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LARGE LAW FIRMS AND THEIR ROLE IN THE EDUCATIONAL CONTINUUM OF LAWYERS

*By Paula A. Patton**

The business savvy and organizational mettle of the largest law firms in the nation is formidable. The top 100 law firms in the United States grossed nearly \$42 billion in fiscal year 2003.¹ Average profits per partner were recorded as \$930,700, a ten percent increase from 2002.² Median associate base salaries in firms of 501 or more lawyers were \$165,000.³

Large law firms are well established as legal industry leaders. These firms are pioneering the business of law as an entrepreneurial venture and creating precedent and protocol for all firms. Virtually anything that these large law firms choose to accomplish they can achieve in exemplary fashion by allocating their resources, which include extraordinary intellect, seemingly unlimited manpower and financial clout.

Large law firms craft training and development programs that fit their individual business goals. These programs, which are administered and coordinated at all levels, are funded as an essential business priority, and positioned as an invaluable benefit for associates. Through these programs, firms are realizing improvements in client service and satisfaction, increased associate productivity, enhanced associate loyalty, and decreased malpractice risk.

This paper will examine the ways in which large law firms have served as educators and consider how their efforts might be enhanced.

I. THE LEGAL EDUCATION CONTINUUM: THE NECESSITY FOR CONTINUING LEGAL EDUCATION

When talking with law firm partners, it is not unusual to hear complaints that law graduates, even those graduating with honors from elite law schools, are not adequately prepared for the rigor and pace of law firm practice. This anecdotal evidence is supported by empirical data.

* CEO/President of the NALP Foundation

1. Allison Frankel, *Veil of Tiers*, AM. LAW., July 1, 2004, at 92.

2. *Id.*

3. *Id.*

According to the “MacCrate Report,” “[t]he lament of the practicing bar is a steady refrain: ‘They can’t draft a contract, they can’t write, they’ve never seen a summons, the professors have never been inside a courtroom.’”⁴

To be fair, law schools do not claim to teach students how to be legal practitioners. They do not attempt to train students to market legal services, manage people, handle the unrelenting stress of practice, or run a business.⁵ According to law schools, “we teach them to think, we’re not trade schools, we’re centers of scholarship and learning, practice is best taught by practitioners.”⁶ In fact, according to well-respected scholars, “law schools cannot reasonably be expected to shoulder the task of converting even very able students into full-fledged lawyers licensed to handle legal matters.”⁷

Even though the practicing bar complains that law school graduates are unprepared for practice, large law firms—those with 101 or more attorneys—hire law graduates in droves.⁸ In 1995, 25.8 percent of all ABA-accredited law school graduates acquiring jobs in law firms were employed by large firms.⁹ In 2002, due in part to consolidation of the industry, 41.2 percent of all ABA-accredited law school graduates acquiring jobs in law firms were employed by large firms;¹⁰ seventeen percent of those graduates who acquired jobs in law firms, ended up at the largest of the large firms, those with 501 or more attorneys.¹¹

Large law firms have become central figures in the educational continuum of new lawyers, attempting to fill the enormous gap in associate skills and understandings which are revealed by immersion in practice. It is because of this gap that skills training and professional development have become standard components of law firm personnel management

4. *Legal Education and Professional Development: Report of the Task Force on Law Schools and the Profession—Narrowing the Gap*, 1992 A.B.A. SEC. LEGAL EDUC. AND ADMISSIONS TO THE BAR 4. The report suggests the skills of lawyers are developed along a continuum, as opposed to recognizing a large gap between law school students’ and practicing attorneys’ legal understanding. *Id.* at 3.

5. IDA ABBOTT, *DEVELOPING LEGAL TALENT: BEST PRACTICES IN PROFESSIONAL DEVELOPMENT FOR ALL LAW FIRMS* 29 (2001).

6. *Legal Education and Professional Development*, *supra* note 4, at 4.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. NALP Foundation for Law Career Research and Education, *Trends in Graduate Employment—1982-2003*, at <http://www.nalp.org/content/index.php?pid=167> (last visited Nov. 18, 2005).

strategies.¹²

II. THE MOTIVATION FOR ASSOCIATE TRAINING

Associate training programs are not new, but the scope of the training that large law firms offer today is radically different from the training offered decades ago.¹³ As recently as the 1980s, very few firms offered associate training programs, and those that did focused their training on technical legal skills, particularly in litigation.¹⁴ Today, things are substantially different. Large firms provide technical courses, covering both substantive and procedural rules of law, while making use of cutting edge training tools and techniques that make learning more experiential and effective.¹⁵

The motivation to train and develop associates is multifaceted. First, in order to have the manpower required to produce the volume of legal work business clients demand, firms must have a cadre of talent that can “run” with assignments and sustain partner and client confidence. Well-trained associates are critical to the firm’s effort to provide extraordinary service to clients. To compete, firms must be strategic in their efforts to bridge the gap between law school and practice.

Second, from a risk management perspective, it is imperative that all attorneys of a firm be technically competent and well-informed as to the rules of professional responsibility. Liability insurers expect firms to impart these characteristics to their lawyers as a means of managing malpractice risk. In return, some firms benefit from reduced premiums for such assurances.¹⁶ These reduced premiums may serve as another substantial business rationale for allocating resources to associate training.

There are, of course, other reasons for law firm involvement in the education of their lawyers, including the need to fulfill state bar requirements for continuing legal education (“CLE”) to satisfy lawyers’ desire to learn, to ensure that lawyers stay abreast of rapid changes in industry knowledge, and to help lawyers cope with complex changes in technology and communication.¹⁷

When it is done well, investing in associates through training has the potential to result in significant returns. Clients are better served and risk is

12. ABBOTT, DEVELOPING LEGAL TALENT *supra* note 5, at 8-9.

13. *Id.*

14. *Id.*

15. *Id.* at 58.

16. *Id.* at 33.

17. *Id.* at 30-34.

better managed through comprehensive attorney training and development programs. Furthermore, when employers invest in associate development, associates interpret that investment as a positive indicator of their status and, tangentially, a positive indicator regarding their future potential within the firm.¹⁸ Research has shown that associate training and development builds loyalty, impacting the choices associates make regarding whether to stay or depart from their employers.¹⁹

In today's legal environment, even the least experienced lawyers are called upon to exercise judgment in case and client management. Professional training and development programs provide young lawyers with a means to acquire the experience they need to undertake this challenging work—a key factor dictating job satisfaction. Furthermore, associates generally expect that law firms will provide them with continuous self-development opportunities, structured paths to equity partnership, leadership opportunities, management and entrepreneurial skills training, time management training, and mentoring.²⁰

Theoretically, associate education cannot be *ad hoc* or otherwise serendipitous if it is to provide the firm with necessary results and a return on its investment. The program must be uniquely crafted to fit the individual firm's business goals, administered and coordinated at all levels, funded as an essential business priority, and positioned as an invaluable benefit for associates.²¹ When all of these characteristics are achieved, firms can realize excellent client service and satisfaction, increased associate productivity, enhanced associate loyalty, and decreased malpractice risk.

III. THE COORDINATED EDUCATION CONTINUUM

The continuing education of new lawyers requires a multi-pronged approach. Billable hours requirements prevent associates from attending daily classes to further their legal skills and knowledge. As a result, new lawyer education includes both classroom instruction and on-the-job-training. This on-the-job training requires that work assignments and associate work product evaluations are orchestrated in such a way that

18. NAT'L ASS'N FOR LAW PLACEMENT ("NALP") FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION, *THE LATERAL LAWYER: WHY THEY LEAVE AND WHAT MAY MAKE THEM STAY* 47 (2001).

19. NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION, *KEEPING THE KEEPERS II: MOBILITY AND MANAGEMENT OF ASSOCIATES* 59 (2003).

20. NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION, *THE LATERAL LAWYER*, *supra* note 18, at 50.

21. *Id.*

associates learn skills through experience and gain the knowledge that top-notch lawyers use in their practices.

The ideal system includes the following three components:

1. Curriculum-driven training (formal in-house/external learning and/or CLE)
 - a. Developmental benchmarks for lawyering skills and work experiences
 - b. Performance standards for quality work products
 - c. Core competencies as desired lawyer characteristics
2. Administered work assignments (aligned with developmental needs and training)
3. Developmental evaluations (aligned with work experiences)

The degree to which each of these components is executed in a firm's associate development program varies from firm to firm. Research shows that each component is key to the success of the program in the eyes of associates. A brief examination of each of these components follows.

A. Curriculum-Driven Training: Roadmap or Underutilized Resource?

A curriculum-driven training and development program is the core component of every successful law firm educational initiative. Clients favor law firms that train their lawyers in business skills and knowledge. Therefore, firms that offer such training will have a better chance of attracting and retaining corporate clients.²² As a result, many large firms have examined lawyering skills and the developmental experiences that associates need at every level and in every practice area, and have structured their work and evaluation processes based on those findings.²³ For example, litigation departments now have curriculum guides to supervise partners as they delegate work, determine the sequence of various work assignments and provide feedback to associates on their progress.²⁴ Associates have access to this continually updated curriculum.²⁵ In this way, the curriculum serves as a resource to associates, providing information about what is expected of them in their progression as

22. Lawrence S. Berger & Adam S. Breslin, *Thinking Strategically about the Practice of Law*, 4 *LAW FIRM GOVERNANCE* 9, 15 (2000).

23. IDA ABBOTT, *LAWYERS' PROFESSIONAL DEVELOPMENT: THE LEGAL EMPLOYER'S COMPREHENSIVE GUIDE* 191 (2002).

24. *Id.* at 192.

25. *Id.* at 191.

associates.²⁶

This skills training curriculum includes *developmental benchmarks*, guideposts to attorney education, which are usually presented as experiential milestones in chronological ranges.²⁷ As examples of these benchmarks, the curriculum guide might indicate that a first or second year associate should be provided with the opportunity to undertake conflicts checking and due diligence, and train for, observe, and assist with depositions, among numerous other activities. Meanwhile, a third or fourth year associate might be expected to participate in witness preparation, client counseling, and discovery.

Developmental benchmarks are guideposts to ensure that associates have equitable opportunities to demonstrate their skills and abilities. At the same time, benchmarks make associates aware of and partially responsible for pursuing assignments that will provide them opportunities to practice their skills. Using the firm's developmental benchmarks, associates can determine their strengths and weaknesses. Then, with a mentor, supervisor, or advisor from the firm, associates can set developmental goals and monitor their own progress.

Performance standards, the second element of the skills training curriculum, provide thresholds for associate performance so that their progress can be measured by objective standards.²⁸ Performance standards incorporate quantifiable data such as billings, business origination, and realization rates. These measurable items assess lawyer accomplishments in terms of time, work, and money generated. Once a firm identifies the specific standards for associates in various practice groups and class years, they should be clearly communicated to all stakeholders in the firm and explained to associates. Firms may choose to include this information in their associate orientation handbooks and post them on firm intranets. Performance standards are like highway signs—providing clear direction for associates' behavior.

Core competencies are the final component of the skills training curriculum. These are sometimes referred to as the soft-skill qualities of attorneys. Core competencies are skills and behaviors of lawyers that extend beyond technical mastery of the law.²⁹ An evaluation of core competencies is a subjective assessment of factors including interpersonal skills, team skills, time and people management, leadership ability, and

26. *Id.*

27. *Id.* at 204.

28. *Id.* at 187.

29. *Id.* at 205.

responsiveness.³⁰

In total, the value of a curriculum for associate development is twofold. First, firms represented by associate supervisors have a consistent plan that closely fulfills their obligation to offer equitable opportunities for associates. Second, firms have a tool that ensures greater equity in the associate evaluation process which provides associates with a clear roadmap that can help them take some of the initiative for their careers.

The potential pitfalls of curriculum-driven programs should be noted. First, these programs will not be successful if they are little more than notebooks on the shelf; they must be constantly updated to reflect the changing needs of the firm and of the developing associates. Thus, the firm's investment in writing, reviewing and implementing the curriculum should be on going. Without sustained oversight and a high degree of accountability for its implementation—accountability that extends to partners and supervisors—even the best development curriculum cannot provide the outcomes associates and their firms expect. Second, associates need to understand that completing all benchmarks does not guarantee advancement to partnership, nor does a failure to complete them necessarily prevent advancement. When benchmarks are used it should be made clear that they are merely guideposts. Third, when a developmental curriculum is used, firms have an obligation to provide associates with sufficient opportunity to achieve the prescribed experiences and must not penalize them for lacking experience if that opportunity is not provided.³¹ Similarly, performance standards must be achievable—although not necessarily easily accomplished. This means that the firm must provide the resources associates need to pursue the standards. Finally, core competencies must be relevant to the firm's culture and business goals. For example, if teamwork isn't valued and rewarded, then firms should not make it a core competency.

B. Work Assignments: Pathways to Development or Developmental Detours?

Young lawyers learn by working. Associates repeatedly identify work assignments as “the most singularly important variable” affecting both their job satisfaction and their chances for advancement.³² In order to learn, advance, and stay motivated, associates need interesting, diverse and

30. *Id.* at 206.

31. *Id.* at 163.

32. NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION, PERCEPTIONS OF PARTNERSHIP: THE ALLURE & ACCESSIBILITY OF THE BRASS RING 81 (1999).

progressively challenging work. Given their centrality, work assignments deserve considerable attention by firms. In the interests of both the firm and the associate, it is critical to match associates with projects that will help them acquire new knowledge and skills, expose them to many partners, and give them a broad range of experiences and responsibilities.³³

Ideally, every assignment should be analyzed for developmental implications and then matched with the associate most suited for it. Realistically, however, expedience often necessitates less strategic efforts.³⁴ Most work assignment systems deal only with delegating work to associates and “keeping them busy” or addressing short-term staffing issues—all of which have been attacked as inadequate strategies for both associates and firms.³⁵ McKinsey & Company, a consulting firm that is known for its extraordinary professional development program, believes that developing employees in order to serve clients, and serving clients in a way that maximizes the development of employees, are mutually beneficial goals.³⁶

Work assignments are transformed into learning experiences when they strengthen and expand existing capabilities. Unfortunately, law firm associates report that a majority of the work they do does not fit that qualification. New, unpublished data from a NALP Foundation-sponsored longitudinal study of legal careers documents this problem.³⁷ When compared with the work experiences of attorneys in government workplaces, law firm associates were far less likely to have received work that required trust and independence and far more likely to have been given work that was routine and perhaps redundant.³⁸ Significant increases in the amount of routine work for associates and large decreases in the work assignments that required trust and independence were common as law firm size increased.³⁹ In other words, associates in the largest law firms, according to preliminary data, may be assigned work that is the least aligned to their developmental needs.⁴⁰

“Interesting work” is also a key factor in associate retention. According to the *American Lawyer Midlevel Associates Survey*, a majority of

33. ABBOTT, LAWYERS' PROFESSIONAL DEVELOPMENT, *supra* note 23, at 114.

34. *Id.* at 130.

35. *Id.* at 115.

36. *Id.*

37. NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION, AFTER THE JD: THE FIRST 10 YEARS—A LONGITUDINAL STUDY OF LAWYER CAREERS (forthcoming 2005).

38. *Id.*

39. *Id.*

40. *Id.*

respondents (seventy percent) reporting that the interest level of the work they were assigned was one of the two top criteria in their decisions about whether to remain at their current firms.⁴¹ Work assignments are the natural focal point of associates' day-to-day lives. They desire work of a quality that will be challenging, teach them new skills, and, when they complete the assignments, add value to their employment with the firm. They also want work in appropriate quantities so that they can balance their time and give each assignment the scrutiny and thoughtful consideration it deserves without constantly infringing on family and personal time.⁴² Associates are often unable to determine their own fate in achieving these goals, however. Supervising attorneys and partners have a powerful influence on associate work experiences. Therefore, in order to be effective, supervisors and partners must have an interest in, and an ability to monitor and measure growth in associate skills. The best supervisors also nurture, counsel, constructively criticize, and otherwise support associate maturation.⁴³

Work assignments can become liabilities in the educational continuum if a supervisor's delegation of work does not reflect an awareness of the interests of the associate, does not reflect his or her skill level and experiential needs, and does not offer challenging work in appropriate quantities. An assignment's inherent learning potential, however, may not be easily assessed. Some assignments that sound limited may offer significant learning opportunities, and those that sound exciting may actually be mundane or tedious.⁴⁴

Ida Abbott, a nationally recognized expert on associate development, suggests that assessing an assignment's teaching and learning potential requires examination of:

- *Content*: Is the work matched to the associate's interests and is it free of moral or religious conflicts?
- *Delegating Versus Supervising*: Is the supervisor committed to the associate's development?
- *Case Team Role*: How will the associate add to the team and what will the associate be asked to do on the case?
- *Client Contact*: Will the assignment create opportunities for the

41. Laura Pearlman, Annual Associate Survey Supplement, *Whistle a Happy Tune*, AM. LAW., Oct. 2001, at 10 (treatment by partners was the top factor with a seventy-five percent response).

42. NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION, PERCEPTIONS OF PARTNERSHIP, *supra* note 32, at 81.

43. ABBOTT, LAWYERS' PROFESSIONAL DEVELOPMENT, *supra* note 23, at 120.

44. *Id.* at 117.

associate to work directly with the client?

- *Scope of Work*: What range of skills, experiences, and responsibility will the assignment entail?
- *Challenge Versus Stretch*: Will the assignment challenge the associate without presenting unacceptable risks to the client and firm?⁴⁵

IV. EVALUATIONS: DEVELOPMENTAL MOTIVATORS OR MOTIVATING DEPARTURES?

Performance counts in the practice of law. Therefore, new lawyers must quickly demonstrate that they can perform at a high level. Virtually all law graduates have ability and potential, but unless their performance meets or exceeds the expectations of their firm, that potential won't matter much. Evaluations, with regular feedback, can support associate performance. However, among nearly 4,000 new lawyers surveyed in 2004, when measuring the detailed factors contributing to job satisfaction, they ranked "performance evaluation process" dead last.⁴⁶ This data suggests that associate evaluations are not a positive experience in the minds of associates. It appears that evaluations are not being used effectively to promote associate development and do not meet their needs and expectations.

Those firms that have not implemented a comprehensive curriculum for associate development, demanded accountability for the curriculum's achievement, aligned work assignments to associates' developmental needs, coordinated training to work assignments, or aligned evaluations to all the above, have inadvertently created a situation in which neither associates nor their supervisors know what is expected of them or how to evaluate their work. Unfortunately, far too many firms assess associate performance solely on the number of hours billed and the "we know it when we see it" test.⁴⁷

Associates need clearly defined performance expectations that they have some ability to control or achieve, and they need to be evaluated on the basis of achieving those expectations. Only when this happens can the potential and performance of associates be optimized.

Effective evaluation systems give associates the resources to respond to the findings of their evaluations by changing behavior, increasing skills

45. *Id.* at 120-26.

46. NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION, AFTER THE JD—FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 49 (2004).

47. ABBOTT, LAWYERS' PROFESSIONAL DEVELOPMENT, *supra* note 23, at 182.

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training experiences, or taking other appropriate steps.⁴⁸ In this way, evaluations serve the dual purpose of appraising an associate's performance and providing the associate with the knowledge of where s/he needs to improve in order to achieve future job targets.

Effective evaluations systems are just that: systems. They require a systematic means of developing the scope of evaluations that ensure relevancy, equity, and links to development. Though it may seem that only the topics and questions of an evaluation are of importance, there are, in fact, many other fundamental factors, such as: form and format (whether the evaluation is paper, electronic or oral), partner participation, the processes for compilation, and associate confidentiality. This system must include the training of partners participating in the review delivery experience, who will, as an element of the review, work with the associate to create a development plan for the coming year.

SUMMARY

Despite capably achieving success during law school, new lawyers have extraordinary developmental needs. For that reason, the role of large law firms in the educational continuum of law school graduates, as they aspire to become exemplary high-performing attorneys, is also extraordinary. Law firms must embrace comprehensive strategies that impart performance standards, benchmarks, and core competencies through experiential training. Experience should come from work assignments that are selected to facilitate the realization of an attorney's developmental potential. Moreover, evaluations of new lawyers must be aligned with both training and work assignments if they are to contribute to a constructive learning experience.

48. ABBOTT, DEVELOPING LEGAL TALENT, *supra* note 5, at 165-66.