Pioneers and Pathfinders: Oded Oren

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Steve Poor
Today's guest is Oded Orden, the founder and executive director of Scrutinize, a nonprofit that uses data analytics, AI, and legal research to shed light on complex judicial data. Before starting Scrutinize, Oded was a public defender in the Bronx. While there, he began digging into publicly available court data to spot patterns in how judges were ruling, an approach that soon evolved into the foundation for Scrutinize.

In our conversation, Oded shares how his work in the courtroom sparked the idea for the organization, what kind of feedback they've received, and what's next for Scrutinize. We also talk about the challenges and rewards of building something new in the legal space, and the advice he has for others thinking of doing the same. Thanks for listening.

Oded, how are you today? Thanks for joining.

Oded Oren
Hi Steve. Thanks for having me on the show. It's good to see you.

Steve Poor
I know you're on vacation, so I appreciate you making the time.

Oded Oren
My pleasure.

Steve Poor
You founded and you're the executive director of Scrutinize, which aims to promote judicial transparency. Tell us about your experience with the Bronx Defenders, particularly the components of it that led to your decision to start Scrutinize.

Oded Oren
So, it was less about the specific experience of the Bronx defenders and more about the experience of public defense generally. I think that when you are in court every single day, appearing before the same 30 or so judges, you begin to see patterns. You begin to understand which judges know the law better and which the judges know the law less well. Who's going to try to undermine your argument when you make it who's going to be more critical of the prosecution's position? Who's going to delay the case? And so the more you practice, the more patterns that you see in the courtroom, the more judges you recognize as being one way or the other. It becomes obvious. And so when the pandemic hit and I found myself with a lot of free time on my hands because the courts closed, I decided to start looking in these into these patterns, not from the perspective of a public defender in court and anecdotal evidence. But instead, through data, I started taking online classes to learn how to analyze data, how to

code, how to run statistical regressions, and once I had some kind of foundation with that, I began looking to see whether through the data I could find the things that I found in court, that I saw in court, and at some point I saw that the data did speak in those patterns. You could see from the data which judges are getting reversed more often, which judges are being more punitive than others. And at that point, I realized that the data could be really useful for translating to people outside of the court room, what we as practitioners know is happening in the courtroom. So that was the initial spark for starting Scrutinize. I can speak a bit more about why I thought it was important, but that was the initial spark.

Steve Poor
Yeah, I want to get to the second question here in a minute, but I'm curious. So you're you're teaching yourself data. One of the challenges, and we'll talk a little bit more about this when we talk about how Scrutinize gets its data and everything else, but one of the initial challenges has to be access to the underlying data itself before one can analyze it. You're sitting at home in the pandemic taking online courses. How on earth did you figure out where to get the data from to analyze?

Oded Oren
So I think it came as part of the coding experience as well. I started looking for ways to use what I was learning in these virtual classes on something real and grounded. And so I started looking for data, and what I realized was that there was this huge database, public database, that is accessible to everybody, and that is court opinions. Because in state courts, or at least in New York State courts, all of these opinions the judges offer in the lower courts or in the appellate courts, all of these opinions are public and available online. And so, you can start thinking about each opinion as a data point that you can extract information from. So, I realized I had this amazing data at my fingertips that I knew how to read because I was a lawyer, and all I needed to learn was how to code all that text into a data point that could be analyzed.

Steve Poor
Huh, that's fascinating. So what inspired the transition to entrepreneur, to start Scrutinize, and leave the public defender's office?

Oded Oren
So, the first step was really recognizing that the patterns that I saw in court were patterns that I could see also in the data. So I realized there was something there, but that's sort of built on top of another realization that I've had throughout my practice in the Bronx, which was that there was not a lot of accountability for the judges I was practicing in front of. You go to court every single day and use judges that don't necessarily know the law, who get reversed regularly, sometimes on the same issues, making the same mistakes. You know, you litigate motions and you make legal arguments, see which judges are catching on and understand the underlying law and which judges are not. But despite everything that I knew about the bench and about the individual judges that I was practicing in front of, I knew that they were going to be sitting on the bench a year from now and five years from now and 10 years from years from now, and that's because in New York, was not really accountability for judges. They kept getting reappointed or re-elected or promoted to a higher court--no matter what. And so I thought, well, there is an accountability problem, and I have a solution. I have data that can show which

judges are doing well on the line, which judges are getting reversed or making mistakes. Why not combine the two and try to use data to bring more transparency and more accountability to the bench?

Steve Poor

So, one of the problems you must have encountered during--I think you spoke at one point about your experience working at the Bronx defenders, about not all judges decisions are published, particularly at the trial court level. How do you deal with that problem?

Oded Oren

I'll give maybe a bit of background about these decisions. So we're talking about the decisions that judges at the lower level, at the lower trial levels, and when I was published, when I was litigating, I realized that out of the hundreds of decisions that I received, you know, through email from judges, only very few of them became public and accessible to other attorneys or to people who voters or the general public. And as a side note, now Scrutinize, we have actually done research on this, and we found that only half a percent to 6% of all of the decisions being written in criminal court, Judge courts are being published. So a tiny, tiny fraction is actually being published. And so at Scrutinize, we do use those decisions to some extent. But what is different with appellate decisions is that all appellate decisions are published. There is a law that require courts to publish those opinions. And so if you're looking at the data at the appellate level, you're going to have all the decisions ever published at your fingertips. And so we are to address this gap of location at the lower level of the courts, but at least in the appellate level, we have all the data that we need that exists.

Steve Poor

You mentioned accountability, holding judges accountable at both the trial and the appellate level, I presume. What's your audience for that? General public? Other lawyers? Other judges? All of the above?

Oded Oren

All of the above. So I think that state courts are special, because unlike the federal judiciary, state judges do not enjoy life tenure. They have to be reappointed or re elected every so often, and that means that they can be held accountable with by the public or by decision makers for their decisions, we can Scrutinize what they decide and how they decide and how they reason, and we can make a determination about whether we want them to continue presiding from the bench or not. And so, each state has a slightly different mechanism for how to elect or appoint their judges and how a judge can stay on the bench for longer. New York specifically, has a complex system with multiple ways of ending up on the bench. You can be appointed by the mayor of New York City or mayors in localities. You can be appointed by the governor of the state. You can be elected in various races, or you can be appointed to the court by the Chief Administrative Judge of the entire state. And so, at Scrutinize, what we hope to do with our data is reach all those decision makers, whether it's the committees that advise the mayor and the governor, whether it's the mayor ot governor themselves, or the public and the voters and those involved in those elections who are choosing which candidates will be running and will be on our ballots.

Steve Poor

What type of feedback have you gotten from those audiences? You've now been up and running for two and a half years, so you're still relatively new, relatively young, building your profile. What's been the initial feedback from those decision makers' audiences?

Oded Oren
So far, we have had a lot of good feedback from local elected officials who are involved in one way or another in the election of judges in New York City. We have heard from several of them that they use our system, that they use our data, that it has helped shape and send their votes for which candidates to support and which candidates not to support. I have not heard unfortunately, from selection committees, whether the mayor's selection committee or the governor selection committee, on whether they are using our data or not. My hope is that they are, because there is no reason not to. I haven't heard directly from them. And then finally, we do know that a lot of New Yorkers, voters, and the general public are using our data. We receive emails from them, and we just see a lot of traffic on the website from New York State, where people are viewing our profiles and spending time on the website.

Steve Poor
You've mentioned the goal is to increase accountability and transparency for the judicial system, and is access to data one of the biggest challenges you've encountered in trying to bring clarity to an opaque system or there, there must be other challenges as well.

Oded Oren
Yeah, I think data is definitely a challenge, but I think the biggest challenge has been the court system itself and judges themselves unfortunately. Unlike other public officials, judges are not used to being Scrutinized. I think for many of them, the judiciary stands apart from the legislator or the executive branches. The judiciary is viewed as independent, neutral, impartial, and I think that because of that, many judges believe that they should be above the scrutiny and oversight that other public officials, elected or appointed or otherwise are subject to. And I think in part, this is a learned belief, right? Because for a very long time, state judges have been more or less ignored. They were thought of as less than their federal counterparts. There's not a lot of attention in the media to state courts, not as much as to the federal courts, and so they were left to their own devices. So then, you know, I come along and I start not only surfacing patterns in the data, but also attributing them to judges by name, and I understand why they were uncomfortable and why they are still uncomfortable with what we do, because that is not happened for decades and decades before, and so we have seen pushback.

Steve Poor
Is one of the issues...You get pushback. I know you use, in addition to data analysis techniques, you also use AI as part of your program. Do you get concerns about the ethical use of AI? I presume, like most organizations that use AI, you do and how do you how do you deal with that? How do you make sure that the analysis going through these, these various systems is ethically used and effectively used? Because this is a very sensitive topic, particularly, as you mentioned, for the judges.

Oded Oren
For sure. So AI, we have used in one of our metrics, our data analyses as a proof of concept. What we did was we analyzed appellate decisions for decisions where judges were reversed on constitutional

issues, specifically on rulings and suppression hearings. And we then we identified all the cases where such reversals happened, and then we ran all of the cases through an AI process that we developed to see whether the AI can classify these decisions the same way that we did manually. And we found that it did so in a very high accuracy. So we haven't done anything which is only based on AI. I think that now that the models have come so much better. This is definitely where we're going to go, but we haven't done yet. I will say, though, that we build a lot of processes into our data analysis in order to guarantee that we are fully accurate. So, first of all, in any report, in any analysis we put out, we publish a very detailed data and methodology section, where we detail exactly, step by step, all the steps that we've taken in analyzing the data, but specifically for using AI, what we have done is build a process where the AI is asked to classify, Was there a reversal for suppression, or wasn't there a reversal for suppression? And that process runs several different times, five different times, in order to find any discrepancies between the answer of the AI on any run. And so, this allows you to use some of the features that are inherent in generative artificial intelligence in order to identify cases that are edge cases where the AI is giving you different answers. In those cases, you can go back and read through manually. And so that is the process that we implemented before; it was very accurate. We basically manually reviewed all of the decisions to make sure that it was correct. And I think that now that we're moving past GPT 3.5 and 4, which is what we used in the past to the newer versions that are much smarter, quote, unquote, we're going to see just much better results, even better than we were getting before. I can give you a glimpse and say that I recently reran that analysis and got 100% accuracy rate. Well, that's awesome. It's amazing. Yes, we have come a long way of AI. And so I think once AI normalized in the legal field--and Steve, I know that you have done a lot of work on that--I think that we're going to see it being implemented in more and more ways, because it is, as you know, a large language model, it is just built for the work that we're doing. It's very good at it.

Steve Poor
Absolutely. You mentioned the reports and some of the data you've come up with. For those listening, there's a number of fascinating reports on Scrutinizes website. We'll put a link in the show notes. One of them that caught my eye was a report you did. I think it's called cost of discretion, where you talk about the cost of pretrial detentions and the impact of certain judges decisions, and you tried to quantify them in terms of the cost the government or society was was incurring as a result of these decisions. Talk to us a little bit about the findings of that, and have they affected the way we talk about these judges? Have they affected policy? What impact has it add?

Oded Oren
So, yes, you are correct that that report is called the cost of discretion, and it was our first report. We wrote it with the Zimroth Center at NYU Law and with another organization, with an author who is a professor of mathematics and data analysis. And what we did in that report is we did not use appellate opinions or trial decisions. Instead, we used a different data set, which is pre trial detention data that the court system itself publishes here in New York, and we developed a model that identified which judges all else equal were more likely to order someone to be detained, compare their peers. And the report identified 14 of those judges who were the most likely to detain people on bail, and named those judges, which was again, sort of a break with tradition in the past, where there was not a lot of scrutiny of judges. I think that report has helped some people make decisions as they were submitting judges. I cannot get into more details, because that's kind of information that was given to me privately, but I

think the report really demonstrated the sort of knee-jerk reaction of the judiciary to being Scrutinized. This report led to a lot of backlash from the judiciary about sort of our conclusions and the names and, yeah, that was sort of how we started with that.

Steve Poor

Yeah, but it's, you can argue that you shouldn't name names, but it's hard to argue with the facts as demonstrated by data.

Oded Oren

Yes, exactly. That was sort of our point, right? This is all public data. These are decisions of public officials. You may not like that the data shows that you are more punitive or less punitive, but that is the data, and there is no reason to stop analyzing it or withhold it from the public, especially when the person who's making these decisions is a public official, just like the governor is, or our elected senators and assembly members.

Steve Poor

You cover New York with Scrutinize, state court levels in New York, what's the long term vision for Scrutinize? Because this is a problem, not just in New York.

Oded Oren

Yes, I think that in the long term, the hope is to be able to develop more metrics, more data, not only on the lower court judges, but also on the appellate judges. We already have a lot of that data. We just have to analyze it in a way that makes it accessible, and then the hope is to expand to other jurisdictions. We're actively thinking about where to expand, and sort of marshaling the resources to do that, but the hope is to bring scrutiny and analysis and data to other states, because all across the country, state courts are making huge changes and differences in people's lives, and they have been doing it for decades without scrutiny and any change that you want to make in state courts, if you want to make any, has to start with some objective truth about what the data is, what is happening, and then people can reason from that to decide how they want to shape theirs.

Steve Poor

I know that Scrutinize is a is a nonprofit. That's right, and I know that you utilize key partners in both supporting and doing. As you mentioned, the first report was done in conjunction with other folks. As you look to expand Scrutinize, how do you view the partnership model as working? I assume it's worked well for you in New York. Is that a model you plan to expand on? Are you looking for additional partnerships outside of New York to help you expand?

Oded Oren

Yes, we are definitely looking for partnerships as we expand, I think that partnering with other organizations has been fundamental for our ability to do this work. You know, we are a very small nonprofit right now, it's just me, and we are dependent on expertise that. I don't have, or that people who have worked with me in the past do not have. I'll give one example maybe. We've been successful here in New York obtaining new data that has never been made public before through freedom of information requests. And I don't know how to litigate those cases. I've never litigated them. I do not

have the time to learn the law and to start litigating. And so, what we have done is partner with several organizations who have those practices. So with the ACLU of New York, with the Harvard Cyber Law Clinic, and with Cornell First Amendment clinic. We've partnered with them, where they represent us pro bono, and we've been very successful in obtaining data that has never seen the light of day before. In fact, we recently obtained for the first time, a list of all the judges who are currently sitting in courts across New York and the firm length that they have, which you would think was information that was public before, but it was never public. And so, through our partnership within the organizations, we've been able to make public data that is so fundamental for our democracy and for public education, and we just couldn't do a lot of things that we do without these partnerships. So yes, definitely, we are looking to expand and to make more connections and partnerships.

Steve Poor
How do you keep the data up to date, particularly if you've got to go through FOIA requests all the time. So judges change. They get moved around, given how thin you must be stretched. How do you keep the data fresh?

Oded Oren
It depends. It depends on which data we're talking about. You know, again, some of the data is made public by the court system on a biannual basis. So we're able to just download it a few times and keep it up to date--as up to date as we can based on what the court system is doing--on the information that we obtained through the Freedom of Information request. You know, my hope is that the court system will just make that information publicly available and update it regularly. I don't think that's their number one priority at this point, and so we will just have to keep filing freedom of information requests every year until they make that data public and update it regularly.

Steve Poor
So, you made this transition from trial lawyer to startup. What advice would you give to other folks who may be interested in starting up an operation, particularly one focused with justice and accountability and transparency? What lessons have you learned that you would share for an aspiring entrepreneur in this space?

Oded Oren
I think maybe the two main lessons are, first, to talk to as many people as you can about whatever idea or subject you're interested in, so that you get as many viewpoints as possible. Before I started Scrutinize, I would email out of the blue people who worked in the space or who had published about topics that are related to judicial accountability, and just try to talk as many people as I can, to run my ideas by them, to hear what they had to say and what they were thinking about, in order to build a better understanding of what the field looks like and whether my idea had any legs to walk. I think the other tip I would give to anybody who's thinking about a tech legal startup is to use AI, and Steve, I'm sure that you hear that from a lot of people. I'm sure you do that, but I just think that there is a huge potential for the work that we lawyers think about and do with AI, and I think we're only beginning to scratch the surface of how influential and empowering it can be. And so I would just recommend that people subscribe to one of the GPTs and start asking it questions, left and right and center all the time,

to understand what the limits are and what the capabilities are, and see how it can influence their work, make it easier, make it better. Because I'm sure there are ways in which it can.

Steve Poor

those are great pieces of advice for our listeners. I appreciate it. The other thing, another note I'll make for our listeners, is that on the Scrutinize website, there's an opportunity to donate to their mission. If any of you have been impacted by Oded's discussion today, feel free to click on and contribute to the cause. Oded, you're doing some great work. We really appreciate you making the time. Thank you for the conversation.

Oded Oren

Thank you, Steve, it was a pleasure to talk to you today. Thanks for having me on the show, and thank you for the plug for the donations. I appreciate it.

Steve Poor

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