

Training Lawyers: Where Are We Now?

New lawyers bring much knowledge and likely more clinical experience to the profession than did lawyers of earlier generations. But a decline in the number of trials and an increase in remote work necessitate changes in on-the-job training.

Jury trials are fast becoming a rarity in the legal world.¹ But lawyers continue to soldier on, repopulating their ranks with a new graduating class each year.

Wherever they go, this new cohort will inevitably need some on-the-job training. But time spent training and garnering essential lawyering skills is not necessarily billable time.

This article provides some insights from attorneys across Wisconsin, including lawyers at large and medium or smaller firms. Each attorney addresses differences in training and building skills for new hires and young associates, as well as advice about how to get crucial experience and what has changed in that respect.

Big Firms and Big Ideas

Stacy Gerber Ward is a shareholder at von Briesen & Roper S.C., a Wisconsin-based firm with multiple offices in the state and two out of state. While billing itself as “neither ‘Big Law’ nor a ‘small firm,’” at about 180 lawyers, von Briesen is a relatively large firm.

The firm has implemented “a one-year onboarding process for our new associates, either those that are right out of law school or who’ve just joined the firm from a different practice,” Gerber Ward said.

She was quick to emphasize that, “we call it an onboarding program because training seems awfully formal.” The onboarding process is designed not so much to train as to “provide information we think will be helpful for [new attorneys]” and to get them “up and running quickly and to be successful in the law firm environment.”

Gerber Ward said, “there’s a couple of different components to the program,” including the new associate being paired “with another associate who we call their peer advisor.” This peer advisor is an established attorney at the firm and an “internal resource who already knows the ropes and how the system works and knows what tools we have.”

The advisor is someone who has a little more experience and is still approachable in ways more experienced shareholders or partners might not be for a newer attorney – a sweet spot of experience “but not so much experience that it’ll be intimidating.”

The program also includes a “series of monthly programs where we try to address issues that we think are important for [new attorneys] in terms of understanding how to be successful in

BY AARON M. EARLYWINE

In justifying the work that new attorneys do for a firm, and the price they charge for it, “it’s all about providing effective and efficient client services.”



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a law firm,” said Gerber Ward, leader of the firm’s government enforcement and internal investigations section, as well as co-chair of the firm’s health law section.

“For example, we have a session that is on timekeeping and how you craft your time entries understanding that those time entries end up showing up on a client bill. It’s one means of client com-

‘That’s why you come to a law firm, to work in a supportive environment with other lawyers who are going to help you learn that art.’

munication. So, learning the mechanics of time entries and also why time entry is important for the client relationship.”

These sessions also cover more abstract subjects in addition to the nuts and bolts of the profession. Gerber Ward said the firm also does “a special session on just mental health and being an associate” and the balancing act that can sometimes go along with the territory.

Fewer Trials, but Opportunities Still Abound

The onboarding program, and other systems within the firm, also attempt to tackle an experience issue that has developed in the legal system as a whole. “There are very few small trials anymore,” Gerber Ward said. “But, we have a system where we are putting associates on litigation teams where they are exposed pretty early on, not necessarily to being in trial but there are a lot of skills that you need to be a trial lawyer.”

These skills include taking depositions, learning how to respond to discovery, and learning how to work with expert witnesses. For the cases they do try, junior and new associates might not be first or second chair, but Gerber Ward is confident that they will be involved and that they will be “integral in terms of the trial team.”

“Are we trying as many cases as we used to? No,” she conceded, “but we are still finding ways to develop our lawyers.” von Briesen is not alone in this regard and is “consistent with several

other firms in that up to 50 hours of pro bono time is credited toward your billable hours” for those seeking trial and court experience.

Of course, taking on pro bono work can add on to already sizable hours and cut into sizable billing requirements, but Gerber Ward has observed that for the most part the newer associates are able

to balance the demands, and motivation to gain that trial experience often helps offset extra work or pressures.

But clients don’t always see the crafting of an associate. They just see the bill that comes with it. However, in justifying the work that new attorneys do for a firm, and the prices firms charge for it, Gerber Ward contends “it’s all about providing effective and efficient client services.”

“At some point it’s not efficient for me to sit down and read 15 cases, billing as a senior shareholder. So of course, I’m going to have an associate do that. If you’re communicating your value to them, clients understand that.”

That onboarding program is designed to help associates understand how to communicate with their clients, among other things. But it’s not designed to cover up any glaring lack of lawyering skills that might come from law school curriculums – because that isn’t an issue.

“Law school is intended to train you to think like a lawyer. It was never really intended to give you all the skills you need to practice law. So, for your first job at a law firm, there is just a lot of practical learning that has to go on that can’t really be accomplished while you’re in law school.”

Gerber Ward concluded, “You learn in law school how to think like a lawyer, you develop certain intellectual traits and certain intellectual skills and then when you come out, you have to figure out how to apply it. And that’s why you come to a law firm, to work in

a supportive environment with other lawyers who are going to help you learn that art.”

Landing the Job in the First Place

Law schools may be the locus of foundational training, but they are of course also recruitment centers – clusters of overachievers and eager potential interns all in one convenient location and all clamoring for jobs. Fertile recruiting grounds indeed.

The recruitment process itself has not changed substantively but more in form. Specifically, as Emily D. Kite, the Associate Dean for Career & Professional Development at the U.W. Law School notes, the major changes in recent years have been whether such recruitment is done in person or online. “During COVID, all recruiting moved to a virtual format,” Kite replied via email. “This includes our ‘on-campus’ interviews as well as the interviews for the multistate recruiting consortia in which we participate and the national and regional job fairs. Through these changes, we learned that virtual recruitment could work.”

It has worked well enough that some recruitment programs, such as the Equal Justice Works Conference & Career Fair, the largest public interest career fair in the U.S., have stayed virtual. Others, such as the Midwest-California-Georgia Consortium, use a hybrid model, with the interview program remaining virtual. On-campus or virtual participation by employers for campus recruitment at the U.W. Law School has leveled out at 50-50 in either form.

“In the early days of COVID,” Kite wrote, “it was more common for students to accept a position without ever having been to an employer on-site or having met any attorneys in person. In the law firm context, that is less likely to happen recently – even firms that do the first round of interviews remotely will often do callback interviews in-person. For nonprofit positions, and particularly summer internships, it



might happen more frequently that a student shows up for the summer having never met anyone in person.”

Trials and Tribulations at Smaller Firms

As mentioned earlier, law school can't train a student in every imaginable skill and practice area. Some must be learned in the field. Nicholas J. Rifelj is a solo practitioner in Madison as well as the judge for the Waunakee Municipal Court. He noted a dichotomous tension between training and experience and the current state of the legal landscape.

“Trials are the exception, not the rule,” he said “[and] even in large firms people just don't get that experience.” Rifelj, a criminal defense attorney, advocated for the practice area, suggesting that criminal law “early in a career is a fabulous way to get experience ... not even trials but just getting in front of a judge ... getting inside a court and making an argument to a judge.”

When pressed if there was any deficiency he has noticed in recent crops of lawyers, Rifelj said that “especially at the mid- to large sized firms, legal writing is one skill that is lacking.” Still, “U.W. Law does a very good job providing students with practical experience through its clinics,” Rifelj said.

Nevertheless, the main issue facing recent generations of attorneys appears not to be gaps in foundational knowledge, Bluebooking, or court procedure know-how but certain intangibles. “Young attorneys starting out in 2019 and 2020 literally had an entire year of in-person appearances taken away,” Rifelj lamented, before adding that COVID-19 itself isn't the entirety of the issue. He worries that in the cell-phone era, many attorneys lack the ability to make small talk and establish the relationships and rapport essential to meaningful and effective courtroom advocacy and work.

His comments echo those of Judge Nicholas J. McNamara, the presiding judge of the criminal division in the

Dane County Circuit Court and an adjunct professor at the U.W. Law School.

In a brief conversation, Judge McNamara humorously and a bit nostalgically recalled prior generations of attorneys who practiced what he dubbed “trial by ambush,” and with all retrospective concerns aside, could masterfully work a courtroom and a trial with seemingly little preparation and certainly no trepidation.

If a bit less technical or perhaps refined by today's standards, they had

a wealth of experience to draw from and the relationships and charisma that came from such experience.

Rifelj observed that mid-to-large law firms tend to focus on civil law, where trials are infrequent by the nature of the business. The issue facing newly minted attorneys and those looking for more early career experience, however, is that “debt makes it hard to come out of law school and be a criminal attorney.” For defenders and prosecutors alike, “either way you're not making enough.”

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To offset costs, Rifelj recommended staying in state for education and specifically being aware of and thinking long term about undergraduate debt accumulation.

An Organic Approach to Mentoring

Robert Gagan is an attorney at Conway, Olejniczak & Jerry S.C. With about 15 lawyers and two offices, one in Green Bay and one in Sturgeon Bay, it is probably safe to call his firm midsize, although that term is a bit nebulous and often depends on the geographic area as much as the firm.

Gagan, a former president (2014-15) of the State Bar of Wisconsin, described the firm's particular onboarding or training program as more on the informal side. "We are divided into practice areas," he explained, "where depending on what practice area that associate is focusing on, a senior lawyer in that practice area will start serving as their mentor."

However, unlike other programs, this mentor-mentee relationship is organic and not the result of assignment. "We only have one or two people coming in per year, [so] it's not as formal. It's more just working with people and being available and checking in, those types of things."

Being mid-size also allows Conway, Olejniczak & Jerry some flexibility, and "if there's a larger case, one of the younger lawyers will be able to serve as second chair and learn from a more experienced lawyer. And [the younger attorneys] also get experience just on smaller cases, where there's not as much at stake."

Trial experience aside, even in the post-trial era, Gagan believes that most of the same skills and attitudes that served lawyers in times past are still relevant. What have remained important are "still hard work and being flexible and open to learning new things."

He recalled, "one of the senior lawyers around here, I remember going to a seminar where he was speaking before I joined this firm and he said that the best marketing is just being a good lawyer. And I think that comes through with hard work and being willing to learn new things and rely on senior people within the firm ... don't be afraid to ask questions. Ask for feedback. Just kind of the general things that have always been there."

What's also still there are the people, at least at Gagan's firm. One survey found that with the advent of remote work has come something of a generational gap at many firms with "around 44% of lawyers that have practiced for 10 years or less [suggesting they] would leave their job for another one that provides a greater opportunity to work remotely. Only 13% of lawyers practicing for 41 years or longer reported they would do so."²

Gagan believes that the impact of remote work and videoconferencing may be more acute at larger law firms, but for his own coworkers, he finds that

"we are still pretty tight." A firm culture and office congeniality still exist, and "we celebrate birthdays and there will be a happy hour here and there. We have certain traditions, like the Friday before the first Packers' game we'll have a tail-gate party out in the parking lot. We do a good job of just getting people together, a pizza lunch when someone new joins the firm, just things like that."

For firms trying to preserve their office culture and identity and for new attorneys worried about never meeting their coworkers or bosses in person, remote work doesn't help. To that end, Gagan's solution is simple. "From the firm's end, just schedule it. And from the young lawyer's end, try and attend as many of those things as you can."

Conclusion

Every law firm is different – and each deals with their own circumstances of practice, size, area, and so on. But they all need new attorneys from time to time to keep the wheels turning and keyboards clacking.

Training programs are necessary, but they're only as good as a firm makes them. Costs paid upfront in time, effort, or expense – or lack thereof – stand to have major returns, or the inverse, as new lawyers develop or flounder. Law schools can't do it all, and sometimes attorneys have to take on another role of teacher, mentor, and peer advisor. **WL**

ENDNOTES

¹Edward T. Kang et al., *The Disappearing Jury Trial and Its Affect on the American Legal System*, Law.com (Sept. 22, 2022), <https://www.law.com/thelegalintelligencer/2022/09/22/the-disappearing-jury-trial-and-its-affect-on-the-american-legal-system/>.

²Sara Merken, *As More Lawyers Return To Office, ABA Finds Stark Split On Remote Work*, Reuters (Sept. 28 2022), <https://www.reuters.com/legal/legalindustry/more-lawyers-return-office-aba-finds-stark-split-remote-work-2022-09-28/>. **WL**

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