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## **Now that Clients Won't Pay for Training Young Associates, How are We Going to Teach Young Lawyers the Skills of Lawyering?**

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### *Creating law firm fellowships*

**W**e all once had a pretty good gig going. Law schools would spew out about 40,000 or so graduates each

year trained in the ephemeral notion of having learned how to “think like a lawyer” but largely clueless as to how



That wasn't such a bad thing, since law schools had charged these men and women a king's ransom to learn to "think like a lawyer" and legions of these newly minted lawyers became employed by large law firms which trained these novices on basic legal skills while essentially apprenticing. The beauty in this system was that law firms charged handsome hourly rates to their clients as these young men and women toiled away at learning their craft at clients' expense.



Unfortunately the gig is up. [As reported](#) in *The Wall Street Journal*, clients have simply said “no mas: we’re not going to pay for training young lawyers anymore.” Peter Kalis, the venerable chairman of K&L Gates was quoted in the *Journal* as saying “that when the issue arises with clients, he tells them "it's their dollar, and they're free to do with it as they wish." But he said he also tells them to ‘step back,’ and take a longer view. ‘It's a bargain made throughout the generations that has served democracy and capitalism well.’” Anecdotal evidence suggests that Mr. Kalis’ well meaning admonitions have largely fallen on deaf ears. As the *Journal* reported, “According to a September survey for *The Wall Street Journal* by the Association of Corporate Counsel, a bar association for in-house lawyers, more than 20% of the 366 in-house legal departments that responded are refusing to pay for the work of first- or second-year attorneys, in at least some matters. Almost half of the

companies, which have annual revenues ranging from \$25 million or less to more than \$4 billion, said they put those policies in place during the past two years, and the trend appears to be growing.”

Added to this mix is the fact as [articulately explained](#) by Jordan Furlong, law schools simply don't get it and are not in the slightest attuned to the day to day skills required in the current marketplace. And we add to this mix that law schools also don't comprehend basic rules of supply and demand. They relentlessly spew out new graduates, saddled with ginormous student loan debt with these new graduates having diminishing employment opportunities, as Prof Steve Harper, [among others](#), recently [noted](#). Law schools having served capitalism well, particularly their own capital, continue to proliferate, [build new schools and willy nilly add new chars to their diploma grinds](#). And, at the

same time, the number of law school graduates hired by law firms is at the lowest level since 1996. But I digress.



What we need is a new system for training fledgling lawyers. I am particularly keen on the suggestion made by Bruce McLean, long time chairman of Akin Gump, as reported in the *Journal*: “R. Bruce McLean, the chairman of Washington, D.C.,-based Akin Gump Strauss Hauer & Feld LLP, said that if the trend continues, firms will have to find a

new solution, perhaps a new billing model or intensive training programs similar to those in the U.K., where prospective solicitors take a one-year course on legal practice followed by an apprenticeship.”



Modified clerkship or clinical training programs already have some traction in the United States: the need for training physicians through residencies is universally required and accepted; many industries, such as the media and many financial institutions require internships; a prestigious internship is a badge of honor for these professionals as they pursue the rest of their careers. And many, if not most AmLaw 100 law firms have

already accepted and adopted this concept in material measure.

Indeed, the United States stands alone in the world: It is the only nation without mandatory clerkships, articling, *staggers* or its equivalent as a condition for bar admission.

The system I propose is one in which law firms would hire law school graduates in the spring preceding their graduation and they would first be dubbed as “fellows,” a designation which may have greater *gravitas* attached to it than “clerks.” These fellowships would last four years, of which two years would be devoted to training (which is, in fact, now the case) and would include not only the assumption of the duties now performed by first and second year associates, but also the rigorous training program I described above. Quite likely, the eminence of law firms would thus be measured in part

by the quality of these practicums and their faculties. “Fellows” should receive quarterly reviews in which performance and participation in these seminars should be important elements.



The eminent Bruce MacEwen, serving the profession under his *nom de guerre*, Adam Smith Esq., has already established [JD Match](#) which could easily serve as the legal profession’s analogue to the [medical residency matching program](#), which, together with the [work](#) of Professor Ashish Nanda of Harvard was the inspiration for Bruce’s program.

At the conclusion of these fellowships, these reviews should be

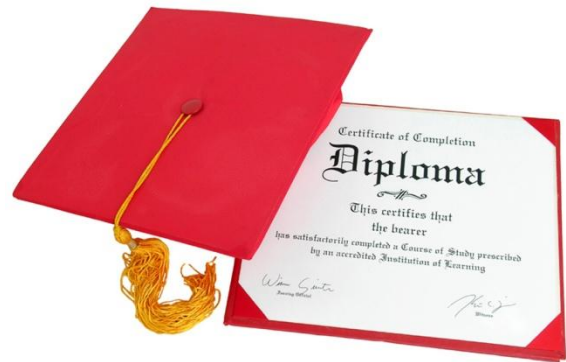
collated and a committee of the law firm would confirm that the fellowships were completed, perhaps with “honors” or “high honors.”

There are certainly other issues which need to be addressed for the successful implementation of this system.



Another question is how a law firm, having invested in the training of its “fellows,” receives a fair return on its investment by effectively deploying and using the services of the now well trained, efficient and productive cadre of lawyers. As much as some associates might think otherwise, they cannot be chained to

their desks. The solution, it appears to me, to be that incoming associates sign a contract committing to stay with the firm for four years, the last two of which are essentially the clinical practice of law. One would hope that aspiring lawyers would honor such contractual obligations. Firms would, however, retain the right to terminate “fellows” for performance reasons. Further, the formal conferral of completion of a fellowship would only occur upon the conclusion of four years of service. The contract would further provide that should an associate leave prior to the termination of the four year period, any inquiry by a future employer would result in a response advising a prospective new employer that the associate failed to complete his or her fellowship.



The successful conclusion of the fellowship would give the associate a resume builder, a proud badge of honor: “Fellow, Firm X”, “Fellow with Honors, Firm X” or “Fellow with High Honors, Firm X.” These designations would obviously appear on web sites and firm literature. Our physician’s shamelessly post analogous information on their own web sites, on hospital web sites, on their CV’s and even decorates their offices with plaques boasting of their own training.

The argument that might be made that not all law school graduates would be invited to a “fellowship” program, is plainly of no significant

moment. First, we already know that approximately only 22% of law school graduates find their way in to large law firms. Second, firms of smaller sizes, which typically filled their associate ranks by hiring associates in which large firms had invested in training would be encouraged to limit their pilot fish-like existence by establishing their own fellowship programs. And a host of federal agencies with large lawyer populations could conduct such programs and would themselves benefit from law firm conducted programs, ensuring that lawyers it trained would make real commitments to stay with the agencies for four years, before they might be attracted by the succor of private practice.



Ah, but what of the issue of compensation? At what level should these “Fellows” be compensated? Some of the few firms which have adopted comparable systems offer lower compensation levels to their lawyers in training. Some pay higher levels. In the end, market factors will dictate the answer. Those market



factors will in some measures be driven by the [relentless competition](#) from LPO’s who provide the equivalent fodder of novice lawyers at a fraction of BigLaw rates. Indeed, Professor William Hendersen [described](#) the entire current system of escalated compensation and the concomitant need by law firms to charge exaggerated fees for these young lawyers which is driven in part



by the need of law school graduates to repay exorbitant student loans is a “bubble about to burst.” In fact, I believe that Professor Henderson is wrong: *The bubble has already burst* by the pinprick of clients unwilling to pay for first and second year associates.



Elsewhere Professor Henderson correctly noted even currently, “many firms are in the unprecedented position of slashing associate salaries.” The lessons of so many recently burst bubbles, such as subprime mortgages, CDO’s, an

irrationally inflated stock market, dot.coms and so on, is that all of the burst bubbles are largely Humpty Dumpties. They can’t be put back together. Time to start from scratch.

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