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Executive summary

Like so many other professions, law is becoming increasingly influenced by an overwhelming amount of disparate, fragmented and complex data that can both help and hinder business. Data comes from a wealth of different sources, both internal and external, constantly changing, never still. Keeping control of all that data is one challenge; leveraging it to the greater good much harder.

Despite the huge amount of data in the average law firm, data-driven decision-making is relatively new and uncharted. With the hugely disruptive changes that have occurred in our ways of working over the last two years, the issue of data is now front and centre.

This second edition of *Building the Data-Driven Law Firm* looks at how the use of data has become inextricably linked with the practice of law; how it can be utilized to the good, and the safeguards that must be put in place to mitigate the bad; how Big Data will revolutionize the way lawyers work, and the cases they will work on; and how new uses for data (including blockchain and the Internet of Things) will influence the law firm of the future. Bringing the book bang up to date, new content features how we can keep data secure in the changing world of work, how data can be used for business development and client satisfaction, the implications of data bias and data theft, and whether the way we use data is even useful anymore.

In many firms, data is locked away in information systems that often operate independently from each other. There is great value in those data sets, but law firms often lack the resources, skill, and infrastructure to bring them together under a data strategy that delivers better outcomes for clients. Becoming a data-driven organization is not a single event or even a series of tactical steps. It's more of a mindset or a strategic approach to how a firm handles its data. At Litera, explains David Curle, author of chapter one, this approach is known as “a single source of truth”, because its ultimate goal is to ensure that all available data support every decision and that people in the firm can rely on that data as the most current, accurate basis for those decisions. This chapter offers guidance on how

firms can start to derive more value from the data that they already have, in their marketing, planning, billing, matter management, experience management, and pricing and budgeting systems.

In chapter two, Shilpa Bhandarkar and Doug Donahue of Linklaters look at how contracts, and the process of creating and negotiating them, represent the most abundant and valuable form of legal and audit data. However, businesses can rarely access or manipulate this data in its current form – linguistic data buried in MS Word and PDF documents. Through the process of standardization and thoughtful digitization, they argue, lawyers can start to capture structured and machine-readable contractual data that can then be exploited by AI technologies and form the basis for true automation. These “full-stack” lawyers will be able to provide an entirely different experience and level of service to their clients, partnering with them to unlock valuable business intelligence, spot trends, and proactively prevent issues from arising, all underpinned by accurate and current contractual data.

Chapter three then looks to assess the increasing use of data when assessing law firms’ approach to talent. Even today, the only datasets used across the industry to track the ultimate success or failure of a lawyer have been recording a combination of billable hours and associated revenues and profits. Increasingly however, HR and leadership figures are considering how to bring the use of data into more areas of talent management and linking this to different targets and indeed compensation structures for fee-earners. There is also a further opportunity, to bring the use of data into external talent strategies with the aim of increasing the success rate of lawyers who are brought into the firm as lateral hires. This chapter by Phil Burdon and Tom Spence of Donoma Advisors explores possible ways in which data can play a role in helping law firms identify, attract, retain, and reward fee earners through an increase in the use of data.

Another transformational use of data in legal is the Blockchain. Chapter four by David Fisher at Integra looks at the ways in which data-driven law firms can use Blockchain to their advantage.

In chapter five, Joanne Frears, solicitor at Lionshead Law, analyses a number of issues pertinent to the use of data today. Using data provides the ‘value add’ that lawyers increasingly seek to differentiate their practice from another firms. She asks, if a law firm owns that data, what trends and indices can it safely and sagely provide as ‘advice’ or ‘information’ to clients?

When client confidentiality remains at the heart of professional practice worldwide, this chapter considers how data can be interrogated and used whilst maintaining secrecy and privilege.

If trust in the legal profession is low, will having access to data help rebuild trust and confidence in the profession or not? Or do the ethical issues of data bias make all big data fundamentally flawed and potentially unethical and thus intrinsically unhelpful for lawyers.

In every industry there are 'outliers' and we pose the question, what if that's the data what your client really needs need? How can lawyers use the minority reports and outliers and provide those to their clients without risk. We touch on data sovereignty and indemnity matters and consider if insurance and indemnities offer adequate protection when data bytes, bite back?

Even before the COVID-19 pandemic broke out, remote work was becoming more and more attractive. On the one hand for the employees, who have added value through more flexible working hours, time and cost savings, and on the other hand for companies, who save on rent, ancillary costs and benefit from more satisfied employees. New circumstances demand new standards – also with regard to data protection and security. Even if employees work remotely, the employer as a data controller has to comply with the requirements of the Data Protection Law, e.g., in the European Union with the General Data Protection Regulation.

Even in the home office, personal data must be protected against unauthorized access, improper destruction, insecure transmission and similar traps that can lead to a data breach. In addition to appropriate technical equipment of the employees with suitable hardware and software and the implementation of adequate technical measures, the implementation of organizational measures, like guidelines and trainings, that inform the employees on the one side and oblige them on the other side, is indispensable.

Chapter six, by Silvia Bauer, Luther Rechtsanwaltsgesellschaft mbH, describes what measures a company must implement to ensure compliance with applicable data protection law, especially the General Data Protection Regulation (GDPR), when employees work remotely. The employer remains the responsible data controller under the GDPR and is liable for misuse of the personal data processed by its employees – even if the employees work from home. Data breaches can not only undermine client confidence in the company but can lead to expensive fines. To ensure compliance includes implementation of organizational measures such as remote working policies and cybersecurity policies. Employees should be trained and aware of the risks. On the other hand, it includes implementation and control of technical measures, such as encryption and access controls, introduction of deletion concepts and processes for the

detection of data breaches. Furthermore, the employer must also provide suitable hardware and software to protect personal data; private devices may not be used under any circumstances. This chapter summarizes how personal data can be adequately protected in the home office.

Chapter seven by Yolanda Cartusciello, PP&C Consulting, examines real case studies and examples of how firms are using data to drive business development strategies and decisions. In the chapter she talks about how to begin the process of collecting and analyzing meaningful data for the benefit of the firm.

Following this, chapter eight, by Mori Kabiri, CEO of InfiniGlobe and an entrepreneur with two decades of designing technology for the legal industry, reviews some of the methods, metrics, and KPIs used by corporate legal departments to evaluate firms' performances. Mori's chapter provides an overview of two decades working with US and EU corporations to analyze law firm ebilling data and how this has helped improve performance.

It is often said that data is the new gold. Even a term like 'data mining' seems to suggest that there are riches that one just has to unearth. Reality, surprisingly, could not be more different. Most data is absolutely useless to serve as a basis for meaningful analysis. Chapter nine, by Jaap Bosman, consultant – partner, explains in easy-to-understand practical terms what standards a usable dataset must meet. Not only does the data need to be clean, it also needs to be complete and unbiased. All this is much harder than it seems and requires considerable efforts and funding. The legal industry came late to the game in terms of the use of data and data analytics. Today there is a cottage industry offering data-related services to the sector. Law firms, struck by data fever and fearing to miss out on essential developments, has jumped on the bandwagon. Unsurprisingly, the number of success stories remains underwhelming. The chapter therefore also highlights the economic aspects of data gathering and analysis. Under what conditions will the investment deliver a return on the investment? In other words: how, if at all, can data make you money?

The 2020s will be defined by data. Global companies and household names such as Apple, Amazon, Meta (Facebook), and Google are all creating and consuming huge volumes of data whilst at the same time turning it into viable business outcomes. Data is being used to drive efficiencies in business and in governments; it is being curated into scientific and artistic discovery, new knowledge and intellectual property; data is being turned into money. The Data Decade is likely to have a profound impact upon the legal world. Questions will abound, answers will be

scarce. Do you need a digital twin to operate within the virtual world? What is a digital twin? Will artificial intelligence replace human expertise? Should the legal profession use AI to enhance customer service, to generate new revenue streams? This final chapter, by Paul Brook, Dell, challenges thinking, leads with examples, and intends to leave you with more questions than answers. But asking the right question is often the best place to start.

Chapter 9:

Why your data might be useless

By Jaap Bosman, TGO Consulting

Type “antioxidants health benefits” in to Google and hit the search button, and within 0.6 seconds you get over 100 million hits. The internet and literature are awash with articles, studies, and reports that antioxidants are good for our health. Because of that, millions of people around the world include foods that contain high levels of antioxidants in their daily diet. That antioxidants are good is generally accepted by science.

A couple of years ago, a group of academics decided to review a large number of earlier studies into the effects of antioxidants. What they found shocked the academic community, as it appeared people who consume foods containing antioxidants on a regular basis have a healthier lifestyle than the average population. They do not just eat blueberries, but also less fat and refined sugars. They smoke less tobacco and drink less alcohol. They also tend to lead a more active lifestyle. When the researchers started taking into account the positive effects of the lifestyle of the people that consume antioxidants, what they found was that the antioxidants as such do not have a positive effect on our health. On the contrary, it proved that antioxidants could even be harmful...

This example is meant to illustrate that vast amounts of data are no guarantee that the results of the analysis will be valid. Numerous teams of academics had failed to recognize the healthy lifestyle bias that was distorting their data.

Snake oil

In November 2008, the until then relatively unknown English author Richard Susskind catapulted to fame as an international legal industry celebrity, with the publication of his book, *The End of Lawyers*.¹ Since then, Susskind has been invited to speak in over 40 countries and has addressed audiences (in person and electronically) numbering more than 250,000.

I think it is fair to say the book kicked off a virally growing Legal Tech frenzy. At some point there was a seminar or conference on Legal Tech in

the main legal centers of the world every week. Countless articles have been written and many speakers have been making a living as prophets of technological disruption.

This also gave birth to a growing number of Legal Tech startups. I remember being present at a presentation in Amsterdam in the late 1990s where Mike Lynch, the founder of Autonomy, claimed that his software was “smarter than a human being”. Autonomy was sold to US giant Hewlett Packard for \$11bn in 2011. (Mike Lynch was later accused of fraud and prosecuted.)

Not surprisingly in this industry-wide excitement, law firms fell victim to Fear Of Missing Out (FOMO). Many CIOs were hastily appointed and law firm websites made bold statements on how advanced and forward-looking their IT strategy was. Law firms were en masse implementing advanced technology. At least that is what they claimed.

The reality is that most so-called technological revolutions never happen. In 2013, Google Glass was widely expected to be the next big thing. Today it is nothing more than a faint memory for some. Around the same time, in 2014, we were supposed to be at the beginning of a 3D-printing revolution. Most households would have 3D-printers at home and be their own manufacturers. Instead of buying and shipping physical goods, people would simply purchase a computer file and print whatever it was at home. Again, this “revolution” never took off. Self-driving cars? Not so much, or at least not yet.

Almost 15 years after *The End of Lawyers*, the Legal Tech hype seems to finally be coming to an end. The legal industry is moving from inflated expectations to sensible and gradual innovation. Today’s legal tech is much more likely to be real medicine than the snake oil it was over more than a decade.

Data, an early experience

It must have been little over ten years ago, while I was still with a law firm. As a team, we frequently had to pitch for transactions. This regularly involved giving a fee quote. Fearing to lose the pitch because of the price, we always tried to come up with a competitive quote. After winning the mandate, despite all our experience, we often found that in the end we went way over budget and actually lost money. How frustrating.

At the time I was convinced that we could do better if only we could analyze the historical data from all the transactions we had done in the past. We decided to recruit a young and very smart econometrician who had graduated in data analytics to lead the project. Long story short: after a

year or two we concluded that it would not work. It appeared that the time needed for a transaction could not be predicted using historical data. It was predominantly external factors that were not recorded that had a huge influence. Factors such as whether the client is a repeat player, or if the transaction is a once in a lifetime event. The size of the company, number of jurisdictions, industry, number of employees, ownership structure, etc. – all these are obviously known at the time the transaction is done, but they are not recorded in the system so they cannot be used for analysis later on.

For me, this was a super interesting and valuable experience. Not only did I learn a lot about data analytics (I did my first Monte Carlo Simulation, for example), I also realized that availability, quality, and quantity of the dataset is crucial for any project to succeed. This is still the prime reason why Artificial Intelligence and Data Analytics projects fail. Often the focus is on the clever algorithm, but in reality this is seldom the problem. The challenge is in the data. This includes both the data used for the analysis and the data used to train the algorithm.

25 percent savings on external legal spend

If one would ask clients what they would want their law firms to improve upon, the most common answer would likely be price. For over a decade, clients have been complaining that law firms are too expensive. But are they?

In 2018, my team and I carried out a large-scale analysis of real-world billing and time-keeping data from a number of very large companies that buy for millions external legal services annually. The dataset we analyzed contained almost a million records of anonymized individual timekeepers from a large number of anonymized law firms. What we found was a big surprise for everyone – about 25 percent of all the billable time that lawyers charge for is caused by preventable inefficiencies on the clients' side!

Please let this sink in for a moment. If clients would be more efficient in managing the relationship with their outside counsel, they would save 25 percent without negotiating lower rates. The only thing clients need to do is make sure they prepare all the documents and information the lawyer will need and provide it in a well-organized, accessible manner. Clients should not change the scope of work and should create a clear and efficient communication and decision-taking structure.

I think every client would agree that it does not make sense to pay a premium to a lawyer for sorting out information and for acting as a communication intermediary between different departments and people

in the client's own organization. If the client's legal department would be understaffed and short on resources, hiring a temporary paralegal would come at a fraction of the cost. The problem is that clients are not aware of this opportunity.

For me, this is a great example of the power and benefits of employing data analytics in the legal industry. Not only because we did it and found this revolutionary insight, but because, if used properly, data analytics can be a most powerful management tool. Before taking decisions it is best to know all the relevant facts. I'm not saying data should drive the decision. Some of the best decisions are based on intuition, but even gut-feeling needs to be fueled by facts. When it comes to the legal industry, there is still a tremendous amount of room for improvement as it comes to the use of data and data-analytics.

CRM frustrations

The legal industry could greatly benefit from employing some proper data analytics. In order to be able to start doing that, law firms first need clean data. While this might sound easy, it is far easier said than done. Let look at a CRM database as an example.

Typically, law firms go through a five-year cycle of implementing a new CRM system. This is far more frequent than their financial systems, for instance, which are known to be used for a decade or more. This, despite the financial system being of much more vital importance to the business. So, why are law firms en masse throwing money at their CRM tools?

The main reason behind the short lifecycle of a CRM system is not that the software is outdated and/or no longer supported. It is also not that the current software is too restricted in its possibilities. No, the software as such is just fine.

So, if the software is just fine and capable, how come law firms still want to spend vast sums of money on the next system, which might look a bit different, but will basically be the same? For the record, unless your firm has in excess of 5,000 or so contacts, Microsoft Excel will probably also do just fine.

The need to change is mainly driven by frustration regarding the data. Partners feel frustrated their CRM system is unreliable and does not contain all the information they want. CRM data invariably contains doublures, contacts who moved to another employer, retired, or got fired. Some contacts may even no longer be alive. If a newsletter or – even worse – an invitation is sent to such a contact, partners get frustrated and sometimes infuriated. Clearly this has nothing to do with the software, it is only

a matter of data. The data in the system is not clean and uncleaned data is mostly useless.

Not only do partners feel frustrated if they come across contacts that are outdated, they also are expecting the CRM system to pull up all contacts that meet certain criteria. This could be all contacts who are at C-suite level, or all contacts that have an interest in a certain topic. Most of the time this type of information is not in the system. Not all CEOs, for example, are created equal. Perhaps you do not want the CEO of a small regional family business to sit alongside the CEO of a large, listed company. Unfortunately, company size is not an adequate tool for determining which are the high level CEOs. A private equity company that invests billions and owns a stake in large companies might be rather small itself.

The same goes for interests in certain topics. Let's say the firm is planning to organize a seminar on the latest developments in renewable energy. Should it just invite contacts from the energy industry, or also investors? The problem with investors is that they are classified as "financial" and not as "energy". Both the C-suite and the "area of interest" example are about the richness of the data. Here the data is correct, but – from the perspective of the need – incomplete.

When partners demand a new CRM system, they are actually blaming the system for not containing the right data. If it is, however, not the system at fault. The root cause is the data. That is why a new system is never the solution. That is why, after five years or so, the whole cycle starts again. Much to the benefit of the suppliers of CRM software.

Financial analysis – risks and shortcomings

While the financial systems of law firms remain around for much longer than their CRM systems, that does not mean that the data it contains is much better. Finance software is primarily geared towards sending invoices and doing basic bookkeeping.

For both objectives these systems work just fine. The financial system contains matter numbers, a billing address, and time spent per individual fee-earner, and a provision for special fee arrangements. This is enough to send out invoices and for this purpose the data is reliable.

The data being reliable and usable for the purpose of billing, does, however, not imply that the data is also usable for further financial analysis. In my practice, we do a lot of what we call Financial Business Analysis©, and we have over the years experienced first-hand how unsuited data straight from the financial system could be for this purpose.

When using the billing data for further analysis, the first problem you

will come across is that of the “billing partner”. The partner in whose name the file is may or may not be the partner that has actually been responsible for client and matter management in a particular file. When you want to make an analysis of revenue per partner and utilization ratios, this is a huge obstacle.

Secondly, the client, according to the invoice, may or may not be the actual client. Both private equity and insurance clients often prefer to have the invoices in the name of the target, respectively the insured party. This will obviously obstruct a clear view on the total revenue of such client. It is also not uncommon that a client consists of a group of companies, some of which may have “obscure” names. Among these are special purpose companies. If such companies are not connected to the mother company in the financial system, their revenue will be missed in the analysis of what are the best clients of the firm, a practice group, or a partner.

These are just some examples of data that, if used straight out of the system, will inevitably lead to invalid conclusion in the analysis. We see this happen a lot. Mostly, law firms just assume the financial data can be used without further scrutiny. Many financial software suites even offer analytical tools based on the data in the system. There is never a clear warning that the analysis will probably be unsuited for management purposes.

Much of the data is “useless”

Just as with the CRM system, it is not the software that is to blame, it is the integrity of the data. The grim reality is that much of the data that law firms hold is in principle useless. It is not just contact data or financial data. It is potentially all data. Take your document management system. In theory, it would only contain one version of each document, so everyone would always have access to the latest version. In reality, documents get stored in private folders and multiple slightly different versions will exist at the same time in different places. The same document can also be stored under different names, making it hard or even impossible to know for sure which version to use.

The red thread so far is that humans are the weakest link as it comes to data. People are lazy or pressed for time and don't put the correct information in the CRM system. I know an employment partner at a prestigious law firm who once helped to terminate the contract of a high profile CEO. Given the extremely sensitive nature, the whole process was wrapped in the greatest secrecy. Months later this partner ignited in rage when it turned out the ousted CEO had been sent an invitation for one of the

firm's boardroom events. It should have been his responsibility to update the CRM system, but being a high profile partner, he could not be bothered by such a mundane triviality. The problem is that CRM systems still are not clairvoyant.

Not updating the data is one problem, not understanding the data is another. Most lawyers are not great with numbers. There is a reason why back at college they did not opt to pursue a career in the beta-sciences. There is no reason why managing partners would be an exception. It still amazes me how law firm leaders accept the results of financial analysis without any scrutiny of the nature of the data used. This would never happen if it were not numerical. Anything verbal would invariably be challenged.

Data analysis for law firms

Law firms are sitting on a treasure trove of data, but it is not what they think. Like I did myself over a decade ago, law firms are still trying to use historical data for pricing purposes. Some larger law firms even have pricing professionals or a dedicated pricing team to help partners get mandates and clients while not losing money at the same time. The fact is that not only do law firms still not keep records of the relevant data that is needed to accurately predict the time spent by level of experience (this was my conclusion back in 2009 and it still holds true), but they also vastly underestimate how much – clean – data is needed to make a valid analysis. Much more than most law firms would have.

If the potential is not in analyzing historical data for pricing purposes, where is it? The answer is in the financial records of the firm. All law firms have a professional financial department that makes sure all billable hours get invoiced and paid. From an accounting perspective, the finance departments are extremely well organized. All time that has been entered in the timesheets will show up in an invoice to the client (subject to the partner's approval of course).

An accounting and billing machine is very different in organization, skills, and mentality from a management-data analytics department. There are lots of opportunities in analyzing the data that underlies the accounting. We have developed a method that we branded Financial Business Analysis© and without exception this provides surprising new insights to law firm management. This is not rocket science and, after we show them how to do it, any law firm can do it on their own. By applying Financial Business Analysis© law firms, on average, improve their bottom line by five to ten percent, which makes a strong business case for analyzing those data.

Prediction and prevention

Companies don't have legal issues, they have a business to run. Ideally a company would like to avoid legal issues altogether. That is why most SMEs try to avoid disputes involving lawyers at all costs. Actually, this is not unlike medical issues. No one wants to be ill, people in general will want to avoid doctors and hospitals. The difference is that the medical profession recognized this decades ago and started to focus on prevention and prediction.

It would be very unsatisfying if doctors would only cure people who are already ill. That is why there has been a lot of public and private research trying to figure out why people get sick and what can be done to prevent this from happening. By now we all know that smoking might cause tumors and that lead plumbing for tap water could seriously affect the development of the brain and nervous system of children.

Why is this relevant for the legal industry? The surprising thing is that lawyers have never focused on prevention and prediction. When I went to law school, like all of you, I had to study lots of case law. As a consequence, lawyers are focused on the outcome of a dispute and not on why disputes arise in the first place.

Police forces are already experimenting with Artificial Intelligence-based tools that help predict where crimes might happen. This will help the police department to locate resources and might even help prevent crimes from happening. Given the early stages, none of this is perfect, but some results look promising.

If data analytics can help prevent a highly individual thing as crime, it certainly must have the potential to help prevent commercial disputes. Academic studies show that there are certain underlying patterns that can help predict what will happen next. For society it often starts with discussions on social media, followed by discussions on major news platforms. This in turn leads to discussions in politics, leading to legislation. Legislation, after a while, will lead to enforcement. By studying and analyzing what is trending on social media today, companies could anticipate tomorrow's legislation and enforcement. There are many yet untapped opportunities for the legal industry to apply all sorts of data analytics for prediction and prevention of disputes (or PR disasters).

Data are the alpha and the omega

This chapter is about the use of data analytics in the legal industry. As you have seen, there are many very useful opportunities waiting to be explored. Data analytics can help companies save substantially on their

external legal spend. It can help prevent disputes and public opinion catastrophes. Data analytics can help law firms to better manage their business and significantly boost their bottom line. These are just examples, and there are many more opportunities waiting to be unlocked. Data can be a goldmine for the legal sector.

If I say it can be a gold mine, then that is on purpose. There are two crucial conditions that must be met for data to be useful for analysis, delivering meaningful results. Condition number one is that the data must be clean and unbiased. This condition is already very hard to meet. The second condition is that you need a huge amount of clean and unbiased data for drawing valid conclusions. If there is not enough data the results will be unreliable at best.

Don't let this put you off. Just be aware that you will need to calculate for spending a lot of time and effort on cleaning the data before you can start. But it would be fair to say that data analytics will become an essential tool for the legal industry in the years to come. Those who start today will definitely have a competitive advantage.

References

- 1 Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services*, Oxford University Press, Oxford, 2008.

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Despite the huge amount of data in the average law firm, data-driven decision-making is relatively new and uncharted. With the hugely disruptive changes that have occurred in our ways of working over the last two years, the issue of data is now front and centre.

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