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The Theory of the Case: Competitive Intelligence Tips for Attorneys

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**The Theory of the Case:
Competitive Intelligence Tips for Attorneys**

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Introduction

There is nothing new under the sun. People can debate this adage, but it provides a reassuring guiding principle for this exploration of online legal research tools that can inform your business decisions. Specifically, this paper explores web-based or web-hosted tools that help in three important areas of online legal research: competitive intelligence, business intelligence, and investigative research. The tools are new and shiny, but the strategizing and intellectual legwork needed to use them effectively will sound very familiar.

Twenty years ago, Timothy J. Ogilvie wrote an article in a prominent competitive intelligence journal in which he compared this kind of investigative work to processes used by criminal prosecutors in their case evaluation and preparation.¹ He argued it is the same kind of work, just with different data points. Ogilvie presents a good counter-narrative to more-recent blogs, articles, and books that present competitive intelligence work as some sort of epiphany forced on lawyers in the past decade as their clients' internal austerity measures led to wide scale comparison-shopping for legal services.

Competitive Intelligence

Competitive Intelligence involves looking to both the individuals in your sphere and to the broad industry landscape to make strategic decisions. It involves the research and assessments of actions based on that research. Competitive intelligence is purposeful and actionable information to advise strategic decision-making. Common types of competitive intelligence projects at law firms include biographical sketches and

¹ Ogilvie, T. J. (1997), The Theory of the Case: What Prosecutors Can Teach Us about Competitive Intelligence. *Competitive Intelligence Review*, 8: 12–19. doi:10.1002/cir.3880080205.

relationship profiles of prospective and current clients or hires, analysis of similarly positioned firms, as well as industry or company profiles and their reputation histories.

Tracking Attorneys and Other Firms

The tools available for tracking the work of individual attorneys and firms has expanded in scope as more open and publicly available information has moved online. The trend is now toward aggregating data from various sites into a single interface—one search box to check multiple sources, but these tools include a price for convenience. While many legal professionals have a small internet footprint, most are at least trackable in bar directories and in a state and federal court documents.

- **Company websites & Internet Archive Wayback Machine-** Many firms market their services and expertise online. The details the firm provides and how it promotes itself can be informative. The Internet Archive provides a way to view past versions of a website. <https://archive.org/web/>
 - **Advanced searches-** When confronted with a large site, use any “search in site” boxes (usually in top right) or run a search engine query limited by specific domain.
- **General internet searches-** For situations when no resources are obvious, a general search can help provide some initial guidance and lead to better tools. <https://google.com> & <https://bing.com>
 - **Alerts-** When useful sites are found and will remain relevant, researchers should create email alerts to track any updates to a webpage (<https://visualping.io> and <https://wachette.com>) or to run automatic, periodic search engine queries for specific terms (Google & Bing Alerts live under “News” tabs). Chrome and Firefox each have automated page checkers in beta.
 - **Filter for news only-** Local and national newspapers provide archives that can be searched for press coverage. For searches requiring a broad scope (beyond the legal profession), researchers can start with a search engine “news” search for wider perspective and coverage (geographic, philosophical, and temporal, etc.).
- **Mention-** A subscription-based upscale version of Google Alerts with analytics and a focus on social media conversations about the firm or person. <http://Mention.com>

- **Directories**
 - **Bar Association directories-** Even lawyers without websites have an entry in their bar directories with notations for any disciplinary actions. The Georgia Bar directory has an especially good search engine, and a high proportion of lawyers have at least basic contact information.
<https://www.gabar.org/membership/membersearch.cfm>
 - **Martindale.com-** The digital descendant of the major directory of attorneys for over a hundred years. Martindale.com tracks data points, like firm size, practice area, geographic area, alma mater, year of graduation, and professional memberships for over one million professionals, but the content is optional and self-reported. Individual profiles can be emailed and shared, but full results lists cannot be exported.
<http://martindale.com>

- **LinkedIn-** The value of this resource depends on the individual. In some cases, it provides the most current status and title information. In others, profiles can languish without update for years. <https://www.linkedin.com/>

- **ALM Legal Compass-** Hot off the press in December and still in development, but ALM has long been a trusted and major legal news publisher, producing such titles as *Fulton County Daily Report*, *American Lawyer*, *Inside Counsel*, and *National Law Journal*. Major categories for recruiting, competitive analysis, benchmarking, client prospecting, and firm expansion.
<http://legalcompass.intelligence.alm.com/#/home>

- **Bloomberg Law Business Intelligence-** Bloomberg's stake in intelligence on corporations plays to the company's historical strengths. Enables users to create a watch list of companies, industries or people of interest that will track news and deliver it automatically to a dashboard for quick review. Its litigation analytics provides courtroom trends by company and by law firm through the 1990s.
https://www.bloomberglaw.com/product/blaw/business_intelligence_center/

- **Lex Machina Attorney Analytics-** Just launched by LexisNexis in December as a fully integrated product, this suite compiles a basic litigation history for attorneys in state and federal court. LexisNexis offers some basic charts for free, but broader tools require subscription.
<https://www.lexisnexis.com/infopro/keeping-current/b/weblog/archive/2017/12/20/lexis-advance-174-integrates-attorney-analytics-from-lex-machina-174.aspx>

- **Westlaw Profiler-** Provides courtroom analytics and direct links to cases of interest. Permits command line search queries for more complex search strings and ability to export results as an Excel spreadsheet or csv file.
<http://legalsolutions.thomsonreuters.com/law-products/westlaw-legal-research/litigator/profiler>

Business Intelligence

Business intelligence focuses inwardly to assess how well a firm handles its non-billable activities, including business development. Business intelligence deemphasizes the practices of other professionals and asks how well the firm responds to the needs and wants of the actual and potential client pool. In law firms, common business intelligence projects are the review of business growth potential in a given market (defined by geography or specialization niche) and the internal monitoring of practice area successes and challenges. It is also client solicitations for comment on quality and suitability services rendered and on assessment of the business relationship. The emphasis is on learning from those people by whom and for whom the work is or will be done rather than from third parties.

In an article published in *Law Practice* this fall, Ed Walters, CEO of Fastcase, writes that clients are expecting data-based answers from their attorneys, whether it is a fixed price for service or a suit-outcome probability.² Many of the companies that produce these legal analysis tools market them to corporate clients. While “anecdotal” (a qualitative generality based solely on a single incident) is useful to illustrate research-based, quantifiable information, savvy clients can perceive such answers as uninformed hunches or even misrepresentations, if used in isolation. Broad industry reports, like those produced by Thomson Reuters, ALM, Clio, and the BTI Consulting Group, can substantiate or refute assumptions. One of the more striking findings of Clio’s *Legal Trends Report, 2017* was that lawyers, on average, spend only 2.3 hours a day on

² Walters, Ed. “Using Small Data to Make Big Decisions: Managing a Smarter Small Firm with Data.” *Law Practice* (Sept/Oct 2017) p. 36-41. <http://www.mazdigital.com/webreader/51548?page=38>

billable tasks. Generalizations and market variabilities aside, through several major industry reports and surveys, attorneys now have quantifiable benchmarks against which to compare their daily schedule and thereby market their value.³

Improving Office Management

Conversations about money tend to be difficult, so finding information on how to set a pay scale or a fixed-fee pricing structure has been challenging. As in other areas of intelligence work, tools are available to help. In addition, the impact of marketing efforts can also be a source of uncertainty that can gain some clarity through online business intelligence tools.

- **Bureau of Labor and Statistics Occupational Employment Statistics**- Compiles general standard of living statistics and market saturation data across the United States. Researchers may limit to specific cities or metropolitan areas (including four regional “nonmetropolitan” areas in Georgia), but the data is at least one year behind, updated each May. <http://www.bls.gov/oes/>
- **BTI Consulting**- With nearly 30 years of experience doing business intelligence for law firms, BTI has a strong reputation for big law data. Produces for purchase a series of annual reports, including practice outlooks, billing rate references, and custom market research. <https://www.bticonsulting.com/>
- **ALM Legal Intelligence**- Source for legal research with over 100 reports and hundreds of individual firm profiles. Focused on data from the largest 250 US-based law firms. <http://www.almlegalintel.com>
- **Clio**- Using the client base for its cloud-based practice management software, Clio has produced industry reports for law firms of all sizes for nearly ten years. <https://www.clio.com/resources/>
- **Thomson Reuters State of US Small Firms Study**- Survey provides data. <http://legalsolutions.thomsonreuters.com/law-products/news-views/small-law-firm/state-of-small-law-study>
- **Kira Systems**- Promotes itself as providing machine learning contract analysis and predictor for mergers and acquisitions. <https://kirasystems.com>

³ 2017 *Legal Trends Report*. Vancouver, Canada: Clio (2017) page 15 <https://www.clio.com/2017-legal-trends-report/> [Accessed December 21, 2017].

- **Google Analytics**- Tracks basic information like how people find your web pages and how long they spend there. <https://www.google.com/analytics/analytics/features/>
- **Salesforce**- A subscription-based tool that tracks data about a business and how new clients found it <https://www.salesforce.com/>

Developing Business Prospects

Growing the client-base can be an individual person-to-person process or a major shift to a new area of practice or new geographic region. Not everyone has a natural knack for being a rainmaker, but several tools exist to assist in portfolio building and maintenance. Monitoring local news for major events and general networking efforts can help in identifying potential for relatively small-scale growth. For larger strategic decisions about whether to enter a new practice area market or how to anticipate needs of existing and future industries in a geographic area, a firm can consult larger aggregator databases.

- **Census Business Builder**- A new free resource, released in 2016. Helps small businesses create market data reports. If you are mobile or thinking of expanding your office, this could elucidate key socio-economic factors and market saturation of a geographic area. <https://cbb.census.gov/sbe/#>
- **National Environmental Title Research (NETR)**- Offers a powerful portal with links to tax assessors'/collectors' site in each state, county clerks' offices, real estate information, environmental files enable users to see known hazards within a specific radius of an address. It also contains aerial photographs from 1960 through 2013. <http://publicrecords.netronline.com>
- **GoogleMaps** and **GoogleEarth**- Offer panoramic full color views of an address or lot. GoogleEarth contains historical aerial photographs that can be viewed as streaming video to show changes over time. <http://maps.google.com>
- **Sapling**- Consolidates open-source client data for easier review and trend spotting. <http://www.saplingdata.com/pages/app/attorneys2?release=30>
- **Monitor Suite Intelligence Center**- A Thomson Reuters subscription-based suite of tools geared to help firms zero in on legal trends of importance and on potential clients in a given practice area.

<http://legalsolutions.thomsonreuters.com/law-products/solutions/monitor-suite>

- **Manzama**- A subscription-based tool that monitors social media and other web content to identify trends and find key predictors for the markets and industry in order to better anticipate potential clients and develop client relationships. <http://manzama.com/>

Soliciting Comments from Current Clients

Cultivating the customer experience is important in any field that relies on repeat business. Frankly, it is better to empower business associates to comment directly to the service provider rather than vent on social media. Popular online survey tools facilitate requests for and compiling of comments from clients, but users must be prepared to spend extra time developing and honing the questions to facilitate actionable and constructive comments. These tools help with the collection, but success also requires a commitment to read and follow-up on the feedback—the good and the bad.

- **SurveyMonkey**- Offers several levels of pricing, including a basic, free service. Provides users with many example surveys and templates to help jump-start the process. <https://www.surveymonkey.com/>
- **Qualtrics**- Offers several levels of pricing, including a basic, free service. All feature mobile-friendly designs and provide model questions with a lot of tips on survey construction and research on the benefits of customer feedback loops. <https://www.qualtrics.com/>

Investigative Research

Online investigative research tools for virtual gumshoeing are some of the newest, most innovative, and sleek tools but also some of the oldest and least polished.

Aggregators and portals combine searches from several authoritative government datasets to reduce the number of specific sites to bookmark. Tools in this category help attorneys track down contact information for people, their assets, and their interactions with the courts.

Finding People and Business Interests

- **Anywho.com**- Free, basic address service that also provides information on associates that have shared an address, age, and previous location.
<http://www.anywho.com/>
- **LexisNexis Accurint** and **Westlaw PeopleMap**- Offer the convenience of integration of these investigative research tools into familiar platforms. Useful for finding people through public and publicly-available records.
<http://accurint.com/> & <http://legalsolutions.thomsonreuters.com/law-products/westlaw-legal-research/peoplemap>
- **TLO for Legal Professionals**- Offers services tailored to legal professionals for basic investigative work. Contains contact information (present and past addresses, phone numbers, and email addresses) for difficult to find people.
<https://tlo.com/legal-professionals/>
- **County Tax Assessors Databases**- Provide updated information on real estate ownership, generally searchable by address and by personal name. Researchers can consult individual county websites or use a portal, like Portico, that provides links to county offices in all fifty states.
<http://indorgs.virginia.edu/portico>
- **Georgia Superior Court Clerk's Cooperative Authority (GSCCA)**- Consolidates searching of lien, title, and UCC indexes statewide in Georgia. Basic free service is free, but to view documents and use premium search options a monthly subscription is required. <http://gsccca.org>
- **Secretary of State's Office**- Contains searchable database of all licensed professionals and UCC filings in the state of Georgia. Useful to confirm current status of licensees and to search for agents and officers of corporations.
<http://verify.sos.ga.gov/verification/> & <https://ecorp.sos.ga.gov/BusinessSearch>
- **Hoovers People Search**- Offers a variety of search options to find business executives across the United States in one search. Basic search to retrieve a person's position and company is free. Other services are available to subscribers.
<http://www.hoovers.com/>
- **EDGAR (US Securities and Exchange Commission)**- Contains more than 20 million filings, including annual reports and executive compensation, from 1994 to the present for public companies. Persons holding more than 5% interest in a company must also submit searchable documents.
<http://www.sec.gov/edgar/searchedgar/companysearch.html>
- **Opencorporates**- Provides link between trademark and parent corporation information that includes private and public companies. Contains with a very handy limiting options (like position title and place of incorporation). Global in

scope. <https://opencorporates.com/>

- **PrivCo**- Fee-based tool that attempts to fill the gap for the harder to find information on privately-held companies. Exportable reports and lists. <http://privco.com>
- **Mugshot sites**- word of caution against using a site like mugshots.com, which have been notorious for publishing inaccurate information or not clarifying between people arrested and those charged.⁴

Analyzing Court Trends

Courtroom analytics have really taken off since 2015, with a variety of ways to prepare for judges and opposing counsel in state and federal courts. These tools tout the ability of past practices to reflect likely future outcomes, thereby enabling attorneys to adjust their strategies, citations, and better estimate length of trial. All of these predictive analytics tools are sleek with informative graphical displays of the data.

- **RAVEL Law**- Started in 2012, this suite of products distills big data of courtroom practices into accessible findings and informative graphics. Includes: Court Analytics (“what makes each court unique”), Judge Analytics (“how judges think, write, and rule”), and Case Analytics (“focus on the language” of Law). Offers a seven-day free trial of each of its three subscription products <http://ravellaw.com/products/>
- **LexisNexis Litigation Profile Suite** and **Westlaw Jury Verdicts**- Nestled in the familiar Lexis and Westlaw platforms, these tools provide easy access to awards and decisions with charts and extensive details about counsel, judges, experts, and parties all hyperlinked to related cases. <http://www.lexisnexis.com/en-us/products/lexisnexis-profile-suite.page> & <http://legalsolutions.thomsonreuters.com/law-products/westlaw-legal-research/litigator/jury-verdict>
- **ALM Judicial Perspectives**- Goes beyond the courtroom to provide basic biographical information and in-the-news links <http://judicial.almintel.com/>
- **Bloomberg Law Litigation Analytics**- As of December 2017, this suite now includes length of case analytics for individual judges and for jurisdictions as a

⁴ Rebecca Beitsch. Fight Against Mugshot Websites Brings Little Success, The Inquirer (December 11, 2017) <http://www.philly.com/philly/business/cannabis/fight-against-mugshot-websites-brings-little-success-20171211.html> [Accessed online December 21, 2017].

whole. Provides courtroom trends by company, law firm and federal judge through the 1990s. <https://www.bna.com/bloomberg-law-litigation-m57982078880/>

- **Docket Navigator**- Niche here remains for patent litigation professionals. Clean advanced search interface with the ability to set alerts and export results. Currently, the advanced analytics features are free with a basic subscription. <http://brochure.docketnavigator.com/>
- **Gavelytics**- Based on California currently but planning to expand to include the whole country by the end 2018. Features the tagline: All judges have tendencies. Gavelytics identifies them. <https://www.gavelytics.com/>
- **LegalMetric**- Very early entrant into litigation analytics, focuses on federal court, International Trade Commission, and the PTAB. Charge per report can be quite steep (\$595-\$995). <https://www.legalmetric.com/>
- **Oyez**- A bit of legacy player without the predictive hype. Oyez provides transcripts and analysis of cases and general news at the United States Supreme Court. <https://www.oyez.org/cases/2016>

Monitoring Potential Legislative & Regulatory Impacts

Attorneys can stay abreast of the current legislative and regulatory landscape to anticipate changes and appropriately advise clients through a variety of freely available sources. The free tools push breaking news to the user but reserve the analysis to the recipient. For broader analysis and interpretation, attorneys can consult legal blogs and fee-based services like BloombergLaw.

- **Georgia General Assembly**- Viewers can review the legislative calendar and track floor debates and the progress of proposed legislation.
 - **Bill tracking**- <http://www.legis.ga.gov/Legislation/en-US/Search.aspx>
 - **Daily reports**- <http://www.house.ga.gov/mediaServices/en-US/LegislativeReports.aspx>
- **United States Congress**-
 - **Active Legislation (for both Chambers)**- Arranges bills by popular title and by subject area as well as bill number to facilitate tracking. http://www.senate.gov/legislative/active_leg_page.htm
 - **Congress.gov**- Enables users to find bills, treaties, and executive communications and to set up email alerts legislature takes actions. <https://www.congress.gov/quick-search/legislation>

- **Govtrack**- An independent non-governmental entity that aggregates legislative data from official government websites. Search functionality is intuitive and alerts may be set to email whenever updates are made. Also includes prognosis of passage for pending legislation. <https://www.govtrack.us/>
- **Regulations.gov**- Allows users to search for proposed and final federal rules and regulations, comment on proposals, and register for email alerts to track pending rules and regulations. The database is searchable by agency, type of document, docket number, and keyword. <http://regulations.gov>
- **Bloomberg Government**- A major area of interest within the BloombergLaw's subscription-based resources for monitoring actions of federal contract award, legislatures, and federal regulatory agencies. <https://about.bgov.com/>

Incorporating Intelligence Work

Attorneys researching online tools to assist with competitive, business or investigative intelligence work will attest to the proliferation of tools and platforms that promise to revolutionize the industry. But the technology cannot replace the analytical evaluation the human mind offers. The clear articulation of a business need, development of a research strategy, and accurate analysis of the data are the ultimate determinants of success. An attorney can waste a lot of time surfing for answers, looking at the wrong fancy charts or failing to ask critical questions about how the data might be incomplete.

Like the theory of the case, developing a theory of the firm is a skill that requires some creativity as well as critical assessment—and it demands intention and planning. This point is where we pick up with Timothy Ogilvie's seven lessons that prosecutors already know.

- 1) **Use discretion.** This work takes valuable time but do not view that as prohibitive. Trial attorneys decide which cases to resolve out of court and which defendants to prosecute or to defend in court as a matter of course. These

determinations generally average to a 90/10 rule. Likewise, attorneys should judiciously investigate the business decisions that are most critical or most pressing: would a new assistant lead to greater efficiencies, is a colleague a good collaborator, would joining another office be advantageous, does it make sense to hire a web developer to improve a website?

- 2) **Develop a theory of the case.** In legal prosecutions, the event has occurred already, but the attorney did not witness it. Much like the predictive work of competitive and business intelligence, the attorney creates scenarios around the action—plausible motives/events with their outcomes. Once they have a theory or desired business outcome, then they can form, pursue, and test their hypotheses systematically.
- 3) **Conduct good research.** If business and life decisions were always obvious or if all online research tools were equally reliable, there would not be much to talk about today. Experienced researchers learn to set strategies first and be clear about what kind of data will address the question. They spend time assessing the resources by how current the information is, what might be missing, and if any countervailing evidence might refute it.
- 4) **Use informants and corroboration.** Librarians call this work “triangulation.” Essentially, researchers should seek a second and third source to substantiate or support an item. If a gossipy bit appears on social media, an attorney should seek confirmation from parties involved rather than rely on the post. But even the best tools have some blind spots due to timing of updates or incomplete metadata, so good practice requires checking multiple sources.

- 5) **Play by the rules.** Two ethical standards preside for professionals engaged in intelligence work: those imposed by the American Bar Association and those of the society for Strategic and Competitive Intelligence Professionals (SCIP). The SCIP code has seven principle elements that distill to: keep it legal, do not misrepresent purpose or intent, avoid conflicts of interest, and bring honor to the field and those represented.⁵ This is not espionage. This is diligent and resourceful research.
- 6) **Shadow the defense-** In competitive intelligence, professionals keep an eye on the progress of others in the field and endeavor to learn their relevant business strengths and weaknesses. Just as in court cases in which the prosecution and defense follow and anticipate each other's strategies, attorneys should bring that interest to the management of their practices.
- 7) **Let the facts speak-** The point of this work is to make a decision based on the information. However, be mindful of varied ways that the pieces of information can fit together to indicate different conclusions.

Lastly, accept that the unpredictable happens. It is hard to imagine a situation in which an attorney would guarantee a slam dunk to a client. Life has unaccounted variables and unintended consequences. All research is a type of persuasion of likelihood, not a resolute assurance. Even with the best tools and analysis, risk persists.

Conclusion

The number of competitive, business, and investigative tools have proliferated even as they merge and get absorbed into larger products. Considerable hype surrounds the

⁵ SCIP Code of Ethics for CI Professionals <http://www.scip.org/?page=CodeofEthics> [accessed online December 21, 2017].

predictive tools that seem to claim that past performance is the best predictor of future results. There is no shortage of products promising to change the legal profession and many technology pundits post stories about how predictive analysis is revolutionizing the industry. But the human part of the equation has not changed. The analysis and questioning that goes on between the ears, remains the most critical factor in success.