

# The Tipping Point

## Offshore Document Review and the “New” Legal Industry

BY MIKE DOLAN AND JOHN THICKETT

Capital markets have undergone significant restructuring as a result of the recent economic downturn. Once thought to be recession proof, the legal industry is succumbing to the economic forces impacting other business sectors. Top law firms are handing out pink slips by the hundreds. Since the beginning of 2009, law firms have laid off more than 10,500 employees, including both attorneys and support staff.

Also gone are the days of double-digit profit growth for partners as companies decrease legal spending. To survive this pivotal shift, law firms will have to change their fundamental billing practices and restructure the way they serve their clients.

### IMPACTS ON CORPORATE CLIENTS

The cost of legal services is steadily eating into a larger portion of corporate profits. According to Fulbright and Jaworski’s *Second Annual Litigation Trends Survey* findings, total legal expenses can average 1.34 percent of total revenues for major corporations. Document intensive industries such as medical, oil and gas, intellectual property, and finance have been particularly impacted.

In 2006, amendments to the Federal Rules of Civil Procedure significantly increased the number of discoverable documents. As a result, all forms of electronically stored information – including text messages, e-mails, computer files, and other electronic documents – are now open to scrutiny. Today it is not uncommon to see more than 100 million pages worth of discoverable data in legal disputes. Consequently, document review is one of the costliest aspects of litigation, encompassing 58 percent to 90 percent of all legal expenses.

### LEGAL INDUSTRY RESTRUCTURING

The legal industry is restructuring in ways that were unimaginable only five years ago. In the new industry model, law firms will focus on what they do best – practicing law. As a result, firms will find it increasingly difficult to extract large profit margins on routine services that are offered by litigation support firms at a fraction of the cost.

Litigation support firms that specialize in functions such as document review have fine-tuned more efficient processes; a deeper command of the applicable technologies; and, in many cases, lower labor costs, with many of their attorneys located in other countries, such as India.

This change is the Internet-enabled generation’s version of the unbundling of copying and imaging within law firms. Several organizations have already embraced this legal business model, setting up dedicated offshore legal teams to decrease the skyrocketing legal costs and increase efficiencies. These changes



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are, quite simply, a new reality. Successful firms will embrace these changes and partner with outsourcing firms to lower cost and increase efficiencies.

#### GOING GLOBAL

Initially, the waiver of attorney-client-privilege and concerns over the unauthorized practice of law were the leading objections that U.S. law firms raised against offshore document review. That changed in August 2008, when the American Bar Association issued Ethics Opinion 08-451, confirming that offshore document review is proving to be a catalyst in decreasing costs for clients and enabling smaller law firms to work on larger, labor-intensive cases at more favorable rates.

While much of the high-level legal work will remain in the United States, document review and other legal services are being outsourced to India and other countries at an ever-increasing rate. Forrester Research estimates the current value of legal work shipped overseas at \$80 million; that amount is expected to grow to \$4 billion in India alone by 2015.

A larger concern for offshore document review has been for the security of the information once it was sent to the review team. Today, international review firms often do not store the data on-site. Instead, reviewers work directly on their clients' US based servers through a secure Internet connection. In many cases, reviewers work on computers with inoperable USB ports, disabled CD burners, no printers and no Internet access. Finally, it is a common practice to prohibit cameras or portable memory devices, like flash drives, to enter or leave a review center.

#### THE OFFSHORE DECISION

Corporate giants including IBM, Microsoft, and Cisco are already using offshore legal teams in India to decrease costs and increase efficiencies. India continues to be the leader in outsourcing due to its ability to leverage highly sophisticated technology. Additionally, India is the largest English-speaking country with a stable workforce of attorneys educated in common law. These factors enable outsourcing firms in India to perform high-quality document review more efficiently and at a significantly lower cost than domestic law firms.

Often the most compelling consideration is the vast savings: U.S.-based law firms charge approximately \$250 per hour or more for a junior associate to conduct document review, compared to outsourcing this service to India, which costs approximately \$25 per hour.

But, like any business in a competitive field, success factors go well beyond costs, and offshore document review firms are no exception. The people, process and technological tools ultimately make the difference and deliver quality results. Discovery is one of the most critical aspects of litigation and, if conducted improperly, can result in adverse consequences, such as sanctions, an unfavorable result in the case and even future liabilities.

#### THE PEOPLE

A dedicated staff is vital. One best practice in document review is to establish a team to work on a project from start to finish. The turnover of review teams in most U.S. law firms is a significant problem, as associates are multitasking for several clients. Based on conversations with associate attorneys over the years, and after reviewing

several blogs dedicated to document review, it is rather easy to see that many U.S. attorneys simply do not value the work. In contrast, Indian lawyers seek these jobs and remain dedicated to the case.

Scott Cole, Principal with McKool Smith, said that, "We have had a dedicated team of India-based attorneys reviewing documents for over 12 months. The biggest surprise was zero turnover and an amazingly positive attitude toward document review."

### THE PROCESS

The right process ensures better quality and lower costs. Savvy leaders in the field continue to excel by changing the process to maximize the capabilities of new software and staff. Today, reviewers are consulted more often in the meet-and-confer process to limit the quantity of documents, build the review strategy, and conduct sample tests on statistically significant sub-sets. This early case assessment and analysis can substantially reduce the number of documents requiring manual review.

Processes are being adapted to document review from other information-based industries. Best-in-class operations are applying processes such as SPC (statistical process control) and six-sigma DMAICS (define, measure, analyze, improve, control, and sustain) to improve productivity and quality. Using these tools, document review firms are helping clients to accurately forecast budget and time requirements, drive down costs, improve quality, and increase the confidence of U.S. legal peers.

### THE TECHNOLOGICAL TOOLS

Choosing the right tools for the case and using them to their potential is a central part of a successful document review. Leading legal process outsourcing firms (LPOs) are agnostic when choosing software programs. Instead, several tools are evaluated depending on the type of case, timeline, and the desired results. As a result, review teams are often well versed in multiple review tools and frequently consulted when their clients are choosing the correct tools for their situations.

Recent improvements in software capabilities give reviewers the ability to group documents by relevance across multiple custodians and data sets.

In some cases, "clustering" of data can double the output of a skilled reviewer and significantly impact the expense and time of a review project. Technology and software are changing the way cases are won and lost.

### THE BOTTOM LINE

Many leading in-house legal departments and law firms are migrating to the dedicated firm approach and outsourcing document review. The results have proven to be higher quality work, high client confidence and significant cost savings. ✱

#### *about the authors*

**Mike Dolan** and **John Thickett** founded Tusker Group in 2002 to specialize exclusively in advanced legal document review options to in-house and outside legal counsel. For more information, visit [www.tuskergroup.com](http://www.tuskergroup.com).

