

THE PIPELINE AT LAW FIRMS DEFERRING ASSOCIATES— CLOUD WITH A SILVER LINING?

Leslie A. Gordon

As an aspiring intellectual property lawyer, Jessica Hannah spent her second law school summer at a Bay Area law firm that specializes in intellectual property in San Francisco. She eagerly accepted a permanent offer and planned to join the firm after a postgraduation clerkship with a federal judge in the Eastern District of Texas, a court known for handling cutting-edge patent cases. During that clerkship, however, Hannah received word from the firm that it was deferring its offer—essentially, pushing back her start date due to the poor economy.

“It’s definitely been frustrating,” says Hannah, who returned to San Francisco after her clerkship only to learn that her employment offer had been deferred even longer. “My plans have changed so many times.”

Fortunately, an attorney with the firm who works regularly with local attorneys in Texas recommended Hannah to a firm there. She moved back to Texas to earn some money during her second deferment.

“It worked out really well on all ends,” Hannah says. “The Texas firm needed someone and I was available. But I’m looking forward to getting back to the Bay Area.”

Despite being deferred twice, Hannah is actually one of the lucky new lawyers. With help from her deferring firm, she’s been able to make ends meet doing law-related work while waiting to join the firm as a full-time associate.



Recent law school graduates like Hannah are facing the bleakest job market in decades. Law firm clients are willing to hire only the most experienced attorneys and refusing to pay for the traditional new associate learning curve. As a result, law firms are drastically cutting costs, the most notable being associate salaries.

Many large firms have deferred start dates for brand new lawyers, offering no-benefits stipends in lieu of salaries—

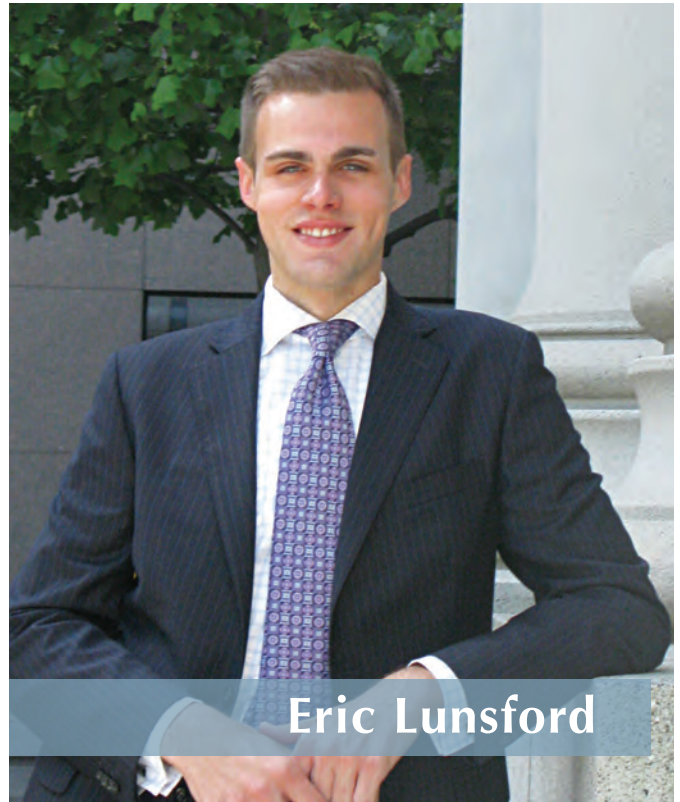
in essence, law graduates are being paid not to join the firm as originally planned. Some firms have deferred entire classes of new lawyers for as long as a year. Other firms have staggered start dates depending on practice group or the associate's timing preference.

While waiting out deferrals, some recent graduates, like Hannah, have cobbled together short-term legal work. Others have eagerly used the unexpected time off to extend bar trips. Still other deferred associates are volunteering at nonprofit organizations, either by choice or as a condition of receiving the stipend from the firm. Some new lawyers are even opening their own practices.

Unnerving to many recent graduates, the deferrals are shifting law firm infrastructure in a way that will not reverse even when the economy rebounds, some industry watchers say. With many clients refusing to allow or to pay for new attorneys to work on their matters, and with new attorneys joining firms long after graduation, the law firm structure may well be reshaped from a pyramid to a diamond. But attorneys in the middle of the diamond need to come from somewhere—firms still need a pipeline of high-quality lawyers, if not right away. And if law firms aren't training them, who is?

The answer may be the nonprofit sector. What may result is a new apprenticeship model that expands the public interest sector, something that firms, nonprofit organizations, and deferred associates themselves are saying isn't such a bad thing. Working in public interest while living off big-firm stipends, deferred associates are drafting complaints and briefs, making court appearances, interviewing clients, and handling other tasks not normally available to first-year associates. These new attorneys are also learning flexibility, teamwork, efficiency, client management, and persistence, traits otherwise honed only after years of practice.

Eric Lunsford, who graduated from UC Davis School of Law in 2009, was planning to join the San Francisco office of Dechert, a Philadelphia-based firm, in the real estate finance group. Dechert deferred all new associates in blocks, with those waiting the longest receiving the largest stipend. Lunsford chose a longer deferment because he wanted to stay in real estate finance, a practice area that had been especially slow.



Eric Lunsford

When Lunsford first learned of the deferral, he was troubled. “I went straight through to graduate school from college, just like my parents had done. I considered it a bit of a bump in my career. But then a friend said, ‘Why would you be upset? You get a whole year off.’”

OPPORTUNITY

To receive the stipend, Dechert required deferred associates like Lunsford to take a pro bono position. Through an online clearinghouse, Lunsford landed a fellowship at BASF's Volunteer Legal Services Program (VLSP), a nonprofit provider of free legal and social services to low-income individuals and families. Specifically, Lunsford works at VLSP's Low Income Taxpayers Clinic, evaluating cases and assigning them to volunteer attorneys. He's also handled a few debtors' rights cases himself.

“I get an amazing amount of client contact,” says Lunsford, who works about thirty-five hours a week and is paid monthly by his firm. He's negotiated settlements with the IRS and appeared in court. “It's been fun and

educational. I have decision-making authority, which is not something a first-year associate normally gets. And it's been a great networking opportunity."

The experience has also given Lunsford perspective on the profession. "Most of the time, the cases involve small amounts of money, like \$700, which is less than one or two hours of billable time in a law firm. Yet we're spending hours and hours here to resolve the cases."

The result, according to Lunsford, is that his "eyes are a little more open. I still want to do exactly the same kind of law I originally planned. But I have a better appreciation for pro bono work. I will be a lifelong VLSP donor and supporter." Plus, he quips, "I'll now never have problems with an audit."

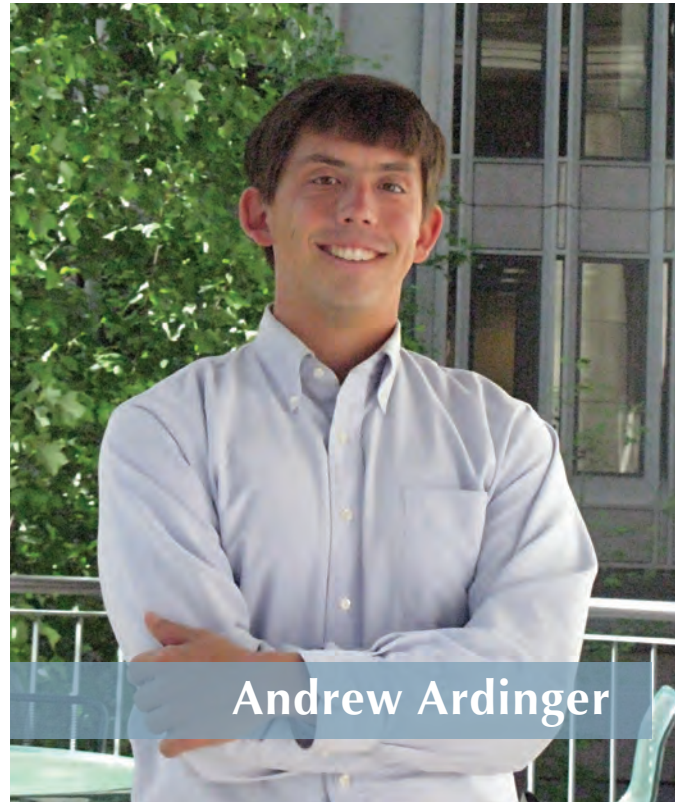
Tiela Chalmers, VLSP's executive director, has hired seven deferred associates. In most cases, the associate receives a stipend from the firm, usually \$60,000, and the fellows pay their own health insurance. One firm, Pillsbury Winthrop Shaw Pittman, has used a grant model, paying VLSP \$60,000 to hire the deferred associate, who becomes a VLSP employee with benefits.

VLSP had frozen three vacant jobs but was able to fill the positions with deferred associates. "We would have had to cut our services dramatically if we didn't have the deferred associates," Chalmers says. "It has made a big difference." As law firms are continuing to defer hiring, she's making offers to a next class of fellows.

Chalmers and her public interest colleagues around the country are hoping this apprenticeship model continues even after the economy recharges.

"In legal services, is there a way for us to harness the power of this phenomenon? Some law firms view deferrals as just a way to stall associates and save on recruiting," Chalmers says. "Others, however, are taking a more long-term and strategic view and are exploring ways in which the deferrals of today might lead to the apprenticeship model of tomorrow and meet the needs of the law firms and the legal services providers. My mission is to support this more strategic approach."

She's informing firms about the meaningful legal work



fellows are doing, including dealing with clients and courts and managing projects and cases. "It's real, on-the-ground experience."

Orrick, Herrington & Sutcliffe has recognized the value of this kind of public interest work, rolling out its own fellowship program for the new associates it has deferred. Rene Kathawala, firmwide pro bono manager, helped dozens of graduates find jobs at legal services organizations, impact litigation organizations, general counsel offices, public defender offices, and clients of the firm. The new lawyers receive a twelve-month stipend of \$60,000 from the firm while working at these organizations. (First-year associates would have otherwise earned \$160,000.)

Kathawala, who remarks that he's "running a career counseling service out of my office," talked at length to each of the deferred associates about their interests in an effort to make the best match. "They had a broad spectrum of opportunities and are getting a qualitatively different experience [than a traditional first-year associate]," he says. "The deferment will undoubtedly serve their long-term career goals."

Andrew Ardinger, who graduated from Stanford Law School in 2009, was deferred by Orrick's general litigation group.

"I was actually really happy about this [fellowship program] as an opportunity," Ardinger recalls. "It was great that the firm made the best of a bad situation."

Kathawala helped Ardinger land an internship at the Public Interest Law Project in Oakland, which handles litigation and legislative advocacy related to public benefits and housing. There, he's developed briefs and motions, drafted complaints and petitions, and interacted with clients.

"It's been a hands-on learning experience," says Ardinger, who notes that he's working fewer hours than if he'd started on time at Orrick. "I've received a lot of good work, but it's in a relaxed and collegial environment." Ardinger plans to work at the organization until October, take some time off to relax, and then join Orrick in January 2011.

It's still unclear, according to Kathawala, how the new lawyers will enter the firm—as first years or as second years. But, he adds, "What matters is that they got good experience. They're going to come here and excel."

As new lawyers are joining firms later, new partnership tracks may result. In addition to devising the fellowship program, Orrick, for example, eliminated the traditional lock-step associate compensation structure in favor of one with subjective, merit-based pay, with emphasis on skills and revenue generation. Associates are now chosen from partner, "custom," or "career" tracks. Many law

firms are moving to a "competency-based" model and away from lock-step or seniority approaches.

Other changes related to new lawyers have emerged at big firms. Drinker Biddle & Reath, for example, did not defer associates but instead completely revamped the first year to an on-the-job training model with zero time billed to clients, according to San Francisco-based partner Heather Fedeli. "Many firms were cancelling offers or deferring them. We decided to be proactive. We wanted to honor those commitments" to hire, says Fedeli, who serves on the firm's professional development committee.

EXPERIENCE

Even before the economy crumbled, Drinker Biddle had been discussing ways to make first-year lawyers more productive and provide better service to clients. "We'd heard legitimate feedback from clients that they didn't want to pay for the first-year learning curve, and they'd request that first years not work on their matters," Fedeli recalls. "As a partner, from a business standpoint, you don't want to write work off. It was a conundrum. How do you train great lawyers without clients paying the price? Listening to what our clients want and need led to a changing of the structure. We decided to build a better mousetrap for the associates' first year."

New lawyers now spend a year on internal training including participating in a formal curriculum and shadowing

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—Dean Jeffrey Brand, University of San Francisco School of Law

lawyers at hearings and depositions without a single hour billed to clients. The new lawyers' salaries are adjusted to reflect the lightened workload, but, Fedeli adds, "they're still getting decent pay." Clients, she says, "have been amazingly responsive, and the first years love it. It's a total win-win."

At the end of the year, the new associates will roll into doing some minimum billable work. "It's been a way to show clients that we're conscious of efficiency and economy of services. I wouldn't be surprised if this program continues for incoming classes going forward."

For those firms that do defer associates, a trickle-down effect results in law schools. As young associates with experience are looking for work, a line is forming, "and students are further back in the line," says Jeffrey Brand, dean of University of San Francisco School of Law. "There's no question that the economic downturn is having an impact on students and law schools. It's a terribly, terribly tough time." Law schools up and down California are adding career counselors, even amid university hiring freezes, to accommodate not just students but alumni demand for coaching and job-search assistance.

"Students need jobs. Legal education costs a fortune," Brand says. "Our students have been very resourceful about coming up with jobs. They're not necessarily long term or full time," but it's work nonetheless. Brand asked USF alumni to offer students transitional employment to "keep spirits alive and give them another line on their résumé and allow them to network."

Importantly, though, "there's something much broader going on," he adds. "It's not like three years from now there'll be the same job market as before the downturn." He explains, "The big-firm model may have been well intentioned, but it's unsustainable. Firms can't charge associate work at a much inflated price if associates start to balk about the workload and the business from clients is not there. Both those things happened. Something dramatic is taking place."

In the wake of the economic collapse, USF held a symposium in September focusing on navigating this changing legal employment landscape. The conclusion was that law schools must provide even more skills training and, at the same time, nurture the passion of students as they face the horrible job market.



"The training of young lawyers that went on in law firms cost firms and clients a huge amount of money. Now that's history," Brand says. "Firms are looking for other ways to train new lawyers. There's not going to be a re-emergence of the associate market. It's going to continue to create pressure on young lawyers." Law schools, meanwhile, "can't skate through like nothing is happening. We need to rethink clinical work and skills training so students are better prepared."

The "very positive side" to this shift, according to Brand, is that firms like Orrick and Dechert have started subsidizing public interest work. "What a wonderful model: the firm is going to get a more skilled lawyer and more lawyers will be doing public interest work. Firms do still need a pipeline. What if they decided this model is in their economic interest? It could be thrilling."

Another response to deferred or cancelled offers is new lawyers hanging their own shingles. Wayne Chi is not technically a deferred associate, but he decided not to accept the less-than-ideal small-firm offer he received when he graduated from law school in 2008. At first, he thought he could easily land another job because he

speaks Mandarin and worked on his school's law review. But then the economy tanked.

"I had to do something," Chi recalls. "I took the opportunity to really understand my skill set, including language skills, the fact that I'd helped run my family's real estate firm in Hawaii. I'd also externed for a federal judge and worked in a community law clinic." Chi had entered law school thinking he'd go solo someday. "I didn't know it would be so soon."

Opening his doors in March 2009, Chi splits his billable time between immigration and business matters. He maintains small offices in San Francisco and Hawaii (where he's also licensed), but usually works from home. He logs even more hours than a typical big-firm first-year associate, sometimes working until 2:00 a.m. It's time-consuming not only representing his clients but also learning new substantive areas and, most importantly, he says, developing and marketing his business.

On Chi's recent one-year anniversary, he discovered that he'd met the revenue goals he'd set when he launched his practice. Expenses have been low: he got inexpensive mal-practice insurance, negotiated an inexpensive lease thanks



Eric Toscano

to the down real estate market, and made use of virtual office tools. His largest cost, he says, is his subscription to Westlaw.

Not every deferred associate should turn to solo practice, Chi notes. "You must have an entrepreneurial spirit." Though he receives hundreds of calls from potential clients, Chi's biggest challenge is converting leads into

INSPIRATION

clients. For practical help with that, he's turned to the young lawyers divisions of the state bar and the American Immigration Lawyers Association.

BASF's Barristers Club similarly provides networking events and a dedicated listserv for new solo attorneys, says Barristers Club President Avin Sharma. "I also point them toward the Solo and Small Firm Resource Center on the BASF Web site," which provides information on discounted insurance products and an attorney-to-attorney advice program.

Sprinkled among the entrepreneurial solos and the public interest fellows are, of course, the deferred associates who choose to do something wholly nonlaw related, which many longtime lawyers wish they'd had the chance to do before the prolonged nose-to-the-grindstone years. Eric Toscano, who graduated from UC Davis School of Law in 2009, was deferred by Reed Smith in San Francisco. Toscano, who'd worked for seven years before going to law school, "looked at the deferral as an opportunity for an extended bar trip and figured it could be kind of fun."

Armed with a law firm stipend that covered his travels, Toscano set out for Rome in September. He spent several weeks visiting friends (he'd lived in Italy before law school) and tracing his Italian ancestry to the 1700s. He then traveled with his girlfriend and later his dad through places like northern Italy, Spain, and France. When his visitors returned home, Toscano headed to Munich, where he rented an apartment for an extended stay.

“I wanted to enjoy myself, but I did not want a slack-er trip,” he says. “I wanted to study a new culture and language.” Toscano got a university-level textbook and taught himself basic German. He also penned an article for the New Lawyer supplement to the *Daily Journal* and met with attorneys in Reed Smith’s Munich office. He celebrated passing the bar at the Hofbräuhaus.

Toscano returned to San Francisco in December and joined Reed Smith’s intellectual property group in January 2010.

“I was definitely rested and itching to get started. But if I’d started at the firm in the first week of September as planned, I would not have unwound sufficiently,” he says. “Having a whole season off was wonderful. I got it out of my system. I was ready to buckle down. I started in a healthy, relaxed state.”

Some associates felt pursuing nonlaw-related activities was a trap for the unwary—that the firms would be less likely to invite them back if they travelled or sat on a beach rather than worked at advancing their careers. But others weren’t worried—and for at least those firms and

associates who embraced the idea of a broader use of the deferred time, they were right.

Toscano has no regrets about spending the bulk of his deferment doing something nonlaw related. “If it had been a longer deferral, maybe I would have done some work. But I come to the firm with a publication under my belt and proficiency in another language—that can’t hurt.”

No matter what they’ve chosen to do with their unexpected time off, many deferred associates already look at their delayed career starts not as a setback but as an opportunity.

“I’m having a great time now,” says Ardinger, about his work at the Public Interest Law Project. “I’m getting a lot of stimulating work. And I also anticipate having a great time at the firm.”

Of working at VLSP, Lunsford adds, “This was never something I would have chosen, but I have loved every minute of it.”

A former lawyer, Leslie A. Gordon is a freelance legal journalist living in San Francisco. She can be reached at leslie.gordon@stanfordalumni.org.



Tuesday, June 29 • 5:30 – 7:30 p.m.
Barristers Club Sections Happy Hour Mixer
@ 111 Minna Gallery
111 Minna Street (at Second)

This is the first quarterly happy hour for Barristers sections and committees! Meet and network with your peers that share your practice area and community interests.

Wednesday, July 14 • 5:00 – 8:00 p.m.
Latino Partners & Summer Associates Reception
@ Morrison & Foerster
425 Market Street, San Francisco

Established in 2007, this annual reception provides an opportunity for networking, meeting mentors, and appreciating the achievements of Latino and Latina partners in the Bay Area. At this event, Latino partners and summer associates can gather to network and learn about the achievements of Latino attorneys in the Bay Area.

Wednesday, July 21 • 5:30 – 7:30 p.m.
Barristers Club Diversity Reception
@ BASF Conference Center
301 Battery Street, Third Floor

The Barristers Club will honor a deserving attorney who has made significant contributions to diversifying the legal profession at the 2nd Annual Barristers Club Diversity Reception.

Monday, July 26 • 5:15 – 7:15 p.m.
BASF’s 5th Annual Law and Disorder Night
San Francisco Giants vs. Florida Marlins
@ AT&T Park

The San Francisco Giants will host the 5th Annual “Law & Disorder” Legal Professionals Night at AT&T Park. The pregame reception starts at 5:15 p.m. and runs until the start of the game. Judges, lawyers, law students, summer interns, friends, and family are invited to celebrate their contribution to the community during an evening of drinks, music, and the chance to rub elbows with the Giants legal team!