



Training Your Law Firm Associates



Transforming Your Associates into Trial Lawyers

By Frank Ramos

To Ana
My Muse

To David and Michael
The two most talented people I know

To Bud and Spencer
I pass on what you taught me

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About the Author



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Foreword

If you want your associates to better represent your clients, bring in business, and develop into partners, you need to train them to do so. These things don't happen by accident, and a haphazard plan is little better than no plan at all. This book will walk you through how to develop and implement a plan to teach your associates how to produce better work product, be better litigators and trial lawyers, and grow as business people who put your clients' interests first. They didn't learn how to do these things in law school. This book will help you fill that education gap and will create an environment where associates are better trained, feel more appreciated, and will develop loyalty among attorneys who often feel overlooked by their bosses. Take the time to read through the book, mull through my suggestions, and put together your plan. And please let me know how it goes. I would love to hear your feedback.

Why Establish an Associate Training Program?

There's an old business joke that goes:

CFO asks CEO: "What happens if we invest in developing our people and they leave us?"

CEO: "What happens if we don't, and they stay?"

Why implement an associate training program at your law firm? To answer a question with a question, what's the alternative? You want to keep your clients happy? Teach your associates how to serve them. Teach them how to write, argue, advocate, and how to win. Teach them the business of law, how to market, and how to interact with clients. Teach them your expectations, your firm culture, your beliefs, and your values. Create a program that teaches them how to excel as attorneys so they can provide your clients the best representation and service possible. Ignore doing this, ignore sitting down and crafting a program to teach your associates, to instill in them your values and skill set, and you've walked away from your firm's quality control, leaving it to chance that you hired the right people to always do the right things in the right situations. No matter how talented, how bright, or how experienced your hires are, you still need to mold them into your type of attorneys representing clients according to your brand of representation and advocacy. You may need to restrain the Pitbull litigator you hired for your more reserved litigation boutique or prod the research and writing guru to be more aggressive at depositions. Your firm has a style, a code, a method, and an approach—these can be taught and it is up to your firm to teach them.

This book assumes that any skill set we need as lawyers can be reduced to writing and taught to others. It assumes you can put pen to paper, create an associate training program that works for you and meets your needs and implement it so that within 12 to 24 months, you can have your lawyers go from doing things the way they do them to the way you do. We're talking about a training program that teaches associates how to spot the issues and concerns, the problems and pitfalls, the ethical quagmires and client demands, and how to address them. It empowers them to find a solution to every problem and develop the skill set to bring those proposed solutions to fruition. Yes, it is a commitment of time of resources. It is non-billable. You cannot write two hours on your time sheet for associate training and bill your client for it. But, by implementing a program, you groom your associates to better serve your clients, which leads to happier clients who refer you more work and refer you to their colleagues. It may not immediately translate into billable hours but it will mean more billable hours down the road.

Every other business implements quality control. We lawyers should be no different. This book will walk you through on how to conceptualize and implement a program right for your firm size, needs, and clients. There is no cookie cutter, one size-fits-all approach to such programs. It will require some thought, tinkering, and adjustments, but if you see it through you will improve the work product, confidence, and satisfaction of your associates and create an environment where your associates become a valued part of your team and that sense of belonging keeps them put for years and decades to come.



Addressing the “Buts”

But Our Firm Doesn’t Have the Resources

“An associate training program?” you ask. “But our firm is small. A handful of partners. A few associates. We don’t have the Big Law resources. We can’t throw money at training.” An associate training program does not need to be expensive to be effective. It does not require trips to NITA programs and leadership programs and writing institutes. It can be done in-house by you and your partners (or just you, if it’s just you—more on that later), with materials from your office in a manner that does not disrupt your business. On your part, it’s part mentoring, part coaching. On their part, part emulating, part trial and error. It’s learning how to teach your skill set to another, how to pass on your values and perspective and how to pass on your experience. Some of this you already do, informally. You make the most of teachable moments, you share your thoughts at lunch, talk through case strategies and pass on your wisdom when appropriate. Whether you know it or not, you already have the elements and tools for a formal training program.

It will require non-billable time to formulate a plan and carry it through. You will need to expend time—a precious resource for any firm—to define a plan that works for you and your associates and to spend the requisite time training them. That’s time away from clients and family. But it is time well spent. Happier clients, more engaged associates and the camaraderie resulting from working together on a common goal creates a more successful team. You don’t have to pay to bring in speakers. You don’t have to pay to send out associates. You don’t have to order CLE programs. You have everything you need for your program in your head, in your files, and at your computer. You have the resources you need to train your associates and train them well.

But Our Firm Doesn’t Have the Time

You have a busy practice. You’re busy. Your partners are too. So are your associates. Who has time to plan a program, much less implement one? There’s a difference between handling the urgent and handling the important. Deadlines are urgent. Training your associates are important. Tomorrow’s deposition is urgent. Ensuring your associates know how to take a deposition is important. Spend too much time on the urgent and not enough time on the important and your practice will suffer. Missed opportunities at deposition, poorly argued motions, and client slights will add up while you’re tending to the urgent and ignoring the ever important associate training.

You make time for your clients. You need to make time for your associates. You take your clients' questions. You need to field your associates' questions too. By training your associates, you're serving your clients. By teaching them, you're enriching your clients. Yes, the time has to come from somewhere. It may mean some early mornings and late nights putting a plan together, and more face time with your associates talking about them and the practice and not just about their cases, but it is time well spent. You say you don't have the time? Make it. You say you have fires to put out? Poorly trained associates are one of those fires. And let's face it. How often do you have to answer impromptu questions from associates who would not have had to ask if they had been trained on how to handle that client inquiry, problem, or issue? Training isn't a drain on your time. It actually saves you and your firm time in the long run. Find the time for what's important and develop a plan.

But Our Partners Aren't Interested

For an associate training program to work, you need the partners to buy into it. But what if they don't want to bother with one? They're too busy. Their hands are full with their clients. They're constantly traveling for depositions and conferences. They don't want to be bothered. You're the managing partner, or administrative partner, or whatever title, real or imagined, you have—you take care of it. For it to work, though, everyone (or at least most everyone) needs to be on board. So how do you convince them? Explain to them that less time will be spent correcting their associate's memos and letters to client. Less red ink will flow from their pens. Less stress from worrying about whether the deposition transcript should read as it should. Will they need to participate? Yes. Will it take some time, effort, and energy? Yes. But, will there be a payoff? Yes. Are they tired of attorneys coming and leaving? Engaging and training associates will encourage them to stay. Better trained associates are better at their jobs, enjoy their jobs more, and provide better service. Do they want to convert their "B" associates into "B+" and "A" associates? Do they want to leave the office knowing their cases are in good hands when at a deposition, conference, or vacation? Training will provide them that peace of mind. Yes, it is a commitment of non-billable time. But the payoff is worth it.

But Our Associates Aren't Interested

You say that your associates are Millennials, and they covet their personal time. They don't want to spend more time in the office

in training sessions, reading sample motions and deposition transcripts, and certainly don't want to read books on grammar, legal writing, advocacy, or leadership. They have other interests and goals. They're not planning on sticking around long anyway, so why waste the time? The fact is that your associates want to be engaged. They want to become part of the fabric of your firm. They want your attention and your time. They want to learn from your wisdom and your experience. If you create a training program with their needs and wants in mind, you will get them involved and they will participate, and participate whole heartedly. Your associates want to do a good job. They want to feel accomplished. They want your praise. Learning how to do their job and do it well will get them all that. They benefit from investing in themselves. Becoming a better writer, advocate, service provider, and marketer will lead to greater autonomy in their practice and will provide them more control over their day to day lives. What they want—more say in the firm, more self-determination, more control over their calendar—can be secured by learning how to do their jobs better. It is an upfront investment in time and energy but that will pay off in the long run. Buying into this delayed gratification, appreciating that less free time today means more free time tomorrow, that investment in oneself leads to big dividends in the future, will help convince your associates of jumping into a training program with both feet. The program is as much or more for them than it is for the firm. Explain that and they will understand.



The Planning

First Steps

The goal is an effective, engaging associate training program. To get there, you need to have a plan. This requires the input of your partners, associates, and possibly your paralegals and staff. This all assumes everyone is on board. You have gotten past the “buts” and everyone (or most everyone) agrees that an associate training program is in everyone’s best interests—the firm, the clients, the partners, and the associates. You have discussed it with your partners. They’re in. You have discussed it with your associates. They’re in. You haven’t put meat on the bones yet, but the idea of implementing an associate training program, whatever that means, has your firm’s support and backing. When pressed for details, you’ve demurred, letting folks know the details will be driven by their input. You envision meetings, written materials, mentoring, and a few others ideas fluttering about, but for now it’s amorphous, and you know what? That’s perfectly fine. The hardest part is getting everyone to commit. Now that you’ve done that, you’re halfway home. The planning, though not easy, is organic. You have your own ideas of skill sets that need to be taught and how to teach them. Your partners have some too. As do your associates. The training program will work best if everyone is heard and everyone’s ideas are considered and the best ones incorporated. You probably won’t be able to incorporate everyone’s ideas, and some will be too expensive (or dare I say, too dumb) to implement. Keep an open mind. What you think works may not. What others think may work, may. So the first step is to be open minded and seek input and counsel. Before we do that, though, we need to address the size of your firm. Onto the next page.



How Big Is Your Firm?

Every firm should have an associate training program, but what it looks like will depend in no small part on the size of your firm? Is it just you and an associate? That training program would be a one-on-one mentorship program. Is it 100 associates over 10 offices in five different states, with a half dozen discrete practice areas? There could be some centralized training where associates meet in their respective conference rooms and learned deposition techniques from the head of litigation via a computer or television screen and had local meetings to discuss local procedural issues and local judges' preferences, pet peeves, and proclivities. If the firm was large enough, each practice area could put on their own training geared toward their caseload. The importance of a training program is to offer more than the broad strokes, though those are important too. You want to make sure that your associates are learning how to handle cases according to how the partners they work for want them handling them. You want to make sure your employment litigation associates know the questions to ask in the plaintiff's deposition, which are different from the questions you ask a plaintiff in a product liability or commercial litigation matter. Yes, there are rules, approaches, and techniques that apply to all depositions, but there are also specifics that pertain to given practice areas which your training program must also cover.

Each firm size poses its own sets of advantages and challenges. Smaller firms have fewer resources but have fewer logistical issues and fewer associates likely handling fewer practice areas to teach. Larger firms have more resources (more money, more prospective instructors, more mentors, etc.), but they also have to create a two tiered program—one that addresses associates as a whole to learn the firm culture, mission, and approach, and one that addresses specific practice groups', offices', and partners' needs. These programs have the potential of being more robust and can compete with national educational programs put on by NITA, for example, but they require more planning and forethought. What would work best for your firm? Let's start by asking.

Survey Your Partners

What program should you implement? Start with surveying your partners. Send the following email (or something along these lines) to all your partners, whether junior, senior, or equity.

Dear Partners,

As we agreed, the firm is moving forward with an associate training program. We discussed the benefits of teaching our associates how to serve the firm and our clients according to our firm's mission, our partners' litigation styles and our clients' needs and expectations. By creating a firm wide program, we will be ensuring quality control and better work product. It will take all of us to make it successful but we all in turn will enjoy its fruits. Time spent now will ensure better case results, and happier clients, tomorrow.

To ensure we are creating a program that best serves you and your clients, please email me your thoughts on the following:

- What skills do you want us to teach?
- What skills do you think your clients would want us to teach?
- What topics do you want us to cover?
- What values do you want us to impart?
- What materials do you recommend we use?
- How often should we meet with the associates? What time of day?
- How many sessions do you envision us having?
- What do you see your role as?
- What topics are you willing to teach?
- How many associates are you willing to mentor?
- What can you offer as a mentor?
- What do you bring to an associate training program?
- Do you want to be involved in planning the program? If so, how?
- Do you want to volunteer to be part of the planning committee?
- What resources do you have (*i.e.*, written materials, articles you've written) that you can share with us?
- Are there any existing programs you suggest we study?
- Are there other firms with training programs you recommend we emulate? If so, please state which firm and describe their program.
- Do you have any other thoughts about the program?

I have copied my legal assistant on this email. Please email us your responses and we will organize them and follow up with you if I have any questions.

As we have done with all of you, we will be reaching out to all the associates and securing their input too. We are doing this for them, if not more so, than for us and our clients, and their input is valued and needed. Once we have received everyone's input, we will select a committee and put together a program.

We cannot guarantee that all your recommendations will be implemented. We will consider everyone's thoughts and input and weave into the program what best serves the firm and its clients based on the time and resources we are willing to commit to this worthy endeavor.

We look forward to your responses and working with you on this.

Depending on the size of your firm, the response may be a few email or a few hundred. The larger the firm, the more help you'll need for each step along the process. One partner can review and synthesize 10 emails. But a hundred emails? That's more problematic. It's doable, but you just need more feet on the ground.

Also, the firm has to decide on the level of transparency during this initial information gathering and program evaluation. Do you want to have a place on your server where everyone can see everyone else's input? Do you want it only open to partners? Only to the committee creating the training program? If folks know their input will be kept confidential, their responses may be more honest about what needs have to be met and how. Conversely, keeping things secret could cast a cloud on how the program was created and what was included, and just as importantly, what was not. Depending on the size of the firm and its transparency on issues such as associates as their training, your firm will have to decide what is the best approach.

Survey Your Associates

As with your partners, survey your associates. They have their own ideas what an associate program should look like and how it should be run. There may be things they need or want that may be overlooked by the partners. In terms of the skill set to be taught, who should teach it and how, they will have valuable advice and input. To get their thoughts, email them the following:

Dear Associates,

As you know, we are planning a training program to give you the tools to better handle your cases and better serve the firm's clients. To make it the best possible program that best serves your needs and the firm's, we want your input about this program. We want to build a program that takes into consideration not only the partners' input, but yours' as well. With that mind, please provide us your thoughts about the following:

- What skills do you want us to teach?
- What topics do you want us to cover?
- What materials do you recommend we use?
- How often should we meet? What time of day?
- How many sessions do you envision us having?
- Do you want to be involved in planning the program? If so, how?
- Do you want to volunteer to be part of the planning committee?
- What partners do you recommend be instructors? On what topics?
- What qualities are you looking for in a mentor?
- Do you have any other thoughts about the program?

I have copied my legal assistant on this email. Please email us your responses and we will organize them and follow up with you if I have any questions.

We cannot guarantee that all your recommendations will be implemented. We will consider everyone's thoughts and input and weave into the program what best serves the firm and its clients based on the time and resources we are willing to commit to this worthy endeavor.

We look forward to your responses and working with you on this.

One of the items you need to think about from the very beginning is a mentorship program. As you may have noticed, both the emails to the partners and associates assume a mentorship aspect of the program. To be successful, every associate should have a mentor in the firm, either a partner or senior associate he/she can regularly communicate with and rely upon for advice and help.

We'll talk more about mentoring later, but early on in the process start thinking about how the firm plans to match associates with their mentors. There will be some natural pairings, especially in smaller firms, and in smaller practice groups, but this can get tricky. How do you find the right fit? How do you tell a partner that a certain associate doesn't want to be mentored by him? How do you tell an associate that another partner would prefer to mentor her? This can be delicate office politics. Whoever is placed in charge of this should be well suited to address these touchy situations, both from a HR perspective and a tactful, polite one.

Survey Your Paralegals and Staff

Even though the training program is directed to your associates, seek input from your paralegals and staff. They deal with your associates more often than you do. They recognize what works for them and what doesn't. They may have insight of topics you should cover or how to cover them. They may even be prospective faculty. As with the others in your firm, email them:

The firm has decided to institute an associate training program. We are now seeking input from everyone at the firm about its content and delivery. We value your input and seek your ideas and wisdom on how to make this the best training program we can create. To do that, we ask that you email us your thoughts about the following:

- What topics should be covered?
- What skills should be taught?
- How can we improve our relationship with our clients?
- What do you see as the associates' strengths?
- Where could they improve?
- What can we teach them that will make your job easier?
- What can we teach them to improve their communication with you?
- What tasks are you doing that they should be doing?
- What tasks are they doing that you should be doing?
- Who should teach? What topics should he/she teach?
- What recommendations do you have as to how the program should be structured?

We appreciate your input and will take all your thoughts into consideration as we plan this program.

Your staff, who deal with your associates when they are at their best and worst, may have insights you don't. Give them the opportunity to share their thoughts and seriously consider their recommendations.

I've Collected All this Information—Now What?

The next step will take some time and will require some help. Instead of pouring over all the responses, have your legal assistant prepare three charts—one for the partners' responses, one for the associates', and one for the staff. Without including who said what, have him or her create columns for each question and list all the responses. For those responses that are the same (for example five partners say that writing should be one of the skills taught or four associates want junior partner Tina to teach deposition skills), list the response once and note by it how many referenced it. By having everything in front of you in three documents, you can see patterns, and not be distracted by who said what. You can see what the most people say is important and their recommendations about what this program should look like and how it should be run.

Also, have your assistant inform you who wants to be on the committee to design the program. You may find you only have a handful of volunteers, so you invite all of them to participate. Conversely, you may have too many volunteers, making any committee unwieldy. It's a good problem to have, but one that requires finesse and tact to determine who should be invited to participate and who should not. You should have a cross section of practice groups and partners and associates of different experience levels. Each provides her own unique and important perspective on what should be included and what shouldn't, what should be emphasized and brought to the forefront, and what should remain in the background. Also, you want the whole firm to buy into the program, so you want a variety of voices representing the various aspects of your firm at the table. The size of your committee will depend on the size of your firm. Small firms may only have two or three attorneys put together a program. A large firm could have a dozen members or more. This will be driven by how your firm handles firm wide initiatives and who generally is involved in them.

The Associate Training Program Committee

Once you've selected a committee, official planning may begin. To start the process, send them the following email:

Dear Associate Training Program Committee Team:

Thank you for volunteering to help the firm design and implement an associate training program. I enclose three charts that summarize the input we received from the partners, associates and staff, each labeled accordingly.

As you can see from the charts, the top ten topics our partners want to focus on include, in order of popularity, are:

- Case Strategy
- Writing
- Oral Advocacy
- Deposition Skills
- Client Relations
- Attorney Marketing
- Motion Practice
- Dealing with Difficult Opposing Counsel
- Written Discovery
- Meeting Partners' Expectations

The top ten topics our associates want to focus on, again in order of popularity, are similar:

- Case Strategy
- What Partners' Want
- Dealing with Difficult or more experienced Opposing Counsel
- Deposition Skills
- Writing
- Oral Advocacy
- Addressing Client Questions and Concerns
- Motion Practice
- Developing Business
- Technology

The staff also suggested some administrative issues that the associates need help with, such as dealing with opposing counsel regarding e-discovery, scheduling hearings and

depositions, and drafting documents, including training on Word, Excel, and PowerPoint.

We also received the names of prospective faculty for our program. As you can see, the same names were mentioned over and over again. These are partners and senior associates who have dedicated time to teaching associates on a one to one basis on everything from writing, to discovery to deposition skills. They're in high demand and apparently good instructors, so we'll want to include them in the program.

Based on everyone's input, I have my own thoughts on how the program should look, including a one-on-one mentoring program, a weekly associate luncheon where we address a finite topic, and course materials, including sample deposition transcripts, motions, pleadings, etc., but I want each of your thoughts on this.

Please take two weeks to review the three enclosed charts and email the group with your thoughts on what should be included in the program and how it should be taught.

Once we have everyone's input, we will input it into a chart and circulate it and plan our first meeting.

I look forward to working with you all on this worthwhile project.

This initial email provides the committee everyone's input, a brief summary of their input and your thoughts based upon that input. Give them two weeks to provide you their input, have your legal assistant input it into a chart, circulate it, and set up an in person meeting or phone conference to discuss a plan.

Set an Agenda for Your First Meeting

There are both macro and micro issues you will need to address when developing the associate training program. A macro issue is what topics to address. A micro issue is what grammar book to provide everyone. A macro issue is a schedule of events. A micro issue is deciding between which sample deposition transcripts to provide everyone. To ensure you address the big picture and the details, create an agenda for your first meeting. Make it comprehensive. You probably won't cover everything. It may take two, three, or more meetings to do so, but you want to make sure you tackle all the issues upfront to avoid pitfalls or surprises down the road. A sample agenda you would email out to your committee could look like this:

Associate Training Program

- **Mentor Program**
 - ☐ Define Mentor's Role
 - ☐ Define Mentee's Role
 - ☐ Define Mentor's obligations
 - ☐ Define Mentee's obligations
 - ☐ Match Mentors with Mentees
 - ☐ Define Criteria for Matches
 - ☐ Set Protocol for Matches
- **Classes (60-90 minute presentations)**
 - ☐ When? Where? How Often?
 - ☐ Topics
 - ☐ Instructors
 - ☐ Materials
 - ☐ Schedule
- **Training for Instructors**
 - ☐ Expectations for Class
 - ☐ Format of Class
 - ☐ What to Cover
 - ☐ What materials to Provide
 - ☐ Follow Up with Students
- **Materials**
 - ☐ Writing Samples
 - ☐ Written Discovery Samples
 - ☐ Sample Pleadings and Motions
 - ☐ Deposition transcripts
 - ☐ Books
 - ☐ CLE Material
 - ☐ Articles
 - ☐ Blogs, Legal and Business Websites
 - ☐ Workbook
 - ☐ Homework
- **Seminars**
 - ☐ Should we put one or more on?
 - ☐ If so, on what?
 - ☐ Deposition Boot Camp?

- ☐ Writing Camp?
- ☐ Mock Trial?
- External Training
 - ☐ NITA? DRI? IADC Trial Academy?
 - ☐ CLE
 - ☐ Pro bono
 - ☐ Volunteer Trial Experience

The sample agenda would cover all the main issues the firm wants addressed in its training program. It provides all the topics and subtopics to provide discussion points for the committee to address. In fact, you may want to send out the agenda and ask if anyone wants to add to it before the initial meeting. You want to make sure all the broad brushes are covered so that everyone is on the same page as to what to discuss and what the team needs to reach consensus on.

How Much Is This Going to Cost?

One item I left off the agenda is the budget. How much does the firm want to spend on associate training? Most of it will be done in-house, with your partners and senior associates as faculty and your work product as materials. But there will be some expenses. For example, books for the associates—books on writing, rainmaking, leadership, trials, etc. How about lunch for the weekly lecture? Also, will some associates, particularly more senior ones, be sent to training programs outside the firm, such as DRI's Young Lawyers Seminar or Deposition Institute? What's the firm's total spend on training going to be? When we speak of costs, we're speaking of hard costs. Food, books, travel, seminars. There is, of course, also "soft" costs—time spent by partners teaching associates and time spent by associates learning—time which can be spent billing hours. Yes, these are costs, but for budgeting let's focus on hard costs. Are you planning on a monthly luncheon meeting? Monthly breakfast meeting? Biweekly meeting? Books? How many? Trips? How many? The budget is going to depend on the number of associates, offices, practice groups, and years of practice, to name a few factors. A way to defray some of the cost is to ask associates to pay for their own lunches and buy their own books. Of course, it's easier to get their buy in and enthusiasm if the firm picks up these costs. The committee needs to provide alternative cost arrangements and provide them to the managing

partner or appropriate partners' committee to determine what costs will be expended for this endeavor.

Circulate the Agenda

Email the committee your agenda and ask they respond with their input. Is there something you ignored or left out? What are the committee members' thoughts about the line items in the agenda? You may want to put more meat on the bones and include your suggestions for the various line items. You don't want to usurp the input of the rest of the committee, but there may be aspects about it you feel strongly about and want to include that in your email to the committee. Some of the macro questions—Should we have an associate training program? If so, should we conduct our own training?—have already been answered. What that associate program will look—What are our goals? Who will teach what? What materials will we use?—that's for the committee to decide. By encouraging everyone to comment on the agenda, and share their own thoughts via email before the first meeting, you can go into the meeting with a general sense of where there is agreement and where there may be debate, possibly vigorous, on some issues.

Going into the initial committee meeting, you want to know who supports what, who opposes what, and the various proposed approaches the firm should take to associate training. There will be different perspectives, agendas, approaches, and paradigms to tackle associate training. Have an open mind to everyone's contributions and focus on common ground.

What's in It for Your Committee Members?

Depending on the size of the firm and the scope of the training program, this may entail a lot of time of you and your committee. Not only does the committee have to plan the program, they have to implement it and tweak it as it goes forward. The size of the project won't be appreciated until the committee has met once or twice to discuss what it wants to do. Those responsible at your firm for determining attorney compensation should decide if the firm will pay a bonus to committee members, and if so, a rough estimate of the amount. Some members of the committee, such as its chair and co-chair, will spend much more time planning and implementing it than other members. If the firm does decide to compensate committee members for dedicating time to the project, it should consider a sliding scale for the amount of time

and effort put forth. Members of the committee should keep track of their time and prepare periodic memos of their input and effort. Each firm handles compensation for non-billable work differently (some offer no compensation for it). There should be transparency about what, if any compensation there will be provided. To the extent there are discretionary funds the firm makes available for non-billable work, thought should be given about how much (if any) should be set aside for this project.



The Program

Discussing the Details

The devil, as they say, is in the details. The committee will get together, go through the agenda, debate different proposals and ideas, put meat on the bones, and put together a detailed plan. It's important that the committee reduce its plan to writing so the whole firm can see the plan for themselves. The written report will provide an overview of the plan, its objectives, proposed activities, a schedule of events, a list of faculty, a list of materials (with PDFs attached), and a reading list. Anyone can pick up the plan and see the whole course from beginning to end, know what their role is, and understand what obligations they have. After it's underway, adjustments may have to be made, but you want to have a roadmap of where you're going and how to get there so everyone at the firm knows where they're going and how they're getting there.

Someone should assume responsibility as secretary at the meetings and record what agreements are reached and start drafting the written program. Ultimately a draft, with an introduction, an overview, a section on goals, and the specifics, with a calendar of events, should be circulated around the committee for additions, revisions, and comments. It's important that that final product have the input and blessing from the whole committee. This is going to be a living document which will spell out your entire associate training program. It's important you get this right and that it be comprehensive so everyone in the firm understands where the program starts, where it is directed and where it ends.

Timing

Timing is important when it comes to creating and rolling out an associate training program. If you're a large firm, you likely have a summer associate program, many of whom you hire in the fall after they pass the bar. Ideally, you would like to have a firm wide associate training program in place before they start, so you can include them in the program. If you're a smaller firm, you may not have any new associates coming on board, or if you do, they're not right out of law school and have different needs. You have some more flexibility as to when to start. You should set up a timetable by which the committee plans to have a finished written associate training program and when it plans to implement it. This is a big project and it will take time and energy. It's easy to kick it down the road. It's easy to let other priorities, like paying clients, take precedence. That's why you need to set deadlines for you and

the committee, so you have some pressure on getting it done and getting it done on a timely basis. Consider having the committee meeting weekly for lunch to hash out the plan. Smaller firms, with fewer associates and fewer competing interests can probably hash out a plan (with accompanying email exchanges between weekly meetings) in a month. Larger firms may take two months, possibly three. Remember, there's going to be a lot of back and forth on this. Decide how much control to impose on the committee and its direction. The more leadership you exert, the faster things will move along. Just don't be autocratic. Simply making the trains run on time isn't the only goal.

Mentoring

Your committee should tackle mentoring first. Every associate training program should have a mentoring facet to it. Every associate in the firm should be partnered with a more senior attorney who is responsible for her growth and development. The more senior attorney does not have to be a partner. He or she can be a senior associate. Criteria when matching associates with mentors should include:

- Same Office
- Same Practice Group or Practice Area
- Serving the same clients

You want to match associates with partners or senior associates with whom they work closely. You want someone teaching them how to interact with clients, how to serve their interests, how to market, how to argue, how to write, and how to better serve the firm. The best person for this is someone they have a close working relationship with. Ideally, you want to find a mentor who is compatible with the associate—similar personality, similar interests. But the most important aspect is partnering mentees with mentors they work with and with whom they serve the same clients.

When partnering folks, a few things to keep in mind. First, some attorneys won't make good mentors. You know who they are. We all know who they are. Forcing them into being mentors will simply undermine what you're trying to accomplish. It's better to have others serve double duty as mentors than force these individuals into mentorship relationships.

Second, some firms, because of their makeup (where associates out number partners), you'll have some partners playing double duty. In these situations, have senior associates mentor less



experienced associates and partners mentor the senior associates. I've found that junior associates feel more comfortable having more senior associates mentor them. Generally, the discussions are more open, more free flowing and more productive.

Third, some associates may have preferences about who their mentor should be. Your committee will have to decide what role associates will have, if any, to pick their mentors. You may think that's a bad idea. You may think it's a great idea. Obviously, giving the associates a role creates more work for the committee and possibly some hard feelings from those not requested as mentors. Coming from a smaller firm, our choice of mentors has come naturally based on who is working on what and who's working with whom. Bigger firms may not have such an easy time. One approach is to leave it up to each office, or perhaps each practice group in each office, to decide who is going to be who's mentor. The head of the office or practice group, based on work assignments, can pair folks off. They can also let you know of any partners who would make poor mentors. You can give them a deadline by which they match every associate with a mentor and you can have someone on the committee with a chart keeping

track of all the pairings, and following up on behalf of associates without assigned mentors.

Once you've paired everyone up, you need to let your mentees and mentors know what is expected of them. Have a firm wide conference call or meeting to tell the attorneys what the mentorship relationship should resemble and their role in the relationship. For mentors:

- Meet regularly with your mentee. Consider a monthly lunch and a weekly in person meeting
- Ask your mentee to accompany you periodically to a deposition, hearing, or client meeting
- Share articles or books of interest with him or her
- Share deposition transcripts, motions, memos, and letters as examples
- Share CLE materials with her
- Consider working on joint projects together, whether writing an article, organizing an event on behalf of a voluntary bar association or handling a pro bono matter
- Share dos and don'ts for handling matters and clients
- Share your expertise

For mentees:

- Meet regularly with your mentor
- Read what he or she gives you
- If available, attend depositions, hearings, and events your mentor asks you to attend
- Help with his or her ongoing projects
- Volunteer to help with your mentor's involvement in voluntary bar associations or trade groups
- Ask how you can help your mentor and the firm, and follow through

Mentorship is a two way street. Mentors can learn as much as they teach from their mentees, and mentees can offer as much help to their mentors as they receive from them. Paint with a broad brush what mentors and mentees should do and leave the details up to them. What you're creating is an atmosphere where an associate can go to someone more senior and seek guidance and help and return the favor where appropriate. Some mentoring relationships will be better than others. Some will last a lifetime and some will fizzle out. All you can do is lay the foundation, make some

suggestions and leave it up to the mentors and mentees to build a relationship of trust, friendship, and mutual assistance.

Classes

They say they don't teach you how to be a lawyer in law school. Well, that's what this program is for. To teach lawyers how to be lawyers. You surveyed the partners, associates and possibly the staff, and you have your top topics to address. You probably found a lot of overlap, and the same topics mentioned over and over. Writing is at or near the top of the list. So are deposition skills. Rainmaking is probably up there too. You can't teach everything, and what you teach can't cover everything on the respective topic. And then there are the logistics. Are you going to have the same person teach the same topic to everyone? If so, if you have multiple offices, are you going to have everyone attend from their respective offices' conference and attend via Skype, for example? Invariably, because of deposition, hearing, and vacation schedules, one or more associates will miss a session here and there. Are you going to record them, so they can viewed later? Is someone going to keep notes, so those who missed it will at least have a Cliff Notes version of the class? And what happens to new associates who join later? Are you going to redo all the classes for them? Have an associate fill them in? Have them watch video replays? You also have to keep in mind any larger programs you plan on doing. Are you going to do a deposition boot camp? A trial skills boot camp? They are very time intensive and time consuming. We'll talk about them later, but if you plan on having them, that'll change how you handle the weekly or monthly associate luncheons/classes. For now, let's assume you're focusing on classes and will send select associates to more in depth programming, such as the DRI Deposition Boot Camp, as the need arises, and come up with a comprehensive list of one hour CLE programs for your associates. Ah yes, CLE. Let's discuss that next.

CLE

Speaking of CLE, your hourly classes may qualify. Each state is different, with its own rules, but you should explore it. You need to submit a form with a title, the topic, the speaker, the speaker's bio and a brief paper. If you have 10 associates or more, CLE cost is a large line item in your budget. You can reduce substantially by creating a 10 to 30 one hour classes (which should include ethics

training) over a year to two. For firms looking to cut their bottom line, taking CLE in-house is a partial solution. Your office manager or administrator can run down the details for you and the committee can decide if it's worth pursuing. It will require your instructors to write papers, but that should be part of the curriculum anyway. Writing it down will help them focus their instruction and they can publish it later in a voluntary bar association magazine, newspaper, or newsletter. In fact, the firm may decide to publish its own e-book with all the instructors' contributions and send it to your clients so they can see how important associate training is to you. The larger the firm, the more the associates, the more it makes sense to secure CLE credit for your classes. This can offset many of the billable hours being dedicated to this project.

Logistics

You'll need to devise a schedule for your classes. You can have breakfast with a breakfast speaker or lunch with a lunch speaker. Generally early in the morning or at lunch are the best times to have the one-hour class (with folks settling in, serving themselves lunch, mingling, etc., allow for an hour and a half). You'll have to decide what day of the week to have it. Preferably Tuesday through Thursday is best, with Mondays and Fridays generally being bad days to schedule anything. Depending on how many classes you have in mind, how many partners and senior associates you have available to teach (and write papers), and their availability, you may have weekly Wednesday lunches until you've covered the entire program or it you may prefer monthly breakfasts the second Tuesday of each month. Spreading it out makes it easier for more of the associates to attend because they can plan ahead and keep that slot in their calendars open. Conversely, it drags out the program, and puts off vital lessons months down the road. Ideally, if you can put together a weekly program, let's say every Wednesday at lunch, with each instructor emailing the associates their written materials that Monday (giving them two days to review them), that could be the ideal set up. Hopefully, once you plan the schedule, your teachers won't wait to the last minute to prepare their written materials. In fact, depending on CLE requirements, you may want to get everyone's papers and written materials in advance and provide the associates a complete manual at the inception of the program. These are decisions your committee will have to make.

Topics

Your partners, associates, and possibly even your staff have provided their input about what topics to address in your classes. Each firm will have its own list depending on its location(s), clients, and practice areas. I suspect, though, that your list will include the following:

- Firm Culture
- Writing
- Research
- Case Strategy
- Drafting Motions
- Arguing Motions
- Drafting Written Discovery
- Responding to Written Discovery
- Deposing the Plaintiff
- Deposing Lay Witnesses
- Deposing Experts
- Defending the Corporate Representative Deposition
- Technology
- Motions for Summary Judgment
- Mediation
- Trial Preparations
- Trial
- Appeals
- Business Development
- Client Relations
- Leadership
- Getting Involved

You want to take the top 10–30 topics, organize them so they build on one another (for example, an hour on legal writing would precede an hour on writing motions), and create a schedule. Your first class may be on firm culture, firm expectations, dos and don'ts, and pet peeves. That could be followed with a class on legal research followed with a class on legal writing. The natural progression will become apparent from the topics with which you're working. The topics above assume you're concerned with teaching litigation skills. If you have a transactional department, a different plan would be drawn up for them. The same holds true

for appellate counsel (though learning why trial lawyers do what they do may be helpful when crafting their briefs).

After developing a successful mentorship program, developing a class schedule is the most important aspect of your associate training program. You're deciding upon the most important topics to be covered, the faculty to cover them, how they should be covered and the written materials to accompany them. In effect, you're creating your own mini-law school for your associates. You're telling them what's important and how to tackle what's important. You want to make sure you pick the best faculty for the job and the best written materials.

So let's talk faculty next.

Faculty

Once you've settled on your topics, choose your faculty. These are partners or senior associates who have a mastery over the topic in question, have time to participate in the program, and whom you expect will put together a strong paper and gather appropriate written materials. The survey responses may provide some leads as to prospective faculty. You may have some ideas yourself as do your committee members. Match all the topics with a potential instructor. Some will be easy matches. Some won't. Some things to consider when choosing faculty:

- Has he or she presented before? If so, on the topic in question?
- Has the instructor written on the topic?
- Has he or she spent time in the past teaching associates one-on-one on this topic?
- Is he or she a good public speaker?
- Did someone recommend the instructor?
- Did he or she volunteer to speak on the topic?
- Do you need more than one speaker to address this topic with different segments of your firm? If so, how many? From which offices? From which practice areas?
- How much experience does the instructor have handling the topic?

Ideally, you can handle each topic with just one instructor for all your associates. If you have multiple offices, you can have the instructor in his or her office or office conference room and address all the associates via Skype or another format. Some

topics may require two or more instructors. For example, deposing the expert means different things to different practice areas. Are we talking about an expert in a products case? Employment matters? Patent infringement? There are some common questions and approaches for every expert, but depending on their specialty, there are specific lines of questioning to pursue. Perhaps for expert depositions, you create a one hour class on the most common experts and have associates who would depose those experts attend those lessons. Such experts could include: engineer, accountant, accident reconstructionist, rehabilitation counselor, and economist. The surveys you conducted will provide you guidance on this.

Once you have a speaker for each topic, reach out to them and see if they will agree to participate. Most should say “yes.” For those who say “no,” go back and discuss replacements and reach out to them and continue the process until you’ve filled all the slots.

Expectations of Faculty

Once you have your faculty you need to explain to them the scope of their presentations and papers. You want an hour long presentation on their topic. They may say they need two hours. Depending on the topic, that may be appropriate. PowerPoints are optional. I’m finding speakers using them less and if you have dynamic speakers, all you’re doing is creating more work for your faculty. Your committee may want to provide each speaker a set of subtopics to cover in their lesson. Or if you have related topics, you may ask the speakers on those topics to coordinate so they don’t address the same subtopics during their respective presentations. For example a presentation on deposing the plaintiff would have some overlap with a presentation on deposing a lay witness. You may want to set parameters for each of these speakers or ask them to coordinate their presentations. On the one hand, you want to control the content but on the other, you want to allow the speakers to address what they consider important based on their own experiences and knowledge. A good rule of thumb is to provide your speaker with the topic and a sentence or two description of what the class will cover and let the speaker decide what to address and what to leave out. You can use the topic and class descriptor in your written plan to be circulated throughout the firm.

Also, provide some guidance on the paper. It should be between 10-20 pages, double spaced, with citation to authorities where

appropriate. It should be written in plain English and provide practical advice that associates can use. It's not meant to be a treatise or a law review article on a topic. It's a how-to. It's as if the partner took an associate to lunch and had a conversation with him or her about how to take a deposition or how to write a motion. A suggestion is that the paper be annotated with exhibits referencing samples from letters, motions, or deposition transcripts. For example a paper on how to depose a plaintiff should reference depositions the author has taken or participated in, reference portions of it and attach the relevant portions so associates can read it for themselves. A chapter on writing should have writing samples—perhaps a letter to a client, a letter to opposing counsel, a motion, and a mediation statement—and reference them and explain why they work. Perhaps sample sentences or paragraphs can be included as exercises for associates to rework them—changing passive to active voice, addressing grammar mistakes, proper diction, etc. The author shouldn't simply talk about how to do something, he or she should show how it's done through examples in the articles itself and attachments to the article.

In addition to the paper, the instructor should prepare an outline for the associates to follow during the presentation. It could be a series of bullet points or a more formal outline. It's just something for the associates to see what's being covered and what leads to what.

One approach is to secure all the instructors papers and attachments before you begin the program. That way, you know you have everything you need and you don't have to worry about any late papers or inadequate materials. You can also take everything and create a manual which your associates can access online and print off what they want. Doing this will take some time and push off the start date of the program but conversely you have everything up front and you, the committee, and the firm can see everything that lies ahead and can provide input if additional materials need to be circulated or an additional topic or two or more should be added to the schedule.

As far as the one hour presentation, the instructors should keep it conversational, have a give and take with the associates, use real life examples where appropriate, and because of the time limit, don't get stuck in the weeds and minutia of the topic. Hit the highlights, reference the materials referenced and attached to the paper, and where appropriate, refer the associates to articles, websites or blogs they can find online. The class assumes the associates have read the paper and materials and will follow up

by reading any additional materials or reading list the speakers offer them.

At the end of each presentation, the associates' feedback should be sought to tweak future classes as necessary.

Course Materials

As discussed, the course materials will consist of the instructors' papers and attachments to them. In addition, the committee may consider putting together a reading list of articles written by firm attorneys or from others from whom you have the right to copy and distribute their work. DRI has some great materials. Their materials from their young lawyer programs, their young lawyer newsletter and their young lawyers' contributions to *For The Defense* are all great resources to share with your associates. Also, consider providing them a link to my free book for young lawyers titled *The Associates' Handbook*. If your associates go to <http://bit.ly/2iAnOJM>, they can download their own copy for free. It provides a soup to nuts on the defense law practice, including a detailed discussion on writing, attorney marketing, and how to work up cases for trial. You don't want to overwhelm your associates with materials, but you do want to provide them a variety of materials to choose from to read at their leisure. Materials on how we do what we do aren't that plentiful and some are simply not that good, so if you can provide a bibliography of materials to your associates and make them available on your firm's server, then they can have resources readily available to them as opposed to trying to hunt them down. You may want to task one or two members of the committee to amassing these articles and securing permission to copy them and use them throughout the firm.

Also you may want your associates to read several books over the course of the program. For example, for writing, all associates should have a copy of *The Elements of Style* by Strunk and White. You may want to provide them a book on rainmaking. I've written another free book—*Attorney Marketing 101*—which you can download at <http://bit.ly/2IDqBIZ>. A book on leadership—such as one by John Maxwell—may also be a good addition. Perhaps you can provide your associates a book every quarter asking them to read it before they get the next book. If the firm doesn't want to incur the expense, ask the associates to order their own books. Regular reading on the skill set required of the practice—whether writing, rainmaking, public speaking, leadership—should be part of every associate's diet. In addition to the classes, you may want

to consider having a quarterly book club with a group leader to discuss each book and what the associates learned from the book and what they plan to apply to their practices and lives.

Expectations of Students

Just as you have expectations of the faculty, you should have expectations of the students (associates). They should read all the materials for a class before the class. They should keep up with books you recommend that they read. They should remain in regular contact with their mentors and help them when they can. They should seek out opportunities to attend depositions, hearings, receptions, business meetings, client meetings, etc. And of course they must understand that all of this is in addition to their billable work, not in place of it. You're helping them become lawyers. It's in effect continuing legal education. You're not requiring them to leave the office to secure CLE credit. You're not sending them off on their free time to learn how to take depositions. You're bringing the learning to them. They need to understand that there is a steep learning curve at the beginning of everyone's legal career and you're helping them manage that.

Putting on a “Boot Camp”

In addition to hour-long classes, your firm may be interested in putting on a deposition or trial skills “boot camp.” This is a one or more day seminar put on by your lawyers for your lawyers. This is a lot of work and requires a lot of resources. This is best reserved for larger firms who want to avoid the expense of sending all their associates to DRI, FDCC, IADC, or NITA programs. Having helped organize the FDCC Deposition Boot Camp (there will have been 10 of them by the time this book is published), I appreciate first-hand the energy, work, and expense required. Before jumping in with both feet, count the costs. You will need to do the following:

- You will need a fact pattern. You can buy one from certain outfits, such as NITA. But this can be expensive, especially if you have a lot of associates. Alternatively, you can create your own. This is very time consuming. You'll take an actual case the firm has handled, simplify it a bit, rework the pleadings, evidence, and documents, and create a fact pattern your associates can use to take depositions or try a case.

- You need instructors to teach each aspect of the boot camp. For the FDCC deposition boot camp, we have five instructors teach close to 20 topics.
- You need instructors to run small groups where associates can practice the skills they learned. For the FDCC boot camp, we had one instructor for every four students to advise them on their deposition techniques and questions.
- You'll need witnesses to be deposed (of examined if a mock trial). These can be legal assistants, runners, family members. They'll need to learn their part and be prepared to be questioned.
- If you're going to teach how to depose an expert or cross examine him or her at trial, you may want to reach out for volunteers from the local engineering or medical school. This takes time and calling in favors.
- You'll need sufficient facilities. You'll need a large conference room for the lecture portions and break out rooms for the student to practice their deposition or trial skills.
- You'll want to record the mock depositions or trial so students can view them. This can be done on an iPhone.
- You'll need to feed everyone. We're talking breakfast and lunch, for at least one day.
- You may need to do this multiple times to accommodate all the associates.

As you can see, this is a big commitment of billable time and money. I'm not trying to dissuade you from doing it, but you need to go into it with your eyes open. If you investigate some of the national firms, you'll find some of them have these programs. Consider picking up the phone, calling two or three of them, and inquire how they do it. They may have developed short cuts they're willing to share with you. You may also consider reaching out to DRI or FDCC about how they do their deposition boot camp or to the IADC about how they do their Trial Academy. If you have any questions about how FDCC does its deposition boot camp, you're welcomed to reach out to me at framos@cspalaw.com.

The advantages of doing your own programs is that you teach your associates what you want taught to them. The approach to depositions or trials at national bar association programs may not take the tact or view that your firm does toward depositions or trials. Also, you can build your training around a fact pattern you

think is most appropriate and have first-hand knowledge about. Also all your instructors are in-house and are available in the future for any follow up questions by your associates.

Our firm has sent our associates to such programs as opposed to creating our own programs. Every associate of ours, sooner or later, attends the IADC Trial Academy. Others have gone to other training seminars. The DRI Deposition Institute and the FDCC's deposition boot camp are both great. The DRI Trial Tactics Committee this year hosted a seminar that included a mock trial with a mock jury. So if you don't have the resources or time, there are plenty of skills programs out there you can send your associates to.

Trial Experience

A big complaint among associates is that they don't get enough trial experience. The ever disappearing trial is becoming more and more of a reality, with fewer cases going to trial and clients expecting experienced trial attorneys to try them, edging out opportunities for less experienced lawyers. Most associates become litigators because they want to try cases. If your firm isn't affording them this opportunity, they may look for it elsewhere.



Also, what is your firm going to do when your senior partners retire and your junior partners and senior associates take over with little or no trial experience? Are those clients going to stick around?

So your firm wants your associates to get trial experience but has no trials to offer them. There are alternatives. Seek out pro bono opportunities where associates can try cases. In Florida, there was a program that lasted several years where firms signed on to represent pro se inmates in civil matters they brought against correctional facilities. The organization, The Lawyers' Project, would send out an email about a case going to trial in two to four weeks and the first firm that responded would get the case. What our firm did is that we had a partner (me) accompany the associate to the trial and help her try the case, but she did all the heavy lifting. I would discuss with her the case's themes, theories, approaches, evidence, and witnesses. We would come up with a plan and she would try the case under my supervision. I had the privilege to supervise a number of cases and see young associates transform into trial lawyers in front of my eyes. The program lost funding and is no longer around, but there may be similar programs in your state. Another program in Florida is volunteering as a public defender in misdemeanor matters. Many of those cases are pled out, but some do go trial and a trial is a trial. Yes, it's criminal, but you have to pick a jury, make an opening statement, cross examine witnesses and make a closing argument. Just being in a courtroom and being a trial lawyer is a great experience and a huge boost of confidence for lawyers. Not every state has these opportunities, but for those who do, consider pursuing them.

The committee should research local opportunities for associates to try cases, whether it is criminal, civil, or administrative. What programs exist? What's the likelihood of trying cases? What's the commitment? What amount of billable time will be siphoned off to preparing for and trying these cases? Trying a case is a big commitment. It's an important one but it is a big one. Your associate will be out at least a week preparing for and trying the case, and ideally you'll have a partner sitting alongside of him or her, teaching the associate the entire time. You'll going to need one or more partners, depending on the size of the firm, committing to be second chair on these cases. The firm will need to discuss how it will consider all those hours the associate and partner will dedicate to it. They should keep track of their time and the firm should consider how it will affect their annual compensation.

Participating in local pro bono trial programs is something the partners should discuss and approve. It's one thing to agree to

an associate training program, it's another to agree to having an associate being out of the office that long and trying his or her own case. It's not for every firm, but speaking from personal experience, it's one of the best things we did and I have to say I learned as much as the associates did from the experience.

If there are no such programs, see if there are administrative or evidentiary hearings your associates can participate in. They are not as long, intensive or complex as a full trial, but they do provide some of the experience and have the benefit of being less time consuming.

The disappearing trial is a big problem. You need to think out of the box to create opportunities for your associates to try cases.

Rainmaking

All firms need to teach their associates about attorney marketing. In fact, your firm should have a separate program dedicated to it. Read my free book *Attorney Marketing 101* to learn how you can implement a firm wide marketing plan. Having written that book, I won't get into the details here, other than to say that what we do is as much a business as a profession, it's as much about rainmaking as it is about the craft of lawyering, and associates need to learn this as early as possible and be provided the tools to develop relationships with other professionals which will blossom into referral sources. Just as one day they'll be trying all your cases, one day, they'll be responsible for bringing in the cases. You have to teach them how to do so.

In my book, I explain that that every attorney in the firm, including every associate should develop his or her own marketing plan. Every attorney should write down which contacts he or she has and which ones he or she wants to make, how he or she plans to develop closer relationships with the contacts he or she has and new ones with those he or she wants to meet, what organizations the attorney wants to join and the role that he or she wants to play in them, what articles he or she plans on writing, and what other activities he or she plans on doing to meet the right people who one day may refer him or her a case. There should be a separate one hour class, and it should be one of the first classes, where the firm explains the importance of attorney marketing, how everyone must do it, why they must do it, and how to do it. That's a lot to cover in an hour, but provide the broad strokes and discuss creating a separate firm wide program dedicated to teaching lawyers how to be rainmakers.

Provide your associates some resources, including books that teach attorneys how to develop business. My book is one, and it's free. There are other resources you can find online. There are numerous free blogs and articles to which you can direct your associates. But whatever you do, make sure you have a one hour class, a paper, and written materials for your associates on rainmaking. Of all the classes you'll be offering, this one may prove to be the most important for the firm's longevity.

Knowing the Clients' Business

In-house counsel not only look at their cases through the lens of a lawyer but also through the lens of their CEO. Not only are there legal issues, there may be public relations issues too. Not only do they want to do the right thing, they're also concerned about their bottom line. In-house departments are cost centers, not profits centers, for their companies, and every dollar they spend is a dollar lost by the company. Understanding this, and understanding how their business works, should be a class. The business side of the clients the firm serves should be discussed and shared with the associates. There could be a general class on this topic and specific practice groups or offices could go through the dos and don'ts of their respective clients. You may even want to consider having a client representative come into your office or appear via computer monitor or phone to discuss the client's business—what they do, their mission, their future plans, their challenges and successes. Having a better understanding of what companies do and what their mission is helps your associates better represent them. I never learned anything about business, or how clients think or what they want in law school. Unless things have changed much, neither did your associates. The fact that your client is thinking about what is this going to cost, and what happens if I settle with this plaintiff's attorney, and how is this going to affect my department's budget, and how am I going to limit my company's exposure—all these things that he or she is thinking about are things your associates need to be thinking about too, and the client need to know that your associates are thinking about these matters and that they (and you) have a plan to address them.

Consider an hour overview, with a paper on client relations, a few articles on how to stay on the client's good side (and a couple articles by clients addressing how some outside counsel have upset them) followed up with discussions from team leaders about specific clients' pet peeves. As with marketing, this is a class you

have early, because it is the prism through which your associates will tackle their cases.

How the Firm Plays

Presumably you hired your associates after sharing with them how the firm operates—its expectations, standards, requirements, rules, and understandings—and knowing all these, they came on board, implicitly agreeing to play by your rules. Of course you can only cover so much during an interview process and an associate can only soak up so much walking the hallways, observing, and speaking with other associates. There are the right ways to do things at the firm and there are wrong ways. The wrong ways aren't necessarily wrong, and to an outsider they seem pretty right, actually, but as far as the firm is concerned, they are wrong. A lot has to do with the firm culture and what they expect in terms of behavior, attitude, work ethic, and personality. Face it—some associates, no matter how much you tell them what the expectations are and explain to them what they need to do to keep the firm happy—they're not going to do it. They're not a good fit. They see things differently from you. They have different priorities. They have a different view of litigation. These folks sooner or later will leave or will be shown the door. But most associates want to learn what your firm's rules are and play by them. You may already have an orientation for your associates. You may already teach them the rules of the road as your firm defines them. If so, you can skip this. But if you don't, and you don't have a formal process in place to tell associates what your specific partners and their specific clients expect of them, then you need to include a class on firm culture and expectations. This chapter could be nothing more than a compilation of emails from partners and senior associates on what to do and what not to do. It's easy to get on someone's bad side, and hard to get back on their good side, so make sure your associates know how to avoid upsetting the partners they work for.

Proposed Schedule

Let's assume your committee meets four times between June and July and finalize the program, in writing, by mid-August. You give the prospective instructors two months to get you their written materials, attachments, and proposed reading lists. Now we're into mid- to late-October. You then take a month to get the materials together, prepare a training manual and email it in electronic format to all your associates. Now we're pushing up against the

holidays, with Thanksgiving around the corner. Ask your associates to read the materials and be ready to go at the beginning of the year in January. Wait until mid-January when everyone is back and have their heads back in the game and start your weekly classes for the next 10–30 weeks, on every Wednesday from 12:00 noon to 1:30 (if your offices are in several time zones, pick one that best works for everyone). In your written training plan, explain this timetable, and include a schedule similar to the following:

■ January 17, 2018	The Firm's Expectations
■ January 24, 2018	Our Clients' Business
■ January 31, 2018	Firm Technology
■ January 31, 2018	Business Development
■ February 7, 2018	Case Strategy – Defining a Win
■ February 14, 2018	Improving Your Writing
■ February 21, 2018	Improving Your Research
■ February 28, 2018	Responding to the Complaint
■ March 7, 2018	Drafting Written Discovery
■ March 14, 2018	Responding to Written Discovery
■ March 21, 2018	Investigating the Facts
■ March 28, 2018	Deposing the Plaintiff
■ April 4, 2018	Deposing the Law Witness
■ April 11, 2018	Deposing the Expert
■ April 18, 2018	Moving for Summary Judgment
■ April 25, 2018	Mediation
■ May 2, 2018	Preparing for Trial
■ May 9, 2018	Assisting at Trial
■ May 16, 2018	Direct Examination at Trial
■ May 23, 2018	Cross Examination at Trial

This is a 20 week course. You can remove some of the topics or add additional ones. For example, deposing the expert could be split up into two classes—one for liability experts and one for damages expert. Firm technology could be split up into several—one for PowerPoint, one for Excel, one for Word, one for trial software, etc. The schedule is going to depend on how many partners and senior associates you have, how much time they're willing to commit, and how much time the firm wants to dedicate to the program. The idea is give the associates a soup to nuts education on litigation, hitting all the highlights without getting bogged down in too many

details. Also, the associates will have the manuals, with all the samples to refer to when they have specific questions.

Have a schedule for make-up classes or simply upload them onto the firm's server so associates can watch them when they can. To do that, make sure the presentations are video recorded. If multiple associates miss a session, there's something about having them watch it together. That'll depend on how many associates you have and how many miss a given session. Recording and uploading the presentations not only serve the associates who missed the session but new associates who join the firm after the program has started or after it's over.

If in addition to the classes, you're planning a boot camp, save that for the fall. That take a lot of planning and it's a lot to ask your firm to sit through a four month training program immediately followed by a boot camp. The schedule will include one to three days, likely in mid to late October. That'll give the committee some time to work with the faculty to put together a fact pattern, a training manual and materials, track down witnesses, and address all the details such a large project entails.

Written Associate Training Program

The written program will provide an overview of the program, describe its goals and purpose, provide a calendar of events, list the instructors for each class, explain the expectations for the faculty and students, describe the mentoring program, list everyone's mentors, give a preview of the written materials and the training manual, and provide a reading list of materials, blogs, websites, and articles associates can find online, and start reading until they receive their manual. This written program doesn't have to be long. A few pages is all it takes. It's not a book. Just a program so everyone knows what to expect, what their assigned to do and what their respective time commitments are.

The written program goes out to everyone. The instructors have two months to get you their papers and attachments. This needs to be a hard deadline. In fact, before you include an attorney as an instructor on the schedule, you make it very clear to him or her the deadline is etched in stone. In fact, if you get commitments to the program before you finalize the written program and distribute it, encourage those folks to start working on their materials. Everyone's papers come in, the committee organizes them and saves them into the firm's system, and within a few weeks it's ready

to download. This manual is the book. This has everything your associate needs to do their job well. Sample discovery? Check. Sample plaintiff deposition outline? Check. Sample mediation report to the mediator? Check. Associates should have access to such things anyway on the firm's server, but a sampling of each for the manual serves as a good resource.

So everything is ready to go. How about the rollout? First, let's discuss making adjustments depending on your firm size and resources. One size does not fit all.

One Size Does Not Fit All

We've been talking about committees and instructors and manuals and boot camps. But what if you're at a small firm? Or what if it's just you and one associate? How is this going to work? How does all of this help you? No matter how big your firm, you can have an associate mentoring program. Let's talk how.

Let's start with a two attorney firm: you and an associate. You're litigators. You have a specialized practice (or you don't). You have either a niche practice with a handful of larger cases, or you're a volume practice, with many smaller matters. You need your associate to make your job easier, have your back and run things when you're at a conference or on vacation. This is an apprenticeship relationship. You teach, the associate learns. You do, the associate observes. You lead, he or she follows. You could simply have your associate learn as he or she goes, have an ad hoc approach, and wish for the best. A more formal program is much better. When you're home, one night or during the weekend, write down the topics you want your associate to master. Very similar to the list of classes we discussed. Being such a small firm, there are likely a variety of small business skills you need the associate to learn. Write those down. Then put the topics in a logical order and commit to taking your associate out to lunch (or you two can brown bag it and stay in) and go through a topic a week. You don't need to write a paper. Articles from online would be nice, but not necessary. Samples from your work will do. And each week, go through a topic. You teach every class. Don't spend too much time thinking about it and planning it out. You know how to draft motions. You know how to depose treating physicians. You know how to market. Just tell the associate what you know, one topic at a time each week.

There will be a lot of unbillable time at the beginning. You'll want to take the associate to hearings with you so he or she sees first

hand to argue and persuade. You'll take him or her to some of your depositions so he or she learns what to ask and how to ask it. If you try a case, the associate will second chair it with you, even if you have to bill him or her out at a paralegal rate or not bill him or her out at all. You want the associate to learn? You want him or her to do things the way you want them done? This is how you do it. No surprises here. You do, the associate watches. You teach, he or she learns. This type of arrangement yields good results and a lot of loyalty.

Let's go from the two-person firm to the three- to ten-person firm. This model starts to morph from a straightforward apprenticeship model to a more conventional associate training model which we've been discussing. You don't have quite the resources to write papers or teach formal classes. But you do have folks who can come up with a list of topics, split them up and discuss them over lunch. You can't do a boot camp. But you can consider pro bono trials. You don't have a big training committee. Maybe it's just one person who puts together a more slimmed down program and assigns partners and senior associates to address specific topics and leaves it to them on how to address them. There's still the one-on-one training with associates accompanying more senior attorneys to hearings, depositions, and trial. Having regular luncheons discussing specific topics, assigning reading, and putting together materials consisting of samples and articles can make up the backbone of a training program.

The next size firm would include those with 10-25 attorneys. More resources allow you to have a more formal training process and follow many of my recommendations in this book. You have more matters, more clients, more resources, and more partners with more time to write papers, gather materials, and teach classes. You're reaching a size where quality control has to be more deliberate and a formal program addresses this.

Once you go beyond 25 attorneys, and move beyond one office, more and more of the suggestions in this book come into play. The greater the number of the classes, the larger amount of samples and articles, and the more sophisticated the program. Each firm has to count the cost and decide how much time, energy, and money it wants to invest in a program which will be driven by the size and resources of your firm. Every firm can have an associate training program. What it looks like will depend on you.



The Rollout

Let's Go!

You have emailed the associate training program to everyone, you have emailed them the training manual, you've matched mentors with their mentees, and the fun is ready to begin. Let's take this in turn.

Mentorship

This is the backbone of your program. Yes, the classes are important. The written materials are important. Certainly a boot camp would be important. But the mentoring relationships you create and help foster are the most important. The day-to-day, how-I-do-this job questions and answers are going to be the most important interactions your associates are going to have to grow into the very big shoes they have to fill at your firm. After everyone receives their materials, which should include a list of mentors and their mentees, send everyone an email along the following lines:



On _____, you received the Associate Training Program which included a list of all the mentors and their mentees. The Program provided suggestions and expectations about these mentorship relationships. The primary purpose is to provide associates with someone they can reach out to with questions they have about the practice and provide them with an example on how to practice law. As the materials note, it is a two way relationship, with each side giving and taking. Of course we can provide all the rules, guidance and suggestions possible, but the mentoring relationship will depend on what you mentors and mentees put into it. Like all relationships, a mentoring relationship either grows or wilts based on the care and feeding you provide it. We all have lives and commitments, but take the time to nourish your mentoring relationship and both the mentor and mentee will reap the benefits.

We recommend each mentor schedule a breakfast or lunch with his/her mentee over the next three weeks to discuss the logistics of the mentoring relationship (How often will we get together? Where? What topics do we plan on discussing? What opportunities are there to attending depositions? Hearings? Meetings with clients?) and what each sides expectations are for the relationship. A Mentorship relationship, like all relationships, are fluid and subject to change. But like all relationships, they abide by a certain set of rules and it's important those rules be discussed and parameters be set.

We wish you all the best. You are taking your initial steps to developing a relationship that will last years to come with someone you will not only call a colleague, but a friend.

You send off your mentors and mentees to break bread and discuss their impending mentoring relationship. You've painted the relationship with a broad brush and it's up to them to fill in the details. You want to make sure the relationship doesn't begin and end with one bowl of pasta and tiramisu. Your committee should send regular reminders to everyone encouraging them to spend time with their mentors/mentees. Do they have another lunch planned? Are there any events they're attending together? Is there a deposition or hearing the mentee can attend? Also, provide questions or topics that they can discuss over lunch. Every month, give everyone some ideas of items to discuss. One month it could be how young lawyers can develop relationships that will become referral sources. Another month could be about how to get involved in organizations. Another month could be how to deal

with difficult opposing counsel. Some mentors and mentees will immediately hit it off, will spend plenty of time together, and will make the most of their relationship. Others won't. Hopefully you screened out those partners who make poor mentors, but even the best meaning well intentioned mentors may quickly lose sight of what they should be doing. By regular reminders, with topics to discuss, you'll help those relationships grow and flourish.

You may also want to create outings where mentors and mentees can go out socially and get to know each other and get to know other mentors and mentees. For example, you may have a quarterly event—bowling, shooting pool, ping pong, darts—where mentors and mentees can compete together against other mentors and mentees. We're litigators because we're naturally competitive. Creating opportunities where mentors and mentees can compete together as a team brings them closer and the firm closer.

You also want to get feedback from everyone about the mentoring relationships. Consider sending out a confidential survey to everyone to get their input and how the firm can help come alongside them and help them improve the mentoring experience. Also, some mentoring relationships simply won't work. Some folks won't simply get along. Mentors and mentees need to be given the opportunity to voice their concerns to the committee and switch mentors or mentees when the need arises.

Written Materials

When you roll out the program, you would have distributed the Associate Training Manual, which has all the instructors' papers and their addendums to it. Depending on how big your firm is and how many practice teams and areas you have, the presentations will provide a lot of great advice but may not address all the issues and details for everyone. You should encourage practice groups to put together their own materials. For example, our firm handles many different types of employment matters. We have our own employment manual with sample answers, discovery requests, discovery responses, motions, and other documents that are representative of these various matters. It's a great place to start when you're drafting a pleading or a motion in an employment matter. Instead of printing it all out, you can create a manual on your firm's server with sample documents associates can reference when working up a case. The idea with the written materials is you want to provide your associates resources so they don't have to reinvent the wheel for every project they undertake.

The Associate Training Manual is the beginning of written materials for your associates, not the end. Your partners will read through it and think, “you know, I came across an article on X. I should distribute it.” Or another partner might say, “those sample interrogatories are good, but they’re general. I should send everyone in my practice group the ones I always use.” A separate email should be sent to them, encouraging them to send their associates articles they have clipped or saved and sample motions and filings with which they are particularly impressed. Good writing is learned from reading good writing. You want as many, if not all, your partners engaged and thinking of written materials they can share with associates to augment the Manual your committee put together. It’s better that you have too much to read than too little. You want them with more writing samples, not fewer. They may not get to everything, but they’ll have plenty of resources to which to refer.

The First Class

You’re going to learn a lot about how well your associate training program is going from your first class. Make sure to attend, either in person or by video and assess how it goes. How was the instructor? How was the interaction with the associates? What questions were asked? What answers were offered? You’re going to want to provide a survey of this class (in fact, of all your classes) and see what worked and what didn’t to advise the future presenters. Perhaps associates wanted it to be more interactive? Perhaps they wanted certain topics covered? Perhaps they thought the pace was too slow? Too fast? Too simplistic? Over their heads? Your firm is doing this for the first time and they’re going to be some hiccups along the way. Be proactive about identifying and rectifying them. You’re going to have 10–30 of these classes and you may decide to add more down the road. Troubleshoot early.

And then there are the logistics. Should we start the classes earlier or later? How was the caterer? Was there enough room for everyone? Enough chairs? How was the recording? Did all the associates get to watch it? For those who weren’t present, how will they get to see it? You or someone from the committee should attend every class and have a first-hand impression of how it is going and what changes or additions should be made.

Coordination

Make sure you coordinate your associate training program with any other firm programming you have. For example, most firms have marketing programs and there is a lot of overlap between training associates to be better lawyers and training associates to better marketers. There are probably classes, written materials and other aspects of your associate training program that are also covered by your marketing program. Make sure to speak with one voice as a firm and coordinate the training to avoid overlap, or worse, contradictory advice.

You may already offer technology training or your clients may offer your firm their own orientation programs. Keep these other programs in mind when scheduling classes or events, when distributing written materials or offering firm wide advice to associates. The bigger the firm, the more programs you will likely have to juggle.

Associate Feedback

During the rollout of the training program and its first few weeks, lean heavily on the associates on your committee. Have them gauge the reaction of their fellow associates and garner their feedback. Ultimately, the program is for them so you have to make sure it's reaching them on their terms. Your associate committee members, having helped put the program together, now should act as liaisons and investigate what's working and what's not, what's being well received and what isn't. They should play a role in reviewing the surveys and assisting in interpreting the data into positive changes to the program. There's no right way or wrong way to do an associate's training program. What I make and what you have read elsewhere are simply suggestions. What it actually looks like at your firm and how your firm does it will be based on your firm's needs, personality, resources, and feedback. Make sure your associates are given a voice to make the proper adjustments.



The Classes

When I discussed the individual classes, I didn't say what each should include. That's going to be driven by your firm, your clients, your cases, your jurisdiction and your practice areas. How our firm tackles depositions may be different from yours. How our firm teaches our associates how to develop business may be different from yours. The substance is up to you. The content of the papers you provide your associates is up to you. The materials you circulate is up to you. If you need help with the substance, you're welcome to borrow from my book for young lawyers, *The Associates Handbook*. Although I won't tell you what to teach, I'll provide my thoughts on questions your instructors and students should answer. Consider the following worksheets—a list of questions on a given topic that both the instructors and students should review and contemplate before the class and be prepared to address them in class. What you can do is circulate a set of questions (which follow in the next pages) a week before class, asking the instructor and the associates to reflect on them and address them during class. To avoid instructors from having to revamp their presentations, consider sending the following sets of questions to the instructors when they're first assigned their classes so they can take them into consideration when preparing their paper, materials, and presentation. They provide a framework about what should be covered and considered without spelling out what advice should be given.

What follows are various topics for your classes and suggested questions for those classes. You can simply cut and paste the following pages and send them to your faculty first, so they can consider them when preparing their materials, and later to your associates, so they can reflect upon them before attending the classes. They're workbook pages which serve as a tool to help direct and focus the classes and the discussions in those classes. They also serve as talking points between mentors and mentees.

The Firm's Expectations

Background about the firm:

- What was the firm's origin?
- How has it grown?
- What changes has it undergone?
- What's the firm's Mission Statement?
- What does it mean? What's its purpose?
- What are the firm's values?
- What are the firm's goals?

Associate's role:

- What are the firm goals for you?
- What should you plan on accomplishing?
- What are the expectations for:
 - Junior Associates?
 - Mid-Level Associates?
 - Senior Level Associates?

What should you do when you have:

- A legal question?
- A case-related question?
- An ethical question or dilemma?
- A problem a client wants you to address or solve?
- Come across a mistake you made?
- Come across a mistake someone else has made?

What are the dos and don'ts for associates?

- What are partners' pet peeves?
- What are clients' pet peeves?
- What else should every associate know?
- What questions do I have about the firm?
- About the practice?
- About our clients?
- About our cases?
- What are the expectations about billing?
- About client interactions?
- Interactions with partners?
- What does an associate superstar look like?
- What goals should I set for myself this year?
- How will I know when I achieve them?
- How about work/life balance?
- How should an associate act on social media?

Our Client's Business

- Who are the firm's clients?
- What matters do we handle for them?
- What businesses are they involved in?

- Who are our client contacts?
- What do their companies expect of them?
- Based on those expectations, what do they expect of us?
- What demand are placed on our clients by:
 - Their clients? Customers?
 - Their employees?
 - Their bosses?
- How can you help them meet those demands?
- What business training do you have?
- Where can you go to learn more about our clients' businesses?
- What are some of the changes taking place in the marketplace?
 - How do they affect our clients?
- What changes are taking place in technology?
 - How will it affect our clients?
 - How will it affect our delivery of services to them?
- What steps can I take to learn more about those aspects of our clients' business that affect our cases?
 - What can I learn from their websites?
 - Their corporate filings?
 - Articles about them?
 - Articles about their business?
 - Their business model?
 - What publications address their business?
 - What publications do our clients read?
 - What should we be reading?
 - What blogs should we be following?
 - Who should we follow on Twitter and LinkedIn?

Firm Technology

- What technology does the firm offer its attorneys?
 - Its staff?
 - Its clients?
- How proficient are you with:
 - Microsoft Word

- ☐ Excel
- ☐ PowerPoint
- How proficient are you with trial technology:
 - ☐ Trial Director
- How familiar are you with our file management software?
 - ☐ Our deposition management software?
 - ☐ Our clients' case tracking software?
- How about e-discovery?
 - ☐ What is your experience with retrieving, sorting, and producing e-discovery?
 - ☐ How familiar are you with our clients' procedures with handling e discovery?
 - With our firms' handling of e-discovery?
- How about our use of laptops?
 - ☐ iPads?
 - Related aps?
 - ☐ iPhones?
 - Related aps?
 - ☐ Other technology?

Business Development

- What is business development?
- What is rainmaking?
- How do the partners develop business?
- How did they become rainmakers?
- What's the firm strategy regarding business development?
- What's your role in that strategy?
- What's a personal marketing plan?
- What does it consist of?
- How do you prepare your own?
- How do you measure your success?
- What should you be reading about rainmaking?
- What blogs should you be following? Twitter accounts? LinkedIn accounts?
- What goals should you set for yourself?
- What organizations should you join?

- ☐ How can you get involved with them?
- ☐ What committees should you join?
- ☐ What should you do on those committees?
- How about getting published?
 - ☐ Should you write articles?
 - ☐ On what?
 - ☐ For whom?
 - ☐ How do you get published?
- How can you work with your mentor to develop business?
 - ☐ How can he or she help you?
 - ☐ How can you help him or her?
- What are the expectations for business development for:
 - ☐ A junior associate?
 - ☐ A midlevel associate?
 - ☐ A senior associate?
- Are you expected to bring in clients?
 - ☐ If so, what type of clients?
- If not, what are you working towards?
- How do you meet prospective clients?
 - ☐ What do you say to them?
 - ☐ How do you “pitch” them?
 - ☐ How do you build relationships with them?
- What business development skills do you need?
- How do you develop them?
- How can the firm help you develop business?
 - ☐ What resources are available to you?
- What are firm activities you can help in developing business?
 - ☐ Writing for the firm website?
 - ☐ Write for the firm newsletter?
 - ☐ Helping with a firm proposal for a new or existing client?

Case Strategy—Defining a Win

- How does one evaluate a case?
- What does “winning” the case look like?

- How does the client define a “win”?
- How does the firm define a “win”?
- How do the facts play into defining a “win?”
 - How about the law?
 - How about the judge assigned to the case?
 - Or opposing counsel?
- What goes into developing a case strategy?
 - What’s the partner’s role?
 - What’s your role?
 - What’s the client’s role?
- What do you need before developing a case strategy?
 - What facts?
 - What law?
 - What research?
 - What does the client need to provide?
 - When do you have enough?
 - What else do you need?
- How does the litigation team formulate the strategy?
- How can you help?
- What value do you add?
- How should you approach your cases?
- What does “start with the end in mind” mean?
 - How do you decide what the goal is?
 - How do you work backward from the goal?
 - How do you plan on achieving the goal?
- What is this going to cost?
 - How do you prepare a case budget?
 - What needs to be included?
 - What should be done/spent, and what shouldn’t?
- What are the variables? The unknowns? The X factors?
 - How do you take these into consideration when preparing your strategy?
 - How will the strategy change over the course of litigation?
 - How do you address those changes with the client?
- How do you share with the client your case evaluation?
- What’s an evaluation letter to the client look like?

- What does a case budget to the client look like?
- Why spend so much time and energy up front on a case?
 - What are the benefits on an early and thorough case investigation?

Improving Your Writing

- What are you trying to accomplish when you write:
 - A motion?
 - A letter to opposing counsel?
 - A letter to the client?
 - An email?
- What are you trying to say?
- How should you say it?
- Are you providing an objective analysis?
- Are you trying to be persuasive?
- How is your grammar?
- How can you improve it?
- How is blue booking?
- How can you improve it?
- Do you write in Plain English?
- Do you write in the active voice?
- Do you remove all unnecessary words? Phrases? Clauses? Sentences?
- What writing training have you received?
- What books on writing have you read?
- Which ones should you read?
- Whose writing in the firm do you try to emulate?
- Why?
- How's his or her writing style?
- Have you read samples of his or her writing?
- What should be your approach to writing:
 - An email
 - A letter
 - A motion
 - A response to a motion
- What exercises can you do to improve your writing?

- What are some common mistakes writers make?
 - How can they be avoided?
- How do you frame your writing?
 - What should the beginning look like?
 - How do you write an effective and persuasive introduction?
 - How do you build on the beginning?
 - How do you conclude?
 - What affect are you trying to have on the reader?
- How do you prepare an outline?
- How do you arrange your arguments?
- How do you transition from one point to the next?
- How do you spell out your facts?
- How do you show the relationship between your facts and the law?

Improving Your Research

- Where do you do your research?
 - Westlaw?
 - Google?
 - Blawgs?
 - Pacer?
- What are the sources of information?
 - Cases?
 - Statutes?
 - Regulations?
 - Treatises?
 - Journal Articles?
 - Other secondary sources?
 - Pleadings, Motions, and Orders from Westlaw? Pacer? Other?
- How do you conduct your searches?
- What are your goals for your research?
- What jurisdictions do you search under?
- Do you ever use Westlaw research assistance? Phone? Live chat?

- ☐ How can they help you?
- ☐ How do you use them effectively?
- How do you use the firm resources?
 - ☐ How about our research memos? Correspondence? Motions?
- How can you improve your research skills?
- What do you need help with?
- What questions do you have about:
 - ☐ Identifying research issues?
 - ☐ Crafting research searches?
 - ☐ Modifying searches?
 - ☐ Finding the impossible case to find?
 - ☐ Researching an issue not bearing any fruit?
- How do you reduce your research findings to writing?
- How do you interpret what you found?
 - ☐ How do you explain the results?
- What should a research memo contain?
 - ☐ What should it look like?

Responding to the Complaint

- How do you read a complaint?
- What are you looking for?
- What facts are looking for?
- How are the causes of action articulated?
- What's your strategy in responding to the complaint?
 - ☐ What do you hope to accomplish?
 - How does that play in the larger case strategy?
- Is there a basis to move to dismiss?
 - ☐ What is it?
 - ☐ How strong is the argument?
 - ☐ Is it dispositive?
 - ☐ Is it a pleading flaw that can easily be corrected in amended complaint?
 - If so, do you want to point that out?
- Is there a basis to move for more definite statement?
- Should you simply Answer?

- ☐ Why?
- ☐ What affirmative defenses do you have?
- ☐ How do you know if you've asserted all the relevant affirmative defenses?
- What does your client want?
- What makes the most sense for her?
- How does your response play into winning the case?

Drafting Written Discovery

- What's the purpose of written discovery?
 - ☐ Interrogatories?
 - ☐ Requests for production?
 - ☐ Requests for admissions?
- What are you trying to accomplish?
 - ☐ Secure:
 - Information?
 - Documents?
 - Admissions?
 - Locking the other side in?
 - Laying the foundation for future depositions?
 - Summary Judgment?
- What can you reasonably secure from written discovery?
 - ☐ What's opposing counsel trying to do when they respond?
 - ☐ How much information are they likely to provide?
 - ☐ How are they going to distract you from what they're not telling you?
- How much of your case strategy are you revealing through your written discovery?
- How much should you reserve for deposition questions?
- What's the tension between the scope of written discovery and the scope of depositions?
- What are the different approaches to written discovery?
 - ☐ What's the strategy behind each?

Responding to Written Discovery

- What is opposing counsel trying to accomplish with his or her written discovery?
- What information is he or she trying to gather?
- What admissions is opposing counsel hoping you make?
- What smoking gun document is he or she trying to secure?
- On your end, what information are you trying to keep from him or her?
- How can you in good faith and ethically not produce the smoking gun document?
- What objections can you assert?
- How much information is not enough? Too much?
- What documents should you produce? Hold back?
- What if the client wants to keep something secret?
 - What if the client wants to withhold a document?
- How about e-discovery?
 - How do we handle that?
 - What are the firm's protocols?
 - What are the client's protocols?
- How do we produce documents?
 - How to we organize them? Bates stamp them? What format?
- How about confidential documents?
- When are privilege logs appropriate?
 - What should be included in them?
- How about form objections?
- How about blanket objections?
- How will the judge perceive your objections?
- How do you address them in a meet and confer with opposing counsel?
- What fights are worth having over written discovery?
 - Which ones aren't?
- Do you risk showing your hand by fighting an issue too much?
- Can the court sanction you for your objections?
 - How likely is that?

- ☐ How can you avoid that?
- How do you balance the requirements of the discovery rules and free exchange of information and your clients' interest in keeping certain things secret?
- What are your ethical obligations when responding to discovery? To the court? Opposing party? To your client?

Investigating the Facts

- What does a case investigation consist of?
- What are you trying to find out?
- Who should you speak to?
- What documents should you seek out? From whom?
- How do you identify relevant witnesses?
- How do you locate them?
- Ethically, who can you talk to?
 - ☐ What can you say to them?
 - ☐ What questions can you ask them?
 - ☐ What documents can you ask they produce?
- What goals do you have when you interview someone?
 - ☐ What information are you trying to collect?
 - ☐ How does a given witness play into your case? Into your case strategy?
- How should you approach a witness interview?
 - ☐ How do you prepare for them?
 - ☐ What questions should you ask every witness?
 - ☐ What questions should you ask specific witnesses?
- How do you preserve their testimony?
 - ☐ Written statement?
 - ☐ Recorded statement?
 - ☐ Sworn statement?
- Do they have a right to the statement?
- Does opposing counsel have a right to the statement?
- What if opposing counsel asks the witness for a copy of his or her statement?
- Where do you seek documents from?
 - ☐ Client?

- ☐ Witnesses?
- ☐ Third party sources?
- What documents can you find online?
 - ☐ Court documents?
 - ☐ Background searches?
 - ☐ FOIA requests?
- What documents does the firm generally seek out?
- Which ones are publicly available?
- Which ones require a subpoena or a signed authorization?
- What do you do with the documents once you get them?
- How do you use them in your case?
- Which ones do you have to produce to the other side?
- What role do documents play in your case?
- How do you plan on authenticating them for trial?

Deposing the Plaintiff

- What are your goals?
- What are you hoping to accomplish?
- What do you need to prove to prevail:
 - ☐ On a Motion for Summary Judgment?
 - ☐ At trial?
- What facts are you hoping to secure?
- What admissions are you hoping to secure?
- How do you plan on asking your questions?
 - ☐ Leading questions?
 - ☐ Simple questions?
 - ☐ One fact per question?
 - ☐ Each question building on the last question?
- What are the different approaches to deposing a Plaintiff?
- What are the pros and cons of each?
- How do you prepare for a Plaintiff's deposition?
- What documents do you need?
- What written discovery should have been propounded?
- Which witnesses should you have already spoken to?
- Which documents should you have already reviewed?
- What goals have you set out for yourself?

- ☐ What are the partner's goals?
- ☐ What are the client's goals?
- How do you draft your outline?
- Should it be annotated?
- What do you include in your outline?
 - ☐ What topics?
 - ☐ How do you arrange your topics?
 - ☐ How do you transition from one topic to the next?
 - ☐ How do you hide the tough questions among the more innocuous ones?
 - How do you prevent Plaintiff from seeing where you're going?
 - ☐ Do you write out all my questions? Some of my questions?
 - ☐ What questions should you avoid?
 - ☐ Which ones should you always ask?
- How should you prepare the exhibits you expect to use at deposition?
 - ☐ How many copies will you need?
 - ☐ How will you use them in deposition?
 - ☐ In what order will you use them?
- How do you get Plaintiff to make an admission?
- What do you do when you get an admission?
 - ☐ Are there follow up questions? Do you move on?
- How do you deal with speaking objections?
 - ☐ How do you deal with opposing counsel trying to coach his client?
- How do you deal with changes to the plaintiff's testimony after a break?
- How do you deal changes on an errata sheet?

Deposing the Lay Witness

- What are the main differences between deposing a Plaintiff and a lay witness?
- What are the categories of lay witnesses?
- When should you depose a lay witness?
- Can you lead a lay witness?

- ☐ Why not?
- Can you speak with a lay witness before a deposition?
 - ☐ When can you?
 - ☐ When can't you?
- What's the appropriate scope of pre-deposition communications with a lay witness?
 - ☐ What do you hope to accomplish?
- How does the witness play into your case strategy?
 - ☐ What information do you want to gather?
 - ☐ What admissions are you seeking?
 - ☐ How does he or she help with summary judgment? With trial?
- How does Plaintiff's deposition testimony affect your strategy with a lay witness?
- How does opposing counsel plan on using the lay witness?
 - ☐ What favorable testimony does he or she have for the opposing party?
 - ☐ How can you blunt that favorable testimony?
- What are the goals with the deposition of any lay witness?
- What documents should you show a lay witness?
 - ☐ How do you use exhibits during his or her deposition?
- What does a "win" look like when deposing a lay witness?

Deposing the Expert

- When should you depose an expert?
- What preparation goes into deposing an expert?
 - ☐ Where do you get his or her:
 - CV?
 - Publications?
 - PowerPoints from presentations?
 - Prior deposition transcripts? Trial transcripts?
 - Background information?
- What impeachment materials are available? Where do you get them?
- What motions are available challenging the expert? His or her expertise? His or her opinions?

- What has the expert said in the past about the issues relevant to your case?
 - Do they support Plaintiff's position?
 - Do they undermine Plaintiff's position?
- Are you entitled to expert's report? Drafts of his or her report? How do you get it?
- How do you get the expert's file? How do you get it well before his or her deposition?
- What portions of an expert file are discoverable? What portions, if any, aren't?
- What are you looking for in the expert's file? What helps you? What hurts you?
- How do you sit down with everything you've gathered and approach the deposition?
 - What do you focus on?
 - What's your strategy?
 - How do you use the expert's expertise against him or her?
 - How do you use his or her publications, presentations, and past testimony against him or her?
- What do you include in your deposition outline?
 - How do you lay it out?
 - How do you annotate it?
 - How do you ask questions so you don't telegraph what you're trying to do?
 - How do you pin an expert in?
 - How do you get him or her to make admissions?
 - What should you ask every expert?
 - What questions should you avoid?
- Do you have your expert help you?
 - How can your expert prepare for the other side's expert's deposition?
- What do you do at the deposition?
 - How do you handle exhibits?
 - How to do you shift from one topic to the next?
 - How do you lead an expert to the answers you're seeking?

Moving for Summary Judgment

- What's the standard for summary judgment?
 - How is it different in state court versus federal court?
- What is your burden?
- What do you have to prove?
- When do you start laying the ground work for a summary judgment motion?
- How do you lay the ground work?
- How do you research the law?
- How do you investigate the facts?
- How do you set up the facts to match the law you're relying upon?
- What facts do you need to prove through:
 - Written discovery?
 - Depositions?
 - Affidavits?
- How do you prevent fact issues from undermining your motion?
- How do you know when you have a viable summary judgment motion?
 - What makes it viable?
- How strong is your motion for summary judgment motion?
- How can you make it stronger?
- How do you prevent opposing counsel from undermining it?
- How do you not telegraph the facts you are establishing to support your motion?
- What do you do when you have a document that undermines the motion?
 - How about a witness?
 - Deposition testimony?
 - An affidavit?
- What are the purposes of filing a motion for summary judgment?
- Do you have to win to have it be effective?
 - Are motions for summary judgment used to:
 - Facilitate settlement?
 - Draw out unfavorable facts?

- Draw out the identity of experts and their opinions?
- What's the cost associated with such a motion?
 - Have they been discussed with the client?
 - Is the client on board?
- How do you draft the motions?
 - How do you:
 - Conduct the research?
 - Apply the facts to the law?
 - Organize the facts?
 - Anticipate the other side's response?
 - Prepare supporting affidavits?
- How do you prepare a reply in support of the motion?
- How do you argue the motion?
- How do you prepare for the hearing?
- What happens if you prevail?
- What happens if you don't?

Difficult Opposing Counsel

- How do you handle difficult opposing counsel?
- What if he or she is:
 - Rude?
 - Belligerent?
 - Lies?
 - A Bully?
 - Harassing?
- How do you respond to opposing counsel:
 - Over the phone?
 - In emails?
 - Through motion practice?
 - In depositions?
- Specifically, in depositions, what if opposing counsel:
 - Tries to coach his or her witness?
 - Makes speaking objections?
 - Tries to testify for his or her witness?
 - Harasses your client?

- ☐ Insults, belittles or verbally attacks your client?
- What if opposing counsel engages in unethical behavior?
 - ☐ What if he or she lies to the court?
 - ☐ What if he or she misrepresents what you've said or done?

Ethical Issues

- How do you know you've come across an ethical issue?
- How should you approach it?
- To whom should you bring the issue at the firm?
- Where do you look for guidance?
- What are the state bar standards? Written opinions?
 - ☐ Other resources?
- How can a partner help?
- How do you avoid inadvertently acting unethically?
- What are common ethical issues:
 - ☐ You confront?
 - ☐ For litigators?
 - ☐ For representing insureds?
 - ☐ Dealing with insurance clients?
- What's the tripartite relationship between you, the insurer, and the insured?
 - ☐ What are common ethical issues that arise from that relationship?
 - ☐ How do you address those issues?
- What are good resources to read to avoid accidentally falling into an ethical trap?
- What are common ethical issues associated to different practice areas?

Mediation

- What is mediation?
 - ☐ How does it work?
 - ☐ What are the different elements of mediation?
- Should you mediate? If so, when?
- What's a court ordered mediation?

- What's the difference between a court ordered mediation and one that is not?
- How about mediation before suit is filed?
- What do you need to know before proceeding with mediation?
 - What facts do you need?
 - What issues need to be researched?
- What preparations are necessary for a successful mediation?
- What's your role?
- What's the partner's role?
- What's the client's role?
- What case evaluation should be done before committing to mediation?
 - What is the case worth?
 - What does the client want to settle for?
 - What's an appropriate settlement range?
 - What's the client's exposure if he or she loses at trial?
 - What are the remaining costs to defend the case?
 - What are the remaining legal expenses?
- Has Plaintiff made a demand?
 - If not, should you request one before mediation?
- Do you have all of Plaintiff's hard costs?
 - Litigation costs?
 - Medical bills?
 - Expert fees?
- Do you know what Plaintiff's counsel approach to mediation is?
- How about the mediator?
 - How do you choose the "right one?"
 - What does your client want in a mediator?
- What is a mediation statement for the mediator?
 - What's its purpose?
 - What does it consist of?
 - How do you draft one?
- How do you prepare an opening statement for mediation?
 - What does it consist of?

- ☐ How do you address opposing counsel? The Plaintiff?
- ☐ What should be your tone?
- How do you negotiate a settlement?
 - ☐ What should you say? How should you say it? What should you avoid saying?
- What are different settlement styles?
 - ☐ What are the pros and cons of each?
- What's the appropriate role of the mediator?
 - ☐ How do you get the mediator to help me resolve the case on my terms?

Preparing for Trial

- What should you expect at trial?
- What is the purpose of trial?
- What are the goals for trial?
- How do you define a win at trial?
- What are the different aspects of trial?
 - ☐ What will trial consist of?
- What will be the client's role at trial?
- What will be the partner's role at trial?
- Your role?
- The paralegal's role?
- What goes into preparing for trial?
- What will the partner be doing?
 - ☐ What will he or she need help with?
- What will you be doing at trial?
 - ☐ What do you need to do to be ready to do those tasks at trial?
- How can you help with preparations for:
 - ☐ Jury Selection?
 - ☐ Opening Statement?
 - ☐ Direct Examinations?
 - ☐ Cross Examinations?
 - ☐ Trial Exhibits?
 - ☐ Use of Technology at Trial?
 - ☐ Closing Argument?

- How can you help with:
 - The preparation and use of trial exhibits?
 - Getting witnesses ready for trial?
 - Pretrial motions, including motions in limine?
 - Last minute settlement discussions?
 - Trial subpoenas?
 - Last minute discovery?
 - Preparing the client for trial?
- What should you be doing 90 days out?
 - 60 days out?
 - 30 days out?
 - 15 days out?
 - A week out?
 - The weekend before?

Assisting at Trial

- What does a partner typically want an associate to do at trial?
- What is the typical role for second chair?
- What is the partner's role at trial?
- Your role?
- The paralegal's role?
- What discussions will you have with the trial team?
- What will likely be the division of labor?
- What do you bring to trial?
- What needs to be loaded on your laptop? iPad?
- Who is going to handle technology in the courtroom?
- How about meeting with and preparing witnesses?
- Keeping track of exhibits?
- Taking notes on prospective jurors?
- Taking notes to assist with preparation for closing argument? Appeal?
- When should you speak up at trial?
- When should you offer advice?
- How should you address the client's questions and input?

- What's your role each morning before trial begins?
 - How about each evening when the trial day ends?

Direct Examination at Trial

- Which witnesses are you handling?
- Are they favorable or hostile?
- How do you prep them?
- What information can you share with them?
- How far can you go to get them ready for their testimony?
- What does an effective prep session consist of?
- What exhibits will you introduce through the witness?
- What demonstrative aids will you use with the witness?
- What facts do you want the witness to discuss?
- How do you want the facts to come out?
- What role does the witness play in your overall strategy?
- How does the witness help your case?
- How may the witness hurt your case?
 - How do you prevent him or her from hurting your case?
- What should you include in your direct examination outline?
 - How detailed should it be?
 - What topics should it cover?
 - How do you transition from one topic to the next?
 - How do you incorporate exhibits into your outline?
- How do you address in direct potential bad testimony that may come out in cross?
 - How do you blunt cross examination in your direct?
- What does redirect look like?

Cross Examination

- Which witnesses are you cross examining?
- What role do they play in the case?
- What unfavorable testimony will they provide?
 - What can you do to limit or undermine that testimony?

- What favorable testimony may they offer?
 - How do you extract that testimony?
- What are the rules of cross examination?
 - How do you lead a witness?
 - How do you keep your questions short and concise?
 - How do you ask questions that always require a “yes” answer?
 - How do you pin down a witness?
 - How to you extract admissions from a witness?
 - How do you get what you want from a witness?
 - How do you keep a witness under control?
- How about the difficult witness?
- How about the lying witness?
- How do you impeach a witness?
 - How do you prepare to ensure an impeachment goes smoothly?
- When should you impeach?
- How do you build to a climax in your cross examination?
 - How should you begin your cross?
 - What should the middle of your cross look/sound like?
 - How do you conclude?
- Should you ever ask the judge for help? When? How?

Questions and Answers

These prior pages of questions can be discussed during the weekly lessons. They serve as a jumping off point to discuss the various aspects of a given topic. They are not meant to be exhaustive and conversely you don’t have to use or incorporate them all. They help associates think about what they should be doing and assist the instructors on what they should be teaching. Instead of telling you what to teach your associates, the questions help you think about the substance of your programming. I simply offer many of the key questions. How your firm answers them may be similar as to how our firm answers them. Then again, your answers may be completely different from ours. One of your practice groups may answer the questions different from your other practice groups. These questions should be circulated among the leaders of your practice groups to get their input about what each class should

address, whether these questions address those issues, and how best to answer these questions. You can decide what topics can be covered firm wide with all associates and which ones may require break out classes for specific practice groups to address the issues of concern for them on their terms.

What Does Each Class Consist of?

You have the topics, the materials, the questions, the instructors' proposed answers, and the students. You're ready to go. So how would a typical class go?

Introduction

Your instructor will introduce him or herself, provide his or her professional background, and address why he or she is suited to address the topic at hand.

Overview

After the introduction, the instructor should offer an overview of the topic, hitting the highlights and cover the must dos and don'ts about the topic. He or she will address the firm's general views on the topic, its approach to the topic, and how the firm tackles the topic. This is meant to, for lack of a better word, indoctrinate your associates to how the firm does things as it relates to this topic.

Questions and Answers

Through the questions you've provided the firm for the topic, your instructor will go through all the details about the topic. This should be a discussion—questions and answers—not a lecture. You want your associates thinking about the topic and engaged about it. Think Socratic Method Lite.

Based on the topic, this may take two meetings to address all the issues and all the questions about them. During the planning stage, some classes will clearly require two sessions. For some, you won't know until the session takes place. If a second session is required, and it wasn't planned for ahead, you'll need to work the second session into the schedule. Simply pushing everything back probably won't work because you had to clear dates on specific topics with specific speakers. A second session the following week, even if sparsely attended, may be the best approach.

Homework

The instructor should remind the students to read their materials in their handbook and samples provided by the instructor and others.

Feedback

At the end, ask for feedbacks from the students regarding the lesson and remind them to complete their surveys. You will debrief the instructor and take lessons learned into future classes.



Evolution of Program

We Did It! Now What?

You've put together a program—Handbook, Lessons, Mentoring—the works. The classes ran for 25 weeks and the mentoring program continues humming. As the program proceeded, there were some hiccups, but you made adjustments, filled the potholes, and proceeded forward. You still check in on your mentors and mentees and have events planned for them for the remainder of the year. So what happens next? There are a few issues to consider.

First, how do you handle new associates? A new associate here or there can be shown videos of the classes, given the workbook, and assigned a mentor. But what if you have a new large associate class every year?

Second, what about the holes you left with addressing some of the details about the various topics, but refrained from going into too much detail to avoid stepping on the toes of any given practice group and how they practice law. How do you help those associates secure a better grasp of their specific practice area?

Third, how do you supplement your program? What can you do after the program is over to continue the learning?

Fourth, how do you turn your students into instructors?

Learning is a lifetime experience and as a firm, after you're done with your initial associate training program, you have ask, "What's next?"

New Associates

As new associates join the firm, you'll want to train them. If you have a new associate class of five or more, redoing the training program makes sense. If it's just one or two, having them watch the videos, read the materials, and providing them access to the instructors for any follow up questions is probably the best approach. Conversely, you may want all your associates to go through the training again every two years, with the same topics but presented by different faculty, providing their perspective on the topics. They can prepare similar papers, find different written materials, and speak on the same topics from the vantage point of their practice areas. This is a lot more work than going back to the canned program or simply having folks watch videos of the canned program, but it does offer additional training for existing associates. You can only learn so much about taking depositions from a few classes. Teaching deposition skills every year or every

other year with different faculty with different written materials can help your associates think outside the box and not limit themselves to one paradigm or approach to taking depositions. Creating the initial program is tough. Tinkering it to use it again is a much more manageable proposition. Recasting the program will depend on how many new instructors you can recruit. Conversely, you can use the same instructors but assign them a different topic. One off associate training is better than no training, but if you're going to commit to associate training, decide what you'll do with new associates and supplement the learning of existing associates.

Filling in the Holes

You can only cover so much in an associate training program. You can teach your associates how to depose a plaintiff, but deposing a plaintiff in a slip and fall case is different from deposing a plaintiff in an employment case which is different from deposing a plaintiff in an intellectual property suit. There are commonalities. That's what your classes covered. But the classes didn't cover the specific issues in those types of cases. After your program has laid the foundation with the fundamentals, your committee needs to work with your practice groups and devise a mini training program geared around the needs of the practice group.

While preparing for the initial associate training program, you sought the input and guidance of the heads of your various practice groups. You tried to cover as much as you could that would be helpful for their attorneys without getting bogged down into the details of their practice area that attorneys from other practice areas would have little interest in and would not benefit much from. Now that the initial program is over, it's time to revisit those discussions with them and help them put together a mini training program to help their attorneys handle their cases. A mini program could cover some of the very same topics covered in the general program, but from the perspective of their practice area. A presentation on case investigation could address the specific documents and witnesses you need for cases in that practice area. A presentation on deposing an expert could address the specific experts you come across in that practice area. A mini manual could be put together of articles and sample motions, pleadings and discovery related to cases handled in that practice area. Where the general associate training program provided the basics (and some not-so-basics) this supplemental program would provide the details an attorney needs to know to practice in that given area.

Supplement Your Program

It's doubtful you can cover everything you want to cover in your associate training program. There are so many skills, laws, rules and facts you want to teach your associates and you don't have the time or resources to make all of them part of your training. To supplement it, take some time to identify CLE webinars, podcasts and downloads and put together a library that your associates can choose from. Some states still offer CD sets of CLE. Not sure how many folks still have CD players, but you can put together a library of CLE programs on CD and associates can be encouraged to borrow them and listen to them in their spare time.

In addition to CLE that anyone can download or access, put together a running library of articles and blog posts about practical aspects of litigation and trials. You can keep them on your server, organized by topic, which associates can browse, read, and study. You're looking for how-to materials, which are becoming more and more common on attorney websites, blogs, and publications.

Turning Students into Instructors

Today's students should be groomed to be tomorrow's instructors. It's unfair to expect the same partners to teach each and every year (assuming you roll out the program each year). Identify those associates who want to teach and have the temperament to do so, and start getting them involved in the program so they can take over a class or two in the years ahead. Ask for feedback from your partner instructors and ask them which students in the room were most engaged, asked the best questions, and provided the best answers. Which ones were "faculty material." Approach them and get them involved in upcoming programs.



Guest Speakers

Lunch and Learns

After you're done with the lectures and you have some down time before gearing up for it again when the new batch of associates roll in, consider having a monthly or bi-weekly lunch where you invite a guest speaker and have your associates learn from her. We'll discuss these in turn, but consider the following:

- Judges
- Experts
- Third Party Vendors
- Plaintiff Lawyers
- Marketing Coach

By looking for folks outside your firm to speak with your associates, you'll provide them different perspectives and approaches to the practice. It's easier to look outside the box when you're bringing in folks from outside the firm to discuss their experiences, views, and thoughts.

Judges

If your state bar and your state's judicial standards permit it, invite a judge to your conference room to have lunch with your associates. Voluntary bar associations sponsor lunches with judges. If your firm is permitted to do so, do the same. Ask the judge to discuss dos and don'ts when appearing before him or her, and what his or her pet peeves are. What are the judge's expectations for motions filed with the court? Arguments? Proposed orders? Civility? My experience



speaking with judges is that they wish they could tell as many attorneys as possible what to do and what not to do in their chambers to avoid unnecessary hearings, arguments and related issues. Judges want to tell your associates how to behave before them. They want to tell your associates what motions to file and which ones not to, what arguments to raise and which ones to avoid, what discovery issues to bring before him or her and which ones to work out on their own. Most judges want to share their wisdom with young lawyers. If your state permits it, invite them over. If they can't accept a free breakfast or lunch, have them over mid-morning or mid-afternoon. If they don't want to be seen favoring one side or another, co-sponsor a luncheon with a Plaintiff's firm. Get creative and create opportunities for your young lawyers to meet and speak to judges.

Experts

Experts want your firm to hire them. Your associates need to be exposed to experts to learn how they operate, how they think, how they can help you, how you should work with them, etc. Have experts over to lunch to talk to your associates about what they do and their role in litigation. Given the opportunity to speak to a roomful of lawyers who one day may hire them, the experts would likely do it for free. They may even provide the inside scoop on dos and don'ts when working with experts—what to provide them (and what not to), how to use them (and how not to), and how to work with them efficiently to avoid sticker shock when you receive their bills. You could invite over an economist, an engineer, or a vocational rehabilitation counselor, to name a few. The experts you invite will be driven by your practice areas and which experts are willing to provide you this free service in exchange for the publicity. Often experts are willing to speak free at attorney seminars in exchange to mingle with the attendees. If you find the right experts, they'll be willing to do the same with your associates.

Third Party Vendors

There are a plethora of third party vendors who would welcome the opportunity to host a lunch at your offices for your associates and speak to you about their services. Think e-discovery vendors and trial graphics vendors and trial technology vendors. There are valuable third party vendors that firms should learn more about but partners don't want to spend the time meeting with them. Have your associates do that. They can learn more about e-discovery

and getting ready for trial and using exhibits and demonstrative aids for trial and your firm learns all the various services that you can make available to your clients.

Plaintiff Lawyers

The best presentation on jury selection I ever heard as a defense attorney was from a plaintiff's trial lawyer. He provided us his perspective on jury selection from the plaintiff's view and I learned so much about what plaintiff's lawyers do during jury selection and why they do it. Now why would a plaintiff's lawyer share his secrets with a roomful of defense lawyers? Because each of us are from firms who don't handle plaintiff cases and he was so impressive that I, and certainly many other defense lawyers in that room, will call him when we have a Plaintiff's matter. Just as there are plaintiff lawyers willing to speak at a defense lawyer conference, there are plaintiff lawyers who are willing to speak to a conference room full of defense associates. Learning how they do things, how they view cases, how they evaluate them, how they work them up -this is invaluable information for an associate to know, especially those with limited experience dealing with plaintiff lawyers. Search out plaintiff lawyers you've worked with and have a good relationship with and ask them to speak to your associates and allow them to pitch their services to them, so in return for their time, they're provided a roomful of potential referral sources.

Marketing Coach

There are a lot of consultants out there who want your firm's money to teach your lawyers how to market. Some will host a free lunch at your office, providing your associates general advice on how to market themselves and the firm. Do your homework, but odds are you can find a reputable attorney marketing coach that will provide an hour of time for free to share some marketing tips with your associates. If you already work with a marketing coach, it can't hurt to ask him or her to speak to your associates on such things as developing a personal marketing plan, getting involved with organizations, or getting published in a legal or business periodical. Anyone you can bring in to discuss the business side of the practice, whether it's a firm rainmaker, a marketing coach, a sales coach, or an actual client, would help your associates see the other side of the practice they didn't learn about in law school.



Out of the Box

An associate training program can be much more than mentoring, a manual and classes. Where else can you find ideas? Consider the following.

Defense Law Firm Forum

Consider starting a Defense Law Firm Forum where you ask firm leaders from other defense firms in charge of their associates to get together monthly and discuss what each firm is doing to train their associates. No two firms approach associate training the same way and each firm has novel ideas about it. Other firms may have ideas on helping associates secure trial experience or developing business. Some others may have developed a great writing program or deposition boot camp. Two heads are better than one and several are even better. A monthly brainstorming lunch hosted by a different member firm each month would provide your firm additional ideas to supplement and bolster your associate training program.

Going In-house

If you have the right client who wants to expose your associates to their business, consider loaning an associate for a day or more to the in-house department of a client and have the associate shadow them for free to learn about what they do day to day, the challenges they face, the issues they wrestle with and the demands they are under. Seeing it firsthand will help your associates better appreciate what a client's job entails and will better equip them to address their cases, their questions and their approach to litigation. Perhaps the associate can sit in on a board meeting or a planning meeting. Anything that exposes the associate to the day to day operations of the business and provides him or her with a sense of the decision making process of in-house counsel and the pressures that they face. We as attorneys can become insulated in our offices and assume everyone relates to the world, stress, their jobs and work the way we do. Our clients—in-house counsel—experience the practice of law very differently from us and learning how they experience it is invaluable for any associate.

Retreat

If you have the time and resources, consider a full day associate training session at your offices on a Saturday, where the office

provides breakfast and lunch, and covers several topics, with opportunities to ask questions, mingle, and interact. You can cover a lot in a day, especially on a Saturday when the cell phones aren't constantly going off with emails and calls. A retreat may focus on a wide array of topics, or could focus on just one skill set, such as taking depositions. You may even consider turning it into a brainstorm session where associates get together, discuss common issues, develop an agenda of items they want the firm to help them with and devise a plan on how the firm can address these issues. Defining the problem and proposing a solution is very empowering and helps associates take control of their training and future.

Create a Joint Program with Your Clients

Ask your clients what they want your associates to know. Also, ask them what they want their junior in-house counsel to know. Put the two together, and propose a joint training program for your associates and their junior in-house counsel. Your clients will appreciate the free CLE and training geared toward their needs and you will solidify your relationship with them by training their junior attorneys on their terms. You can create a one day seminar on a Saturday at your offices so the in-house counsel can see your offices and meet your attorneys. With in-house departments looking to cut their budgets, providing a free day of CLE to their younger lawyers will be appreciated and remembered.

Pro Bono

A good way to have associates cut their teeth is handling pro bono matters. They have opportunities to take depositions, argue motions and even try a case. They are time consuming and cut into billable hours, but by choosing the right ones, you can provide your associates the experience they crave. Also, seek out opportunities with nonprofits and governmental agencies to handle administrative and evidentiary hearings on a pro bono basis which your associates can handle. Keep in mind, though, that there should be a partner in charge of each pro bono matter ensuring that the associate is getting the most out of the experience and more importantly, that the client is being properly and zealously represented.

Improv

More and more attorneys are trying improv to develop their speaking and presentation skills and to learn to think on their feet. I took a couple of courses of improve a few years ago and I still use some of what I learned in my practice. Improv classes are generally at night or on weekends with the students putting on their own comedy improv show at the conclusion of the course (which runs between 6-12 weeks). Consider having the firm pay for the course (each of mine cost \$175) and encourage associates to participate. If several attend, it's great team building, it'll help them overcome any nervousness or jitters when it comes to public speaking and it's a blast. It's one of those perks associates will appreciate and will benefit the firm by having more self-assured, more confident attorneys.



Becoming a Partner

Any associate training program should address the road to becoming a partner at the firm. It should be a frank and honest assessment, while also be encouraging and helpful. Some firms have strict criteria. Others have a more flexible approach. Your firm should spell out the criteria in writing and should provide your associates practical, substantive advice, and information on how to become a partner. What's the general partnership track? How important is business development? How much business is required? How about extra-curricular activities? Getting published? Leading organizations? How about trial experience? How much? Relationships with firm clients? The promotion committee needs to establish some parameters and the associate training committee has to build into the training program classes, materials, and other items to equip associates to meet the firm's goals need to achieve partnership.

Quality Work Product

The first thing about becoming a partner is that one has to be a great lawyer. One has to learn the skill set and produce a great work product. One needs to argue motions, take depositions, and try cases successfully. This first criteria –being good at what you do – will be emphasized throughout your associate training program. That's the whole point of the program. You're teaching the lawyers how to be great practitioners. Every associate program should have this as its foundation.

Leadership

Partners are leaders. You need to teach your associates how to become leaders. The best way to do this is to have their mentors or others at the firm take them under their wing, join the organizations the partners belong to, have the partners get them involved, show them how to lead the organizations, and identify opportunities for the associates to assume leadership roles in the organizations. As with everything else, you can't simply read about leadership (although there are many books on the topic, and mentors should recommend some to their mentees), you actually have to roll up your sleeves and lead. For example, when I was an associate, the firm's Managing Partner, Spencer Silverglate, was a leader of the Florida Defense Lawyers Association. He got me involved, pointed me toward opportunities to get involved, introduced me to the leadership and members, and kept an eye out for me to handle

projects on behalf of the organization. Through his mentoring and assistance, I wrote articles and contributed to several projects. Eventually I became a committee chair and was ultimately elected to an officer position and eventually became president. Learning to lead the organization and actually leading it were invaluable in learning how to lead in a variety of circumstances and situations. Create opportunities for your associates to lead, both in the firm and beyond it, because one day you want them to be a partner, and a partner is a leader.

Published Author

You want your associates to get articles published in leading legal and business publications. Your associate training program should include a discussion on how to get published. Whole books and seminars have been dedicated to this. How do you teach your associates to get their articles in print? Recruit those attorneys in your firm with the most published articles to their names and have them hold an afternoon workshop on getting published. This involves finding the right publications, the right topics, writing a compelling piece, satisfying the writer's guidelines and presenting the information in a vibrant, seize-the-readers' attention manner. Of course it has to have good grammar and research. But getting your articles published, especially in national publications, is an art, which can be taught by those at your firm who have done it themselves. Many partners have one or more published articles in their website profiles. It establishes them as an expert in a given field. Make sure to train your associates and train them early on how to write articles and get them published.

Public Speaking

You want your associates to be strong public speakers. You want them speaking in front of audiences on topics that show that they are experts in various fields of the law. As with getting published, getting speaking opportunities and delivering on them is an art form. Again, find those in your firm who do the most public speaking and ask them to tell your associates how they do it. How do they get picked to speak? Do they volunteer? How do they volunteer? How do they prepare their presentation? Do they use PowerPoints? Demonstratives? How do they prepare their speech? How do they deliver it? Do they use anecdotes? Current events? Humor? Organizations have conferences, cocktails and meetings

and they want vibrant, outgoing, thoughtful, personal speakers to wow their audiences. Your firm's top public speakers can provide a roadmap to your associates on how they can become one of those go-to speakers. Give them the tools and have them start small. Perhaps speak at a local rotary luncheon, Sunday school or in front of a high school class. Public speaking, like trials, takes practice and requires trial and error, and simply the experience of getting used to being in front of a crowd and talking to them. Joining Toastmasters could help. Getting on a speakers bureau. Teaching a class at the local university. There are different ways of getting this public speaking experience.

Rainmaking

Partners are expected to bring in business and keep the lights on. Developing a book of business takes time, practice, effort, and experience. You don't become a rainmaker overnight. You don't develop the relationships which will evolve into referral sources overnight. You're not born knowing how to work a room, how to make a pitch and how to develop personal relationships which will grow and flourish. You need someone to teach you. Every firm needs to train their young lawyers on how to develop business. The earlier and the sooner the better. The biggest factor in favor of making partner is a robust book of business. If you have your own clients, you will be able to have say in your future at the firm. Getting there takes time and it takes training. Separate and apart from any associate training program, every firm should have a firm wide attorney marketing and business development program that teaches all lawyers how to develop relationships wherever they are on the food chain which will one day result in business. I again would refer you to my book Attorney Marketing 101 for suggestions on starting your own firm wide rainmaking plan.

Law Firm Management

Associates should learn how your firm operates. One day they'll be managing the firm and they should understand the nuts and bolts of the daily operations, including HR, insurance (health, malpractice, liability, workers comp), the lease, firm budget, marketing, trust account, banking, etc. A law firm is a business and associates need to learn how to run a business. There is a tension here about teaching associates how the firm operates and avoiding revealing too much about the firm's finances, including

compensation. But understanding how the firm works, and how it makes payroll and pays the bills is an important lesson for any associate. At some point your managing partner is going to want to pass on the reigns. Make sure you've trained someone who can accept those reigns.



Publicizing Your Program

During the course of your associates training program, consider how you can use it to market your firm. How can you publicize it to attract top associate prospects? How do you market it to clients to show your firm's quality control to ensure that all the associates who work on their matters provide the best quality service? How do you promote it generally to get the word out about your firm and your dedication to quality work product? Here are some thoughts.

Associate Training Brochure

When you're done with the first round of lessons and your mentoring program is well underway, prepare an e-brochure about why your firm created its own associate training program, an overview of the planning and hard work that went into it, a summary of the training offered, and quotes from associates regarding how much they learned. Ideally, you should also get some favorable quotes from clients as well. Include photos of the instructors, the firm office and of the associates. It's a brochure you can offer prospective associates to convince them to join your firm and to prospective clients to convince them they should refer you their matters because the associates working on them will provide excellent work product and service. Larger firms have marketing departments who can do this for them. For smaller firms, with the right publishing software, you can create a professional looking e-brochure which you can repurpose for other marketing efforts.

Marketing to Associates

When interviewing associates brag about your training program and email them your brochure about it. Associates want to hear about:

- What training they will receive
- Mentoring
- Client contact
- Opportunities to handle hearings and deposition
- Opportunities to assist with trial
- Pro bono

Associates, like all of us, are seeking fulfilling work where they will be challenged and gain meaningful experience. Market your program to show them that they will be assigned mentors from day one who will make their career a priority and will help them

become a good litigator and a good business person. Let them know that you will cover all the aspects of being a lawyer with them, so they will learn the law, the practice, and everything they were never exposed to in law school. A comprehensive training program can be a greater incentive than a more robust salary. Knowing that a firm will invest in you and is prepared to help you succeed is a great way to attract the best and brightest associates.

Marketing to Clients

Companies understand processes. You define a problem, figure out a solution and create a process for your employees to handle the problem the next time it arises. In-house counsel, being business people as much as lawyers, appreciate lawyers who have a process approach to problems. How do you ensure high quality work from associates who understand their clients' needs and how to meet them? Create a process to ensure all the associates learn how to become such attorneys. By taking the time to create a program to address quality control among your associates, you have shown your clients you're invested in their needs and providing them quality service. By not only creating a program, but learning from it, adjusting it, improving it and making it better, you show them that just as their companies are constantly learning to improve their products and services, so is your firm. By tackling associate training the way a business would tackle any myriad of issues, you demonstrate that you understand business, that your firm is business minded and that your clients' interests are your interests. Again, lead with the brochure, explain how your training program helps your clients, and be prepared to answer any questions about the program. Also, invite your clients input on how the program can be improved to better meet their needs.

Marketing to Voluntary Bar Associations

Promote your program in the voluntary bar associations your attorneys are members of. Let them know about your successes and explain how they too can design and implement a successful training program. By sharing your program with others you are letting potential referral sources know that you are ensuring that your associates are providing excellent service and you have devised a plan to ensure they do so. If I have a case to refer, I would strongly consider referring it to a firm which has taken the time to ensure the associates working on that case will know what they are doing and will provide a quality work product. Never overestimate

touting firm processes that, when implemented, result in better quality and better service. Firms that have associate training programs have something concrete to offer prospective clients—quality control. No matter who works on your matters in the firm, he or she will provide quality service. Many firms can't assure that.



Specializing

Most attorney marketing consultants recommend attorneys specialize in a niche practice area. You want more business? Become the go to attorney in practice area A, B, or C. You want to be the lawyer everyone thinks of when they have a cyber security matter for example, or a medical marijuana issue. Specializing isn't simply for partners. It's for associates too. If you're going to develop niche practices, you need everyone in the practice group to be able to handle those niche matters. But what areas? And how specialized? And is it good for associates to only handle one type of matter? Will associates want to stick around if they're handling the same matters all the time? When training associates, a few thoughts about specialization.

What's Best for the Firm

Firms with niche practices generally do better than firms who are jacks of trades and experts at none. Clients aren't looking for general litigators. They're looking for experts in specific litigation practices. If a firm has niche practices and trains associates to master those niche practices, they'll attract and keep clients with matters in those areas. Any firm's marketing plan should involve identifying lucrative niche practices and developing an expertise in them. So, certainly an associate training program which helps associates help the firm develop niche practices benefits the firm. The downside to the firm is what if those niche practices disappear? There were a lot of firms who developed foreclosure practices after the 2008 crash. Many of those practices are no longer around. So make sure the firm doesn't become overly reliant on a niche practice with a limited shelf life.

What's Best for the Associates

Early specialization allows an associate to become an expert earlier in his or her career which is a boost for the associate's self-esteem and gets him or her into court and into depositions earlier. From that vantage point, early specialization is in associates' best interest. The flipside is depending on how narrow the specialization is, it means handling the same cases, and serving the same discovery and asking the same questions in deposition and arguing the same motions day in and day out. That could grow tedious and can stunt their growth as lawyers. It depends on how limited the field you're asking your associates to handle. It's one thing to have associates only handle employment matters, but to handle all types of employment matters, and it's another to ask them to only

handle Title III cases, or perhaps even more narrowly, only Title III cases dealing with specific issues such as website access. Again, the more narrow the path, the quicker an associate can become an expert, but the less he or she will be able to transition into other areas. A sound approach is to have associates spend most of their time specializing, but also afford them opportunities in other fields to keep them challenged.

What's Best for Associate Retention

Associates want challenging work and experience. Too narrow a niche may result in gaining substantive experience sooner but it also will lead to becoming bored with the work sooner too. When having associates specialize, balance the firm's need to have an associate handle matters in an efficient and expert manner with the associate's desire not to do the same tasks over and over again. You need to have an open and honest discussion with your associates about specialization. What does the firm want? What do they want? What are the firm's needs? What are the associates' needs? Specialization can add a lot to a firm's bottom line and can also empower associates by making them experts, but conversely, depending on the work and the scope of the work, it may become, sometimes quite quickly, mind numbing. You'll have to keep that in mind when training associates.

What Does Specialization Training Look Like?

You've decided you want to train your lawyers in a specialized area of law. But what does that look like? Let's take Florida. Florida recently legalized medical marijuana. This is a highly regulated industry which requires all sorts of lawyers. Your firm wants to get on the ground floor of this new practice area and want to establish itself as an expert and leader in the area. You want your partners to become experts and you want to train your associates to become experts. So where to begin?

There will be CLE out there—some good and some not so good. You need an attorney to attend these seminars and report back to the practice group. Associates are good guinea pigs—they'll pay attention at the seminars, take good notes, and educate the rest of the practice group upon their return. Here in Florida, there is suddenly a plethora of seminars and CLE on medical marijuana and all the legal issues created by it. For some webinars, you can order

the materials and get a CD or DVD with the content. In addition to seminars, everyone will suddenly be writing about it. Designate an associate to identify, obtain, and cull together these articles, blog posts, etc. To become an expert, you want to gather all the relevant law and analysis of that law. When it's a new practice area, you want to secure and digest the information, which at times will be coming at you like water from a firehose. Once the niche practice group has their arms around the niche practice, then they need to get ahead of it—they need to write and speak on it. They need to join organizations addressing it. They need to go out to business and legal organizations and address it. Getting in on a new and hot topic is fun and exciting and plays into associates need to handle meaningful and cutting edge work and it has an entrepreneurial feel which many young lawyers would welcome.

This is the approach for a new, burgeoning area. What happens if your firm specializes or wants to specialize in a long existing area of law? The approach is similar. The firm should secure all the relevant research, books, CLE, and materials on the area and use those materials to train the associates both the substantive area of law and how to practice in that area of the law.



Creating a “Form” Database

In addition to the associate training manual, I suggest providing your associates form discovery, motions, deposition outlines, etc., so they have something to reference and work off of. Ideally, depending on your resources, you should create a “form book” on your computer, where your associates can review relevant forms according to type of case and type of document. For example, there should be a file with all the forms for a Title III case, organized the way you would use those forms in that type of case. If you handle a lot of auto personal injury matters, there is a lot you do which is the same from case to case. You may have a standard questionnaire you use when interviewing your client or a witness. There may be standard interrogatories you propound. There may be standard letters to the police department and other third party parties to do record requests for accident reports and related documents. Your firm may generally depose the EMT who appear at the scene and you have a form deposition outline to use. Create an index of all the relevant forms, organize them in the order you’re likely to use them in the case, and make them available online on your server so that any of your associates can access them for quick reference.

Prepare a “Form” Table of Contents

Each practice group should be tasked with creating a “form” table of contents for each case they handle. Depending on the “form” (for example an outline for Plaintiff’s deposition), you’ll be securing several from different attorneys, so associates can see how different partners approach it. Whatever the type of case, the table of contents is going to look something like this:

- Removal Papers
- Answer and Affirmative Defenses
- Motion to Dismiss
- Motion for More Definite Statement
- Motion for Change of Venue
- Interrogatories
- Request for Production
- Request for Admission
- Response to Interrogatories
- Response to Request for Production
- Response to Request for Admissions

- Witness Questionnaire
- Case Investigation Checklist
- Status Letter to Client
- Subpoenas
- Plaintiff Deposition Outline
- Witness Deposition Outline'
- Expert Deposition Outline
- Deposition Checklist for Client
- Deposition Checklist for Corporate Representative
- Motion for Summary Judgment
- Mediation Report
- Jury Instructions
- Motions in Limine
- Juror Questionnaire
- Sample Voir Dire

Once a practice group has drafted a proposed table of contents, and everyone in the practice group has chimed in on its contents, the next step is populating the form database.

The Form Database

Once a practice group has a table of contents for forms used in a specific type of case, it's time to save the table of contents and the respective forms in the firm's computer system to make it easily accessible for all. Find several representative forms for each topic. For a Motion to Dismiss, you would provide several that address the most common issues over which one moves to dismiss a given type of case. For answers to interrogatories, you would provide several samples which together provide the full array of objections one could assert. The idea is to provide a starting point for associates and to ensure that he or she covers the basics and doesn't miss any idea, argument, or topic the firm typically addresses when preparing a certain type of document. Form books for lawyers are common. They cover just about every topic and provide a resource to ensure you cover what needs to be covered. Creating your own ensures your associates cover what you want them to cover.



Checklists

In addition to creating a form database, compile a series of checklists for discrete tasks your associates will repeatedly perform in their daily work. About 80 percent of what we do as attorney can be reduced to checklists—how we prepare for a hearing, how to interview a witness, how to prepare a corporate representative for deposition—and shared with your associates. Henry Ford figured out how to transform the manufacture of a car into a series of discrete steps and turned the process into an assembly line, redefining a craft into a series of much simpler jobs that less skilled employees could handle. This process of turning something complex into something simple by breaking it down into its component steps and teaching these discrete steps can be applied to our firms and our practices.

List of Checklists

Before creating a checklist, you need to know what tasks can be reduced to checklists. You must first devise a list of checklists. Such a list could include the following tasks:

- Initial client meeting
- Initial interview with a witness
- What documents to secure and how to secure them
- Initial case investigation
- Initial case assessment
- Preparing a case budget
- Preparing for a state court hearing
- Preparing for a federal court hearing
- Preparing a client for deposition
- Preparing a corporate representative for deposition
- Choosing an expert
- Choosing a physician to conduct a defense medical examination
- Preparing an expert for deposition
- Investigating the opposing party's expert
- Choosing a mediator
- Preparing for mediation
- Preparing for trial

This is just a sampling of tasks we do every day which can be reduced to checklists which associates can follow. The best

approach is to have associates update these lists as they perform these tasks and keep draft documents that are revised and augmented by the firm as attorneys perform these tasks and think of additional items to add or possibly modify existing steps.

The following are a sample of checklists to get you started.

Initial Client Meeting

Let's assume you handle insurance defense matters and you've been retained to represent a defendant insured in an auto accident matter. Early on, you will schedule a conference call or in person meeting with your insured and will address the following. The "following" is a list of items to address at that initial meeting:

- The rights of the insured in the insured/insurer relationship
- Your role as defense counsel retained by the insurer
- Your experience handling this type of matter
- Your firm's experience handling this type of matter
- Your duty of loyalty
- The attorney-client relationship
- The litigation process
- What to expect
- Preservation of all relevant evidence
- The client's role
- The client's obligations
- Discuss Complaint
- Discuss facts of case
- Identify all relevant witnesses and secure their contact information
- Identify all relevant documents and secure them
- Discuss electronic data, its preservation and its collection and review
- Discuss responses to Plaintiff's interrogatories
- Discuss responses to Plaintiff's request for production
- Discuss responding to Complaint
- Initial development of case strategy and approach
- Discuss the client's preferred method of communication
- Discuss how often the client wants to be informed and about what

- Discuss client's expectations for case
- Inquire whether client has any questions and answer them
- Inform clients of the next steps in the litigation
- Discuss how long cases take to litigate and the various stages of litigation
- Ensure the client that you are available at any time to answer any questions

Initial Interview of a Witness

There are a number of ethical issues when interviewing a witness. Can you speak with the witness? What can you ask her? What can you delve into? How hard can you press on a given line of questioning? You don't want your attorneys creating unwanted problems by interviewing someone they shouldn't. When it comes to associate training, there should be a firm memo about who an attorney can interview in your jurisdiction and what they can ask. And partners should talk through witness interviews with their associates until they feel comfortable they can handle them on their own. Assuming a witness is not represented by counsel and is a type of witness you can interview, here is a list of items to cover with her:

- What does witness know about incident?
- What does witness know about case?
- What is the witness's relationship to the parties?
- Who else observed incident?
- What documents does the witness have?
- Has the witness spoken with opposing counsel?
- Has the witness spoken to law enforcement?
- Has witness given statement? Does he or she have copy? Can he or she get copy?
- Will witness provide you a statement?
 - ☐ A recorded statement?
 - ☐ A sworn statement?
- Does witness have any photos of incident? Video? Is he or she aware of any?
- Can witness draw a diagram of the incident?
- What's the witness's background?
- If he or she is a favorable witness, are there any biases or skeletons you need to know about?

- When's the best time to reach the witness? The best way to reach him or her?

If you're interviewing a witness for a specific type of case, let's say a slip and fall, you may have a standard questionnaire for your associates to cover with the witness to ensure they procure all the relevant facts.

Securing Relevant Documents

To evaluate a case properly, you want to make sure you secure all the relevant documents. But what are those documents? One of your firm's checklists should include a list of documents that should be secured in each type of case a firm handles. For example, a proposed list could include:

- All witness statements
- All photos and videos of alleged incident
- All police, EMT, OSHA, and other reports
- Signed authorizations (IRS, Social Security, Workers' Comp, Medicare, Medicaid, Military, etc.)
- All medical records
- All incident reports
- Personnel records
- Employment records
- Relevant emails
- Social Media posts
- Website posts
- Client's investigative file
- All relevant manuals, policies, and procedures
- All relevant federal, state, and local rules and regulations
- All communications between the parties
- All documents generated by Plaintiff
- Diaries
- Calendars
- Logs

Depending on the case, the documents you want can be quite extensive and technical. Separate lists should be drawn up for each type of case.

Initial Case Investigation

To properly advise a client about how best to proceed, a thorough initial investigation is necessary. The more case investigations you handle, the longer the list of items to check off to ensure you've covered everything. "If only I had secured document X." "If only I had spoken to witness Y." Guiding associates through a case investigation by providing a checklist will result in a better analysis of the strengths and weaknesses of a matter and better advice to a client.

A typical case investigation checklist may include:

- Interview client
- Interview client's employees
- Interview third party witnesses
- Secure client's documents
- Secure photographs and videos
- Secure investigative reports
- Secure any third party reports
- Identify all eyewitnesses
- Identify all witnesses with relevant information
- Secure all relevant documents
- Secure all drafts and versions of relevant documents
- Secure all original documents
- Prepare a chronology of relevant documents
- Prepare chronology of relevant events
- Identify the facts you know
- Identify the facts you don't know
- Identify the facts you may never know
- Identify the relevant legal issues
- Research those issues you don't have answers for
- Prepare a case analysis with what you know, what you don't, what needs to be done and any relevant legal analysis

The hard work comes at the inception of the matter, tracking down all the relevant facts and researching the applicable law so as to provide an initial assessment to the client and a plan on how best to proceed. Provide your associates a guide on what they should do to ensure their initial case assessment to the client is thorough and well thought through.

Preparing Checklists

As you can see from my examples, checklists aren't difficult to prepare. You want to create an exhaustive list of everything that needs to be done to ensure your associates cover everything that needs to be covered. The lists I provided are skeletal. Feel free to beef up your lists, by providing a list of not only the tasks, but perhaps the order of the tasks and an explanation of how they should be carried out. For example, you ask your associates to secure "X" documents. Perhaps you include an explanation of how to secure them. The purpose of checklists is several fold. First, you're providing a guide to your associates on how to handle specific, regularly occurring tasks. You're also alleviating your partners from constant questions from associates about common tasks. You also create documents that you can add to and revise regularly to ensure that all attorneys from the firm, not just associates, have the most comprehensive and thoughtful checklists they can use for their tasks. Also, the checklists can be touted to clients as a quality control measure to ensure them that no matter who handles their matters, there will be consistent, quality work product.



Confidence

I've been practicing 20 years. When I first speak with a client, I tell him or her that. The client, hearing that I've been at this for 20 years feels reassured. It's as if, "Well, he's been doing this for 20 years and he's still doing it, so he must know what he's doing." There's no bigger confidence booster than experience, and confidence is one of the most important qualities, if not the most important, an attorney must have. Clients crave confidence in their counsel. Opposing counsels fear it. Judges expect it. But how do you develop it in your associates? They don't have the experience and won't have it for a while. There easy targets for unscrupulous opposing counsel and in-house counsel often consider them a waste of their company's resources, preferring the insight and advice of more senior counsel. And associates know this, which hinders their ability to build up their confidence. So what can a firm do, to develop confident associates? A few thoughts.

Seek out Leadership Opportunities

Encourage your associates to seek out leadership opportunities in local bar associations, nonprofits, trade groups and at their houses of worship. Devising a vision, a plan to implement it, and carrying it out is a huge confidence boost. Pointing to an initiative, a fundraiser, or an event, and saying to oneself "I did that," goes a long way in building one's confidence. Confidence is a transferable trait. Confidence handling one matter for one entity spills over to handling litigation for the firm's clients. Setting goals in an organization and accomplishing them, along with the praise that comes with it, helps young associates feel more confident when handling obnoxious opposing counsel or a demanding client.

Edit or Write a Book

Early in my career I wanted something tangible that I could look at, pick up and flip through and say to myself, "I did that. If I can do that, then I can do this,": whatever this was at the time. So I started writing, and when I say writing, I mean a lot. I was writing a new article every week, and later a book directed to young lawyers. It was a how to for law students transitioning into a litigation practice, aptly titled "From Law School to Litigator." I also edited a book for defense lawyers—"The Defense Speaks," which was a 70 plus chapter book on every aspect of preparing for and trying a case from the defense perspective. I have a filing cabinet, and on top of that cabinet I have copies of the books I've edited and

the ones I've written—seven in total (I'll be adding a copy of this book once it's done, making it eight). I don't say this to brag on myself. I say this because the books serve a very useful tool—if I can be responsible for so many books on litigation and the practice, then I can tackle any problem a client throws my way. They're confidence boosters.

Encourage your associates to volunteer to edit a book for a voluntary bar association, write a chapter for one, or even consider writing their own. It's one thing to write an article, which can also be a confidence boost. It's quite another to write or edit a book. Doing so lends you instant credibility and an air of expertise, which goes a long way to building one's confidence.

Public Speaking

Getting in front of an audience and holding their attention for 30-60 minutes—educating them, entertaining them, leaving them wanting more—that's a skill that takes time to develop but a skill, if well honed, which greatly boosts one's confidence. Organizations are always looking for dynamic public speakers who have something relevant to say and say it well. Encourage your associates to take a public speaking class, join Toastmasters, take an improv class or teach a class at the local college. This, in and



of itself, builds their confidence. Getting in front of people and talking about random topics to random groups helps develop their sea legs. After they're done with this, encourage them to speak to small groups—Rotary, church socials, high school classes—so we can they get used to crowds and interacting with them. With a few of these under their belts, they can graduate to speaking to attorneys or trade groups on legal issues of interest to them. A good presentation will lead to invitations to other events. Good presentations at those events will lead to even more invitations. All along the way, your associates are developing their contact list and building confidence when arguing motions, taking depositions, or trying cases.

Positive Feedback

Associates, just like the rest of us, want positive feedback. They want to be appreciated and enjoy a thumbs up when a job is well done. If an associates does something wrong, that needs to be addressed so it doesn't happen again. But when an associate does something right, take the time to acknowledge that. In fact, partners across the board should be encouraged to temper criticism with praise, addressing the mistakes but also acknowledging what was done right. A supportive, encouraging environment fosters a better and closer relationship with your associates and helps them do better work. Someone who is constantly criticized with little, if no, positive feedback, loses interest in his work and eventually the firm, and leaves. If an associate is truly a problem, that's one thing. But if it's an associate you want to keep, develop and nurture, keep in mind the good that he or she does, and thank him or her for it.



Training Your Clients

Why stop with your associates. What better marketing tool is there than to provide your clients in-house training? Whether it is a claims handling course for adjusters or litigation management for junior in-house counsel, consider putting together a program that you put on at your clients' place of business or provide remotely through the webinars or similar programming. Tell your clients you dedicated to teaching processes to enable your firm and them to better handle matters, share your success stories from your associate training program and offer to put on a training program for their folks. It doesn't have to be as detailed or as in depth as your firm's associate training program and it doesn't have to involve multiple lunches. It could be a one day seminar where you teach your clients' staff how to be better handle their litigation matters. Where to start? Start with what the client wants.

Client Input

Start the process with an email to your clients asking them if they are interested in having you provide a complimentary in-house training program for their legal staff or adjusters. Tell them your firm is prepared to send one or more partners from your office to theirs and provide them free CLE or continuing adjuster education for a half day or a full day, depending on their needs. If the client takes you up on your offer, you can either propose a canned schedule which can be drawn from your associate program or if you have the time and resources, ask what they need, and develop a program around those needs. It's preferable to find out what your client needs and meet those needs as opposed to trying to give them what you think they need based on the program you use at your firm, but this will depend on a number of factors. How many clients want the service? How much time is the firm willing to dedicate to this? How many partners are willing to participate? Ideally, if your firm is committed to doing this, you gauge client interest, seek client input about the programming, and you cater your training to that input. Perhaps an insurance client wants their adjusters to receive training on evaluating the value of a case. Or perhaps they need an overview of the law for a certain type of case. Based on this input, you can put together a proposed itinerary for the morning or for a full day, send it to the client for approval, put together a program, submit the program for continuing education, and then select a date and time to come to the company, teach the staff, and offer them free continuing education. Providing this added benefit will solidify your relationship with existing clients and can create an entry point for prospective clients.

Developing the Seminar

Once you have a list of topics your client has provided you, or a list you proposed to the client with which your client agrees, select your speakers. If the topics are the same or similar to the ones you used during your associate training program, you can select the same speakers. If different, you'll need to investigate which ones to recruit. You want to send several partners to speak because it creates more networking and fellowship opportunities and creates more touch points between the firm and the firm's clients. The firm's speakers will want to put together a paper (which will be needed to secure continuing education credits), a PowerPoint, and a presentation that will cover the topic appropriate for the given audience. You'll find that most clients will have the same needs as to their continuing education, so once you've put together a program for one client it may not require much work to put together a similar program for another client.

A Manual

The most important part of the training course is the manual you will be providing your client's staff. It should consist of:

- The papers for each topic
- The PowerPoints for each topic (many enjoy having the PowerPoint in front of them to annotate them as the presentations proceed)
- Articles written by your firm on the respective topics
- The bios of the speaker
- Information about the firm and its practice areas

What you want to create is a resource for in-house counsel and adjusters to keep on their shelves and refer to when they have a question. Just as importantly, you want a manual with your firm's name on the cover and information about your practice areas and your attorneys and their contact information in the inside so they'll be the first persons your clients think of when they have a case and need an attorney.

Invest the money in creating a quality looking spiral bound manual along with a word searchable e-version that your clients can download separately and instantly find a case or an issue. If you can create a resource with your firm's name on it, which your client keeps on his or her desk, you well ahead of the competition when it comes to attorney marketing and business development.

Take It on the Road

Consider putting on a series of free webinars accompanied by a training handbook that you offer to prospective clients and their staff. In-house counsel and insurance companies are always looking to reduce their overhead. What better way than to offer them free continuing education and written materials their folks can use as a reference tool. Creating a canned training program that you can roll out through webinars on a regular basis is a great marketing tool to attract and bring in new clients.



Motivation

An issue that has become more common over the last several years is motivation. How can a firm motivate associates who prefer coming and leaving at a fixed time each day and don't have the same goals the partners had when they were associates? So you've trained them. How do you motivate them? A few suggestions.

Quality Work

One of the biggest complaints from associates is that they are assigned tedious, boring assignments, such as large document reviews or endless research projects. To keep associates engaged, find opportunities for them to do more challenging work, whether it's argue a motion or attend a deposition. If those opportunities aren't available, have the associates accompany partners to hearings on motions they prepared or researched or attend depositions where they were responsible for culling through all the documents. Being a glorified paralegal isn't very rewarding. Finding opportunities for associates to do the type of work they imagined they would be doing as attorneys will help motivate them to spend more time in the office and be more focused on the projects at hand.

Client Contact

Encourage your partners to take their associates on client visits and have them come to mediations and depositions where clients will be attending. Associates want the opportunity to meet and speak to those they're working for. They want to talk to the person they prepared a motion for, prepared a case analysis or answered a research question. Keeping them in their offices away from clients, preventing them from the interactions they crave is a huge demotivator.

Invest in Them

Training your associates sets you apart from many firms who refuse to make the investment. In addition to training, get them involved in organizations and pay for their attendance at conferences. Most conferences are in great venues, in beautiful hotels, with fancy meals and fun receptions. They're there to work—to attend the meetings, participate, volunteer, mingle, network—but in the process they can have a lot of fun. Some of my most memorable times as an attorney have been at conferences I've attended where I made friends, saw beautiful places, and experienced great events.

Spending money on them to attend a conference shows them you're vested in them and you're willing to spend money on them for items that other firms only reserve for their partners. Also, consider contributing to nonprofits and charities where they serve on the board and are creating relationships which one day may benefit the firm. Yes, this all costs money, but I'm not suggesting picking up their health spa fee. I'm recommending picking up the tab for those events and items that help them grow as lawyers and benefit the firm in the long run by fostering relationships which may evolve into referral sources.

Give Back

Many associates want to go beyond billing hours and serving clients and give back something to the community. It can be in the form of pro bono or it could be through community service projects. Seek associates' input and see what they find most meaningful and how they want to give back. Associates may have pet projects they want the firm to support. They may belong to non-profits that have events where they serve food, hand out backpacks, provide free tutorial service or furnish food pantries. These are meaningful and worthwhile projects, which if a firm shows interest in and supports, will encourage associates to do more to support the firm and the firm's clients. Care about what your associates care about and they will care about what you care about.

Ask Them

Firms survey clients. Why not survey your associates? Put together an anonymous survey asking your associates what their goals are and how the firm can help them in achieving those goals. Engaging your associates and giving them a say about their role in the firm and the firm's role in their professional and personal development keeps them motivated. Show that you're interested in their opinions and will work to address their concerns and they will be interested in your opinions and work to address your concerns. The days of simply telling associates what to do and responding to concerns or complaints with simply saying, "do your job" are over. Even though associates are associates, they want to be partners with you regarding the direction and focus of the firm and how it operates. Making them part of the process goes a long way to keeping them at the firm.

Where Do We Go from Here?

The most dangerous thing any organization can do, including law firms, is assume they are necessary. Whether it's necessary to their clients, to their associates, to their staff or to the practice. Firms come and go all the time. Some are taken over by other firms, some simply cease to exist. No firm is necessary. And so the challenge every firm has is how it stays relevant, how does it remain part of the conversation and play a continuing role to serve client needs. To do so, it must understand that clients' needs change, that the practice changes and how we did things 10 years ago isn't how we do them now and how we do them now will change dramatically in the next 10 years. This is where your associates play such a crucial role. How they use technology reflects how your clients use it. How their expectations have changed and how their service providers have changed to meet those expectations are similar to how your clients' needs and wants have changed. We've talked a lot in this book about how to train your associates. Let's now talk a little bit about how they can train you so your law firm doesn't become the next telegram company, or fax machine, or Woolworth (who remembers Woolworth?).

Everything Changes

I attended a conference where a DRI board member, John Owen, explained in stark terms how companies which once seemed invincible were no longer around because they refused to change, and once they realized they had to, it was too late. When he was a child, he studied the Sears catalog and circled the toys he wanted. Sears is on the verge of bankruptcy. When he was a teen, he waited in line to get movies at Blockbuster. They're gone. When he bought his first home, he furnished it with appliances from Circuit City. They're gone. He provided several other examples of companies who were once seen as industry leaders and are no longer around. Netflix changed how we watch movies. Uber changed how we get rides. Amazon changed how we shop. And these companies know that if they don't keep changing, the next Netflix, Uber, or Amazon will have their lunch. Associates understand this constant change and evolution because they, their shopping, viewing, listening habits, how they process information, how they interact with one another, and how they eat and play and work is redefining how companies do things, and they are in the best position to help your firm recognize these trends and get ahead of them.

Leveraging Technology

Is your firm's website designed to be viewed on a smart phone? What, that idea didn't occur to you? It occurred to your associates. Can a client pull up CLE on their phone from your website and listen and watch it in the airport or in the back of an Uber? That idea hasn't crossed your mind? It's crossed the minds of your associates. Are you thinking how what Amazon, Netflix, and Uber are doing can be applied to your firm? Your associates are thinking about this. I tell voluntary bar associations that the first bar association that can meet all their members needs from their phone will become the Amazon among voluntary bar associations. Imagine, having a full library of CLE you can pull up on your firm, for a monthly flat fee, and watch and listen to anywhere? The first one who does that will be an industry leader. As for your firm, how can you leverage technology to provide your clients better, less expensive services even faster? I'm not suggesting tweaks here or there. I'm talking about industry leading ideas that will change the way your client sees you and your firm? Your associates are using technology more than you, are using it better and have a better appreciation of its uses and applications. They also have a better sense of the untapped resources current and evolving technologies have to offer. Make sure your associates have a place at the table to help the firm evolve and change and stay ahead of industry changes as opposed to becoming victim to them.

The Future Is Now

Your firm should have a committee of attorneys, including associates (the younger the better) whose task is to following legal, business, and technology trends and report back to the firm on them and what the firm can learn from them and what changes the firm can make to address and incorporate these changes. Training is a two way street. You want to train your associates to be better lawyers and you want your associates to train the firm on how it can respond to the rapidly changing world around us. As technology and business change, you want to stay at the cusp of those changes, alert to how those changes affect you, your firm, and your clients, and you want your associates, who are often in the best position to understand this change, to help the firm take advantage of it rather than suffer from it.

The practice is changing. Our clients' businesses are changing. Our associates' expectations are changing. Don't be afraid of the changes and whatever you do, don't ignore them. If you see the

trends, get ahead of them and exploit them, the changes may be the best things that ever happened to your firm.

One last thought. Investing in your associates is possibly the best investment you can make in your firm. Ending where we started, let's take to heart the old business joke:

CFO asks CEO: "What happens if we invest in developing our people and they leave us?"

CEO: "What happens if we don't, and they stay?"

Best of luck to you, your firm, and your associates.

