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Recommended Citation
71 MD.L.REV.ENDNOTES 41 (2012).

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NOT EVERYONE WORKS FOR BIGLAW: A RESPONSE TO NEIL J. DILLOFF

LAWRENCE FRIEDMAN* AND LOUIS SCHULZE**

In Saul Steinberg's famous *New Yorker* cover, "View of the World from 9th Avenue," Manhattan dominates more than half the page; receding in the distance, beyond the narrow blue band of the Hudson, lies everywhere else.[1] In his recent article, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*,[2] Neil J. Dilloff paints a similar picture of the legal universe: just substitute "Biglaw"[3] for Manhattan and every other public and private practice setting for the rest of the world.[4]

Steinberg's aim was satire, but Mr. Dilloff's is not. In making recommendations for changes in legal education, he takes the perspective of Biglaw and what Biglaw needs, beginning with the premise that, "[h]istorically, a large number of law school graduates sought employment in the nation's largest law firms."[5] From this premise he reasons that "one of the functions of law schools is to produce graduates . . . who can enter a large law firm and be successful."[6] Accordingly, he argues that "[t]he challenge for legal education is how best to prepare students for [the] brave new BigLaw world."[7]

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1. Saul Steinberg, *View of the World from 9th Avenue*, NEW YORKER, March 29, 1976, Cover.

2. Neil J. Dilloff, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. 341 (2011).

3. The term "Biglaw" generally refers to the largest law firms in the country. *See infra* note 8 and accompanying text.

4. *See generally* Dilloff, *supra* note 2 (arguing that Biglaw is the central pursuit of law students and that the central purpose of law school education is to prepare students for Biglaw)

5. *Id.* at 342.

6. *Id.*

7. *Id.*

Even assuming the accuracy of Mr. Dilloff's premise—that most law school graduates seek to work in large law firms—it would not necessarily follow that law schools should seriously consider changing their curricula to prepare students for Biglaw practice. Rather, it would make more sense to base curricular decisions not on where law students *desire* to work, but on where they actually are *likely* to find work. And where the majority of them will find employment following graduation is probably not with Biglaw.

In the first part of this Response, we discuss some of the statistics that demonstrate that Biglaw is not where most law school graduates are destined to practice; indeed, the numbers indicate that Biglaw is increasingly becoming the practice setting for a relatively small number of law school graduates from a relatively small set of elite law schools. In the second part, we make some suggestions about the changes law schools should consider making to enable their graduates to compete in a rapidly changing legal employment market. Our modest conclusion is that students should be trained to thrive in the settings in which they are most likely to practice. It is here that some of Mr. Dilloff's recommendations might yet prove useful, when combined with a focus on the practical aspects of the kind of work in which most lawyers are engaged—a focus, alas, that most law schools currently lack.

I. WHO WORKS FOR BIGLAW?

There is no standard definition of Biglaw, but the *National Law Journal*'s ("NLJ") top 250 firms for 2009 ranged from 164 to almost 4,000 attorneys.[8] At the height of Biglaw employment, before the current economic downturn, firms composed of more than one hundred lawyers annually employed 43.2 percent of law school graduates.[9] This figure illustrates the position of Biglaw in the legal market but also reflects the fact that, even at its height, Biglaw did not employ a majority of law school graduates.[10] Further, the trend has since reversed,[11] and in 2010, employment of law school graduates by

8. *The NLJ 250*, NAT'L L.J., Nov. 9, 2009, at S1.

9. *Longstanding Employment Patterns for Law School Graduates Interrupted*, ASS'N FOR LEGAL CAREER PROFS., July 2011, http://www.nalp.org/employment_patterns_classof2010 (noting that firms composed of more than one hundred lawyers employed 43.2 percent of law school graduates in 2008).

10. *Id.*

11. *Cf.* Glenn Harlan Reynolds, *Small Is the New BigLaw: Some Thoughts on Technology, Economics, and the Practice of Law*, 38 HOFSTRA L. REV. 1, 1, 9 (2009) (discussing changes in technology and economics that have led large law firms to cut costs and lay off attorneys, which, in turn, affects the hiring of law school graduates).

Biglaw dropped to just over 20 percent.[12]

Even if the recession were a temporary factor, as Mr. Dilloff believes,[13] large law firm employment is not evenly distributed among graduates.[14] Not only do a relatively small number of graduates find employment with Biglaw, but the majority of these graduates come from a short list of elite law schools, also known as feeder schools.[15] Forty-two of the Biglaw feeder schools were also ranked among the top fifty of the country's best law schools.[16] Notably, only twenty-four of these institutions had more than 20 percent of their graduates find employment with Biglaw.[17] And only four of these schools (Chicago, Cornell, Columbia, and the University of Pennsylvania) had more than half of their graduate go on to work in Biglaw.[18] This means that at most of the top twenty-four law schools in the United States in 2010, the majority of graduates did *not* end up working in Biglaw;[19] this fact suggests, of course, that the average law school graduate of a lower-ranked school is not likely to find post-graduate employment with Biglaw even if that is what he or she most desires.[20]

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12. *See* James Leipold, *The Legal Job Market for New Graduates Looks a Lot Like It Did 15 Years Ago (Only Worse)*, ASS'N FOR LEGAL CAREER PROFS., June 2011, http://www.nalp.org/perspectives2011commentary (observing that of 2010 law school graduates only 50.9 percent were employed in the private sector and, of those, only 41 percent of positions were at firms employing fifty-one or more lawyers, where 41 percent of 50.9 percent is 20.9 percent of the original sample).

13. *See* Dilloff, *supra* note 2, at 345 ("While large law firms have shrunk in size, it is likely that they will eventually resume their growth, although in a moderate and strategic manner.").

14. *See, e.g.*, Leigh Jones, *Go-To Law Schools: A Special Report*, NAT'L L.J., Feb. 28, 2011, at 10 (ranking the top fifty law schools by the percentage of graduates in 2010 who took jobs at NLJ 250 firms, the nation's largest law firms).

15. *See id.*

16. *Compare id.* (ranking the top fifty law schools by the percentage of graduates who took jobs at NLJ 250 firms), *with Best Law Schools 2011*, U.S. NEWS & WORLD REP., http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings (last visited Jan. 15, 2012) (ranking the "best" law schools in the United States using a proprietary "methodology").

17. *See* Jones, *supra* note 14.

18. *Id.*

19. *Id.*

20. The numbers bear this out: though today there are 200 ABA-accredited law schools in the United States, almost 60 percent of Biglaw partners (defined as firms in the 2007 Vault 100 prestige rankings) went to top twenty law schools (according to *U.S. News & World Report*'s 2006 rankings). ABA Groups: Section of Legal Education and Admissions to the Bar: Resources, *ABA-Approved Law Schools*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html (last visited Jan. 27, 2012); PAUL OYER & SCOTT SCHAEFER, AMERICAN BIGLAW LAWYERS AND THE SCHOOLS THAT PRODUCE THEM: A PROFILE AND RANKINGS 4, 21 (November 2010).

Mr. Dilloff's law firm, DLA Piper LLP,[21] is a good example. With a global presence, DLA Piper is ranked among the top fifty most prestigious law firms.[22] The firm employs approximately 1,370 lawyers in the United States.[23] Of those 1,370, more than one-third attended just twenty-five of the 200 law schools in the U.S.[24] And some 131 lawyers of the third that attended the top-ranked schools graduated from just two law schools: Harvard and Georgetown.[25]

As these numbers show, the vast majority of law school students in the United States will not work for Biglaw. Accordingly, it is not clear that, as Mr. Dilloff suggests, a course that seeks to prepare students to serve corporate clients, business executives, and in-house counsel should be the highest-priority curricular investment for a law school.[26] Most students simply are not headed into practice settings in which those corporate and business executives are likely to make up a significant portion of their client base.[27]

This is not to say, though, that the current approach to legal education that pervades most schools is meeting the needs of the majority of their students. Here, Mr. Dilloff, like numerous other commentators in recent years, has a point: it is time—past time, really—to think seriously about curricular revision in legal education.[28]

II. CONSIDERING CURRICULAR REFORM

So, what curricular revisions should we consider to improve legal education? As noted above, Mr. Dilloff's call to transform law schools to prepare students for Biglaw practice is not statistically justified.[29]

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21. *Our People,* DLA PIPER, http://www.dlapiper.com/neil_dilloff/ (last visited Jan. 15, 2012).

22. *Law Firm Rankings 2012: Vault Law 100*, VAULT, http://www.vault.com/wps/portal/usa/rankings/individual?rankingId1=2&rankingId2=2&rankings=1&regionId=0 (last visited January 15, 2012).

23. *United States, Overview*, DLA PIPER, http://www.dlapiper.com/us/content/overview/ (last visited Jan. 15, 2012).

24. *See On Campus Interviews*, DLA PIPER, http://www.dlapiperlegalcareers.us/lawstudents/oncampusinterviews/ (last visited Jan. 15, 2012) (a search of DLA Piper attorneys by law school found that, in summer 2011, some 448 of the firm's 1,370 U.S. attorneys graduated from the top twenty law schools, as ranked by *U.S. News*).

25. *See United States, Our People*, DLA PIPER, http://www.dlapiper.com/us/people/ (search for graduates of Georgetown University Law Center and Harvard Law School) (last visited March 1, 2012).

26. *See* Dilloff, *supra* note 2, at 362.

27. *See supra* text accompanying notes 14–19.

28. *Cf.* Dilloff, *supra* note 2, at 342 ("[L]aw schools must adapt to the new economic realities and their effects . . . . The challenge for legal education is how best to prepare students for this brave new BigLaw world.").

29. *See supra* text accompanying notes 14–19.

Moreover, his focus is normatively flawed in that it ignores the large number of students who enter law school with the intent to practice in other contexts, such as public interest law, government law, or small firm practice.[30] Despite this, some of his suggestions have merit, and here we look at his proposals for curricular revision through the lens of the goal of preparing all students for practice, not just those students seeking a career in Biglaw. We would modify some of Mr. Dilloff's suggestions so as to encourage reform that would help students to be ready to practice law—in whatever context—the day after they pass the bar exam.

Mr. Dilloff's first suggestion focuses on "who is doing the teaching."[31] He notes that, while there is always "a place for true academics in legal education," law schools should hire adjuncts with Biglaw experience and include guest lectures by in-house counsel, judges, and non-lawyer clients.[32] This is a laudable recommendation but, as the recent Carnegie Report has noted, fundamental curricular change cannot occur with merely "additive" measures.[33] We fear that modest reforms like this will have a merely peripheral impact, leaving many of the flaws of legal education intact.

Accordingly, we recommend a reconsideration of the criteria for becoming a full-time, tenure-track law professor. As has been noted elsewhere, the longstanding norm is that successful faculty candidates will have: (1) graduated from an elite law school and served on its law review;[34] (2) clerked at the federal appellate level;[35] (3) produced substantial evidence of scholarly potential;[36] and (4) avoided a lengthy

30. *See supra* notes 9, 11, and 12 and accompanying text (discussing how less than half of all law school graduates entered Biglaw at the height of the legal economy).

31. Dilloff, *supra* note 2, at 360.

32. *Id.*

33. *See* WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 189–91 (2007) (discussing the need for an "integrative approach" to improving legal education in lieu of only "additive" changes). *See also* Dilloff, *supra* note 2, at 360–61 (describing the findings of the Carnegie Foundation's 2007 study, concluding that "law schools should use an integrative approach to teaching").

34. ANDREW J. MCCLURG, 1L OF A RIDE: A WELL-TRAVELLED PROFESSOR'S ROADMAP TO SUCCESS IN THE FIRST YEAR OF LAW SCHOOL 124–25 (2009).

35. *Id.* at 125.

36. Services: FAR Advice, *Uncloaking Law School Hiring: A Recruit's Guide to the AALS Faculty Recruitment Conference*, ASS'N AM. L. SCH., http://www.aals.org/frs/jle.php (last visited Jan. 27, 2012) (noting that law school faculty recruiters tend to always look at "law school, class rank, honors, and law review" and that "[p]ublications may be an equally important 'make or break' for a number of recruiters"). *See also* Don Zillman et al., *Uncloaking Law School Hiring: A Recruit's Guide to the AALS Faculty Recruitment Conference*, 38 J. LEGAL EDUC. 345, 347 (1988) (same).

amount of practice experience.[37] We agree with Mr. Dilloff that there should always be a place in law schools for true academics who meet these criteria. For a more robust *training* of future lawyers, however, the academy needs to begin to welcome into the fold lawyers who are interested in (and have a talent for) teaching and bring with them substantial practice experience.

Currently, much of the practice experience within many law schools is found within the ranks of the legal writing and clinical faculties.[38] Adding a few adjuncts into the mix while focusing exclusively on a tenure-track faculty who lack significant practice experience will not achieve the objective of preparing students for active careers in the law. It makes more sense to seek to diversify the range of experiences of law faculty, to produce a more holistic balance between true academics and practitioner-teachers, each group complementing the other.[39] In this way, law schools could embrace some of the pedagogical structure that medical schools have long maintained.[40]

Mr. Dilloff's second and third suggestions focus on diversifying teaching methods to provide students with more real world experiences.[41] Examples include trial observations, attendance at mediations and settlement negotiations, and simulations.[42] He notes the Carnegie Report's call to integrate substantial practice experience within the core of legal education and amplifies the report's argument for more teaching by "modeling."[43] With these suggestions, we wholeheartedly agree.

What gives us pause, however, is Mr. Dilloff's recommendation that law schools highlight opportunities for "apprenticeships," presumably for academic credit.[44] At first blush, this proposal makes per-

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37. Dina Awerbuch, *Prof. Levinson Demystifies the Path to Legal Academia*, HARV. L. REC. (Oct. 19, 2007, 12:00 AM), http://hlrecord.org/?p=12363 (quoting Harvard Law School Professor Daryl Levinson's statement to aspiring law professors that "practical legal experience is not a good predictor of scholarly ability" and "pretty nearly" disqualifies a candidate); Jeffrey Lipshaw, *Memo to Lawyers: How Not to "Retire and Teach"*, 30 N.C. CENT. L. REV. 151, 159 (2008) (suggesting that "the general sense within the academy [is] that extended practice diminishes one's ability to think like a scholar").

38. Robert J. Rhee, *On Legal Education and Reform: One View Formed from Diverse Perspectives*, 70 MD. L. REV. 310, 334 (2011).

39. *See* SULLIVAN, *supra* note 33, at 160 (noting that the goal of legal education must be a "holistic" balance between "analytical knowledge" and "skillful performance" in order to "advance students toward genuine expertise as practitioners who can enact the profession's highest levels of skill in the service of its defining purposes").

40. Anthony V. Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1078 (2009) (reviewing the book by SULLIVAN, *supra* note 33).

41. Dilloff, *supra* note 2, at 360–62.

42. *Id.* at 360.

43. *Id.* at 360–61.

44. *Id.* at 360.

fect sense, and would seem to make all participants happy: students get experience; legal employers get free labor. Latent problems become more obvious when one examines the historical role of apprenticeships in legal education.[45]

Prior to Dean Christopher Langdell moving legal education into the university, the primary means by which one became a lawyer was through the apprenticeship system.[46] An aspiring lawyer would work for an attorney, but the apprentice was required to pay the attorney a fee for the use of his library.[47] Often, the attorney's library was a meager one, and the apprentice's daily responsibilities gave him little training in the law due to the attorney's exploitation of the apprentice's labor by preoccupying him with menial tasks.[48] Thus, despite the fee paid the attorney, the apprentice's studies were unsupervised, often meaningless, and usually limited to whatever doctrinal area practiced by his master.[49]

The exploitation in such a system would, in many ways, be even worse if expanded today in the way Mr. Dilloff suggests. Firms would have a strong financial incentive to exploit students' labor by assigning tasks unlikely to propel their legal training.[50] Because firms likely could not bill an apprentice's lawyerly work to clients,[51] that product would be financially worthless. Instead, a firm could require the apprentice to provide the labor usually performed by costly (but nonbillable) administrative assistants. This certainly would benefit the firm's bottom line, but it would not prepare a student for the practice of law. And, similar to the apprentices of yesteryear, the modern law student would be *paying* the law school for the credits earned in the useless apprenticeships.[52]

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45. *See* David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 108–09 (2003) (discussing the history of legal education in America with a specific focus on the role of apprenticeships).

46. *Id.*

47. *Id.*

48. *Id.* at 109.

49. *See id.* (noting that "the student was expected to pay for the privilege of performing menial office tasks and clerical work" and implying that apprentices' fields of study within law were restricted because apprentices had access merely to those "legal texts and treatises available in the master's office").

50. *See* Lawrence Rosenthal, *Those Who Can't, Teach: What the Legal Career of John Yoo Tells Us About Who Should Be Teaching Law*, 80 MISS. L.J. 1563, 1618 (2011) (lamenting that student interns perform mostly menial tasks and suggesting that externships and clinics are not the "best training for practice").

51. *See* Richard A. Matasar, *Does the Current Economic Model of Legal Education Work for Law Schools, Law Firms (or Anyone Else)?*, N.Y. ST. B. ASS'N J., Oct. 2010, at 20, 24 (relating the current trend of clients refusing to pay for work by young associates).

52. *See supra* notes 48–49 and accompanying text.

We recommend a different way for students to obtain practical, real world experience. First, in addition to the availability of traditional clinics, students could enroll in an "internship" in a law office for credit.[53] The difference between this internship and an apprenticeship would be faculty oversight:[54] students would journal their experiences and attend a discussion session seminar weekly, while the legal "employers" would be required to provide the intern with an actual learning experience, rather than delegating to them a raft of cost-saving busywork. Faculty would monitor this requirement through reading the students' journals and through weekly class discussions.[55]

Second, unlike Mr. Dilloff's proposal, the for-credit internships would include placements with a diverse array of legal employers.[56] Not only would students intern in firms, but they could also have the option to intern as a judicial law clerk, as a junior attorney at a legal services organization, as an informal in-house counsel at a corporation, or as a member of the office of the general counsel at a governmental agency.[57] In this way, students would receive hands-on training with less danger of the exploitation inherent in an apprenticeship system.

Mr. Dilloff's final recommendation concerns "bringing in the clients." He describes a pedagogy marked by "field trip[s] to a company's headquarters" and visits to classrooms by business clients in order to indoctrinate students on "how corporate clients want to be serviced."[58] It is not clear that such a program would be practical or desirable. Many firms have strict rules on client interaction and developing business.[59] Further, to introduce students to this aspect of the practice of law seems premature, given that many larger firms will

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53. *Lawyering Skills Center: Clinics, Externships & Simulation Courses, Frequently Asked Questions about Clinics, Externships & Workshops*, N.Y. L. SCH., http://www.nyls.edu/user_files/1/3/4/17/95/Frequently%20Asked%20Questions%20about%20Clinics.pdf (last visited Jan. 15, 2012) (an externship is an internship for which a student receives law school class credit).

54. *Id.* (explaining that clinics are superior to externships in "that clinic students function more in a primary role as 'lawyer' . . . . Students in clinics actually represent their own clients . . . under the supervision of their professors and carefully selected attorneys").

55. *See id.* (explaining that a faculty tutor monitors the student and helps him or her "benefit from the placement experience").

56. *See e.g.*, Academics: Practice-Based Learning, *Externships*, UNIV. MD. FRANCIS KING CAREY SCH. L., http://www.law.umaryland.edu/academics/practice/externships/ (last visited Jan. 15, 2012) (providing a list of externship placements).

57. *See, e.g.*, *id.*

58. Dilloff, *supra* note 2, at 362–63.

59. *Cf.* Catherine Gage O'Grady, *Cognitive Optimism and Professional Pessimism in the Large-Firm Practice of Law: The Optimistic Associate*, 30 LAW & PSYCHOL. REV. 23, 48–49 (2006) (describing differences between work assignments and client interaction for junior associates and more senior attorneys).

not let their own associates into this realm until they are at least a few years out of law school.[60] As well, every client likely has a different perspective on the reasonable expectations of an attorney; it is not clear how one could select an adequately representative sample of clients, in the context of field trips or in-class visits, who would present students with the full range of potential client expectations. While exposure to a snapshot of client expectations might be better than nothing, these expectations can be so idiosyncratic that even a snapshot could be misleading.

Even setting aside these concerns, the enterprise of training students for rainmaking and for meeting the demands of corporate clients seems antithetical to the goal of viewpoint-neutrality so prized in any educational endeavor. While we agree that law schools would do better to expand training to include some education in client services, Mr. Dilloff's proposals seem to include a far narrower set of objectives. As a normative matter, should law schools be in the business of training students to think of corporate clients as the most desirable?

Such an approach essentially means laws schools would be solely concerned with producing future associates for Biglaw. By focusing strictly on the desires and legal needs of business executives, human relations personnel, and in-house counsel, Mr. Dilloff's recommendations implicitly suggest that the desires and legal needs of other individuals lack weight. Where is the place for classroom visits by victims of workplace discrimination? Where is the discussion of the pedagogical value of a practicum exercise involving live-client interaction with a poverty-stricken litigant recently evicted from her home?

Law schools should always be careful not to take up the interests of one constituency among the many on the spectrum of consumers of legal services. To do so would send a subtle but clear message to students about the relative worth and worthlessness of certain practice areas and convert law schools into a factory for the reproduction of hierarchy.[61]

At the same time, law schools should pay more attention to training students in the "business" of law by expanding the availability of practicum courses, experiential learning, and simulation courses.[62] Here, we mean "business" in the broadest sense, to include client

60. *Id.*

61. *See generally* Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEG. EDUC. 591, 601 (1982) (warning against the "[i]ncapacitation for [a]lternative [p]ractice" generated by law schools' messages about the hierarchy of law practice fields).

62. *See* Rhee, *supra* note 38, at 334 (discussing the increasing prominence of clinical education and externship opportunities for law students in the United States).

counseling, client development, crisis management counseling, and so on. Ideally, these efforts should seek to connect students to the wide array of potential client interests, including corporate clients, small business clients, individual clients, and public interest clients.

III. CONCLUSION

In the end, all perspectives on how to improve the quality of modern legal education, from all sectors of the legal universe, should be welcome. Discussions about curricular reform can only benefit from the input of a diverse array of lawyers. All we're suggesting here is that Mr. Dilloff's recommendations be put in context. After all, the map in the famous Steinberg cartoon does not describe the world as it really exists: just as Manhattan does not occupy half the continental United States, neither is Biglaw the only place where recent law school graduates will find work. Accordingly, law schools would be doing a disservice to their students and the communities they serve if all they produced were attorneys equipped to work in the largest firms.