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Arrested Development: Younger Associates Are Taking Longer to Develop

Changing workflows, client wants and of course the pandemic have all exacerbated an existing trend of longer ramp up times for new attorneys.

By Patrick Smith
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Changes in how firms utilize (or don't) younger attorneys, cuts to mentorship and development programs and a lack of in-person communication, exacerbated by the pandemic but certainly not solely driven by it, have created a mix that leads practice leaders and legal industry experts to believe there is a case of arrested development in newer attorneys and that the trend is not likely to stem.

This isn't to say that today's young attorneys are less capable, in fact they are often quite the opposite: more tech savvy and independent than their predecessors, more attuned to the importance of "softer" skills such as business development and brand building and in possession of a comfort level with working remotely not bound by decades of in-office experience.

But practice leaders are noticing a trend of delayed full utilization, often brought about by lack of opportunity and direct mentorship. It doesn't necessarily define itself as a negative, but it does ask for a change in expectation levels firms should have for their younger attorneys, given their operating environment.

The Great Recession

While not always a direct comparison, taking stock of the pandemic through the lens of the Great Recession a decade ago does provide some parallel context.

JP Box, a former Big Law associate at King & Spalding and Fox Rothschild and author of "The Millennial Lawyer: How Your Firm Can Motivate and Retain Young Associates," was just beginning his legal career when the 2008-2009 downturn hit.

"I was a first year associate in 2007 and lived through the changes," Box said. "That first year, they heavily invested in mentoring programs, had associate retreats where we did discovery, mock trials, etc. When the markets fell out and firms did cost-cutting measures, all those training programs were the first thing to get the ax. There was a delay in the development for young associates around that time."

(Photo: iStock)

Stephen D'Amore, co-chair of Winston & Strawn's litigation department, noticed a similar trend.

"Slowly, over the last five to seven years, we were seeing a slower uptick in the productivity of brand new lawyers," he said. "It was taking longer for them to be fully utilized than what I remember. It was already a trend, and I think the pandemic-related shutdowns exacerbated that."

Grunt Work, Partners and Technology

Much like during the Great Recession, work has dipped slightly overall for the legal community in 2020. While firms are handling that dip with more compassion during the pandemic than they did a decade ago, there are factors that are in play that do work against associates gaining experience.

One of those is the increased usage of data and technology to accomplish the more mundane tasks that associates used to undertake but now gets farmed either to e-discovery houses or is done by a partner now that technology takes much of the legwork out of it.

"When I was at Winston early on, we [young associates] were strictly process people, which helped facilitate the efficiency of other people," Brian Richards, now the chair of Paul Hastings' global private equity practice, said. "We don't need to do that as much anymore, like traveling to work on due diligence for a deal for four to five days."

D'Amore agreed, saying the "work" has moved to a skill set normally considered the arena of more-seasoned attorneys.

"A lot of that commodity work that kept junior lawyers busy has been shifted to alternative sources like e-discovery and innovation centers," D'Amore said. "And there has been a much greater demand for client interaction and strategic engagement. Those are moves that work more for mid and senior level associates and above."

While the pandemic can't be held accountable for advances in legal technology over the past decade, it can be for facilitating a more dispersed work environment, which can also have repercussions for associates.

"The lack of face time is impacting them," Jon Robbins, chair of the cannabis practice at Akerman, said. "So much of your experience is sitting down and watching your mentor and how they practice law. Learning what to do and what not to do. That art is suffering."

Robbins said his mentor was not necessarily the nicest person in the world, but he did know the law, and Robbins said he learned a great deal while working directly with him.

"You are going to see associates in the metaphysical library taking longer. That time frame is being stretched out."

Partners, both at client behest and to some degree for the betterment of their own pocketbooks, have taken more work recently, especially during the pandemic. That of course has its own impact on associates.

"During times like this, my pitch to law firms is that it may help the bottom line in the short term to hoard work or pass up mentorship opportunities," Box said. "But ideally you want your associates to actually be able to do the work, and it will ultimately make the partner's lives easier and help them manage their book of business," he said of making sure associates are being given appropriate opportunities.

Mitigation

"Many years ago, when we created practice groups within the litigation department, we allowed the most junior associates to remain unaffiliated, so they didn't need to declare a 'major' early on," D'Amore said. "We didn't want to pigeonhole people, we wanted to let them develop their skills and interests. More recently, we created a special practice group made up of those unaffiliated junior associates, to give them the support of a practice group setting and foster greater engagement."

He said the firm really embraced a structure and culture of learning for its most junior lawyers. He likened it to how doctors learn the ropes at a training hospital.

"They can't be dropped in and just figure it out," he said. "Those people have to be taught to do the more complicated work they are not getting from day one."

He said the firm also made a shift in what he called the "free market system" of obtaining work for new associates.

"When I came to the firm, and until recently, when a new case came in and it needed to be staffed, the partners on the new case would be responsible for staffing it, down to the most junior level," D'Amore said. "That tended to reinforce old practices and people would go to associates they knew best, resulting in inequality in the distribution of work."

He said the firm now requires that junior associates on new matters be staffed using a centralized assignment process that can quickly map associates to relevant opportunities, ensuring an equitable distribution of opportunities on a range of matters.

While of course not the case for every associate, if enough are falling into this category of arrested development by current standards, there are consequences for firms. As the associates mature, there could be "gaps" in certain levels that firms have to fill with laterals, which aren't the most cost-effective way to fill a need, and the potential for exodus by associates who don't see a way to accomplish the billing requirements laid out to them.

Or, perhaps the legal industry will need to accept the idea that the expectations around what a first-, second- or third-year associate is capable of need to change to more accurately reflect the environment they were raised in.

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