LEGAL EVOLUTION

Best practices for effective litigation tracking systems (316)

By Kenneth Jones on July 10, 2022

An effort to close the communication gap between legal technologists and the lawyers and called legal professionals they serve.

This post is for lawyers and allied legal professionals who are not legal technologists but want to understand some of the basic principles of constructing and operating an effective litigation management system.

The development of legal profession software —more specifically the forging of **sophisticated litigation matter management systems**, has been one of my core vocational functions for a period of time far longer than I wish to admit. See **Post 108** (discussing my initiation to legal in the legal department of Bristol-Myers Squibb). It is particularly important to master and adopt advanced software of this nature when attempting to manage some of the more **expansive civil litigation issues** of our time (e.g., Roundup, Juul)

A key theme on Legal Evolution is how the legal industry is becoming much more multidisciplinary, partially to drive productivity gain but also to gain insights that can alter and improve the quality of legal advice and strategy. Yet, without basic foundational knowledge of adjacent disciplines, we struggle to communicate and collaborate effectively, giving the status quo more power and endurance than it deserves. Thus, my purpose here is to demystify some of the fundamentals and key moving parts related to litigation tracking systems.

This essay is divided into four parts:

1. **Benefits: applies to all vs practice specific**
2. **Elements of effective case management**
3. **Four distinct approaches to implementation**
4. **Exploring the roles of advanced technology**

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1. Benefits: applies to all vs practice specific

We make investments of time and resources to achieve some type of future benefits. So, what are the benefits of an effective litigation management system? Here are three:

- **Visibility to actually manage**. When one system serves as a single source of truth for multiple constituents (legal, insurance, financial functions of the involved parties, courts), redundant data tracking and reporting tasks are eliminated. Lawyers and clients can focus on conversations and decisions that can drive resolution. Further, after a case is settled, a well-constructed tracking system often results in accelerated processing, which means expedited relief for affected litigants.
- **Reduction in litigation costs.** Downstream from better, more trustworthy data are cost savings to clients. Although this includes identifying and implementing recommended billing practices and rules, to ensure billing and proper rates and minimize redundant or non-authorized tasks, effective case management can also reduce litigation settlement costs. For example, identifying "like matters" and calculating average settlement costs creates a baseline to counteract the claims of opposing counsel. More parameters (products involved, injuries, facilities or associated business partners involved, jurisdictions, etc) enable lawyers to be better prepared on the merits.
- **Best-in-class security.** Structured, well-constructed tracking systems, especially when hosted in the cloud, often offer capabilities such as immutable logging, advanced encryption capabilities, security models such as Zero Trust, or data storage in specific geographical locations. Often, these features are core elements of governmental compliance or certifications such as **GDPR**, **ISO 27001** or **SOC 2**.

In many cases, however, the most significant benefits of a litigation management system will be a function of the practice being served. For example, in volume practices with common work tasks (e.g., debt collection, consumer bankruptcy, or single-plaintiff employment cases for big box employers), the benefits flow primarily from strong systems and methodologies. These are areas, in my opinion, where no-low code and advanced technologies like administrative-oriented robotic-type automation can play a prominent role in streamlining repetitive within well-established workflows.

In other practices, however, the underlying litigation can be sprawling, involving hundreds of parties with slight but potential material variations connected to their dispute (e.g., mass torts, or consumer class actions). Here, the litigation tracking system needs to rein in massive complexity. At **Xerdict Group LLC** (a wholly-owned technology subsidiary of the Newark, NJ boutique firm Tanenbaum Keale LLP, known as TK), our branded product, CaseEnsemble™, often tracks hundreds of fields (data related to plaintiffs, courts, products, locations, related parties, associated law firms, injuries or allegations, financials). This type of complex litigation tracking system is designed to answer challenging business questions like:

- "What are our projected legal and settlement costs for the next four quarters?"
- "How many unique plaintiffs remain to be settled?"
- "Can we develop a detailed, defensible report to file insurance claims?'
- "What is our upcoming nationwide trial calendar?"
- "Might we project the fair anticipated cost of resolving a set of litigation claims based on prior, resolved settlements and the data associated with said claims?"

Whether the underlying challenge is high-volume, practice-specific complexity, or some combination of the two, the elements of effective case management are guided by the same principles.

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2. Elements of effective case management

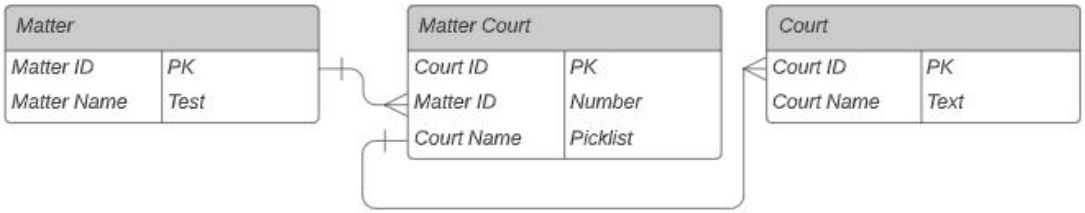
It's neither flashy nor sexy to express this perspective, but the most effective case management principles actually relate to fairly basic, traditional technology concepts such as identifying strong requirements, solid database design, and business-oriented reporting.

This may seem to beg the question, "Is there a place for the emerging technologies captivating legal operations experts today – tools like **AI and Blockchain**, machine learning, predictive analytics – within matter management?" Of course, there is.

But clearly, akin to a satisfying loaf of bread, the figurative flour, eggs and yeast of an effective system tend to be basic application ingredients like accurately tracking matter particulars, useful reports, and efficient data entry forms.

A. Strong data model

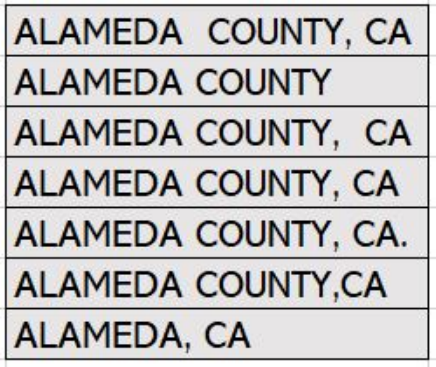
I completely understand that folks' eyes will start to glaze over a little bit when one discusses something like a **data model**. So, despite the importance, we'll keep this brief.



Very simple data model with a matter, assigned court, and court name picklist

The key point here is to select the correct data type for the data your application needs to store. In this example, we create a data model with the capability to assign one or many courts to a matter, and also to display the court name(s) in a picklist for selection (to minimize typing inconsistencies).

What are some examples?



- We need to store data like a name (law firm name, a product, a location). The graphic to the right shows some of the many tiny text-field inconsistencies that crop up in a poorly designed data model.
- Dates are another example, as elements like "Date Filed" or "Date Closed" also don't work as text fields. Not enforcing data integrity (e.g. there is no such date as February 30th) presents insurmountable data consistency and downstream reporting difficulties. (As a bonus, here is a little related mind-twister to offer your friends: "*How many months have 28 days*?" The answer is ***all of them***, although some of us might default to ***one***! Full credit to **Joe Kernan** of CNBC for this example, which we solve by programming in logic rules.
- Picklists are important also. There's a big difference between a single select, multiple select, or something like a yes/no field. Apply the proper option to each tracking need.

We all understand text fields are appealing to users, especially those with a superior command of the English language like attorneys. They greatly enjoy and covet the flexibility of entering exactly what they want to enter. But the failure to enforce certain data rules is a huge barrier to success.

A final nuisance in this area is the characteristics of each field. Failing to set fields to be mandatory when appropriate, or not developing programmatic data validation checks (e.g. prohibiting values that do not make sense such as future dates or inconsistent values) contribute to serious data-related issues as.

B. Workflow and notification

One example of **workflow and notification capabilities** is the application of business rules to support the management of the many deadlines present in the legal profession. This is, naturally, a key reason sophisticated calendar systems are prevalent in the industry. Matter management is certainly not a calendaring system, but there are many embedded deadlines coursing through the veins of the litigation process. We can better manage these milestones by coupling matter management technology in a limited manner withdate and process information.

Workflow and notification technology can help manage these litigation steps

The more one can automate common management functions like ticklers, reminders, and follow-ups, the greater the opportunity for attorneys to work at the top of their license. This also reduces administrative costs absorbed by either clients or the law firm — in many cases, the costs savings (and efficiency gains) can be quite substantial. Lastly, mechanization of this nature reduces errors, both literal inaccuracies, and errors of omissions.

C. Extraordinary flexibility, especially with reporting

Factors like remote work and cloud computing technology contribute to increasing the velocity of business across more and more hours of the day.

Although we might not like working at Mach 5 for more hours than we used to, the probability that the gait of business will slow is similar to the resurgence of Kodak film, Blackberry devices or $2.00 a gallon gasoline. Thus, it's prudent for us in the legal profession to adapt and be nimble.

Within case management technology, this means having the capability to effectuate functionality requirements as quickly as possible. As discussed below, this is one of the main benefits of no/low technologies and similar development approaches.

Kodak Gold 200
35mm Film

Flexibility may be most important in the area of reporting, which is the feature that enables stakeholders in the litigation process to understand the business context and thus make better-informed decisions. Thus, it is very beneficial to forge a close alignment between the human team and the technologists designing core reports, as various constituents (think legal operations, financial departmental management, insurers, auditors) have varying needs. In many cases, embedding staff in these different business functions (e.g., locating technologists within legal operations) will pay significant dividends.

When it comes to reporting, we need flexibility at both ends of the customer service continuum. For example, we need a query manager that is simple enough to allow end-user edits to support ad hoc needs. This is because litigation reporting requirements are evolutionary, often with short-term deadlines.

At the other end of the continuum is a deeper, technically oriented professional services group that can respond to complex reporting needs via concepts like nested SQL statements, specific sorting, and groupings, etc. Below is a graphic that illustrates the type of query writing that a professional services group might write to satisfy business needs. This is the technologist version of drafting precise legal language — domain expertise and experience really matter.

```
select *
from    tb_case a, tb_settlement_group b, tb_case_status c,
        tb_class d, tb_case_subcat_pl e, tb_case_subcategory f,
        tb_matrix_report_status g, tb_matrix_record_type h, tb_opposing_firm i,
        tb_case_implant_prod j, tb_implant_product k,
        tb_case_imp_pro_mat l, tb_implant_product_mat m
where a.settlement_group=b.settlement_group_id(+)
and a.case_status=c.case_status_id(+)
and a.popsui=d.class_id
and a.pl_classification=e.case_subcat_pl_id(+)
and a.sedgwick_subcategory=f.case_subcategory_id(+)
and a.matrix_report_status=g.matrix_report_status_id(+)
and a.matrix_record_type=h.matrix_record_type_id(+)
and a.opposing_law_firm_matrix=i.firm_id(+)
and a.case_id=j.case1(+)
and j.implant_product1=k.implant_product_id(+)
and a.case_id=l.case1(+)
```

Lastly, a conversation about reporting is really an opportunity to assist clients with the creation of key metrics to ensure that they can measure and assess litigation results. Everyone has their own ideas about KPI (Key Performance Indicators), executive dashboards, and the like. Although KPIs for legal department efficiency are starting to take hold, see, e.g., **KPIs published by legal operations software company BusyLamp**, managing a large complex litigation is a different animal that can't be tamed with generic KPIs. In most cases, clients will want to see statistics that enable comparisons with industry standards.

D. Data cleansing/redundancy considerations/data analytics

Large litigations are often overrun with data challenges. Data collected from multiple sources are typically not **standardized**, which means inconsistent formats need to be identified and corrected. Until data is cleaned, reliable and useful reporting is impossible.

Even more troublesome, however, is the issue of duplicative data (e.g. the same plaintiff stored more than one time because data has been pooled from multiple plaintiff firms). To fix requires the implementation of advanced techniques to identify duplicates (e.g., match plaintiffs) using agreed upon business rules to identify the primary record. Doing so enables a better understanding of the true number of active cases within a litigation and thus a more accurate projection

of financial exposure (legal costs and anticipated settlements). These approaches are difficult to execute but offer tremendous value to corporate clients looking to report on and minimize the cost of litigation.

When you have clean data, you can mine the data for patterns, often through data visualization tools such as Salesforce Tableau or Microsoft Power BI. Likewise, there may be opportunities to use AI and similar advanced technology. There are different approaches to facilitate these types of analysis. One is the build the analytics into the core system (the transactional database). Another is to offload a copy of the data in an approach known as a **data warehouse**. This obviously is not an essay devoted to a deep discussion of the details of analytics and data warehouses. However, it is useful to be aware of these distinctions.

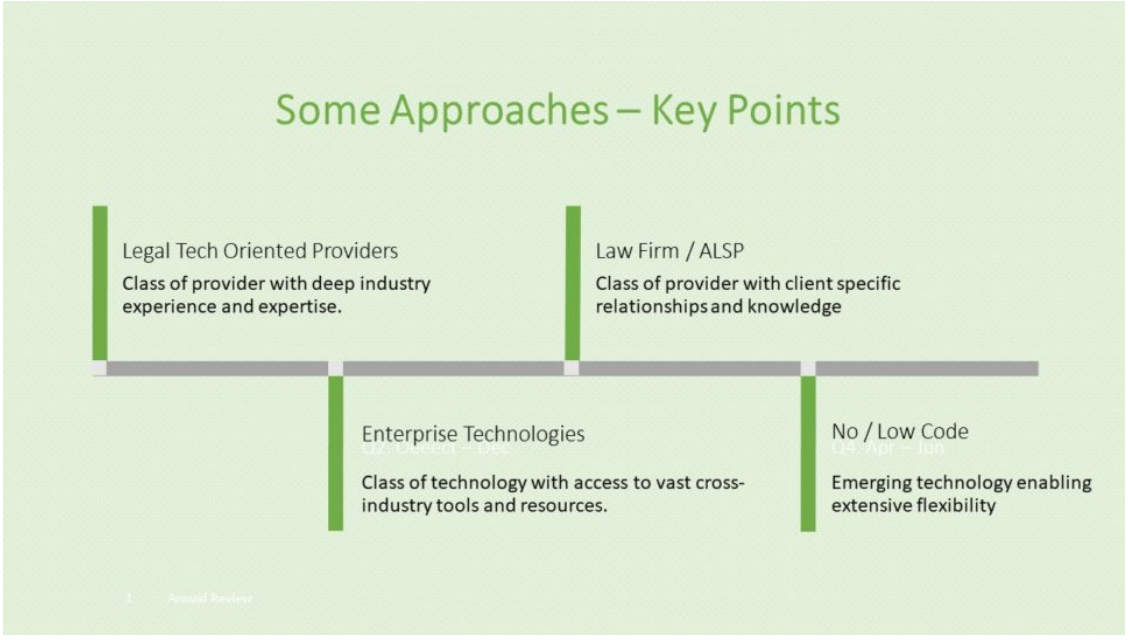
E. Tight relationship between technology and legal function

This point is repeated, but given the importance, please indulge me.

No matter how impressive the tech stack, if tools are not specifically directed to the actual needs of end-user groups, ultimately a deployed system will be less than a complete success. Having technologists that are knowledgeable about legal, and legal folks who understand the basics of technology, are the cornerstone of success for these projects.

3. Four distinct approaches to implementation

The legal technology landscape is unquestionably complex in nature. There is fragmentation in the industry, via the many different types of providers located at various points along the continuum between legal and tech (law firms, ALSPs, software companies). We are still a long way from seeing market-dominant players in the arena, so it is vital to understand the pros and cons of each option to select the best approach for each need. Here are some of the options.



A. Traditional LegalTech software vendors

Implementation of matter management systems with a software company in the legal space is probably considered the "traditional platform." There are many key players in this space, that most readers of this know quite well.

One significant value point for companies in this space is their depth of knowledge of the legal industry. And one potential downside is that some of the advanced services and features resident within large enterprise vendors may not be present. It is worthy of note that as other legal tech providers — **iManage** being one along with **NetDocuments** — partner

with enterprise resource planning (ERP) providers to leveraging products like Microsoft Azure and/or Microsoft Teams, the lines are beginning to blur.

B. Enterprise technologies

Offerings in this category include those which are **Salesforce** or **Service Now** based, which in this case offer the ubiquitous workflow and process technology we are familiar with whenever we report online problems in our day-to-day lives, with the capabilities tailored to the legal field.

Some industry examples of close alignment to a field are seen in human resources and the talent clouds (providers like **Workday**, **iCIMS**, etc.). The closer a technology provider aligns with an industry, the more value it provides to the business processes it supports.

C. Law firm / ALSP providers

These entities (like the **service offering my firm operates**, in full disclosure) offer the unique position of being close to client requirements due to the frequent long-standing client relationship between client and law firm. Because it's difficult to understand what's most important to a client without ongoing dialogue and discussion on litigation issues for representative periods of time, those relationships really do matter. Ongoing associations help to integrate the subtle nuances and preferences of an individual client into the technological solution. For an excellent primer on the ALSP landscape, please see **Post 307**.

D. No-low code technology

No-low code does not have a standalone role in the development of complete matter management systems. However, given the ever-changing requirements of legal data tracking and client needs, we should not discount the flexibility advantages of no-low code technology for defined components of a complex matter management tracking application. Here are two examples.

- *Tracking field enhancements*. Properly configured, no-low code can be used to make back-end, data model changes (new database tables, fields, constraints for business rules, etc.) without the need for programmers and database

analysts. Some examples of this might be instances when a client requests that matters be categorized by risk factor, or product group (e.g. brand), or any other scheme which might be unique to the corporate legal and financial groups charged with managing and reporting against their largest litigations. This is a huge element of the value proposition our applications offer to the clients we (Xerdict) serve.

- *Configuration of **human in the loop** workflows, notifications, and rules.* If workers can accomplish the same goals with fewer steps (or fewer redundant keystrokes), they will do so. Thus, the more end-users potentially have the opportunity to make minor changes to configured workflows (e.g., the number of days associated with a reminder, the individuals receiving the remainders or acting as the human-in-the-loop decision-makers, or even the decision points themselves), the more closely tied a system will be to the dynamic tracking needs of the litigation.

Although no-low code is especially valuable in complex litigation, where flexibility is paramount, the same no-low approach enable the nimble construction of systems for things like litigation discovery research requests, the intelligent processing of legal invoices from local counsel, rapidly posting and applying metadata to document groupings (e.g., product manuals(, and the development of malleable calendaring/deadline systems molded to the needs of a particular litigation.

Why is this important? For me, in my personal work journey, possessing the ability within our technology unit to spin up new types of systems for clients on a timeline and budget which greatly exceeds what the competition can offer has helped expand relationships with clients (e.g. offering them additional, non-traditional legal technology-oriented services to improve workflow or tracking capabilities in areas other than matter management). That's good for me/us (deeper connection to a client) and obviously for the client (drives productivity, solve a problem).

Who are some of the significant no-low players in the legal field? Without implying my recommendation of one other than by noting them, **Neota Logic**, **Bryter**, **BettyBlocks** are strong examples of independent platform options aimed at the legal vertical. There are other players from the U.K. who offer robotic automatic elements of this approach (**Toco.io**, **Autologyx**, etc.). And there are players which are part of larger ecosystems also (**HighQ** which is part of Thomson Reuters large suite of products, **Litify** or **AdvoLogix**, which are provided within the Salesforce ecosystem).

What are strong use cases to use these technologies? Applying them to repetitive, standard work tasks works well. An intake process or working through the elements of a usual workflow (e.g., prosecuting intellectual property tasks like

patents/trademarks, certain elements of immigration/visa work, moving matters through bankruptcy proceedings) are both strong candidates. A winning combination is to place enabling technology in the hands of those who (a) know work processes inside out and (b) are highly motivated to improve those processes.

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4. Roles of advanced technology

The technology profession would not move forward without new tools. At the same time, as pointed out earlier, tried and true concepts are not necessarily bad, one classic example being the continued use of mainframes in financial and medical claims processing industries.

That being said, here are some salient use cases for advanced technologies within the matter management realm.

A. Artificial intelligence

This technology can identify litigation trends, and more specifically call out successful outcomes and strategies to emulate throughout the litigation. Relatedly, **AI** can also help identify worrisome risk factors (jurisdictions, plaintiff firms, doctors, facilities) to guide litigation strategy and alter business practices that can prevent or reduce future litigation. See **Post 282** (former GC Jeff Carr discussing prevention as the final destination and biggest value-add of legal).

This is a technology that absolutely raises the value of well-constructed systems and data models (the topic of Part 2 above). Conversely, without the aforementioned foundational elements to support the creation of complete, accurate datasets, this tech also has the unfortunate potential to be legal tech's version of a house of cards, reaching incorrect conclusions based on the "garbage in, garbage out" principle. Be careful to focus on creating a solid base on which to build out an advanced analysis toolset. And for more excellent material on the core functionality of AI in legal, see **Post 264**.

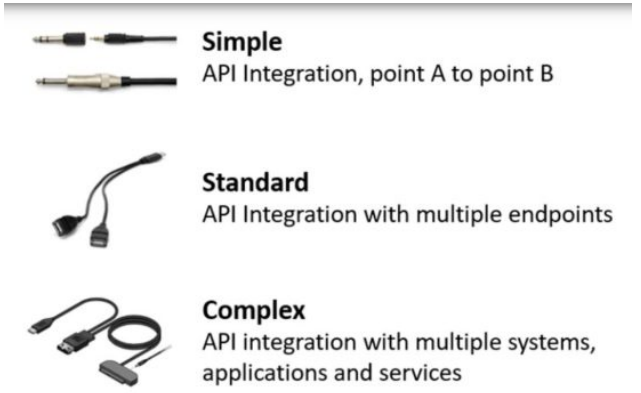
B. Blockchain

It is perhaps more forward thinking, but standardizing settlement negotiation tasks or other litigation activities and then implementing the steps via Blockchain (here are **some examples** of "Smart Contracts" courtesy of Gemini) raises the

ceiling of legal profession efficiency. We are a long way from tangible results, but streamlined, secure contracting and transacting will drive commercial use of this technology in all sectors of business, and legal is no exception.

C. Integration via APIs and connectors

For those perhaps not familiar with the acronym API, it stands for **application programming interface**. Those are, in essence, connectors between different systems (financial, matter management, document management, etc.).



Three types of API connections

What are some examples in legal? Well, one might be that when a case status is changed in a matter management system from open to closed, an update is shared with the accounting system so that timekeepers no longer can enter time against that particular matter. Another might be to share the latest version of an updated document in a system like NetDocuments or iManage once it is updated to the corresponding matter in the matter management system via a connector. All of these integrations help lawyers work with the latest available data and hopefully within fewer platforms.

In brief, the economics of litigation favor standardization, as standardization eases the burden of one system "talking to" another. Within legal operations, matter budgeting and the challenge of implementing this concept throughout the industry is increasingly gaining a strong foothold. Engaging with the goals and activities of the legal standards bureau the **SALI Alliance** is an authoritative source for getting up to speed on current happenings in this functional area.

Clearly, "as they occur" updates in data points like case milestones, plaintiff discovery materials and ongoing legal costs collectively contribute to more accurate budgeting and forecasting. The combination of standardizing terms and data (a clear definition of a work task, for example) coupled with best available information empowers improved budgeting and cost tracking. Also, synching disparate data points in real-time lowers legal admin work effort by eliminating redundant data entry.

D. Legal technology funding trends

Finally, to keep current, follow legal tech funding trends and potential happenings. **Crunchbase** is a great source if you don't feel like reading legal tech news every day. News on ongoing Series A and B funding certainly serves as a useful barometer to identify the legal tech capabilities and application areas of the law which are considered ripe for innovation. For those interested in learning more about this, Legal Evolution **Post 255** offers further outstanding content on how to raise awareness of legal technology emerging technology events and **Post 315** provides current-day thoughts on how one White Shoe firm has recently moved to open an innovation subsidiary.

A closing thought on provider frame of reference

One's vantage point in providing systems to manage litigations has a strong impact on the service model. And obviously, my vantage point is the world of large, complex litigation.

When Xerdict provides services to legal clients of TK, there are times our entity works a bit more directly with clients. When Xerdict is under the aegis of TK, it is a natural evolution for such connections to be made (and a compelling contention for why tech offered by law firms can grow a relationship around client needs).

Xerdict client base, however, extends beyond the clients of the firm, and in that capacity, we tend to be more of a typical software provider. Partners within our client firms function as relationship managers with their clients. Xerdict then responds to service requests via their direction. Sometimes, like a communication system made up of cups and strings, the original messages get distorted or jumbled. But that's not anything new in the software industry, and I believe that when legal technologists are working closely with attorneys and those within legal operations, that gap can be narrowed to the point it is barely noticeable. See Kenneth Jones, "**The value of an immersion strategy to tighten bonds between legal technology and legal operations**," Peer to Peer (ILTA Summer 2022).

In closing, I hope this primer helps lawyer and allied legal professionals better understand and adopt approaches to effective litigation tracking systems (both high volume and sprawling, complex practice areas). Good luck in your various journeys down this challenging, important area within our profession.

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