Using AI to Improve Legal Case Valuations

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By Jonathan Judge

Virtually all legal disputes get considered for settlement, which means that virtually all legal disputes get valued. Traditionally, those values are chosen by lawyers, who assign an overall value based on components like the facts of the case, the law that applies, the strength of the players involved, and the effectiveness of the advocates. In my view, experienced trial lawyers are quite good at evaluating these individual components. (I am one of these lawyers, so perhaps this belief is to be expected.)

The problem arises when even the best lawyers try to track all possible *combinations* of these components, and assign an *overall* value to the case. This is exactly what corporate counsel need their lawyers to do, and yet this also is where the process can break down, resulting in frustrating mistakes and stresses, not just with outside counsel but with company financial departments.

Artificial intelligence (AI) can be part of the solution. For

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most corporate counsel, AI so far has mostly been about *process*: streamlining e-discovery, simplifying bill submission, reducing the need for document review. We, however, are now using AI to offer *substance*; actually helping corporate counsel make better and more informed decisions when it comes to case valuation.

The Problem, Illustrated

Consider the following (hypothetical) problem:

The Situation	The Plaintiff, who was rendered a paraplegic when her vehicle collided with Company's vehicle, sues Company.

What Your Legal Counsel Thinks	The jury will find no fault with Company 80% of the time. If fault is found, counsel expects Plaintiff to get about 25% of the fault half the time, and the rest of the time most of it. The case is pending in a modified comparative fault jurisdiction.
Estimated Damages	Each number within these ranges is seen as equally likely: · $3 million (M) – $10M for past and future medical bills · $1M – $5M for past pain and suffering · $5M – $10M for future pain and suffering · $1M – $2M in wage loss
What the Plaintiff Demands	$35M all in, although your counsel thinks that is completely unreasonable, and stands by her estimates above.

What is the exposure presented by this case? Put another way, what is a fair amount to pay to settle this case, balancing the probability of a good result versus a bad result?

A typical set of choices would be:

- $1.4 million
- $3.3 million
- $5.5 million
- $8.1 million

Many experienced case evaluators—outside counsel, insurance claims managers, and in-house counsel—have assessed the value of this case at $3.3 million. Almost as many assessed it at $5.5 million, and a few have even voted $8.1 million.

And yet, the correct answer is $1.4 million. By "correct," I don't mean that anyone can predict the future and know what any one jury might do. But what I can say is that if you were to try this case a million times—and using AI, you can simulate exactly that—the average result would be about $1.4 million. You might ultimately settle at a different number for whatever reason, but the average value of the case, based on what your counsel reported to you about its component parts, is $1.4 million.

If you picked one of the other options above, and plenty of experienced evaluators do, you potentially threw away millions of dollars. The plaintiffs' bar very much appreciates overpayments like these, but company financial departments see it differently. Those departments have long been suspicious of the values being assigned to cases, and this exercise somewhat validates that skepticism.

Why do so many evaluators get these values wrong? For the same reason that I got problems like this wrong until I figured out why this keeps happening, and worked out an AI solution for the problem.

The reason we get these valuations wrong is *because we are human*, and while humans are brilliant at reasoning—including assessing individual components of a case—we are dreadful at counting and tabulating. There can easily be hundreds of different ways the components of a case combine together to reach a particular final verdict. Because we have no practical way of discovering them all, much less counting them, what we do instead is conceive a rough, overall estimate, trying to be mindful of the case components we have identified. Unfortunately, the exercise above shows how these rough estimates can be very, very wrong.

But as it so happens, AI is the mirror image of human ability and disability. AI struggles to reason independently like a human being does, but AI excels at counting, tabulating, and finding combinations. AI can explore millions of potential outcomes at a breathtaking pace. Programmed in a legally correct way, AI is an ideal solution to our problem, and it works equally well for intellectual property and other types of commercial cases as it does

for tort cases like our example above.

In sum, when we break down the reasoning of lawyers into a form that AI can understand, and then leverage AI to understand the resulting spectrum of possibilities, human beings and computers work *together* to make better valuation decisions.

Creating an Intelligent Risk Portfolio

The bigger picture is this: Many corporate legal departments have multiple cases or categories of cases on their plates. The financial department, in turn, needs to consider the effect of all these cases as part of a pool—or portfolio—of risk.

Much like a stock market investment, a portfolio of risk is best optimized when its components are assessed in a consistent way. Without AI, it is difficult for case evaluations to meet this standard. Just as we can generate examples where reader valuations tend to be too high, we also can generate examples where reader valuations tend to be too low. Portfolios that are constantly "wrong," but in a random way each time, are not optimized for anything, except losing a lot of the company's money and harming counsel's internal credibility.

However, when cases go through an AI evaluation, the process becomes consistent. No one can guarantee any particular result, but financial departments *can* finally know "where these numbers are coming from," and corporate counsel can have more confidence in their evaluation process, as AI helps them project the expected best case, worst case, and most importantly, the average value for each matter. Companies already pay a fortune for good litigators; why not get the maximum value from that investment?

The benefits of AI evaluation go beyond consistency. As the facts (or law) of a case change, AI can confirm whether these developments actually change the settlement value, or in fact make little difference at all. For corporate counsel with reporting obligations, AI can update the values of portfolio cases on a predetermined schedule, and make it easier to flag those which have shown the biggest change, and thus could require special attention going forward.

A Bright and Bold Future

These benefits of AI are not just theoretical. We have written AI programs like these and put them to work for our clients. The solution to the sample problem laid out above was actually generated by one of those AI programs. AI solutions can be customized for each case while still being surprisingly affordable. Case valuation advice is of course still legal advice, and companies should be wary of any consultants who claim to be able to draft such programs, but who are not themselves lawyers.

In time, we believe everyone accept AI as an indispensable tool to resolve complex legal problems at optimal values. In the meantime, corporate counsel looking for a competitive advantage should be putting AI to work when valuing cases.

Jonathan Judge *is a trial lawyer at Schiff Hardin LLP who believes that artificial intelligence can make legal decisions better. He has tried numerous cases to verdict in courtrooms around the country. He also regularly represents clients in proceedings before the Consumer Product Safety Commission (CPSC) and the National Highway Traffic Safety Administration (NHTSA). Jonathan also is the Head of Quantitative Modeling for* **Baseball Prospectus** *(BP), a leading baseball analytics website, where his computational models are used to quantify catcher framing and other cutting-edge baseball statistics.*