



The Data Explosion

Lawyers charge a lot for discovery and aren't even very good at it. That spells opportunity for H5 | By Daniel Fisher

THESE DAYS AN EXECUTIVE'S career—or a multibillion-dollar judgment—can turn on a single e-mail. Who can forget the one sent by an American Home Products executive who complained about spending his “waning years signing checks to fat people who are a little afraid of some

silly lung problem” and blew open the case on the diet drug fen-phen? Or the e-mails that outed Harry Stonecipher, who was brought back to clean up Boeing's business scandals and was instead snared in his own romantic uproar?

Corporations are evidence machines, generating terabytes of electronic docu-

**"We give you the bullets designed to win":
H5's Nicolas Economou thinks lawyers
should litigate, not search for documents.**

ments, e-mails and digitally recorded phone calls each year. Lawyers try to sift through all this dross in search of the smoking gun that can determine the outcome of a case. But, so say studies by library scientists and others, the lawyers aren't very good at sifting. Worn down by the anesthetizing process of flipping through thousands of digital images a day, they miss as much as they find. That's where a San Francisco company, H5, comes in. "Our work is to discover the ideal narrative to walk into court with," says Nicolas Economou, 42. "We give you the bullets designed to win."

Tough talk from a soft-spoken graduate of the University of Geneva's diplomacy school who later got an M.B.A. from Wharton. But in four years Economou has built H5 into a little powerhouse, booking \$60 million in contracts during the fiscal year ended June 30. The 250-employee firm uses banks of servers and a staff of linguists and computer scientists for highly customized searches to dig up the evidence to prosecute—or defend—big corporate lawsuits. In an era where adversaries think nothing of dumping 500 million documents on each other in response to discovery requests, computer searches are the only realistic solution. "You're faced with hiring an army of lawyers to page through this stuff or using technology to give you a good first cut," says Mark Ouweleen, a lawyer with Bartlit Beck Herman Palenchar & Scott in Chicago, which has used H5 in cases involving Microsoft and other large companies.

H5 usually charges an average \$10 million per case and recently took in \$33 million for one three-year assignment. It's like googling for dirt. But where a Web search turns up a sampling of items, a discovery program must unearth everything. Otherwise the client might face dire consequences like the \$1.6 billion judgment Morgan Stanley was ordered to pay financier Ronald Perelman in 2005 after it repeatedly failed to produce electronic evidence on time. (Morgan Stanley got it thrown out.)

In a typical securities case, H5 huddles with lawyers and a corporate organizational chart to define the theory of the case and

which employees might have taken part in it. Then H5 lawyers, engineers and linguists draw up patterns of words that might be used to express various elements of the scheme. Finally it dumps the entire database into its parallel processors and finds every document that could be relevant. A sales executive, for example, might have issued an urgent e-mail to a subordinate about a pending sale, followed by an entry in the accounting ledger of the sale a few days before the close of the quarter. A subsequent record showing the same customer refusing delivery after the end of the quarter provides strong evidence the company was stuffing the channel. Urgency in the executive's e-mail indicates he knew of the mischief.

Confidentiality agreements keep Economou from discussing most cases. But he says H5 helped RealNetworks prepare an antitrust suit against Microsoft a couple of years ago. Maybe the technology helped: Microsoft settled for \$300 million.

In one oft-cited 1985 study, lawyers who searched a 350,000-page library using conventional electronic techniques were convinced they found 75% of the evidence relevant to the case. A closer check established they had gotten only 20%. More recently, Anne Kershaw, a litigation management consultant, pitted six lawyers and paralegals against H5 in a search of 48,000 documents. The lawyers found 51% of the relevant documents, versus 95% for the computer.

Economou started H5's predecessor in 1999, intending to build the next great Web-search tool based on technology developed by the father of a Wharton classmate. That plan fizzled in the dot-com bust. Then Economou switched to legal research, renaming his company H5 in tribute to 18th-century English clockmaker John Harrison, whose fourth chronometer, commonly known as "H4," enabled modern sea navigation. Draper Fisher Jurvetson invested \$6.5 million in 2003 (Economou no longer owns a majority stake in the company), and H5 won its first multimil-

lion-dollar assignment the following year.

H5 is profitable, says Economou, though it is spending heavily to support 400% annual growth. He has also spent a fair amount polishing H5's image: The firm's "advisory board" includes former Harvard Law School professor Arthur Miller and John Seely Brown, onetime chief scientist at Xerox Corp. Economou rented the Library of Congress earlier this year for a glittering reception after a conference at which speakers included U.S. Supreme Court Justice Stephen Breyer.

Anything to stand out among competitors. Among them: Cataphora of Redwood, Calif., with more than \$10 million in revenue; traditional investigators like Kroll International; and technology companies like Oracle and EMC. This is a growing business. Forrester Research estimates the e-discovery business totaled \$1.5 billion last year and is on track to hit \$4.8 billion by 2011.

It's expensive, too. At H5's Washington conference Breyer was shocked to hear discovery in a routine case might

cost \$4 million. "We can't do that," the Supreme Court justice spluttered. "If it really costs millions of dollars, then you're going to drive out of the litigation system people who ought to be there." Some in the audience snickered; \$4 million sounded cheap. A Verizon Communications lawyer told a federal judiciary panel in January that his company hired some 225 lawyers and spent \$14 million to search 2.4 million documents just to determine if they were protected by the attorney-client privilege.

"The haystack is too big," says Jason R. Baron, chief litigator for the National Archives, where it took 25 lawyers and archivists six months to search 20 million White House e-mails for evidence about the Clinton Administration's tobacco lawsuit.

Lawyers aren't capitulating to H5's servers. "I don't want to suggest in that in a \$46 billion case we're going to turn over the car keys to a computer," says Alfred Levitt, a partner at Boies Schiller & Flexner. "But once you teach H5 this stuff, it goes a lot faster than people." **F**

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