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COVER STORY

## Analytics companies offer data on judicial tendencies

By David Houston  
Daily Journal Editor

**L**OS ANGELES — Rick Merrill got frustrated that a billion-dollar operation like his law firm, Greenberg Traurig LLP, had no data-driven way to find information on judges.

“I can think of two trials we lost that we attributed in large part to the judge,” Merrill recalled recently. “If we had known at the beginning that the judge was bad, we could have 170.6’d him (removing the judge from the matter), or settled the case. We could have written or argued motions differently.”

In 2015, Merrill left Greenberg Traurig after six years. He spent the next two years working with software developers and other attorneys to create Gavelytics, a computer program introduced in October that aims to give attorneys mathematical guidance into how superior court judges in Los Angeles and Riverside counties might rule.

The use of judicial analytic products have been on the rise since Lex Machina was created at Stanford University in 2006 for use in intellectual property litigation.

Some algorithms try to predict how a judge might rule in a case or on a particular motion based on past performance while others go deeper, providing case law or language to include in court briefs that have historically been successful before a particular judge.

The San Francisco Chronicle last year dubbed it “Moneyball” for lawyers, analogizing it to Oakland A’s executive Billy Beane’s use of data analytics to



Alex Drecun / Special to the Daily Journal

Rick Merrill, a former Greenberg Traurig LLP attorney, now runs Gavelytics, a computer program that is designed to give mathematical guidance to how judges in Los Angeles and Riverside counties might rule.

evaluate baseball players. Others have called it high-tech judge shopping.

A handful of marquee litigators in California said they were either unfamiliar with the products or weren’t using them.

But Bobby Schwartz, a partner at Irell & Manella LLP, is using Gavelytics. He said clients are wowed in pitch meetings by the data he can provide on the judge in their case.

“I’ve never seen anything like it,” Schwartz said. “It presents really useful information in a compelling way.”

Schwartz said the data was much more useful than the information lawyers get from emailing their partners for intelligence.

“Everyone who has won thinks the judge is the greatest judge since Learned Hand and everyone who has lost thinks the judge is an idiot,” he joked.

Another person who might be expected to be bullish on judicial

analytics is Allison Chock, chief investment officer for Bentham IMF. Bentham provides millions of dollars in private investor funding for parties in large commercial litigation.

“We actually did some research and tested a number of analytical tools this past year,” Chock said in an email. “In our view, many of the products we tested had significant holes in them in terms of how the data was input before sorting and in terms of missing categories/types of information that we would want for our case/judge/firm/lawyer evaluation purposes.”

“We also found some of the programs with nicer user interfaces lacked depth in terms of data and analysis, while those with better data tended to be less user-friendly,” Chock continued.

“In addition, we felt that many of the currently available analytics products didn’t produce much more in terms of valuable results

than a few searches would,” she added. “With these new data analytics services carrying fairly significant price tags, the expenditure would be difficult to justify just for convenience.”

Nevertheless, these companies are betting that people will spend big bucks for the data.

Gavelytics is the first company to focus exclusively on state court judges in Los Angeles and Riverside counties. This year, the company plans to expand into Northern California. It also will add a feature to allow lawyers to search documents in its database to better understand why a judge might rule the way he or she does.

And it is adding a database of arbitration rulings, a holy grail for lawyers since most arbitration results are secret.

“We’ve cracked the code,” Merrill said of the arbitration project. He wouldn’t say how they did it but teased that the company has developed “a very novel way” to determine information on how arbitrators rule.

Josh Becker is CEO of Lex Machina. Two years ago, the company sold to LexisNexis and expanded its offerings to include information on antitrust, securities, labor and employment, product liability and commercial litigation plus the Delaware Chancery Court.

Becker recalled that many lawyers were leery of judicial analytics when Lex Machina began.

“You couldn’t mention data or analytics,” he said. “We were just selling history.”

That changed in large part because intellectual property lawyers were more comfortable with emerging technologies and

quickly saw these algorithms' value, Becker said. "Intellectual property lawyers were really good ambassadors to [their colleagues] in other practices," Becker said.

"We went from selling one seat to signing up the whole firm."

LexisNexis is also getting law students interested in the product, hoping they will request their employers buy it once they are hired by law firms. Becker spoke at UC Berkeley School of Law on Thursday about Lex Machina and said his product was received enthusiastically.

Becker and Jeff Pfeifer, vice president of Product Management at LexisNexis, both said they believe 2018 will be the year law firms adopt wide scale use of data analysis.

"It took 10 years to get the first 45 Am Law 100 firms signed up. We signed 20 firms last year," Becker said. "There's definitely been an acceleration."

"We're big proponents of the idea that the future of the practice of law will be data-driven," Pfeifer said.

They are betting money on it. Last year, LexisNexis purchased

Ravel Law, another judicial analytics firm spawned at Stanford.

"Ravel's technology, enhanced by LexisNexis, examines legal reasoning and argument analysis that is either persuasive or not persuasive to a judge," explained Pfeifer. In other words, the software tries to identify cases and language that have been most persuasive to a judge.

All of these companies are careful to say they aren't predicting how a judge would rule.

"We're not claiming to predict the future," said Merrill of Gavelytics. "We are looking at their historical records and noting how judges are behaving differently from one another. We don't opine on judges and say, 'This is a good judge or this is a bad judge.'"

"We're not the Robing Room," Merrill said, referring to the website that allows people to anonymously rate which judges they think is good or bad.

To succeed, these companies must have access to an enormous number of case outcomes. Lex Machina began by carefully curating intellectual property case outcomes from across the U.S.

over a significant period of time. That was costly work that would not lend itself to scale.

Even now, Lex Machina and Ravel, which has exclusive access to a large database of historical cases compiled by Harvard Law School, focuses primarily on federal cases, where there is more access through the PACER system.

Tackling state court cases is more problematic. Rulings on access to case files vary by state and even county. And there are more cases to compile. The average judge in Los Angeles County, the largest court in the nation, has more than 3,300 cases on his or her docket.

"We see states pursuing radically different solutions in this space [of information management]," Pfeifer said. One state is doing it right, he said. "Delaware has quality data and consistent data."

Delaware is small and the matters are mostly high-end business litigation. In Los Angeles County, documents are not consistent and aren't easily accessed in mass quantities.

To coax judges toward accept-

ing and perhaps facilitating their efforts, analytics firms are trying to intrigue, or even co-opt them.

Pfeifer said judges often ask to see what his system has on them. "They're intrigued," he said.

Merrill has been pitching his product as a way for courts to keep tabs on judges and perhaps apply the law more evenly. "Right now, chief judges have no meaningful way to know what judges are doing," he said.

"Our position with the courts is that we are on the same team here," Merrill said. "The court should know what it is doing and lawyers and litigants should know what the court is doing."

Chock, the litigation financier, said that despite her reservations she is now using a product offered by Westlaw/Thomson-Reuters.

"Although Monitor Suite certainly isn't a substitute for human evaluation of potential investments, we've found it to be a very useful tool in our due diligence (underwriting) processes," Chock said. "I expect we will continue to see rapid and dramatic improvements in these products over the next few years."