

26 Factors in Effective Lawyering

(Please note that these are randomly ordered; they are not in order of importance)

- **Problem Solving**
- **Practical Judgment**
- **Passion and Engagement**
- **Analysis and Reasoning**
- **Creativity/Innovation**
- **Integrity and Honesty**
- **Writing**
- **Community Involvement and Service**
- **Providing Advice and Counsel and Building Relationships with Clients**
- **Organizing and Managing One's Own Work**
- **Finding and Using Facts**
- **Self Development**
- **Researching the Law**
- **Speaking**
- **Ability to See the World Through the Eyes of Others**
- **Strategic Planning**
- **Networking and Business Development**
- **Stress Management**
- **Listening**
- **Influencing & Advocating**
- **Questioning/Interviewing**
- **Negotiation Skills**
- **Diligence**
- **Organizing and Managing Others**
- **Evaluation, Development and Mentoring**
- **Developing Relationships Within the Legal Profession**

Behavioral Interviewing 2.0: Using Structured Panel Interviews to Identify High Performers and Eliminate Bias in Lawyer Interviewing

by Ramla Farzad and Caren Ulrich Stacy

Most people start each year by making New Year's resolutions. Challenge yourself to add one more to the list of resolutions you set at the beginning of the year: identifying high performers, while also eliminating bias in your firm's lawyer interviewing process.

The good news is you can do both — at the same time.

Over the past decade, law firms have started using behavioral interviewing as a tool to increase their ability to hire the best and the brightest. Although some incremental progress has been made by asking behavioral questions such as “tell me about a time you were on a team,” there is still a way to go for the process to be effective. Consider this familiar story.

The Typical Hiring Story

She had a likable personality. That's why she was hired. Well, to be fair, she also embodied the firm's accepted pedigree standards — being from a top-tier law school and having good grades. She performed brilliantly in a series of one-on-one interviews where she was asked a host of behaviorally based questions. Yet, just three months into her mid-level associate position, it was clear to the partners with whom she worked that she lacked the judgment and communications skills needed to effectively manage clients.

This scenario happens frequently. It's the law student or lateral who displays all of the outward signs of a high-performing associate — top law school, law review, high honors — but does not live up to the hype — the associate everyone wants to go to lunch with but won't trust with client work. These associates, the low performers or C-players, absorb valuable firm resources. Costly and painful partner time is spent redoing work, and much administrative time is spent on managing the associates. In the end, the frustrated lawyers look around and wonder, “Who hired her?”

A Proven, Better Alternative

Thankfully, there is a proven interview method that significantly minimizes these hiring mistakes. The 2.0 version of behavioral interviewing — known as Structured Panel (or Board) Interviews — marries competency-based interview questions with a panel of interviewers using a customized, firm-specific scorecard to measure the candidate's skills against the performance standards of the firm. This all-star combination provides law firms with an evidence-based method to weed out C-players and hire more A and B+ players for the benefit of the firm's clients. Studies of the effectiveness of various interview techniques have been conducted for decades. As the table accompanying this article shows, Structured Panel Interviews (SPIs) provide a higher probability of identifying the stars than the typical one-on-one and interests-based interviews (e.g., “you like bas-

Validity of Selection Methods

PREDICTORS	VALIDITY	HIT RATE
Perfect prediction scheme	1.00	100%
Cognitive ability tests	.53	77%
Job tryouts	.44	72%
Biographical inventories	.37	69%
Structured board interviews (e.g., scorecard, panel)	.35	68%
Reference checks	.26	63%
Grade point averages	.21	61%
Job-related experience	.18	59%
One-on-one interviews	.14	57%
Ratings of training	.13	57%
Years of education	.10	55%
Interests (Preferences)	.10	55%
Random selection scheme	.00	50%

Sources: Hunter and Schmidt, "Quantifying the Effects of Psychological Interventions on Employee Job Performance and Work-Force Productivity," Vol. 38, *American Psychologist*, 473, 474 (1982); Wiesner and Crowshaw, "A Meta-Analytic Investigation of the Impact of Interview Format and Degree of Structure on the Validity of the Employment Interview," *Journal of Occupational Psychology*, Vol. 61, 275, 282 table 1 (1988).

ketball, me too, you're hired") so widely used in hiring.

The Role of Selection vs Recruitment

Although one-on-one interviews are not nearly as effective at judging performance as an SPI, they still have an important place in the hiring process. One-on-one interviews are helpful in determining whether the candidate is a cultural fit. They also allow the firm to engage the candidate by "recruiting" him or her through a conversational, free-flowing dialogue about how that candidate's professional desires match the firm (e.g., work/life balance, team approach, practice areas). By contrast, the SPI focuses on "selecting" candidates with the necessary skills to be successful. The combination of both techniques — the one-on-one interview for recruiting and the SPI for identifying high performers — is the killer app for hiring.

So, what makes SPIs different from a typical behaviorally based interview? There are four primary differences.

Panel Interviews. First, the interview is conducted by a panel of two to four interviewers. The multiple interviewers offer two main benefits: (1) interviewers stay on task because of the discipline imposed by having others in the room; and (2) they simultaneously score the candidate on what matters using a reliable, evidence-based process. As you might imagine, it can't be done in 20 minutes. Panel interviews are typically an hour or longer depending on the candidate's level of seniority.

Competency-Based Questions. Second, the questions are developed based on the firm's success traits or competencies. They are behaviorally and historically based questions, not hypothetical or situational, to uncover what a person has done in the past to better predict how they will behave in the future. The questions ask a candidate to give specific examples of things they *have done*, rather than *would do*, to demonstrate fit. For example, a firm that values teamwork may ask for specific examples of when a candidate has worked in a team setting, the role he or she played on the team, and the ultimate result. But, contrary to popular belief,

the questions are not nearly as important as the next two parts of the process. Indeed, without a standardized method by which to judge the answers, the questions are almost useless.

The Scorecard. Third, the panelists score candidates using a behaviorally anchored rating scale for each success trait or competency. This approach replaces “we know it when we see it” subjectivity with a common standard by which all candidates are evaluated.

Consensus Decision-Making. Finally, the panelists *work together* at the end of the interview, which dramatically reduces individual biases, to give the candidate an overall score. The final output is a data-driven scorecard that the hiring committee can use to identify the best candidate matches. With proper training — a *critical element* of the process — SPIs allow the firm to weed out the mismatches and create a pool of applicants who have a higher probability of success.

Eliminating Bias

While we expect interviewers to judge candidates solely on objective criteria, bias continues to play a significant role in hiring. Some bias, such as connections based on common interests, may appear harmless yet result in a lack of diverse backgrounds among lawyers. More overt bias, such as judging a person based on looks or personality, is also rampant in the interview process.

A woman candidate with a strong personality, replete with examples of leadership and initiative, may be labeled a “diva” by some, while others view her as a potentially powerful player in the firm. How can a firm ensure that such a candidate gets equal treatment from all and is judged appropriately? Put her in a room with several diverse lawyers — women and men, associates and partners, ethnically and racially diverse — as part of a panel interview and have her answer objective questions that are judged through use of a standardized scorecard.

It is much more difficult for a panel member to express unfounded (conscious or unconscious) bias if three other panelists conclude that the candidate exhibits the behaviors of a high performer. This consensus scoring, in and of itself, significantly decreases bias: in one recent example, panel interviewing was found to decrease evaluator bias by more than 70%.

Not for the Faint Hearted

Introducing something new is never easy. The SPI process requires time and commitment from both the firm and its lawyers. To gain the full benefits of SPIs, a firm needs to create a vocabulary that defines a successful associate, define the questions and scorecard based on those specific competencies, and train panel interviewers to use the scorecard and engage in consensus decision-making. But if done correctly, SPIs are three times more likely to help a firm identify A-players and screen out C-players.

SPIs have benefits for both interviewers and interviewees. Interviewers are relieved because they finally have a road map of questions, understand why the questions are important, and know how to evaluate the answers. Interviewees find the questions more germane than the usual discussion of résumé bits and pieces, which often addresses little more than commonalities with the interviewer. Candidates also find that, for the first time, they have the opportunity to tell their story and provide specific examples of things they have done that should make them an effective associate — and to do so within a process that safeguards against the unfortunate and inevitable bias that seeps into the interview process.

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Combating Junior Lawyer Fallout — Part I

Law360, New York (March 25, 2011) -- Now, more than ever, junior lawyers need to be trained with practical skills. With an increasingly competitive global market and clients demanding more of their outside counsel, lawyers need to not just be good thinkers — they need to know how to practically apply their skills from the outset. Yet the junior lawyer training model has changed and key stakeholders in the profession are no longer willing or able to assume the cost and responsibility for training junior lawyers. The result is Junior Lawyer Fallout.

Clients are the largest driver for change. Clients are unwilling to pay for junior law firm lawyers to be trained. Additionally, clients have become more sophisticated in recognizing that the work they assign to outside counsel can be disaggregated. Not all of their legal work needs to be performed by highly trained lawyers. Some work can be performed by other lawyers at lower rates, by nonlawyer professionals at traditional firms, or by outsourced companies in the United States or abroad.

In turn, the leveraged associate staffing model used by traditional firms, which typically relies on a billing ratio of at least three associates for every partner, is no longer being funded by the client. Thus, law firms are reluctant to incur the financial obligation to train junior lawyers due to the threat to the leveraged associate model, the shrinking demand for legal work, and the likelihood that most of the talent they train will walk out the door. As a result, most traditional firms are reducing the size of their incoming class of associates.

Who is Impacted by Junior Lawyer Fallout?

Junior Lawyer Fallout is most significantly impacting the law school community, junior lawyers themselves, and the traditional law firm that historically generated significant revenue from lawyer billable hours. The problem starts in the law school community. Law schools fear that they will continue to produce graduates at expanding rates yet these graduates will no longer be placed at the same rates in secure jobs to develop their skills as practitioners.

In turn, poor law student placement will negatively impact a law school's ranking, which dictates its status among students and employers. Law students and junior lawyers fear they will not be able to pay back their law school loans or develop as lawyers. Law firms wonder who will be their future leaders. And they worry their profitability model will decline with the collapse of the leveraged associate model and the junior lawyer revenue stream significantly diminished.

But beyond these specific casualties, the broader legal profession pipeline will suffer. In-house legal departments have historically plucked well-trained law firm talent to be the future leaders of the in-house community and they may no longer have the same opportunities to do so. Also, new model law firms — including virtual firms and firms founded on alternative fee and secondment models — will no longer have the same ability to hire trained talent to perform in their environments.

But even if top talent continues to flee in-house and to new model firms, there will be depleted strength in law firm leadership. Thus, the profession as a whole needs to address the junior

lawyer training challenge and it may ultimately impact all constituents' bottom line.

How is the Junior Lawyer Training Gap being Addressed?

An apprenticeship model is one approach to training the junior lawyer that has been implemented by a handful of firms in the United States, inspired by firms in Canada and the United Kingdom. An apprenticeship model provides structured training to incoming associates and increased exposure to senior lawyers from whom they can learn. Typically the model is accompanied by reduced billable hour targets and reduced salaries. Clients applaud the model because they are no longer absorbing the law firm lawyer's learning curve.

However, the model is costly, which is why only a handful of firms have adopted it. For example, at one firm, a managing partner estimated that the apprenticeship program would cost between \$3 million and \$4 million to implement, when calculating unbilled hours, time spent observing and training costs. While the managing partner argued that the firm would otherwise have spent this money on its associates, typically that spending would have occurred over seven years rather than two.

The apprenticeship model may be too costly and risky for most firms to undertake. The risk is that after a firm invests considerable sums of money in the entry level lawyers, the lawyers have no obligation to stay to give the firm a return on its investment. And, if apprenticeship model firms imposed a time commitment on lawyers (like some companies do that pay for employees' MBA degrees), the firms would be placing a burden on entry level lawyers that other firms would not. There are also concerns that more prestige may be associated with the higher-paying firms and questions remain about whether the apprenticeship model is better — there may be too much observing and not enough doing.

Another approach to filling the junior lawyer training gap is where in-house legal departments hire entry level talent and team-up with their outside law firms to train them. Hewlett-Packard is one such company piloting this concept. It typically hires lawyers with five to seven years of experience, but in 2009, it hired four third-year law students to begin work in 2010. The company put together a robust training program, partnering with firms in the Bay Area.

The thinking was that in-house legal departments spend a lot of time training their experienced talent to transition from risk avoidance to risk management. Instead, Hewlett-Packard figured it would be more cost effective to develop lawyers from the outset and enable them to directly apply their knowledge to the business. For the most part, other companies have not followed suit. Most legal departments are small and busier than ever and they do not have the time or devoted resources to train junior talent. Additionally, entry level lawyers may be less suited to do in-house legal work, as it often requires more business acumen and knowledge that an entry level lawyer typically has not developed.

Reforming the law school curriculum is one more approach to addressing the junior lawyer training gap — one that is being hotly debated in the profession. Recommendations from a report issued by the Carnegie Foundation for the Advancement of Teaching, among others, urge law schools to integrate practical training into the traditional law school analytical courses to better

prepare students for practice. Some believe law schools should focus more on teaching students effective communication, business management skills and financial principles to operate more effectively in business. Additionally, many believe that escalating law school tuition has created much of the burden for graduating law students and law school reform would require a reduced price tag.

Questions remain whether law schools are prepared to accept a new role of training law students, whether more practically based training would make law schools even more costly, whether law schools are best positioned to provide such training, and if so, what the best format is for doing so. Even if law schools were to accept a new direction for legal education, it would be a long time before a standardized curriculum could be developed to effectively transition the role and responsibility to law schools of training law students more practically, as well as analytically.

Conclusions and Remaining Questions

Current attempts to resolve Junior Lawyer Fallout are ineffective. The apprenticeship model is too costly and risky for most firms to undertake. The in-house approach is not sustainable because most legal departments are too small and too busy and do not have the time or resources to assume the training responsibility. And, law schools are not positioned for training junior lawyers with more practical skills or to do so properly would be prohibitive.

The question remains — who is best suited to train junior lawyers? And how should they do it? In part two of this article (to be published in Law360 on April 4), I will offer recommendations. I advocate for law school curriculum reform to shorten class time and develop students' practical skills through public service internships. I also demonstrate the need for supplemental outsourced practical training. In the meantime, what do you think? Are the current proposed methods of training sufficient? Should we simply reduce the number of incoming lawyers and hope the training problem will go away? Are there other solutions you have to resolve Junior Lawyer Fallout?

--By Deborah Epstein Henry, Flex-Time Lawyers LLC

This article is Part I of a two-part series. Part II will appear in Law360 on April 4, 2011.

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Combating Junior Lawyer Fallout — Part II

Law360, New York (April 1, 2011) -- In [Part I](#) of this series, I discussed how junior lawyers need to be trained with practical skills now, more than ever. Yet, the junior lawyer training model has changed. Clients are no longer willing to pay for the junior law firm lawyer to be trained. Work is being disaggregated and sent overseas or it is being performed by lawyers at lower rates or by nonlawyer professionals.

Given the diminishing demand for legal work and clients' unwillingness to pay for training, law firms are reluctant to incur the financial obligation of training. In turn, firms are reducing the size of their incoming class of associates. Thus, the key stakeholders in the profession are no longer willing or able to assume the cost and responsibility for training junior lawyers. The result is Junior Lawyer Fallout.

Many would say that the true answer to solving the junior lawyer training problem is simply to reduce the number of incoming lawyers. If we reduce the incoming pool of lawyers, the training problem might go away. While this may be true, it has not happened. In fact, law school class sizes have increased and new law schools continue to open. While the junior lawyer training problem grows, I propose a three-pronged approach to resolve the training conundrum and rethink the future of legal education.

Law School Class Time Should be Two Years, Not Three

Law school class time should be reduced from three years to two. Law school has become prohibitively expensive and many in the profession agree that the current law school curriculum no longer prepares law students for practice. Legal education has increasingly come under scrutiny by The Carnegie Report, among others, that urge law schools to integrate practical training into the traditional law school analytical courses to better prepare students to contribute as lawyers.

My suggestion is to collapse the second and third years into one. Northwestern University School of Law has been progressive in recognizing the simultaneous deficiency and opportunity in law school education and it has created an accelerated JD program in two years, with a full semester of experiential learning in the third year.

Reducing law school class time from three years to two would greatly help the growing problem of law student debt and the increased recognition that law schools are inadequately preparing law students for practice. The shortened curriculum would also allow law schools to focus on what they do best — educating students in substantive law and thoughtful analysis to enable a student to “think like a lawyer.”

A Public Service Internship Should be Required in Lieu of the Law School Third Year

A one-year public service internship, immediately following the first two years of law school, should be required in lieu of the third law school year. Law schools would help facilitate the internship placements that students would apply for, like with law firm and clerkship positions.

Law schools would conduct a weekly seminar with students grouped by internship types, providing a forum for discussion and questions.

Law school tuition for the third year would be de minimis because law students would be working off-site and the law school involvement in the internship would be merely supportive — not supervisory, as in the typical law school clinical model. Judicial clerkships would count as one type of public service internship and would continue to be paid while many other public service internships may be unpaid.

The notion of law students gaining practical training in an area of interest for a year while contributing to public service makes intuitive sense and is a direction the profession should pursue. In addition to filling the practical training gap, the benefits to standardizing a public service internship are considerable for all parties involved.

The public service employer benefits from the contribution of entry level lawyers. The law students benefit from gaining hands-on training and doing interesting work in an area aligned with their interest. And the profession benefits by practically training its pipeline of lawyers and getting lawyers focused on public service at the outset.

Outsourced Core Competency Training Should be Required in Both Practical and Specialized Skills

During the public service internship year, outsourced core competency junior lawyer training should be required in both practical and specialized skills. We live in an increasingly outsourced world. The legal profession has already embraced effective outsourcing in two aspects of lawyer knowledge training.

One example is what Barbri has done for bar examination preparation and the other example is what the National Institute for Trial Advocacy has done for deposition and trial preparation. If junior lawyer training were outsourced by a trusted source, it would bring significant cost savings to employers and avoid the need for each employer to reinvent the wheel in training. It would also create efficiency and standardization to a process that has greatly varied in quality.

Building on recommendations from the Critical Issues Summit report, law schools, the bar and the bench should collaborate to develop standardized core competencies of skills and knowledge for lawyers. These core competencies could then be taught in a series of outsourced junior lawyer training sessions over the course of the public service internship year. The training sessions would have two components.

First, a core curriculum of practical lawyer training would include developing skills in writing, communication, basic quantitative, business management, ethics, professionalism, client relations, project management, teamwork, leadership, work/life balance, mentoring, time management and networking.

Second, there would be training in practical skills for substantive specialties including litigation, corporate, real estate, trusts & estates, intellectual property, family law and others. Participation

or certification by the American Bar Association, state bar associations or other governing bodies in the legal profession would be necessary to ensure a high quality core competency curriculum for the outsourced training.

For graduating law students with law firm offers, the law firm may pay for the outsourced series of training sessions, like they currently do for Barbri or NITA. This training investment would be significantly less costly than what firms currently outlay for their internal training. Law firms who pay for training may, in turn, require a one or two-year commitment from incoming lawyers to enable the law firm to recoup its investment, similar to companies that require a time commitment when they pay for their employees' MBA degrees.

For graduating students without offers, they would pay out-of-pocket but the combined cost of a minimal third year law school tuition coupled with the outsourced training sessions would be significantly less expensive than up to \$48,000 they would otherwise pay in a third year of law school tuition.

Questions Remain

The recommendations to shorten law school from three years to two, institutionalize the public service internship, and require outsourced core competency junior lawyer training are significant, requiring considerable analysis and refinement.

Many questions remain. Will law students in a two-year model miss out on law school teachings that cannot otherwise be learned? Would law schools be better suited to facilitate the public service internship through an expanded clinical program and is there a way for law schools to achieve this without being prohibitively expensive? Can law schools teach all they need to teach in two years and if not, should the first year summer be used for more class time?

Can law schools, the bar and the bench collaborate effectively to develop standardized core competencies of skills and knowledge training for all lawyers? Should the outsourced core competency training be treated as an expanded version of continuing legal education that would continue throughout a lawyer's career? Who should qualify as a trusted provider of outsourced core competency training? Would the two-year law school tuition plus the public service internship and outsourced training result in students incurring significantly less debt than they do now?

Conclusion

Reducing the law school curriculum by one year addresses the mounting realization that the current law school model is outdated. It is prohibitively expensive and unresponsive to the needs of the profession that demands more practically trained lawyers from the outset. The notion of employing entry-level lawyers in public service internships and supplementing their learning through outsourced core competency training is a way to train junior lawyers with practical skills more cost effectively and efficiently.

With these changes, graduating law students would gain hands-on training and knowledge under a new system that would develop the practical skills of entry level lawyers — a burden that the stakeholders in the profession have no longer been willing to assume. In turn, entry level lawyers will bring value to the marketplace, as they enter it.

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What follows below is excerpt from Deborah Epstein Henry's book, *Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance*, published by the American Bar Association on October 18, 2010. The excerpt is taken from Chapter 4 entitled, *Redesigning Lawyers' Career Paths*. To review the book's Table of Contents, read advance praise, read press features, order the book, and learn more, visit www.lawandreorder.com.

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Core Competency Programs

Increasingly, law firms are moving away from lockstep compensation and evaluation systems toward merit-based systems of competencies and levels. In a July 2009 survey of The Am Law 100 (America's 100 top grossing firms, according to a ranking of law firms by *The American Lawyer*) by the Law Firm Group at Citi Private Bank, almost half of the top 50 firms said they planned to switch to a performance-based or merit-based system.⁷ In a lockstep system, bonuses and billable rates are largely dictated by the number of hours logged by the associate and the number of years out of law school. Instead, by focusing on skills and experience gained at each level of progression, comprehensive level systems would create core competencies and performance expectations.

Most firms creating level systems are dividing associates into three or four levels.⁸ The groupings and numbers of competencies vary by firm but the concept is the same. . . .

Training, Evaluations, and Promotions

The ultimate goal of a level system is to revamp associate evaluations, training, advancement, compensation, and billing rates.¹² . . . Ideally, a core competency model is better than a lockstep system. “[I]t requires the firm to be clear about its expectations for its lawyers, to provide them with feedback on their progress and to link their compensation to their contributions”¹³

In implementing a core competency system, most firms conduct evaluations once or twice a year. To ensure fairness, law firms must distribute work assignments equitably, and effectively evaluate and measure associate performance.¹⁴

. . .

Perception is a critical component in an effective core competency program. Core competencies cannot be perceived by associates as a cover for reducing compensation, increasing hours, and getting rid of associates, even if these events may occur.¹⁵ For a level system to be effective, lawyers must believe that they have been evaluated fairly. Their pay and seniority depend upon it.¹⁶ With lockstep, pay is predictable. But with a merit system, firms are veering from predictability in pay and, therefore, compensation decisions must be clearly justified.

Firms adopting core competencies must train associates to achieve each level of competency. Training should be linked to the outlined competencies.¹⁷ At some firms, business skills training, including management, is part of the curriculum. . . .

Compensation

Most firms adopting a levels system create compensation bands at each level that often vary in a firm’s different city offices. At Blackwell, compensation was set on a trajectory from entry level toward the new partner base and the firm created the most meaningful pay increases between each level.²³ For Blackwell associates who spend more than one year at a given level, there may be compensation increases within levels, too, although these are not uniform.²⁴ At some firms, there is one established base pay at each level with no pay increases within a level, even if a lawyer is not promoted to the next level. At some firms like Wilmer Cutler Pickering Hale and Dorr LLP, pay will vary considerably within tiers based on individual bonuses, and a larger percentage of each lawyer’s compensation will be based on an annual performance bonus.²⁵

What law firms have not decided yet is how billable hours will be factored into an evaluation based on competencies. . . .

For firms that transition to a core competency system, it remains to be seen whether clusters of firms at each prestige level will match starting salaries with their peer firms. For the time being, firms with new core competencies will likely stick with the copycat model and measure up with competitors, at least at the entry level. Recent indications reflect that continued trend.

Billing Rates

The largest impetus for firms to transition to a core competency system is client pressure. Clients who have pushed back on billing rates feel reassured to see associate billing rates matching their level and contribution.²⁶ . . . A clear benefit to linking billing rates, associate level, and compensation is that incentives become aligned between the associate and the firm. If a firm invests in its associates and facilitates their promotion, the firm generates more revenue by being able to charge higher rates for its associates at higher levels.²⁹

Elimination of Bias

Effective core competency systems must be managed by someone who can ensure the synchronicity of the recruiting, training, evaluation, promotion, compensation, and billing processes.³⁰ It may be appropriate at some firms for this “point person” to be a partner or a professional development person. The key is that it is part, if not all, of the point person’s job responsibilities to manage the core competency process. Merit-based systems must be unbiased so that women, people of color, and reduced-hour lawyers are not negatively impacted. The evaluation system should not be—or be perceived as being—discriminatory. . . .

Impact on Women

One of the significant problems with lockstep promotion and compensation has been the underutilization of women lawyers. Under the core competency system, these concerns remain. Some believe the lockstep system was an objective way to ensure that base level pay for associates was fair, while the core competency system will rely on subjective factors outside of an associate’s control, including what matters you are staffed on or with which lawyers you work. But there are also real opportunities for women to thrive. A well-structured merit system delineates the competencies and criteria under which associates will be evaluated at each level. It gives associates a road map of what they must achieve to graduate to the next level and provides supervisory lawyers the guidelines necessary to evaluate and compare associate skills and development. A well-designed competency system should also have a clear method for doling out assignments fairly. If these steps are put into place, it should minimize the risk of women associates not gaining equal access to staffing and promotion.

All lawyers stand to benefit from the clear articulation of expectations and benchmarks created in a core competency system. Women and people of color, in particular, have the opportunity to thrive under the new system. Under the lockstep system, women and people of color have often been excluded from networks and mentoring³⁶ that would have facilitated their promotion. While core competency systems cannot replace the value of mentors and networks in supporting junior lawyers and familiarizing them with the unwritten rules of practice, women and people of color still stand to benefit from the clarity of the criteria to advance. Additionally, detailed core competencies that are properly implemented may reduce the subjectivity often associated with attorney evaluations. With benchmarks and criteria outlined, there is more accountability for evaluating attorneys. That should create more objectivity in the evaluation process.

Women also stand to benefit from some of the criteria identified in core competency systems because they encompass areas where many women naturally flourish, including interpersonal skills, teamwork, cooperation, tact, diplomacy, delegation, and supervision.³⁷ . . .

Impact on Reduced-Hour Lawyers

Core competency programs have been recognized for their flexibility. Lawyers can advance at their own rate, in line with their own skill.⁴⁰ In the lockstep system, reduced-hour lawyers face the stigma of being put in a separate category and marginalized. If firms allow reduced-hour lawyers to excel at their own rate in the core competency system, that should minimize the stigma, even if these lawyers advance at a slower pace.

However, with the flexibility and opportunities come identifiable risks for lawyers seeking work/life balance who want to remain on partnership track in a core competency program. These include:

Compensation: . . .

Accountability: . . .

Contribution: . . .

Misconstruing Work/Life Balance as Lack of Aspiration: . . .

The greatest risk in a core competency system for lawyers seeking work/life balance is that they will be presumed not to want high-quality work and not be partner eligible. Employers often mistakenly think that lawyers working reduced hours are willing to forgo challenging work and

the opportunity to advance in exchange for predictability and control. Not necessarily. There are typically two separate categories of reduced hour lawyers:

1. Those desiring to move off the partner track on a temporary or permanent basis in exchange for less challenging work and more predictability and control; and
2. Those desiring the opportunity to make partner and perform challenging work, just at a reduced pace that allows them to spend more time with their families or pursue other commitments or interests.

The risk in confusing these two groups is acute given the increased role that staff and non-partnership attorneys will play in the future of the profession. . . . With women making up 72.5 percent of the lawyers working reduced hours,⁴¹ the concern is that all women will be sidelined and “mommy tracked” into staff and nonpartnership attorney roles and will not be partner eligible in the core competency system.

. . . .

Some argue that lawyers seeking fewer hours should not be eligible for sophisticated work. However, as will be discussed in Chapter 8, as long as reduced-hour lawyers are performing at a high level, being responsive to clients and colleagues, and meeting the competency requirements, there is no basis to deny their eligibility for advancement. . . .

Additionally, with the move to alternative fee arrangements, reduced-hour lawyers who pursue and commit to challenging work should be partner eligible. Under alternative fee arrangements, lawyers should be evaluated according to their results and efficiency, not hours. If a reduced-hour lawyer achieves competencies and favorable results in less time, that lawyer should be further rewarded with advancement rather than penalized.

Progression and Promotion: Firms implementing competency systems generally expect that associates will progress through the levels every two to three years. Thus, under the core competency system, there is still risk of stigma when colleagues see that some associates are progressing through levels more quickly than those associates voluntarily electing to work at a slower pace. From the outside, associates working reduced hours may be indistinguishable from associates who do not excel through the levels because of lack of skill or talent. It is therefore essential that associates working reduced hours be evaluated fairly and be eligible to progress

through the levels, assuming they meet the requisite competencies at each level. Even given the stigma risk, it is still preferable to mainstream the reduced-hour lawyers and keep them in the core competency system and not create a separate track for their progression. Thus, associates seeking reduced hours should be evaluated within the same core competency system, with the recognition that progression may be at a slower rate. . . .

Apprenticeship and Training

Associate training is another area where firms are rethinking how to manage their talent. One recommendation of the 2001–2002 ABA Billable Hours report was that firms vary billable hour minimums by experience, by not requiring, for example, billable minimums for first- and second-year associates.⁴⁷ This ABA recommendation was reinvigorated in 2007 by the Opt-In Project report that recommended that law firms consider having no billable hour requirement and lower salaries for an associate's first two years, allowing more time for training and skill development.⁴⁸ Beginning in 2007, many firms began to rethink their training of associates, and a handful of firms have taken it a step further and implemented apprenticeship models.

An apprenticeship model provides structured training to incoming associates and increased exposure to senior lawyers from whom they can learn. The model is also typically accompanied by reduced billable hour targets and reduced salaries. Clients are the most significant impetus for implementing apprenticeship models. Many have refused to pay for a new lawyer's learning curve.⁴⁹ For firms setting up an apprentice model, it is advisable to establish a person who can oversee the lawyers and ensure that their training goals and workloads are being met.⁵⁰ . . .

There are a lot of bonuses to apprenticeship programs. Law firms earn tremendous goodwill from clients who no longer have to pay for new associate training.⁶⁷ Firms also save money by cutting salaries.⁶⁸ Law firms adopting apprenticeships believe that their enhanced training programs will distinguish them in terms of recruiting.⁶⁹ According to a February 2007 straw poll conducted by the *ABA Journal*, about 84 percent of associates said they would prefer a more manageable billable-hour requirement, even if it means smaller paychecks.⁷⁰ Adopters of apprenticeship programs are also hopeful that by investing in their associates, they will build loyalty in them.⁷¹ Indeed, some junior associates are thrilled to be gaining access to influential partners and exciting work, without the pressure to bill, at such a junior level.⁷²

There are also some risks and challenges with apprentice programs. The training can be costly and the loss of billable hours can result in an economic hit for the firm.⁷³ At Howrey, for example, Managing

Partner and CEO Robert Ruyak estimated that the apprenticeship program would cost between \$3–4 million to implement when calculating unbilled hours and training costs.⁷⁴ Ruyak, however, anticipated the firm turning a profit faster once associates are trained and ready to handle client matters.⁷⁵ He also explained that this is money the firm would have otherwise spent—just that it would ordinarily have spent the money over seven years, rather than two.⁷⁶

Some believe that law students will not be drawn to firms' apprenticeship programs and instead will be enticed by bigger money at other firms. If a firm with the apprenticeship model is offering \$80,000 to \$100,000 while another firm is offering \$160,000, many top students may be lured to the higher-paying firm.⁷⁷ Also, more prestige may be associated with the higher-paying firms. Some contend that existing training programs at many firms are good and are not convinced that sitting in a classroom will give young lawyers the training they need.⁷⁸ There may be a risk in too much observing—some believe learning to practice law actually requires practicing, and associates won't really learn until they have to do the work themselves. There is also concern about whether lawyers will simply take their training and run. These junior lawyers may benefit from the training and reduced pressure to bill and then, being very marketable, choose to leave.

Changes to Law Schools and Law Student Paths

When we consider all of the changes facing the legal profession, we must also consider the impact on legal education. Many argue that law schools must reform their curriculum. With law jobs more scarce and clients no longer willing to pay for law firm associate training, law schools should be more pressed to implement changes such as those recommended by the Carnegie Foundation for the Advancement of Teaching report.⁷⁹ The Carnegie report concluded that law schools are not proficient enough in helping students develop professional competence and identity.⁸⁰ It called for a changed curriculum that integrates traditional analytical courses with practical training that prepares students for practice.⁸¹ Questions remain, however, whether law schools are prepared to accept a new role of training law students, whether they are best suited to provide the training, and, if they are, what the best format is for doing so.⁸²

In terms of specific curriculum changes, some believe law schools should better prepare students to operate in a business environment by teaching law students effective communication, business management skills, and a foundation in financial principles.⁸³ Some think law students should learn strategic thinking and organizational management skills more often taught in business schools.⁸⁴ Some also believe that the process of working in teams done in business schools will benefit students.

Still others believe that law schools may need to include in their coursework classes that prepare students for the non-legal careers that lawyers have always sought, including business, government, journalism, and others.⁸⁵ With all of these suggested changes, though, some fear that if legal education becomes too focused on practicality, it will stifle creative thinking.⁸⁶

There has also been discussion of whether there should be multiple models of future law schools.⁸⁷ Perhaps certain schools could have specialties to distinguish themselves and train different types of lawyers.⁸⁸ Also, some schools may focus on experiential learning.⁸⁹ Tuition is another significant factor that will impact law school structure. From 1990 to 2003, the cost of private law schools rose at almost three times the rate of consumer prices.⁹⁰ As of 2009, the average law school student graduated with more than \$80,000 in debt.⁹¹ Such debt already prohibits many students from pursuing government or public interest jobs.⁹² In the future, law schools will need to moderate their tuition and costs.⁹³

Some law schools have been innovators in anticipating the need to change legal education. . . .

Other law school innovators have focused on experiential learning and a greater understanding of today's legal market. . . .

Another area that law schools should consider adding to the curriculum is addressing and advising on how to overcome the challenges that many women face that impede their success as lawyers. In 2006, Flex-Time Lawyers LLC and the New York City Bar's Committee on Women in the Profession released *The Cheat Sheet*, a guide for women law students for selecting, creating, and ensuring a woman-friendly employer.¹⁰² Since *The Cheat Sheet's* release, I have advocated to train women law students on the specific challenges women face as they enter the profession. These specific challenges, identified in *The Cheat Sheet*, include five areas: mentoring; promotion; leadership; flexibility; and business development/networking. In March 2008, I developed a workshop at Yale Law School entitled "Women Law Students' 'Blueprint' for Success at Law Firms." The focus was on what I call "blueprinting"—training women law students on the above five identified challenges, the areas that have traditionally caused the careers of women lawyers to stall. The "blueprinting" goal is to enable women law students and junior women lawyers to design blueprints—plans for their success—by training them at the law school and junior associate levels.

Blueprinting programs are the flip side of the popular reentry programs designed to retool women professionals to get back to work after leaving their professions, primarily for child rearing. By blueprinting as

women enter their legal careers, we can ensure that more women will not need to leave their careers midstream. Law schools should incorporate blueprinting programs into their curriculum and train students on the subjects of mentoring, promotion, leadership, flexibility, and networking. 103 A complete framework for blueprinting programs is outlined in Chapter 16. Effective blueprints will empower women to navigate the hidden ingredients to success, to plan for the challenges they will face, and to gain the awareness and skills to succeed. . . .

As the law school curriculum is changing, the student body may also need to change. It may be more fitting for entering law students to have two or more years of work experience, like those traditionally entering business schools. . . .

Law schools should not only be focused on educating and training their law students but also on training their alumni. Specifically, they should train their “lawyers in transition” (lawyers who have been laid off or are voluntarily seeking a career change) and “reentry” lawyers (lawyers who have left the profession for one or more years, mostly to become full-time caregivers).107 . . .

It is in a law school’s financial and reputational interest to have its alumni employed. Law schools could be doing much more to get their reentry and lawyers in transition back to work. Law schools should train their alumni to maximize their opportunities to return to work by advising them how to use their leave time productively; address the specific challenges they and their prospective employers face; choose the right work venue; use flexibility as an asset; network and interview effectively; and ensure a smooth transition back to work. Law schools should designate a knowledgeable representative for reentry and lawyers in transition and actively engage in programming to foster a successful return. Law schools should also develop creative ways to use their alumni networks to facilitate introductions and networking. Additionally, law schools should consider creating special interview opportunities for reentry and lawyers in transition and developing relationships with legal employers to either entice them to interview these lawyers on campus or to review these résumés in a special alumni pool. . . .

A new focus at law schools should reflect an understanding that the traditional path to practicing law is no longer the norm, and the market demands that law school curriculums respond to the changed profession. The challenge for law schools is to educate and train their law students and alumni for adaptability and practicality, in addition to critical thinking.

Remaining Challenge: Who Will Train Law Students and Incoming Lawyers?

With all of the changes confronting the legal profession, law students and new lawyers face the risk of becoming casualties of the shifting climate. Under the new law firm models, experienced, well-trained lawyers, rather than entry-level ones, are the sought-after talent. Under the new large law firm models, associate classes are shrinking. Lawyers who do join the large law firms will find clients no longer willing to pay for their training. Outside of firms that have adopted the apprenticeship model, it remains a mystery where junior lawyers will get trained.

The lack of training of junior lawyers will not only negatively impact graduating law students and law firms. It also does not bode well for in-house legal departments who get the benefit of hiring well-trained lawyers from law firms. As Michael Reilly, assistant general counsel at FMC Corporation, put it: “[T]he legal industry is ‘jeopardizing our own farm system.’”¹⁰⁸ Virtual law firms and other new-model firms will also suffer, as they typically pluck senior talent that has been groomed by traditional law firms.

The best two training options under the new law firm models are either through apprenticeship programs or secondments, where law firm associates work for a limited term in client offices at a discount.¹⁰⁹ If other legal employers elect to no longer train incoming lawyers, the question remains whether law schools will change their curriculum enough to train law students practically, as well as analytically, to practice law.

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LAW & REORDER

Legal Industry Solutions for
Restructure, Retention, Promotion
& Work/Life Balance

DEBORAH EPSTEIN HENRY

What follows below is excerpt from Deborah Epstein Henry's book, *Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance*, published by the American Bar Association on October 18, 2010. The excerpt is taken from Chapter 3 entitled, *The Large Law Firm of the Future*. To review the book's Table of Contents, read advance praise, read press features, order the book, and learn more, visit www.lawandreorder.com.

...

Many law firms, including the largest firms, are bracing for permanent changes in staffing and non-hourly billing arrangements.¹ According to the "BTI Premium Practices Forecast 2010: Survey of Corporate Legal Spending" study, spending by general counsel on outside counsel fees dropped 10.8 percent, from an average of \$20.8 million in 2008 to \$18.5 million in 2009. Another 4.3 percent drop in spending to \$17.7 million is expected in 2010.² These cuts in spending, among other challenges, are an impetus to change to the traditional law firm model that will be explored below.

Alternative Fees

In April 2009, William Henderson, Professor at the Indiana University Maurer School of Law, and a leading Australian risk manager, Anthony Kearns, convened a group of thought leader lawyers in a role-playing game called FutureFirm. They tried to devise a strategy for a hypothetical law firm to survive another decade.³ The lawyers at FutureFirm agreed that future firms would need to offer alternative fee arrangements to share risk with their clients.⁴

The concept of alternative fees is not new. It has been around for decades and discussed at length. Indeed, the American Bar Association (ABA) launched the Law Practice Management Section Task Force on Alternative Billing Methods in 1989. The Task Force's work culminated in the 2001–2002 ABA report on billable hours, which discussed a range of alternative fee options.⁵ There is greater urgency to heed these recommendations today. While clients are pushing harder, many large law firms are still uncomfortable moving away from billable hours and incurring more risk.⁶ They are concerned about the new level of budgeting, planning, and projecting of lawyer and staff time required to manage alternative fee arrangements.

Although many large law firms fear alternative fees, they no longer have a choice. . . . Law firms will need to be receptive to . . . general counsel demands or lose business. . . . The outlook for 2010 is similarly focused on alternative fees. . . .

With so much discussion of alternative fees, it is important to identify the more popular arrangements and understand what they entail. What follows below is a summary of the pros

and cons of popular alternative fee arrangements. . . . A firm that adopts any of these alternatives, at least initially, should continue to track hours, realization, utilization, and collection. This is important as a means to compare profitability and revenue generation.⁷

Fixed or Flat Fees/Unit Pricing. With fixed or flat fees, there is usually one set fee for a whole matter. Unit pricing sets one fee for each stage of a transaction or proceeding. These approaches are well received by clients because it gives them predictability and removes the problem of receiving astronomical legal bills that have no association with results or value.⁸ For law firms, fixed or flat fees reward efficiency and minimize delays in payments and declining realization rates.⁹ Fixed or flat fees work well with simple transactions like real estate closings, wills, employee contracts, or corporate filings. The risk is that they create incentives for firms to take shortcuts or not assign their talented lawyers to the work.¹⁰

Fixed and flat fees are more difficult to manage when time and workload is less predictable—for example, in litigation, buy-sell transactions, or bankruptcies.¹¹ However, it can be done. . . . Both law firms and corporations have extensive information on the past costs of different types of matters, and this can be a starting point for determining a fixed fee. Also, if a client has repeatedly worked with a law firm, they have a pattern of dealing that should reduce the risk.

Unit pricing, where the fixed fee is broken down based on the various stages of the representation, often makes more sense for complex and high-risk matters.¹² Particularly with unit pricing, it is important to define the scope of the transaction or proceeding clearly.¹³ Also, because certain matters are unpredictable, it is often appropriate to periodically review the pricing structure to ensure that it is fair.¹⁴

. . .

Success, Bonus, or Incentive Fees. Success, bonus, or incentive fees are structured by determining a standard fee and then, prior to engagement, agreeing to reward fees commensurate with varying levels of success. . . . As with unit pricing, it is important to clearly define the success targets.¹⁵ A success fee ensures that law firm lawyers don't cut corners. It usually aligns lawyers' incentives with the clients'.¹⁶ However, the client and law firm interests do not always line up, because resolutions of matters are not always tied to performance. . . .

Holdbacks. A holdback is when a percentage of an engagement or monthly fee is withheld until the end of a matter or a predetermined time when a goal has been reached. . . . Some refer to holdbacks as success fees.

Retainers. With a retainer, a law firm provides certain services for an agreed-upon fee on a monthly basis or another specified period of time.¹⁷ Retainers provide predictability but their fairness depends on how accurate the law firm and client are in estimating the volume of work.¹⁸ Retainers are most popular when there is a large volume of relatively small matters.¹⁹ As with fixed fees, it may be appropriate to agree in advance to regularly review retainers, either monthly or quarterly, to ensure the fairness of the fee.

Contingent Fees. Contingent fees require a lawyer and client to agree on a goal to be achieved to trigger a payment and the consequences of achieving that goal. If the goal is not achieved, the client does not pay for the legal services rendered. Contingent fees are most commonly used with litigation plaintiffs where the lawyer's fee is typically one-third or one-fourth of a settlement or judgment they obtain.²⁰ Contingent fees are a form of "value billing" where the lawyer's fee is directly linked to the value received by the client.²¹ . . .

Alternative Fee Variations of the Billable Hour

There are variations on the billable-hour model that some consider to be alternative fee arrangements. Some firms and clients that struggle with designing creative alternative fees fall back on variations of the billable hour.²²

Discounted Hourly Rates. Some clients negotiate a discount on hourly rates, often for commodity work. Law firms often accede to this for significant clients with leverage.²³ There are risks associated with this arrangement on both sides. For law firms, the clients get accustomed to the discounts and when firms try to revert back to charging regular rates, it is often interpreted as a price increase.²⁴ The risk to the client is that their work will no longer be prioritized and lower-caliber lawyers will be staffed on their matters.²⁵ Also, discounting does not limit the numbers of hours billed and it does not improve efficiency.²⁶ In fact, it might encourage the opposite.

Volume Discounts. Volume discounts occur when clients commit to a certain amount of work if the work is performed at a discounted hourly rate. Thus, a firm agrees to charge a lower percentage of its standard hourly rates when its billable hours reach a negotiated threshold or series of thresholds.²⁷ . . . Clients face the same risk here as with discounted hourly rates.

Blended Rates. For blended rates, one hourly rate is negotiated for all the time spent by different timekeepers on a project. . . . While the benefit is potentially more efficient staffing, the detriment is an incentive to inflate hours or produce lower quality of work by delegating to less senior or less capable lawyers or paralegals.²⁸

Frozen Rates. Frozen rates are adopted when a law firm agrees not to raise its rates by more than an agreed-upon percentage for the length of a matter or during a certain period of time.²⁹

Per Diem Rates. Some clients prefer a daily rate, rather than an hourly rate, for certain lawyer time. . . .

Fee Cap. A fee cap places a limit on the maximum number of hours that will be billed for a matter or task. Law firms incur the loss if the maximum number of hours is exceeded.³⁰ Meanwhile the client risk, as with blended or discounted rates, is that they may receive lower-quality work and unwittingly provide an incentive to the firm to delegate their work to less senior or less capable lawyers.³¹

Hybrid. A hybrid is a combination of alternative fee arrangements and demonstrates the flexibility that can be exercised—for example, a flat fee plus an hourly fee or an hourly fee plus a contingency.³² Or, another hybrid might be a fixed fee plus a negative contingent fee.³³

There are some common elements among the alternative fee arrangements described above. In most, law firms share the risk with clients, and the law firm and client interests are aligned. Some firms fear shared risks but this can be mitigated by quarterly, or even monthly, assessments. Most alternative fee arrangements (that are not variations of the billable hour) focus on efficiency and results and present the opportunity for firms and clients to return to relationships founded on trust and fairness.

Alternative Fee Opportunities for Women and Work/Life Balance

Alternative fees also present significant opportunities for women and those working flexible and reduced hours. Women have been largely unsuccessful competing over time. Since 40 percent of women law firm lawyers with children work reduced hours in any one year,³⁴ these women will be hard pressed to ever achieve the same level of success when the measure of value is simply hours worked. However, with alternative fees, if the measure of value becomes quality of work, efficiency, and results, then women have the opportunity to level the playing field.

Additionally, firms that support flexible and reduced hours stand to benefit from the transition to alternative fees. The link between flexibility and increased productivity has been clearly demonstrated in other industries and should prove to be the same in law. For example, in 2005, the BOLD Initiative, a workplace diversity advocacy organization, found that ten large employers reaped sizeable economic gains after implementing workplace flexibility programs.³⁵ The BOLD Initiative arranged pilot projects for companies including the Chubb Corporation; Gannett Company, Inc.; Johnson & Johnson Services, Inc.; PepsiCo Inc.; Macy's Northwest; and Prudential Financial, Inc., among others. The pilot projects yielded compelling findings. Programs such as telecommuting, flex-time, and compressed workweeks resulted in decreased overtime, fewer unscheduled absences, increased productivity, and more efficient work processes. Each employer increased productivity by 5–10 percent.³⁶ Thus, lawyers working flexible and reduced hours will likely be even more profitable to firms adopting alternative fees.

Changes in Legal Staffing

Use of Temporary Attorneys

Another change to the large law firm model is the disaggregation and unbundling of legal services. . . . [M]uch of the work previously performed by junior associates will be outsourced to India and elsewhere.³⁷ Some firms have resisted the pressure to work with Legal Process Outsourcing (LPO) firms while others have embraced them.

In London, large firms are now considering using temporary attorneys. . . .

Employers that are not already rethinking their staffing model should do so. The use of temporary attorneys is a smart alternative for firms that are less certain of their staffing needs. Creating or turning to a team of pre-vetted attorneys is preferable to ensure quality control.

Shrinking Associate Classes and Increasing Use of Staff and Non-Partnership Attorneys

Due to the disaggregation and unbundling of legal services, among other factors, other staffing needs at large law firms are changing. In an *American Lawyer* survey of the top 200 law firm leaders, 72 percent said they expect their 2010 first-year associate class to be smaller.³⁸ This is because the traditional “leveraged associate” staffing model used by large law firms, which typically relies on a billing ratio of at least three associates for every partner, is being challenged.³⁹ . . .

With shrinking associate classes, another staffing trend emerging is the increased role of staff attorneys or two tiers of associates, with one a partnership track and one not. These staff or non-partnership attorneys do more routine work for less pay and at lower rates, and they are not on a firm's partnership track.⁴⁰ . . . Firms also plan to have larger pools of non-lawyer professionals who work at a reduced cost and increase efficiency for the client.⁴¹

Some firms are developing other creative solutions to combat the trend toward shifting work to LPOs or midsize and regional firms.⁴² At Orrick, for example, the firm has created an “insourcing” model in an office in West Virginia, where real estate and hourly labor are less

expensive than in urban centers. . . . The firm also announced plans to expand the number of attorneys doing routine legal work who can be paid and billed at lower rates.⁴³ . . .

Levels/Tiers of Associates

Another change to the large law firm staffing model is to create levels or tiers of associates. . . . The level system replaces lockstep associate promotion with typically three or four tiers of associates within its partner track.⁴⁴ . . .

Temporary, Staff, and Non-Partnership Track Attorney Work: The Impact on Women

The increased need for temporary, staff, and non-partnership track attorney work presents both risks and opportunities for women attorneys. Nearly one-third of women lawyers leave law firm practice⁴⁵ and many become full-time caregivers because of, among other reasons, the difficulties in managing a career with erratic hours and demands. But with an increased temporary, staff, and non-partnership attorney presence, these women may be more inclined to stay. . . .

If talented lawyers announce their plans to leave because of practice demands, temporary, staff, and non-partnership attorney positions should be offered as an alternative. Additionally, employers should recognize that if they can hire at-home mothers to do temporary work on an hourly basis, they will benefit. These lawyers will be more engaged in the work because of the lifestyle it offers them for the period of time that their kids are young. In turn, employers will benefit from having a stable pool of reliable workers rather than transitory lawyers looking toward their next move.

With the increased role of staff and non-partnership attorneys, there is a significant risk that more women will be “mommy tracked” and fewer will pursue the challenging alternative. The risk stems from the fact that generally, two groups of attorneys pursue the staff and non-partnership attorney path. One group of these attorneys is not as well credentialed or otherwise would not be hired for or cannot manage the higher paid, partnership track work. The other group of attorneys who pursue these roles are high-caliber lawyers who are seeking the less challenging work because it is more predictable and consistent with their lifestyle needs. This second group of lawyers is often women who work flexible or reduced hours in the staff or non-partnership attorney role. The bottom line is that many women have left the workforce entirely or have left law firms. If we provide women with another opportunity to remain engaged in the profession, these alternative positions should better serve them in the long run as long as certain cautionary measures are taken. In other words, it is better that women continue practicing law in a less challenging capacity than leave the profession entirely—as long as the overall representation of women in the profession increases, including the representation of women at the top.

There are critical safeguards law firms should implement to minimize the risk that the increased role of staff and non-partnership attorneys will be detrimental to women. These include the following:

1. *Track All Levels of Female Representation:* The representation rates of women at all levels of seniority needs to be tracked annually. The objective is to increase representation of women at the equity partner level and overall. In other words, the increased role of staff and non-partnership attorneys will only be beneficial if it results in more women staying in the profession overall *and* more women being represented at the highest level.

2. *Create an On-Ramp for Talented Attorneys to Return to Partnership Track:* Law firms need to recognize that some lawyers seek staff or non-partnership track work only temporarily during a certain life stage. Those staff or non-partnership attorneys capable of doing the more sophisticated, higher-paid work (often with irregular hours) should be given the opportunity to resume doing so if the business needs exist.⁴⁶ At some firms, it may be appropriate to separately label the non-partnership attorneys who are capable of doing the more sophisticated, higher-paid work but who have sought the less challenging and predictable work for lifestyle reasons. These high-caliber lawyers can be called “Fixed hour attorneys” rather than staff attorneys. The term “Fixed” suggests the predictability that this high-caliber talent is seeking and also separates this group of attorneys from those who do not have the capacity to do partnership-level work. If firms separately label these two groups of non-partnership track attorneys, attention must be paid not to degrade those attorneys who are in the permanent staff attorney role.

3. *Educate to Inform and Avoid Stereotyping:* Firm lawyers need to be educated about the different career paths that are available to them, what each path entails, and what are the risks and tradeoffs of electing the different career paths. Law firms must be vigilant that women are not being disproportionately steered into the staff and non-partnership attorney positions. Firms must also guard against assumptions that all women or all mothers belong in these positions. The message must be clear that many women with and without children will seek the highly challenging and higher-paid work that is often accompanied by more irregular hours. Additionally, the option for high-level talent to pursue staff or non-partnership attorney work should be available to men and women for reasons in addition to parenting.

Compensation

Over the past 10 to 15 years, there has been a growing pay gap between large law firms and the rest of the profession. . . .

Rising compensation appears to be disappearing as a result of the recession, like other bygone practices. The factors that are driving the decline in associate compensation include

clients' resistance to rate hikes, a decreased demand for legal services, and an increase in contract lawyers, LPOs, and virtual law firms.⁴⁷ . . . Regardless of whether firms abandon lockstep compensation, it seems that compensation among most associates in the United States will decline. It remains to be seen, however, whether UK firms will follow the United States' downward compensation trend. . . .

As of February 2010, almost 30 Am Law 200 firms (America's 200 top grossing firms, according to a law firm ranking by *The American Lawyer*) abandoned lockstep in favor of a merit-based system.⁴⁸ The new structure being established by nearly all of the firms has three tiers, with bonuses, raises, and promotions tied to annual evaluations.⁴⁹

. . .

In terms of future compensation for associates, the picture is not entirely bleak. Top associate talent may earn more than associates do today.⁵⁰ Many think the issue is not that all associates are overpaid, just that many are.⁵¹ . . .

If compensation declines for most associates, there will likely be other accompanying trends. Perhaps the long hours will go by the wayside with the high compensation.⁵² It also may result in fewer graduating law students taking top law firm jobs as a means to repay their law school debt. These lawyers entering the profession may have the opportunity to choose work that is more closely aligned to their interests⁵³ or pursue midsize or regional firms where the pay gap with large law firms may be shrinking.

Changes in Recruiting

As large law firms change staffing, the recruiting process will become another ripe area for a market correction. Recruiting changes have been discussed widely since the economic downturn began in 2008 and even before. The recruiting problems start with the unrealistic premise that a legal employer should be able to accurately predict its hiring needs two years before a lawyer's start date. The problems are compounded by the fact that the leveraged associate pyramid model at law firms relies on the attrition of most of the associates hired.

The result is that law firms plan to shrink the number of law students hired to fill summer and first-year associate classes. A handful of firms took a stark approach and canceled on-campus interviewing in the fall of 2009 and their 2010 summer associate programs.⁵⁴ Most other firms shrunk the sizes of their summer associate classes, hoping they could reduce attrition by being more effective at screening applicants.⁵⁵ . . . The goal at many firms now is to cut the incoming class in half and expect a higher percentage of the class to be promoted to partner, rather than expecting only a 10 to 15 percent promotion rate.⁵⁶ Executing on this goal will prove challenging if firms do not significantly change their talent management system .

. . .

. . .

Ultimate Challenge Facing Large Law Firms: Determining Value

With all of the challenges facing large law firms, one theme is consistent throughout: the challenge of measuring value. This challenge resonates in three ways.

1. Measuring the value of a case or matter is a challenge that makes alternative fee arrangements hard to effect. Firms and clients need measures to assess the value of a representation. Neither side wants to incur more than its fair share of risk.

2. Measuring the value and profitability of a law firm is another challenge. Firms are looking for new metrics and may move away from profits per equity partner as a defining measure to assess performance.⁵⁷ It is uncertain whether firms will develop varying metrics to measure profitability or if a new standard for all firms will evolve. If the measure moves away from profits per equity partner, then it is likely that the partnership structure itself will change. With all of the structural shifts being discussed regarding large law firms, there is an unusual silence about the future of law firm partners. Partner roles will inevitably need to evolve given all of the expected changes with law firm associates.

3. Measuring the value of associates for promotion purposes is a third challenge as firms move away from lockstep promotion and compensation. This is made more difficult by the use of blended methods. For example, if 30 percent of a firm's revenue is earned from alternative fees and the rest from billable hours, does that confuse the evaluation process? How much should billable hours be considered in evaluating associates, if at all? As firms transition from lockstep to competency-based evaluations, this concern may diminish. However, the challenge of assessing a lawyer's value based on a measure other than time will remain. . . .

One thing is clear: as large law firms face the obstacles of today, they should look closely at the new models emerging around them. These new-model firms have been built on the inefficiencies and imperfections of traditional law firms and the failures of the billable-hour model. In turn, traditional firms can improve their productivity and profitability through close examination and lessons learned from their alternatives.

¹ Ross Todd, *Law Leaders: Crunch Won't Cause Legal Revolution*, LegalWeek, May 13, 2009, available at <http://www.legalweek.com/legal-week/news/1171379/law-leaders-crunch-won-cause-legal-revolution>.

² Sheri Qualters, *Outside Counsel Spending Projected to Drop by 4.3 Percent Next Year*, Nat'l L.J., Oct. 9, 2009, available at <http://www.law.com/jsp/article.jsp?id=1202434410545>.

³ Aric Press, *Legal Professionals Role-Play the Future of Big Law*, Am. Law., Apr. 21, 2009, available at <http://www.law.com/jsp/article.jsp?id=1202430052156>.

⁴ *Id.*

⁵ Am. Bar Ass'n, ABA Commission on Billable Hours Report 2001–2002 (2002), available at <http://www.abanet.org/careercounsel/billable/toolkit/bhcomplete.pdf> [hereinafter ABA Commission Report].

⁶ Eric Young, *More Bay Area Firms Adopt Creative Legal Fees*, S.F. Bus. Times, Jan. 1–7, 2010, available at <http://sanfrancisco.bizjournals.com/sanfrancisco/stories/2010/01/04/story10.html>.

⁷ Alan G. Badey, *The Alternative Billing Debate Continues*, N.Y.L.J. (2009).

⁸ Ben W. Heineman Jr. & William F. Lee, *Two Veteran Lawyers Say Now Is the Time for Fixed Fees*, Corp. Couns., Aug. 24, 2009, available at <http://www.law.com/jsp/cc/PubArticleFriendlyCC.jsp?id=1202433261281>.

⁹ *Id.*

¹⁰ David Gialanella, *Taming the Billable Beast*, A.B.A.J., Feb. 1, 2008, available at http://www.abajournal.com/magazine/article/taming_the_billable_beast/.

¹¹ Badey, *supra* note 7.

¹² Heineman & Lee, *supra* note 8.

¹³ Badey, *supra* note 7.

¹⁴ Evan R. Chesler, *Kill the Billable Hour*, Forbes, Jan. 2009, available at <http://www.forbes.com/forbes/2009/0112/026.html>.

¹⁵ Badey, *supra* note 7.

¹⁶ Chesler, *supra* note 14.

¹⁷ Richard J. Rawson, et al., *Fee Arrangements*, in *Successful Partnering Between Inside and Outside Counsel*, at 8-17 (Robert L. Haig ed., 2000). . . . Note that the term “retainer” can also be used to refer to an up-front payment made by a client to assure payment (rather than as an alternative fee arrangement). *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ ABA Commission Report, *supra* note 5, at 18.

²¹ Rawson, et al., *supra* note 17, at 8-18.

²² Rachel M. Zahorsky, *Majority Say Law Practice Is Undergoing a Sweeping Evolution, Survey Says*, A.B.A.J., Mar. 26, 2010, available at http://www.abajournal.com/news/article/majority_say_law_practice_is_undergoing_a_sweeping_evolution_survey_says/.

²³ ABA Commission Report, *supra* note 5, at 17.

²⁴ Badey, *supra* note 7.

²⁵ *Id.*

²⁶ ABA Commission Report, *supra* note 5, at 17.

²⁷ Rawson, et al., *supra* note 17, at 8-15.

²⁸ Rawson, et al., *supra* note 17, at 8-14.

²⁹ *Id.* at 8-15–8-16.

³⁰ *Id.* at 8-14.

³¹ *Id.*

³² ABA Commission Report, *supra* note 5, at 18.

³³ Jeanne Graham, *Alternative Billing Increasingly Important for Texas Firms, Survey Shows*, Tex. Law., July 1, 2009, available at <http://www.law.com/jsp/law/sfb/lawArticleSFB.jsp?id=1202431903623>.

³⁴ Mona Harrington & Helen Hsi, *Women Lawyers and Obstacles to Leadership*, in A Report of MIT Workplace Center Surveys on Comparative Career Decisions and Attrition Rates of Women and Men in Massachusetts Law Firms 32 (2007), available at http://web.mit.edu/workplacecenter/docs/law-report_4-07.pdf.

³⁵ Leah Carlson, *Flexibility Proves Profitable for Large Firms*, Emp. Benefit News, Sept. 15, 2005, available at <http://www.allbusiness.com/labor-employment/working-hours-patterns-flexitime/8008526-1.html>.

³⁶ *Id.* The Chubb Corporation also experienced a 50 percent reduction in unscheduled absences and a 40 percent decrease in overtime hours per employee at a claims service center. *Id.*

³⁷ David Lat & Elie Mystal, *The New Biglaw Business Model*, According to O'Melveny & Myers, Above the Law, Sept. 16, 2009, available at <http://abovethelaw.com/2009/09/the-new-biglaw-business-model-according-to-omelveny-myers/>.

³⁸ Debra Cassens Weiss, *40% of Firms Cut Starting Associate Pay, While 44% Consider 2010 Cut*, A.B.A.J., Dec. 1, 2009, available at http://www.abajournal.com/news/article/40_of_firms_cut_starting_pay_for_associates_while_44_consider_2010_cut/.

³⁹ David A. Scherl, *Leverage and Rates*, N.Y.L.J., 2009, available at <http://www.morrisoncohen.com/downloads/NYJL%20Report%20Mid%20Size%20Firms.pdf>; see also Dan Slater, *At Law Firms, Reconsidering the Model for Associates' Pay*, The New York Times, Apr. 1, 2010, available at <http://www.nytimes.com/2010/04/01/business/01LEGAL.html>; Debra Cassens Weiss, "O'Melveny Aims to Become Fixed-Fee Leader, Leaked Plan Says," A.B.A.J., Sept. 17, 2009, available at http://www.abajournal.com/news/article/omelveny_aims_to_become_fixed-fee_leader_leaked_plan_says/.

⁴⁰ Scherl, *supra* note 39.

⁴¹ Lynne Marek, *DLA Piper Plans to Keep Reducing Associate Classes, Discard Lockstep System*, Nat'l L.J., June 25, 2009, available at <http://www.law.com/jsp/article.jsp?id=1202431748925>.

⁴² Zach Lowe, *This Isn't the End of Big Law Firm Associates*, AmLaw Daily, Mar. 10, 2010, available at <http://amlawdaily.typepad.com/amlawdaily/2010/03/clobiglawassociates.html>. The idea of using lawyers outside of New York, Washington, D.C., and other big cities is gaining momentum. *Id.*

⁴³ Jill Redhage, *Orrick Shakes Up Big-Firm Staffing Model*, Daily J., July 2, 2009.

⁴⁴ Amanda Royal, *Orrick Breaks Lockstep in Response to Clients' Cost Concerns*, Recorder, July 2, 2009, available at <http://www.law.com/jsp/article.jsp?id=1202431956146&rss=newswire>.

⁴⁵ Harrington & Hsi, *supra* note 34, at 8.

⁴⁶ Deborah Epstein Henry, *Facing the FACTS: Introducing Work/Life Choices for All Firm Lawyers Within the Billable Hour Model*, Diversity & the Bar, Nov./Dec., 2007, available at <http://www.flextimelawyers.com/pdf/art10.pdf>.

⁴⁷ Debra Cassens Weiss, *Associate Pay May Need to Return to 1998 Levels, Consultant Says*, A.B.A.J., Nov. 5, 2009, available at http://www.abajournal.com/news/article/associate_pay_may_need_to_return_to_1998_levels_consultant_says/.

⁴⁸ Julie Triedman, *Are Merit-Based Pay Switchovers Simply Hidden Salary Cuts?*, Am. Law., Feb. 18, 2010, available at <http://www.law.com/jsp/article.jsp?id=1202443769098>.

⁴⁹ *Id.*

⁵⁰ Dan Slater, *At Law Firms, Reconsidering the Model for Associates' Pay*, N.Y. Times, Apr. 1, 2010, available at <http://www.nytimes.com/2010/04/01/business/01LEGAL.html>.

⁵¹ *Id.*

⁵² Adam Cohen, *With the Downturn, It's Time to Rethink the Legal Profession*, N.Y. Times, Apr. 1, 2009, available at <http://www.nytimes.com/2009/04/02/opinion/02thu4.html>.

⁵³ *Id.*

⁵⁴ See, e.g., Rachel Breitman, *Morgan Lewis Cuts 2010 Summer Program*, Nat'l L.J., July 20, 2009, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202432352838>; Debra Cassens Weiss, *Triple Bad News for Law Students: Three Firms Ax Summer Associate Programs*, A.B.A.J., July 20, 2009, available at http://www.abajournal.com/news/article/triple_bad_news_for_law_students_three_firms_ax_summer_associate_programs.

⁵⁵ Lisa Smith, *Report from Law Firm Leaders Forum—Change Is the Name of the Game*, Hildebrandt blog, Mar. 12, 2010, available at <http://www.hildebrandt.com/blog/archive/2010/03/12/change-is-the-name-of-the-game.aspx>; see also Jeff Jeffrey, *Howrey Introduces Apprenticeship Program for Associates*, Nat'l L.J., June 22, 2009, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202431654426&rss=nlj242&hbxlogin=1>.

⁵⁶ *Id.*

⁵⁷ *Id.*



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Please answer the following questions about your firm:

1. Size of your firm:

2 - 25 attorneys		0	0%
26 - 100 attorneys		5	9%
101 - 250 attorneys		18	32%
251 - 500 attorneys		11	20%
500+ attorneys		22	39%
Total		56	100%

2. Number of offices:

1 - 2		7	12%
3 - 5		11	20%
6 - 10		16	29%
11 - 15		8	14%
Over 15		14	25%
Total		56	100%

3. Compared to the previous two years, please indicate your firm's lateral hiring experience in 2011:

We have hired significantly more lateral associates.		25	45%
We have experienced a slight increase in lateral associate hiring.		18	32%
Our lateral associate hiring volume has remained the same.		9	16%
Our lateral hiring volume has decreased.		4	7%
Total		56	100%

4. In your experience, which hiring criteria do the partners involved with lateral hiring at your firm value most?

Associate class year.		1	2%
Practice specific skills/experiences.		46	82%
Law school attended/law school ranking.		1	2%

Law school grades.		1	2%
Candidate's current employer.		4	7%
Other, please specify: View Responses		3	5%
Total		56	100%

5. Are the partners involved with lateral hiring at your firm flexible with regard to hiring a lateral associate who has a more junior or senior class year than the target?

No.		2	4%
Yes, but rarely due to promotion expectations or other factors.		12	21%
Yes, as long as the lateral associate is flexible with compensation.		34	61%
Other, please specify: View Responses		8	14%
Total		56	100%

6. As a result of the current market conditions, how would you describe your willingness to be flexible regarding class year in your hiring?

We are definitely more flexible now than before the downturn.		5	9%
We are somewhat more flexible.		24	44%
We have the same approach as prior to the downturn.		25	46%
Total		54	100%

7. When are you willing to consider more senior candidates for junior positions? Please select all that apply.

If coming from a government position.		27	55%
If coming from in-house or non-profit.		34	69%
If coming from another law firm.		21	43%
If the candidate has been laid off.		22	45%
Other, please specify: View Responses		9	18%

8. Have you implemented changes to your lateral hiring process in the past two years?

No.		48	87%
Yes.		7	13%
Total		55	100%

9. If yes, what changes have you implemented? Please select all that apply.

Behavior interviewing.		4	50%
Administering assessments.		1	12%
Requiring "homework assignments".		1	12%
Other new methods, please specify: View Responses		3	38%

10. Has your firm expanded or changed the lateral integration process over the past two years?

No.		34	63%
Yes.		7	13%
If yes, please describe changes: View Responses		13	24%
Total		54	100%

11. When determining compensation for entering lateral associates, how are calculations determined?

Solely on graduation year.		23	42%
Competency level.		33	60%
Other factors, please specify: View Responses		10	18%

12. Please include any comments you may have regarding recent trends/issues in lateral associate hiring:

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4. In your experience, which hiring criteria do the partners involved with lateral hiring at your firm value most?

#	Response
1	Combination of school, grades, interview, firm fit
2	Our partners value law school grades, current employer and skills/experience all equally.
3	Grades, class year and experience

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5. Are the partners involved with lateral hiring at your firm flexible with regard to hiring a lateral associate who has a more junior or senior class year than the target?

#	Response
1	Yes, as long as the lateral associate is flexible with compensation and/or class year treatment.
2	Yes, but usually they are willing to consider a more junior candidate rather than a more senior candidate.
3	Yes, as long as the lateral associate is flexible w/ comp and look to partnership
4	Depends on specific hiring need
5	It really depends on the class years of other associates in the practice group conducting the search.
6	yes
7	Yes, as long as the lateral associate is flexible with time to shareholdership and compensation
8	As long as the candidate will agree to take a hit on seniority.

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7. When are you willing to consider more senior candidates for junior positions? Please select all that apply.

#	Response
1	Has a transferable skill set, but not direct skills in the Practice Group
2	If the candidate "blows us away" during his/her interviews and will be a great fit at the firm.
3	If the candidate has changed practice area focus.
4	every need evaluated on a case by case basis
5	Yes
6	Clerkship experience
7	if the experience is not absolutely on point
8	Again, we would only consider a more senior associate if that person is willing to take a hit on seniority and probably salary.
9	If the skill sets required are not found in the more junior candidates.

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9. If yes, what changes have you implemented? Please select all that apply.

#	Response
1	We made organizational changes internally and to our feedback gathering process.
2	More rigorous review of applications.
3	n/a

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10. Has your firm expanded or changed the lateral integration process over the past two years?

#	Response
1	See above. We only hire laterals at this time.
2	Associate buddy program, online resources for them
3	Follow-up Meetings after 90 days of hire
4	Social activities that introduce the laterals to attorneys outside their practice area.
5	More comprehensive
6	Improved process - much more in depth
7	Implemented an orientation program
8	Developing more detailed and formal process and follow-up
9	
10	New Orientation that is more intensive and more follow-up
11	We are working to improve our current lateral integration process.
12	Extended the duration of the program from 12 months to 24 months.
13	Yes, we have revamped our orientation and are working on a formal partner integration process.

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11. When determining compensation for entering lateral associates, how are calculations determined?

#	Response
1	CBC, but usually a combination of class year and competency level
2	We follow the market rates and make a case by case decision.
3	
4	experience, graduation year, other skills
5	seniority level of others in the group
6	Based on perceived skill set; ensuring offers are competitive with current compensation and any competing offers
7	plus graduation year
8	experience and grad year.
9	class level placement reflects perceived experience level and dictates compensation
10	Both of the above factors are considered.

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12. Please include any comments you may have regarding recent trends/issues in lateral associate hiring:

#	Response
1	We have seen an increase in resumes from two specific big firms in the New York City area that have traditionally been rather quiet. We are seeing candidates at both the junior and mid-level from these firms.
2	2011 a banner year for lateral hiring at our firm
3	The majority of the lateral hiring activity has been at the partner level and not associate level.
4	We currently use behavioral interviewing for entry level and will be doing the same for lateral hiring in 2012.
5	We have not hired a lateral since 2010.

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NALSC Survey – 37 Responses

- 1. Are any of your law firm clients giving job orders based on core competencies or transferable skills, without reference to law school graduation year?**

Most – 2.7%
Some – 24.3%
Few – 21.6%
Virtually None – 51.4%

- 2. What type of law firm is more likely to hire based on skills rather than class year?**

National – 2.7%
Regional – 27%
Local – 45.9%
Virtually None – 24.3%

- 3. Are your law firm clients limiting consideration to candidates of specific graduation classes only?**

Virtually All – 24.3%
Most – 54.1%
Some – 16.2%
Few – 2.7%
Virtually None – 2.7%

- 4. As a result of current market conditions, have you found your law firm clients more willing to be flexible regarding class year in their hiring than they have been in the past?**

Most – 5.4%
Some – 35.1%
Few – 40.5%
Virtually None – 18.9%

- 5. What type of law firm is more likely to be more flexible regarding class year?**

Global – 2.8%
National – 2.8%
Regional – 27.8%
Local – 52.8%
Virtually None – 13.9%

6. Are your law firm clients willing to consider more senior candidates for junior positions:

a. If coming from a governmental position?

- Most – 8.6%
- Some – 31.4%
- Few – 28.6%
- Virtually None – 31.4%

b. If coming from in-house or non-profit?

- Most – 5.4%
- Some – 21.6%
- Few – 29.7%
- Virtually None – 43.2%

c. If coming from another law firm?

- Some – 29.7%
- Few – 27%
- Virtually None – 43.2%

d. If the candidate had been laid off?

- Virtually All – 2.7%
- Most – 2.7%
- Some – 8.1%
- Few – 32.4%
- Virtually None – 54.1%

7. Is there more flexibility regarding class year depending upon the desired practice area?

- No – 51.4%
- Yes – 48.6%

If yes, please explain:

- *If the client is desperate, possibly, and if the practice area is very niche (tax, IP), some flexibility as well.*
- *The "hotter" the area, the more flexibility*
- *If the practice area is "hot" and there are not enough candidates, firms will be more flexible.*
- *If it is a niche/smaller practice area, or more difficult to find attorneys in a specific practice area, then the firm is much more likely to be flexible about the class year.*
- *With certain hard to find areas of law like trusts and estates and tax, they are sometimes a little more flexible.*
- *Real Estate, or other practice areas where associates got virtually no experience over the last few years due to the economy.*
- *Investment Management or there may be seem flexibility - maybe other regulatory areas like gov Ks, FDA etc*

- *In Houston, because of the shortage of candidates with strong energy experience, there is some flexibility -- but only after the employers have seen for themselves (or lost candidates to higher bidders) that a shortage exists.*
- *There seems to be more flexibility for corporate and real estate transactional associates.*
- *Only in tough to find specialties like EE*
- *If difficult position to fill will be flexible within a couple of years.*
- *If there is a very small pool of potential candidates*
- *very very slight flexibility if practice area is very very tough to find appropriate candidates but only one class yr*
- *in tough to fill areas*
- *Class years can vary for patent attorneys*
- *I am seeing flexibility on class year only for super-specialized areas like IP positions requiring certain undergraduate degrees, and some big law staff attorney positions (especially L/E). Also, I am seeing corporate positions wanting seniority ("run the deal" associates), and litigation positions wanting the super junior candidates.*
- *More 'in demand' practice areas are more flexible.*

8. Are you aware of your law firm clients using any of the following selection tools:

Behavioral Interviewing – 38.9%

Administering Tests or Assessments -33.3 %

Requiring “Homework Assignments” – 22.2%

Other New Methods, please specify – 5.6%

- *Clients are definitely more thorough in their hiring practices, testing is more common.*
- *only a handful*
- *No*
- *no*
- *N/A*
- *not at this time*
- *could only pick one but 'homework assignments' also*
- *none*
- *None of these.*

9. Are you aware of any changes in your law firm clients' onboarding or integration processes over the past few years?

No – 82.9%

Yes, please describe – 17.1%

- *Onboarding is a more integrated approach, but more notably at the partner level. Associates still largely viewed as a commodity hire.*
- *more formalized*
- *More firms are using onboarding and integration as a selling tool during the recruitment process.*

- *Many of my law firm clients are instituting more formal integration procedures.*
- *Hiring very few and much smaller summer classes/interns.*
- *More thorough*
- *Some clients are formalizing more of their processes.*

10. When your law firm clients are setting compensation for entering lateral associates, how are calculations determined?

Solely on Graduation Year – 52.8%

Competency Level – 19.4%

Other Factors, Please Specify - 27.8%

- *Primarily on graduation year*
- *Both on graduation year as well as on competency level*
- *Combination of graduation year, years of relevant experience, and how other peer-attorneys are compensated.*
- *For the most part, though often the smaller firms consider experience as well as other factors.*
- *It depends on the law firms. With the larger firms, it is usually with the graduation law, mid--size and smaller firms take the competency level more into account.*
- *mostly grad year with some backtracking for competency*
- *only some... some are still considering the graduation year only*
- *combination of graduation year and competency level (i.e., if competency is below expected for graduation year, compensation is adjusted downwards in line with a more junior graduation year)*
- *Some local firms with set compensation on competency levels.*
- *It is a mixed bag and if the person is a star the firms have some flexibility.*
- *graduation year or competency level, depending on how the candidate has been slotted.*
- *based on graduation year or level of experience in the focus practice, which ever is more appropriate*
- *Clients are basing compensation, we have found, on what the candidate is making at their present firm, as well as what others in the group are commanding. Finding lockstep is disappearing at several firms*
- *a combination of the above-- but they still tend to put people in a particular class for comp purposes. sometimes people just have to step back a year or two*
- *Generally a formula based on billable hours, grad year, and education , ie., advanced degree.*
- *one or the other or a combination of both*