

PREMONITION™



WOMEN IN LAW

Who makes the better lawyer?
Male or Female?

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FOREWORD

Premonition uses artificial intelligence to answer one essential question: **which lawyers provide clients with the best value from their legal representation?**

Getting to the answer involved gathering unprecedented amounts of litigation data from courthouses around the world into one single archive containing millions of cases.

We trained a sophisticated AI to read these documents at 50,000 pages per second and to normalize an array of formats into one single style, enabling users to easily search for the individual records they needed. Soon it could pick out names of the lawyers involved, the expert witnesses, the judges, the winners and the losers. It can even figure out how to predict which lawyers are mostly likely to win cases in the future, based on how they performed in the past.

Answering that central question meant trusting our data, even when its findings flew in the face of conventional legal wisdom, peer review, easy platitudes and longstanding stereotypes.

First it was clarity on win rates: which lawyers won before which judges?

Then we were able to compare law firm versus law firm

Next we began to account for price versus performance.

And now we're comparing men and women—with astonishing results.

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On average, female lawyers at every level of practice offer better value for money than men. They win more and they charge less.

”

THIS REPORT EXPLORES WHY.



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INTRODUCTION: **FAR FROM A LEVEL PLAYING FIELD**

FAR FROM A LEVEL PLAYING FIELD

“

SHE MAKES LESS THAN HER MALE COUNTERPARTS.

This is true from the highest paying careers to the lowest paying jobs according to the U.S. Census Bureau. It is also true in the legal profession, according to the American Bar Association and other independent studies. - Dr. Silvia Hodges-Silverstein, Sky Analytics.

”

This won't come as any surprise to 50% of you but, as with most professional and skilled industries, there has always been an imbalance in favour of men when it comes to career progression in law. From high school onward, women generally have to outperform their male peers to achieve success and advancement into the best universities, law schools, internships, firms. The challenge intensifies with each new step.

Women have made significant progress despite the *Mad Men*-esque culture embedded within many law firms. While the men make connections over liquored up business lunches and golf course schmooze sessions, women are generally discouraged from pursuing litigation on account of their supposedly delicate nature. They're often nudged instead toward less lucrative avenues, like family law. It still takes substantial amounts of patience and tenacity for women to advance within most firms. While men with children at home rarely have to worry about any domestic sacrifice, high-achieving female lawyers are considered “less reliable” workers than fathers.

When a woman makes partner in a law firm, she will almost certainly remain a minority at that top table. She will also know, though many of her colleagues would never acknowledge it, that she has worked harder and been paid less than any of her male peers.

THE GREAT DIVIDE ON PAY

“He said, she said” is a surefire contender for the oldest form of human debate, but it’s 2018 and we sit on a wealth of statistical evidence that reveals the extent of this historical imbalance.

Thanks to a lot of diligent research and the birth of big data, there is clear proof that a pay gap exists, with some variation, across all industries, with men on balance earning about 20% more for the same jobs. More telling perhaps, is research from Cornell University which shows that, as more women enter fields traditionally dominated by men, pay for that field (including for men) drops accordingly:

“

“[Once women start doing a job] it just doesn’t look like it’s as important to the bottom line or requires as much skill. Gender bias sneaks into those decisions. It’s not that women are always picking lesser [work] in terms of skill and importance. It’s just that the employers are deciding to pay less for it.”

Dr. Paula England, New York University (New York Times)

”

Given the fact that by its very nature capitalism will always attempt to squeeze labor costs as much as possible, it shouldn’t come as a surprise to find the going rate for workers in integrated fields trending downward toward women’s pay, rather than allowing the pay of women to rise to the levels to which men are accustomed. But what about elite careers, like law?

WOMEN MAKE UP ONLY 22% OF PARTNERS



**FIRST YEAR
LAW STUDENTS:**

51%
female ¹

PARALEGALS:

75%
female

ASSOCIATES:

46%
female

PARTNERS:

22%
female



In 2014, Dr. Silvia Hodges-Silverstein of Sky Analytics conducted a Gender Study based on \$3.4 billion in actual billings by male and female attorneys.



No matter the size of the practice, her rank within the firm; no matter where she practiced, or for how many years; no matter her rate per hour, or how many hours she worked, the female lawyer made less.



The same largely holds in other countries; in Canada's largest province, Ontario, for example, just 9.7% of licensed female attorneys have made partner, compared with 23.5% of men. (Law Society of Upper Canada).

¹ American Bar Association 2016 reporting.
<https://www.nytimes.com/2016/12/16/business/dealbook/women-majority-of-us-law-students-first-time.html>



**51% OF FIRST YEAR
LAW STUDENTS ARE FEMALE**

AMERICAN BAR ASSOCIATION 2016

**ONLY 22% OF LAW FIRM
PARTNERS ARE FEMALE**

AMERICAN BAR ASSOCIATION 2016

DRILL DEEPER INTO THAT STUDY AND THE MARKET IMBALANCES JUST KEEP ON COMING.

- **Women tend to be assigned to lower value assignments with 93% male majority teams on 20+ timekeeper projects, vs. 81% female majority teams on <5 timekeeper projects.**
- **Only 59% of female time is actually billed, vs. 66% of male time.**
- **Typically “male” and “female” jobs, i.e. more than a 5% difference in average billings:**
 - **Only 4 “Female” jobs: word processing (UTBMS code E103); fact investigation/ fact development (L110); depositions (L330); and “other” (P280).**
 - **By comparison, 177 jobs were “Male” jobs: Analysis/Strategy (TR120); Discovery On-Site Inspections (L360), International Patent Prosecution (PA600), Operations (B200), and Hosting Costs (L651), most likely to be done by a man.**
 - **6% of men billed over \$800 per hour, vs. only 2% of women**
 - **Women Partners earned on average -10% less at large firms, -12% less at small firms.**

WOMEN PARTNERS EARNED ON AVERAGE
-10% LESS AT LARGE FIRMS
-12% LESS AT SMALL FIRMS

SKY ANALYTICS

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XII

**ONLY 59% OF FEMALE TIME
IS ACTUALLY BILLED
VS. 66% OF MALE TIME**

SKY ANALYTICS

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THOSE ARE THE STATISTICS: WHAT ABOUT THE DATA?

Clearly this imbalance remains a scandal but, what if we could use data to get under the skin of what really matters: and that is performance? Perhaps data can help us establish a reality that men perform better and therefore should receive better reward?

Explanations as to why women are paid less for the same work than men tend to slide quickly into essentialist notions of gender; similarly, attributing their superior performance in our analytics to feminine intuition and the like would be absolute rot.

With the world's largest litigation database, Premonition Analytics brings significant insight into the world of legal analytics and lawyer performance. With the results of that gender study fresh in our mind, this report unpacks the truth behind the myth.

The following pages will summarize some of Sky Analytics' findings about the pay gap, as well as Premonition AI's insights into the performances of women vs. men litigators. It's a data driven courtroom battle of the sexes.



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WOMEN CHARGE LESS...

WOMEN CHARGE LESS...

One of the most striking insights offered by Sky Analytics' Gender Study is the fact that no matter which variable you choose to apply to the question, the pay-gap persists.

Law Firm Size

Dr. Hodges-Silverstein recognizes five tiers:

- TIER 1: National or international mega firms with over 1,000 attorneys.
- TIER 2: Major firms with 500 to 999 attorneys.
- TIER 3: "Super regionals" employing 250 to 499 attorneys.
- TIER 4: State or regional firms with 24 to 249 attorneys.
- TIER 5: Practices with fewer than three offices and 24 attorneys.

No matter the size, women bill less per hour. While **6%** of all male lawyers bill over \$800/hour, only **2%** of women do the same.

Over half of male tier 1 lawyers bill **+\$500**, compared to just **31%** of females.

Just **22%** of tier 5 men charge under **\$150 per hour**, compared to **30%** of women.

Hours Billed: Overall and Per Matter

Some have argued that part of the reason the pay gap exists is because women are more likely to spend at least a portion of their working days and years as homemakers. Whether or not that's true of women as a demographic, the fact that litigators bill by the hour makes it relatively easy to compare apples to apples in terms of how long they work (Overall Hours) and how quickly (Hours Per Matter).



**6% OF MALE LAWYERS
CHARGE OVER \$800PH
ONLY 2% OF FEMALES DO**

SKY ANALYTICS GENDER STUDY

Overall

Female partners bill **+24 minutes** per day versus men

Female and male associates bill roughly **the same** per day

Female paralegals bill roughly **-121 minutes** per day versus men

Per Matter

No meaningful time difference between men and women.

Location & Tenure

No matter where a woman practices in America she will make less than a man, though some regions are less-worse than others:

In the **Midwest**, she'll make "only" **6% less than a man** doing the same work.

In the **South Central** region, she'll experience a **20% wage deficit**.

In most jobs, a combination of seniority and skills mean higher wages after years on the job. Not so for female lawyers: unlike men, there is no correlation between years of experience and wage increases.

**FEMALE PARTNERS BILL
+24 MINUTES PER DAY VERSUS MEN**

SKY ANALYTICS



**FEMALE LAWYERS ARE 23% LESS LIKELY
TO BE SUED FOR LEGAL MALPRACTICE.**



Source: ALPS THE NATION'S LARGEST DIRECT WRITER OF LAWYERS' MALPRACTICE INSURANCE

THE SEX FACTOR IN MALPRACTICE SUITS

According to ALPS, **FEMALE LAWYERS ARE 23% LESS LIKELY TO BE SUED FOR LEGAL MALPRACTICE** than their male counterparts. While there are relatively few peer-reviewed studies on the effect of sex and gender on malpractice suits in legal services, or on the reactions of practitioners who are sued, we can look to other highly-specialized fields for comparisons. Doctors are famously the most popular targets of malpractice litigation, and there is extensive research literature to draw on. According to a comprehensive analysis of 32 studies on medical malpractice suits published in BMC Medicine, **“male doctors had nearly 2.5 times the odds of [being the subject of] medico-legal action compared to female doctors.”**

There are a number of factors which may explain why this is the case for doctors which may also apply to lawyers. One suggestion is that female doctors, like lawyers, are often pushed towards lower-level areas of practice (primary care and family law respectively) that are less likely to precipitate malpractice suits than, say, surgery or tax law. However, there seems to be little data to back this up, as women are not only less-sued regardless of specialty, but have begun to dominate ob/gyn residencies, the single most-sued area of practice according to *The New England Journal of Medicine*.

A 2014 article in *Transactions of the American Ophthalmological Society* cites research that indicates differences between male and female communication style appear to influence their relationships with patients: “Women have been found to make greater use of questioning and counseling, engage in more emotional and positive talk, and more actively enlist patient input.” Furthermore, “Closed claims studies and patient interviews have identified several interpersonal communication failures that prompt patients to file lawsuits against their doctors. These include patients’ perceptions that they were ignored or misled, their visit was rushed, tests were not properly explained, and the doctor was reluctant to talk openly with them.”

Malpractice cases in law tend to stem from a sense that their lawyers failed in some way to represent them adequately, but few clients are well-versed enough in law to competently make this determination. Instead, the suits are based on the perception of the quality of the service they received; in fact, a Canadian study cited by the American Bar Association found that

“POOR COMMUNICATION” WAS THE FIFTH MOST-LIKELY REASON FOR MALPRACTICE SUITS, INDEPENDENT OF PROCEDURAL OR CONFLICT OF INTEREST ERRORS.

It seems likely that women’s tendencies to spend more time with their clients, effectively communicate their litigation approach and reasoning, and involve their clients in the process, alleviates these misconceptions.

Finally, women appear to take the experience of being sued harder than men, with 57% of women describing being hit with a malpractice suit as Very Bad or (literally) Horrible – The Worst Experience of Their Lives, compared to 51% of men who described the experience as being merely unpleasant, upsetting or irritating.

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...TO WIN MORE

...TO WIN MORE

Sky Analytics' study shows us that women are paid less in law; or, from a buyer's perspective, that advising a female lawyer represents a significant cost savings. But are male attorneys providing some kind of surplus value commensurate with their higher pay to justify this schism?

Just the opposite, according to Premonition's findings. The Miami-based software firm possesses the world's largest archive of courtroom data, as well as a proprietary artificial intelligence capable of producing detailed historical and predictive legal analytics based on this data.

“

"Most of the old data was anecdotal. We ran the biggest legal study on gender of all time, and we found things many people wish we hadn't."
Guy Kurlandski, Premonition, CEO

”

Premonition recently ran a study comparing the litigation performance of male and female lawyers across 120,000 cases. The system assigned lawyers to one category or the other based on their given name which, while an imperfect system on a case by case basis (ex. is Leslie male, female or non-binary?), provides accuracy at scale comparable to the US census.

According to Premonition's numbers, **as a group women partners in Big Law beat males in court 70.19% to 57.47%**, the biggest factor ever tested by the firm.

Without controlling for gender, partners as a group outperformed associates by a mere **1.4%**. Female associates, meanwhile, outperformed their male counterparts **60% to 57.47%**, meaning they were nearly twice as likely to beat men as a partner of any gender.

The gap widens still further: **female partners outperformed male associates 70.19% to 57.47%**. Remove female partners from the equation, and our results found no difference in performance between male partners and associates.



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**FEMALE PARTNERS WIN
12% MORE THAN MEN**

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A DOUBLE GLASS CEILING?

“I believe there’s a ‘double glass ceiling’ effect going on here,” says *Premonition CIO Toby Unwin*. Although women now represent just over half of the entrants to law schools in the US, only **one-third become litigators**. “Litigation is seen as being ‘man’s work’ and they’re steered away from it, which is a shame because female associates who do choose to go this route win more on average than men.”

According to *Corporate Counsel*, women frequently find more success as in-house corporate attorneys than in the hyper-masculine world of case law. Susan Hackett, formerly of the Association of Corporate Counsel (ACC), talked about her experience at an unnamed law firm:

“I can remember working all day at the firm and realizing that, at 6:30, all the guys were sitting down in one of the partners’ offices downstairs drinking Jack Daniels,” she recounts. “It wasn’t that I didn’t get along with those people, and it wasn’t that I wanted to drink Jack Daniels with them that much, but I thought to myself as I watched this,

“

‘There’s something happening here that I’m not part of.’”

”

These informal, gender-based methods of exclusion contribute to the high attrition rate as female litigators attempt to climb the ladder in an industry based on making connections. **JUST 4.88% OF PARTNERS IN PREMONITION’S STUDY WERE IDENTIFIED AS FEMALE.**

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“Those that do make it through the ‘double glass ceiling’ are phenoms: cheaper, faster, and less likely to take a losing case to court,” says *Unwin*.

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A woman with blonde hair tied back, wearing a dark suit and white shirt, is looking down at a laptop. In the foreground, a pair of wooden scales of justice is visible, slightly out of focus. The background is a blurred office setting.

**ONLY 4.88% OF LITIGATOR
PARTNERS ARE WOMEN**

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WHY THE WIN GAP?

The rate of attrition from the point women enter law school to the point where the few survivors make partner suggests that the “win gap” is largely due to “survival of the fittest”: only the best women make it through the gauntlet, and these elite females naturally outperform a glut of mediocre men. But there are other tertiary factors that may be involved. One study led by Professor Jane Goodman-Delahunty of Charles Sturt University found that **female lawyers are somewhat less overconfident in their predictions of case outcomes than males**, meaning they are less likely to bring losing cases to court while preparing more diligently for the cases they do litigate.

One of the most important aspects of litigation that Premonition’s software reveals is the influence that the judge assigned to a case has on the final outcome. The predictions the firm offers its clients lean heavily on a lawyer’s past performance in front of a particular judge. As a whole, the lawyer-judge pairing has a massive 30.7% impact on the outcome of a case: if, all things being equal, a case is a true 50/50 proposition, a good or bad pairing could skew the result to 80/20 in either direction.

There are numerous studies which indicate that women judges run their courtrooms differently than men. One study of judicial discretion, or a judge’s perceived fairness, showed that “estimates [based on observation of courtroom behavior] for female judges (59%) and male judges (44.3%) differ by over 14 percentage points. Phrased in terms of odds, the odds of a helpful judicial behavior when the judge is female is estimated to be 80.7% higher than when the judge is male” (Gill et al, 2017). The superior performance of female lawyers before female judges may be a rare example in the field of a bias working in women’s favor.

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**FEMALE LAWYERS ARE LESS LIKELY
TO TAKE LOSING CASES TO TRIAL**

Professor Jane Goodman-Delahunty, Charles Sturt University

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**PERCEPTION/REALITY ARBITRAGE,
AND A NEW PAY GAP?**

PERCEPTION/REALITY ARBITRAGE, AND A NEW PAY GAP?

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“Let’s not hire on gender when we should be focusing on merit. It just so happens that women litigators perform substantially better.”

Guy Kurlandski, Premonition, CEO

”

Premonition’s ultimate purpose is to spotlight legal best buys, some of which flout conventional wisdom. This is called **perception-reality arbitrage**: exploiting the gaps between what people think they know and the numbers actually reveal.

In that sense, female litigators represent a significant arbitrage opportunity because clients who advise them are likely to pay significantly under market rate for better representation.

But, as in any science, the subject being studied will inevitably be altered by observation. In the past, firms could discriminate because they weren’t being monitored. Perhaps they would allow a few token female partners to keep up appearances, but when it came time for payroll they could afford to pay women less because virtually all firms paid women less.

As analytics reveal more about courtroom performance, more lawyers will be hired on the basis of merit. And that could mean turning the pay gap upside down.

“

“It may be a controversial statement to make, but I don’t believe women in law should be paid the same as men. They should be making more.”

- Toby Unwin.

”



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**FEMALE ASSOCIATES WIN
3% MORE THAN MALES**

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PREMONITION'S METHODOLOGY OF COUNSEL SELECTION

GETTING TO THE SHORTLIST

The purpose of Premonition is to provide shortlists of capable, proven lawyers for selection by the client. It is not an absolute, it's indicative. Factors such as lawyer availability, price, personal chemistry, etc., may all affect individual selection. A client may well feel that #6 of 20 is a better fit than #1.

DETERMINING WINS

At the heart of the Premonition Method is the determination of an attorney's "win rate." Of course, what constitutes a win is often hotly debated. If you call both lawyers on a closed case, both will claim to have "won". We consulted with a number of lawyers and judges asking them about the general winners and losers for various dispositions (we have over 100 types in the system). There was broad agreement that the fairest approach would be to consider judgements as a "win" for plaintiffs, dismissals as a "win" for defendants and settlements should be categorized consistent with local court rules, which generally categorize a settlement as a "dismissal."

While the system is not perfect, it does create a "level playing field" for which reasoned judgments can be made of a group of attorneys operating in the same judicial environment. Thus, comparisons between local attorneys operating on the same types of cases in the same jurisdiction can be more "data based" and less subjective. This is the ultimate goal of Premonition. Premonition is not a "rocket science" system where we strive for 100% unarguable analysis of every case; rather its function is to spot trends and outliers. It does this very well as data is "smoothed out" over thousands of cases.

CASE DIFFICULTY

Every case differs in difficulty. Premonition does not assess the difficulty of a case. Attorneys often claim to "only take the toughest cases" when explaining low Win Rates. Occasionally this is true. However, our data indicates that as an overall excuse this is a false foundation as it too is "smoothed out" over a large number of cases.

It is also worth noting that in some jurisdictions such "cherry picking" is prohibited. For example, the United Kingdom has a "cab rank rule" preventing barristers from cherry picking easy cases and the Premonition results are similar to the United States. This also supports

the conclusion that even in the United States, cherry picking is not much of a factor. Finally, while Premonition is not designed to identify the “surgeon” attorneys that only work the hardest cases, it does group cases with those of similar difficulty by using case type, sub type and parties. For example, Tax Court is notorious for its low Win Rates against the IRS, however top performing attorneys still stand out, not by their wins, but because they lose less. Cases group by court type (Appeals Court being a more rigorous black letter law venue than small claims), and by judge where certain cases, e.g. complex business claims are assigned to certain judges. Over time case difficulty variations are also smoothed out over large numbers of cases and attorneys who only take easy cases will de-select themselves when approached.

MULTIPLE ATTORNEY AND FIRM ONLY CASES

Premonition looks at the first listed attorney for each side and ignores the others. This not only makes using the system easier to use but it also recognizes the practical reality that the lead attorney usually has the greatest impact on the result. In courts where the individual attorney names per party are not identified specifically, Premonition uses an algorithm to predict which individual attorney likely represents which party, then selects the first one for each side to analyze. However, co-counsel can be analyzed if specifically requested by the client.

GENDER AND DIVERSITY

Premonition matches names to census data and calculates the likely gender and race based on first and last names. We find that at scale Premonition’s accuracy approaches that of the census itself.

OVERALL DATA ACCURACY

Premonition data cannot be more reliable than the public record.

A DIVERSITY & INCLUSION SPECIAL EDITION: **WHY HIRING WOMEN LAWYERS IS SMART BUSINESS.**

A MESSAGE FROM THE CO-LEADER OF IBM'S COGNITIVE LEGAL PRACTICE



I have spent my career committed to promoting diversity and inclusion in emerging technologies. I have always believed that we are more effective when we work together to tap into the strengths that a diverse workforce offers. At IBM, our Cognitive Legal Practice is a diverse, multi-cultural practice. My Co-leader, Brian Kuhn, and I intentionally promote a diverse team on our projects. We **think about diversity the way we think about innovation - both are essential to the success of our business.**

Last year, we posed a question to a packed room at one of the largest legal conferences in the world. "One day, will we be able to predict which lawyers will provide the best results for a case?" We knew that answering the question without bias meant gathering an unprecedented amount of data from cases and trusting the hard facts from those cases, even when its findings flew in the face of conventional legal wisdom, peer review, easy platitudes and longstanding stereotypes.

I am proud to share with you that the challenge has been met by Premonition with surprising results which, in my opinion, promote new insight into diversity and how inclusion of women is smart business. After reading this report, I believe you will clearly see that a legal strategy that includes women is not only the right thing to do, but it provides a competitive advantage.

I am inspired by the data in this report and look forward to taking supplementary steps to strengthen and evolve our focus on diversity and inclusion in the future.

SHAWNNA HOFFMAN

IBM Cognitive Legal Co-Leader
Co-Founder of Women in eDiscovery
Co-Founder of Diversity in Blockchain

WHY HIRING THE BEST PEOPLE IS SMART BUSINESS (THEY JUST HAPPEN TO BE WOMEN).

A MESSAGE FROM THE CO-FOUNDER OF PREMONITION.ai



Shawwna and I have arrived at the same conclusion via two different paths. After witnessing first-hand the staggering inefficiencies of the legal system, I set out to measure it. Leveraging the *Perception/Reality Arbitrage* differences inherent in the system to produce the best results at the best prices for major purchasers of legal services. While, by no means, simple, it was quite a bit easier than it should have been. Why? Quite frankly the legal market is appallingly inefficient. Its treatment of women is perhaps the clearest example of this. For a very long-time law has overlooked and underpaid its best performers, while foisting clients with overpaid, mediocre litigators where paying 100% more produced just 3% better results.

Recently, Premonition used Artificial Intelligence “AI” to answer one essential question: **which lawyers provide clients with the best value from their legal representation? This was not an easy task.** Getting to the answer involved gathering unprecedented amounts of litigation data from

courthouses around the world into one single archive containing millions of cases. This rapidly became the largest in the world.

Premonition trained a sophisticated AI to read each word from the case data at 50,000 pages per second. Next, the AI searched for the names of the lawyers involved, the judges, the winners and the losers. With the combination of advanced statistical models and AI, it figured out how to predict which lawyers were mostly likely to win cases in the future based on how the lawyers performed in the past.

First it was clarity on win rates: which lawyers won before which judges? Then, Premonition was able to compare law firm versus law firm. Next, they began to account for price versus performance. And, when comparing men versus women, the results were astonishing. In every measurable aspect the women outperformed the men. Not just slightly, but substantially. I have always disagreed with the idea that people should be selected over others based on their sex or race. Positive discrimination is just as bad as negative. There is nothing in discrimination that is good. We simply replace one wrong with another. I believe people should be hired and judged on merit alone. In this case, that would lead to an overrepresentation of women in litigation. That’s fair, that’s the market.

When you hire by merit, diversity comes standard.

TOBY UNWIN

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