



Legal Process Outsourcing of First Level Document Review

By [Dario Olivas and Michael Dolan](#)

Over the last several years, the proliferation in electronically stored information (ESI), such as email, instant messages, electronic documents and data on handheld devices, has drastically changed the litigation practice. As a result of this data explosion, the complexities associated with performing first level document review have accordingly increased, and with them, the corresponding costs.

KPMG estimates that first level document review encompasses anywhere between 58% and 90% of total litigation costs. This is a huge piece of the litigation costs pie. Therefore, companies are quickly working to identify strategies to control and reduce these costs. As such, interest and demand is growing in legal process outsourcing (LPO) that allows for economies and efficiencies in first level document review.

This article explains the basics of first level document review, why to consider outsourcing this function and how to go about selecting a service provider to work with.

First Level Document Review: What It Is

The primary purpose of first level document review is to review documents and determine whether or not they're "responsive" or "non-responsive" as they pertain to a specific legal case or issue. In essence, first level document review forms part of the discovery phase of litigation. It is performed prior to producing and after receiving documents pursuant to a legal "Request for Production of Documents." It's the initial review phase that helps narrow the document set to a responsive and workable data set for later, more senior review.

Typically in litigation, vast amounts -- often numbering in the millions -- of documents are routinely being reviewed by teams of law firm associates, contract attorneys and paralegals, in an effort to identify whether or not documents are: 1) relevant to the case at hand, 2) confidential, 3) privileged/protected, and 4) "key," or "hot."

Litigation aside, aspects of first level document review are also routinely performed in matters of regulatory compliance and corporate due diligence.

The Technology Fix

Technology has been a mixed blessing in the litigation cost-hike dilemma. On one hand, the growing amount of ESI is a large part of the problem. For example, well over 90% of all current data is being produced and stored electronically. People are storing and producing more ESI because the costs associated with it are practically nonexistent. Therefore, as ESI increases, so do the hours and expenses associated with first level document review.

On the other hand, the last 10 to 15 years have seen a dramatic transition that has allowed technology to play an integral role in the document review process. Gone are the days when attorney and paralegal teams gathered in large rooms or warehouse-style environments (known as "war rooms"), meticulously going through bankers' boxes filled with paper documents in preparation for litigation. Instead, the war rooms have transformed into computer-filled rooms where teams of people are armed with electronic platforms and technological solutions in an effort to identify responsive data.

However, even with the best technology and electronic discovery (e-discovery) practices, the truth of the matter is that robust technology can only do so much. It is understood that current industry e-discovery best practices can reduce a data set by as much as 70%. But, like many litigation cases to date, even after performing e-discovery best practices, what if that data set still consists of 25 million pages to review?

The Legal Process Outsourcing Solution

Inefficiency drivers in first level document review are the drivers behind LPO. These include the following.

Costs

Current US practices have law firm associates, contract attorneys (typically hired through staffing agencies), unlicensed law school graduates and paralegals performing first level document review functions. The billing structure for these services is still akin to traditional per-hour law firm billing, although at a discounted rate. Many times, billing is comparable to what a mid-sized law firm bills for its associates.

Inconsistencies

This is not to say that the individuals performing first level document review are directly inconsistent. Rather, inconsistencies are inherent in the current domestic model of document review. US practices lack constant and consistent teams to perform document review.

Typically, teams are rounded up and dismantled on an as-needed basis using attorneys, paralegals and law school graduates that are often undergoing transition themselves, having moved to a new city, searching for employment or awaiting bar results. This, in turn, has created a "day laborer" mentality, powered and weighed down by a constant "turnover" of first level document reviewers. For example, it is not uncommon for document review teams to start with 40 to 60 individuals and during the course of the project to lose over half of the original team.

With costs and inconsistencies in mind, high document reviewer turnover has not only affected the consistency of first level document review projects, but has led to an inefficient model of "train and retrain," ultimately exploiting valuable client resources and time.

The India Solution

As US litigation costs soar, LPO provides a solution for alleviating first level document review inefficiencies. And India is proving to be a country that many companies are turning to for its large and skilled workforce. In terms of LPO, India possesses the following desirable characteristics:

- Political and economic stability with a high-quality, low-cost and flexible workforce.
- One of the largest pools of English-speaking graduates in the world.
- English as the language of instruction in law schools.
- A legal system based on English common law (US and UK). Therefore, legal understanding and analysis is applicable and adaptable.
- Time differentials that allow for around-the-clock document review.
- Advances in technology that allow for remote and secure document review.

- The ability to maintain a constant and consistent team of trained individuals at reduced costs.

Collectively, these factors, in addition to established processes and procedures (discussed below), support a recipe for reducing inefficiencies in document review.

Processes and Procedures of LPO

The primary success factors for first level document review LPO in India rest on detailed and measurable processes and procedures. To be successful, your LPO service provider must be armed with the following:

- A team with a proven track record.
- Attorneys from the best law schools in India.
- Legal staff managing projects both domestically and in India.
- Intricate understanding of the US legal system, with continuous training and education.
- Identifiable and measurable quality control measures.
- High-level management skills and operational experience.
- Best-in-industry e-discovery technology, tools and processes, with the ability to streamline the e-discovery process from inception (i.e., harvesting and processing) to first level document review.
- The ability and willingness to stay apprised of e-discovery case developments and nuances.
- Close collaboration with clients (company/law firm) and case-specific legal training.
- High-level security and confidentiality measures.

Transitioning to LPO

Current estimates identify that first level document review LPO can save clients well over two-thirds of current domestic costs. How does an organization transition into this cost-effective model? We advise first-time clients to work closely with your potential provider to coordinate, manage and produce a successful document review pilot. For example, you might consider setting up a two-phased pilot project:

Pilot an actual case (preferably a small matter).

Pilot a sample data set for a case that has already been reviewed and resolved (preferably a case for which the document review progress was measured).

Each test brings a distinct benefit to a transitional relationship. For example, working on an actual case grants both the service provider and client with the opportunity to develop a communication stream for understanding and identifying expectations, timing and management techniques. Piloting a previously

reviewed sample data set provides the participants with a quantifiable approach to measure overall performance. Utilizing the fixed analysis gathered from the previously reviewed case lets you conduct a direct comparison and evaluation for cost, efficiency and time (project inception to completion) to help identify and justify the efficiencies afforded in first level document review LPO.

Useful Links

Tusker Group
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