



How Appellate Analytics Give Law Firms A Competitive Edge

For trial practitioners, legal analytics is a proven quantity. Recent trends and advances suggest that they can similarly improve legal professionals' approach to federal appellate practice.

In a recent survey commissioned by Lex Machina, legal analytics users reported the biggest drivers behind their organizations' adoption of legal analytics were "successful litigation outcomes" – 74% – and "improved efficiency" – 62%. No other factor polled above 50% of the respondents.

Now, appellate practitioners could unlock that same potential, says Wade Malone, Lex Machina's Co-Head of Product. Lex Machina recently added the federal courts of appeals to its platform, as well as enhanced district court data so that users can see the impact of appeals on their litigation.

"I think this is a big opportunity to change the way people look at appeals practice," says Malone. "Bringing legal analytics to the federal courts of appeals will have some of the same effects that we've seen from bringing analytics to district courts."

SAVING TIME AND MONEY

Every lawyer knows that the story of litigation doesn't end with a trial judge's ruling. Appeals add complexity – and years – to litigation. Appeals analytics can help solve this complexity, according to Malone.

"The big question that most people have is that of reversal rate: 'How likely am I to get this decision overturned?'" says Malone. "Another big issue that comes up is timing – getting good data on how long it takes to get through an appeals case, how long it takes to get an appealability ruling, things like that."

The question of timing in appeals helps inform costs and budgets for law firms and attorneys. When combined with reversal rate statistics and other outcome analytics, the factors of time and money can spell out the business case for legal departments. This then begs the question: Is an appeal even worth it – and at what point is it not?

Similarly, says Malone, appeals analytics improve pricing practices, making billing more predictable and efficient. If a law firm knows roughly how much time and effort a particular kind of appeal in a particular circuit court will take, the firm can better set client expectations. This may allow a pricing department to toss the billable hour in favor of a flat- or hybrid-fee arrangement – giving clients the gift of predictability.

SHOPPING AROUND

Law firm clients can reap other benefits from appeals analytics more directly. For example, if a company wants to appeal a decision or has to defend a decision against appeal, it can use appeals analytics to look for the best fit – vetting various law firms' and individual attorneys' histories before appellate courts.

Robust appeals analytics also uncover those firms and lawyers that have the most experience – and even the best track record – with a particular circuit court, a particular kind of case or even a particular party.

"You may want to check the data on your regular law firm to understand their experience with appeals," says Malone. "And if you have one of those bet-the-company appeals, then you definitely want objective data to find the best possible law firm for your situation."

In turn, law firms can craft their pitches accordingly, using appeals analytics to back their track records and impress prospects with their knowledge and insights. They're already well-equipped to do so. According to Lex Machina's survey, users' top use case for legal analytics – 80% of respondents – is "gaining competitive insights on judges, parties, [and] opposing counsel."

THE RISE AND FALL OF ANECDATA

Leveraging legal analytics for "competitive insights" has traditionally been challenging in the context of federal appeals, Malone explains.

Raw docket data from PACER can be arduous to click and sort through. Metadata tags are sometimes unreliable or incomplete. And, unlike in state appeals or the U.S. district courts, attorneys may have as little as a weeks' notice before they find out which three circuit judges will hear their appeal.

In short, without fast and reliable appeals analytics, practitioners miss out on the ability to craft the most advantageous arguments in their particular scenario.

Fortunately, newer and better appeals analytics tools leveraging PACER data are now available, including Lex Machina's own appeals analytics tool for federal circuit courts released on April 21, 2022.

The next steps now lie in getting law firms to adopt these technologies, starting with appeals analytics education. In the Lex Machina survey, 41% of non-users of legal analytics reported that they don't use legal analytics because they don't know what "legal analytics" is. Even in firms that use some measure of legal analytics, appeals analytics adoption often lags. Instead, attorneys compare notes among themselves.

There is a term for this phenomenon: Anecdotal data.

"Anecdotal data is an anecdote that people use in place of data," says Malone. "That's the email blast to the other members of the firm: 'Hey, has anybody practiced before this judge?' 'Oh, yeah, I had him on a case four years ago.' And then building a case strategy around a few stories like that."

"That's not analytics," cautions Malone. "That's the old way of doing things."