

## Saving Money in Document Review

Companies outsourcing preliminary research should consider potential benefits and problems.

BY BILL DETAMORE

**L**egal document review costs, usually a large part of the litigation budget, continue to rise. Sophisticated and experienced litigants, who often don't perceive first-pass document review as an important activity, are looking for more cost-effective options to a task viewed as a "necessary evil" to conducting litigation.

Increasingly, these corporations are looking to nontraditional legal service providers to save money. The common alternatives to using law firm associates include contract attorneys, outside service providers that aren't law firms, and offshore legal service providers. Each of these nontraditional legal resources involve different issues. For the legal department that wants to lower its

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litigation spending, it's a good idea to consider all of the options. The increasing volumes of information to review combined with the escalating rates of law firm associates have led to the inevitable result that the total spending on document review is increasing.

Organizations are creating electronic information at an increasing rate. Gary Masada, Chevron Corp.'s chief information officer, recently told *Computerworld* magazine that his company is accumulating data at a rate of two terabytes per day. That's the very rough equivalent of adding 40,000 more bankers' boxes to Chevron's information stores each day. More information in the information stores of companies obviously means there is more litigation-related information to pore through during discovery.

Even advanced technologies to filter and identify only the most relevant information have not been able to keep up with the dramatic increases in electronic information. In litigation today, the vast majority of the information being collected can be categorized automatically and never reviewed by a human. Still, there remains a significant amount of information that requires human review.

Compounding the issue, billing rates at the top law firms continue to increase. Hourly rates for associates in many markets now begin at more than \$200 and average more than \$300. For

labor-intensive, noncritical activities, like legal document review, these rates make the costs of many projects prohibitive.

Companies seeking to squeeze every dime out of their legal budget realize that the traditional method of accomplishing these projects—by their law firms with the lion's share of the work done by associates—is not always preferable. These companies have adopted to various degrees a number of alternatives.

#### CONTRACT REVIEW ATTORNEYS

The use of contractors for legal review is appealing, if only for the sake of saving costs. Contract review attorneys are paid much less than their partnership-track peers and can be hired and terminated with little or no notice. They can be hired directly by the litigant, through outside counsel, or from a legal staffing firm.

Typical hourly rates for contract attorneys range from \$30 to \$150, with the rate primarily driven by what type of associated costs (overhead) is included. Some legal staffing firms' rates may include everything from recruiting costs to office space and computers. Others deliver nothing more than a body.

Managing a legal review by contract attorneys entails much more than simply negotiating a low rate and turning the contractors loose. In order to ensure a successful project, counsel must consider several factors.

One important element, of course, is recruiting. The actual recruiting and staffing of these positions raises a number of questions. How will the attorneys be found and hired? Who will pay the recruiting costs? More importantly, how soon can the review attorneys be hired, trained, and ready to be productive? Or, can twice as many reviewers be placed on a project on short notice? Conversely, if the case settles two weeks into the project, is there a penalty for ending the contract? In other words, what are the commitments that cannot be terminated upon a moment's notice? Flexibility is usually mandatory in document review projects.

Facilities and technology are other important considerations. Most document reviews these days are done by reviewing documents on a computer, rather than by sifting through boxes of paper documents. This raises a host of technology infrastructure and support needs. Computers, network equipment, and telecommunications connectivity service become key factors

that drive productivity and can eat into the cost savings. The ability to quickly ramp up (or down) can be significantly affected by the technology infrastructure.

Running the entire review process from a single location is one way to reduce certain technology and quality-control risks, but it raises some other issues that must be managed.

Finding an office on a short-term basis (for less than six months) is often very difficult and expensive. An inconvenient location may make it difficult to attract high-quality reviewers, as temporary attorneys are frequently sensitive to transportation and parking costs.

Whether at a single or multiple locations, reviews still require well-developed project plans. And reviewers still need effective supervision. They need to be motivated and measured as other productive staff members. Many successful document reviews occur because the organization or its law firm already has the infrastructure—both facilities and people—to support the review at no added cost.

Many stories have been told about the inefficiencies that have permeated some poorly managed review projects through the years. From overstaffing, to re-reviewing documents, to daily changes in review guidance—document reviews (especially with temporary, contract review attorneys) can get out of control quickly and the cost savings can be lost.

### SERVICE PROVIDERS

A second alternative in document review comes from legal service providers that are not law firms. This group of service providers includes traditional legal staffing firms, litigation support providers, e-discovery processing and consulting companies, and expert witness firms.

These vendors provide all (or most) of the recruiting, facilities, infrastructure, and management needed in document reviews in exchange for a higher rate than companies or firms pay by directly hiring contract review attorneys. Hourly rates in this category typically average between \$60 and \$150.

Some providers charge by the document for common relevance or privilege review, with the rate being driven by the complexity of the review. This may be more attractive as the risk of inefficiency (and the reward for efficiency) is accepted entirely by the service provider.

This also makes the client's oversight responsibilities much simpler, effectively reducing the variables that have to be managed to two: the number of documents and the rate per document.

Many of these service providers also provide related electronic-discovery services, further simplifying the client's oversight responsibilities by eliminating one or more vendors from the process. For instance, if a single service provider consults on the overall process or provides the processing services and the review services, it is easier and much less costly to coordinate the filtering and prioritization of the review. Moreover, this reduces the risk of finger pointing between vendors.

Service providers that aren't law firms may offer high-quality legal review services and alleviate much of the management and infrastructure challenges in a document review, at rates significantly less than law firm associates charge. While these providers typically do charge higher rates than contract attor-

neys, the reduced need for oversight and willingness to share risk may make this an attractive option.

In addition to the increased costs to develop processes and set up infrastructure, as well as the commitment to actively manage contract attorneys, there are some other considerations that even more strongly weigh against using contract attorneys or other legal service providers.

Where the review consists of highly relevant information, there is potentially greater value gained by using resources that are closer to the litigation team. Also, when the review can be accomplished by using attorneys who intend to remain on the litigation team throughout the litigation, there is significant value in having those attorneys get familiar with the documents. In both circumstances, there may be significant value gained by having the members of the review performed by the trial team's associates.

### OFFSHORE SERVICE PROVIDERS

For several years, offshore service providers have offered less-expensive objective document coding services. More recently, offshore providers have developed subjective legal review services. Due to the much lower cost of labor, they are able to offer these services at a fraction of the costs of their U.S. counterparts. Typical hourly rates for offshore attorneys in India or the Philippines range from \$10 to \$30 for a lawyer.

While there is some debate about the education level and ability of foreigners to interpret American vernacular or understand subtle cultural nuances, one thing is certain: The low billing rates for these resources are attractive. Though the use of offshore resources for legal-related services is not widespread, it's growing. The most publicized user of offshore support for discovery-related tasks is DuPont. Publicly, the relationship is working out well for DuPont. Its offshore service provider was chosen as the "primary service provider of the month" for the company's legal department.

Some offshore providers prefer to host the information within their network (rather than allowing for access to the documents remotely via the Internet). This raises a host of practical hurdles and risks, including:

- Transporting large amounts of information (even in electronic form) to the provider may be costly and time-consuming (days, instead of hours);
- Sending information, especially technical data, may violate export control laws or other regulations (risk may be higher in IP-related disputes);
- Some information sent might be protected by other regulations (such as the Privacy Act or the Health Insurance Portability and Accountability Act).

When in-house counsel are comparing options for a legal review, especially for a large-scale legal review, it is important to quantify all of the associated costs and risks. By exploring all of the alternatives to using law firm associates for this work, companies can achieve high-quality work at a significantly reduced cost.

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