Artificial Intelligence and Mediation

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How can a professional mediator use AI effectively and responsibly?

- Survey of IAM Mediators – I asked:
  - How are you using AI in your mediation practice?
  - What are your fears about using AI in your practice?
    - Fears with respect to what the parties will think about your desire to use AI?
    - Fears about undermining your role as the mediator?
    - Fears about violating mediation confidentiality?
  - How to approach parties about your interest in using AI?
    - Are you approaching parties about using AI or, alternatively, are you doing your own work with anonymized information?
      - To prepare for mediation?
      - During an active mediation?
  - What are your hopes about using AI going forward?

Responses

Largely positive about using AI to prepare for mediation

- Used to organize and summarize position statements, prepare time-lines and charts comparing parties' positions on issues
- Participant background
- Researching basic legal points
- Use negotiation numbers to date plus mediator's experience with similar cases in same venue to conduct mock negotiation and predict outcomes. Run several times (results were within 5% of outcome)
- Distilling issues on pre-mediation statements (more succinct)

During Mediation

- Less use but . . .
  - Checking tone and quality of communications
  - Neutral source for ideas and feedback (giving range of likely settlements that was consistent with what parties had proposed as highs and lows – so less concern about puffing)
  - Identify topics that could impact bargaining range
  - AI drafts award in favor of each side to be used at mediation

Some use during mediation (but largely during breaks)

- Preparing a Mediator's Proposal
- Preparing a MOU or settlement agreement

Some mediators have used AI and are no longer interested in using it

- "After a brief fling with AI this year, and in hindsight cheating on my instincts that have served me well over 25 years of practice, I am resolved to remain an Analogue Mediator".
  - Concerns include:
    - Reduction in internal mental effort (cognitive offloading or loafing was "killing the skills that made me a mediator . . . Surprised about how quickly it happened.")
    - I am not "in" the process if I delegate reviewing documents to AI (the need to pore over documents to become sufficiently familiar with the case).
  - Predicts "in-demand mediators of the future will be those who keep their Black Box skills sharp by using AI to full effect on the business side of practice but largely stay off AI on the clinical side."

Imagined Future Uses

- Use AI to interview lawyers and clients to obtain information currently sought through pre-mediation statements

- Assisting the mediator during mediation
  - Helping determine whether the parties are discussing interests, BATNA, distributive allocation, relationship, law – help mediator refocus if on tangential issues
  - Predict BATNAs; predict outcomes
  - Monitor potential emotional states
  - Finding acceptable and persuasive comparables
  - Companion to help sort through past events, navigate through complex issues, trigger discussions – not seeking opinion

Additional Mediator Thoughts

Confidentiality and Privacy of Parties' Information

Several mediators state in their mediation agreement that they will use it and have not found that parties resist.

Mediator requested redacted documents so that he could have AI summarize – careful to treat anything AI provides as a starting point rather than the "truth".

Parties using AI either with or without telling other party and mediator

Current ways AI can help prepare a mediator for mediation

Research	Background on a particular industry, existing legal authorities, risk or tradeoff analysis
Summarize	Deposition transcripts, pleadings, parties' briefs or other statements, email correspondence
Identify	Identify parties' interests, potential agenda items, common ground between parties, creative settlement terms
Organize	Format of mediation, issues resolved vs. outstanding items, settlement terms agreed upon, summarizing day-to-day progress
Generating movement	Construct questions, creating hypos, reality testing, questions that encourage parties to prioritize interests; mediator proposals
In-person support	Generate transcripts, speech or translation support, other accommodations (i.e. voice to text)

Current Limitations of AI

Ethics of using confidential information

- Privacy concerns that sensitive information put into AI will be used to train future AI

- Unauthorized access to case-related data could undermine mediation integrity, undermine trust in the process

Resource limitations and implementation

- Ability to execute AI functions depends on mediator's access to information
- For AI to "reframe" a party's statement, that statement must be put into the system
- Pre-hearing briefs or questionnaires become essential if mediator wishes to utilize AI (and the parties consent to it)
- Parties may not wish to pay a mediator to spend time using AI in advance of mediation
- Does Mediator have time to use the AI information?

Current Limitations of AI Usage

- Cognitive Offloading – externalizing a cognitive process – writing information down, using a calculator, setting a reminder in a calendar.
  - But AI interprets information, identifies patterns, drafts, generates new images – extreme cognitive offloading.
- Automation Bias and Overreliance
  - Automation bias – tendency for a human user to rely too heavily on an automated system – failing to question automated technology
  - Overreliance: users accept AI-generated recommendations without question, leading to possible decision-making errors; a behavioral manifestation of automation bias
- Cognitive Atrophy
- Entrenchment
- Comprehension Erosion

Current Limitations of AI

- When artificial intelligence is trained on a biased or underrepresented dataset, it will incorporate and use that data, which results in bias
- Can result in AI responses unintentionally favoring one party over another
- Biases concealed within bad data could potentially increase socioeconomic, gender, and ethnic disparities, ultimately contributing to heightened levels of discrimination
  - AI doesn't understand or see power dynamics, historical tensions, etc.

Current Limitations of AI

Human elements

- Establishing a genuine human connection with the mediator and feeling heard are crucial elements that contribute to the success of the mediation process – unclear if AI mediator can do this (yet)
- Lack of cultural competence and empathy (inability to read verbal and nonverbal cues)
- AI cannot currently suggest how to handle party emotions unless the mediator identifies the emotion or offers context
- AI may be less effective in highly complex or multi-party disputes where intricate human relationships and values are involved
- Can't build trust through personal interaction, listening, understanding, and empathy.

Other

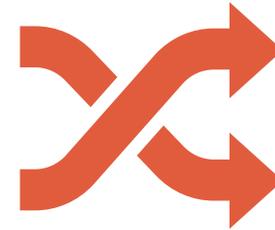- Regulatory framework governing AI use is still evolving and differs by jurisdiction

AI in 20 years?

AI as a mediator or co-mediator

Mediator for low-stakes or high-volume disputes (e.g., consumer disputes).

May serve in a co-mediator role in multi-party cases by assessing the party where mediator cannot pay attention to all parties at once.

Hybrid process where AI supports human mediators

AI may assist human mediators by providing data-driven insights, pattern recognition, and strategic suggestions in complex disputes.

May leave emotional intelligence-based negotiation to humans (although may eventually become an expert at reading human faces).

Future Uses for AI in 20 years?

- Emotion and Sentiment Analysis
  - AI will be able to analyze speech, text, and facial expressions to gauge emotional states and detect underlying tensions
  - Mediators may want to utilize this information to adjust their approach to the parties.

- AI-Powered Decision Support
  - AI will provide real-time legal analysis, highlighting strengths and weaknesses in each party's arguments.
  - May generate customized settlement proposals based on facts, law, assigned judge, jury verdicts etc.
  - **Predictive analytics**

- Bias Reduction and Fairness Monitoring
  - AI may improve neutrality by identifying biases in human mediators

- Other uses?
  - Training and support for new mediators and real-time feedback to help mediators refine their skills

Predictive Analytics

Predictive analytics uses trained AI models to forecast the likely trajectory of a dispute, to suggest dispute outcomes, and to help parties understand their best and worst-case scenarios (and intermediate scenarios) in their settlement analysis.

Trained with following data sources:

- Settlement data
- Court rulings, judgments, and reasoning (e.g., summary judgment success rates)
- Party behavior
- Legal briefs and party submissions
- Outcomes based on arbitration/ mediation clause language

AI considers factors like:

- Jurisdiction
- Nature of dispute
- Claim amount
- Past judicial or arbitral decisions
- Timeline and procedural posture of case

How might predictive analytics help mediators?

Risk assessment → understanding potential range of outcomes if parties proceed to arbitration or court

Settlement strategy → can inform parties of realistic expectations based on similar cases

Negotiation leverage → helping parties evaluate whether a proposal is favorable given what's typical

BATNA → helps parties assess their best alternative to a mediated agreement

Conclusion

AI now:	Helpful to prepare the mediator before mediation
	Can be helpful during mediation to the extent information is publicly available or parties consent to disclosure
	Excels at research, summarizing information, and generating creative questions or solutions
AI in 20 years:	Increased capacity for predictive analytics and AI decision support
	AI to analyze emotion and sentiments of parties within mediation
	AI may mediate low-stakes or high-volume disputes, but likely to *support* human mediator in complex disputes