



MESSAGE FROM THE PRESIDENT

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ARTIFICIAL WISDOM

This month's edition of *Nevada Lawyer* explores the countless and intriguing legal issues surrounding the emergence of artificial intelligence in the world around us. Long overdue as a serious line of inquiry for the legal profession, determining how and why the business and activities of our citizens are impacted by this rising influence of software and algorithms can no longer be avoided. Our contributing authors tackle many of the ramifications of what is affectionately known as "AI," comprehensively and provocatively. But it will soon be time to give serious consideration to how these same technological breakthroughs directly assist or disrupt the practice of law and, more importantly, the viability of our system of justice.

Over the past three decades, the legal system and profession have had plenty of experience with both technological disruption and alleged "innovation." The heroic efforts of both practitioners and the courts to wrestle with these issues have certainly produced a mixed bag in terms of results, with unintended consequences,

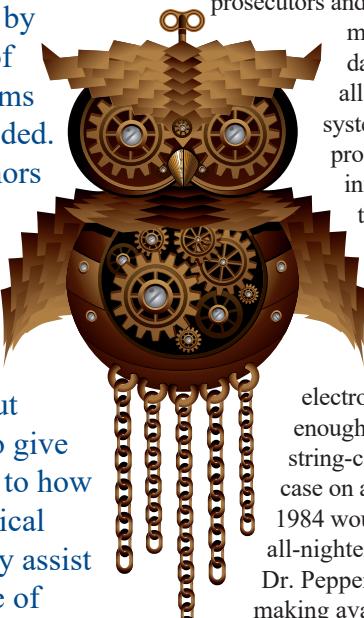
as well as serendipitous improvements. Nonetheless, sorting out the details of incorporating eDiscovery into the civil and criminal justice processes pales in comparison to effectively and wisely incorporating increasingly sophisticated aspects of artificial intelligence into the process by which we dispense justice in this country.

The utopian promise of artificial intelligence is that it can assist our courts, prosecutors and juries to reach better, more just, more informed, data-driven decisions. After all, algorithms and analytical systems can be designed to process far more precedent, information and correlations than can any mere mortal. In an earlier era, this was the partially-fulfilled promise of computerized legal research; in a matter of minutes, the new world of electronic searches could amass enough material to endlessly string-cite every conceivable case on a legal issue, work that in 1984 would have involved three all-nighters and multiple cases of Dr. Pepper. Nonetheless, aside from making available every unpublished decision by the U.S. magistrate judges in the southern district of Indiana, it is hard to regard that development as progress in the evolution of justice.

Artificial intelligence can certainly contribute to the dispensation of justice, but we run the risk of conceding too much of the process to what only appears to be a smarter, more logical and better-informed decision-maker. Some Canadian jurisdictions already permit their citizens to

adjudicate their small claims matters online. Presumably human judges rule on the cases, but it is a short walk from there to "just" solutions calculated by artificial intelligence. Perhaps tempting to the general public or overburdened courts as an efficient alternative to our sometimes slow and complicated justice system, abdicating our responsibilities to what would truly be "calculated justice" would be the most grievous of errors masked as progress or innovation.

It is no accident that we see little discussion of concepts such as "artificial judgment," "artificial wisdom" or "artificial discretion." They don't exist, and no scientist will ever develop them. Judgment and discretion are the key strengths of our justice system, and both require the human attributes of compassion, wisdom, experience and intuition. The limitations of artificial intelligence in law should be obvious. In 1954, an algorithm designed to compile and analyze existing legal precedent would never have suggested or predicted the arguments which prevailed in *Brown v. Board of Education*. (Existing legal research aids often remind me of the cluelessness of iTunes. When I download a Bob Dylan song, I am met with the response, "maybe you would like this Joan Baez recording." Fat chance: she broke Dylan's heart, jerked him around and folk music would never be the same again. Keep your "Diamonds and Rust." Imagine Thurgood Marshall being asked during his computerized research in the *Brown* case, "Maybe you would like to download *Plessy v. Ferguson*?"') The adaptability of our legal system to largely unpredictable societal change has traditionally been one of its strengths, earning law the reverential compliment of being the true game-changer. And the pursuit of justice is a game of the highest



importance, best left to those with human experience, human intelligence and capabilities, and human emotions.

This concern is not merely hypothetical, or an example of old-fashioned resistance to change. Every time we have surrendered some portion of the adjudicatory process to formulas or technology, the byproducts have been expensive, exclusionary or controversial. Witness the widespread dissatisfaction with mandatory minimum sentences, the U.S. Sentencing Guidelines in the criminal field and the barriers to middle class access to justice posed by eDiscovery costs in the civil arena. If we, as legal professionals, are not vigilant regarding changes that dehumanize the dispensation of justice, there will soon be no justice to access. As a cautionary tale, it is important to note what happened when we entrusted a large portion of the nation's political discourse to social media and its brilliant and technologically talented founders and designers. The public square may never be the same again.

So, let us approach claims of technological progress and innovation with the healthy skepticism we as lawyers apply to most claims and assertions we encounter. In recent years, I have been attending conferences where people and companies have been singing the praises and virtues of "disrupting the practice of law." The disruption that they champion usually boils down to (1) putting someone different in charge of an institution or group (usually the person suggesting the disruption), or (2) exercises in making money from legal services without actually being lawyers or being bound by legal ethics. Neither of these "disrupting" trends are particularly positive, nor inevitable. As with all other representations and concepts flavored with jargon (i.e. "innovation," "game changer," etc.), the legal profession needs to evaluate each change on its own merits, seeking to insure that the siren song of supposed technological progress does not divert us from guarding and improving the best justice system the world has ever seen: real justice for real people, administered and determined by real people. That remains our mandate as attorneys. It is also where our greatest original contributions can be made. Our value added, in technological terms. **NL**

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