

The talent portfolio

New options for where, how and by whom your work gets done.

The old “talent wars” were fought over top law students or laterals with big books of business. Tomorrow’s talent competition will be about systems first and people second. Here’s a preview of the new players and new rules of the forthcoming “legal talent portfolio.”



By Jordan Furlong

Hey, remember the “Talent Wars”? Five years ago, you were probably reading articles in journals like this one, warning that a lawyer shortage was coming and urging you to act now to preserve the safe supply of that most precious resource, legal talent. With the imminent retirement of Boomers grown rich on years of plenty and the simultaneous emergence of a Millennial generation notoriously hard to please, you had to fight early and often to corner the market on good lawyers, right?

But then the financial crisis happened, and the recession came in like a storm, and Boomers’ savings dried up, and Millennials were thrown out of law firms by the thousands. And suddenly, the Talent War didn’t seem like



such a big deal anymore. In fact, it seemed a lot more like an HR version of the Y2K crisis: a lot of consultant-powered hot air that caused great consternation but ultimately came to nothing.

As you might imagine, neither of these narratives is entirely accurate. The “Talent War” scare ignored the fact that even before the recession, America’s Boomers would have to keep working longer than they wanted to believe. But nor is it wise to assume that the buyer’s market for legal talent is now a permanent fixture.

What’s really happening is this: the market for legal talent is evolving and becoming more complex. The financial crisis marked the end of the traditional model by which law firms acquired and utilized talent. The time when all legal work and all legal workers were housed inside a law firm’s walls is just about over. What comes next is what your firm really needs to be ready to face.

THE NEW RULES OF LEGAL LABOR

Work, as we know, is like water: it flows downhill until it finds its proper level, the place where the costs of production are lowest while still meeting market standards of quality and competence. It’s why automotive jobs left Detroit first for Mexico, then for southeast Asia, among many other

examples. And talent, of course, follows work.

The legal profession hasn't followed this pattern, however. Work has been more like helium: it rises to the top, finding its way to the most skilled and most expensive performers regardless of their cost. Too often, there is little proportionality between the sophistication of the work and the skills of the

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person who performed it: partners happily did associate work, associates happily did paralegal work, and so forth.

The primary reason for this state of affairs, of course, is that in the legal market, costs of production directly determine price and are, in the absence of competition from other providers, to be encouraged rather than streamlined. From the point of view of partner profits, this has been an extraordinary golden age — one that's now coming to an end.

Both planks of this profit platform are now splintering. Clients, under enormous pressure to reduce legal spend, are making unprecedented demands of their outside counsel: lower your prices, now. For law firms addicted to ever-increasing partner profits, that can only mean reducing costs, and the two biggest internal costs for law firms are leases (usually untouchable) and talent. It's not hard to see where firms are looking.

At the same time, the legal services "market" is finally losing those quotation marks, with the emergence of new suppliers for many services law firms traditionally have sold at huge markup. Legal process outsourcing (LPO) companies are performing research, document review, due diligence and e-discovery for 75% to 90% less than law firms charge. Thomson Reuters' acquisition of LPO giant Pangea3 late last year gave this nascent industry instant credibility among GCs.

Now and in the future, with the causative link between internal cost and external price finally severed, the market will require (and increasingly obtain) legal services provided in cost-effective ways. This will trigger a greater flow of work to lower-cost providers outside the confines of the law firm — and where work goes, workers follow. This will usher in a brand-new model for legal talent.

REDEFINING "LEGAL TALENT"

The first step firms must take is to redefine "legal talent." Traditionally, that term has included only law firm partners and law firm associates. It

needs to be re-envisioned as any competent provider of legal services — which means that when you think “legal talent,” you need to think beyond full-time law-firm lawyers.

Think about part-time law firm lawyers who are extremely talented and dedicated, but whose family situations or personal preferences mean they’re not going to meet your firm’s annual revenue targets. Don’t throw them away; use them during their irregular hours to meet client needs at lower cost.

Think also about freelance lawyers who are just as competent as many of the associates who “won the lottery” and now toil for your firm. They have little overhead, they don’t require a secretary or a benefit plan, and they charge far less for their services than your associates cost. These “free-agent” lawyers are a growing force, and they do better work than you might believe.

Think about clerks and paralegals and other quasi-lawyers who can handle (or could handle in the future, with training) tasks that are now performed by associates. It’s a pretty good bet that your associates are often punching below their weight, doing work beneath their potential simply because it can be billed profitably. Move their work down the value chain, and move your non-lawyer staff up the same chain to meet it.

And think about LPO firms, within your national borders or outside them. Some LPO personnel are lawyers, some are not; but they all enjoy, and are

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trained specifically to do, the tasks assigned to them, which is more than can be said on either count for many law firm associates. Clients are using LPOs and are coming to rely on them: get them onside as suppliers to you, before they usurp your position as suppliers to your clients.

Richard Susskind was the first to identify the “decomposition” of legal tasks as a critical trend in the evolution of legal services: breaking down a task into its component parts and assigning each part to the provider best suited — in terms of skill, training, enthusiasm, and above all, cost — to perform it. Identify sources of legal talent best aligned with the quality of the work at hand and strive to match the work to the appropriate performer.



QUESTIONING OLD ASSUMPTIONS

But that’s not all. Rethinking legal talent is an across-the-board exercise, and everything should be open to consideration in a new light.

Here are some suggestions for talent-related topics you can discuss at your next management committee meeting:

Why are we still recruiting from law schools? You can recruit talent from your rival firms, from the ranks of your alumni, and from the in-house departments of your clients. But most firms continue to recruit talent from law schools, even though schools clearly aren't interested in producing practicing lawyers. Law firms will require fewer on-site associates in future, and when you think about it, attrition-by-tournament is a terrible way to deter-

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mine tomorrow's partners and leaders. So why not prepare for a leaner future by reducing your law school intake today?

Why are we "training" our lawyers like that? I frequently hear partners justify repetitive tasks for associates by saying this is the only way new lawyers can learn the law. To this argument I invariably reply, remembering boxes of documents in windowless rooms that so many lawyers have endured: "You call that learning?" Lawyers should know how this work is done, yes; but this work ought to be performed, as a matter of course, by specifically trained lower-cost personnel. Try assigning associates to spend a month or so with those people and have them train the associates on what they do.

Why do we have so many people in the office? One big-firm lawyer recently confessed that it was "insane" how much real estate his firm occupies. The modern law firm evolved at a time when businesses operated on the factory model: bring all your employees together in one place, have them work (alone) together, then send them all home at the end of the day; repeat. Knowledge workers simply don't need to operate this way. There are information and cultural benefits from close quarters, to be sure, but they don't justify full-time in-person attendance, no exceptions. Rethink how, when, and how often your workers should be physically proximate.

THE NEW "TALENT WARS"

Up until now, "talent wars" have been fought over the "best and brightest" graduates of law schools that don't even pretend they're training lawyers, or over lateral hires with the "biggest books of business" regardless of whether that business will continue to flow or whether the lateral will jump at the next better offer that comes along. It's no wonder firms are often disappointed with the results.

These visions of talent competition haven't aged well. In their place is emerging a new model that focuses less on individual lawyers and more on creating a diversified portfolio of service providers. Law firms of the future will have fewer employees inside their walls, but will have many more part-timers, freelancers, specialists, and other independent contractors outside — each retained for specific tasks or skills, each playing a specific role in a modern legal workflow process.

Tomorrow's talent wars will be fought, yes, over truly talented lawyers — but also and maybe more so over these networks of non-firm providers. The winning firms will design the best systems, identify the best providers, utilize those providers most effectively, and integrate them into their pricing schemes in the most market-friendly ways. The “who” of legal talent will always be important, but the “how” is poised to become even more critical. •



Presenting: the future

Jordan Furlong delivers dynamic presentations to law firm retreats and legal organization conferences throughout North America. He explains the unprecedented changes in the legal marketplace and how lawyers can respond.

For information about speaking engagements:

Email him at jordan@edge-international.com

Call him at 613.729.7171

Read his blog at <http://law21.ca>