



MANAGING FIRST LEVEL REVIEW COSTS IN AN ERA OF CHANGE

The Industry Drivers

Ask any corporate General Counsel ("GC") today what their number one concern is and the answer is almost invariably "cost control." In a recent Fulbright and Jaworski LLP (2006) client study, cost was the single 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 due to 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. The preponderance of articles one reads in the legal media focus on or pertain to technology and its applications within the industry. It is to be expected that this topic will continue to be a focus for many years to come because the technology that allows firms to more efficiently refine volumes of data into smaller sets for review and production has and will undoubtedly continue to improve.

However, the greatest success for clients, as measured by cases won and cost savings, will be realized by combining robust technology with lower-cost, offshore legal workers. In a recent KPMG study (2006), four different methodologies for preparing 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 is not in the processing and production of documents, but within the review.

History Teaches Us a Lesson

The evolution of skills and services in litigation support will continue to parallel that of other global industries. A more mature, outsourced industry that can be studied for parallels and perhaps hints at the future of legal outsourcing is contract manufacturing. In that industry, early service companies were provided with circuit boards and electrical components, asked to perform simple populations of the components into the boards and deliver them back to clients, such as IBM.

Over time, those service providers began to purchase the components for assembly themselves (known as "turnkey services"), developing skills in scheduling their factories, organizing sophisticated procurement operations strategically located around the globe to obtain better prices than their clients and even adding further value by designing lighter

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Tusker Summer School

Ask Uncle Mike

Did You Know?

Tusker Herd Increases by Two



TUSKER SUMMER SCHOOL

Tusker is running free, one-hour online training classes this summer.

Please contact the presenters for login information and more details:

July 28, 11am CST
Reducing Litigation Costs: How to Control Legal Expenses for Large Volumes of Data with John Thickett

jthicket@tuskergroup.com
(512) 347-8812

August 11, 11am CST
Repository 101: A Non-Technical Introduction with Priya Keshav

pkeshav@tuskergroup.com
(281) 759-5336

August 25, 11am CST
Objective Coding: Best Practices with Mike Dolan

mdolan@tuskergroup.com
(512) 477-2839

FIRST LEVEL REVIEW, CONTINUED.

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 expertise over a mere two decades, such that major corporations eagerly sold their operations with "take-or-pay" contracts to these service providers. Nowadays, nearly all electronic appliances are built, boxed and delivered by firms that have no consumer brand recognition.

When studying the contract manufacturing industry, a clearly observable trend from "outtasking" to "outsourcing" emerges. That is to say, there has been a shift from work provided in a Tayloristic assembly line (à la Henry Ford), to actually setting up the infrastructure and organization to deliver and enhance those services to multiple clients, thus saving money and developing greater expertise.

With regard to supplemental legal services, basic offshore bibliographic legal coding started around ten to fifteen years ago and is now, provided that care is taken with vendor selection, widely accepted as much better value for money than its domestic counterpart. This 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, many times resulting in a constant "train and retrain" and "hire and rehire" method, wasting time, money and resources. There is 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:

1. Huge cost savings over domestic review: Top Indian attorneys cost less than half that of very junior domestic review attorneys and paralegals;
2. Higher client comfort level with offshore work, since quality and service have vastly improved over the years;
3. Existing infrastructure: Offshore management expertise, coupled with the current existence of a high bandwidth, low-cost and ubiquitous data networks, permits real-time video conferencing and remote access to systems, while allowing all images and documents to remain in the US;
4. The large available pool of lower-cost offshore attorneys;
5. A shortage of domestic review attorneys.



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As a member of the Sedona Conference Vendor Panel, Tusker Group contributes valuable input on issues involving e-discovery.

Visit

www.sedonaconference.org for more information.

FIRST LEVEL REVIEW, CONTINUED.



Why India?

In the last decade, India has proven to be the primary destination for leveraging a global workforce to derive tremendous cost savings. Political and economic stability and a large, English-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:

1. India has the second largest pool of English speaking graduates in the world;
2. India has a large, skilled workforce, with over 70,000 law students graduating annually from Indian law schools;
3. The Indian legal system is based on English common law; and
4. English is the medium of instruction in law schools.

Thus, attorneys based in India can immediately help the US legal industry control rising costs by improving efficiencies in document review. India-based document review teams may further 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 constant group of attorneys based in India can retain the intangible knowledge critical to the case, along with the coded databases derived from reviews. Moreover, 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.

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ARTICLE SOURCES:

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(2006, March).
Upstairs, downstairs:
Law firm temps are
furiously blogging
about their work
conditions.
The American Lawyer,
p. 19.

FIRST LEVEL REVIEW, CONTINUED.

India: Past Experience

In the last few years, we have 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 utilizing our production teams in India. Our research and experience have found the best improvements in efficiencies come from using a constant team of trained individual to manage all of a law firm 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 utilized for future cases, in what we identify as 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.



Additionally, advances in technology and communication have constantly expanded and improved the document review processes. It is not uncommon for a review to be spread over many geographic locations and firms. Attorneys from different offices may be reviewing the same set of documents with co-counsels, clients and attorneys from other law firms. This is all enabled by internet-based document repositories that can be accessed via secure and high-speed internet connections. As such, we have found that consistent and high-quality associates who can effectively help with the document review process are readily available in India, allowing for improved efficiencies with the added advantage of around-the-clock review.

However, it must be noted that assembling, training and retaining a best-in-class production team in India has its own unique challenges, including communication, cultural differences and training. Management skills and operational experience are critical to success, and it is important to work with the right set of people, who have a proven track record and have established rigorous processes and quality controls. Thus, a much closer level of interaction between GCs, legal counsel and review teams in India will result in a winning combination that can deliver a more effective and higher quality review.

What the Future has in Store

It is our conclusion that the development of offshore project/program management skills, the availability of low cost and ubiquitous communications networks, the large availability of common law educated India attorneys, a shortage in the domestic attorney review market (Triedman, 2006), a time differential that allows for around-the-clock advantages and a major emphasis on corporate cost control, will drive explosive growth in offshore document review.



YOU'LL BE SURPRISED BY WHAT WE CAN DO.

Tusker Group brings to your case the sophistication of a large company, as well as the creativity and responsiveness of a small one. Our extensive multinational operations can help you with customized solutions for all your coding, e-discovery and document review needs - quickly, seamlessly and cost-effectively.

E-discovery
Paper Coding
Online Repository
First Level Review
Customized Solutions
Outstanding Service
Rapid Turnaround
Superior Quality

ASK UNCLE MIKE: TUSKER GROUP'S EXPERT IN DEMYSTIFYING DOCUMENT REVIEW



For those of you who occasionally find document review perplexing, here is your opportunity to ask Tusker Group your questions. For every question you submit that we end up publishing in The Tusker's Trunk, we'll give you a \$25 gift certificate to Amazon.com.

Dear Uncle Mike,

Security is a major concern for my client's data. What steps do you take to ensure our files are secure?

- Anxious in Albany

Dear Anxious,

Tusker Group takes security very seriously. We employ many human and technical processes and systems to ensure your data is handled by Tusker in a secure manner. Examples include security guards at our data centers and offices, employee training and awareness, file encryption, firewalls, multi-level password protocols, network monitoring, removal of media drives and USB ports in our operations and auditing of our security processes. Please contact me directly for more details on any or all of our security programs.

- Uncle Mike

Dear Uncle Mike,

It seems like everywhere I turn, there are more folks offering electronic data discovery services. What features should I consider looking out for that will enable us to perform our review more efficiently?

-Searching in Sacramento

Dear Searching,

Significant savings can be achieved in review by the way documents are both reduced in amount and the remaining documents organized and structured in the output from the EDD process. Look for folks who understand different filtering, search methodologies and de-duping practices to really reduce the document population down to the set that is truly responsive - this minimizes the number of review hours needed. Also look for folks who can group e-mails and docs together by topics. In addition, having near de-duplicates grouped together can speed review too. This increases the rate at which review can be performed - further improving efficiency.

-Uncle Mike

Please send your questions for the autumn edition to "Uncle Mike" at mdolan@tuskergroup.com.



DID YOU KNOW?

African and Asian elephants are actually two completely different species. There are many physical differences between them, but the most obvious one is ear size. Asian elephants have small ears compared to those of Africans, whose ear width can reach four feet.

TUSKER HERD INCREASES BY TWO

As part of our efforts to enhance services for our existing and new clients, Tusker Group has appointed two regional Presidents to lead business development. Michelle Garber joins us as President of the Western Region and Tom Carroll joins us as President of the Northeastern Region. Accomplished entrepreneurial executives, both Michelle and Tom have impeccable reputations in the legal services community.

Michelle and Tom will be responsible for the expansion of sales and client services in their respective regions. The addition of their offices in California and New York will enable Tusker Group to provide excellent, local support to clients with critical deadlines.

Michelle Garber began her career in Philadelphia, in sales with Xerox Corp./XRC division, working on her first of many document productions with the Sperry Univac/IBM case. After spending 17 years at Xerox in various management positions, including a stint in Kansas City, she moved to New York as Director of Operations for Pandick Technologies. She then moved to Los Angeles and initiated the first reprographics group for Bowne. In 1990, she started her own litigation support company, LegalSource, Inc., which she sold to Uniscribe in 2000. In 2003, she became the West Coast manager for SPI Litigation Direct. Michelle resides in Marina Del Rey, California, and is married to Bertram R Zweig, who is Of Counsel in Kaye Scholer's Los Angeles' office. She is also President of the California Women's Law Center.



Tom Carroll has over ten years of litigation support experience. He started his career in Chicago with IKON OFFICE Solutions and most recently was the Managing Partner for DTI Global in New York. Tom has provided legal outsourcing solutions to many AMLAW 100 law firms and Fortune 200 companies.



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