

CRAIN'S CLEVELAND BUSINESS

'Predictive' software eases lawyers' burden in document searches

Technology cuts time of poring over vast records

By CHUCK SODER
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Attorney Howard Nicols tells a man-versus-machine story that sounds a lot like a backward version of the tale of John Henry, the mythical hammer swinger.

Squire, Sanders & Dempsey LLP, where Mr. Nicols is global managing partner, is one of a few law firms using an up-and-coming method that allows attorneys to blast through mountains of electronic records to find the documents they need.

The process, often referred to as "predictive coding" or "predictive tagging," uses software that learns from attorneys as they sift through documents marking which ones are relevant to their case and which ones aren't. After a while, the software takes over.

Predictive coding isn't broadly accepted yet because it hasn't yet faced — and, therefore, survived — a major challenge in court.

Squire Sanders, a global firm with its largest office in Cleveland, was willing to make the leap after internal tests suggested that such a system could cut in half the time attorneys spend poring through what can be overwhelming numbers of electronic records, said Mr. Nicols, who also leads the firm's advocacy practice.

The test pitted the firm's attorneys against Equivio's Relevance predictive coding software.

Unlike John Henry, who died after beating a steam-powered hammer in a steel-driving competition, the attorneys survived — but lost big time.

The gold standard

To set a baseline, the firm judged the predictive coding method against how its own attorneys performed on a previous case that required them to find relevant documents among 3 million pages of records. Even after advanced keyword searches and other methods of filtering out irrelevant documents, they still spent 1,200 hours marking documents related to the case.

They could have done the same job in roughly 200 hours using the firm's predictive coding

software, according to calculations Mr. Nicols made based on Squire Sanders' internal testing.

For the test, Squire Sanders attorneys spent just 15 hours looking through about 16,000 pages pulled from the original lawsuit. Then the software knew enough to review the rest of the 350,000-page sample — and score each document on its relevancy along the way.

Granted, during the test, attorneys were looking for documents relevant to just two of the 10 issues in the original lawsuit, so Mr. Nicols estimates that it might take 75 to 100 hours to train the software for a more thorough review. He added 100 hours to his estimate to give attorneys the chance to review enough relevant documents to become knowledgeable about the case.

Even with those additions, the system would have cut attorney time spent on the case by 84%. Many cases don't involve so many documents, so Mr. Nicols typically tells clients to expect to save 50% to 60% on attorney review time.

And the software wasn't just faster than the attorneys: It was more accurate, too, according to the Squire Sanders review.

"The gold standard of human review — it ain't such gold," Mr. Nicols said.

Since June, three Squire Sanders clients have agreed to use the process.

Warming to the technology

Another Northeast Ohio company, electronic discovery firm Vestige Ltd. of Medina, just over a year ago created in-house software designed to find relevant documents after studying a sample coded by an attorney.

A growing number of Vestige's clients are requesting the service, said Vestige chief technology officer Greg Kelley. For one, they recognize the savings it provides, even though it's among the company's more expensive offerings, he said.

"More and more people have warmed up to the idea," he said.

It doesn't hurt that Vestige calls it the "Defensible Search" service. The company promises to defend the method in court if it is challenged.

Squire Sanders, likewise, made sure that Equivio, based in Israel, would do the same, and earlier this year the law firm wrote a white paper detailing how it evaluated the system, Mr. Nicols said. Plus, after running the software, Squire Sanders reviews a sample of documents dubbed irrelevant to make sure they aren't useful, he said.

"We came at this from the defensibility side," he said.

That preparation may prove important, given how new predictive coding is, said Diane Carlisle, certified records manager for ARMA International of Overland Park, Kan. The group used to be called the Association of Records Managers and Administrators.

"They would have to really have their act together in terms of how they ensured the accuracy of the records," Ms. Carlisle said.

Should a judge rule that this or any method of review is unreasonable, the side using the method may need to review the documents again or worse, Mr. Nicols said. If attorneys conduct a particularly sloppy review and hand over documents protected by attorney-client privilege, a judge could decide that a "waiver of privilege" has occurred, forcing the attorneys to reveal documents they otherwise wouldn't need to disclose.

It will take months or years before a legal dispute settles the matter, which would make many clients more comfortable with predictive coding, said Larry "Bud" Conner, a Kirtland-based attorney with Applied Discovery of Bellevue, Wash. The electronic discovery company doesn't offer a pure predictive coding service, though it does have software that can look for patterns among documents marked relevant and suggest search parameters that would find similar documents.

A handful of companies have been promoting predictive coding technology, Mr. Conner said. He cited how Fulbright & Jaworski LLP, a global firm with nearly 900 attorneys, has adopted a system by Reconnind that lets the firm review less than 8% of the documents in a case while holding the rest on reserve for later review.

The use of predictive coding isn't yet widespread, but it has potential, Mr. Conner said, adding that he's glad Squire Sanders, a large, well-known firm, has been willing to try it out.

"It's exciting that someone is getting out in front of this," he said.