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How Analytics in Trial Prep Can Give Lawyers the Upper Hand

Dean Gaida, None

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One of the biggest, yet untapped advantages the digital age has brought to the legal world is access to technology and electronic evidence during the trial preparation stage of a legal matter. In the past, lawyers had no choice but to pore over endless stacks of paper to find a case's key documents. Today's post-production case work is not much different, swapping stacks of paper for a mountain of electronic documents.

For most lawyers dealing with e-discovery, document review and compliance is the focus. Yet post-production, a large dataset remains, which needs to be tapped repeatedly for information that will help inform case strategy and support counsel's positions in court. Once the burden of discovery has been fulfilled, the work of understanding the information produced—often hundreds of thousands or millions of documents—can be equally cumbersome. Without an efficient way to identify and analyze the subset of truly relevant information, attorneys can become buried in post-production work.

While analytics technology is fairly widespread in the main part of the e-discovery reference model (EDRM), lawyers often are less comfortable using it for trial prep. But using these same techniques to quickly identify key facts to assist with preparing for depositions or simply to support court presentations, can make a world of difference in the cost and outcome of a matter.

When combined with the insight and experience of attorneys and expert advisors during post-production casework, analytics can offer insight into a case's strengths and weaknesses, as well as potential strategies opposing counsel may pursue. The ability to find a particular data point in a production set quickly is something all attorneys would appreciate, but few know how to do it on the fly. Below are three instances where advanced analytics can bring serious benefits to the trial prep phase of litigation.

Deposition prep: Without thorough preparation, depositions can go sideways fast. A lot of strategy is involved in knowing what to ask, how to answer questions about documents and the key points of contention that apply to each deponent. At this stage in the game, counsel is working to out-manuever the opposing side to shape the direction of the case in their favor.

Leveraging analytics alongside people who understand how to use the technology for depositions enables counsel to take all of the produced material surrounding each individual and narrow it

down to the facts. This includes understanding key communications involving the individual, who the person communicated with and other activities that may be relevant. This level of detail—and the ability to access the information in real time as new topics or themes become more important than others—ensures counsel is prepared for anything the opposing side might try.

This approach is invaluable in highly complex matters that require help from an outside provider. For example, one client engagement involved production sets of 80 million documents from around the globe, and it wasn't clear who needed to be deposed. With a skilled team applying analytics tools, even in these extreme circumstances, counsel can identify likely deponents, prep them and fully understand the relevant data in the short time between when data is produced and when meetings begin.

Building a case: Case strategy is more than just knowing the facts that help support your arguments. It also means clearly understanding the elements that can hinder your case. It's equally important to vet the "bad" documents in preparation for opposing arguments. Going through produced documents with a "fine-tooth comb" is just as cumbersome and costly as it is during the compliance phase, but analytics make it possible to garner that same level of detail quickly and efficiently.

Getting down to the handful of documents that really drive home an argument, while also preparing for opposing arguments, can literally make or break a case. With the flexibility of analytics tools, attorneys can also quickly pivot their approach to different arguments in the instant they find the documents don't support their initial approach, or if the documents provide the opposing side with strong counter points.

Assessing Damages: Litigation is fluid—cases evolve and change through every stage. Each deposition, each meeting with opposing counsel, each discovery of new information can impact long-term strategy. All of this information can be laborious to track, but use of analytics tools can help facilitate reports that explain the content and context of relevant documents, as well as the bearing they may have on an overall case strategy. This makes counsel's job much more manageable.

At various points in the trial-prep stage, expert lawyers with a deep understanding of the matter will evaluate the most prudent next steps. This often means hunkering down and moving forward to court, but sometimes it involves a decision to settle. Access to visual analytics allows counsel to quickly revisit data points in light of new developments. This helps facilitate the serious task of assessing damages and determining how to proceed.

In a recent antitrust Hart-Scott-Rodino "second request" investigation into the merger of two organizations, our team worked with counsel to execute e-discovery in coordination with the investigation, and to help our client prepare for the antitrust litigation that had the potential to follow. Beyond the high-stakes pressure, this project required specific security and workflow designs to ensure that highly sensitive data remained secure.

After successfully meeting the government's 60-day deadline for producing documents for the investigation, our team conducted post-production research for the anticipated litigation. This effort assisted counsel with identifying key documents quickly, enabling the legal team to prepare deposition and white paper documents and to effectively argue the matter. The team of researchers provided insight on both positive and negative information relating to the case, arming counsel to present their arguments and anticipate data and arguments presented by the reviewing federal agency.

As analytics are more broadly integrated into e-discovery, attorneys will increasingly look for new ways to apply them and further contain costs for clients. Any managed service provider brought on board should be looking at the matter across the entire EDRM, offering insight and strategy for smart ways to apply technology all the way through the matter's completion. In-house legal teams and law firms should set the bar high for third-party providers, and as a best practice, expect them to proactively address post-production work and techniques for streamlining those processes.

Dean Gaida is a managing director with the FTI Consulting Technology practice based in New York. His areas of expertise include computer forensic acquisition and analysis, data mining/database analysis and review workflow strategy development, including use of predictive coding. He has extensive experience in document collection, processing, review and production technologies.

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