

Training Trial Lawyers

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Molding young associates into effective courtroom advocates is more difficult than in decades past. The difficulty stems from limited practical instruction in law schools as well as shifts in the legal industry toward increased practice specialization and law firm growth. Partners in firms across the country bemoan these challenges. Ambitious associates long for top-down, targeted development. Some of them intend to stay at law firms for their whole careers, and nearly all expect to learn skills that will serve them throughout their working lives. Thus, a modern litigation training program that serves its stakeholders well should both train associates to be proficient in tasks that clients and partners demand and ensure that each associate acquires the essential skill set to be a first-chair trial lawyer.

In 2018, our law firm launched a top-to-bottom refresh of its litigation training to meet these new challenges and expectations. The firm's litigation partners wanted a formal curriculum appropriate to all associate seniority and skill levels that would, over the course of six years, teach "everything"—from basic lawyering skills and trial practice, to case management and client relations. The result combines elements of formal education and apprenticeship, with seminar and learn-by-doing elements. The curriculum is standardized by associate class year and touches on most aspects of civil litigation. It aims to provide a robust

base of skills so that associates will be better prepared in real litigation settings.

When we first set out on our training overhaul, the road stretched long before us. This was in large part due to the paucity of training our most junior associates brought with them. It has long been a complaint of experienced lawyers that American legal education is heavy on theory and light on practice. Many schools do not require courses—like corporation law and evidence—that practitioners widely regard as indispensable. Law schools also generally do not require any sort of on-your-feet practical education, such as clinical work, trial advocacy, or moot court. Even legal advocacy writing, a bedrock element of any litigation practice, is often relegated to just one introductory course.

Given that fresh-faced associates arrive at their first law firms with little practice-based education, firms have traditionally operated on a model similar to apprenticeship. New associates begin their careers completing bite-sized "assignments" and shadowing senior attorneys handling everything from depositions to meet-and-confer to court appearances. As associates advance, their assignments increase in scope and importance. Ideally, the associates progressively shed layers of supervision and eventually receive opportunities to handle key moments of a case on their own. By the time partnership is near, associates should be able to run the



day-to-day operations of a case on their own. Under the traditional model, associate “training” may be informal, even implicit. Rather than expressly guiding associates, firms using this approach simply expect associates to take ownership of their careers through a combination of seeking informal mentorship, attending occasional presentations, and seizing hands-on opportunities that arise.

Reevaluating the Apprenticeship Model

In recent years, however, new trends have emerged that require reevaluation of the apprenticeship model. Once ubiquitous, jury trials have plummeted in frequency across the industry—even among firms with the busiest trial dockets. Many cases are instead settled or resolved in abbreviated, litigation-adjacent proceedings like arbitration. Fewer trials mean fewer on-your-feet opportunities, and also mean the opportunities that do exist often come with higher stakes. In the absence of a formal training infrastructure, it is simply too difficult to reliably ensure that every associate receives a full tool kit of basic litigation skills.

Our firm wanted to create a program that built a real skill set for our younger lawyers while also serving the needs of our clients. It needed to cover all basic areas of civil litigation, using learn-by-doing methods where possible. It needed high-quality content to become viewed as an indispensable part of associate development.

Our Vision

Our first task was to plan for managing the change that would unfold. Overhauling a training program requires a vision, complementary goals to reach that vision, and engaged and influential members of the organization to make it all happen. Our vision was plain: associates consistently prepared for success as litigators in the firm. To reach that vision, our goal was to inculcate in young associates the key attributes of high-achieving lawyers. Thus, a large part of our initial work was identifying those attributes and ensuring that our training curriculum would cultivate the skills supporting those attributes. Consultation and buy-in from our key constituents—the partners and associates—were essential to this process. Finally, we identified key partners with an interest in teaching and a particular subject matter expertise to drive the program. They would design the specific components of the new program.

We identified three overarching attributes of a successful associate: (1) professional habits, attitudes, and practices; (2) an understanding of the rules, theory, and practice of civil litigation; and (3) preparation for and ability to execute specific tasks when required. To build a program designed to cultivate those attributes, we canvassed partners and associates to identify the skills that every litigator should possess. We distilled them into

Illustration by Erick M. Ramos

seven essential skills, the “building blocks” of litigation success. We then characterized these skills as basic, core, and advanced, with each category building on the next—a sort of Maslow’s hierarchy of litigation needs.

There are two basic skills: professionalism and sound business habits. Associates who display professionalism know how to conduct themselves in all settings and should understand how lawyers interact with each other, with the court system, and with the public. Associates with sound business habits have some understanding of how law firms are run, how law firms make money, and how much things cost.

The three core skills are writing, questioning, and litigation tactics and strategy. Every associate should possess minimum competency in these areas. Every associate should be able to write coherently and presentably with minimal editing. Associates should also know how to ask questions in legal settings for a variety of purposes in a way that builds a record, without falling into unhelpful, argumentative practices. Associates should understand the life cycle of a civil case, how their firm approaches cases strategically, and what common tactics lawyers will employ and encounter in different phases of litigation.

The two advanced skills are speaking and presenting and becoming a principal. Associates should be able to speak with poise and confidence in all situations. In addition, particularly when nearing partnership, associates should be able to manage the day-to-day work of a case, be seen as a reliable and responsive point of contact for clients, and understand how to develop client relationships.

Identifying Our Needs

After we distilled the skills, our next step was to identify the needs of our litigation practice and secure our lawyers’ support for the new program. We solicited extensive feedback on the program from both partners and associates through a combination of surveys, direct outreach, and group discussions. We then enlisted support for building out the program and implementing it.

First, we surveyed and then spoke individually to our litigation partners. They provided insight into client expectations of associates, current areas of strength and weakness, and broader trends in litigation. These insights were useful in identifying specific points of education within the framework of the basic, core, and advanced skills. For instance, partners most desired improvement in areas where law schools have traditionally fallen short. One such area was legal writing, a skill that practicing lawyers use every day but is often overlooked after the first-year law school curriculum. Another area was business. Many associates—at all levels of seniority—lack knowledge of accounting, enterprise valuation, business and investment structures, and corporate governance. For writing, we tasked some of the firm’s most proficient

writers to develop a multipart training program with an emphasis on specific problems that seem to appear routinely in junior associates’ writing. For business, we developed programs on corporate structures, governance, and ways in which different corporate clients interact with law firms. We also developed a program on accounting fundamentals so that all associates have basic literacy in financial statements.

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Second, we canvassed associates for their opinions on our existing training, as well as for specific examples of situations in which they felt underprepared. We wanted to design a program that met their actual needs, rather than dictating a program in a top-down format. Associates’ committees served as sources of deeper feedback. Overwhelmingly, our associates favored a learn-by-doing model and asked for other opportunities to get on their feet in a controlled setting. Associates also expressed an interest in creating more structure around the firm’s training program rather than relying on ad hoc offerings. They wanted to know up front what their educational path would look like throughout their associate years, and they wanted to have input in the topics covered.

The Training Curriculum

To build out the substance of the training, we identified internal subject matter experts with an interest in associate education. Many had decades of experience in training and mentoring young associates and were passionate about associate development. Participating partners were assigned to small “task forces” aimed at particular aspects of litigation: depositions, legal writing, expert witnesses, etc. Over about a year, in 2018 and early 2019, the task forces developed substantive content related to their assigned areas. In fall 2019, with the arrival of a new class of first-year associates, we launched the new training curriculum. The

training incorporated what we called the “Kirkland Institute for Trial Advocacy,” which we used to offer twice annually. Using hypothetical case files, associates prepared for, and put on, a trial. We revamped that trial advocacy program and added a new uniform curriculum for all other litigation training, which we call the “Kirkland Institute for Pretrial Practice.” Programming is scaled in complexity, with junior associates taking more seminar-style courses and senior associates engaged in more participatory exercises on the basics of witness interrogation and oral argument.

Associates in years one through three take learn-by-doing introductory, bench, and jury trial programs, as well as a depositions course. They also are assigned a selection of seminars including Professionalism, Business Practices and Policies, Life Cycle of a Civil Case, Privilege, E-Discovery, Written Discovery, Restructuring Litigation, Evidence, Accounting, Motions and Arguments, Legal Writing, Experts, and Business Organizations.

Associates in years four through six likewise receive learn-by-doing training, including jury and other advanced trial programs, and modules on depositions, discovery disputes, motions to dismiss, and summary judgment motions. Seminars focus on developing the advanced skill of becoming a principal. The programs are supplemented by materials available on an internal training work-product website, such as precedent, briefs, transcripts, checklists, and links to articles of interest.

All the seminar-style courses are designed to give associates topical, substantive instruction in a setting designed to maximize interactivity and learn-by-doing techniques. For example, our writing class includes a guided discussion in which associates critique examples of both good and bad legal writing. Other classes use polling software that allows associates to respond to questions through their phones; the results displayed in real time facilitate questions and deeper discussion. The week before each program, we survey associates about their level of experience in the subject, difficulties they have experienced with that topic in the past, and what specific issues they would like to see addressed. In this way, our partner faculty can make appropriate adjustments and deliver a program specifically targeted to associate needs and concerns.

In revamping our trial advocacy program, we focused on our most-junior and most-senior associates. First-year associates needed more time to build basic skills before taking on an entire trial. For them, we designed examination drills rather than a full trial. Associates are given specific objectives to accomplish with a witness (questioning about a specific topic, admitting an exhibit into evidence, impeachment, etc.) and are given immediate feedback and opportunities to repeat the exercise. For our most-senior associates, we made the mock trials more difficult and realistic. We added complications to the case files, and we hired retired judges to sit in on the trials and provide further feedback.

In the depositions program, associates are divided into rooms with actors playing witnesses from a hypothetical case file. The

associates are given a list of specific tasks to complete with the witness, such as marking an exhibit, laying an evidentiary foundation, exhausting the witness’s recollection about an event, gaining admissions, or confronting an evasive witness. After each task, a partner provides feedback and allows the associates to repeat ineffective lines of questioning. The program scales in difficulty of source material and objectives. In addition to building questioning skills, the training also makes the associates more effective in the deposition second chair. By asking their own questions, they learn to appreciate the importance of preparing a detailed outline, knowing where the deposition fits into the larger case, and thinking strategically about what is achievable and desirable with a given witness.

In the arguments program, associates must prepare for and moot an oral argument before partners and judges. These arguments are based on evenly balanced case files that limit the scope of the dispute to discrete issues and fact patterns so that the participants can focus on technique rather than memorization. The arguments program presents scenarios: a discovery conference in which attorneys negotiate a dispute and then argue the issues on which there was no agreement, a motion to dismiss argument facing a “hot bench,” and a summary judgment argument. Associates represent imperfect clients from closed-universe case files offering some strong arguments and some lousy ones.

Throughout the rollout, we sought feedback on what was and was not working, and what kinds of programs were missing. We made adjustments when programs were too long or too short, or when topics addressed together would have been better off separate. We made changes and additions in response to dynamic forces: After the pandemic hit, we moved all programming to Zoom and found ways of preserving interactivity even in a remote environment. In response to the sudden new needs of all litigators, we put together a course on best practices for remote depositions and court appearances. When we experienced an uptick in bankruptcy business, we put together a course on restructuring litigation.

Courses in the new program—which we call “Kirkland Litigation University”—are taught by partners, rather than outside consultants. Partner teaching provides a double benefit: It ensures that associates are getting both high-value training and the specific education that the partners want. The involvement of our most senior partners sets a “tone at the top” that emphasizes the importance of training to everyone else. Partners are always busy, and there is a great temptation to “outsource” associate education to consultants. The reality is that nobody knows your business as well as you do. Mentoring and leadership of your own associates are not “outsourcable” tasks. The bottom line is that there are no shortcuts; a successful litigation education program cannot be bought—it requires partner time and partner work. ■