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Essential Elements for Interviewing a Law Firm Lateral Candidate

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What you don't know because you didn't ask can come back and hurt you

About thirty years ago, I was assigned to be a second seat on a complex multi-party securities fraud case. Among the many lawyers working with us on the defense side was a partner (let's call him Tom here) at an AmLaw 50, who was a widely respected litigator with 25 years of experience. In fact, shortly before the case was scheduled for trial, this lawyer was nominated to serve as a judge on the United States District Court for the Southern

District Court. A month or so before the case was scheduled for trial, the lawyers for the dozen or so defendants met to begin planning for the trial and dividing up the various pretrial and trial tasks.

As the meeting started, Tom looked around the room and said plaintively "fellas you got to help me out here. I've never tried a case before. I've got lots of deposition and motion experience and some evidentiary trial experience in connection with injunctions, but I've never even seen a jury trial" Yes, we all stared in disbelief. Five or six of the seasoned trial lawyers in the group took Tom aside and gave him a four day

crash course on jury trials.

The case was duly called for trial and in the six weeks of trial, Tom, who had a high degree of innate intelligence, acquitted himself well, although I can't say the same about his client who was found liable for serious damages. A few weeks later Tom's nomination was confirmed. He attended judge's school, went on to serve with distinction and ultimately became chief judge of the district.



The story comes to mind in connection with an [interesting and provocative article](#) by Mark Herrmann of Above the Law in which he discusses different interviewing techniques for lawyers being considered as lateral candidates at law firms. Herrmann first discusses the two standard techniques, resume based interviewing and second, behavioral based interviewing. The former is straightforward and is one in which the interviewee is asked about items on his resume. The second involves asking candidates about experiences in their lives and how they handled them.

The issue is even more timely, following a recent piece by Professor Steve Harper entitled "[Fed to Death](#)" in which Harper recounts, among other things, that injudicious lateral hiring of partners has

caused the implosions of many major law firms.

A correspondent to Herrmann, Alessandro Presti suggested to Herrmann an entirely different approach. As recited by Herrmann, Presti

“... suggested giving an applicant a relatively non-technical contract and asking the applicant to interpret it or identify issues that the contract left open. This might give insights into the applicant's ability to identify issues and analyze them. Once the applicant identified the issues, you could explain that your client wants to launch a new product and ask whether the contract permits this. This would force the applicant to synthesize information and present it, thus demonstrating communications skills.”

While not utilized often, I have in the past fact seen this approach taken.

A couple of years ago, I arrived at the office of a managing partner of an AmLaw 200 firm for a scheduled meeting. He greeted me in the reception area and asked me to excuse him for a moment or two, since he had to conduct an interview of senior real estate associate who was being considered by the firm.

I was initially annoyed, thinking that I would have to cool my heels for 30 or 40 minutes as he conducted the interview. Instead, he returned and collected me within five minutes. I complimented him on his efficiency in conducting such a quick interview. He explained that he simply started the interview and would conclude it in an hour. He went on to explain that he gave the associate a term sheet for a lease

and a draft lease and advised her he would be back in an hour, at which time, she should mark up the lease and he would then discuss her markups when he returned. This was a first for me and I complimented him. He said that he's been using this technique for a six months. He invited me to join him when he went through the second substantive part of the interview.

We came in to the conference room and saw a clearly flustered lawyer on the telephone shouting at her headhunter.



She then sat across the table from the MP and slid her markup across the table. The MP began asking her questions about her comments in a mixed style of a partner reviewing an associate's work and an adversary conducting a negotiation. When he got to the third page, he asked her about an issue that she missed entirely. She was silent for a moment and then tried to explain that she just wasn't given enough time to do a thorough review. He said, "you know, here, we are always working under time pressures." She burst into tears, collected her things and left. He turned to me and said, "too bad, she's not going to work out here. Her legal work was pretty good but if she thinks this was pressure, wait until she has to deal with an SOB client or adversary."

As we approach what will surely be [a busy recruiting season](#), particularly at the partner level, we owe a debt of gratitude to

Herrmann for opening up this subject for careful consideration. Much has been written about the [essential need for due diligence](#), not enough has been addressed concerning testing the technical skills of lateral candidates.

Years ago, a fast growing law firm recruited a litigator who had an outsized ego and boasted an enormous book of business. Once on board, he pitched none other than Donald Trump to handle a significant case. He neglected to mention to The Donald or his partners that his only jury trial experience was a one day minor Civil Court case. Unlike Tom, he did not have a table full of experienced trial lawyers to guide him along and his hubris precluded him from confessing to his partners that he lacked real trial experience or from asking his experienced partners for a helping hand. He also assuredly did not want to share any ["responsible partner credit"](#) with anyone. The case went to trial and received an inordinate amount of publicity. The result was embarrassing; The plaintiff prevailed but the jury awarded damages of \$1.00, which the court duly trebled. The tabloids had a field day with this. This lawyer did conduct second jury trial several years later. In that second trial, he appeared *pro se*, defending himself of defrauding clients of millions of dollars. This second time, he didn't fare as well and his subsequent time in prison may have tempered some of his hubris.



So what do you ask a lateral candidate? I would suggest a combination of resume, behavioral and real life discussion.

Review with a litigator some of the cases he's worked on. Pick up the identity of those cases from a Google search, if he or she hasn't given you a list of cases he or she has worked on. Ask for the details that went on in strategizing the case, why certain motions were made or not and how the case was staffed, including the precise role played by the candidate.

Then pick up a recent case that landed on your desk and ask the candidate about his or her reactions to the claim (of course, being careful not to divulge client confidences). Challenge him or her on some of some of the theories advanced. Inquire about how he or she envisioned litigating the case.

Ask about some of the adversaries he or she has dealt with. Telephone one or more that you or your partners may know and mention casually that you ran into the candidate and ask about his or her skills and demeanor, being sure to couch the conversation as being prompted by idyll

curiosity.

Ask transactional lawyers the same types of questions. Inquire about deals worked on in the past. Describe a pending deal (hypothetical or not) and ask how he or she would structure the deal.

A very similar approach should be taken with regulatory lawyers.



I know all of this sounds a bit gruesome and perhaps overbearing. But, if you are doing things right, your lateral partner questionnaire is overbearing and the ubiquitous use of these questionnaires have made them simply part of the pain a lateral must bear in making the move.

Explain at the outset, either directly or through your headhunter, that part of your firm's recruiting process entails these procedures, so that there are no surprises.



Steve Harper is right in that lateral hiring may be fatal when not done well. Every managing partner can recite instances in which a lateral was a disappointment.

And every managing partner knows full well that taking on a lateral involves substantial risk and investment. That risk must be managed carefully and tempered by a careful and thorough detailed vetting of the candidate. The future well being of your firm rests on working through this process with great care, vigilance and diligence.

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