This Is What I'm Thinking

A Dialogue Between Partner and Associate

Editor's Note: All too often, law firm partners and first-year associates fail to communicate effectively with one another They come from different generations, have different agendas, worry about different concerns. And there never seems to be enough time to talk about anything other than the work at hand.

Perhaps the following two articles will help. The first is written by a partner in a large firm. He tells associates how to achieve success. The second is written by a former first-year associate who is now an educator She tells partners what their new associates need to be successful.

. . . From the Partner

by Mark Hermann

Welcome to the firm.

I wish that I had the chance to speak to each of you, our new associates, individually when you joined our firm. With more than 50 members in this year's entering class, however, you will have to excuse my lack of collegiality. I was pleased nonetheless to be invited to speak to you about how to succeed at our law firm. I present, for your entertainment, 'The Ten Most Common Mistaken Assumptions Made By New Lawyers."

Please turn down the lights so that everyone can see the slides. We start with number 10 on the hit parade.

10. So long as it is clearly marked "DRAFT," no one will care if it is incomprehensible.

When Robert McNamara was Secretary of Defense, a young aide brought McNamara a memo. Two weeks later, McNamara summoned the aide into his office and demanded: "Is this the best you can do?'

The aide apologized profusely. He revised the draft for more than a week, and left the new version on McNamara's desk. Two days later, McNamara again called the aide: "Is this really the best you can do?'

The aide apologized even more profusely this time. "Oh, no, Mr. McNamara, it's not the best I can do. Let me get you another draft."

The aide worked furiously on the memo all weekend. He polished the draft until it glittered. On Monday morning, the aide left his jewel on McNamara's desk. That afternoon, McNamara called again: "Do you really mean to say that this is the best you can do?'

The aide exploded. "Yes, dammit, that's the best I can do! That's the best I can do! What do you want out of me? That's the best I can do!"

(Please turn to page 8)

. . . and From the Associate

by Myriam E. Gilles

Doing well on the LSATs, getting into a top law school, acing exams, and landing a job at a premier law firm is the easy part. The hard part is being a first-year associate.

You walk into your firm feeling that you have finally made it; everyone treats you like you have. Nice office, network computer, secretary, keys to a desk (which must mean that you will someday be the keeper of important documents). New suits, ties or pantyhose, fancy shoes. You are a working, productive member of society. You are important. You are an attorney.

Then the reality sets in.

Everyone seems to think that you know how to practice law, but you have no clue what is going on. You have never done a document review. You do not even know what that means. You have never written a memorandum of law; except for Moot Court, you have never written a brief. You have never litigated anything. You feel like a fraud.

The sexy image of being an associate and the reality of knowing nothing about how to practice law are on a collision course. And if a crash occurs, the first year of associate-dom becomes a nightmare of insecurity and frustration. In clinical terms, this is called cognitive dissonance, and it can lead to feelings of self-doubt, confusion, and shame. In layman's terms, this is called a living hell, and it can lead to sleepless nights, ulcers, and thoughts of running away to join the circus.

Based on my experiences and those of many friends who have made it through the first year, here are four ways that a firm can help its new associates forget the circus and join the ranks of productive lawyers.

1. Take a New Approach to the First Assignment.

Associates all have different war stories to tell about their first year, but they share one common experience: The First Assignment.

(Please turn to page 12)

...From the Partner

(Continued from page 1)

McNamara nodded. "Okay. Now I'll read it."

That's a joke.

sort of.

The single most important rule for a new lawyer, like the single most important rule in life, is the Golden Rule: "Do unto others as you would have them do unto you." Think about everything that you do from the other person's perspective. From my perspective, I want to read a memorandum that is focused, easy to read, and intelligent. I want to be able to forward the memo to the client without any revisions at all. I want you to write briefs that we can sign and file. I have no interest in redoing your work.

From your perspective, you should want the same thing. You should want your work to be impeccable. To succeed at this law firm, the most important thing that you can earn is trust. If I trust you, then I will ask for your help on my cases. If everyone else at the firm also trusts you, then everyone will want your help. You will be offered the finest work available, and you will be able to pick and choose the most interesting projects. You will select the projects that give you the most responsibility. Your career will skyrocket.

I know when I trust you. Trust is not something that I think about once a year when I fill out an evaluation form. When you tell me that there is no case on point, but I go to the library and find the case, you lose my trust. When the opposing brief comes in citing devastating cases that you never warned me about, you lose my trust. When you cite the trial court decision without mentioning the later appeal, you lose my trust.

When you hand me a memo and I find myself immediately heading to the library to reread the cases that you have discussed, our relationship is beyond salvation. If I do not trust you, our professional relationship serves no purpose. I will ask other new lawyers for help. If you do not have the trust of senior lawyers at the firm, you cannot possibly succeed.

I understand that no new lawyer wants to tell me what the aide finally told McNamara: 'This is the best I can do." What if this is the best that you can do, and I still think it is garbage? You would rather hand me a "DRAFT," so that if I say it is not good, you can disavow it.

I see this routine all the time, and it frustrates me. The lawyer tells me: "I didn't have much time to do research. Here are two cases in the area. I didn't Shepardize them or do any exhaustive research, but I thought you'd like to see what I found." You would rather hand me two cases and an apology than a memo that draws a conclusion that you cannot disclaim.

Keep it. Stuff it. I don't need garbage with an apology. I need answers. Someone has to figure out the answer. Someone has to take responsibility for the answer. If you did not do the research, then I have to do the research. But the reason I asked you for help in the first place was to avoid having a high-priced partner do the research. Give me an answer; don't give me shoddy work coupled with excuses.

I will forever associate your face with the quality of work that comes under your name. If I associate your face with lumps of coal, I will not ask for your help on other cases. You will not create an internal market for your work, and you will have no chance to pick from among the many assignments that might have been offered to you. Your experience will be limited, and you will not grow as a lawyer.

I make no promises that you will succeed at this firm. Your very best work may not impress me; it may not impress other lawyers at this firm. But I guarantee you that a miserable first draft, accompanied by excuses, will not impress anyone. Give yourself a chance; make lawyers associate your face with diamonds, not coal.

Also, while you are mining those diamonds, think about my schedule. When your secretary waits until five minutes before quitting time to type the first drafts of those three letters you have been waiting for, you will (legitimately) want to shoot him. Why does he put you in a situation where you cannot conveniently achieve your mutual goals? You want the letters to go out today; he wants to go home on time. Why has he made these two goals mutually exclusive?

I feel the same way about you. If the brief is due on Monday, do not deliver a first draft to me at 7:00 on Friday night. What will I think? "This jerk has decided to blow up my weekend so that I can review this and put it in final form." If there is any chance that your draft will require substantial revisions-and I promise you, there is-deliver it early. That is the only way to ensure that you and I can perform our work on a mutually convenient schedule.

Finally, if you are not working on a project that I have given you, warn me immediately. Some night at midnight, you will be dismayed to learn that our word processing department has not yet begun typing the brief that you left there at 4:00 in the afternoon. You will think: "If they weren't doing the work, why didn't they at least tell me that they weren't doing the work? Then, I could have found some other way to get it done."

So, too, when you do legal research for me. If you are not doing the research, tell me immediately. I will find some other way to do the work. If you wait until the last minute to tell me that you have not done the work, we are out of luck. That is no way to run a law firm, and we do not run ours that way.

9. They want me to bill a lot of hours, so why not?

At this law you have no obligation to bill time.

I repeat: You have no obligation to bill time.

You have one obligation: Represent our clients as effectively as possible at the lowest possible price. Write briefs with the logic of Cardozo and the eloquence of Shakespeare. Produce that

work instantaneously; record no time to write that brief. If it takes you 15 minutes to produce perfection, you may then, grudgingly, record 15 minutes on your timesheet. If, because of your human frailty, it takes you 30 minutes, then you may (with even more regret) write down an additional 15 minutes.' To my eye, if you were the perfect lawyer, you would produce outstanding work at minimal cost.

When I think of someone "billing time," I think of how my children used to practice the piano. They are good kids; they dutifully billed 30 minutes sitting at the piano every day. 'They checked the clock five or six times during those 30 minutes to see if the half hour was over yet. They went to the bathroom three or four times during the half hour. They asked me two or three times if I would help them practice, trying to induce a long discussion with me on each occasion. Finally, when 26 minutes had passed, they started asking if they could skip the last few minutes, just for today.

That was not learning the piano; that was billing time.

I feel the same way when I hear new lawyers tell me that they are oppressed by the number of hours they must bill. If you ever feel the need to bill long hours, then please find another law firm to employ you. Your only obligation at this firm is to pursue the client's cause; "billing hours" is not on the agenda.

The entire concept of recording time serves only three purposes. Originally, clients wanted to double-check legal bills. Bills historically contained no information. They simply said, for example, "$10,000 for legal services rendered." Clients insisted that lawyers reveal their time so the propriety of the fee could be double-checked.

Today, I view the practice of recording time solely as an administrative chore. Relatively few people and corporations in the world are willing to help you and me pay our mortgages and put our children through school. Those few people are our clients. We must allocate our overhead and our profits among them. By accounting for time, we are able to approximate, however crudely, the value given to each client. The amount of time spent working for a client is a starting point for allocating our charges fairly and efficiently.

Additionally, we need some institutional way to know who is busy and who is available to work on new projects. By collecting time sheets from our lawyers, we are able to judge who is available to help with new work.

Apart from those functions, however, billing time serves no purpose at all. If you ever come to work with the idea of billing some hours, rather than helping a client pursue its interests, just go home. The client does not need your help; we do not need your help.

Learn how to play the piano; don't bill time.

8. Forget the facts; just research the law.

It is impossible to answer a legal question without knowing the underlying facts. Without the facts, there is no legal question to be answered. With the facts,

legal questions exist, and they all have answers. On occasion, the correct answer is: "It's a toss-up; no one can predict how a court will rule on this issue." But every question has an answer, and every answer is tied to the facts.

It goes without saying that you must pay close attention to the facts of our client's situation. Be sure that you understand the relevant facts before you begin legal research.

It is equally important, however, to pay close attention to the facts of the cases that you rely upon as precedent. I am sometimes surprised that new associates overlook the facts of cases that they are reading.

First, pay attention to the judicial facts. You must know whether you are reading a case that comes from a state court or a federal court. You must know whether you are reading a trial court opinion or an appellate opinion. I will confess here, publicly, that I did not realize until I began a judicial clerkship that the Federal Supplement contains only trial court opinions and that the Federal Reporter contains only appellate decisions. Now, you don't have to admit if you were equally ignorant; that gem is yours to keep.

Second, pay attention to the geographic facts of the case that you are reading. For example, if I am litigating a case in federal court in Cleveland, I want to rely on local precedent. We would prefer to be able to write in a brief that the Supreme Court of the United States or the Sixth Circuit has squarely addressed the relevant issue.

If the local appellate court has not spoken, however, beggars can't be choosers. If a judge in the Northern District of Ohio has spoken on the question, we will gladly cite that case. We will explain that "this court" has already addressed the issue.

If we find only two helpful federal cases from California, we will write that "federal courts have addressed the issue." If we have only trial court opinions from state courts in places you have never heard of, we will say: "Indeed, many courts have held . . . ." You cannot write a brief without knowing the geographic facts of the cases that you are relying on.

Beyond pure geography, certain courts are known for particular expertise. This also can influence word choice in a brief. For example, if the Second Circuit has decided a question of securities law, we might emphasize the identity of the court in our brief. Similarly, we might mention the District of Columbia Circuit by name when discussing an administrative law issue.

Finally, you must be aware of the temporal facts that affect the strength of the case that you are reading. Evidence cases from before 1975 can be dangerous precedent because the Federal Rules of Evidence were promulgated in 1975. Ethics cases from before 1983 can be dangerous precedent because the Model Rules of Professional Conduct began to replace the Model Code of Professional Responsibility in that year. As you practice, you will learn more of these relevant dates and facts. Be attentive to the need to learn these dates, and be sensitive to the dates when you are reading cases.

7. Forget the facts; just say what the case stands for.

The holding of a case is what the trial court did. All the rest is just old men in nightgowns talking.

I am constantly shocked by the penchant of new lawyers to talk about cases without having any idea of what the case held. For example, a new lawyer might say that Roe v. Wade held that there is a Due Process right to abortion during the first trimester of pregnancy. Wrong. The holding of Roe v. Wade affirmed a decision striking down a Texas criminal abortion statute as unconstitutional. All the rest is just an explanation of that holding.

For any case that you and I discuss, I expect you to know the holding and the procedural posture of the case. In the trial court, the holding will ordinarily be that the court granted or denied a motion, sustained or overruled an objection, or entered a judgment after a jury or bench trial. An appellate court will act on what the trial court did. Ordinarily, the appellate court will affirm, reverse, vacate, remand, or take some combination of those actions. You must always be able to describe the procedural posture of a case and the precise holding in both the trial and appellate courts.

Why? When we discuss cases in briefs, we want to rely on the most persuasive authority in the most persuasive way. The most persuasive authority is a case in which the trial court did what our opponent is seeking here, and the appellate court reversed. By discussing the holding of that case in our brief, we tell our trial judge that he could do what the other side wants him to do, but that the appellate court would reverse. This threatens public humiliation; judges do not like to be reversed. Accordingly, if a precedent contains the implicit threat of reversal, we use that threat (gently, of course) when we discuss the case in a brief.

The second most persuasive precedent is a case in which the trial court did what we are asking the trial court to do in our case, and the appellate court affirmed. In that situation, we can give the judge a safe path to walk. We tell our trial judge that if he does what we are asking him to do, he will not be reversed. There is no implicit threat here, but there is at least a guarantee of affirmance.

The least helpful case is one in which a court simply discusses an issue in obiter dictum-an alternative holding or a true aside. If that is the best case that we can find, we will, of course, cite it. When we cite it, however, we will be aware of the fact that it is not a particularly persuasive precedent.

In the end, we cannot even think intelligently about a case until we understand it. We can understand a case only by studying its holding.

6. **Who needs books? This handy computer will give me a case on point.**

You will forgive me if I start to foam at the mouth here.

Most new lawyers begin their legal research by turning on a computer. This is almost inevitably wrong. When you work for me, do not begin your research with a computerized database unless I expressly tell you to do so.

Why am I crazy about this? First, you cannot find the needle without first finding the haystack. Suppose we told a stranger that I was located somewhere in the universe, and we asked him to find me. The stranger should not start looking in random locations to see if I am there. Instead, he should try to get a general sense of where I might be.

The stranger should begin his search by looking in the direction of the Milky Way. From there, looking in the solar system would narrow the scope of the search. If the stranger then looked on the third planet out, he would be warmer still. From there, the search should be narrowed to the Northern Hemisphere, Ohio, Cleveland, and this room. Our stranger might then have a relatively good chance of finding me.

If you are looking for a particular legal authority, you should not begin by looking through the entire universe of cases with the hope that you may find what you need. First, you should read a secondary source (such as a chapter of a good treatise) to learn the general contours of the relevant area of law. Next, you should look through the descriptions of cases found in the digests. By flipping through scores (or hundreds) of case digests, you will develop a sense for this area of the law. Then, read in their entirety the cases that appear to be most relevant. Only then, after you know the location, size, and shape of the haystack, are you able to search intelligently for the needle. Turn on the computer to complete your research.

If you begin your research in some other way, I will catch you. I have lived too long for you to fool me (at least about legal research). If I ask you to help with legal research, and you return a half-hour later insisting that there is no case on point, I will know that you used a computer instead of doing true research. I will go to the library, skim a treatise, read the descriptions of cases in the digests, read the relevant cases, and find the precedent that we need. I will also think about having some other lawyer help me with my next case.

Thirty days later, our financial department will tell me that I am supposed to charge our client thousands of dollars for the time that you wasted on a computer. I will have to decide whether this cost can properly be charged to the client. After I make that decision, I will decide never to work with you again. The internal market for your work just shrank.

This does not mean that I oppose the use of computers for legal research. To the contrary, I believe only that research should rarely begin on a computer. I

believe just as fervently that research is never *finished* until a computer has been used. After you understand the relevant area of the law and have read the relevant cases, it is imperative to use a computer to find cases that cannot be located through the digests.

When a case is digested, a human being reads the case and thinks about it. That human being—the digester—is imperfect. Some cases will therefore not be digested under all the relevant key numbers. Cases that are digested incorrectly vanish under the key number system.

At other times, the structure of the digesting system will itself lead to errors. For example, for many years (and perhaps still today), West Publishing had a rule that criminal cases could be assigned only criminal key numbers. If a criminal case decided an important issue of general application, West nonetheless insisted that the case not be given any civil key numbers. A leading case that discussed "standard of review" might thus be found only under criminal digest numbers. When doing research in a civil case, you might not think to look there. It is not possible to find all the relevant cases without using computers.

It is equally impossible, however, to find all the cases by relying exclusively on computers. Computers cannot, for example, effectively search for complex expressions that use common terms. If the plaintiff waived his right to a jury at the first trial, is he permitted to demand a jury at the second trial? This issue might prove very difficult to research on a computer.

Similarly, the existence of many synonyms for a word might cause a computer search to be incomplete. For example, a court might refer to the "boy" who stands at the center of a case as the "minor," "child," "juvenile," "youth," or "infant," among other possibilities. Unless you are able to think of every possible synonym, your computer search will not be complete.

Finally, simple typographical errors can hide cases from a computer. I know firsthand that several years ago there was only one case in America that found a claim of unconscionability to be barred by the doctrine of laches. The case was unpublished, so it could not be found in the digests. And the case could not be located by a computer search unless you thought to misspell the legal doctrine as "latches."

I have also tried to research the legal doctrine that "the law disregards trifles" or "*de minimis non curat lex*." Unless you substitute the letter "u" for an "i" or two in the word "minimis," your computer will miss relevant authorities.

Use computers to finish your research. Use computers to find recent cases. Use computers to look up opinions written by a particular judge. But do not use computers as the first step for typical legal research.

5. Once I get the general idea, I don't really have to read all of those cases.

You do have to read all of the cases. Moreover, you should be grateful for the opportunity.

Collective Eyes and Ears

First, by reading all of the cases in a field, you learn all of the legal tentacles related to our primary concern. You discover new ideas for legal research and stumble across other paths that must be pursued. Because you are likely to be the only person on a trial team who reads many of the cases, you serve as our collective eyes and ears.

Second, if you do not read all of the cases, we are likely to be confronted with ugly surprises later in the life of our case. There will be some precedent out there that you did not read, and that we do not like. We avoid ugly surprises only by having you thoroughly explore the landscape.

Third, you have one main job as a beginning associate: Be a sponge; soak up the law. You will have only a scant year or two when you have the luxury (though it may feel like a curse) of time—time to read many cases closely. This is your short opportunity to learn the law.

After you have done legal research in an area, you should be our resident expert on that topic. If anyone else has a question in the area, you should have an intelligent answer off the top of your head. You should have considered the various issues discussed in the cases, decided which cases were right and which were wrong, learned what the law is, and decided in your own mind what the law ought to be. If you do any less, you have not used your legal research project as the gift that it is.

When you are doing legal research for me, do not worry about the time that you spend. Within extremely broad limits, you are welcome to do as much legal research as needed for you to absorb the relevant area of the law. The question of how much we charge a client for your time is my concern; I will discount a bill as needed to be fair. Your only duty is to be a sponge, soak up the law, and become a valuable resource. Spare no effort in doing so.

I have one secret to share with you. No one has ever failed to make partner at this firm by being too conscientious. When we make partnership decisions, we consider, in large part, whether we would be concerned if you were representing the other side in litigation. If you are indispensable, we will keep you. If you are not indispensable, you will be at risk. And you make yourself indispensable by knowing more about the facts and the law than anyone else. Take your time and become indispensable. I will watch out for the bill.

Twenty years from now, people will value your insights because of the cases that you have read and understood and the judgment that you have developed as a result. Now is the time to transform yourself into a lawyer who will be treasured. Don't waste the opportunity.

4. Once I get the general idea, I don't really have to read the whole case.

To understand a field of law, you must read all of the relevant cases. You also must read those cases in their entirety. We must know that the cases that we cite stand for a helpful proposition. We must also know, however, that those cases do not hurt our client's position in some other way. Our client is not happy if we win the motion because of the holding that you found in footnote 6, but lose the case because of the holding that you missed in footnote 8.

When we write a brief, we try to discuss the holdings of relevant cases in a logical and persuasive way. We do not string together a selection of sound bites culled from many cases, and we do not ignore contrary holdings scattered among the sound bites.

Read all of the relevant cases; read those cases in their entirety.

3. Topic sentences? Syntax? Grammar? That's stuff I didn't bother with in high school.

Edit yourself. If you do not edit your work, I will be forced to do the job. Your time is cheaper than mine, so you should be doing the editing. Not only that, but I will prefer to work with new lawyers who produce work product that

is flawless. Unless you edit yourself, there will be less of an internal market for your services, and your selection of work will become limited over time.

After I write a brief, I go back and reread it, concentrating solely on matters of style. I read each paragraph to see if it has a topic sentence. I read each sentence to be sure that it is no more than three and one-half typed lines long. (The average reader can keep the beginning of a sentence in mind for only three and one-half typed lines. If the sentence runs on for five or six lines, the reader will lose his thought and be forced to go back and reread the beginning of the sentence. This is no way to persuade.)

I read my work to shorten paragraphs. I read my work to delete the passive voice. I read my work to delete the verb "to be." I read my work for word choice, to try to select more interesting words. I read my work for typographical and grammatical errors.

When you draft a brief for me, your work will eventually become our work. As between the two of us, there is no reason for me to have more selfdiscipline than you have. You should be able to edit as closely as I can. I expect you to do so.

2. I was asked only one little question; there is no reason to fret about that other stuff.

There is no such thing as one little question. You cannot answer a legal question without knowing the context in which it is posed. You must therefore be sure to understand the context of all of the work that you are doing.

Do not count on me to give you that context. I might spend three days preparing for an important deposition, two days preparing for an appellate argument, or one day preparing to meet with a client. How much time will I spend preparing to ask you for help with legal research? Most likely, very little. It will strike me that we need some research, and I will pick up the telephone. I will not have prepared to give you the assignment intelligently, so I will butcher the task. I will accidentally leave out relevant facts and include unnecessary information. After I describe the project, you will not be able to understand what you have been asked to do. In this situation, you are not simply permitted to ask questions; you are required to do so. I will give you the assignment intelligently only if you insist.

Moreover, the best young lawyers in this firm are itching for more responsibility. They are not happy with writing a research memo; they want to write the brief. They are not happy with writing the brief; they want to argue the motion. They are not happy with arguing the motion; they want to try the case. They are not happy with trying the case; they want to have overall responsibility for the client.

I have no quarrel with this attitude; it is essential to succeed in the practice of law. The only way to move up this ladder, however, is to be able to take on more responsibility on any given case. You cannot take on additional responsibility if you do not understand the context of the issue that you are working on. Insist on learning that context; it is good for you, the client, and the firm.

1. A new lawyer is a potted plant.

I saved this as the single most common mistaken assumption made by new lawyers.

When you work with me, you can make yourself valuable or you can make yourself irrelevant. If I send you a draft brief and you do not comment on it, I will not send you the next draft. There is no reason to waste time running unnecessary copies. I would rather send the draft to a new lawyer who will make intelligent suggestions. That lawyer will be creating an internal market for her services; you will be dying a slow death.

Take responsibility. I am delighted to see work move from my desk to yours. If you do the work that you are given, and do it responsibly, the trickle of work that I assign to you will become an avalanche. That avalanche is opportunity; use it.

As to every project that you touch, learn it better than anyone else in the world. Understand the client; understand the case; understand the law. When everyone is turning to you for advice, you will finally have become a lawyer.

You are not a potted plant. You are valuable, and you can make yourself even more valuable. Prove to the firm that you are indispensable. We can be convinced, and it will open a world of opportunity for you.

Welcome to the firm. I look forward to working with you over the next few decades.

Mark Herrmann is a partner in the Cleveland office of Jones, Day, Reavis & Pogue. The views expressed in this article are those of the author and not necessarily those of his clients or firm.

...From the Associate

(Continued from page 1)

It is your first or second day at the firm. You have admired your new office, said hello to your secretary, and filled out myriad forms. The most difficult thing you have done is compute how many deductibles to claim on your W-2 form.

Suddenly, the honeymoon is over. There is work to be done.

You are called to a partner's office to receive The First Assignment. It takes you ten minutes of walking through the carpeted, serpentine hallways to find the office to which you have been summoned, only to be told by a secretary that the partner is on a call and you must wait. You make small talk with the secretary, gushing about how much you have enjoyed your first few hours at the firm. You imagine that she sees through your too-cheerful chitchat, that she senses your fear and confusion. Just then, her phone buzzes, and she tells you to go in.

You walk into an office six times as large as your own, filled with 18 times as much paper-all of which, no doubt, is vital to some ground-breaking litigation. The partner smiles warmly and beckons you to sit down. She asks you how you like the firm so far, and you repeat your spiel about how happy you are and how nice everyone seems. Your practiced speech is cut off, however, when the secretary reappears and hands you a large stack of still-warm, recently photocopied paper. You wonder immediately whether you will actually have to read all this, or whether it is just some sort of lawyer's prop.

The partner, suddenly all business, begins to tell you about the case on which you will be working. She starts somewhere in the middle of a story about an agreement for sale of a business; then, noticing your look of complete confusion, she starts again. She tells you a little about the client, but forgets to mention what business the client is in. She tells you a little about the lawyers on the other side and a case she had against them three years ago. You wonder whether the prior case has any relevance to the present litigation.

Because it might, you take notes on everything she says.

Almost in mid-sentence, the partner shifts gears and tells you about how long the case has been in the office and how it was dumped on her when another partner left the firm. Being naive and apolitical-at least at this point in your tenure-you are not quite sure what to make of this information. You write it down anyway.

The partner mentions that other, more experienced associates have also been assigned to the case, and you feel a momentary rush of hope. Perhaps someone with less paper in her office can explain things to you more slowly. But you have no idea what the "working group list" is or where to find it in your small mountain of paper.

Apparently believing that she has now, given you sufficient background, the partner returns to the subject of the sale agreement. She speaks quickly. You try to write down everything, but you discern only words that seem vaguely familiar: contract, breach, damages. Suddenly, she is silent and looks at you expectantly. You smile and nod, unsure what reaction she is looking for. Luckily-or perhaps not-the large phone on her desk buzzes and she takes what is clearly an important call. You stand up with your two-foot-tall stack of paper. As you struggle to open the door, she calls out for you to 'feel free to call with any questions." But then she adds ominously, "You should find all you need to know in those papers." Right. Sure. Great.

What happens next differs from associate to associate. Some go back to their offices and sob silently into the sleeves of their brand-new suits. Others, perhaps those with more confidence, head straight to the library and begin working on The First Assignment, without any clue of what The First Assignment really is. These associates often are not seen for the remainder of the first year. Still others-at least, I have fantasized that such people must exist-leave the partner's office, walk to the elevator, and exit the building, never to return.

But all associates are overwhelmed by confusion, self-doubt, stress, anxiety, and a tinge of anger when they receive The First Assignment. After all, brand new associates know nothing about actually practicing law. So why did that partner assume that you knew how to litigate? Why did she speak to you as though you were as intimately involved with the case as she is? And why, after 30 minutes in her office, did you leave knowing so little about what she wants you to do?

At this point, a small bell goes off in the associate's head; "I've been here before," the associate thinks. Remember the first year of law school? You had no idea about what you were supposed to be doing, what the professor was talking about, and what exactly he wanted from you. Perhaps, like the first year of law school, the stress-producing confusion of first-year associate-dom is meant to weed out those who "can't cut it"-and to toughen up those who can. Or maybe, like first-year law students, first-year associates are bound to endure some level of panic and stress because they are in a new environment, being judged by new standards.

Clearer Communication

But just as law schools are beginning to recognize that the traditional first-year trial-by-fire may not be the most efficient-let alone humane-method of educating law students, so law firms should reconsider the treatment of first-year associates. There are basic categories of information and certain methods of conveying that information that would give first-year associates a far better sense of what they are supposed to be doing and how they are supposed to do it.

Of course, the moral of the "story" recounted above is that partners should communicate assignments more clearly to first-year associates. But what exactly does this mean, and how can it be accomplished? I asked a number of second- and third-year litigation associates at different law firms in New York, Chicago, and Los Angeles what they wish they had been told about The First Assignment. Most said that they had not been given enough background about the case, and confessed that they felt stupid asking what seemed like basic questions. A few associates (mainly law review types) complained that they had no idea how much time to devote to a particular research assignment. Not surprisingly, they often ended up writing Corbin-like volumes on even trivial or simple issues. In general, the associates polled believed that they could have been better first-year associates had they simply been given more information.

One associate recalls that on her first day at a large New York firm, she was told by a partner that she was to help out on "a brief." She diligently read the prior pleadings in the case, researched and wrote memoranda on various issues, and even participated in conference calls and meetings with the client. She viewed herself as an important part of the "team" and felt lucky to be working on a case that enabled her to have so much input. Then, a month or so into her tenure as a first-year associate, a more senior associate asked her what she was working on. She responded with the client's name, and even rattled off the now memorized client-matter number. But when the senior associate asked her what kind of brief was being filed, the first-year sat in stunned silence, trying desperately to stave off the fear that slowly crept up her spine. Summary Judgment? Motion to Dismiss? The first-year associate had no idea what kind of brief she was working on. And, as she thought about all the research she had done and all the memoranda she had written, this first-year's heart began to beat wildly: What if all her research was worthless because of the procedural posture of the case? What if all the cases she had found were completely off-point?

Telling this story, now two years after the fact, this associate's eyes fill with the same fear she must have felt that day. This fear-unnecessary, counterproductive, and silly as it may seem-is an overwhelming part of life for first-year associates. They are afraid to ask questions, lest they look stupid; afraid to not ask questions, lest they do something wrong; afraid to act afraid, lest they appear human. Indeed, the associate who did not know what type of brief she was working on admits to being so full of fear that she never actually got up the nerve to ask the partner this very basic question. (She finally saw the title of the brief on an early draft in a recycle bin. It was a Motion for Judgment on the Pleadings.)

It is not enough simply to ask that those responsible be clearer and more forthright in giving The First Assignment to first-year associates. Instead, firms must establish a better procedure for conveying information to the new recruits. The Socratic case method of teaching law provides a useful analogy for finding what this "better procedure" might be.

Law students are expected to read a vast number of cases without understanding, at least at first, what they are

looking for. In class, the professor focuses on a single case and questions individual students about various aspects of the court's legal analysis. She posits hypotheticals and alternative arguments, and asks for the students' analyses of these. Finally, if the method works, surdents come to understand not only the substantive law, but also the different components of a case and the various ways of conducting legal analysis. Through this method, law students are slowly taught to "think like lawyers."

Law firms should establish a similar method of acclimating first-year associates to the practice of law. Information about the assigned case should be communicated to first-year associates in installments, not in bulk. And the first-year associate should play an active role in figuring out the significance of the information he receives.

The first step involves a senior lawyer writing a short synopsis of the procedural and substantive history, open issues, and strategy of the case. All documents referenced in this descriptive memorandum should be attached, like exhibits to a motion. The assignor tells the first-year associate to read through the packet of information carefully, to reread it, and to write down any questions he might have.

Next, the assignor answers the first-year associate's questions. These answers may well lead to more installments of information, more questions, and more answers. Only when it appears that the first-year associate has an adequate understanding of the case should the assignor give the associate a written description of the assignment, Accompanying the assignment should be an approximate date of completion and a suggested length in terms of pages or time spent.

This installment system should be used until it is no longer needed for the associate's development. Over time, as the first-year associate becomes more comfortable with the history, facts, and issues of a particular case, the installments will no longer be necessary. Similarly, over time, the first-year associate will become able to approach a new case with a better understanding of what questions need to be answered at the outset. The installment system will have accomplished its purpose.

Partners should not bemoan the additional time and work required to provide a first-year associate with these installments of information. In the long run, the firm will save time and money.

Writing the synopsis of the case will itself be a productive expenditure of time. It will force senior litigators, who have perhaps become overly involved with the details of the trees, to step back and describe the contours of the forest.

In addition, because the associate will not know, at first, what he is looking for or what his assignment is, he will approach the information with an open mind. The questions he will ask after reading the synopsis of the case -may themselves be useful to the senior litigators because the associate may spot previously unnoticed issues or problems (i.e., "from the minds of babes").

Finally, as these questions are answered, as more documents are read, and as more knowledge of the case is gained, the first-year associate will become more comfortable speaking and thinking about the issues in the litigation. When the assignment is finally revealed, the first-year will be primed to work through the issues efficiently.

Another important aspect of this system is that the final installment-the actual assignment-clearly identifies the issues that the first-year associate is expected to research, the date the assignment is due, and approximately how long it should take. Of course, the estimated expenditure of time can only be a rough guess; legal research is not an exact science, as one issue often tends to lead to another. But giving a first-year associate some sense of what is expected of him is far better than allowing the associate to try to figure it out for himself.

The installment system should go a long way toward reducing anxiety among first-year associates. Most first-years want desperately to do good work and to be helpful to the attorneys they work for; most long to feel that they are part of a team and that they have a good grasp of the issues in the litigation. Just as important, most first-year associates are bright, ambitious, and accomplished people who are completely unaccustomed to doing poorly or, even worse, not knowing what they are doing at all. It is therefore not surprising that first-year associates are frustrated when they do not understand an assignment or cannot even grasp the issues.

Implementing the installment system means that some additional burden will be heaped on the plates of senior litigators. But that's life--or, more precisely, that is the price the firm must pay to raise a better crop of young lawyers. Providing information in bits rather than in chunks may require more time and effort by senior litigators, but the result will be better not only for the associates, but also for the firm and its clients.

2. Establish or Restructure Real Mentoring Programs.

Many firms have instituted formal or informal "mentoring" programs, in which a first-year associate is assigned to a partner. The associate is invited to turn to the partner for guidance about, and answers to, all sorts of questions. The associates with whom I spoke, however, gave a universal thumbs-down to these mentoring programs. In fact, many claim not to have laid eyes on their mentor since being taken to a fancy lunch on their first day of work.

An associate at a major Chicago firm tells a particularly poignant tale about his mentor. At the end of this associate's first week at the firm, his mentor called him up and invited him out for drinks with a few other litigation associates and partners. The first-year arrived late to the local watering hole and spotted a table of loud-talking lawyers from his firm - including his mentor, whose picture he had looked up in the firm directory. Approaching the table, the first-year tapped his mentor on the shoulder to tell him that he had arrived. Without turning around, his mentor simply waved his hand and said "Sure, we'll have another round of beers." The other lawyers at the table, seeing the first-year blush with embarrassment, began to laugh. When the mentor realized his mistake, he only joined the laughter, failing to apologize or even to make room for his mentee at the table.

This Chicago associate, now in his fourth year of practice, recalls leaving the bar close to tears. For months, he avoided his mentor and all the other lawyers at the table.

This story-albeit extreme and, with any luck, unique-nevertheless highlights the problem of pairing an insecure, unsophisticated, and easily embarrassed first-year associate with a tenured, potentially insensitive, and busy partner. Under most circumstances, the power, age, and life differences inherent in such a relationship doom it to failure.

There are other problems with traditional mentoring programs. Few young

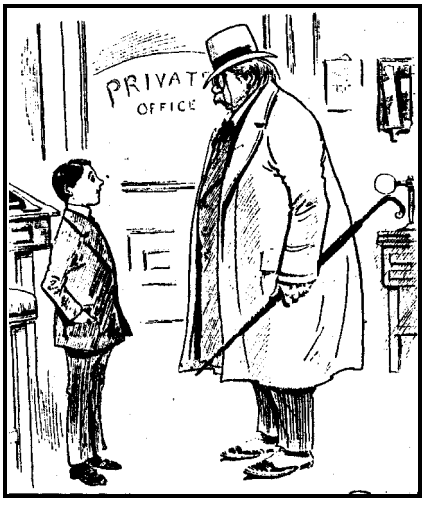
associates feel comfortable speaking with a partner during their first few days, weeks, or even months of practice-exactly the time that they most wish to ask questions. A first-year associate is particularly loath to approach a partner when the associate's questions run toward the mundane ("Should I bluebook my memos?' or "How do you use the conference call function on these phones?').

Moreover, many mentoring programs try to avoid work-related conflicts by pairing the associate with a partner from another area of practice or another department. But randomly pairing a first-year litigation associate with someone with whom he is not working on a day-to-day basis, particularly a partner in another department, does not work. In fact, it all but guarantees that the first-year will never turn to his mentor for answers to the questions that plague the associate's days and nights. There may be exceptions to this rule where mentor-partners and first-year associates share personal interests (the football team of an alma mater), but staking mentorship on this possibility is a crap-shoot.

Finally, most partners, though well-intentioned and eager to participate in mentoring programs, simply do not have the time to be real mentors for first-year associates. These partners generally start off well enough: they call their mentees, have lunch a couple of times during the first month, and try to stop by the mentee's office to "check up." But eventually, busy mentor-partners fall out of touch. The first-year associate, unsure of why he is being ignored, is bound to be disappointed. He may view it as a personal slight or, worse, as a comment on how much the firm values him. He may well feel more marginalized than ever.

But there is a solution! assigning the first-year associate to a third- or fourth-year associate mentor, preferably one who is also working on at least one case with the first-year. Because first-years are closer in age and experience to other associates, and because other associates are not viewed as power brokers at the firm, first-year associates will be less reluctant to ask questions of fellow associates. Indeed, rather than call these people mentors-a word that suggests a personal closeness and the power to guide the younger person's career-law firms should use a more appropriate term, such as "handler." A handler could field the first-year associate's questions, address her concerns, and deal with her problems, no matter how mundane or silly. A handler might read and edit the associate's memoranda and other written work product before the assigning partner does, and may advise the associate on issues of style and substance. A handler could help the first-year associate navigate the tricky political terrain of the law firm, with advice ranging from how much not to drink at the firm's Christmas party to how to schmooze the administrative staff to get things done.

Of course, the firm's commitment to promoting and maintaining the program as a priority is vital to any such handling program. For example, handlers should be allowed to "bill" time spent helping. their assignees; for this purpose, the firm might use a special matter number, akin



to pro bono or firm development. And firms might consider picking up the tab for monthly handler/first-year lunches or dinners to encourage interaction outside the office. In short, the atmospherics are almost as important as the substance of what a handler is assigned to do, and the success of any such program requires a firm to pay attention to these details.

Many of the associates with whom I spoke thought that pairing slightly senior associates with first-year associates would be helpful; in-fact, some noted that, as first-years, they regularly sought out third- and fourth-year associates to answer questions, edit memoranda, and explain the politics and personalities of the firm. A small minority suggested that third- and fourth-year associates simply do not know enough to help first-year associates. My response is that these third- and fourth-year associates would know much more if they had been given handlers during their first year.

3. Facilitate Meaningful and Helpful Client Contact.

Young lawyers yearn for client contact. Partners, on the other hand, sometimes secretly wish that their clients could never contact them at all. It is easy for partners to dismiss the repeated requests of young associates for more client contact, perhaps with the knowledge that in a few years they will be singing a different tune. But honoring these requests in an appropriate way could make associates far more productive-to the benefit of the client and the firm.

One partner at a national law firm remembers his first year being taken up, for the most part, by a massive document production. From all of the client's documents, he was to cull and produce only those relating to a single product. As he began going through the documents, one by one, he looked for any mention of the product in question. But it soon became apparent that the vast majority of the documents were written in "product-code-ese." No one had told him whether an XFN*(#!Q or a UPBIMNVF was a component of the product in question, and there was no one to ask.

Should the associate have called the partner in charge with each question? Should he have compiled a list of every indecipherable term that turned up in hundreds of boxes of documents and presented that list to the partner? If the partner could answer the questions, should the associate have returned to the hundreds of boxes with his new-found knowledge in hand? Or should he simply have taken it upon himself to call the associate general counsel listed on the "Contact Sheet," to whom he had never been introduced?

None of those "solutions" is ideal; all included unnecessary work or questions posed to those with more important things to do with their time. But the problem would have been avoided entirely if the associate had a "contact" at the client who knew the product codes and who was sufficiently junior to view the associate's seemingly endless questions as something other than an interruption.

Providing first-year associates with much-coveted client contact, in the form of a lower-level manager or a junior executive, would allow law firms to kill

the proverbial two birds with one stone. First, it would save time. The client contact would presumably be able to answer basic questions about business and internal procedures, and would certainly be able to find answers to more difficult questions far more quickly than the associate could. Second, providing a young associate with the opportunity to call someone in the client's business, ask questions, and ferret out information would be a valuable business development teaching tool: many first-year associates have very little business contact with anyone outside their firm. Picking up the phone and speaking with a client, without worrying about wasting that person's valuable time, would enable first-year associates to feel more comfortable dealing with non-lawyers and businesspeople. And as an added benefit, new connections will be forged between the firm and the client.

4. Help the Associate Adjust to Firm Life.

One of the most startling aspects of being a first-year associate is how much other attorneys think you know about being part of the work force. NEWSFLASH: many first-year associates have never worked in a formal business setting, have never had a secretary or an office, have never even seen hanging files, and have never used a photocopier that requires numbers to be punched in before the blessed thing will work. Most first-year associates are young, right out of school, eager, and probably a little wet behind the ears.

Firms generally try to acclimate first-year associates to the work environment through a half-day orientation on their first day of work. Good idea; poor execution. Rather than try to tell first-years everything they need to know in the first four hours of their careers as practicing attorneys, firms should hold all-day retreats prior to the first day of work.

First-years would arrive at their new firm mid-morning on Saturday or Sunday. (Tell them that dress is casual or they may arrive wearing a tie or high heels.) Give them the usual orientation information. And then let these new, eager attorneys spend the day practicing-and thus learning-everything from how to work fax machines and photocopiers to how to get reimbursed for late-night cab fares home from work.

Every form an associate may need should be put in a binder for future reference; every function the phones can perform should be put on a sheet of paper attached to the phone itself; and every important phone number (car services, restaurants that deliver, security) should be placed on a list somewhere in the associate's office. Someone should be on hand to explain how to fill out the tax forms and medical insurance applications, give advice about whether to participate in the firm's 401K and life insurance plans, and provide general information about compensation, bonuses, and vacation time.

But the firm's support should not stop at the purely professional. As these young lawyers struggle to acclimate to their new jobs, they are also trying to settle into their new lives. Some are decorating the apartments they will rarely see during their first year of practice. Some are trying to learn a new city-from how to get towork every morning, to where to buy groceries, to how to find a decent (cheap) place to eat dinner. Some are dealing with relationships, children, and a host of other personal issues in a new environment.

Remember that these are people who have spent the past three years in school-that wonderful place where all you do is go to class occasionally, hang out with friends, do a little reading around exam time, and watch television. The whole getting-up-early, putting-on-a-suit, and working-all day thing is new to many. And it is quite hard for some.

There is much that a firm can do to help ease the first-year associate's transition into her new life. First, big-city firms should help out-of-town associates find apartments. I mean REALLY help. Hire licensed real estate brokers, clip real estate sections, get on the Internet, look in the obituaries for recently vacated apartments. In some cities (New York comes to mind) finding an apartment is such a daunting, difficult task that many associates never really recover from the experience.

One associate, born and raised in the Midwest, told me the story of arriving in the Big Apple a few days after taking the bar exam. She stayed at a hotel while she looked for an apartment with a broker whose name she found in the newspaper. Knowing nothing about New York City apartments, this associate told her broker that she wanted to spend about two to three hundred dollars a month. . Not surprisingly, thebroker took her to a relatively dangerous area on the upper, upper westside of Manhattan, where she was shown a series of dilapidated, roach-infested, noisy apartments in buildings surrounded by crack dens.

This associate was not naive, but she also realized that she had never seen the apartments of other associates at the firm. Maybe they all lived like this at first? At least until their student loans were paid off?

(You can sleep easy tonight; the story has a happy ending. The associate was fortunate enough to call a friend who told her to keep her head down to avoid stray bullets and to get out of there. Two weeks later, she was comfortably ensconced in a studio apartment-more expensive, of course-six blocks from the firm.)

There are too many stories like this one to recount them all here. The point is that some associates need all kinds of help-from finding apartments, to buying a bed, to figuring out how the public transportation system works. Firms should provide this help through the recruitment coordinator or some other accessible person. Out-of-town associates will arrive in a new city-often alone and knowing no one-before they start their jobs; they need immediate help finding shelter, clothing, and other necessities of life. How much easier it would be if the firm had someone available to help these needy associates before their start dates.

In the end, it is in the best interests of law firms, partners, senior associates, and administrators to do as much as they can to help the fresh recruits who arrive each fall. Though I have no statistics to prove this, common sense tells me that associates who have positive first-year experiences remain at the law firm longer than those who do not. If this intuition is true, then law firms that train first-year associates to become better lawyers and support first-year associates so they may live better lives will keep these young attorneys, who will. someday become partners and leaders in the firm. Law, after all, is the study and practice of the rules that regulate society. It makes perfect sense, then, that those new to the law should be given a full understanding of their immediate society and its workings.

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