Here Comes the Judge

Judicial Analytics

BY JAN BISSETT AND MARGI HEINEN

It is an age-old lawyer's dilemma—what will the judge decide? Sleepless nights, calls or emails to colleagues to probe past experiences, and research to see how somewhat similar fact patterns have fared with this judge were all part of the strategy. Now comes Big Data! Large data sets of judicial behavior and case outcomes can be examined to offer predictive analysis or trends.

One piece of that real estate—judicial analytics—offers an intriguing view of the struggle with predicting judicial behavior. We touched on judicial analytics in our May 2017 article, "Beyond Court Decisions—Dockets, Documents, and Analytics."[1] Since then these sources have only continued to increase in popularity and offerings. This article provides a more in-depth analysis to help researchers determine which products are appropriate for their research and litigation needs.

Overview

Lex Machina[2] (launched in 2006) and Ravel Law (launched in 2012)[3] were the first analytics products to draw the attention of legal researchers. Both specialized in intellectual property research when they were first introduced. Noting their popularity with researchers, Lexis ultimately acquired both Ravel Law and Lex Machina and incorporated their functionalities into LexisAdvance.[4] Judicial analytics products are now available from the "big three" legal research platforms: Bloomberg Law, Lexis, and Westlaw. Other eager entrants into this growing market include providers such as Gavelytics,[5] as well as newcomers Trellis: Legal Intelligence,[6] Loom Analytics,[7] and Premonition.[8]

Manage Your Expectations

Reading vendor brochures, requesting a trial use, and speaking candidly with current users are just a few ways to begin to evaluate how a resource may work for your particular research situation. It's easy to focus on the judges or courts where your practice is concentrated or you spend the most time, but it's important to consider potential and future uses too. Are you taking a deep dive into how a particular judge thinks? What do the products provide for you that you can't access now? Who else might be using the product, and how else might this information be used within your practice? Is the vendor in the process of adding materials to the newly minted product? If so, how long will it take before complete coverage is available? How reliable have researchers found this information to be?

Is your book of business federal? Or is state practice your bread and butter? Many vendors have found that mining PACER gives them a huge database of federal opinions and orders ripe for analyzing.[9] Westlaw and Lexis have been collecting decisions for years from a variety of jurisdictions, but for many of those years the emphasis was on officially reported appellate decisions. This practice has made it harder to find state court trial decisions and orders that have no database similar to PACER. If you're interested in a state court, you may want to check out Gavelytics, Premoniton, or Trellis: Legal Intelligence, especially for California courts. State courts are notoriously independent and employ a wide range of technology tools for providing e-filing and sometimes public access. Mining these varied sources is much harder and less reliable than accessing PACER, so depending on the state you're interested in, you may not find much help in determining a judge's mindset. If you do find results for your state court judge in an analytics product, be aware that conclusions may be drawn on only a few decisions or orders.

Evaluate Efficiencies

The research inquiries have existed for some time.[10] Information about litigation strategy and drafting and judicial background and experience is used by legal professionals for a variety of reasons: counseling clients, seeking job opportunities, evaluating judicial candidates, and so on. Common inquiries include how long a particular case type takes to come to trial in a particular judge's court, and how a particular court has addressed a specific type of pleading or particular litigation. In the past, researchers searched out court statistics, reviewed judicial directories, and waded through pleadings. Consider how many times you've performed this type of research and how time consuming

it has been. Would analytics products provide you additional research value, efficiency, or effectiveness to warrant the budget outlay?
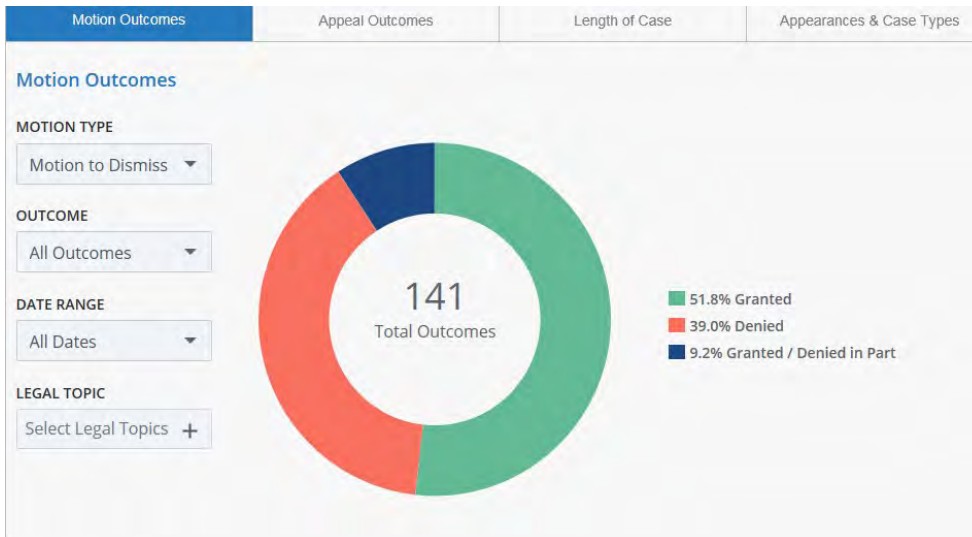
For a long time, researchers have wanted to quickly assess a judge based on likelihood of reversal on appeal. While that search can be cumbersome, you can construct a search of decisions that will collect instances of opinions reversed or affirmed for a specific judge without purchasing a full suite of judicial analytics products. However, the new judicial analytics products not only provide information on possible outcomes, but also offer insight into what cases judges prefer to cite in their orders and decisions. This kind of analysis allows a researcher to make an informed decision when determining which case law to cite for greatest impact. In fact, a recent article by Kevin Bennardo and Alexa Chew[11] has some surprising results regarding case citations in briefs and opinions. Labeling this process "citation stickiness," the article studies the likelihood that a citation in a parties' brief or

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pleading may be referenced in the judge's opinion. Two findings are of interest. First, half of the citations that appear in the final opinion were not in the parties' briefs. Thus, judges are referencing cases that attorneys either did not find or did not choose to rely upon. Second, 16% of the cases cited in briefs were included in the judges' opinions, so using a judicial analytics product to choose cases and the language within a case that a judge often relies on could certainly improve the likelihood that persuasive arguments and references are part of your brief.
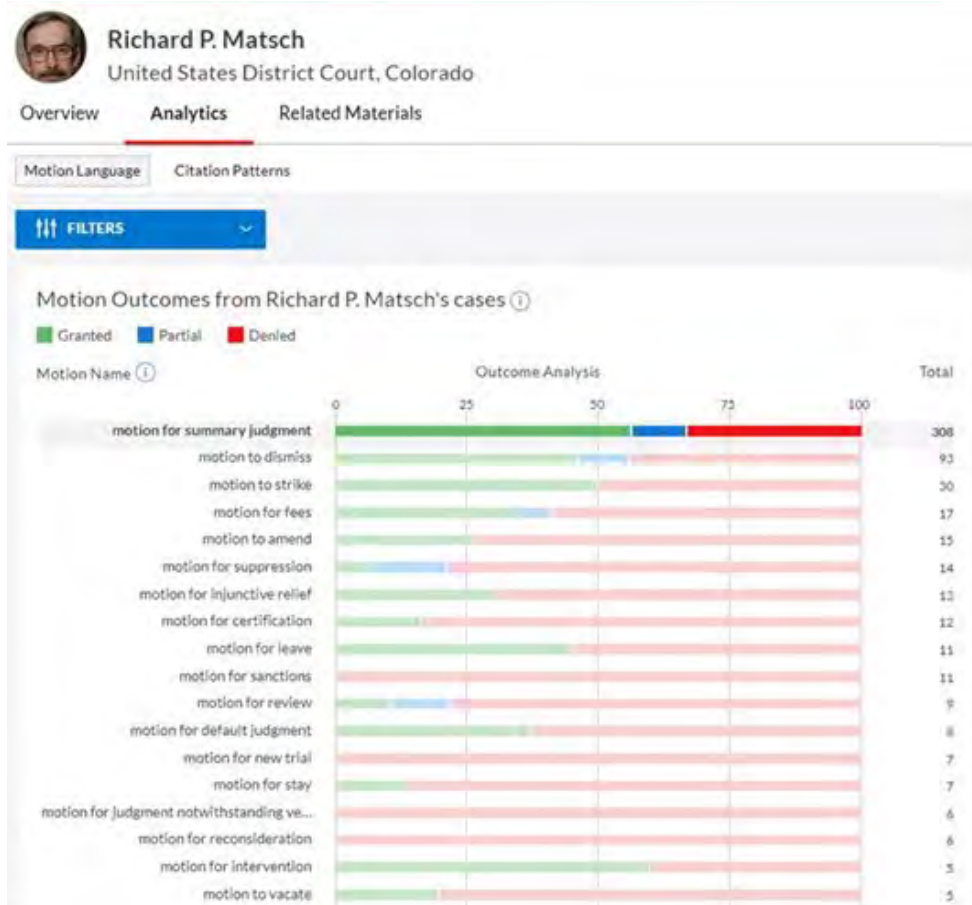
In a Dewey B Strategic "Hits and Misses" survey of readers, Westlaw Edge Analytics was voted the best new analytics product for 2018–19, with Lexis Context and Bloomberg Law Attorney Analytics the second and third runners up, respectively.[12] In a recent market research report, legal analytics market key players included Wolters Kluwer, Thomson Reuters, Mind Crest Unitedlex, Argopoint, LexisNexis, and Premonition.[13] The field will

BLOOMBERG LAW

| Motion Outcomes | Appeal Outcomes | Length of Case | Appearances & Case Types |

Motion Outcomes

MOTION TYPE
Motion to Dismiss ▼

OUTCOME
All Outcomes ▼

DATE RANGE
All Dates ▼

LEGAL TOPIC
Select Legal Topics +

141
Total Outcomes

■ 51.8% Granted
■ 39.0% Denied
■ 9.2% Granted / Denied in Part

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LEXIS CONTEXT

Richard P. Matsch
United States District Court, Colorado

Overview   **Analytics**   Related Materials

Motion Language   Citation Patterns

⇅ FILTERS ⌄

Motion Outcomes from Richard P. Matsch's cases ⓘ

■ Granted   ■ Partial   ■ Denied

Motion Name ⓘ	Outcome Analysis	Total
	0 25 50 75 100	
motion for summary judgment		308
motion to dismiss		93
motion to strike		30
motion for fees		17
motion to amend		15
motion for suppression		14
motion for injunctive relief		13
motion for certification		12
motion for leave		11
motion for sanctions		11
motion for review		9
motion for default judgment		8
motion for new trial		7
motion for stay		7
motion for judgment notwithstanding ve...		6
motion for reconsideration		6
motion for intervention		5
motion to vacate		5

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only grow as the legal industry welcomes and adopts new technologies.[14]

Take a Look at What's on Offer

Let's take a look at exactly what the big three products may provide to researchers. A brief description of the litigation analytics (particularly judicial analytics) offerings from Bloomberg Law, Lexis Context, and Westlaw Edge follows. We selected these three services because law students have access to all three online legal research tools, including the judicial analytics products, and law firms are likely to subscribe to one or more of the three services. These quick looks are only a peek at possible results. A purchase evaluation should include multiple sources and vendors that may provide information appropriate to your research needs.

The late Honorable Richard Paul Matsch of the U.S. District Court for the District of Colorado, a familiar name to Colorado practitioners, serves as our illustration. His career spanned 1974 through the early part of 2019. The examples here focus on motion analytics because the analysis of motions rulings is the newest inclusion in judicial analytics. Each screen shot shows tabs that indicate additional data on the judge's rulings, such as length of case, appeals, and related materials.

Bloomberg Law

The Bloomberg Law screens are clear and easy to use. There are only three types of motions in the drop-down menu. It is easy to find the outcomes on appeal. Appearances and case types indicate companies and attorneys that have appeared before this judge.
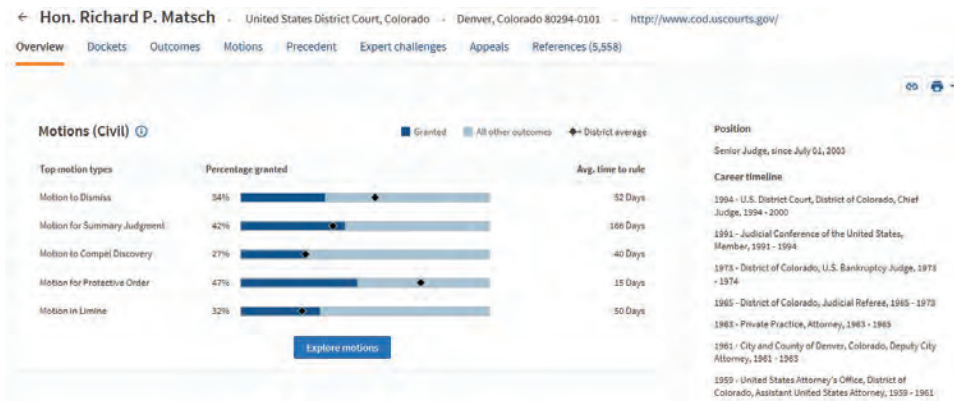
Lexis Context

A large number of motion outcomes are available. Lexis also shows the judges and cases most cited by this judge. In fact, you can dig deeper and see the specific language the judge of interest has cited.
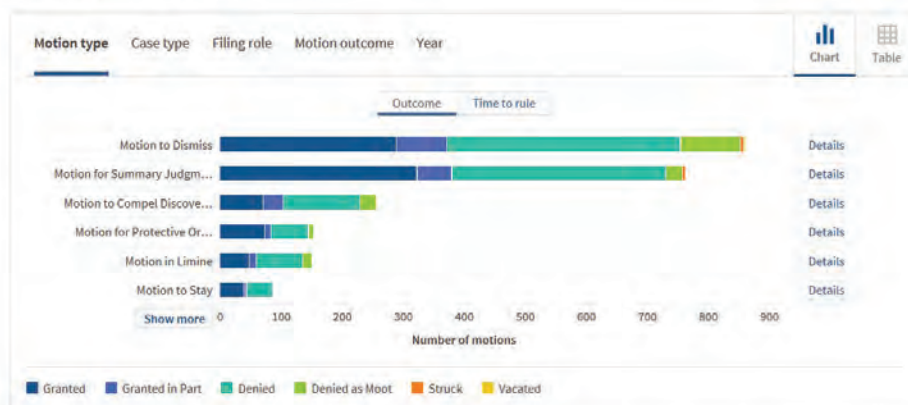
Westlaw Edge

The overview provides top motion types, but you must select "explore motions" to retrieve the motions analytics. Westlaw includes analytics and profiles, which can be printed separately.

WESTLAW EDGE

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NOTES

1. Bissett and Heinen, "Beyond Court Decisions—Dockets, Documents and Analytics," 46 *Colo. Law.* 59 (May 2017).

2. LexMachina, https://lexmachina.com.

3. Ravel Law, https://home.ravellaw.com.

4. Dipshan, "LexisNexis Launches Lexis Analytics, Leveraging Collective Power of Recent Acquisitions," *Legal Tech News* (July 12, 2018).

5. Gavelytics, https://www.gavelytics.com.

6. Trellis: Legal Intelligence, https://trellis.law.

7. Loom Analytics, https://www.loomanalytics.com.

8. Premonition, https://premonition.ai.

9. Becker, "Legal Analytics Tools are not Created Equal," *Law Technology Today* (Dec. 4, 2018), https://www.lawtechnologytoday.org/2018/12/legal-analytics-tools-are-not-created-equal.

10. Jenkins, "Making Sense of the Litigation Analytics Revolution," *Practical Law.* 58 (Oct. 2017).

11. Bennardo and Chew, "Citation Stickiness," 20 *J. of Appellate Practice & Process* (Apr. 19, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3375050.

12. O'Grady, "Hits and Misses Survey Part 3: Best Analytics Product and Best Analytics Documentation," *Dewey B Strategic* (Apr. 22, 2019), https://www.deweybstrategic.com/2019/04/hits-and-misses-survey-part-3-best-analytics-product-and-best-analytics-documentation.html.

13. Market Research Reports, "Legal Analytics Market—Global Industry Analysis, Size, Share, Growth, Trends, and Forecast 2017–2025," https://www.marketresearchreports.biz/it-and-telecommunication/7586/legal-analytics-global-industry-market-research-reports.

14. *See, e.g.*, Wolters Kluwer, "The Future Ready Lawyer: The Global Future of Law" (2019), https://lrus.wolterskluwer.com/media/3002/future-ready-lawyer-white-paper.pdf.

15. O'Grady, *supra* note 12.

16. Nevelow Mart, "The Algorithm as a Human Artifact: Implications for Legal [Re]Search," 109 *Law Library J.* 387 (2017).

17. Nevelow Mart, "Every Algorithm has a POV," *AALL Spectrum* (Sept./Oct. 2017), https://scholar.law.colorado.edu/articles/723.

Looking behind the Curtain

These products, like other artificial intelligence advances in legal research, need to be viewed with a measured eye. Answers pop up for us with much more ease than the literal Boolean searches that online research vendors provided in the early days of online legal research. But do we understand why we get these results and how comprehensive they are? Jean O'Grady surveyed users to see which analytics providers have invested time in providing good documentation for users.[15] She also questions the lack of strong ROI documentation by vendors, which leaves users to develop their own analysis of the cost-benefits of these products. In 2017, Susan Nevelow Mart, director of the University of Colorado Law Library, studied the results obtained using search algorithms in Westlaw, Lexis Advance, Ravel, and others.[16] She found that the algorithms vendors employed were not identical, and each has a point of view that a researcher might be completely unaware of as results appear.[17]

As vendors continue to encourage us to use their judicial analytics products, the burden falls to researchers to understand what is included in the analysis and what may be missing. Are the results coming from published opinions, or are unpublished orders included? How far into the past does the database go? Is the database large enough to produce meaningful results, or is the researcher seeing a high percentage in a very small sample? Analytics, like other research tools, demand skilled users and a healthy respect for evaluation. **CL**