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Redefining the legal industry's approach to lateral hiring

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Lateral hiring in today's legal market is like playing a game of checkers, when it should be more like a game of chess.

In checkers, you see a chance to jump your opponent and you take it. They see a chance to take your piece and do the same. You both go back and forth until, most likely, you both end up with one piece each. A draw. Then you reset the board and start all over again. It's not the most riveting of games.

This is because checkers is what's known as a "solved" game. The limited movements and uniform value of the pieces make it so that if each player plays perfectly, the game will always end in a draw.

Chess, on the other hand, is not a "solved" game. The reason: the versatility of the pieces creates infinite possibilities. Chess requires its players to be strategic and forward-thinking when making moves and to value certain pieces over others.

The prevalence of lateral hiring in the legal industry brings to mind the oft-repeated definition of insanity: "Doing the same thing over and over again and expecting different results."

The legal industry has a history of clinging to the same rote processes and flawed systems. Bearing this in mind, it's not out of the question to ask: Has the lateral partner market reached a level of insanity?

The numbers suggest that it has.

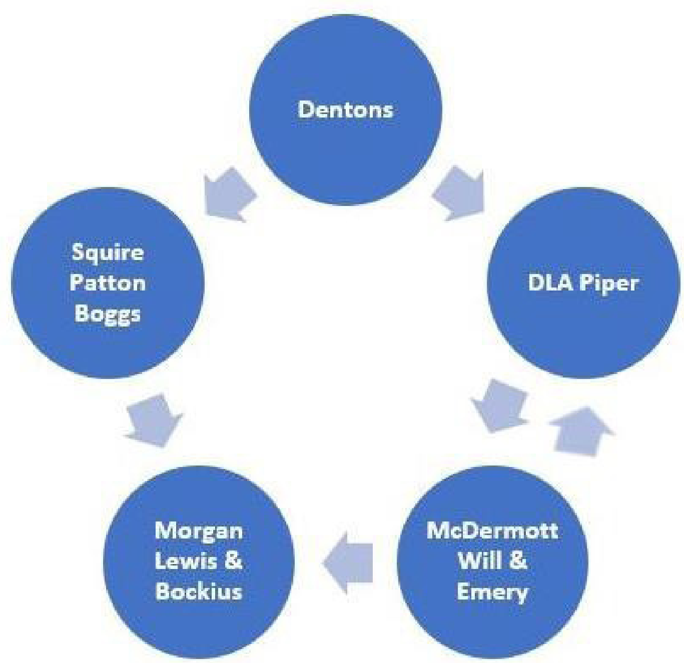
A hefty 85% of Am Law 200 firms stated that they intend to grow their firms by lateral partner hiring in 2019. Nicholas Bruch, Michael A. Ellenhorn & Howard Rosenberg, *Risky Business: Rethinking Lateral Hiring*, DECIPHER & ALM INTELLIGENCE (February 2019). This in itself shouldn't be surprising. A legal market slow to recover from the late 2000s Recession Era, coupled with the increasing popularity of alternative legal service providers, has substantially limited law firms' traditional means of growth.

Lateral hiring presents the opportunity for firms to grow quickly by acquiring large books of business and diversifying their practice areas to reach new markets. Big-name laterals can also add clout and consumer value to a firm's brand.

This practice may have gone too far, though. Every month seems to bring yet another "lateral raid" between two BigLaw firms.

Take the comings and goings of the past year:

- January 2018: Three Dentons' top partners go to Squire Patton Boggs.
- February 2018: Two Dentons' litigation partners go to DLA Piper.
- March 2018: Twenty Piper partners go to McDermott Will & Emery.
- July 2018: McDermott's trade secrets head goes to Piper.
- August 2018: Fifty McDermott lawyers go to Morgan Lewis & Bockius.
- February 2019: Fifteen Squire Patton Boggs lawyers go to Morgan Lewis.



Last year alone saw 2,754 lateral moves to Am Law 200 firms, while the past five years have seen a total of 14,144 moves. But here's the more baffling statistic: Of these 14,000+ lawyers moving to Am Law 200 firms, almost 9,000 came from Am Law 200 firms. Nicholas Bruch, Michael A. Ellenhorn & Howard Rosenberg, *It's Time to Overhaul the Lateral Hiring Process*, AM. LAW. (Jan. 29, 2019).

This means that roughly 64% of laterals just went from one BigLaw firm to another. If you asked anyone outside of our industry what they thought of this system, what would they say? That it looks an awful lot like trading like for like? That similar pieces are just moving around the same playing surface?

The lateral market as we know it is counterintuitive. One would naturally and logically suppose that partner moves should have an upward trajectory. Or better yet, a forward one.

> Too often firms get caught up in recruiting big books of business without reflecting on how a lateral's practice will function practically within the cogs and gears of the firm.

The word "lateral" itself betrays the lack of impetus and momentum involved when BigLaw recruits from BigLaw. Lawyers and law firms alike end up just moving side to side. And yet, the lateral market booms.

It may have something to do with the $17.1 billion in business cited in *Risky Business: Rethinking Lateral Hiring* that has moved through the lateral market in the past five years. High-dollar books of business provide a tempting incentive to firms looking to quickly bolster their revenue streams, even if it means dishing out celebrity-level paychecks to attract new talent. But is this type of lateral hiring really worth the hype? Or the price tag for that matter?

Decipher and ALM Intelligence estimate that the cost of hiring lateral partners in 2018 generally ranged from $525k to $8.7 million, with the average falling around $2.3 million per partner (including one year's salary, recruiting fees and other onboarding costs). In some extreme cases, laterals moving from one BigLaw firm to another have been compensated even beyond this range, going as high as $11 million. Meghan Tribe, *With Risks Growing, Lateral Hiring Takes a Leap of Faith*, AM. LAW. (Feb. 1, 2019).

This is a far cry from what was once the ubiquitous lockstep compensation model of white-shoe law firms, where attorneys would stay for decades. Most firms simply cannot afford to depend solely on developing internal talent and have turned outwards to look for their next rainmakers.

Considering many firms' willingness to pay top-dollar for fresh talent, it's perplexing to see that the national "success" rates of lateral hires are dismally low. "Success" in this context may be defined in a variety of ways. For our purposes, we'll look at both longevity and profitability.

Contrary to what may be popular belief, lateral hires are usually less profitable once they move firms. According to data collected over the past five years, almost 70% of laterals won't produce even 75% of their expected book of business at their new firm, the authors said in *It's Time to Overhaul the Lateral Hiring Process*. This means that, on average, two-thirds of lateral hires are significantly underperforming.

And considering that the average book of business for a lateral hire in 2018 was $1.9 million, a subpar lateral can cost today's law firm hundreds of thousands of dollars in unrealized profits.

The numbers don't get much better when looking at the average tenure of lateral hires: 24% of laterals leave their firm within three years and nearly 50% leave within five years. A lot of new talent is certainly being brought into firms, but almost half isn't staying. This sheds some light on why the current lateral hiring market is so frenetic, but it still doesn't explain why lateral attrition rates are so high.

Some might assume that laterals are simply chasing the biggest paycheck by moving from firm to firm. But there's much more to it than that. Although 56% of laterals do receive some type of pay hike when they move, 36% receive about the same compensation as they did at their previous firm, according to a recent partner compensation survey. Dan Hatch, *6 Common Lateral Myths Debunked*, LAW 360 (Aug. 25, 2017).

Although money is certainly a factor, it's clearly not the only one, nor is it always the most important one. So why are so many lawyers leaving their firms and entering the lateral market? And why do so many end up leaving their new firms within five years of being hired?

An ALM intelligence survey revealed that 74% of Am Law 200 firms have had lateral partners leave within the past five years due to "personality or cultural issues." A lateral who feels alien to (or alienates) other partners due to culture gaps will most likely struggle to integrate and may lose incentive to remain at the firm.

So, the question becomes, how can a firm alleviate the "personality or cultural issues?" The two most important keys to a long-lasting and profitable hire are fit and integration. These concepts are really two sides of the same coin: a partner who is a good fit with the firm will also be able to integrate more completely.

To ensure successful integration, firms need to have clear ideas about what a successful "fit" means to them when evaluating lateral hires.

"Fit" primarily encompasses the following criteria, all of which are important to a lateral hire's successful integration:

NEED FOR EXPERTISE AND PRACTICE AREA

This may seem like common sense, but too often firms get caught up in recruiting big books of business without reflecting on how a lateral's practice will function practically within the cogs and gears of the firm. Firms should be asking themselves whether a lateral's expertise will either fulfill a need in the firm's practice offerings or add an element of strength to an already existing practice area.

If the answer is no, it is highly unlikely that the lateral will benefit from internal referrals at the new firm. A lateral who is a good practice fit is more likely to be integrated into a firm's existing client base and should also be able to assist other partners in securing new clients who have proven difficult to land in the past.

CROSS-SELLING OPPORTUNITIES

Most firms want laterals who will bring clients, but firms should make sure that those clients are also interested in using the services of other practice areas in the firm, and that the potential lateral is willing to participate. BTI Consulting reported on cross-selling:

> Just getting a lateral hire in the door isn't enough. To truly integrate a lateral, a firm must foster a culture of connectedness, satisfaction and stability.

"Heidi K. Gardner, a Distinguished Fellow at Harvard Law School's Center on the Legal Profession, studied millions of data points and discovered that cross-selling serves as a revenue multiplier: When a law firm expands client services to two practices, revenues from that client triple. Cross-selling has also been shown to boost long-term revenue in the form of client retention.

"Redwood Analytics found that successful cross-selling boosts client loyalty and serves as a powerful anti-poaching mechanism, which makes sense given that more relationships lead to a better understanding of the client's business." Jody Glidden, *Cross-Selling Proven to Increase Revenue, Service Efficiency and Loyalty*, INTROHIVE (Nov. 15, 2016).

ECONOMIC FIT

A lateral must also reasonably fit within the economic structure of a firm. A lateral compensated too far above the normal structure could be unprofitable and alienate existing clients who are unable or unwilling to pay a significantly higher rate.

Conversely, a lateral with a rate-sensitive, commoditized practice is unlikely to provide desirable work for other partners in a high-rate environment. A firm must consider what kinds of rates its clients are typically able and willing to absorb. A lateral whose rate drastically deviates from the norm in either direction is at a disadvantage from the outset.

INTEGRATION

Getting the "fit" right is one of the best solutions to the integration challenge. A firm that can quickly get the lateral working with other partners has a higher probability of success. However, fit alone is not enough.

Firm leadership must have a strong commitment to a thorough, robust integration process, implementing best practices and dedicating resources to this end. Just getting a lateral in the door isn't enough. To truly integrate a lateral, a firm must foster a culture of connectedness, satisfaction and stability.

Attorneys and firms need to shed the silo mentality that so often leaves attorneys cut off from the life source of the firm. Few attorneys can thrive and produce the desired results in isolation. When partners work together to collaboratively bolster business, it builds morale, fosters collegiality, increases personal satisfaction and ensures that everyone is pulling in the same direction.

LOOKING BEYOND BIGLAW FOR FIT AND CULTURE

With this understanding of fit and culture, is it possible that BigLaw is not a fit for many BigLaw partners and that this could account for low rates of success?

Many partners at BigLaw firms know the burden of onerous cost structures all too well: Firms pressure lawyers to earn revenue disproportionate to the value of their compensation to feed upper-tier partners and satisfy the demand for the year-on-year increase in profits per partner.

The requirement for higher profit is in constant conflict with clients' desire to lower costs and achieve better value. Many attorneys end up feeling trapped by the obligation to charge rates their clients aren't willing to pay.The result is that many partners are "literally being squeezed out of their firms because they are not as profitable as the firm needs them to be to maintain their Am Law rankings." Roger E. Barton, *Square pegs, round holes: Does the traditional law firm business model fit the needs of clients, or even most lawyers, anymore?* THOMSON REUTERS (June 2017).

In this regard, most BigLaw firms are the same. Many partners hop from firm to firm opportunistically, running into the same compatibility issues time and time again.

For some laterals who have decided to break the cycle, however, home has come in perhaps an unexpected place: smaller firms.

Whether they are called mid-sized, boutique or breakout firms, an increasing number of former BigLaw partners are finding their niche in these alternative spaces of the legal industry. For partners ill-suited to the restrictive nature of large law firms, smaller firms can offer a less cumbersome platform on which to build and grow a practice.

Because of the flexibility their size affords them, smaller firms are often unhindered by issues that typically affect BigLaw firms.

Structured properly, these smaller firms with lower overhead and nimble management can drive value to their clients. These firms are not burdened with legacy compensation structures that require extensive use of leverage. They can effectively implement alternative fee arrangements and can use technology for even further efficiencies.

These firms can also allow for more meaningful partner collaboration, greater autonomy, more hands-on time with clients and more dexterity to adapt to a constantly changing legal industry. Smaller firms may produce fewer conflicts and often aren't as bogged down by office politics as are firms with traditional hierarchy-based leverage structures.

Laterals who want greater freedom to grow their practices, improve the value they deliver to clients and increase their profitability may find that firms outside the BigLaw model can be the answer, without compromising on quality or competitiveness.

While lateral hiring does offer an expeditious way for firms to grow and expand into new markets, when firms act opportunistically rather than strategically, the benefits to both parties are often minimal. Underperformance, low retention rates and partner dissatisfaction can cause firms significant loss of profits, while also breeding frustration among laterals.

Firms that aren't afraid to break from the traditional law firm service-delivery model and that make concerted, intentional efforts to hire and integrate new laterals will enjoy greater success in the coming years. In this sense, they will be ahead of the game. Or rather, they will be playing a different game altogether.

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Roger E. Barton is the managing partner of **Barton LLP**. He is an accomplished litigator with an international reputation for achieving outstanding results and has been rated by The American Lawyer, Corporate Counsel Magazine and the National Law Journal as one of the Top Commercial Litigators in the United States.