



SHOVELING SMOKE: OFFSHORING—THE DAWN OF INTERNATIONAL LEGAL SKILLS ARBITRAGE?



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In this column on professional issues, legal department management, and relations between in-house and outside counsel, Mr. Pol discusses elements of managing lawyers, sometimes likened to herding wild cats, or as he prefers, shoveling smoke. Here, he offers views on an international legal issue affecting legal department efficiency and cost.

Offshore outsourcing (or "offshoring") has become an election issue. The primary focus has been the overseas relocation of service functions such as customer and IT call centers, yet an increasing range of service functions has followed.

In the legal services market, several large legal departments have already used overseas lawyers and paralegals, not just for overseas transactions, but also for local operations. These companies have asked overseas lawyers to perform tasks such as patent searching, legal transcription, and research.

A few law firms are also reported to have set up docu-

ment production overseas, and for at least one legal publisher, case-noting facilities.

In the political debate, offshoring has understandably been characterized in emotive terms, with company leaders labeled "Benedict Arnold CEOs." Irrespective of whether such terms are appropriate, the debate is fueled by a perception of American jobs being lost to other countries.

This is not the place to debate the economic rationale of such arguments, nor whether economic theory (supported by reports from *McKinsey*¹ and *The Economist*,² among others) suggests that offshoring benefits both the receiving and sending economies. Instead, given the likelihood that similar arguments will be raised when legal departments consider offshoring selected tasks and functions, it might be useful to outline a few of the issues.

- **Offshoring is not new.**

Overseas technology development and call centers, based on labor-intensive back-office jobs for which the labor costs of educated English-speakers are a fraction of U.S. costs, are well established. More recent is the expansion into other service functions, including legal services, drawn by lower labor costs combined with reduced telecommunications costs.

- **Some legal services are suitable for offshoring.** This is particularly true with competent lawyers in other common law countries such as

New Zealand and Australia available at often significantly lower costs than their U.S. or UK counterparts. Exchange rates often compound the cost advantage.



- **Many legal services are also readily divisible.** Whilst some tasks in many legal transactions must be performed by local attorneys (such as courtroom representation and face-to-face negotiations), many others can be performed pretty much anywhere, including legal research and some document drafting.
- **Considerable resistance to change is likely.** Yet ironically, using overseas lawyers for some tasks could strengthen local firms' client relationships. Rather than seeking defensively to justify high fees for basic work, bold firms might actively reduce client legal costs by selectively offshoring some work. The resultant focus on more strategic issues, aligned with the client's own perspective, may strengthen the relationship.
- **Productivity gains enhance the value proposition of**

using overseas lawyers.

This is especially so for time-sensitive transactions. As the U.S. legal team completes its day, a team based in New Zealand or Australia could continue—with low telecommunications costs enabling easy handover and round-the-clock focus on urgent client needs.

- **Potential disadvantages must also be addressed.** Some transactions require complex local understanding. Cultural differences may also cause misunderstandings.
- **Poor experiences of outsourcing offer "proof" of offshoring's failure.** Yet as any in-house counsel knows, managing outside professionals is a task that requires effective and ongoing management.

Legal services offshoring is new. Yet the underlying trend—the outsourcing of selected functions for efficiencies and cost-savings—is well established, as is its international extension: offshoring. Whatever the short-term impact of the current debate in the political arena, even if some legal departments choose to play it safe in the meantime, the outsourcing of selected legal functions is likely to continue—including its international dimension.

NOTES

1. *Offshoring: Is it a Win-Win Game?*, McKinsey & Company, Aug. 2005.
2. *Relocating the Back Office*, THE ECONOMIST, Dec. 11, 2005.