



## ARTICLE

## The Leadership Imperative: A Collaborative Approach to Professional Development in the Global Age of More for Less

Scott A. Westfahl & David B. Wilkins\*

**Abstract.** Notwithstanding the increasing importance of technology, the practice of corporate law is—and is likely to remain for the foreseeable future—a human capital business. As a result, law firms must continue to attract, develop, and retain talented lawyers. Unfortunately, the traditional approach, which divides responsibility for professional development among law schools, which are supposed to teach students to think like a lawyer; law firms, which are expected to train associates to “be” lawyers; and corporate clients, whose job it is to foot the bill, is no longer well aligned to the current realities of the marketplace. In this Article, we document the causes for this misalignment and propose a new model of professional development in which law schools, law firms, and corporate clients collaborate to train lawyers to be lifelong learners in the full range of technical, professional, and network-building skills they will need to flourish throughout their careers. We offer specific proposals for how to achieve this realignment and confront the resistance that will inevitably greet any attempt to do so.

---

\* Scott A. Westfahl is a Professor of Practice and the Faculty Director of Executive Education at Harvard Law School. David B. Wilkins is the Lester Kissel Professor of Law, Vice Dean for Global Initiatives on the Legal Profession, and Faculty Director of the Center on the Legal Profession at Harvard Law School. The Authors wish to thank Lisa Gluckstein and Marissa Marandola for their terrific research and editorial work on prior drafts of this Article.

**Table of Contents**

Introduction..... 1669

I. The Alignment of the Traditional Model ..... 1674

II. The Misalignment of the Current System..... 1681

III. Resistances—and How to Overcome Them (or Not Throwing the Baby out  
with the Bathwater)..... 1689

    A. If It Ain't Broke . . . ..... 1690

    B. Meeting Resistance with Opportunity..... 1696

IV. Toward a New Model of Professional Development..... 1702

    A. Law School Realignment: From Teaching Students to Think Like  
    (Common Law) Lawyers to Developing the Leaders of Tomorrow ..... 1705

        1. Leadership and professional skills ..... 1707

        2. Enhancing student networks..... 1713

    B. From Education to Work—Without Losing the Focus on Lifelong  
    Learning ..... 1716

        1. Increasing investment in talent development..... 1716

        2. Putting lawyer development on par with serving clients..... 1718

        3. Improving the development of technical legal skills and  
        knowledge..... 1721

        4. Building leaders ..... 1722

        5. Building related professional skills..... 1725

        6. Understanding and building networks..... 1727

Conclusion..... 1727

## Introduction

Since 2008, there has been a fierce debate over the future of large law firms and the market for corporate legal services generally. Did the global financial crisis usher in a new paradigm in which sophisticated in-house legal departments armed with big data and artificial intelligence will fundamentally destabilize—and eventually destroy—the traditional model of the large law firm?<sup>1</sup> Or will 2008 end up looking more like prior recessions in 2001 and 1991, which, though certainly painful, did not fundamentally alter the basic structure and functioning of the corporate legal services market?<sup>2</sup>

One can tell a similarly Janus-faced story about legal education. Notwithstanding a slew of reports about “failing law schools” caught in a vise grip of falling applications and diminished employment prospects for their graduates,<sup>3</sup> only a handful of law schools have actually closed their doors since 2008.<sup>4</sup> More

- 
1. See RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES 2* (2010) (arguing that because of technology “the jobs of many traditional lawyers will be substantially eroded and often eliminated”); see also RICHARD SUSSKIND, *TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE 3* (2013); William D. Henderson, *From Big Law to Lean Law*, 38 INT’L REV. L. & ECON. 5, 5-6 (Supp. 2014); Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 751-52.
  2. See, e.g., Chris Johnson, *Global Law Firms Face a World of Questions in 2017*, AM. LAW. (Jan. 4, 2017), <http://www.americanlawyer.com/id=1202776052073/Global-Law-Firms-Face-a-World-of-Questions-in-2017> (reporting based on conversations with a group of partners from top firms that “[t]he 2008 recession once again highlighted the resilience of the legal industry, and there’s an unspoken truth that change, even disruptive change, is generally good news for lawyers”); see also BENJAMIN H. BARTON, *GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION 9-10* (2015) (“[T]he lawyers who survive will be the lawyers who can demonstrate the value of their insight and services.”).
  3. For the canonical text on this point, see BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS*, at x-xiii (2012). But there are many others. See, e.g., John O. McGinnis & Russell D. Mangas, *First Thing We Do, Let’s Kill All the Law Schools*, WALL ST. J. (Jan. 17, 2012), <https://www.wsj.com/articles/SB10001424052970204632204577128443306853890> (arguing that state bar associations should work with undergraduate colleges to offer law majors that “entitle graduates to take the bar exam,” thus reducing the need for expensive law schools, increasing the supply of lawyers, and lowering legal fees); Martha Neil, *12 More Law Schools Sued over Reporting of Law Grad Employment and Salary Stats*, A.B.A. J. (Feb. 1, 2012, 10:39 PM CST), [http://www.abajournal.com/news/article/12\\_more\\_law\\_schools\\_sued\\_in\\_consumer-fraud\\_class\\_action\\_re\\_reported\\_law](http://www.abajournal.com/news/article/12_more_law_schools_sued_in_consumer-fraud_class_action_re_reported_law) (reporting on lawsuits alleging that law schools had falsely advertised postgraduation employment prospects).
  4. See Elizabeth Olson, *Whittier Law School Says It Will Shut Down*, N.Y. TIMES: DEALBOOK (Apr. 19, 2017), <https://nyti.ms/2pEeNm5> (listing a handful of law school closures since the recession and reporting that Whittier Law School will be the first fully accredited school to close); see also Peter Nemerovski, *Reality Check: Law School Closures Are Unlikely*, DAILY CALLER (Dec. 8, 2014, 3:51 PM), <http://dailycaller.com/2014/12/08/reality-check-law-school-closures-are-unlikely> (reporting that, as of December 2014, *footnote continued on next page*

importantly, notwithstanding the downturn in applications, few law schools have undertaken major changes to their curricula—and fewer still to their teaching methods—instead preferring to reduce enrollment while tinkering around the edges of what and how they teach.<sup>5</sup> Christopher Columbus Langdell’s model of legal education, with its emphasis on teaching students to “think like a lawyer”<sup>6</sup> through Socratic dialogue about appellate cases elaborating common law doctrine, is alive and well in the modern law school.<sup>7</sup>

In this Article, we do not seek to resolve these competing visions of the profession’s future. Instead, we explore the implications of these cross-currents of stability and change for a key element that will affect the future of both law firms and law schools however these competing forces are resolved: namely, the training and development of new lawyers. Notwithstanding the growing importance of technology, the practice of law is—and is likely to remain for the foreseeable future—a human capital business. As a result, law firms must find ways to recruit and retain talent and to train and deploy that talent in ways that provide value to their increasingly sophisticated corporate clients. And while rules that currently limit the ability of “nonlawyers”<sup>8</sup> to share in the

---

no law schools had closed since the 1980s and predicting that “fewer than five ABA-accredited law schools will close by 2020, and the number will probably be zero”).

5. See A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 2015-54 (2012); see also Joe Palazzolo, *More Law Schools Cut Class Sizes*, WALL ST. J.: L. BLOG (Nov. 19, 2012, 9:33 AM ET), <http://on.wsj.com/T6OV1a> (reporting that a survey of law school admissions officers found that most schools chose to cut entering class sizes in response to the downturn in applications). As Spencer summarizes:

A closer look at some of the pillars of law school education—its curriculum, its pedagogy, its assessment methods, and its faculty—reveal that what is past is not only prologue, but it is largely our present, a fact that is problematic given the death of the apprenticeship and the dramatic changes in the law and legal practice since the time of Langdell.

Spencer, *supra*, at 2020.

6. Stephen Wizner, *Is Learning to “Think Like a Lawyer” Enough?*, 17 YALE L. & POL’Y REV. 583, 586 (1998) (describing Karl Llewellyn’s concept of legal education as encouraging the student to “think[] like a lawyer” (quoting K.N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 101 (1960))).
7. See Spencer, *supra* note 5, at 2026-27 (“[N]otwithstanding the myriad changes in the legal profession and in our understanding of how people learn, the contemporary law school remains remarkably Langdellian in its design as a three-year system in which doctrinal legal knowledge and legal analytical abilities are transmitted to students mostly via a traditional or modified case-dialogue approach, supplemented with optional or mandatory experiential learning components.” (footnotes omitted)). For a description of Langdell’s model of legal education, see generally Edward Rubin, *What’s Wrong with Langdell’s Method, and What to Do About It*, 60 VAND. L. REV. 609 (2007).
8. As one of the Authors has written elsewhere, one of the things lawyers must learn to stop doing if they are to help their clients solve complex issues at the intersection of law, business, geopolitics, and other issues is dividing the world into “lawyers” and “nonlawyers.” Cf. BEN W. HEINEMAN, JR. ET AL., *LAWYERS AS PROFESSIONALS AND AS CITIZENS: KEY ROLES AND RESPONSIBILITIES IN THE 21ST CENTURY* 52 (2014), <https://>

*footnote continued on next page*

ownership of law firms or otherwise play a significant role in the delivery of legal services<sup>9</sup> may very well be relaxed in the United States, as they have been in the United Kingdom and elsewhere, it is nevertheless likely—at least for the foreseeable future—that the overwhelming majority of those whom law firms seek to recruit and retain will be law school graduates. This means that law schools, law firms, and corporate clients have a mutual interest in ensuring that the next generation of lawyers will have the skills and disposition necessary to be competent and ethical corporate lawyers in the increasingly challenging legal market of the middle decades of the twenty-first century.

The problem is that the model these parties are relying on to accomplish this goal is no longer fit for purpose. For more than a century, large law firms and the elite law schools from which these firms primarily recruit have maintained an implied division of labor, in which the law schools teach their charges how to *think* like lawyers, leaving law firms to teach graduates how to *be* lawyers.<sup>10</sup> This division, however, is no longer well aligned either to the institutional dynamics of law firms and law schools or to the dynamics of a corporate legal services market in which clients increasingly expect lawyers to function as multidisciplinary problem-solvers but at the same time are unwilling to pay for the training and development of junior associates.<sup>11</sup>

Given this breakdown, what is needed is a new model of professional development that aligns with the new realities of the legal marketplace. We advocate for a system premised on the understanding of shared responsibilities among all relevant stakeholders for the training and development of lawyers rather than one that divides responsibilities among law schools, law firms, and clients. It is only through this kind of inclusive and broad participation that law schools, law firms, and corporate clients can credibly promise the talented young women and men they recruit that they will not only become technically

---

clp.law.harvard.edu/assets/Professionalism-Project-Essay\_11.20.14.pdf (arguing that the complex problems lawyers confront “require collaboration with professionals from a wide range of disciplines”).

9. See MODEL RULES OF PROF'L CONDUCT r. 5.4 (AM. BAR ASS'N 2016)

10. See MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 9 (1991) (arguing that “[t]he gap between the[] certified promise” of recent law school graduates and “their untested quality of performance underlies the promotion-to-partnership tournament” at the heart of the big law firm); cf. David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1604-27 (1998) (arguing that this traditional model was already breaking down in the 1990s).

11. See RICHARD SUSSKIND & DANIEL SUSSKIND, THE FUTURE OF THE PROFESSIONS: HOW TECHNOLOGY WILL TRANSFORM THE WORK OF HUMAN EXPERTS 138 (2015) (reporting that many clients “have objected quite vocally to paying high (often hourly) rates for junior professionals to undertake routine work, and to subsidize their training at the same time”); see also Wilkins & Gulati, *supra* note 10, at 1604-27.

competent lawyers but will also develop into leaders with the broad-based networks they will need to build satisfying and successful careers wherever their interests and talents might lead them. And it is only if this new generation finds these promises both credible and attractive that law schools, law firms, and corporate legal departments will continue to thrive in a human capital business where the war for talent will only become more intense.

The remainder of this Article proceeds in four Parts. Part I briefly describes the traditional model for training lawyers developed in the early decades of the twentieth century and argues that the success of this model was due in large measure to its fit or “alignment”<sup>12</sup> with key elements of the market for corporate legal services during this period. Part II documents how a set of connected changes in the economy generally, and in the corporate legal market in particular, have destabilized this longstanding alignment, undermining the effectiveness of the traditional model of professional development. Notwithstanding widespread agreement on this point, however, most law schools, law firms, and corporate legal departments have resisted making significant changes to their traditional practices in this area. Part III explores some of the reasons for this resistance and offers strategies for overcoming it by underscoring some of the benefits law schools, law firms, and companies could reap by adjusting their human capital models to better align with the new realities of the markets for clients and talent. Part IV provides a preliminary outline of what such a new talent model might look like and how law schools, law firms, and companies could collaborate to create this new equilibrium. Finally, the Conclusion acknowledges the challenges facing law schools, law firms, and companies in the coming years as they continue trying to align their professional development models to a legal world that is likely to change even more rapidly in the coming decades than it has in the ones that have just passed.

We make two final points before beginning. First, throughout this Article, we refer to our experiences as professors at Harvard Law School (HLS) and our work in the research and executive education programs we have helped to create and run. We do so not because we believe that everything we have done at Harvard is perfect (far from it) or even that what we and the school have

---

12. We borrow the concept of alignment from the 7-S framework developed by the consulting firm McKinsey for analyzing how organizations can achieve sustainable growth. See *The McKinsey 7-S Framework: Ensuring that All Parts of Your Organization Work in Harmony*, MINDTOOLS, [https://www.mindtools.com/pages/article/newSTR\\_91.htm](https://www.mindtools.com/pages/article/newSTR_91.htm) (last visited June 6, 2017). According to this model, the better aligned an organization’s strategy is with its systems, structures, staff, skills, style, and shared values, the better it will perform. See THOMAS J. PETERS & ROBERT H. WATERMAN, JR., IN SEARCH OF EXCELLENCE: LESSONS FROM AMERICA’S BEST-RUN COMPANIES 9-11, 29-54 (2d ed. 2006) (describing and applying the 7-S framework to analyze what makes a business “excellent”).

managed to do well should necessarily be a template for others. We are well aware that there are important differences among law schools, in terms of both their internal organization and their relationship to the legal market, that even those who are persuaded by our argument for a new approach to professional development should take into consideration in deciding how to proceed. We therefore offer our own experience as a relevant—but also cautionary—example of the challenges facing anyone seeking to move beyond the traditional assumptions animating the contemporary approach to professional development.

Second, we recognize that there are some in the legal academy and elsewhere who may oppose our new model of professional development for the corporate sector not because they believe that it will not work but because they are afraid it will. It is no secret that many believe law schools channel students into Big Law to the detriment of worthier areas of legal practice in government and public interest.<sup>13</sup> To be sure, many dispute this claim.<sup>14</sup> As with our general discussion about the future of large law firms and legal education above, we do not intend to resolve here the dispute over whether law schools do—or should—steer their graduates toward particular employment outcomes. Instead, for the purposes of this Article, we simply assert without argument that given the important role corporate law firms have traditionally played in training and developing some of the best and brightest young lawyers and in managing our legal, economic, political, and social systems generally, if lawyers are going to join these organizations (and there is every indication they will), it is better for all concerned that they be

---

13. See, e.g., ROBERT GRANFIELD, MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND 47-50 (1992); ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER” 226 n.16 (2007); STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING 51-71 (2004); Craig Kubey, *Three Years of Adjustment: Where Your Ideals Go*, JURIS DR., Dec. 1976, at 34, 34.

14. See, e.g., Todd A. Berger, *Jimmy Carter’s “Malaise” Speech, Social Desirability Bias, and the Yuppie Nuremberg Defense: The Real Reason Why Law Students Say They Want to Practice Public Interest Law, yet So Few Actually Do*, 22 KAN. J.L. & PUB. POL’Y 139, 142 (2012) (speculating that public interest drift may be merely an illusion stemming from a possible social desirability bias in the survey responses of incoming law students, in favor of expressing altruistic career motivations while concealing their true income-driven motivations); Monroe H. Freedman, *The Loss of Idealism—By Whom? And When?*, 53 N.Y.U. L. REV. 658, 658-59 (1978). For commentaries suggesting that first-year socialization has a limited impact on students, given that law school is not an authoritarian or “total” institution and that students begin their legal education as already-socialized adults, see RICHARD L. ABEL, AMERICAN LAWYERS 213 (1989); and Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns*, 13 LAW & SOC’Y REV. 11, 12-15 (1978).

well prepared when they arrive and that they get the best possible training and development while they are there.<sup>15</sup>

## I. The Alignment of the Traditional Model

To understand the problems today's large law firms face in attracting, developing, and retaining top talent, it is first necessary to understand why these organizations were so successful in all three of these areas in the not-so-distant past. As we explain below, that success was in large part due to the alignment between the *organizational* model of the large law firm that evolved during the early decades of the twentieth century and the *educational* model of postsecondary law schools that took hold during that same period.<sup>16</sup> Both of these models in turn proved well aligned with the *service* model increasingly sought by large corporate clients.<sup>17</sup> Together, the intersection of these three models created a remarkably stable and successful ecosystem in which large law firms became the top destination for a significant percentage of the nation's top law school graduates, whom these firms in turn subtly but nevertheless effectively marketed as the primary reason big companies should entrust them with virtually all of their legal needs.

At the epicenter of this convergence was the New York law firm Cravath, Swaine & Moore, whose founder Paul D. Cravath is widely credited with creating the blueprint for the modern large law firm in the early decades of the twentieth century.<sup>18</sup> At the heart of Cravath's model was a new system for hiring and developing talent. Prior to Cravath, most law firms were little more than loose connections of established lawyers who came together to share office space and the services of a few junior clerks.<sup>19</sup> These clerks often paid their seniors for the privilege of working in the firm in the hopes of learning a

---

15. For a discussion of the importance of large law firms in the country's overall legal, economic, and political development, see ERWIN O. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN?* 8-12 (1964). For an argument that it is important to train the lawyers who join the corporate sector to be responsible and ethical practitioners, see HEINEMAN ET AL., *supra* note 8, at 6, which discusses the important roles played by lawyers in legal departments and law firms.

16. *See infra* notes 18-38 and accompanying text.

17. *See infra* notes 18-38 and accompanying text.

18. *See* GALANTER & PALAY, *supra* note 10, at 9; *see also* Robert W. Gordon, "The Ideal and the Actual in the Law": *Fantasies and Practices of New York City Lawyers, 1870-1910*, in *THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA* 51, 64-65 (Gerard W. Gawalt ed., 1984) (recounting the role of Paul Cravath and his like-minded colleagues in the evolution of the corporate bar in the early twentieth century).

19. *See* GALANTER & PALAY, *supra* note 10, at 4 (describing the emergence of large law firms as replacing "loose affiliation[s] of lawyers[] sharing offices and occasionally sharing work for clients").



few tricks of the trade before striking out on their own. When Cravath assumed the management of his firm in 1906, he rejected these traditional practices in favor of a system where new lawyers were hired directly out of law school and given both a full-time salary and the promise that if they worked diligently and competently for a probationary period of six to ten years, they would be given the chance—but only the chance—to become full partners in the firm.<sup>20</sup> Those who were not awarded this prize would be asked to leave the firm.<sup>21</sup> By the time of Cravath's death in 1940,<sup>22</sup> the “Cravath System”—as it would come to be known—had become the unquestioned industry standard for organizing large law firms, with firms self-consciously patterned after Cravath located in every major American city.<sup>23</sup> By the 1960s, these organizations had entered into what Marc Galanter and Thomas Palay have aptly—if ironically—called a “golden age,” when “big firms were prosperous, stable, and untroubled.”<sup>24</sup>

What accounts for the tremendous success of the Cravath System? Although there are undoubtedly many factors, a key element was the degree to which Cravath's *human capital* model of hiring lawyers directly out of law school and then rigorously training them for the work of the firm aligned with both the *external* markets for talent and clients in which law firms competed in the middle decades of the twentieth century and the other elements of the *internal* structures of the Cravath System.

Externally, the Cravath System took advantage of the growing number of bright and ambitious graduates who were emerging from the nation's leading law schools. As Cravath's admiring partner and obsessive biographer Robert T. Swaine later reported, Cravath believed that the “mastery of the fundamental theories of the common law is a *sine qua non* of legal competence[,] and that such mastery can better be taught in the law schools than by practitioners in a

---

20. See 1 ROBERT T. SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS: 1819-1947*, at 3 (1946); David B. Wilkins, *Law Firms*, in 13 *INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES* 578, 578 (2d ed. 2015) (describing the Cravath System).

21. Wilkins, *supra* note 20, at 578.

22. 1 SWAINE, *supra* note 20, at 3.

23. Cf. GALANTER & PALAY, *supra* note 10, at 20 (noting that “[b]efore the Second World War the big firm had become the dominant kind of law practice,” “command[ing] the highest prestige,” attracting some of the best talent, and being regarded as “state of the art”).

24. *Id.* See generally SMIGEL, *supra* note 15, at 182-202 (documenting the dominance of large law firms in New York City). As Galanter acknowledges in a subsequent article, it is important to remember that this period was only “golden” for those who fit the narrow—and overtly discriminatory—criteria employed by law firms during this period. See Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 *DICK. L. REV.* 549, 555 & n.28 (1996).

busy office.”<sup>25</sup> At the same time, Cravath was able to generate ample work for these eager but untrained young men (at this point they were all men<sup>26</sup>) to do because of the exploding needs of business clients to keep up with the new laws and regulations governing their affairs.<sup>27</sup> As the historian Gerard Gawalt explains:

Entire branches of the legal profession were created in response to industrial demands—patent law, corporate law, trust and estate planning, government regulation, and tax law. These were the newest and most profitable areas of legal practice; they were responses to the needs of industrial society and required different skills than those of trial-oriented advocates.<sup>28</sup>

To meet this burgeoning demand, Cravath developed a system capable of ensuring that the bright young lawyers he recruited would both develop the expertise to serve corporate clients in the new fields of law that now governed their affairs and remain diligent and loyal in providing those services for the benefit of Cravath and the other partners in the firm. This system had three additional interlocking parts: training, promotion, and partnership.

*Training.* As indicated above, Cravath believed that law schools were best situated to train young lawyers in the critical thinking skills they would need to be successful practitioners.<sup>29</sup> He therefore designed the Cravath System to provide the practical training these new recruits would not receive in law school.<sup>30</sup> Rather than immediately immersing the new recruit in whatever specialized area of the law the firm currently needed, Cravath required that all of his associates obtain a well-rounded education in the varied affairs of the firm’s corporate clients.<sup>31</sup> Young lawyers were therefore discouraged from specializing until they had been with the firm for several years.<sup>32</sup> And they were not immediately given significant responsibility for any major work.<sup>33</sup> As Swaine explains in quaint but vivid language: “Cravath men are not thrown

---

25. 2 ROBERT T. SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS: 1819-1948*, at 2 (1948).

26. The exclusion of women from corporate law firms—and the legal profession as a whole—during this period is well documented. *See, e.g.*, CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 3-5 (2d ed. 1993).

27. *See* Gerard W. Gawalt, *The Impact of Industrialization on the Legal Profession in Massachusetts, 1870-1900*, in *THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA*, *supra* note 18, at 97, 100.

28. *Id.*

29. *See supra* note 25 and accompanying text.

30. *See* 2 SWAINE, *supra* note 25, at 4-6.

31. *See id.* at 4.

32. *See id.*

33. *See id.*

into deep water and told to swim; rather, they are taken into shallow water and carefully taught strokes.”<sup>34</sup>

To accomplish this feat, Cravath partners divided complex matters into “component parts,” each of which was given to a different lawyer who was expected to work “thoroughly and exhaustively [on] the part assigned to him.”<sup>35</sup> As a new lawyer grew in competency and professional stature, the size and complexity of his work assignments would commensurably increase.<sup>36</sup> Those who continued to succeed were then given the “opportunity to expand their own activities by the use of younger assistants to whom they can in turn give the same kind of training they ha[d] enjoyed.”<sup>37</sup> Mastering this delicate balance between doing the work himself and delegating to others was crucial to a young lawyer’s long-term prospects with the firm, for “[t]he more nearly he attains the right compromise between these two extremes, the greater the amount of effective work a man can turn out, and hence the greater his value to the firm.”<sup>38</sup> And the more likely he was to obtain the ultimate prize: partnership.

*Promotion.* As Swaine would later recount, “[e]very lawyer who enter[ed] the Cravath office ha[d] a right to aspire to find his life career there—but only by attaining partnership.”<sup>39</sup> Two distinctive policies were responsible for producing this result.<sup>40</sup> First, Cravath maintained a strong preference for homegrown partners who had spent their whole careers with the firm.<sup>41</sup> Second, he enforced an even more stringent “up-or-out” rule by which associates not promoted to partnership were required to leave the firm.<sup>42</sup> The confluence of these two policies created what, for the better part of the twentieth century, was viewed as the defining feature of the large law firm: the competition among entering associates for partnership.<sup>43</sup>

*Partnership.* Although many associates were promoted to partnership during Cravath’s tenure as managing partner, it would be a mistake to assume

---

34. *Id.* at 4.

35. *Id.*

36. *See id.* at 5.

37. *Id.*

38. *Id.* at 5-6.

39. *Id.* at 7.

40. For a description of the importance of these two policies, see ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 71-73 (1988).

41. *See id.* at 72.

42. *Id.*

43. *See, e.g.,* RICHARD W. MOLL, THE LURE OF THE LAW 81-82 (1990) (describing the partnership process).

that the firm resembled the kind of equal partnership we now associate with Cravath and other similar firms. As even his admiring biographer conceded, “Cravath believed that a law firm, like any other successful organization, must have strong executive direction, and until the mid-1930s his firm was under a dictatorship in his person.”<sup>44</sup> The concept of partnership Cravath pioneered, however, contained the germs of a more egalitarian and secure vision than had previously existed. Cravath clients were clients “of the firm” and, as Swaine explained, “[e]very partner [wa]s expected to cooperate with every other in the firm’s business, through whichever partner originating, and to contribute to all the work of the firm to the maximum of his ability.”<sup>45</sup> By the mid-1960s, this egalitarian ethos was embodied in a general presumption that compensation would be more or less “lockstep,” with partners of a given age and experience sharing relatively equally in the profits of the firm.<sup>46</sup> Partnership under this system was the equivalent of tenure in an academic institution, and the overwhelming majority of partners stayed with their law firm until retirement.<sup>47</sup>

---

44. 2 SWAINE, *supra* note 25, at 12.

45. *Id.* at 10.

46. See GALANTER & PALAY, *supra* note 10, at 31 (noting the general perception that most firms during this period adhered to a lockstep compensation system in which each partner was given a relatively equal share of the firm’s profits on the basis of seniority). As the authors go on to point out, however, there is evidence that even by the 1960s, this practice may have been honored as much in the breach, with many firms paying “individualized shares” in response to pressure from big “business-getters.” *Id.* (quoting MARTIN MAYER, *THE LAWYERS* 336 (1967)). Determining the size and extent of this deviation is almost impossible given the secrecy surrounding compensation. See SMIGEL, *supra* note 15, at 18 (noting that the subject of compensation was particularly hush-hush during this period). Even conceding this point, however, it is clear that the ethos of relative equality among partners was far stronger during that period than it is today. See MILTON C. REGAN JR., *EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER* 15-49 (2004) (describing the dramatic move from largely egalitarian to highly individualized compensation, often called “eat what you kill,” at a New York law firm and in the large law firm sector generally); see also Peter Lattman, *Culture Keeps Firms Together in Trying Times*, N.Y. TIMES: DEALBOOK (Sept. 24, 2012, 4:36 PM), <https://nyti.ms/2ngRRLy> (noting that “Cravath, along with Debevoise & Plimpton and Cleary Gottlieb Steen & Hamilton, are three remaining law firms that adhere to a strict lock-step compensation system, paying their partners in a narrow range according to seniority” and contrasting this with the much more prevalent practice of wide differences in compensation exemplified by the then-recently bankrupt firm of Dewey & LeBoeuf). It is this transformation, rather than any absolute claim about the prevalence of strict lockstep compensation during the “golden age,” that we seek to highlight here.

47. See JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 147-48 (2005) (“Once a lawyer became a partner in a law firm, he stayed there for the rest of his working life, receiving an income that reflected his seniority in the firm and the economic health of the partnership as a whole, much more than his individual contributions to the bottom line.”).

As indicated above, these three interlocking elements—training, promotion, and partnership—proved a potent model for organizing a law firm capable of responding effectively to the growing demands of corporate America for legal representation through the middle decades of the twentieth century.<sup>48</sup> Although the number of “large” law firms climbed steadily during this period, even by the late 1960s there were still only a handful of law firms in the United States with more than one hundred lawyers.<sup>49</sup> Each of these firms only needed to hire a few good men (once again, we use the term “men” advisedly<sup>50</sup>) from the top law schools to satisfy its recruiting needs every year. Moreover, firms could confidently expect that the overwhelming majority of those they hired as associates would remain in their employ until the firm either promoted them to partnership or asked them to leave the firm, which for most disappointed associates meant leaving the large law firm sector altogether.<sup>51</sup> There was virtually no lateral market for associates to move from one corporate law firm to another, particularly in the same city, and no such market for partners at all.<sup>52</sup> As a result, Cravath-style law firms during this period could be confident that whatever resources they devoted to training their associates would be recouped over the course of many years of hard work on increasingly important matters, with the “best”<sup>53</sup> of the group becoming partners and contributing to the firm’s long-term success. At the same time, associates joining the firm could be confident that even if they were not fortunate enough to receive the ultimate prize of partnership—with all the

---

48. See *supra* notes 27-29 and accompanying text.

49. See GALANTER & PALAY, *supra* note 10, at 46 (reporting that there were fewer than a dozen law firms with more than one hundred lawyers in 1960 and that as late as 1968, the largest law firm in the country had 169 lawyers and the twentieth-largest law firm had 106 lawyers).

50. See EPSTEIN, *supra* note 26, at 3-5.

51. See GALANTER & PALAY, *supra* note 10, at 23.

52. *Id.* (stating flatly that during the “golden age” “[b]ig firms did not hire from one another” and reporting that “[l]ateral movement was still conspicuously absent in the early 1970s”).

53. Whether those who were promoted to partnership were indeed the best is debatable, given the widespread existence of express discriminatory practices throughout the legal profession during this period. For a trenchant description of these practices, see JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 292-95 (1976). These practices extended to large law firms. See GALANTER & PALAY, *supra* note 10, at 25-26. As one of the Authors has argued elsewhere, the characteristics of the market for legal services described above helped shield these discriminatory decisions from the adverse consequences economists argue should befall firms that refuse to hire or promote qualified workers. See David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms?: An Institutional Analysis*, 84 CALIF. L. REV. 493, 520-23 (1996) (arguing that the structure of the legal market shields law firms from the adverse economic consequences of preferring average white lawyers to average black lawyers).

money, prestige, and security associated with that position—the training they received from the firm would make them very attractive to employers in other sectors of the legal market. As a result, the salaries law firms had to pay to recruit the best and brightest young men emerging from top law schools were relatively modest, further reducing the firms' training costs.<sup>54</sup>

Moreover, given the oligopolistic nature of the corporate legal market, law firms could pass most of the cost of whatever resources they did invest in training junior associates on to their clients. As many scholars have noted, prior to the 1970s even the largest corporate clients were relatively unsophisticated when it came to understanding law and the legal system.<sup>55</sup> As a result, most companies depended almost entirely on “their” law firm to service all of their legal needs, from slip-and-fall cases to big litigation and major corporate transactions.<sup>56</sup> The general bill “for services rendered” that law firms sent clients for performing this work was understood to include the cost of training the firm's hardworking associates, the best of whom would become the partners serving the clients' needs.<sup>57</sup> The fact that virtually all these junior lawyers had backgrounds very similar to both the senior lawyers in the firm and the clients the firm represented made it easy for all concerned to view investing in the training and development of these promising young men as an important contribution to a system from which everyone within this ecosystem would benefit.

By the latter decades of the twentieth century, however, this clubby world of long-term relationships and gentlemanly competition underpinning the assumption of mutual benefit began to rapidly deteriorate.<sup>58</sup> And yet the basic structure of the Cravath System's model of professional development remains largely unchanged.<sup>59</sup> The result is a serious mismatch between the continuing needs of junior lawyers to develop the skills and dispositions they need to build

---

54. See ABEL, *supra* note 14, at 302 tbl.38 (reporting that, in the heyday of the Cravath System, associates were paid comparably to lawyers in the public sector).

55. See Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 EMORY L.J. 1057, 1059-60 (1997) (noting that in-house legal departments only began to expand during the 1970s); Ronald J. Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 MD. L. REV. 869, 902 & n.73 (1990) (noting the same).

56. See NELSON, *supra* note 40, at 54-58 (describing the importance of “general service” law firms).

57. Gilson, *supra* note 55, at 914 (arguing that the “information asymmetry” between law firms and their corporate clients allowed firms to pass a variety of costs on to clients by creating significant costs associated with switching firms).

58. HEINZ ET AL., *supra* note 47, at 147-51 (describing the fading of the career patterns of the “golden age”).

59. See Spencer, *supra* note 5, at 2008-09; *infra* Part II.

successful and satisfying careers in the law and the incentives of law firms and clients to actually provide this kind of training.

## II. The Misalignment of the Current System

On a superficial level, most law firms have retained the outward trappings of the Cravath System's processes of recruitment, training, promotion, and partnership. Virtually all law firms still hire some associates out of law school, purport to train them over the course of an apprenticeship period that now frequently stretches over ten years, and promote some number to "partnership," where they are still nominally viewed as owners of the firm.<sup>60</sup> But as the caveats and quotation marks in the above description underscore, the similarities between modern law firm practices and those of "golden age" firms are more symbolic than real.

Developments in both talent and client markets have worked to undermine the effectiveness of the Cravath System's traditional approach to professional development. With respect to the talent market, although the large law firm sector has increased dramatically (in 2016 there were 385 U.S. law firms with at least one hundred lawyers<sup>61</sup>), the size of the graduating classes at the top law schools from which these firms continue to want to hire has not.<sup>62</sup> As a result, competition for these coveted recruits has increased significantly, helping fuel a bidding war that has dramatically escalated the

---

60. See Wilkins, *supra* note 20, at 579 (describing changes to the Cravath System as important modifications to the system, as opposed to a complete rejection of it); Stephen L. Carter, *A "Big Law" Revolution? Not Likely*, BLOOMBERG VIEW (Aug. 21, 2015, 9:00 AM EDT), <http://bv.ms/1E9TjCV> (describing the forces pushing in favor of the continuity of the basic elements of the big law firm model). The fact that Cravath recently raised starting salaries for associates to \$180,000 underscores the continuing importance of the Cravath System's basic tenet of hiring lawyers directly out of law school. See Martha Neil, *First-Year Associate Pay Will Be \$180K at Multiple BigLaw Firms Following Cravath's Lead*, A.B.A. J. (June 8, 2016, 5:40 PM CDT), [http://www.abajournal.com/news/article/cravath\\_raises\\_first\\_year\\_associate\\_pay\\_to\\_180k\\_effective\\_july\\_1](http://www.abajournal.com/news/article/cravath_raises_first_year_associate_pay_to_180k_effective_july_1).

61. See Cristina Violante, *Law360 Reveals 400 Largest Firms*, LAW360 (Mar. 24, 2016, 11:25 AM EDT), <https://www.law360.com/articles/772291/law360-reveals-400-largest-us-firms>.

62. See, e.g., David Wilkins et al., *Urban Law School Graduates in Large Law Firms*, 36 SW. U. L. REV. 433, 434-35 (2007) (reporting the relative stability in the size of the graduating classes in the nation's leading law schools and arguing that this has contributed to the willingness of large law firms to hire the graduates of less highly ranked "urban" law schools); see also John P. Heinz et al., *The Scale of Justice: Observations on the Transformation of Urban Law Practice*, 27 ANN. REV. SOC. 337, 349 (2001) (making a similar point about the willingness of elite Chicago law firms to hire graduates from "local" law schools like DePaul and Chicago Kent).

starting salary of entering associates.<sup>63</sup> This escalation has been particularly steep since the mid-1980s, when rival employers such as investment banks and consulting firms also began bidding for the services of top law school graduates.<sup>64</sup>

At the same time, the gentlemanly rules against “poaching” associates—and even partners—that implicitly governed the corporate legal market have given way to a feverish lateral market in which lawyers at all levels move among law firms early and often.<sup>65</sup> The confluence of these factors has produced a world

---

63. See Leigh Jones, *Midsized Law Firms Shift Recruiting Strategies: Regional Schools Are Getting a Closer Look*, NAT'L L.J. (Feb. 16, 2007), <http://www.nationallawjournal.com/id=900005474124/Midsized-Law-Firms-Shift-Recruiting-Strategies> (quoting an Altman Weil consultant as reporting that in 2007, the nation's two hundred largest law firms by revenue were set to hire a combined 10,000 new associates—a number that is likely about half as large as the entire graduating classes of the country's top one hundred law schools and nearly one-quarter of all law school graduates). Needless to say, the global financial crisis has reduced the demand for entering associates in recent years. See Henderson, *supra* note 1, at 8 (reporting that the number of entry-level associates beginning their careers in law firms of 250 lawyers or more “declined from 6100 in 2007 to 3500 for the class of 2011”). But there are signs that entry-level recruiting has picked up in recent years. See Gavin Broady, *Law Firm Entry-Level Hiring Is Showing Signs of Life*, LAW360 (Mar. 5, 2015, 3:36 PM EST), <https://www.law360.com/articles/628097/law-firm-entry-level-hiring-is-showing-signs-of-life>. And the salary was initiated by Cravath underscore that the competition for “top” graduates is as fierce as ever. See Neil, *supra* note 60; cf. Erin Coe, *Firms That Stall on Associate Pay Will Be Left in the Dust*, LAW360 (May 8, 2015, 2:21 PM EDT), <https://www.law360.com/articles/653370/firms-that-stall-on-associate-pay-will-be-left-in-the-dust> (quoting a law professor as saying, prior to Cravath's salary hike, that firms were “so competitive” that they would have to increase associate pay and that once one firm did so, other firms would have to follow or risk being perceived as “second-level BigLaw for law students”).

64. For the origins of this escalation, see Tamar Lewin, *At Cravath, \$65,000 to Start*, N.Y. TIMES (Apr. 18, 1986), <https://nyti.ms/2mw2skq> (reporting that Cravath's decision to increase starting associate salaries by \$12,000 in 1986 was due to the widespread belief that “some of the best law school graduates—and some of the firm's most promising young associates—have shunned the practice of law and turned instead to investment banking”). For the continuing relevance of the world of banking and hedge funds, see *Bonus Babies: Why Big End-of-Year Payouts for Junior Attorneys Are a Double-Edged Sword*, ECONOMIST (Dec. 17, 2014), <http://www.economist.com/news/business/21636751-why-big-end-year-payouts-junior-attorneys-are-double-edged-sword-bonus-babies> (reporting that by paying significant bonuses, law firms were moving closer to the model used by other Wall Street firms such as investment banks and hedge funds).

65. See, e.g., William D. Henderson & Leonard Bierman, *An Empirical Analysis of Lateral Lawyer Trends from 2000 to 2007: The Emerging Equilibrium for Corporate Law Firms*, 22 GEO. J. LEGAL ETHICS 1395, 1404 & tbl.4 (2009) (documenting increased geographic dispersion and lateral mobility); Henderson, *supra* note 1, at 9 (reporting that the number of lateral partner moves in the *American Lawyer* 200 increased by more than 50% between 2000 and 2013); MP McQueen, *The Big Law Lateral Hiring Frenzy Continues*, AM. LAW. (Feb. 1, 2016), <http://www.americanlawyer.com/id=1202747504110/The-Big-Law-Lateral-Hiring-Frenzy-Continues> (reporting on the frenzied  
*footnote continued on next page*



in which law firms pay significantly more for talent but have significantly less incentive to invest in the kind of apprenticeship training for the majority of their young lawyers on which the Cravath model of professional development depends.<sup>66</sup> The increase in the leverage ratio between associates and partners in many firms further exacerbated this trend, as increasingly busy partners found themselves responsible for the training (or at least supervision) of more and more junior associates.<sup>67</sup> Although leverage rates in many firms have fallen in the years following the global financial crisis, the demands on partners to focus their attention on bringing in business have arguably increased, continuing to put pressure on the apprenticeship training at the core of the Cravath System's professional development model.<sup>68</sup>

The increasing sophistication of corporate clients over the last several decades has further diminished the effectiveness of the Cravath System's traditional model of professional development. Beginning in the 1970s, and

---

market for hiring lateral partners in 2015); *see also* HEINZ ET AL., *supra* note 47, at 147-51 (reporting that this practice was well underway by the 1990s).

66. As one of the Authors has argued elsewhere, firms must train at least some of their lawyers if they are going to be able to promote at least some of them to partnership. *See* Wilkins & Gulati, *supra* note 10, at 1583, 1609 (describing why training is an essential element of the "tournament of lawyers"). As Wilkins and Gulati note, however, training is an inherently scarce resource—particularly in light of increasing leverage rates. *See id.* at 1644-51. As a result, firms have little incentive to train *all* of their incoming lawyers, and instead they are likely to "track" associates into those who will receive beneficial training and those who will not receive this necessary good and will therefore ultimately leave the firm. *See id.* In another article, Wilkins and Gulati underscore that this process is likely to disadvantage black lawyers and other traditional outsiders. *See* Wilkins & Gulati, *supra* note 53, at 542. We discuss below how this impact on diversity affects a law firm's professional development goals. *See infra* notes 185-91 and accompanying text.
67. For a description of the increase in the number of associates compared to partners as a percentage of firms' average total attorneys in the years leading up to the global financial crisis, *see* Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1884-86, 1884 fig.5 (2008). For an argument that as law firm partners became increasingly busy they had less incentive to invest their scarce time in training associates, *see* Henderson, *supra* note 1, at 6. That article endorses an argument made by Larry Ribstein that busy partners can make more money by giving "short shrift" to activities such as "training and mentoring junior lawyers" and that the increasing number, dispersion, and mobility of law firm partners make such action difficult for firms to monitor. *Id.*
68. *Cf.* Elizabeth Olson, *Law Firms, Struggling Financially, Cull Partner Ranks*, N.Y. TIMES: DEALBOOK (Nov. 21, 2016), <https://nyti.ms/2f0zmHI> (reporting on widespread partner demotions and terminations as a means of boosting sagging law firm profits). Not surprisingly, these pressures have had an adverse effect on the time partners are willing to spend on training and mentoring associates. *See* Neil J. Dilloff, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. 341, 342-46 (2011) (discussing how the economic downturn has adversely affected associates, including their ability to receive training).

accelerating dramatically during the last two decades of the twentieth century, many companies began building substantial internal legal departments, allowing them to purchase many routine legal services—and in recent years, ones that would not be considered routine—“wholesale” from employed lawyers rather than “retail” from partners and associates in law firms.<sup>69</sup> Today, the general counsel who lead these increasingly sophisticated legal departments have become both the chief “diagnostician[s]” of their companies’ legal problems and the chief purchasing agents in charge of which internal or external providers will be assigned to attend to their companies’ legal needs.<sup>70</sup> A key element of their new role is to reduce the price law firms charge for their services, particularly for work that does not directly benefit the client.<sup>71</sup> Unsurprisingly, paying for the training and development of associates has been one of the primary targets of this budgetary axe.<sup>72</sup> Companies do have a long-term interest in firms having well-trained associates, both to do their current work and because legal departments hire virtually all of their in-house lawyers from these institutions.<sup>73</sup> We return to this point below.<sup>74</sup> At present, however, many general counsel do not think that associates will be around long enough for them to recoup the investment in their training and are

---

69. See BEN W. HEINEMAN, JR., *THE INSIDE COUNSEL REVOLUTION: RESOLVING THE PARTNER-GUARDIAN TENSION* 7 (2016) (“General Counsel have risen in power and status within the profession in the past 30+ years, becoming core members of top corporate management and dramatically changing the relationship between inside and outside lawyers.”); *supra* note 55 and accompanying text.

70. The term “diagnostician” comes from Ronald Gilson. See Gilson, *supra* note 55, at 893. For a comprehensive description of the evolution of the modern general counsel role and its contemporary significance, see HEINEMAN, *supra* note 69, at 3-8, which summarizes the transformation of the general counsel’s role both inside the company and outside in the legal profession and society as a whole. See also David B. Wilkins, *Team of Rivals?: Toward a New Model of the Corporate Attorney-Client Relationship*, 78 FORDHAM L. REV. 2067, 2096-97 (2010) (arguing that general counsel and law firms must cooperate as equals in serving corporate clients).

71. See HEINEMAN, *supra* note 69, at 402-04 (setting forth a “bill of particulars” with respect to excessive rates charged by law firms).

72. See Ashby Jones & Joseph Palazzolo, *What’s a First-Year Lawyer Worth?: Not Much, Say a Growing Number of Corporate Clients Who Refuse to Pay*, WALL ST. J. (Oct. 17, 2011), <https://www.wsj.com/articles/SB10001424052970204774604576631360989675324> (reporting on the growing percentage of corporate clients that refuse to pay for associate training).

73. See David B. Wilkins, *Is the In-House Counsel Movement Going Global?: A Preliminary Assessment of the Role of Internal Counsel in Emerging Economies*, 2012 WIS. L. REV. 251, 252-53 (reporting that in-house departments “have their pick of talented mid-level associates and junior partners from the best law firms, with senior in-house lawyers frequently recruited from the top-ranks of the partnerships of outside firms”).

74. See *infra* notes 140-41 and accompanying text.

content to do their own training of the law firm lawyers they eventually bring in-house.<sup>75</sup>

Law firms have reacted to this downward price pressure by requiring associates to specialize immediately so as to make themselves productive as early as possible, further eroding the Cravath System's promise of generalist training.<sup>76</sup> And to complete the daisy chain, associates in turn have reacted to law firms' pressure for early specialization by leaving their jobs even earlier, both to avoid being pigeonholed so as to render themselves unemployable by anyone other than another large law firm and to find other jobs where they believe they will have broader and more satisfying experiences.<sup>77</sup> Both strategies in turn diminish the incentive for law firms—and even more for individual partners—to invest in the long-term development of associates (as opposed to their short-term profit maximization), thereby further undermining the traditional model of lawyer training.

To be sure, many firms have tried to make up for this decrease in the apprenticeship training promised by the Cravath System by increasing their commitment to formal training programs run by a dedicated professional development staff.<sup>78</sup> As we indicate below, we applaud these efforts, which one

---

75. See Robert W. Hillman, Professor, Univ. of Cal., Davis, *The Hidden Costs of Lawyer Mobility: Of Law Firms, Law Schools, and the Education of Lawyers*, Randall Park Lecture at the University of Kentucky College of Law (May 7, 2002), in 91 KY. L.J. 299, 303 (2003) (arguing that lawyer mobility acts as a disincentive for clients and firms to invest in the training of young lawyers); see also Catherine Rodgers, *What I Wish I'd Known: Moving In-House*, GC MAG., Winter 2014, at 59, 59-65, <http://www.legal500.com/assets/images/gc-magazine/winter-2014-digital/index.html#/60> (discussing the training even the best law firm lawyers need when moving in-house).

76. For a discussion of the growing pressure to specialize, see, for example, Timothy Hia, Note, *Que Sera, Sera: The Future of Specialization in Large Law Firms*, 2002 COLUM. BUS. L. REV. 541, 542, which reports that “junior lawyers are asked to choose their fields of practice earlier in their careers, while the specialties available to the young associates are more narrowly-focused than ever before.” For analysis of the pressure to have associates who are “practice ready” from day one, 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), which states: “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.”

77. See HEINEMAN, *supra* note 69, at 431 (arguing that “pressure to specialize unleavened by generalist experience through department rotation” is one of the factors contributing to the dissatisfaction of many associates in a system where many associates leave law firm jobs “after three to four years when they have paid off much of their heavy debt”); see also Ben W. Heineman, Jr. & David B. Wilkins, *The Lost Generation?: Demoralized and Dispirited, Big-Firm Associates Are Defecting in Droves; Here’s What Firms, and Their Clients, Can Do About It*, AM. LAW. (Mar. 1, 2008), <http://www.americanlawyer.com/id=900005504489/The-Lost-Generation> (making a similar point).

78. See *The 9 Most Important Characteristics of the Best Law Firm Training Programs*, BCG ATT’Y SEARCH, <http://www.bcgsearch.com/article/900045152/The-Nine-Most>  
*footnote continued on next page*

of us has helped pioneer.<sup>79</sup> A quick glance at the factors identified in a recent report by an attorney search firm as being necessary to make such programs effective—for example, that the effort be “strategically oriented” to meet the firm’s business objectives, be actively supported by “top management,” be targeted at “all of the lawyers” in a way that does not discourage participation, deliver content appropriate for lawyers at all levels, and be supported by full-time dedicated staff—underscores the difficulty many law firms face in making this kind of commitment.<sup>80</sup> As a result, many only make a half-hearted attempt at rigorous formal training, which just makes the training given seem even less valuable to associates than the informal mentoring and sponsorship that some chosen associates (and even partners) continue to receive.<sup>81</sup> The fact that entering associates today have even less chance of making partner than did entering associates in Cravath’s day—and that those who do make partner often find that the prize they have struggled so long to achieve comes with less stature and rewards, and significantly less job security, than it did in the “golden age”—has only exacerbated the downward spiral for associate training.<sup>82</sup>

---

-Important-Characteristics-of-the-Best-Law-Firm-Training-Programs (last visited June 6, 2017) (describing the best of these efforts).

79. See *infra* note 149 and accompanying text. Prior to joining HLS in 2013, Scott Westfahl was the Director of Professional Development at the law firm Goodwin Procter LLP and also served as a board member, Vice Chair, and Chair of the Professional Development Consortium (PDC).
80. *The 9 Most Important Characteristics of the Best Law Firm Training Programs*, *supra* note 78 (describing these factors and reporting that firms that understand the importance of this issue are “quietly transforming” themselves to adopt these practices).
81. See, e.g., Claire Zillman, *Survey: Generally Content, New Partners Fear Lack of Training Will Hamper Ability to Win Clients*, AM. LAW. (Oct. 22, 2012), <http://www.americanlawyer.com/id=1202575884133> (reporting that nearly 50% of new partners surveyed said that they had received “no formal training in business development before and/or after their promotions”). Indeed, the percentage of new partners who did not receive such training as associates may be greater than 50%, as those who only received such training upon promotion are not captured by the 50% figure. See generally Wilkins & Gulati, *supra* note 10, at 1609 (arguing that the kind of informal training and mentoring that comes from working directly with partners on important work is critical to an associate’s chances of succeeding at a law firm).
82. See Henderson, *supra* note 1, at 8-10 (reporting that rather than growing by making new equity partners, firms are creating a variety of new categories of lawyers); see also William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. 1691, 1694-98 (2006) (attributing the decline to the assumption among many firms that creating an expanding tier of nonequity partners will be beneficial). For a discussion of the lack of job security even for those who become equity partners, see David B. Wilkins, *Partner, Shmartner!: EEOC v. Sidley Austin Brown & Wood*, 120 HARV. L. REV. 1264, 1265 (2007), which discusses the growing trend toward terminating or “de-equitiz[ing]” partners. For a discussion of the adverse consequences of all of this for associate training, see Dilloff, *supra* note 68, at  
*footnote continued on next page*

And the existence of this vicious cycle is no longer a surprise to most law students. Just as the rise of sophisticated in-house lawyers has dramatically reduced the traditional information asymmetry between law firms and corporate clients regarding how legal services should be sourced, delivered, and priced, the burgeoning legal press has performed a similar function for today's law students. With legal publications ranging from the *American Lawyer* to *Above the Law* to *Vault* and increased attention paid by mainstream news organizations such as the *New York Times*, the *Wall Street Journal*, Thomson Reuters, and Bloomberg, law students now have tremendous access to news and information about the legal services market in general and large law firms in particular. To be sure, these publications tend toward the sensational and the self-centered.<sup>83</sup> By largely abdicating their responsibility to study and teach about the profession, law schools bear significant responsibility for this state of affairs.<sup>84</sup> But regardless of either fault or accuracy, the hoary stories about life in Big Law circulating in the press—and even more in the hallways and student lounges in the very law schools from which large law firms want to recruit—have only reinforced the tendency of many students to look at these institutions with a jaundiced eye.<sup>85</sup> At the same time, the combination of high debt loads and an educational model that concentrates largely on teaching students how to “think like a lawyer” and to practice a few lawyering skills largely in the context of litigation continues to lead many students to take Big Law jobs that they do not intend to keep.<sup>86</sup>

---

347-48. Dilloff discusses the effect of “less upward mobility for associates” on training and development. *Id.* (formatting altered).

83. For example, consider the obsessive attention to associate salaries. *See, e.g.,* David Lat, *Breaking: NY to \$180K!!! Cravath Raises Associate Base Salaries!!!*, ABOVE THE LAW (June 6, 2016, 3:09 PM), <http://abovethelaw.com/2016/06/breaking-ny-to-180k-cravath-raises-associate-base-salaries>. As if the exclamation points were not enough, Lat felt the need to “break[] out the Drudge siren” when announcing the news. *Id.*

84. *See* David B. Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach About the Profession*, 49 J. LEGAL EDUC. 76, 76 (1999) (arguing that by failing to provide students with independent information on legal practice, law schools are failing to meet their ethical obligations to students).

85. *See, e.g.,* Debra Cassens Weiss, *Do Elite Law Grads Disdain Longtime BigLaw Work?: Stats Suggest Lower-Tier ‘Strivers’ Stick Around*, A.B.A. J. (Mar. 12, 2012, 10:30 AM CDT), [http://www.abajournal.com/news/article/do\\_elite\\_law\\_grads\\_disdain\\_longtime\\_big\\_law\\_work\\_stats\\_suggest\\_lower-tier](http://www.abajournal.com/news/article/do_elite_law_grads_disdain_longtime_big_law_work_stats_suggest_lower-tier).

86. Both the high debt loads of recent law school graduates and the high attrition rates of entering associates are well documented. For a discussion of law school debt, see Editorial, *The Law School Debt Crisis*, N.Y. TIMES (Oct. 24, 2015), <https://nyti.ms/2myrS0J>. For a discussion of attrition from big law firms, see Joan C. Williams, *Law Firms’ Grueling Hours Are Turning Defectors into Competitors*, HARV. BUS. REV. (Aug. 25, 2015), <https://hbr.org/2015/08/law-firms-grueling-hours-are-turning-defectors-into-competitors>, which argues that poor work-life balance in big law firms is creating high attrition rates in Big Law and fueling new competitors that “hard-bake work-life  
*footnote continued on next page*

This skepticism is prevalent among students in general. But it is particularly strong among the growing number of female and minority students (the majority of whom are also female) who have even less faith than their white male peers that they will be able to build successful and satisfying long-term careers in large law firms.<sup>87</sup> The fact that partnership rates for these groups continue to lag far behind the rate for their white male peers gives credence to these fears.<sup>88</sup> Given that women now constitute more than 50% of all law students, with people of color and other historically underrepresented groups also constituting a significant percentage of those graduating from law school, the fact that these groups no longer believe in the efficacy of the Cravath System's professional development model poses a significant threat to the future of large law firms.<sup>89</sup>

As indicated at the outset of this Article, the fact that the traditional bargain among law schools, law firms, and clients for the training and development of young lawyers has broken down will not surprise anyone who has been reading the accounts of "The Death of Big Law" or "Failing Law Schools" in the legal and popular press.<sup>90</sup> What is surprising is that

---

balance into the[ir] business model[s]." For an argument linking these issues to the fact that many law students now join large law firms with no intention of staying more than a few years, see Dennis Curtis, *Can Law Schools and Big Firms Be Friends?*, 74 S. CAL. L. REV. 65, 76 (2000).

87. This skepticism is fueled by the well-documented problems faced by minorities and women in large law firms. See, e.g., Elizabeth Olson, *Leading New York Law Firms Lag in Including Women and Minorities*, N.Y. TIMES: DEALBOOK (Oct. 16, 2016), <https://nyti.ms/2e9Abga>; see also Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245, 2251-57 (2010); Wilkins & Gulati, *supra* note 53, at 502-06. For the particular issues faced by minority women, see Liane Jackson, *Minority Women Are Disappearing from BigLaw—and Here's Why*, A.B.A. J. (Mar. 1, 2016, 12:15 AM CST), [http://www.abajournal.com/magazine/article/minority\\_women\\_are\\_disappearing\\_from\\_biglaw\\_and\\_heres\\_why](http://www.abajournal.com/magazine/article/minority_women_are_disappearing_from_biglaw_and_heres_why).
88. See NAT'L ASS'N FOR LAW PLACEMENT, 2016 REPORT ON DIVERSITY IN U.S. LAW FIRMS 3, 8 tbl.1 (2017), <http://www.nalp.org/uploads/Membership/2016NALPReportonDiversityinUSLawFirms.pdf> (reporting small increases in partnership rates for women and minorities in 2016 but finding that the percentages continue to lag significantly behind the percentage of white men).
89. See Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass'n, ABA Law School Data: JD Matriculant Data, Fall 2016 (2016) [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2016\\_fall\\_jd\\_matriculants\\_gender\\_race\\_ethnicity.xlsx](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2016_fall_jd_matriculants_gender_race_ethnicity.xlsx) (reporting that there were 19,032 women and 11,880 minorities out of a total of 37,107 law students matriculating in 2016).
90. See Ribstein, *supra* note 1, at 814 ("Big Law's death poses difficult questions for law schools as to what they should train their students to do."). See generally TAMANAHA, *supra* note 3 (critiquing the crisis in legal education perpetuated by high costs, economic demands, and competitive pressures among schools and prospective employers).

notwithstanding such widespread criticism, there has been so much resistance to creating a new model of professional development that better fits current conditions.

### **III. Resistances—and How to Overcome Them (or Not Throwing the Baby out with the Bathwater)**

In order to build satisfying and successful careers, lawyers have always needed to develop three overlapping sets of competencies: technical legal skills and expertise, professional skills that are adaptable to any professional context, and opportunity-creating professional networks. Traditionally, law schools, law firms, and corporations have for the most part failed to invest in all but the first of these three components, remaining resistant to emphasizing the importance of professional skills and networks.<sup>91</sup> Given the dynamics of the market for both talent and clients outlined in Part II above, this emphasis is understandable. Lawyers have always needed broad professional skills and networks. But law schools, law firms, and companies could plausibly assume that the training junior lawyers received in how to think like lawyers in law school, and how to be a careful and diligent associate at a top law firm, would both be transferable to other legal jobs and help them build relationships within the relatively small and insular world of the American legal profession. As John Heinz and Edward Laumann document in their classic study, prior to the mid-1960s the bar was relatively small and homogenous even in large cities like Chicago and there were many opportunities for lawyers to build cross-cutting professional networks.<sup>92</sup> As they go on to document in a subsequent study, however, the rapid expansion in the size of the bar—from approximately 355,200 in 1970 to 1,066,000 in 2001—combined with the bar's increasing (albeit less than many would have expected) diversity and the significant growth in lawyer specialization have made building both transferable skills and broad professional networks much more difficult.<sup>93</sup> Yet law schools, law

---

91. See, e.g., COMM. ON THE PROF'L EDUC. CONTINUUM, AM. BAR ASS'N, TWENTY YEARS AFTER THE MACCRATE REPORT: A REVIEW OF THE CURRENT STATE OF THE LEGAL EDUCATION CONTINUUM AND THE CHALLENGES FACING THE ACADEMY, BAR, AND JUDICIARY 10 (2013) (questioning whether law schools' emphasis on individual performance, as opposed to networking skills, adequately prepares students for collaborative problem-solving in legal practice).

92. See generally JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 130-38 (rev. ed. 1994) (demonstrating that by the time of the authors' study, the Chicago bar had abandoned its homogenous beginnings and had separated into "two hemispheres" distinguished by type of client served—individual or corporate—and highly determined by a lawyer's political, cultural, and social ties).

93. See HEINZ ET AL., *supra* note 47, at 8, 13-14, 37, 46-47, 62-69.

firms, and companies have continued to act as though the informal systems of the “golden age” of the large law firm are still functioning.<sup>94</sup>

A. If It Ain’t Broke . . .

There are several reasons why law schools and law firms in particular remain in denial about their failure to give young lawyers the broad professional skills and functioning opportunity-producing networks they need in a world in which the traditional patterns of apprenticeship and socialization have broken down. At leading law schools, outcomes are often taken for granted, even in times of economic downturn. Top students continue to apply for—and virtually all get—good jobs, even if they have somewhat fewer options to choose from.<sup>95</sup> Aside from these important but basic measures, most law schools have little systematic information about how their graduates are doing five, ten, or fifteen years after graduation—particularly about those who may be struggling.<sup>96</sup> As a result, it is easy to assume that the traditional model continues to work.

Moreover, there are many aspects of the traditional model that *do* continue to work well and that provide law students with important skills, including the following:

“Thinking like lawyers.” As they have always done, leading law schools continue to engage in rigorous selection and train smart people to “think like lawyers.”<sup>97</sup> Their graduates can view problems from multiple perspectives;

---

94. As Marc Galanter underscores, this age was only “golden” for the select few who were allowed to participate. *See* Galanter, *supra* note 24, at 555 & n.28.

95. *See* Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S.* News & World Report *Law School Rankings*, 83 IND. L.J. 791, 815 (2008) (“The Top 16 law schools consistently posted employment at graduation rates of 90.0% to 99.8% (and 97.6% to 100% for employed at nine months), with the percent employed falling through the remainder of the hierarchy.”).

96. The “After the JD” study, for which one of the Authors is a lead researcher, is one of the few efforts to provide this kind of systematic information. *See* RONIT DINOVTZER ET AL., NALP FOUND. FOR LAW CAREER RESEARCH & EDUC. & AM. BAR FOUND., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 13 (2004), <http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf> (tracking career outcomes of a nationwide group of lawyers admitted to the bar in 2000 and describing itself as the “first national study” of its type). Some law schools have followed suit. *See, e.g.*, DAVID B. WILKINS ET AL., HARVARD LAW SCH. CTR. ON THE LEGAL PROFESSION, THE WOMEN AND MEN OF HARVARD LAW SCHOOL: PRELIMINARY RESULTS FROM THE HLS CAREER STUDY 1-2 (2015), <https://clp.law.harvard.edu/assets/HLS-Career-Study-FINAL.pdf> (collecting data that reflect a sample of individuals from a select few graduating classes). However, most law schools lack such data collection initiatives altogether.

97. *See* Wizner, *supra* note 6, at 586-88 (discussing Llewellyn’s well-known description but critiquing its impact on legal education).



empathize; advocate; and engage in deep, rigorous analysis of the intentions and influence of people and legal structures like cases, laws, and regulations. Arguably, law school is the most rigorous form of professional education with respect to analytical thinking.

*Adaptable skills and knowledge.* Preparing people to think critically allows them to succeed in almost any professional endeavor, and law schools wisely remain neutral as to how their students choose to pursue their passions.<sup>98</sup> They resist the temptation to be like trade schools. Indeed, by training people in analytical thinking that can be applied broadly and is endlessly adaptive, they serve their graduates much better than does a trade school that trains students in a specific set of skills that can easily be disrupted (hence the traditional faculties' resistance to more training on "practical skills"<sup>99</sup>).

*Civic impact through scholarship.* By focusing primarily on scholarship rather than serving as a professional training ground, law schools rightly contribute to and advance the way we order our society and/or challenge and overthrow the existing order for the greater benefit of all.

*An emphasis on diversity.* Without changing the key elements of their traditional model, law schools have become increasingly diverse and are successfully graduating many more women and minority lawyers than ever before.<sup>100</sup> This provides hope that these graduates will apply their analytical and advocacy skills to help make our society more inclusive and allow diversity to thrive, in turn resulting in better problem-solving and less risk of radical social disruption.

*Insulation from corporate interests.* Legal academia's independence and wide separation from the world of legal practice protects the integrity of legal scholarship and ensures broad, vigorous, and unbiased debate about important policy issues without undue influence from corporate clients of top law firms.

---

98. See, e.g., *Career Path Resources*, YALE L. SCH., <https://www.law.yale.edu/student-life/career-development/students/career-pathways> (last visited June 6, 2017) ("[A] law degree is an excellent foundation for a multitude of careers. . . . [Y]our career possibilities are limited only by your effort and imagination . . .").

99. Spencer, *supra* note 5, at 1984-85 ("[I]t can still be said of some law faculty that they do not 'seem ever to recognize the need' to offer training that approximates what students miss by not going through an apprenticeship experience." (quoting Wm. G. Hammond et al., *Report of the Committee on Legal Education*, in REPORT OF THE THIRTEENTH ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 327, 330 (Philadelphia, Dando Printing & Publ'g Co. 1890))).

100. See WILKINS ET AL., *supra* note 96, at 13 (showing a trend toward gender parity among HLS graduates from 1975 to 2013); Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass'n, ABA Approved Total JD and Minority Degrees Awarded: Fall 2013 (2013), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2013\\_jd\\_degrees\\_minority.xls](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_jd_degrees_minority.xls) (showing an increase in J.D. degrees awarded to minority students from 8.6% of the total awarded in 1984 to 25.5% in 2013).

*Expanded clinical offerings.* The traditional model for legal education has evolved to include clinical experiences that have been shown to correlate positively with lawyer preparedness without undermining the core approach to the teaching of legal doctrine.<sup>101</sup>

Given these important benefits, it is unsurprising that law schools have resisted calls for the wholesale overhaul of legal education.<sup>102</sup>

One can tell a similar story about law firms and in-house legal departments. Although law firms continue to claim that they provide broad and transferable professional skills and help young lawyers build the kind of networks and relationships that will help them succeed throughout their careers,<sup>103</sup> such claims should no longer be credible to many young lawyers. As many have documented, the careful step-by-step apprenticeships that were such an integral part of the original Cravath System have been largely replaced by the very sink-or-swim model of lawyer development that Cravath himself sought to avoid.<sup>104</sup> As each of us has observed in our investigations of the practices of the Big Four accounting firms and consulting firms like McKinsey, this is not the model used in these other professional services firms, which invest far more resources in systems, structures, feedback, mentoring, and coaching of their professionals than the typical corporate law firm does in developing its lawyers. State bars that impose continuing legal education (CLE) requirements have forced firms to comply with these mandates by running their own training programs on technical legal skills or outsourcing such training to online or live CLE programs.<sup>105</sup> Additionally, performance review

---

101. See Robert R. Kuehn, *Measuring Clinical Legal Education's Employment Outcomes*, 2015 WIS. L. REV. 645, 661 (providing evidence that law students' clinical experiences often provide the practical skills and professional experiences most valued by prospective legal employers); Spencer, *supra* note 5, at 2017 ("The clinical legal training movement has successfully imported live-client practice experiences into the law school framework . . .").

102. See generally Spencer, *supra* note 5 (providing a historical analysis and critique of law school pedagogy, which still adheres largely to the Langdellian case model).

103. See, e.g., *Alumni*, CRAVATH, SWAINE & MOORE LLP, <https://www.cravath.com/alumni> (last visited June 6, 2017) ("What you learn at Cravath you take with you, no matter where you go or what you do."); *Alumni*, MORRISON & FOERSTER, <https://www.mofo.com/about/alumni> (last visited June 6, 2017) ("Morrison & Foerster alumni have amazing careers.").

104. See, e.g., William D. Henderson, *Law Firm Strategies for Human Capital: Past, Present, Future*, 52 STUD. L. POL. & SOC'Y 73, 80 (2010); Scott Westfahl, *Performance Management and Rewards: A Wealth of Opportunities*, in INNOVATING TALENT MANAGEMENT IN LAW FIRMS: DEVELOPING TOMORROW'S LEGAL WORKFORCE 305, 305-08 (Terri Mottershead ed., 2016).

105. See, e.g., *Minimum Continuing Legal Education*, ST. B. CAL., <http://mcle.calbar.ca.gov> (last visited June 6, 2017). For examples of the array of CLE programs offered by and for large law firms, see *Continuing Legal Education/CLE*, ABOVE THE LAW, <http://above.thelaw.com/continuing-legal-education-cle> (last visited June 6, 2017).

systems and bonus structures at law firms reinforce the idea that productivity—measured by hours billed and realization rate—is the only real metric that matters.<sup>106</sup> Young lawyers are asked to focus on building technical legal skills and an area of expertise, while the building of professional skills and networks is neither measured nor particularly encouraged. Firms do provide very minimal educational programming on topics like negotiation, delegation, and sometimes even leadership.<sup>107</sup> But relative to other professions—and to the importance of professional skills for long-term success as a partner—paltry law firm investment in such programs is shortsighted (to say the least) in an environment as ripe for disruption as the legal profession.

And yet, as with law schools, the corporate bar takes for granted that it is highly profitable and successful. Ask any partner at an *American Lawyer* Top 100 firm who graduated from law school in the 1980s or 1990s; they will all confirm that they never expected to be earning the incomes they now receive—firm profits per partner average well over \$3 million per year among the top firms.<sup>108</sup> Further, it is hard to contend that the corporate bar’s lawyer development model is broken when the current model has the following three characteristics:

First, corporate law firms have achieved incredible global reach<sup>109</sup> and influence, and strong corporate law departments have become the norm rather than the exception at major companies.<sup>110</sup> Through impressive networks of highly talented and dedicated professionals, they are shaping the way business is done all over the world.

Second, law firms and law departments solve incredibly complex problems—putting together deals of size and scope that were unimaginable twenty

---

106. See Curtis, *supra* note 86, at 70 (“For many firms, billable hours, partner profits, and market share in a practice area or in a city—in other words, ‘the bottom line’—have become the only way that success is measured.”); see also Steven J. Harper, Opinion, *The Tyranny of the Billable Hour*, N.Y. TIMES (Mar. 28, 2013), <https://nyti.ms/ZEo7Un>; cf. *Salaries and Hours*, CHAMBERS ASSOCIATE, <http://www.chambers-associate.com/law-firms/salaries-and-hours> (last visited June 6, 2017) (tracking law firm associate salaries and billable hour requirements).

107. See, e.g., *Professional Development & Training*, PROSKAUER, <http://www.proskauer.com/careers/professional-development-and-training> (last visited June 6, 2017) (highlighting the firm’s professional development programming, which includes training in negotiation, work flow management, and communication, among other technical skills).

108. See *Firms Ranked by Profits per Partner*, AM. LAW. (Apr. 25, 2016), <http://www.americanlawyer.com/id=1202755653273>.

109. See generally Galanter & Henderson, *supra* note 67 (evaluating how firms have adapted to structural changes in the legal market, including globalization of corporate clients).

110. See HEINEMAN, *supra* note 69, at 4-5.

years ago,<sup>111</sup> litigating cases with massive worldwide impact,<sup>112</sup> and playing a key guardian and trusted advisor role<sup>113</sup> as the regulatory environment explodes and businesses struggle to comply with the letter and spirit of the law.

Third, law firms work hard to embody meritocracy. They hire the “best and brightest” from leading law schools<sup>114</sup> (which preselect, sort, and rank students through grades to help firms identify top talent) and then provide a “free market” tournament to elect as partners the select few who have demonstrated the grit, resilience, judgment, and legal and professional skills required.<sup>115</sup> Needless to say, as one of the Authors has argued extensively, there remains a significant gap between these aspirations of meritocracy and the reality of the “tournament of lawyers,” particularly for women and minorities.<sup>116</sup> But the fact that law firms have not achieved this goal does not diminish their attractiveness—even for those who continue to bear the brunt of the lingering inequalities of the current system.<sup>117</sup>

Once again, given these benefits, it is easy to see why law firms continue to resist wholesale changes to their model—and why corporate clients have declined to push forcefully for them to do so. Notwithstanding all of the changes outlined in Part II above, corporate lawyers often do interesting work, are highly paid, and build skills that allow them to do many other things if they leave the private practice of law. Corporate legal practice is a proven training ground for future leaders who have been forged in the fire of rigorous analysis and advocacy; complete dedication to clients; and a striving for clarity, accuracy, and perfection rarely found among other professionals.<sup>118</sup>

---

111. Cf. Leslie Picker, *A Standout Year for Deals, in Volume and Complexity*, N.Y. TIMES DEALBOOK (Jan. 3, 2016), <https://nyti.ms/1ZlWSez> (describing a growing deal market requiring increasingly creative and complex structuring).

112. See John Flood, *Institutional Bridging: How Large Law Firms Engage in Globalization*, 36 B.C. INT'L & COMP. L. REV. 1087, 1091 (2013) (explaining the necessity of the litigation expertise of U.S. firms in international legal disputes).

113. See Praveen Kosuri, *Beyond Gilson: The Art of Business Lawyering*, 19 LEWIS & CLARK L. REV. 463, 481 (2015) (“Premium service lies in being a trusted advisor to a client in the fullest sense of the word.”).

114. See, e.g., *Recruiting the Best and Brightest*, COVINGTON & BURLING LLP, <https://www.cov.com/en/diversity/recruiting-the-best-and-brightest> (last visited June 6, 2017) (citing a commitment to the “highest quality legal representation,” in addition to public service and diversity, as key recruiting criteria).

115. See GALANTER & PALAY, *supra* note 10, at 100-01 (arguing that large law firms employ a “promotion-to-partner tournament”).

116. See Wilkins & Gulati, *supra* note 10, at 1583, 1602 & n.80; Wilkins & Gulati, *supra* note 53, at 502.

117. See David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502, 1588-89 (1998).

118. Cf., e.g., Kevin H. Michels, *Our Hidden Value*, 53 U. LOUISVILLE L. REV. 1, 1, 3, 32 (2014).

And yet it is increasingly apparent that the status quo is unsustainable. Law school application rates are dropping even at top schools.<sup>119</sup> Law firms and other employers are pressuring law schools to graduate “practice-ready” lawyers, while bar associations are pushing to impose “experiential” learning requirements.<sup>120</sup> Moreover, as indicated above, the costs and benefits of legal education are increasingly transparent through the legal press, particularly when compared to other options often perceived by potential law students as providing a better, more accelerated path to impact in the world without the measurable mental health risks that legal education imposes.<sup>121</sup> Even former President Barack Obama, an HLS graduate and former law professor, has famously and openly questioned the value of the third year of law school.<sup>122</sup> And corporate clients, while continuing to push for a “partnering” model with their principal law firms—as opposed to pushing for the “death . . . of Big Law” as some seem to suggest<sup>123</sup>—are growing increasingly impatient with what they perceive as the failure of law firms to train lawyers who are capable of being the kind of broad-gauge business partners they seek.<sup>124</sup>

---

119. See Natalie Kitroeff, *The Best Law Schools Are Attracting Fewer Students*, BLOOMBERG (Jan. 26, 2016, 9:18 AM PST), <https://www.bloomberg.com/news/articles/2016-01-26/the-best-law-schools-are-attracting-fewer-students> (describing class size cuts at highly ranked law schools).

120. See Ed Finkel, *Training a New Breed of Lawyers*, A.B.A. FOR L. STUDENTS (Nov. 1, 2014), <http://abaforlawstudents.com/2014/11/01/training-new-breed-lawyers>.

121. See, e.g., Lawrence S. Krieger with Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 621, 624 (2015) (“[S]tudies revealed core changes in student values and motivations during law school, and a linguistic analysis of basic law training found consistent undermining effects on student values, interpersonal caring, and moral and ethical decisionmaking. . . . [T]he shared understanding of ‘success’ needs to be amended so that talented students and lawyers consistently avoid choices in the pursuit of material success that will undermine their happiness.” (footnotes omitted)); see also JESSIE AGATSTEIN ET AL., YALE LAW SCH. MENTAL HEALTH ALL., FALLING THROUGH THE CRACKS: A REPORT ON MENTAL HEALTH AT YALE LAW SCHOOL 14 (2014), [https://www.law.yale.edu/system/files/falling\\_through\\_the\\_cracks\\_120614.pdf](https://www.law.yale.edu/system/files/falling_through_the_cracks_120614.pdf) (finding that 70% of surveyed Yale Law School students reported experiencing mental health challenges during law school).

122. President Barack Obama, Remarks by the President in Town Hall at Binghamton University (Aug. 23, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/08/23/remarks-president-town-hall-binghamton-university> (“[L]aw schools would probably be wise to think about being two years instead of three years . . . . The third year [students would] be better off clerking or practicing in a firm, even if they weren’t getting paid that much.”).

123. See, e.g., Ribstein, *supra* note 1, at 771.

124. For an exploration of the partnering model, see Wilkins, *supra* note 70, at 2070, which describes a new “keiretsu” model between companies and their top law firms, in which the relationship becomes a “long-term strategic partnership[]” rather than a traditional “agent-principal relationship.” For a discussion of the growing frustration of many corporate clients over whether many of the lawyers in those firms have the incentives,  
*footnote continued on next page*

What is needed, therefore, is a new model of professional development that both preserves what is good about the current system and gives law schools and law firms an incentive to invest more in helping young lawyers develop broad and transferable professional skills and opportunity-creating networks that will allow them to flourish in this new global age of more for less.

### B. Meeting Resistance with Opportunity

We begin with law schools because that is where all lawyers' careers will have to begin, at least for the foreseeable future. We then move to law firms, which in the old Cravath System were supposed to bridge the gap between thinking like a lawyer and actually practicing law. Throughout, we offer reasons why corporate clients should be willing to partially—but only partially—underwrite efforts to overcome resistance to change in law schools and law firms in order to reap the benefits that would flow from a new collaborative model of professional development.

Market forces impact different law schools differently, and the leading law schools are most resistant—though not immune—to influence from the corporate bar. But when the corporate bar pressures law schools to change, the argument too often devolves into a dispute over how much “practical skills” training law schools should be providing to ensure that large law firms can bill the time of first-year associates.<sup>125</sup> Tenured academic faculty cannot be expected to have sympathy for law firm partners earning a million dollars per year or more. It is not surprising that partners' whining about lost profitability from “unprepared” junior associates falls on deaf ears.<sup>126</sup>

---

skills, and dispositions to partner effectively, see HEINEMAN, *supra* note 69, at 402-06, which sets out a “bill of particulars” of problems with law firms that fueled the development of the “inside counsel revolution.”

125. William Henderson has proposed changing the law school status quo through a five-element “competency-based curriculum” that better prepares students for legal practice. William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 465-66 (2013). He explains the five elements of the curriculum:

(1) [I]t identifies examples of professional excellence in both the new and old legal economies, (2) breaks them into discrete domains of knowledge, skills, and behaviors, identifying both overlaps and distinctive feature[s] of specific practice areas, (3) uses an iterative process of theory and data to determine the best way to sequence and teach these competencies, (4) measures the performance of the program as a whole against a baseline . . . , and (5) continuously improves the educational process through feedback loops.

*Id.*; see also LexisNexis, White Paper: Hiring Partners Reveal New Attorney Readiness for Real World Practice 6-8 (2015), [https://www.lexisnexis.com/documents/pdf/20150325064926\\_large.pdf](https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf).

126. See David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), <https://nyti.ms/uhQK6Q> (reporting that some lawyers criticize law schools for inadequate training).

Our proposed model for lawyer professional development is not about building particular skills or preparing law students to be more profitable out of the gate. Rather, at its heart, our model is about a shift in mindset away from believing that whether someone can “think like a lawyer”—and more specifically, think like a common law lawyer, as that is what is still predominantly taught—is the only law school outcome that matters. Indeed, in the context of the changing legal profession, the notion of what it means to “think like a lawyer” is also changing. Corporate clients are calling for their lawyers to have more business skills, project management skills, and ability to integrate the contributions of other professionals involved in clients’ matters.<sup>127</sup> Law schools have the responsibility to acknowledge these changing realities to adequately prepare students for their professional lives after graduation. So what can law schools do to bring about that kind of a mindset shift?

In their excellent book *Switch*, Dan and Chip Heath explore, as the subtitle states, “how to change . . . when change is hard.”<sup>128</sup> The key to change in their model is “motivat[ing] the elephant” (emotion) to go where the driver (intellect) would like to go and shaping the path to get there (making it simple and understandable by setting a vision and clearing obstacles).<sup>129</sup> To achieve the necessary mindset shift here, law school leaders need to be emotionally engaged and passionate about the need to evolve the traditional model of legal education.

*Defining and measuring impact.* One place to begin fostering that emotional energy would be challenging law school leaders to measure the impact of their students on the world over an extended period after graduation and to celebrate the many paths students take to make a positive difference. Analyzing which abilities and traits most highly correlate with graduates having significant influence on the world could lead to greater energy around creating an environment more conducive to the development of those abilities and traits. It could also lead to healthy discussion of significant gaps. While no faculty will likely ever agree fully on a set of ideal outcomes for its law school’s graduates, efforts should be made to articulate and direct resources toward at least a core set of common goals.<sup>130</sup>

---

127. See Wilkins, *supra* note 70, at 2088 (citing research documenting that corporate clients believe that understanding the company’s business is the key to excellent service).

128. CHIP HEATH & DAN HEATH, *SWITCH: HOW TO CHANGE THINGS WHEN CHANGE IS HARD* (2010) (formatting altered).

129. See *id.* at 17-18 (formatting altered).

130. See HEINEMAN ET AL., *supra* note 8, at 61 (arguing that law school faculty members “have an obligation to participate collaboratively in efforts to advance a broad yet common purpose for legal education, and then to respectfully use this vision to guide the critical  
*footnote continued on next page*

*Setting learning objectives.* Studying, agreeing upon, and directing resources toward the accomplishment of specific learning outcomes may have other important benefits, such as increasing a school's ability to fund research and other activities through donations from successful alumni who more directly attribute their success to their legal education.<sup>131</sup>

*Engaging students in institutional improvement.* Another factor that could help generate the emotional energy required for change is the way millennials approach learning and engage with institutions.<sup>132</sup> There is an opportunity to leverage their hunger for change and the optimistic creativity they can bring if engaged.<sup>133</sup> For centuries, Western education has been about the transfer of information from wise people with access to books and time to read and teach about them to students who listen and learn.<sup>134</sup> But in the digital age, the transfer of information is radically easier and asynchronous, so that education needs to pivot from the transfer of information to the use of information. Millennials' perceived impatience with the old ways of teaching likely derives from their correct perception that when they need to know something, they will easily be able to look it up.<sup>135</sup> In the competitive market for students, a law school could generate real buzz among applicants by creating a formal

---

decisions around hiring, promotion, curricular development, and resource allocation that in the end determine whether these aspirations will be achieved").

131. See Lolly Bowean, *Northwestern's Law School Gets \$100 Million Pritzker Gift, New Name*, CHI. TRIB. (Oct. 22, 2015, 4:23 PM), <http://www.chicagotribune.com/news/ct-northwestern-law-school-gift-met-1022-20151022-story.html> (noting that according to Northwestern University's law school, a \$100 million gift from J.B. and M.K. Pritzker was "the largest single donation to a law school in the country").
132. See Morley Winograd & Michael Hais, *Governance Studies at Brookings, How Millennials Could Upend Wall Street and Corporate America 2* (2014), [https://www.brookings.edu/wp-content/uploads/2016/06/Brookings\\_Winogradfinal.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/Brookings_Winogradfinal.pdf) ("By 2020, Millennials will comprise more than one of three adult Americans. It is estimated that by 2025 they will make up as much as 75 percent of the workforce.").
133. See Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1, 8 (2013) ("Millennials are confident, team oriented, conventional, achieving, and ambitious."); Melissa Maleske, *4 Ways Millennials Will Change Law Departments*, LAW360 (May 25, 2016, 11:11 PM EDT), <https://www.law360.com/articles/799828/4-ways-millennials-will-change-law-departments> (paraphrasing a general counsel as saying that "[m]aking millennials feel that they are part of something greater is key to retaining them and to motivating them to do their best work").
134. See Eric Mazur, *Balkanski Professor of Physics & Applied Physics, Harvard Univ., Assessment: The Silent Killer of Learning*, Dudley Herschbach Teacher/Scientist Lecture 13:10 (Oct. 29, 2013), <https://www.youtube.com/watch?v=CBzn9RAJG6Q>.
135. See Benfer & Shanahan, *supra* note 133, at 10 (citing research finding that millennials prefer "inquiry-based approaches to learning and are less willing simply to absorb what is put before them" (quoting Cassandra Barnes et al., *Teaching and Learning with the Net Generation*, INNOVATE 2 (May 1, 2007), <http://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1091&context=innovate>)).



initiative to engage students in developing new types of learning, ideas for which are presented below.<sup>136</sup>

We believe that a similar spirit should infuse proposals to change the law firm professional development model. As noted above, corporate law firms are now pressuring law schools to graduate more “practice-ready” lawyers by providing more training on technical legal skills.<sup>137</sup> Their justification is that clients are no longer as willing to subsidize newer lawyers’ on-the-job training, which negatively affects firm profitability.<sup>138</sup> As also noted, though, leading law school faculties are not very sympathetic to that concern.<sup>139</sup> It is also highly unlikely that law firms will soon change their hiring criteria to emphasize practical experience and skills over law school rank and students’ grades, so that lower-tier law schools that are developing more practice-ready graduates will not meaningfully disrupt firm hiring patterns.

So what will move the corporate bar toward a new model for lawyer development?

*Complementary competencies.* First, we perceive new types of client pressure now taking hold, beyond the question whether first-year associates add immediate value. As the role of general counsel is evolving and becoming much more complex and important within the C-suite, clients are placing greater emphasis on whether their outside counsel understand their businesses and have a broad range of “complementary competencies” to go along with their technical legal skill.<sup>140</sup>

Law firms are very slowly starting to react by providing minimal business skills training, with a small number of firms taking the lead.<sup>141</sup> What might

---

136. See *infra* Part IV.A.

137. See Carl J. Circo, *Teaching Transactional Skills in Partnership with the Bar*, 9 BERKELEY BUS. L.J. 187, 201 (2012).

138. See *id.* at 193, 200.

139. See *supra* notes 125-26 and accompanying text.

140. For a discussion of the increasing sophistication of general counsel, see HEINEMAN, *supra* note 69, at 3-8. For an analysis of the importance of “complementary competencies,” see HEINEMAN ET AL., *supra* note 8, at 13-14.

141. For example, one of the Authors, as Faculty Director for HLS Executive Education, works with the law firm Milbank, Tweed, Hadley & McCloy LLP on Milbank @ Harvard, a unique program designed to teach professional skills to the firm’s associates. Associates begin the program in their third or fourth year of practice by coming to HLS for a seven-day program focused on core business skills, leadership, and advanced legal topics. A typical cohort comprises thirty-five to forty associates from all of Milbank’s offices around the world. After they attend the initial Module I program, associates progress through three more six-day programs, returning every twelve to eighteen months to attend successive Modules II-IV. Each module builds on the one before it, with the final module serving as a capstone program for the associates, who are typically in their seventh year of practice by that time. For more information about the program, which is a collaboration between HLS’s Faculty Director of Executive

*footnote continued on next page*

help accelerate the pace of change is for law firms to consider how to work with clients jointly to develop their lawyers' business skills and networks to their mutual benefit.<sup>142</sup> It would similarly be helpful for firms and clients to collaborate to find new ways to measure client satisfaction with outcomes and how those outcomes specifically relate to new and better lawyer development initiatives.

*Collaboration as a vaccine against unraveling.* Another idea for overcoming resistance to a new model for lawyer development is to help law firm leaders understand the fragility of their organizations and what research suggests about how to minimize the risk of the kind of run-on-the-bank failures that can lead to the demise of a major institutional law firm.<sup>143</sup> Building trust and collaboration within a large, flat-structure professional firm is very difficult to do, especially when growth is in part, and often largely, inorganic by merger or acquisition of partners and practice groups over time.<sup>144</sup> What is the "glue" that will hold a law firm together when faced with existential challenges? We believe, for reasons set forth below, that a better lawyer development model can be a significant component of that glue.<sup>145</sup> If law firm leaders can come to recognize lawyer development as an opportunity to minimize the risk of firm collapse, they will be more open to longer-term investment in it.

*McKinsey as an example.* Pointing to the longer-term economic benefits of a new model for lawyer development for both law firms and their clients may also help overcome resistance from the corporate bar. McKinsey provides an excellent reference point for those benefits. McKinsey is, of course, arguably the world's leading consulting firm and one of the foremost professional services firms in the world.<sup>146</sup> McKinsey generates a tremendous amount of its

---

Education and Milbank's head of professional development, see MP McQueen, *Milbank Grooms Midlevel Associates for Success at Harvard*, AM. LAW. (Dec. 2, 2015), <http://www.americanlawyer.com/id=1202743849485/Milbank-Grooms-Midlevel-Associates-for-Success-at-Harvard>.

142. Again, the Milbank @ Harvard program pioneered by HLS Executive Education serves as one possible model. See, e.g., Christine Simmons, *Milbank's Unique Harvard-Run Client Training Program Catching On*, CORP. COUNS. (Nov. 3, 2016), <http://www.corpcounsel.com/id=1202771545294/Milbanks-Unique-HarvardRun-Client-Training-Program-Catching-On>.

143. See John Morley, *Why Law Firms Collapse 2-3* (Yale Law Sch. John M. Olin Ctr. for Studies in Law, Econ. & Pub. Policy, Research Paper No. 521, 2015) (arguing that the "partner run," or unraveling, explains why law firms tend to "collapse" with "extraordinary swiftness and finality" instead of going bankrupt).

144. See HEIDI K. GARDNER, SMART COLLABORATION: HOW PROFESSIONALS AND THEIR FIRMS SUCCEED BY BREAKING DOWN SILOS 149 (2016).

145. See *infra* Part IV.

146. See Susan Adams, *The Most Prestigious Consulting Firms in 2015*, FORBES (Sept. 3, 2015, 5:16 PM), <https://www.forbes.com/sites/susanadams/2015/09/03/the-most-prestigious-consulting-firms-2> (noting that in the fourteen years Vault has been running its  
*footnote continued on next page*

business through its alumni network because McKinsey alumni are intensely loyal to the firm, even though its up-or-out process for associates is even stricter than that of most law firms.<sup>147</sup> Despite these up-or-out policies, McKinsey is one of the most sought-after employers among top business school graduates, who know that the training they will receive and the networks to which they will gain access will benefit them throughout their careers.<sup>148</sup>

*Professionals for professional development.* Finally, we see hope in the increasing transparency of the market for talent, which has been accelerating the clock speed of innovation within law firms in their approach to talent. Organizations like the PDC exist to allow law firm talent development leaders to trade ideas and approaches, and they do so quite openly in the knowledge that execution at each firm will be so different that the exchange of ideas does not threaten a firm's competitive position.<sup>149</sup> As Dobbin and Kalev's research on diversity underscores, the most important step an organization can take to drive change is to put a dedicated professional in charge of making the change happen.<sup>150</sup>

---

survey ranking consulting firms' prestige, McKinsey has consistently been ranked number one). For a history of McKinsey, see generally CHRISTOPHER D. MCKENNA, *THE WORLD'S NEWEST PROFESSION: MANAGEMENT CONSULTING IN THE TWENTIETH CENTURY* (2006). As McKenna relates, McKinsey's visionary leader Marvin Bower, an HLS and Harvard Business School (HBS) graduate and former attorney at Jones Day, expressly modeled the firm on the Cravath System. *Id.* at 206; Douglas Martin, *Marvin Bower, 99: Built McKinsey & Co.*, N.Y. TIMES (Jan. 24, 2003), <https://nyti.ms/2q3m9zP>. As we indicate in Part IV.B.2 below, McKinsey's approach to professional development has evolved far beyond these traditional roots.

147. See David Burkus, *Why McKinsey & Company's Alumni Network Is Crucial to Its Success*, FORBES (July 5, 2016, 2:30 PM), <http://www.forbes.com/sites/davidburkus/2016/07/05/why-mckinsey-companys-alumni-network-is-crucial-to-its-success>.

148. See Grace Wong, *15 Top MBA Employers*, CNN MONEY, <http://money.cnn.com/galleries/2012/pf/jobs/1205/gallery.top-MBA-employers/2.html> (last updated June 5, 2012).

149. The PDC includes over five hundred talent development leaders from law firms across the United States and Canada, as well as some from law schools and corporate legal departments. See *Happy 25th Anniversary, PDC*, PROF. DEV. CONSORTIUM (July 6, 2015), <http://www.pdclegal.org/blog/happy-25th-anniversary-pdc>. As one example of how the PDC community accelerates change, six years ago one of the Authors proposed a session on mindfulness for lawyers for an annual PDC meeting, and the committee that chooses proposals rejected it with the verbal comment "not in a million years." Yet with the dialogue started, leaders within the PDC began to experiment with innovative mindfulness training pilot programs at firms, and mindfulness is now regularly featured as a conference topic. See *2016 PDC Summer Conference Materials*, PROF. DEV. CONSORTIUM, <http://www.pdclegal.org/2016-pdc-summer-conference-materials> (last visited June 6, 2017) (featuring mindfulness and meditation in the conference agenda).

150. See Frank Dobbin et al., *You Can't Always Get What You Need: Organizational Determinants of Diversity Programs*, 76 AM. SOC. REV. 386, 405-06 (2011) ("[I]nternal advocacy [for diversity] can be effective in the absence of strong industry norms. Firms

*footnote continued on next page*

Needless to say, we do not mean to suggest that, either singly or in combination, these arguments will overcome the resistance of every law school or law firm that still clings to the illusion that the traditional model of professional development is working to prepare lawyers for the demands of twenty-first-century corporate practice. We are confident, however, that such arguments will be persuasive to some law schools and law firms—provided there is an alternative model that will plausibly meet the developmental needs of young lawyers without completely disrupting the law school’s or law firm’s existing business model. In the next Part, we offer some preliminary ideas about what such a model might look like.

#### **IV. Toward a New Model of Professional Development**

Our new model begins with this simple truth: the lawyers of the future will need to be technically capable; professionally nimble; and able to use broad, interdisciplinary networks to solve problems. Law schools, law firms, and corporate legal departments therefore have a mutual interest in collaborating in a deliberate and focused effort to redefine lawyer development across the arc of legal careers.<sup>151</sup> To be effective, this collaboration must concentrate on helping lawyers build three critical capacities: technical legal skills and expertise, professional skills that are adaptable to any professional context, and opportunity-generating networks of relationships. These need to be developed at all stages of a legal career, from law school to retirement—and even beyond, given how baby boomer lawyers continue to want to give back to their profession even after retirement from their corporate legal jobs.

---

appear to listen to the preferences of important managerial constituencies . . .”). See generally Frank Dobbin & Alexandra Kalev, *Why Diversity Programs Fail: And What Works Better*, HARV. BUS. REV. (July-Aug. 2016), <https://hbr.org/2016/07/why-diversity-programs-fail> (arguing that heavy-handed diversity strategies can retrench biases and that workplaces should instead use engagement, contact, and social accountability to promote positive outcomes).

151. See HEINEMAN ET AL., *supra* note 8, at 65-66 (arguing for such a collaboration).

**Figure 1**



In a sense, this model is directed toward creating and maximizing lawyers' opportunities for impact in the world however they choose to define "success." If done right:

- Developing specialized legal expertise and technical lawyering skills builds credibility with clients and other stakeholders;
- Developing broad professional skills, especially around leadership of people and teams, creates more opportunity to apply and build upon technical legal skills and opens doors to higher levels of impact; and
- Developing rich internal and external networks creates opportunities for lawyers to leverage their technical and professional skills in new, interdisciplinary ways, especially as leaders and connectors of ideas, people, and possibilities.

In our proposed shared model of responsibility for lawyer development, the building of technical legal skills, professional skills, and networks begins in law school and continues across the arc of a lawyer's career. To build this model, however, law schools, law firms, and companies must be willing to

invest the resources to build the links that are essential to facilitate the movement from development to opportunity to further development. Without this connection, development becomes a zero-sum game that some will inevitably win at the expense of others. The current sink-or-swim model creates a false sense of meritocracy and entitlement for those who “win” and leaves so many other very worthy and highly capable people to dog-paddle back to shore.<sup>152</sup> The current model also perpetuates law school hazing<sup>153</sup> and negatively impacts and unfairly stigmatizes those who do not perform well on the very narrow range of competencies measured by law school exams.<sup>154</sup> The depression cycle in many cases begins during the first year and worsens over the course of law school.<sup>155</sup> This is the antithesis of education and will eventually turn the potential for a virtuous circle into the reality of a vicious race to the bottom. Students will not gain the skills they need to succeed in their careers, and law schools, law firms, and companies will find themselves with a declining number of talented lawyers who are interested in building careers in these organizations.

- 
152. See Wilkins & Gulati, *supra* note 10, at 1586-87 (arguing that the real rules of the tournament of lawyers are quite different from those implied by the “tournament” analogy and that these rules undermine the standard claim that those who win the tournament of lawyers are by definition the best); see also Wilkins & Gulati, *supra* note 53, at 537-38, 542 (arguing that the failure to gain access to meaningful training and development opportunities in law firms disproportionately disadvantages black lawyers).
153. The tradition of professors being “tough” on students when cold calling in the Socratic method was developed long ago when students were mostly young white men from similar backgrounds whose futures were mostly secure and for whom being ridiculed in class posed little actual risk and likely felt akin to fraternity hazing. See Morrison Torrey, *You Call That Education?*, 19 WIS. WOMEN’S L.J. 93, 104 (2004) (analogizing the Socratic method to the “bizarre male bonding experience of fraternity/military hazing”). The stakes are much higher in today’s very diverse law school classes, where students struggle to feel included and able to speak freely when questioning fundamental assumptions. Analytical rigor is important to learn, as is the ability to defend an unorthodox view. The typical first-year law school classroom, though, is no longer well suited to achieve those goals. Cf. DOUGLAS LITOWITZ, *THE DESTRUCTION OF YOUNG LAWYERS: BEYOND ONE L* 29 (2006) (“[M]ost students treat law school as a hazing ritual to be endured, a bizarre rite of passage to be suffered as the price for getting the degree.”).
154. Notably, Shultz and Zedeck found that law school grades and high LSAT scores did not correlate strongly with success as a practicing attorney. See Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 621, 642 tbl.4 (2011).
155. See Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL’Y L. & ETHICS 357, 358-60 (2009) (suggesting that fierce competition and an emphasis on achievement and linear thinking contribute to student unhappiness); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 875 (1999).

But building these connections will take sustained work. That work must begin in law schools but with the input and collaboration of professionals. And it must continue into the workplace, with the input and collaboration of academics who can help lawyers become lifelong learners.

A. Law School Realignment: From Teaching Students to Think Like  
(Common Law) Lawyers to Developing the Leaders of Tomorrow

Realigning legal education presupposes a common goal. Yet we highly doubt that if surveyed, a law school's faculty members would agree upon a simple mission statement for their law school. Law school deans face the nearly impossible task of balancing faculty members' often largely conflicting views as to the purposes of their allegedly common enterprise. Accepting and living with conflicting goals and without a unifying mission may be necessary to preserve academic freedom and flexibility, but it diminishes the concept of lawyer development as one of the most important reasons why law schools exist.

Thus, we propose that as a first step, law schools should explicitly elevate and acknowledge lawyer development as one of the few existential purposes of a law school.<sup>156</sup> This does not have to be controversial. No one questions that medical schools should develop excellent doctors or that business schools should develop highly capable executives and entrepreneurs. Nor do such expectations hinder medical schools and business schools from also producing excellent research and scholarship and playing an important role in the pantheon of the academy. Although there certainly are differences among law, medicine, and business,<sup>157</sup> the fact that the schools dedicated to the latter two professions have undergone far more extensive changes than have law schools in the way they prepare new graduates to enter their chosen field should be a

---

156. Some law schools are already moving in this direction. For example, one of the Authors served on an advisory committee at George Washington University Law School that brought together private and public sector professional development leaders to work with faculty and the school's full-time director of professional development to redesign the law school's first-year experience. One of the primary results of this process was an initiative under the school's Inns of Court program to provide first-year students with external mentors and with career and professional skills-related training and programming. See *Career Path Profile: Susan Fine, Director of Professional Development at George Washington Law School*, A.B.A. LEGAL CAREER CENT. (Nov. 17, 2015), <http://www.abalcc.org/2015/11/17/career-path-profile-susan-fine-director-of-professional-development-at-george-washington-law-school>; *Inns of Court*, GW LAW, <https://www.law.gwu.edu/inns-of-court> (last visited June 6, 2017) (describing the Inns of Court program).

157. For example, as one of the Authors has argued, the conditions that might allow for a three-year M.D. are not the same as what would be required to have a two-year J.D.—although there is much we can learn from the debate in the medical field about these programs. See HEINEMAN ET AL., *supra* note 8, at 57-58.

strong signal to legal educators that we are not doing all we should be doing to prepare our students for the complex challenges they are likely to face as professionals.<sup>158</sup>

With lawyer development as a shared objective, law schools should adapt the lawyer development triangle shown in Figure 1 above as the new model framework around which they accomplish that goal. This would build upon law schools' traditional strengths (emphasizing the learning of legal doctrine, analytical reasoning, and advocacy) and create and maximize opportunities for students by substantially enhancing their learning of leadership and other professional skills, while helping them develop rich opportunity-generating networks as well as the skills and knowledge needed to best leverage those networks. Our focus in this Subpart is thus to suggest how law schools can build upon their traditional strengths to help students develop the leadership skills, professional skills, and rich networks that law schools have traditionally failed to teach.

Before proceeding, however, it is important to emphasize one final caveat. In presenting these proposals, we bracket the question whether the reforms we seek should be made a mandatory part of the law school curriculum or instead offered as electives. As anyone who has worked on curricular reform will attest, the attempt to introduce new mandatory courses into the law school curriculum—or to mandate how existing courses should be taught—threatens to derail any discussion about changing legal education into endless (and endlessly contentious) discussions about academic freedom and professional privilege. We therefore leave it to those who read our proposals to decide whether attempting to mandate the increased emphasis on professional skills and network development we describe is worth the candle in their own institutions or whether it is better to introduce these changes through elective offerings designed to build a “coalition of the willing” for change. From our own experience, we believe that students are hungry for the kind of instruction we propose and that professionals are eager to help supply it. But deans and faculty must be willing to allow experimentation on these issues to flower and to provide the necessary financial resources and encouragement that will be required for these new initiatives to succeed. Doing so is also part of the ethical obligation faculty and administrators owe to the legal profession and to their institutions to ensure that law school graduates have the skills and dispositions to be competent and ethical practitioners and to build satisfying

---

158. See Benjamin H. Barton, *A Tale of Two Case Methods*, 75 TENN. L. REV. 233, 236-38 (2008); Rebecca C. Flanagan, *Do Med Schools Do It Better?: Improving Law School Admissions by Adopting a Medical School Admissions Model*, 53 DUQ. L. REV. 75, 90-92 (2015); Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 603-06 (2007).



and successful careers in the new global age of more for less of which they are part.<sup>159</sup>

### 1. Leadership and professional skills

The most critical component of the new model of lawyer development is the building of leadership and other important professional skills that can be applied in any professional, public sector, or even academic career setting. While the traditional law school environment currently provides opportunities to build such skills, it does so much more by chance than by design and without the consistency of instructional quality that law schools demand for the teaching of legal doctrine.

A helpful way to define and then design new ways to build students' leadership and other professional skills is to think about these skills as helping students either to have impact working *with* others or to have impact working *for* others. Building skills relating to working with others requires coordinated, experiential learning approaches. Building skills relating to working for others can be accomplished through more traditional types of learning approaches. Here is a framework showing this dichotomy:

- *Impact working with others requires a combination of the following skills:* leadership of people and teams, developing and implementing strategy, working in teams, cross-cultural competence and developing a global mindset, emotional intelligence and empathy, leveraging others' strengths, and understanding one's own strengths and working style.
- *Impact working for others requires different—but complementary—skills:* negotiating effectively; legal problem-solving; core business skills and knowledge (such as accounting, finance, and valuation); basic fluency in technology skills like coding; and skills and capabilities relating to professional presentation, design thinking, resilience, and mindfulness.

There are a number of measures that law schools could implement to improve the ability of students to work *with* others effectively. Among the most promising are the following measures:

*Building skills that enhance students' ability to have impact with others.* Because the complex problems lawyers will be asked to solve in any professional career setting will almost certainly require them to fill leadership roles and collaborate effectively, law schools should focus much more attention on

---

159. See HEINEMAN ET AL., *supra* note 8, at 60-61 (arguing that law professors are fundamentally members of the legal profession with obligations to the profession's broad public goals and that they also have obligations to their institutions to support efforts to better prepare students to enter the profession).

helping students build skills that enhance these and other related skills. Specifically, law schools should consider adopting a variety of new approaches:

- *Teaching in teams, through team-based courses and projects.* Law schools should encourage faculty to have at least one-third of law school courses, assignments, and assessments be team-based and should work with faculty members to help them adapt innovative new ways to teach team-based courses.<sup>160</sup>
- *Teaching about teams, and applying related tools and technologies.* As part of creating more team-based courses, law schools should also teach students how to collaborate and work more effectively in teams. Such instruction should be based on related research and the application of team-based tools and technologies that strengthen team performance and can be applied by the students later in their careers.<sup>161</sup> Examples of such tools include team launch tools, team feedback and check-in tools, and tools that help teams reflect at the end of their projects.
- *Building cross-cultural competence.* Law schools should help students develop cross-cultural competence by introducing related research and

---

160. At HLS, Jon Hanson has redefined the first-year tort-law pedagogy by emphasizing student engagement with systemic problems and social injustice in his “Frontier Torts” section, in which students work in teams. See Dick Dahl, *Hanson: On the Frontier of Teaching Torts*, HARV. L. TODAY (Feb. 12, 2014), <http://today.law.harvard.edu/hanson-on-the-frontier-of-teaching-torts>. Others have recommended incorporating design principles into the law school pedagogy model. See generally MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* (2009) (promoting the use of design principles in creating law school curricula that depart from traditional case method pedagogy).

161. For example, in our winter term Problem Solving Workshop at Harvard, which is mandatory for all first-year students, we require students to work in preassigned, five-student teams and complete all assignments together. See *Course Catalog: Problem Solving Workshop D*, HARV. L. SCH., <http://hls.harvard.edu/academics/curriculum/catalog/default.aspx?o=69509> (last visited June 6, 2017). We use team launch and feedback tools drawn from organizations like McKinsey, which has pioneered such tools for teams of diverse professionals, to teach students how to set collective goals and team norms, discuss and leverage each other’s strengths, and resolve and overcome individual and team conflicts. See Lisa Brem, *The Problem Solving Workshop: A Video Introduction*, HARV. L. SCH.: CASE STUD. BLOG (July 22, 2014), <https://blogs.harvard.edu/hlscasestudies/2014/07/22/the-problem-solving-workshop-a-video-introduction>. Designed by one of the Authors, who spent six years leading professional development for McKinsey’s D.C. office, the team launch tool helps student teams determine their mutual goals, share background information about their individual strengths and working styles, and plan how they will approach their assignments. The team feedback tools help team members reflect on what is working well and what they should focus on improving as they progress through the course. The critical takeaway is that paying attention to team process is equally important to paying attention to team output and results. We also introduce a Myers-Briggs Type Indicator (MBTI) assessment tool available from TypeCoach to help students discuss differences in working styles. See TYPECOACH, <https://type-coach.com> (last visited June 6, 2017).

exercises as part of law school orientation and in conjunction with team-based courses. Needless to say, there are many ways to accomplish this goal. At HLS, we have experimented with incorporating this kind of training into the mandatory Problem Solving Workshop for first-year students.<sup>162</sup> The jury is still out about the effectiveness of this particular intervention—and indeed of “diversity training” generally.<sup>163</sup> Given the critical role of cross-cultural competence in the increasingly global world in which future law graduates will live and work, however, it is imperative that law schools continue to search for ways to build these skills.<sup>164</sup>

- *Strengths assessment and development.* Law schools should develop assessments and exercises to help students both understand their particular strengths and also invest in those strengths more deliberately, not as an optional career services department offering but as a core part of team-based course offerings.<sup>165</sup>
- *Leadership learning and practice.* The greatest potential multiplier of student opportunities and career impact is to help students understand and build their leadership capabilities. To do so, law schools could, for example, introduce students to learning and research about leadership and develop “field” leadership experiences (similar to those now required at business schools<sup>166</sup>) in which students are challenged to lead

---

162. For example, through Dean of Students Marcia Sells, HLS has recently partnered with Verna Myers Consulting Group to conduct cross-cultural competence exercises and learning sessions with all first-year law students as part of orientation and is now piloting advanced learning sessions within the mandatory Problem Solving Workshop for 1Ls. See Claire E. Parker, *Law School Aims to Level Playing Field with New Orientation*, HARV. CRIMSON (Sept. 16, 2016), <http://www.thecrimson.com/article/2016/9/16/hls-1L-orientation-changes>. Tools used in these exercises require students to share and disclose their experiences with diversity and help students learn how to more effectively communicate across differences. See *id.*

163. See Dobbin & Kalev, *supra* note 150 (arguing that traditional diversity training in the corporate context generally does not improve minority hiring or promotion and may adversely affect these goals). Whether these results apply to law schools or law firms remains to be seen.

164. See generally David B. Wilkins, *Why Global Law Firms Should Care About Diversity: Five Lessons from the American Experience*, 2 EUR. J.L. REFORM 415 (2000) (arguing that cross-cultural fluency is critical for global law firms).

165. Examples of this include instruments like Gallup’s StrengthsFinder assessment, MBTI tools like TypeCoach, and team learning exercises in which students discuss and acknowledge strengths and work together in teams to leverage each other’s strengths. See GALLUP STRENGTHS CTR., <https://www.gallupstrengthscenter.com> (last visited June 6, 2017); TYPECOACH, *supra* note 161. These tools may help students find initial postgraduation opportunities and networks that are well aligned with the strengths and interests in which they are most likely to succeed.

166. For example, first-year students at HBS must participate in the Field Immersion Experiences for Leadership Development program, which melds leadership develop-

*footnote continued on next page*

teams and receive related feedback and coaching. Schools could also introduce students to principles of strategy and engage in group strategic-thinking exercises. Successful completion of a field leadership experience could be recognized with course credit or an additional certification. To structure such an effort, law schools could partner with law firms and their professional development teams and could engage alumni; clinical staff lawyers; and volunteer lawyers from legal service providers, the government, and other public sector organizations, who could help generate and supervise field teams.

Law schools seeking to enhance student leadership could also engage in more scholarship relating to lawyers as leaders and, with student participation, create workshops, panels, and lectures outside the classroom that incorporate the knowledge and experience of prominent lawyer-leaders and alumni. Law schools should publicly celebrate the leadership roles prominent alumni have played in the profession and help students understand the career paths of such alumni as well as how they developed the specific skill sets and experiences that contributed to their success.<sup>167</sup>

Law schools should also consider taking concrete steps to help law students translate these critical leadership and professional skills to improve their ability to deliver value *for* the clients and other constituents for whom they work.

*Building skills that enhance students' ability to have impact for others.* To varying degrees, law schools are already helping students develop skills that enhance their ability to influence others. The core skill of “thinking like a lawyer” remains critical. Our model goes further, however, by requiring law schools to explicitly delineate and then deliberately design ways to teach specific, client-impact-enhancing skills. We offer below some examples of where law schools should focus such efforts:

---

ment workshops with a practical product or service design problem. *See The Field Method: Bridging the Knowing-Doing Gap*, HARV. BUS. SCH., <http://www.hbs.edu/mba/academic-experience/Pages/the-field-method.aspx> (last visited June 6, 2017). The year-long program first lays the foundation through interactive workshops focused on self-reflection and team development and culminates with a final project for which each team of students must use human-centered design principles to solve a customer problem for a global partner organization. *See id.*

167. As one example, some law schools display current and former faculty member portraits prominently in classroom building hallways. *See, e.g.,* Lorin Granger, *Harvard Law School's Faculty Portraits: A Backdrop for Daily Life at HLS*, HARV. L. TODAY (Apr. 24, 2015), <https://today.law.harvard.edu/a-sense-of-continuity-harvard-law-schools-faculty-portraits>. We suggest that law schools consider also displaying the photo portraits of alumni lawyer-leaders, captioned to describe their paths to success and to inspire students about the many career paths they might take to impact the world. Such alumni portraits could be rotated among alumni classes each year, chosen by class leaders, to ensure that they represent and celebrate a diverse group.

- *Contextual problem-solving*: Law students should be challenged like business and medical students to solve problems contextually. Medical education involves continuous observation and hands-on training with real patients. Business schools provide “field” experiences and use a case method that most often describes a challenging, real-world, fact-based situation and requires students to engage and apply learned theory to solve problems encountered in the case.<sup>168</sup> For the past several years, HLS’s Problem Solving Workshop has provided such contextual learning for all first-year HLS students. The workshop involves cases and exercises that place students in the roles of lawyers who need to figure out how to help a client whose issue is not neatly defined as a “property” issue or a “torts” issue. Students learn the basic problem-solving approach lawyers apply through interviewing clients, thinking broadly about client goals and potential positive outcomes, applying facts to law, and designing a legal strategy.<sup>169</sup> Ideally, such cases would also be incorporated directly into core curriculum courses rather than isolated in special workshops, so that students would be periodically challenged to apply the legal doctrine they are learning in their traditional courses to real-world situations.
- *Negotiation skills*: While many law students learn some negotiation skills in law school, this training should be available to every student who wants it—and from our experience that is almost every student—and should be incorporated into cases and exercises interwoven with core doctrinal courses.
- *Presentation skills*: The traditional lawyer development model at most law schools teaches professional presentation skills through cold calls in class and by providing optional opportunities for students to speak or present publicly (through moot court or student activities, for example). To maximize opportunities for students across their careers, law schools should create multiple opportunities for professional presentation experiences that provide students with practice and feedback to substantially enhance their own authentic presentation styles. Such experiences could be tailored to specific exercises for students entering particular careers (for example, courtroom presentations for litigators, policy presentations for those headed to government service, and business or board presentations for those headed toward corporate and business law or business generally).

---

168. See Barton, *supra* note 158, at 235-37 (describing the business school case method); Rakoff & Minow, *supra* note 158, at 603-04 (describing the same).

169. HLS’s Problem Solving Workshop cases are available online with teaching notes. See *Problem Solving*, HARV. L. SCH.: CASE STUD., <http://casestudies.law.harvard.edu/problem-solving> (last visited June 6, 2017).

- *Basic business skills:* As we have noted, lawyers in the corporate bar are challenged to solve increasingly complex problems beyond the narrow boundaries of legal rights and obligations.<sup>170</sup> Often, these problems require basic fluency in core business topics like accounting, valuation, finance, and strategy. Law schools should collaborate with business schools to create case-based learning and experiential exercises through which law students would develop an appreciation for and basic fluency in these core business principles.<sup>171</sup> Not only will these skills help future lawyers provide better service to their corporate clients but also, in a world in which government and public interest lawyers are also required to solve complex problems at the intersection of law and business, developing business fluency will make lawyers who begin their careers in large law firms better able to transition and create value in these settings as well.
- *Technology skills:* Law schools should engage in interdisciplinary efforts to help law students understand—and for some, learn to practice—basic coding and related technological skills. The purpose of building these skills is not necessarily to develop the next generation of expert programmers. Rather, the goal is to help law students develop basic familiarity with the methods, problem-solving approaches, and tools that are being applied to solve complex problems outside the legal context. This will help maximize law students’ opportunities to collaborate across professional boundaries to find innovative approaches to legal problems.
- *Design thinking:* Law schools should provide all students with the opportunity to participate in exercises to teach the core principles of human-centered design. Through such experiences, law students will develop enhanced abilities to empathize with clients and think creatively using tools and processes that will help them succeed in any professional setting. Perhaps most importantly, law students will learn

---

170. See *supra* notes 111-13 and accompanying text.

171. For example, for the past two years, HLS has partnered with HBS to offer HLS students the opportunity to take the online HBX CORE program at a highly subsidized rate to develop a foundational understanding of core business skills. See *Harvard Law Students Will Be Offered ‘CORE’ Business Fundamentals Through HBS Program*, HARV. L. TODAY (Mar. 21, 2016), <https://today.law.harvard.edu/harvard-law-students-will-be-offered-the-core-of-business-fundamentals-through-hbs-program>. One of the Authors has confirmed with the Office of the Dean of HLS that the program has received very favorable comments from students and has been oversubscribed each year, indicating that many law students are highly interested in learning these skills. See *id.* (“In 2015, 89% of HLS survey respondents indicated that CORE increased their confidence in discussing business topics.”).

how to prototype, experiment, and iterate when solving problems rather than expecting their first efforts to be perfect.<sup>172</sup>

- *Resilience and mindfulness*: Since the brain is a lawyer's best problem-solving tool, law students should be required to understand its functioning and what neuroscience research informs us about how people can develop resilience, optimism, and creativity. All law students should also be trained in simple mindfulness practices that have been positively correlated with improved focus, decisionmaking, and physical health.<sup>173</sup>

If law schools take these steps to dramatically improve their teaching of leadership and professional skills, they will provide a much firmer foundation for students to have impact in the world doing whatever they choose to do.

## 2. Enhancing student networks

In concert with continued teaching of legal doctrine and related technical skills and a new focus on leadership and professional skills, law schools should treat as equally important the third component of the new model for lawyer development we propose. This component concerns networks and the power

---

172. Legal education and practice have both traditionally placed such a high burden on out-of-the-gate perfection and attention to detail that we fear that lawyer creativity is negatively impacted. Law students who are also prepared to prototype, fail, and try again are more likely to generate creative solutions to complex problems and be seen by other professionals as helpful collaborators rather than as nit-picking, hole-poking, narrow-thinking cynics. We exaggerate, of course, but we believe there is some truth in that perception. In our new HLS course "Innovation in Legal Education and Practice," we are teaching design thinking principles and having students work in small teams to generate innovative proposals to change legal education or practice. See *Course Catalog: Innovation in Legal Education and Practice*, HARV. L. SCH., <http://hls.harvard.edu/academics/curriculum/catalog/default.aspx?o=69508> (last visited June 6, 2017). The course has been receiving rave reviews from students, and we believe this is because it is tapping into latent creativity that traditional legal education does not fully engage. The inspiration for this course is the innovative Law Without Walls (LWOW) program, in which one of the Authors has closely participated since it began in January 2011. Founded by Michele DeStefano and hosted through the University of Miami Law School, where she teaches, LWOW challenges students from thirty law and business schools from fifteen countries to work in small teams to design and pitch creative solutions to a wide variety of legal/business, compliance/ethics, legal practice, and social justice issues. For a more detailed description and related materials, see *All About LWOW, LAW WITHOUT WALLS*, <http://lawwithoutwalls.org/about-lwow> (last visited June 6, 2017).

173. See David S. Ludwig & Jon Kabat-Zinn, *Mindfulness in Medicine*, 300 JAMA 1350, 1351 (2008) (linking mindfulness training with beneficial effects on "acceptance of pain, severity of general medical symptoms, physical functioning, and ability to cope with daily life"); cf. Martin E.P. Seligman et al., *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33, 35, 50 (2001) (offering positive psychology and greater cooperation as solutions to lawyer discontent).

they have to create and maximize opportunities for people. There is an enormous opportunity for law schools to invest in helping students build more effective networks and understand how to leverage them across the arc of their careers. The traditional legal education model too often fosters an unhealthy spirit of competition among classmates that impedes the building of effective networks. Worse, unlike business schools, law schools do little to signal to their students that their classmates are one of the most important resources the schools provide, even though the schools work so hard to select and admit promising, talented students from all over the world. The spirit of student camaraderie may vary somewhat from law school to law school, but all law schools should explicitly help students build and leverage their networks through proactive measures that tie network development directly to the schools' mission of lawyer development. Many such measures are imaginable:

*Network theory exposure.* Law schools could teach first-year students about network theory.<sup>174</sup> This could be done as part of orientation, with the introduction of network-building exercises and presentations featuring speakers and alumni whose stories of leveraging networks can inspire students to think beyond whether their grades will qualify them for law review.

*Team-based instruction that emphasizes network development.* To help students build deeper, trust-based relationships that endure beyond graduation, law schools should introduce significantly more team-based instruction and experiences (including within clinics and workshops), together with team launch,<sup>175</sup> feedback, and reflection tools. The experience of working together on substantive issues and learning to appreciate each other's strengths will enhance the likelihood that students develop more robust networks among their peers.

*Collaborative technology.* Law schools should develop technology solutions to help students network with each other, faculty, and alumni more effectively

---

174. For example, students should learn about the important research done by Rob Cross on what distinguishes the networks of high-performing people. See, e.g., Rob Cross & Robert J. Thomas, *How Top Talent Uses Networks and Where Rising Stars Get Trapped*, 37 ORGANIZATIONAL DYNAMICS 165, 166 (2008) (emphasizing that high performers' networks demonstrate similarities in structural, relational, and behavioral dimensions). According to Cross and Thomas, high performers "position themselves at key points within . . . network[s]," invest in expertise-building relationships, and "engage in behaviors that lead to high-quality relationships" with other individuals in their networks. *Id.*

175. See Carolyn O'Hara, *What New Team Leaders Should Do First*, HARV. BUS. REV. (Sept. 11, 2014), <https://hbr.org/2014/09/what-new-team-leaders-should-do-first> (emphasizing the importance of building rapport and sharing goals among team members at the outset of a team project).



and to map the growth of their personal and professional networks during law school and thereafter.<sup>176</sup>

All such efforts should be directed at encouraging students to appreciate the power of networks to create and maximize their opportunities while at law school and throughout their careers. Law schools, however, can only be the beginning of this journey of discovery. Notwithstanding all of the changes to legal practice discussed in Part II above, the fundamental proposition underlying the Cravath System—that young lawyers must ultimately learn the fundamental skills and dispositions that they need to *be* lawyers on the job—remains as true in the early decades of the twenty-first century as it was in the early decades of the twentieth. This is why we continue to speak about the “practice of law,” a phrase that implies that lawyers must be given the opportunity to practice and develop the skills they need to be competent, satisfied, and ethical practitioners. The difference today is that we now realize that the “skills” young lawyers need to be able to practice and develop go far beyond the technical legal skills law firms have traditionally emphasized and include the professional and network-building competencies described above. To give associates a realistic opportunity to practice these critical skills, both law firms and their corporate clients must change their traditional approaches to professional development.

---

176. For example, HBS students and faculty use a terrific “classcard” database system and related mobile app as a directory and network-building tool. See *IT Tools in Support of HBS Students—Check!*, HBS TIMES (Feb. 16, 2014), <https://hbstimes.com/2014/02/16/it-tools-in-support-of-hbs-students-check/> (“Classcards are an invaluable source of information on your classmates’ careers and lives—consider them an internal HBS LinkedIn sy[s]tem . . .”). As confirmed by one of the Authors in conversations with several joint HBS/HLS students, HBS also (i) creates mandatory “study groups” among first-year students that meet before class every day to prepare cases and (ii) has developed network-enhancing gatherings prior to graduation where students connect with others who are going to be working in particular geographic areas or industries. See Patrick Mullane, *The Best Little Secret of the Harvard MBA*, HARV. BUS. SCH.: MBA VOICES BLOG (Dec. 21, 2016), <http://www.hbs.edu/mba/blog/post/the-best-little-secret-of-the-harvard-mba> (describing the confidence-building breakfast review sessions that help students prepare for in-class discussion of assigned cases). In discussions with joint-degree students who spent their first year at HBS and then started their first year at HLS, we have noted students’ shock and surprise that the law school does not emphasize or meaningfully support the building of strong networks among peers. Halfway through the first semester in a ninety-student business school section, most students have had lunch or coffee with all of their sectionmates, for example. The model of instruction may also play a role. One of our HLS colleagues who regularly coteaches courses at HBS with many cross-registered law students in his classes reports that on numerous occasions business school students have asked him, “Why are the law students so mean in class?” The courtesy of building upon others’ ideas that business schools actively promote culturally supports the building of long-term relationships.

B. From Education to Work—Without Losing the Focus on Lifelong Learning

For far too long, law firms and in-house legal departments have been locked in a cycle of finger-pointing in which each side blames the fact that young lawyers lack the requisite skills for contemporary law practice either on each other or on law schools. Thus, law firms blame their inability to train associates on shortsighted clients who are no longer willing to pay to develop young lawyers, while clients claim that law firms only want to drown junior lawyers in an endless tide of unnecessary work that leaves them unprepared to provide meaningful value to clients or to make the transition to the broader responsibilities of in-house positions. And both law firms and clients blame law schools for failing to provide “practice-ready” graduates who are ready to hit the ground running on day one. As should be clear from what we have said so far, there is undoubtedly some truth in all of these critiques. But this endless blame game does little to fix what everyone concedes has become a serious problem. Instead, law firms and clients need to begin to collaborate with each other, and with law schools, to create a new professional development model based on the three critical components we have proposed. We offer here specific suggestions for how law firms and in-house legal departments can invest to develop this new model.

1. Increasing investment in talent development

As noted above, the overall level of investment in leadership and talent development by large law firms pales in comparison to investments made by other professional organizations, such as accounting and consulting firms and the military, which provide regular, significant training in skills and leadership at each stage of an individual’s career.<sup>177</sup> Since the 1990s, law firm leaders have emphasized the need to run law firms “like a business.”<sup>178</sup> That has

---

177. See *Accounting for Good People*, *ECONOMIST* (July 19, 2007), <http://www.economist.com/node/9507322> (arguing that other professional organizations can learn from the example set by the “Big Four” accounting firms); see also LOWELL L. BRYAN & CLAUDIA I. JOYCE, *MOBILIZING MINDS: CREATING WEALTH FROM TALENT IN THE 21ST-CENTURY ORGANIZATION* 62 (2007) (drawing organizational management lessons from best practices that “superclass companies,” professional services firms, and the military have been using for years).

178. See, e.g., John S. Smock et al., Smock Law Firm Consultants, “We’ve Gotta Run This Place Like a Business”—A Primer on What Many Law Firm Managers Say They Must Do, but Very Often Do Not 1 (2013), <http://www.managingpartnerforum.org/tasks/sites/mpf/assets/image/MPF%20WHITE%20PAPER%20-%20Run%20This%20Place%20Like%20A%20Business%20-%20SMOCK%20-%202010-24-131.pdf> (speaking to the ubiquity of the phrase “like a business” among law firm managers). As an associate in a major law firm for ten years starting in 1988, one of the Authors directly experienced this shift in communications from firm leaders and the gradual professionalization of

*footnote continued on next page*

meant improving practices like billing, collection, and purchasing systems and in some cases streamlining leadership and decisionmaking structures. “Running like a business” for law firms typically means adopting conventional practices from the 1950s—or even worse, the 1850s—rather than the innovative business practices of leading knowledge and services companies like Google, IDEO,<sup>179</sup> or Facebook or professional services firms like McKinsey or Deloitte. What those organizations have realized is that their ability to compete in the market for clients depends almost exclusively on their ability to compete in the market for talent. Thus, for example, Google has an entire division dedicated to “People Analytics” and conducts wide-ranging internal studies about how better to motivate, engage, and develop its people and how to maximize the effectiveness of its teams and leaders.<sup>180</sup> Law firms must make a similar investment if they want to continue to win the war for talent. It is increasingly clear that law firms are now competing with all of these organizations both to induce the best and brightest students graduating from college to want to go to law school and to motivate those who do become lawyers to want to join law firms, as opposed to throwing their lot in with these and other new “disruptive innovators” in the legal marketplace.<sup>181</sup> If they expect to convince young people with an expanding list of options to invest some or all of their human capital in careers in large law firms, these institutions must offer opportunities for professional development that millennials view as comparable to what they could get at Facebook, McKinsey, or PricewaterhouseCoopers.

Nor can law firms expect clients to foot the bill for this entire investment. As we indicated above, clients do have an important interest in ensuring that at least some law firm associates are well trained, both to work on their matters while at the firm and to minimize their own training costs when they hire these former associates into their legal departments. But clients also reasonably

---

firm operations during the 1990s. Law school classmates and friends reported similar trends at their firms.

179. IDEO is a global design company known for innovative practices. IDEO, <https://www.ideo.com> (last visited June 6, 2017).

180. See Chris DeRose, *How Google Uses Data to Build a Better Worker*, ATLANTIC (Oct. 7, 2013), <http://www.theatlantic.com/business/archive/2013/10/how-google-uses-data-to-build-a-better-worker/280347>; Charles Duhigg, *What Google Learned from Its Quest to Build the Perfect Team*, N.Y. TIMES MAG. (Feb. 25, 2016), <https://nyti.ms/2jC6vKP>.

181. See David B. Wilkins & Maria J. Esteban Ferrer, *The Integration of Law into Global Business Solutions: The Rise, Transformation, and Potential Future of the Big Four Accountancy Networks in the Global Legal Services Market*, LAW & SOC. INQUIRY (forthcoming 2017) (manuscript at 43) (on file with authors) (arguing that the Big Four accounting firms are creating professional development models that give them a surprising edge over large law firms in the war for talent). For a description of how disruptive innovation is reshaping the market for legal services, including the market for talent, see Harvard Law Sch. Ctr. on the Legal Profession, *Disruptive Innovation in Legal Services*, PRACTICE (Jan. 2015), <https://thepractice.law.harvard.edu/article/disruptiveinnovation>.

expect law firms to live up to their repeated promises to train and develop the lawyers who join these institutions and to invest their own resources to do so. Law firms and clients should therefore invest together to create programs and practices in which both parties contribute to the training and development of the next generation of lawyers. The program developed by Intel and its top law firms offers one example of how such a collaboration can work.<sup>182</sup> In this program, Intel invests in developing junior lawyers by giving them smaller cases to lead, inviting them to give “fireside chats” on developing legal issues, and providing feedback to associates and firm leaders about their development.<sup>183</sup> The company’s law firms in turn participate in the training and development of Intel’s in-house lawyers by briefing the company on important legal issues, providing feedback on the internal counsel with whom they work, and organizing joint pro bono projects that further develop the legal department’s engagement with the profession.<sup>184</sup> Fostering this kind of collaboration, however, will require a fundamental realignment of the place of professional development in the hierarchy of values of both law firms and clients.

## 2. Putting lawyer development on par with serving clients

Fundamentally, law firms and in-house legal departments need to consider leadership and talent development as equal to or even more important than client service, as firms like McKinsey, Deloitte, and Ernst & Young already do. Their mission statements, stated and lived values, and cultures must encourage and celebrate their ability to develop great lawyers and leaders, no matter the career paths those lawyers may one day take. Truly treating talent development as equal will require the corporate bar to significantly increase its related investment. Additionally, while it is beyond the scope of this Article to examine these more thoroughly, there are other key steps the corporate bar should take to establish a more solid foundation for the new model of lawyer development we propose. To foster more dialogue, we point toward several below:

*Much more actively working to address the flight of women and minorities from the corporate bar and the appalling lack of diversity in leadership positions.* It is no secret that women and minorities continue to be underrepresented in large law firms, particularly among partners—and even more dramatically in important leadership positions.<sup>185</sup> Beyond giving lip service to flex work options and

---

182. See HEINEMAN ET AL., *supra* note 8, at 45-46 (describing this program).

183. *Id.*

184. *Id.*

185. For a collection of the latest research demonstrating this underrepresentation and exploring its many causes, see generally DIVERSITY IN PRACTICE: RACE, GENDER, AND  
*footnote continued on next page*

diversity initiatives, law firms and their clients need to take a long, hard look at the systems, structures, and cultural barriers to progress in this area. First, for example, law firms should consider developing a cultural expectation around the rotation of leadership roles. Although accurate information on law firm management practices is difficult to come by, it appears that many firms still do not have fixed term limits for key leadership positions.<sup>186</sup> This results in few opportunities for new leaders, especially women and lawyers of color, to emerge. Further, it stigmatizes being replaced as a leader so that leaders have misaligned incentives to stay in leadership roles much longer than even they would prefer. Similarly, we know through direct conversations with law firm leaders that at least a few firms cling to an outdated election process for executive or management committee positions that requires a partner to challenge and name a specific current member of the executive or management committee against whom the partner plans to run. Empirical research suggests that this process is particularly pernicious in that women are far less likely than men to risk challenging a specific current firm leader for his role.<sup>187</sup>

*Aggressively setting and championing a new culture of respect for all lawyers.* Many women in the corporate bar can tell detailed stories of ways in which they have encountered gender-based discourtesy and disrespect—and often illegal sexual harassment.<sup>188</sup> While many women do not report such incidents of disrespect and harassment,<sup>189</sup> the message they have received by being subjected to such behavior is that they are not equal members of the club and

---

CLASS IN LEGAL AND PROFESSIONAL CAREERS (Spencer Headworth et al. eds., 2016) [hereinafter DIVERSITY IN PRACTICE]. For evidence that this underrepresentation extends even among the graduates of the best law schools, see WILKINS ET AL., *supra* note 96, at 36-43, which documents that even among HLS graduates, women are significantly less likely than men to hold important law firm leadership positions.

186. Patrick J. McKenna, *The State of Law Firm Leadership: Survey Results 2* (2010), <http://www.managingpartnerforum.org/tasks/sites/mpf/assets/image/MPF%20ARTICLE%20-%20State%20of%20Law%20Firm%20Leadership%20-%20McKenna%20-%202011-10.pdf>.

187. See Francesca Gino & Alison Wood Brooks, *Explaining Gender Differences at the Top*, HARV. BUS. REV. (Sept. 23, 2015), <https://hbr.org/2015/09/explaining-gender-differences-at-the-top> (reporting that women are less likely than men to “self-select into competitive environments”).

188. See Marlis Silver Sweeney, *The Female Lawyer Exodus*, DAILY BEAST (July 31, 2013, 4:45 AM ET), <http://www.thedailybeast.com/witw/articles/2013/07/31/the-exodus-of-female-lawyers.html> (quoting a female partner as saying that sexual harassment is a problem everywhere but that it is “better hidden in law firms” and citing a 2010 study in Utah finding that 37% of women in firms reported experiencing “verbal or physical behavior that created an unpleasant or offensive work environment”); see also WILKINS ET AL., *supra* note 96, at 48-49, 49 fig.9.2 (stating that nearly 40% of women in the HLS class of 2000 reported experiencing gender-based discrimination in the workplace).

189. See Stefanie K. Johnson et al., *Why We Fail to Report Sexual Harassment*, HARV. BUS. REV. (Oct. 4, 2016), <https://hbr.org/2016/10/why-we-fail-to-report-sexual-harassment> (“[A] 2015 survey showed that 71% of women do not report sexual harassment . . .”).

that their presence is tolerated but not highly valued.<sup>190</sup> The situation for many people of color in large law firms is arguably worse. Not only do they continue to face subtle and not-so-subtle forms of implicit and explicit bias in the workplace but negative assumptions about their competence continue to impede their being hired by large law firms in the first place.<sup>191</sup> We do not believe this is an issue that will disappear with generational leadership transitions; indeed, we both hoped and anticipated that female and minority lawyers would be treated fairly and equally when our generation acceded to power in law firms, but we have been sadly disappointed. It is time for the corporate bar—both law firms and in-house legal departments—to say that enough is enough and become much more aggressive about naming and shaming such behavior.

*Improving transparency and measurement of what matters.* The corporate bar should incorporate the best practices of other professional firms and become much more transparent and thoughtful about what is measured and rewarded. Data analytics and technology offer significant opportunities to engage, motivate, and develop lawyers.<sup>192</sup> Creating appropriate metrics can also play an important role in improving the way companies and law firms work together to improve diversity.<sup>193</sup>

---

190. This, of course, is even financially imprudent for the corporate bar, as studies consistently show that teams and organizations with more women outperform others. See Thomas Barta et al., *Is There a Payoff from Top-Team Diversity?*, MCKINSEY Q. (Apr. 2012), <http://www.mckinsey.com/business-functions/organization/our-insights/is-there-a-payoff-from-top-team-diversity> (finding that companies with more women and foreign nationals on senior teams financially outperformed less diverse companies); Anita Woolley & Thomas W. Malone, *Defend Your Research: What Makes a Team Smarter? More Women*, HARV. BUS. REV. (June 2011), <https://hbr.org/2011/06/defend-your-research-what-makes-a-team-smarter-more-women> (finding that the presence of women raises a team's collective intelligence).

191. See Spencer Headworth & Robert L. Nelson, *Introduction to DIVERSITY IN PRACTICE*, *supra* note 185, at 1, 5-8 (describing the range of explicit and implicit bias that still confronts women and people of color in the legal profession).

192. For example, law firms and law departments should develop transparent development expectations and evaluation processes to help lawyers understand an organization's performance bar and receive helpful feedback to meet that bar. See SCOTT A. WESTFAHL, *YOU GET WHAT YOU MEASURE: LAWYER DEVELOPMENT FRAMEWORKS & EFFECTIVE PERFORMANCE EVALUATIONS* 19-21 (2008) (providing a variety of frameworks for evaluating lawyer performance and progress toward professional development goals). Also, while consulting and accounting firms periodically survey their employees to measure their satisfaction and engagement and Gallup has developed an entire consulting business around employee engagement at Fortune 500 companies, we know of few law firms that follow suit. By not using such tools, law firms miss an important opportunity to build trust and foster a culture of inclusion.

193. See David B. Wilkins & Young-Kyu Kim, *The Action After the Call: What General Counsels Say About the Value of Diversity in Legal Purchasing Decisions in the Years Following the "Call to Action,"* in *DIVERSITY IN PRACTICE*, *supra* note 185, at 37, 37, 75-77 (noting how diversity initiatives like the Association for Corporate Counsel's Call to Action are part  
*footnote continued on next page*

*Adopting a new approach to team process and effectiveness.* One area where law firms in particular need to develop new metrics is in their approach to measuring team performance. Rather than caring only about what results are achieved for a client at the end of the day, law firms also need to focus attention on how well their lawyers have collaborated and worked together as a team. To do so, law firms need to ensure that teams have the tools they need to collaborate effectively and to assess their performance after the fact, including basic tools for team launch, check-in, and post-project evaluation. We strongly believe that by arming teams with the proper tools up front and holding them accountable for their process as well as their results, both law firms and clients will reap significant rewards in terms of both team effectiveness and satisfaction—*regardless of whether the time can be billed to clients.*

*Developing a culture of sponsorship.* Law firms and in-house departments should emphasize the responsibility of more senior lawyers to create challenging opportunities for younger lawyers and “sponsor” them to accelerate their development.<sup>194</sup> Unlike mentorship, sponsorship requires senior lawyers to put their personal reputations on the line for younger lawyers and be their internal and external champions.

### 3. Improving the development of technical legal skills and knowledge

The corporate bar’s ability to train lawyers in specific technical legal skills and knowledge is arguably strong and therefore warrants less attention and investment than the other two critical components of our proposed model of lawyer development. As one of the Authors has directly experienced while leading professional development and training at a major global law firm for over nine years, law firms and in-house legal departments rely on on-the-job training; internal and external CLE programs; and online, just-in-time learning sessions to train newer lawyers in specialized legal and technical skills. What is typically missing, however, is an organized way of tracking what a lawyer has already learned—or still needs to learn—and a formal work assignment system ensuring that on-the-job training aligns most effectively with a lawyer’s development needs. Law firms that employ a “free market” work assignment system for associates claim that they are deliberately training young lawyers to be entrepreneurial by forcing them to reach out to partners

---

of a more general trend toward creating “visible and objective metrics” that facilitate collaboration between companies and law firms on matters of mutual interest).

194. Sponsorship is effective for the development of all professionals and may encourage women to “stay in the game” after having children. Cf. SYLVIA ANN HEWLETT, (FORGET A MENTOR) FIND A SPONSOR: THE NEW WAY TO FAST-TRACK YOUR CAREER 6-10 (2013) (providing a personal account of the value of sponsorship).

and senior associates to find their own work.<sup>195</sup> While this may work for some associates, it also creates enormous potential for inappropriate favoritism and unconscious bias in the allocation of plum assignments that can help associates develop specialized legal knowledge and skills.<sup>196</sup>

#### 4. Building leaders

Our primary recommendation for the corporate bar is to significantly increase its investment in the second leg of our triangle model for lawyer development: leadership and related professional skills. With respect to leadership development, we note that leading professional services firms and the military all see leadership development as a core mission of their organizations and provide training, structured feedback, and experiences and opportunities for professionals to build their leadership abilities and profiles.<sup>197</sup>

*Training.* Following the example of other professions, law firms should provide leadership training from the very beginning of a lawyer's career and at each interval when a lawyer is advancing to a new level of responsibility, even if that is not also associated with a change in the lawyer's title. Typically, that means every year and a half to two years for a law firm associate.<sup>198</sup> One important vehicle for providing such training is intense, executive education-type programs that are three to seven days long for cohorts of similarly tenured associates. Case-based and experiential programs should introduce

---

195. Kirkland & Ellis's explanation of its "open assignment system" is typical. See *Open Assignment System*, KIRKLAND & ELLIS LLP, <https://www.kirkland.com/?contentID=247> (last visited June 6, 2017) (claiming that "[t]he entrepreneurial spirit is alive and well at Kirkland" and that the firm's system "exemplifies the Firm's emphasis on individual initiative").

196. By contrast, other professional organizations like consulting firms and even the military employ teams of professionals whose full-time jobs center around staffing and professional development of employees. A few large law firms have now adopted this model. See, e.g., Erik Sherman, *The Electronic Mentor: How Scott Westfahl Automated Career Development at Goodwin Procter*, LAW FIRM INC., May/June 2008, at 20, 20.

197. For example, in leading professional development for McKinsey's D.C. office, one of the Authors administered post-project and semiannual formal review processes that were all based on performance criteria set forth in a "Five-Part Leadership Model" that signaled the critical nature of leadership development for the firm. The mission statement of the U.S. Naval Academy illustrates this point as well: "To develop Midshipmen morally, mentally and physically and to imbue them with the highest ideals of duty, honor and loyalty in order to graduate leaders who are dedicated to a career of naval service and have potential for future development in mind and character to assume the highest responsibilities of command, citizenship and government." *About USNA*, U.S. NAVAL ACAD., <https://www.usna.edu/About/index.php> (last visited June 6, 2017).

198. See WESTFAHL, *supra* note 192, at 29-30.



associates to a broad range of professional skills, including effective teamwork, understanding leadership styles and developing their own, effectively delegating, giving and receiving feedback, project management, developing strategy, cross-cultural and cross-organizational collaboration, design thinking, and advanced legal problem-solving.

For most law firm partners, two stages of leadership training would be ideal. First, law firms should provide leadership training to prepare early- to mid-stage partners for their first meaningful firm leadership roles (for instance, leading a small practice area or office, or firm-wide recruiting). Such programs should focus on developing leadership skills necessary to succeed in these early critical roles, such as a deeper understanding of one's own leadership style, leadership of small teams, business unit strategy, having difficult conversations, and client leadership. Next, firms should require advanced leadership training for lawyers who take on more senior leadership responsibilities, such as running a larger department or office, serving on the management or executive committee, chairing a key firm committee like the partner election or compensation committee, or becoming a new managing partner or firm chair.<sup>199</sup> The executive education model for lawyers that we have pioneered at HLS is one way to achieve these goals.<sup>200</sup>

*Structured feedback.* Beyond training, to help lawyers develop as leaders, the corporate bar also needs to create transparent competency models and evaluations that set standards and provide timely, detailed, and actionable feedback on lawyers' leadership styles and practices. Included in such efforts should be upward reviews, through which junior lawyers, paralegals, and staff can provide more senior lawyers with helpful feedback. Ideally, upward reviews would be provided together with related coaching and attention to improve performance based on such feedback. Some law firms, such as O'Melveny & Myers, have made significant investments in providing lawyers with upward feedback,<sup>201</sup> but very few have done so successfully.<sup>202</sup> Feedback

---

199. For an example of a leadership program for senior law firm leaders, see *Leadership in Law Firms*, HARV. L. SCH. EXECUTIVE EDUC., <https://execed.law.harvard.edu/llf> (last visited June 6, 2017). For an example of a leadership program for early- to mid-stage partners, see *Accelerated Leadership Program*, HARV. L. SCH. EXECUTIVE EDUC., <https://execed.law.harvard.edu/alp> (last visited June 6, 2017).

200. For a more detailed description of the executive education model, see Scott Westfahl, *Learning to Lead: Perspective on Bridging the Lawyer Leadership Gap*, in *LEADERSHIP FOR LAWYERS: ESSENTIAL LEADERSHIP STRATEGIES FOR LAW FIRM SUCCESS* 79, 82-86 (Rebecca Normand-Hochman & Heidi K. Gardner eds., 2015).

201. See Kat Greene, *5 Innovative Associate Training Programs*, LAW360 (Nov. 7, 2014, 3:07 PM EST), <https://www.law360.com/articles/584154/5-innovative-associate-training-programs> (paraphrasing Rochelle Karr, O'Melveny's director of attorney professional development, as saying that O'Melveny's upward feedback system "is unique for a large law firm").

is often delivered poorly, without related coaching, and through systems junior associates do not trust.<sup>203</sup> In mature professional services firms like McKinsey, enough trust and buy-in exists to use upward feedback for both developmental and assessment purposes: one cannot become a McKinsey partner if one's upward feedback scores are poor.<sup>204</sup> We suggest that law firms and in-house legal departments start simply by instituting upward feedback for developmental purposes only, ideally in conjunction with leadership training.<sup>205</sup>

*Leadership experiences and opportunities.* Law firms should proactively coordinate and provide leadership experiences that give associates and partners early, supervised opportunities to grow and learn as leaders. Far too often, we have directly observed law firm partners and senior in-house lawyers infantilizing younger lawyers, referring to them as “kids” and insisting that apprenticeship requires them to build deep technical expertise before being allowed to exercise any leadership responsibility, either internally or with clients. Such hierarchical thinking is another example of “running like a business” of the 1950s and ignores how across the corporate world, and even in the public sector, matrix-based organizations—which provide multiple reporting relationships instead of a traditional linear hierarchy—are consciously providing early opportunities for employees to lead initiatives and

---

202. See, e.g., Anonymous Partner, *Buying In: Upon Further Review*, ABOVE THE LAW (Oct. 16, 2012, 10:10 AM), <http://abovethelaw.com/2012/10/buying-in-upon-further-review> (criticizing the “whole process” of “360-degree reviews” in which partners receive feedback from their subordinates as “thankless, time consuming, and generally useless”).

203. See Tomas Chamorro-Premuzic, *Is How You Deliver Feedback Doing More Harm than Good?*, HARV. BUS. REV. (Aug. 10, 2015), <https://hbr.org/2015/08/is-how-you-deliver-feedback-doing-more-harm-than-good> (reporting that according to a meta-analysis, “30% of feedback interventions actually hurt performance”). In extensive conversations with hundreds of large law firm associates, one of the Authors has frequently heard associates complain about upward review processes—even those run by outside consultants—because the associates do not believe that their input will be kept confidential and they usually do not see positive changes in partner behavior from these processes. The Author has also directly experienced partners trying to “reverse engineer” upward feedback and directly confronting associates to whom they falsely attributed certain upward feedback comments.

204. One of the Authors has considerable experience with and was directly involved in the development of McKinsey's worldwide upward feedback system and its implementation as both a developmental and an evaluative tool, including for election to partnership.

205. For example, senior associates attending a three- to five-day leadership program could seek feedback from their junior associates, paralegals, and secretaries in advance of the program and receive their upward feedback reports as they participate in case-based instruction and reflection on their own leadership behaviors and what research says about effective leadership.

work independently on matters of interest to them over which they feel a sense of ownership.<sup>206</sup>

With increasing access to information about alternative employment opportunities through online databases and networking tools, talented law firm associates will gravitate toward organizations that value their contributions and provide them with leadership opportunities. We do not claim that mid- to senior-level associates and similarly positioned in-house lawyers are prepared to lead significant client engagements and exercise sophisticated legal judgment without supervision. However, they are certainly capable of leading internal initiatives relating to important organizational goals. Internal leadership opportunities could easily be identified to help achieve firm goals in such critical areas as new and lateral recruiting, new lawyer training and mentoring, knowledge development and sharing, employee engagement and community building, technology-related opportunities and efficiencies, pro bono efforts, and empowering associate committees with resources and support to be more than groups that just surface associate complaints. Externally, younger lawyers could add tremendous value if given the chance to lead community service efforts such as charity drives or events, helping local schools, collaborating with organizations like Habitat for Humanity, or helping the firm develop a social media strategy and web presence for its lawyers.<sup>207</sup>

Law firms and law departments should develop an infrastructure to offer and track such opportunities, provide related coaching, and recognize and reward outstanding leadership contributions.

##### 5. Building related professional skills

To help lawyers build the related professional skills we include with leadership skills in Figure 1 above, the corporate bar should collaborate with law schools and bridge the gap between academia and practice. Experienced lawyers and other professionals can help law schools provide necessary

---

206. See generally CATHLEEN BENKO & ANNE WEISBERG, *MASS CAREER CUSTOMIZATION: ALIGNING THE WORKPLACE WITH TODAY'S NONTRADITIONAL WORKFORCE* (2007) (providing a framework that corporate leaders can use to strengthen leadership pipelines through more tailored support for professionals' varied career trajectories); DANIEL H. PINK, *DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US* (2009) (examining the importance of mastery, meaning, and autonomy to intrinsic motivation).

207. As one of the Authors has argued elsewhere, engaging in public service of this kind can also help young lawyers develop the skills and contacts that are important for business development. See David B. Wilkins, *Doing Well by Doing Good?: The Role of Public Service in the Careers of Black Corporate Lawyers*, *The Eighth Annual Frankel Lecture* (2003), in 41 HOUS. L. REV. 1, 10-20 (2004) (reporting examples of black lawyers successfully using public service to build their careers in corporate law firms).

training and experiential learning in such skills, which are often beyond the core competencies of law school faculties. For example, the corporate bar could help write and teach legal problem-solving cases like the ones developed for the mandatory Harvard Problem Solving Workshop,<sup>208</sup> develop and help teach sessions on core business skills and how they relate to legal practice across a myriad of settings, or explore how to help law students build cross-cultural competence.

Beyond collaborating with law schools to help prepare students for the world of corporate practice, law firms and in-house legal departments should consciously develop and track lawyers' professional skills with the same diligence with which they track and measure productivity, billed hours, and technical legal competence. While some law firms and law departments have made significant strides, few if any are fully committed, and almost all still insist on calling such skills "soft" and treating them as secondary in importance, even by the language they choose.<sup>209</sup>

Additionally, we note the growing importance of helping lawyers develop skills relating to innovation, design thinking, and leading innovation-focused teams effectively. One potential way to help build those skills within a law firm or law department is to establish a research and development (R&D) initiative. Partners and associates showing leadership potential could be seconded to an offsite R&D lab to learn design thinking principles and work across offices, departments, and hierarchical levels to address key organizational and client issues. In a flip of the current trend, law firms could invite clients to be seconded into the law firm's R&D lab to learn design thinking principles and skills and then work with law firm colleagues to solve problems of joint concern, conduct interesting industry-facing research, and design pro bono or community service-related projects. Funding for the R&D lab should be treated as a capital investment, with an allocated fixed annual budget like a real estate lease over a period of years rather than a budget that can easily be slashed from year to year.

---

208. Former Dean Elena Kagan and her successor Martha Minow were able to make the Problem Solving Workshop a mandatory part of the first-year curriculum. As faculty members who have been instrumental in designing and teaching this course, we are firmly convinced that the fact that it is mandatory is critical to its impact—although we recognize that it has also made delivering the content to all 550 first-year students particularly challenging. As we said at the outset, we leave it to others to determine whether this tradeoff is worth it in their own environments.

209. See Marni Becker-Avin, *Developing Lawyers' "Soft Skills"—A Challenge for the New Era in Legal Services*, LAW PRAC. TODAY (May 2014), [http://www.americanbar.org/content/newsletter/publications/law\\_practice\\_today\\_home/lpt-archives/2014/may/14/developing-lawyers-soft-skills-a-challenge-for-the-new-era-in-legal-services.html](http://www.americanbar.org/content/newsletter/publications/law_practice_today_home/lpt-archives/2014/may/14/developing-lawyers-soft-skills-a-challenge-for-the-new-era-in-legal-services.html) (arguing that legal organizations should "stop taking 'soft skills' for granted, and start placing a higher value on teaching and attaining those skills").

## 6. Understanding and building networks

Finally, the third leg of the new lawyer development model triangle shown in Figure 1 above offers law firms and law departments an opportunity to tap into a force mostly taken for granted or ignored: the true power of networks to solve problems. Building on our ideas for enhancing law student networks, law firms and law departments should also provide specific training and workshop experiences to help lawyers understand how networks can help them maximize their opportunities and solve challenging problems. Among the skills such training could provide are: a process for lawyers in their organizations to map the breadth and depth of their networks and update them on a regular basis; methods for tracking, measuring, celebrating, and rewarding intraorganization collaboration and collaboration with external partners; and ways to incorporate network training and analysis into related training on leadership and the power of diverse teams to solve problems so that lawyers better understand the critical nature of building diverse networks.

As we have discussed above, the corporate bar has a critical role to play in developing and implementing a new model for lawyer development. Law firms and in-house departments that heed the call for increased investment in talent development and focus on developing all three legs of the lawyer development triangle will be most likely to achieve the organizational alignment necessary to continue to thrive.

## Conclusion

We believe that a shared model of responsibility for the professional development of the next generation of lawyers will best serve the collective interests of law schools, law firms, and clients—and most importantly, these lawyers themselves. Law schools will better withstand criticism from those who charge that legal education is too expensive and theoretical to be worth the investment. Law firms and their clients will be more successful in developing, retaining, and even inspiring their people, who will collaborate more effectively across networks to solve complex problems. Lawyers whose professional development is framed specifically through a multidisciplinary approach to building technical legal skills, broad professional competencies, and opportunity-creating networks will be much better prepared to adapt to whatever changes they encounter in their legal careers. These lawyers will also be better prepared to enter public service or transition to pure business roles within companies because they will have widely transferable professional skills and stronger, more beneficial networks to leverage.

This realignment of lawyer professional development will not be easy to achieve. We are hopeful, however, that sources of resistance will fall to the changing reality of the market for corporate legal services. Too much is at

stake and too many potential disruptive forces loom for law schools, law firms, and clients to continue clinging to the misaligned, divided nature of their current model for lawyer development. As a first step, the narrow debates about who bears responsibility for what aspect of lawyer development need to turn to broader discussions around how law schools, law firms, and clients can collaborate and leverage each other's strengths. Unhelpful finger-pointing and resentment should give way to new ideas and approaches targeted especially at building lawyers' professional skills and networks, as well as their technical legal skills.

Because the practice of law is a human capital profession that also stands for more than just profit—even at the corporate bar—we urge law schools, law firms, and clients to pause to appreciate the serious nature of the true threat here. If the current model for lawyer development is not realigned, the profession risks losing its foundation: brilliant, analytic, creative, hardworking, and ethically oriented people who will otherwise choose another profession or career path where professional development is thoughtful, supportive, transparent, and well aligned toward helping them accelerate their learning and their impact on the world.<sup>210</sup>

As scholars of the legal profession, we admit the ultimate limitations of our proposed model. For even if law schools, law firms, and companies adopt every one of our suggestions and truly collaborate, they would still face a daunting challenge: how to maintain the alignment of the institutions, structures, and practices they adopt in the face of a legal world likely to change even more dramatically in the coming decades than it has in the period of great change we are currently living through. In Part II, we argued that the Cravath model of professional development became ineffective as both the external market for clients and talent and the internal dynamics of large law firms shifted away from the stable and homogenous relationships that characterized the period in which that model was created. Similarly, there is a real danger that the new models that law schools, law firms, and clients might put into place could become similarly obsolete as the rapid pace of large-scale forces like globalization and technology shift the legal landscape. Our hope is that moving from the divided Cravath model to our proposed shared model of lawyer professional development will build a foundation of communication, collaboration, and coordination that will make it far easier for law schools, law firms, and clients to adapt and align as those forces continue to require change. We are reminded of the verse from Nobel Laureate Bob Dylan's brilliant song "Forever Young": "May your hands always be busy / May your feet always be

---

210. See Wilkins, *supra* note 82, at 1276-77 (noting that the claim that law is a distinctive profession plausibly connected to larger goals of public service and to the rule of law has been key to drawing some of the best and brightest young people into the legal profession).

*The Leadership Imperative*  
69 STAN.L. REV. 1667 (2017)

swift / May you have a strong foundation / When the winds of changes  
shift."<sup>211</sup> It is time for the legal profession to build a strong new foundation for  
developing our next generation of leaders.

---

211. BOB DYLAN, *Forever Young*, on PLANET WAVES (Asylum Records 1974).