

Professional Perspective

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# 10 Tips to Leverage Your Litigation Data

Contributed by [Alex Lucas](#), Reed Smith

Law firms and legal departments sit on a goldmine of litigation data, but it is rarely corralled and put to work. Instead, litigators rely on personal experience, word-of-mouth, and rudimentary document database searches, losing out on efficiency, knowledge sharing, and cost savings.

Legal teams commit the cardinal sin of reinventing the wheel—often at considerable expense—when they cannot easily identify similar work done by others. Attorneys may also take inconsistent positions for the same client, fail to raise every legal argument in their toolbox, or miss litigation trends that impact their clients' bottom lines.

Using readily available data to improve practice operations and decision-making is easier than you think. By tracking actionable information about litigation matters you can ensure that institutional knowledge is truly for the institution, and—privilege permitting—can be accessed by anyone at any time.

The author leveraged her firm's litigation data by creating a database profiling key information from nearly 900 distinct litigation matters, which increased collaboration, transparency, and client value. What follows is a list of tips and tricks for others who seek to harness the power of their law firm's or company's litigation data.

## 1. Think About What You Want to Achieve

Careful planning and defining goals at the beginning of the project will pay dividends in efficiency. Ask, “What do I want to achieve by leveraging the data?” A firm or legal department can accomplish a variety of objectives through this exercise, including:

- Increasing knowledge sharing among legal teams
- Identifying hot-button legal issues that require attention and coordination
- Reviewing trends to predict and target future litigation spend
- Comparing outcomes across matters

Whatever the result (or combination of results) you want to achieve, keep it top of mind to avoid resource-waste and scope-creep. The more closely hewn you stay to the project goal, the greater its chance of success and impact.

## 2. Choose Data Points Carefully

Identify at the outset all relevant data points you must collect to achieve the defined goal. For example, some basic litigation data points are: Jurisdiction, Judge/Arbitrator, Causes of Action, Opposing Counsel, Expert Witnesses, Fact Witnesses, Key Documents, To-Date Fees and Costs, Litigation Strategy, and Outcome. While the data points should be reasonably tailored to the project goals, they should also be as comprehensive as possible.

Keep in mind that whenever data points are added downstream, best practice is to update all past matter profiling to include the new data point. When there are many stakeholders involved and it takes a long time to gather data, collecting additional data after the fact can be extremely cumbersome, and perhaps impossible if stakeholders have left the organization. You can prevent this heavy lifting by identifying all relevant data points up front.

## 3. Figure Out the Technology

You do not need state-of-the-art technology to track litigation data, but you will ideally use a platform more advanced than a spreadsheet. Although spreadsheets benefit from being the most cost-effective option and may be appropriate for discrete data collection projects, they are not well-suited for more comprehensive litigation data tracking. This is because a single source document like a spreadsheet can become cumbersome to manage with multiple users, and it is difficult to standardize the input (discussed below). There are also security and privilege concerns if the document is shared externally. Finally, analysis of the data may be time-consuming and require manual intervention, which increases the risk of error.

A more secure and standardized option is a survey or questionnaire. This option would allow the user to answer questions that would be aggregated as actionable data. For example, a questionnaire could have a dropdown of selections for

different data points, such as jurisdiction or outcome. Note that there is greater upfront investment for building the questionnaire. And, like a single source document, any analysis of the data may be time-consuming and at risk for error.

Another option is to engage a vendor to provide discrete software design. Though the cost investment will be greater, software engineered for litigation tracking would provide the most sophisticated and secure solution. You can also explore whether the software can integrate with existing software, such as billing or case management systems, to reduce the burden of data input and/or analysis. In fact, a sophisticated data tracking software could potentially save costs by automating data collection, upkeep, and analysis tasks that would otherwise be performed manually.

In the process of selecting a technology platform, keep in mind that the quality of the data fed into the platform should remain the focal point. The critical piece, after all, is the data itself.

## 4. Standardize the Input

You can more readily track litigation data if it is built from pre-populated, standardized input values—think multiple choice rather than free text. This will reduce the “noise” from typos, minor language changes, and differences in convention. For instance, you might use a single input value for “Response/Opposition to Motion for Summary Judgment” rather than the many other ways this document could be referred to in a free text field.

Where possible, you should explore compiling data from existing platforms such as document databases or other case management programs. This will reduce the lift of attorneys’ manual data input. However, even when data is sourced from existing programs, budget adequate time to standardize the data for your analysis. In the example above, “Response/Opposition to Motion for Summary Judgment” documents may be saved under varying filenames in a document database. Individualized review is necessary to make the data actionable for litigation analysis.

If there is no existing data to work from, input will come from practitioners responsible for day-to-day management of the litigation matter. This may be very time-consuming depending on the number of stakeholders. You should carefully consider workflow and minimize the disruption of the data input—for example, by engaging non-attorneys.

## 5. Engage Non-Attorneys

Busy attorneys can struggle to keep up with administrative tasks, and they rarely have time to extensively input and interpret raw data. For these reasons, it is risky to build a foundation for data analysis that relies exclusively on attorney upkeep and interpretation. In addition to selecting attorneys who will work with the system, identify and empower non-attorneys, such as paralegals or administrative assistants, to profile new matters and consistently enter the data. For example, non-attorneys can review and profile new complaints or other litigation demands for key data fields, such as jurisdiction and the legal claims asserted. Non-attorneys can also perform outreach to attorneys responsible for specific matters to ensure the data is accurate and up-to-date.

Moreover, identify staff within your company that can break down the data and communicate meaningful and useful information to attorneys and other interested parties. Depending on the technology, it may require manual input to synthesize the data, such as running tables or graphs. Non-attorneys can perform this analysis—and, just as important, run quality-checks—for easy consumption of the data by stakeholders.

When employees are engaged in this way, their data responsibilities should be a part of their formal job responsibilities and performance reviews to ensure these tasks are not pushed aside as tangential responsibilities.

## 6. Mind the Backlog

Do not underestimate the resources necessary to build a knowledge-sharing tool from the ground up, which includes gathering data from matters that are ongoing or already concluded. Keep in mind that when profiling new matters is put on the backburner, the data backlog grows. To address ongoing backlogs, consider engaging non-attorneys as discussed above, and having a system whereby key stakeholders are notified data entry is delayed.

## 7. Create a Realistic Schedule for Updates

Even if non-attorneys are involved, it will probably be necessary for attorneys to review and update the data. But for many legal teams, it is not feasible to update matters in real time. You should consider your team's bandwidth for this task, then set—and stick to—a realistic schedule for updating and auditing the data. For example, updates may be monthly or even quarterly. The process will be even smoother if there is a mechanism such as a billing tool or case management system to verify each matter has been reviewed and updated, without needing to confirm with the responsible attorneys. For example, you should explore whether the technology provides an audit trail that indicates when and by whom each matter was updated.

## 8. Factor in Training and Follow-Up

Training and outreach are necessary to ensure those involved in data collection and analysis understand the new processes and collect consistent and correct data. In addition, the involvement of management and key stakeholders is critical to ensuring a successful launch. At the outset of the project, you may consider a kick-off event where all individuals potentially responsible for input participate in a presentation and orientation on the tool.

Beyond this, in the early stage of adoption, be sure to allocate ample time for follow-up and training to account for any growing pains associated with adopting a new tool. Companies should prepare and distribute written training materials that users can reference while they update the database. Any written training materials should have an “owner” who can maintain and update them as the tool evolves. Likewise, there should be a dedicated person or group to assist on any issues or questions that arise.

## 9. Preserve Privilege and Protect Confidential Information

For external applications it becomes critical to protect privilege and confidentiality—particularly when case-specific litigation data is accessible to multiple law firms or clients. Some options to protect privileged and confidential information include tailoring the permission level of each user to specify which matters are visible to them, anonymizing the data, or distinguishing between case information that is publicly accessible—e.g., jurisdiction of a federally-filed action—versus not—e.g., mediation statements—at the matter profiling stage.

Because such approaches increase administrative upkeep, weigh the costs and benefits of external applications carefully. Also consider the privacy and security protocols of any vendor engaged, such as a technology vendor, and whether they also protect privilege and confidentiality of the information. Note, however, that you may be able to share analysis based on litigation data so long as the analysis itself does not disclose any privileged or confidential matter-specific information.

## 10. Put the Data to Work

The effort of collecting litigation data should have demonstrated impact. Take full advantage of the end product by applying the data to actionable decision points. Use the data to answer common questions such as:

- Is an opposing law firm filing lawsuits more frequently, which would justify greater resources to beat them back?
- Is litigation regarding a specific compliance issue picking up, such that you can prevent future legal fees by tweaking the current process?
- What is the average litigation spend for a certain docket of cases, and is it justified by the probable exposure?

The more often real-world applications are modeled—and shared with inputting attorneys and stakeholders—the greater the buy-in, and the more likely the profiled data will be of high caliber.