

# THE FILIPINO LAWYER AND THE ENEMY AT THE GATES: RATIONALIZING THE PLACE OF LEGAL PROCESS OUTSOURCING IN THE PHILIPPINE LEGAL MATRIX\*

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In 1984, Apple Computers released an advertisement that symbolized the advent of a new era, the era of user-friendly computers to liberate the human mind. In 1999, the self-inflicted enslavement of humankind by machines was explored in *The Matrix*. Through the years, technology has always been perceived from two distinct perspectives. There are those who blame technology, or humankind's irresponsible use of it, for a plethora of problems - environmental degradation, moral decline and the like. On the other hand, there are those who perceive it as the way of the future.

Undoubtedly, technology, specifically the use of computers and the World Wide Web, has changed the way we live our lives. Technological innovations have affected even the way we conduct business. Business process outsourcing (BPO), defined as "sending work traditionally handled inside a company or firm to an outside contractor for performance,"<sup>1</sup> has torn down geographical boundaries through the use of computers and the Internet. With the rise of business process outsourcing, through which people from one side of the world can cater to the needs of those on the other side, the world has become a smaller place. As Thomas Friedman remarked, outsourcing is flattening the world as we know it.<sup>2</sup>

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<sup>1</sup> A.Harmon, "The Ethics of Legal Process Outsourcing—Is the Practice of Law a "Noble Profession," or is it just Another Business?," Available <http://works.bepress.com/cgi.viewcontent.cgi?article=1000=aaronharmon>. (last visited July 16, 2010) [10].

<sup>2</sup> T.Friedman, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY FIRST CENTURY* 10 (2005).

### Knocking at the Gates

Technology has influenced all aspects of human life. The field of law is no exception. In recent years, the legal profession has witnessed the emergence of a new species of business process outsourcing called Legal Process Outsourcing (LPO). "Legal process outsourcing (LPO) is an emerging business that focuses on outsourcing legal processes to a third-party service provider."<sup>3</sup> LPO is a system where certain law-related tasks are outsourced by corporations and law firms to foreign service providers. The services provided cover a range of law-related tasks such as legal research, contract analysis, preparation of questions for depositions and trial, and creation of legal documents.<sup>4</sup> Began in 1995 by the US law firm Bickel and Brewer with the establishment of a satellite office in India to handle its administrative support services, LPO is now a booming industry, with Microsoft and GE joining the list of clients of LPO hubs.<sup>5</sup>

The main attraction of LPO companies is their cheap cost. Law-related services are outsourced by, primarily, US and UK firms to countries like India, China and the Philippines where employees are efficient and English proficient and the labor cost is cheap. Studies have shown that LPO can save a business 20 to 60 percent in costs.<sup>6</sup> But beyond the costs, LPO allows the outsourcing firms to free up resources in order to focus on more important projects. The system stimulates efficiency and enables firms to handle cases which they normally cannot undertake for lack of human resources.<sup>7</sup>

The trend has reached the Philippines where at present, several LPO companies such as Sencor, Integreon and Kittelson and Carpo are already operating.

As in many other developments, LPO has been met with mixed reactions. There are those who, like Steve Jobs, welcome it as a kind of liberation. There are those, however, who, like Neo and Morpheus, doubt the advantages of a profession ruled by technology. The dilemma, however, is perhaps more greatly felt here in the Philippines. The practice of law here has always been strictly

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<sup>3</sup> Lawrence Casiraya, 'Ayala to open legal process outsourcing in the Philippines,' Available <http://technology.inquirer.net/infotech/view/20070215-49658/Ayala-to-open-legal-process-outsourcing-facility-in-RP>. (last visited July 12, 2010) [2].

<sup>4</sup> M. Regan and P. Heenan, *Supply Chains and Porous Boundaries: The Disaggregation of Legal Services*, 8 FORDHAM L. REV. 2137, 2154 (2010).

<sup>5</sup> The Law Gazette, 'How Legal Process Outsourcing is changing the legal landscape,' Available <http://www.lawgazette.co.uk/in-business/a-first-hand-look-a-legal-process-outsourcer-provider-india>. (last visited July 12, 2010) [10-15].

<sup>6</sup> B.J. Fischer, *Outsourcing legal services, In-sourcing ethical issues: An Examination of the Ethical Considerations arising from the Practice of Outsourcing Legal Services Abroad*, 16 SW. J. INT'L L. 451, 459 (2009).

<sup>7</sup> *Id.*

regulated. The Bar has always attempted to perpetuate an image of dignity, of being above morality, of being a noble profession and not a business. The practice of law here has been jealously guarded by the law, the Bar and the Bench so as to ensure that "Lawyering is not a moneymaking venture and lawyers are not merchants. Law advocacy is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered."<sup>8</sup> Hence, lawyers are not even allowed to advertise their services. With this kind of culture, the rise of LPO in the country will raise numerous issues on how we view lawyering in the Philippines.

In LPO, local companies accept job orders for law-related services from abroad. Filipino lawyers and paralegals are expected to work on them and send them back to the offshore client on time. The services have a fixed price and the prosperity of the LPO company depends not merely on the quality of the service, but also on the speed of delivery and the cheap cost of labor. LPO companies may even have to send out advertising and special promos to encourage more clients. The scenario is enough to drive a conservative Filipino lawyer infuriated at the treatment of law-related services as a form of business. After all, the Code of Professional Responsibility has established that the practice of law should not be a money-making venture but should be geared towards public service. Indeed, with the rise of LPO in the Philippines in recent years, the conservative Filipino lawyer may begin to think that the enemy, in the form of LPO companies armed with computers and the World Wide Web, is knocking at the gates.

Technology is indeed knocking at the gates of the Philippine legal profession, yet contrary to the conservative view of lawyering here, it may not turn out to be the enemy. The gates are slowly being opened and there is an impetus to understand LPO and how it can be rationalized, if it can be rationalized, in our legal system.

This paper is dedicated to such a pursuit. In this paper, we will explore the bounds of legal and ethical lawyering in the Philippines and to what extent they may be stretched to accommodate the concept of LPO. We will not deal with the question of the wisdom or soundness of allowing LPO here as a policy, but will focus instead on whether there is a place for LPO in our legal framework. In seeking to answer this, we will first turn to the formal opinion of Bar associations in the US who have accepted the legality of LPO. It must be remembered however, that while these opinions may be used as guide, they do not completely answer the LPO issue in the country. The formal opinion of Bar associations in the US were made from the perspective of the outsourcing country. A more

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<sup>8</sup> *Bach v. Ongkiko Kalaw Manbit & Acorda Law Offices*, G.R. No. 160334, September 11, 2006.

responsive answer to the LPO issue in the Philippines should be anchored from our position as the LPO provider.

Moreover, we will identify the legal issues raised by LPO and explore probable answers. By doing so, this paper will seek to find a framework for LPO in the Philippines. In the end, we will endeavor to answer if those who are now knocking at the gates of the Philippine legal profession may be treated as friends or foes.

### **The Verdict in Other Jurisdictions**

No laws or court decisions have given a definite approval of LPO in the United States. The existing formal opinions from several Bar associations in that country, however, reveal the positive regard of legal communities there for LPO. The American Bar Association, The Association of the Bar of the City of New York, The Los Angeles County Bar Association, The San Diego County Bar Association, The Florida State Bar Association, The North Carolina State Bar<sup>9</sup> all have issued formal opinions stating that LPO is both legal and ethical. The ABA even went as far as saying that “The outsourcing trend is a salutary one for our globalized economy.”<sup>10</sup>

The formal opinions all viewed LPO in the context of laws and codes governing the practice of law in the US. They identified similar ethical issues raised by the LPO trend and sought to solve these issues by providing prescriptions for companies who seek to outsource legal services. The unauthorized practice of law is the overarching issue identified in the said formal opinions. The solution proposed by all the formal opinions is to treat the offshore lawyer as a “foreign assistant,”<sup>11</sup> as termed by the North Carolina State Bar. In other words, in order to remedy the issue of allowing non-licensed foreigners to practice law in the US, the formal opinions highlighted that the “foreign assistant,” regardless of whether she is a licensed lawyer in her country or not, should be treated as a non-lawyer in the US. Impliedly, the relationship between the US firm outsourcing services and the offshore lawyer performing the task is similar to the relationship of a lawyer and a paralegal.

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<sup>9</sup> The Ass'n of the Bar of the City of N. Y. Comm. on Prof'l & Judicial Ethics, Form. Op. 2006-3 (2006); Los Angeles Co. Bar Ass'n Prof'l Responsibility & Ethics Comm., Form. Op. 518 (2006); San Diego Co. Bar Ass'n Legal Ethics Comm., Form. Op. 2007-1 (2007); N.C. State Bar Form. Op. 12 (2008); ABA Standing Comm. on Ethics & Prof'l Responsibility, Form. Op. 08-451 (2008); Florida State Bar Ass'n Comm. on Prof'l Ethics, Form. Op. 07-2 (2008).

<sup>10</sup> ABA Standing Comm. on Ethics & Prof'l Responsibility, Form. Op. 08-4512, August 5, 2008.

<sup>11</sup> N.C. State Bar Form. Op. 12 (2008).

Hence, in order to avoid aiding in the unauthorized practice of law, US lawyers sending work offshore should closely supervise the work of the foreign lawyer. As explained by the Association of the Bar of the City of New York, “the lawyer’s supervising the non-lawyer is key to the lawyer’s avoiding a violation.”<sup>12</sup> The US lawyer must guide the offshore lawyer while the work is ongoing, she must review the work after it is finished and must insure that the finished product is accurate and complete. To this end, the US lawyer has the final say as to whether the finished product may be used or not. Hence, under this kind of set-up, it is the US lawyer who is ultimately responsible to the client,<sup>13</sup> and not the offshore lawyer, who is merely a “foreign assistant” providing support services.

Other ethical issues addressed by the formal opinions include conflict of interest, privileged communication and correct billing. The formal opinions prescribed certain steps that the US lawyer must take in order to prevent violation of her ethical duties to her client. More specifically, the New York Bar provided for the following well-defined measures: (i) obtaining background information about intermediaries employing or engaging the non-lawyer, and obtaining the professional resume of the non-lawyer, (ii) conducting reference checks, (iii) interviewing the non-lawyer in advance by telephone, the Internet or by web cast; and (iv) communicating with the non-lawyer during the assignment to ensure that the non-lawyer understands the assignment and is discharging the assignment according to the lawyer’s expectations.<sup>14</sup>

The legality of LPO in the US depends largely on the treatment of the foreign assistant and the role played by the US lawyer. In that jurisdiction, the gates were opened for LPO companies by assigning “codes” to the parties so that the legal matrix can be able to accommodate them. The offshore lawyer is coded as a “non-lawyer” while the US lawyer is coded as the “supervisor” or the “ultimately responsible one.”

This approach may prove instructive on how the legality of LPO may be perceived in the Philippines. However, while this assignment of “codes” may be legally and logically sound, we must not lose sight of the fact that this rationalization of LPO in the US is seen from the eyes of the outsourcing country. Hence, the framework put forth may not necessarily be apt in the legal matrix of the Philippines which is not an outsourcing country, but is instead, an LPO hub.

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<sup>12</sup> The Ass’n of the Bar of the City of N. Y. Comm. on Prof’l & Judicial Ethics, Form. Op. 2006-3 (2006).

<sup>13</sup> M. Tuft, *Supervising Offshore Outsourcing of Legal Services in a Global Environment: Re-examining Current Ethical Standards*, 810 PLI/LIT 209, 218 (2009).

<sup>14</sup> The Ass’n of the Bar of the City of N. Y. Comm. on Prof’l & Judicial Ethics, Form. Op. 2006-3 (2006).

### The LPO system in the Philippines: A Profile of the Alleged Enemy

The kind of LPO system found in the Philippines will determine, to a certain extent, how far the bounds of legal and ethical lawyering may be stretched so as to accommodate LPO. Hence, a brief survey of the existing LPO system will be made in this section.

In 2009, the BPO industry in the Philippines generated more than \$7.2 billion in revenues.<sup>15</sup> There is reason to believe that this will increase with the boost in the LPO sector of business outsourcing. Integreon, a leading LPO provider in the Philippines, has signed a 10-year deal with CMS Cameron McKenna LLC, to provide LPO services to big law firms in the UK.<sup>16</sup> Thomson Reuters, a BPO provider, has also extended its services to LPO with the opening of its new facilities in Taguig.<sup>17</sup> What is notable here is that the leading LPO companies in the country are not law firms but are corporations engaged in the BPO business.

In this sense, the LPO system in the Philippines follows the Firm-Middleman Model which is the most common model used in LPO systems in other countries such as India and the US. "Under the firm-to-middleman model, a British or U.S. law firm or corporation contracts with an 'outsourcing provider' that facilitates overseas operations."<sup>18</sup>

As to the services rendered, a survey of the websites of several LPO companies indicate that LPO services in the country involve general paralegal services, litigation support, drafting of legal documents, intellectual property services, legal research and legal document review.<sup>19</sup>

Moreover, the staff of LPO companies may be classified into two general categories. On one hand, LPO companies boast that their human resources

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<sup>15</sup> A. Ho, 'BPO sector generates \$7.2B in revenues,' Available at [http://archive.inquirer.net/view.php?db=1&story\\_id=252047](http://archive.inquirer.net/view.php?db=1&story_id=252047). (last visited July 17, 2010) [1].

<sup>16</sup> P. Montecillo, 'Ayala-led BPO signs \$852-M deal with UK-based law firm,' Available: [http://archive.inquirer.net/results.php?offset=10&date1xx=01/01/2008&date2xx=07/17/2010&keyword=business%20process%20outsourcing%20\(BPO\)&txtheadline=&txtfname=&txtgname=&section1=&batch=1](http://archive.inquirer.net/results.php?offset=10&date1xx=01/01/2008&date2xx=07/17/2010&keyword=business%20process%20outsourcing%20(BPO)&txtheadline=&txtfname=&txtgname=&section1=&batch=1). (last visited July 17, 2010) [1-3].

<sup>17</sup> PDI, 'Thomson Reuters to expand legal BPO operations,' Available at [http://archive.inquirer.net/view.php?db=1&story\\_id=26963](http://archive.inquirer.net/view.php?db=1&story_id=26963). (last visited July 17, 2010) [1-2].

<sup>18</sup> D. Pollak, 'I'm calling my lawyer... in India!': *Ethical Issues in International Legal Outsourcing*, 11 UCLA J. Int'l L. & Foreign Aff. 99, 107 (2006).

<sup>19</sup> Kittelson & Carpo, Available at <http://legalprocessoutsourcing.kittelsoncarpo.com/>. (last visited July 12, 2010) [7], LPOManila, Available [http://www.lpomanila.com/index.php?option=com\\_content&view=article&id=3&Itemid=3](http://www.lpomanila.com/index.php?option=com_content&view=article&id=3&Itemid=3). (last visited July 17, 2010), [2-4].

include experienced lawyers who are graduates of top law schools.<sup>20</sup> In addition, LPO companies also mention that their lawyers are supported by efficient legal secretaries and paralegals.<sup>21</sup>

### **The Legal System and the Enemy**

To the conservative Filipino lawyer, looking at the way LPO is practiced in the Philippines may cause her to sound the alarm. There seems to be a clash between the current LPO system and the laws governing the practice of law in the country. With these facts as the backdrop, we will examine the laws and institutions that govern the practice of law in the Philippines and determine if the profession, so jealously guarded by the conservative Filipino lawyer, is being undermined by the LPO system.

#### The First Version

The 1993 case *Ulep v. The Legal Clinic, Inc.*<sup>22</sup> is an important case in determining the legality of LPO in the country. At the same time, it is relevant in predicting the reaction of the Court and of the legal community to LPO.

The Legal clinic was a corporation that offered "legal support services" to the general public. Such services included "document search, evidence gathering, assistance to layman in need of basic institutional services from government or non-government agencies like birth, marriage, property, or business registration and obtaining documents like clearance, passports, local or foreign visas."<sup>23</sup> The clinic was staffed by law experts, not necessarily lawyers, who utilized modern computers and electronic machines. The business was conducted like a medical clinic. Clients would proceed to the office where their problems would be 'diagnosed.' If the problem was simple, the Legal Clinic would offer 'prescriptions,' such as drafting of deeds, while the client waited. On the other hand, if the problem was grave, the client would be referred to lawyers for more 'treatment.' In order to promote the business, the Legal Clinic published advertisements in newspapers.

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> G.R. Adm. Case No.553, (June 17, 1993).

<sup>23</sup> *Id.*

Mauricio Ulep, a member of the Bar, filed a case with the Court, stating that “as a member of the legal profession, he is ashamed and offended by the said advertisements.”<sup>24</sup>

The Court sought the opinion of Bar associations in the Philippines. All of them saw the Legal Clinic as a violator of the laws and rules that govern the practice of law. The Court, in consonance with the position of these Bar associations, identified numerous issues raised by the business of the Legal Clinic. These issues were the unauthorized practice of law by the non-legal staff, the prohibited practice of law by a corporation, and advertising of services by lawyers. The main defense of the Legal Clinic was that it was not practicing law, but was merely providing legal support services through its paralegals.

The decision of the Court relied heavily on the definition of the practice of law. Applying the rulings in two earlier cases, *Philippine Lawyers Association v. Agrava*<sup>25</sup> and *Cayetano v. Monsod*,<sup>26</sup> the Court held that “The practice of law, therefore, covers a wide range of activities in and out of court.”<sup>27</sup> It found that the services offered by the Legal Clinic amounted to the practice of law and was therefore unauthorized if carried out by its non-legal staff. The Court went further and dismissed the Legal Clinic’s claim that they rendered paralegal services, stating that “In the Philippines, we still have a restricted concept and limited acceptance of what may be considered as paralegal service.”<sup>28</sup>

The Court also found that the Legal Clinic’s advertisements were “undignified” and not fitting for the legal profession. It further mentioned that a corporation like the Legal Clinic cannot be organized to engage in the practice of law in the Philippines. The Court ended by prohibiting the Legal Clinic from conducting business.

The decision in this case points to two predictions as to the future of LPO in the Philippines. First, as the legal community disapproved the practices of the Legal Clinic in “selling” legal services, it may also find LPO as a means for legal services to be turned into commodities. Second, the Court may also be cool to the idea of outsourcing services, as it declared in the Ulep case that paralegal services are not widely accepted here.

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<sup>24</sup> *Id.*

<sup>25</sup> 105 Phil. 173

<sup>26</sup> G.R. No. 100113, September 3, 1991.

<sup>27</sup> Ulep v. The Legal Clinic Inc., *supra* note 22.

<sup>28</sup> *Id.*



### **Coding the Enemy into the Legal Matrix**

#### *The Second Version*

The *Ulep* case is valuable as it is parallel with many of the legal and ethical issues confronted by LPO in the country. The Legal Clinic is in many ways similar to the LPO system. Except that the Legal Clinic did not engage in offshore outsourcing, the services it provided are similar to the range of services offered by LPO companies. Even the Legal Clinic's characterization of its tasks as "legal support services" is akin to what LPO companies do. Moreover, like LPO companies, the Legal Clinic was also a corporation engaging in law-related work. Interestingly, the Legal Clinic was put up way before Bickel and Brewer, the original outsourcing US firm, ever put up an LPO office in India. Perhaps it can be said that the Legal Clinic was an earlier version of LPO companies. The *Ulep* case may therefore be used as a template in identifying the legal and ethical issues facing the LPO industry in the Philippines. In the following section, we will discuss the issues raised in the *Ulep* case, as applied to the LPO system. Further, we will attempt to explore the bounds of ethical lawyering in the Philippines so that we may find out if there is indeed a place for LPO in our legal matrix.

#### *Unauthorized Practice of Law*

The overarching issue for LPO is the unauthorized practice of law. There is a mandate that only those admitted to the Philippine Bar can engage in the practice of law in the Philippines.<sup>29</sup> Moreover, lawyers are enjoined from directly or indirectly assisting in the unauthorized practice of law.<sup>30</sup> For LPO companies, these proscriptions mean two things. One, if an LPO company employs non-lawyers and the services they offer qualify as practice of law, then they are violating the prohibition on non-lawyers to engage in the legal profession. Second, and more importantly, if an LPO company employs lawyers and their legal services are used in foreign countries like the US where these lawyers have no license to practice, then they may be engaging in the unauthorized practice of law there. This means that the company is in violation of the rules and, in addition, their lawyer-employees are violators of Canon 9 of the Code of Professional Responsibility.

As in the *Ulep* case, this issue greatly depends on how the "practice of law" is defined in the Philippines. The leading case is *Agrava* where practice of law was defined as:

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<sup>29</sup> RULES OF COURT, Rule 138, sec.1.

<sup>30</sup> CODE OF PROFESSIONAL RESPONSIBILITY, Canon 9, Rule 9.01.

The practice of law is not limited to the conduct of cases or litigation in court; it embraces the preparation of pleadings and other papers incident to actions and special proceedings, the management of such actions and proceedings on behalf of clients before judges and courts, and in addition, conveying. In general, all advice to clients, and all action taken for them in matters connected with the law incorporation services, assessment and condemnation services contemplating an appearance before a judicial body, the foreclosure of a mortgage, enforcement of a creditor's claim in bankruptcy and insolvency proceedings, and conducting proceedings in attachment, and in matters of estate and guardianship have been held to constitute law practice, as do the preparation and drafting of legal instruments, **where the work done involves the determination by the trained legal mind of the legal effect of facts and conditions.**<sup>31</sup> (Emphasis supplied)

In *Cayetano*, the Court also defined the practice of law in broad terms. It stated that:

Practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. "To engage in the practice of law is to perform those acts which are characteristics of the profession. **Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill.**"<sup>32</sup> (Emphasis supplied)

These decisions characterize the practice of law in very general language. What can be gleaned from these cases is that anything that involves the use of legal training in rendering any service characteristic of the legal profession constitutes the practice of law. Applying this to the services rendered by LPO companies, which include legal research, legal analysis of documents and drafting of legal papers, it can be deduced that LPO companies will always be involved in the practice of law. After all, as the Court said, anything that involves the use of the legal mind amounts to the practice of law.

Putting this in juxtaposition with the formal opinions of Bar associations in the US, which treat the offshore lawyer as a non-lawyer assistant, employees in an LPO company is stripped of any authority to practice law at all.

Hence, going by the declaration of the Court in the *Ulep*, *Agrava* and *Cayetano* cases and the formal opinion of Bar associations in the outsourcing country, LPO companies in the Philippines will always be guilty of violating the proscriptions against the unauthorized practice of law.

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<sup>31</sup> *Supra* note 25.

<sup>32</sup> *Supra* note 26.

There is, however, a way to meet this issue. The solution lies on two things – the kind of work done in LPO companies and, as in the strategy of US Bar associations' formal opinion, the "coding" of employees in a way that can be accommodated by the legal matrix.

Before "coding" these employees, we must first differentiate the non-legal staff from the legal staff of LPO companies. This can be done by requiring the non-legal staff to perform purely non-legal work. In other words, to avoid the unauthorized practice of law issue, the non-legal staff must provide support services only. As in traditional law firms, they must act as legal secretaries and assistants.

The legal staff of LPO companies involves an entirely different matter. In this jurisdiction, treating them as non-lawyers, as suggested by the US Bar associations, is not logically and legally sound. "Coding" them as non-lawyers works for the US jurisdiction as it solves the unauthorized practice of law there. If they are not treated as lawyers there and the US lawyers are ultimately responsible for their work, then no one will be pinpointed as practicing without a license. It is the US lawyer who actually practices while the offshore lawyer is just an "assistant" or a paralegal.

The problem, however, is that treating LPO lawyers as non-lawyers in the Philippines will always make them guilty of unauthorized practice of law, given our very permissive definition of what constitutes such a practice. Moreover, the lawyer-paralegal relationship proposed by the US Bar associations' opinion will not work in the Philippines. As the Court mentioned in *Ulep*, we have a restricted concept and limited acceptance of paralegal service.<sup>33</sup> Furthermore, this "coding" fails to acknowledge the reality that outsourcing firms choose LPO providers precisely because these providers have competent lawyers who work on their projects.

Hence, the way to address the issue is to "code" Filipino LPO lawyers for what they really are. They should be treated as lawyers who render legal advice to clients. In other words, the transactions involved in LPO should be depicted in this way - the outsourcing client seeks legal advice to the LPO lawyer who in turn responds to the matter. Such a depiction is in consonance with reality because clients really do come to LPO companies because of the lawyers that they employ. The transaction in itself calls for the use of legal knowledge, and as a licensed lawyer, the LPO employee can adequately respond without being branded as engaging in the unauthorized practice of law.

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<sup>33</sup> *Supra* note 22.

Admittedly, this “coding” does not address the issue of whether the Filipino LPO lawyer is involved in the unauthorized practice of law in a foreign jurisdiction if the client is an offshore outsourcing client. The US Bar associations’ opinion is vital here. The offshore outsourcing client must always be a lawyer. This is necessary because it is the foreign lawyer who will legitimize the work of the Filipino LPO lawyer in the foreign jurisdiction. Hence, instead of characterizing the relationship as lawyer-paralegal, the relationship should be lawyer-lawyer. The foreign outsourcing lawyer seeks advice from the Filipino LPO lawyer. The Filipino LPO lawyer responds. In the foreign jurisdiction, the Filipino LPO lawyer’s work has no legal value since it is done by a non-practitioner there. It is for the outsourcing foreign lawyer alone that the work is done. Ultimately, the foreign outsourcing lawyer will then exercise independent professional judgment as to whether the work can be used for her client’s behalf. In effect, it is the foreign outsourcing lawyer who actually practices law in her own jurisdiction. The Filipino LPO lawyer’s work is merely a kind of research. This is an approach also proposed by the San Diego Bar. According to its formal opinion, “although the nature of the work the firm performed in India would constitute the unauthorized practice of law if foreign lawyers had done the work directly for the client, the fact that the work was contracted for by a California lawyer who in turn exercised independent professional judgment in deciding how and whether to use the work on the client’s behalf did not result in the lawyer aiding the unauthorized practice of law in violation of California law.”<sup>34</sup>

This therefore necessitates that for LPO to be legal and ethical here, LPO companies must cater only to lawyers as clients. This is unavoidable because it is the foreign lawyer who “converts” the work into something that is legal and valuable in the foreign jurisdiction. LPO companies and their lawyers must therefore never deal directly with non-lawyer clients from foreign jurisdictions. The foreign lawyer must always stand in between its direct client and the LPO companies in the Philippines. The foreign lawyer is the “converter” or in the world of Neo in *The Matrix*, the foreign lawyer is the Keymaker.

In such a framework, moreover, since the Filipino LPO lawyer is “coded” as a lawyer in this jurisdiction, then the Code of Professional Responsibility will be fully operational. Other ethical issues involved in the conduct of the LPO business will therefore be dealt with in accordance with the rules that govern practice of law in the country.

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<sup>34</sup> San Diego Co. Bar Ass’n Legal Ethics Comm., Form Op. 2007-1 (2007).

*Prohibited practice of law by corporations*

Another hurdle that must be faced by LPO companies is the prohibition for corporations to practice law.<sup>35</sup> The underlying reason for this is that a corporation, being a juridical entity, cannot comply with the requirements for admission to the Bar. Moreover, allowing a corporation to employ lawyers to practice law hampers the attorney-client relationship in that the lawyer's loyalty is divided between the corporation and her client.<sup>36</sup>

Hence, for LPO corporations to be able to engage in the LPO industry in the Philippines legally and ethically, they must change the way they conduct business. One way is to act as "agents" for Filipino lawyers. In other words, LPO companies can limit themselves to being conduits. They would provide the means for foreign clients to contact Filipino lawyers in the country. In turn, Filipino lawyers would go to the LPO companies if they seek to communicate with foreign clients. In this set-up, LPO corporations and Filipino LPO lawyers have no employer-employee relationship. The LPO corporations' business would be to act as agents or brokers for lawyers in the Philippines. Filipino lawyers would then be the ones who would directly conduct the LPO business.

Another possibility is for Filipino law partnerships to conduct LPO operations themselves. Hence, LPO corporations should be taken out of the picture. Since the partnership is the only recognized business organization for lawyers in the Philippines, law partnerships will then be the players in the LPO industry.

These two proposed alternatives will unavoidably affect the efficiency of LPO in the Philippines. However, unless something like the UK's Legal Services Act<sup>37</sup> allowing the formation of alternative business structures for the practice of law is promulgated in the Philippines, there is no going around the issue.

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<sup>35</sup> RULES OF COURT, Rule 138, sec. 1.

<sup>36</sup> R. Agpalo, COMMENTS ON THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE CODE OF JUDICIAL CONDUCT 93 (2004).

<sup>37</sup> UK Legal Services Act (2007).

*Conflict of Interest*

Canon 15 of the Code of Responsibility imposes a strict obligation on lawyers to observe candor, fairness and loyalty in dealing with their clients. In furtherance of this duty, a lawyer is required to ascertain, as soon as possible, if there is conflict of interest between a prospective client and the lawyer's own interest or that of her clients.<sup>38</sup> This duty is of such importance that the Supreme Court in one case mentioned, "an attorney owes loyalty to his client not only in the case in which he has represented him but also after the relation of attorney and client has terminated as it is not good practice to permit him afterwards to defend in another case other person against his former client under the pretext that the case is distinct from, and independent of the former case."<sup>39</sup>

While endeavoring to be loyal to this duty is hard enough for the conventional lawyer, the situation becomes even harder for a lawyer working in the LPO industry. When lawyers work under one large business organization, the possibility that lawyers may end up accepting projects involving conflict of interest is increased. That the projects come from offshore, without the LPO lawyers meeting the clients face to face, worsens the situation.<sup>40</sup>

The ethical conduct of the LPO business, therefore, requires that mechanisms be put in place to avoid conflict of interest situations. Hence, a system for tracking work performed for clients must be put in place. A policy of cross-checking prospective clients with existing and previous projects must be enforced. Through this, LPO lawyers can easily ascertain if the prospective client's interest will clash with some other interest of the LPO lawyers and their clients.

A standard clause to the effect that there is no conflict of interest and that the Filipino LPO lawyers will not use information obtained from the client in any improper way should be placed in written contracts signed by the foreign client and the Filipino LPO lawyers.

An LPO company may accept a project which poses a possible conflict of interest situation only when the client gives her consent in written form and after a disclosure of the facts.<sup>41</sup> In such situations, the LPO company must be able to establish "Chinese walls" between and among lawyers.<sup>42</sup>

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<sup>38</sup> CODE OF PROFESSIONAL RESPONSIBILITY, Canon 15, Rule 15.01.

<sup>39</sup> *Rosacia v. Bulalacao*, G.R. Adm. Case No. 3745, (October 2, 1995).

<sup>40</sup> S. Bennet, 'The Ethics of Legal Outsourcing,' Available at <http://www.nysba.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=32107> (last visited July 16, 2010).

<sup>41</sup> CODE OF PROFESSIONAL RESPONSIBILITY, Canon 15, Rule 15.03

<sup>42</sup> S. Bennet, *op. cit. supra* note 40

*Privileged Communication*

Intimately related to a lawyer's duty to avoid conflict of interest is her duty to protect information disclosed by her client.<sup>43</sup> The duty extends even beyond the termination of the attorney-client relationship. According to the Court, professional confidence is not divested by the termination of the professional relationship or by the death of the client.<sup>44</sup> Furthermore, the lawyer's duty extends beyond her personality. The lawyer must also "adopt such measures as may be required to prevent those whose services are utilized by him, from disclosing or using confidences or secrets of the clients."<sup>45</sup>

In the world of LPO where communication is usually done through overseas telephone calls and the World Wide Web, the ability to safeguard client secrets or confidences is significantly diminished.<sup>46</sup> This places an even greater duty on the part of the LPO lawyer catering to the needs of an offshore client.

A safe communications system is therefore key to running an ethical LPO business in the country. As suggested by the New York State Bar, certain measures such as restricting access to secrets and confidences must be put in place.<sup>47</sup> The LPO lawyer also has a duty to insure that the non-legal staff does not disclose information obtained from clients. To this end, the prudent step would be to include non-disclosure clauses in contracts between LPO lawyers and their clients and in the employment contracts signed by non-legal employees.

*Advertising services to the public*

As early as 1929, the Court has already declared that advertising is unethical for lawyers elucidating that "The law is a profession and not a business. The lawyer may not seek or obtain employment by himself or through others for to do so would be unprofessional."<sup>48</sup> In subsequent cases, the Court has refused to change this rule notwithstanding the change in policy of other jurisdictions. In *Ulep*, the Court further explained that "The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity

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<sup>43</sup> CODE OF PROFESSIONAL RESPONSIBILITY, Canon 21

<sup>44</sup> *Hilado v. David*, G.R. No. 961, (September 21, 1949).

<sup>45</sup> CODE OF PROFESSIONAL RESPONSIBILITY, Canon 21, Rule 21.05.

<sup>46</sup> J. Henessey, *Outsource your IP legal work at your client's – and your peril*, 1 No. 3 *Landslide* 46,49 (2009).

<sup>47</sup> B. Miller, *The Ethical Considerations of Legal Outsourcing*, 32 J. LEGAL PROF. 259, 270 (2008).

<sup>48</sup> *In Re Tagorda*, 53 Phil. 37 (1929).

and fidelity to trust.”<sup>49</sup> The LPO industry in the Philippines, in order to be ethical, must take this proscription into consideration. Since under the framework we have proposed, the conduct of business by LPO should be treated as a practice of law, the ban on advertising must also apply to them. This means that the LPO industry cannot follow the business practice of other BPO industries when it comes to promoting their services.

But this does not necessarily mean that LPO companies cannot advertise at all. In *Ulep*, the Court said that the advertising ban is not absolute. Certain forms of advertising may be acceptable so long as they are “dignified.” “The first of such exceptions is the publication in reputable law lists, in a manner consistent with the standards of conduct imposed by the canons, of brief biographical and informative data... The use of an ordinary simple professional card is also permitted. The card may contain only a statement of his name, the name of the law firm which he is connected with, address, telephone number and special branch of law practiced. The publication of a simple announcement of the opening of a law firm or of changes in the partnership, associates, firm name or office address, being for the convenience of the profession, is not objectionable. He may likewise have his name listed in a telephone directory but not under a designation of special branch of law.”<sup>50</sup>

This limit on advertising will definitely affect LPO in the Philippines. Without active advertising machinery, LPO in the country simply cannot compete with other LPO hubs like India and China. However, under the existing rules and laws, LPO companies operating in the Philippines must conform to the standards of “dignified” advertising of the practice of law.

### Forcing the Gates Open

Outsourcing is indeed flattening the world. Technology is changing life as we know it. The change is perhaps inevitable. Whether we approve of these changes or not, they have begun and unless we make a decision now to refuse riding the waves of change, they will not stop anytime soon. Such a refusal, however, is never guaranteed to succeed. There is no assurance that such a refusal can halt the change.

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<sup>49</sup> *Supra* note 22.

<sup>50</sup> *Supra* note 22.



“Various legal sourcing advocates argue that every other profession and industry has embraced technology, deregulation, and globalization.”<sup>51</sup> In the UK, the Legal Services Act was passed to liberalize the practice of law. In the US, legal communities are rapidly opening its gates to LPO. In India, lawyers have fully embraced LPO as an alternative career. In fact, they now have a system for the issuance of a ‘Global Legal Professional Certification’ to make their LPO companies more competitive.<sup>52</sup> For all these countries, the opening of the gates for LPO is also revolutionizing the legal profession.

The traditional law firm model is being challenged. The system of training new associates is becoming less practical as the jobs that they are usually assigned to do are now given to LPO companies in other countries. “Graduates without the practical skills needed to provide clients value on the first day of practice will be at a severe disadvantage. This, in turn, will affect the way law students are educated and trained.”<sup>53</sup>

Clients are becoming more adamant in demanding value for their money. “Legal practice is changing, not because lawyers want it to but because clients are changing it for them--increasingly insisting that attorneys utilize the discipline driven by the same market forces to which every other business is subject.”<sup>54</sup>

This change is spreading at a rapid pace owing to how easy it is to transfer information from one side of the world to the other. The legal profession in the Philippines is now facing a choice – open up to change or be secluded from the rest of the world. The conservative Filipino lawyer is at a crossroads – to continue the jealous guarding of the legal profession from the infusion of business practices or to allow the way of the marketplace to liberalize the practice of law.

The answer to this entails a change in perspective. In a country where lawyers are regarded with so much reverence, where lawyers perpetuate the image of being beyond reproach, where the law and the Bench continue to view the simple act of advertising as a perversion of the noble profession, there is hardly any room for an industry where legal services are unbundled and given a fixed price. Indeed, the bounds of ethical lawyering in the Philippines can be stretched, but at a certain point, the lines will necessarily break.

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<sup>51</sup>D. Steiger, *The Rise of Legal Outsourcing: How vendors and clients are changing legal business models*, 19 DEC BUS. L. TODAY 39, 42 (2009).

<sup>52</sup>S. Borsand, A. Gupta & T. Brown, *Public and Private Sector Legal Process Outsourcing: Moving Toward a Global Model of Legal Expertise Deliverance*, 1 PACE INT'L L. REV. 1, 18 (2009).

<sup>53</sup>*Supra* note 51

<sup>54</sup>*Id.* at 43

Perhaps now is the time to consider whether the visitors knocking at the gates should be welcomed or driven away. To truly welcome them means that the bounds must not only be stretched, some of the lines must be replaced. Some laws must be altered. An entire perspective must be adjusted. On the other hand, to drive them away means facing the consequences of the inability to ride the waves of change.

Technology has always been viewed from two distinct perspectives. On one hand, it is blamed for many of the problems facing humankind today. On the other hand, it is responsible for how life has become so much easier for the rest of the world. We hate it and yet we love it.

In 1984, Apple Computers released an advertisement promising the whole world that the advent of an era of user-friendly computers will liberate the human mind. Today, user-friendly computers have become a way of life. In 1999, *The Matrix* explored the clash between artificial intelligence and the human mind. Today, human beings are virtually helpless without any piece of technology around. In 1995, Brewer and Bickel began the LPO trend. Today, the Philippine legal profession must decide if the trend tells the story of 1984 or that of 1999. Until it does, change continues to knock at the gates.