Brooklyn Law School

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The Law School Firm

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THE LAW SCHOOL FIRM

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Recently, there has been much dialogue across the academy and the legal profession on reform of legal education. The Carnegie Report has stimulated an old debate anew, and the financial crisis of 2008-2009 and its adverse effects on the legal profession have made the debate more urgent. We do not believe that this debate will die down anytime soon, and in fact it will only intensify due to a number of factors including: (1) growing tuition rates and alarming student debt levels, (2) growing pressure for increased transparency of employment data and outcome-based assessment, (3) growing reluctance of Corporate America to fund the training of junior associates at large law firms, and (4) increased market pressures on large law firms to deliver greater services at cheaper prices. By now, most informed reasons are well aware of the cacophonous chatter, reaching a crescendo perhaps, regarding these interrelated problems.

Although opinions differ on many aspects of legal education, there is a fair consensus that legal education is more disconnected from law practice than it should be. At the heart of the matter is whether law schools are graduating more “practice ready” attorneys for training must be funded by someone. There are a number of ways in which legal education and law practice

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2 See id. (explaining that “law schools cannot reasonably be expected” to “convert[] . . . students into full-fledged lawyers licensed to handle legal matters”); SULLIVAN ET AL., supra note 2, at 12–13 (noting the importance of “bridg[ing] the gap between analytical and practical knowledge” in legal education); Rhee, supra note 3, at 313 (“Legal education has long been criticized for being disconnected from the needs of the legal market.”). Academics and judges have also noted this disconnect. See, e.g., Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 MICH. L. REV. 34, 57–66 (1992) (criticizing legal pedagogy that emphasizes theoretical education at the expense of doctrinal instruction); Robert M. Lloyd, Hard Law Firms and Soft Law Schools, 83 N.C. L. REV. 667, 676–78 (2005) (arguing that the law school curriculum has become “soft,” despite law firms’ need for graduates with “hard” skills).

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can be brought closer together. Pedagogical changes can lead to greater market-ready attorneys. These changes can be in curriculum such as instituting more interdisciplinary training, particularly in fields such as business and business law. They can also be in teaching methods, such as moving more toward the case study method similar to business school case studies rather than focusing three years of legal analysis of case law and other primary legal references. Lastly, law schools can emphasize experiential learning through mandatory clinics or externships as is the model at, for example, Northeastern, Drexel, Washington & Lee, and Maryland. These ways of bringing legal education closer to law practice work within the framework of a traditional three-year legal education as we know it today.

For the purpose of stimulating debate on alternatives to traditional three-year legal education that sends graduates into the legal market with no additional training, we propose an idea that is a radical break from the current model of the three-year law school that is disconnected from practice. The idea is a law school firm.

I.
THE BASIC IDEA

The basic idea is simple. A law school can establish a law firm that is separate and distinct from the law school. The law school firm will be a professionally-managed, revenue-generating, non-profit law firm. The CEO will be an experienced attorney with proven legal and business-development skills, who is committed to the profession and active in the legal community. The firm will hire several senior attorneys, each to manage a different practice group. The senior attorneys will be experienced attorneys with business-development and management skills, a public-service mentality, and commitment to the profession. As needed, the firm will hire more experienced attorneys to work under the practice-group managers, service clients, participate in business development, and train “resident” or “provisional” attorneys.

The law school law firm operates just as any private law firm would. Although the law school firm would be non-profit organization, it would be non-profit as a matter of legal status and end motive. It should generate revenue and be self-funding (after perhaps an initial support from the law school and an organization period). This means that the law firm must find clients and source revenue just as a private firm would. The law school would be the economic owner of the law firm, and it may have profit allocation arrangements, but there would be a separation of ownership and control. We understand that this may require changes in the rules of professional responsibility regarding the sharing of fees with a non-attorney; there would be issues of accreditation; and there may be tax implications. These are also entrenched interests and concepts, and minds are not easily changed. The purpose of this paper is to present the concept as a thought piece, and we acknowledge the details of implementation and set them aside. Also, we do not propose that law schools should be required to set up a law firm, and thus radically change the entire structure of legal education. Such a suggestion would be bold, and perhaps presumptuous. The appropriate starting point for a law school firm may be a small-scale pilot programs to see if the model is feasible.

Either employers absorb the cost of legal training—obviously undesirable from the law firm's perspective—or law schools graduate students with more directly applicable skill sets.”)

6 Certainly, our idea of a two-year law school education followed by a multi-year training program would not meet today's accreditation standards. In the other version, nothing really changes to the traditional three-year law school program.
Law schools may adopt one of several different law school models. Some law schools can provide the traditional three-year track and offer slots in the law firm to select students. Other law schools may provide an alternative law school firm track. Under the three-year model, the law school will offer practice-focused and advanced substantive courses. Members of the law school firm would help with instruction in the third-year courses. The practice-focused courses would be available to students who intended to continue with the law school firm following graduation as resident attorneys and to students who intended to pursue other opportunities. Resident attorneys will commit to several years of work at the law firm.

Under the two-year model, law students would take a two-year curriculum that is largely the required curriculum at most law schools plus a few electives. It takes two years to develop essential skills: legal research and writing, ability to read case law and statutes, and construct an understanding of entire legal doctrines. Upon acquisition of these essential skills, a student can transfer to the law school firm to work under contract for a fixed period, perhaps three to six years after which time a provisional attorney should be prepared to begin a law practice or join another firm. Such an arrangement would be strictly “in and out” meaning that the law school firm would not be an indefinite career option. In the firm, post-graduate law students, so to speak, would work as a “provisional attorney” supervised by a permanent senior staff. Since the firm must be profitable and self-funding, we envision a traditional pyramidal structure of junior attorneys working under a small group of senior attorneys.

The two-year model is similar to the UK model of legal training with respect to the idea of an apprenticeship. In the UK, attorney-trainees serve in an apprenticeship under a training contract. The differences are that the US model is still based on the foundation of a graduate school education, and the sponsoring law firm is connected to a law school.

The three-year model is more akin to the American medical school model. In American medical education, medical schools are associated with hospitals. The first two years of medical school focus on classroom instruction. In later years, medical students ease out of course work into clinical rotations. After graduating from medical school, physicians spend time as residents developing professional proficiency. After several years of residency, they are ready to practice medicine. Medical schools and hospitals work in tandem to train residents. The faculty at medical schools engages in sophisticated research and scholarship related to offering medical services. The physicians at teaching hospitals also have opportunities to engage in research. The teaching hospital is a place of learning and a lab for studying the practice of medicine and the teaching of new physicians.

We see the benefit of having the law’s equivalent of a teaching hospital. Senior attorneys in a law school firm would practice law, model best practices for junior attorneys, help train them, and possibly work in collaboration with full-time law faculty on research problems that arise in the practice of law.

II. OPERATING CONSIDERATIONS

The organization and governance of the law school can be modeled after organizations like the ACLU and NAACP, which represent clients and do legal work with no owners and no profit motive. The law school firm will draw senior practitioners who enjoy the practice of law but seek professional fulfillment beyond the profit motive of billable hours. It will generate sufficient revenue to adequately compensate its attorneys, but it will not distribute profits to its
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attorneys. Any excess revenue it generates will go to improving the education of students at the affiliated law school and the provisional or resident attorneys at the law firm. Compensation paid to the attorneys at the law school firm will not be as high as that paid to attorneys at the largest law firms, but it would be competitive with compensation paid at medium-sized firms. Work at the law school firm will be demanding, but the pressure to bill clients will be less, and attorneys will have time (and be expected) to participate in the community and profession (such as bar associations, commissions, other law-related activities) and to train provisional attorneys.

We envision a law firm with a size that the market would bear. It could become quite large in terms of number of attorneys. The structure will require a critical mass of experienced attorneys to ensure that the firm has the resources to attract sophisticated and assorted work and also assist with training provisional attorneys. The firm could start out with ten to twenty attorneys. It could grow by retaining some provisional attorneys who wish to remain at the firm, but the purpose of the firm with respect to provisional attorneys will be to train them to be productive in their own practices or other firms. The firm’s mission should include practice areas that are proven and effect sources of revenue, but it should also support publicly-minded practice areas and recognize that some practice areas may not generate enough revenue to be self-sustaining, even though they provide important services and help develop the law in important areas. Areas that generate excess revenue should help support areas that are important to the firm’s mission but incapable of generating sufficient revenue to fund their activities. Such a mission and practice will add to the firm’s vibrancy and improve society.

The law school firm need not be geographically tied to the brick-and-mortar of the law school’s physical facility, though the natural inclination and in many cases advantage would be to have the law school firm be in close proximity. We can envision Brooklyn Law setting up a firm in Baltimore, and the Carey School setting up a firm in Brooklyn, but significant benefits would about from having the law firm within a few blocks of the school. A remote location may prove more suited to law schools that are not part of a significant population center. The market forces at work would be the student size of the law school, student demand for the alternative track, the capabilities of the senior “rainmaking” attorneys. Like any start-up, the business plan must be carefully constructed and the business may start small. Because the law school firm cannot provide a supermarket of legal services, each law school that ventures into this alternative will have different kinds of firms. By virtue of geography, localized legal markets, and senior attorney specialization, each law school firm will be different just as many private firms provide different specializations and strengths.

The law school firm most likely would not rival the largest private law firms. The Skadden Arps and Sidley Austins and Cravaths of the world are safe from the likes of Brooklyn Law School and the Carey School of Law (or even Harvard Law and Yale Law). Indeed, there are potential partnership arrangements. Large law firms can partner with schools to provide resources, training, and referrals. It is not unusual for accomplished practicing attorneys to give back to legal education by teaching as adjuncts and otherwise contributing their knowledge with law students. The law school firm provides an opportunity for private law firms to contribution on an entity basis. By providing essential resources, law firms can advance the cause of legal education and professional development. The cause would not be entirely selfless. The law school firm would be training ground for potential recruits, and to the extent clients demand it
law firms can outsource certain work to the law school firm, which can provide lower cost services.\(^7\)

In addition to doing client work, attorneys at the law school firm will be involved in community and bar endeavors. At its heart, the practice of law is a profession. Participating in the work of the bar to affect the development of the law is a responsibility that attorneys must shoulder. The current legal environment, with emphasis on profit maximization, often makes that difficult. The law school firm will provide its attorneys enough respite from the requirement to generate revenue that they will be able to participate in relevant bar activities. Its mission will also recognize that the viability of the firm and legal profession requires its members to participate in and support its institutions.

A major failing of the legal profession is the lack of training for new attorneys. A primary part of the mission of the law school firm will be to train recent law graduates in the best law practices. They will join the firm at compensation levels similar to those that someone in public service would make. The lower compensation will allow the firm to devote more time to training attorneys and to other aspects of its mission. In exchange for the lower compensation, provisional attorneys will not have unbearable billing requirements, even though they will service clients and help the firm generate revenue. They will be expected to do client work but also learn how to be a successful attorney. They will learn how to develop a book of business and make contacts in the community that will benefit them as practicing attorneys. They will participate in bar and other relevant activities to serve the profession and others.

In addition to receiving training from attorneys at the firm, provisional attorneys will benefit from the association with the law school. The law school faculty can provide additional legal training to provisional attorneys at the law firm. The faculty can focus on helping new attorneys obtain technical knowledge needed to adequately serve clients. The attorneys at the firm can assist with that effort and help new attorneys learn how to develop business, manage clients and files, and develop other skills needed to be a successful attorney.

III. ECONOMIC CONSIDERATIONS

Economic considerations are an important facet of any legal education reform, and they cannot be underestimated. Although there is some debate on whether the third-year of law school is useful or not, particularly when viewed from the perspective of opportunity cost,\(^8\) economic reality will not support such a radical change. Some commentators argue that “[e]liminating the third year outright would reduce law school revenues by one-third and, presumably, would reduce faculty sizes by nearly that amount.”\(^9\) Law schools and their faculties have deeply entrenched self-interest in not losing revenue. Under either the three- or two-year model, schools and students stand to gain economically. The law school firm should be self-funding and should strive to generate profit, which can flow back to the law school, legal education, or professional development. We don’t know whether there can be a precise one-for-one matching of lost tuition

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\(^7\) See Heather Timmons, *Outsourcing to India Draws Western Lawyers*, N.Y. TIMES, Aug. 4, 2010, at B1 (noting the increasing trend toward outsourcing and unbundling legal work such as document review and due diligence).

\(^8\) See Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 235–36, 262 (2001) (describing recent proposals to eliminate the third year and speculating that “a majority of law students would support abolishing the third year”).

\(^9\) *Id.* at 262.
revenue with profit flow back under the two-year model, but that would be the minimum goal. Greater profit can flow back to the law school for its uses, or be plowed back into the law school firm for business or professional development.

There are obvious economic considerations for law students as well. Under the two-year model, students do not pay tuition during their third year of training. Instead they work as provisional attorneys earning a trainee’s salary commensurate with their level of knowledge (very low) and skill level (beginner). Lost tuition revenue for law schools and opportunity cost for law students can be offset by profitable law practice that delivered legal training and legal services. Under the three-year model, resident attorneys would start at salaries that are higher than those paid to provisional attorneys but below those paid at traditional firms. The law school firm would be attractive to students who recognize that several years at the law school firm will enhance their professional competency and outfit them with practice skills that will provide them with independence in the future. For example, resident and provisional attorneys will learn to develop business and manage a legal practice, which will enable them to practice law successfully. They will be able to practice law at a sustainable profitable level throughout their lives.

IV. COLLABORATION BETWEEN SCHOOL AND FIRM

The law school firm model would bridge the gap between law school and law practice, as law students connect more with the practitioners and recent graduates continue to learn important skills and obtain requisite knowledge of the law. Clinics are one answer to bridging legal education and law practice, but they have well recognized limitations. First, clinics are very expensive to operate owing to the fact that they require a low faculty-student ratio. In an era of increasing tuition and debt levels, we question whether the inherent cost structure is cost effective. Clinics cost tuition dollars and bring in zero revenues. Cost restrictions limit the number of students who can benefit from clinical offerings. Second, in an important way, clinics do not mimic the practice of law because of the substantial supervision of students and because clinics are only a “part-time” job for law students who also must juggle other courses. On the other hand, practice is a full-time immersion experience, and it is this immersion into the work that is the single most important factor in practical learning and training experience. “Deficiencies in educational training are inevitable because the classroom cannot wholly substitute for an immersion experience of independent practice, whether the schooling is in law, medicine, or business.”

Clinics provide some experience in the practice of law, which will be helpful for a law student who is about to enter the practice of law, or who wants a scaled back, highly structured

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See Marjorie Anne McDiarmid, What’s Going on Down There in the Basement: In-House Clinics Expand Their Beachhead, 35 N.Y.L. SCH. L. REV. 239, 286 (1990) (stating that “live-client, in-house clinics probably are still more expensive than most other teaching methodologies” despite rising costs in alternative teaching methods); Rhee, supra note 3, at 335 (“[Clinical education] is limited by budgetary and other resource constraints, suggesting that it is ultimately financed by student tuition. An important economic consideration is the need for a low student to faculty ratio in clinical teaching, given that faculty salary is the largest expense in a law school’s operating budget.”).

Rhee, supra note 3, at 335 (“Moreover, while clinics enable students to practice law, they are not a substitute for immersion in the practice of law, which is the steepest part of the learning curve for new lawyers.”).

Id. at 314.
experiential learning course. On the other hand, the law school firm is the practice of law in the sense that it is an immersion experience of a full-time professional practice. There would be no grades, formal ending to a semester, or set times for classroom; instead, the evaluation process is based on how well the provisional attorney and the law school firm represent their clients.

The following figure illustrates the relationship between the law school and the law school firm.

The close association between the law school and the law school firm will provide unique opportunities for law faculty and attorneys to collaborate on numerous types of projects. In addition to practicing law, the attorneys at the law school firm will engage in practical scholarship and contribute to continuing legal education programs and jointly sponsor programs at the law school. The attorneys can collaborate with faculty at the law school on their projects and recruit student to help with research and other aspects of such projects. Provisional and resident attorneys will develop expertise and professional prominence as they write articles and speak at conferences. They can consult with law faculty as they develop articles and other projects.

The law firm can also look to the law faculty for help with general problems. Many on the law faculty are not qualified to practice law, so they would not give advice with respect to specific clients. Nonetheless, as the members of the law firm see problems with the law that
warrant greater research and thought than they are able to devote, they can turn to faculty members who are expert in the area warranting additional consideration. The problems that the attorneys face could become material for future theoretical work that the faculty will do. Attorneys and faculty can of course co-author such work.

The collaboration between members of the law school and members of the law firm will not prevent some members of the faculty from engaging in purely theoretical work with no association with the law firm. Their roles will include teaching, researching, thinking, and writing. The notion of collaboration between study and practice of law is not a new idea. Many of the leading academic institutions understand the importance of collaborating with people in industry or practice. Schools of applied science recognize the importance of collaboration and invite people from industry to teach students and work to establish employment opportunities for their graduates. The relationship should be symbiotic, but law schools and gotten away from symbiotic models. The lack of symbiosis has hurt both the academy and the profession.

The interaction between law students and attorneys and faculty and attorneys will help blur the lines between law school and practice. The blurring of the lines will help students better prepare for practice. It will help the profession better train recent graduates. It will help law faculties produce significant, relevant theoretical work. It will help improve the practice of law. It will do many good things.

A significant component of the law school firm’s mission must include teaching and research. The law school firm will be a lab for the practice of law. It will study the best practices. It will promote the highest level of professional ethics. It will examine practices to improve the quality of work it produces. It will focus on providing world-class training to its attorneys at all levels of practice. It will study its billing practices to determine whether other billing arrangements work better for clients and affect the quality and effectiveness of work. Billing by the hour may encourage attorneys to do work that may not be necessary for a particular engagement. Without the profit motive, the law school firm can study the effectiveness of other billing arrangements, such as fixed-fee arrangements in transactional practices. It can also study other practices and modify them as needed to accomplish its mission.

The law firm will also be a lab for teaching new attorneys. Working with the law school it can develop and implement training programs for provisional attorneys. The law school and law firm could also develop teaching methods for students. Members of the law firm, including provisional attorneys will mentor and teach law students. They will be particularly suited to teach practical aspects of the practice of law. For example, they may help students understand the real estate closing process, the formation of a limited liability company, or how to negotiate a contract. They can use case studies from practice to help students see the application of the law. Such interaction will help the provisional attorneys better understand the work they do, and it will energize law students who witness the application of things they learn in the classroom.

The law school and the law firm could market techniques they develop to attorneys in conventional law firms. Those firms may not have the resources to develop and implement training programs. Instead, they could pay to obtain access to training materials prepared for the law school firm. Surely publishers will work with the authors of such materials to help make them professional. The focus on teaching could revolutionize the way law students and attorneys learn.
IV. CONCLUSION

Law school education and law practice are more disconnected than they should be. It is unfortunate that the legal academy cannot match the medical and business academies in providing practice-ready professionals. Newly minted attorneys typically receive their “practical” training on their first jobs. However, that training must be funded. The business sector, the professional bar, or the legal academy, or a combination, must bear the cost of training. At the same time, the cost of legal education is skyrocketing and law students today face a large debt load. There is a confluence of adverse economic factors.

Our idea for a law school firm addresses the totality of these problems. From a training and educational perspective, it makes sense. Economically, it makes sense for law student who would earn a small wage in the third-year rather than pay large tuitions. If the economic arrangement between the law school and the firm can be made to the law school’s satisfaction, everyone wins. Moreover, the training program that would be available through a law school firm can make for an important distinction in a world of largely homogenous curricula and teaching methods, and where a major meaningful distinction among law schools—like it or not—is the annual rankings in the U.S. News & World Report.