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6:24 pm ET  
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## Should Lawyers Fear Big Data, or Embrace It?



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CIVIL LITIGATION JUDGES LAW AND TECHNOLOGY LAWYERS AND LAW FIRMS



By JENNIFER SMITH

Lawyers can—and will—argue until the cows come home about whether the law is an art or a science.

But attorneys who employ a more quantitative approach to litigation could well see some substantial benefits in the courtroom, according to a draft paper out this month by a professor at the South Texas College of Law in Houston and a recent graduate of the school (h/t [TaxProf Blog](#)).



Brad Pitt as the Oakland Athletics' Billy Beane in 'Moneyball.' — Columbia Pictures

The paper, "[Lawyering in the Shadow of Data](#)," essentially says litigators could learn a thing or two from the "Moneyball" approach used by baseball team managers and owners who began making decisions based on number-crunching, instead of on their gut instincts:

Like John Henry's Boston Red Sox, lawyers who embrace data-driven decision-making will gain a clear advantage over their counterparts who still cling to their Dictaphones, feather-quilled pens, and thumb-in-the-air predictions when handling their clients' legal affairs.

For instance, a lawyer trying to decide where to file a lawsuit could rely on her personal experience, or ask colleagues what forum might be most favorable to her client's case:

This approach to legal decision-making is problematic for several of reasons. First, as noted above, intuition takes years to develop. To make matters worse, studies have shown that lawyers are generally overconfident when assessing their likelihood of success, and that the accuracy with which lawyers can predict outcomes does not improve with experience.

A more effective strategy, the paper suggests, would be to aggregate historical legal data and look at the trends and patterns that emerge:

... historical litigation data, in the aggregate might reveal a judge's tendency to grant or deny certain types of pretrial motions, an opponent's historical avoidance of expert witnesses, or a party's typical timing for settlements...

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The Law Blog covers the legal arena's hot cases, emerging trends and big personalities. It's brought to you by lead writer **Jacob Gershman** with contributions from across The Wall Street Journal's staff. Jacob comes here after more than half a decade covering the bare-knuckle politics of New York State. His inside-the-room reporting left him steeped in legal and regulatory issues that continue to grab headlines.



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All that, the authors say, could well be more relevant for a client or lawyer than the published court opinions in prior cases.

And getting the information is easier than it used to be, thanks to data-sourcing companies such as Palo Alto's **Lex Machina**, which cranks out data on likely outcomes in intellectual property cases.

"People use Lex Machina to forum shop," said Nicholas Wagoner, a Houston litigator and 2011 graduate of South Texas College of Law who co-authored the paper with professor Drury Stevenson.

Such technological boosts can give lawyers a tactical edge that previously might have taken decades of courtroom experience to acquire, the paper said. Still, at the end of the day they are just tools:

While algorithms may be able to process and summarize trends and patterns in historical litigation data far more accurately and efficiently than their human counterparts, it is ultimately the lawyer's job to draw on their experience and intuition to determine which trends and patterns are relevant to a given situation, and how to act on such insight.

And the Big Data advantage can cut both ways, as any attorney who has haggled with a tech-savvy general counsel over **pricing** can attest to. For example, a company might use number-crunching to decide which lawyer to hire for a big case.

"Clients are interested in comparing attorneys' win/loss records," Mr. Wagoner said. "By aggregating, you can get what some call a Moneyball for litigation. You can do it for individual lawyers, or zoom out and do it for a firm."

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