

## First-Level Review: The Next Legal Service to Be Sent Offshore?

By Priya Keshav and Mike Dolan

Ask any corporate general counsel today about his or her top concern, and the answer almost invariably will be “cost control.” In a recent Fulbright & Jaworski client study, the firm’s Second Annual Litigation Trends Survey Findings, cost was the most-cited concern. Interestingly, some respondents expressed more concern over the costs of litigation than whether they won or lost the case.

Discovery costs continue to spiral upward because of the vast amount of electronic data created daily, and the need for robust technology to reduce document sets for review, coupled with high-quality/low-cost review, is acute.

But the greatest success for clients, as measured by cases won and costs saved, will be realized by combining robust technology with lower-cost, offshore legal workers. In a recent KPMG white paper, *A Revolution in E-Discovery: the Persuasive Economics of the Document Analytic Approach*, four different methodologies for pre-paring and reviewing documents in litigation were compared. While a broad

range of total costs was computed across the different approaches, the majority of the cost in all cases was in first-level document review — ranging from 58% to 90%. So the cost and time are not in the processing and production of documents, but within the review.

### HISTORY TEACHES A LESSON

The evolution of skills and services in litigation support will continue to parallel that of other global industries. Contract manufacturing — a more mature outsourced industry — can be studied for parallels, and perhaps provide hints of legal outsourcing’s future. In that industry, early service companies put electrical components into circuit boards and delivered them back to clients, such as IBM.

Over time, those service providers began to purchase the components for assembly themselves — known as “turnkey services.” They also developed skills in scheduling their factories, organizing sophisticated procurement operations strategically located around the globe to obtain better prices than their clients, and adding value by designing lighter and cheaper components and finished products. These early service providers were instrumental in setting up factories in geographic areas where skilled, low-cost and high work-ethic labor is available. They developed such expertise over just two decades that major corporations eagerly sold their operations with “take-or-pay” contracts to these service providers.

When studying the contract-manufacturing industry, a clearly observable trend from “out-tasking” to “outsourcing” emerges; that is to say, there has been a shift from work provided in an assembly-line setting to actually setting up the infrastructure and

organization to deliver those services to multiple clients, and to enhance the services — including cost-saving and developing greater expertise.

With regard to supplemental legal services, basic offshore bibliographic legal coding started around 10-15 years ago, and is now widely accepted as a much better value for the money than its domestic counterpart, provided that care is taken with vendor selection. This line of development also parallels the contract-manufacturing industry, where unsophisticated and lower-value manufacturing components were outsourced for assembly first.

Drawing a comparison with document-review services, current U.S. practices make it common for law firms to use teams of contract attorneys (occasionally paralegals) on an as-needed basis for said services. These teams are routinely being formed and disbanded with each case, often resulting in a constant “train-and-retrain” and “hire-and-rehire” method, which can waste time, money and resources. There’s no reason why this “churn” can’t be avoided by using service providers who specialize in these services. As such, our research and experience dictates that much like other legal services, the adoption rate for using offshore attorneys for first-level document review will significantly increase due to the following drivers:

- Huge cost-savings over domestic re-view. Top Indian attorneys cost less than half what very junior domestic-review attorneys and paralegals cost;
- Higher client comfort level with off-shore work, because quality and service have vastly improved over the years;
- Existing infrastructure. Offshore management expertise, coupled with high-bandwidth, low-cost and ubiquitous data networks,

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permits real-time video conferencing and remote access to systems, while allowing all images and documents to remain in the United States;

- The large available pool of lower-cost offshore attorneys; and
- A shortage of domestic review attorneys.

(See, "Why Offshore Review Will Take Off," right.)

(Despite such trends with contract attorneys as noted above, temporary lawyers can be a boon to some firms' work. For a rundown on hiring contract lawyers for e-discovery and other projects, see, "The Basics of Hiring A Contract Attorney: Different Jobs Require Different Skills and, Maybe, Different Hiring Approaches," in the May 2006 edition of *e-Discovery Law & Strategy*, p. 3.)

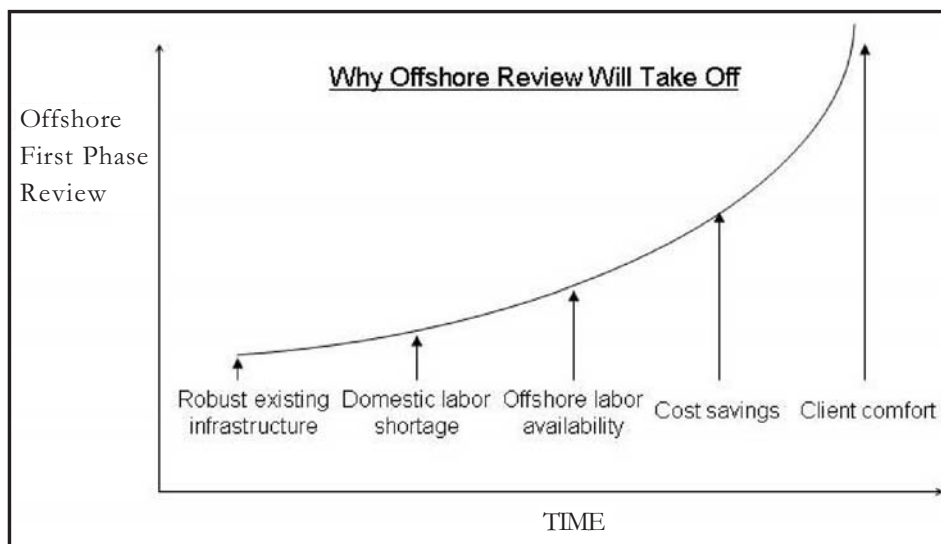
### WHY INDIA?

In the last decade, India has been the primary destination for leveraging a global workforce to derive tremendous cost-savings. Political and economic stability and a large, English-speaking, educated, high-quality and low-cost workforce have made India a very compelling option for many industries. As litigation costs soar, the legal industry can also leverage the skilled legal workforce in India to control costs.

India has all the elements necessary to successfully meet the challenging needs of the legal industry:

- The second-largest pool of English-speaking graduates in the world;
- A large, skilled workforce, with more than 70,000 law students graduating annually from Indian law schools;
- The Indian legal system is based on English common law; and
- English is the primary mode of instruction in Indian law schools.

Attorneys based in India, then, can immediately help the U.S. legal industry control rising costs by improving efficiencies in document review. India-based document-review teams may continue to prove to be crucial in cases as their knowledge of the information and documents can provide senior associates and partners with an invaluable source in preparation for final review, depositions and trial. A strategic relationship with a group of attorneys based in India can allow partners and their enterprises to retain the intangible knowledge critical to the case, along with the coded databases derived from reviews. Also, an established team that has adopted the review style that the law



firm prefers is more efficient than a newly assembled team of contract attorneys.

### INDIA: PAST EXPERIENCE

In the last few years, we've specialized in reducing costs and improving efficiencies in bibliographic coding and other people-intensive legal work for many domestic and international law firms, and corporations, by using our production teams in India. Our research and experience have found that the best improvements in efficiencies come from using a constant team of trained individuals to manage all of a law firm's or corporation's individual cases, thus maintaining work-product consistency. Such a dedicated team enables the knowledge and understanding of best practices gained from previous cases to be funneled into future cases, in what we call a "consistency model." This sort of model is difficult to create and sustain with current U.S. practices that constantly band together, and then disband, contract attorneys with each project.

Also, consider that advances in technology and communication have continued to expand and improve document-review processes. It's not uncommon for a review to be spread over many geographic locations and among many firms. Attorneys from different offices may be reviewing the same set of documents with co-counsel, clients and attorneys from other law firms — all enabled by Internet-based document repositories that can be accessed via secure and high-speed Internet connections.

It must be noted, though, that assembling, training and retaining a best-in-class production team in India has its own unique challenges, including those involving communication, cultural differences and

training. Management skills and operational experience are critical to success.

### WHAT THE FUTURE HAS IN STORE

We conclude that an explosive growth in offshore document review will be driven by:

- The development of offshore project/program-management skills;
- The availability of low-cost and ubiquitous communications networks;
- The large pool of common-law educated Indian attorneys;
- A shortage in the domestic attorney review market;
- A time differential that allows for round-the-clock advantages; and
- A major emphasis on corporate cost control.

Fortune 500 companies are quickly taking notice of the significant benefits associated with offshoring document review, and once a few of them adopt a practice, others usually follow. For law firms, the option to significantly lower document-review costs for their clients is available. Forward-thinking firms will embrace the opportunity to perform litigation more efficiently, allowing them to concentrate on the core issues of their cases and, consequently, gain new and more satisfied clients in a competitive marketplace.

