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## THE CHANGING CULTURES AND ECONOMICS OF LARGE LAW FIRM PRACTICE AND THEIR IMPACT ON LEGAL EDUCATION

NEIL J. DILLOFF\*

### I. INTRODUCTION

The practice of law, especially in large law firms, has been affected significantly by recent economic conditions.<sup>1</sup> The recession of 2008–2009 brought about a new way of doing business for BigLaw. The year 2009 was the worst ever for law firm layoffs: more law firms laid off more employees than in all past years combined.<sup>2</sup> Major law firms laid off more than 12,100 people—over one-third of whom were lawyers.<sup>3</sup> (It is likely that the number of layoffs was dramatically underreported.) Moreover, some major law firms simply disappeared.<sup>4</sup> As a direct result of large companies' decreased need for the sophisticated legal services typically provided by large law firms,<sup>5</sup> the nation's

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1. Ellen Ostrow & Naomi Beard, *Grab Your Surfboard!*, N.Y. L.J., June 7, 2010, at S2 (referring to the current climate as “a period of unprecedented change in the legal industry”); Jeff Jeffrey, *Panelists Predict Changes to, Not Death of, Big Law*, BLT: BLOG OF LEGAL TIMES (Mar. 22, 2010, 2:54 PM), <http://legaltimes.typepad.com/blt/2010/03/panelists-predict-changes-to-not-death-of-big-law.html> (“Big Law may not be dying, but its [sic] certainly not going to operate as it did before the economic downturn.”); Tamara Loomis, *Has the Recession Forever Changed Large Law Firms?*, LAW.COM (Oct. 6, 2009), <http://www.law.com/jsp/article.jsp?id=1202434302753> (“The worst economic downturn since the Great Depression has hit law firms hard.”).

2. Law Shucks, *The Year in Law Firm Layoffs—2009*, LAW SHUCKS (Jan. 3, 2010), <http://lawshucks.com/2010/01/the-year-in-law-firm-layoffs-2009/>.

3. *Id.*

4. See Erin J. Cox, Comment, *An Economic Crisis Is a Terrible Thing to Waste: Reforming the Business of Law for a Sustainable and Competitive Future*, 57 UCLA L. REV. 511, 515–16 (2009) (acknowledging “the crippling effects of the current economic downturn,” which are “acutely illustrated by the recent collapses of Heller Ehrman LLP, Thacher Proffitt & Wood LLP, and Thelen LLP”).

5. See Ameet Sachdev, *Congratulations, Class of 2008: More Law Firm Layoffs*, CHI. TRIB., June 5, 2009, at 21 (attributing layoffs at McDermott Will & Emery to the lack of “demand for transactional-related services” (internal quotation marks omitted)); Michael J. de la Merced, *The Legal Profession Feels the Pain of the Recession*, N.Y. TIMES DEALBOOK BLOG (Andrew Ross Sorkin ed., Mar. 26, 2009, 2:02 AM), <http://dealbook.blogs.nytimes.com/2009/03/26/the-legal-profession-feels-the-pain-of-the-recession/> (recognizing that “the drastic slowdown in the financial sector” coincided with increases in law firm layoffs).

largest firms have implemented various measures that are likely to have long-term effects on the hiring, retention, promotion, and training of lawyers.<sup>6</sup>

Historically, a large number of law school graduates sought employment in the nation's largest law firms.<sup>7</sup> The reasons for this interest are many, including money, prestige, training, and the opportunity to do sophisticated work for large clients.<sup>8</sup> Thus, one of the functions of law schools is to produce graduates who are capable of providing high level legal services and who can enter a large law firm and be successful. Law firms are looking for associates who exhibit sound judgment and creative and efficient problem solving abilities. To fulfill their function of producing practice-ready graduates, law schools must adapt to the new economic realities and their effects: fewer big firm jobs, alternate methods of billing clients, increased emphasis on marketing, moderated pay increases (and in some cases, decreased pay), fewer opportunities for partnership, and less job security. The challenge for legal education is how best to prepare students for this brave new BigLaw world.

## II. THE NEW TRENDS: THEIR IMPACT ON BIGLAW AND CONSEQUENCES FOR LEGAL EDUCATION

Several key trends have emerged in the legal market over recent years. These trends provide the backdrop for the changes that have occurred within BigLaw and provide insight into how law schools can prepare their graduates to successfully cope with the effects of these changes.

### A. *Downsizing*

The worst recession since the Great Depression hit the United States economy in early 2008,<sup>9</sup> and in its wake, large law firms have

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6. See *infra* Part II.A–I.

7. See Gerry Shih, *Downturn Dims Prospects Even at Top Law Schools*, N.Y. TIMES, Aug. 26, 2009, at B1 (explaining that students at top law schools, such as Harvard and New York University, have long been accustomed to being wooed by big firms, even assuming that landing a BigLaw position was “almost like a birthright”).

8. See Quintin Johnstone, *An Overview of the Legal Profession in the United States, How That Profession Recently Has Been Changing, and Its Future Prospects*, 26 QUINNIPIAC L. REV. 737, 764 n.86 (2008) (“The students accepted large law firm associate employment due to such benefits as high salary, added training and experience, and the reputation obtained from having worked in a prestigious large law firm as an associate.”).

9. Bob Willis, *U.S. Recession Worst Since Great Depression, Revised Data Show*, BLOOMBERG (Aug. 1, 2009, 12:00 PM), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aNivTjr852TI>.

been retrenching, downsizing, and cutting back in almost every way.<sup>10</sup> For the most part, the economic impact on BigLaw within the past couple of years has been all bad.<sup>11</sup> In 2009, *The American Lawyer* reported an average decline in gross revenue of 3.4% for the nation's largest 100 law firms.<sup>12</sup> *The Wall Street Journal* characterized the job market for lawyers as "one of the worst . . . in decades."<sup>13</sup> Law firms have hired fewer associates,<sup>14</sup> drastically curtailed or eliminated summer associate programs,<sup>15</sup> eliminated expenditures for outside training programs,<sup>16</sup> reduced fringe benefits,<sup>17</sup> deferred start dates or rescinded offers,<sup>18</sup> frozen or scaled back salaries,<sup>19</sup> and promoted

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10. See, e.g., Nathan Koppel, *Bar Raised for Law-Grad Jobs*, WALL ST. J., May 5, 2010, at A3 (reporting on the dramatic and negative impact of the recession on law firm hiring practices).

11. But see Adam Cohen, Editorial, *With the Downturn, It's Time to Rethink the Legal Profession*, N.Y. TIMES, Apr. 2, 2009, at A26 (suggesting that although law firms have suffered economically as a result of the recession, "[t]he silver lining, if there is one, is that the legal world may be inspired to draw blueprints for the 21st century").

12. Aric Press & Greg Mulligan, *Lessons of The Am Law 100*, AM. LAW., May 2010, at 93, 93.

13. Koppel, *supra* note 10.

14. See Shannon Henson, *Market Not Improving for Law School Grads*, LAW360 (May 20, 2010), <http://www.law360.com/articles/170008> (subscription required to access LAW360 articles) (on file with the Maryland Law Review) ("The number of new law school graduates finding employment has hit its lowest rate since the mid-1990s . . .").

15. Evan Weinberger, *Outlook Bleak for Summer Associate Spots*, LAW360 (Mar. 3, 2010), <http://www.law360.com/articles/153238> (subscription required to access LAW360 articles) (on file with the Maryland Law Review).

16. See, e.g., Karen Sloan, *Diversity, Leadership Training Suffers in Downturn*, NAT'L L.J. (May 12, 2009), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202430650191> (reporting that "law firms seem reluctant to shell out for leadership training").

17. See, e.g., Kashmir Hill, *Biglaw Reversed Perk Watch: No More Tech Stipend at Weil*, ABOVE THE LAW (Feb. 2, 2009, 10:14 AM), <http://abovethelaw.com/2009/02/biglaw-reversed-perk-watch-no-more-tech-stipend-at-weil/> (stating that Weil, Gotshal & Manges's technology stipend "fell victim to economic pressures").

18. Firms have deferred incoming associates through a number of different strategies, including delaying start dates by six months while offering an advance on deferred associates' first paychecks, offering year-long sabbaticals in exchange for one-third of associates' pay, and increasing associates' class levels of pay based on relevant experiences obtained during deferment. See, e.g., Jocelyn Allison, *Dewey Reports Mixed Results for Deferred Class*, LAW360 (May 24, 2010), <http://www.law360.com/articles/170635> (noting that both Skadden, Arps, Slate, Meagher & Flom LLP and Dewey & LeBoeuf LLP offered 2009 associates the option of taking a year off in exchange for one-third of their salaries). Other firms have rescinded offers entirely. See, e.g., Ashby Jones, *Recession-Era Tale of Job-Offer Deferral, Rescission, Leads to Lawsuit*, WALL ST. J.L. BLOG (Aug. 19, 2010, 10:35 AM), <http://blogs.wsj.com/law/2010/08/19/recession-era-tale-of-job-offer-deferral-rescission-leads-to-lawsuit/> (describing a woman's lawsuit against a San Francisco-based law firm that made her a job offer, deferred the offer, and ultimately rescinded the offer completely).

19. E.g., Martha Neil, *Pay Cuts Accelerate at Law Firms Across the Country*, A.B.A. J. (June 30, 2009, 5:18 PM), [http://www.abajournal.com/news/article/pay\\_cuts\\_accelerate\\_at\\_law\\_firms\\_across\\_the\\_country](http://www.abajournal.com/news/article/pay_cuts_accelerate_at_law_firms_across_the_country) ("Firms across the country are implementing temporary and

fewer associates to partner.<sup>20</sup> While necessary, these actions have negatively impacted morale, resulted in less institutional loyalty, and led to increased lawyer mobility.<sup>21</sup>

In the spring of 2009, more than 40,000 students graduated from the nation's law schools.<sup>22</sup> According to a recent report by the National Association for Law Placement, "The employment figure for the Class of 2009 also marks the lowest employment rate since the mid-1990s."<sup>23</sup> About eighty-eight percent of those who graduated from law school in 2009 are employed—down more than three percent "from the recent historical high of 91.9%," which was enjoyed by the class of 2007.<sup>24</sup> Moreover, many of those employed are in temporary positions.<sup>25</sup> Not only are many students unable to find a job in BigLaw, but they are also unable to obtain even less lucrative positions.<sup>26</sup>

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permanent pay cuts for associates, and in some cases, partners."); Martha Neil, *Some BigLaw Leaders Still Ponder: How Low Can Associate Salaries Go?*, A.B.A. J. (Oct. 6, 2009, 12:07 AM), [http://www.abajournal.com/news/article/some\\_biglaw\\_leaders\\_still\\_ponder\\_how\\_low\\_can\\_associate\\_salaries\\_go/](http://www.abajournal.com/news/article/some_biglaw_leaders_still_ponder_how_low_can_associate_salaries_go/) (noting that some firms have frozen senior associates' salaries while others "have cut first-year compensation").

20. Nate Raymond, *Law Firms Promote Fewer Senior Associates to Partnership*, LAW.COM (Nov. 30, 2009), <http://www.law.com/jsp/article.jsp?id=1202435897457>.

21. See, e.g., Vivia Chen, *Lateral Partner Moves Spiked in 2009, New Report Shows*, LAW.COM (Feb. 2, 2010), <http://www.law.com/jsp/article.jsp?id=1202441786983> (noting that "a record number of lateral partner moves" occurred in 2009).

22. NAT'L ASS'N FOR LAW PLACEMENT, CLASS OF 2009 NATIONAL SUMMARY REPORT (2010) [hereinafter NALP REPORT], available at <http://www.nalp.org/uploads/NatlSummaryChartClassof09.pdf>.

23. Press Release, Nat'l Ass'n for Law Placement, Class of 2009 Faced New Challenges with Recession: Overall Employment Rate Masks Job Market Weakness 1 (May 20, 2010), available at <http://www.nalp.org/uploads/09SelectedFindingsPressRelease.pdf>.

24. *Id.*

25. *Id.* ("Overall, nearly 25% of all jobs were reported as temporary, a figure which includes judicial clerkships.")

26. See *Occupational Outlook Handbook, 2010–11 Edition: Lawyers*, U.S. DEP'T OF LAB.: U.S. BUREAU OF LAB. STAT., <http://www.bls.gov/oco/ocos053.htm> (last modified Dec. 17, 2009) (explaining that many "lawyers are increasingly finding work in less traditional areas for which legal training is an asset, but not normally a requirement" and stating that "some graduates may have to accept positions outside of their field of interest or for which they feel overqualified"). The crisis in the legal job market has raised questions about the value of a law degree, especially for students who graduate with over \$100,000 in loan debt. See Elie Mystal, *Boston College 3L Asks for His Money Back; Hilarity Ensues*, ABOVE THE LAW (Oct. 18, 2010, 10:07 AM), <http://abovethelaw.com/2010/10/boston-college-3l-asks-for-his-money-back-hilarity-ensues/> (commenting on an open letter sent to the interim dean of Boston College Law School by a 3L that requested "a full refund" of his tuition in light of dire job prospects and the burden of student loans). The fact that BigLaw accounts for a significant amount of the money spent for outside U.S. legal services, cf. David E. Van Zandt, *The Evolution of J.D. Programs—Is Non-Traditional Becoming More Traditional?: Keynote Address Transcript*, 38 SW. L. REV. 607, 607–08 (2009) ("The number of dollars spent for legal services is becoming more concentrated in upper-end law firms . . ."), means that the scaling back of hiring by large law firms has significantly impacted law school gradu-

Summer associate hiring also has declined dramatically. Virtually all of the larger law firms have reduced their summer associate classes from twenty to as much as eighty-one percent.<sup>27</sup> This is a significant portent of future job constriction because a summer associate job often leads to a permanent associate position.<sup>28</sup> Thus, a main source of BigLaw job placement is declining even before students graduate from law school. In addition, a backlog of previously hired associates whose start dates have been deferred will be given priority over any new hires.<sup>29</sup>

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.<sup>30</sup> Associate hiring will increase, but much more slowly than in the past. Further, the job market for such graduates will be more challenging. Some law firms have begun to hire experienced midlevel associates instead of new graduates,<sup>31</sup> which will create heightened job competition as new graduates may be forced to compete not only with their peers but also with lawyers who have been out of school for several years. While in-house training of new lawyers will continue at large law firms, firms will want newly hired lawyers to begin working in

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ates. It has raised the issue of whether or not a college graduate should spend three years in law school at all.

27. See Nate Raymond, *Clients Grow Cool to the Support of Dwindling Summer Classes*, N.Y. L.J. (June 8, 2010), <http://www.law.com/jsp/nylj/PubArticleNY.jsp?id=1202461074366&slreturn=1&hblogin=1> (charting the percent difference in summer associate classes between 2009 and 2010 at ten large law firms).

28. See Debra Cassens Weiss, *Some 2010 Summer Associate Programs Are Being Axed or Scaled Back*, A.B.A. J. (May 13, 2009, 7:40 AM), [http://www.abajournal.com/news/article/some\\_2010\\_summer\\_associate\\_programs\\_are\\_being\\_axed\\_or\\_scaled\\_back/](http://www.abajournal.com/news/article/some_2010_summer_associate_programs_are_being_axed_or_scaled_back/) (noting a BigLaw partner's belief that if a law student is "going to be a summer clerk, there has to be a reasonable expectation that they [sic] can be hired as associates" (internal quotation marks omitted)).

29. See generally NAT'L ASS'N FOR LAW PLACEMENT, PERSPECTIVES ON FALL 2009 LAW STUDENT RECRUITING (2010), available at <http://www.nalp.org/uploads/PerspectivesonFallRec09.pdf> (finding that more than 2,400 incoming associates in the class of 2009 have been deferred).

30. See Ameet Sachdev, *Law School Tuition Hikes Spark Talk of Bubble*, CHI. TRIB., Apr. 27, 2010, [http://articles.chicagotribune.com/2010-04-27/business/ct-biz-0427-chicago-law-students-20100427\\_1\\_law-school-law-firms-national-law-journal](http://articles.chicagotribune.com/2010-04-27/business/ct-biz-0427-chicago-law-students-20100427_1_law-school-law-firms-national-law-journal) (reporting that Dean David Van Zandt of Northwestern University Law School predicts that "big law firms will never go back to hiring graduates in droves").

31. See, e.g., Debra Cassens Weiss, *Law Firm Leaders: Why Hire Summers When Laid-Off Lawyers Are Available?*, A.B.A. J. (Aug. 28, 2009, 8:30 AM), [http://www.abajournal.com/news/article/law\\_firm\\_leaders\\_why\\_hire\\_summers\\_when\\_laid-off\\_lawyers\\_are\\_available/](http://www.abajournal.com/news/article/law_firm_leaders_why_hire_summers_when_laid-off_lawyers_are_available/) (reporting that four Ohio law firms cut their 2010 summer associate programs due to the current flood of experienced attorneys in the job market).

a productive and client-worthy capacity as soon as possible.<sup>32</sup> Several large law firms have scaled back their billable hour requirements so that a larger percentage of first-year associates' time can be spent on training.<sup>33</sup> Whether this experiment will continue is an open question.<sup>34</sup> For now, the reality is that the compensation system remains skewed in favor of associates billing hours instead of spending a significant amount of time training to become better lawyers.<sup>35</sup> A balance is needed, and it remains to be seen if the correct balance will truly come to pass. Thus, those law schools that produce client-ready associates will be viewed favorably by large law firms, and their graduates will have a significant head start.

The tensions between law firm economics and nonbillable training present law schools with the opportunity to become much needed training hubs.<sup>36</sup> This will permit large law firms to continue new associate training at a more sophisticated level, instead of having to spend more time on practice basics.<sup>37</sup>

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32. See Eric J. Gouvin, *Teaching Business Lawyering in Law Schools: A Candid Assessment of the Challenges and Some Suggestions for Moving Ahead*, 78 UMKC L. REV. 429, 452 (2009) ("The bar has been demanding that law schools do a better job of preparing graduates to 'hit the ground running' because the firms are not doing that any more.").

33. See, e.g., Karen Sloan, *The Apprentice*, NAT'L L.J. (June 14, 2010), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202462642328&slreturn=1&hblogin=1> (describing Howrey's new apprenticeship program, which allows new associates to engage in a variety of training activities in addition to doing some billable work, and noting other firms that have adopted similar apprenticeship programs). To make up for these training costs, some firms that adopted the apprenticeship approach have decreased first-year associate salaries and charge lower rates for apprentice work. *Id.* Ford & Harrison, a 190-lawyer labor and employment law firm based in Atlanta, has eliminated first-year associate billable hour requirements entirely. Leigh Jones, *Firm Kills Billable Hour for First-Year Associates*, LAW.COM (Aug. 20, 2007), <http://www.law.com/jsp/article.jsp?id=1187341325148>.

34. Zach Lowe, *The Howrey/Drinker Apprenticeships: One Year In*, AM. L. DAILY (June 14, 2010, 5:22 PM), <http://amlawdaily.typepad.com/amlawdaily/2010/06/apprenticeships.html> (noting that firms have lost money on apprenticeship programs and reporting skepticism about whether the firms will be able to continue this model once the economy rebounds).

35. Cf. Gerald F. Phillips, *It's Not Hourly Billing, But How It's Abused That Causes the Poor Image of Attorneys*, PROF. LAW., at 21, 26 (2007) (stating that law firm billable hours requirements "make it difficult" for their attorneys to engage in other activities, including "training and professional development").

36. See *id.* at 22 (assuming that hourly billing "will continue to predominate" and arguing that law schools should provide training on billable hours while also emphasizing the importance of nonbillable professional activities).

37. For example, DLA Piper LLP provides an ongoing training program for all levels of associates throughout their employment. The training benchmarks increase in scope and sophistication at each successive level. The objective is to have associates at partner-level competency by the time they are seven to nine years out of law school.

*B. Less Upward Mobility for Associates*

Once hired, new associates continue to face challenges. Competition among associates has increased over the years as the weak economic climate has reduced available partnership opportunities.<sup>38</sup> This trend has spiked markedly in recent years as both the nature and the number of partnership slots have changed.<sup>39</sup> There are now even more types of partners—from traditional equity partners, who have significant monetary investments in their firms, to nonequity or income partners, who have no capital investment in the firm and are salaried.<sup>40</sup> Many large law firms have lengthened (either overtly or covertly) the seven to nine year partnership track.<sup>41</sup> While equity partnership will still be available, the odds of becoming an equity partner will become much lower.<sup>42</sup> In addition, other nonpartner titles and designations—counsel, of counsel, senior counsel, senior attorney, staff attorney, etc.—have been created and have been used to promote associates while delaying or denying ascension to the brass ring of BigLaw equity partnership.<sup>43</sup> Recently, for example, a major law firm selected three of its incoming associates to be “discovery lawyers” at a salary significantly lower than those of other first-year associates.<sup>44</sup>

Given the significantly decreased odds of achieving capital partnership in a large law firm, sophisticated, younger associates should

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38. See, e.g., Vivia Chen, *Deferred and Demoted: Associates Have No Bargaining Power These Days*, LAW.COM (June 22, 2010), [http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202462868218&Deferred%20and\\_Demote](http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202462868218&Deferred%20and_Demote) (considering McDermott Will & Emery’s decision to rescind the original offers to three summer associates and to offer the associates nonpartner-track “discovery attorney positions” instead).

39. See THOMAS S. CLAY & ERIC A. SEEGER, *ALTMAN WEIL, INC., 2010 LAW FIRMS IN TRANSITION: AN ALTMAN WEIL FLASH SURVEY 5* (2010), available at [http://www.altmanweil.com/dir\\_images/upload/docs/2010LFITSurvey.pdf](http://www.altmanweil.com/dir_images/upload/docs/2010LFITSurvey.pdf) (“Partnership in US law firms is now harder to attain and will remain so . . .”).

40. See Joel A. Rose, *Changing Course?: As Firms Face Shrinking Profits and Personnel Cuts, It May Be Time to Rethink the Traditional Partnership Track*, RECORDER (S.F.), Nov. 4, 2009, at 4 (describing three different kinds of partners—“non-equity, contract and part time”—that have emerged “as a result of the economy and shrinking profits”).

41. See Julie Kay, *New Partners: The Climb to Upper Echelon Becomes More Challenging*, BROWARD DAILY BUS. REV., Mar. 15, 2010, at A19 (noting that “[s]ome firms are even moving toward nine- and 10-year [partnership] tracks”).

42. See Carlyn Kolker, *Making Partner Less Likely as Big Law Firms Face Cash Crunch*, BLOOMBERG BUSINESSWEEK (Feb. 17, 2010, 12:48 AM), <http://www.businessweek.com/news/2010-02-17/making-partner-less-likely-as-big-law-firms-face-cash-crunch.html> (asserting that making partner has become an “elusive dream” for many associates due to “shrinking revenue” at the largest U.S. firms).

43. See Janet Ellen Raasch, *Making Partner—or Not: Is It In, Up or Over in the 21st Century?*, 33 LAW PRAC. 32, 35–36 (2007) (explaining the various strategies devised by large and small law firms “to retain talented senior associates who are” not on a partnership track).

44. See *supra* note 38.



have lower expectations. As a result, many new associates join large law firms for the money, prestige, and presumed training without any intention of remaining with the firm for more than a few years.<sup>45</sup> Large law firms know this.<sup>46</sup> The transient nature of the associate population has caused some large law firms to reconsider how much training to provide new associates.<sup>47</sup> Moreover, many large law firms have reduced their training budgets;<sup>48</sup> it makes little economic sense to train associates who are likely to leave the firm within a relatively short period of time. Although many large law firms continue to tout their in-house training and do provide valuable education, the depth and scope of that training are not as extensive as the training that can be offered in law school.<sup>49</sup> In the large firm setting, training hours must compete with billable hours and making money for the firm. Therefore, law firm training of associates will continue to take a back-seat to income production. The realities of economics and increased associate attrition strongly swim against the tide of intensive and lengthy training by law firms. Law schools have a unique opportunity to fill this void as law students are not yet under BigLaw's economic gun.

### C. Increasing Lateral Partner Mobility

In the good old days, large law firm partners were likely to spend their entire careers with one firm.<sup>50</sup> For example, a 1970s firm bro-

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45. Kate Neville, *Why Associates Bail Out of Law Firm Life—and Why It Matters*, LAW.COM (Nov. 14, 2007), <http://www.law.com/jsp/llf/PubArticleLLF.jsp?id=1194948247090> (reporting that nearly eighty percent of lawyers who work at large firms stay less than five years).

46. *See id.* (“Law firms have an interest in anticipating attrition and preparing for its impact.”).

47. *Cf.* Dan Slater, *At Law Firms, Reconsidering the Model for Associates' Pay*, N.Y. TIMES DEALBOOK BLOG (Apr. 1, 2010, 1:17 AM), <http://dealbook.blogs.nytimes.com/2010/04/01/at-law-firms-reconsidering-the-model-for-associates-pay/> (explaining that associate attrition rates have traditionally been high and commenting that any meaningful training in the firm model came at great cost to clients, who are now less willing willing to foot the bill).

48. Alison McKinnell King & Daniel Boglioli, *Getting Ahead by Gaining Experience*, N.Y. L.J., Oct. 1, 2004, at 16, 16 (“[T]he hands-on training and development of young associates . . . is often the first thing to be cut in today's environment of cost-conscious clients and belt-tightening law firms.”).

49. *Cf.* Ostrow & Beard, *supra* note 1 (advising today's junior associates not “to become complacent and believe that [they] can rely upon [their] firm[s] to benevolently take care of [their] professional development” through otherwise beneficial core competency training).

50. *See* Marc S. Galanter & William D. Henderson, *Three Ways to Save Big Firms*, LAWJOBS.COM (Dec. 8, 2008), <http://www.lawjobs.com/newsandviews/LawArticle.jsp?id=1202426501193&slreturn=1&hbxlogin=1> (“In contrast to an earlier era, partnership in a large

chure for then-Piper & Marbury (now DLA Piper LLP) stated that no partner had ever left the firm to join another law firm. Lateral movement between law firms was relatively rare at that time and raised eyebrows.<sup>51</sup> Further, once a lawyer achieved the brass ring of partnership, he (there were not many “shes”) typically stayed put until retirement or demise.<sup>52</sup>

Today, institutional loyalty, while not quite an anachronism, is under siege.<sup>53</sup> Lateral mobility is a daily occurrence in BigLaw,<sup>54</sup> and the era of “free agency” in the profession is entrenched.<sup>55</sup> The New York State Court of Appeals noted that “the revolving door” of partner departures is a “modern-day law firm fixture.”<sup>56</sup> In many firms, partners who have been with the firm for five years or less likely comprise forty to fifty percent of the entire partner population. It is no longer rare for partners to make multiple moves from one law firm to another, totaling as many as seven moves in their careers. The days of a partner joining a firm and staying forever are not gone, but they are dwindling rapidly.

This era of free agency has made large law firms less stable and partners less trusting of each other.<sup>57</sup> Partners routinely refuse to entrust each other with their important clients because the key to mobility is a partner’s ability to leave with his book of business. Not surprisingly, collegiality in BigLaw has suffered.

Partner mobility may also directly affect associates. Associates may leave a firm with a departing partner for no other reason than to follow the work.<sup>58</sup> Thus, a partner’s move to another firm can result

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corporate law firm is no longer an implicit contract that endures throughout one’s productive years.”).

51. *Id.* (describing the “norms against lawyer mobility” that dominated the “postwar decades”).

52. Jon Lindsey & Chuck Fanning, *After the Handshake*, N.J. L.J., Mar. 5, 2007, at S8.

53. See William H. Rehnquist, Dedicatory Address, *The Legal Profession Today*, 62 IND. L.J. 151, 152 (1987) (“Institutional loyalty appears to be in decline.”).

54. See, e.g., Shannon Henson, *Lateral Market Popping Again Following Dip*, LAW360 (June 1, 2010), <http://topnews.law360.com/articles/172051> (reporting a twenty-eight percent increase in lateral movement from April to May 2010).

55. See Ameet Sachdev, *More Attorneys Switching Teams: Law Firms Scrambling to Compete with National Rivals Are Raiding Competitors for Talent, Top Billers*, CHI. TRIB., Mar. 23, 2004, at C1 (likening attorneys in the competitive legal market to free agents in baseball).

56. *Graubard Mollen Dannett & Horowitz v. Moskovitz*, 653 N.E.2d 1179, 1180 (N.Y. 1995).

57. David Maister, *The Trouble with Lawyers*, AM. LAW., Apr. 2006, at 97, 98.

58. See, e.g., Sandra Torry & B.H. Lawrence, *Star Lawyers Become Field’s “Free Agents”; Traditional Loyalty to Firms Gives Way to Bidding War Mentality*, WASH. POST, Feb. 27, 1989, at A1 (noting that one partner took three other attorneys with him when he moved to a new firm because “[t]he four have practiced banking law together for years and consider themselves a ‘family within a family,’ at whatever law firm they are with”).

not only in the loss of business for the old law firm but also in the loss of associates and staff who owe their livelihoods and/or allegiances to the departing partner.<sup>59</sup>

The reality of less institutional loyalty<sup>60</sup> highlights the need for prefirm training because the “here today, gone tomorrow” movement of partners and their associates deters intensive on-the-job training.<sup>61</sup> These comings and goings raise a variety of thorny issues, such as the proper protocol for when partners depart and their clients follow them, when partners solicit firm clients and personnel, and when partners depart with client files and firm materials.<sup>62</sup> Issues related to ethical and fiduciary duties arise from such activities.<sup>63</sup> Accordingly, law schools can and must play a role in teaching legal ethics and professional responsibility.<sup>64</sup>

*D. Increasing Competition Among Large Law Firms and from Smaller Firms*

Competition among law firms has always been fierce.<sup>65</sup> In the past, large law firms primarily competed against each another. Now, such firms must also compete against many smaller, high quality, and nimble firms. The change creates the opportunity for law schools to teach valuable entrepreneurship skills.

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59. See, e.g., Press Release, Orrick, Herrington & Sutcliffe LLP, Associates and Staff Follow Clifford Chance Partners to Orrick (July 12, 2004), available at [http://www.orrick.com/news\\_events/releases.asp?action=article&articleid=991](http://www.orrick.com/news_events/releases.asp?action=article&articleid=991) (announcing that “16 associates and 18 other professionals—in addition to eight partners . . . will join Orrick from Clifford Chance’s West Coast offices”).

60. See Robert W. Hillman, *The Hidden Costs of Lawyer Mobility: Of Law Firms, Law Schools, and the Education of Lawyers*, 91 KY. L.J. 299, 300 (2002–2003) (“This is the era of lawyer mobility and law firm destabilization.”).

61. See *id.* at 303 (“The problem is that lawyer mobility serves as a disincentive for investment by firms in the training and development of their lawyers.”).

62. See generally Robert W. Hillman, *Loyalty in the Firm: A Statement of General Principles on the Duties of Partners Withdrawing from Law Firms*, 55 WASH. & LEE L. REV. 997, 1009–19, 1025–1028 (1998) (discussing a departing partner’s ethical and fiduciary duties pertaining to the notification and solicitation of clients and the retention of client files).

63. See *id.* at 999 (warning that “[t]he manner in which partners plan for and implement withdrawals . . . is subject to the constraints imposed on them by virtue of their status as fiduciaries”).

64. Although all law schools require students to take a legal ethics course, law professors are often unwilling to address ethical issues in substantive courses. Hillman, *supra* note 60, at 307.

65. See Torry & Lawrence, *supra* note 58 (revealing how aggressively law firms across the country competed for clients and talent in the late 1980s).

Traditionally, dissatisfied partners at large law firms departed to other large firms that offered more money, more prestige, or both.<sup>66</sup> Many BigLaw partners continue to leave to join other large firms (either voluntarily or involuntarily), but recently, former BigLaw partners are starting their own spin-off firms or moving to smaller practices.<sup>67</sup> The dramatic acceleration of this trend within the past several years has continued competition among large law firms, and it has also created more competition from smaller law firms.<sup>68</sup>

The shift in partner departure to boutique firms is particularly significant.<sup>69</sup> High quality boutique law firms that specialize in particular areas, such as patent litigation, intellectual property, taxation, mass tort litigation, and class actions, are now viable competitors with large law firms. Many such firms are able to provide the same high quality service as a large law firm but at a reduced cost.<sup>70</sup> These smaller, but cost-effective, versions of large law firms have made the competition for BigLaw work more intense than ever.<sup>71</sup>

As this trend continues, law schools have an opportunity to teach legal entrepreneurship skills that will prepare students to accommodate to and succeed in the new legal market.

#### *E. Alternate Methods of Billing and Moderating Legal Fee Increases*

Corporate America is the target of large law firms. As a direct result of the recent economic stress felt by large corporations, the annual escalation of legal fees has subsided greatly.<sup>72</sup> Large corporate

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66. *See id.* (noting that a lawyer's annual compensation could increase significantly as a result of changing firms and that top lawyers were "admired" for the amount of money they made in such moves).

67. Hilary Potkewitz, *Partners Flee Big Law Firms to Go Their Own Way*, CRAIN'S N.Y. BUSINESS.COM (Aug. 15, 2010, 5:59 AM), <http://www.crainsnewyork.com/article/20100815/SMALLBIZ/308159975> (citing numerous instances in which former BigLaw partners have joined or started their own smaller firms).

68. *See e.g., id.* (suggesting that former BigLaw partners can compete for the same clients by billing at lower boutique rates).

69. *Cf.* Jill Priluck, *Leaving Big Law Behind*, SLATE (Aug. 19, 2010, 5:24 PM), <http://www.slate.com/id/2264501> (explaining that the reluctance of clients "below the \$100 million-revenue level" to pay BigLaw prices has encouraged partners "fed up with the Big Law model, to strike out on their own").

70. *See, e.g.,* Martha Neil, *Ex-BigLaw Attorneys Profit at Smaller Firm via Flexible Fees & Eat-What-You-Kill Comp*, A.B.A. J. (June 7, 2010, 12:12 PM), [http://www.abajournal.com/news/article/ex-biglaw\\_attorneys\\_profit\\_at\\_smaller\\_firm\\_via\\_flexible\\_fees\\_eat-what-you-ki](http://www.abajournal.com/news/article/ex-biglaw_attorneys_profit_at_smaller_firm_via_flexible_fees_eat-what-you-ki) (attributing the success of a recently formed boutique firm to its "willingness to be flexible about hourly billing rates").

71. *Cf.* Ward B. Coe III, *Profound "Nonchanges" in Small and Midsize Firms*, 70 MD. L. REV. 364, 366 (2011).

72. *See, e.g.,* H. Ward Classen, *Recession's Impact on In-House Counsel*, MD. BAR J., Jan.-Feb. 2010, at 42, 43 (stating that "companies have been able to negotiate discounts . . .

clients now demand and receive discounts.<sup>73</sup> Some corporations are also reducing the number of law firms they use.<sup>74</sup> Others are assigning outside counsel less work to decrease legal expenses,<sup>75</sup> which has resulted in “beauty contests” among law firms in which price and quality are significant considerations. In the past, this “marketing-to-market” has been anathema to big firms, but this is no longer true.

In response, most large law firms now have little choice but to offer large hourly discounts, fixed fees, and alternate fee arrangements to their largest clients.<sup>76</sup> According to a recent report, seventy-eight percent of associates, partners, and staff at corporate law firms charge certain clients a discounted rate.<sup>77</sup> In addition, firms are using contingency fees, a mainstay of plaintiffs’ firms, or hybrid arrangements, in which firms charge a lower hourly rate or fixed fee plus a contingency.<sup>78</sup> These new pricing systems have become essential to maintain business activity and keep law firms profitable.<sup>79</sup> One industry consultant asserted that law firms would be wise to show that they agree with these new value-based billing systems.<sup>80</sup> At least one major law firm intends to become “the leader in providing high-end legal

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of 10 to 15 percent” from law firms and have succeeded in obtaining “commitments not to increase rates”).

73. See, e.g., Amy Miller, *Seven Sigma*, CORP. COUNS., Dec. 2009, at 100, 100–05 (detailing United Technologies Corp.’s successes in negotiating and implementing alternative fee arrangements).

74. Sherry Karabin, *Sharing the Pain*, CORP. COUNS., Mar. 2009, at 17, 17–18.

75. Amy Miller, (*Snip Snip*) *For Firms, It’s All About Who’s Going to Survive the Cut Spree*, CORP. COUNS., (June 2, 2010), <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202459045859>.

76. See Steven T. Taylor, Editorial, *Widespread Use of Alternative Billing Is On the Horizon; Are Law Firms Ready for the Change?*, OF COUNS., June 2010, at 3, 3 (asserting that “law firms may not have any choice but to comply with . . . demands” for alternative fee arrangements).

77. Debra Cassens Weiss, *Why Law Firms Are Like Hotels: “Rack Rates” Are Negotiable, Real Rates Vary by Client*, A.B.A. J. (May 26, 2010, 7:08 AM), [http://www.abajournal.com/news/article/client\\_beware\\_law\\_firm\\_rack\\_rates\\_are\\_negotiable\\_and\\_real\\_rates\\_vary\\_even\\_f](http://www.abajournal.com/news/article/client_beware_law_firm_rack_rates_are_negotiable_and_real_rates_vary_even_f) (citing Press Release, CT TyMetrix & The Corp. Exec. Bd. Co. (May 24, 2010), available at <http://www.prnewswire.com/news-releases/ct-tymetrix-and-the-corporate-executive-board-to-release-industrys-first-true-analysis-of-law-firm-billings-94753764.html>).

78. Shannon Henson, *Firms Need to Manage Risk in Contingency Deals*, LAW360 (June 16, 2010), <http://insurance.law360.com/articles/162076> (subscription required to access Law360 articles) (on file with the Maryland Law Review).

79. For an article that details a number of ways firms can control growth, pricing, and costs in the current economic climate, see Ed Wesemann, *Don’t Wear a Red Dress to a Funeral . . . : Pricing in a Recession*, OF COUNS., Feb. 2009, at 9, 9–11.

80. Taylor, *supra* note 76, at 4 (“Law firms would be well advised to adjust accordingly. Because staying exclusively with hourly rates at a time when there’s downward pressure on those rates is not a recipe for success.”). Some firms are already doing so. See Erin Coe, *Major Firms Eye Alternative Billing Options*, LAW360 (Sept. 17, 2009), <http://www.law360.com/articles/123000> (subscription required to access Law360 articles) (on file with the

services on a fixed fee basis.”<sup>81</sup> It remains to be seen whether discounts and these other fee changes will stick permanently, but continuous annual price escalation has subsided, at least in the near term.<sup>82</sup> While some large law firms continue to raise rates and can successfully deflect pricing pressures, the economy has forced most firms to accept lower profit margins in exchange for greater volume.<sup>83</sup>

Another significant billing trend is the much-discussed, but long-awaited, erosion of the billable hour.<sup>84</sup> Several large corporations, including Pfizer, Microsoft, UPS, Cisco, Tyco, and United Technologies, have entered into annual flat fee arrangements with certain select law firms.<sup>85</sup> These portfolio or fixed-fee arrangements allow clients to pay a predetermined sum of money for all work performed within a fiscal year, irrespective of the number of hours it takes the firm to perform the work.<sup>86</sup> Such arrangements provide certainty to the client, who can better control its legal fee budget, and the law firm, which can count on a specified revenue stream for the year.<sup>87</sup> This paradigm forces the law firm to be more efficient and prevents the client from being billed unnecessary hours.<sup>88</sup> This trend will likely spread to other major providers of legal work because it is a healthy one that

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Maryland Law Review) (detailing efforts used by three firms to adjust billing strategies in light of current client demands).

81. Coe, *supra* note 80 (quoting the firm O’Melveny & Myers LLP) (internal quotation marks omitted).

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82. See Joan Indiana Rigdon, *Cost & Effect: Financial Outlook Forces Law Firms to Reexamine Billing, Head Counts, and Services*, WASH. LAW., Apr. 2010, at 16, 17–18 (“[T]he days of clients accepting annual billing increases are over, at least for now.”).

83. See Brian Katkin, *Law Firm Managing Partners Pessimistic, Says Citi Survey*, LAW.COM (Mar. 31, 2009), <http://www.law.com/jsp/article.jsp?id=1202429528706> (stating that law firm managing partners expect profits to increase only marginally, if at all, while expenses continue to grow).

84. See Stewart Levine, *True or False: You Are What You Bill*, LAW PRAC. TODAY (Aug. 2007), <http://www.abanet.org/lpm/lpt/articles/mba08071.shtml> (commending firms for eliminating the billable hour, ascribing attrition in the legal profession to the billable hour, and endorsing new billing systems).

85. See, e.g., *supra* note 73 (discussing United Technologies Corp.’s fee model).

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86. See generally Ben W. Heineman, Jr. & William F. Lee, *Getting Your Fix*, CORP. COUNS., Sept. 2009, at 74, 74–77 (explaining the benefits of and advocating for fixed fee arrangements).

87. *Id.* at 74.

88. See Matt Straquadine, *What Some Others Are Up To: Putting It All Together*, CORP. COUNS., Dec. 2009, at 104, 105–06 (noting the mutually beneficial relationship between Tyco International, Ltd. and Shook, Hardy & Bacon L.L.P., which allows the company to “better . . . predict [its] outside counsel costs,” while the firm “gets steady work and vested ownership in cases”).

fosters partnering with clients and requires careful management of law firm resources.<sup>89</sup>

Changes to billing practices may significantly impact the way BigLaw promotes from within. Until recently, many associates were able to move up the law firm ladder through hard work alone because billable hours were the primary criterion for success.<sup>90</sup> As the billable hour becomes subordinate to alternate fee structures, however, these other attributes will become more important. Primarily, efficiency will separate mere worker bees from future partners. As fixed fee arrangements take hold, the star associate will no longer be the one who took thirty billable hours to research an issue and write a detailed memorandum. Instead, firms will covet the associate who can come up with the correct answer in a timely and cost-effective manner.

Perhaps the most refreshing and cleansing impact on the eventual, albeit slow, demise of the billable hour will be a return to the correct incentives for associates (and partners, for that matter). When an associate is paid handsomely for working many hours and sees his ascension in the firm as dependent on the quantity of these hours and how much money they bring into the firm, the temptation to round upward, perform nonessential tasks, and spend more time than necessary on a task increases.<sup>91</sup> This ethical issue, prevalent in all law firms—big, midsize, and small—is the bane of honest lawyers and clients.<sup>92</sup>

Large law firms have begun to address this issue indirectly by implementing “competency models” for their associates,<sup>93</sup> which deal with skills that should be part of a student’s legal education. This

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89. See Heineman & Lee, *supra* note 86, at 74–77 (arguing in favor of fixed fees); see also Taylor, *supra* note 76, at 4 (stating that law firms’ alternative fee arrangements force law firms to eliminate inefficiencies).

90. See Susan Saab Fortney, *The Billable Hours Derby: Empirical Data on the Problems and Pressure Points*, 33 *FORDHAM URB. L.J.* 171, 179 (2005) (acknowledging that salary levels are based on yearly billable hours).

91. See Susan Saab Fortney, *I Don’t Have Time to be Ethical: Addressing the Effects of Billable Hour Pressure*, 39 *IDAHO L. REV.* 305, 310 (2003) (pointing out that “[t]he risk of over-billing is particularly acute when billing practices are not monitored because partners face their own pressure to bill and generate business”); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 *VAND. L. REV.* 871, 915–20 (1999) (describing how the billable hour may lead lawyers to act unethically).

92. See Fortney, *supra* note 91, at 309–11 (stating that ethical lawyers may be pushed out of the profession by “billable hour pressure” and noting that such pressure also lowers the quality of legal services an attorney can provide).

93. Brendan Pierson, *Associate Competency Models Here for the Long Haul*, *LAW360* (May 25, 2010), <http://www.law360.com/articles/156433> (subscription required to access *LAW360* articles) (on file with the Maryland Law Review).

method of associate evaluation is designed “to speed [associates’] professional development and make them more marketable to clients.”<sup>94</sup> Generally, the models seek to identify different areas of competency, depending in part on an associate’s practice area, and to develop ways to assess an associate’s progress, vis-à-vis uniform standards.<sup>95</sup> In addition, some models assess business skills, clients, citizenship, teamwork, and leadership.<sup>96</sup> The ability to work long hours, while still important, is not always part of the model.<sup>97</sup> All of these competency areas deal with skills law schools should be addressing when they teach students how to think and act like lawyers. Law schools should teach time management, efficiency, and organizational skills so that new graduates can adapt to this “less is more” approach.<sup>98</sup>

#### F. *Devaluing of New Associates*

Clients have devalued junior associates. At least one large corporation now refuses to pay for work produced by junior associates and has openly stated that it views these newer attorneys as “worthless.”<sup>99</sup> This is certainly a gross overstatement, but the message is clear: clients want work-ready lawyers and have little to no patience for learning curves. As such, learning at the clients’ expense is history,<sup>100</sup> and law schools must train students to provide value to clients in a cost-effective and efficient manner from day one.

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94. *Id.*

95. *Id.*

96. *Id.*

97. *See id.* (explaining that the models take various areas of competency into account “instead of, or in addition to, more traditional measures like billable hours”).

98. *See generally, e.g.,* Charlotte S. Alexander, *Learning to be Lawyers: Professional Identity and the Law School Curriculum*, 70 MD. L. REV. 465 (2011); Gillian K. Hadfield, *Equipping the Garage Guys in Law*, 70 MD. L. REV. 484 (2011); Michael Kelly, *A Gaping Hole in American Legal Education*, 70 MD. L. REV. 440 (2011).

99. Webcast: Future Ed Conference: New Business Models for U.S. and Global Legal Education Conference, Panel 1, held by New York Law School and Harvard Law School, at 49:20–49:40 (Apr. 9, 2010), [http://www.nyls.edu/centers/harlan\\_scholar\\_centers/institute\\_for\\_information\\_law\\_and\\_policy/events/future\\_ed](http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/future_ed) (follow “For Video of the Conference” hyperlink; then select “Future Ed Conference – Panel 1” hyperlink) (remarks of Chester Paul Beach, Assoc. Gen. Counsel of United Techs. Corp.).

100. *See, e.g.,* Ashby Jones, *Legal Heavies Tackle the First-Year Associate Dilemma*, WALL ST. J. L. BLOG (Dec. 9, 2009, 4:02 PM), <http://blogs.wsj.com/law/2009/12/09/legal-heavies-tackle-the-first-year-associate-dilemma/> (“Increasingly, over the course of the last decade or so, in-house counsel have built ‘no-first-or-second-year’ provisions into their arrangements with law firms.”).



G. *Making Rain Is the Name of the Game*

Client development, while always important, has now clearly become job number one.<sup>101</sup> A recent article in the *Washington Lawyer* aptly categorizes lawyers as belonging in the respective categories of “Finders, Minders, and Grinders.”<sup>102</sup> The Finders bring in the business.<sup>103</sup> The Minders make sure the clients are happy once they are in the door.<sup>104</sup> The Grinders do the day-to-day heavy lifting—researching, writing, and rarely (if ever) seeing the client.<sup>105</sup> In today’s large law firm world, the Finders deserve to be rewarded the most. In the past, law schools have specialized primarily in training the Grinder, who resides at the lower end of the trilogy.<sup>106</sup> In the future, however, law schools must also teach students how to become Finders and Minders.

Interestingly, in today’s legal market, it may not be enough to be only a Finder. Many rainmakers are highly qualified lawyers who attract business because of their expertise.<sup>107</sup> Those who focus more on personal relationships and marketing than on the practice of law to attract clients, however, may lack high level legal skills and rely on others to support them.<sup>108</sup> More sophisticated clients now demand to meet the lawyers who will actually perform the legal services. Quality must be kept at a high level and sales ability must not be confused for legal competence.

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101. See Jane Porter, *Executive Education: Lawyers Often Lack the Skills Needed to Draw, Keep Clients*, WALL ST. J., May 20, 2009, at B5 (explaining that “business development is one of [the] few marketing areas where [law firm] executives are most willing to increase spending”).

102. Jacob A. Stein, *Legal Spectator: Finders, Minders, and Grinders*, WASH. LAW., Apr. 2010, at 48, 48.

103. *Id.* (“Without the Finder, there are no clients.”).

104. *Id.* (“Without the Minder, there is no backup to attend to the client’s needs.”).

105. *Id.* (“Without the Grinder, there is no one bringing in the law.”).

106. *But see* Lorraine Mirabella, *Hands-On Studies for Law Students*, BALT. SUN, Sept. 7, 2010, at 1C (describing the University of Maryland School of Law’s new business law program, which was designed in response to concerns that law students are not practice-ready upon graduation and which expands opportunities for students to interact with legal practitioners and the business community).

107. See Stein, *supra* note 102, at 48 (attributing one rainmaker’s ability to generate clients to his success as a litigator).

108. See Stephen Fairley, *Why Law Schools Are Failing Attorneys and the Legal Industry*, RAINMAKER BLOG (Aug. 12, 2009), <http://www.therainmakerblog.com/2009/08/articles/law-firm-marketing-1/why-law-schools-are-failing-attorneys-and-the-legal-industry/> (putting to rest the “myth” that “a financially successful practice” implies strong legal skills).

*H. Publicity Is Highly Prized*

Today, BigLaw has in-house and outside public relations consultants and marketing departments whose sole function is to publicize the firm and its lawyers, thereby stimulating business and generating brand recognition.<sup>109</sup> BigLaw now seeks favorable publicity at every turn and regularly looks at *The American Lawyer's* statistics and rankings on profitability.<sup>110</sup> The best and most successful large firm lawyers are adept at client development.<sup>111</sup> The days of the humble lawyer who toils away in his office while his reputation spreads because of his good work are long gone.<sup>112</sup> Today's world—for better or worse—consists of lawyer billboards, television advertisements, newspaper and magazine interviews, planted news stories, social network advertising, and the like.<sup>113</sup>

Accordingly, law schools should include business and marketing courses in their curricula.<sup>114</sup> Tomorrow's successful lawyers need training in how to sell high quality legal services and in how to provide them. Being an attorney remains of course a stand-alone profession, but in the current legal market, lawyers practicing in BigLaw are also expected to be skilled in the job of marketing.<sup>115</sup>

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109. See Mary K. Young, *Does Your Firm Need a Marketing Director?: The Skills and Benefits to Look for in the Right Pro*, LAW PRAC., May–June 2010, at 52, 52–54 (explaining the importance of hiring the right marketing professional).

110. See John Eligon, *Law Firms Weather the Economic Storm*, N.Y. TIMES CITY ROOM BLOG (Apr. 30, 2010, 1:57 PM), <http://cityroom.blogs.nytimes.com/2010/04/30/law-firms-weather-the-economic-storm/> (commenting that some firms worry that their reputation “might take a hit if [the firm] drops in the rankings”).

111. See Steven T. Taylor, *Law Firm Marketing Today: Moving Full Speed Ahead*, LAW PRAC., May–June 2010, at 32, 32–39 (highlighting the success of three firms that advanced their practices during the recession through aggressive marketing strategies, including expanding their client bases).

112. See G.M. Filisko, *Law Firm Marketing 101*, ILL. B.J., Jan. 2008, at 20, 25 (suggesting that modern client development does not entail “sitting at your desk hoping and wishing clients will continue to come through your door”).

113. See, e.g., Nathan Koppel, *Business Technology: Using Social Networking as Legal Tool*, WALL ST. J., June 15, 2010, at B4 (reporting on the ways in which firms use web technology and social networking to attract clients).

114. See ABA COMM'N ON ADVER., LAW PRACTICE MANAGEMENT AND LEGAL SERVICES MARKETING IN THE LAW SCHOOL CURRICULUM 31 (1996) (concluding that the lack of law practice management courses offered in law schools is detrimental to both the legal profession and clients).

115. See David Bilinsky & Laura A. Calloway, *Battling the Recession: Bottom-Line Client Development Tips*, LAW PRAC., Mar. 2009, at 55, 55–57 (detailing the many ways firms can grow and retain their client bases through aggressive marketing during a recession).

### I. *Tooting Your Own Horn Is “In”*

As indicated above, the daily publicity about partner movement and defections has driven large law firm management to keep at least one eye on the press at all times.<sup>116</sup> In many respects, perception has become reality. If a firm receives good publicity, either planted or not, that firm is viewed as a major player.<sup>117</sup> Humility and silence are no longer golden.

This principle applies inside and outside BigLaw. In today's economy, the great, but unpublicized, lawyer is at a competitive disadvantage.<sup>118</sup> New lawyers must recognize the importance of highlighting their successes to their superiors and clients. While this may foster a more competitive environment among lawyers in a firm, teamwork should still play an important role.

Law schools can play a helpful role in providing students with the practical skills necessary to succeed in the law firm organization. Psychology and sociology—so-called soft skills—play a key role in law firm associate success and advancement. Learning how to deal with individuals and how to play law firm politics—as crass as this may sound—are essential to climbing the career ladder.<sup>119</sup> In today's large law firm environment, shrinking violets usually die on the vine or, at best, end up reviewing documents all day in a musty warehouse or tiny, windowless office.

### III. SUGGESTIONS FOR IMPROVEMENT: HOW LEGAL EDUCATION SHOULD RESPOND TO THESE NEW TRENDS

The Symposium aimed to provide ideas on how to broaden the scope of legal education to accommodate the changed—and still changing—legal landscape. This Part focuses on the impact of the aforementioned trends on law schools and provides suggestions about

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116. Cf. John Eligon, *Sizing Up Law Firms, Beyond the Fees*, N.Y. TIMES CITY ROOM (July 2, 2010, 10:09 AM), <http://cityroom.blogs.nytimes.com/2010/07/02/sizing-up-law-firms-beyond-the-fees/> (noting that many corporate clients use press clippings and rankings in determining which firms to hire).

117. See *id.* (quoting Seth M. Zachary, Chairman of Paul, Hastings, Janofsky & Walker LLP, as suggesting that *The American Lawyer* rankings “determine[ ] the firms that best reflect success in the legal community” (internal quotation marks omitted)).

118. The greater danger, however, is the marginally competent overpublicized lawyer. Such a lawyer better have great backup.

119. Cf. Shawn W. Cutler & David A. Daigle, *Using Business Methods in the Law: The Value of Teamwork Among Lawyers*, 25 T. JEFFERSON L. REV. 195, 217–18 (2002) (arguing that “lawyers who work together in teams are able to outperform what could be achieved by individual effort alone,” which enhances interfirm relationships and maximizes efficiencies).

how law schools can better prepare future lawyers for the realities of large law firm practice.

A. *How These Trends and Their Impacts Affect the Law School Curriculum*

As discussed above, law schools must focus on many skills in preparing graduates for success in the current and future large law firm environment. Ethics, practical legal and business skills, marketing, and human relations (including psychology) should be emphasized at the law school level.<sup>120</sup> No longer is it sufficient for law schools to impart basic substantive law, train students to think like lawyers, and prepare them to pass the bar examination. More intensive real world experience is essential and may include apprenticeships with practicing lawyers, clinical experiences with actual clients, and more crossdisciplinary and multidisciplinary courses. For example, business classes and graduate-level courses in psychology would be very helpful in giving a law school graduate the educational background and skills required for success in tomorrow's large law firm.

B. *Suggestions for Improvement*

Any analysis of how to make law schools more relevant to the realities of the large law firm marketplace should start by identifying the traits that law firms want in new associates.<sup>121</sup> Currently, law schools offer courses designed to help students pass the bar examination plus a number of other specialized courses.<sup>122</sup> There is a disconnect between this existing method and reality. Thus, the next question is: How can law schools connect the dots between their educational offerings and what their students need to function and succeed in the large law firm world?

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120. See, e.g., Steve Lash, *Lessons from Life, Not Law School*, DAILY REC. (Baltimore) (Aug. 11, 2008), [http://findarticles.com/p/articles/mi\\_qn4183/is\\_20080811/ai\\_n28000109/?tag=content;col1](http://findarticles.com/p/articles/mi_qn4183/is_20080811/ai_n28000109/?tag=content;col1) (explaining that law schools should teach students "what they really need to know about the practice of law," including the fact that law firms are businesses).

121. Many such traits are not law-specific. For example, in my experience, judgment, creativity, integrity, honesty, reliability, good communication skills, organizational skills, a good work ethic, the ability to work on a team, good people skills, sensitivity to client needs, efficiency, effectiveness, guts, and the ability to get things done are all essential to good lawyering.

122. See Hadfield, *supra* note 98, at 486–90 (noting and criticizing the conventional law school curriculum).

### 1. *Who Is Doing the Teaching?*

There is clearly a place for true academics in legal education, but many law school professors have little real world experience and have never practiced in a large law firm.<sup>123</sup> Credibility is the key to teaching law students about the real world. Adjunct professors and guest lecturers, including in-house counsel, judges, and nonlawyer clients, should be used whenever possible because they possess this credibility. It is hard to make a point with a “war story” if you do not have any to tell.

### 2. *Teaching Techniques*

Field trips to courthouses to observe trials, mediations, settlement conferences, plea agreement negotiations, and the like should be utilized. Tagging along with skilled practitioners for a day (or longer) and watching them in action at real estate settlements, contract negotiations, public meetings, and client meetings are worth their weight in gold. In fact, a significant part of the law school curriculum should involve an apprenticeship of some sort with a skilled lawyer serving as teacher, and the state’s rule on admission to the bar should require an apprenticeship component as a complement to the bar examination.<sup>124</sup>

Simulations, demonstrations, mock trials, and the like are also extremely helpful.<sup>125</sup> Washington and Lee University School of Law has replaced its traditional third-year curriculum with a program of legal simulations designed to prepare students for the real world practice of law.<sup>126</sup> An influential 2007 study by The Carnegie Foundation for the Advancement of Teaching concluded that law schools should use an integrative approach to teaching, which means in part “that the com-

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123. See Dina Awerbuch, *Prof. Levinson Demystifies the Path to Legal Academia*, HARV. L. REC., <http://www.hlrecord.org/2.4463/prof-levinson-demystifies-the-path-to-legal-academia-1.577999> (last updated Sept. 9, 2001, 2:09 PM) (“[Professor] Levinson pointed out that today’s younger professors have no significant practical experience . . .”).

124. See John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 DUKE F.L. & SOC. CHANGE 101, 115–26 (2009) (explaining the origins and providing an overview of the University of New Hampshire School of Law’s unique Daniel Webster Scholar Honors Program, which rigorously prepares students for the practice of law through clinics, simulations, and the like).

125. See, e.g., Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277, 298 (explaining that demonstrational teaching “is particularly well suited to teaching lawyering skills, the description of which are not subject to easy verbalization”).

126. See Karen Sloan, *Reality’s Knocking*, NAT’L L.J. (Sept. 7, 2009), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202433612463> (noting that some legal educators consider Washington and Lee’s program to be “the boldest move in legal curriculum reform in recent years”).

mon core of legal education needs to be expanded in qualitative terms to encompass substantial experience with practice.”<sup>127</sup> In addition, recent studies have shown that “modeling”—demonstrating how to do something—is the most effective way to teach.<sup>128</sup> Thus, demonstrations of how to argue an appeal, how to interview a client or a witness, and how to negotiate, for example, should be woven into the fabric of at least the third-year curriculum.<sup>129</sup> Equally important, students should begin *practicing* various skills in controlled settings.

### 3. *Real World Experiences*

There is no substitute for leaving the law school campus and dealing with the real world of the law. Lawyers deal with real people with real problems; law students should as well. The final year of law school presents a viable opportunity for law students to get their feet wet in a nonacademic setting. In the University of Maryland School of Law’s clinical program, students who have met certain requirements may appear before an administrative agency, a trial court, or the Maryland Court of Special Appeals under the supervision of an attorney.<sup>130</sup> Many other law schools have courses or clinics that permit law students to participate in cases under the supervision of an attorney.<sup>131</sup> These second- and/or third-year offerings authorize student participation in appellate arguments and motions practice.<sup>132</sup> Practical experiences like these are invaluable and are highly prized by law firms.

In addition to these clinical experiences, encouraging students to intern at law firms, courts, and governmental agencies as part of a work-study program would help bridge the gap between current legal

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127. WILLIAM M. SULLIVAN ET AL., *THE CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 194–95 (2007).

128. *Cf.* Hoffman, *supra* note 125, at 298 (endorsing modeling as a useful teaching method in the law school context).

129. *See id.* at 299 (asserting that instruction alone does not fully teach certain lawyer skills, such as conducting witness interviews).

130. *See* Md. R. 16 (stating that, with supervision, a law student enrolled in a clinical program is eligible to practice law in the State of Maryland).

131. *See, e.g.*, Gabriel Nelson, *Law Students’ Role in Farm Pollution Suit Angers MD. Lawmakers, Sparks Nat’l Debate*, N.Y. TIMES, Apr. 8, 2010, <http://www.nytimes.com/gwire/2010/04/08/08greenwire-law-students-role-in-farm-pollution-suit-anger-96381.html> (reporting on the University of Maryland environmental law clinic’s involvement in a controversial Clean Water Act lawsuit against Perdue Farms).

132. *See, e.g.*, Jamie Smith, *Month of Wins for Appellate and Post-Conviction Advocacy Clinic*, UNIV. OF MD. SCH. OF L. NEWS ARCHIVE (June 25, 2009), [http://www.law.umaryland.edu/about/news\\_details.html?news=461](http://www.law.umaryland.edu/about/news_details.html?news=461) (describing four victories achieved by law students participating in the law school’s Appellate and Post-Conviction Advocacy Clinic).

education and the actual practice of law.<sup>133</sup> Great Britain, for example, *requires* law graduates to undertake an apprenticeship prior to working full-time.<sup>134</sup> Some permutation of this requirement in the third year of law school would be extremely beneficial to both the American law student and her potential first employer.

In fact, two law schools have already started such programs. In 2008, Duke University School of Law instituted a “Bridge to Practice” fellowship that provides stipends to approximately thirty of its unemployed graduates, which allows them to work for a few months at no cost to employers.<sup>135</sup> Washington University School of Law has taken a slightly different approach.<sup>136</sup> The school’s “Associate in Training” program is designed for first- and second-year law students who do not have summer jobs.<sup>137</sup> The six week program “is loosely modeled on law firm summer associateships, and includes attorney shadowing, networking, instruction on the business of law firms and other skills training.”<sup>138</sup>

#### 4. *Bringing in the Clients*

Because the primary purpose of the lawyer is to serve her clients, clients should play a role in legal education.<sup>139</sup> How many law students have an opportunity to meet with corporate clients, including business executives and in-house counsel? Inviting clients to law schools as class guest speakers or part-time instructors would greatly benefit students. A visit by law students to the client’s place of business would be even better. A field trip to a company’s headquarters during which the students meet with the company’s business people,

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133. See Anahid Gharakhanian, *ABA Standard 305’s “Guided Reflections”: A Perfect Fit for Guided Fieldwork*, 14 CLINICAL L. REV. 61, 71 (2007) (explaining that externships enable students to gain real world legal experience under the supervision of faculty and within a structured academic program, an experience which can “better educate and equip them for transition into practice”).

134. John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 425 (2007).

135. Vivia Chen, *Duke Law to Give Stipends to Jobless Graduates; Washington U. Law Offers Jobless a Virtual Firm Summer*, CAREERIST (June 11, 2010), <http://thecareerist.typepad.com/thecareerist/2010/06/schools.html>.

136. *Id.*

137. *Id.*

138. *Id.* (quoting Tomea Mayer Mersmann, Washington University School of Law’s Associate Dean for strategic initiatives) (internal quotation marks omitted).

139. See Peter B. Knapp, *From the Clinic to the Classroom: Or What I Would Have Learned If I Had Been Paying More Attention to My Students and Their Clients*, 30 WM. MITCHELL L. REV. 101, 102–05 (2003) (arguing that “the way we teach law warps our students’ understanding of the way in which lawyers work with . . . clients” and encouraging more thought and discussion about clients in the classroom).

such as the CEO, CFO, human relations personnel, and in-house counsel, and are exposed to how corporate clients want to be serviced by outside counsel and to how such clients think about the relationship between their business and legal issues would be extremely beneficial.<sup>140</sup> What better way is there for a law student to gain insight about practicing employment law than to meet with a corporation's human resources department and in-house counsel? Both law schools and their students will gain much by exposing students to potential employers.

#### IV. CONCLUSION

Recent economic events have rocked the practices of BigLaw. As a result, law schools have a golden opportunity to increase their relevance to the real world practice of law by implementing changes in their curricula that meet the challenges of tomorrow's large law firm practice. Implementing changes like those suggested in this Essay will increase both the value of the junior associate to BigLaw and BigLaw's ability to get paid for work done by the associate. In such a world, the client wins, BigLaw wins, the new graduate/associate wins, and the law schools win. Law schools that act swiftly and substantively to accommodate change will better serve their students and will experience an increase in student job placement. While there is less need to revise the curriculum in the first and second years of law school, the third year is ripe for experiment. A focus on the actual practice of law, including the integration of business and human relations courses, would better serve law students and their subsequent employers. The real question is whether the nation's law schools are prepared to take a large step in this direction.

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140. See Afra Afsharipour, *Incorporating "Business" in Business Law Classes*, 8 U.C. DAVIS BUS. L.J. 1, 5 (2007) (asserting that business clients "want attorneys that present and analyze legal issues in the context of the client's business").