



THE FUTURE OF LEGAL EDUCATION: A SKILLS CONTINUUM

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I. INTRODUCTION: THE BUSINESS CASE FOR A LEGAL SKILLS CONTINUUM

Steve Gibson

Only 10 to 20 percent of people can stay calm and think in the midst of a survival emergency. They are the ones who can perceive their situation clearly; they can plan and take corrective action, all of which are key elements of survival. Confronted with a changing environment, they rapidly adapt.

—Laurence Gonzalez (*“Deep Survival: Who Lives, Who Dies, and Why”*)

Premise

While the need for legal educators to improve the way they identify the essential skills of lawyering and how law students and lawyers alike are trained to become proficient in those skills has been studied and discussed for nearly five decades, little has changed. The current recession, however, appears to have catalyzed change, driven by recent shifts in client perceptions of value and reinforced by underlying business trends, that will be lasting and deep. In order to remain vibrant, relevant and successful, skills training must transform from a 50-year old topic of discussion to a newly energized, integrated process of training legal professionals.

In the pages that follow, we present viewpoints and specific recommendations from lawyer development professionals at leading law firms and the National Institute for Trial Advocacy. While certainly not comprehensive, we seek to be as specific as possible in any recommendations made. As a result, the proscribed changes are neither complete nor appropriate for all law schools, law firms, or Bar Association/CLE providers.

Background

The shock of recession—over 13,000 layoffs at 250+ major law firms since last year began¹—was layered on a profession that, while growing and profitable, was subject to many of the same competitive forces of technological innovation and the like that face professional service firms world-wide.² These pressures, originating from clients, naturally have intensified as the economy worsened. Historically, such forces remain long after the causal downturn has ended.

With speed few anticipated and permanence even fewer are willing to predict, the legal industry has changed. While it remains to be seen just what will constitute the “new normal,” and how different it will be from what was a stable, profitable, and growing profession just a year ago, we believe that a skills-based lens provides important insights into today’s legal climate and crucial focus for those seeking success in tomorrow’s legal reality.

The net result is that the market for legal services has experienced a simultaneous decrease in demand and, in effect, an increase in supply. Even the most economics-shy attorney understands the depth of the potential implications should these shifts become permanent.

1. See, e.g., lawshucks.com

2. E.g. blogs.cisco.com/news/comments/cisco_general_counsel_on_state_of_technology_in_the_law

While an in-depth analysis of structural trends in *the legal industry* is outside the scope of this white paper, we highlight four that flow in one way or another from changes in the broader economic and business environment, and which have the potential to most influence a permanent change.

- The relative success of mid-sized regional firms, less-burdened with large firm/large city cost structures, readily able to adapt to changes in the economy and competing well for large national and even global clients, and legal talent often independent of geographic proximity;
- The emergence of non-lawyer-owned firms in the UK and Australia, and the potential for that arrangement to spread into areas of competitive concern to the largest U.S. firms, if not to the U.S. directly;
- The very early signs of large clients being willing to send very routine legal matters offshore and/or the emergence of virtual and semi-virtual firms; and
- The possibility of increasing lower-cost, internal legal support staff at many clients.

From the client's perspective, each of these trends points to greater options in the purchasing of legal services, and as these options increase, the pressure on the traditional model of legal training and law industry economics will continue, independent of the eventual end of the current recession. In short, clients will be willing to purchase legal services, and competition will increase, in ever-narrowing niches, with less regard for geographic proximity or the administrative burdens of working with several firms.

This pressure, felt most keenly today at the law firm, eventually will be felt at *law schools*, as well. Looked at from the law student's perspective, the existing funding model—where large loans finance increasingly expensive law school tuition only to be offset by high starting salaries for new associates—has been called sharply into question as first year salary cuts, reduced or eliminated summer associate programs, start-date deferrals and other signs indicate that the return on a law school education may have declined. Law school, in short, may no longer be (if it ever was) the easy answer for unemployed, intelligent young professionals.

While seldom thought of in this way, the market for law school education is thus facing the same forces of increasing supply (as new law schools open and existing law schools seek to expand) and decreasing demand (from both funding effects and hiring patterns for new attorneys) as law firms. As a result, we believe that law schools, as well, will need to highlight—and in some instances, create—the connection between a law school education and value to the prospective lawyer, the firms that hire them and, ultimately, the clients that pay them. And that value increasingly will be grounded in quick-to-deploy skills, and not exclusively academic reputation or research excellence. In short, law students entering law firms will need to “hit the ground running.”

At the firm level, the confluence of all the economic, industry and financial factors creates a very high level of uncertainty and financial pressure.

- While the current de-leveraging trend might slow, the likelihood of a reversal is low;
- While the current surplus of early associates resulting from deferrals, layoffs and the like should stabilize, a return to large recruiting classes and numerous 2-L law school employment offers will not occur;

- Natural attrition, made a rarity by the economy, will resume, but will become increasingly painful as talent becomes increasingly more valuable for de-leveraged firms that have made a large investment in associate training.

Finally, for Bar Associations and other providers of *continuing legal education*, the logical outcome of these economic and industry trends is more simple, if no less severe. At the low-end, price-conscious law firms and low-cost technology will combine to drive the price of “talking head,” lecture-type programs lower and lower for all but the most specialized and dynamic of topics. At the higher-end of improving lawyers skills across the core areas identified by each firm, the pressure to customize/tailor and link training programs to client-value seems likely to intensify, yet must be balanced against the need for return on any such investment, particularly for newer associates.

What it all boils down to is the ascendance of skill—versus seniority, pedigree, location or the host of other factors that contribute to a law firm’s or individual lawyer’s reputation—as the standard of value. As we argue in the pages that follow, without a clear and articulate focus on developing the skills valued by clients, law firms and consequently law students who wish to enter legal practice, then lawyers and the profession will remain at risk even as broad economic recovery takes hold.

In our view, as market power shifts towards clients, changes will be forced earlier into, to borrow a phrase, the “value-chain” that creates a seasoned, experienced attorney. Specifically, clients will force change onto law firms. Law firms, in turn, will exert pressure on bar associations and other CLE providers, which they use in part to train their existing associates, and law schools, which train their future associates. Indeed, while as discussed above the legal profession has been talking about the gaps between skills needed and skills taught for many years, only now, as clients increasingly vote with their dollars to demand such skills has the potential for deeper change become real.

Two types of professional education are often cited as models on which to build. The case-study method used in most business schools provides a close parallel to the “real-world” work of a practicing attorney, and is noteworthy for how distinctly that approach trains students for work in business, rather than in the academic study of business.

Medical school provides a second and richer parallel. With a focus around the clinical experience of residency, medical training “...is designed to force students (and faculty) to situate their thinking around the patient’s experience and the consequences of their actions, not just their own reasoning processes.”³ Structurally, we note the integration between medical schools, hospitals, med students and, ultimately, patients in the training process and associated finances: Medical schools rely upon hospitals for clinical experience for their students; teaching hospitals rely upon low-cost residents to provide more routine (i.e. lower value) services to patients; medical students rely upon residency to provide them with the experience needed to provide immediate high-value to patients (i.e. clients) when they graduate; patients benefit across this system. It supports a learning environment that emphasizes learning in context as opposed to the learning divorced from practice model of many law schools.

Without this type of tight and integrated link between the various providers of education—in the law this would be law schools, law firms, and bar associations/CLE providers—the system will remain

3. amlawdaily.typepad.com/amlawdaily/2009/08/welcome-to-the-future-law-school-40-part-two.html

inefficient. While in the past, this loosely-linked system allowed blue ribbon reports (discussed more fully below), such as Carnegie to echo MacCrate which echoed CLEPR and so on, we believe the convergence of economic and business factors present in 2009 make the establishment of an integrated continuum of legal skills training imperative.

II. ESSENTIAL SKILLS FOR PRACTICING LAWYERS

Laurence M. Rose

Overview of Research

To say in 2009 that legal education does not provide adequate skills instruction prior to graduation from law school is almost trite. Almost 50 years ago, the Ford Foundation's CLEPR (Council on Legal Education and Professional Responsibility) Project began its work attempting to bring skills education into the law school framework through the use of externships and in-house clinical opportunities. Twenty-five years ago, the American Bar Association recognized the need for a more formal effort to entice law schools by convening a conference, "Legal Education and the Profession: Approaching the 21st Century", which was followed by a "National Conference on Professional Skills and Legal Education" by the ABA's Section of Legal Education and Admissions to the Bar, the accrediting organization for the nation's law schools. In response to the issues raised in these conferences, the Council of the Section of Legal Education established a Task Force, which ultimately published a report in 1992, *Legal Education and Professional Development—An Educational Continuum*, (The MacCrate Report), suggesting that the process of educating students and lawyers was the responsibility of both law schools and the practicing bar, and requiring a joint approach to identifying the skills necessary for adequate and competent professional representation of clients and the public.

Although the next 20 years saw an increase in law schools' response to perceived skill needs, lawyers and law firms also began to experience a greater reliance upon post-graduate "continuing legal education" opportunities to provide the skills necessary for practice to supplement the skills education received by law students who were fortunate to obtain either a simulated or "real" skill experience and to install skills training for those law graduates who had not had that experience during law school. Beginning in 2000, the legal community again began to look at reforms in legal education, with a particular emphasis on the skills dimension. The ABA Section of Legal Education established its "Out-of-the-Box" Committee, which ultimately produced a number of conferences and papers through its lifetime, which ended in 2008. In 2001, the Clinical Legal Education Association established a committee of legal scholars to develop a "Statement of Best Practices for Legal Education," and the Carnegie Foundation for the Advancement of Teaching issued "Educating Lawyers: Preparation for the Profession of Law," both published in 2007.

It is in the context of this history, and in light of the two most recent publications, that it is easy to conclude that identification of the appropriate skill dimension for practicing lawyers, and the education of these skill dimensions, remains in the forefront of the profession today, but not necessarily by mainstream legal educators. Although, as seen by the Best Practices authors, these skills are capable of being identified, the educational processes designed to acquaint law students and lawyers with these skills are still haphazard, piecemeal and reactive, rather than comprehensive, thoughtful, and proactive.

Gap in Skills

Legal academics who research this issue and law firm leaders who are responding to the unmet demands of clients agree - new lawyers enter the practice of law lacking the real-world skills necessary to effectively service clients. Some of the missing skills include:

- Ethics and professionalism;
- Business acumen;
- Leadership and management;
- Client service and relations;
- Financial/economic analysis; and
- Business development.

Law schools, law firms and bar organizations must each take partial responsibility for ensuring that these skills are taught as part of skills-based training and development continuum and in so doing recognize that modern legal practices require superior skills in both the practice and business of law. Our recommendations to fill the gaps in skills and improve upon the methods for teaching them are included in the following sections.

III. RECOMMENDATIONS—HOW LEGAL EDUCATION AND SKILLS DEVELOPMENT SHOULD EVOLVE WITHIN LAW SCHOOLS, LAW FIRMS, AND BAR ORGANIZATIONS

The lack of a consistent view of legal education across the three legs of the legal training stool—law schools, law firms, and continuing legal education organizations—contributes instability to a system already undergoing unexpected and potentially deep change. As clients increasingly demand skills and related performance more than credentials, law firms will increase the focus on how to develop, or hire, those skills in their associates. Already, several firms are attempting to address this need with apprenticeship programs of varying lengths. While there is similar talk at the law school level, substantive changes are only likely much further in the future.

In the sections that follow, we propose changes at all three levels of legal education. Much like the core competencies framework in use at many firms, while the specifics may not be appropriate in all instances, the global view of a skills continuum, provides an effective and needed filter through which to sift possible new initiatives in order to ensure that the legal profession remains relevant and of value to clients and attractive to the nation's best and brightest talent.

Law School and Law Firm Recommendation: Bridge the Knowledge Gap between Law School and Legal Employers

Laurence M. Rose

Under current practice, the “gap” between law school and legal practice has been “bridged” in two somewhat complementary but distinctively different approaches. The practicing bar approach includes bar-sponsored courses (labeled as “Bridging-the-Gap” and providing communally delivered skills and other practical information relating to the business, networking and professional responsibility aspects of legal practice) or law firm in-house programs (which are of longer duration, but throughout the initial years, and which concentrate on firm-specific skills and practice). Law schools have provided skills training through dedicated simulation or live-client courses and clinics. What has not occurred is a systematic and joint approach to developing a communal understanding and agreement of what skills and values are necessary for the practice of law in current times and where (law school or law firm) they are best acquired. The primary reasons for this situation include: law faculty are largely recruited from recent graduates, some of whom served only a few years as associates at law firms or clerked for a judge; law faculty traditionally have not been involved with bar association leadership; lawyers who have input into the bridge-the-gap courses or in-house programs feel it necessary to teach “against” the lack of skills education in law schools; and change is perceived by both groups as a challenge to authority. At the law school level, some schools have been more willing to include practicing lawyers, who have knowledge of the necessary skill dimension, as members of the adjunct or clinical faculty, but those courses are distinct and finite. At the bar level, some associations have brought in law faculty to provide substantive, academic information during the bridge-the-gap period, but mostly on state law-related matters.

The Carnegie Foundation examined the current status of the gap from the law school perspective, and made five observations:

1. Law School Provides Rapid Socialization into the Standards of Legal Thinking.
2. Law Schools Rely Heavily on One Way of Teaching to Accomplish the Socialization Process.
3. The Case-Dialogue Method of Teaching Has Valuable Strengths but Also Unintended Consequences.
4. Assessment of Student Learning Remains Underdeveloped.
5. Legal Education Approaches Improvement Incrementally Not Comprehensively.

The Report then made seven recommendations:

1. Offer an Integrated Curriculum.
2. Join “Lawyering,” Professionalism and Legal Analysis from the Start.
3. Make Better Use of the Second and Third Years of Law School.
4. Support Faculty to Work Across the Curriculum.
5. Design the Program so that Students—and Faculty—Weave Together Disparate Kinds of Knowledge and Skill.
6. Recognize a Common Purpose.
7. Work Together, Within and Across Institutions.

As a result of these recommendations, a number of law schools have announced curriculum and structure proposals and changes. These include: additional clinical programs; mandatory clinical, experiential, or pro bono requirements; more adjunct professors teaching basic and advanced real-world courses and seminars; including a skills course in the required first-year curriculum; and practical courses relating to the economics and business aspects of law practice. Some schools have provided mentors (lawyers and judges) from the legal profession to each student, with varying degrees of scheduled interaction. The most dramatic structural changes proposed include: reducing law school education to two years (although some schools would add a 3-L experiential requirement, as currently utilized in a few schools, on an externship basis); replacing the third year with course work in either business or another substantive non-law curriculum; or charging a faculty member with the responsibility of providing skill education opportunities to his/her colleagues in each course, beginning in the first year (the question of mandating those opportunities in each course is still being debated).

The English/European model can provide some guidance. After a four-year general education, with a major in law (or after an additional conversion course for those without the law major), prospective lawyers are required to take a year-long Legal Practice Course (LPC), approved by the Law Society, which is normally separated into four phases: core foundational subjects, compulsory subjects, optional elective subjects, and practical skills (which include advocacy, interviewing, advising, writing, drafting, research, accounting, and tax). Many students will have had employment with a law firm after graduation from university, and the employer will pay for the LPC costs. Although the LPC course is taught by recognized law schools and primarily by law faculty, the practical skills portion is largely taught by practicing lawyers, and the entire curriculum and periodic review is under the supervision of the Law Society⁴, which regulates the practice of law.

In December 2007, to follow the work of the Carnegie Foundation, LEARN (Legal Education Analysis and Reform Network) was formed to encourage reflection and innovation in legal education. Composed of representatives from 10 law schools, it seeks to maintain the momentum of curricular reconsideration

4. See discussion later in this paper on the role and function of the UK Law Society and Solicitors Regulatory Authority.

and reform by educating faculty about the variety of current and future innovations as well as examining the role that assessment plays in legal education. While the proposed projects are designed to form a cohesive approach to improving the training of lawyers, it is hoped that both law teachers and practicing lawyers will be discussing the skills and subjects to be taught and assessed. This discussion must be accomplished by each law school in order for it to be effective at that school, subject to broader discussion among the practicing bar, curriculum committees of law schools, and bar examiners.

Law Firm Recommendation: Develop Core Competency Frameworks to Serve as a Roadmap to Recruit, Train, Develop, and Advance Talent

Heather Bock

Core Competency Frameworks can serve as the foundation for talent management in law firms. Recruiting, professional development, and advancement can all be measured through the use of the model. Competency models can also serve as critical tools to inform the learning objectives and curriculum of law schools and bar associations.

Competencies are characteristics which drive outstanding performance in a given job, role or function. A competency model refers to a group of competencies required in a particular job. The number and type of competencies in a model will depend upon the nature and complexity of work along with the culture and values of the organization in which the work takes place. These will support the primary tasks and the job specific tasks. Together these tasks reflect the purpose of the job. Research by individuals such as Daniel Goleman in *Emotional Intelligence* and Richard Boyatzis in *The Competent Manager* has revealed the importance of competencies as essential predictors of outstanding performance.

Recruiting

When an associate is recruited, use of a competency model in career development is part of the value proposition offered along with work experience, firm culture and compensation. Associates who want to start their careers with a strong development focus will find competency models key in guiding their skill development. When an associate progresses through a firm, the competency model is used to measure progress and to highlight developmental and training needs. This is in contrast to a random training and development assessment in practice at some firms. A competency model can serve as an interview guideline for partners and recruiters as the various highlighted competencies are used as selection criteria. When conducting behavioral interviews, partners and recruiters can assess the skill level of prospective new hires. By understanding the competency models of the organizations where they place their graduates, law schools can integrate foundational competencies into the curriculum. Soft skills such as working in teams, leadership and the drive for excellence can be particularly helpful to start building during law school as these are often ignored by law firms in favor of specific technical skills.

Training and Development

Competency models can form the basis of designing training programs for lawyers. They can inform the learning objectives for law school curriculum, law firm training programs, and bar association CLE. A leveled competency model may provide more specificity than one without levels. In a leveled competency model, each level represents different behaviors and helps the attorney understand what

developmental blocks and learning objectives look like. The example below illustrates a leveled competency on teamwork. Rather than receiving generic feedback and going to a generic training program on how to improve team skills, an attorney is able to receive feedback on specific behaviors he may be exhibiting and match the learning objectives of a training program to his needs. They both can then use this feedback to assess his current skill level as well as the behaviors that will move him to a more expert skill level.

Training programs can offer clear learning objectives based on a leveled competency model and target the specific behaviors for participants. This approach can help delineate the one size fits all training or can help coaches and faculty critiquers provide the appropriate level of feedback depending on the skill level of the participant. Attorneys can build their personal development plans linked to competencies with identified areas for growth and development. These can serve as a compass for career development.

Team work (© Howrey LLP)

<p><i>LEVEL 1 - COOPERATES</i></p> <p>Participates and willingly supports team decisions; is a good team player; does share of the work. As a member of a team, willingly shares all relevant or useful information. Proactively and willingly helps team members, taking up the slack when needed, without seeking individual credit.</p>
<p><i>LEVEL 2 - SOLICITS AND PROVIDES INPUT</i></p> <p>Values others' input and expertise; willing to learn from others, including subordinates and peers; sees value of diversity. Proactively solicits ideas and opinions to help form decisions and plans or to generate innovative solutions to problems. Promotes team cooperation. Offers input and ideas constructively.</p>
<p><i>LEVEL 3 - ENCOURAGES OTHERS</i></p> <p>Publicly credits more junior associates who have performed well. Encourages and empowers others; makes others feel strong and important. Provides direct, constructive feedback.</p>
<p><i>LEVEL 4 - BUILDS TEAM SPIRIT</i></p> <p>Acts to promote a friendly climate, good morale, and cooperation. Resolves team conflicts. Protects and promotes group reputation with outsiders. Encourages fair and open debate but supports and respects final team decision; counteracts cynicism and sarcasm.</p>

Advancement

For organizations that use a performance-based advancement system, a competency model can be integrated into the evaluation and promotion process. For those who don't use a performance-based advancement system, the competencies are helpful guideposts on the path to partner or expectations for advancement.

Law School and Law Firm Recommendation: Transform Formal Classroom Training into Learning-by-Doing Opportunities

Terre Rushton

I hear . . . I forget

I see . . . I remember

I do . . . I understand

The most effective approach to teaching lawyers is “learning by doing.” As in the proverb above, active participation is the key to integrating and understanding new skills. Beyond the traditional learning by listening, or learning by reading, *learning by doing* reflects the importance of that participation and is structured to maximize participation, allow failure, and encourage recovery and mastery of skills. *Learning by doing* is not just a method that works for trial lawyers; transactional lawyers learn how to deal with interviewing clients, fact investigation, and making client presentations, among numerous other skills. Senior lawyers improve their supervising and mentoring skills. All attorneys improve skills of presentation and persuasion, which are used to generate and to retain business.

To play baseball one must practice the skills of baseball and play in some games. You could read all about baseball and listen to lectures by all of the greatest baseball players. You could watch thousands of baseball games. But you can't truly learn how to throw or hit the baseball without practicing and playing in a few games. You don't need to play in the World Series to be a good player. But one must get out on the field and actually throw a baseball, hit a pitch, run some bases, and participate in a few games to gain the experience necessary to competently play in a real game.

First, *learning by doing* minimizes lectures and demonstrations and emphasizes performance by students. There is certainly a place for lectures, demonstrations, and selected readings as they guide learning, but they are not as important as skill building, and should not diminish the time for actual performances. The skills being taught can be mastered and adopted only if the lawyers try them and find some success in these skills. This takes practice. It will involve failure. And it requires a supportive environment that encourages participants to keep trying and failing and improving with each performance. The traditional method of talking at participants can be overwhelming and intimidating, inhibiting the desire to try and to try again. It can also hamper the development of creative new approaches. We all know that there are few mandatory rules in the art of practicing law, few single right ways to communicate and persuade. Lawyering is an art with many approaches to the same facts and many ways of expressing the same themes and thoughts. By minimizing talking the lawyers learn new skills; *learning by doing* encourages lawyers to challenge themselves and take bold creative steps from which they can learn individually and from each other.

Finally, *learning by doing* creates a safe place to fail. Maybe more than others, attorneys hate to fail and hate to be embarrassed. But failure and embarrassment are essential to gaining new insights and creative ways in which we can be more persuasive. To encourage this, the learning by doing atmosphere creates a very supportive, respectful, collaborative, collegial, and trusting environment where students can feel free to experiment and test the limits of their abilities—without hurting a client or tarnishing their professional reputation. When lawyers are eager to stretch themselves beyond their present capabilities, they find hidden talents and growing confidence that they previously did not think they possessed. By creating a safe place for people to stretch and fail, the method nurtures active learning and major breakthroughs in each lawyer's ability to persuade.

Law Firm Recommendation: Transition from Lockstep Evaluation and Compensation to Merit-Based Systems⁵

Terri Mottershead

Connecting as it does to so many aspects of law as commonly practiced today, from recruiting and retention to business development and billing, perhaps no other change could have as leveraged effect on other areas as changing evaluation and compensation. But, as argued below and elsewhere in this paper, no single change is sufficient, nor is likely to be successful absent a broader change of view, and practice, with regards to legal education and talent management.

Lockstep to Levels—It's Not All About Compensation

The current economy has given us pause to re-think how we practice law, how we service clients and how we manage our talent. Law firm revenue increases have been driven by fee increases over the past ten years, but that trend has come to an end. Law firm leaders looking to revive profitability know they must look more critically at practice, service, and talent strategies. It is not surprising that in the last year or two, law firms have been revisiting their business model in its entirety—revisiting the billable hour as a measure (or not) of service value and revisiting associate compensation and evaluation models.⁶ The movement from lockstep to variable levels of compensation for associates, a movement which the media suggests is gaining momentum in law firms, is not, however, meaningful nor can it deliver on its promise of better compensating top performers if firms view this change as being only about money.

What is the Lockstep to Merit Levels Change?⁷

Many law firms compensate their attorneys (associates and less so partners) on the basis of lockstep.⁸ In essence, attorneys enter a firm at a base salary determined by minimum billable hour expectations, billing rate, geographic market, prior experience outside the firm, and legal education/experience. On

5. The author gratefully acknowledges the thoughtful guidance and input received from Susan Manch, Principal, Shannon and Manch, LLP, and Ann Miller, Partner, Nixon Peabody, for this section of the white paper. All errors are the author's alone.

6. See discussion: Dan DiPietro, *Commentary: Leaving Lockstep Behind. Abandoning lockstep pay would go a long way toward solving the crisis in recruiting and retention* (The American Lawyer: August 1, 2008).

7. See Peter B. Sloan, *From Classes to Competencies, Lockstep to Levels How one Law Firm Discarded Lockstep Associate Advancement and Replaced it with an Associate Level System* (Blackwell Sanders LLP: 2007). This is a great explanation and case study of one U.S. firms that made the lockstep to merit levels move.

8. See the NALP Foundation Research Findings, *Survey of Law Firm Use of Core Competencies and Benchmarking in Associate Compensation and Advancement Structures* (July 2009).

entry as a new associate or as a lateral hire, the attorney is assigned a compensation year. Under a pure lockstep compensation model, each attorney in the same compensation year advances to the next compensation year at a predetermined date (according to the firm's financial year end). Firms may adopt different forms of pro rata adjustment for changes in experience like secondments or flex time but, the basic premise is that if you get a year older at the firm, your base salary will increase!

Firms have increasingly moved to what may be termed a modified lockstep compensation model which combines base salary with a bonus. For many firms, the measure for bonuses has again been billable hours. Bonuses are paid on a sliding scale with the highest bonuses being paid for the highest number of billable hours above minimum. Exceptional bonuses are also paid for an exceptional number of billable hours. In some firms, this model has been modified again so that in addition to billing above minimum, a small percentage of the bonus is allocated to other performance criteria like professional excellence, profitability, realization, firm citizenship (participation in firm administration, coaching/mentoring and training programs), pro bono (although this is more often treated as a billable hour equivalent), client relationship management/business development, contribution to team, or acting as a firm ambassador (through externally published articles, external presentations, contributions to pro bono boards, local Bar activities etc.).⁹

Proponents of lockstep argue that it is the most objective and fair way to compensate developing attorneys, recognizing that as associates, these attorneys may have little control over work flow, quality of work assigned, and effectiveness of training and supervision. Ultimately, while associates' performance quality is evaluated in a lockstep compensation model, the indicator that dominates that assessment is productivity. Top performers are readily identified and properly compensated under this system; they are the associates that partners most want to work with, will have the largest number of work assignments and will therefore bill the higher number of hours. Paying all associates at a similar level of experience the same amount of money is presumed to eliminate competitiveness and focus associates' attention on learning their craft. Is it that simple? Is a movement away from lockstep warranted or needed? Isn't this the way law firms have always done it or at least long enough to know this is a tried and true system?

Experience and research indicate that while there are inevitable truths in what the lockstep proponents argue, there are also significant flaws:

➤ *Not all billable hours are equal*

An associate billing for routinized work (like litigation document review or lease review for real estate transactions), all of which is realized, and who becomes the "go to" associate for that work (for partners and institutional clients) will be a top performer under a lockstep compensation model. However, a senior level associate who spends time developing his/her leadership capabilities on firm committees, spends time understanding and educating themselves about the client's business, may have a portion of their billable hours written off by a partner but works as conscientiously albeit billing fewer billable hours than the first associate, may not be a top performer under the lockstep model. There is no right or wrong answer to these mini case studies but there is a need to understand that compensation models in and of themselves establish, reinforce and guide expectations and behaviors for success, however "success" is defined in a firm.

9. See, for example, Bingham McCutchen discussed in Amanda Royal, *Bingham Adds Merit Piece to Associate Pay* (The Recorder: October 5, 2009).

The billable hour has also come under increased scrutiny by clients as the basis for legal fees.¹⁰ The Association of Corporate Counsel *Value Challenge*¹¹ is an example of a sustained campaign by in-house counsel to normalize this change. If clients move to fixed fees and value added bonuses as the fee norm and the basis for billings for legal services, the billable hour will no longer be a measure of top performance by a firm and it will likewise fail to be the best or most relevant measure of top performing associates.

➤ *Work assignments are not always made on the basis of “best in class”*

Not all practice groups are equal. Some are busier than others. Some partners have more political capital than others. And, we all like to work with people we are comfortable with. So what happens to the associate who is assigned to a less busy practice group or a service practice group and not a core practice group? What happens if his/her partner is not a power player or a rainmaker? What happens to diverse associates in a practice group that is not diverse? If the playing field was truly even, then the answers to all these questions would be “it doesn’t matter” but we know many law firms do not have a level playing field. If there is any doubt that this is true, one needs look no further than the results of the recent Catalyst Study on *Women of Color in U.S. Law Firms* (July 2009):¹²

The study found that women of color felt marginalized in some top U.S. law firms. Compared to white women, men of color, and white men working in law firms, women of color were most likely to perceive negative stereotyping; they were also most likely to feel that fitting into their firms’ environment was a challenge. The development and advancement of women of color was compromised by lack of access to business development opportunities and important client engagements. Women of color also felt that their supervising attorneys had low expectations of their performance.

➤ *Not all associates develop at the same pace*

It would be interesting to take a straw poll of partners in your firm to see how long it takes them to make a decision about whether or not a new associate/lateral hire is a good fit for their practice group/firm. Experience indicates that this is a very short time period—perhaps a week and in some cases, perhaps one work assignment. At best, most associates are judged to be top performers or not in just a few months. What happens, then, to the bright associate who is taking a little longer to adjust to the law firm environment? Is he/she left to languish for a couple more years until they are told to go? Does your firm marginalize them to such an extent that they can do little but fail? To whom do they turn? How is this caught, addressed and turned around quickly within your firm? If you do not have concrete, fair and transparent answers to all these questions (and many more), then the playing field is uneven.

10. See discussion in Nathan Koppel and Ashby Jones, ‘Billable Hour’ Under Attack—In Recession, Companies Push Law Firms for Flat-Fee Contracts (The Wall Street Journal: August 24, 2009).

11. See discussion and updates on Association of Corporate Counsel website at: <http://www.acc.com>.

12. Deepali Bagati, *Women of Color in U.S. Law Firms—Women of Color in Professional Services Series* (Catalyst website: <http://www.catalyst.org/publication/344/women-of-color-in-us-law-firmswomen-of-color-in-professional-services-series>), July 2009.

➤ *Not all partners are exceptional project managers*

Law schools teach law not business. Clients want their lawyers to know the law but to also provide accurate, timely, business advice efficiently and within budget. As more and more clients decline to pay first year associate rates for routine work and demanded fixed fees, there is an increasing emphasis on exceptional project management skills. Associates working with partners less skilled in these areas find their time written off because the matter will not bear the cost and/or because the associate was inefficient due to a task being poorly delegated and/or supervised.

➤ *Not all partners give timely and constructive feedback*

Lawyers do not like to give feedback—curious for a profession that prides itself on being articulate and a practice that requires advanced skills in problem solving. Perhaps it stems from lawyers, as a group, being low on the resilience scale¹³ or perhaps feedback is too often viewed as the need to berate rather the opportunity to transfer knowledge, develop a relationship and support the success of another. Whatever the reason, if we are honest, we do not have to look far to know law firms are not exemplars in this area.¹⁴ We also know that in the absence of meaningful feedback, associates cannot fully take control of their development and shape skills to meet senior attorneys' expectations.

The change from lockstep to merit levels acknowledges and, if done right, addresses these flaws and seeks to minimize them within a framework that engages the attorney in the developmental process. Fully implemented, a competency-based performance management and compensation model can develop more well-rounded professionals, identify future leaders of the firm, and create, through its talent, a more adaptable and flexible business model.

What is “the Level” in the Merit Levels?¹⁵

Under a merit or performance-based associate compensation model, associates are placed in a “merit level” based on the extent to which they are progressing toward mastery of core competencies. The number of merit levels differs from firm to firm depending on the degree of refinement between levels of skills and competency, the number of years in the firm it typically takes to advance to partnership, and the prospects of partnership at the firm. The greater the number of merit levels, the more difficult the system can be to administer. Best practices indicate that the model should have an odd number of levels and no less than three. Levels should be determined by assessing the way senior attorneys naturally express experience levels in the firm. These are often described in connection with the type of associate they need on a project. For example, if partners generally discuss associates as being junior, mid-level, and senior, a three-level model aligned with those descriptions is probably a good fit.

13. Larry Richard, *Herding Cats: the Lawyer Personality Revealed*, ABA Journal, The American Bar Association (1993).

14. Blane Prescott, Larry Richard and Michael Short, *Merit-Based Compensation and Promotion for Associates: The Challenges of Designing and Implementing a New Approach*, Hildebrandt International (September 2009)

15. See discussions in a number of recent webinars on this subject: *Replacing Lockstep Advancement: Building Alternative Tracks for Associates* (Center For Competitive Management, September 17, 2009); *Transforming Associate Advancement: Moving from Lockstep to a Performance-Based System* (Hildebrandt Institute, August 4, 2009); and *Leaving Lockstep: Moving Toward Competency Based Compensation* (ALI-ABA, July 21, 2009)

Typically in a three-tier merit level model¹⁶ and using the compensation levels discussed earlier as a rough equivalent, the first merit level equates to associates compensation levels 1-3, the second merit level to associate compensation levels 4-6 and the third merit level to associate compensation levels 7 and above. Five-tier merit level models¹⁷ tend to shorten all levels by one year and further refine what is typically referred to as the mid and senior associate ranks. For example merit level one (compensation years 1 and 2), merit level two (compensation years 3 and 4), merit level three (compensation years 5 and 6), merit level four (compensation years 7 and 8) and merit level five (compensation years 9 and above).

Within each merit level there is a range of associates.¹⁸ The range is measured not only by the number of years since the associate was first admitted to the Bar but also his/her experience in the practice and level of mastery of the firm's core competencies. As discussed in an earlier section of this paper, these competencies are often a combination of behavioral competencies (e.g. teamwork, communication etc.) and practice area-specific technical competencies or benchmarks¹⁹ (e.g. legal writing, advocacy etc.).²⁰ Each core competency is usually further broken down into performance criteria. Competencies, performance criteria, and benchmarks are developed for each different merit level. The important difference between merit levels and lockstep is that advancement from one merit level to the next bears little or no relationship to the number of years a person has been an associate. It has some relevance to experience, but only as it reflects an associate's skills and competence. To illustrate this using the earlier mini case studies, the associate doing a lot of routinized work at 100% realization and being the "go to" associate for that work, would remain in a merit level and not advance to the next merit level because his/her mastery of the full range of core competencies, at some point would plateau. Whereas the associate who was working hard and billing time but also working on building other skills, such as business development and leadership, is more likely to advance to the next merit level.

Compensation under a merit level model usually comprises a base salary and a variable and/or bonus component.²¹ There is usually a base salary (and billing rate) range within each merit level. Billable hour minimums are often noted for each level but these act more as a guide than a prerequisite for the award of variable compensation. The potential to significantly increase earnings usually accompanies

16. See discussion of Orrick Herrington and Sutcliffe's three level model in supra note 15, *Transforming Associate Advancement* webinar.

17. See, for example, the Howrey LLP five level model discussed on their website and in their press release of July 22, 2009 (www.howrey.com); and again in more detail in Drew Combs, *The Revolutionaries* (The American Lawyer: August 1, 2008).

18. Some firms have segmented level 1 associates. In these firms, entry level associates may undertake a six months (Drinker Biddle) or two year (Howrey LLP) "apprenticeship." See discussion in Jeff Jeffrey, *Law Firm Apprenticeship Programs Add Extra Step for New Associates* (The National Law Journal: June 30, 2009). These apprenticeships include a mixture of client work; client secondments; inter-office secondments; shadowing of experienced attorneys; intensive training programs; pro bono work assignments; coupled with a combination of some or all of a reduction in billable hours, annual salary, bonuses, and billing rates.

19. There is some difference in terminology as this relates to practice area skills. Where these are qualitative, they are often referred to as competencies. Where these are quantitative, they are often referred to as benchmarks.

20. Heather Bock and Robert Ruyak, *Constructing Core Competencies: Using Competency Models to Manage Firm Talent*, American Bar Association (August 2009).

21. The term "bonus" has been removed from the language of some of these merit-based compensation models to signal a change in how compensation is viewed. The new terminology used is base salary and variable compensation. However, in most models, some form of "bonus" is retained for exceptional performers. See also descriptions and discussion in supra note 8, The NALP Foundation Research Findings (July 2009).

the advancement from one merit level to the next, though many models actually include overlapping base compensation rates to accommodate high performers who need more time in a level for some reason, or those ready for a level move but lacking readiness for a billing rate increase. Unlike a modified lockstep compensation model, under the merit levels model, the variable compensation/bonus component is significant and often increases as a percentage of total compensation as one advances through the merit levels. The criteria for variable compensation/bonus awards have much less (and in some cases no) reference to 'above minimum billable hours' expectations and instead focus on mastery of the core behavioral and technical competencies, accumulation of practical legal experiences and the profitability/realization rate for an associate's work.

As is evident from the discussion so far, compensation under a merit-level compensation model depends significantly on an evaluation/assessment of subjective core competencies/performance criteria and less on objective billable hours. However, as noted earlier, the subjectivity and objectivity of each model is relative. Lockstep is likely most objective in a boutique (single practice area) small firm. In these firms, however, without a strong and consistent commitment to associate development from senior management and partners, associates will be myopically focused on billing. In medium to large firms with multiple practice areas, operating in multiple states or countries, the flaws in the lockstep model are exacerbated and the system is less likely to have relevance if clients, especially large institutional clients, move to fixed fee with bonus billing.

Got Compensation, Need Evaluation

The move to a merit-based compensation model brings about an additional focus on evaluation.²² If a higher percentage of compensation is going to be based on merit and that merit is assessed against subjective competencies and performance criteria, then the evaluation system has to be fair and transparent and must inject some objectivity into the subjectivity. For these reasons, and as mentioned at the outset in this section, moving from lockstep to merit levels is not all about saving money or even about redistributing money. Rather, it is about defining success and about understanding how talent management relates to achieving the firm's business performance goals associate by associate, relationship by relationship, and conversation by conversation, every day.

Some firms moving from lockstep to levels have therefore undertaken this change as part of a broad talent management initiative.²³ It has been part of a refocus on investment in associate talent and linking compensation and evaluation to the development and entrenchment of core skills and competencies for success. These skills and competencies are similar but also different in each firm because they must be linked to the unique performance attributes that lead to success in that firm. However, the need and desirability for firms to define success then recruit, manage performance, develop (train and coach), evaluate, reward and promote their associates against them, is consistent.

22. See generally: Joan C. Williams and Consuela A. Pinto, *Measure Fair Toward Effective Attorney Evaluations* (Commission on Women in the Profession, American Bar Association, 2nd ed.: 2008); Scott A. Westfahl, *You Get What You Measure: Lawyer Development Frameworks and Effective Performance Evaluations* (NALP: 2008); and The NALP Foundation, *How Associate Evaluations Measure Up—A National Study of Associate Performance Assessments* (2006).

23. Examples of firms here include Orrick Herrington and Sutcliffe and Howrey LLP: See supra notes 15 and 17.

Got Evaluation, Need More Partner Time

If compensation is intended to reward success, then evaluation processes and systems must support an associate with regular and constructive feedback so the associate knows immediately he/she is straying off the path to success. If competencies guide success, then this means that evaluations and compensation need to align with the competencies.

Firms that move from lockstep to levels will need to increase the amount of partner time spent in evaluation, work assignment and development discussions with associates.²⁴ Given that partner time is always at a premium, the challenge for firms, as they make the move, is in the design and staffing of their evaluation and work assignment processes and systems. Under a merit-based compensation model—where compensation and advancement are based on an associate having the opportunity to advance only if he/she masters competencies and builds level-appropriate experiences—getting the right work assignment, going to the right development program, and getting regular constructive feedback on how to perform, cannot be a matter of chance or just happening to be in the right place at the right time. The model requires planning, administration and checks and balances.

Law firms have increasingly spent time and money on their evaluation systems. Much less money has been spent on work assignment systems, and even less on associate development and coaching programs. However, firms have the opportunity to learn from other professional service sectors that have done much more. For example, experience in the consultancy and accountancy sectors has shown that constructive feedback linked to immediate corrective action can be achieved through post project debriefings or reviews. Research shows that evaluation of a person's performance will be most accurate closest to the "offending" behavior or demonstrated absence of skill or competency.²⁵

Project debriefings are typically undertaken by the project lead partners at the end of significant projects or time devoted to a project and they involve the whole team in a discussion about what went well and what did not for internal and client purposes. For an individual associate, an assessment/evaluation of their contribution and performance in the project can be captured and discussed in an individual development-focused meeting immediately after these reviews. If conducted properly, this feedback session should result in the associate being made aware of how he/she contributed to the project and result in the associate being directed to performance improvement opportunities (where appropriate) like training programs, different or additional work assignments, and/or given a time frame in which to show improvement. This sort of feedback, provides a higher degree of partner engagement, supports the development of the partner/associate relationship, quickly identifies gaps in skills and competencies, provides transparency and opportunities to achieve expectations, and in all these respects is far superior to feedback once a year in the annual performance review or not at all. There are a number of products on the market which provide software support²⁶ for capturing these sorts of post project reviews and depending upon compatibilities, can also link to firm human resource, matter and billing systems.

24. See discussion in Alex Novarese, *Editor's Comment: Step Change* (Legalweek.com: July 23, 2009).

25. Cynthia M. Phoel, *Feedback That Works* (Harvard Management Update, Harvard Business Publishing: April 27, 2009); and Lauren Keller Johnson, *Alternatives to Performance Reviews* (Harvard Management, Update, Harvard Business School Publishing: June 1, 2006).

26. See supra note 22, Scott A. Westfahl (2008), p. 67.

Despite the advantages of the post-project reviews, it is also important to retain the annual review process. There are many reasons for this, with the most obvious being that an annual review is usually linked in time to an annual variable compensation/bonus assessment. It is important to look backward in order to look forward. Regular feedback is, as noted, important but there is also benefit in viewing an individual associate's performance over the whole year as well as viewing it comparative to his/her merit level of associates. The annual review process also provides an opportunity to test the validity of the system as between associates within a merit level, or within a Practice Group, or within a geographical area (depending on how the firm is organized or its management matrix).

Giving and receiving this sort of feedback requires partners and associates to undergo training and have access to resources and support to make these conversations most effective. This is not to suggest that all partners and all associates will engage in this process equally or well. But it does suggest that for talent management to be truly effective and an integral part of the firm culture, everyone has an ownership responsibility—for associates, to listen and learn, and for partners to transfer knowledge and experience—and thereby to develop the next generation of firm leaders.

The one real drawback with all forms of evaluation is that they are by nature and purpose backward looking. They assess past performance and too many review systems fail to include a career development element in the overall evaluation process model. Enter the importance of career development plans and coaching.

Career Development Plans and Coaching²⁷

In many firms, career development plans and mentoring/coaching have not enjoyed great success. There may be many reasons for this, but experience points to an absence of follow up, follow through and return on investment as the leading reasons for their disrepute. Most firms fail to truly engage the associate in the process as a participant, rather leaving them to assume a passive posture that rarely results in high levels of success.

In order to be effective in shaping the quality of associate performance, evaluation meetings must result in associates drafting personal career plans with SMART (specific, measurable, attainable, realistic, time bound) short, medium and long term goals and action steps for career and performance improvement. Without this additional step, evaluation meetings will focus more on what went wrong rather than how to make it right. A merit based compensation model (or any compensation model for that matter) will lack credibility if there is no opportunity (through lack of support) to improve compensation and advancement through improvement of skills and competencies during the next year. Follow up on these career plans is where the better mentoring/coaching programs kick in.

With the career plan in hand, the partner/mentor/coach can discuss the opportunities and challenges the associate has experienced in achieving his/her goals, provide experiences (mentor), ask questions (coach) and advocate on the associate's behalf with other partners so that opportunities multiply and challenges are minimized. It is also through careful pairing of associates with partners under this type of coaching program that strong relationships are built in the firm and that differences and how they

27. See discussion on coaching in law firms in Cindy Pladziewicz, *White Paper: The Value of Coaching in a Law Firm* (Thomson Reuters, 2009)

play out in the workplace to the disadvantage of, for example, a diverse associate, are better understood and eliminated.²⁸

Deciding to Make ‘The Move’

Most large firms manage associates the same way they have for decades. They have assumed an “if it ain’t broke” approach to confronting possible improvements. But today, most of us can agree that many elements are indeed “broken” given what we have seen since the beginning of 2009. A move from lockstep to levels offers firms an opportunity to decide what talent management practices are right for their firms today—not just what every other firm is doing. Like any change that affects a firm’s most important asset, a move to variable pay should be undertaken with care and is best done with input from all firm constituencies. Done well, a move from lockstep to levels can help firms refocus on their talent in a way that will encourage associates to stay longer and support them in finding greater satisfaction in their careers. It will also support the development of consistently higher quality workforce that can proactively exceed client expectations and, in so doing, contribute to the firm’s business in a more substantial manner.

Law Firm Recommendation: Implement Commercial Work Allocation Systems and Pro Bono to Support Skill Development and Experiential Training Opportunities

Scott Westfahl

In both the old apprenticeship and the newer, leveraged law firm structures, a central truth exists about lawyer professional development. It’s all about the work. Well, mostly. What lawyers do day to day and how they learn to do it play a primary role in building their skills and networks, and thus shaping their careers. Yet as law firms have transitioned to more leveraged structures, they have ignored this central truth.

In the apprenticeship model, an associate’s work assignments are closely managed to develop the associate’s skills progressively and enhance his or her long-term marketability. This close attention is lost in the sink-or-swim, “free market” approach to associate work assignments that most highly leveraged law firms have adopted (by negligence more than by design).

Much harm results. While some lucky associates flourish, others experience inconsistent assignment patterns that fail to help them develop marketable expertise, years of assignments that fail to stretch or challenge them on any meaningful dimension, and even racial or gender bias against which there are no systemic controls. The myth of the meritocracy prevails, even though so many factors beyond associates’ control can practically pre-determine winners and losers in the partnership tournament.

One way out of this trap is to do what consulting firms like McKinsey & Company and law firms like Goodwin Procter have done, namely, to create a direct link between associate work assignments and professional development systems. At Goodwin, a network of former lawyers serves as Staffing and Professional Development Managers, each responsible for the work assignments and professional development of 50 or so associates. They use a sophisticated, proprietary database called iStaff to track associate workloads, assignment patterns, work preferences and professional development

28. The associate evaluation process, systems and documentation as well as coaching programs should be designed so as to eliminate all aspects of bias. See discussion and checklists for evaluation in supra note 22, Williams and Pinto (2008).

needs, in order to replicate the benefits of the apprenticeship model at scale. These Managers also serve as confidential counselors and facilitators of more immediate feedback than annual review processes provide.

Because the Staffing and Professional Development Managers have all been law firm associates and have “felt the pain,” they are trusted by both associates and partners. Thus, they become effective mediators of the conflicts that arise between client service expediency and long-term associate professional development. While an associate cannot often be immediately reassigned from document review to do a particular project that he or she has always wanted to do, the Managers advocate behind the scenes and use their network and the iStaff system to spot opportunities for the associate down the road. This long-term vision and close management achieves greater associate engagement through the trust that comes from believing that (at least in some ways) the firm is invested in the associate’s career development.

Taking this notion even further, McKinsey’s professional development managers are empowered by the Firm’s adherence to a co-equal, dual mission of serving clients and developing people. This is a step few if any large law firms would seem culturally able to take, perhaps because as lawyers, we mistakenly believe that our obligation to put clients’ interests ahead of our own creates an inherent, continuing conflict with developing ourselves professionally. Nothing could be further from the truth, of course, because in bettering ourselves, we serve clients more effectively. Ten years ago or so, Ernst & Young’s partners boldly launched a “People First” initiative because they realized that unless they first focused on developing world class talent, they would be unable to compete for the kind of client work that would sustain their business model. To follow suit, law firms should start by aligning their work assignment and professional development systems in a way that better ensures their ability to serve clients.

Law Firm Recommendation: Improve Attorney Performance by Blending Training with Knowledge Management

Chris Boyd

Law firm leaders need to make sure that their attorneys provide as much value to clients as possible. This challenge is particularly acute for first-year lawyers, who must climb a steep learning curve following law school, which gives attorneys a strong foundation of legal knowledge but rarely teaches them the full complement of skills that they need for private legal practice.

One way to help newly-minted attorneys get up to speed quickly is to supplement formal training with knowledge management (KM) tools. Formal training teaches junior attorneys what they need to know well before they do the actual work. KM can complement training by providing useful tools when these attorneys do the work. When integrated, training and KM can powerfully boost lawyer performance, to the ultimate benefit of themselves, their firms and their clients.

Some real-world examples of this potent combination include:

- When asked to draft agreements for a venture financing, an associate can use document assembly tools to prepare them more quickly and effectively (the KM piece), search a past-deals database to find sample language for specific terms that were not automated in the document assembly tool (a second KM piece); and access tutorials about deal terms and links to recent state-of-the-market data (the training piece).

- When asked to do due diligence for a buy-side acquisition where the seller may have significant environmental issues, an associate can access the KM site to get the standard due diligence checklist (the KM piece); use the enterprise search engine to find past examples of this checklist (a second KM piece); search the transcript of the online M&A due diligence training class to get a quick coaching boost on specific environmental items to look for (the training piece); and search the digitized PLI course handbook on M&A due diligence for the specific tips on environmental issues (a second training piece).
- When going to a client's office to collect documents and information responsive to a request for production, an associate can consult handouts from the associate training program on discovery, such as sample document collection memos, charts, and examples of summaries of client interviews regarding responsive documents (the training piece), the associate can also check the KM site for samples of litigation hold and document retention client memos, which will remind him to emphasize the importance of document retention to the client (the KM piece); and he can also refresh his memory as to potential repositories of electronically stored information by viewing a searchable, digitized workshop on electronic discovery (a second training piece).

Supplementing formal training with KM resources can help boost the performance of more senior associates as well. For example:

- When drafting a motion to be filed in an unfamiliar court, an associate can search the firm-wide pleadings index database to find other cases the firm has handled before that court, find examples of the filing format, and identify the components needed to support such a motion (the KM piece); when writing the motion, he/she can refer to the on-demand video and transcript from the firm's internal "Effective Brief Writing" class (the training piece); and when finalizing the papers, he/she can refer to a checklist from an internal training class to ensure he/she has applied the correct citation format and conformed to local rules (a second training piece).
- When drafting a prospectus for an initial public offering, an associate can follow the standard Form S-1 checklist (the KM piece) and review the latest training class guidance on drafting the MD&A and executive compensation sections (the training piece). After filing the Form S-1 and receiving comments from the SEC, the associate can prepare to discuss those comments with the SEC examiner by reviewing the relevant sections of the class transcript from the recent "Best Practices for Communicating with the SEC" session (a second training piece) and searching the firm's online Q&A resource for attorneys who have had recent experience responding to similar comments (a second KM piece).

While the associate and the firm will certainly benefit from a thoughtful and targeted combination of training and KM, the biggest beneficiaries will ultimately be the firm's clients. Those clients will get better and faster answers and work product, and overall will get more value from their legal fees.

Law Firm Recommendation: Increase Secondments and Rotations to Clients, Public Interest, and Governmental Agencies to Enhance Learning Opportunities

Caren Stacy

The best way to learn about a client's business is to be on the inside. Secondments provide that unique opportunity. The term secondment was first coined by the British military to describe a soldier's temporary

reassignment to another regiment. In the legal industry, secondments typically refer to lawyers who have been “loaned” to a client or pro bono organization on a temporary basis for a specific project or to fill a short-term need.

Britain’s largest law firms have engaged in secondments for decades to better equip their lawyers with the skills needed to handle overseas work. In fact, a survey conducted in 2006 by Lawyer 2B, a UK legal news organization, revealed that 64% of UK’s top 50 firms offer overseas secondments, while 70% offer trainees the opportunity to spend part of their training contract with a client. Although this concept has not been as prevalent in U.S. law firms, the idea of secondments as a skill development tool is gaining traction. As U.S. law firms look for ways to train lawyers to add greater value to clients, and clients search for options to cope with lean staffing and slashed budgets, secondments provide an ideal solution. Corporations such as Cisco, General Electric, Starbucks, Bayer, Kraft, and United Airlines have all taken advantage of secondments in the past several years.

It’s clear why more lawyers and organizations are jumping on this bandwagon—it is a win-win situation for everyone involved, including the client, the firm, and the lawyer. The client gets a top-notch lawyer from a reputable firm who can provide expert assistance when their budget doesn’t support hiring a new lawyer, or when one of their in-house lawyers is out for an extended period of time due to illness or parental leave. They also benefit post-secondment from having an outside counsel who has been on the inside and can continue to support their needs at a high level. The firm benefits from a more deep-rooted relationship with the client which may mean increased business opportunities. From a skill development perspective, the lawyer or the “seconded” is the big winner. The lawyer has the unparalleled opportunity to work side-by-side with the client to learn their business, among other crucial skills, in an experiential setting.

Some of the benefits and skills secondees report gaining during their experience include:

- *Broad Technical Experience*—Most lawyers specialize in a particular area of law. Those who engage in secondments have the opportunity to learn a more broad-based spectrum of technical skills, outside of their respective area, to support the needs of the client’s business.
- *Legal Counseling Skills*—Secondments teach lawyers to develop into effective legal and business counselors, not just great technicians. In most instances, clients don’t want a 50-page memorandum that lays out all of the nuances of the law; they want a concise, well-thought out solution that takes into account all of the pertinent legal aspects in relation to the business goals of the corporation and can be passed on as is to their CEO.
- *Resourcefulness*—In a corporation, seconded lawyers may not have the resources readily available to them that they have grown to depend on in a law firm setting. For instance, there is probably not a tax expert down the hall or a huge law library to pull resources from on a moment’s notice. Secondments force lawyers to become more resourceful by taking the initiative to locate the people or sources they need to effectively do their jobs.
- *Big Picture Outlook*—Secondments help lawyers understand that their work is not a stand-alone legal analysis, but an integral part of the overall business plan and goals of the client. In addition to the litigation aspects of the case, for instance, there may be tax implications, political issues, accounting matters and other competing considerations that affect how a client decides to proceed with the case.

- *The Client's Perspective*—Secondments provide an opportunity to walk in the shoes of the client and view everything from their perspective. After being on the receiving end of unreturned phone calls, long-winded briefs, and typographical errors on bills, the seconded lawyer understands first-hand what in-house clients like and don't like about managing outside counsel. They also gain a new appreciation for the politics, and other business-related issues that influence how the client manages the case.
- *Leadership & Communication Skills*—The secondee typically serves as the liaison between the law firm and the client. In some instances, the secondee may have to direct more experienced lawyers at his/her firm on behalf of the client's interests. The ability to manage up, down and across party lines requires the seconded lawyer to acquire superb communication skills while also honing his/her leadership skills.
- *Global Considerations*—Since most corporations are global, they need their lawyers to think globally. Overseas secondments allow lawyers to become entrenched in other cultures, languages, and politics to better understand their clients and their clients' customers.
- *Relationship Building*—Post-secondment there is an opportunity for increased work flow from the client. To fully benefit, the former secondee must continue to maintain and cultivate the relationship on an ongoing basis. The experience provides an excellent training ground to teach the lawyer how to connect with, and manage a long-term professional relationship.
- *Business Acumen*—A lawyer must know the client's business to be effective legal counsel. But first, they need to understand how businesses work. Many lawyers transition from undergraduate school to law school with little or no other work experience. They only know how law firms operate, which is typically very different from most corporations. Being ingrained in the day-to-day dealings of the client allows the lawyer to better understand how corporations function.

Secondments provide an incredible experiential learning experience. In a concentrated amount of time, seconded lawyers are taught some of the most valuable skills needed to effectively service clients and advance their careers. Under normal circumstances in a law firm environment, it would likely take a decade or more to teach these skills. If better, faster, cheaper lawyers are the goal, secondments are the answer.

Law School, Law Firm, and Bar Association/CLE Provider Recommendation: Transform Transactional Training Into Learn-by-Doing Case Studies and Workshops

Bryn Vaaler

Law schools, law firms and Bar organizations have generally done rather well in providing opportunities to *learn by doing* through simulation-based training relating to litigation practice. Law schools all offer some type of *learn-by-doing* instruction in brief writing, oral advocacy and trial practice. Law firms and Bar organizations widely offer newer lawyers simulation-based deposition and trial advocacy training, often in cooperation with NITA.

Learn-by-doing case studies and workshops simulating actual practice have been less widespread for the transactional lawyer. In the law school, this may reflect in part continued dominance of the litigation-oriented case-book method of teaching and the relatively small number of experienced transactional

lawyers who join law faculties.²⁹ In the law firm and Bar association, the lack of ready models of simulation-based training from law school combined with the pressure to bill hours has left new transactional lawyers facing the hard knocks of on-the-job training with relatively less support than their litigation colleagues.

There is no reason why this must be the case. An effective *learn-by-doing* case study or workshop can be put together by linking basic transactional skills training—in contract drafting, oral communication, legal research and analysis, factual investigation, problem spotting and solving, counseling, negotiation or resolution of ethical issues—to a realistic factual hypothetical. Properly put together, such a case study or workshop may also offer a chance to teach relevant legal doctrine and even the opportunity to tie skills and doctrine to an underlying theory of transactional lawyering.³⁰

Publication of the MacCrate Report³¹ in 1992 prompted law schools to re-focus on the state of skills training generally. In the ensuing years, there have been signs of improvement in the state of skills training generally in law schools.³² Training in transactional skills may still be lagging behind, but there have also been signs that creative law school faculty members are developing more and better *learn-by-doing* skills training courses and modules relating to transactional practice.³³ And, with the growth of dedicated professional development infrastructure in large law firms and increasing client pressure for newer lawyers to be trained off the billable-hour clock, there is no question that effective transactional skills training also has become a focus of attention for law firms and bar organizations.

29. The literature noting these problems is substantial, and the suggestions by commentators about what, if anything, should be done about it are varied. See, e.g., Victor Fleischer, *Deals: Bringing Corporate Transactions into the Law School Classroom*, 2002 Colum. Bus. L. Rev. 475, 478-480; Ronald J. Gilson, *Value Creation By Business Lawyers: Legal Skills and Asset Pricing*, 94 Yale L. J. 239, 304 (1984); Francesca Jarosz, *None of Your Business? No: Law Schools Need To Bring Their Business Law Teaching Up to Date*, 16 Bus. L. Today 35, 40 (Sept./Oct. 2006); Jonathan C. Lipson, *Doing Deals in School: A Prof Talks about Teaching Transactional Law*, 15 Bus. L. Today 51, 51-53 (Sept./Oct. 2005); Lisa Penland, *What a Transactional Lawyer Needs To Know: Identifying and Implementing Competencies for Transactional Lawyers*, 5 J. Ass'n Legal Writing Directors 118, 120-22 (2008); Debra Poggrund Stark, *See Jane Graduate. Why Can't Jane Negotiate a Business Transaction?*, 73 St. John's L. Rev. 477, 480-82 (1999).

30. For an example of a simulation-type law school course combining training in multiple transactional skills with capstone review of business law doctrine, all anchored to Professor Ronald J. Gilson's theory of value creation by transactional lawyers (as articulated in Gilson, *supra*, note 1), see Bryn Vaaler, *Bridging the Gap: Legal Opinions as an Introduction to Business Lawyering*, 61 UMKC L. Rev. 23 (1992). Professor Gilson's theory of value creation has become a guiding principle for much of the academic innovation in transactional skills training that has emerged in the last two decades. See, e.g., Fleischer, *supra*, note 1, at 487-90; Lipson, *supra*, note 1, at 57; Karl S. Okamoto, *Teaching Transactional Lawyering*, 1 Drexel L. Rev. 69, 72 (2009); Tina L. Stark, *Thinking Like a Deal Lawyer*, 54 J. Legal Educ. 223, 228 (2004). For discussion and critique of Professor Gilson's theory and its relation to transactional skills training curricular developments, see generally George W. Dent, Jr., *Business Lawyers as Enterprise Architects*, 64 Bus. Law. 279 (2008).

31. ABA Section of Legal Education and Admissions to the Bar, *The MacCrate Report, Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992)

32. One measure of progress may be seen in the dramatic increase in academic literature describing innovative skills training in law school courses and teaching modules in the years after publication of the MacCrate Report. See Arturo Lopez Torres, *MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom*, 77 Neb. L. Rev. 132 (1998).

33. A measure of progress with respect to transactional skills is the impressive bibliography of articles on teaching transactional skills maintained by Tina L. Stark on her Stark Legal Education, Inc. website, here: <http://www.starklegaled.com/resources/index.php?id=900>. Tina Stark is a pioneer in transactional skills training in both the law school and law firm settings. See generally Stark, *supra*, note 2; Tina L. Stark, *Training Junior Transaction Associates—First and Second Years*, 17 The ALI-ABA Insider (Winter-Spring 2003); Tina L. Stark, *Training Junior Transactional Associates—Third and Fourth Years*, 17 The ALI-ABA Insider 2 (Summer 2003).

The elements that go into a successful training are not radically different from one setting to the other. Although some law professors and professional development directors have successfully implemented transactional simulations that attempt to recreate the full scope of a transaction from beginning to end in multiple training sessions over days or weeks with multiple role players, others favor focusing on segments of transactions and doing simulation trainings that can be completed in a single training session.

While the potential list is effectively limitless, *learn-by-doing* transactional courses that have found success among one (or more) of the authors of this white paper include:

- *Opinion negotiation*—A skills exercise in which lawyers negotiate and draft a third-party legal opinion in a stock acquisition transaction.³⁴ They also prepared the related opinion back-up memorandum,³⁵ and can be introduced to the firm’s opinion manual and policies, to refresh their recollection with respect to a wide range of related corporate and securities doctrinal topics and to review related ethical considerations. The exercise can also be used to review negotiation theory and is especially conducive to teaching theory regarding value creation by business lawyers as transaction cost engineers.
- *Contract negotiation and drafting*—In this instance, negotiation of an executive employment agreement based on a problem involving asymmetrical information as part of initial training for new transactional lawyers. This particular contract negotiation exercise works well as a basic skills training for all types of new transactional lawyers.
- *Due diligence workshop*—Following a presentation on the law of due diligence and basic due diligence techniques, new lawyers participate in a series of simulations relating to different aspects of due diligence review, including: (1) customizing a due diligence request list based on review of the subject company’s business description and other related disclosures in its annual report on Form 10-K; (2) reviewing a company’s charter documents; (3) reviewing corporate minutes; and (4) reviewing a variety of contracts in connection with due diligence. For the contract review portion, the new lawyers work in small groups led by a senior associate with extensive due diligence experience giving instructions and one-on-one advice.
- *Internet scavenger hunt*—Inexperienced corporate attorneys are given a list of questions to answer, most of which require them to pore through SEC filings by U.S. public companies available online. The exercise teaches about the content of SEC filings. Questions could be drafted in such a manner that the associates not only learn important lessons in factual investigation, but also must review legal doctrine. For example, a question like “Can the CEO of [name of actual public company] call a board meeting by telephone and, if so, how many days notice must be given?” would require learning how to use publicly available information to determine: (1) What is the relevant state of incorporation? (2) What does the corporation statute of that state say on the topic? (3) What do the bylaws of the corporation say on the topic and how does one find the current bylaws?
- *Partnering with finance professionals*—While perhaps more applicable to a law school or summer associate setting, a particularly “real-world” application of learning by doing might include both legal and finance professionals as a means of improving skills in business valuation and corporate legal doctrine of dissenters rights of appraisal, for example.³⁶

34. See generally Vaaler, *supra*, note 2.

35. See *id.*, at 61.

36. See M. Mark Walker & Bryn R. Vaaler, *Negotiating Value/Valuing Negotiation: A Joint Case Study for Business and Law*

Bar Association/CLE Provider Recommendation: Provide Credit for Core/Lawyering Skills and Web-Based Learning

Caren Stacy

When clients describe the best lawyers they have ever worked with, they typically use words such as strategic business partner, persuasive advocate, and effective negotiator. Although technical legal skills are critical, clients need and want more from their lawyers. They want well-rounded lawyers with an array of skills including business acumen, negotiation, teamwork, emotional intelligence, and creativity. These core skills, also called soft or practical skills, often can make or break a lawyer's ability to be successful. Yet many of the US state bar associations that have mandatory continuing legal education (MCLE) do not provide credit for teaching or learning these skills.

In addition to effectively servicing clients, lawyers must be able to run a business. Client relations, business development, financial analysis, people and project management, and leadership skills are just a few of the necessary skills lawyers must embody to operate a successful business. Yet, again, many of the US state bar associations who require MCLE do not provide credit for teaching or learning these skills.

The US bar associations should consider borrowing a page from the playbook of many other countries' legal education policies, including Germany, Australia and the United Kingdom. All of which allow, and actually require, their lawyers to obtain credit for the core skills necessary to service clients, manage people and run a business.

For the benefit of clients, and the US legal system as a whole, US lawyers must be prepared and capable of competing in a global world. To do so, they need to be more than just great legal technicians. They need to be well-rounded legal practitioners with both the technical and practical skills required to be successful. The US state bar associations should support this charge by providing credit for all of the skills lawyers need to accomplish this goal.

Law School and Bar Association/CLE Provider Recommendation: Study and Mirror Effective Components of the UK Law Society Model

Peter Lyons

The UK Law Society Model provides important parallels and contrasts to the system currently in place in the US. In particular, with a focus on providing the type of practical, real-world skills training that enable the transition from law student to fully-billable and productive lawyer, we believe a careful review and analysis of the ongoing changes in the UK could provide important insight into needed changes, both in content and in concept, to the U.S. methods.

Regulatory structure

The Law Society of England and Wales, which has no jurisdiction in Scotland or Northern Ireland, has undergone and is still undergoing a massive change of structure and approach. Until relatively recently it represented the interests of its 130,000 solicitors and also regulated them. It now has an independent

Students, 22 J. Fin. Educ. 101 (Spring 1996). For another example of cross-disciplinary partnering, see Seth Freeman, *Bridging the Gaps: How Cross Disciplinary Training with MBAs Can Improve Transactional Education, Prepare Students for Private Practice, and Enhance University Life*, 13 Fordham J. Corp. & Fin. L. 89 (2008).

arm called the Solicitors Regulation Authority, which is responsible for issuing practising certificates, investigation and enforcement, and continuing professional development.³⁷

Barristers are advocates who give advice and appear in court. Until about 10 years ago they had a monopoly on appearing in court. There are about 10,000 registered barristers in England and Wales. The vast majority are self-employed.³⁸

Training is the hub of the English legal system and its complexities are all too apparent.

Qualifying as a solicitor

A typical person who aspires to becoming a solicitor completes a three-year law degree at University.³⁹ They then go on to the Legal Practice Course (LPC) for one year.⁴⁰ Alternatively, those who take a degree in another discipline such as History can pass a one-year law conversion course which entitles them to attend the LPC.⁴¹ Finally, they must complete 2 years as a trainee solicitor with a law firm.⁴²

Beginning September 2009, the structure of the LPC changed radically. It can still be done in one year (or two years part-time) but it must now be completed in two stages.⁴³ The stages can be accelerated or taken over a longer period than the traditional one year.

- Stage 1 covers the three essential practice areas of *Business Law and Practice*, *Property Law and Practice*, and *Litigation*, and the course skills, *Professional Conduct and Regulation*, *Taxation*, and *Wills and Administration of Estates*.
- Stage 2 will be made up of three vocational electives.

Stage 1 must be with one training provider only. Stage 2 may be completed with the Stage 1 provider or with one or more other authorised Stage 2 providers. The three vocational electives may be taken with three different authorised providers. Each elective subject is allocated to an elective group, which cover different areas of practice. A candidate is required to complete electives from at least two groups. Finally, candidates may have three attempts within five years at passing the assessment.

It is expected that the course will continue to be delivered over the traditional academic year (i.e. over ten months), on a full-time or part-time basis. But it is also likely that accelerated programs or, possibly, programs that are delivered over a longer period of time will be available.

During the training contract, aspiring solicitors must attend three main training events in the subjects of *Financial and Business Skills* (18 hours long and assessed); *Advocacy and Communication Skills* (18 hours and skills appraised) and *Client Care and Professional Standards* (12 hours and not assessed.)

37. www.sra.org.uk/solicitors/solicitors.page

38. www.barcouncil.org.uk/trainingandeducation/CareersHome/TrainingtoBecomeaBarrister/

39. www.sra.org.uk/students/academic-stage.page

40. www.sra.org.uk/students/lpc.page

41. www.sra.org.uk/students/conversion-courses.page

42. www.sra.org.uk/students/training-contract.page

43. www.sra.org.uk/students/lpc/lpc-update.page

They must also complete 24 hours of related courses called Electives, of which half must be face-to-face learning.

Qualified solicitors

Solicitors from other countries who wish to practice in England and Wales must pass the Qualified Lawyers Transfer Test and show they have 2 years' practice experience.⁴⁴ Once qualified, an English solicitor who works more than 32 hours per week is required to undergo 16 hours of training each year of which 25% must be accredited courses (most usually with an accredited external training provider). The remaining 75% may be made up of unaccredited, internal training.⁴⁵

Before the end of their third year in practice the solicitor must attend 7 hours of Management Training in the following areas:

- Managing finance;
- Managing the firm;
- Managing client relations;
- Managing information; and
- Managing people.

Training and courtroom experience will not be compulsory, but a solicitor who wishes to exercise the same rights of audience as a barrister in the Higher Courts must pass a series of detailed assessments.⁴⁶

Barristers

In the first three years' of practice, newly qualified barristers must complete 45 hours of Continuing Professional Development (CPD), including at least 9 hours of Advocacy Training and 3 hours of Ethics.

After the first three years of practice, barristers are required to undertake 12 hours of CPD (continuing professional development) each year.⁴⁷

The answer, of course, is not simple replication. Nonetheless, taking advantage of what can be learned from the UK system should help speed the process of effective change in the US. The content of most courses is dictated by (i) the Law Society and its committees; and (ii) legal practitioners in law firms. It is fair to say that most of these people have little or no teaching experience.

There is one widespread misconception among lawyers that teaching is about reading out lecture notes (which is how a lot of them were taught) or presenting PowerPoint slides (which is how they do it in-house). In addition, lawyers are trained to give answers or opinions. Ask an attorney about anything (even in a social context) and you are likely to get a speech. Lawyers view teaching as giving answers. It is, to a lesser extent, but I see it more as asking questions. Another misconception is that the practitioner who knows most about the subject is the best teacher. That has now been watered down to the best teacher is someone "who knows something about the subject." Yet these theories hold sway. In

44. www.sra.org.uk/solicitors/qltt.page

45. www.sra.org.uk/solicitors/cpd.page

46. www.sra.org.uk/documents/solicitors/accreditation/higher-rights-introduction.pdf

47. www.barstandardsboard.org.uk/continuingprofessionaldevelopment/

professional education, there is a third misconception. The providers stand by the retail theory that the customer is always right. So, if a client law firm tells a provider what it wants and how to do it, the provider will not demur. When the delegates complain about the course to their employers, the provider will suffer in the fallout.

Sometimes the law firms are quite justified in demanding better quality trainers, and it is understandable when the training they have purchased in the past has been below par.

A more insidious development is that a lot of training is now done by in-house lawyers. The firms save money. But no one in his or her right mind is going to give bad feedback to a more senior lawyer or partner who delivers a seminar. The training may well be terrible but the feedback will be good and the partner will think they have done a great job. So the bad training is perpetuated.

Law School, Law Firm, and Bar Association/CLE Provider Recommendation: Research U.S. Best Practices, and Produce an Agreed-upon U.S. Standard of Practice

Steve Gibson

Perhaps the most far-reaching and simultaneously least tangible of our recommendations is the research and creation of a national Standard of Practice for U.S. attorneys.

Bar examiners and associations, sitting as they do as the licensing chokepoint for attorneys, play a unique and pivotal role in maintaining the professionalism and stature for the legal profession's vital role in society. However, without skills and experience of value to clients, passing the Bar will increasingly become merely a checkpoint on the way to becoming a practicing lawyer, rather than the signal event in joining the profession. Evidence of this trend can be seen with every announcement by major law firms of some type of apprenticeship or other new associate training program during which the associates will not bill clients.

On an ongoing basis, MCLE authorities must provide CLE credit for the types of skills training discussed throughout this paper. For MCLE states, the challenge and need is even greater, as all too often minimum standards can become maximum standards. It follows, then, that MCLE requirements need to be harmonized. If there is a recommendation for one U.S. national standard then it logically suggests that there should be one set of guidelines/standards for MCLE.

IV. CONCLUSION

The art of progress is to preserve order amid change and to preserve change amid order.

—Alfred North Whitehead

Our intent in writing this white paper was not so much to provide the answer, or even *an* answer. Rather, we hope to catalyze a new and needed discussion around the future of legal education, while providing sufficient specific examples to anchor that discussion in the immediate and pressing need for actual and substantive change.

At the core, this is based upon four inter-related beliefs.

- While the ultimate direction and end-point of the changes underway in the legal profession are impossible to determine, we believe that the change is, and needs to be, permanent, and the profession will do itself a disservice if it “wastes a good recession”;
- Law schools, law firms, and Bar associations/CLE providers all hold important stakes in the health and effectiveness of the legal profession;
- All three must change and find more and more opportunities for partnership and collaboration in order to address the needs of today’s economic and business reality;
- A skills continuum provides a useful, and necessary, framework for re-thinking the future of legal education.

Informed by these conclusions, and with the types of changes we recommend in the pages above, we believe legal education can and will emerge from its next phase of evolution more integrated, relevant and adaptable than it has been, and it will be well positioned to ensure the quality of legal representation in the years and decades to come.

ABOUT THE AUTHORS

Heather Bock, PhD, is the Chief Professional Development Officer for Howrey LLP. She leads the attorney training and professional development function globally. Prior to joining Howrey, she designed programs and delivered training for Andersen/Accenture and consulted with a variety of companies on HR strategy, organizational transformation, and culture change. Under Heather's leadership, Howrey won the NALP Award of Distinction and the Association of Training and Development (ASTD) BEST Award. In addition, Heather is a recipient of the HR Leadership Award of Greater Washington and the Chief Learning Officer Vanguard Award. She has written several articles and authored a book on Using a Competency Model to Manage Firm Talent for the American Bar Association and is an adjunct professor at Georgetown Law.

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After college, Chris was a management consultant for two years and then went to law school. After clerking for a Ninth Circuit judge, Chris worked as a corporate attorney at WSGR in the mid-1990s, where he managed numerous technology company initial public offerings, venture capital financings, and acquisitions. After deciding he no longer wanted to practice law, he left WSGR and led the knowledge management programs at several Internet start-ups. He re-joined WSGR in November 2001.

Steve Gibson is the Chief Operating Officer of NITA, where he is responsible for the day-to-day operations of NITA's public programs, in-house training and publications teams, as well as sales and marketing, finance, HR and other staff functions.

He brings broad experience in both the for-profit and non-profit realms, having served as COO for Right Hand Manager Software, VP Corporate Development and VP Finance & Administration for Maxager Technology, and as Executive Director of The Bionomics Institute, a non-profit think tank focused on the role of technology in changing economic policy and business practices. Steve began his career on Wall Street as a research assistant to Alan Greenspan and as Associate Economist at Bear Stearns, having received his BA in Economics from Princeton University in 1986.

Peter Lyons has been a specialist advocacy and dispute resolution trainer since 1995. He is a barrister and solicitor who was admitted to the Bar in Australia in 1987. In 1995, he was appointed Course Leader of Nottingham Law School's Master's Degree in Advanced Litigation. In 1998, the College of Law asked him to assist in founding the Institute of Advocacy and Dispute Management. He was appointed an Associate Professor in 2000 and was made Professor of Professional Development and Head of Programs in 2002.

For some years now, Peter Lyons has been designing and teaching courses in Advocacy, Litigation and Dispute Resolution for many of the top fifty city firms and for a large number of provincial firms. He has written and delivered major programs for the Bar Council of England & Wales, the UK Financial Services Authority and the Hong Kong and Singapore Law Societies.

Peter Lyons founded CPD Training (UK) in 2005.

Terri Mottershead is the national Director of Professional Development with DLA Piper LLP (U.S.) and is based in San Francisco, California. Her role at DLA Piper includes leading the U.S. Professional Development Department and supporting the talent management initiatives for more than 1,400 attorneys in the firm's thirty U.S. offices. Terri brings to the position over twenty-five years of experience in international law practice, legal associations (law firm associations, academic institutions and Law Societies/Bar Associations), consulting, legal education and training.

Prior to working in in-house attorney talent management, Terri practiced law in Australia and Hong Kong and was a law school academic and consultant in Hong Kong. She is an award-winning teacher. Terri is frequently asked to present and consult nationally and internationally on all aspects of attorney talent management. She has served on more than fifty Boards and Committees.

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Prof. Rose began his law teaching career at the University of Kansas School of Law in 1976 and taught at the University of Miami from 1990 to 2008. He is admitted as an attorney in Vermont and Kansas and currently serves in Leadership within the American Bar Association's Section of Litigation and on the Board of Directors of the Center for Legal Aid Education.

Rose was selected for the 1998 Richard S. Jacobson Award for Excellence in Teaching Trial Advocacy by the Roscoe Pound Foundation and in 2001 was named an Academic Fellow by the International Society of Barristers. Prof. Rose has taught in more than 350 trial advocacy programs throughout the world and is the author of more than 100 books, articles and other legal publications.

Terre Rushton graduated from the University of Colorado with a BA in Philosophy and from the University of California, Hastings College of the Law, with a JD in 1977. After Clerking for the Hon. Joseph Quinn, Ms. Rushton worked for the Colorado Attorney General and then began working for the civil litigation practice of Kelly/Haglund/Garnsey & Kahn in Denver, Colorado. She became a partner in the firm in 1982. During that time, Ms. Rushton argued cases before the Colorado Court of Appeals, the Colorado Supreme Court, the Federal District Court and the Tenth Circuit. She also successfully argued before the United States Supreme Court in *Budinich v. Becton Dickinson*. She has been active in many Colorado Bar Association activities, including those focusing on civil court reform, served on

the Board of Governors of the CBA, chaired a statewide Multidisciplinary Committee on Domestic Relations, and co-authored the pro se forms and procedures used in Colorado District Courts. She has been a frequent lecturer at CLE programs, and an expert witness in court. Ms. Rushton has been teaching for NITA since 1982, a year after she took her first NITA course.

Caren Ulrich Stacy has over fifteen years of experience in lawyer recruiting, professional development, and diversity with law firms across the country, including Arnold & Porter, Cooley Godward, McGuireWoods, Weil Gotshal & Manges, and Jenkins & Gilchrist. She is an expert in the field of lawyer development and was awarded the NALP Mark of Distinction for Professional Development and Training in 2009 because of her vision, leadership and innovation.

As the founder of Lawyer Development Strategies LLC, she specializes in helping law firms and legal departments recruit, integrate, develop, advance, and retain the lawyers who are best suited to service the needs of their clients. Her talents include building and integrating core competency models, training curricula, evaluations, upward reviews, merit-based compensation, mentoring programs, work assignment systems and experiential learning frameworks through the use of pro bono projects and shadowing initiatives. She also consults with law firms on creating policies and initiatives that support a diverse and inclusive work environment. Her contributions in these areas have helped several law firms enhance their reputations as “best places to work” by entities such as The American Lawyer, Vault, Working Mothers, Fortune, and the Minority Corporate Counsel Association.

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For eleven years, Mr. Vaaler was a professor of law at the University of Mississippi Law School, where he taught Contracts, Corporations, Corporate Finance Law and Securities Regulation. He was a member of the select ABA Committee on Corporate Laws from 2000 to 2006. He is the author of numerous articles on corporate and securities law and on professional development and legal pedagogy.

Scott Westfahl joined Goodwin Procter in 2004 as the firm’s Director of Professional Development. In this role, he is responsible for all aspects of the professional development of Goodwin Procter attorneys, focusing primarily on issues involving feedback, mentoring, diversity, professional skills development, attorney integration and alumni. In 2008, he was chosen as one of *Law Firm, Inc.* magazine’s five “Innovators of the Year” for his work in developing a cutting edge attorney assignment system and database called iStaff, which effectively ties attorney work assignments to their professional development needs. Mr. Westfahl currently serves as Vice Chair of the Professional Development Consortium, a professional association for law firm professional development and training leaders across North America and the UK. He is a frequent guest lecturer and is the author of the book *You Get What You Measure: Lawyer Development Frameworks and Effective Performance Evaluations* (NALP, 2008).