

## Legal Analytics vs. Legal Research: What's the Difference?



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For hundreds of years, litigators have served their clients by applying facts to law using legal reasoning. To identify relevant law—statutes, cases, rules—to apply to the facts of a case, lawyers conduct legal research. Performing accurate legal research remains a core skill of successful lawyering.

But over the past few years a new tool has appeared in litigators' toolkits: legal analytics.

Legal analytics involves mining data contained in case documents and docket entries, and then aggregating that data to provide previously unknowable insights into the behavior of the individuals (judges and lawyers), organizations (parties, courts, law firms), and the subjects of lawsuits (such as patents) that populate the litigation ecosystem. Litigators use legal analytics to reveal trends and patterns in past litigation that inform legal strategy and anticipate outcomes in current cases.

While every litigator learns how to conduct legal research in law school, performs legal research on the job (or reviews research conducted by associates or staff), and applies the fruits of legal research to the facts of their cases, many may not yet have encountered legal analytics.

Data-driven insights from legal analytics do not replace legal research or reasoning, or lawyers themselves. They are a supplement, both prior to and during litigation.

Think of legal analytics as *Moneyball* for lawyers. Just as a *Moneyball* approach to managing a baseball team supplements the hard-earned wisdom of managers, scouts, and team executives with data-driven insights, legal analytics supplements a lawyer's legal wisdom.

In law, as in sports, data and analytics can provide the margin of victory. Confusion about the difference between legal research and legal analytics may stem from lawyers' deep familiarity with legal research or lack of familiarity with the new tool of legal analytics.

### **What is Legal Analytics?**

Legal analytics relies on advanced technologies, such as machine learning and natural language processing, to clean up, structure, and analyze raw data from millions of case dockets and documents.

Legal analytics offers litigators facts-based answers to key questions that emerge during litigation: “What are the predilections of Judge X? Should we seek a change of venue? What specific tactics have opposing attorneys used in similar cases? Has party Y pursued litigation in this area before? If so, what were the outcomes? Should we press forward with this case or settle?”

In-house counsel also use legal analytics to inform key business decisions, such as who to hire for outside counsel. What is the track record of firm Z in litigating certain kinds of cases? Which firms have the most experience in this area, and what were the outcomes of those cases?

With legal analytics, litigators can answer such questions quickly and accurately, arriving in minutes at comprehensive answers that would take weeks or more to piece together by hand from multiple sources.

### **Competitive Advantage**

In any competitive activity—business, sports, finance—if you have better information about the opposition than they have about you, you hold a distinct advantage. Legal analytics gives litigators an advantage over opposing counsel by providing data-driven insights into how judges, attorneys, and parties have behaved in similar cases in the past, and how they are likely to behave in similar cases in the future. Lawyers can build litigation strategies informed by that information.

Until now, to get insights into the behavior of specific attorneys, firms, judges, or parties, litigators have had to rely on querying colleagues who may have personally dealt with them in the past. But such anecdotal data, or “anecdata,” often relies on a small sample size. It may well be misleading and is unlikely to provide a complete, accurate picture.

## **Predict Outcomes and Replicate Successful Strategies**

While technology cannot infallibly predict the outcome of a particular case, it can provide insights that increase the odds of an accurate prediction, enabling its users to pursue a accurate litigation strategy that is more likely to succeed.

If, for example, a litigator represents a client in a securities case, and can determine which motions or other tactics have been most successful in other securities cases tried by the same judge, it would be reasonable to predict that similar motions or strategies may be successful in the current case. The attorney still needs complete command of the relevant law, which traditional legal research provides, to set and execute the right strategy. But the outcomes of these motions or tactics are not quantified in the documents accessible via legal research, so there is no way to uncover these insights using traditional research tools.

## **Analytics as a Workflow and Business Development Tool**

Unlike legal research, legal analytics can be used to find quick answers to practical questions. With just a few keystrokes, lawyers can get data-driven answers to client questions that might otherwise take weeks to pull together.

For example, after a recent pharmaceutical merger, the general counsel of the acquirer met with outside counsel to request a full risk assessment of the patent portfolio of the acquired company. The client needed the information fast, and gave its law firm two weeks to complete the task. Using legal analytics, outside counsel was able, in real time, to access the entire litigation history of the acquired company's patent portfolio in minutes.

Law firm and corporate law department support staff can also apply legal analytics to their work. For example, law firm marketing professionals can quickly identify broad litigation trends to inform decisions about where to invest business development resources. Law firms soliciting new clients or new matters from existing clients can look up a prospect's litigation history—and the track records of competing law firms—and tailor a pitch to highlight their strengths and expertise and contrast it with those of competitors.

Law firms can also identify relevant litigation trends and insights to highlight in their advertising, public relations or marketing collateral to promote their brand, refine messaging, and call attention to specific areas of expertise in national, local or vertical markets.

### **Exploring Alternate Legal Strategies**

The power and speed of legal analytics empowers attorneys to explore and experiment with different legal scenarios and strategies in order to offer the best, most informed counsel to their clients.

For instance, an attorney might have a specific litigation strategy in mind, but the client wants to take the case in a different direction. Using legal analytics, the attorney can perform a series of searches and adjust parameters to provide the client with a range of possible outcomes for different legal approaches, including remedies and damages awarded.

Testing a strategy against outcomes data from similar prior cases, and exploring alternatives if the prospects for that strategy look unpromising, represents the power and promise of legal analytics.

### **Making Good Lawyers Better**

Technology is transforming the legal services industry. Some attorneys may resist this transformation out of fear that new technologies might change how they practice law or even make their jobs obsolete. Similar concerns were voiced when legal research moved from books to computers. But that transition did not reduce the need for attorneys skilled in legal research. Instead, it made attorneys better and more effective at their jobs.

Similarly, legal analytics will not make the judgment and expertise of seasoned lawyers obsolete. It will, however, enable those who employ it to provide better and more cost-effective representation for their clients and better compete with their opponents.

Lawyers who embrace legal analytics now will reap those benefits sooner and have a competitive advantage over those who do not.