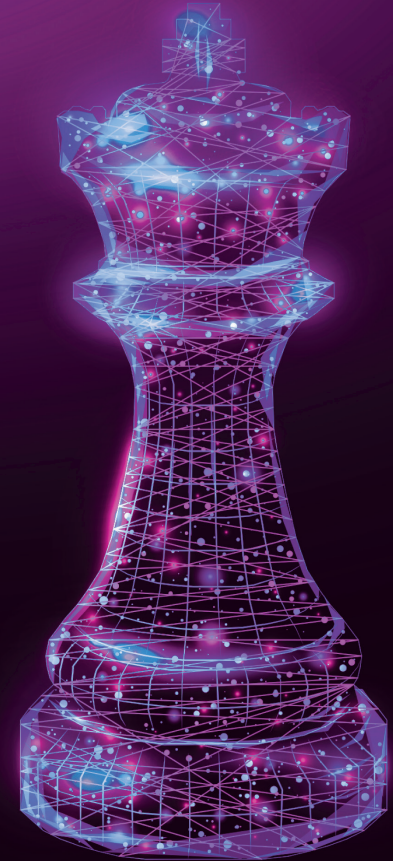


WHEN TECHNOLOGY BECAME STRATEGY

How data, analytics, and AI have reshaped the way litigation is investigated, evaluated, and tried

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INTRODUCTION

I remember all too well the experience of searching for relevant financial documents in warehouses filled with paper records in the 90s and early 2000s.

Nowadays, the quest for relevant evidence is executed at a desk, using technology that we had not even begun to imagine in 2001. Today, litigation involves massive volumes of data extracted from emails, text messages, accounting systems and cloud platforms. What once took months of manual review can now be found in hours using sophisticated review platforms and advanced analytics.

The legal technology revolution began in the early 2000s, when corporate scandals such as Enron and WorldCom established that critical evidence was no longer confined to paper. Email and other electronic records moved to the center of cases, offering attorneys a direct view into the decision-making and intent of the parties involved. Technology was moving at lightning speed through a legal system that had not anticipated the sudden information dumps.

The impact on forensic accountants, often brought in as consultants or expert witnesses to assist on cases with financial aspects to them, has been just as significant. Financial evidence is no longer limited to ledgers and bank statements. It now includes transactional data, system logs, communications, and digital artifacts that, when considered together, tell a more complete story than the numbers alone.

In 25 years, technology has moved from the background to the center of litigation, influencing how attorneys and their experts build case theories, assess risk, and present complex issues clearly and persuasively. Understanding how we got here helps explain what litigation looks like today and where it is heading next.

2001–2008: DIGITAL EVIDENCE RESHAPES LITIGATION WORKFLOWS

The early 2000s marked a turning point. High-profile corporate failures showed that electronic communications often contained the most revealing evidence. Emails, internal drafts, and accounting system data helped explain not just what happened, but how

decisions were made, who was involved and when events occurred.

For forensic accountants, this meant rethinking how financial investigations were conducted. Financial records alone were no longer enough. A journal entry might look routine on its face, but when paired with internal emails discussing pressure to meet earnings targets, it could tell a very different story.

At the same time, the sheer volume of data quickly became overwhelming. What once felt like an unmanageable amount of paper was dwarfed by the scale of electronically stored information (ESI). Relevant evidence could be buried in hundreds of thousands of documents across multiple systems and entities, increasing the risk of missing the “smoking gun.”

Having no alternative, attorneys and courts were applying traditional discovery approaches to this new type of evidence. A framework for handling ESI was urgently needed, prompting the 2006 amendments to the Federal Rules of Civil Procedure. Even then, the available technology lagged behind the demands of modern discovery.

Keyword searches and manual linear review remained the norm, often hindering and slowing the process, making it prohibitively expensive.

2008–2016: WHEN DATA ANALYSIS BEGAN SHAPING STRATEGY

As technology continued to evolve, so did the scope of evidence in litigation. Smartphones, text messaging, cloud computing, and social media introduced entirely new sources of data. Financial activity became increasingly intertwined with communication and operational systems.

At first, this compounded the challenge. Data volumes continued to grow, costs increased, and review timelines stretched out. The risk of missing something important grew even greater.

Over time, better tools began to change the equation. Technology-Assisted Review allowed teams to prioritize documents more efficiently, reducing the need for extensive manual review. Courts gradually became more comfortable with these methods, which helped drive broader adoption.

Analytics tools also improved, with email threading making it easier to follow conversations and clustering group-related documents.

At the same time, forensic accounting became even more data driven. Forensic accountants could now analyze entire populations of transactions. This made it easier to identify patterns that stood out, such as round-dollar payments, unusual vendor relationships, or timing that did not match normal business activity.

In bid rigging and revenue recognition cases, analytics made it possible to identify pricing patterns, bidder behavior, and transactions that did not align with historical trends or underlying operations.

Computer forensics added another critical layer of insight. Metadata and system logs made it possible to see when transactions were created, modified or deleted. This helped build clearer timelines and connect financial activity to user behavior.

Together, these developments marked a shift away from data review as a downstream exercise and toward data analysis as a strategic input. This shaped how cases were investigated, where discovery was focused and which issues emerged as central.

2016–PRESENT: AI AND THE INTEGRATION OF DATA INTO LITIGATION STRATEGY

Over the last decade, litigation technology has become more integrated and more influential. Platforms now routinely combine data collection, processing, review and analysis within a single environment. This

integration has made it easier to connect communications, financial data, system logs and user activity, providing attorneys and their experts with the full evidentiary picture rather than isolated data points.

Although nascent, Artificial Intelligence (AI) is already central in this shift. AI-enabled tools are commonly used to identify relevant documents, flag unusual transactions, and reveal connections between individuals and financial activity. These tools have significantly reduced the time required to sift through large data sets, allowing litigation teams to focus more on interpretation and judgment rather than on data management.

Generative AI has also begun to play a role in litigation support. In the last several years, these tools have been used to summarize large collections of documents, assist with drafting, and help translate complex analyses into clearer narratives. While human oversight remains essential, these capabilities have already changed how work is performed and how insights are communicated.

At the same time, computer forensics has expanded in scope. Investigations increasingly involve reconstructing activity across multiple devices, cloud platforms and enterprise systems. This has made it possible to link financial transactions more directly to user behavior, strengthening timelines and providing greater insight into intent and control.

Together, these developments have changed how litigation is approached. Data analysis is no longer confined to later stages of a case or limited to supporting conclusions reached through other means. Instead, it has become central to litigation strategy, informing early assessments, shaping discovery priorities and influencing how cases are positioned and pursued.

THE FUTURE: WHERE LITIGATION IS HEADED

Looking ahead, technology is poised to play an even larger role in litigation strategy. Predictive analytics tools are being developed to identify risk patterns and assist in evaluating potential outcomes at earlier stages of a dispute. While still evolving, these tools point to a future in which litigation decisions are increasingly informed by deeper and more sophisticated data analysis.

Artificial intelligence is also expected to continue expanding its role in areas such as anomaly detection and transaction analysis. As these capabilities improve, they may allow potential issues to be identified earlier and with greater precision, helping litigation teams focus their efforts on the most consequential facts.

At the same time, the legal and regulatory landscape will continue to evolve. Courts are likely to articulate clearer standards governing the use of AI and advanced analytics in litigation. As a result, ensuring that analytical methodologies remain transparent, defensible, and well documented will become even more important.

The role of the forensic accountant is expected to continue changing alongside these developments. In addition to traditional financial expertise, future engagements will increasingly require an understanding of data systems, technology, and digital behavior, reflecting the growing integration of analytics and technology into litigation practice.

CONCLUSION

Over the past 25 years, litigation has undergone a fundamental shift. What started as a move away from paper has become a fully data-driven approach to investigating and resolving disputes.

Today, cases are no longer built solely on documents or financial records. They are built by connecting the numbers to the surrounding data, the communications, system activity, and user behavior, to understand what really happened.

For attorneys, this shift has real, practical implications. It means engaging with data early in the case, not waiting until discovery is well underway. It means working closely with forensic and technical experts from the outset to identify key issues and risks. And it means being prepared to explain complex data in a way that is clear and persuasive to judges and juries.

The core objective of litigation has not changed. It is still about telling a compelling and credible story. What has changed is how that story is built. Increasingly, it is grounded in data and shaped by tools that allow attorneys to see the facts more clearly and act more quickly.

The past 25 years have shown that the future of litigation will belong to attorneys who understand this shift, who are comfortable at the intersection of law, data, and technology, and who can turn data into insight and insight into effective strategy.



Deborah Temkin is a managing director with a focus on disputes and litigation in MDD's Chicago office. Deborah has almost 30 years of experience, working in the forensic accounting, litigation dispute and eDiscovery areas.

Deborah enjoys working with law firms, in-house counsel and C-Suite executives.