
KIMBALL LEGAL SEARCH & CONSULTING

April 24, 2006

I am delighted to present these materials to participants at the April 2006 Kanter Large Law Firm Lawyer Recruitment Conference. Seven subjects are covered

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Forty years ago lateral hiring was a small blip on the radar screen of America's law firms. To be sure, senior associates from firms who did not make partner quietly moved to smaller firms.¹ But in that pre-AMERICAN LAWYER era, lawyers' incomes were not disclosed, firms did not market or advertise aggressively, and a lateral hire was such an unusual event that firms often sent a preview memoranda alerting all lawyers to what was an exotic development. Today lateral hiring is a turbine engine spinning at faster and faster speeds. Individual lateral hires come to firms in many ways direct submissions by candidates indirect submissions by partners or associates (the latter often being paid bounties by their firms) referrals from clients and contacts listing on firm websites in response to media placements by the firm through retained or contingent search firms working on an exclusive or a multiple-listed basis. Most large national firms hire more lawyers in the lateral market than they do at the law school level. I hope you'll find this outline to be a useful discussion of various issues relating to lateral hiring.

¹ The CD furnished with these materials contains PDF copies of the following Kimball Legal Search reports for clients and candidates: Law Firm / Search Firm Relationships The Compensation Avalanche - Remembering 2000 Market Conditions & Lateral Hiring Success in the Summer Due Diligence & Lateral Hiring Chicago - 2006 Market Report Retained Search Kimball Services for Law Firms Model Search Agreements and Lateral Questionnaires Kimball Programs — Training Campus, Office And Lateral Interviewers Inside A Search Firm -Understand Your Vendors. Earlier versions of this report were presented at The 2005 Kanter Professional Management Large Law Firm Hiring Partner Conferences The April 2004-2006NALP Conference on Managing Lateral Hiring The May 2005 Chicago Association of Legal Personnel Administrators Program on Managing Lateral Hiring and The May 2005 Institute of Management and Administration Audio Conference - Best Practices in Lateral Hiring. To discuss our search and advisory services or receive a list of other Kimball publications, please call or e-mail Frank Kimball.

Lateral Hiring In Earlier Eras

To understand the current lateral market, it's useful to put it in perspective with other periods of growth and contraction in the market for professional services. All of us have seen cycles in lateral hiring, but today's rapid pace is best understood when compared with earlier eras.

- PRE 1979** Lateral hiring was not even an industry. Departing associates typically joined smaller firms, started their own practice, or became in house counsel with a client of their original firm. The hiring of a lateral associate - much less a partner - was an extraordinary event in many of the larger firms in major cities. Headhunting was such a novelty that Esquire profiled a New York search guru of the late 1970's and predicted great things about the 'industry.'
- 1980-1996** During this sixteen year period lateral hiring tracked fairly closely with the overall economy and market for professional services. Peaks were seen in 1979-1980, 1984-1985, 1987 (through mid-October), and again in 1989-1990. The grim recession of the early 1990's brought lateral hiring to a dead stop for almost two years. Many leading firms terminated scores of associates and partners. Some of these events received media attention; others remained lost in the ground clutter.
- 1980-1996** During this period search firms expanded and contacting laterals was a phone list driven system in this era before Martindale Hubbell became available on CD ROM. Most law firms did lateral hiring at a department level and associate lateral hiring existed with minimal participation by law firm management committees. The recession of 1990 was terrible - worse for law firm head count than the 2001-2003 plunge. The speed of the decline took many law firms by surprise and caused some to revisit the control management exerted over department heads' estimate of entry-level and hiring needs.
- 1997-2000** Fueled by the stock market and e-commerce boom of the late 1990's, lateral hiring ran at a manic pace in the last two years of the decade in many markets. The bubble burst, of course, only a few months after almost all leading firms decided to emulate the 50% increase in overall associate compensation which originated in Silicon Valley. Expansion into other markets increased in the last two years of the decade - particularly into New York and Northern California. The dawn of the internet and e-mail changed many things about hiring including □ posting of openings at law firm websites □ comprehensive website listings by search firms and □ job boards and greedy boards of all kind. On the supply side it empowered millions of job seekers to bury law firms in resumes that they have not requested and do not need. To hiring (lateral and entry-level) the internet is less of a faucet being turned on than it was a spillway being opened at Hoover Dam. Hiring staff in many law firms was reduced in the 1990 recession and never expanded during this boom. This caused many delays and inefficiencies in lateral hiring.
- 2000-2003** The lateral market reached a peak in mid 2000 and was already in a steep decline on September 11. The total volume of lateral hiring fell sharply - probably by 75% between September 11, 2001 and the end of 2002. A recovery in lateral hiring began in mid 2003 and is now moving with the pace of a steam engine heading down a grade.

II. LATERAL HIRING IN 2006

1. LATERAL HIRING IS A BIGGER BUSINESS THAN ENTRY-LEVEL HIRING —Whether one measures head count, compensation, importance in terms of filling gaps or creating opportunities, lateral hiring is a key cylinder in the engine of growth. The world of entry-level hiring has evolved into a sophisticated series of processes, methods, and tools which are used to recruit the best new talent.

Well thought-out systems are fine-tuned annually for campus visits, call back interviews, summer programs, offer decisions, reviews, compensation and all the rest. Lateral hiring, by contrast, is often as fragmented today as entry-level hiring was 25-35 years ago. Candidates are identified by more than ten methods which can conflict with each other in terms of purpose and result.

Defining needs, and identifying, interviewing, and vetting candidates may be done at a department, office, or firm level. Rapid growth into new markets may result in conflicting views as to standards on schools, grades, experience, time to promotion, compensation and other factors. Deciding how to better organize and administer lateral hiring - consistent with developing firm wide standards - and without offending your partners and colleagues in other cities - can be a tall order.

2. LATERAL HIRING NEEDS AND LEVELS - Lateral activity in the nation's 1,000 largest law firms has accelerated to a pace not seen since 1998. It has not reached the manic once-in-a-generation spike of 1999-mid-2000, but it is far stronger today than at any time since the recession. Lateral activity is strong in predictable fields, e.g., litigation / intellectual property / labor & employment / real estate but also in other areas that were relatively inactive during the recession (the best example is corporate). However, defining the need to hire is an increasingly difficult exercise. In some firms +/- even 1 on headcount is something decided at the department head level or above.

The world is far different than it was during the 1987-1990 and 1997-2000 booms when departments and groups had fairly substantial autonomy on adding headcount. In the fast growing multi-office firm defining need can require delicate discussions among partners in management and partners at the practice group or office level. Firms growing to national scale work hard to create a seamless 'one firm' message to the world and to offer autonomy and independence on many matters to group heads. The discussions on head count are no more or less demanding than those on budgeting, marketing, space, compensation, and other issues. For a hiring partner who is new to management issues, the discussions can be taxing.

3. BACK TO BASICS - LOOK AT ATTRITION
- In the rush to fill empty slots, expand offices, and grow in key areas, sometimes we need to get back to



basics. Before spending a second on lateral hiring - look first to the attrition of entry-level and lateral associate. If attrition in either group drops 25%, the impact on any firm would be tremendous in terms of □ cash □ attorney time and □ more continuity in client service. Much of lateral hiring is driven by attrition of entry-level hires and lateral hires. Today the typical new hire stays with a large national law firm for only three years. And, the typical mid level lateral associate is likely to leave in less than three years. That's more than sobering. It's an enormous waste of attorney time and money. It's also unproductive and, to some extent, unnecessary.

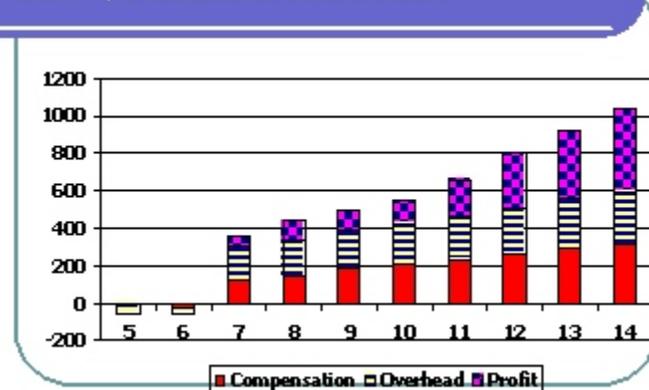
Before ramping up entry-level or lateral hiring, a firm should examine why associates are leaving. A blunt look at the actual reasons for associate departures often shows that the reason should have been detected and addressed during campus or office interviews or during the lateral interview process. *A modest change in the attrition of entry-level or lateral associates can have an enormous impact on □ cash hiring expenses □ attorney time and □ effective client service - where clients don't see as rapidly a changing canvass of junior lawyers handling their matters.* It is a close sibling of the immediate returns which come from more effective campus and office interviews.

In an era when the average lateral stays less than 3 years, perhaps it's time to go back to fundamentals and re-examine whether our hiring efforts are as effective as they could be. As hiring partners almost all of us have had the unpleasant task of being involved in associate departures and terminations. More often than not, the reason the associate left (or failed) should have been detected during interviews. And, as hiring partners all of us have seen talented associates leave our firms for reasons which could have been predicted when they were hired.

The most common reason for this generation is the 'trailing relationship' where an associate with few links to the city in which they first settle, leaves after 2-4 years to return to their geographic roots or to follow a relationship. Multi-city- two professional relationship are the order of the day in post modern America. But law firms may want to go back to basics when considering ties to the community. But because of the press of business, the need to fill the ranks, or the hope that the dream candidate with no roots would actually stay - this short fall is often overlooked.

The bottom line is as simple as it is important — despite tens of thousands of hours, millions of dollars, and the tremendous disruption to practice inherent in entry-level and lateral hiring, most national firms are losing 30-50% of their associates before they become fully profitable and completely integrated into client service. That startling fact should be a blunt and constant reminder to law firms everywhere that it may be time to turn the lateral hiring system on its head in order to obtain better results. To keep doing what one has been doing in the face of disappointing results is not the best use of the

The \$1 Million Associate

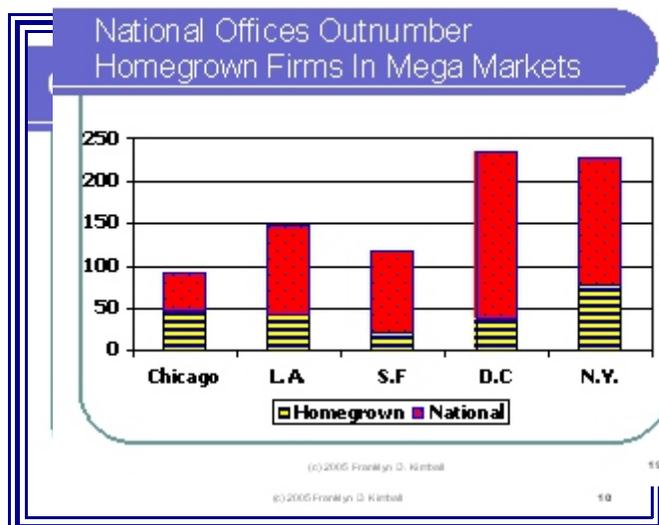


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firm's cash - nor of its most precious resource - the time of its attorneys and their ability to deliver high quality client service.

4. THE ADMINISTRATION, ORGANIZATION, AND STANDARDS OF LATERAL HIRING MUST BE AS SYSTEMATIC AND ORDERLY AS ENTRY-LEVEL HIRING. None of us can remember the pre NALP era of the early 1960's when large law firms did not go to campus. 3L's came to the firms, without an appointment, and were interviewed by whomever was available. The world evolved in the 1970's but still had some charming elegance. In the 1970's law firms in Houston, Los Angeles, and San Francisco interviewed all candidates for two full days (and the requisite 5 or 6 meals). In some firms, candidates met almost every lawyer in the office. It was not until the 1980's that systems began to evolve into the well-ordered dance that firms have today for campus interviewing. Today a key issue for entry-level hiring is how to organize, administer, and regulate entry-level hiring standards and processes in multi-office national firms. From the organization of the campus visit to grade standards to split summers, the issue of the moment - and correctly so - is how to meet the needs of the multi-office firms in a marketplace which is far more dynamic than it was only five years ago.



5. LATERAL HIRING IS SOMETIMES THE NEGLECTED STEP CHILD OF ENTRY-LEVEL HIRING . From the standpoint of administration, standards, and execution, lateral hiring is done in a less systematic and sensible fashion. Because of the rapid growth of firms - in their original cities - and in cities where they expand - firms often have a less than ideal set of tools and methods for lateral hiring. This can include many factors including determining the best method for lateral hiring (which can vary widely depending on the need how or whether to use search firms extent and nature of background checks on partner and associate candidates differing standards on candidates from department to department and office to office, etc.

6. FRAGMENTED LATERAL HIRING IS COUNTER PRODUCTIVE - *First*, it is increasingly challenging for a multi-office national firm to set standards for lateral hiring that meet the needs of the firm and the sensitivities and priorities of individual offices.

- Second*, the views of senior management, individual offices, and practice group leaders may vary on almost anything relating to lateral hiring - from need to standards to methods of hiring.
- Third*, day-to-day administration of lateral hiring is far more burdensome and demanding than many believe it to be. The avalanche of resumes, the flotillas of headhunters, and the rapidly changing needs have created a process that can choke the systems currently in place.

- Fourth, internal disagreements may exist about credential requirements including schools, grades, prior experience etc. This can grow increasingly complex because of the practicalities of hiring in different practice areas.
- Fifth, there are literally a dozen methods used to find laterals. Some work in some cities and some practice areas. Others do not.
- Sixth, vetting, compensating, selecting, leashing, and working with search firms can be difficult for your partners and administrators.
- Finally, and perhaps most importantly, hiring is only one of many areas where new partners and new offices have to learn each other's practices and idiosyncracies. It's a tall order. In an active lateral hiring market - optimizing lateral hiring supervision, quality control, interviewing, and administration can yield immediate and substantial dividends in cash, attorney time, and reduced lateral attrition. The fragmented nature of some lateral hiring efforts in some large multi-office law firms leads to a variety of problems – all of them remediable □ inconsistent standards

7. THE DRIVING FORCE IN LATERAL HIRING IS EXPANSION INTO NEW MARKETS BY MULTI-OFFICE NATIONAL LAW FIRMS. Thirty years ago, most large national firms had one office - and perhaps a small outpost in Washington, D.C. In 1976 most firms had one dominant office and an outpost in Washington or perhaps one other city. Today multi-city firms are a fact of life. The five 200+ offices in 1976 were the New York offices of Shearman & Sterling and White & Case and the Houston offices of Baker & Botts, Vinson & Elkins, and Fulbright & Jaworski. Today, many have *several* offices with more than 200 lawyers. *Today 117 offices have more than 200 lawyers, and more than 390 have more than 100 lawyers.* In that charming pre-fax, pre-FedEx, Selectric-driven era the practice was national in name but primitive in its execution. In the past 5-10 years firms have scrambled to establish a national presence in mega, large, and mid-size markets.

The national office expansion phenomenon may be accelerating too fast for its own good. Some of the moves into unfamiliar markets seem to resemble the race in the computer, telecom, or airline industry to grab as fast as you can and sort it out later. Whatever the merits of the decisions, they are a fact of life. Chicago is a typical example. Fifteen years ago only four national firms had a meaningful presence in the Windy City (Jones Day / Latham & Watkins, Skadden, Arps and Foley & Lardner). Today the number is 68. This results in a spike of lateral moves at the partner and associate level that is likely to continue - and possibly accelerate.

Today, laterals often arrive with small or large groups of lawyers typically led by partners with portable client relationships. Sometimes an avalanche of laterals must be assimilated or integrated in the event of a merger, acquisition, or other combination. The pace can be frenetic. In the wake of the closing of sizeable firms in many major markets, e.g., Brobeck / Testa Hurwitz / Altheimer & Gray - firms move aggressively and creatively to close quickly with leading prospects.

In such an environment issues of process, diligence, can be given less attention than should be the case. Amidst this barrage of submissions, large law firms often operate with less recruiting staff than they had 15 years ago. Other firms have ample staff but face challenges which are a result of how the firm has grown. Many firms are wrestling with the gorilla of managing rapid growth. This has many implications for hiring professionals including the process of establishing national standards and practices without impairing local autonomy or ignoring local market realities.

Compare Lateral Hiring Options

- Outreach /Direct Submission
- Media /Web site
- Non exclusive contingent search
- Exclusive search
- Bounties
- A little of everything
- Expense
- Simplicity / Time
- Candidate Quality
- Discretion
- Volume Needed
- Ability to Screen
- Is Exclusivity Wise?
- Multiple / Serial Efforts

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7. SELECT THE BEST METHODS FOR EVERY LATERAL HIRING NEED. Firms often exert too little control over how lateral hiring should be done. Decisions are made at the department, practice, group or office level about search methods which may not be in the best interests of the firm. When any search is started the firm should make a considered decision about the best way to conduct a search. This can vary depending on the city, the practice area, and competitive conditions.

One of the most common - and warranted complaints - about lateral hiring is that whatever method is chosen is not resulting in the firm seeing a large number of qualified candidates. This often results in firms making decisions that are counter productive. For example, in certain practice areas giving a search assignment to several firms (akin to multiple listing of real estate) caused diluted and unfocused results. When three or four search firms chase the same project - candidates may get three of four calls and the firm's message to the market looks confused. Second, if the firm gives the assignment to a search firm who is already looking for, let's say, patent lawyers with an EE background for ten other firms - there is no incentive to present the candidates to you. The search firm conveys, intentionally or otherwise a message to candidates that "we are looking for E.E. I.P. candidates for most of the large firms in Los Angeles." It is far more effective for the law firm to hire an excellent search firm who will focus on their efforts exclusively. Mutual exclusivity. Take it for a test drive. You will like the results.

Another common problem is when a department begins looking by using a variety of tools simultaneously - e.g., website listings, associate bounties, media placements, and multiple listed search firms. After several frustrating months, the group leader reaches a point of tremendous frustration and then asks his recruiting team to "get me another search firm." The problem at that point is that another search firm has to enter the marketplace and overcome the noise that has already been created. This is in some ways comparable to the frustrated home owner who switches real estate brokers six months into the effort to sell her home.

A firm is far better off using the right tool from the beginning. This suggests the importance of setting standards and guidelines for search methods at a national level, giving appropriate deference to practices in the markets in which you practice. For example, life working with search firms in New York is far different than Chicago. There are far different practices on search fees, guarantees, non-solicitation, and other issues. And, there are practice areas where the need is so red hot that

different decisions must be made. As in many other areas in the modern national law firm - e.g., marketing, management, and compensation, the firm must give guidance - and exert some control - over selecting the best way to conduct every search.

Generally recruiting staff in each market is your best source of knowledge about the most effective search method. This approach is neither slow nor heavy-handed. It can be brisk and effective. Over time it will gain the support at the office and practice group level. It can be done without communicating a Politburo style message. A good search firm will advise a client about the best methods for a search. Lateral projects differ widely - from an evergreen need for 2-3 year litigation associates (where multiple listing and many tools may be wise) to the rifle shot search for 1 I.P. E.E. candidate with solid trial experience and a terrific client service personality.

8. UNDERSTANDING “INVENTORY” - All of us would like to think that the best associates at other firms will recognize the superior opportunity offered by our firm and will voluntarily enter the lateral hiring market. In fact, the picture is far different. For associate lateral hiring, the 'inventory' includes associates who are unhappy at their current firm (regrettably, this includes many associates who will be unhappy elsewhere and who are high flight risks for their new employer) who have lingering dissatisfaction with life in a large law firm who are in a slow walk out of the profession for an infinite variety of reasons who dislike the irregular schedule and high hours inherent in the profession \$125,000 a year clock punches who want to pay down their debt but have no long-term commitment to private practice. *Regrettably, lateral hiring inventory only rarely includes high functioning strong associates at our competitor who are on track for partner or more likely to leave for in house positions. Also it is unusual for a candidate to move to a similar firm.*

9. Control Solicitation of Your Lawyers By Search Firms - One of the dark realities of the search / headhunting business is that a regrettably large percentage of search firms try to place lawyers in your front door while simultaneously soliciting others to leave. Not only does this violate the clear terms of most law firms' search firm agreements, but it is contrary to fundamental principles of ethical conduct. How can law firms put at stop to this chicanery?

First, let's set aside the world of lawyer placement and call search firms what they are — vendors. They provide a service and merchandise in the same way that your computer dealers, furniture suppliers, HVAC technicians, and others provide services or merchandise. Imagine if your computer dealer delivered 1,000 PC's to you in March and then quietly stole 30 a month out the back door late at night. You'd hang them by their thumbs, sue them, and terminate the relationship. Why then do you tolerate this from search firms? You'll have to tell me. Here's what I recommend —

- Draft an air tight unambiguous no-poach provision which prohibits search firms who place lawyers with you from “soliciting, placing, recruiting, contacting or otherwise inducing any attorney to leave the XYZ firm at any time for any reason.”
- Restrict the number of search firms you do business with - and speak with each of them - face to face about the importance of this provision. If you detect any resistance - stop doing business with them.

- ❑ Have a strong penalty for violation of the search agreement. Beyond terminating the search firm and cancelling any payments which are due and owing - how about a 12 or 24 recapture clause which requires the search firm to refund any fees previously paid.
- ❑ Have a strong enforcement clause - whether for mandatory arbitration or litigation (the choice is yours) but the loser to pay the winner's attorney's fees.
- ❑ Finally - take an aggressive stance when poaching takes place. Make sure your facts are correct - and then notify the search firm that you are terminating the agreement and enforcing the recapture clause - giving them X days to refund all fees due under the clause. If they do not do so give some thought to initiating arbitration or litigation. As John Kennedy said in his 1961 inaugural address, "the word will go forth from this time and place" that you are not to be trifled with by vendors.

10. GRADE / SCHOOL STANDARDS / MARKET SHARE & COMPETITION - One of the iciest slopes in hiring is setting sensible guidelines for law school records of entry-level and lateral candidates. The nation's 1,000 largest firms are hiring 400% more entry-level associates than they did 35 years ago. No comparative data exist for lateral hiring, but a good guess would be that lateral hiring is 1,000% higher than it was in 1975. During that time the top 30 law schools have increased in size only 15%. This means that all law firms must reach to more schools and reach more deeply at all schools to find the entry-level talent. There is, to the shock of many, a shortage of human capital. The number of law students who meet the needs of law firm is insufficient. In the lateral hiring market, law firms focus, as they should on a wider range of factors - including the quality and range of experience. But law school and law school grades remain an important factor. But this becomes complex and frustrating for the multi-office national firm for several reasons —

- ❑ A firm cannot impose the same school/grade standards in new national offices that it imposes in its 'original city' because it does not immediately command the attention of the market in a new city. The best examples of this would be New York and Washington D.C. - where the 'home grown' firms which are most well-known to students and young laterals are able to set different standards for grades and schools compared to the hundreds of new entrants in the market.
- ❑ Firms must understand that regional and local schools which are completely unfamiliar may be excellent places to hire selectively. For example a New York firm entering the Chicago market may be unfamiliar with Loyola, DePaul, or even Illinois. Your new colleagues in your Chicago office probably have a very good idea of how deep they can or should go into the class at these schools.
- ❑ Establishing a 'name' for recruiting purposes takes a long time. Law students are excruciatingly hide-bound and conservative on law firm choices. They revert to the familiar and succumb to the drumbeats of distant hearsay when selecting firms. A law firm which is a leader in its original city may take literally a decade to gain buzz and name recognition among associates and junior laterals. This may shock and annoy department and practice group leaders who interact with leading firms nationally every day. But at the law school and young associate level - newer entrants to the market come with a yellow caution light for a long while.

- ❑ The entire *Michigan Law Review* is not sitting in main reception at your friend's firm! Lawyers whose knowledge of recruiting is 10-15-25 years old may understand relatively little about the current competitive picture for entry-level and lateral recruiting. They may feel that somehow the firm has fallen behind its competitors who “must” be hiring “far more top students from top schools, just like we did back in 1980.”
- ❑ A good search firm will understand the actual hiring patterns of leading firms in the market in the relevant practice areas. Whether they admit it or not, most law firms may announce one standard on grades and schools and apply another. Law firms apply different standards when hiring in different practice areas - the astute firm understands that it may not be able to be as selective in any area in which it is not as prominent in the legal community. Being stubborn on this issue can lead to a very disappointing search. Law firms should - and do - apply different standards for laterals than they do for entry-level associates. The associate with a spectacular deal or case roster - and who has had solid experience across the board may well be a superb lateral hire, even if they did not attend a famous national law school or finish in the top quarter of the class.
- ❑ The number of top graduates from leading schools is unchanged. This causes greater competition for law school graduates. Firms react to this competitive pressure by reaching deeper into the class at more law schools and increasing salaries to remain competitive with peer firms in other major markets. The quality of law school graduates has improved because of the widespread admissions of talented women and talented minorities.
- ❑ Every 2-3 years a firm should take a snapshot of their hiring patterns to see how their compare to their perceived /actual competitors. Many famous law schools (Yale, Columbia, NYU, Stanford, Boalt, Virginia, and Penn) place relatively few lawyers in Chicago. That says nothing about law school quality but speaks volumes about the preferences of students who attend prominent ‘national’ schools.
- ❑ Beyond the grouping or ranking of schools equally important patterns emerge concerning the percentage of a school’s graduates who settle in a city. It is not surprising so see that Northwestern, Chicago, Michigan, Illinois and Harvard lead the parade. What is more interesting is that the next four schools in terms of volume of placements are DePaul, Loyola, Kent and John Marshall. This suggests that the local schools are competitive in this range — but the student at the local school who aspires to a Mega Firm should be at the very top of her class. For firms with 100-249 lawyers, the pattern is different. Northwestern, once again, leads the parade. Michigan Illinois and Chicago take the 3d- through 5th slots. But Loyola is close on its heels and Kent, DePaul and John Marshall all edge out Harvard.

**LAW SCHOOL MARKET SHARES - CLASSES OF 98-02 ASSOCIATES
FROM LEADING SCHOOLS IN SELECTED MEGA & LARGE FIRMS**

Selected Mega Firms	%	Selected Large Firms	%
Michigan	10.5	Northwestern	12
Northwestern	10.3	Loyola	12
Chicago	10	Illinois	6.5
Illinois	7.5	Chicago	5.8
Harvard	4.6	Michigan	5.5
Loyola	3.9	Georgetown	4.8
Georgetown	3.9	John Marshall	4.5
DePaul	2.3	Indiana	3.4
NYU	2	Wisconsin	2.7
Duke	1.5	DePaul	2.7
Yale	1.5	Virginia	2
Texas	1	Iowa	1.3

Data available on Martindale Hubbell CD ROM as of Fall 20034. Selected mega firms include Jenner & Block, Kirkland & Ellis, KMZ Rosenman, McDermott, Will & Emery, Winston & Strawn, Foley & Lardner, Skadden Arps, Latham & Watkins, and Jones, Day. "Selected Large Firms" includes Gray, Bell Boyd & Lloyd, Chapman and Cutler, Gardner, Carton & Douglas, Schiff Hardin & Waite, Seyfarth Shaw, Vedder Price, and Wildman Harrold Allen & Dixon. Members of the Classes of 1998-2002 include entry-level and lateral hires and that this data does not reflect associates who have departed voluntarily or otherwise. My thanks to my former recruiting coordinator Karen Mortell of MW&E. In the summer of 1988 and 1989 Karen compiled this information manually for 30 firms. What is interesting is that the role of the core feeder schools has not changed. Yes, student self selection and law firm bias are a part of the equation. But the message is simple - the recruiting war is won or lost on a short list of battlefields. It always has been and probably always will be.

- ❑ One could debate endlessly whether the pool of students in 2005 is more talented than the pool of students in the mid 1970's. Today's law students are brighter and more capable than those from 30 years ago. This reflects increasing admissions of minorities and women and the growth in the number of students who attend colleges. While the level of law school applications has not risen enormously, the quality of the typical student at a top fifteen school is higher than it was twenty-five years ago. So, firms dip far deeper in the class but they do not as a result hire less qualified lawyers. Just one Michigan graduate's opinion.
- ❑ The recent U.S. Supreme Court decisions on admissions at the University of Michigan are beyond the scope of this report; however, the nation's leading schools - using various systems and methods - are doing a far better job on minority admissions in every respect than was the case 10-20 years ago - and they should be commended for their efforts - rather than subjected to external micro management by those completely unfamiliar with the complexities and subtleties of admissions and achieving the goal of improving the quality of the law school student body.

11. DUE DILIGENCE - AN IMPORTANT, DIFFICULT ISSUE - Every firm stubs its toe from time to time on entry-level or lateral candidates with troubling issues or bogus credentials. The task for the large multi-office firm is to develop systems which obtain the information needed without being burdensome or oppressive to either the law firm or the candidate. I do not presume in this limited discussion to treat federal or state labor law issues which may limit the scope of inquiry. Instead, this piece highlights issues which require further discussion in many large law firms.

- ❑ Firms should establish uniform standards for all candidates in all offices. Even in some firms with elaborate comprehensive questionnaires for candidates, some partner and associate candidates are considered, approved, and hired, without obtaining detailed background information. That's fine the 95% of the time that no problem exists. But in rapid fire lateral hire situations where firms are scrambling to hire lawyers fleeing a firm that is collapsing there is still a need to conduct diligence
- ❑ Due diligence has levels - routine information (resume, website bio, confirmation of grades, law school graduation and good standing in the bar), comprehensive information (1-3-5 year history on billing, collection, rates, compensation, and client rosters), and sensitive / controversial information - the limits of which are as broad as your imagination and creativity. The latter category could include tax returns, background checks including reviews of personal litigation, investments, credit, drug tests, etc. The firm should do more than adopt a questionnaire - it should understand what information is important in making its decision. Strong, credible candidates are rarely offended about completing questionnaires - it is part of the drill at 75% or more of law firms.
- ❑ Not a year passes without a disclosure of a lateral lawyer who failed to disclose materials items about their background - resulting in profound embarrassment (or exposure to liability) for the acquiring firm.²
- ❑ Sometimes with lateral partners, the issue may be failure to fully disclose problems with a portable client. For example, sometimes a partner with a apparently large book of business can be considerably less attractive because the client gets discounts - either across the board when the engagement begins or in a de facto discount taken as a write off on time billed. Or, the client is slow pay - although most law firms are far more disciplined in 2004 than they were 15 years ago, many lateral partners may be accustomed to a billing collection cycle which is different from their new firm. It pays to examine the billing and collection cycle on major books of business. ❑ The client may get blended rates - which are hard to compare to the new firm's hourly rates. ❑ The client has one (or more) large outstanding receivable with its current firm - which can often be an indication of problems down the road on new matters with a new firm. ❑ Some client time is

² This problem is not limited to lateral hiring. There are abundant examples of failures to disclose in the entry-level hiring context — e.g., new associates who have not graduated, who cannot be admitted to the bar, who mis-state, invent or exaggerate academic credentials, who lie about previous summer experiences. Some of the frauds are audacious and fairly simple minded. Others are complex and have more threads than a medieval tapestry.

stashed in non billable marketing accounts - so that the billing sheets for the lawyer mis state the actual investment in / profitability of the business.

- ❑ The omissions can be creative and subtle to the audacious and grotesque - but among the trouble signs are the following
 - ❑ Failure to disclose mis conduct within their current firm, e.g. claims for sexual harassment or other illegal, discriminatory, or offensive conduct
 - ❑ Claims of abuse of expense accounts, abusive billing / collection / write off practices³ (many firms like to bury this stuff very deep so it is often hard to find and easy to hide)
 - ❑ failure to disclose practice / liability issues. Ninety five percent of the time the answer is no. Five percent of the time the answer can and should kill the candidacy. You could have a candidate with
 - ❑ misdemeanor convictions for alcohol related violence or domestic violence
 - ❑ a candidate with unusual investments that have left him over extended and so preoccupied that he is not likely to be a strong performer
 - ❑ a candidate who is in litigation or plans to litigate with his former law firm over capital, income, expenses, etc.

- ❑ The tough questions is what I'll call the "White House Appointment What Else" inquiry. Some senior member of the firm should sit with every candidate and ask them if there is any other fact, experience, or issue in their background that could conceivably embarrass the firm or the candidate, effect the candidate's performance or their ability or willingness to perform, or otherwise cause trouble. The person asking the tough questions should be a partner outside the group which is hiring the lawyer.

12. A Word For Chairs, Managing Partners, Hiring Partners, and Recruiting Administrators - Sometimes amidst the stress and rapid pace of entry-level and lateral hiring - and the cacophony of conflicting priorities and rapidly changing instructions, one can forget that all of you are on the same team. The rapid growth of the multi office national law firm has accelerated the pace of all aspects of the hiring process. Everyone from the chair of the firm to the most junior staff member has to do more, do it better, do it faster, and do it with less backup. You are in a competitive profession where the demands of practice often collide with administrative imperatives.

For the Chair and Managing Partners - Take the time to learn as much as you can about hiring in the new century. Many of you were hiring partners earlier in your career and for that your colleagues and staff are grateful. But it's possible that you may not understand the volume of activity in lateral and entry-level hiring and how back breaking the burden can be.

- ❑ It is also possible that your recollections of issues such as law school quality, competition with other firms, and sources of talent in the lateral market from the days when you were hiring

³ The possibilities here are almost endless but include, over billing, improper billing of disbursements, characterizing time as disbursements or vice versa, undisclosed premiums or write-offs, creation of fictitious dump accounts where time is logged without any realistic hope of it being billed or collected, accumulation of excessive unauthorized and uncollectible disbursements (e.g., the lawyer who flies first class when she knows that the client will only pay for coach travel, or the lawyer with excessive lodging / meal expenses which exceed client or firm guidelines).

partner are not today's reality. Hiring evolves just as much and just as quickly as practice areas and marketing. Embrace the adventure. There really isn't any other choice.

- ❑ Create systems so that you understand the ROI on your recruiting dollars and time. The best run hiring programs save enormous amounts of attorney time - a large part of which is convertible into billable time. It is far more important to focus on the time savings than to be overly involved in who is spending what on the summer program. Yes, at least four of your attorneys will spend too much entertaining summer associates this year. It's an Olympic Sport and all firms play the game. Keep the focus on saving time. That's where you find the real cash.
- ❑ Make sure you have sufficient administrative staff to handle the avalanche of paperwork in the new hiring process. It is a lot cheaper to add an administrator or two than it is to have lawyers hamstrung by inefficient or glacial hiring processes - which cause you, for example, to lose a lateral or entry-level because you respond less quickly than your more well-staffed competition.
- ❑ Be a leader, not a follower, on staff compensation in this area. A well-run hiring program that reduces unnecessary lateral hires, optimizes relationships with search firms, and reduces the amount of attorney time spent on hiring - is worth its weight in gold. In the last 10 years law firms have decided to spend enormous amounts of money on marketing while in most cases neglecting the part of the machine that provides the raw materials (new lawyers and laterals) who are necessary to support the efforts of our successful partners.
- ❑ Maintain contact with the process. Take the time to meet some law student recruits, summer associates, and junior lateral prospects. Just as you would master the business of a potential new client - maintaining contact will help you keep your bearings in the rapidly changing world. Yes there are generational differences. No, there isn't much we can do about them - except to understand them as part of the inherently competitive process of recruiting.
- ❑ The law student or lateral associate sitting in your office did not cause the salary spike in 2000 - that was something law firms did in a bone-headed effort to compete with other firms when the bubble was about to burst. Don't blame the younger generation for accepting what you have offered.
- ❑ Respect your competitors. Those folks down the street who are your bitter opponents on the case or deal from hell may be very very good at recruiting. Set a standard for your law firm and don't disparage the competition - ever. It sends a powerful message to lateral and entry-level recruits. And it sends a powerful message to some of your less gifted partners who believe that lifting the left rear leg is the best way to recruit.

For Hiring Partners - First you have my congratulations and condolences. Being the hiring partner for a law firm is a rewarding and interesting job. It is also draining, difficult, and a kind of Alice in Wonderland world where priorities change in a second and common sense is sometimes turned upside down in pursuit of hiring objectives. Defeat is an orphan and victory has a thousand parents in a law firm. Your failures will be your failures. Be an involved hiring partner. Don't treat hiring as a

kidney stone that is just passing through your system. Take ownership of the position - learn about yield rates, campus teams, and the details of the entry-level and lateral process. Don't take the position if you are going to just hit the high spots and use it as a belt notch on the road to chairman. That does a disservice to the firm - and, by the way, your colleagues will understand the short shrift you are giving to the position.

Your successes are the successes of the firm. Many of your colleagues will assume entry-level and lateral hiring is just an exercise in rolling your Range Rover past the low hanging fruit in the hiring orchard. Many of your older colleagues have misty and hoary memories of how hiring was 20-40 years ago and little interest in or understanding of the process as it exists in 2005. A few suggestions

- ❑ Pick a small and opinionated hiring committee with a range of seniority, genders, ethnic groups, and departments. Don't just pick your friends. Pick some who are tough on grades and others who are equally picky about other credentials.
- ❑ Thing big - and don't be afraid to just throw out an idea that seems to have outlived its usefulness. You are being paid to deliver improved results - don't just tinker - think big and make some fundamental changes.
- ❑ Study what you have done in lateral hiring - it is out of these studies that you can learn where you need to improve and what you need to do.
- ❑ Inform your management about how you're doing and what you're doing - in quarterly snapshot reports or a more detailed annual report.
- ❑ Turn off the accommodation hire switch - once you make 1 accommodation to a client with a relative you might as well buy more furniture for reception because there will be scores of others. They almost never meet your traditional criteria. Don't be afraid to say no. To anyone. ⁴
- ❑ Relieve your ineffective on campus team leaders or interviewers. If the results are poor at an important school - there is a good chance there is something wrong with your on campus team. Thank them for their service and get a better one.

For Recruiting Administrators — Your job may be the toughest in the hiring process. In lateral hiring and entry-level hiring you face ❑ multiple reporting lines - to office heads, group heads, and hiring committees ❑ rapidly changing priorities for entry-level and lateral hiring ❑ managing

⁴ During the depths of the 1991 recession I received a call from one of my most intellectually gifted senior partners who asked me to talk to "Jeremy" who was the nephew of a potential client. The market was terrible. Jeremy was worse. My partner said "gee Frank just take him to lunch and tell him about the secret job market." I said "Jeff I can't do that." Quoth Jeff "Why?" "Because it's a secret." Jeff had no sense of humor - but in that recession year I received more than 400 resumes forwarded by partners. Accommodation hires are a dangerous slippery slope. Call the ski patrol and ask for the St. Bernard with the flask. You'll need it. And, no, I still can't tell you about that secret job market.

relationships with dozens of search firms □ working with new members of management whose experience in hiring may be tissue thin □ working with new colleagues in new offices who are accustomed to different people, processes, and priorities □ constraints on the number and experience of your support staff. Bottom line - you often to do more and more with less and less. Even, and perhaps, especially in such an environment consider the following —

- Maintain good relationships with colleagues in other firms - you'll learn a lot and feel better about your work.
- Don't be afraid to think big and challenge old systems that may be outdated.
- Be patient and good humored with new colleagues in other offices and new committee members or practice group leaders.
- Don't be afraid to tell a partner that a search strategy is wrong, unrealistic, too expensive, unworkable, etc.
- It's old fashioned but whenever possible meet face to face with partners to discuss projects and priorities - it improves your relationships in the firm and you'll learn more about partner's preferences, priorities, and personalities.
- If you need help or additional time - ask for it as soon as you discern the need
- Make your communications to management crisp, topical and timely. Never pass along a problem without offering a proposed solution or two.

Thirteen Ways To Improve Lateral Hiring -

1. Analyze the resources you are using and the resources you need - *Attorney Time* - Many firms do not have an accurate method of capturing and differentiating attorney time spent on lateral hiring. For most multi-office firms the attorney time costs run in the low to mid 7 figures when all costs are properly accounted. Much of that time supplants billable hours. *Organization and Reporting Lines* - multi-office firms are creating new methods to supervise and administer lateral hiring. *Administrative Staff*- Your administrative staff is probably twice as strapped as you believe trying to juggle everything relating to lateral hiring. The greater likelihood is that you need more staff. The dollars spent are inexpensive dollars because talented administrators improve results and free up billable hours. *Cash* - You should know how you are spending hard dollars on lateral recruiting. Remember - a modest increase in associate retention will slash fees paid to search firms. A little effort goes a long way.
2. TRAIN YOUR LATERAL INTERVIEWERS - When the typical lateral associate pulls up stakes in less than 2.5 years, law firms are wasting enormous amounts of cash and attorney time - not to mention adding further confusion and chaos to client service. Interviewers must be taught to identify and probe the ingredients for success and retention in your law firm. This roster varies from firm to firm. Regrettably most lateral interviewers tend to be a who do you know exercise rather than a systematic examination of the candidate's background, suitability, and likelihood of staying the course. ⁵
3. REVIEW LATERAL HIRING RESULTS — A 1-3 year review of lateral hiring, retention, promotion, and administration can provide an excellent foundation for setting goals and priorities for the next 1-10 years. Some of what you learn will surprise you - and it will be especially enlightening to partners who lead practice groups but are not familiar with the day to day aspects of lateral hiring.
4. ANALYZE ATTRITION - Without engaging in revisionist history, a law firm should analyze why lawyers leave and the relative strength of the lawyers who depart. Attention should be paid to original interviews and background facts which may indicate preferences or tendencies in lateral hiring -e.g., schools, grades, law review, prior law firm experience, etc.
5. STUDY MARKET COMPETITION IN CITIES / PRACTICE AREAS - Every firm should know its competition in entry-level and lateral hiring. Getting a snapshot of hiring / promotion trends of your key competitors can be highly instructive. Your actual competitors may differ from your theoretical competitors. Again, the process is illuminating.

⁵ I freely confess considerable bias on this issue. This year I am introducing a lateral hiring training program designed for partners and associates in multi city major national law firms. For details, please call 773 528 7548 or e-mail FDK@Sprintmail.com. That concludes this advertisement.

6. **KNOW YOURSELF - KNOW YOUR COMPETITION** - You must understand how your firm is perceived in the market place. Welcome to Tough Love 101. There may be many perceptions that are outdated, inaccurate, unfair, etc. But you have to know you are perceived before you try to sell your firm to a skeptical audience in a hot economy. Consider taking a survey of lawyers who have turned down lateral offers. You'll be astounded by what you learn and you'll know how to gauge the competitive challenge. Often a lateral's impression is incredibly unsophisticated and outdated - based in large party on hoary tales from law school days. By contrast the lawyer who has practice in the same firm for 20+ years may have impressions of the competition which are even more out of date.
7. **REVIEW SEARCH AGREEMENTS** - Many rapidly growing multi-office firms have a wide range of search agreements in place. A review should take place to make them as consistent as is reasonable. At a minimum they should be reviewed for key provisions, e.g., compensation, payment / refund, non solicitation, exclusivity, confidentiality, due diligence, and related subjects.
8. **ESTABLISH PROCEDURES FOR SELECTING /APPROVING MIX OF SEARCH METHODS** - Firms should develop a system for approving methods used for lateral searches. With proper deference to unique factors in local markets - the firm should be able to guide the "mix" of the search process - whether a search firm should be used, a search is exclusive or multiple listed what use should be made of listings at the firm website or associate bounties whether referrals from clients or other outsiders should be encouraged or discouraged what firms are 'hands off' for firm-related reasons, etc.
9. **REVIEW DUE DILIGENCE INFORMATION COMPILED ON CANDIDATES** - The firm should establish standards as to the level, detail, and process of gathering and confirming background information on all candidates. A wide range of possibilities exist here - and there are many competing / conflicting priorities. But it is worth going back to basics to assess this issue.
10. **EXAMINE THE BALANCE BETWEEN ENTRY-LEVEL AND LATERAL HIRING** - What is the churn rate on entry-level associates? Are certain of your practice areas best filled by laterals rather than new associates? At what seniority level does assimilation / integration become too difficult in terms of morale? Does over reliance on lateral hiring pose a threat to firm culture, i.e., a firm of migrant workers without a shared foundation in practice?
11. **ASSESS DIVERSITY IN LATERAL HIRING / RETENTION** - What efforts are you making to attract diverse partners and experienced associates? What is the track record of search firms? What other methods should be considered to improve lateral hiring/retention of women and minorities?
12. **ESTABLISH PROCEDURES TO SELECT / COMPARE SEARCH FIRMS** - All search firms with whom a law firm works should meet your expectations. Ask for references - from law firms or placed candidates. Meet with them personally. Test their familiarity with the practice areas in which you have needs. Make certain you know where they are "blocked" and where they have overlapping searches in the same field.

13. **TAKE YOUR VACATION** - Those of you involved in both entry-level and lateral hiring understand this is a 13 month a year business - with no down time. For hiring partners and for your capable and loyal administrators, it's as important as it is for anyone in your firm to take your vacation. Don't worry. The demons will still be there when you return. But you will be more able to deal with them.
14. **Hire Excellent Administrators - Pay Them Well - And They'll Repay Your Loyalty** - There is some irony, I suppose, in the fact that turnover in recruiting administration is almost as fast as associate turnover. As soon as you train a Manager, Director, or Coordinator - they pick up and move across town to your Death Star competitor or that national firm who is new to your city. Continuity in administration will, in most instances, enhance the quality of your lateral and entry-level hiring. The administrators are often the best source of institutional history about hiring - what works, what doesn't, and why? They, more than the hiring partners have the direct lines of communication to law schools. The most common reason administrators leave are compensation inadequate staffing and a lack of continuity and guidance from hiring partners. In large law firms you may often feel constrained by the firm's guidelines on maximum increases for staff. Every large law firm has exceptions (yes, even yours). Go to your C.O.O. and discuss the importance of keeping someone on board. Think it can't be done? Think again. Twenty years ago 'marketing' meant a secretary who occasionally handed out brochures at a golf outing. Now the top marketing jobs pay well in excess of \$500,000. Understand that in any given year 15% or more of the recruiting administration jobs will open. Some turnover is inevitable - but when you have a top administrator, it is far cheaper for the firm to keep her on board for the long-term than to bring in a replacement.

The Quest For Diversity

America's largest law firms have made substantial and commendable progress in the past decade in increasing the number of women and minority lawyers. Much remains to be done. Law firms are now responding not only to the socio-political imperative to 'do the right thing' but also to the demands of their clients that their vendors - including lawyers - be more diverse. In a given year there are more programs, committees, initiatives, dinners, and other activities designed to jump start, reinforce, or celebrate law firms' commitment to diversity. There are many tough issues to consider -and some are that pleasant to discuss. Consider the following

- Who is a minority? Should a firm stick to the classifications recognized by various governmental agencies or go farther? For example - are immigrants from the Middle East, South Asia, or Eastern Europe minorities? Certainly one can find ample evidence of hostility and discrimination toward immigrants from Iran, Egypt, and other nations in the Islamic world, along with immigrants from Pakistan, India, and Bangladesh. Perhaps the definition of minority should be re-examined.

- ❑ Does a minority group become sufficiently assimilated that we don't 'count' them for purposes of diversity. One hundred ten years ago, factories had white washed signs saying "Irish need not apply." The world has changed a great deal. Perhaps today or in ten to twenty years, certain minority groups might be considered to have been fully assimilated.
- ❑ Understand what is realistic in your market - The melting pot we call America is more akin to a tapestry which has different threads in each city. On the West Coast the Asian community is far more substantial than it is in the Midwest and the South East. The Hispanic community is very large in many markets - although severely under-represented in major law firms. For example, 32% of residents of the incorporated City of Chicago are Hispanic. Their representation in law firms pales by comparison. Ethnic populations vary substantially among the major law schools. So, before launching a diversity initiative try to understand the demographics and competitive factors. Educate your management about both because it is a problem that cannot be solved overnight.
- ❑ Does the obsession with head count (an obsession shared by clients, government agencies, law firms, and law students) overlook more important data? For example, should we require that law firms disclose the numbers of minorities and women who are equity partners in law firms rather than lumping together equity partners with non equity partners - which often results in far different numbers?
- ❑ Should law firms disclose whether minorities or women partners have RMP (real management power)? Until and unless women and minority partners run departments, run client relationships, sit on compensation committees, and run law firms - real progress has not been made.
- ❑ Can law firms grapple with the higher than average levels of attrition for women and minority lawyers? Can law firms develop systems that permit and encourage women and minority lawyers to stay the course rather than jumping ship for what appears to be a more attractive option?
- ❑ Even with aggressive and creative efforts to increase hiring, retention, and promotion of women and minorities, the overall numbers will change very very gradually. Law firms cannot assume that one program, one initiative, or one year of determined effort is sufficient. The profession as a whole must recognize that it may take 50 to 100 years of uninterrupted effort to completely level the playing field. For every enlightened law firm leader who is voluntarily and enthusiastically committed to this effort there is another who pays lip service to the issue but simply "does not get it." There are enormous parallels between the assimilation of various European groups into American society - Irish, Italian, German, Jews, Catholics, and Polish Americans - and the challenges facing America today. All of these groups endured (and to some extent still do) discrimination in its odious and more subtle forms. Even when the most blatant means of discrimination faded away, it took decades for these groups to be assimilated fully into professional America.

- ❑ Women and minority lawyers and law students under the age of 35 will be the ones to carry forward the battle for diversity and representation. The number of female and minority equity partners is low. The number in senior management is even lower. This reflects, in part, the small number of women and minorities who graduated from leading law schools and joined large firms in 1965-1985. But it is a more complicated than low initial numbers. Women and minorities have higher levels of attrition - voluntary and involuntary - as associates and partners than white males. Even with enormous progress in the next twenty years, women and minorities will still be under-represented in the ranks of senior law firm management. There are many senior partners whose commitment to this issue is sincere. Regrettably, there are others for whom it is simply lip service to the issue du jour for corporate counsel looking to see more diverse staffing (because they, in turn, are under pressure from shareholders to have diversity in the ranks of their vendors).
- ❑ The battle for diversity and representation is waged in every profession: law, investment banking, accounting, management consulting, government service, academia, the military, and the Fortune 500. Each has senior partners or executives whose commitment to diversity and representation is legitimate and sincere. There are others who are passive at best or opposed to change. Some professional firms who don't trumpet their success are actually fairly solid citizens on their commitment to diversity. Other institutions congratulate themselves daily and trumpet their programs, committees, and consultants but the internal reality is far different from what one reads in their press releases. The creation of a diverse egalitarian professional structure is as complex as it is time consuming.
- ❑ The bottom line: the current generation of young lawyers and law students will be the ones to carry the battle forward. Any sea change in professional / corporate culture meets resistance, takes time, and encounters entrenched opposition that is expert at politics and in-fighting. The battle is of course worth the fight. But it is the generation you hire today who will write the decisive chapter in the history of the modern American law firm.
- ❑ Firms must take the bull by the horns and find ways to put women and minorities into positions of real authority in senior management. Window-dressing positions fool no one although the do goose reported numbers for NALP and other surveys. Some firms appear to overload inconsequential committees with female and minority members because it looks good on data that can be reported to clients, NALP, schools, and the media. Progress will not have been made until and unless law firms voluntarily and unhesitatingly involve women and minorities in the corridors of power — not simply a mezzanine of mediocrity.

When Do Associates Become Profitable?

The true costs of recruiting one associate are very substantial - not only in terms of cash but in terms of attorney time. Consider the following sunk costs for recruiting 1 new associate

- ❑ The direct costs of attorney time and cash for recruiting a 2L, running the student through the summer program (where most of their time is probably not billable) and bringing them on board. The allocable cash and time costs for recruiting the 4 other 2L's who declined offers in order to generate the one acceptance
- ❑ The costs of recruiting include cash and attorney time related to ❑ the student who accepts the offer - from her campus recruiting, to the fall call back, to closing the deal, to the summer program (where little time is billed and enormous attorney time spent cultivating and supervising) and ❑ the special one time costs of new associates - bar exam fees, bar review, the half pay summer stipend.
- ❑ The summer program is at best a break even proposition but usually loses money because ❑ summer associate time is scarce ❑ much of it is not billable ❑ much of what is billed is written off or billed at a discount.
- ❑ For every associate who joins a firm - three or four other students decline the offer to join the program. In a strong economy only 70% of invitations for call backs result in interviews. It may take a total of X on campus interviews to result in one summer associate who accepts an offer. The cash and time spent on students who are not hired is enormous and must be allocated in order to correctly account for the true cost of recruiting.
- ❑ New associates often take 2-3 months to be fully active on client matters. ❑ In addition it is inevitable that a chunk of their time in their first and second year must be written off because of inefficiencies. One can play games with overhead until the cows come home. Whether one allocates firm overhead per capita, per square foot of space used, per dollar of real compensation - the associate requires enormous support from the firm.

The lawyers you hire contribute to the bottom line - and in an era when the bottom line is more important than it ever has been, it might be useful to conclude with a hypothetical review of what a talented associate contributes to a firm's bottom line if they stay with a firm for seven years. The following analysis considers an associate you meet on campus this Fall who arrives in 2005 and 'stays the course.' I've assumed ❑ she is productive, works hours in the top quartile, and receives substantial bumps in compensation ❑ an hourly rate increase consistent with the past ten years. ❑ Overhead matches per capita figures used by comparable firms ❑ compensation increases matching averages over the past 5 / 10 / 15 / 25 year ❑ a discount rate of 7 percent is applied to come up with the NPV of the DCF of net profits generated. ❑ The NPV calculation assumes \$150,000 in recruiting costs (an allocable share of fall recruiting time and expenses as well as the cash, overhead, and time attorney time costs of running a summer program).

The Parable of the Million Dollar Associate

Year	Client Hrs Billed	Client Hrs Collected	Rate	Revenue	Total Comp.	Special Overhead	Overhead	Net Profit
2006	700	500	175	\$87,500	\$60,000	\$150,000	\$50,000	(\$172,500)
2007	1900	1700	200	\$340,000	\$166,750	\$0	\$150,000	\$23,250
2008	2200	2000	225	\$450,000	\$184,000	\$0	\$160,500	\$105,500
2009	2300	2200	250	\$550,000	\$201,250	\$0	\$171,735	\$177,015
2010	2300	2200	300	\$660,000	\$218,500	\$0	\$183,756	\$257,744
2011	2400	2300	350	\$805,000	\$235,750	\$0	\$196,619	\$372,631
2012	2400	2300	400	\$920,000	\$258,750	\$0	\$210,383	\$450,867
2013	2400	2300	450	\$1,035,000	\$276,000	\$0	\$225,110	\$533,890
			Totals	\$3,812,500	\$1,325,000		\$1,122,994	\$1,748,397

NPV / DCF (AT 7% DISCOUNT RATE) —1,024,399

- This assumes an associate joins a firm in September 2006 at a base salary of 135,000. During 2006 they will be paid a summer stipend of 15,000, and the firm will move them, and pay for their bar exam and bar review course.
- The associate works only 4 months during the first year - and slowly becomes fully occupied. Client hours billed v. client hours collected show a steady increase in overall time as well as the amount of time which is collectible.
- Compensation assumes the current level of compensation for associates in Chicago mega firms and assumes in 2007 and going forward a 15-20% bonus, which is assumed to be paid during the same calendar year.
- Special Overhead includes the full time and cash costs of recruiting the associate - including campus interviews, office interviews, travel and entertainment of lawyers and the candidate, the cash and time costs of the summer program, and, importantly the cash and time costs of recruiting others 2L's who are interviewed on campus who decline invitations who do not receive offers after a call back and/or decline the firm's offer.
- Regular overhead - represents all of the costs of supporting the associate - office space, staff, administration, insurance, benefits, equipment, etc. It is beyond the scope of this chart to define whether this should be allocated per capita or on the basis of revenue generated or compensation received. One can make the numbers dance to almost any music one wants to hear.
- Data on Special Overhead is compiled from selected law firm clients who track detailed information on attorney time spent in recruiting. It is based on standard experience concerning offer-acceptance and invitation ratios and assumes that the firm is a market leader in Chicago with a strong track record of hiring from top ten law schools.
- The associate begins to turn a cash profit during 2009 - their third full year with the firm.

Lateral Hiring and Practice in 2030⁶

With the exception of the host of this program, I don't think many of us could have anticipated the changes in the profession - and in recruiting - that have occurred in the past twenty years. For a moment let's go out on a limb and predict what could happen in the next 25 years. I'll be 77, but give me a call and let me know how I did.

- ❑ Firms will still go to campus to interview and they will still have summer programs. Even with all of the new video and technical toys 1:1 interviewing will remain as important as it is today just as 1:1 in person presentations to clients will remain important. Firms will still struggle to find talent - because new human capital is a limited resource.❑ The quality of law students will increase as ❑ the number of women and minorities in the profession increases ❑ as more students are drawn to a profession without licensing walls ❑ as the interdisciplinary nature of law becomes a more attractive option to students who in earlier eras might have chosen a career in business.
- ❑ AmLaw 100 meets Jerry Maguire - Senior lawyers will have agents who will negotiate compensation, perks, retirement benefits, etc. The agents will work in small groups but some will work with C.A.A.-like agencies. The ruthless competition for talent will drive this engine.
- ❑ The SEC will require that firms which represent public companies disclose the compensation and perks of their 10 most highly paid partners. This transparent disclosure will fuel competition for lawyers, increase compensation for those with the most business and cause some firms to make terrible decisions pursuing the wrong lawyer for the wrong reason. Some firms will get into hot water with the SEC for less than clear and complete disclosure of senior partner compensation
- ❑ Most major national law firms will have small private jets. This will start out as a vanity exercise for some senior partners looking for that last great benefit but will grow into a comprehensive program of transportation that makes client work more efficient.
- ❑ Mandatory retirement at age 55 will become a popular way to manage headcount. However, law firms will discover that boomers (like their namesake missile submarines) will not go gently into the night. Rather partners forced out at age 55 will start their own boutique firms. These firms will have a demographic shape that resembles a bar-bell - with many senior lawyers and a cast of experienced associates. The Bar Bell firms will compete effectively against mega firms because of the efficiency of the senior partners and their ability to charge less and earn more than their Mega Firm colleagues who have to tolerate higher overhead and other inefficiencies. Call it - Revenge of the Boomers.

⁶ For a copy of my 1992 predictions about 2002, please write or call. Many of the guesses were on the money - some over the rainbow - but in the tech area - the evolution has been far more rapid than any of us contemplated. My only other attempt at playing Karnak was the March, 2000 newsletter which predicted what would happen when firms raised compensation to \$125,000. For a copy please write or call.

- ❑ Bar Bell Boutique professional firms will still run rings around the Goliaths like the Marines lap the Army. They will compete on rates, service, accessibility and technology. They will not go to campus and will continue to cherry pick top talent from larger firms at the 2-5 year level.
- ❑ Most large firms will still charge some of their work by the hour. Average hours will rise 10-15% from current levels in most firms. Work hoarding, time exaggeration, and related problems will not go away.
- ❑ Progress will be made on diversity - but it will be slow and steady, not dramatic and universal. The percentage of women equity partners in large firms will creep slowly toward the 25% mark but will not reach 30 percent. Progress will be made on minority hiring and retention but it will be slow and difficult for many reasons. The definition of minority will evolve as certain groups are assimilated into American professional culture. A new generation of immigrants often overlooked by pundits will form the cornerstone of discrimination/ diversity issues in the next thirty years. Immigrants from the Mid East, persons from Islamic states, and persons from the sub continent of Asia will form an increasing part of the pool of minorities. Firms will struggle in good faith to make progress - but they will stumble along the way.
- ❑ Positions such as managing partner, hiring partner, and other operational positions will become permanent international positions in most leading firms. Firms will evolve into pyramid organizations resembling corporations with layers of partners - in a manner similar to management consulting and accounting firms.
- ❑ First in the United Kingdom, second in Europe, and then in the United States law firms will go public. It will not be pretty. Key players will cash out and leave some firms. Others will prove themselves to be very poor at running the type of company they advise. The current Dean Witter / Morgan Stanley experience and other hoary tales will be re-examined as law firms become \$10 billion public companies. ❑ In a bubble boom in thirty years law firms will rush to go public and several partners will be convicted for insider trading violations involving stock in their own law firms.
- ❑ Large firms will institutionalize and substantially expand their training and development of lawyers. They will have national training centers where lawyers spend 20-30% of their time during their first five years learning the tools which are necessary to succeed including ❑ oral presentation skills ❑ negotiation ❑ trial skills ❑ financial analysis ❑ project management ❑ marketing. These universities without walls will use distinguished faculty drawn from leading businesses and business schools. Some firms will collaborate and cooperate on funding these centers. This will explode into a CLE industry which dwarfs today's offerings. And, of course, lawyers will still hate accounting, try to skip seminars, and try to argue that they don't need this training.
- ❑ Lawyers will still argue about billing credit, power, and minutiae but progress will have been made in developing systems to reward real contributions.

- ❑ The Supreme Court will find attorney licensing to be a violation of the antitrust laws. Lawyers will be accredited state by state - in a manner similar to board certification but lawyers will be free to practice in areas such as management consulting - and non-lawyers without a J.D. will hang out their shingles in what will turn into a multi layered free for all.
- ❑ In 2013 three leading national firms will withdraw from NALP and turn the hiring world on its head. Taking the position that NALP constrains rather than facilitates competition they will adopt completely different rules on compensation, bonuses, and offers. They will offer exploding offers, pay different salaries to different graduates of the same school, and recruit star students from the ranks of the nation's leading colleges offering to finance the legal education of selected star students in exchange for a five year commitment to the law firm. This star system will offend many - but be remarkably effective.
- ❑ The starting salary will be \$225,000 by 2025. The salary derby will become more nauseating because large law firms in a dozen markets will pay the same salary in each of their offices. Their will be wailing and threats to not go along, but it will be same old same old all over again. In a severe recession in the mid 2010 decade, several law firms will stop entry-level hiring for two years. On returning to campus they will find it relatively easy to rebuild their reputations given the anxious state of law students at all law schools.
- ❑ In 2015 a law firm will run a 2 minute television advertisement during the Super Bowl. It will be roundly criticized by smug lawyers in other firms. The following year two other firms will follow suit. By 2020 firms will advertise regularly on cable and network news for the financial community.
- ❑ Law schools will compete for faculty talent and students and at some top schools one will be able to receive a degree without a physical presence on the campus. ❑ Law schools will affiliate into groups for purposes of marketing and teaching. ❑ A major private east coast university will merge with a peer in California. ❑ Law school will become elastic with even premier schools offering 2 or 4 year programs with more fine tuning beyond the traditional course progressions offered today. ❑ Universities will continue to resist the notion of full integration of interdisciplinary programs in law, business, and medicine because of the predictable bragging rights and turf fighting.
- ❑ A group of law schools will be sued in a class action brought by a disgruntled student who claims that she was fraudulently induced to attend law school by false or misleading reports about placement information. Several tier III and IV law schools will close. In the course of this class action, it will be established that more than 10 percent of the law schools have submitted false or misleading placement information to U.S. News and other sources to spike their rankings and attract applicants. The class action will be settled with a substantial damages payment and the establishment of a system of random audits of reported placement data. U.S. News will still have its rankings and most of the top 20 will stay the same.

- ❑ A major national law firm will elect its first non lawyer CEO. She will have served in marketing and finance functions and will participate in client marketing presentations. Her income will be \$8,000,000 per year.
- ❑ Firms will increase their client hours expectations to 2,200. Many will find that it is not easy to find 15 percent more chargeable work to do. Some will hoard work or over work matters because of the pressure to meet firms' ambitious hours requirements. Firms will tinker with different approaches to compensation including two-tiered systems (where some associates work the 'old hours' and others are far better paid to work 200-300 hours more a year), hours-based bonuses, and other variations. Firms will have minimal tolerance for under-performing lawyers - associates or partners who might have been given a year or two to get back on track or redeem themselves from earlier mis steps will find far less tolerance - even in a boom economy.
- ❑ Hacking will be a capital offense in many countries - but will be far more widespread globally. For those who are not executed for hacking they will be taken off the electronic grid. Access to future computers will be through, among other things, DNA based identification and the genetic code of known hackers will be catalogued making it impossible for hackers to log into any computer system.
- ❑ Several firms will tinker with partnership - adding a 1-2 years to the track(s), creating additional tiers of partners, raising capital contribution requirements, and making it far more difficult to progress from non-equity to equity partner. Partner attrition will increase. Still it will not be surprising for firms to lose 5-8 percent of its partners in a year as a result - above and beyond normal retirement and departure patterns.
- ❑ A white male associate passed over for partner by a national mega firm with a female chair and a Syrian managing partner will sue his employer for reverse discrimination in 2017. He will lose and leave the practice of law.
- ❑ Two firms will implode because of exaggerated time scandals. This will accelerate the move to LLC and LLP - however the courts will treat some of these entities as partnerships have been treated. It will also send a shock wave through the profession that will finally cause firms to transition from hourly rates to a system that is based on other factors. After a gut wrenching period of adjustment, most large law firms will emerge more profitable than ever - but with fundamentally changed approaches to promotion, marketing, and servicing clients.
- ❑ Mergers will continue but the pace and number will be slower than expected. Some mergers will come apart at the seams as a result of defections, debates about culture, and battles about profit allocation. ❑ Starting salaries will rise again in around 2010-2012 with a substantial up tick around 2015-2020 during the next great boom period. By 2030 starting salaries for new lawyers at large firms in major markets will be over \$275,000. Law school tuition will be \$90,000 and many students will graduate \$300,000 in debt.

- ❑ Lawyers will carry a revolutionary device in their pocket - a universal integrated wireless device that serves as telephone, hard drive, contact manager, video and audio recorder, etc. It will replace all of the electronic toys that we have today - battery life, of course will still be an issue, but a combination of fuel cell and solar cell technology will make it possible to use this one device constantly for a week. It will be smaller than an I-pod, have voice recognition capabilities, GPS tracking and mapping capabilities, and security that permits it to be used only by the person whose Iris and DNA match the data stored in the device. It will sell for \$499 in current dollars. It will take the place of credit cards, toll booth readers, and other payment mechanisms.

A Few Light-Hearted Predictions About Life & Law in 2030

- ❑ NBC's long running hit Law & Order will finally be cancelled after two last ditch attempts to extend the run with "Law & Order SUV" and "Law & Order OCI."
- ❑ The Cubs will still not have won a World Series.
- ❑ A firm will offer to make its summer associates partners - living off a meager draw, paying both sides of Social Security and fringe benefits, receiving distributions six months later, and paying in capital. No summer associate will accept the offer.
- ❑ Tiger Woods will rule the senior circuit in golf and win the Masters at the age of 58 using a composite driver made from materials mined on Mars and assembled in orbit around the Earth.
- ❑ The average Division I lineman will weigh 425 pounds but, of course, never take steroids.
- ❑ A member of the Bush family will run for President in 2028. He will lose.
- ❑ The first African American will be elected President. She will be a Republican.
- ❑ Wal-Mart will open a 5,000 lawyer firm inside its stores called WALLAW. It will be wildly successful.
- ❑ HP will still make most of its money from selling toner.
- ❑ A law firm will open an office in Earth orbit and attempt to declare that its principal place of business for tax purposes is outer space. Gov. Arnold Schwarzenegger III will attempt to collect a pro-rata share of taxes on behalf of California because ❑ the orbital craft was launched from Area 51 and ❑ it passes over California once every 90 minutes.

Recommended Reading

If you're not sated, this section recommends supplementary reading about interviewing, the development of large law firms, and the law firm / law student minutet. Additional nominations are welcome. Curious historians should read Marc Galanter and Thomas Palay, *TOURNAMENT OF LAWYERS* (Univ. of Chicago Press 1991)(a detailed analysis of the evolution of large law firms) and Paul Hoffman, *LIONS IN THE STREET: THE INSIDE STORY OF THE GREAT WALL STREET LAW FIRMS*, (1973, Signet) (the first book by to discuss the genesis of Wall Street firms). A truly remarkable book was published in 1994 by Benjamin Sells, a Chicago-based psychotherapist who was for six years a practicing lawyer with Jenner & Block. *THE SOUL OF THE LAW* (Element, Inc. 1994)is worth a serious read and re-visitation whenever you hit a rough spot in the highway.

To learn more about interviewing skills and techniques read □ Arnold B. Kanter, *THE ESSENTIAL ART OF INTERVIEWING — INTERVIEWS FROM BOTH SIDES OF THE TABLE* (New York Times Press 1997)(Kanter is a good friend who was for years the hiring partner of Chicago's Sonnenschein Nath & Rosenthal firm. For twenty some years he has been a management consultant to law firms and investment banks nationally on all aspects of hiring) □ Harvey Mackay, *SHARKPROOF - GET THE JOB YOU WANT, KEEP THE JOB YOU LOVE* (Harper Business 1993)(Mackay's book is a wonderful compendium of real life stories of people who put networking and contact theory to work in business. It lends credence to many of the theories you may find foreign or unpersuasive. Readable and memorable);□ and Anthony Medley, *SWEATY PALMS —THE NEGLECTED ART OF BEING INTERVIEWED* (Ten Speed Press 1993)(this brief but excellent book focuses on the give and take of interviews.) □ Freund, James C., *LAWYERING—A REALISTIC APPROACH TO LEGAL PRACTICE* (Law Journal Seminars Press 1979).(This is the single best volume on the nature of the partner associate relationship in law firms. Freund, a former senior partner with Skadden Arps, walks the reader through every aspect of attorney development. The book is practical and insightful).

For further reading on professionalism and the traditions of excellence of elite organizations *see e.g.*, □ Guy Kawasaki, *SELLING THE DREAM* (Harper Business 1992)(Kawasaki was the 'evangelist' for Apple Computer behind the development and marketing of the Mac); □ Jason P. Rich, *FIRST JOB, GREAT JOB — AMERICA'S HOTTEST BUSINESS LEADERS SHARE THEIR SECRETS* (MacMillan/Spectrum 1996)(interviews with 30 leaders of American business who talk about what drew them to their firms and other issues that are related to hiring lawyers); □ Paul Hawken, *GROWING A BUSINESS* (Fireside / Simon & Schuster 1987)(the founder of Smith & Hawken describes how he went from one small classified ad in the New Yorker to a \$50 million business and talks about his zeal, commitment, and focus on what he loves).

The best book I've seen comparing actual career path choices of lawyers is Richard W. Moll, *THE LURE OF THE LAW*, (Viking 1990) (interviews with practicing lawyers about career choices and dreams). Rather than simply listing many things one can do with a law degree he walks you through the choices actual lawyers have made - from famous partners in mega firms to satisfied lawyers in many other areas of practice.

There are scores of terrific lawyer's autobiographies. One of my favorites is William O. Douglas, *GO EAST, YOUNG MAN: THE EARLY YEARS*, (1974, Random House). It includes chapters on his life as a student at Columbia, as a young lawyer at Cravath, a professor at Yale, and as a founding commissioner of the SEC. It's worth reading coming of age books about those in other endeavors. Some of my favorites are □ Stephen E. Ambrose *UNDAUNTED COURAGE* (Simon & Schuster, 1996) (Lewis & Clark explore the Louisiana purchase at the age when we studied Con Law) □ Robert Klitzman, *IN A HOUSE OF DREAMS AND GLASS* (Simon & Schuster 1995) (the stress of going through a residency in psychiatry) □ Samuel Hynes, *FLIGHTS OF PASSAGE* (Naval Institute Press, 1988) (a young aviator's memoirs of learning to fly in World War II) □ Professor Stephen Bergman, now on the faculty of the Harvard Medical School, penned *IN THE HOUSE OF GOD* (Dell Paperback) an NC-17 view of the life of interns in a teaching hospital in the late 1970's. It has sold more than 2 million copies.

Working in a large firm is stressful. But it's not landing an aircraft 80 times, mostly at night, under fire from Japanese Zeros and ack ack without radio, lights or radar, in the Solomon Islands in 1942. It helps to put our stress in perspective. We're paid a fortune and work in remarkable surroundings, with all manner of help at our beck and call. We're not operating under war-time conditions.

For further reading about the relationship between law firm management and the problems presented by entry-level and lateral hiring I recommend □ Maister, David H., *MANAGING THE PROFESSIONAL SERVICE FIRM* (MacMillan 1993) (\$40). Maister is the leading international management consultant for professional firms. This text is a masterful collection of his thoughts on every aspect of professional firm management, structure, economics, and administration. □ Maister, David H., *TRUE PROFESSIONALISM* (Free Press) (1997) (\$25). *PRACTICE WHAT YOU PREACH: WHAT MANAGERS MUST DO TO CREATE A HIGH ACHIEVEMENT CULTURE* (2001); and (b) *THE TRUSTED ADVISOR* (2000) (this collection of essays provides sparkling advice on management, client service, profitability, and other core issues).

Other favorites on law firm management and economics include □ Henning, Joel, *MAXIMIZING LAW FIRM PROFITABILITY: HIRING, TRAINING, AND DEVELOPING PRODUCTIVE LAWYERS* (Law Journal Seminars Press 1991)(\$90). Written from the vantage point of someone who counsels managing partners it offers a valuable perspective far different from those who work primarily in the hiring vineyard □ Quinn, Bailey & Craig, *LAW FIRM ACCOUNTING AND FINANCIAL MANAGEMENT* (Law Journal Seminars Press 1994)(\$95). If you want to understand more about how law firms manage their cash and human resources, this is the Bible. You don't need to know a debit from a credit to appreciate the common sense of this work

Jacob Stein's treatise *THE LAW OF LAW FIRMS* (CLARK BOARDMAN / WEST GROUP 1995)(Stein's contains extensive state specific footnotes on issues including partnership formation and dissolution, conflicts of interest, retirement plans, and enforceability of controversial partnership agreement provisions) □ Robert Hillman's *Lawyer MOBILITY - THE LAW AND ETHICS OF PARTNER WITHDRAWAL AND LAW FIRM BREAKUPS* (Aspen 1997)(an exhaustive treatment of lawyer mobility) □ Mark H. McCormack, *THE TERRIBLE TRUTH ABOUT LAWYERS: HOW LAWYERS REALLY WORK AND HOW TO DEAL WITH THEM SUCCESSFULLY*, (1986, Beech Tree Books -- William Morrow)(s an irreverent but quite useful guide to how lawyer and non-lawyer clients can work effectively with lawyers).