

Too Many Lawyers?

By Susan G. Manch

A frustrated student at a prestigious law school called a recruiting administrator to find out why she wasn't being invited for a callback. Patiently, the large firm recruiter explained, *"While you were an excellent candidate (tactfully not adding, albeit in the middle of your class), others were better matches for our firm's needs."* The student pressed on, "Why," she asked, "are none of the firms in your area giving me a callback?" The recruiter, having had more than one of these conversations lately decided to explain more honestly. *"Let me walk you through my process,"* she began, *"I know that I want a summer class size of 10 and start by looking at about 3000 resumes. We then go on campus or invite in about 225 for screening interviews. We invite 60 for callbacks and make offers to 30 of whatever number decide to come. Of those 30 offers, we expect 10 to accept. Two years ago I would have made twice that many offers, but we don't need more than ten people in our entering class. To be one of the 30 winnowed out of 3000, every detail on your resume and transcript has to be exactly what we are looking for."* There was silence on the other end as the numbers began to sink in. Welcome to the world of law firm overcapacity.

Overcapacity is the polite term law firms use to describe the condition of simply having too many lawyers and too little work. Like a stubborn hurricane swirling over the Outer Banks of North Carolina during your only two weeks of vacation, the economic downturn stubbornly refuses to give up and move on. We are now in the midst of the second on-campus recruiting season since the workflow generated by the internet and telecom booms dried up. That summer and fall of 2001, firms—particularly those with emerging industry practices—announced layoffs and staggered start dates, and some even rescinded offers to incoming first years. Most thought things would be back to normal by the beginning of 2002, but the stunning bankruptcies of giants Enron and Worldcom, the continued dearth of transactional work in most parts of the country, and clients going through belt-tightening processes themselves have kept law firm financial managers focused on managing their largest asset wisely—their legal talent. Firms have employed a number of strategies to bring staffing in line with work flow, but there are no quick fixes.

Striking a Balance

The problem seems simple—if there are too many lawyers, fire some or don't hire any new ones. This would be a reasonable solution for a restaurant with too few customers or a car dealership that isn't selling cars. Law firms, on the other hand, live and die by their talent. Maintaining a healthy pipeline of developing legal minds is critical to the success and good reputation of the firm. If you fail to recruit at a top law school one year you may find your schedule empty when you return in better times. If you stagger start dates too awkwardly or worst of all, revoke offers already tendered, you may be blacklisted by

all but the mediocre students on a campus. In other words, your access to the talent pipeline will be severely compromised.

If you stop hiring laterally, you may find yourself with painful experience gaps in practice areas that may heat up without warning as did the mergers and acquisitions practices of the mid-1990's. The crash of 1987, followed by the bursting of the real estate bubble decimated transactional practices in the early 1990's. Many firms had few mid-level to senior associates who had the experience to be effective and productive when businesses started reaching out for corporate lawyers. Rebuilding was painful and slow and dollars were lost in the process.

Summer Strategies

Yet, most firms recognize that they have to take corrective action to rightsize staffing or associates will begin to suffer from a lack of on-the-job training. Summer program adjustments are the focus of attention for many. A recent National Association for Law Placement survey (NALP, May 2002) reports that among firms surveyed nationwide, 43.8% reduced the size of their summer program, 23.6% reduced one-L hiring, 13.2% delayed start dates for their first year classes, and 2.7% revoked offers to entry-levels. In addition, NALP reported that 88.9% of Washington, D.C. summer associates received offers at the end of the 2001 program compared to 94.5% in 1999.

- Summer class reduction is the easiest and least risky among the strategies. Firms get to maintain a presence on campus and have access to the best talent. The recruiting environment becomes more advantageous for the employers as students become more serious about the process—some realizing for the first time (as with the frustrated student we talked about) that they will have to be impressive in order to have a chance with the top firms. Not hiring first year law students does not hurt the firm in any significant way, but it may make sense to continue to offer clerking opportunities to local 1st years not tied to the summer program.
- Delaying start dates works if it doesn't create too much hardship for the new lawyer. Some even welcome a bit more down time after the grind of law school. Creative firms have offered students the opportunity to work for a public interest organization or government office on their dime rather than start immediately at the firm. But ultimately the success of the delaying tactic is dependent on work picking up when the start dates finally arrive. If the dates go out too far they can interfere with decisions for the next year's incoming class.
- Revoking offers is obviously the most severe remedy for an overcapacity situation and should only be used when all else has failed. No one can accurately predict workflow two years in advance, but firms make commitments all the same and law students depend heavily on those promises of employment. Most students with offers do not continue to interview or research employers in their third year and so will find themselves almost 2 years removed from the legal job market. Add to that the fact that few have any real experience and they will be competing with talented associates on the market as a result of layoffs and you have a bleak

employment picture for this group. Those who have done it with the least amount of collateral damage have been as humane as they can be—extending pay and benefits for up to six months beyond what would have been the start date, reimbursing any moving costs that are not refunded, and providing some form of career counseling support. All this needs to be followed by remedial work to rebuild relations with the campuses from which these students hailed. Being visible, attending job fairs, and volunteering for panel discussions may help allay students' wariness of the firm.

- Reducing the number of offers made to summer program participants used to be viewed as risky behavior, but is more widely practiced today. While it can still harm a firm's reputation on the snottiest law campuses if an offer is not extended to their comrade, the practice of whittling down the class to the best and brightest is becoming commonplace enough that it doesn't stand out. In many ways, making offers only to those summer associates who really put forth a stellar performance is a formula for greater retention and professional development later. Why bring in someone you already know is doomed to failure or whose presence will dim morale among the already stressed associate pool.

Managing Current Employees

When attrition slows to a trickle and only the best folks are getting the headhunter calls, firms have to use thoughtful performance management strategies to fend off overcapacity issues. Now is the time to dust off the performance appraisal system and see if it really works. Associate evaluations usually eat up obscene amounts of attorney and administrative time only to yield little meaningful information on skill mastery, knowledge development, and cultural fit. To successfully monitor and manage developing attorney performance, supervisors must provide candid assessments of ability and fit, associates must have the opportunity to describe their own strengths and weaknesses, and the firm must have clear performance standards and a comprehensive approach to professional development.

Best practices include in the areas of performance management include these:

- Training supervisory attorneys on how to provide useful feedback and employ effective techniques in conducting the evaluation interview
- Asking associates to draft an annual professional development plan in which they set forth specific performance or learning objectives for the next review period and using that plan to monitor ongoing performance during the year
- Identifying poor matches early in an associate's career and providing a humane approach to separation that includes time to search for a job and professional outplacement counseling
- Moving from an annual review process to a post-engagement review model in which performance is evaluated in real time as the work is completed or when an hours worked threshold has been met on a project
- Conducting upward reviews of supervisory attorneys is gaining in popularity to help firms identify and reward performance management behaviors that enhance associate efficiency, productivity, and learning

- Moving away from lock step compensation and bonus systems to allow attorneys to move from one developmental level to the next based on the billing rate commanded, hours worked, level of mastery, and quality of the work—known as “banding” in the corporate world, the approach is based on the idea that individuals should be able to advance from one level of performance expectations to another as soon as they are able or care to rather than moving everyone forward as a block merely because they have put in one more year at the firm
- Adjusting compensation systems to reflect both performance and firm profitability—according to the NALP survey, 26.3% of responding firms reduced bonuses, 17.1% froze associate salaries, and 6.6% reduced salaries. Many firms moved toward offering variable starting salaries, based on the hours target chosen.

The Lateral Equation

Carefully managing lateral hiring is especially important in a market such as this one. There are plenty of people to hire, but there are just as many reasons for each being available. Due diligence is the key. Thoughtful assessment of the skill set and personality needed, thorough job interviews with the people the attorney will work for and with, and real reference and background checks all help firms make smart lateral hiring decisions. For partners, the checks need to be even more thorough as evidenced by the recent Pillsbury-Latham mess.

Creative Staffing Solutions

Now may be the time to offer part-time schedules, year-long sabbaticals, or job sharing opportunities. Contract attorneys have become hugely popular and a part of the legal landscape that is here to stay. Lending out attorneys to clients or state or local government offices, rotating associates through foreign offices, or sending them off to LLM programs may be ways to increase learning even when there isn't enough work. Using down time to finally create a workable, organized forms file or to have the comprehensive in-house training workshops there was never time for makes positive use of less busy minds.

Finally, firms may want to dust off the idea of practice rotations for entry-level associates. Most firms gave up trying to rotate junior associates through litigation and transactions groups when firm management shifted to a practice group centered model. Rotations used to be the rule and exposed associates to a variety of legal work. Not surprisingly, rotations also allowed firms to use the most inexperienced legal talent where it was most needed—which may be just what is needed in firms today. Practice group management may be efficient, but it creates subgroups of attorneys who become so specialized that the firm loses any measure of fluidity when the market shifts. Maybe firms had it right in the olden days—thinking that all attorneys needed exposure to all areas of the firm's practice.

In the end, this too shall pass. But with each economic downturn, law firms become better at managing their capacity planning. Creativity and humanity are at the heart of employing successful staffing management strategies without negative impact.

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