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### Training Post-Millennial IP Lawyers: A Field Guide

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# TRAINING POST-MILLENNIAL IP LAWYERS

## A FIELD GUIDE

BY NORMAN J. HEDGES AND MARK D. JANIS

**S**tephen T. Logan, the best lawyer in Sangamon County, Illinois, in his day, took a young, inexperienced law partner under his wing.<sup>1</sup> Like most lawyers then and now, Logan evidently aimed to expand his billings; altruistic considerations about mentoring as a tool to advance the legal profession presumably were not foremost in his mind.

By all accounts, Logan was brilliant, disciplined, and thoroughly steeped in the law. He saw in his young partner his opposite: a lawyer deficient in formal training and lacking in confidence, but gifted with a common touch that could sway local juries in a way that Logan could not.<sup>2</sup> A productive partnership ensued. Although the firm dissolved after about three years, the young partner had many occasions to put Logan's teachings to good use, even years later, as the sixteenth president of the United States, Abraham Lincoln.

Maybe, like us, you believe that mentoring remains as vital for today's novice lawyers as it was for Lincoln. Maybe (again like us), you're of a certain age, you've read up on millennials and observed them, and you believe you just might be starting to figure out how to mentor them. News flash: millennials, at least the older ones, are now your partners. (In fact, maybe, unlike us, you *are* a millennial, and you're now expected to mentor the new flock of associates.) Those new associates and new summer associates coming into your firm are post-millennials, bringing with them an entirely new set of sensibilities, but the same deep need for solid mentorship. (Alternatively, they're known as "generation Z," but we think that sounds vaguely sinister, so we're sticking with "post-millennials.")

We're intellectual property (IP) law professors. Post-millennials are our current and future customers. So we're figuring out a few things about who post-millennials are and how we can mentor them effectively to start them on the path to becoming the next generation of outstanding IP lawyers.

Here are a few things we're learning, and a few teaching strategies that we've developed. We hope that by sharing them, we can give IP lawyers some insights about what to expect from their new hires and how to help them advance professionally.

### **Post-Millennials: Who Are They and What Will They Be Like as IP Lawyers?**

The Pew Research Center defines millennials as those born between 1981 and 1996, and post-millennials as those born in 1997 and later.<sup>3</sup> In recent years, about half of all law school applicants have been between 22 and 24 years old.<sup>4</sup> At least under the Pew definition, typical law school students that we're seeing are at the tail end of the millennial generation and the first wave of post-millennials.

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There are already plenty of prognostications about how post-millennials will operate in the workplace. Of course, these are generalizations about a generation that doesn't quite even know what to call itself yet, so the usual cautions apply. Below we've distilled a few of these projections that resonate with our observation of modern law students, compared with their millennial predecessors:

1. *They're more entrepreneurial, and more individualistic.*<sup>5</sup> Upside—they're likely to be more competitive and independent. Downside—they may be less willing to embrace teamwork.<sup>6</sup> Split views exist on whether they'll be primarily disruptive<sup>7</sup> or more about problem-solving, repairing, and building.<sup>8</sup>
2. *They prefer informal learning over formal classroom learning.* They expect to learn new skills on the fly,<sup>9</sup> they're more likely to insist that employers provide on-demand learning opportunities,<sup>10</sup> and they're wary of student loan debt.<sup>11</sup> And they want their teachers to get to the point. Immediately.
3. *They're pragmatic.* Millennials may be idealists; post-millennials are projected to be more hard-headed, valuing long-term job security.<sup>12</sup>
4. *They're the first generation of "true digital natives."*<sup>13</sup> They have an "instinctual" relationship with digital technology; they are multi-multitaskers (we remain unconvinced that this means that each task gets adequate attention); and they know no distinction between workplace and home.<sup>14</sup> They say that they prefer to communicate face to face,<sup>15</sup> but we think that "face to face" in the mind of a post-millennial might well mean FaceTime rather than congregating with peers in open space in an office building.<sup>16</sup>
5. *They expect to be catered to, including in the workplace.*<sup>17</sup> Enough said?
6. *They're diverse.*<sup>18</sup> They view diversity as a given not an aspiration, and they're likely to define it more broadly than their predecessors did.

To this list we'd add a few observations relevant to law practice (and more specifically to IP practice):

1. *They've been told that they're all above average.* Law school applicants with science and engineering degrees are still rare.<sup>19</sup> They may have been heavily recruited by multiple law schools; they might have negotiated with prospective schools to maximize scholarship offers; and they may have become accustomed to being told that they're awesome, which is true for most of them.
2. *They've been hearing about breathtaking starting salaries for IP lawyers.*<sup>20</sup> They may not be quite so familiar with correlatively high performance expectations.
3. *They're entering the legal profession at a time of historic volatility (as measured, for example, by the number of law firm mergers).*<sup>21</sup> This is likely to be a source of especially significant stress for a generation that prizes long-term job security.
4. *They don't consider the Federal Circuit new.* Nor are they much in awe of it as an institution, understanding, as they do, that the Federal Circuit isn't the de facto final word on patent doctrine these days.

5. *They don't even consider first-to-file and inter partes review proceedings to be new.* Some of these folks were in high school when the America Invents Act passed.
6. *They think it's quaint to speak of the effect of online commerce on copyright and trademark law.* Everything is online and, to a post-millennial, always has been.
7. *They've sought out law schools that have full-fledged IP programs.* They expect a sophisticated IP curriculum delivered by subject matter experts. They're surprised to hear that IP scholars used to be scarce in law schools.

Now, the challenging part: how might this information be used to mentor new IP lawyers more effectively?

### **Training Millennial (and Post-Millennial) IP Law Students and Lawyers**

If you call us to consult about how to design your firm's training exercises for new IP associates or if you outsource the task to us and let us do the design and teaching, we'll tell

school training sessions) should minimize lecture and information delivery and focus on hands-on exercises. Experiential education is an excellent fit. In our IP program, like other nationally recognized programs, we offer students the opportunity to participate in a pro bono IP law clinic and a variety of other upper-level IP classes that have a significant focus on drafting and other transactional and advocacy skills. Our offerings are particularly strong in patent law, with a patent-heavy docket in our IP clinic and an especially rich set of course and seminar offerings, such as Patent Trial Practice (taught by seasoned IP litigator Don Knebel) and Federal Circuit Advocacy (taught by Jones Day's Greg Castanias, who flies in from Washington, D.C., to teach the class). Our work as the U.S. Patent and Trademark Office's (USPTO's) designated pro bono patent hub for Indiana and Kentucky offers additional opportunities to engage directly with patent practitioners and to involve our students in those interactions—for example, through a new program we're developing that will allow 1Ls to volunteer for some types of IP pro bono work.

# POST-MILLENNIALS ARE INDIVIDUALISTIC AND PRAGMATIC, SO EXPERIENTIAL EDUCATION IS AN EXCELLENT FIT.

you that based on our experience, an effective training program for post-millennial lawyers should be built around three design principles: (1) a commitment to intensive skills training, (2) high-quality individualized feedback, and (3) a holistic approach to developing lawyer competencies using the "Fromm Six." Our approach is a hybrid that blends traditional law school instruction with the sort of practical mentoring that senior lawyers used to do for their junior lawyers in the old days. We explain these principles below, with examples showing how we implement them in our IP program at our law school and in our work with a law firm in our region.

### ***Commitment to Skills Training***

We know that post-millennials are thought to be individualistic and pragmatic. We know that they don't like to do their learning exclusively in traditional classroom settings. And lastly, we know that they prefer to engage "in person"—albeit perhaps online. All of this suggests to us that intensive law classes (and post-law

For us, it's critical that these skills opportunities be treated as integral to our IP curriculum. Said another way, we reject as false the oft-asserted dichotomy between "theory" and "practice" in IP law education. We try to convey that message in our curriculum by presenting the clinic and other upper-level IP "skills" courses as capstone experiences. In addition, all of our IP classes, whether or not they are "skills" classes, strive to provide students with (1) a sound foundation in IP doctrine, emphasizing currency; (2) the intellectual tools for thinking normatively and with nuance about IP policy; and (3) opportunities to practice applying IP doctrine to real-world problems—in essence bringing a practice orientation to the classroom. Analogously, law firm training exercises ought not to shy away from history, theory, and policy—for example, they should not be approached strictly as information-heavy excursions into technical and practical minutiae about USPTO practice.

Because of our emphasis on applied learning, much of our IP teaching relies on nontraditional modes of instruction. While the

legal academy's current move toward experiential education may diminish someday, we don't see ourselves departing from our skills-heavy model. Given the proclivities of post-millennials, we expect the demand for nontraditional learning opportunities to expand among the next generation of IP law students, as well as newly minted IP attorneys.

### *High-Quality, Individualized Feedback*

Patent claim drafting may be the primary example of an IP practice skill that can be strengthened profitably if firms are willing to invest in high-quality feedback to young lawyers. It should be easy for firms to justify expending resources on training their incoming patent associates in claim-drafting fundamentals, because the savings in reviewing and redrafting time by senior lawyers should quickly exceed any reasonable training costs. We have experimented with a "boot camp" approach to claim drafting for new patent associates at a nearby law firm, and we are implementing similar approaches within our IP law curriculum. Under our instruction, we break down claim-drafting exercises in ways that could not be done quite so effectively in actual practice settings, we provide extensive written and in-person feedback

full-time IP faculty is greatly augmented by a group of adjunct professors who subscribe to our ambitious vision and generously donate their time. Just as we're leaning on private practitioners for some of our instructional responsibilities as part of a mission to blend practice with traditional law school instruction in intellectual property, law firms ought to consider outsourcing some of their training tasks to those of us who make a business of teaching IP subjects—not to replace lawyer mentoring in the grand old tradition of the practice, but to supplement it in a way that makes it sustainable in a modern law firm.

### *Developing Lawyer Competencies Holistically—The "Fromm Six"*

Our late colleague Leonard Fromm, a true master in transforming law students into legal professionals, developed a model of six core lawyer competencies: self-awareness, active listening, questioning, empathy, communicating/presenting, and resilience. (An explanation of the list, and a glimpse into the wisdom of its originator, has been published elsewhere.<sup>22</sup>) For us, the model serves as a regular source of validation and an excellent reminder that substantive IP

# CUSTOMIZED AND INDIVIDUALLY DISPENSED FEEDBACK IS COSTLY, YET POST-MILLENNIALS WANT, AND NEED, IT.

on assigned exercises, and we repeat, and repeat, and repeat. By our taking over the basics of claim drafting, partners can focus on billing time while still participating in mentoring associates in advanced claim drafting.

It's easier said than done. Anyone who's reviewed lawyer work product, especially in the area of patent application preparation, knows that giving effective and detailed feedback requires a serious time commitment, a sophisticated eye, and a tough-love temperament that is nevertheless constructive. It also requires a one-on-one, or at least few-on-one, teacher-student ratio. Feedback like that, especially when it is customized and individually dispensed, is costly, whether carried out in a law school setting or in the law firm. Yet the need is already extreme, and will only expand. Post-millennials will demand it, and even if they don't, they need it just as much as any new generation of lawyers ever did.

At our law school, we're very fortunate that our cadre of

content makes up only a small fraction of the body of knowledge that aspiring IP professionals need to absorb.

So how do we train IP law students in these competencies? One focal point is communication/presentation. We don't take it for granted that aspiring IP lawyers are already masters of oral presentation. If anything, we presume the opposite—many of them have had few opportunities to stand and deliver before an audience. So we strive to remedy that. Our IP clinic students present on IP topics to community organizations and the clinic's referral partners, and of course are exposed firsthand to the challenges of communicating with clients. Our Advanced Patent Law students give formal, graded presentations on newly decided Federal Circuit decisions. And, through a unique partnership with law programs in Taiwan, our Patent Trial Practice students must confer regularly online with their counterpart Taiwanese students, who play the role of in-house counsel responsible for overseeing a U.S. patent litigation matter. Here,



we're also taking advantage of post-millennials' ready familiarity with communicating online. None of these examples involves courtroom oral advocacy exercises so celebrated in law school tradition. We teach that too, but our point here is that most IP law students and new associates need practice in a much wider range of oral presentation skills.

We also assume that many post-millennials will come to us having had no experience working with paralegals and other professional staff. Some students will already have the humility, self-awareness, and ability to elicit information efficiently by asking good questions, but most will need some practice. Students in our Patent Trial Practice class receive feedback from court reporters who graciously attend and transcribe mock deposition and trial proceedings. In our IP clinic, we may spend more time advising students about how and when to ask for information than we do on the substance of the requested information. Because our clinic handles an unusually large volume of filings, our students have many opportunities to work with professional staff under the sort of stressful conditions that are a fact of daily life in IP practice.

Moreover, we think that aspiring IP lawyers need to be given ample room to fail—with a safety net—so that they have the wherewithal to develop the crucial competency of resilience. Much of the formal curriculum taught in the IP clinic (meaning the work done in addition to client representations) focuses on a litany of blunders that we have observed in many years of involvement in patent law, and advice on how to navigate them, if not avoid them altogether. The same holds for the in-depth simulation exercises in the Patent Trial Practice and Federal Circuit Advocacy classes, where students can expect to receive frank but constructive critiques of their work from experienced judges and lawyers who set high expectations but also understand the need to create a supportive atmosphere that encourages creativity and diverse perspectives on how to attack an IP problem.

### Conclusion—Making It Sustainable

Post-millennials who aspire to become IP practitioners want, and need, individualized, practical mentoring. We've described our hybrid model that provides mentoring through rich collaborations between law schools and lawyers. We're proud of the results that we've achieved so far.

However, our model isn't cheap. In a law school setting, it can only be implemented with substantial support from IP practitioners who volunteer as adjunct instructors. We're fortunate to have that in our IP program. In the law firm, implementing our model is likely to require significant collaboration with IP legal educators, and perhaps some outsourcing for intensive training on critical skills such as patent claim drafting. All of that requires a stable funding source to make it sustainable.

That may sound costly, but the fact is that mentoring young lawyers has always been costly. In the old days it was easier for law firm partners to get clients to pick up part of the bill for a new IP associate's on-the-job training, but even under that model, partners had to write off associate time and prioritize mentoring when they could have been spending time on other activities that generated higher short-term profits.

We're all lucky that a lawyer like Stephen T. Logan chose to mentor the young Mr. Lincoln. While we may be unable

to revive the old culture of senior IP lawyers dispensing daily wisdom to their apprentices, we may be able to take a stab at it by a collaborative hybrid model that brings IP practice into law school, and law school into IP practice. Post-millennials are likely to demand nothing less. ■

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