

Leadership Note

From the Vice Chair



By Alexander E. Potente

Welcome DRI cyber liability readers! We have a great newsletter for you. We have three interesting articles on very current topics. The first involves AI and the legal profession and the very important question of whether we will have jobs in a decade: “Can Machines Think Like Lawyers?” The second, “Three Ways that Counsel Can Assist Defense Contractors to Achieve Proactive Compliance with the Department of Defense’s Newly Effective Cybersecurity Requirements,” addresses new cybersecurity requirements for defense counsel and ways in which we as lawyers add value to that compliance process. The final article, “Seeing Enterprise IT in the Clouds,” addresses outsourcing enterprise IT and ways it has become integral to our practices. Furthermore, as I hope all of you know, planning for the DRI Cybersecurity and Data Privacy Seminar is well under-

way. Please save the date for it in Chicago on September 6–7, 2018. We look forward to seeing all of you there!

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Can Machines Think Like Lawyers?



By Daniel S. Marvin

Can machines think? That question was first posed by famed British mathematician Alan Turing in 1950, who postulated that at some point in the future, computers would be able to be trained to act like humans. While computer scientists are still pondering Turing’s question, there is a far more relevant question for us to consider: can machines be trained to think like lawyers? After all, when performing legal analysis, lawyers employ a host of human-based analytical tools such as intuition, reason and emotion. Can that be replicated by computers? And if so, can lawyers leverage such technology to their advantage? We can look to the field of computer science known as “Machine Learning” in an attempt to answer those questions.

Machine Learning is a subcategory of artificial intelligence where computers are able to “learn;” that is, they are able to use complex algorithms in order to form predictions based on data that is fed into their system. While the concept has been around since the time of Turing, it is only the past few years that have brought us computer processing powerful enough to analyze the enormous amounts of data

that are being created and attempt to answer his question. Examples of Machine Learning are all around us in our everyday lives. For example, Amazon utilizes Machine Learning to predict what items you are likely to buy based upon your (and others) past purchases in order to suggest future purchases; Netflix uses Machine Learning to predict what movies to suggest to you based upon your viewing habits; Uber also uses Machine Learning to predict pick-up times and traffic patterns; and perhaps the best example, Spam filters use Machine Learning in order to predict what email messages are junk and should be kept from your inbox.

These are examples of “supervised” Machine Learning, meaning that the computers learn based on a user-provided data set. Over time, as more and more samples are entered into its database, the computer will get smarter. With spam filters, for instance, email providers feed in known spam emails, such as those containing the phrases “online pharmacy,” “make money quick” or “looking for a date?” An algorithm will then not only flag similar emails as Spam, but also look for additional patterns amongst

the sample set, such as if they originated from common IP addresses or locations, and then flag those messages as Spam as well. The system will then add those emails to its learning set, and over time, continue to get smarter and be able to all-but eliminate Spam from a user's inbox. Lawyers are already utilizing similar technology to code documents during discovery. As relevant documents are coded, Machine Learning not only filters out documents with similar coded data points, but also sees patterns amongst those documents that perhaps the reviewer missed. In just hours, Machine Learning can cull down millions of documents to a relevant subset that would take an army of lawyers months to discover.

A more interesting aspect of lawyers' use of Machine Learning is can be seen in case modeling. When a matter arises, clients rely on attorneys to analyze both facts and law, and arrive at suitable risk-reward based recommendations. In turn, attorneys rely on their experience, including familiarity with the law, juries, judges and opposing counsel in order to arrive at reasoned recommendations, such as whether to settle a case or take it to trial. The more experience an attorney has to call upon, the better and more systematic of a recommendation can be made. Attorneys must be able to synthesize all of the data they have gleaned through their experience in order to evaluate potential liability, likelihood of settlement, amount of a likely settlement and litigation costs. But even the best attorneys have a limited data set on which to rely. That is where Machine Learning comes into play. With the technology, attorneys are able to create data-driven predictive analysis using not only historical information from their firm, but also from published opinions. Once the data set is created, algorithms can comb all of information contained in it and arrive at case predictions based upon past occurrences.

Let's envision a law firm that has a medical malpractice defense practice. With Machine Learning, such a firm could enter data concerning their various matters into a centralized system. This data could include information such as the type of doctor who is a defendant; the nature of the alleged injury; the age, occupation and other statistics on the injured person, including pre-existing conditions; the initial demand; whether it settled and for how much; the stage of litigation at which it settled; if the matter went to trial and what the jury verdict was; information about the court and judge; and information on any unique legal issues. Using that data set, a Machine Learning system can evaluate the information and perform analytics in order to predict the outcome of future cases. As with a Spam filter or shopping patterns, the larger the data set the better

the predictions. A system with thousands of cases worth of data can see hard-to-detect correlative relationships in-and-amongst the data. While attorneys inherently engage in a similar analysis when evaluating a case, a computer program can analyze immense volumes of data and connect certain dots that even the sharpest legal minds might miss.

The potential of such a system is assisting attorneys and improving client outcomes should not be underestimated. For example, algorithms with a large enough data set might notice that defendant doctors of a certain level of experience are 24 percent less likely to have a jury verdict rendered against them; or it may determine that a settlement agreed upon within the first three months of a litigation would likely be 15 percent lower than those in months three through six; or it might see that injured parties who were out of work due to their injury for six months or more were 22 percent less likely settle a case prior to trial than those who missed no work; or it might recognize that a certain judge or forum is more or less hostile to defendant doctors. These are just a few illustrations of the types of conclusions that could be drawn out using Machine Learning, and counsel can use this data to assist their clients in making informed decisions and determine at what point in a litigation is the optimal time to settle, or if settlement should not be considered at all.

At the end of the day, while computers can conceptually outdo attorneys with their sheer ability to compute huge swaths of data, they likely will never be able to call upon gut-instincts or read people the way humans (and lawyers) can. So while Alan Turing's vision may never be completely realized, lawyers need to begin to at least think about how Machine Learning can be incorporated into their practices in order to both improve results and enhance efficiency. As technology continues to improve and becomes cheaper, clients will to expect that these tools be implemented in order to give them every possible advantage, and lawyers should be ready to meet those expectations.

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