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Michael G. Owen
Chrissinger & Baumberger.

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Legal Outsourcing to India: The Demise of New Lawyers and Junior Associates

Michael G. Owen*

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I. INTRODUCTION

In a business where time and efficiency often mean money, lawyers, law firms, and corporations have begun to recognize the benefits of outsourcing their legal work to countries where labor costs are much lower.¹ One country in particular is India, which is a world-leader in providing outsourced legal services²

* Michael Gladstone Owen, currently with the law firm of Chrissinger & Baumberger. J.D., Thomas M. Cooley Law School (2008); B.A., Pennsylvania State University (2004). The author wishes to thank Scott Waldron and James W. Owen, Sr., for their comments and contributions.

1. Helen Coster, *Briefed in Bangalore, First, Call Centers. Then, Back Office Operations. Now Legal Services are Moving Offshore. Will India's Lawyers Help Reshape the U.S. Legal Market?*, AM. LAW., Nov. 2004, at 98.

2. See Zachary J. Bossenbroek & Puneet Mohey, *Should Your Legal Department Join the India Outsourcing Craze?*, ACC DOCKET, Oct. 2004, at 46, 50 (noting that India is likely the "primary beneficiary" of the outsourcing trend).

due to its large English-speaking, law school trained workforce that can carry out legal tasks that would be typically performed by U.S. junior-level employees.³ Using contract attorneys is not a new phenomenon in the legal industry as general counsel “fed up” with high legal costs have been known to hire contract attorneys themselves or force firms to hire cheaper outside services.⁴ However, using Indian legal outsourcing services is new to the legal profession and can offer substantial savings⁵ over traditional outsourcing methods such as firms hiring contract attorneys for specific jobs. For example, since 2001, general counsel for General Electric has saved more than two-million dollars in legal fees by outsourcing legal work to India that otherwise would have been spent on outside counsel in the United States.⁶ Another example involves a New England-based, publicly traded manufacturing company that saved more than \$500,000 in the first two months of a legal engagement by outsourcing document review for a large-scale products liability class action suit to India.⁷

Besides the obvious financial incentives of outsourcing, other incentives to use Indian legal services exist including: the nine to thirteen hour time difference between the countries that gives U.S. lawyers the “sense of operating on a twenty-four hour basis” and the opportunity to have requested work finished by the time the lawyer arrives for work the next morning;⁸ assistance with an “erratic work flow” that does not justify hiring another full-time associate or staff member;⁹ and the ability to handle more of the low-level work, so a firm can focus on the more complex issues.¹⁰ Ultimately though, the latest interest in outsourcing legal services centers around the significant financial savings for the lawyers who use the services and pass along the savings to the client.

The prices for Indian legal services vary from ten dollars to twenty-five dollars an hour on low-end work, and twenty-five dollars to ninety dollars an hour on advanced jobs.¹¹ One source found that Indian firms can do legal work for roughly forty dollars an hour, compared to the one-hundred and twenty

3. *Id.* at 52.

4. Kellie Schmitt, *McDermot Will to Add Lower-Paid Associates*, LEGAL INTELLIGENCER, Nov. 5, 2007, at 4.

5. See Dick Dahl, *Law Firms and Legal Departments Going Offshore to Cut Costs*, S.C. LAW. WKLY., Sept. 24, 2007, available at 2007 WL 18832019 (quoting Jay Horowitz, SQ Global Solutions’ CEO as saying, “[t]he cost savings [using Indian legal outsourcing] can be substantial” and that “companies can save ninety percent of their in-house costs.”).

6. Jennifer Fried, *Offshoring Work; Law Departments are Cutting Costs by Sending Work Abroad*, NAT’L L.J., May 17, 2004, at S1.

7. David Perla, *Next, Outsource All the Lawyers: Convinced Your Offshoring Options Are Confined to Call Centers and IT? Think Again*, CHIEF EXECUTIVE, Jul. 1, 2006, at 40.

8. Coster, *supra* note 1.

9. *Id.*

10. Perla, *supra* note 7.

11. Cynthia Cotts & Liane Kufchock, *India Wins Rising Share of Legal Work from U.S.*, INT’L HERALD TRIB., Aug. 22, 2007, at 10.

dollars an hour many U.S. law firms charge.¹² Overall, the amount of savings can be as high as seventy percent for work traditionally handled by junior U.S. lawyers who earn close to two hundred dollars an hour.¹³ Another outsourcing firm, Lexadigm, charges legal fees ranging from sixty-five dollars to ninety-five dollars an hour for work that a large U.S. firm might bill at two-hundred fifty dollars an hour or more.¹⁴

At a time when “[eighty-six] percent of corporate law departments surveyed by the American Corporate Counsel Association cite outside legal costs as their top concern,”¹⁵ a number of U.S. companies, including the legal departments of Fortune 500 companies, along with some of the country’s largest law firms are beginning to outsource routine legal work.¹⁶ For example, General Electric has set up its own Indian subsidiary comprised of roughly thirty lawyers¹⁷ to capitalize on the savings to handle legal compliance and research for two of its divisions, GE Plastics and GE Consumer Finance.¹⁸ Other companies with in-house legal departments in India include DuPont, Cisco Systems, and Morgan Stanley.¹⁹ Companies such as Microsoft Corporation are using Indian professionals to search for information in preparation for filing patent research applications.²⁰ Other companies contracting Indian legal services firms include United Technologies Corp., Oracle Corp. and Bayer AG.²¹ However, these services are not limited to corporations. Two Washington law firms, Arnold & Porter, LLP and Howrey LLP,²² outsource legal services, as do firms like Kirkland & Ellis and Jones Day.²³ Even West Publishing uses Indian lawyers “to prepare their case summaries, which form the basis for legal research searches by U.S. practitioners.”²⁴

Outsourcing is not a new concept but a business tool that has been used throughout the United States as part of a competitive business strategy. For

12. Tom Ramstack, *Law Firms Send Case Work Overseas to Boost Efficiency*, WASH. TIMES, Sept. 26, 2005, at C14.

13. Krysten Crawford, *Outsourcing the Lawyers. Add Attorney to the Growing List of White-Collar Jobs Being Shipped Overseas. How far will it go?*, CNNMONEY.COM, Oct. 15, 2004, http://money.cnn.com/2004/10/14/news/economy/lawyer_outsourcing/.

14. Daniel Brook, *Made in India, Are Your Lawyers in New York or New Delhi?*, LEGAL AFF., May/June 2005, available at http://www.legalaffairs.org/issues/May-June-2005/scene_brook_mayjun05.msp.

15. Perla, *supra* note 7.

16. Crawford, *supra* note 13.

17. *Id.*

18. Brook, *supra* note 14.

19. Cotts & Kufchock, *supra* note 11.

20. Brook, *supra* note 14.

21. Ramstack, *supra* note 12.

22. *Id.*

23. Cotts & Kufchock, *supra* note 11.

24. Rich Smith, *A Passage to India*, MOTLEY FOOL, Jan. 26, 2004, <http://www.fool.com/investing/general/2004/01/26/a-passage-to-india.aspx>; see also Mary C. Daily & Carole Silver, *Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshoring Legal and Law Related Services*, 39 GEO. J. INT'L L. 401, 415 (2007).

example, in 1966, “the U.S. Naval Academy operated its own production facility to provide milk for midshipmen. At a time when their services were handed off to a third party, the organizations would have said they ‘outsourced’ them.”²⁵ Outsourcing in the legal community is the latest trend, and lawyers need to be cognizant of its emergence in the legal services business. While more and more is written on the ethical implications of outsourcing legal services to India, very little has been written on the potential effect on U.S. lawyers. This article addresses one of those issues; specifically, the potential impact legal outsourcing could have on new lawyers entering the field and junior associates in the profession. It will not discuss the legal ethics involved in the sending of legal work abroad or the positives and negatives of outsourcing in general. Rather, this article presents an overview of this new phenomenon in the legal community and suggests how new lawyers can prepare in light of this growing phenomenon.

In this article, the author will discuss the current state of offshore legal outsourcing of legal services and its impact on the legal profession generally, the growing trend, and suggestions for law school students, lawyers, and legal institutions to embrace this growing trend. Part II addresses the background of outsourcing generally. Part III discusses the growth of legal outsourcing through the last decade and future projections. Finally, Part IV offers suggestions on how new lawyers can increase job security in light of the outsourcing of legal services to India.

II. BACKGROUND OF OUTSOURCING

Generally, outsourcing is “when a company turns over responsibility, in whole or in part, for an internal business function to an outside supplier.”²⁶ With legal outsourcing, those who are not members of an American Bar Association are supervised and their work is supervised by someone that is.²⁷ There are three general types of outsourcing addressed in this comment: one type involves corporations outsourcing their subsidiaries to other countries, or “offshore outsourcing,” which is “when a company in a high-wage country outsources to a supplier that will perform the services in large part in a low-wage country;”²⁸ a second type of outsourcing involves American businesses hiring Indian law firms;²⁹ and the third type is “legal process offshoring” (LPO), which “is an arrangement whereby law firms, legal departments of corporate bodies, and law

25. JANE C. LINDER, *OUTSOURCING FOR RADICAL CHANGE: A BOLD APPROACH TO ENTERPRISE TRANSFORMATION* 27 (2004).

26. Brad L. Peterson, *When and Why Companies Use Onshore and Offshore Outsourcing Arrangements*, in *KEYS TO OUTSOURCING AND OFFSHORING 2006: PROTECTING CRITICAL BUSINESS FUNCTIONS*, at 17 (PLI Patents, Copyrights, Trademarks, and Literary Prop. Course Handbook Series, 2006).

27. Brook, *supra* note 14.

28. Peterson, *supra* note 26, at 20.

29. Jayanth K. Krishan, *Outsourcing and the Globalized Legal Profession*, 48 WM. & MARY L. REV. 2189, 2202-03 (2007).

publishers outsource processes to third party vendors or to their captive centers situated in cheaper destinations.”³⁰ Put another way, LPO involves law firms and legal departments “open[ing] their own offices staffed by Indian employees, rather than simply outsourcing their work to a third-party vendor.”³¹

As briefly mentioned earlier, the advantages of outsourcing include significant cost savings by replacing fixed overhead costs of employees with variable cost services that can often increase or reduce the level of services by shifting resources and ultimately improved business results.³² In addition to cost savings, legal outsourcing frees up corporate legal counsel departments from time-consuming paper-work, as outsourced work can be done on an overnight turnaround because of time-zone differences, and can fill the void when the volume of work does not justify hiring an in-house, full time employee.³³

A reason why India has been the leading market for outsourcing is due to the similarities between the U.S. and India legal systems, English language capabilities, and large market of highly skilled manpower.³⁴ For example, India’s legal system is based on the common law system in the U.S. and England,³⁵ English is a national language,³⁶ law school in India is taught exclusively in English,³⁷ and India’s law schools graduate nearly 75,000 lawyers annually, making an abundance of highly trained manpower attracted to outsourcing firms.³⁸ Other incentives for the outsourcing of work to India include the tax exemptions from import and export duties to U.S. legal outsourcers provided by the Indian government in an attempt to draw more business to the country.³⁹

Proponents of outsourcing explain that outsourcing work to India is no different from outsourcing work to a temporary lawyer.⁴⁰ Alan Gershowitz, the former partner of Skadden Arps, Slate, Meagher & Flom LLP, and current President and Chief Operating Officer of Strategic Legal Solutions and Chief Operating Officer of SQ Global, said law firms often turn to SQ Global on big-volume cases, making costs cheaper for firms and possibly for clients who may have the savings passed to them.⁴¹ However the inexpensive labor is not enough to convince all lawyers of outsourcing.⁴² Disadvantages of outsourcing include

30. *The Emerging Indian Legal Offshoring Opportunity*, INVESTREND, Apr. 18, 2006, <http://investrend.com/articles/article.asp?analystId=0&id=25006&topicId=160&level=160>.

31. Coster, *supra* note 1.

32. Peterson, *supra* note 26, at 18.

33. Perla, *supra* note 7.

34. *See id.*; *see also* Dahl, *supra* note 5.

35. Perla, *supra* note 7.

36. *See* INDIA CONST. art. 348 (English is one of the country’s national languages).

37. Perla, *supra* note 7.

38. *Id.*

39. Julie Foster, *Law Firm Cuts Rates by Outsourcing to India Overseas Office Gets Incentives From Government There*, PIONEER PRESS, Mar. 3, 2004, at C1; *see also* Krishan, *supra* note 29.

40. Coster, *supra* note 1.

41. Schmitt, *supra* note 4.

42. Coster, *supra* note 1.

the cultural differences, potential language barriers, distance between the two countries, and data protection.⁴³ Another issue with legal outsourcing involves the attorney-client privilege and the conflict of one firm outsourcing work to the same Indian firm as a competing firm.⁴⁴ “I would be concerned about the absence of quality assurances,” says Mathew Powers, a head of patent litigation in the Silicon Valley office of New York’s Weil, Gotshal & Manges. “We invest a lot of time in training and managing our people to ensure we get a high-quality work product. I’d rather find efficiencies in other forms.”⁴⁵ A more pressing issue involves the potential ethical implications raised by using foreign lawyers to perform legal services. However, American Bar Association (ABA) officials say they are aware of law firms outsourcing to foreign countries, but have not seen problems arise from it.⁴⁶ Nancy Slonim, the ABA Deputy Director for Policy Communications commented on the issue stating “we [ABA] have not either endorsed it or opposed it.”⁴⁷ Since 2005, three specific bar associations have issued opinions that aim to provide ethical guidelines for lawyers.⁴⁸ The Los Angeles County Bar Association was first to address the issue in a June 2006 opinion, followed by the Association of the Bar in the City of New York in August 2006, and most recently by the San Diego County Bar Association in January 2007.⁴⁹ The opinions are designed to guide attorneys considering outsourcing legal work to foreign countries, ranging from advising attorneys when they must inform clients that work is being outsourced to charging “appropriate” fees.⁵⁰ Paul Dutka, a partner in New York City’s Weil Gotshal & Manges who chairs the New York City bar association’s Committee on Professional and Judicial Ethics, commented that legal outsourcing will continue to command attention.⁵¹ Ethical implications aside, just like all new industries, proponents of outsourcing say that the practice will become “increasingly efficient” with time.⁵² “If I think that I am going to get high quality work from the first day, I’m kidding myself,” said H. Wynne James III, partner in a two-hundred-fifty-lawyer Louisville-based Sites & Harbison.⁵³

43. Peterson, *supra* note 26, at 22.

44. Coster, *supra* note 1.

45. *Id.*

46. Ramstack, *supra* note 12.

47. *Id.*

48. Vesna Jaksic, *Three Bar Groups Offer Ethical Guidelines on Outsourcing*, LEGAL INTELLIGENCER, May 2, 2007, at 4.

49. *Id.*

50. *Id.*

51. *Id.*

52. Coster, *supra* note 1.

53. *Id.*

III. LEGAL OUTSOURCING GROWTH/TREND IN INDIA

Outsourcing became mainstream in the U.S. beginning with manufacturing jobs in the late 1980s.⁵⁴ It has been largely reported that outsourcing legal work to India began in 1995, when the Dallas-based litigation firm Bickel & Brewer opened an office in Hyderabad.⁵⁵ Bill Brewer, the co-founder and co-manager, explained the idea was a result of a conversation about a more efficient way to handle all of the information arising from a case while at brunch with a relative.⁵⁶ Since 1995, Bickel & Brewer established a subsidiary named Imaging and Abstract International.⁵⁷ As mentioned earlier in this comment, in 2001 General Electric added a legal division to an already existing base of operations in India to handle legal compliance and research for two of its divisions, GE Plastics and GE Consumer Finance.⁵⁸ Since 2005, the number of offshore legal services companies has grown from roughly twenty to one hundred in only two years.⁵⁹

The work traditionally handled by Indian legal firms “involve[] non-core and manpower intensive functions such as legal transcription, document conversion, legal data entry, legal coding, and indexing.”⁶⁰ One estimate of the “back-office” work fees from the top two hundred law firms alone is roughly twenty billion dollars a year.⁶¹ Core functions such as legal opinions, judgments, arguing in U.S. courts, and client communications are simply not outsourced due to the fact that these skills often require the service provider to be registered in the country of jurisdiction.⁶² However, media outlets have suggested the legal services provided by offshoring firms are “encompassing more sophisticated and more profitable work.”⁶³ This more sophisticated work includes negotiation, contract drafting, review litigation documents, conduct competitive intelligence, perform patent research and analysis, and manage nondisclosure agreement processes—all services currently being performed by Indian legal services firms for some of America’s leading corporations.⁶⁴ “High-end legal services are likely to lead the next wave of offshoring with about 35,000 lawyers’ jobs likely to move from

54. Ashok Deo Bardhan & Cynthia A. Kroll, *The New Wave of Outsourcing*, RES. REP., (U.C. Berkeley Fisher Center for Real Est. & Urb. Econ., Berkeley, Cal.) Fall 2003, at 1, available at http://www.haas.berkeley.edu/news/Research_Report_Fall_2003.pdf (the first wave of outsourcing of manufacturing began between 1987 and 1997).

55. Brook, *supra* note 14.

56. *Id.*

57. *Id.*

58. Coster, *supra* note 1.

59. Colleen Jenkins, *Lawyers Look to India for Answers*, ST. PETERSBURG TIMES, Oct. 14, 2007, at 1B.

60. *The Emerging Indian Legal Offshoring Opportunity*, *supra* note 30.

61. Tommy Fernandez, *Low Costs Make the Case for Outsourcing Legal Work*, CRAINS N.Y. BUS., Sept. 13, 2004, at 21.

62. *Id.*

63. Perla, *supra* note 7.

64. *Id.*

U.S. to countries like India in the next five years.”⁶⁵ In fact, a U.S. Supreme Court Brief was written by Indian offshore outsourcing legal services company, Lexadigm and briefs for the U.S. Circuit Court of Appeals were submitted on behalf of U.S. lawyers using Lexadigm’s services.⁶⁶

In 2002, approximately 1,300 Indian workers provided services for U.S. lawyers, generating roughly \$52 million in revenue for the firms and corporations they worked for.⁶⁷ While exact figures are difficult to come by, in the current year the estimated value of outsourced services to India’s roughly eighty million dollars in revenue, with revenues expected to reach four billion dollars by 2015.⁶⁸ Finally, the Indian legal services industry employed roughly 7,500 people in India in 2006 and is on track to reach 32,000 by the end of 2010.⁶⁹

While these figures do not show an “explo[sion]” in the marketplace of legal services being outsourced, they do suggest that this is not merely a “fad” either.⁷⁰ Forrester Research, Inc., a Cambridge, Massachusetts based market research firm, predicts that by 2015 more than 489,000 U.S. legal jobs will shift abroad, making up nearly eight percent of the U.S. legal field, will shift abroad.⁷¹ According to Value Notes Report, with more and more legal firms comfortable with the concept of legal services outsourcing, revenues are expected to reach more than ten times its current size in this decade alone.⁷² Forrester Research estimated that in 2005 alone, two hundred fifty billion dollars was spent on legal services globally, with the U.S. accounting for one-hundred-seventy billion dollars of that figure.⁷³ Should legal service outsourcing explode, with Indian legal services running twenty-five to seventy-five percent of the cost of domestic legal services, it would translate into billions of dollars in legal expenses saved per year.⁷⁴

Nevertheless, outsourcing legal services to India will continue to increase as American law firms and corporations continue to push for more cost efficient legal services as well as increased profits. The next section of this article offers suggestions for new attorneys and legal institutions to prepare for the continued growth of outsourcing legal services to India.

65. *Take This!: After BPO and KPO, it's LPO*, TIMES OF INDIA, Nov. 5, 2005, <http://timesofindia.india.com/articleshow/1285235.cms>.

66. *Lawyers Find Work Outsourced* (NPR May 1, 2005), available at <http://www.npr.org/templates/story/story.php?storyId=4626716>.

67. Ramstack, *supra* note 12.

68. Arin Greenwood, *Manhattan Work at Mumbai Prices Inside India's Hottest Legal Outsourcing Team*, A.B.A. J., Oct. 2007, http://www.abajournal.com/magazine/manhattan_work_at_mumbai_prices/.

69. Jenkins, *supra* note 59.

70. Crawford, *supra* note 13.

71. Fried, *supra* note 6.

72. Perla, *supra* note 7.

73. *Id.*

74. *Id.*

IV. ARGUMENT

A. Client Demand For Cheaper Services Results In Driving Down Legal Prices

Technology has finally caught up to the business of law and has changed the way legal services are handled.⁷⁵ Advancements in communications, transportation, and free trade have widened the range of functions that may be sent to overseas vendors.⁷⁶ Law firms can now send work overseas to boost efficiency⁷⁷ and ultimately decrease the cost of legal services to the clients through legal-outsourcing services. "When outsourcing allows firms to produce more cheaply, competition between firms that are outsourcing will drive down the prices of their products."⁷⁸ When legal outsourcing to India began roughly a decade ago, firms were handling low-level legal services such as document review.⁷⁹ Since then, the legal services being offered are more complex and sophisticated,⁸⁰ with the quality of the work constantly improving. More and more lawyers and Fortune 500 companies use Indian legal services companies in addition to setting up their own legal departments abroad that employ Indian law school trained labor.⁸¹ Compounded by the growing industry with client demands for cheaper services and dismay over increasing first year salaries, ultimately, the legal industry is in the infant stage as lawyers and law firms are forced to become more cost efficient.

1. Legal Outsourcing: More Cost Efficient Lawyers

While there are many ways for lawyers to increase cost efficiency—including law firms relying on technology and going "virtual" to cut overhead costs and making rates more competitive,⁸² cutting fees and selling more time of existing lawyers⁸³—nothing to date has the potential of being as cost efficient as legal

75. John W. Anderson, *The Virtual Law Firm*, 23 DEL. LAW. 36, 36 (Winter 2005/06).

76. Justin K. Holcombe, *Solutions for Regulating Offshore Outsourcing in the Service Sector: Using the Law, Market, International Mechanisms, and Collective Organization as Building Blocks*, 7 U. PA. J. LAB. & EMP. L. 539, 542 (2005).

77. Ramstack, *supra* note 12.

78. Timothy Taylor, *In Defense of Outsourcing*, 25 CATO J. 367, 371 (Apr. 1, 2005).

79. Brook, *supra* note 14.

80. Perla, *supra* note 7.

81. Crawford, *supra* note 13.

82. Anderson, *supra* note 75, at 36-37. The author uses the workplace concept ROWE, which stands for Results Oriented Workplace Environment. The premise is executives, managers, and employees working whenever and wherever they want so long as they get their work finished. This concept has lowered overhead, while making attorneys and staff more efficient for firms such as Smith Dornan & Dehn PC (SSD), located in New York. *Id.*

83. Ellis R. Mirsky, *Litigation Cost Control in a Nutshell*, in LITIGATION MANAGEMENT SUPERCOURSE 1991: TECHNIQUES FOR IN-HOUSE AND OUTSIDE COUNSEL, at 51 (PLI Litig. & Admin. Practice Course Handbook Series, 1991).

outsourcing to India, where lawyers can cut costs while retaining profits.⁸⁴ Although some lawyers feel immune to the risks of outsourcing, noting the “insurmountable barriers of jurisdictional constraints and quality control”⁸⁵ and brushing aside the growing trends and increasing level of sophistication of the Indian legal services firms work product,⁸⁶ they cannot dismiss the demands of their clients for cheaper services.

The latest round of associate salary raises to \$160,000⁸⁷ has created resentment among clients, including corporate clients.⁸⁸ Clients increasingly expect and demand “firm[s] to be able to justify the level of experience and associated cost that is being applied to certain processes in a transaction.”⁸⁹ Wal-Mart, for example, recently sent a memo addressed to “relationship partners” raising concerns about the increase in associate starting pay to \$160,000.⁹⁰ Associate General Counsel Miguel Rivera Sr. stated, “[u]ntil further notice, we will only consider reasonable, individual requests for rate increases for those attorneys in your firm who are performing at an exceptional level and whose experience and knowledge is adding substantial value towards meeting Wal-Mart’s legal objectives.”⁹¹ Wal-Mart and similar companies want “cost-effective staffing,”⁹² not new lawyers or junior associates with little experience taking a longer time to perform a standard task (e.g., drafting a motion for summary judgment) than it would take an experienced attorney at a higher rate.⁹³ In fact,

84. See Jonathan Brewer, *Developing Junior Lawyers – A Marathon or a Sprint?*, LEXISNEXIS UK (on file with author) (mentioning the trend towards outsourcing of more basic work); Emily Gibson, *In A Land, Far, Far Away . . .*, TIMESONLINE, Nov. 30, 2004, http://business.timesonline.co.uk/tol/business/law/public_law/article396208.ece (stating that pressure from clients to lower rates and high costs of staff could mean that the legal profession is left with no choice but to transfer work to where labor is cheaper).

85. Darya V. Pollak, *“I’m Calling My Lawyer . . . In India!”: Ethical Issues in International Legal Outsourcing*, 11 UCLA J. INT’ L. & FOREIGN AFF. 99, 102-03 (2006).

86. Perla, *supra* note 7.

87. Edward A. Adams, *Which Firms Pay \$160K to First-Years?*, A.B.A. J., Apr. 5, 2007, <http://www.abajournal.com/news/which-firms-pay-160k-to-first-years> (“New York’s Simpson Thatcher & Bartlett set off the latest round of salary wars when it boosted first-year associate pay to \$160,000 from \$145,000 in January. Since then, at least 55 firms of all sizes from across the nation have matched the new going rate, according to the New York Law Journal.”).

88. Leigh Jones, *Latest Associate Pay Hikes Leave Corporate Clients Cold*, NAT’L L. J., Aug 13, 2007, <http://www.law.com/jsp/ihc/PubArticleFriendlyIHC.jsp?id=1186736524192>.

89. Brewer, *supra* note 84.

90. Nathan Koppel, *Wal-Mart Memo to Law Firms: No More Rate Hikes!*, WALL ST. J. ONLINE, Nov. 2, 2007, <http://blogs.wsj.com/law/2007/11/02/wal-mart-strikes-back-at-associate-salary-increases/>; Debra C. Weiss, *Wal-Mart Refuses Law Firm Fee Hikes, Cites High Associate Salaries*, A.B.A. J., Nov. 5, 2007, <http://blogs.wsj.com/law/2007/11/02/wal-mart-strikes-back-at-associate-salary-increases/>.

91. Koppel, *supra* note 90.

92. Mirsky, *supra* note 83, at 60 (contemplates staffing a case with attorney of the most cost-effective experience levels and hourly rates, and forbidding participation of too junior and too senior attorneys who, when their relative productivity and hourly rates are considered, simply do not represent good value to the client).

93. *Id.* (within a law firm, lawyers with little experience typically have a relatively low hourly rate that increases with increasing experience and/or salary. The number of hours it takes for an attorney to perform a particular task varies with experience of the attorney performing the task).

many in law firm management admit that the raises to new associates make the “fledgling associates even less cost-efficient for law firms that hope new associates will even stick around long enough to earn their high salaries.”⁹⁴ In some situations, the greatest competition a senior attorney may face is a junior attorney in the same firm whose multiple hours charged for a similar task nevertheless costs less than the senior attorney’s charges.⁹⁵

Dennis Kennedy, a technology lawyer, legal technology consultant, and well-known blogger based in St. Louis, Missouri, commented in an article from *Law Practice Today*, that the “recent rounds of salary increases for starting associates will only cause more interest in this [use of legal outsourcing firms] approach.”⁹⁶ David Perla, co-chief executive of Pangea3, an offshore legal-services company based in New York and Mumbai, India, said roughly eighty percent of Pangea3’s clients are corporations, and twenty percent are law firms.⁹⁷ Perla further explained that “some firms are coming to [Pangea3] because in-house clients suggested it or pressured them,”⁹⁸ and “others want to come to the client first and offer a solution.”⁹⁹ Thomas Morgan, a professional responsibility expert and George Washington University Law School professor, recently stated “in theory, at least, it would take only one big firm looking for a competitive advantage to start a bidding war that could change the cost of buying legal advice in the U.S.”¹⁰⁰

2. Outsourcing Could Lead to Increased Profits

In addition to firms using legal Indian outsourcing firms to appease client demands for lower-priced services, firms could also use legal outsourcing to increase profits. By using Indian lawyers supervised by their own partners and counsel, firms could follow the corporations already setting up their own legal departments in India.¹⁰¹ These branches in turn could handle the services generally handled by junior associates and new lawyers; however, instead of paying \$160,000 a year the firm could pay a fraction of that to competent lawyers in India. Not only would the firms be getting similar work at a lower cost, the firms will not have to pay for the real estate, medical and health benefits, office support staff, and other services required to keep junior associates and new

94. Jones, *supra* note 88.

95. Mirsky, *supra* note 83, at 54-55 (argument in response to senior lawyers continually increasing hourly rates while remaining competitive within the firm).

96. *Inside vs. Outside: When Does it Make Sense for Law Firms to Outsource?*, LAW PRAC. TODAY, Apr. 2006, <http://www.abanet.org/lpm/lp/articles/mgt04063.shtml#bio>.

97. Cotts & Kufchock, *supra* note 11.

98. *Id.*

99. *Id.*

100. Brook, *supra* note 14.

101. See Fried, *supra* note 6 (companies such as General Electric are sending legal work abroad to cut costs).

lawyers in cities such as New York, Boston, Los Angeles, or Washington, where real estate prices are some of the highest in the country. In addition, these firms can focus on the more specialized and complex areas of their practice.¹⁰² In theory, the money saved by using Indian legal services, or setting up branches using Indian lawyers, would result in greater profits for partners and firms while at the same time lowering the legal fees for clients. Even with the markup, law firms will undoubtedly charge while Indian lawyers are doing the work.

Traditionally, law firms have charged markups to clients as much as “three times what they pay associates and contract attorneys.”¹⁰³ “Law firms can earn more by using labor they can mark up without disclosure,” said Stephen Gillers, a professor of legal ethics at New York University School of Law.¹⁰⁴ However, firms simply creating verbiage on their bills and identifying outsourced lawyers as “special consultant,” “outside consultant,” or even “temporary lawyer service”¹⁰⁵ will likely not satisfy their clients’ demands for lower prices. By sending legal work overseas, ethics rules compel law firms to disclose their profit margins.¹⁰⁶ “Clients are knowledgeable about costs, and they want to negotiate the markup of these charges.”¹⁰⁷

Critics, especially the top U.S. law firms focused on providing sophisticated legal services, may argue that they “sell judgment and experience” more than legal research.¹⁰⁸ After all, the “routine aspects of the work of these firms is critical to the ability to train new lawyers, [because] it allows them to offer sufficient routine and lower stakes experiences to enable new law school graduates to develop the kind of judgment that forms the basis for the reputation of the firms’ top lawyers.”¹⁰⁹ If outsourced lawyers perform much of the work currently done by junior associates, it would open the door to the potential of creating a training gap that will ultimately leave U.S. firms without sufficient numbers of mid-level lawyers with experience to handle complex legal services.¹¹⁰

However, considering eighty percent of new associates leave firms after five years and only a small percentage make partner,¹¹¹ firms cutting their costs by cutting the number of associates they hire a year is not a reach. Firms would still hire new attorneys; however, with less new associates these firms could focus

102. See Perla, *supra* note 7 (advantages to outsourcing includes freeing up corporate legal counsel departments from time-consuming paper-work).

103. Cotts & Kufchock, *supra* note 11.

104. *Id.*

105. Pollak, *supra* note 85, at 135.

106. Cotts & Kufchock, *supra* note 11.

107. *Id.*

108. Daily & Silver, *supra* note 24, at 412.

109. *Id.*

110. Pollak, *supra* note 85, at 157.

111. NALP, <http://www.nalp.org> (NALP is a Washington-based nonprofit group that tracks jobs in the legal industry).

more on highly qualified candidates and also spend more on training new lawyers and junior associates to be more cost efficient and self sufficient. With more training and individualized attention spent on new attorneys, new lawyers and junior associates will be less inclined to ask questions of more senior colleagues, as they will be more likely to find the answers themselves.¹¹² In the end, lawyers and firms will simply have to balance the costs of training new lawyers and junior associates to eventually make partner against the savings and profit increases using foreign labor.

3. What Can Law Firms and Lawyers Effectively Do Besides Using Foreign Legal Outsourcing Services Firms?

With associate salaries increasing, rising litigation costs, and client opposition to it all, besides using Indian legal services for cheaper services and labor, some firms such as McDermott Will & Emory are creating a new tier of attorneys.¹¹³ McDermott Will¹¹⁴ created this second tier of attorneys to handle lower-end tasks at lower billing rates.¹¹⁵ “In a market where high compensation for lateral partners, lateral associates and associates are creating pressures, we’re trying to bring the best quality service at the lowest price to our clients,” said Robert Mallory, a partner in the trial group of the firm’s Los Angeles office.¹¹⁶ While hiring contract attorneys is not new to the legal profession, creating a second class of “full-timers” is.¹¹⁷ The concept came about during a firm retreat where the 1,000-lawyer firm decided to create a “cadre of staff lawyers outside the partnership track who will be paid less, work less and charge less per hour.”¹¹⁸ In having a “flexible separate staff” able to move from “big litigation to big litigation,” it could help the firm make better use of its high-priced associates.¹¹⁹ The firm will begin with a pilot group of fifteen lawyers with “good pedigrees” who will work thirty to forty hours and be paid roughly twenty five percent less than associates, though an exact pay structure has not been decided.¹²⁰ This is not a path that will result into a partnership track; rather these attorneys will take some of the more mundane tasks like document review away from the more expensive associates on the partnership track.¹²¹

112. Brewer, *supra* note 84.

113. Schmitt, *supra* note 4.

114. McDermott Will & Emory employs over 1,100 attorneys. For more information visit their website at <http://www.mwe.com>.

115. Schmitt, *supra* note 4.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

While only a pilot program at this point, creating a “second tier” of attorneys is a statement by the firm of its attempt to bring down legal costs without cutting profits.¹²² The question of course is whether this concept can compete with Indian contract attorneys making a fraction of what even “second-tier” attorneys will be paid.

B. What Does Outsourcing Mean to New Lawyers and Junior Associates?

Lawyers and law firms forced to meet client demands for cheaper legal services will have no choice but to use Indian lawyers. As a result, a majority of the work new U.S. lawyers and junior associates generally handle will be lost.¹²³ This work includes tasks such as legal research, drafting pleadings, discovery requests, and basic transactional drafting assignments.¹²⁴ While not all junior associate positions will be lost, the competition for these positions could become even more cutthroat as jobs are sent abroad where legal fees and costs are less than what they are in the U.S. The next section of this comment addresses the potential of outsourcing and how new lawyers and law school students and U.S. legal institutions can prepare for such phenomena.

1. Focus on Litigation Concentrations and Areas of the Law that Cannot Be Outsourced

With competent legal services now available offshore, what additional value is a trainee or newly qualified lawyer at ten times the hourly rate bringing?¹²⁵ While the increased use of legal outsourcing over the last decade may not spell the demise of the new attorney or junior associate all together, it does make one wonder what the future may bring. The back office, administrative, and support functions for law firms and legal departments may soon be obsolete for U.S. lawyers and law firms. However, there are areas of the law that cannot be outsourced due to the attorney licensing rules that mandate that only lawyers who are licensed in the U.S. can give legal advice on American law.¹²⁶ That means that Indian-trained lawyers who are not registered to practice anywhere in the U.S. are restricted in the types of legal work they can perform.¹²⁷ For example, it is highly unlikely that work such as trials, advice on mergers, or public stock offerings could ever be outsourced.¹²⁸ Therefore, law school students and new

122. *Id.*

123. See Pollak, *supra* note 85, at 99-102 (one study estimated that America will lose almost 75,000 legal jobs to poorer countries by 2015).

124. *Id.* at 135.

125. See *generally id.* (noting that the high cost of obtaining legal help is a long-recognized problem that is begging for a solution).

126. Crawford, *supra* note 13.

127. *Id.*

128. *Id.*

lawyers should look for training in areas such as litigation, domestic relations, administrative law, etc., which cannot be outsourced.

Law school students can begin by focusing on litigation concentrations and courses that offer skills in the areas of the law that cannot be outsourced, as “[t]rial lawyers can rest easy along with deal makers.”¹²⁹ This includes studies in trial advocacy, pretrial litigation, alternative dispute resolution, civil litigation, evidence, arbitration, remedies, appellate practice, and essentially any other area of the law that cannot be outsourced due to attorney licensing rules that mandate that only lawyers who are licensed in the U.S. can give legal advice.

While it is early, indeed too early, to forecast the legal profession a decade into the future, the trends and growth of outsourcing cannot be overlooked. For law school students and new lawyers preparing for the profession, it would be beneficial to get as much training in services that cannot be sent abroad for job security, as well as offering flexibility when searching for a position in the legal services industry.

2. Get Involved in Mentoring Programs

“If due diligence is done in India, how does a junior associate learn?”¹³⁰ With new lawyer and junior associate work being outsourced, the opportunities for new lawyers and law school students to learn through the experience and mentoring of senior attorneys will be lost. Senior attorneys give feedback, guidance and advice, all vital lessons for the younger lawyer¹³¹ in addition to learning the basic skills of research, writing, document drafting, etc. To replace these vital benefits to young lawyers, lawyers, law school students, and legal institutions need to provide outlets to replace this “real world” experience lost to outsourcing.

The mentoring process can begin at the law school level¹³² through clinical studies, clerkships, and programs such as the Thomas M. Cooley Law School’s externship program.¹³³ Each law school student at Cooley is required to complete a minimum of three credits of an “intense clinical experience.”¹³⁴ The credits are completed by student externs with an attorney that serves as their field supervisor or mentor.¹³⁵ “The student shadows the attorney and gains valuable practical experience from projects that the attorney assigns.”¹³⁶

129. *Inside vs. Outside: When Does it Make Sense for Law Firms to Outsource?*, *supra* note 96.

130. Brewer, *supra* note 84.

131. Thomas W. Cranmer, *The Importance of Mentoring*, 85 MICH. B.J. 14, 14 (2006).

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

This is only one example for students and legal institutions to learn and benefit from senior attorney experience. Whether or not legal institutions adopt clinical programs similar to the one required at Cooley, legal institutions need to offer more “practical” courses in their curriculum to fill in the mentoring gaps as well as to give students the experience advantage outsourcing legal services cannot match. Ultimately, new lawyers, law students, and legal institutions need to prepare for the growing outsourcing trend in the legal industry by capitalizing on mentoring programs, law school programs, and other outside programs that can help fill-in any learning gaps that may arise from the loss of such opportunities in the real world due to the outsourcing of legal services abroad.

V. CONCLUSION

Outsourcing legal services to India will continue to gain popularity as client demands and corporations continue to force U.S. law firms and lawyers to become more cost efficient while lawyers continue to look for ways to increase profits. As the popularity of outsourcing in the legal industry grows and the types of legal services outsourced become more and more complex and sophisticated, it is important that new lawyers, junior associates, and future law school students be cognizant of this growing trend and its potential impact on the U.S. legal industry. This comment is an attempt to highlight the growing trend of legal outsourcing in the United States, and suggests that individuals interested in entering the legal industry should begin taking appropriate measures such as focusing on litigation concentrations and areas of the law that cannot be outsourced to maintain competitive in the legal industry. The author also recommends that new lawyers, junior associates, and future law school students take advantage of every opportunity they can to prepare themselves – whether it is through law school externship programs, clerkships, or volunteer work with senior attorneys in order to benefit through mentoring. Of course, there is only so much that can be done as a young lawyer or junior associate to ensure job security; however, the more practical training and experience one has generally means the more opportunities he or she will have for employment.