

# Structural Changes in Recruiting, Talent Management, and Retention Will Drive Needed Change in Big Law

By Jonathan Greenblatt



Multiple phenomena in the evolution of the practice of law, particularly in “Big Law,” coalesced to cause us to form Legal Innovators, an Alternative Legal Service Provider, or ALSP. Our mission and business model are centered around identifying, hiring, training, and mentoring high-quality graduating law students who were either missed in the traditional Big Law OCI process or did not participate in it, and then placing them on one-year or two-year rotations with high-end law firms and corporate legal departments that need help with traditional junior associate work. We focus extensively, but not exclusively, on attorneys coming from underrepresented backgrounds. The objective at the end of the rotation period is for these young lawyers to be hired permanently by the law firms/legal departments with whom they were placed. The Legal Innovators mission is to create additional pathways into sophisticated legal practices for a greater number of lawyers.

The phenomena that caused us to see a great need for this model include:

- the failure of Big Law/corporate legal departments to make adequate progress in the hiring, retention, and promotion of attorneys from underrepresented backgrounds,
- the outdated and narrowly focused way in which Big Law identifies incoming talent, and
- the inadequate training many junior lawyers receive to enable them to bridge the gap between being a law student and a young lawyer in a brutally demanding profession.

## Underrepresented Attorneys

The failure of Big Law and corporate legal departments to make adequate progress regarding lawyers from underrepresented backgrounds is widely acknowledged within the legal profession. By and large, firms have often tried but ultimately failed to move the needle on diversity, equity, and inclusion (DEI), particularly as it relates to more senior lawyers and partners. It is safe to conclude that the needle will not be moved by trying to do things the same way they have been done in the past. Only by increasing the size of the pool, focusing on skill development, fostering an inclusive environment, and taking more calculated risks will progress be made. Structural problems require structural

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solutions. Structural steps can be taken that drive inclusivity, while at the same time ensuring the quality required by Big Law.

## Outdated Approach

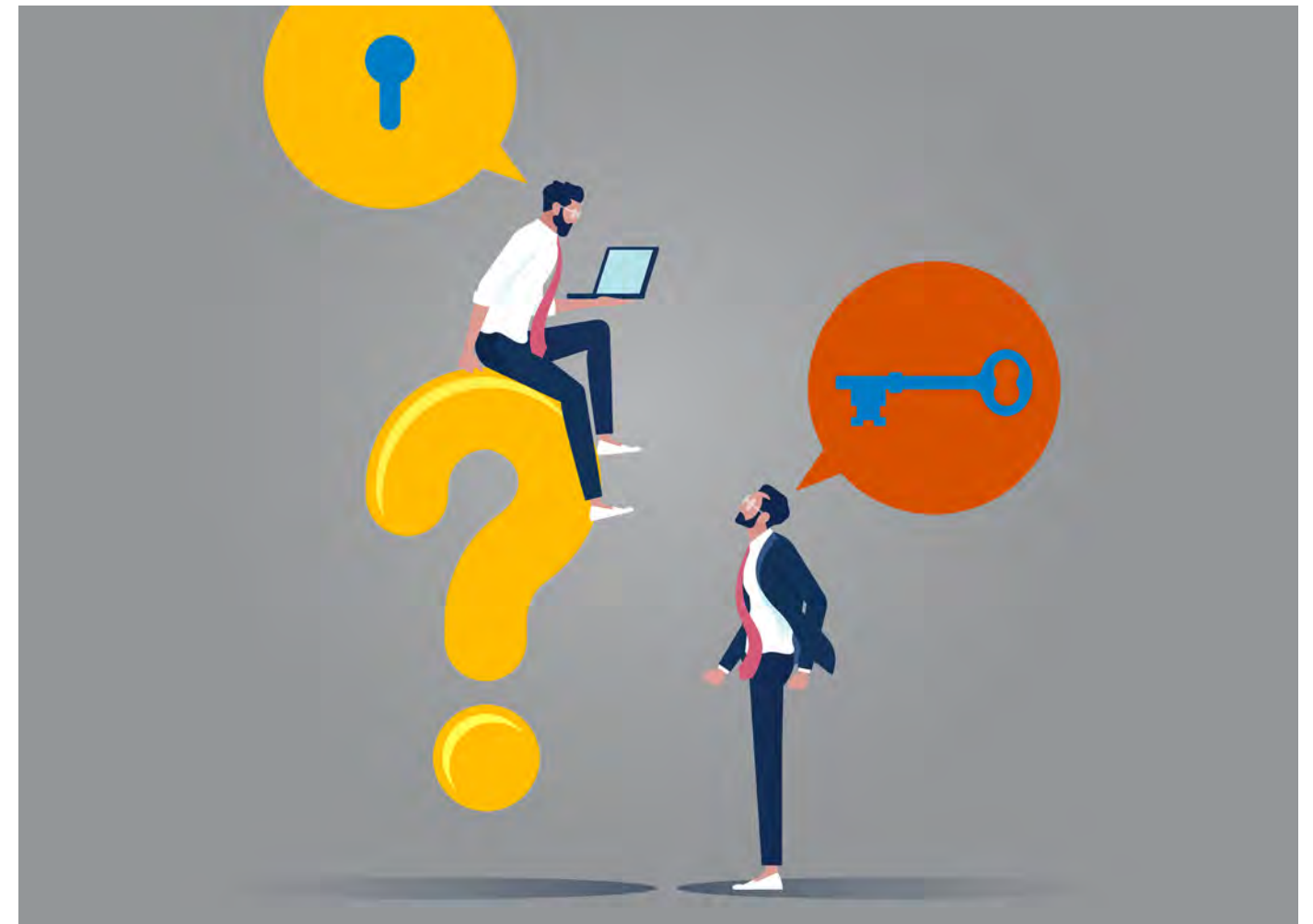
The structural problem is caused, in part, by the narrow and virtually exclusive way in which many law firms identify incoming talent. They visit a small number of select law schools, base their hiring decisions on one year of law school performance, fail to adequately test their summer associates for ultimate success, and hire their first-year associates only from their summer associate classes. The entire process disproportionately negatively impacts attorneys from underrepresented backgrounds. These students often base their law school admission decisions on considerations of cost, not law school prestige or ranking, may come from educational or family backgrounds that make the transition to law school more difficult — and hence first-year performance less impressive — and write off any realistic prospect of landing a job with a Big Law firm by the time they have completed their second semester.

By holistically focusing on a law student's performance throughout the student's entire tenure in law school, examining students' backgrounds and what they have overcome, attempting to identify the “grit” factor that young lawyers must possess to excel, and utilizing potentially predictive analytical data, a larger pool of high-quality young lawyers,

often from underrepresented backgrounds, can be identified. A larger pool of these types of lawyers, properly trained and mentored to improve the prospects of retention and long-term success, will contribute to greater success in DEI.

Big Law firms understand, at least subconsciously, that the process by which they identify talent fails to capture all the talent available because they work with extraordinarily high-quality local lawyers and in-house counsel who graduated from law schools from which they do not recruit. Moreover, a student's grades and law school background become far less meaningful, if not entirely irrelevant, when law firms consider and hire lateral partners and other senior lawyers who have developed expertise or books of business despite not having attended a law school from which the same law firms exclusively hire.

Recognizing that this structural nut is difficult to crack because law firms are legitimately concerned about the reality — and even the perception — that they are not hiring the highest-quality lawyers, the Legal Innovators model significantly vets the lawyers it hires to meet Big Law's performance standards while seeking to de-risk the process by borrowing from the English Trainee or Canadian Articles Clerk models. Under the Legal Innovators model, the law firm/corporate legal department is not obliged to permanently hire the junior attorney until it has gained sufficient exposure to that attorney's quality of work and cultural fit to make an informed hiring



decision — indeed a more informed hiring decision than law firms currently make through the traditional hiring process.

## Inadequate Training

The training, mentoring, and wellness aspect of Legal Innovators' model is critical to maximizing the prospects of long-term success, and hence better prospects of retention at the firm or legal department at which the junior lawyers are ultimately hired. At many law firms, training of junior lawyers has suffered as more senior lawyers are put under ever-increasing

pressure to produce business and billable hours. The firm-associate relationship has become ever more transactional and short-term. Yet the failure to train junior associates not only impacts the junior associate's ability to progress — it also contributes to the associate's perception that the firm is not invested in the associate's future, which in turn negatively impacts retention.

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## Focus on Well-Being

As it relates to lawyers from underrepresented backgrounds, the need to train, mentor, and focus on wellness is even greater. Law firms are generally very tough, demanding places to commence a professional career — more so in a pandemic remote working world. The transition is even more difficult for those who have lacked exposure to this type of professional setting. At the same time, law firms are

week focuses on practical transaction skills that a junior associate will likely be expected to master in a transactional practice group. And the third week focuses on litigation skills. The objective of the training is to give the participating junior lawyers a leg up on the expectations and demands of practicing law at the highest levels upon their placement.

The training does not stop with the three-week program. Legal Innovators lawyers participate

## Structural problems require structural solutions.

quick to form permanent judgments about a junior lawyer's performance, often based on one or two encounters. Once marginalized as a poor performer, demand for that lawyer dries up, the lawyer becomes underutilized, and the cycle of low retention rates is perpetuated.

For these reasons, Legal Innovators lawyers participate in a three-week training course prior to placement. The curriculum is designed to provide practical training, delivered by experienced practitioners at all levels — junior associates, senior associates, partners, and law firm clients. The first week focuses on professional skills — how to succeed in a demanding law firm environment. The second

in on-going training, coaching, wellness assistance, and mentoring throughout the period of its attorneys' placements in law firms. It is not enough to train and cut the cord. The transitional process to success in a law firm requires continued focus and work for all junior lawyers. By staying closely connected with junior attorneys throughout the placement period, it is easier to assist with any course corrections that prove necessary. Working together with the employer and the junior attorney, the process is designed to avoid having the first bump in the road derail the ride. Far too often that first bump proves fatal, particularly for lawyers from underrepresented backgrounds who may suffer from "imposter" syndrome.

## Breaking the Cycle of 'Sink or Swim'

More experienced lawyers are prone to forget how little they knew when they first started practicing law. They tend to glorify the "sink or swim" culture they believe they endured. This thinking is fallacious on two levels. First, it is frequently the case that successful experienced lawyers received more training and assistance than they acknowledge or recall.

Second, there is nothing to glorify about a "sink or swim" mentality. Not only does it write off talented junior lawyers who could well attain long-term success with early training and intervention, but it causes unnecessary expense to the employer. It is extremely expensive to recruit, hire, and then out-place associates. It also negatively impacts a firm's ability to recruit additional underrepresented talent. It makes little sense to build the expectation of failure into the hiring model. More resources spent on training, mentoring, inclusion, and timely intervention is far more efficient and cost-effective.

Junior lawyers are junior; by definition, they lack experience. In the current Big Law environment, they are being paid extraordinarily high salaries, which in turn results in extraordinarily high billing rates for their services. This places extreme pressure on their ability to perform at a high level. They feel that pressure daily. Paying a lot of money to junior lawyers

does not make them more senior. The pressure can be lessened, client satisfaction can be improved, and long-term retention can be maximized by focusing on training, mentoring, wellness, and intervention in the early years of an attorney's career. It is money well spent in every conceivable way. +



**Jonathan Greenblatt**  
([Jon@legal-innovators.com](mailto:Jon@legal-innovators.com)) is a retired Shearman & Sterling litigator and co-founder and Chairman of Legal Innovators, which brings a level of innovation to legal that

he believes is lacking in recruitment, hiring, talent development, pricing, and diversity and inclusion. Greenblatt is a lecturer at the George Washington University Law School. He is a graduate of the University of Connecticut and earned his J.D. from the George Washington University Law School.