From Instinct to Analysis

Law firms are finding a data-driven approach may help them make decisions about budgeting, work distribution and a number of other factors.

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Historically, attorney experience and intuition may have fueled matter, business management and other law firm decisions. However, firms are now increasingly blending their institutional knowledge with hard data culled from time tracking, customer relationship management (CRM) and other systems.

The practice — frequently referred to as data or legal analytics — can identify patterns, inconsistencies and other elements in informational records to help law firms determine how to more accurately estimate matter cost, increase productivity and improve various other operational aspects.

The growth of e-billing systems, which automatically create data sets on an ongoing basis, coupled with post-recession changes to how legal services were purchased, which placed increased pressure on in-house and external lawyers to manage risk and cost, helped influence the trend, according to Bill Garcia, Chief Practice Innovation Officer at national law firm Thompson Hine. The firm uses data to inform staffing and other decisions.

"When I started practicing in 1983, we extrapolated from experience," Garcia says. "Now it's informed by data that describes the experience in a granular way. Tools to analyze data are

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becoming more readily available, and outside of the office, lawyers see data use becoming more sophisticated — they have every reason to expect that to get pulled into their professional life."

WHAT DATA ANALYTICS CAN DO

Research indicates a significant number of industry members feel examining data can be beneficial. Ninety percent of the litigators, trial attorneys and librarians who had used data analytics practices between 2014 and 2017 said it had been a valuable experience, according to a 2017 LexisNexis survey. Nearly one-third described analytics as invaluable.

Law firms are embracing analytics to help with a number of functions — determining the success rate of certain claims before certain judges, for example. This can help shape their litigation strategy or with identifying connections between specific clients and the common issues they might face, according to Juliet Kostritsky, a contract law professor and Director of the Center for Business Law at Case Western Reserve University School of Law in Cleveland, Ohio.

Kostritsky plans to include information about how firms are using data analytics in business development in her business and law colloquium course next spring, including a panel discussion featuring lawyers from the area, so students will understand how analytics are being used in client development.

"We have the ability to extract data in a way that wasn't that common previously," she says. "There is a whole field of data experts who aggregate information, separate it out and make it useful to people. Lawyers and other professionals saw the value for their business."

At a previous firm she worked at, Michelle Murray worked to help partners on the corporate side of a firm better understand what types of deals the competition was doing. So Murray, who currently serves as Global Director of Business Development at litigation and arbitration firm Boies Schiller Flexner LLP, located two database resources to extract information from.

"The firm could then pull together tables and data to get a better picture of what all the deals going on in the market were — how many were sponsored, what law firms were working with a sponsor and/or the bank that was doing the lending," she says. "It was a great way to understand the types of deals the firm was working on versus [what] one's competitors were working on. You were also able to monitor the market share in a quarter-over-quarter basis."

Firms may also be able to use competitive intelligence data to retain clients — and determine whether the investment involved in trying to gain a potential new client would be worth it.

"To convert a client is an 18-month process most of the time, so you want to know from the get-go if you are wasting your time," Murray says. "If the data shows that every matter a client has is on the West Coast, they are far less likely to hire your firm if you have no experience in that jurisdiction. If they have a ton of employment work and you haven't [done much of that type], don't even bother pitching for that work."

Some firms are using data analysis techniques to help with time allotment and budgeting — such as Thompson Hine, which several years ago developed a set of proprietary task codes for the various types of work each practice group does. Attorneys enter the codes when they log their time.

As part of its approach to legal project management, Thompson Hine also created software that pulls data from its system and helps organize it, which allows the firm to derive budgetary and workplan-related conclusions from the information.

"When you look at the practice group level, you can draw insights into staffing requirements or time," Garcia says. "For example, if a combination of your budget and work plans across practice groups indicate that in November you have 47 different kinds of massive deposition programs, all within a month, what are the implications for staffing? Do you

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have the right number of bodies to be able to handle all that in one month?"

Although a number of firms are performing in-depth assessments of data to obtain various insights, using artificial intelligence (AI) to review data sets and suggest process improvements or other adjustments doesn't appear to be a widespread practice quite yet.

However, aside from AI-related document review, Kostritsky hasn't seen firms using data for too much predictive or quantitative decision-making. She says that may eventually become a trend as AI technological tools become more commonplace.

"Artificial intelligence is developing, and maybe in the future some aspects of that will be useful for firms," she says. "The pressure will be to use it in a way that helps and provides value to the client."

EFFECTIVELY EMPLOYING ANALYTICS
Legal industry data analytics usage appears to be poised to grow; 82% of AmLaw 200 leaders reported their firm would likely increase its data analytics-related efforts to obtain new clients, according to LexisNexis' research. Ninety-two percent of the survey respondents who viewed analytics as very or somewhat important for cost savings also indicated their firm's analytics use would increase in the future.

Legal departments seem to be following suit. In 2018, 26% said they were planning to implement legal spend analytics in the next one to two years, according to a survey from HBR Consulting, up from 24% in 2016 and 2017.

While many firms may benefit from gathering and analyzing different types of information, a data-driven approach to decision-making may not be a perfect fit for everyone. For instance, firms that don't have technological tools in place to record pertinent data, such as time spent on matters, would need to first invest in relevant functionality.

In addition, due to their size and the scope of their work, smaller firms may have a hard time justifying the investment

involved in incorporating data analytics tools, according to Kostritsky.

Even if firms are eager to add analytics capabilities, before they can begin crunching any numbers, they need to first clearly identify what type of information would be helpful to track based on the issues or areas they hope to address.

"[That] would be overseen by the partnership — management — because what you collect requires judgment about why you're collecting it, what [insights] you hope to gather and the implementation that [will be] done," Kostritsky says. "The decision about what information to collect and why is [typically made] by someone who is sensitive to how the information will help create value and help the firm serve clients better."

For unstructured data to be gathered in a format that makes it more usable, employees need to actively participate in the data collection procedure — which can be a change management issue, according to Garcia.

"Having the lawyers and timekeepers understand why we're doing it and how to operate in a system is really a continuing educational effort," he says. "Because the way we use data is becoming increasingly more sophisticated, the need to capture additional data in a different way becomes increasingly important."

When Thompson Hine began using its task code system, it was easy to notice any less-than-stellar participation, Garcia says. The firm handled this by trying to get attorneys to understand what benefits they could reap from taking the time to properly code matters.

"If an attorney is only using one task code, it will stick out like a sore thumb," he says. "That's a training issue — having lawyers appreciate why you use the data helps with that. We'd go to practice group meetings and say, 'There are X number of codes, you only used three; we're giving an award to the one who used the most' — [and tell them,] 'If you give me good data, I can help you manage matters and price.'"

For the resulting outcomes to be positive, law firms will also likely need some employees to play a role in the data analysis procedure.

Firms Murray previously worked at, which housed the client research function in the business development department, would have researchers work on projects, including analyzing the type of legal work done for the members of the organization.

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"Firms need human capital," she says. "You can ask a computer to generate a number of things, but you need someone to cull the information and create an actionable client report."

The same principle can generally be applied to implementation.

"As with any tool, you want to make sure you're not using the data to drive decisions that also require a judgment or qualitative component," Kostritsky says. "You still want

to make sure the people making decisions are using it in a thoughtful way that dovetails with the mission of the law firm and its treatment of clients."

The key to successfully using data analytics may be to treat the insight that's obtained as a beneficial supplement to all the skills and acumen the firm brings to the table — something that's presented to clients as part, yet not all of the value the firm provides.

"Lawyers first must have the legal skills to be able to secure a new client," Murray says. "But you also have to have a relationship with the client. Ideally, you achieve the trusted adviser status. It's a combination of your experience, knowledge and understanding of their business needs — then you're the whole package. These technology resources help you understand their needs." ∎
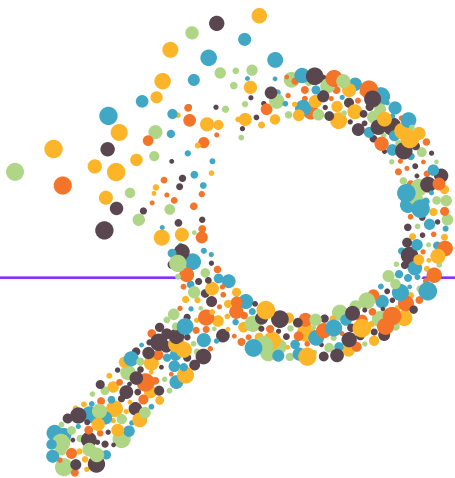

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