



CLM 2019 Annual Conference
March 13 – 15, 2019
Orlando, Florida

Metrics, Analytics and A.I., Oh My!

I. Introduction

The Importance of Metrics and Data Analytics

For many of us, *Moneyball*, the book by Michael Lewis, subsequently made into a movie in 2011, introduced us to the concept of data analytics. In reality, the sport of baseball has been utilizing metrics for decades. In 1980, a baseball fan named Bill James pioneered the idea behind “Sabermetrics,” which is the application of statistical analysis to baseball records. James understood that the traditional statistics kept in baseball did not always track the most relevant data. The book and movie *Moneyball* told the story of one major league baseball team’s use of Sabermetrics. Today, insurance carriers and law firms are using Sabermetrics to track and analyze more data than ever in an effort to better understand how to become more efficient and effective. The goal is to eliminate biases by using data analytics to gain an advantage.

II. Metrics – The Recent Past

The Use of Metrics

Metrics have become a tool for litigation managers, general counsel, claims professionals, and others who regularly purchase legal services. As the process has evolved, metrics have played an important role in controlling litigation management. Metrics provide an unbiased basis for evaluating quality and value and also provide the ability to compare results. In many ways, metrics created a new language for assessing performance. The goal has been to eliminate, to the extent possible, making decisions based upon “feelings” or even “best guesses.”

Of course, some metrics are subjective and others objective. Further, different purchasers of legal services monitor different metrics or even value different metrics differently. Similarly, law firms also collect different data, value data differently, and often track information differently from clients.

As the topic has evolved, the impact of metrics has been significant in the world of litigation management. Metrics have caused carriers to evaluate counsel differently. Metrics have caused outside counsel to evaluate their own delivery of services differently, and have changed the relationship between client and carrier. Let’s start with the insurers.

Three Closely Watched Metrics by Insurers

The three top metrics observed by insurers, according to a LexisNexis survey, include (1) average total cost per case, (2) legal expense per case, and (3) cycle times (days to resolution). The impact of metrics on claims management has allowed for better budgeting for the total legal spend, has increased the speed in claims resolution by providing more clarity in the beginning of claims on what the insurer can expect to pay, and has improved the standards for self-evaluation of claims.

Likewise, metrics have impacted the selection of legal counsel, independent adjusters, experts, and other service providers. Metrics permit for differentiating between poor and stronger-performing firms over the life of a relationship. Additionally, it can permit firms and carriers to differentiate between attorneys within the same firm and can provide the basis for selecting new vendors.

Metrics have also impacted law firm management. Significantly, more firms are conducting their own internal evaluation of data collected. The ease of pulling the data today is far simpler than in the past. A benefit from digital recordkeeping has permitted firms of all sizes to more easily retain and evaluate critical data. Analyzing data now impacts how legal services are billed, and how counsel are compensated.

III. Data Analytics and A.I. – Where We Are and Where We Are Going

The Insurers' Perspective on Monitoring with Data Analytics

Data Analytics and A.I. from the insurers' perspective assist in evaluating law firm performance and timekeeper trends, evaluate product line performance, guide underwriting decisions, and potentially allow for the prediction of future claims.

In the evaluation of law firm performance and timekeeper trends, carriers look at the efficiency of resolution and the efficacy of resolution. Carriers monitor whether the proper path to final resolution was taken, and whether the legal spend has delivered the best results. Additionally, carriers are in a better position to monitor whether a case has been overworked, or whether the firm's budgeting is accurate and proactive.

Additionally, carriers can evaluate product line performance by sharing trend observations from claims with underwriting, sharing internal information with insureds, and sharing information with firms and other vendors. Underwriting decisions can be guided through claim data, and future claims can be better reserved.

The Lawyers' Perspective on Working with Data Analytics

Law firms are utilizing data more than ever to promote efficiency among their lawyers. While not all claims should be resolved as quickly as possible, or at all, the data analyzed has better enabled lawyers to evaluate expected legal spend, duration of cases, and outcome. The information learned

through existing data permits lawyers to more accurately budget cases through completion and should spark early collaboration and potential resolution.

For instance, cycle time of cases can vary widely based upon venue. The average time from “file to trial” in the rocket-docket of the U.S. District Court for the Eastern District of Virginia is reportedly 11 months. Comparing an attorney who practices only in venues like the rocket docket to an attorney who may have a more rural state practice is likely useless. However, using cycle times as a benchmark to train or incentivize lawyers is a helpful practice. It can assist young lawyers to learn efficiencies, but it can also help more experienced lawyers understand how to better budget and anticipate the duration of cases earlier in the case. That early information translates to better decisions and often better outcomes.

Using Predictive Modeling and Legal Analytics

“Legal Analytics” involves the monitoring of data contained in case documents and docket entries, and then aggregating that data to provide previously unknowable insights into the behavior of individuals (i.e., judges and lawyers), organizations (i.e., parties, courts, and law firms) and subjects (i.e., property losses, personal injuries, and business losses) that populate the litigation ecosystem. By reviewing data through the use of increased computing capacity, trends and patterns can be found, which can then be used to inform and anticipate the potential for certain outcomes in pending cases. This in turn allows those who litigate, or who manage litigation, to reach better decisions about a case in general, the lawyers and experts involved, and the judges and juries hearing the case. As a result, the most effective legal strategies are more readily apparent.

Legal Analytics can also cause lawyers or law firms to evaluate their own internal behavior in a more unbiased manner. This includes a comparative evaluation of the performance of lawyers, as well as decisions concerning the overall management of a law firm or legal department. For instance, such analytics may better define what lawyers should be assigned to certain matters; or on a more macro

level, it may define what lines of business the law firm should, or should not be handling. Some commentators predict that law firms will eventually employ data scientists to help with these evaluations.

Meanwhile, legal resource providers have started to sell data analytical tools to assist lawyers and litigation managers in their work. Examples include Westlaw Edge, Lex Machina (by Lexis-Nexus), Litigation Analytics (by Bloomberg), Raval, and Premonition. All of these services have both descriptive analytics and predictive analytics features that provide access to legal trends and patterns that were formerly unattainable. In the not too distant future, prescriptive analytics will be widely used to recommend course of action, and to illuminate likely outcomes based on historical and current trends. Already some forms of prescriptive analytics are being used to handle e-discovery, draft contract documents, and perform legal research.