

The Times, They Are A-Changin': AI Goes to Court

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Program Materials

1. PowerPoint Presentation

Reference Materials

Dorsey Blog: *How Will Artificial Intelligence Impact IP Litigation?* (Published March 6, 2018; Updated April 5, 2018)

<https://lawoftechnology.com/how-will-artificial-intelligence-impact-ip-litigation/>

Webinar Playback: *How IP Litigation Will Be Impacted By New Technologies: AI, Smart Devices, and Cryptocurrencies* (March 14, 2018)

<https://www.dorsey.com/newsresources/events/videos/2018/03/webinar-playback-ip-litigation-new-technologies>

For more information on exploring dramatic advances at the intersection of law and technology, see Dorsey's *Law of Technology Blog* at <https://lawoftechnology.com/>.

Materials are Available on www.dorsey.com at
<https://www.dorsey.com/newsresources/events/event/2018/10/corporate-counsel-symposium-2018-materials>

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Owen Byrd, Lex Machina
Jeremy Elman, Jocelyn Knoll and Caroline Sweeney,
Dorsey & Whitney LLP

Tuesday, October 30, 2018

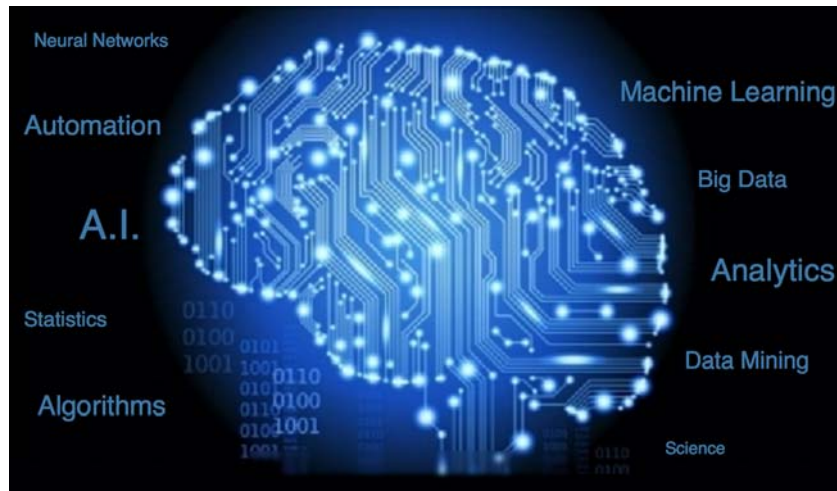
Current State

- Cost pressures
- Need for strategic lawyering
- Need to increase productivity and efficiency without adding head count
- Growth of legal operations



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The legal industry is being disrupted now



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Corporate Legal - Difficult for Technical Innovation

- Legal departments often amongst the last to innovate in a company
- Mix of outside counsel who use different types of technology in their practice
 - Rarely in budget for corporate legal department to demand outside service providers use uniform solutions
- Legal tech vendors, beyond e-discovery, are typically focused on large law firms, not corporate legal departments

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Corporate Legal – Potential Tech Solutions

- **Large departments can set their own roadmap and demand that vendors, including outside law firms, uniformly comply**
 - Many examples of large organizations leading the way
- **Corporate legal increasingly able to borrow best practices from other parts of the business**
 - Attorneys working with developers, innovation groups
- **Send leadership to industry meetings such as CLOC to keep business-people focused on potential benefits of technology and AI in the legal department**

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Law Firms – Even More Difficult for Technical Innovation

- **Historical reluctance to be in the “tech” business**
- **Ethical bar from non-lawyer ownership typically prevents long-term investment in software**
- **Lack of traditional personnel solving technical issues**
- **Lawyers are trained skeptics**

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Law Firms Are Finally Starting to Adapt

- **Most Firms are piloting various vendor technologies right now, with some doing nothing and some trying to devote large data projects to AI-type problems**
- **Many firms are hiring Knowledge Management employees with increasing responsibilities**
- **Some law firms are trying to be both a law firm and a technology company**
 - Large firm “skunkworks”
 - Small firm + small legal tech company

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Potential Solutions for Law Firms

- **The strength of most outside law firms is the collective knowledge of its lawyers**
- **The missing piece for most firms to effectively use AI is to manage that knowledge**
- **Law Firms should:**
 - Invest in knowledge management professionals
 - Analyze their systems for large data that can be effectively mined
 - Document databases (briefs, term sheets, etc.)
 - Budgeting tools
 - Legal Project Management

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Corporate & Law Firm – Unique Opportunity as AI Leaders

- Both corporate legal departments and law firms utilize the most relevant AI capability already – **KNOWLEDGE**
- Many vendors are trying to mine that knowledge and sell it back to us
- Corporate & law firms **CAN** optimize their own knowledge internally or through vendors/partnership
- **KNOWLEDGE + AI = superior service**

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Where Does AI fit in?

- The **HYPE**
- Fear of the **ROBOTS**
- Varying degrees of implementation
- Many tools focus on automating business processes
- Increasing recognition of the value of data analytics



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Don't Fear The Robots

- **Artificial intelligence is still mostly theory**
- **Artificial intelligence is currently invoked in the law to manage huge sets of data**
 - Current applications are more appropriately coined as data mining or machine learning, not giving out legal advice or serving as a “trusted advisor”
- **AI will augment processes that humans cannot perform efficiently**
 - Computers did not replace human lawyers, nor will AI
 - AI has the potential to eliminate many repetitive tasks that are not cost-effective for human lawyers

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AI In Action

- **Legal Analytics/Business Intelligence**
- **Legal research tools**
- **Legal drafting tools**
- **Predictive coding**
- **Decision Tree modeling**
- **Financial dashboards**
- **Application development**



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Legal Analytics

In the past – what could you know about judges, attorneys, parties?



- Stanford graduate
- 9 years on the bench
- Said to be plaintiff friendly
- 89 reported cases



- Chicago Law School '85
- Clerked for one year
- With Orrick since 7 years
- Rumored to play hardball



?

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Legal Analytics

Today – what you can know:



- Heard 37 similar cases
- Ruled for plaintiff in 11
- Median time to trial 452 days
- Denies transfer motions 82%
- Awarded \$27M in damages in 4 cases
- Awarded Attorneys' fees in 2 cases



- Plaintiff lawyer for IBM
- Never had a similar case
- Has 4 current cases in trial and 3 others filed
- Likes to file in E.D. Mich.
- Appeared 3 times before this judge and lost 2 transfer motions

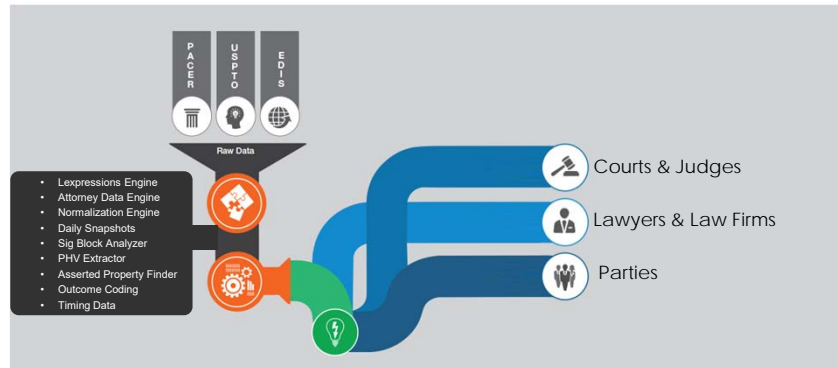


- Took 11 similar cases to trial and won 7
- Won \$13M in damages
- Median time to termination 528 days
- Used Orrick for 10 cases
- Files cases in D.Del.

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Legal Analytics: How it Works



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Legal Analytics

Business of Law: Outside Counsel Selection

- Identify and assess your competition
- Demonstrate expertise about judges, districts, opposing parties and counsel
- Predict legal spend and timing
- Respond to RFPs in real-time

Practice of Law: Win Cases

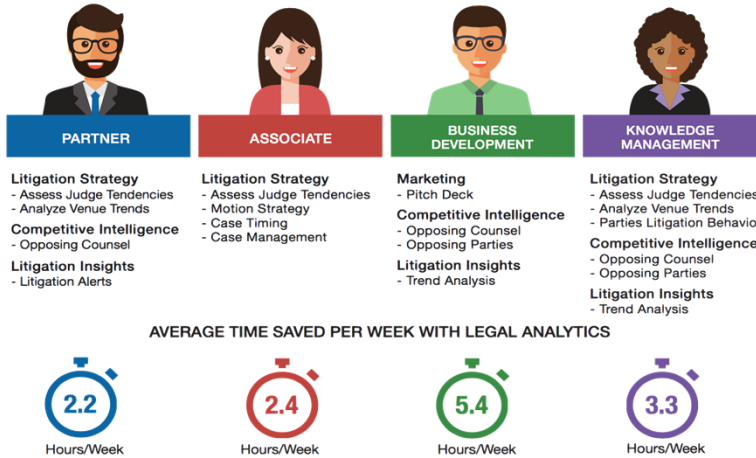
- Anticipate the behavior of judges, lawyers, and parties
- Develop successful motion strategy
- Predict the outcomes of different legal strategies



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Legal Analytics



- | Partner | Associate | Business Development | Knowledge Management |
|---|--|---|---|
| Litigation Strategy
- Assess Judge Tendencies
- Analyze Venue Trends
Competitive Intelligence
- Opposing Counsel
Litigation Insights
- Litigation Alerts | Litigation Strategy
- Assess Judge Tendencies
- Motion Strategy
- Case Timing
- Case Management | Marketing
- Pitch Deck
Competitive Intelligence
- Opposing Counsel
- Opposing Parties
Litigation Insights
- Trend Analysis | Litigation Strategy
- Assess Judge Tendencies
- Analyze Venue Trends
- Parties Litigation Behavior
Competitive Intelligence
- Opposing Counsel
- Opposing Parties
Litigation Insights
- Trend Analysis |

AVERAGE TIME SAVED PER WEEK WITH LEGAL ANALYTICS

Source: Lex Machina 2017 User Case Survey (n=238)

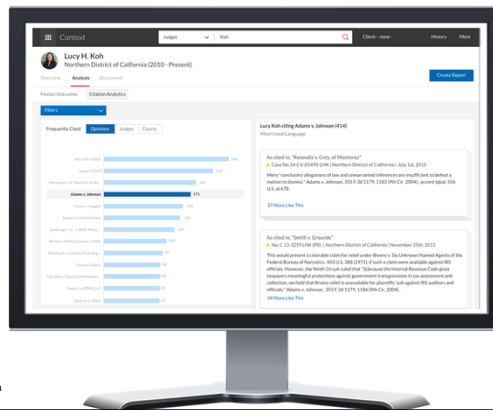
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AI-infused Legal Research

Know the language. Argue the motion.

Did you know that Judge Koh likes to cite *Adams v. Johnson* in cases like yours?
And these are the sentences she uses most frequently.



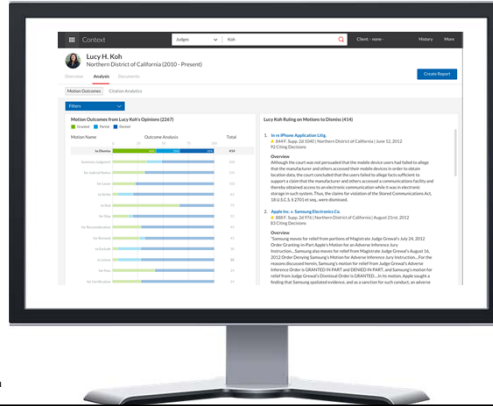
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AI-infused Legal Research

Know the language. Argue the motion.

Grant rates for 100 motion types, extracted from caselaw.



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AI-infused Legal Research

- Ask your legal research question on case law, statutes, and regulations.

ROSS responds to your natural language question with passages from cases, statutes, and regulations. You can emphasize specific motions and facts by completing the designated fields.

Question

What is the standard for patentability of business methods since 2010?

Analyze a brief, in .docx or .pdf format:

1 Check if cited cases are still good law

2 View cited cases on ROSS (they will be on the brief)

3 Find cases having similar language as the uploaded brief



Drag & Drop


your file here or
click here to upload

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Legal Drafting Tools

LegalMation leverages the power of artificial intelligence to transform the practice of law.




Complaint Analysis

Upload Complaint




- Answer
- Discovery Requests



Discovery Analysis

Upload Discovery Requests



- Response Shells
- Draft Objections

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Predictive Coding & Case Discovery Analytics

Continually prioritize and train

☑ Active (enable Continuous Active Learning)

Last processed 4/12/2017 1:04 PM; training will be queued next in 13 minutes.

Document score field

[R] CAL - Population for Relevant Model_Score



Training field (Pick List)

Core - Relevance

Values	Positive	Negative	Unreviewed
Relevant - Not Priv	1,246		
Relevant - Priv	286		
NonRelevant - Not Priv		39,259	
NonRelevant - Priv		3,918	
Foreign Language			14
Junk			2,336
Technical Difficulty			2,611
Unresolvable			455,731
Not Coded			
Total	1,532	43,177	460,692

Population

Population for Relevant Model

Sample (99% reviewed)

Validation Sample for Relevant Model

Positive	Negative	Unreviewed
162		
32		
	1,175	
	124	
		7
Total	194	1,299

Confidence level

90% 95% 99%

Progress based on sample

57,258 - 74,429 projected positives in population

Recall to date 2.3%

Recall worst case* 1%

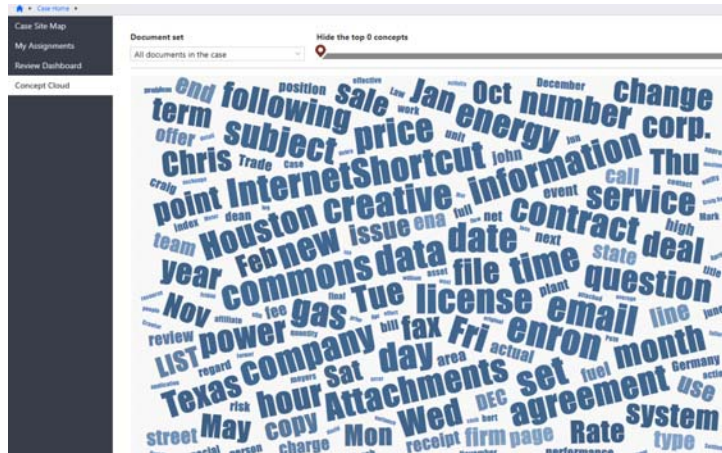
Precision to date 5%

* Due to unreviewed sample documents.

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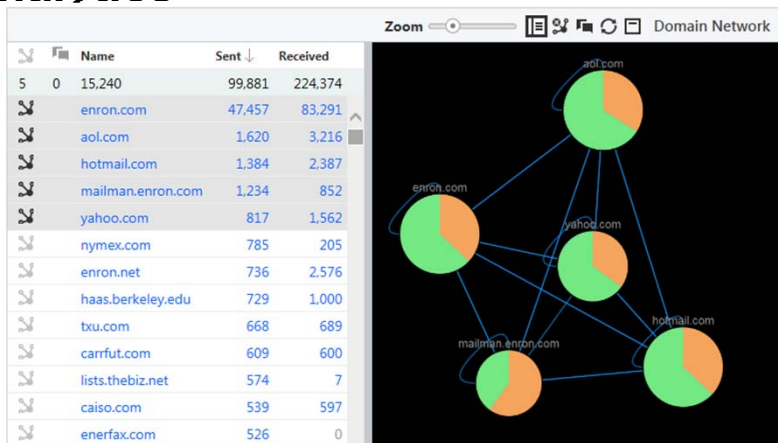
Predictive Coding & Case Discovery Analytics



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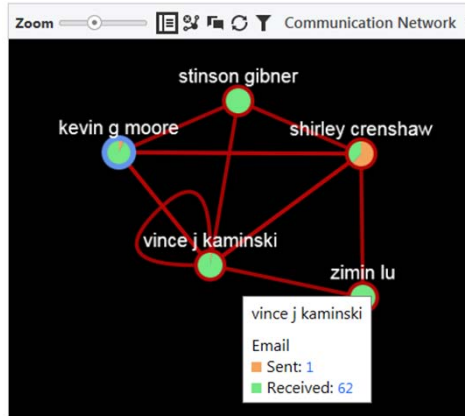
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AI & Transcripts

1 largely identified with, or at least coincident to
2 MSIL's best interests, someone who of his own volition
3 is a party to a transaction, even if it is with someone
4 unknown to you, and if it is a transaction that you
5 understand he is paying for and has paid for over
6 a number of years, whether or not that reimbursement
7 turns out to be direct or indirect, if a director finds
8 this transaction neutral to MSIL's interests, is that
9 director then without doing more in breach of
10 a fiduciary duty? That was my thought process. There
11 is no question that it was arrived at independently.
12 Is this reckless indifference? Is this
13 indifference? Or is it anything other than Kahneman's
14 "What you see is all there is" theory at work? The mind
15 accepts that it knows all there is to know.
16 I never saw the accounting for these payments as
17 a marker of my dishonesty, just to have a diversion.
18 I have never written a closing submission before, so
19 I can't resist the comments on the soap digest section.
20 How is this of any use? I wonder what they would have
21 made of the evidence of those who were not here.
22 Mr. Allen may have posed a problem, whether he had been
23 summoned or not. "I realise, quite rightly", he said,
24 "this has become an issue, I can't tell you it seemed
25 like that at the time, because it didn't, you know".

1 I don't understand why they found fault with

TRANSCRIPT MATCHES

I never saw the accounting for these payments as a marker of my dishonesty. Just

Context Lines: 5 Results: 10 QA Pairs Search

Documents Transcripts Notes

Day 9 (138:2:1 - 138:6:7)

137:22 being called marketing director, my Lord.
23 Q. May I ask you this question, which is: prior to your
24 appointment as CEO, which you go on to describe in your
25 statement, a bit later --
138:1 A. Yes.
2 Q. -- and I am just dwelling at the moment with the
3 BSC. Again payments, do you regard yourself as having had
4 the same responsibility for those payments before and
5 after your appointment as the CEO?
6 A. My Lord, responsibility for the payments?
7 Q. Well, you knew the payments were happening, correct?
8 A. Yes.
9 Q. I am not at the moment asking you -- suggesting that
10 there was anything wrong with them, I am just talking
11 about the responsibility. You knew the payments were
12 happening?
13 A. Yes, my Lord.

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Time Chat History

Source: Opus Magnum. Used with permission.

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Application Development: Gap Analysis to Automated Workflows

Release from Hold

Do you regularly review legal holds to determine if they can be released?

- Yes
- No

Do you have a process for determining if data is subject to other legal holds?

- Yes
- No

Do you advise custodians to return to normal retention for data that no longer needs to be preserved?

- Always
- Sometimes
- Never

Do you advise other parties (legal counsel, opposing party, vendors) to dispose of data no longer subject to legal hold?

- Always
- Sometimes
- Never

Do you issue a written Release from Hold Notice?

- Always
- Sometimes
- Never

Source: Dorsey & Whitney

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What Does the Future Hold?



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How Do We Get There?

- What are the pain points?
- Change management
- How and where can automation help?



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Recommendations for Counsel



Data literacy for
lawyers



Keep an eye on new tech/
accelerators/CodeX



See what CLOC/In-
house counsel are
saying



Adoption: Leverage
partner
retreats/practice group
meetings/law
department training



Mine internal data

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Captain AI has been busy during this presentation...

- 53% of you were paying attention to the conversation!
- 25% of you checked your phones only once during the panel!
- 2% of you nodded off...
- 95% of you are excited about AI in the Legal Profession!



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