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Better Outside Counsel Selection With Legal Analytics

Tune in, as Lex Machina's Sr. Director Kyle Doviken interviews Steven Geiszler, U.S. Chief Intellectual Property Litigation Counsel at Huawei. Have you ever selected a lawyer based on fuzzy criteria and gut-feel? With Legal Analytics you now have access to crystal-clear information that helps you decide who is the best fit for your case. Watch this webcast to view the discussion on how Legal Analytics can help with just a few clicks, review the track record of a lawyer, review previous clients, assess the experience with similar cases, and the outcomes that were achieved.

These key topics and others were covered:

- Analyzing counsel performance
- Comparing law firms and attorneys side by side
- Uncovering conflicts of interest
- Reviewing achieved outcomes
- Anticipating litigation spend

Speakers:

Steven Geiszler
U.S. Chief IP Litigation Council
Huawei

Kyle Doviken
Attorney & Legal Technologist
Lex Machina

Kyle Doviken (00:00):

Outside counsel selection with Legal Analytics is part of our Legal Analytics in Practice series that we host on a regular basis. My name is Kyle Doviken and I'm the director of the Southern US territory at Lex Machina. Previously, I worked as a trial attorney for civil matters in both state and federal courts. And I also served previously as an administrative judge in Nebraska. First I'd like to point out two comments on how to use your webcast screen. You can resize any of the windows using the lower right hand corner to improve your viewing experience. And please enter questions into the Q and A window at any time, and we'll cover them at the end. Now we are really fortunate to have an esteemed litigator joining us today. Steven Geiszler is the US Chief Intellectual Property Litigation Counsel for Huawei before joining Huawei, Steven was an associate at both Jones Day and Gibson, Dunn & Crutcher before becoming a partner in the Dallas office of the global law firm, Dentons, where his practice focused on commercial patent litigation.

Kyle Doviken (01:08):

He has received recognition from Chambers USA and Best Lawyers in America and has been quoted in such publications as Corporate Counsel and Texas Lawyer. Steven has appeared as counsel of record and more than 150 patent litigation cases. Since joining Huawei he has helped manage more than 50 cases. Steve is a strong advocate of using data and analytics in his practice. And in addition to his responsibilities of leading IP litigation at Huawei, Steven is currently an adjunct professor at Baylor Law School, where he lectures on topics of legal analytics and big data. Welcome Steven.

Steven Geiszler (01:51):

Good morning. Thank you, Kyle.

Kyle Doviken (01:56):

Steve, let's start out by taking your approach on a new matter. What kind of data points are you looking to assess?

Steven Geiszler (02:08):

Well, If we're on the defense side, we have a new complaint coming in. We want to look at, of course who the party is that has filed the complaint against us. If it's a patent case, for instance, look at the history of the patents. Have they been litigated before? And then of course, look at the counsel - who is going to be the opposing counsel that we will deal with? And so using the Lex Machina tools that you've put together, we can quickly begin pulling together not only data, but data organized in a way that we quickly start making sense of it. So here I see on the screen, you have the **Attorney Team Analyzer** with your default sample team that you have. So, this attorney team analyzer is one where we could plug in the opposing counsel, whose names appear on the complaint and learn more about their history.

Steven Geiszler (03:22):

This particular team is led by Morgan Chu, who's a very well-known litigator and trial lawyer, particularly in the patent space. If they were, for instance, the plaintiff's counsel, we would see that Mr. Chu in particular has a long history of many cases, but we'd also be able to then look throughout the team, at least the team that's publicly shown, and see not only how many cases they've done, we could of course, click on the number of cases like the 181 in particular and it would bring us to the precise cases that he's done. But more, before we even did that, if we scroll down, we would be able to see the number of times these individual attorneys had worked together. So if that's something of interest, kind of a team history, team cohesion type of analysis, we

would do that. We would also look towards the bottom where we would have the actual cases that they have appeared in.

Steven Geiszler (04:29):

And if there was one that we wanted to look at that caught our eye, we would be able to see cases where that exact team, for instance, in the first listing the Wisconsin Alumni Research Foundation case, you see that all five of them worked on it. And then the great thing about this view is - it's sortable, depending on what we want to look at. We sort it by court, what has this team done in a given district, or different ways of sorting it. Of course, that's just a quick way of looking at opposing counsel, but you can do the exact same type of analysis for teams that are pitching you. So if you have, for instance, two or three law firms that you send out, you ask them to send you pitch material, a presentation of what their proposed team would be. You can see the different members of the team. Then what you could do is plug in the lead five or six people. I think it's five here of your proposed team to defend you and get the same type of information. How many times does this team even work together?

Steven Geiszler (05:40):

I had a matter before I shared with you Kyle one time, where we hired a firm and I personally, even though I was the client, I was personally introducing two team members. They were at the same firm, but they didn't know each other. They'd never worked together. Now, maybe that's not a problem and maybe it's going to be a very cooperative efficient team, but it's the kind of thing that you want to know. Is this a team that has litigated many times together, or is this the first time that this team has ever been assembled? Because, there may just be team dynamics that you have to work through during that case. So this type of team analyzer can quickly tell you a lot about the specific teams and not just the firm. So for instance, in the patent world where I spend most of my time, there are many firms that have say 20 or 30 full time patent litigators, but you're typically not going to hire 20 or 30, you're going to be hiring a much smaller team.

Steven Geiszler (06:44):

And so rather than trying to compare firm A versus firm B, you're now analyzing and comparing team A and team B. And that's important. I forgot at the front, one thing or two things I do want to point out is number one, I'm giving this talk really just in my individual capacity. I'm not doing it on behalf of my employer or my clients or past clients. So I've been a user of Lex Machine for years, even back when I was in private practice. The other thing is in these examples, I want to make clear, we're going to try as much as possible to anonymize them. And some of these examples I'm giving are changed up from the actual events. So I don't want anyone to think that they know who I'm talking about because you probably would be guessing wrong.

Steven Geiszler (07:52):

With those disclaimers out of the way, one example I can give, a large firm, again, a firm that's large enough that they have more than enough people in a practice group to staff a case. So for instance, let's say that they had 20. And again, we'll just use patent litigators but the audience can understand this would apply to any type of practice group. They may have 20 people who do full time patent litigation, and they present a pitch with a team of five people and the pitch proposal that they come in as nice and glossy, and they've had a marketing executive work with the team to put it together. And it says, "Such and such, LLP is proud to provide you this presentation for you to consider us to represent your company in the ABC versus XYZ litigation." And then it goes on to say, "Our firm has great accomplishments in this area. In particular, we won the Seminole case of one, two, three versus four, five, six, and another recent case in front of the exact same judge. And that case was, whatever the case name is."

Steven Geiszler (09:16):

And I've seen and heard from counterparts at other companies where sometimes what has happened is the team that is pitching, actually was not the team that worked on the big cases that are being touted and instead it's colleagues. Now for some people that may not matter, but for other people, that could be a very big point, because as you can imagine, if it's one group of attorneys within a law firm that handle an important case, that's relevant to your consideration of whether to hire that specific team. And you find out that none of the individuals who are actually being pitched to you worked on that case, then first off how's that even relevant, other than probably they're in the same office, perhaps. And so they see each other at lunch and at the coffee machine, and maybe they can ask their colleagues about their experience in the other case, but it's not... We'll just say it's a very loose representation that's being made.

Steven Geiszler (10:25):

And so by having this team analyzer, and being able to look very quickly at their cases, this is kind of thing where you can quickly see that this team actually never worked, or at least never appeared as counsel of record in this case. And had they been core members, particularly on a case that went through trial or to some other important ending summary judgment, you would expect that they would have at least entered in appearance. So it's the kind of thing that you can use to double check if you will, the representations that are made being made by law firms. And it's not that I have anything against law firms.

Steven Geiszler (11:06):

I worked in firms for 15 years and a lot of my friends are at law firms, but as many people on this call will know, there's a great motivation to get a case, to get a matter. And so sometimes the pitch materials are not quite as accurate as you would want. And kind of the recurring theme and reason I'm a big fan of Lex Machina is rather than relying on stories that are being told, some of which may be completely accurate and no embellishment whatsoever, but others may not be quite so. So rather than just using stories and anecdotes, why don't we look at the actual data and the records.

Kyle Doviken (11:50):

So Steven, what I'm hearing you say is that when you hire say an Am Law 10, you're not hiring that firm, you're hiring two or three lawyers from that firm, and you want to use our data to be able to look at those two or three lawyers in micro level, as opposed to the huge branding firm that's tapping their global experience.

Steven Geiszler (12:18):

That's absolutely the case. And that app that you've created provides that analysis. And so what we first saw, that default view was the team. And this is another very useful, and very fast to do analysis. So let's say that at Stafford Davis, I'm going to use Stafford Davis, a friend of mine. He is a former colleague, but let's say that Stafford Davis had filed a lawsuit where he's on the other side. And let's say that I'm back in practice and I'm pitching you to be your counsel to handle this case. And so I might tell you, "I know Stafford Davis, I've worked with him. I've been opposite him in cases." Rather than you just relying on me.

Steven Geiszler (13:07):

And I might say, Oh, I've been in 15 cases with Mr. Davis. Here in just a matter of seconds, you can plug in Stafford Davis, you can plug in me and as you scroll down, it will not only show you how many times we overlapped in cases, but here towards the bottom, you'll see that Stafford and I were opposite each other in some cases. You see that the actual cases you see that were different firms. And then there at the bottom, you'll see cases where we were at the same law firm at Jones Day, where we both were associates years ago

and we worked together. So if I made the representation that I have worked with Stafford Davis, I know him I've been opposite him. Here's a way that you can double check that, make sure that what I'm telling you is accurate, or at least lines up with the data here, which is pulled straight from the ECF system. And just kick the tires on my representation to you, a similar... Oh, go ahead Kyle.

Kyle Doviken (14:11):

And then you can link to the actual cases and the documents so that you can vet it even further.

Steven Geiszler (14:20):

Absolutely. You would see where these cases went to trial. So, I actually was trying a case against Mr. Davis and you can pull up all the briefings. And so really dig down and analyze it as much as you want. But the beauty of this is, all of this takes a matter of seconds, not even minutes to access and pull together. That same attorney team analyzer, another use we have is sometimes the people who are nominated and become federal judges in particular, may have had long distinguished careers before they became federal judges. And one example, and certainly I'm not trying to speak on his behalf, but Judge Alan Albright, who's fairly well known in the patent world. He's in the Western district, Texas. He had a very distinguished career. Is very well known in the patent world.

Steven Geiszler (15:22):

And I know from personal experience, as well as talking to many other people that now a lot of lawyers are out saying, "Oh, I know Judge Albright. I worked on many cases with him in the past when he was in practice." I would not make that representation and the reason is that if you plug me in, you would see that Judge Albright back when he was in practice and I never crossed paths in a case, he was never co-counsel with me. He was never opposing counsel with me on the same case. So for me, if I were pitching you to try to get that work, that is something that would not be wise for me to make that representation, because again, it takes less than a minute for you to confirm: were Steven Geiszler and Judge Albright, (at the time Alan Albright, the lawyer) ever co-counselor or opposing counsel.

Steven Geiszler (16:14):

And so, again, I'm not trying to beat up on law firms or outside counsel, but this is just enabling in house counsel to double check what's being told to them. Now, Kyle, then if you want it to click on me, for instance, one of the points I can make, if you go to me and then go to the cases, the actual cases tab next to federal district, you would see that actually I've appeared as counsel of record 18 times in front of Judge Albright and you'd be able to see the cases. So I could make the representation to you that I have appeared in front of Judge Albright in the Western district of Texas. But that of course is not the same as saying that I was a litigator co-counselor or opposing counsel with him back when he was in his practice days. So again, maybe this is useful for people, maybe it's not, but it's just the type of thing that takes seconds to research. **And that's what makes me such a big fan of Lex Machina - just the speed, with which we can double-check the representations.**

Kyle Doviken (17:42):

Yeah. So let's dig into an individual attorney, and I appreciate you volunteering to be a sort of guinea pig here. And maybe look at your data as a lawyer and how you would examine as a chief outside counsel in your current role, evaluating a lawyer for your particular matter.

Steven Geiszler ([18:07](#)):

Sure. Again, law's very specialized as everyone appreciates. So looking at if a case came in, it was filed and let's say that I'm back in practice and I'm pitching to represent your company in a matter. Here you could look at this view. Now this view, I think the cases where I appeared as counsel of record, since 2009 to present. So little over 10 years worth of cases, you can go back all the way to 2000. So you could get, essentially the past 20 years of cases if you wanted in the full view. But just looking at the past 10 years, you would see that let's say that it was an employment case filed in the district of Idaho and out of the blue Steven Geiszler reaches out to you and says, "You should hire me as your outside counsel to represent your company on this large employment case in the district of Idaho."

Steven Geiszler ([19:11](#)):

Well, I've never appeared as counsel of record in a federal employment case, and I've never appeared as counsel of record in the district of Idaho. So it doesn't mean necessarily that I'm an incompetent attorney. It just probably tells you that if I'm pitching for that case, I may not be your best choice. And here as you can see from Kyle's view, we can also work through, what is my familiarity with different judges. So Chief Judge Gilstrap at the Eastern District of Texas, I've appeared in front of him in many cases, it hopefully represents that I'm somewhat familiar with his practice, with his preferences, how Judge Gilstrap runs his court and his cases. And so that means that if I'm pitching that's a more reasonable pitch for me to make and you should consider hiring me because of my experience in front of Judge Gilstrap for patent cases. So again, this is just something that is pulled together. It's easily readable. And one of my friends in the legal practices has referred to Lex Machina as a great disqualification tool. It doesn't necessarily guarantee that someone is... I'm sorry, go ahead Kyle?

Kyle Doviken ([20:41](#)):

What do you mean by that disqualification tool?

Steven Geiszler ([20:45](#)):

So it's not going to be able to certify necessarily that I am the best attorney, that I will necessarily give you the best result. It doesn't mean necessarily that my personality is going to be the best fit with you, but it's easy to see that for instance, I am not your best choice to handle an employment case in the District of Idaho. And if you are in-house and you're receiving a lot of pitches, a lot of emails, cold calls from counsel, asking you to hire them, and you want to sort through them, this is a very quick way of disqualifying. Again, it doesn't mean necessarily somebody that's not a good lawyer, but it probably can tell you very quickly that someone's not a good fit for a particular case.

Kyle Doviken ([21:34](#)):

Right. Cool. Steven, an interesting question I have for you is how many cases do you refer to outside counsel? How many do you handle yourself and what are the determining factors that you should hire an outside firm, a large firm and spend a million dollars plus in attorney's fees versus handling something yourself.

Steven Geiszler ([22:04](#)):

Yeah. So, it's going to be very different, for different companies. There are different policies that they have different philosophies that they have as well as just the level of comfort and experience or expertise of the in-house counsel. I practiced for 15 years before going in-house. And so there are times when a case will present itself where upon the early case assessment and looking at not only the substance of the complaint and maybe a patent, if it's a patent case, and the opposing counsel, where it may be something that we realize it's almost

counterproductive to be hiring outside counsel because this may be something that we can efficiently deal with by directly engaging with the plaintiff's counsel. So a quick example of this Solution Inc. case, that's a case that was handled in the Western District of Texas.

Steven Geiszler ([23:10](#)):

If you click on expand all for the parties there on the right. Yeah, expand all, you would see that I personally represented my client Fallway Technologies USA Inc. In that matter, we didn't hire an outside counsel. And then if you were to scroll down, Kyle, you'll see that the case took 122 days. So, Lex Machina gathering the data on the front end, I'm able to present to my in house or to my internal client an argument that for this case, perhaps it makes sense for us to just directly litigate it ourselves rather than turning it out to outside counsel for the fees and for their... And then on the backend, I'm able to go back to the internal client and say here's how this case ended up in terms of the time efficiency, there's, non-public aspects of it such as if there's a settlement, the amount of money, but of course the client would have been involved in that decision making as well.

Steven Geiszler ([24:19](#)):

But the point is this empowers the in house counsel to not only make the decisions on the front end of how the handle a case, but then on the backend report and show the actual data to an internal client who may not be a lawyer at all, or may not be a litigator and give a little bit more information. Of course, there are other cases that whenever they're filed, you realize you're going to need an army of 20 outside counsel. And so you're going to have no choice, but to hire a large team. And so really, it just depends on the early case assessment, which again, looking at the actual facts, you can hopefully make a well-informed decision and proceed accordingly.

Kyle Doviken ([25:09](#)):

Yeah. So I think this is a great example where you probably saved a corporation a lot of money, as opposed to just turning it over to some outside a big name law firm who may have obtain similar results, but you were able to do it internally and not have to do that. So, this is a great example, so thanks for that. I have just a few minutes left. And one of the questions that I got was what would be the two or three big pieces of advice that you would give to the audience as they are thinking to hire the best outside counsel or local counsel for that matter. I know that you have a lot of local council matters in Western District Texas or Eastern District of Texas and what advice or takeaways would you like to share?

Steven Geiszler ([26:17](#)):

Sure. So if you go back to the view, for instance of my profile and my case profile in particular, what I like about Lex Machina is this just how quickly... Yeah. And if you look at this you start... If you look at enough lawyers and using this type of view, you start seeing that there's a given profile. So you can see my mixture of cases. Patent and contract versus something like insurance or employment. **And you start realizing that there's a very specific profile for different types of lawyers, somebody who has a national practice scattered across different courts, different judges, versus a very local specific practice, maybe focusing on only two or three judges within the same court.**

Steven Geiszler ([27:15](#)):

And so, again, just over time, **the way this is presented, it's so quick to start understanding and quickly identifying one type of attorney versus another**. And so you start realizing, okay, this is a... Even the difference between somebody who is primarily a litigator, meaning handling the pretrial work, the fact

discovery, expert discovery, versus somebody who has a lot of trial experience, because you can dig into the numbers and quickly identify trial experience of different lawyers. So you can really sort through the different types of lawyers.

Steven Geiszler ([27:50](#)):

And so in terms of takeaway this rapid assessment of attorneys within seconds, you log in you type in somebody's name, and then you're two clicks away from this view in particular, this is something that replaces back years ago when I was in practice. And we were doing competitive analysis, if you will, on opposing counsel. **As an associate, I recall spending up very late almost all-nighters sometimes pulling together and not necessarily by hand because you were doing internet searches, but still it was so tedious time consuming to do this and here with Lex Machina it puts it right there in front of you.** And like in the team comparator where it starts even showing overlap between different attorneys. **That's something that would have been almost impossible to do beforehand.** And that's the key differentiator of Lex Machina versus just simply having access to ECF or PACER to start seeing so much of this

Kyle Doviken ([28:59](#)):

Yeah, that's really insightful Steven. And the last question I guess I have for you personally, is when you're hiring an outside firm, what's your perspective on them having access to data analytics and be able to really understand the data as opposed to making anecdotal decisions.

Steven Geiszler ([29:28](#)):

So I'm a big believer, it's something I've pushed, I've been vocal. In fact, I know you have a white paper on your website where I talked about expectation, certainly a firm of size scale that has a large infrastructure and different platforms. I very much would expect this to be part of it because although we don't have time and it's not really the focus of this call, **Lex Machina is much more powerful than just simply sorting through and selecting or researching counsel.** You can also look at that the likelihood of a given type of motion being granted or denied by a specific judge. So, you can drill down into what makes sense, even from the economics. Is it worth spending money on a given type of motion in front of a particular judge, or is it that this judge has never granted it?

Steven Geiszler ([30:19](#)):

Let's say that 200 times he or she has been presented with a certain type of motion. And that judge has never once out of 200 times, granted it. As in-house counsel I would very much want to know that. **So, I do have an expectation that firms use this.** If I can tell just quickly a very short story, I was on the phone one time with a relationship partner at a law firm. That law firm had recently brought on board, a lateral partner from another firm and the relationship partner being a good law firm partner, attempted to cross sell and says, "Hey, Steven, I want you to know we just brought on a lateral partner, who's in this other type of practice area that I know that you have worked for. He's very strong. He's a leader in the area." While we're on the phone, because this is so rapid, I just logged into Lex Machina and put in that person's name, because they were being pitched to me.

Steven Geiszler ([31:17](#)):

It was all of 25 seconds to do so. And I explained to the relationship partner who I've known for years, "Well, hold it, I'm not sure that that person has... that this new lateral partner's practice is quite as robust as what you're saying. In the past four years, he's appeared in only one case and that case lasted all of six years." And it's type of practice that would be shown here on Lex Machina and come to find out that the firm itself, just

even in the lateral partner process, had never really bothered to look at the data. And so it's the kind of thing where I had to break the news to him that (I'm not saying it's a bad lawyer or a bad partner), but the talking point that relationship partner was giving me over the phone just did not hold up, whenever, **in 25 seconds time, I was able to bring up that new partner's profile.**

Steven Geiszler ([32:18](#)):

And so it was just the kind of thing that I do - for their own good **firms probably should look at their own numbers and statistics and profiles and get to know themselves because many companies, certainly not just mine, many companies in-house have Lex Machina and use it routinely**. And there are people I know who I think are even much stronger and much greater users than I am of it. **And that is, I think, is becoming just a threshold level of ability or capability in in-house counsel.**

Kyle Doviken ([32:57](#)):

Awesome. Well, Steven, I really thank you for your years of advocacy on big data and analytics. I know this goes back for you well, before the start of our company to your medical researching base. And really appreciate that and if you've liked what you've seen in being on the call, and you want to learn more, please reach out to me via email or give me a call and I can certainly route you to the right person in your area. And thank you everybody for your attention. And I hope that this was insightful. So thanks again, and take care, everybody.