

**Legal Hiring Best Practices and Necessary Innovations:
Lessons From A Roundtable Discussion on Legal Talent Development,
Recruiting, and Hiring**

By Kevin M. Brown*

In the second installment¹ of an ongoing discussion between leaders from the legal industry and the University of Colorado Law School, Dean Phil Weiser moderated a timely discussion about legal recruiting and hiring. Law firm managers, a general counsel, legal consultants and experienced practitioners (listed on Appendix A) gathered at Wheeler Trigg O'Donnell LLP to:

- examine the challenges facing law schools and legal employers,
- share best practices, and
- brainstorm about innovative solutions to the employment problems beguiling the legal profession in the “new normal.”

I. The State of the Legal Industry

Dean Weiser began the discussion by acknowledging the fallout from the Great Recession. The continued growth of international legal outsourcing, the increasing use of automation and technology, and the increasing number of law school graduates - all competing for less work - have altered (likely permanently) both the ratio of supply and demand for new lawyers and the method by which law firms conduct hiring.

The group noted two significant challenges at the outset. First, there are too many lawyers for the number of jobs due to over-production of law school graduates and to a reduction in the number of available positions. The second related challenge is the dearth of entry-level legal positions. With a number of law firms and corporate legal departments unwilling to hire attorneys with less than

* Kevin M. Brown is a third-year law student at Colorado Law. He examines this topic more thoroughly in a forthcoming research paper.

¹A copy of the write-up from the first Roundtable, *Reflections on Law Firm Leadership: Lessons From a Roundtable Discussion on Law Firm Leadership, Culture, and Organization*, is available at: <http://www.colorado.edu/law/sites/default/files/GCRoundtable.pdf>.

three years of experience, many young lawyers have struggled to find meaningful employment and to gain the training and skills necessary to add value to a firm as a mid-level associate or to a corporate law department. Innovation from law schools and employers to create and fund post-law school legal training is a necessity.

II. Recruiting and Hiring Today

A. The Traditional Model. Law firms which do hire recent graduates typically use a summer associate program. Although some firms hire students after their 1L year, the more common practice is to hire a limited number of students following their 2L year, pay them well and make them an offer for an associate position following graduation. Law firms typically only hire as many students as they have associate positions. Fred Baumann (Chairman of Rothgerber Johnson & Lyons) and others agreed that law firms that fail to extend offers to their summer associates are understandably concerned about suffering reputational consequences at law schools if they break this norm.

The participants also agreed that the traditional model is broken for several reasons:

- It forces the law firm to essentially commit to a hiring decision after the student has completed only one year of law school. Since summer associate interviews are typically conducted at the beginning of the 2L year, the firm can only evaluate a small body of work.
- This schedule also requires a law firm to anticipate its hiring needs two years in advance, which is a difficult task during dynamic economic conditions.
- The firms are further disadvantaged by the expectation that they are locked into hiring the student even if he fails to perform at the expected level during the summer.
- Finally, Tim Macdonald (Arnold & Porter) pointed out that many students are ill-equipped to decide in which area of law they desire to practice after only one year of law school, a decision which necessarily impacts to which firms or practice groups they apply. At Davis Graham & Stubbs, for example, Ron Levine explained that hiring is largely delegated to the practice groups; it is therefore essential that a candidate

have a strong desire to practice corporate law if the applicant is interviewing with the corporate group. The days of the law firm practice group tour and selection are over at many firms.

The summer associate model notwithstanding, hiring recent graduates has pros and cons. Even the firms that traditionally embraced that model have generally reduced the number of recent graduates and augmented with lateral hires. As Fred Baumann pointed out, it is no longer economically feasible for many firms to hire a large class of new associates at high salaries; those salaries come directly out of the law firm coffers and are not uniformly reimbursed by corporate clients.

There are advantages, however. As DISH's General Counsel Stanton Dodge pointed out, entry level hiring enables them to recruit high-potential lawyers that they can train the "right" way before they develop bad habits. Rather than hiring for experience, he hires for potential – energy, intelligence, the desire to achieve and leadership. U.S. Attorney John Walsh agreed; the chief disadvantage for employers that do not hire recent graduates is that they miss out on the opportunity to hire energetic, highly motivated "raw" talent and develop that talent systematically. There is also a perception that a recent graduate will feel greater loyalty to the organization and, therefore, work harder and stay longer – provided that the organization is a good fit for the young lawyer.

On a related note, employers take a gamble that the new hire will pan out. New lawyers are frequently young and, by definition, inexperienced. They may not have fully actualized their legal specialization, nor understand "what it takes" to be successful within a given organization. As Hugh Gottschalk explained, it takes a lot of hard work to be successful at his firm, Wheeler Trigg O'Donnell. As a litigation firm with national clients, the hours can be long, the travel frequent and the stakes high. A typical first-year lawyer may not be ready to commit to that type of practice, while a lawyer with a few years of experience is more likely to have the self-awareness to choose, and professional drive to succeed in, that environment. Kevin Brown responded that this may have more to do with age and maturity rather than number of years post-law school. A thirty year-old with significant life and work experiences might be able to better commit to a challenging litigation career straight out of law school than a twenty-four year-old.

B. The Lateral Hire Alternative. The alternative of lateral hiring, however, is hardly a panacea. While the advantages can include significantly reduced training time and an existing book of business, these benefits come with some baggage:

- Laterals join the firm with habits, skills, and values they learned elsewhere, and it is rare that those will be a perfect fit with the new firm. As a result, a firm that relies heavily on lateral growth will have a difficult time maintaining its culture. Some firms like Bartlit Beck and Reilly Pozner eschew lateral hires for that reason, as both Lindley Brenza and Jack Hanley discussed.

C. The Judicial Clerkship Alternative. Some firms split the difference by hiring lawyers with one to three years of experience in a judicial clerkship. As such, they hire mature lawyers more likely to know what type of law, and at which firm, they desire to practice. Additional benefits include the fact that these lawyers have been screened by the clerkship application process, and frequently receive excellent mentorship and writing experience under the tutelage of a judge. This often makes them better lawyers faster. The approach is not without problems, however. While effective for the firms able to practice it, the method exemplifies the free rider problem. Additionally, the numbers support this model for only a minority of law students and employers.

D. Screening Criteria. Finally, it is worth considering the procedures used by legal employers to screen applicants and to make hiring decisions. Most firms use a law school ranking and student GPA filter. If an applicant is above a certain threshold, then his resume is screened for indicators like law review, moot court, experience, and other factors. The members of the hiring committee then interview the remaining candidates; frequently, the initial round is done on campus and follow-up interviews are conducted at the firm or at a central location for national firms.

The problem with this longstanding tradition is that a rigorous statistical analysis indicates that this method fails to identify the best candidates for a given firm! Interviewer biases and improperly structured interviews skew scoring, and ultimately, selections. Monique Drake from Lawyer Metrics explained that studies

have shown a .14 validity / 57% hit rate for the typical “one-on-one” interview. Resume screening can overvalue less important qualities and undervalue some important ones. Analogizing to the book (and movie by the same name) Moneyball, the legal industry is where Major League Baseball was in the 1980’s. The clubs recruited the way it had always been done – the wrong way – despite access to better data. Because hiring decisions are more important now than ever before, law firms must improve their hiring methodology by figuring out which criteria matter most (in Moneyball it was On Base Percentage) and then learning how to effectively evaluate candidates.

III. Best Practices and Innovations

A. Law Schools. “Begin with the end in mind” was the late Steven Covey’s advice to those seeking to become more effective; law schools would be wise to adopt a similar approach. With the “end” of the current legal marketplace in mind, law schools must first ascertain the current and potential opportunities for their graduates, and then identify, recruit, admit and retain the individuals who will best take advantage of those opportunities.

On the opportunity front, the evaluation necessarily involves two hard questions. First, how many new lawyers can the school’s target legal market annually bear? Second, what skills, experiences and training can the law school provide to optimize its graduates’ value proposition?

The harsh reality is that the relatively inefficient law schools will close their doors in the next ten years because there is an insufficient market for their graduates as potential students elect law schools with more promising job prospects and lower tuition. Many other law schools, indeed most, will need to reduce the size of their incoming classes in order to maintain quality and achieve optimal job placement rates. The Dean of one “T-14” school, Northwestern, recently announced just that. The law schools that thrive in the coming decades will update their curricula to produce lawyers that add increased value to their employers in a shorter period of time.

Law schools are already expanding clinical opportunities and externships. These efforts, however valuable, are not sufficient. All law students need better

preparation for the practice of law to bridge the experience gap. This likely means that an increasing number of students will begin specializing at some point during their 2L year; law schools correspondingly must offer additional courses, mentorship opportunities, and experiential learning.

For example, a law student desiring to become a transactional lawyer should optimally take not only the standard fare of corporations, contracts, and agency, but also specialized courses in deal-making, banking, transactional drafting and securities. These law school courses should be augmented by business school courses in accounting and finance, with mentorship and an independent project under the guidance of a faculty member who has real world transactional experience. A parallel track for litigators, criminal attorneys, and other specialties should be developed as well. All students would benefit from increased offerings in leadership/management, negotiations, counseling, and business basics. In this way, a law school can produce a lawyer who is a value-add within six months rather than the typical one to two years. Further, law firms will be more assured of the interest, aptitude, commitment, and quality of new associates.

These programs will require law students to identify their practice area much earlier in the education cycle. Thus, law schools will need to assist students with this process after 1L year, whether through exposure, counseling, or personality testing. DISH General Counsel Stanton Dodge explained that personality testing is routinely used by businesses to screen candidates, but is not frequently used by law schools or firms.

Additionally, law schools will likely be forced to consider attracting a different kind of student. Northwestern Law School, for example, requires (with few exceptions) a minimum of two years' work experience prior to matriculation. The increased maturity, leadership skills, business experience, and emotional intelligence of these students expedites specialty election earlier in law school, particularly if the students have industry-relevant background experience. Through a combination of these methods, law schools can work with firms to get the right student, with the right training, to the right job.

Finally, Wayne Gretzky said it best, “Skate to where the puck is going, not where it has been.” Law schools ignore the future of the legal profession at their peril. As Richard Susskind documented in his seminal books The End of Lawyers? and Tomorrow’s Lawyers, both the type and amount of work done by lawyers has changed forever. Legal tasks which can be automated, outsourced, or performed by non-lawyers will not be handled by people with the initials “J.D.” following their names. Law schools must teach this reality to their students. Despite this reduction in work, however, there will be an increased demand for entrepreneurs and project managers. High value legal work that cannot be commoditized, like litigation, regulatory/compliance, and major transactions, will remain the province of skilled lawyers. Law schools of the future must train their students in these skill sets.

B. Employers. One result of legal employers hiring smaller numbers of lawyers is that it is more important than ever to hire the right person. Law firms increasingly seek to minimize risk and to maximize optionality in their hiring procedures. This phenomenon has resulted in new paradigms and methodologies, as well as increasing collaborative opportunities with innovative law schools.

GPA Cutoffs. The research suggests that law school GPA is not the best predictor of success as a lawyer; other qualities, like leadership, work ethic and emotional intelligence have a higher statistical correlation with desirable hiring outcomes and, as such, are far more effective indicators of success. This is the heart of the Moneyball approach employed by Lawyer Metrics: Find out what qualities truly matter at a given firm, and then hire candidates with those qualities!

Some employers have already recognized the shortcomings of the traditional hiring model and adjusted their hiring practices accordingly. At Kennedy Childs, for example, Managing Partner Barbara Glogiewicz explained the firm’s holistic approach to evaluation which examines seven key factors, including leadership, extracurricular activities, previous work experience, and community service. GPA is still a factor, though the firm lowered the threshold from the standard “top 10%” rule to a top one-third cutoff. Her firm seeks future partners, not just solid associates, so the firm must hire for the qualities possessed by its “most successful” partners. Ron Levine expanded on this point; in order to be successful in the long term, Davis Graham has to hire not only future partners, but future

leaders and rainmakers. Graduating from a good school with a high GPA is not enough.

Evaluating the Interview Process. While interviews are a necessary part of the hiring process, the organizations represented at the Roundtable conducted them in different ways:

- At the U.S. Attorney's Office, for example, Kevin Traskos relayed that the interview is often used to do more than just assess a candidate's likeability. Interviewers at the office often use hard questions about legal issues and hypotheticals to test a candidate's abilities.
- Dave Schaller relayed a similar pressure accompanying the Wheeler Trigg interviews; candidates are questioned by dozens of lawyers over several hours because the firm wants to see how the candidate handles the pressure of an unknown situation.
- A different criterion was espoused by Jack Hanley who relayed Dan Reilly's humorous, and quite popular, "final" test: "Dare I leave this person alone with a client for five minutes?"
- The most effective method, according to Monique Drake of Lawyer Metrics, is to screen resumes for behavior indicators and then conduct a standardized panel interview. In her experience, new lawyers fail not due to a lack of cognitive ability or academic credentials, but because they lack drive - the "fire in the belly" - coupled with an understanding of what it takes. Thus, the hiring process must seek to identify that "drive" as well as find lawyers that will be the best fit for a specific firm.

Innovative Hiring Practices. In addition to discussing the mechanics of hiring, the group was also interested in the possible innovations in the legal industry's hiring paradigm. Specifically, how can employers improve industry practices? Several options, including modifications to the summer associate program, pay cuts, apprenticeships, and staff counsel positions were discussed.

Hire More Summer Interns at Lower Rates. First, Dean Weiser and others suggested changing the summer associate paradigm by enabling employers to hire more students at a lower rate while managing expectations by clearly indicating that the position would not necessarily lead to an offer of employment. In this way, employers could simultaneously increase both the number of students to be evaluated and their optionality in them. Meanwhile, an increased number of students gain valuable training and law firm experience. Reilly Pozner uses this model already; Jack Hanley explained that the firm generally hires top students for their 1L summer with the understanding that no job offers will be made. Far from being “blackballed,” students apply in overwhelming numbers to work at this Band One litigation firm because of the quality of the experience.

Hire More Associates at Lower Rates. Similarly, firms could hire more associates at reduced salaries. The participants generally agreed that associate salaries are out of sync with the actual value added, especially considering that many clients will not pay for first-year associates. The problem is that salaries tended to be a one-way ratchet prior to 2008 because of the stiff competition for top candidates, the endless volume of work, and the leverage provided by the pyramid model of firms. The only way to address this problem, at least regionally, would be for multiple firms to make the move together. This action would be an easier sell to students if tuition was also meaningfully reduced, as student debt load looms in the background of salary reduction discussions. Firms would benefit in the same manner as in the summer associate program modification - a greater number of candidates and increased optionality.

The Apprenticeship Model. The group also discussed the Apprenticeship model. Though foreign to lawyers of this generation, apprenticeship once was the predominant method of learning the law. Public, firm, and corporate employers could agree to hire graduates for a two to three year apprenticeship at a significantly reduced salary, perhaps even starting during the third year of law school. By reducing salaries, the employers could hire more students and offset the training cost. Recent graduates would benefit by not only having a job, but gaining the invaluable training and experience necessary to apply for a subsequent long-term job.

The Staff Counsel Option. Finally, Hugh Gottschalk and Dave Schaller discussed the Staff Counsel option. Wheeler Trigg offers this position, which consists primarily of research and writing, to qualified lawyers who do not want to proceed on the typical law firm track. They work around forty hours per week, rarely on weekends, and in this way avoid the travel and stress that often accompany associate life. Because of the reduced pay, the firm can afford to hire more of these attorneys, who appreciate doing meaningful work at a top firm while maintaining work-life balance. Ron Levine countered that the problem with this methodology is that it comes with an opportunity cost; you might gain tremendous employees that will benefit the firm, but you inevitably miss out on hiring potential “rockstars” – the future firm managing partners and rainmakers.

C. Hiding in Plain Sight: Alternative Fee Arrangements and the Case of Bartlit Beck

Bartlit Beck utilizes non-hourly billing for all of its cases. Lindley Brenza explained that this singular decision has ramifications for many aspects of the firm, including recruiting and hiring. The firm gains nothing by throwing large numbers of associates at cases because the partners do not benefit from leverage. Efficiency and the alignment of client and firm interests are the hallmarks of Bartlit Beck, and as a result, it hires in small numbers (and almost exclusively from Federal Clerkships) and diligently trains its associates. It thus avoids altogether the problem of whether clients are willing to pay for associate work or training since the fee is pre-negotiated and is results-based. The firm directs itself to providing the type of work that cannot be commoditized, focusing on high-value-add services depending on the extensive capability, training and experience of its lawyers.

IV. Conclusions

- The legal industry is confronting significant challenges in the coming years.
- For the profession to thrive, both law schools and legal employers must honestly assess the marketplace and work together to find innovative solutions.

- Law schools cannot continue to exist in a vacuum; their fate is closely tied to the ability of their graduates to find jobs.
- The best law schools will be those that can adapt and train their students for the changing legal marketplace, just as the innovative law firms will be those that can deliver cost effective legal services to meet evolving client demands.

Change is never easy, and in the legal profession, infrequent. But hard decisions are being forced on public, private, and academic leaders. By their candid dialogue, and willingness to change and experiment, the participants departed with the hope that there are positive changes to come in the legal profession.

Appendix A

Phil Weiser, Dean – University of Colorado Law School

Lindley Brenza, Partner – Bartlit Beck Herman Palenchar & Scott

Fred Baumann, Chairman - Rothgerber Johnson & Lyons

Kevin M. Brown, Student – University of Colorado Law School

Stanton Dodge, General Counsel – DISH Network

Monique Drake, Director – Lawyer Metrics

Barbara Glogiewicz, Managing Shareholder – Kennedy Childs

Hugh Gottschalk, President – Wheeler Trigg O'Donnell

Jack Hanley, Executive Director – Reilly Pozner

Roxanne Jensen, Senior Partner – Catapult Growth Partners

Whiting Leary, Senior Assistant Dean - University of Colorado Law School

Ronald Levine, II, Partner – Davis Graham & Stubbs

Tim Macdonald, Partner – Arnold & Porter

David Schaller, Partner – Wheeler Trigg O'Donnell

Kevin Traskos, Civil Division Chief – United States Attorney's Office, Colorado

John Walsh, United States Attorney for the District of Colorado