

## For GCs, Tech Can Separate Courtroom Winners And Losers

By Michele Gorman

*Law360 (January 9, 2019, 3:20 PM EST)* -- In-house attorneys should aggressively deploy the technology that's all but taken for granted in legal operations to map out litigation strategies, and failing to do so increasingly means losing out to savvier adversaries, according to a report released Wednesday by Crowell & Moring LLP.

The international law firm's seventh annual report, titled "Litigation Forecast 2019: What Corporate Counsel Need to Know for the Coming Year," looks at the litigation trends and challenges that legal departments are likely to face over the next 12 months, with a focus on how companies and law firms leverage technology to improve their legal operations and litigation strategy.

Artificial intelligence, automation, technology assisted review and data analytics are among the tools creating a generational shift in the delivery of legal services for lawyers in every setting and better situating litigators to win some of the toughest courtroom battles, according to the report.

"The overall trend today is for companies to take fewer cases to trial, but to take the cases that are more complex and significant to the business all the way," said Kent Goss, a litigation partner who contributed to the report". This drive costs up, and technologies such as analytics and AI-based automation will be needed to manage those costs."

Goss acknowledged that many corporate clients — some of which are more sophisticated than others — are increasingly under pressure to apply technology to litigation case strategy. Still, he cautioned in-house counsel to ensure they choose the most suitable products for their own needs.

The report for the first time this year features perspectives from corporate clients about the ways their legal departments maximize technology to decrease spending or be more advanced in their approaches to litigation. For example, Javaria Neagle, assistant general counsel, litigation and intellectual property at United Airlines Inc., said working with an outside vendor for technology assisted review, or TAR, means there needs to be an increased collaboration between her and her outside counsel.

"We have to work very closely together and strategize at an early point about handling a complex case's discovery," Neagle said in the report. "TAR has the good effect of enabling closer relationships between outside counsel and in-house counsel."

Heather Kolasinsky, senior legal counsel at Humana Inc., in the report said the health insurance company each year breaks down its cases by analyzing aspects like time frames and costs.

“You have to know what your trends are,” she said. “Maybe a few years ago you were taking four years to wrap up an average case, and now you are doing them in two and a half years — it’s good to track that and understand why, and to keep finding ways to be more consistent and take similar stances across matters.”

In the increasingly competitive technology environment, Goss advises litigators to analyze vendors for their clients. In an area where technology might currently play a larger role than ever before — in jury selection, for example — he said he has asked vendors to present and provide examples of how their tools operate in real time.

“When you select an expert for a case, you don’t just pick the first name that you get,” he told Law360. “You vet them and you talk to them and you want to make sure they understand your case ... You do the same things with these technology vendors.”

In 2019, in-house counsel will have the chance to apply the technology they embrace to a spectrum of litigation areas expected to grow, from antitrust and environmental, to government contracts and labor and employment.

In government contracts, for example, protests challenging the awarding of federal contracts have become increasingly contentious as contractors fight for a limited pool of government dollars, according to the report.

And in the labor and employment realm, there has been a wave of high-profile sexual harassment claims against companies and executives since the #MeToo movement took hold at the end of 2017. The ensuing litigation, the report said, is just beginning to wind its way through the courts, and its full impact is yet to be felt.

The report’s authors highlighted the importance of lawyers litigating high-impact cases to understand how to leverage technology to reach incremental advantages.

“I think the reality is that the opposition is using the tools,” Mark Klapow, co-chair of the firm’s litigation group and editor of the report, said in an interview. “If you’re not, you’re starting the race from behind.”

--Editing by Connor Relyea.