

The Law of the Lawyer

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The Case For Keeping Legal Process Outsourcing Onshore

In an effort to reduce the costs associated with performing legal work, American law firms and multinational corporations are turning to “Legal Process Outsourcing” (LPO), which involves the contracting of legal-related services to an outside law firm or legal support services company. Eric Bellman and Nathan Koppel. *Legal Services Enter Outsourcing Domain*. The Wall Street Journal Online (September 28, 2005) 1-4. When the outsourced entity is based in another country, the practice is sometimes called “offshoring,” although “outsourcing” is still the more typical term. Similarly, when the outsourced entity is located in another part of the United States, the term “onshoring” is often used. The outsourcing of legal processes across the globe, particularly to India, may include simple tasks such as data entry, legal coding, legal transcription and pre-litigation document review, to more complex projects such as legal research, brief drafting, due diligence, contract management, and intellectual property services.



This growing trend is not merely a cost-cutting fad, but is a legal service delivery model that will continue to have significant and often detrimental (when offshored) effects on the legal profession in the United States. While LPO is usually reserved for routine, low-level legal work, it is becoming a top issue that American lawyers are considering, particularly in these harsh economic times. LPO

has become increasingly popular among large law firms and multinational corporations looking to cut costs, increase flexibility, and expand their legal services. Even small and mid-size law firms that lack staff and resources may tap into overseas markets for a specific case or project.

Foreign Offshoring vs. Domestic Onshoring

While outsourcing in general is a hot-button political issue, the shipping of legal jobs overseas is a relatively new and less talked-about concept. Since 2005, when it first began to receive widespread attention, this industry has expanded to include over 100 LPO companies providing legal services to large law firms, in-house legal departments, and corporations. Maya Karwande, *Legal Process Outsourcing*

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Efficient And Ethical? Immigration Daily, available at <http://www.ilw.com/articles/2008,0926-karwande.shtm#3>. In a July 2007 report, an independent research company, ValueNotes, stated that revenues from legal services offshoring is expected to grow from \$146 million in 2006 to \$640 million by the end of 2010. *Off shoring Legal Services to India: An Update, 2007*, ValueNotes: ValueNotes Database Pvt. Ltd: 1-5. According to a recent Forrester Research report, \$4 billion in legal work is projected to head to India and 489,000 U.S. lawyer jobs are expected to move to lower-cost countries by 2015. Anthony Lin. *Legal Outsourcing to India Is Growing, but Still Confronts Fundamental Issues: Is it just about cost, or can Indian lawyers do some things better than their American counterparts?* New York Law Journal (January 23, 2008), available at <http://www.law.com/jsp/article.jsp?id=1200996336809>.

Supporters and economic free traders say that LPO spares American law firms from mundane paperwork, allows small firms to take on bigger cases, results in cost savings, permits 24/7 operations, provides access to a global labor market, and increases flexibility in responding to workload and client demands. The supporters also claim that the most significant driving force behind the outsourcing of legal jobs is cost savings. Corporate legal departments were the earliest to tout the benefits of legal outsourcing, which pressured law firms to offer this alternative to corporate clients as a cost-cutting solution. Mark Ross, *Legal Process Outsourcing (LPO): 2007 And Beyond*, Immigration Daily, available at <http://www.ilw.com/articles/2008,0125-ross.shtm>. With junior associates in the United States charging an hourly rate of \$300- \$400 plus per hour (*id.*), it appears to be an attractive option for law firms to transfer low-level tasks to overseas markets, where the rate of pay is between 10 to 15 percent of that of U.S. lawyers. For example, LPO salaries for Indian lawyers are often well below \$10,000 a year, while a U.S. contract lawyer usually earns around \$30 an hour and an associate's base salary at major

New York law firms start at \$160,000 a year. Lin, *supra*. LPO vendors target the more mundane yet time-consuming tasks related to legal practice, such as document review, as opposed to more complex duties such as appellate brief drafting. *Id.*

However, what supporters fail to recognize or mention is the sheer detriment that offshoring is inflicting on the U.S. workforce, especially in this time of economic downturn as more and more qualified U.S. workers are losing their jobs while major U.S. corporations turn to the U.S. government for funding. Fortunately, there appears to be a greater movement to outsourcing document reviews to onshore centers — specifically to U.S.-licensed lawyers in less-populated, less expensive areas of the country. *Contract Attorney Work Grows — but in onshore centers, not India*. The Posse List, February 20, 2009, available <http://www.theposselist.com/2009/02/20/contract-attorney-work-grows-but-in-onshore-centers-not-india>. Ohio, North Carolina, Tennessee, and Texas, for instance, have a wealth of law schools, and a supply of legal skills and legal services capacity, and housing document reviews is not as expensive as other regions. *Id.* “On shoring” work to law firms in smaller metropolitan areas or to lower cost domestic niche firms, where billable rates are lower but quality is just as high, is a cost-saving solution that also favorably impacts the U.S. economy and workforce. *Id.*

Risks And Challenges: Why Domestic Onshoring Is the Better Approach

Before outsourcing legal jobs, law firms and legal departments must first consider the risks and challenges, which may very well outweigh the rewards and advantages.

Economic Damage

First, the practice results in a reduction of domestic legal jobs for U.S. lawyers, paralegals, and administrative support personnel. In these tough economic times, additional displacement of U.S.

jobs overseas could have a grave impact on the country's ability to rebound economically. With over 1 million active practicing attorneys in the United States, and approximately 40,000 new graduates each year, there is a compelling demand for legal jobs to remain in the United States. Statistics released by the American Bar Association, *National Lawyer Population by State*, compiled by: ABA Market Research Department, available at: <http://www.abanet.org/marketresearch/resource.html>. A series of recent blogs by legal educators discuss how legal outsourcing is affecting law students and new attorneys. Sally Kane, *Legal Outsourcing (LPO) is Big Business*, About.com, June 20, 2009, available at: <http://legalcareers.about.com/b/2009/06/20/legal-outsourcing-lpo-is-big-business.htm?p=1>. One of these factors is the impact that LPO may have on starting salaries. Professor Anne Enquist of the Seattle University School of Law states that students "cannot assume that when they graduate they will be able to make a six-figure income doing basic legal work for several years as they work their way up to partner. They will have to adjust their expectations, as well as try to figure out how to justify the salaries they hope to receive." *Id.* With the average attorney having approximately \$70,000 - \$90,000 in student loan debt, in addition to a declining economy, domestic-educated and trained attorneys may be willing to work for less simply to keep afloat. Statistics released by the American Bar Association, *National Lawyer Population by State*, *supra*.

Risks To Confidentiality And Privilege

Second, legal offshoring is an extremely risk-prone sector riddled with issues of confidentiality and attorney-client privilege. The transference of legal information to a foreign country may compromise client confidentiality and privacy if the law firm or legal department does not implement proper security measures. Outsourcing legal data across the globe may result in an inadvertent waiver of

the attorney-client privilege because the U.S. government monitors cross-border communications and privacy rights afforded by the U.S. Constitution are often unavailable in foreign countries.

Recently, the Association of the Bar of the City of New York Committee on Professional and Judicial Ethics (the ABCNY Committee) opined that a New York lawyer legally and ethically may outsource legal support services overseas to foreign lawyers or laypersons. Steven C. Bennett, Esq., *Ethical Implications of Overseas Outsourcing*, Lexis Nexus, citing ABCNY Op. 2006-3 (Aug. 2006), available at: <http://law.lexisnexus.com/litigation-news/articles/article.aspx?groupid=2oKGuUXPxVQ=&article=685+/IJqJuM=>. The ABCNY Committee opined that under the New York Code, a lawyer, law firm, or corporation must:

- Supervise the non-lawyer to ensure that the person is providing work that contributes to the lawyer's competent representation of the client;
- Maintain client confidences and secrets;
- Avoid conflicts of interest;
- Bill appropriately for the non-lawyer's services; and
- Obtain the client's informed consent for outsourcing.

Id.

The ABA Standing Committee on Ethics and Professional Responsibility has addressed the ethical implications of outsourcing domestic legal work to foreign legal workers. The duty of the outsourcing lawyer to ensure compliance with the Rules of Professional Conduct does not differ from the obligation of a supervising attorney who is overseeing the work of another attorney in his or her own firm. See generally ABA Formal Op. 08-451.

Hidden Costs

In addition, there are hidden costs to overseas outsourcing, including vendor management, quality control, contract management, and higher operational costs. Law firms and legal departments that outsource legal work might also incur traveling and training expenses related to educating overseas lawyers, who might not be familiar with U.S. laws, legal practices, and professional ethics rules. Furthermore, even though the overseas lawyers may be fluent in English, cultural differences and communication barriers still abound.

Fraud Exposure

Another significant and serious consequence of offshoring is the company's exposure to fraud. For example, in January 2009, the chairman and co-founder of Satyam Computer Services, a leading Indian outsourcing company that serves more than a third of the Fortune 500 companies, confirmed that the company significantly inflated its earnings and assets for years, roiling Indian stock markets and throwing the industry into turmoil. Heather Timmons and Bettina Wassener, *Satyam Chief Admits Huge Fraud*, New York Times, January 8, 2009, available at: www.nytimes.com/2009/01/08/business/worldbusiness/08satyam.html.

Naturally, it is easier for a corporation or major law firm to oversee a domestic outsourcing operation than one in a foreign country.

Lack Of Familiarity

Finally, there is a growing perception that Indian lawyers provide the same, if not higher, quality of service as their American counterparts. While

these foreign attorneys may be well-educated, highly skilled professionals who can easily handle minor and less sensitive legal work at relatively meager salaries, most are not educated in U.S. law schools, they most likely will not comply with U.S. ethical standards, and may not have the same handle or grasp on U.S. law and procedure as a domestically trained attorney.

Conclusion

From a proponent's perspective, offshore legal outsourcing could be viewed as a boon to the legal industry: Law firms may turn to this practice to attract cost-conscious corporate clients and provide 24/7 legal services, and legal departments can utilize it to lower costs and focus on higher-level work. Nevertheless, in this era of economic downturn, when thousands of legal jobs have been lost and corporate clients have cut their demand for legal services, the outsourcing of legal processes overseas is more of a curse to American lawyers and paralegals looking for work. No doubt, minority-owned law firms and minority lawyers struggling to attract and service corporate clients as well as their non-minority counterparts will experience more negatives than positives from this growing industry. Emphasizing value over costs, and perhaps even a little patriotism that does not necessarily rise to protectionism, will be crucial to attracting corporate clients away from offshoring. If using LPO is the only option, onshoring should always be the first choice.

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