Artificial intelligence (AI) is gaining greater acceptance among legal professionals for several important reasons. One is that AI can help solve budget and staffing challenges that are often connected with analyzing large sets of electronically stored information. This can, in turn, enable law firms and in-house legal teams to uncover the story that might be hidden within the data as well as more effectively evaluate information to clarify key issues, confidentiality and case relevance.

But to realize these and other benefits, many legal professionals have to solve a pressing challenge: how to evaluate the potential of AI. This includes AI in general, as well as specific AI solutions and how to implement them in a way that effectively supports the practice of law. Legal professionals can meet this challenge through a better understanding of AI solutions and how they can help attorneys advance their day-to-day activities.

START WITH ANALYTICS

A good place to start is by concentrating on analytics. The key point is that AI can be used to improve the quality of your data for sound decision-making. This is particularly relevant to the legal field because most attorneys and litigation support staff spend a significant amount of time analyzing data. This can often mean entering into a situation that requires quickly becoming familiar with client data, spanning documents and other elements, and determining how that data might affect a particular matter. Bottom line, dealing with analytics and data is a major part of what legal professionals do.

In order to get a legal team on board with implementing and using an AI solution, it’s helpful to understand where the legal team needs help. This point may seem obvious. It’s important to remember, however, that there are different AI applications to consider. Also, attorneys need help in their practice in different ways, such as to support an investigation, litigation or due diligence process. Specific needs will vary, and the challenge is often figuring out how to apply an AI tool to a given situation.

For this reason it is important that a legal team doesn’t just discuss AI technology and how it can be implemented; it is also critical to identify the value that AI can potentially bring to a particular situation in legal practice. In this sense, think of an AI solution not just as a technology. Consider it a highly efficient tool that can enable you to more effectively manage 50 or 100 reviewers or a team of data analysts as they are implementing an investigation.
THREE TYPES OF ANALYTICS
With this in mind, when you’re considering using AI to enhance your analytics processes, it’s helpful to determine if your application of AI falls into any of these three categories: descriptive, predictive or prescriptive analytics.

Descriptive analytics is the most common form of analytics used in the legal field. Many attorneys are familiar with descriptive analytics and why it is used: to assess current and historical data related to a matter. Descriptive analysis helps answer questions focused on what the data might contain in terms of meaningful behavior trends and communication patterns. Analyzing the latter, for example, might reveal vital case-related data such as which custodian sent the most emails, to whom the emails were sent, and the time period when email communication peaked between the custodian and a specific recipient.

Typically, visualizations are used in descriptive analysis. This could include timelines, pie charts and bar charts in order to determine what the data reveals. A timeline view with a graphic showing how much data exists over a period of time, for example, might uncover gaps in a document production where fewer email documents are found than expected. This finding could support investigating a potential deficiency in the production from opposing counsel. Because this feature is so important, legal teams evaluating document review tools often will make sure a tool under consideration offers some form of visual analytics. A simple chart can demonstrate a deficiency in a few minutes.

PROJECTING WHAT MIGHT HAPPEN
The second category is predictive analytics, a form of analytics used to forecast or predict possible future behavior—what might happen—based on what the data contains. The purpose of predictive analytics is not to determine what will happen; no form of analytics can accomplish that goal. Predictive analytics can, however, facilitate forecasting what might occur. It helps clarify what, based on data analysis, could possibly happen. Another way of defining predictive analytics is that it calculates future possible outcomes based on historical performance. One application might be forecasting and budgeting. For example, based on what a legal team has observed in the past and what they are viewing currently in the data regarding a specific kind of litigation, they can more accurately project how much a case might cost.

Another application of predictive analytics is jury research. One example might be a legal team analyzing possible outcomes connected with a jury trial in a particular jurisdiction with specific types of jurors. Using predictive analytics, based on what the data reveals, the team might craft what they feel is the best possible strategy for communicating information to the jurors so they are most likely to be clear about critical issues. This is using predictive analytics as a window into anticipating how a jury will respond to specific aspects of a trial.
THE ABILITY TO MAKE RECOMMENDATIONS
The third category of analytics has been around for some time but is still evolving. It’s called prescriptive analytics, and it enables AI to play an even greater role in the analysis of complex legal issues. Like predictive analytics, prescriptive analytics helps estimate possible future outcomes based on historical trends. However, it does more; it enables legal professionals to make recommendations.

This analytical process involves using current data and information about what has already happened in order to project potential outcomes and recommend a preferred course of action. While prescriptive analytics is still evolving, in theory it could help forecast legal outcomes. As a hypothetical example, a legal team might have specified variables for a trial that include the type of matter involved as well as the district, presiding judge, defense counsel and types of exhibits and evidence that will be presented. Using prescriptive analytics, the team could not only anticipate the possible outcome but also recommend which lawyer is most likely the best choice to try the case.

Again, prescriptive analytics is a form of predictive analytics. Its usefulness comes into play when legal professionals and executives in other fields need to propose an action. In the corporate arena, for example, a decision-maker could use the analytical data in order to inform a business strategy, acquisition plan or R&D investment.

USING AI EFFECTIVELY
In addition to considering which analytics category might be relevant to an AI application, another important issue is clarifying how to ensure that AI will be used effectively. Toward this end, it is helpful for a legal team to think about the three forms of analytics in terms of what the team is trying to accomplish and how AI can enhance the appropriate type of analytics for their needs.

Put another way, the question for the team is: “How can we incorporate AI into an analytics solution to address our needs concerning a specific legal matter and/or improve specific elements within our practice?”

One way to answer this question is to think back to the process of drafting proofs in geometry class. A geometric proof involves writing reasoned, logical explanations that use definitions, axioms, postulates, and previously proved theorems to arrive at a conclusion about a geometric statement.

A good proof has an argument that is clearly developed, with each step supported by:

- Theorems: statements that can be proved to be true
- Postulates: statements that are assumed to be true without proof (for example, the whole is greater than its parts)
- Axioms: self-evident truths or the basic facts that are accepted without any proof (for example, a straight line can be drawn between any two points)
Proofs are commonly written in two columns, where the statements are listed in one column and the reasons for each statement’s truth are listed in another column.

This approach can be adapted to tackle the challenge of determining how AI can be incorporated into one of the three types of analytics in order to meet the specific needs of a legal practice. Team members can start by articulating the problem in simple sentences and then begin creating their legal “proof.” They can better identify risk by using their own theorems, postulates and axioms when focusing on such questions as, “What can we be absolutely sure of in this legal matter?” “What are we relying on the technology to accomplish in our practice?” “To what extent are we depending on someone’s understanding of how to effectively use the technology?”

Going through this process helps legal professionals clarify how AI can be used to solve specific problems. The process can also instill confidence about the integrity of AI and help measure the defensibility of using it. Regarding the latter, a simulated proof provides legal teams an opportunity to see where they are vulnerable in their use of AI. What will the team need to defend if, for example, their use of AI in meeting a discovery request is challenged? This process helps attorneys, paralegals and litigation support staff identify some of these critical issues early in a legal matter.

**RISK AVERSE OR RISK AWARE IN CONSIDERING AI**

Attorneys also face another challenge in choosing the right AI solution for their practice. The challenge is whether to be risk averse or risk aware in considering AI. Law firms tend to avoid risk and use safe, familiar tactics rather than consider new approaches. Consequently many attorneys continue to practice law based on their past experiences, the advice of partners in the firm, and the processes, procedures and strategies that they know well.

Document review for litigation is a good example. For years partners have assured clients that their firm makes certain attorneys review every document they collect. This assurance has often been characterized by the statement, “There will be eyes on every page.”

Eyes on every page, however, frequently means using temporary attorneys. This practice can be expensive. Also, an argument against this practice is that temporary attorneys do not bring substantive knowledge to a matter and any knowledge they might gain is often lost when the review is complete. Using AI solutions can reduce costs and retain knowledge gained from document review.

Nevertheless, many firms and corporate legal departments are more comfortable knowing that there are eyes on the documents instead of using AI and analytics to manage reviews. Why? The answer often is, “Because that’s the way it has always been done.” But why not have as much trust in technology backed by a rigorous “proof” process as in a temporary attorney? The response regularly is, “Because I don’t want to be blamed if something goes wrong, especially in discovery.” Consequently many lawyers view integrating AI into their practice as a risky proposition. This is risk aversion.
In contrast, many corporations understand and accept the risk associated with AI and analytics solutions. This acceptance is based on understanding the potential benefits that can be achieved through AI, such as cost reduction, enhanced efficiency and other gains. This is risk awareness. Many corporate executives are risk aware while many legal professionals are risk averse.

The tide may be turning, however, with more law firms and corporate legal departments becoming risk aware as they investigate and increasingly embrace the potential of AI and analytics solutions. Rather than a threat, these legal professionals tend to see technology as an opportunity to contain costs, increase efficiency, and deliver enhanced client services. They strive to reap the rewards of technology, as opposed to those who cling to the status quo and run the risk of being left behind.

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