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The 2018 Data-Driven Lawyer Award Winners

Law360 and Lex Machina teamed up to launch the first-ever joint award series, recognizing lawyers who use legal data and analytics to successfully meet the challenges of their practice. This is a transcript of the live webcast event. During which, Josh Becker, Chairman of Lex Machina, and Jackie Bell, Journalist at Law360 moderate a live session, where the award winners share their secrets of analytic success.

Speakers:

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Chairman
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Partner
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Evan Moses
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Jackie: Hi everyone, thanks so much for joining us. My name I Jackie Bell and I'm a senior reporter at Law360 and I'm here today with John Becker, chairmen of Lex Machina, and today we're going to be talking about a brand new award we developed together called the Data-Driven Lawyer. It's really the first time Law360 and Lex Machina have come together to create an award series and this award really seeks to recognize attorneys who are successfully data and analytics to really meet the challenges of their practice.

We're always joined today by four of the award winners, and you can of course read all about them and the data driven lawyer series on Law360, but we're joined today by Eric Falkenberry, partner at DLA Piper, Kate Gaudry, soon to be partner at Kilpatrick Townsend, Evan Moses, shareholder at Ogletree Deakins, and Kyle Poe, a partner at Morgan Lewis.

So we're going to talk to them about some of the ways they really put analytics to work and hopefully get them to share some secrets about their data driven practices along the way.

I have to say that one of the things that I personally was really struck by as we were putting together this series is just the incredible variety of practice areas and uses that these attorneys found for data and analytics. Each of them really seemed to come to this type of practice in their own way and use these tools in unique and interesting ways.

So, I'm excited to dig into this a little more with them and talk a little bit about their process and their strategies. So Josh, do you want to jump in here and help us get started?

Josh: Absolutely, thank you Jackie. Really excited for this and we do have a series, of a few questions but the stars here, the heroes here are our award winners and we want to make sure we do save time if any of the people listening today have questions for them and, about any of the things we discuss, how they developed, what they developed, how they use it, and other things that we will talk about today.

So, Kate perhaps I'll start out with you. With the first question of, why did you start to leverage legal analytics and did you feel it gave you an advantage in your practice?

Kate: Sure, so I started leveraging legal analytics because there were questions that I needed to find the answers for in order to find out how best to provide recommendations to our clients. So I initially was working on a project that a colleague of mine at the time, Jim Allen from Knobbe, had come up with and it was just analyzing how effective different types of

appeals were at the patent office and at the time it required a lot of manual effort of collecting data samples from the patent office website.

And over time, different big data sources became available. So, different software companies contacted me to see if I'd be interested in using them and I continued these projects here at law school, to look at how effective were pro se inventors and patent prosecution versus larger entities and how effective were different filing strategies for companies in biologic fields, and then, once I got to the law firm it just kind of exploded and different colleagues would come to me with different questions and I had these great tools at my disposal so I continued to just answer the questions, find the right data source, depending on what the question was and try to find the most accurate answer I could for any question.

Josh: Cool. Great, great. How about Eric?

Eric: Sure, thanks very much. Analytics actually kind of came to me rather than the other way around in that about five or six years ago I was called in by some of my transactional partners to look at the litigation of a target, of an acquisition, or a potential target, and I spent some time with the managing directors of the private equity fund that wanted to make the purchase and I basically assessed the litigation the way that I knew how and provided a lot of lawyer answers. There's 50/50 risk here, the risk here is substantial but I didn't come anywhere near to placing numbers on any kind of assessment or quantification and it became evident at the end of the engagement, at the end of the due diligence, that one of the managing directors in particular was rather frustrated at the fact that he couldn't get some kind of precise number and one night while we were debriefing he walked to the edge of the conference room and he slammed his hand down on it, and basically said: Eric if we could quantify this litigation maybe I could do something with it.

And I'd love to tell everybody that was my light bulb moment and I had this great epiphany and started down the trail of analytics but right then and there you know, I had two thoughts: one was litigation cannot be reliably quantified and even if it could - what could you do with it? How very, very wrong I actually was.

When I started to research it, when our team started to research it, what we found out is that not only is there a ton of data out there with which to quantify litigation, but that there are tools and computation power that will allow you get at that data, tools like Lex Machina and other platforms.

So we were able eventually, to actually sell that litigation risk as a result of being able to quantify it to another private equity firm that specializes in such acquisitions.

So, it changed my practice in that it created a practice for me. I now specialize in this area and without analytics the area wouldn't even be in existence as I said. The same goes for the plaintiff's, the litigation funding market. Without an ability to quantify litigation, that market doesn't exist.

Josh: Yeah fascinating, and we are seeing that market really starts to explode now. So now, really interesting, we've already seen Kate using data around patent prosecution strategies, now Eric litigation, quantifying risk, and mentioned litigation funding as well.

So already two very different uses, but both pioneering uses in their area.

Evan, would you like to go next and talk to us how you started using, started leveraging legal analytics?

Evan: Sure, I'd say I have a pretty similar story to the rest of the presenters so far but I think perhaps mine is a bit more embarrassing. I just got shamed into it by a really, really smart client. I was in the middle of a power point presentation to a client's C-suite team discussing exposure and risk in a large employment class action, and the CFO literally turned to me, and it seems with analytics it's often the CFO that drives a lot of these conversations, and said, "So, basically what you're doing is you're looking into a crystal ball, and trying to predict the future, and then telling us that you're really good at doing that, and we should just trust you, and if I was buying an insurance policy I would laugh you out of here. I'd be looking at actuarial tables and statistics and data analysis, and why isn't that the case here since really we're just talking about quantifying risk?"

And she was absolutely right. Since that meeting, I've tried to take - I guess in a meta sense - a very enterprise risk management approach to all aspects of my practice, litigation, counseling, transactional, due diligence, and if you look at insurance or spaceX, or investment firms, these guys are already running probability models of the type that Kate and Eric

were talking about to help predict outcomes and make better decisions, so why aren't we?

So we've done a lot of things in this regard, but one of the things that I think has been really most productive and sort of opening the door to my clients was after I worked with my firm to build the Monte Carlo Algorithm and the idea is actually that build a model with lots, and lots of data and variables, what would happen in the case, and then run millions of simulations and then you get a distribution model that shows the most likely outcomes, and sometimes even probably of specific events.

So that absolutely has given me an advantage because you're doing a better job helping to predict the future in every sense of the litigation process from deciding where to allocate your resources, which makes cases more efficient, to evaluating plaintiff's demands, and you know, being able to assign probability or rebut their demands by assigning probabilities or figuring out which arguments are most likely to be productive in litigation.

It creates a huge amount of leverage and helps your clients make better decisions. So this has incrementally taken over every aspect of my practice and you know what I'm seeing is that there was a time when this was a rarity, and it's quickly becoming the norm.

Josh: Interesting. Yeah. Great. Good stuff.

Kyle, can you also help address this question about how you started leveraging legal analytics?

Kyle: Sure, so I focused my career primarily on the management of mass work litigation and when I first started working on these cases as an attorney I gravitate toward some of the client reporting aspects of that litigation. So communicating to clients how we're doing on a portfolio of litigation, no one case defines success or performance of the entire docket, and so in order to communicate to our clients a docket of now 36,000 pending cases had to use analytics.

So it was really driven by the necessity of communicating with our clients and presenting to them the big picture of what was actually going on, on the ground and how we were actually doing.

That led me to sort of a feedback loop where we built out the tools and technology and modeling to better communicate with our clients and then we were able to use those same tools, technologies, analytics, to also not only communicate with our clients but also inform how we practice law itself.

And then we got better and more efficient internally, in terms of collaboration, communication, across the firm, and in terms of actually how we prioritize our resources in handling a large docket of cases.

Josh: Nice. And you feel that using analytics has given you an advantage?

Kyle: Absolutely. In the specific area where I practice we couldn't do it without it. We wouldn't be able to operate at the scale that we are today, at 36,000 pending cases. If we didn't have data analytics, we just wouldn't be able to scale the practice in any efficient way. And then of course more broadly others in the firm have seen these kinds of approaches and have adopted them as well and so they're also learning some of the best practices that we've paved the way for.

Josh: Good well thanks everyone. Jackie, do you want to hit the next question?

Jackie: Sure, I'll jump in. So I think one of the questions Josh and I have been really curious about is just, over the course of your career how do you think the attitude towards using data analytics in legal practice has changed and developed? Kate why don't you jump in here? I know you told one of our reporters that maybe in the beginning people were highly skeptical is I think the way you put it.

Kate: Well, some of it has to do with just the availability. So I had mentioned with this project it was really hard to get the data and at the time the person I was working with was intent on collecting the data from every appeal and that would have required I would say half a day, to an hour depending on how many appeals there were, it was really tiring.

And then when I was in law school, I would go onto the patent office website and try to collect a statistically valid sample and that would take

weekends, months, to collect enough data to have a good sample size, really tiring and you know exhausting to get that amount of information. And then for people who weren't comfortable with statistics, understanding how much data you needed to appropriately answer the question was tricky or were you collecting the right type of data? Was there some bias to the data set that you were collecting that would mean that your answer was not valid for a particular use case.

And like I said, now you're getting more of these big data tool and once they became available, there were some issues with them initially. I don't think that, that was necessarily the reason why people were skeptical it's just how not using data is how law was done for a long time, not using big data at least, right? And people were used to understanding their particular situation. So when they go into the patent office, they knew some of the examiners that they would be talking to, personally because you kind of hit the same people over and over, or they felt like they had a general sense of how the patent office operated and what could be expected.

And so the biggest issue that I faced, not so much with Kilpatrick but generally was trying to convince people that this was of any added value and that even though I considered their experience useful, that this big data could show them a trend that might have started a couple weeks ago that they haven't had time to appreciate, right?

So yes, I think initially there was some skepticism that to some degree was valid. The data just wasn't there. And then, it took a while for many people to appreciate that their way of doing it, which was the right way largely for a long time, was no longer the best approach and that by supplementing experience with big data you could really benefit from that bigger data pool I suppose of your experience, and the big data, and drive better recommendations, better strategies.

Jackie: Right, you can add it, add your current practice with it. Eric do you want to jump in here? I know you and I had a conversation about shifting attitudes and what you've encountered.

Eric: Yeah, see I agree with Kate you know, there was a lot of skepticism early on and that is waning. We still have at least a little ways to go and perhaps a lot of ways for some of this, but what I've been surprised with is the class of attorney who have kind of embraced analytics and tried to integrate it into their practice.

You know, a lot of the associates you know of the Millennials' heritage grew up with technology much more than we did and also analytics in many respects, so they're very open to it. It's not hard to convince them, in fact they come to you looking for more tools to help them practice.

The second class that has actually be really receptive at least over the last few years are the older partners which came as a big surprise to me, but I think the older partners having seen the change in their client over the last 10 years as a result of analytics have lead them to believe that this really will be a revolution for law firms as well and a way in which we practice law.

The hard nuts to crack are those between. It's the new partners who spent eight, nine, ten years developing a practice and the way in which they did things in order to get to partnership are very reticent to actually change anything now that they have now achieved their goal.

So, those are, you know, normally the workhorses of the firm, the young rain makers, and those coming up, and the future leader. So that's our challenge right now and we're developing various ways in which to show them that analytics can not only be very useful to their practices but it can increase efficiency and more important it can increase the quality of their practices. And it doesn't have to take a lot of time to do so.

We try to show them that they can get at these analytics very quickly and don't need to reinvent themselves in order to integrate this into their practice. But they need to be open to it and they do need to consult with those who are, you know, deep in the mines.

Jackie: That's great. Evan, I'll pull you in here. Have you experienced something similar? Or what's been your perception of the change in attitude towards data and analytics in legal practice over the last few years?

Evan: I used to and to some extent still suffer from the glazed eye problem but that's relatively easy to get through when you explain the value. Yes, you might have to listen to me nerd out about these things for five to ten minutes but the upside relative to that is so huge, if you can cut down a

legal spend and make it more likely to get great results, that's not such a challenge. It can sell itself pretty quickly.

What I think is that really the challenge depends on the nature of the particular use of analytics. Some things are very easy sells especially to folks like CFOs who are very focused on the metrics. If you do a probability analysis that's very easy to persuade someone to do once you convince them that it's not going to be expensive or particularly time consuming. That's a no brainer.

But then there's other things that involve the use of analytics that get more pushback because they at least innately feel riskier. For example, personally I really like to couple expert surveys with data analytics where you're testing sort of anecdotally in a representative fashion what testimony might look like and then cross referencing that with hard data from the client's internal resources, and use to test the plaintiff's core hypothesis, it's a causation or a nexus between a particular fact and a perceived result.

And that takes some trust because if it goes wrong the client's perspective is well aren't we potentially creating negative evidence and what I've found is, in order to challenge that fear, we can do it in two ways, first the development of the successful track record sure helps. Having done this over some time, it's easier every time we try to sell this type of project in the context of a litigation defense. It gets easier and easier because you can demonstrate in a very real way, how it's worked in other cases.

But also, just really careful thoughtful explanation that this is essentially a scientific test. This isn't us just rolling the dice and hoping that the analytics will demonstrate a particular outcome, it's typically much more efficient in my experience to say, what we're going to do is test the validity of the plaintiff's hypothesis, not that we're going to create evidence necessarily, that's a different issue but we're going to at least in the class action work I do in the employment space, look to see if the data really supports the causal nexus between the plaintiff's theory and some particular outcome.

So once you explain it in that way I think it gets a lot more easy to get sign on from executives who see that you're not just rolling the dice and hoping for a good result.

Jackie: And a step-by-step process.

Evan: Yup.

Jackie: Kyle I'll pull you in here too, what's your experience been? I know your perspective has been a little bit different.

Kyle: Sure, I mean I think there was a substantial amount of skepticism that I ran into you know throughout the past couple of years with this. I think fundamentally it could be described in terms of kind of a skepticism internally about whether or not legal analytics is really a form of legal analysis, and I think that you know we've proven that it is, at its highest and best use it really does the same function that experience plays traditionally for attorneys, and I think that's why it is threatening to most traditional attorneys.

You have attorneys historically, the criteria on which they're selected, on which they're assessed professionally as well as hired, is their expertise, that's what they bring the table and data analytics challenges that in terms of offering another basis to make professional judgments as well as another basis on which a firm could be selected for work. And I think that, in the traditional field like the legal industry, that certainly can upend a very fundamental premise for how the profession works.

I think over time people have seen the results that it's had, they've seen this is not an instance of the machines coming to replace us, this is isn't about automation. This is about augmentation. This is about taking what we do best, which is our legal analysis, our client relationships, and letting us leverage those even better than we could in the past.

Jackie: That's fascinating. Josh, do you want to jump back in here?

Josh: Yeah. I wanted to turn to the question of risks. Are their pitfalls we need to be aware of? What do you see as risks or have come up as risks in terms of leveraging data, leveraging analytics, and anyone feel free to jump in on this one.

Evan: This is Evan. Maybe I'll start, just because I want to piggyback off of something that Kyle said that I liked a lot about, it's not automation but augmentation. I think that's really well said. What I see as a huge risk with this is the same risk we see every time we introduce new tools into the profession, and that's, to some extent, sloppiness bred from over-reliance and over-confidence in the tools. I remember when we first started relying on Lexis and Westlaw, we saw some sloppiness generated as a result. Same thing when we started relying on knowledge management systems, and we saw people cutting and pasting form files that didn't really involve a lot of legal analysis particular to the case at hand, and I see the same problem with big data, where attorneys across the table from me often start relying on data as if it's somehow valuable in and of itself without doing the strategic legwork to make it valuable, so it's the eternal garbage in, garbage out problem. Companies have a lot of data

available to them, but you have to be able to call out things that are irrelevant or unreliable.

For example, I often go and find with clients and opposing counsel getting really focused on what they consider to be the "going rate" for class action settlements, and my perspective is that's nonsense. There's no going rate for a class action settlement. To be sure, there's benchmarking data that can help you to figure out comps relating to particular components of your case, but first you have to cull out all the data from cases that are dissimilar to yours, and what I'm finding is opposing counsel often not even doing a apples to oranges analysis, but it's an apples to steak sandwich analysis, where the metrics that they're relying on are really so dissimilar from our case, but then they get hung up in the fact that they've measured something.

What matters is understanding how to couple the legal analysis and the relevant posture procedurally and factually of your case to the most relevant data, and that takes some work. It's not necessarily time consuming or expensive, but it's thought work that's irreplaceable. The data's not going to speak for itself.

Eric: This is Eric. I couldn't agree more with Evan. I think that this is one of our biggest risks, and it goes to something that he said earlier as well, and that's the trust factor. The data has limitations, both in the way it's used and the data itself, and it keeps getting better and better, and it will continue to get better, but when people blindly rely on the analytics or what's presented on a particular platform, they can get in trouble. That's the sloppiness that Evan was talking about, and I think that if we can be transparent, both the data providers, as well as the lawyers that are talking to their clients, about these limitations with the data, I actually think it will do the opposite of what might be intuitive and it will actually help us trust the data even more.

If you can understand where you have holes and where you can't fill them, but also show where there is value, I think the entire data set becomes that much more valuable. It becomes that much more trusted and credible, and it'll aid you in your strategy decisions, so I think that's the biggest risk. We have to be careful about how this data is used.

Josh: Eric, you said something about transparency of data, where the data comes from. Kate, maybe you were going to chime in on that as well?

Eric: Yeah, I mean, the transparency is ... I'm not exactly sure of your question, Josh. It's important, and we do little things, like in Lex Machina, one of the things that you have is you've got all sorts of notes next to your analytics, and it explains what those limitations are, and where relevancy is an issue or it might not be an issue. Those are the things that I think we have to continue to do as both providers and as attorneys with our clients, in order to show them that there is credible insight here, but you have to know exactly what the data source is, how the data is being gathered, and as I said a few times, what the limitations of that data is.

Josh: Yeah. No, I think that's a good point, and I think that's the bargain that we make with each other. For some extant it's for you guys saying, "Hey, we're changing our practice of law to use data," and the bargain on the other side is providers saying, "Okay, we're going to provide you with trusted, accurate data." Yeah, I know that's something we take very seriously, so I appreciate you calling out the notes. I know, for example, if you come up with an analytics solution that just relies on NOS codes, right? The Nature of Suits codes that are entered, then people are going to be relying on faulty information, because we know that those NOS codes are over-inclusive and also under-inclusive, and there are NOS codes for certain areas like commercial law, so if systems just rely on those then people rely on inaccurate data, and I think that's a danger of giving providers a black eye if people lose confidence in the data sources, so I do think that's a really important topic as well.

Eric: No, luckily, we're going to get beyond that and we're not going to have to rely on the coding that was originally implemented into this database. I know that you know all of this, Josh, but just for the benefit of our audiences, we're an industry that relies on text, and so one of our big challenges has been getting at that text and being able to use it to create analytics, and the advent and continuation of natural language processing is actually allowing analytics providers like Lex Machina to actually go into the underlying documents, to actually extract those analytics directly without relying on the coding, so it's going to get better and better, but it's going to take time.

Josh: Yeah, I think what you said is critical, but that's very, very hard to do. Not everybody does it, but I agree with you. I think that's what's needed for sure. Thanks. Kate, do you want to jump in on this?

Kate: Yeah, so I was going to say a couple of things. One of the issues with regards to the degree to which data is reliable is, you have to define a

particular question, and I was speaking to this earlier. If you're looking at a data set that is too broad for your specific use case, it will give you a wrong answer, right? If I say, "What's the allowance rate of the patent office?" And my case is on file and it's assigned to a particular art unit, the allowance rate of the patent office in general is about 70%, but there are art units that have allowance rates of 5% at given points in time or even lower, so that's a very different answer, so I need to be specific on my question, and also with regard to understanding the context.

I've seen a couple of instances where, as practitioners we can provide a color that people might not appreciate, so again, in the patent context, one of the data points that has been used, has been provided, is what is the probability of receiving an allowance after you interview? But that question, as a practitioner, I know you'll have a different answer depending on who initiated the interview, so if the examiner initiates the interview and gives you a call, a lot of the time what that means is that the examiner wants to allow the case, and he is proposing an amendment to you that if you accept it he'll allow it, so the statistics associated with that kind of interviewer are going to be very favorable, because it oftentimes leads to an allowance.

Meanwhile, if the applicant is initiating an interview and then you've gotten the rejection, and you might get an allowance, or you might not. It's just not going to be allowance rate, and in recent years the patent office has started to separate the tagging of those types of instances, and so have the big data providers, but this is one illustration of how being in the thick of things as a practitioner that sees this every day, you can recognize that the data might not be as simple as it could be portrayed.

Josh: Great, yeah. That's a great example. Great example, have the necessity of being able to drill down, and we say the same thing about finding cases like yours, right? It doesn't matter what this judge does in this other area; finding cases like yours, that's used as a great illustration in the prosecution side, so anyone else on this topic before we move on?

Kyle: Yeah, this is Kyle here. I think it's important to keep in mind that it's not a panacea. This isn't going to solve all your problems. You really need to pay attention to how you're going to be using data analytics as part of your particular practice, and it's an essential element to really supercharging one's legal practice, but it won't do it by itself. It's not automatic. It needs to be implemented. I think one needs to pay attention to essentially four elements here to successfully integrate data analytics into their practice. You have folks on the analytics itself; obviously, the technologies to bring that analytics to the forefront. You need time investment on the part of attorney subject matter

experts, as well as subject matter experts like paralegals who have been working on dockets for a long time. One needs to pay attention to staffing and how you are staffing your matters, as well as finally the fee arrangement that you have in place. To successful leverage legal analytics, one needs to keep all four of those elements in mind.

Evan: This is Evan. I think Kate also raises an interesting point, which is, in addition to all the other things we've talked about, it's important to go in with an open mind, because it's not always clear that the thing that you think will be the prime movers in your case or situation, will in fact be the prime movers, and you may encounter some frustration with the results; finding out for example, as Kate said, a particular person who's looking at your situation may be the dispositive issue. That's not necessarily something that a client is expecting or wants to hear, but a really critical one, so I think that speaks to both the value of what's going on here, because we're looking at characteristics that drive outcomes that, in previous decades, nobody was really paying attention to.

I think we all subjectively understand it was happening, but there was no way to measure the real significance that those things played, and also the importance of front loading to your clients that you have to be ready for these outcomes; that it may be that there are fundamental causes well beyond things that are in your control, or that you could have initially planned for, and over time that will change as we identify these characteristics, but as you dig deeper, you start finding things that are beyond what I think were previously identified to clients as really important characteristics.

Josh: Cool. That's great. Jackie, you want to take the next one?

Jackie: Sure, so I think we also want to look to the future a bit here and just ask, what do you think is the next frontier here? What's the thing you hope to tackle next, or how do you expect analytics to future impact the legal profession? Eric, do you want to start and then anyone can jump in? I know you and I had an interesting chat about this.

Eric: Sure, no problem. As I said in the beginning, it created a practice for me, so I think what data analytics is going to do is either help us expand current practices or actually create new ones, so all of the practices that are related to the litigation funding industry, as well as the industry that I primarily work in, and that's a defense side sale of litigation risk. As I said, those practices just

wouldn't even be in existence, so I think that that's one of the big impacts that's already taking place.

I also think that eventually it's going to fundamentally change the way in which law firms are structured. There a lot of law firms, especially larger law firms, that are considering using their subsidiaries for something other than things like selling products. There are some subsidiaries out there that sell technology products. I think you're going to see more of that. You're going to see the development of tools where the real value is the data from the law firm, and law firms will start to sell data through these tools, and that will become a new revenue source, but they can also start to operate out of that subsidiary and start to recapture work that they've lost over the years due to the commoditization problem.

As litigation and other practices get commoditized, the price which you can charge for them obviously is reduced, so what I think is going to happen is these data analytic tools are going to be placed into the subsidiary, we're going to do data analytics to determine who the most efficient providers are for certain types of cases, and that's going to allow law firms to recapture that revenue, as well as selling products that are data analytics based, so I think it's going to be a fundamental transformation.

I don't know how long it's going to take, but it's already being talked about, and certainly over in Europe, these discussions are even more advanced than they are here in the United States.

Jackie: That's fascinating. A revenue stream that's outside the traditional billable hour is what you're saying.

Eric: Yeah, it's that commoditization, so you're not going to have your high-profile, $1,000 an hour, $1,500 litigators or transactional lawyers getting commoditized work, so that work is going to start to shrink; the high-end work that's hard to estimate the complex cases, so how do you replace that revenue, and I think it's through selling products to certain customers as well as that subsidiary operation.

Jackie: Kyle, what about you? Do you have a perspective on what's next for you and for this type of practice?

Kyle: Yeah, I guess from my perspective I think there's two frontiers of legal analytics. There's top-down and bottom-up, so I think top-down would be how to run a law firm, and so collecting data analytics on various offices, various practice groups, so that one can better inform how we are efficient at handling the work that we do have. The other is bottom-up, which is where I traditionally started, so that's using data analytics to actually practice law better. I think the really holy grail here of legal analytics would be a data infrastructure that can run the full gamut; the full legal analytics stack, from how to practice to how to run a law firm, and that's my next frontier is to build out that infrastructure.

Kate: Can I say a couple of points?

Jackie: Yeah.

Kate: One strategy, technique, approach that I've been able to use since having data analytics is to show quality, so in my industry, there are individual small tasks that are frequently budgeted, so the client will say, "We'd like a patent application to be written," and you agree on how much it's going to cost and you write it, and then you get a rejection from the patent office and you have some agreement in terms of how much it's going to cost for you to write a response, and you write the response. Then you agree on how much it's going to cost for an interview with the examiner if you're going to go that route, and you have the interview.

This continues through the lifecycle of the patent application, and so what we've been able to do is to look at a higher level and identify the overall cost of prosecutions and provide that across these other cases, and then we can also go to a client and say, even if you increase the cost of particular tasks in this manner by a small degree, overall that will save you money, and so it's a different approach to budgeting as well, and it has some data behind it to say, "This is what we expect as an overall cost," which wasn't really done before.

There was a reason why everything was priced by the hour or per task, because you couldn't estimate how long a case was going to go, and then I'll also say, in terms of this prediction of the life cycle, we have a lot of different decisions to make throughout patent prosecution: how are you going to respond to a given office action? Are you going to interview? Who do you want at the interview? Are you going to appeal? Are you going to give up this case so you can spend more money for another case?

With all of this data at our fingertips now, there's smarter ways to make these decisions, and so one of the more recent approaches that I've been interested in is to use a game-theory approach, which looks at a set of combined probabilities and values, and it gives you some indication about what's the smartest route to go objectively in view of your situation, and so it's a new way of providing a recommendation of what to do in particular circumstances given a particular client's goals.

Jackie: I love that idea; using game theory in this context. I just think that's really fascinating. Evan, do you have a thought or two here before we move on?

Evan: Yeah. I guess two quick points. First, between Eric and I, I'm not sure what'll be left of the legal profession, because my thought is that one of the next big things is going to be machine learning that's going to cut out a lot of the lower to mid-level work. I think Eric was focused on the high-level thought work, but there's a lot of stuff that machine learning, and I'm careful not use the phrase artificial intelligence, because I really don't think this is artificial intelligence. I think machine learning, that it'll just allow us to bring some automation into the process of doing relatively standardized tasks like, putting together affirmative defenses, objections to discovery, certain form discovery, removal papers; things like that, that really you are able to build efficient systems that automate the majority of that work subject to quality assurance review by qualified attorneys.

My thought is, that's going to free up a lot of time and resources for clients to pay for the really high-level thought work, getting their resources to where it's going to have the biggest bang for the buck. That I think is first, so that falls under the machine-learning category.

Personally, my next frontier, and I think that there's going to be a lot more of this in the legal community generally, is continuing to focus on predictive analytics. That's what I'm really obsessed with. Right now, we're at a point where I'm able to run models relating to the likelihood of a particular dollar outcome, or even sometimes the likelihood of a particular result for an issue within the life-cycle of a case, but we're almost at the point where we're going to be able to take a peek into the likelihood that a particular judge will rule, based on a specific issue, in a particular way based on our argument or facts, and we're starting to see that now.

Lex Machina, for example, is giving us currently insight into a certain judge's track record with respect to a particular type of motion. What's the likelihood that they're going to grant an ex parte application for a certain type of relief, and how does that compare with some other judges.

So, I think we're really close as a profession to cracking that nut. The data's available, now it's just a question of figuring out the most efficient way to use that in a viable way, and take out as much of the human element as possible. That's really, really exciting stuff, and can have a fundamental impact on how we decide to pursue and defend our cases.

Jackie: It may be not quite robot lawyers coming our way, but it sounds like some big changes in how a legal team might tackle a case?

Evan: I think it frees us up to focus on the highest-level work, and really the more fun stuff. Spending less time on the portions of the practice that are relatively rote, and mundane, and allowing us to come up with creative arguments and really synthesizing high-level case analysis, rather than focusing on the day-to-day movement of the case forward.

Jackie: Josh, I'll kick it back to you.

Josh: Sure. I think we heard, a couple times: augmentation, not automation. I think your last point speaks to that, as well. I just got to say, this is so fascinating. You guys are pioneers, and seven years ago, or more, when I started at Lex Machina, I could never even really have dreamed of having a conversation this level. We're talking about what you guys are already doing, and even talking about stuff in the future, as well. Talking about quantification of risk, and talking about data-driven decisions. That's what it's all about.

We said you still need these expert attorneys with their experience to advice, and make decisions, but they'll be now data-driven decisions. That's why these are data-driven lawyer words, and these were all just great, great examples of this.

Some of you joined partway, we will have a recording everybody will get, so don't worry about that. We can take a few questions. We have one now that I will take, and then we have a wrap up that's kind of related, but this says "how does a litigator get smart about how to find and develop useful data analytics for their litigation practice?" Eric, do you want to start on that one?

Eric: I would start with Lex Machina, right? That's the easiest place to go right now, and one of the more robust tools. I think that it just behooves any litigator who is trying to adapt analytics into their practice to try to do some experimentation. To spend some time on these commercial platforms, see what's available, what the sites are designed to provide.

And then, there are ways in which to use the commercial sites to dig even deeper, to create your own analytics, aside from the analytics that aren't provided, or that the platforms are not designed to provide, at least not at this juncture.

But, you got to dig in, at least a little bit. You don't have to become an expert in any of this, but you have to start to expose yourself. One of the things that I know Kate and others will talk about is you need to understand your data sources. That's really important, and how this data is being mined. I think Kate already alluded to that, but that's really, really important.

Josh: Yeah. Let's get to that, and again, welcome more questions as they come up, but one of the questions that we're going to do as a little bit of a wrap up is "please give us your top three recommendations for attorneys who want to integrate legal analytics into their practice." Eric, you already spoke to this a little bit specifically on litigation. Other folks want to jump in with top recommendations?

Kate: I mean, going back to some other things that we've already talked about, it's really important to define your questions specifically, and to ensure that your data set is appropriate given that question. Is it too broad, is it too narrow, is it of the right data size, is it from the right data source, to how complete is it? Consideration number one is know what questions you're going to ask. Consideration number two is get the right data for that question. Number three, know how to interpret it.

After being involved in data analytics for a decade now, I oftentimes have a sense when something seems off. It just seems like too odd of an answer, or too inconsistent with my recent experience at the patent office. Having that kind of instinct has helped a lot, because most of the time I can push back on the data, and have some indication about what it should be, and then there's oftentimes an issue with how the dataset was generated, or there was some misinterpretation if you know it's from an actual person that's collecting it.

So, I think all of those three things, defining the question, making sure you're having the right dataset, and analyzing it appropriately with some sort of understanding of what makes sense in this context. Some high-level check on whether the data seems like it's reasonable.

Josh: Good, helpful. Anyone else want to jump in?

Evan: This is Evan. I guess, quickly, my top recommendation would be, since we're talking about somebody who wants to start integrating analytics into their practice, just don't be overwhelmed or afraid of the math or statistics end of this. That doesn't have to be a bar to entry. There's all kinds of things along the spectrum of how you can utilize analytics into your practice, and you don't have to be a statistician or programmer to do this.

As I think probably Eric said, the right place to begin is exposing yourself to it. That could be as simple as poking around in a valued resource, and just finding benchmarking data, and presenting that to a client, and teasing out, collectively, what the relevance of that is. As you get more adept at understanding the data, and its utility, then you can start to get much more sophisticated, but that first baby step is a critical point of entry.

Second recommendation is to be really thoughtful about what you're trying to achieve. I've seen colleagues and opposing counsel just get overwhelmed, and say all right, I've researched all this data under the sun, and then just present it, like somehow it speaks for itself. I think it's really helpful to have a goal in mind, typically a hypothesis that you're trying to either prove or disprove, and the narrower the better.

And the final one is really, perhaps for me more of a pet peeve than a recommendation, but I think we have to stop calling everything artificial intelligence. The truth is that we're nowhere near reliable AI, and that gives both a false sense of security, and also is a bit overwhelming to clients. I think what you need to do is explain, again, precisely what it is that you're trying to test, and frame it as a scientific analysis. Whether you do that internally, or you work with an outside expert to do it, explaining to your clients what it is you're trying to achieve is going to prevent some really negative reactions. If you've either over-promised, or you have misjudged what is really realistic, given the data that's available to you, it's better to set expectations appropriately, so that

everybody understands what it is you're trying to achieve, and how to get there.

Josh: Great, thank you. Anybody else on this one?

Kyle: Yeah, this is Kyle. I think there's three things that I would have to offer would be first, don't go it alone. You should seek out the assistance of others who have paved the way before, whether those people are attorneys or not, people who have worked in this field before.

Second, I would say you need to develop a core group of legal practice data analysts who can, in time, become non-lawyer subject matter experts in particular areas. So that way, they can understand the models, and they can offer a first cut analysis of where to look next and how to frame your questions meaningfully. That dialogue really can't be understated, between the data analysts and the attorneys.

And then third, I think I would say is don't reinvent the wheel. I think in this respect you've got to consider there's a distinction between what would be public data versus private data. For the public data, certainly if there are tools like Lex Machina that cover the subject matter that you're working in, use those tools. Don't try and reinvent that wheel.

If it's private data, or public data that isn't tracked by one of the publicly available services, think one should think long and hard about what it's going to take to really build that data. How you're going to get those data sources, how you're going to keep it up to date, keep it synced, et cetera.

Josh: That's great, and I'll sum these up right before we end, but I think it was Evan: "don't be overwhelmed by the math statistics piece." We were testing some of the analytics and the new stuff we're coming out with, someone said this is really helpful, because a lot of lawyers are history majors, and they're afraid of data or something. It kind of resonated with me, because I'm a history major. I'm not a math major, statistician, and so maybe that's why I got interested in this, trying to make some of these tools easy for folks. I agree with that point, you do not have to be. And, some people on this call are doing even more advanced stuff, where it certainly wouldn't hurt, but for the average lawyer, absolutely do not have to be.

Eric, it said in the article that you run bootcamps for attorneys at your firm?

Eric: Yeah, I mean for that purpose, to not only train them on the available resources we have, but also to help them figure out how to integrate into their practice, and most specifically, we try to teach them how easy some of this stuff is. It's not all easy, and it does take the diligence that everyone has talked about, when you're entering into this discipline, this field. But, there are also ways in which you can use analytics without a ton of investment, if you are talking, as Kyle said, to those who are steeped in this stuff.

I think those bootcamps are not only a way to train our attorneys on platforms like Lex Machina and others, but they're also a way to get enthusiasm and change the culture, which ultimately is going to have to happen, if this transformation that some of us have been talking about is going to take place.

Josh: Yeah, I agree. We have another question, says "what types of data, outside of legal data, do you utilize in your analytics?" I know a few folks sort of touched on that, is there anything, Julie, Evan, or Kyle, that you want to mention?

Kyle: Well, I think it really depends on what kind of cases one's working on. Obviously, if there's a lot of underlying data in that case, that's directly relevant to the case itself, obviously being able to leverage data analytics outfits not traditionally legal data sources, is really important.

For example, in the labor employment space, doing things like reduction in force calculations, we have very complicated models that we build and we use to assess those kinds of questions. I think those are more employment data, but it's in the legal context. So, I think being nimble with data is obviously really important here.

Evan: Yeah, I think that's correct. This is Evan. It really does depend on the case, but I focused on labor and employment as well, and client-facing data, or client-generated data, is really our bread and butter. The information about what courts do, and what settlements look like, and what judgements look like, is helpful, but that all has to be cross-referenced with what the client's internal data reflects.

Because, usually we're testing, again, a particular hypothesis that a particular fact X is allegedly creating a legal outcome Y. That's presented, often, as a mathematical calculation, essentially as a mathematical formula, by a plaintiff's counsel. They say because one has a direct outcome derivative relationship of the other, that's why we can certify this as a class, or treat it in some representative basis, because one thing always creates this particular outcome.

The more that we can look into data that tends to reflect human behavior, employee behavior, the better off we are. Not just obvious things like what are their time records saying, but things that are reflective of how they spend their time and how they make decisions. What's their card swipe at the elevator look like? When do they access the parking garage? How long do they typically wait in line before swiping in? That kind of data that speaks to human experience, which isn't, per se, legal data, but it certainly is critical to the outcome of our legal disputes, is really the bread and butter of my practice.

Josh: Interesting. Kate, anything from your practice?

Kate: Well, we use some budget data as well. It's largely based on our internal system, so I've mentioned giving some indication of what things will cost. The big data that's available to us is largely related to particular events at the patent office. How many office actions were there, how many requests for continued examinations were there, but clients want to know how much they're going to pay.

So, you have to translate all of those things into money, into dollar amounts, and you can do that based on what you typically charge, or what is typically charged around your firm. You can look to AIPLA data for what's often charged for similar types of technologies, but it's a way of translating the data that can be accurately tracked across all applications into a variable that matters to the client.

So, I agree with the sentiment of trying to take the data that's available to us, and present a variable that's of meaning to a client or a company, or a potential client.

Josh: Okay, great. Thank you for sharing. With that, I'd like to wrap up, and by doing so I'd first like to, once again, congratulate our award winners. You are pioneers in this legal analytics movement, I think it's fair to say, given the discussion today. I'm just seeing how critical it is to have someone at a firm who's pioneering this, who can be the advocate within the firm. And I see how firms struggle with this. It's not always some of the younger folks pushing for this, and older folks resisting. I've talked to managing partners who like, hey, we're all in favor of this, but we got to bring the rest of the partnership along with us. They're not there yet.

So, this is all really early, early days, and just fascinating how you guys have each integrated analytics into your practice. So, congratulations, again, to each of you.

To wrap up on that last question, with recommendations for attorneys who want to integrate legal analytics into their practice, some of the things that I heard were:

1. Ask clear questions, and understand how they relate to the law.
2. Have a hypothesis for what you are trying to answer.
3. Understand the source of the data and its limitations.

One thing we always say here, it's worse to use bad analytics than no analytics.

So, understand the source and the tool you're looking at, or the source of data that you're getting on your own, understand the source and its limitations. Helping others understand how valuable these analytics really are, being an advocate and Eric talked about that in the bootcamps.

4. If there's not an expert at the firm, maybe you become that expert, and sure some of the folks here would have tips for you on that, but you could become that go-to person.

5. I think the last one, the most critical one: don't be overwhelmed by math, statistics.

At the same time, don't go it alone. If there is someone who's an expert, or someone who's already doing some of this, you can turn to them. Just dive into these tools, don't get scared off by the math statistics part, just dive in. A lot of this is user-friendly, and when you spend some time with it, I think you'll find that you're able to integrate it into your practice. That was the other thing that I gleaned from what folks had to say.

On behalf of Jackie and I, and I want to thank you. Again, this is a Law360 project, and Jackie did so much work on this, and really hats off to the whole Law360 team. Once again, congratulations to our award winners.

Thanks, everyone, for listening. We will get a copy out to everyone who registered, so you can get into more detail. Thanks again.