

April 29, 2011

# Moving Beyond the Pyramid: Exploring Alternative Lawyer Staffing Models

NALP 2011 Annual Education Conference

Palm Springs, CA

PREPARED BY

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The following materials were presented to the NALP 2011 Annual Education Conference in Palm Springs, CA on April 29, 2011. These materials are incomplete without the substantial material accompanying discussion.

# Hoffman Alvary & Company LLC

- Management consulting to law firms across the country
- Areas of focus:
  - Associate structure (including on-track and off-track progression models and compensation plans)
  - Lateral growth strategy (including optimizing lateral hiring initiatives)
  - Strategic growth, mergers and acquisitions (including target firm identification and analysis)
  - Strategic planning for firms, practice groups, industry groups, and client teams
  - Partnership practices and governance (e.g., compensation, retirement, succession planning, and practice group management)
  - Marketing and client service plans and training for both partners and associates
  - Alternative fee arrangements and project management training
  - Hours and earnings improvement programs
  - Annual Hoffman Alvary Survey™ on Law Firm Economics

# Marie Lefton, Esq. Principal, Hoffman Alvary & Company LLC

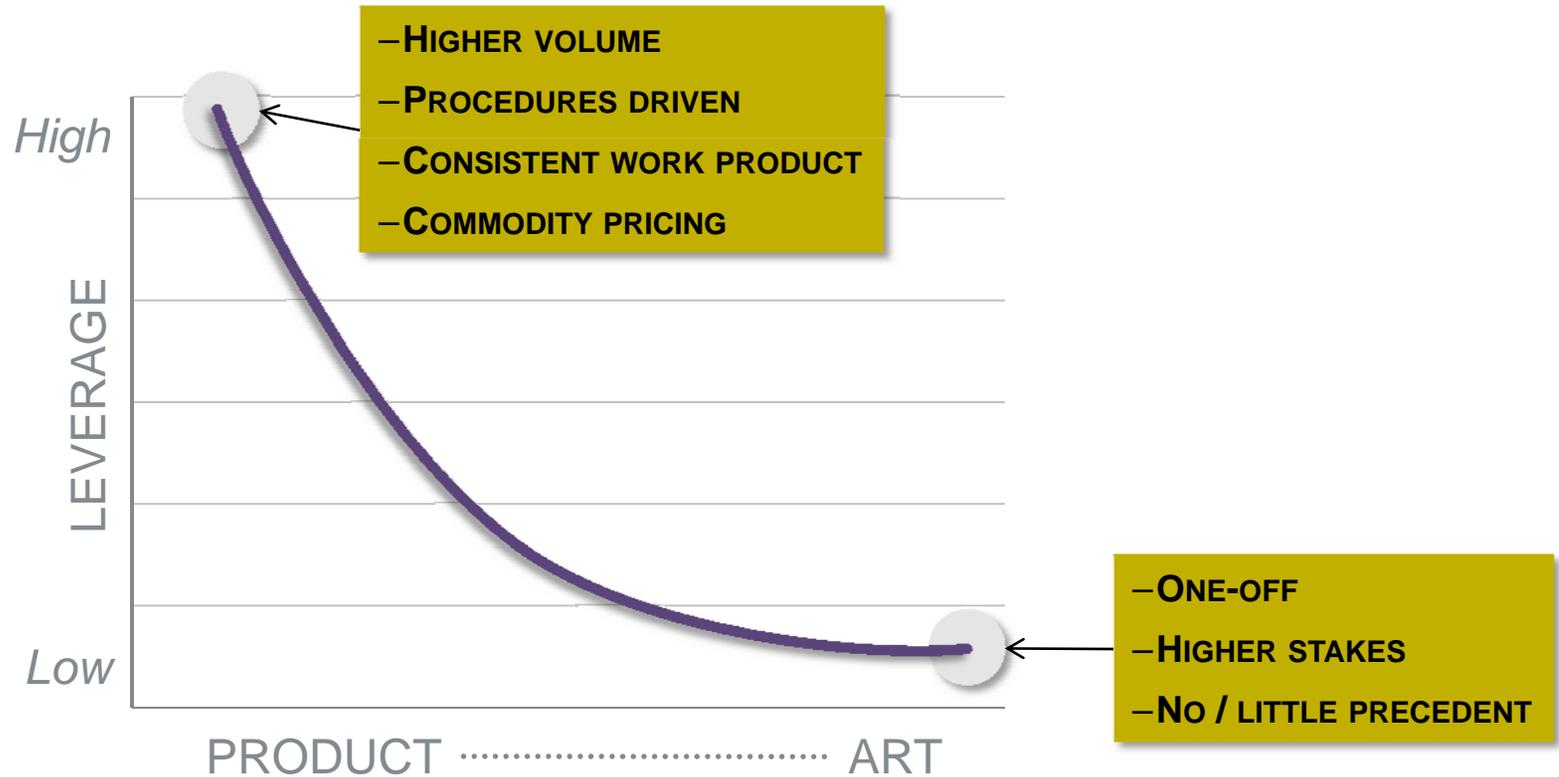


Education:  
Yale University  
*Summa Cum Laude*  
*Phi Beta Kappa*  
B.A. in Political Science and Philosophy  
  
Harvard Law School  
*Cum Laude*  
Juris Doctor

- 28 years of experience with AmLaw 100 firms
- Litigation partner at Goodwin Procter
- Director of Professional Practice for Mintz Levin for 10 years
  - Supervised much partner and associate hiring during a period of extraordinary growth, including the opening of a New York office
  - Also served as Acting Director of Marketing for an extended period
- Chief Strategic Planning Officer for Fish & Richardson for 7 years
  - Supervised much partner and associate hiring
  - Supervised office openings in Atlanta, Houston and Munich
- Associate staffing models, including career paths for off-track lawyers
- Partnership structures and tier systems
- Evaluation and review processes for both partners and associates
- Implementation and integration programs following new office openings and major lateral acquisitions
- Business development programs and marketing programs
- Fixed fee and other alternative pricing models

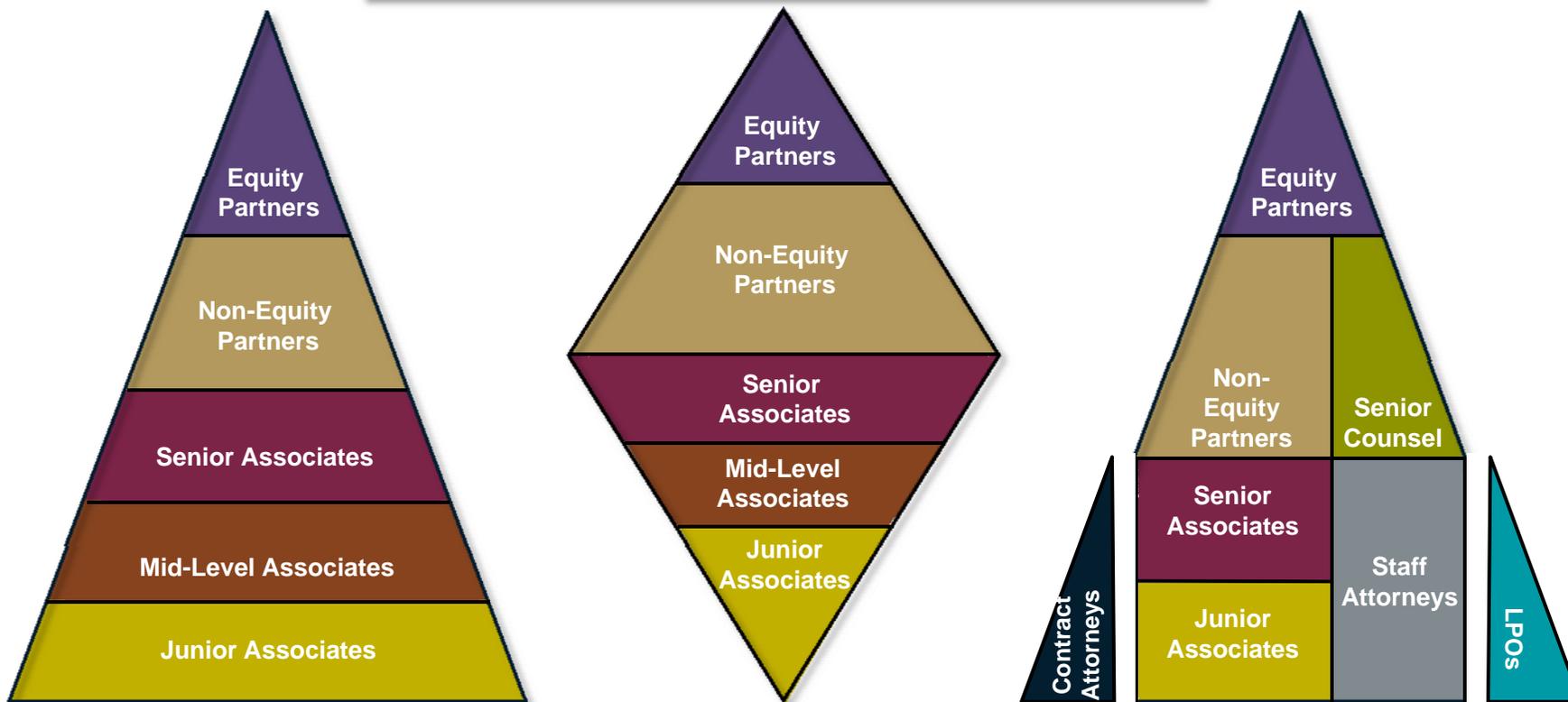
# Non-Traditional Models May Be Suited to the Nature of the Work

- Extent to which the work is a product, distinct from the practitioner
- Match of the leverage model to the work to be performed



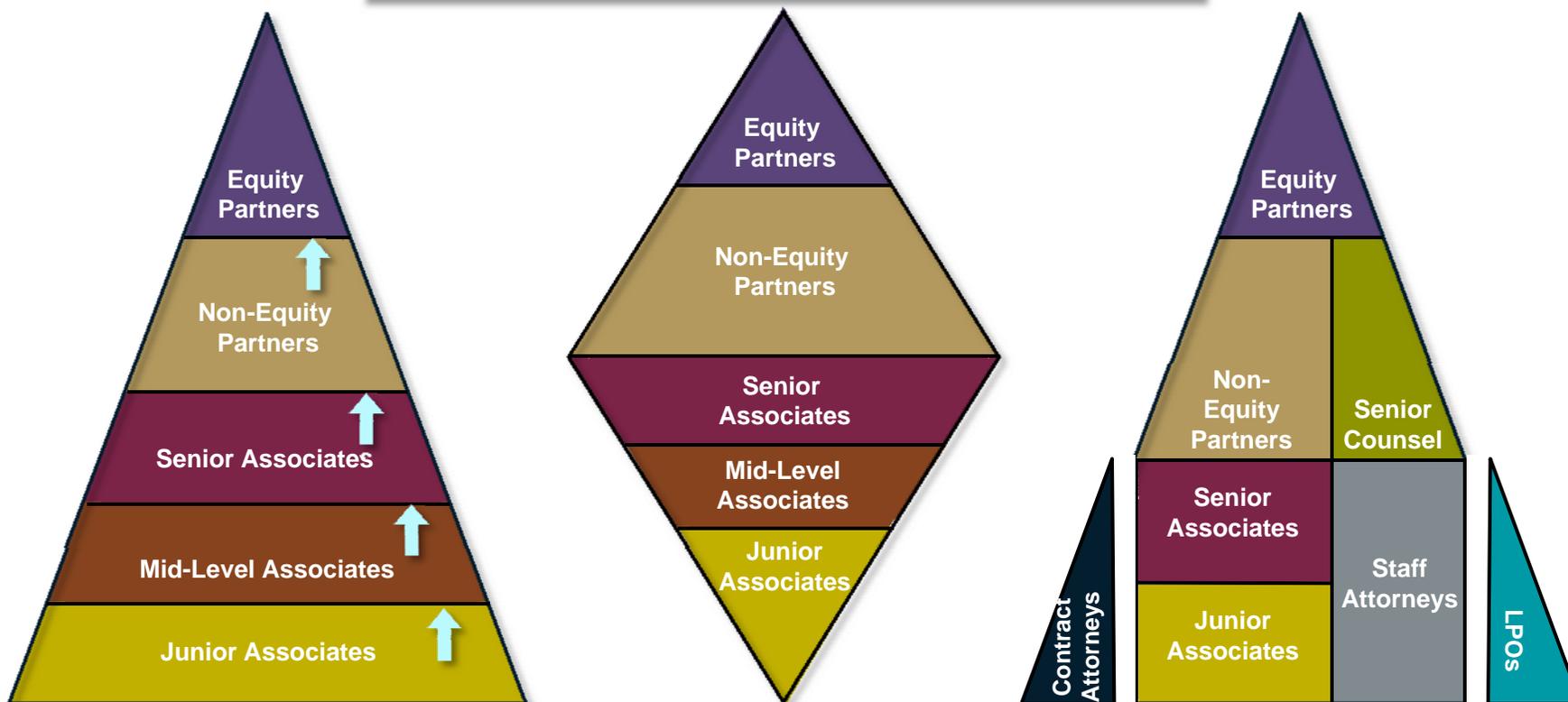
# Topics Today – Structural Alternatives and Their Pros and Cons

- ADMISSIONS CONSIDERATIONS AND PARTNERSHIP TIERS
- COMPETENCY MODELS
- STAFF ATTORNEY CONSIDERATIONS
- OUTSOURCING AND TEMPORARY ATTORNEYS



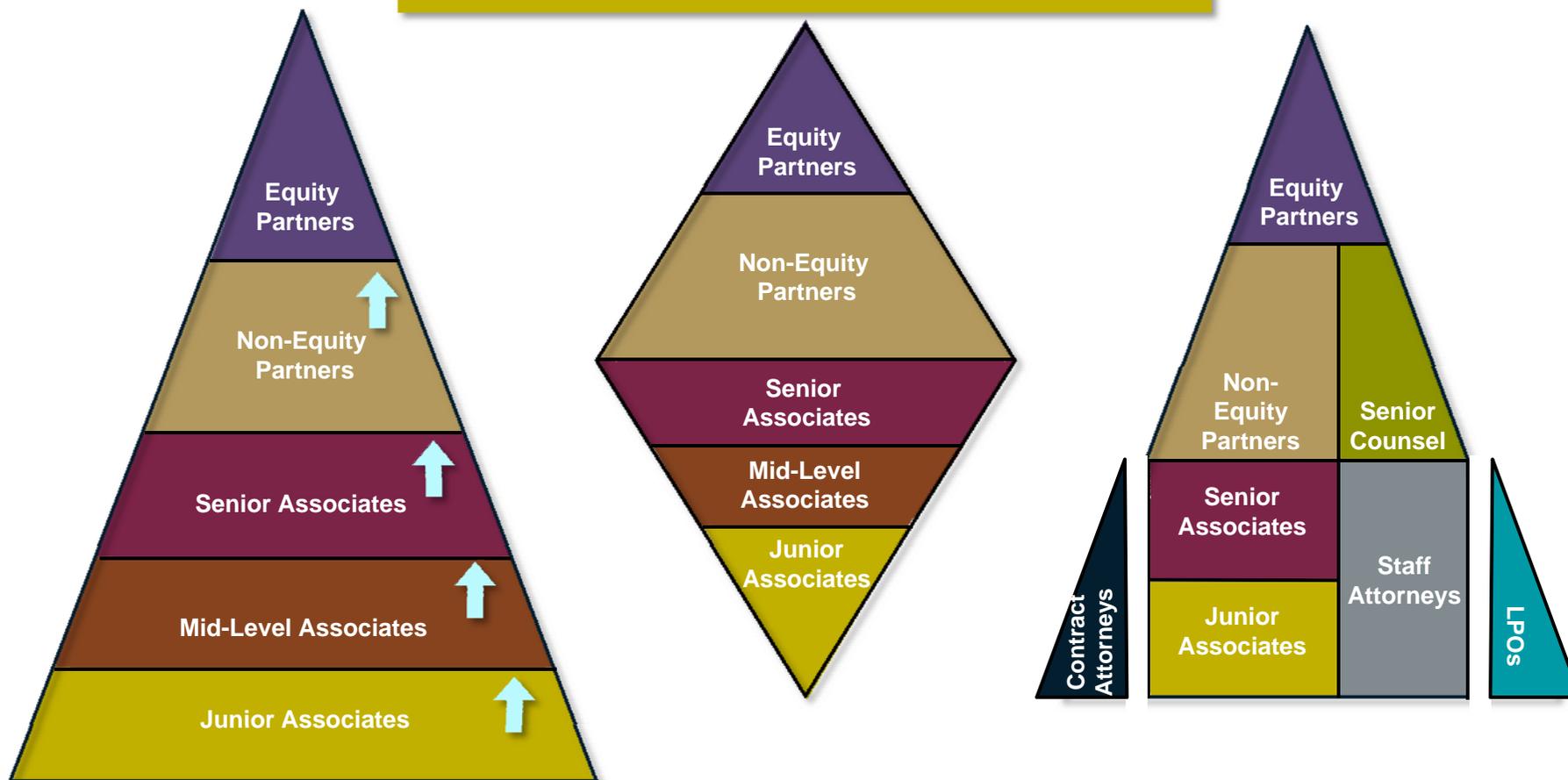
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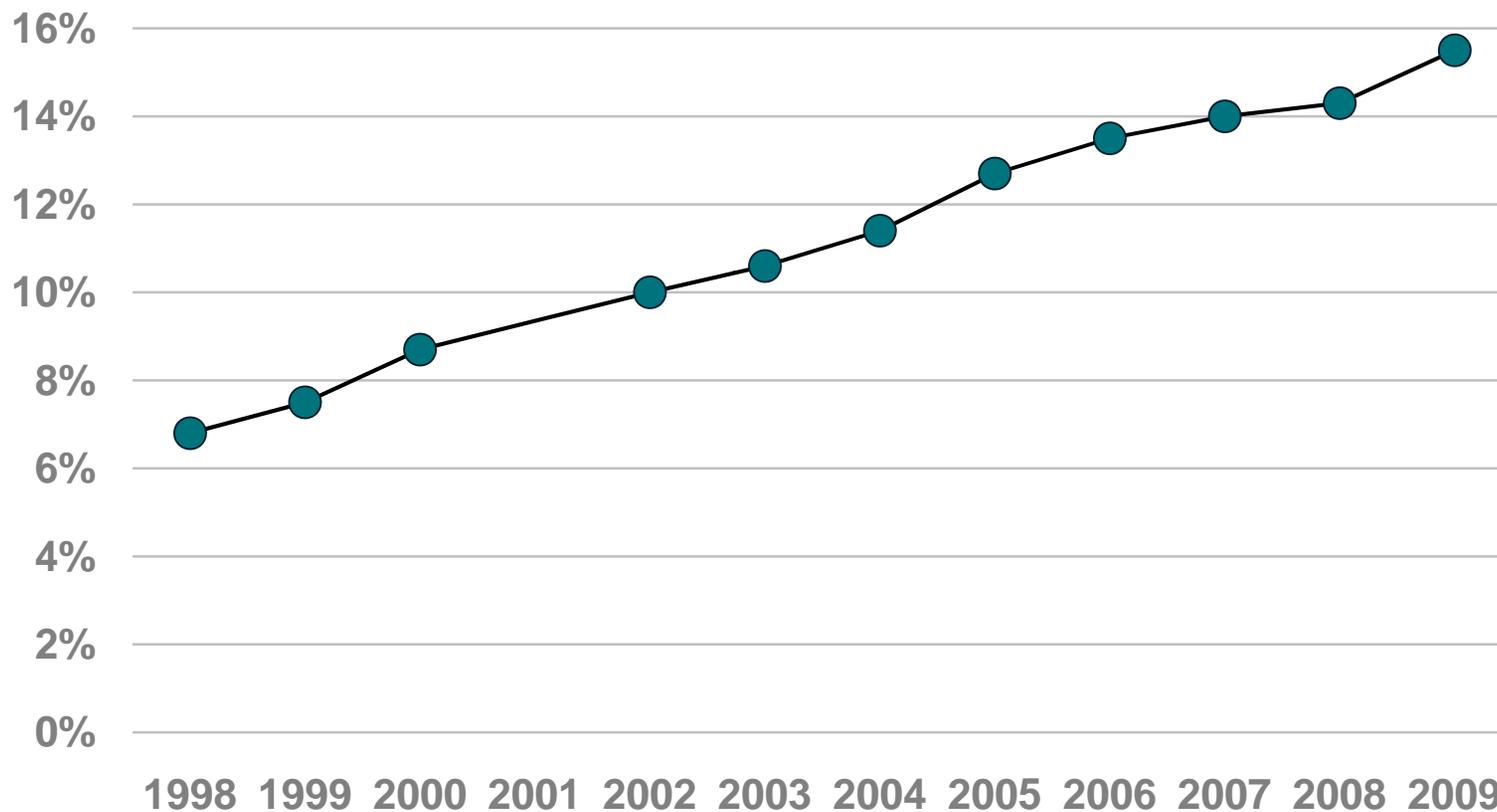
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# Over 15% of Big Law Lawyers Are Non-Equity Partners

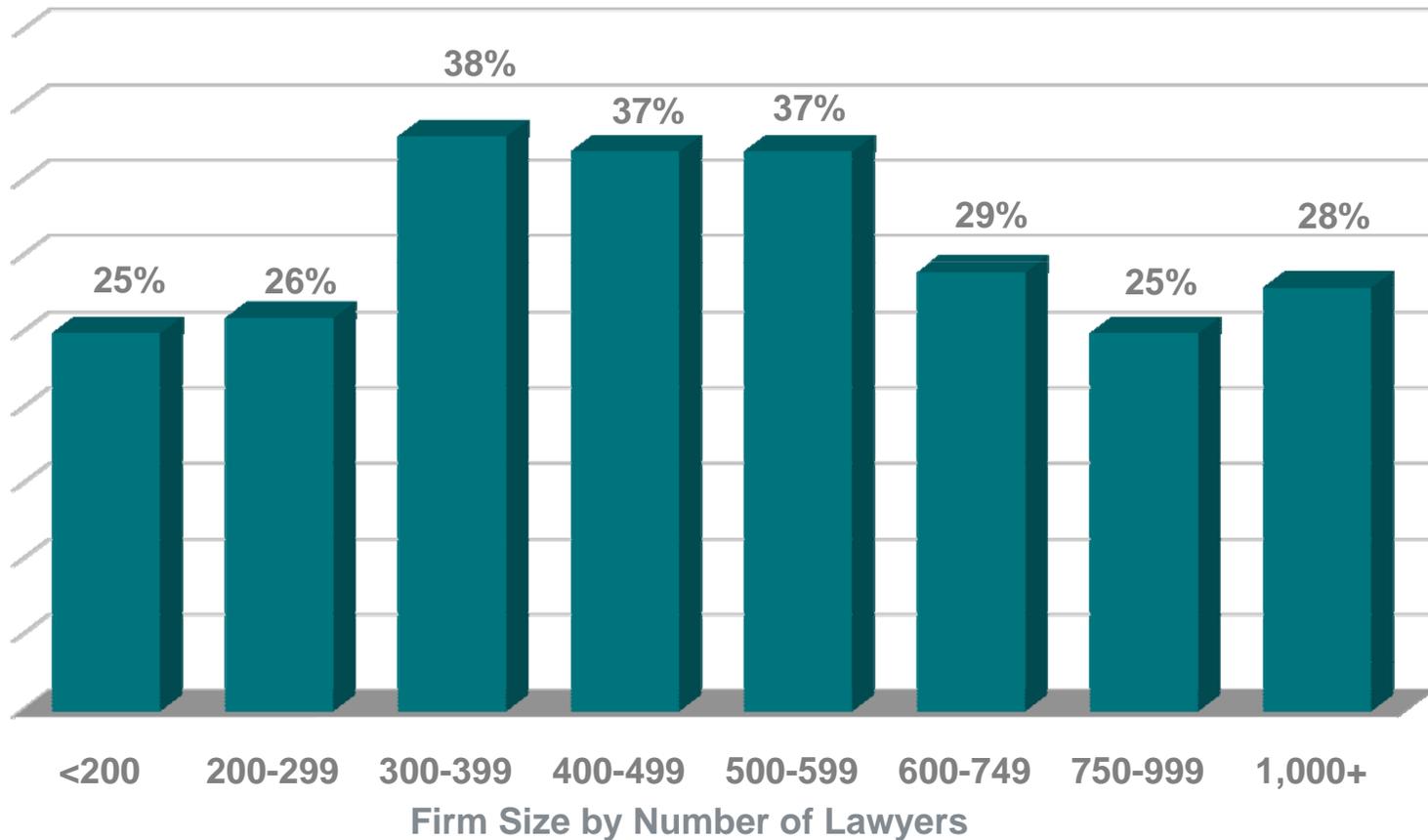
## Percent of Lawyers in AmLaw 200 Identified as Non-Equity Partners



Source: AmLaw 200, The American Lawyer; 2001 data did not include non-equity partner counts

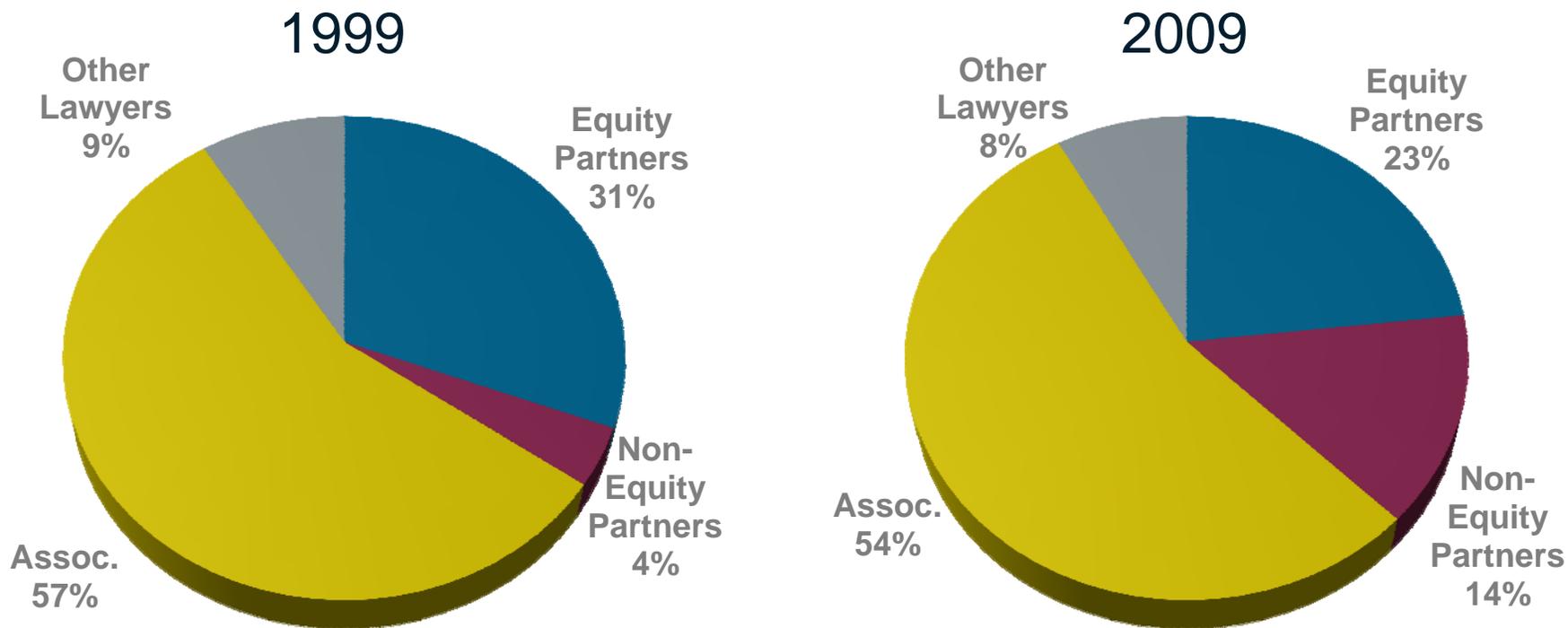
# Non-Equity Partners Are Part of the Fabric in Firms of All Sizes

## Non-Equity Partners as a Percentage of Total Partners



Source: NLJ250, The National Law Journal

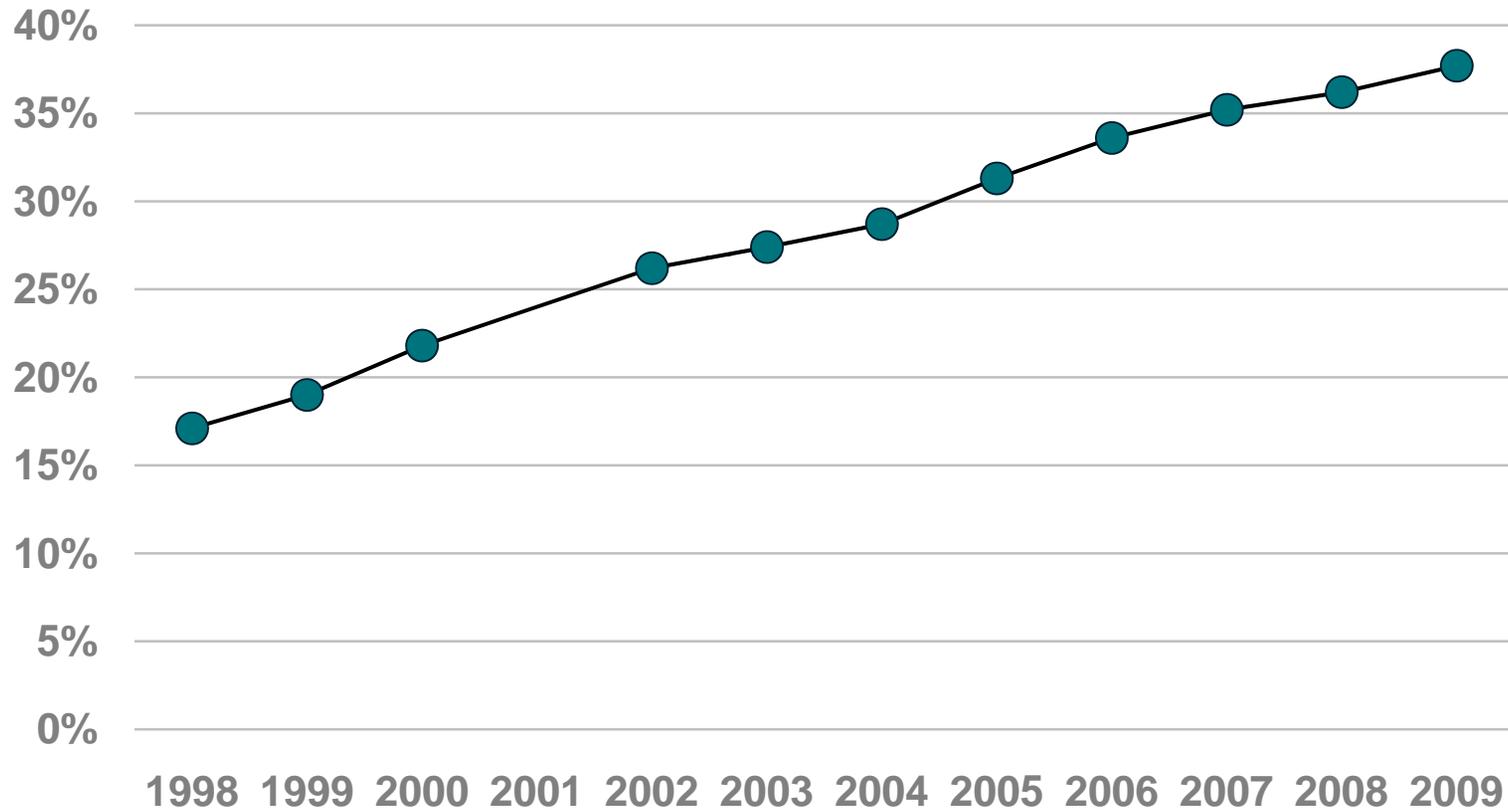
# The Leverage Model Has Shifted, Even Among the Largest Firms



Source: NLJ 250, National Law Journal; AmLaw 100, The American Lawyer

# Nearly 40% of Big Law Partners Are Non-Equity Partners

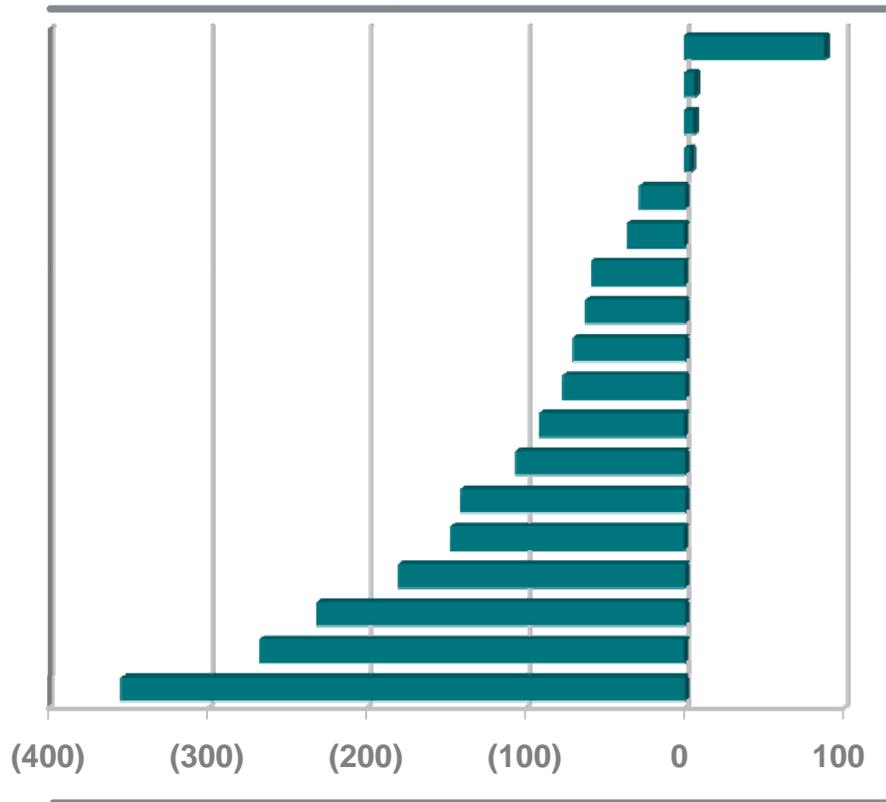
## Percent of Partners in AmLaw 200 Identified as Non-Equity Partners



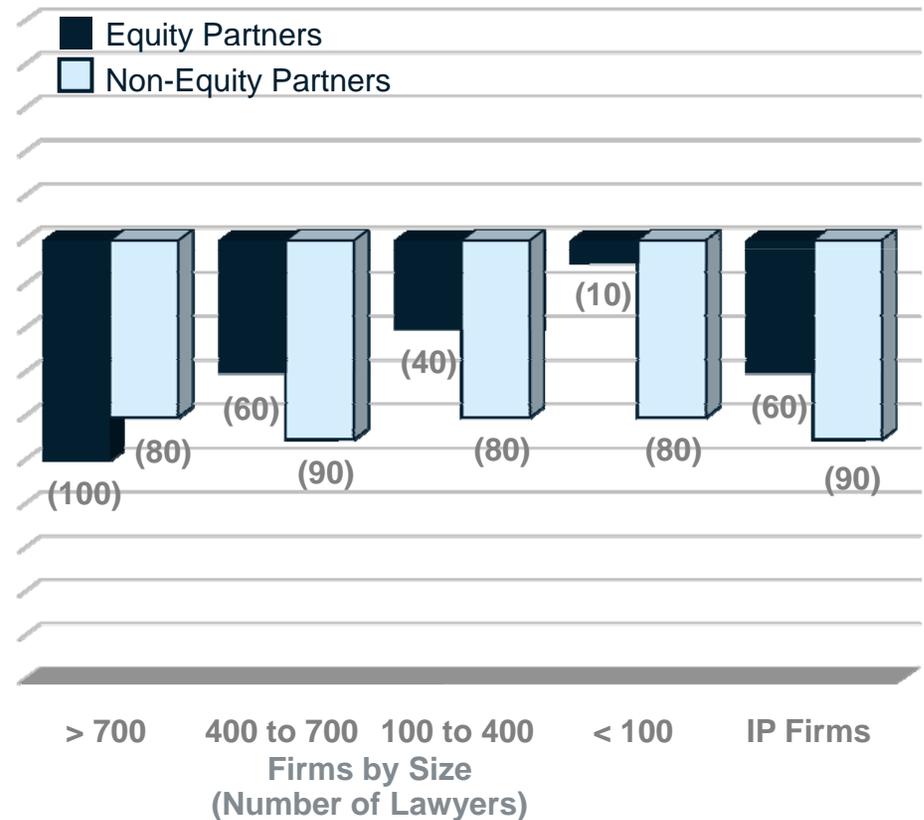
Source: AmLaw 200, The American Lawyer; 2001 data did not include non-equity partner counts

# Non-Equity Partners Face Disproportionate Reductions in Hours During Recessions

## Change in Non-Equity Partner Average Hours 2007-08 by Firm

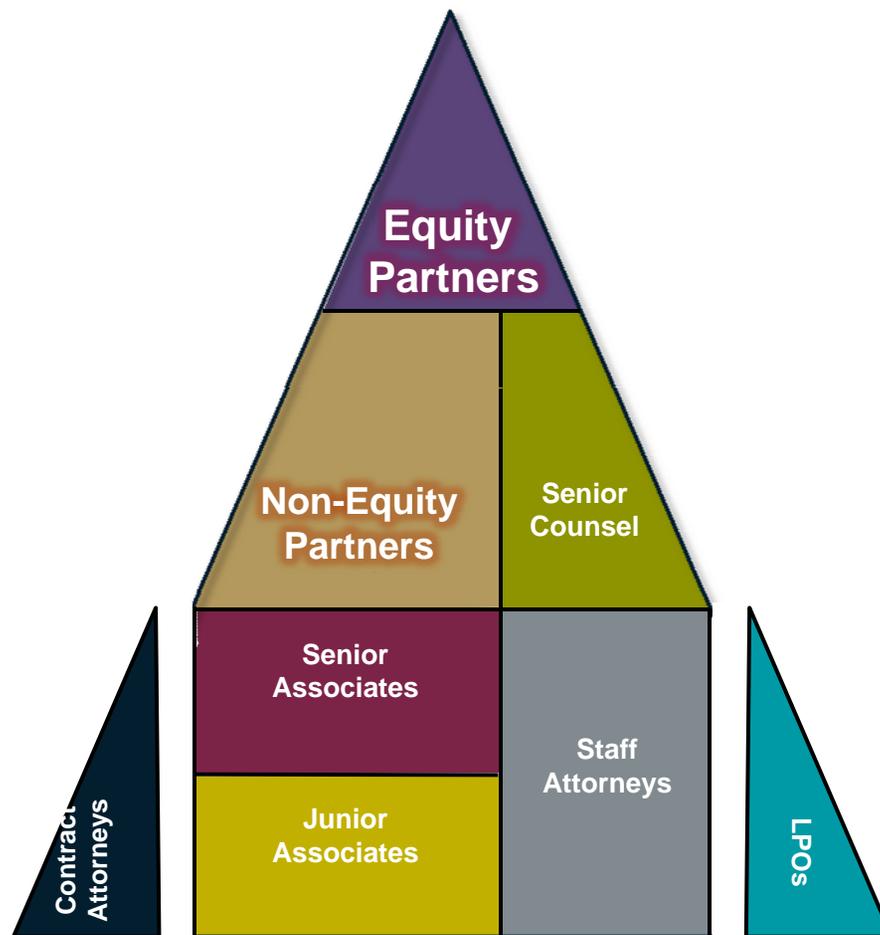


## Decline in Average Hours 2007-09



Source: Hoffman Alvary Survey on Law Firm Economics™ for 2008; chart on left includes eighteen firms not based in New York with total revenue of \$250 million or more; chart on right includes seventy firms

# Non-Equity Partners and the Equity Partner Decision



# Many Firms Still Need to Generate Clear Concepts of Contribution for Equity Admissions

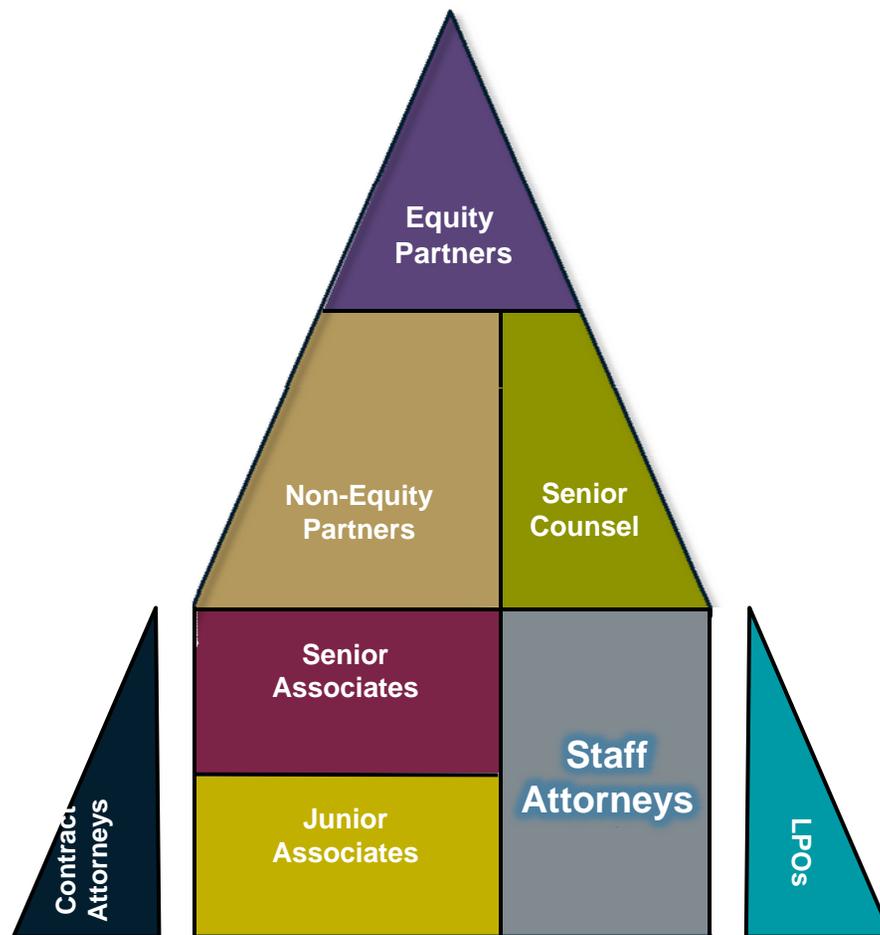
## Professional / Behavioral Contributions

- Long articulated

## Economic Contributions

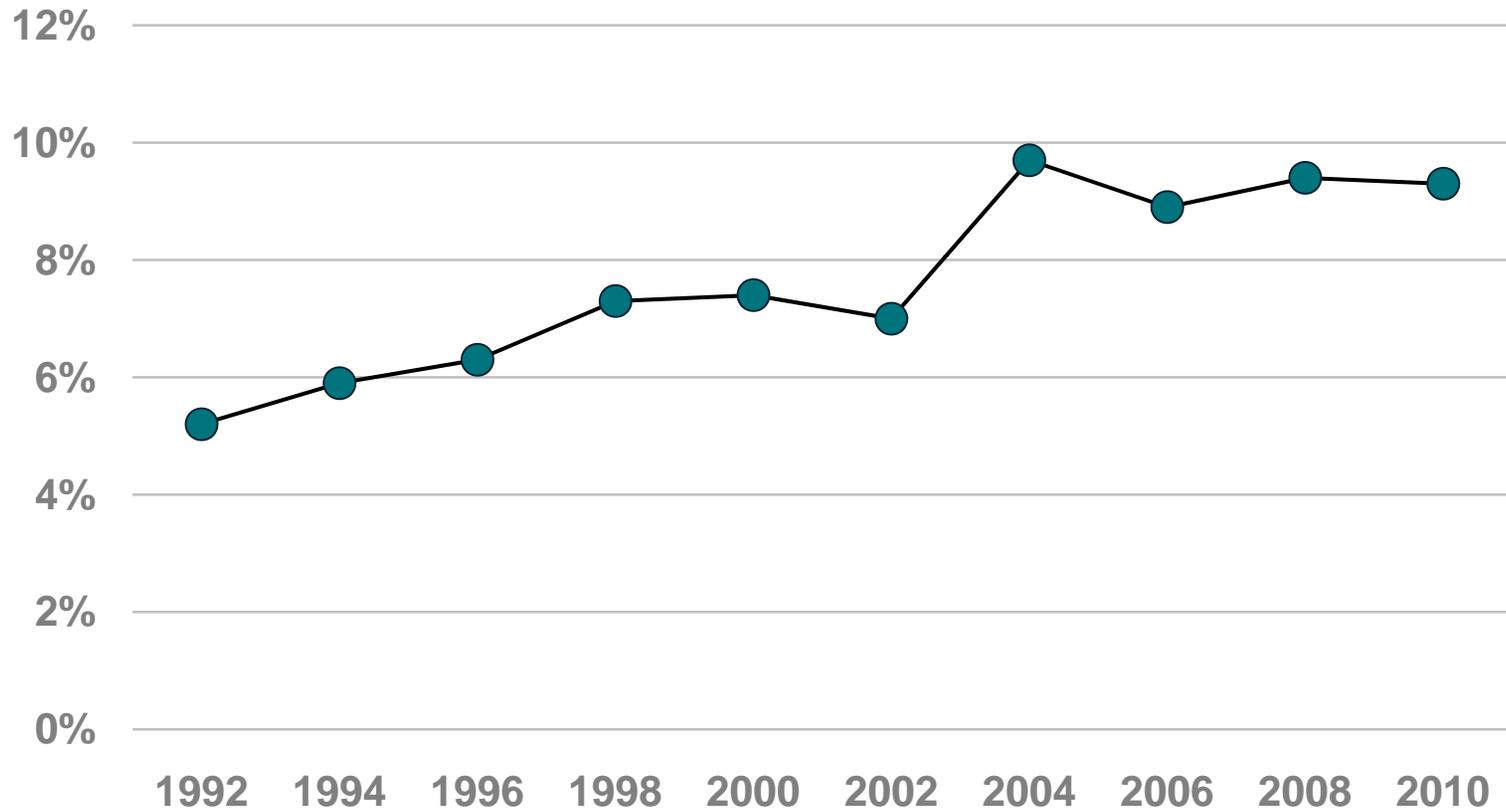
- Attract / expand work
- Manage a pyramid of timekeepers (and become adept at using alternative fee arrangements)
- Be a renown-garnering expert
- Generate more than normative billable hours / revenue

# Staff Attorneys / Off-Track Lawyers



# The Relative Size of the Off-Track Population Is Increasing

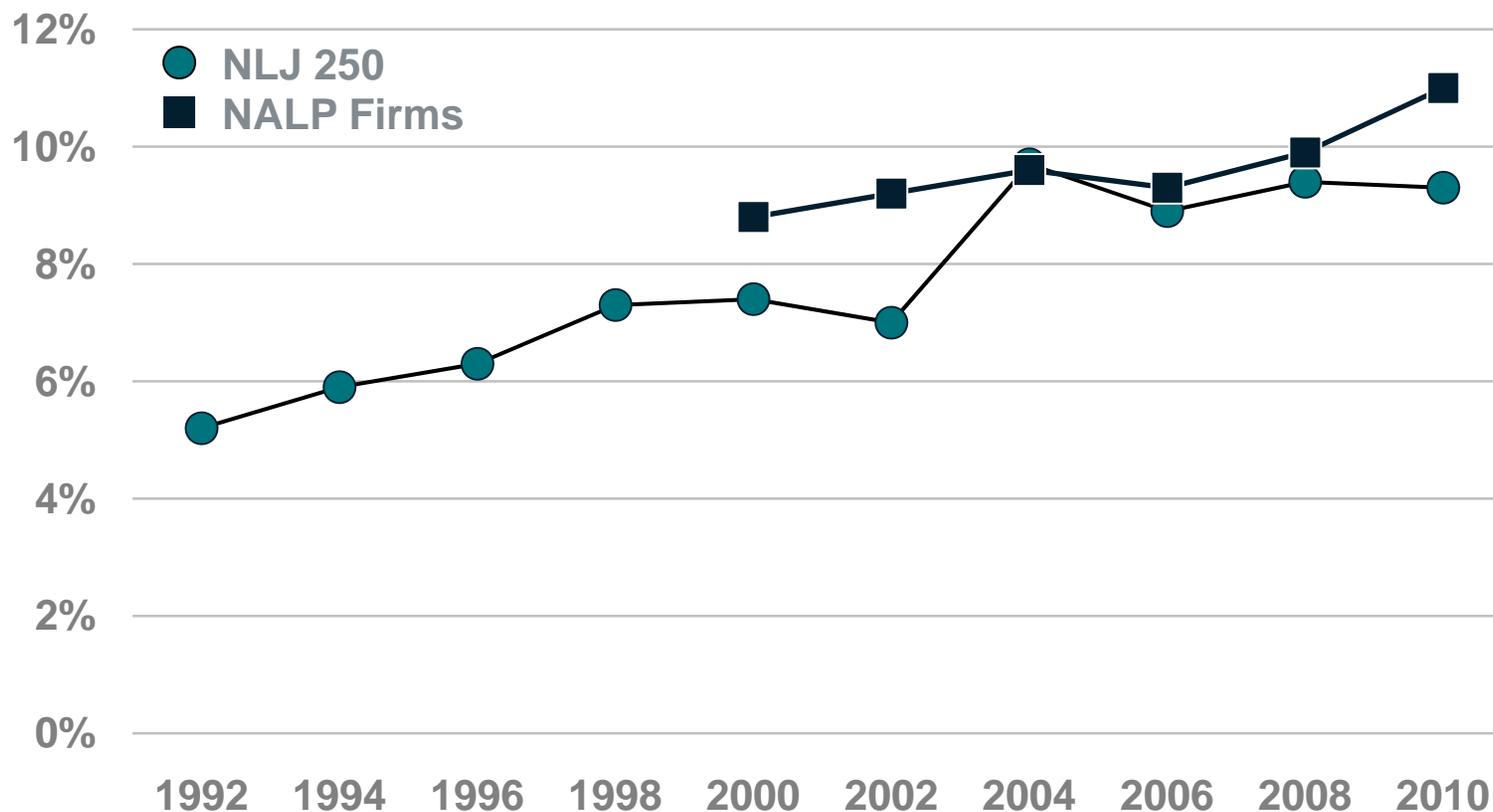
Percent of Lawyers in NLJ 250 Identified as “Other Lawyers”



Source: NLJ 250, National Law Journal; “other lawyers” equals all non-temporary lawyers minus partners and associates

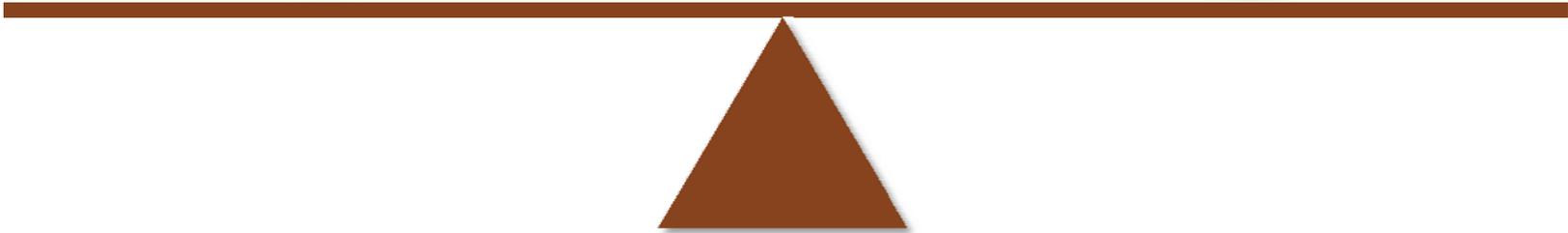
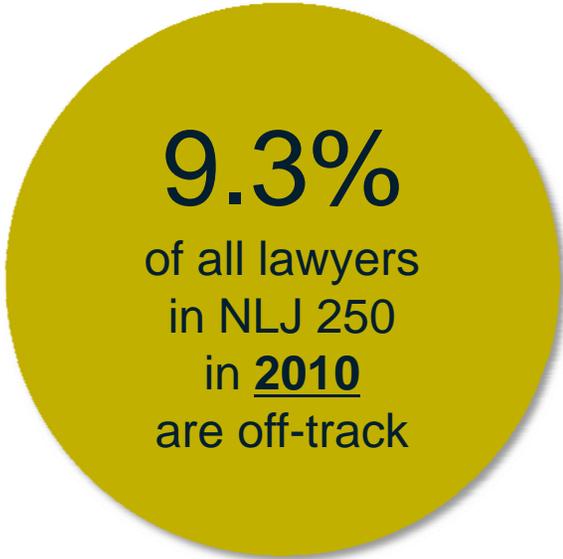
# The Relative Size of the Off-Track Population Is Increasing

## Percent of Lawyers Identified as “Other Lawyers”



Source: NLJ 250, National Law Journal and NALP; for NLJ 250 figures, “other lawyers” equals all non-temporary lawyers minus partners and associates; for NALP figures “other lawyers” equals total lawyers minus partners and associates

# Are People Talking Enough About Off-Track Lawyers?



**Wasn't the market paying more attention to non-equity status ten years ago than it is to off-track status now?**

Source: NLJ 250, National Law Journal; AmLaw 200, The American Lawyer

# Pressure for Change: the View from Clients

## **The ACC Value Challenge: Focus on Value to the Client**

- Alternative pricing, e.g., fixed fees for projects or stages
- Improved budgeting and project management
- Leaner staffing
- Better mentoring
- Enhanced knowledge management (through electronic form files, etc.)
- Increased focus on client service
- Increased focus on results

## Clients Increasingly Refuse to Pay for What They See as Associate Training

- From a recent RFP by a Fortune 100 financial institution:

“Payments for time accrued for first and second year associates may not exceed rates charged by paralegals. Work historically provided by first and second years may not be migrated to more senior/costly resources (e.g., third years).”

Source: 8/12/10 RFP. (Footnote omitted.)

## Law Firms Have Four Traditional Means of Increasing Profits

- Increase Billing Rates → Hard to do in this economy
- Increase Hours → Hard to do in this economy
- Increase Margin → Expense cuts already made
- Increase Leverage → Changes in the pyramid

## Limited Ways to Increase Leverage

1. Reduce the Denominator →
  - Higher partnership standards
  - More non-equity partners
  - Fewer equity partners
2. Increase Permanent Leverage →
  - Off-track attorneys
  - Staff attorneys
  - Of counsel
  - Technical specialists
  - Paralegals
  - Other non-lawyer professionals
3. Increase Non-Staff Leverage → Outsource to India or elsewhere
4. Increase Temporary Leverage → Contract attorneys

## Firms Can Also Modify Leverage

- By adjusting the associate compensation progression
- By shrinking entry-level classes
- By absorbing more training costs
- By customizing the pace of advancement

**So... firms can unlock lockstep  
or adopt a competency model**

# The Lockstep Associate Model Is Bent, But Not Broken

- Move towards competency / merit progression
  - Some viewed it as a cost-saving measure
  - The better firms view it as a matter of professional development
  - Requires a huge commitment of partner time to execute well
- Even in firms that retained lockstep:
  - More variability within a salary “grid”
  - More deferred compensation structures
  - Hours “triggers” for bonus and advancement

**Standard practice at some large firms & most small firms pre-recession**

**Majority of large firms pre- and post- recession**

## Exceptions to a Lockstep Model Have Existed for Years at Some Firms

- No standard uniform base after the first several years
- Opportunistic hiring in smaller / newer offices
- Hours requirements for salary advancement
- Response to stagnant / lower rates in some areas of practice (e.g., insurance defense)
- Alternative to an up-or-out approach
- Early partnership “test”

## Competency Models – Common Components

- Separate associates into 3 to 6 levels defined by skill sets
- Advancement based on achieving those skills / experiences
- Enhanced training commitment
- Rates that may increase only with level changes
- Lower base pay, at least initially
- Higher bonus potential, based on objective and subjective criteria
- Base salaries may result in a grid

## Associate Structure with Apprenticeship / Training Component

- Six months with little or no billable client work
- Code to charge time for “shadowing” partners
- Two-year fractional billable hour commitment
- Mentoring by partners
- Extensive classroom training
- Expanded *pro bono* work
- Additional client secondments
- Judicial externships

# Competency Model

## Pros

### For Clients:

- Lower cost
- More rational rate increases

### For Firms:

- Lower cost
- Identify / attract / retain “keepers”
- Associate incentive to excel
- Enhanced training
- Improved associate loyalty

### For Associates:

- Higher compensation for some
- Faster track for some
- Increased training
- Firm incentive to advance associates
- Enhanced career planning and communication
- Part-time and secondment options

## Cons

### For Clients:

- ?

### For Firms:

- Reduced revenue
- Increased training costs & burden
- Increased evaluation burden
- Implementation issues
- Work management issues
- Lateral hiring issues

### For Associates:

- Can foster competition
- Less predictable compensation
- Less predictable track
- Possible stigma for some

## Work Management Issues Are to Be Expected

- The assignments process is inherently harder and more complex (may need a coordinator)
- Partners need to understand the levels
- There is a conflict between associates' desire to learn new skills and partners' need to staff repetitive assignments
- Associates may be reluctant to help out on matters that do not offer progression
- Sharing work across departments may be more difficult (e.g., corporate lawyers doing document review)

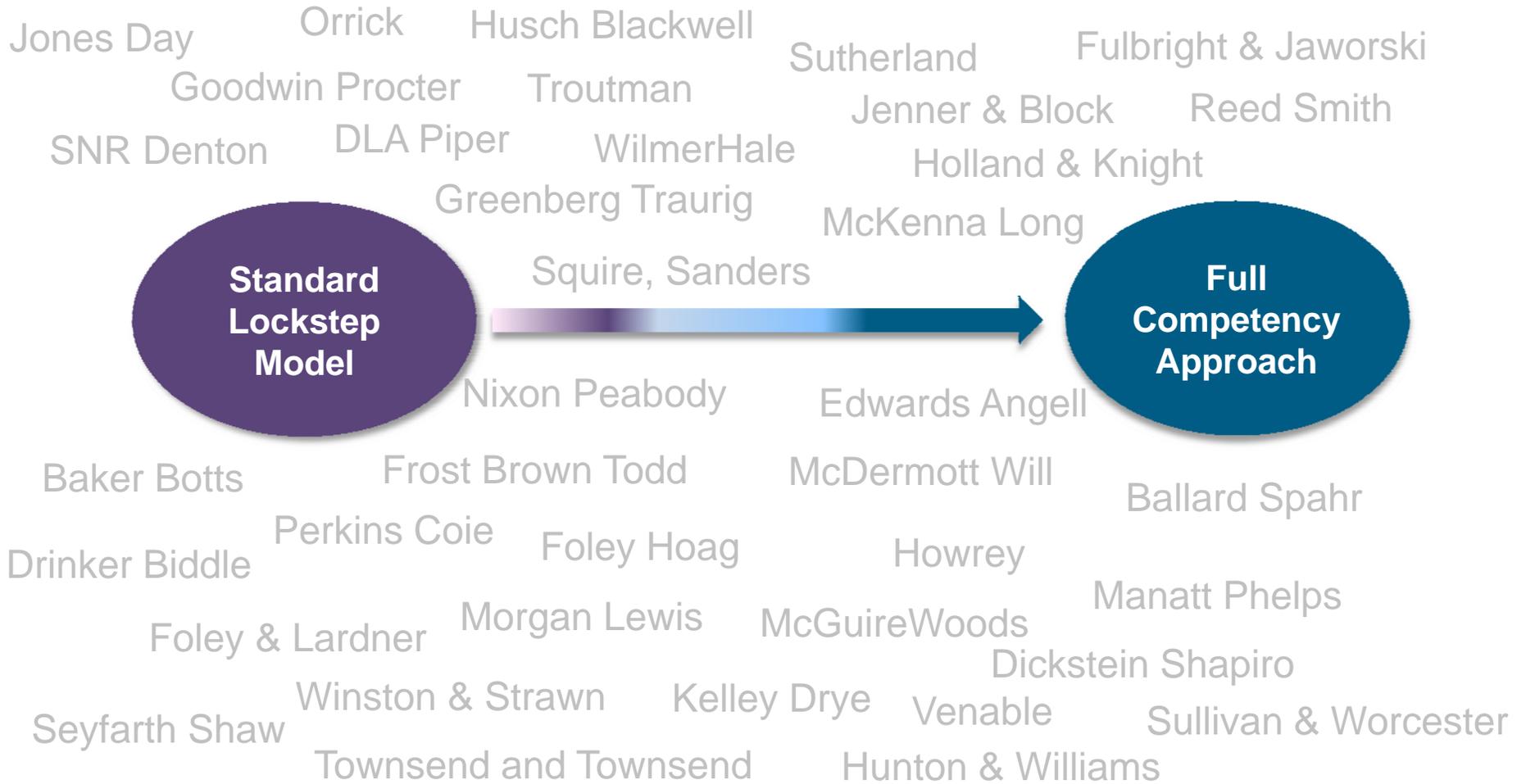
## Some Firms Have Publicly Rejected the Competency Model

- **Morrison & Foerster** “Associates would be unhappy”
- **Hogan & Hartson** “The model works only for firms with a narrow practice focus”
- **Sidley Austin** “Not attractive to top recruits”
- **Cooley** “Extensive classroom training is not necessary for junior lawyers”

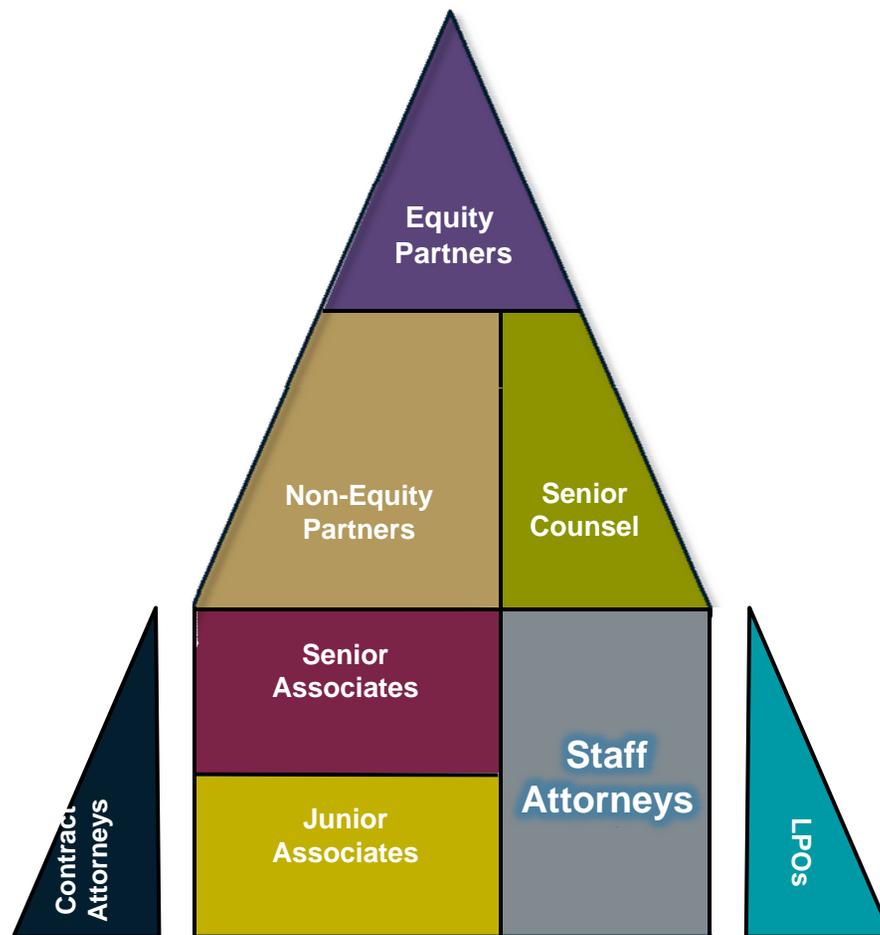
\*paraphrased from press releases

# The Answer for Many May Be a Hybrid Approach

Firms that Moved from Lockstep or Considered Moving from Lockstep

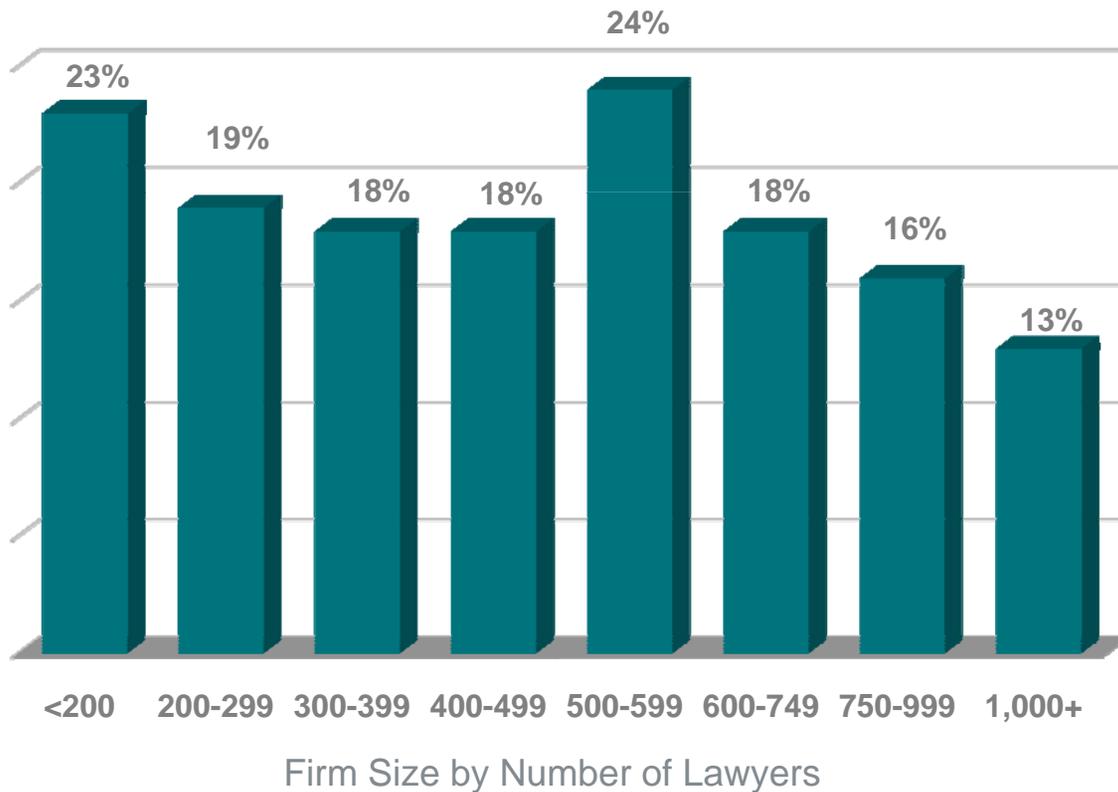


# Staff Attorneys / Off-Track Lawyers



# Off-Track Positions Are Prevalent in Firms of All Sizes

Off-Track Lawyers as a Percentage of Non-Partner Lawyers



**DISTRIBUTION OF FIRMS BY SIZE OF THE OFF-TRACK POPULATION**

- 15 FIRMS HAVE MORE THAN 150 LAWYERS
- 17 FIRMS HAVE 100-150 LAWYERS
- 62 FIRMS HAVE 50-99 LAWYERS
- 63 FIRMS HAVE 25-49 LAWYERS
- 87 FIRMS HAVE 1-24 LAWYERS

Source: NLJ 250, The National Law Journal

## A Wide Variety of Titles and Responsibilities Exist

### Basic Level

- Primarily low level work
- 75% focused on litigation
- Median salaries ≈ \$100K-\$120K
- Median bonuses up to \$9K
- Median rates of ≈ \$255-\$345
- Staff Attorney is the most common title

### Middle Level

- Mixture of low level and substantive work
- Spread across several practice areas
- Median salaries ≈ \$140K-\$190K
- Median bonuses up to \$15K
- Median rates of ≈ \$440-\$505
- No common title exists

### Experienced Level

- Primarily substantive work
- Spread across several practice areas
- Median salaries ≈ \$230K-\$277K
- Median bonuses up to \$19K
- Median rates of ≈ \$505-\$570
- Counsel is the most common title

Source: Hoffman Alvary Survey on Off-Track Lawyers, October 2009

## Other Common Characteristics

- Two-thirds have 10 or more years of experience
- Hired most frequently for litigation
- Over 80% were hired specifically off-track
- Most have no defined career path or opportunity to move on-track
- Should be in a cost-effective facility, but usually in home office major city

Source: Hoffman Alvary Survey on Off-Track Lawyers, October 2009

# Experiences of Firms with Staff Attorneys

## Pros

- Short-term commitment
- Lower compensation cost to the firm
- Clients no longer pay for on-track associate training
- Lower rates for the client
- Enables “permanent” leverage
- Improves associates’ diet of work
- Responds to changes in demand
- Substitute for outsourcing

## Cons

- Cultural shift
- Colleague adjacencies
- Adverse training impact on associates
- Encourages commodity-like work
- Undeveloped career path
  - Large variability in titles, compensation and roles
  - Limited progression
  - Minimal tenure presumption
- Unintended outcomes (diversity)

- Which is more damaging to firm culture:
  - Maintaining multiple castes of lawyers with the same age level? OR
  - Massive layoffs of on-track associates when the economy turns down?

# Policy Decisions Can Affect Profitability

## On-Track Associate

	3 <sup>rd</sup> Year Associate
Revenue	\$436K
Compensation / Benefits	\$170K
Overhead	\$180K (100%)
<b>Contribution</b>	<b>\$86K</b>

Illustration:  
Revenue for on-track associate = \$290/hour x 1,750 hours x 86% realization

# Policy Decisions Can Affect Profitability

## On-Track Associate

## Staff Attorney

	3 <sup>rd</sup> Year Associate	<i>Onsite</i>	
		Similar Overhead	Reduced Overhead
Revenue	\$436K	\$339K	\$339K
Compensation / Benefits	\$170K	\$110K	\$110K
Overhead	\$180K (100%)	\$162K (90%)	\$135K (75%)
<b>Contribution</b>	<b>\$86K</b>	<b>\$67K</b>	<b>\$94K</b>

Illustration:  
 Revenue for on-track associate = \$290/hour x 1,750 hours x 86% realization  
 Revenue for onsite staff attorney = \$225/hour x 1,750 hours x 86% realization

# Policy Decisions Can Affect Profitability

## On-Track Associate

## Staff Attorney

	3 <sup>rd</sup> Year Associate	Onsite		Offsite
		Similar Overhead	Reduced Overhead	
Revenue	\$436K	\$339K	\$339K	\$286K
Compensation / Benefits	\$170K	\$110K	\$110K	\$90K
Overhead	\$180K (100%)	\$162K (90%)	\$135K (75%)	\$90K (50%)
<b>Contribution</b>	<b>\$86K</b>	<b>\$67K</b>	<b>\$94K</b>	<b>\$106K</b>

Illustration:  
 Revenue for on-track associate = \$290/hour x 1,750 hours x 86% realization  
 Revenue for onsite staff attorney = \$225/hour x 1,750 hours x 86% realization  
 Revenue for offsite staff attorney = \$190/hour x 1,750 hours x 86% realization

# An Example: Orrick's New Talent Model Has Three Tracks

## 1. Partner Track

- Adopted three levels: associate, managing associate, senior associate
- Abandoned lockstep; associates now progress at their own pace

## 2. Custom Track

- Available only to partner track associates
  - Who have been with the firm for some period
  - Who have earned good performance reviews
- Designed for those not seeking partnership, or seeking a less traditional route to partnership

Source: Public data and interviews with two Orrick professionals

# Orrick's New Talent Model Has Three Tracks

## 3. Career Associate

- Embedded in the Practice Groups (though most sit in Wheeling)
- Work on document review or other disaggregated tasks (e.g., legal research, compliance, due diligence)
- Also handle non-billable tasks (writing articles, drafting forms)
- Little to no client interface
- Lower compensation and much lower billing rates
- Designed for talented lawyers not seeking an Orrick partnership and who may want more flexibility

Source: Public data and interviews with two Orrick professionals

## The Career Associate Program

- Has grown from 2-3 attorneys to 37, and covers all Practice Groups
- 31 sit in Wheeling, WV (6 in New York and San Francisco)
- Given indicia of associate status: normal associate-sized office for those in New York and San Francisco; included on Practice Group email lists; invited to all associate meetings, retreats, etc.
- Hiring profile
  - Some straight out of law school
  - Some big firm refugees with 6-7 years experience
  - Credentials only a bit lower than partner-track associates. (Many career associates have Ivy League or law review backgrounds.)
- Career path is evolving – some “lifers”; others short-term. (To date, only one career associate has departed.)

# Wheeling Has Two Groups of Lawyers

## 1. Document Review Team

- Led by 6 staff lawyers
- Scalable to 100 lawyers on a contract basis
- Lower cost than regular associates provides an internal alternative to outsourcing
- Program is well-received by clients

# Wheeling Has Two Groups of Lawyers

## 2. Career Associates Embedded in Practice Groups

- Process driven tasks (due diligence, research, basic drafting)
- More interesting work than offered at some WV law firms
- Same assigning partner as partner-track associates
- Family friendly:
  - More flexible lifestyle (working at home or at odd hours is fine)
  - Less travel
  - Little “mommy track” flack
- Demographics are close to 50% men / 50% women
- “Piecework” nature is a boon to some

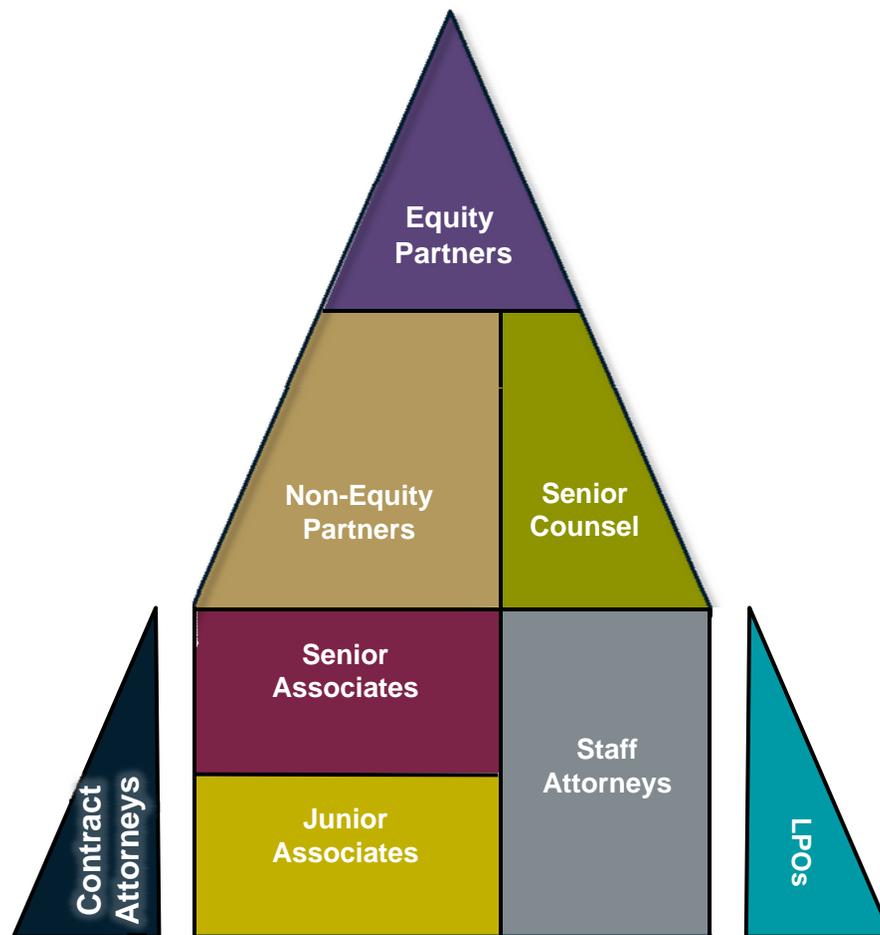
# Compensation, Billing Rates, Supervision and Evaluations

- Compensation
  - Mid-\$60Ks to >\$100K (depending on experience)
- Billing Rates
  - “Significantly lower” than on-track associates
- Supervision
  - Significant administrative work in running and selling the program
  - One lawyer in Wheeling supervises workload, morale and “care and feeding” issues
- Evaluations
  - All lawyer evaluations are handled by Professional Development
  - Separate evaluation form reflects different job responsibilities (e.g., little client contact)

## The Future of Orrick's Program

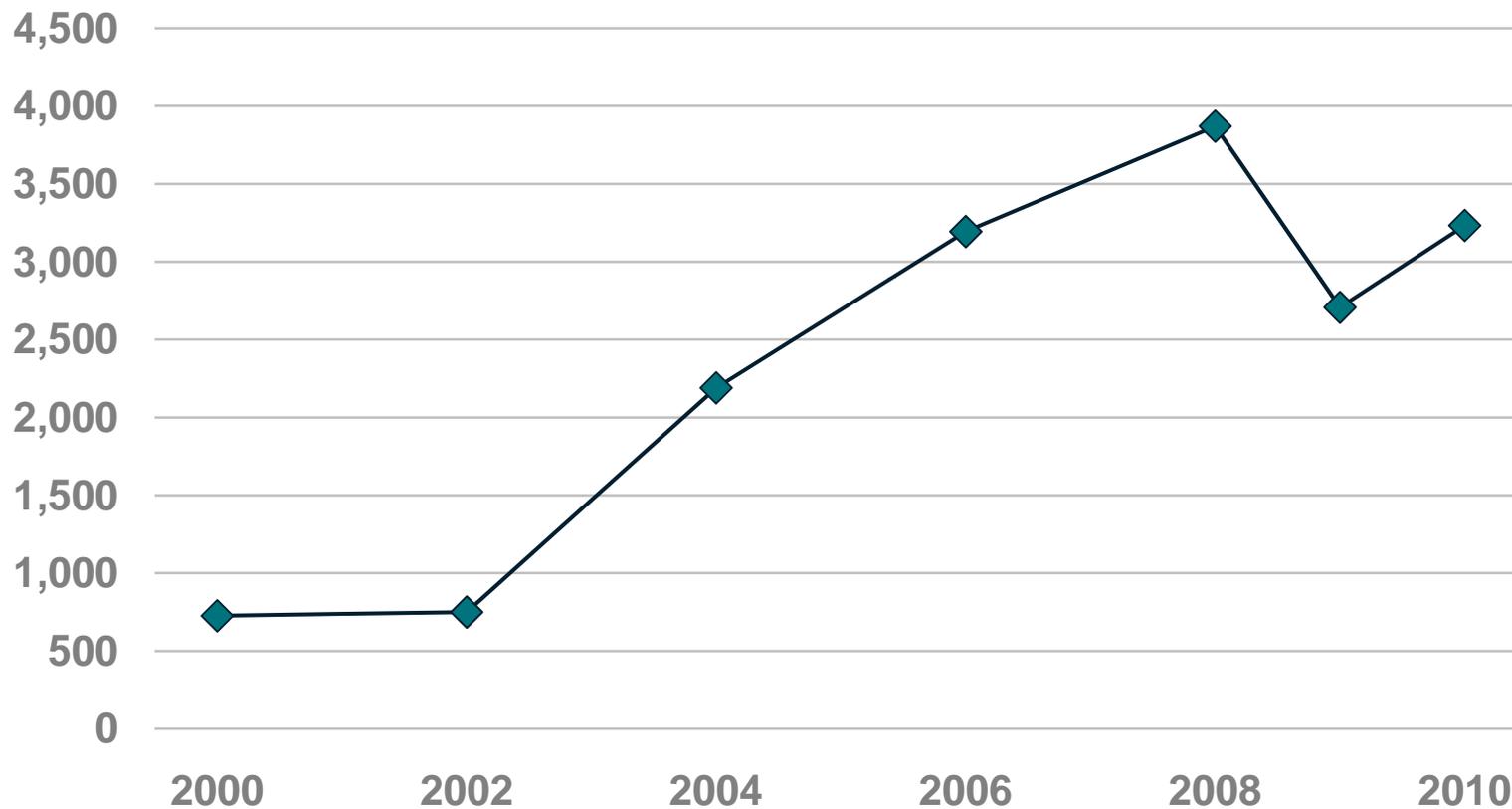
- Currently small: 31 lawyers (not counting the 6 in document review) in a firm of 1,100 lawyers is <3%.
- Appetite for growth in the program
  - Driven by Practice Groups facing rate pressure (e.g., Employment has 4 career associates in Wheeling)
- Expects to have 45-50 career associates and document reviewers by year-end
- 2011 summer program for 3 summer career associates in Wheeling
- Client reaction has been very positive

# Temporary / Contract Attorneys



# The Temporary Lawyer Ranks at NLJ 250 Firms Are Growing

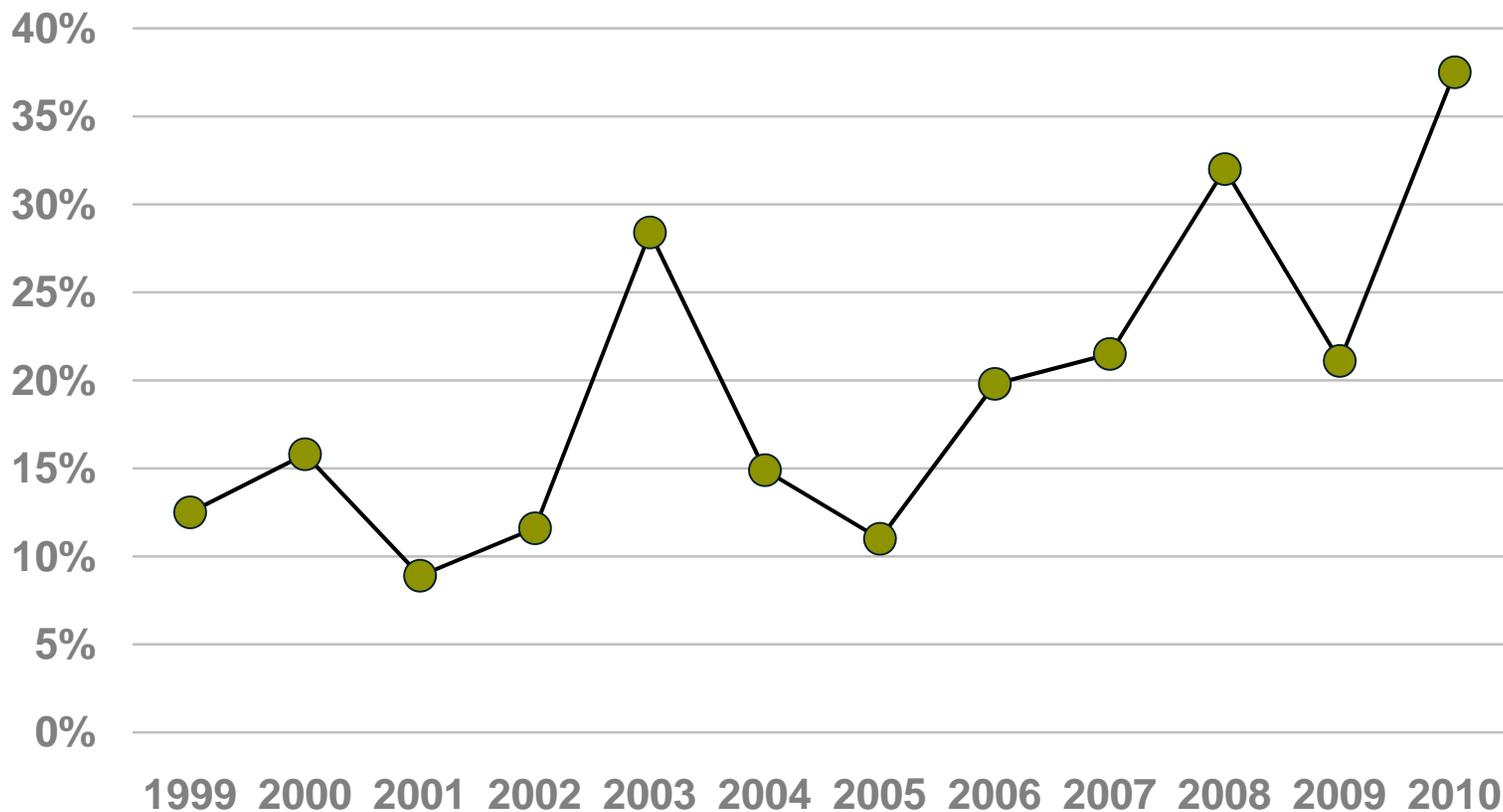
## Number of Temporary Attorneys



Source: NLJ 250 and NLJ 250 Staffing Reports, National Law Journal

# Temporary Lawyers – One AmLaw 100 Firm’s Experience

## Temporary Lawyer Hours as a Percentage of Associate Hours



Source: Hoffman Alvary Survey on Law Firm Economics™ for 2010

# Temporary and Contract Attorneys

## Advantages to Firms

- Lower pay scale
- No benefits
- Eases work flow peaks and valleys

## Advantages to Contract Attorneys

- It's a job
- Reduced commitment / part-time possibilities
- Stepping stone to other jobs?

## Disadvantages to Firms

- Reduced continuity of staffing
- Potential concern about quality

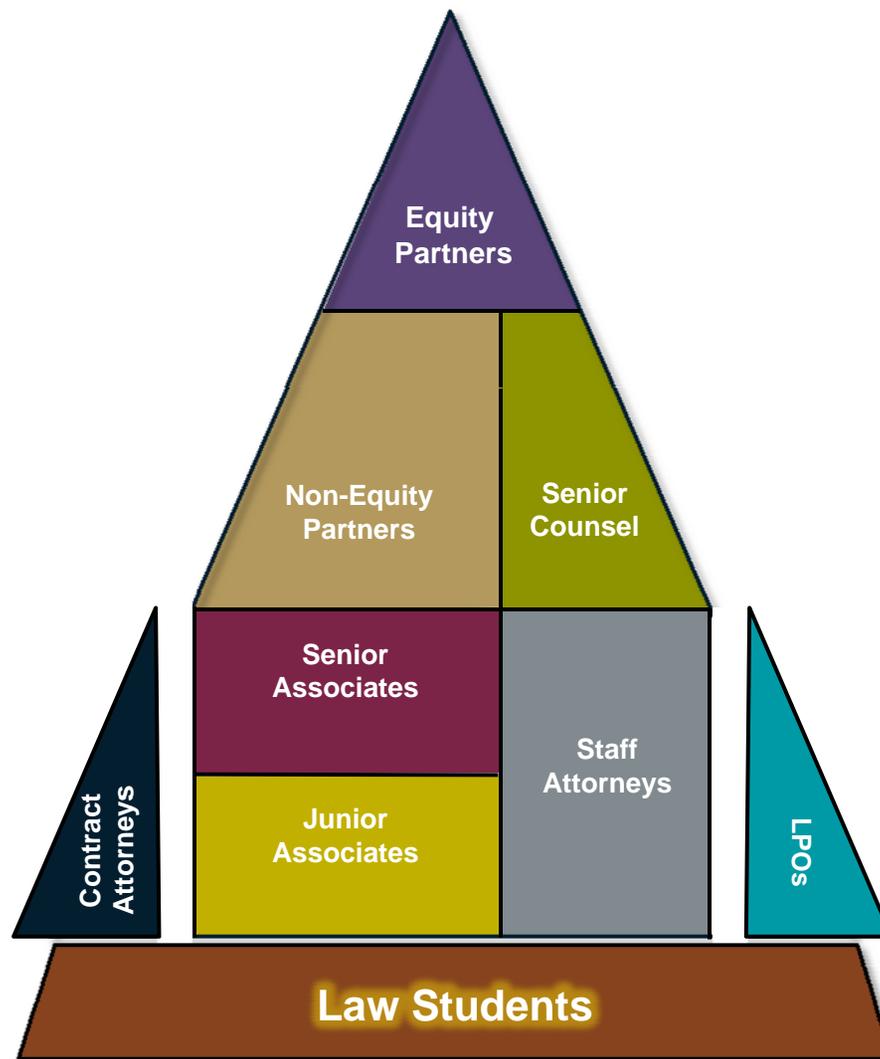
## Disadvantages to Contract Attorneys

- Lower pay scale
- No benefits
- No job security

## What About Outsourcing?

- Can involve domestic or overseas locations
- Tasks:
  - Document hosting and review
  - Due diligence
  - Drafting
  - Legal research
- Significant cost advantage
- Significant oversight and quality control issues
- Also Ex / Im issues in some circumstances

# Law Students



# “The Value Proposition of Attending Law School”

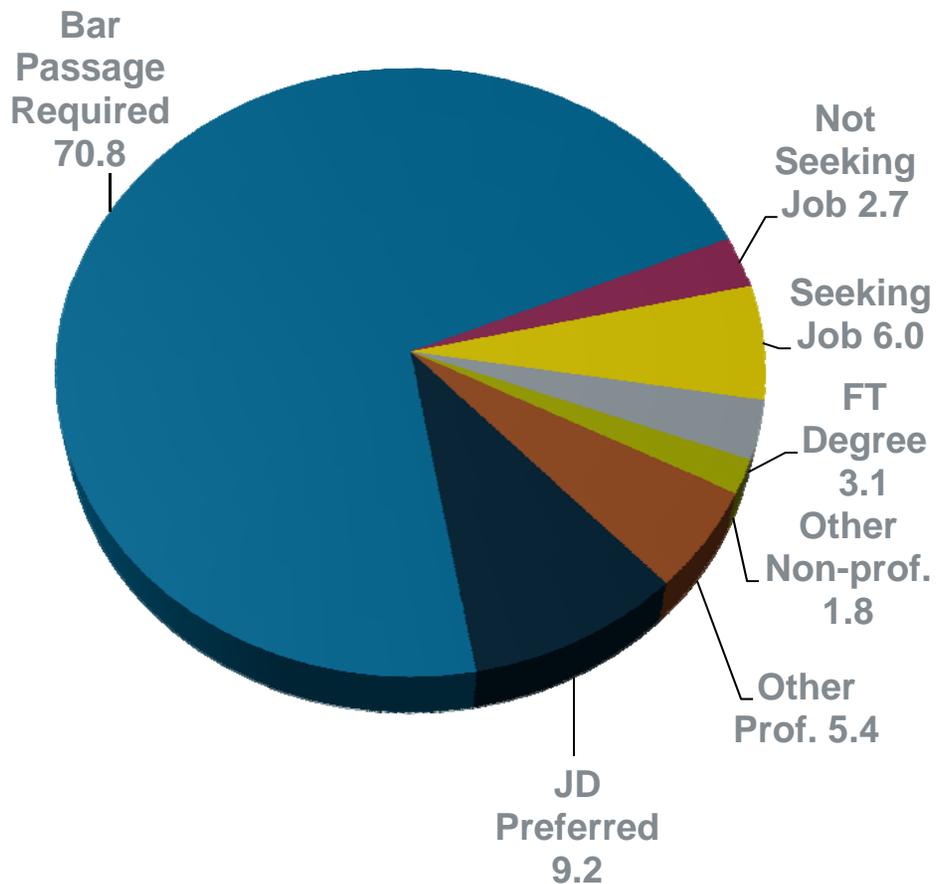
## “THE BOTTOM LINE

The combination of the rising cost of a legal education and the realities of the legal job market mean that going to law school may not pay off for a large number of law students .... All too often, students who bank on reaping a positive financial return from law school lose out.”

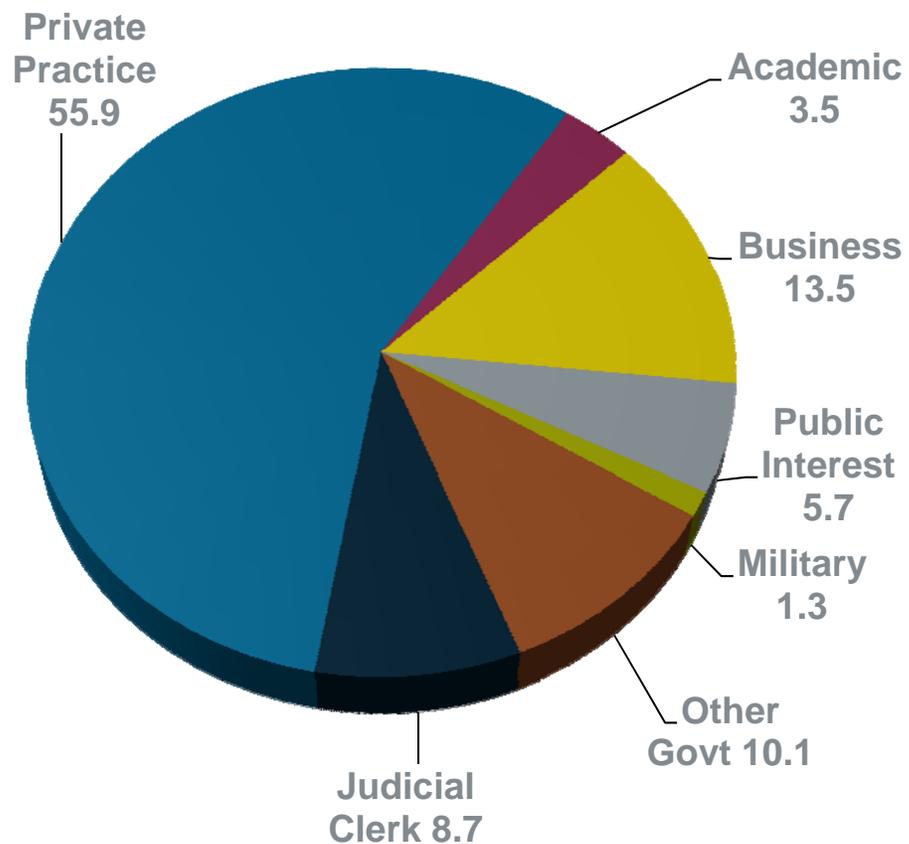
- ABA Commission on the Impact of the Economic Crises on the Profession and Legal Needs (November 2009)

# The National Job Scene for the Class of 2009 (as of 2/15/10)

## Employment Status



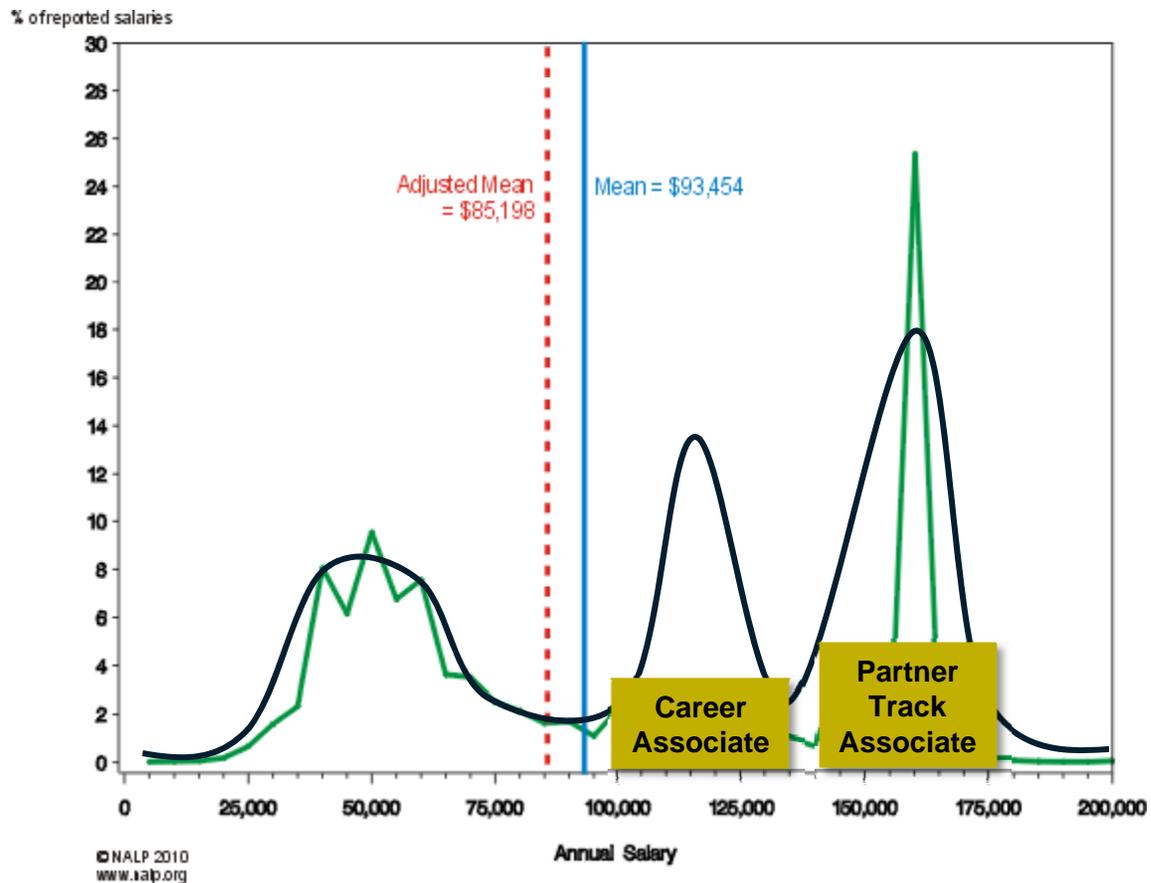
## Employer Types



Source: NALP, Employment for the Class of 2009 – Selected Findings

# What Is the Effect on Starting Salaries?

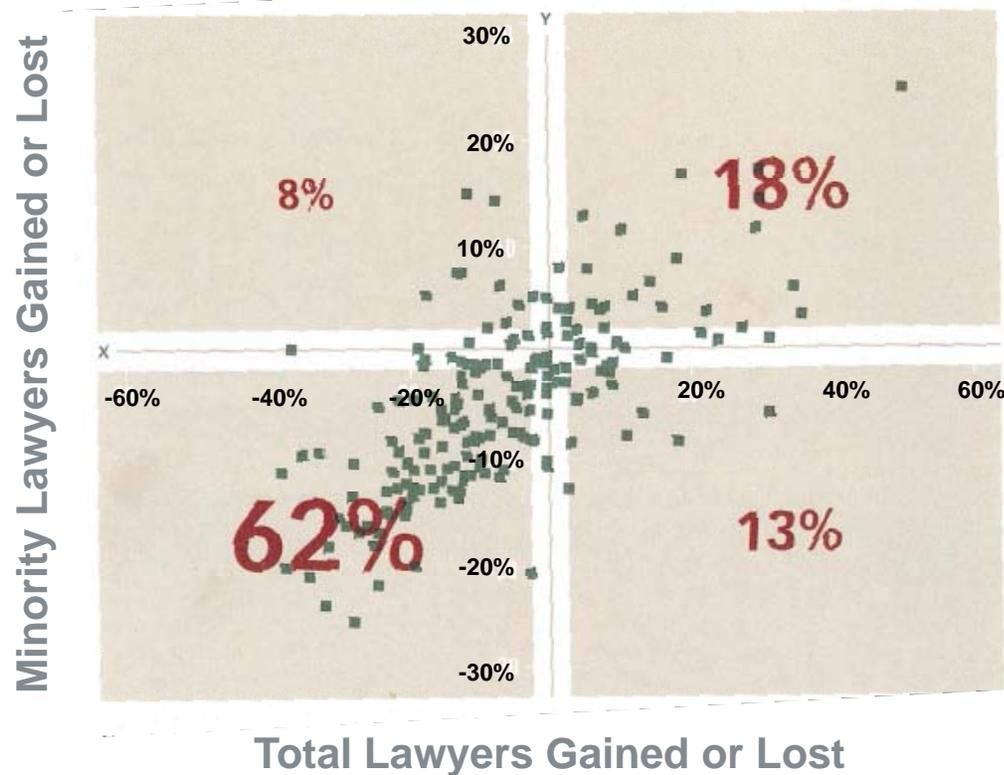
## Distribution of Reported Full-Time Salaries – Class of 2009



Source: NALP

# Diversity Was Sacrificed During the Recession

Overall, large firms lost 6% of their attorneys – including 9% of their minority attorneys, from 2008 to 2009



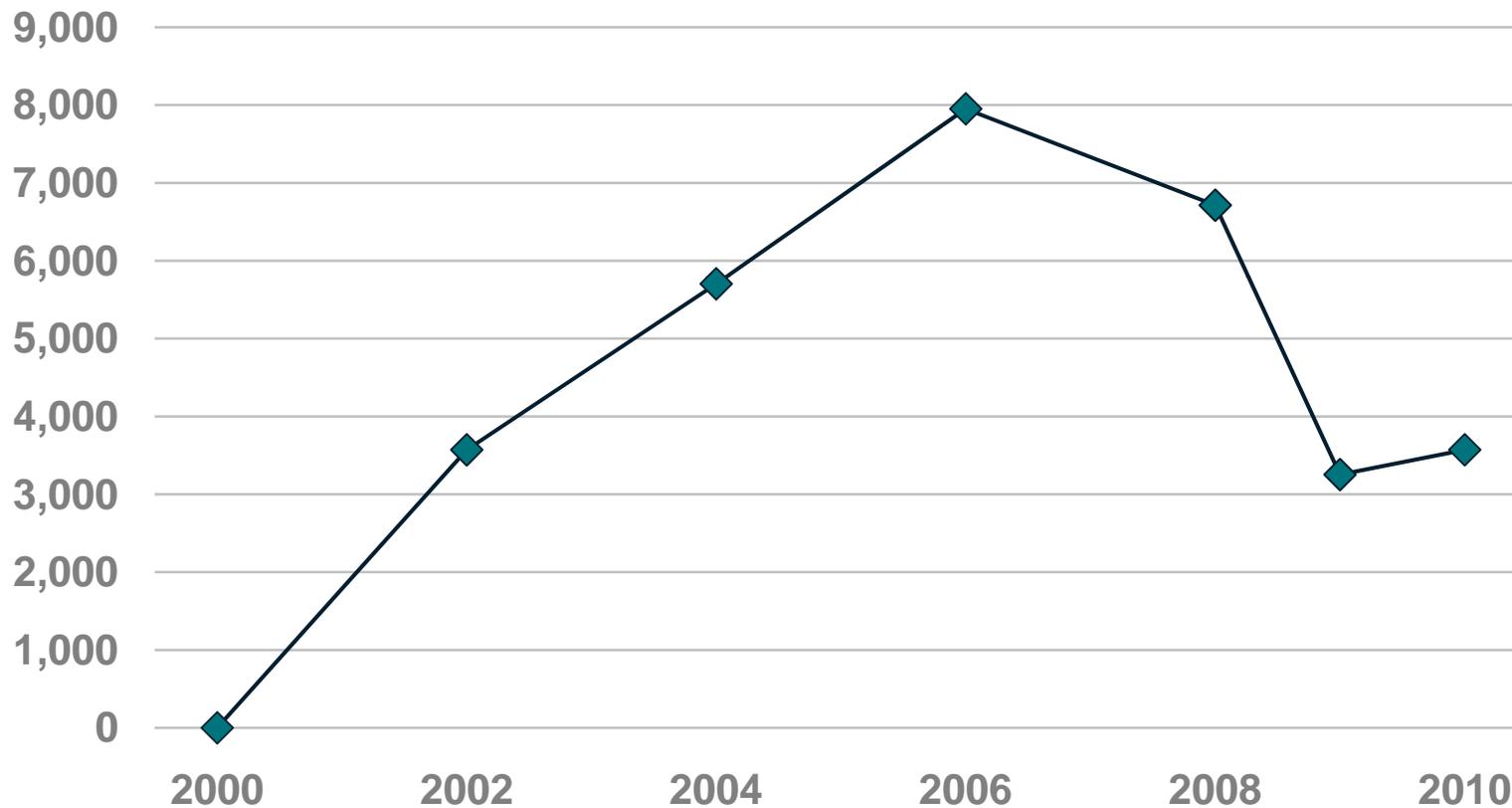
Will recession pressures and the creation of multiple career paths lead to similar results?

# What About Lateral Hiring?



# As of 2010, Big Law Is Hiring More Lateral Associates

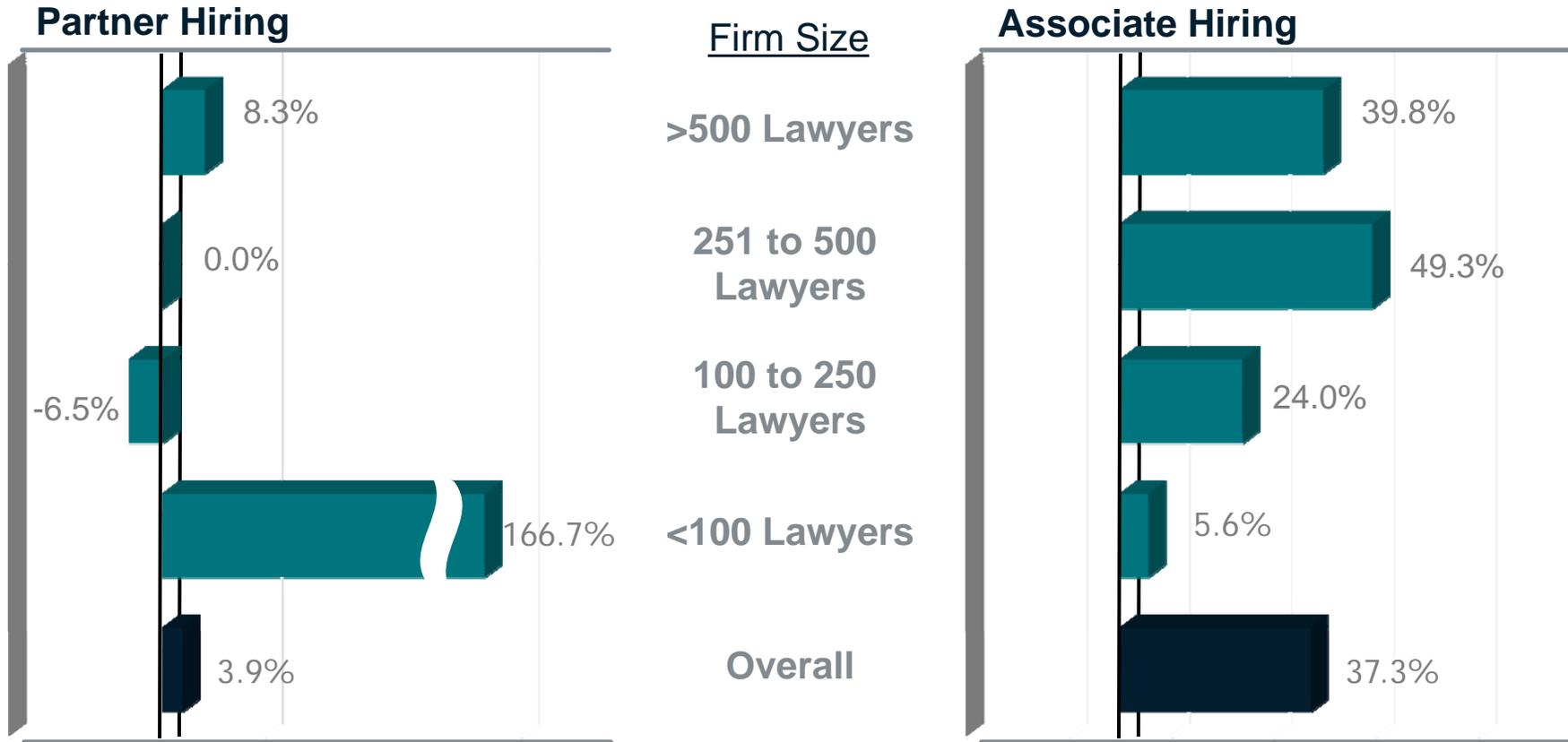
## Number of Lateral Associates



Source: NLJ 250 and NLJ 250 Staffing Reports, National Law Journal

# Lateral Hiring Was Up in 2010, Especially for Associates

Percent Change in Hiring by Law Firms



**Overall, hiring was up 22.9% for both partners and associates.**

Source: NALP Bulletin April 2011

## What Is Each Side Looking For?

### Five Things Law Students Are Looking for in a Firm

- Appropriate location
- Strong compensation
- Challenging work
- High prestige
- Effective training

### Five Things Law Firms Are Looking for in Law Students

- High candle power
- Top credentials and experience
- Strong work ethic
- Effective communication skills
- Client presentability / “partner material”

**How does this change under the new model?**

## Moving Beyond the Pyramid

- Increasing client clout will continue to drive fundamental changes
- Diverging earnings and competitive positions among firms will add variations
- Your client markets and competitive position should drive your adjustments
- The shift toward competency models is overdue despite the challenges
- Staff attorneys and contract attorneys will increasingly relieve pressure
- Outsourcing will slowly grow as firms gain experience and confidence
- Client expectations will compel better:
  - staffing flexibility
  - role and skill definitions among junior lawyers
  - contribution intentions for equity partners / owners