The War for Talent and Business Downturns

Law firms that take a short-term view on talent during an economic downturn will find themselves paying the price. Rather than a cutting-back period, the breather afforded by a slowdown in work is a good time to redouble efforts on a review of the firm's recruiting policies and practices, and its approach to professional development.

After raging for five years, the war for talent collided with an economic downturn. The last time a collision like this occurred was years ago. Like the mid-1990s, the mid-1980s saw an explosion of legal work in mergers and acquisitions, real estate, and litigation. Law firms grew substantially. The total number of lawyers in the 250 largest law firms in the United States tripled from over 22,000 in 1980 to more than 60,000 in 1990. The late 1980s saw substantial increases in salaries of starting associates as well.

All of this came to an abrupt halt at the end of 1989. The junk bond market collapsed. Mergers, acquisitions, and real estate transactions dried up. Associates and staff were laid off, many partners had their compensation reduced, and some were counseled out of their firms. The following five-year period, from 1990 to 1995, saw no growth in the total number of lawyers in the 250 largest firms. Recruiting at law schools was substantially reduced. Starting salaries leveled off. Firms focused on expense reduction rather than on getting and keeping talented lawyers.

Desperately Seeking Associates

Law firms would pay a price for this short-term view. As the economy picked up in the second half of the '90s, firms desperately sought associates to handle an unprecedented amount of work. Corporate work, such as initial public offerings and other emerging company matters, intellectual property and products liability litigation, mergers and acquisitions, real estate, and many other areas exploded.

The associates most in demand were those who were four to seven years out of law school. These were the very classes that had graduated from law school during the recession. The myopia of putting talent issues in a low priority status employed by firms at the beginning of the decade took its toll at the end of the decade. As we enter another business downturn, will history repeat itself in the first decade of the 21st Century?

Law firm leaders now must make an educated guess on how long this downturn will last--and, consequently, how much the firm should cut back on hiring. Firms that get the answer to this question right may well have a competitive advantage when the economy picks up again.

It is a pretty good bet that the scarcity of talent in the legal profession will continue and even get worse. There has not been an addition of a significant new law school in the past 20 years, and there has been no substantial increase in class size in any of the top law schools. During this same period, the number of lawyers, and presumably the demand for new lawyers, quintupled in the 250 largest U.S. firms.

This does not take into account the increasing demand for law school talent by the consulting, accounting, and investment banking firms. The gap between the static supply and the voracious demand for new lawyer talent will certainly widen in the next economic upturn.

Rather than a cutting-back period, the breather afforded by a downturn in work is a good time to redouble efforts on a review of the firm's recruiting policies and practices, and its approach to professional development. Here are some suggested approaches.

Recruit the Right Talent to Help Implement Strategy

Law firms give too little thought to the strategic implications of the type of person recruited. For example, consider a law firm that has a long-established base of traditional industrial clients, and wishes to move more aggressively into high-tech and other emerging company work. The firm does quite well servicing its established clients, and continues to hire and develop lawyers who are good at minding these clients. But to break into the crazy, volatile world of start-ups, the firm will need lawyers who have an entrepreneurial bent.

Or consider the law firm that decides to expand geographically, perhaps even overseas. It will need young lawyers who are willing to take the risk of moving their careers and their families to another state or country. Lawyers with language skills will also be required.

When a shift of strategic direction is made, will anyone think to urge the firm's recruiters to re-examine their hiring profile? Failure to do so can be a major impediment to the successful implementation of these strategies.

Don't Let Strong Partners Opt Out of the Law School Interviewing Process

It seems obvious that strong partners should be involved in recruiting, especially at the law schools. But the 1980s saw a curious competition develop among law firms. It started with a few firms bragging that they were sending senior associates to the law schools to interview students. Then other firms did them one better: They would send junior associates to the law schools. This was evidently symbolic of the confidence firms placed in their associates.

With all due respect to these bright, capable young lawyers, they did not and could not have a very good idea of what it takes to become a strong partner in their firm. Consequently, firm after firm missed potential talent in the interviewing process, because of the lack of experienced recruiters.

These firms had the concept backwards: Strong partners should do the initial screening at the law schools and decide who to invite to the firm for further interviews; associates should be involved in the interviewing at the firm, since law students will most closely relate to their experiences. But firms handicap themselves by not having strong partners out at the law schools spotting potential talent that might not be so apparent to an associate or even a new, junior partner.

In fact, one of the major investment banks has recently changed its recruiting approach to dedicate a substantial amount of time by the firm's top partners to the recruiting of entry-level professionals. Law firms would do well to follow this approach.

Check Your Hiring Profile

Law firms need to devote more effort to finding out what profile of recruit is likely to succeed at the firm. To do this, firms should examine the strongest partners over the years and try to relate their attributes to what they looked like when they came through the recruiting process. Granted, this is very difficult to predict with great certainty, but a number of law firms are now having some success with this approach.

If the firm wants to become more sophisticated in this process, it may need to turn to outside professionals who are expert in relating the successful attributes of partners at the firm to what to look for in the backgrounds and achievements of recruits.

Give Up the "Do-It-Yourself" Approach to Professional Development

Another curious aspect of law firms is their rush to bring in outside professionals to assist them in accounting matters, information technology systems, management advice, space and occupancy issues, and the like. While there is nothing wrong with this practice, when it comes to their most valuable assets--lawyer talent--they take a "do-it-yourself" approach. Their human resource directors are almost always channeled into dealing with support staff, and only a few of the top firms bring in outside professionals to help with ways to develop and retain talented professionals.

This approach may exacerbate the attrition of associates, and sometimes partners, in America's larger law firms. Associate attrition rates are now approaching 28% per year. It is time for law firms to realize that there exists a significant body of knowledge about how to motivate, mentor, and otherwise develop highly educated and talented people, other than continually raising their salaries and bonuses.

One encouraging sign is that a number of major law firms have established a position called, professional development director and are hiring individuals who have access to the research and know-how needed to motivate and develop true professionals.

Balance the Ratio of Inspirational Partners to Associates

Law firms with ratios of one partner to one associate or of one partner to two associates often are puzzled by why their associates complain about lack of feedback, personal attention in training and development, and general unhappiness with their professional lives. If each partner has to pay attention to only one associate, or perhaps two, why do the associates feel so isolated and uncared for?

Firms must recognize that not all partners are skilled at mentoring and other methods of inspiring and developing young lawyers. In fact, most firms are finding that a majority--sometimes a significant majority--of the partners lacks these talents.

If a firm wants to look at ratios, it should compute the ratio of inspirational partners to associates. This ratio can be as high as 10-to-one in law firms. These are the partners who are passionate about their practice, their clients, and their profession. They care about the young lawyers who are entrusted to them. And they communicate their passion and caring, albeit often subliminally, to their prot©g©s.

If there is only one partner of this sort for every 10 or more associates, it is not surprising that associates are unhappy, feel uninspired, and depart after a short tenure at the firm.

The lesson for law firm leaders is to make certain that these inspirational partners receive the support and recognition of the firm. A little compensation boost would not hurt either, even if the particular partner does not happen to be a significant rainmaker.

Break the Associate Lock-Step Compensation System

Law firms may be the only sector outside of government that still promotes and rewards people from year to year solely by time in grade. Indeed, even governments have an element of performance in their systems.

A number of observers of the law firm scene and some law firms are now moving away from the associate lock-step compensation system. See, for example, Donald S. Akins' "Pay Them Well and They'll Leave," in Legal Management, (September/October 2000). In its stead, they are installing performance criteria that an associate must satisfy before he or she can move to the next level. Movement is accompanied by increased compensation and higher billing rates. This approach recognizes that human beings develop professionally in different ways and at different rates of speed. It also forces the firm to focus its efforts on evaluation and feedback. And it makes sense from the standpoint of clients, who can understand the rationale of higher billing rates being connected to performance benchmarks.

The Lesson: Keep Hiring and Developing Talent During a Downturn

Law firm leaders face many challenges during a business downturn. Their partners will put pressure on them to reduce expenses, slow bold moves, and cut back on hiring. Subtler will be the resistance to new approaches to professional development of associates. The notion will be that associates have fewer opportunities in a downturn, so we should not worry about them being unhappy or leaving. "They are lucky to have a job here!"

Once again, as in the '90s, some firms will pay a talent price for this short-term view. The law firms that take the long view and continue to invest in talent development will flourish when the war for talent meets the next business upturn.