The evolution of sophisticated legal matter management practices (168)

By Kenneth Jones on June 14, 2020

The present and beyond.

Today's post covers two topics: (1) current best practices in legal matter management based upon various deployments we see in the industry today, and (2) how legal matter management systems and processes are destined to evolve over the next decade or so.

Before we begin, however, I'd be remiss if I did not acknowledge the amazing progress we've seen in the past few years. More and more, the legal industry is embracing cloud-based collaboration, talking about interoperability and standards, seeking to develop suites of applications rather than individual applications, and recognizing the value of mapping new technological capabilities to cost savings and productivity.

The lines delineating leading-edge technological capabilities and high-end legal thinkers are continually blurring. See, e.g., **Post 088** (Liam Brown acknowledging that Elevate's acquisition strategy is necessary to keep up with rapidly evolving industry); **Post 159** (Jason Barnwell discussing the future of knowledge work and his ambitions for Microsoft's Modern Legal). This convergence is raising the bar on how automation, business analytics, and process improvements are improving the legal function. And there's no reason to believe that the pace of progress shall not continue to increase at an increasing rate.

With this in mind, let's kick things off by examining some current "must-haves" and great practices already firmly ensconced in legal matter management systems today.

Today's best practices

At least five are worthy of mention.

1. Empirical data collection and usage

It's difficult to rank the leading trends, but clearly one perched at the top of the mountain is data. No surprise here, it's entirely consistent with the new ways of the world — an amazing amount of data being collected and mined.

What are some examples of this phenomenon within legal?   It's impossible to study them all in a piece like this, but let's take a look at a few.

One might be a plaintiff. In the past, name, rank, and serial number put a decent chunk into what was needed for some matters. Now, those days are over. Personally identifiable information (PII), is needed in large litigation to uniquely identify plaintiffs. Work history, medical and lifestyle facts (e.g. smoking history) is required. Links to social media accounts and contents are increasingly more the norm than the exception. The extent of a plaintiff's relationship to a

defendant (e.g. product usage) is tracked. And on the back end of matters — think settlements — connecting a plaintiff's financials with resources to identify applicable liens (e.g. alimony, bankruptcy, legal) prior to releasing funds is part of the equation. All in all, the days of tracking case lists in an Excel spreadsheet should be in every lawyer's rearview mirror.

Courts and judges might be another good example of specific data tracking needs. Matters can be moved from one court to another (**Multidistrict Litigation -MDL** – being one example).   Different courts require documentation associated with various Pre Trial Orders (PTO) which trigger unique tracking requirements. Standardizing the tracking of docket numbers can be a huge challenge due to data inconsistency issues. And, of course, all of these requirements are appended to the obvious data points — the tracking of the venue, judge, various milestone case management dates, dismissal information, and others.

How does this actually work in practice? Robert Gilmartin, a partner within my firm, **Tanenbaum Keale LLP,** explains:

> Many of the clients we serve, both as national coordinating counsel and regional counsel, are focused on not just identifying high-risk cases, but on a broader scale and an ongoing basis, ranking all matters by the degree of risk. This helps clients develop a defensible methodology for supporting and predicting costs for the purposes of insurance filing, financial reporting and strategic analysis.

Gilmartin continues by stating some common questions include items like the following. "Who is the plaintiff in terms of age and occupation, and who is his counsel? Where is the case venue? What is the product at issue and the nature of the injury? "

Rob has accurately highlighted many of the most common data points examined within the types of sophisticated mass tort matters we help oversee at Tanenbaum Keale, but for the purposes of completeness, one could also drill down into other common matter entities (defendants, law firms, case evaluation metrics, etc.). But the bottom line here is that data is king. Increasingly, there are requirements to track hundreds of data points for a matter.

2. Collaborative workflow

Integrating workflow capabilities into matter management processes is not just an emerging trend, it is a capability that already has a seat at the table.   What is this and how does it work?

Applied within litigation matter management work processes, workflow, and notification engines drive efficiencies. Consider, for example, a discovery request. These typically emanate from local counsel, with requests for information flowing between and among national coordinate counsel and various departments within a client. When process requests can trigger notification messages, parties can act upon a specific task immediately, empowering the pace of progress for the specific work steps of a task. The key "win" here is assisting all the parties in effectively meeting deadlines imposed by the court by helping to avoid unnecessary delays related to less-than-ideal communication.

There are many other common work processes that can be refined and enhanced via collaborative workflow technology. In essence, anything where parties like national coordinating counsel, local counsel, experts, insurers, and, of course, clients are processing in tandem benefits by the types of ticklers and exception reports generated by this technology.

Lastly, workflows obviously help enforce and govern a matter doing through various steps in a defined order. If, for example, clients want cases tracking via terms like "filed", "response sent", "in discovery", "pre-trial, etc., with resolution options like discussed, settled or a trial verdict also available, workflow engines can "control" users and be sure that matter flow through a defined, preferred process in an agreed-upon matter (a vast improvement on tracking status in a single picklist or via a long, descriptive text field).

In summary, the value of workflow technology providing a framework for following a standard process and shepherding a matter through these processes with customized notifications is a solid practice when entrenched into the matter management systems in play today.

3. Value of application development platforms

It is now fairly common for legal teams to work within a development platform that empowers non-programmers to quickly and efficiently generate new applications. When it works, it takes agile development to a new level, helping to rapidly respond to new requirements supporting both law firms and corporate legal operations. Or, within my core responsibilities at **Xerdict**, these capabilities (our flagship product CaseEnsemble is also built using an application development engine), this allows us to deploy products in new vertical markets, like bankruptcy law, as business conditions warrant.

How might a platform like the **Salesforce Lightning** model be applied to the legal function? Here are the thoughts of one industry expert, **Frank Cabreja**, a Senior Architect within **IT Edge CRM** of West Chester, PA.

Frank Cabreja

> At IT Edge CRM, a Salesforce Registered Partner, we frequently work on projects to assist our clients in connecting their field personnel to home offices within the Salesforce platform. This helps our clients rapidly consolidate data and facilitates an acceleration in business-critical communication between disparate staff. The platform's **Communities** and Web Services API provides for collaboration with partners and customers external to the firm. For the legal function, I see similar opportunities to link corporate legal departments in large Salesforce companies with their business partners. For example, outside counsel attending depositions can report back to and interact with their clients in a more automated, timely manner via the Salesforce platform.

What is the universal of options in this area? Clearly, worldwide providers like AWS, Oracle, Salesforce and Google have footholds in this space. Within legal, there are consortiums such as **Reynen Court** which applies a concept of application containerization to promote their version of a single platform for legal technology. And lastly, other software providers such as **Clio** offer their own flavor of an application marketplace.

4. Sophisticated/flexible reporting engines

A lot of material in the public domain (and even later in this article), talks about sophisticated reporting trends and capabilities. But there is also something to be said for some of the simpler, user-facing tools many matter management systems make available to clients today.

One of the common features in many systems today is a query engine. The better user-facing engines are something clients can use to develop basic reports without the cost or delays associated with provisioning custom reports from software vendors. Common features include the ability to export, format, and control data in a variety of ways. In the legal field, the use of such tools has different adaptation levels (some users love them, others prefer to ask for reports). For those who embrace the do-it-yourself model, query engines are quite valuable.

One tricky element of this approach is raising the ceiling of most query engines, most notably by encapsulating the ability to combine entities into user-created reports.

What does this mean in layperson's terms? Perhaps something like the following. We can all imagine using a simple query engine to pull data about a plaintiff (name, address, etc.).   When we want to add other fields (think the associated matter status, law firms, courts/venues, etc.) that adds some complexity, but generally speaking those types of things are doable. But eventually, once one wants to add more and more fields from different areas of a system (perhaps in this example things like settlement details or product usage), the upper limits of a query engine are tested and, ultimately, maxed out. So, raising the ceiling by doing some under-the-hood work to combine data elements for the purpose of facilitating more complex reports is a great practice today. We do a lot of that work in our shop, and I know we are not alone.

5. Business partner integration

Many features are needed to effectively connect external partners to core legal matter management data. Here is my checklist:

- Strong security controls (**Zero Trust**, access levels)

- Appropriate audit trails

- Ease-of-use

- Controlled submission of data structured to harmonize and cleanse incoming information

- Notifications (event-driven, scheduled reports, exception reporting).

Looking at the Salesforce ecosystem as a model for integrating with business partners, Cabreja notes, "Legal operations departments can potentially link together a network of their external service providers (e.g. experts, law firms) with internal clients via the Salesforce platform. For companies with a significant investment in a Salesforce implementation, we see many opportunities for corporate legal to benefit from the broader company investment in their Customer Relationship Manager (CRM) platform."

What's coming next?

In my view, progress will be substantial in the following five areas.

1. Digital operations – process improvements

Clearly, streamlining functions within legal is some low hanging fruit.   Many workflows are longstanding in nature, with a good bit of "we've always done it this way" and some embedded, extra steps with limited value baked into the process.

But that line of thinking is rapidly evolving. **Jason Moyse**, a well-respected legal technologist, fellow Legal Evolution **author**, and current Managing Director at **Autologyx**, offers the following thought relating to digits ops within legal.

Jason Moyse

> Digital operations and process improvements go together, which is what makes the current era interesting for those that have been process-focused up to now. In fact, the success of a digital operations platform is less about the impressive technology itself and more about the thoughtfulness of reimagining workflow with a drag-and-drop, "box-and-wire" process map sequencer which provides interoperability across multiple types of data, objects, systems, and people.

As we all understand, process improvement itself is not a new concept, but the execution methods are evolving. Many sophisticated companies—from startups like Autologyx to legal tech giants such as Thomson Reuters and different ALSPs —all have their own unique take on this. But Moyse summarizes this beautifully, observing, "It looks like traditional process improvement – but integrated within a digital ecosystem. The end result is far superior to traditional **Robotic Process Automation** or **Business Process Management** with endless use case opportunities and continuous improvement."

In this sense, business process improvement via a digital operations platform is not unlike application development platforms that make is easier to to design and replicate across legal functions. Digital operations are clearly a technology that is at the forefront of legal matter management.

2. Interoperability and Standards

What is happening in legal now reminds me of the great work I observed in corporate America in the 1980s with the standardization of data exchange protocols. Pardon the oversimplification, but two standards were created to assist with transmitting business transactions like purchase orders, order status, shipping confirmations, and invoicing. There were two predominant standards, **EDIFACT** which was more of a worldwide standard and something else named **ANSI** which was the U.S. X12 standard. Again, please pardon the oversimplification of these details.

The benefits of these standards were (and are) incredible. Companies moved from a model of having customer-specific interfaces to a global model; the cost of developing, and maintaining, interfaces were slashed dramatically; and overall efficiency went up.

The legal industry has yet to conquer these issues, but there is a great movement towards that end. A non-profit, cross-functional organization named the **SALI Alliance** (Standards Advancement For The Legal Industry) is working to bring together professionals from various industry elements (legal ops, law firms, solution providers) to develop standards. SALI released version 1.0 of the **Legal Matter Specification Standard (LMSS)** in February, which includes many code sets and is a first step forward in the effort to standardize data exchange formats between those in the legal industry.

While code sets are not entirely new to the legal industry (the ABA LEDES billing standards being one great example of a historical code set which delivered efficiencies to the industry), the SALI Alliance is an organization working towards legal matter management efficiencies and something we all must be mindful of in the future.

3. Compliance / Regulatory

Regulatory compliance is inexorably linked to data governance, so naturally, legal matter management systems must contain the infrastructure needed to meet current and future requirements. Those with data maps, metadata appropriate

for legal functions, and the successful integration of data classification and into core legal processes will have a leg up on the process.

What is important?

- Classifying data to determine appropriate procedures and policies depending on content type.

- The right to erasure or deletion

- Where data is stored.

- Data breach reporting requirements.

- Certification requirements (**ISO 27001 / 27002**)

A sound data governance program is important to identify and implement in both business and legal matter management systems. **Benjamin Pearl**, Faculty Member, Department of Computing and Decision Sciences at the **Stillman School of Business at Seton Hall University**, observes:

Benjamin J. Pearl

> Firms have been gathering and analyzing metadata from a variety of sources, be it authoritative sources within the company operations (i.e. sales, forecasting, budgeting, research, and development), third party sources to assist in the evaluation and acceptance of clients, vendors, employees (i.e., Dun and Bradstreet, Refinitiv World-Check, Sterling), and common regulatory frameworks (i.e., NIST, FERC, ISO, SOX) to ensure compliance with existing regulations particular to data privacy and protection requirements.

Pearl further explains that "[r]isk management plans that include data classification (i.e., high/medium/low) categories drive the risk treatment procedures that key stakeholders (i.e., risk owners) must design and implement. Regulatory and compliance references can be integrated within the procedures and policies to mitigate non- conformance and potential for fines, sanctions, consent decrees, etc. "

Interestingly, application development platforms also support these objections. Many times, I've engaged in dialogue with professionals in the field like Cabreja and others in similar roles within the **Oracle Cloud infrastructure** unit. They

frequently cite the various inherent logging, security, and audit functions which are baseline elements of these enterprise-level offerings based on the considerations cited by Pearl.

In summary, a comprehensive data mapping and classification schema that transcends across all elements of legal processes, and potentially beyond, can trigger businesses of their operational, regulatory/compliance, and reporting requirements. A solution balancing the enhancement of compliance requirements while minimizing the damper imposed on the business processes enables more preventive activities around data identification, classification, breach detection/prevention, and risk mitigation.

4. Reporting dashboards / aligning CLO with ops projects and data

Generally speaking, there are loads of reasons that data collection and analytics can and should be applied to legal operations. Within corporate law departments, decisions on outside counsel evaluation and selection are clearly more informed when supported by quantitative metrics. Analysis of legal spend and linking legal invoices and work tasks to case outcomes is another area ripe for mining.

But data collection is just the beginning. Results need to be made easy to interpret. Being a resident of the New York City metropolitan area, perhaps we can learn something from the daily briefings of our political leaders. Like them or not, the briefings were laden with various graphical representations of key statistics relating to positive tests, hospitalizations, and the like. It's not the content, but the presentation, I'd like you to keep in mind here. It needs to be simple to be effective.

Thus, one of the key questions here is how to get there (assuming you are collecting good data). Ideally, we want business support systems that enable us to store legal data within cloud platform software providers; and in turn, those applications include built-in data analytics and reporting capability. No law firm or ALSP in the world, no matter how deep their pockets might be, is going to be able to exceed the capabilities provided by offering tools like the many provided by **Amazon Web Services**, **Tableau within Salesforce**, or **AI-Driven Analytics within Oracle**.

So, in my mind, one of the keys in this area might include ensuring, in the long run, that a good chunk of legal matter management and spend data be connected to a provider offering these types of advanced reporting services. Taking all that data and packaging it up for C-suite type legal decision-makers is a best left to experts have the advantage of working at scale.

5. Applying AI and net neural tech to litigation functions

Here lies perhaps the most far-flung frontier. Perhaps not quite to the level of the **Perseverance Mission To Mars**, but complex nevertheless. Opportunities to apply these technologies to functions such as the preparation of standard legal documents, the efficient execution of common legal functions like answering an interrogatory, or reviewing a legal release abound.   In fact, they are quite well documented and the frequent subject of projects within law firm tech incubators or ALSPs.

That being said, most of these efforts, to date, tend to be more stand-alone projects, as I have yet to see extensive integration of these capabilities into the matter management systems.

Predictive analytics is another soon-to-be ripened fruit just waiting to be plucked by legal technologists. Why ask the user to define the next step in a process when a machine might be able to suggest the appropriate action to a legal professional. This helps promote both efficiencies and best practices. It might sound pie-in-the-sky, but companies like Salesforce offer **predictive analytic services** that take us much further down the road than one might think we are. This is yet another possible reason to consider building out legal apps on enterprise platforms (far more built-in elements of advanced functionality).

But surely, these types of integration into the legal matter management processes are coming down the pike in the not too distant future.   An effective application of advanced technologies which is well aligned with legal matter management functionality, something which is easier said than done of course, perhaps has the most potential of all to improve outcomes, deliver efficiencies and strip costs out of the legal operations function.

Conclusion

I find the future to be particularly fascinating, due to the scope and breadth of the anticipated improvements to the matter management process. Moving forward, in addition to tech companies continuing to build out features to improve the legal operations function, we'll need to entertain considerations such as regulatory/compliance, developing and then adhering to legal industry data exchange standards, and finally work with a cornucopia of new technologies designed to fundamentally re-engineer some of the most time-honored legal work processes.

Fortunately, by all appearances, we are well on our way.

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