

Who Needs a Mediator When You Have AI? You Do



By Eric Gillett

Artificial intelligence (AI) has been in the news lately. What implications does it have for mediation? Will you be able to settle cases more efficiently and get a better result with “big data” at your fingertips? Maybe.

Some people are very excited about what AI offers now and what it will offer in the not-too-distant future. Others are scared and are warning anyone who will listen to be scared too. For some, the list of what bad tidings AI has in store is long. AI will destroy human interaction. AI will hurt people. AI will develop faster than we can understand it. AI will become sentient and decide humans are not wanted or needed. Arnold Schwarzenegger demonstrated that years ago; or is that years from now? In any event, AI is populating our thoughts.

AI uses algorithms. Algorithms are simply a set of instructions a computer is programmed to follow. For example, instruct AI to add 1 plus 1, the answer is 2. But AI uses multiple algorithms to follow multiple instructions and to learn from the data gathered while it follows those instructions, and then create new instructions of its own based on the new inputs. For example, if the computer is programmed with every book ever written on the

subject of swimming, it can learn very well to teach someone how to swim. It learns what methods are most frequently written about, what successful swimmers almost always do and then decides (intelligence) how to instruct the new swimmer how to swim.

One form of AI receiving popular attention is GPT-e, or third generation Generative Pre-trained Transformer. This neural network machine learning model is trained to use internet data to generate text. It requires only a small amount of input text to generate large volumes of relevant and sophisticated machine-generated text.

And of course, many of us are familiar with our cell phone bots such as Siri (Apple), or Alexa (Amazon), or Google Assistant. Ask a question. Your AI friend may have the answer.

With all this artificial intelligence, who needs to hire a mediator, at least one who is a real person? Think of the database that an AI program could have at its disposal. Name the injury, describe the treatment, input the depositions, input the expert reports. AI can compare all of that data to every other case in its database and advise the parties, either together or separately, what the case is worth. Done and done.

AI has the potential to enhance the mediation process by providing unbiased, data-driven recommendations and decisions. AI systems can analyze vast amounts of data to identify patterns and predict outcomes, allowing

them to provide accurate and impartial recommendations to disputing parties. For example, AI can analyze historical case data and determine the most likely outcome of a lawsuit based on similar cases, taking into account factors such as jurisdiction, parties involved, and issue type.

In addition to providing accurate and impartial recommendations, AI can also streamline the mediation process by automating administrative tasks and reducing the time and effort required for human mediators. For example, AI can automate the scheduling of mediation sessions, the distribution of documents, and the tracking of deadlines, freeing up mediators to focus on more important tasks such as negotiating and resolving disputes.

Another advantage of AI in the mediation process is its ability to learn from past cases and continually improve its recommendations over time. AI can store and analyze vast amounts of data from previous mediation sessions, allowing it to identify common themes and trends and continually improve its decision-making process-

es. This makes AI systems well-suited to complex and high-stakes disputes, where human mediators may struggle to find solutions.

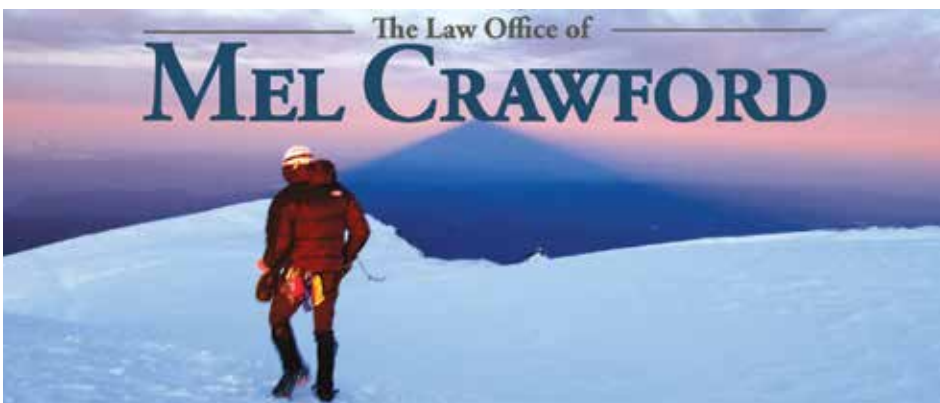
Of course, this futurism doesn't account for everything. For example, it doesn't account for the twelve people we call our jury. And it doesn't account for the esteemed member of the bench, we call our judge. So blind reliance on the cold musing of an AI mediator bot may not accurately predict the outcome of a case refereed by a fallible judge and decided by an unpredictable jury.

AI has already transformed many industries, and the legal sector is no exception. AI has the potential to revolutionize the way lawsuits are mediated and perhaps replace human mediators in some cases. However, despite the potential benefits of AI in the mediation process, there are also concerns about the impact of AI on human mediators and the legal profession as a whole.

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Registration Open for Labor & Employment Law Conference in Seattle this April

The KCBA Labor & Employment Law Section is proud to present the **56th Annual Pacific Coast Labor & Employment Law Conference at the Seattle Convention Center on April 27-28, 2023**. The Conference is typically the largest labor and employment law conference in the Pacific Northwest, welcoming around 300 attendees who average 14+ years of experience representing employees, unions, management, or government agencies in labor and employment matters. Prominent speakers from across the United States travel to present at the confer-

ence. This year's roster includes:

- Former NLRB Member Harry Johnson III, "Can They Say That? Recent Developments in Employee Free Speech at Work"

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- Eric Dreiband (Jones Day) and Dara Smith (EEOC), "EEO Update"

- And many more talented speakers and timely labor and employment law topics, including the modern NLRA, mandatory arbitration, interstate travel for restricted medical care, and mental health accommodations.

The conference is the capstone event for the KCBA Labor & Employment Law Section. Funds from the conference benefit the Mary Ellen Krug Scholarship for law students who show exceptional promise in the area of labor and employment law, and the conference agenda includes a luncheon recognizing this year's scholarship recipients. The Labor

& Employment Law Section is proud of the collegial relationships among members, regardless of whether they represent employees, management, unions, or other interests, and the conference offers multiple social opportunities to help foster these relationships.

The Pacific Coast Labor & Employment Law Conference remains one of the best CLE values in the practice area and an opportunity to meet other lawyers who are passionate about and experienced in labor and employment law. **Register and find more information at www.pacificlaborlaw.com.** ■

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Another concern is that AI may not be able fully to replace human mediators, who bring unique skill sets and human empathy to the mediation process. For example, human mediators are able to understand and respond to the emotional needs of disputing parties, which is a critical component of the mediation process. AI systems, on the other hand, may not be able to understand the emotional aspects of a dispute and may be limited in their ability to provide the necessary support and guidance to disputing parties.

AI has the potential to impact the legal system by transforming the way lawsuits are mediated. AI can provide accurate, impartial, and data-driven recommendations, streamline

the mediation process, and continually improve its decision-making processes over time. However, it is important to consider the potential consequences of AI on human mediators and the legal profession as a whole, and to ensure that AI is used in a way that is fair and ethical. It is unlikely that AI will fully replace human mediators in the near future. The mediation process is a complex and dynamic process that requires human empathy, intuition, and understanding, which AI systems may not be able to replicate.

An AI mediator will not be much help strategizing a favorable result when you are struggling. A live mediator can help a party to find a sweet spot that will resolve the case, high or low even when the chips are down. An AI mediator will not have the nuanced programming that is required

for that task. But unless the parties themselves bring the strength in their case, it is highly unlikely that the mediator, live or artificial, will pull a rabbit out of the hat which gets the party what they want. And as I have discussed in earlier articles, mediation is best used for parties to find common ground and understand what their risks are to help reveal what an appropriate settlement looks like. Running from the tough issue does not bring that party any closer to that number than if it was simply a wish on a list. And an AI mediator will certainly not fulfill anyone's wish list. Unless the data supports it.

P.S. About 20% of this article was generated by AI. I wonder if you can spot the text. Message me on LinkedIn if you want to guess. Or let's set up a mediation and you can decide if it's me on the other side of

the screen or something that calls itself Hal 9000.¹ ■

Eric Gillett is a founding member and managing partner at Preg, O'Donnell & Gillett. Follow him on LinkedIn at <https://www.linkedin.com/in/eric-gillett>. He is licensed in Washington, Oregon, and Alaska. He has tried dozens of cases to verdict and mediated hundreds more. A navigator of resolutions, he is a commercial mediator and can be contacted through his legal assistant, Jasmine Reddy, at 206.287.1775 or jreddy@pregodonnell.com. You can also reach him through his website at www.gillettmmediation.com and his email at eric@gillettmmediation.com While in person mediations can be arranged with all participants fully vaccinated, Zoom mediations are also available and encouraged.

¹ Hal 9000 was a fictional AI character and the main antagonist in Arthur C. Clarke's 2001: A Space Odyssey.



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