

Littler Mendelson Gambles on Data Mining as Competition Changes

By Roy Strom

In job interviews with half a dozen law firms last year, Zev Eigen quizzed firm leaders as much as they probed him. They wondered what a data scientist with a Ph.D. from the Massachusetts Institute of Technology could do for them.

He was curious what they would *let* him do.

Eigen, a Cornell-educated lawyer who was on the faculty at Northwestern University School of Law at the time, developed a test for what he calls “status quo bias” at law firms. He told managing partners that their firms should be teaching and training their own would-be first-year associates in jurisdictions such as California and New York that allow apprentices to sit for the bar exam. The plan would save firms \$880,000 in salary per associate over a 10-year timeframe.

The idea was almost always tossed aside. Firms can’t hire associates without a top-flight law degree, Eigen was told. Big Law is a prestige game, after all.

“That’s an incorrect answer, and it means someone is not facile in their thinking,” Eigen said.

Today, Eigen is global director of data analytics at Littler Mendelson, a position he’s held just over a year. Eigen reports directly to the labor and employment firm’s managing director, Tom Bender. According to Eigen, Bender was the lone executive who expressed at least cursory interest in his apprentice recruiting plan, passing his status quo test.

Eigen and his team of four data scientists and six statisticians operate as a “startup” inside Littler, he said. They are



creating products such as a soon-to-be-rolled-out tool that predicts the outcome and cost of Equal Employment Opportunity Commission charges. Its accuracy rate is up to 92 percent, Eigen said. They also developed an Equal Pay Act audit tool that nearly 100 clients have used to gauge their risk of wage discrimination claims, according to Eigen.

Altman Weil’s Rees Morrison, who consults and writes on law firm data analysis, said that Littler is only the second Am Law 100 firm to hire a dedicated head of data analytics. (He said that Drinker Biddle Reath’s Bennett Borden was the first.)

That Eigen would land at firm like Littler isn’t a surprise. A cluster of labor and employment-focused firms, including

Littler, Ogletree Deakins and, to an extent, Seyfarth Shaw, have responded to rate pressures in the industry by investing in technology and processes to make their firms more efficient.

At the same time, competition among labor practices has changed, according to executives and law firm consultants. Law firms’ proprietary case management products and tech capabilities—such as Littler’s CaseSmart, Seyfarth’s SeyfarthLink and Ogletree’s OD Advantage—are becoming crucial factors for clients deciding which firms to hire. Personal relationships or the breadth of a lawyer’s knowledge—prestige factors—are less likely to tip the scales.

It is a change that could have broad implications for the legal industry.

"What's happening in labor is a good bellwether for what's coming," said Andrew Baker, a consultant at Janders Dean and former director of Seyfarth Shaw's technology team. "If you're a buyer now, you're buying a platform, not just a provider. You think about data and case management systems and all the other pieces being offered today, and those are firm-offered solutions, not lawyer-offered solutions. And that absolutely changes the way clients are hiring firms."

The Power of Prediction

To be sure, labor and employment firms aren't the only ones increasing their investments in innovation, and their clients aren't the only ones paying attention. But Littler's Bender cited the relentless rate pressure on employment work, saying that it had given the firm extra reason to seek out cost-cutting technologies.

At Littler, Eigen has a broad mandate to apply data tools to clients' problems and develop products to address them. He said that much of his team's work—including the EEOC prediction model—would be difficult or impossible to build without the proprietary data the firm has gathered over six years from its CaseSmart software. For most firms, one of the biggest roadblocks to data analysis is simply that they haven't been collecting data from their own cases.

"Law firms are sitting on millions and millions of documents that nobody has ever classified," said Julian Tsinis, who is attempting to wrangle other types of legal data as head of machine learning at Google's legal department. "Zev is in a very lucky position. Because he's in a firm that specializes in a particular type of case, and he's sitting on thousands and thousands of similar cases, and he has access to all that data."

Eigen's EEOC prediction model takes in more than 500 inputs related to each charge. It then analyzes the charge based on comparisons to Littler's data, EEOC data and other data sources Eigen declined to discuss.

So what's the most important factor when determining if an EEOC charge will lead to lengthy litigation?

"I don't have a good answer for that," Eigen said. "It's natural to say, 'What is it?' What's the one thing?' I'd love to answer that question. I'd love to say it's these three things. But it's not accurate."

At the moment, Eigen and Littler use the EEOC predictor internally to model the cost and price of EEOC charges. They are still determining how to deploy it as a product for clients.

But the experiment alone puts them a step ahead of almost half of firms.

Only 52 percent of 356 respondents to an Altman Weil survey said that they regularly create special projects to test innovative ideas or methods. Only 44 percent said they had significantly changed their approach to efficiency in the delivery of legal services, despite 93 percent of firm leaders saying that clients will permanently have an increased focus on efficiency.

Competitive Advantage

The consultant Baker said that firm-to-firm competition, and not necessarily price pressure on labor and employment practices, was spurring firms like Littler to innovate. He said that close rivals naturally watch the products and technologies adopted by their competitors; survey their results; and react in kind, fearing losing a step in the competition.

Seyfarth Shaw's Lisa Damon, a leader of its SeyfarthLean program and head of its labor and employment group, was wary of being compared with Littler and Ogletree. She said that the L&E practice was not the primary source of innovation at the firm.

"Our earliest projects were outside L&E. They've been firmwide, and many of the largest have actually come outside L&E," Damon said. "That said, it's been interesting to us because what we have found is that many of our labor and employment clients have been key drivers of innovation, not only in their own businesses, but with us."

There may be another reason why some in the labor and employment niche have dedicated the resources they have to these changes: Firms with a single practice can make a more compelling case for innovation, compared with general practice firms, lawyers at Littler and Ogletree said. Most of the

products that these firms roll out are practice group-specific. If an entire firm is dedicated to that practice, the investment in the product will have a greater return.

"It's easier for us," said Littler's Bender. "You're not developing a product that has to apply to your tax department, corporate department and everything else."

Ogletree Deakins' Chuck Baldwin, head of the firm's technology strategy committee, said that the firm's investment in technology has helped it compete in the lateral market as clients recognize the value of these tools.

"It's a competitive advantage to have a narrow focus if you are trying to maximize your return and maximize your investment into innovation and technology," Baldwin said. "A lot of lawyers joined us from general practice firms because they felt they were at a competitive disadvantage competing for work and clients because they didn't have the tools and products we've developed."

The firms' narrow focus and the costs of remaining competitive have come with tradeoffs. Ogletree and Littler are among the least profitable firms in The Am Law 100, with Littler ranking No. 100 in profits per partner and Ogletree at No. 94. Seyfarth, which has a broader range of practice groups, is ranked No. 71.

Bender said that his firm wants to stay nimble—and investing in innovation is key to achieving that. "The problem with what's bespoke work today, [is that] next year or the year after, clients are going to say, 'I don't need to pay that much money for this work,'" Bender said. "That's where you get this whole concept of disruptive innovation where an idea starts out, it takes hold and basically flips the market on its head. And that's something we always work very hard to maintain our edge in."

Even so, Bender said the firm "hasn't bought into" Eigen's new hiring model for first-year associates quite yet.

"We say to all our innovators: Keep bringing us ideas," Bender said.

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