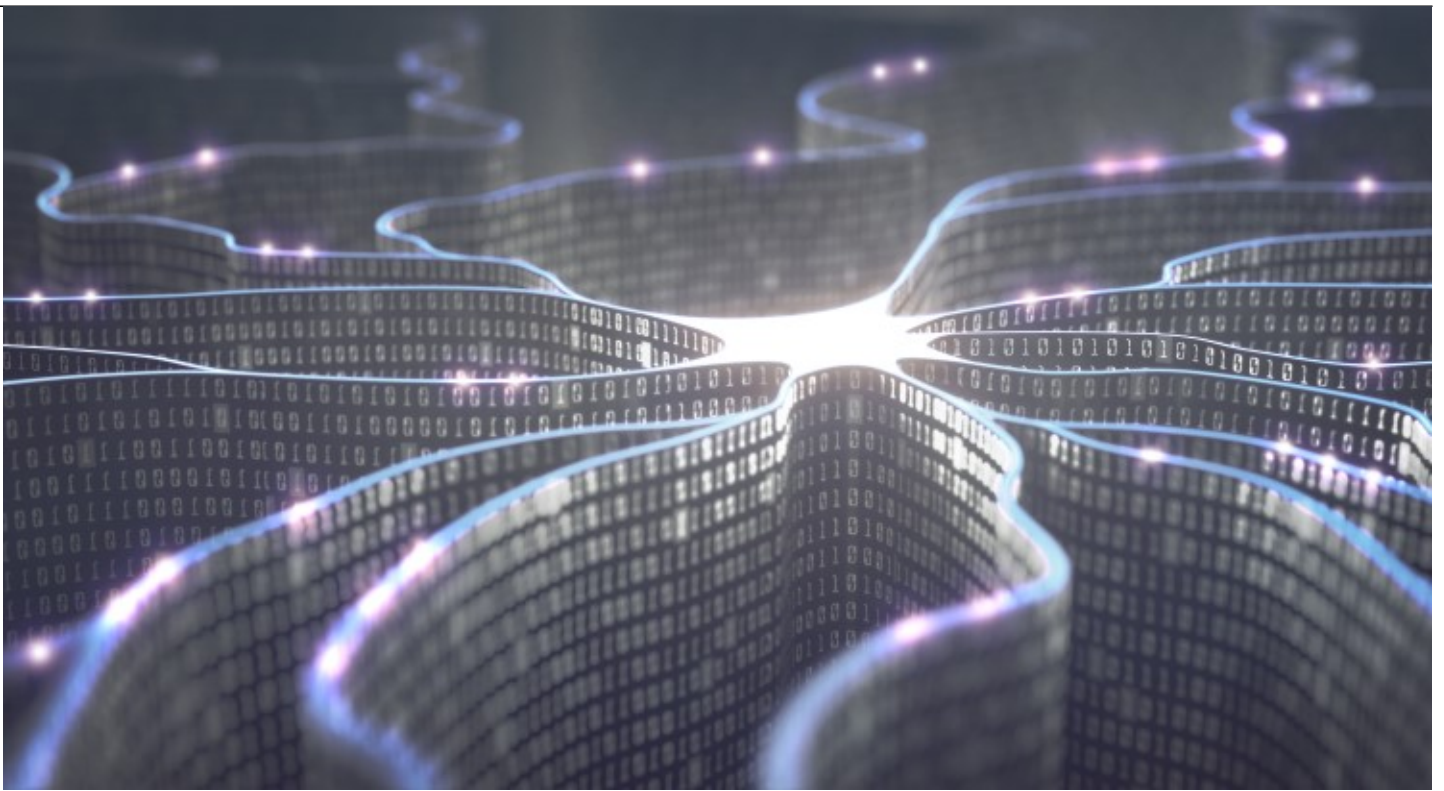




## **The Proof**

**Technology, Privacy, and eCommerce**



*Ppl cn rd ths sntnc dspt th mssng vwls.* The human mind is amazing at pattern recognition. Our ability to construct complete pictures from fragments is a marvel. It is also a necessity. Blind spots are not just psychological and emotional. Medicine has long recognized the punctum caecum (“blind point”) as the location where the optic nerve passes through the optic disc resulting in an area devoid of photoreceptor cells. We are oblivious to our partial blindness because our brains interpolate — i.e., fill in the gaps based on surrounding detail.

Automatically filling in the gaps, however, means we sometimes “see” things that aren’t actually there or miss things that are. And, every now and then, the unexpected lacunas or details in the gaps are important. In those instances, seeing what is in our mind can get in the way of seeing what is actually in front of us. The realization that one of our greatest perceptive powers is also among our most dangerous perceptive weaknesses can lead to poignant reflection on the human condition. But I want to talk about proofreading.

We are terrible at proofreading our own material because we think we know what it says. We tend to be 99.8 percent right. Unfortunately, 0.2 percent can matter. Typos are embarrassing. They lower our esteem in the eyes of our reader (client, judge). They also create ambiguity that results in years of litigation or millions of dollars in losses. Lawyers sweat the small stuff because the small stuff can become big stuff.

One of the greatest kindnesses I ever performed for outside counsel was to require them to follow a formal proofreading process. All items of any import were given to an individual not involved in their drafting and put through a proofreading checklist. This mandate improved quality. It also reduced cost despite my permitting the proofreader to bill. My outside counsel were fantastic, but they were also imperfect perfectionists. Before being authorized to bring in someone with no knowledge of the

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matter, they would repeatedly pore over their own material in search of error. They went to great effort (and expense) to suppress their humanity; they tried to read the text like a machine.

Indeed, proofreading is an area where human plus machine is far better than human or machine alone. Most of us are familiar with the limitations of Word's built-in spelling and grammar checkers. In one breath we curse them for their weakness, while, in the next, we complain that no one learns how to spell because we have grown too reliant on our machines correcting us. In truth, our standard word processing tools, cell phones and search engines do a competent job of pointing out that we may not have written what we intended to write.

There are many additional technology tools that can substantially augment our proofreading prowess. The first item on my proofreading checklist required the human proofreader to run specialized proofreading software. The software went beyond Word's native capabilities in identifying potential misspellings, misused words, inconsistent formatting, inconsistent numbering, contractions, blacklisted jargon, improper punctuation, etc.

One area where legal-specific proofreading software has gotten particularly advanced is in the review of contracts. The software can read a contract, or a series of interrelated contracts, to find errors in numbering, cross-references and defined terms. This software does many things well. But, probably most important is what the software does not do. The software does not get bored. The software does not get distracted. That, and the second set of machine eyes performs in seconds a review that would take the most punctilious human hours to complete.

There is even software that will improve your writing (not mine, I'm beyond help). Gary Kinder, a renowned legal writing instructor, recognized that many rules he preached could be automated. He created a program that scans your draft documents for problematic words or phrases and then recommends superior alternatives you can accept or reject. For example, the software will identify "we stand in agreement that this section has pertinence to any contract" and make several recommendations that get you to the more concise "we agree this section pertains to any contract." It's like having Kinder himself helping you — absent the fear of being judged harshly for your linguistic misdeeds.

Despite evidence to the contrary, lawyers are human. Humans make mistakes. Humans also have a hard time recognizing their own mistakes. Fortunately, with common writing errors, there's an app for that.

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