

# SURVEY RESULTS:

## Practical Skills Initiative

### **Adam I. Kaplan**

Last year, the Barristers Club Board of Directors launched a Practical Skills Initiative (PSI) to advocate for increased practical skills development opportunities for junior attorneys and to help prepare junior attorneys to knock it out of the park when they get those opportunities. The current board has worked hard to drive and expand these twin efforts. In 2017, board members and leaders in the club have:

- met with judges to promote “next-generation judicial orders” and propose local rules and court guidelines aimed at encouraging law firms to have junior attorneys argue motions and take speaking roles at trial;
- organized “Practical Courtroom Tips for Associates” programs at the San Francisco Superior Court and the US District Court for the Northern District of California;
- helped San Francisco Superior Court Presiding Judge Teri Jackson and the Rev. Dr. Amos Brown organize a community “Meet the Judges” event at the Third Baptist Church of San Francisco; and
- launched a “Public Speaking Practice Group” held at the Bar Association of San Francisco (which I discussed in my report in the fall edition of this magazine).



*Adam Kaplan*

An additional PSI component involved collecting data to understand at which point in their careers Barristers Club members are getting significant litigation opportunities, how satisfied members are with the timing and nature of those opportunities, and how satisfied members are with their firms' efforts to support their professional development generally.

District Judge William Alsup—who has long used his standing orders to encourage law firms to give associates more stand-up time in court—suggested this data collection idea when he met with members of the board last year. He had proposed a similar idea in a 2015 article that argued that the legal media “should conduct periodic surveys of law firms to facilitate comparison as to how well they train young lawyers.”<sup>1</sup> The Barristers board shares Judge Alsup's goal of “learn[ing] how well we are doing in training the next generation of lawyers.”<sup>2</sup> And, critically, we want to keep this conversation going so that firms will send junior attorneys to the front lines even as oral argument and trial opportunities continue to shrink and the stakes in litigation get bigger and bigger.

With that backdrop, this article outlines some of the key findings of the Barristers Club's first Practical Skills Initiative Survey.

## Overview of the PSI Survey

The PSI survey has fifteen questions. You can access (and still complete) the survey here: [events.sfbar.org/barristers-club-practical-skills-initiative-survey](https://events.sfbar.org/barristers-club-practical-skills-initiative-survey). Nearly fifty Bay Area attorneys have completed the survey. These attorneys hail from twenty-four different firms varying in size from local firms with fewer than ten attorneys to international firms with more than a thousand attorneys. About 25 percent of the attorneys are from small firms (fewer than ten attorneys) and about 75 percent are from large firms (more than fifty attorneys). The median years of practice among the survey respondents is four years, with the mean being 4.4 years of practice.

A few disclaimers. First, I am not a statistician. And I make no representations as to the validity, reliability, or statistical significance or soundness of the survey results. Selection bias or other biases might well have affected the results. Second, the snapshot that the survey provides is limited by the fact that we designed the survey to be completable in two minutes or less. Third, as Mark Twain used to say, “there are lies, damned lies, and” you know the rest.

## Timing of Major Litigation Experiences

**Depositions.** Fifty-one percent of the attorneys who have been practicing for two or more years had taken or defended a deposition within their first two years of practice. Among attorneys who have been practicing for five or more years, 89 percent had taken a deposition.

**Arguing Motions in Court.** Sixty-four percent of the attorneys who have been practicing for two or more years had argued a motion in court within their first two years of practice. Among attorneys who have been practicing for five or more years, 84 percent had argued a motion.

**Roles at Trial.** Twenty-one percent of the attorneys who have been practicing for two or more years had examined a witness at trial within their first two years of practice. Eight percent had given an opening or closing statement within their first two years of practice. Among attorneys who have been practicing for five or more years, 37 percent had examined a witness at trial, and 21 percent had given an opening or closing statement at a trial.

Two points are worth flagging. First, the survey did not distinguish between types of arguments (for example, discovery motions versus case-dispositive motions), types of clients (for example, paying versus pro bono clients), or types of fora (for example, state or federal court, an administrative body, an arbitration). In a future survey it might be interesting to see whether and how these nuances influence the numbers. Second, attorneys from small firms (fewer than ten attorneys) were overrepresented among the

attorneys who had the substantive experiences discussed above. They were particularly overrepresented among the attorneys who had examined witnesses at trial and given opening or closing statements at trial.

## Firm Support for Professional Development

The survey asked whether the attorney's firm has programs, policies, or tools to help junior attorneys develop practical skills. As examples, the survey listed formal training, shadowing opportunities, mentoring, guidelines or checklists for goals based on practice level, pro bono opportunities, and associate development committees. Seventy percent of attorneys responded that their firms did have such programs, policies, or tools. Eleven percent of attorneys said their firms did not, while 18 percent were not sure.

For attorneys whose firms have minimum billable hour requirements, the survey asked if the attorneys received credit toward those minimum requirements for time spent utilizing the firm's professional development programs, policies, or tools. Among attorneys whose firms have minimum billable requirements, 37 percent reported that their firms give credit for pro bono hours, 14 percent reported that their firms give credit for other training hours, 37 percent reported that their firms did not give credit for either pro bono or other training hours, and 11 percent were not sure.

As an aside, I'll add that one attorney who completed the survey noted in the optional comments section that judicial "emphasis on giving junior attorneys more experience gives partners more leverage in convincing clients to hand off opportunities to junior attorneys." I agree, and have seen and benefitted from this first hand. I was able to argue my first case-dispositive motion thanks to a judge's standing order that guaranteed oral argument when relatively junior attorneys would be doing the arguing.

## Attorney Satisfaction with Timing of Major Litigations Opportunities

The survey asked attorneys: "How satisfied are you with the stage in your career at which your firm provided you with the above [opportunities, i.e., depositions, arguing motions, examining witnesses at trial, giving opening or closing statements] and/or other opportunities to develop your litigation skills?" For attorneys who have been practicing for two or more years, the results were as follows:

• Very satisfied	33 percent
• Somewhat satisfied	38 percent
• Neutral	15 percent
• Somewhat unsatisfied	13 percent
• Very unsatisfied	0 percent

After some slicing and dicing, I made the following additional findings. Seventy-nine percent of attorneys who have practiced for two or more years and have taken or defended a deposition reported being Very satisfied or Somewhat satisfied, whereas only 50 percent of the two or more year attorneys who have not taken or defended a deposition reported being Very satisfied or Somewhat satisfied.

Similarly, 80 percent of attorneys who have practiced for two or more years and have argued at least one motion in court reported being Very satisfied or Somewhat satisfied, whereas only 44 percent of the two or more year attorneys who have not argued a motion in court reported being Very satisfied or Somewhat satisfied.

## My Two Cents

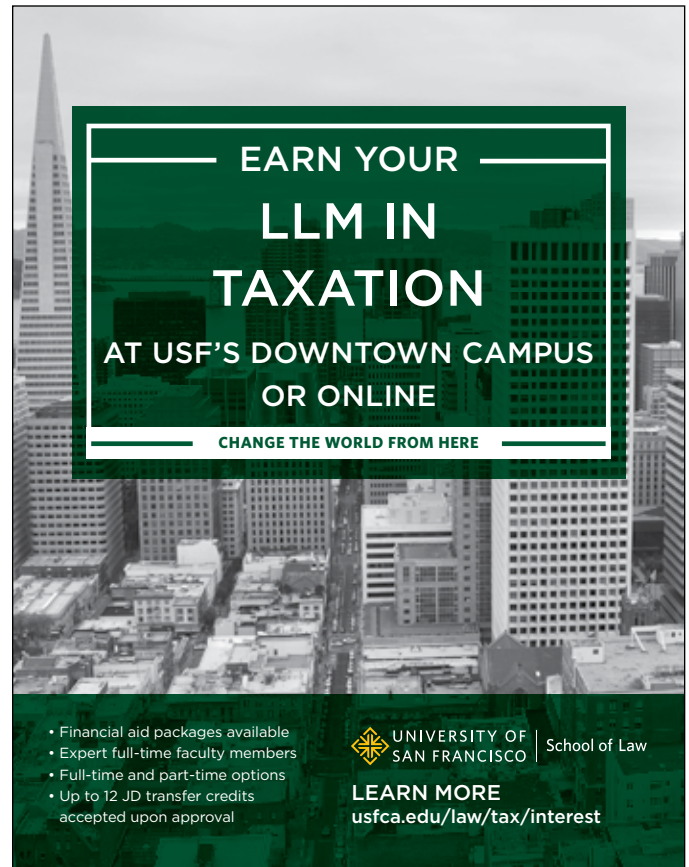
In my view, these results are "Somewhat satisfying." The percentages of attorneys who have taken or defended depositions or argued motions in court relatively early in their careers are higher than I expected they would be. Then

again, the Barristers are an impressive lot—and thanks may be in order to our progressive firms and clients and to our supportive state and federal judges in Northern California. At the same time, the level of satisfaction with the timing and nature of the opportunities attorneys are getting is not as high as I think it can and should be. To some, this might indicate that attorneys these days are too hard to please. But that is not how I see it. To me, the PSI survey indicates that even if Barristers-level attorneys are doing pretty well in the Bay Area, there is nonetheless meaningful room for improvement. And important work still to be done.

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#### Notes


1. Judge William Alsup, Training the Next Generation: Do It!, *ABTL Report*, Northern California, Vol. 24, No. 2 at 3 (Fall 2015).
2. *Ibid.*



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