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## Entrepreneurial Esquires in the New Economy: Why All Attorneys Should Learn about Entrepreneurship in Law School

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# **ENTREPRENEURIAL ESQUIRES IN THE NEW ECONOMY: WHY ALL ATTORNEYS SHOULD LEARN ABOUT ENTREPRENEURSHIP IN LAW SCHOOL**

J. MARK PHILLIPS\*

Abstract .....	60
I. Introduction.....	60
II. A Disrupted Legal Industry .....	62
A. Continuous Un- and Underemployment in Legal Market.....	62
B. The Legal Business Model is Changing .....	63
C. A Clearer View of the Chaos .....	64
III. The Landscape of Entrepreneurship in Legal Education .....	67
A. Law Schools and Entrepreneurship Education .....	67
B. Joint Degree or LLM Programs.....	68
C. Clinical or Experiential Legal Entrepreneurship Programs .....	69
D. Entrepreneurship Course Offerings in Law Curricula .....	70
IV. The Likely and Unlikely Beneficiaries .....	71
A. Who Are Entrepreneurial Law Programs Currently Targeting? .....	71
B. Additional Beneficiaries of Entrepreneurship in Law .....	72
C. Law Schools .....	72
D. Big Law Partners and Firm Leaders.....	73
E. Big Law Associates .....	75
F. Entrepreneurship Education for All Attorneys? .....	75
V. Conclusion.....	77

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## ABSTRACT

As the legal industry continues to recover from the shock of the recent recession, it finds itself in a fundamentally different place than it was ten years ago, with even more tumultuous change on the horizon. Economic pressure coupled with continued technological innovation has increased attorney unemployment levels, shifted law firm business models, and changed the expectations of legal clientele. Yet, despite this radically shifting market place, legal education has remained fundamentally unchanged. This article examines the current state of the legal industry through an entrepreneurial lens and juxtaposes it with the current state of legal education. In doing so, this article sets forth three key claims: (1) the legal industry is not only ripe for entrepreneurial attorneys but will actually depend upon them for survival; (2) as a whole, law schools are currently ill-suited to provide entrepreneurship training; and (3) all attorneys, regardless of their chosen career path, would benefit from exposure to entrepreneurship education in law school.

*Entrepreneurs are simply those who understand that there is little difference between obstacle and opportunity and are able to turn both to their advantage.*

Niccolo Machiavelli<sup>1</sup>

## I. INTRODUCTION

The dust has begun to settle from the great recession of 2007, yet its long-term impact upon the legal industry has yet to be fully understood. Great numbers of attorneys remain unemployed, law firms continue to adapt their business models, and legal clientele increasingly demand legal services be delivered in different ways and at a different price. These conditions stem not only from changes in the economy but also from technological changes and shifting perceptions of how legal services can and should be performed. In short, economic realities have forced the industry to change, while technological advances have *enabled* legal practitioners to adapt in ways never before imagined. As a result, this transitioning industry may be characterized as one not only ripe for innovation and adaptation, but one that *depends* upon it for survival.

Contrast this depiction of the legal industry with the current state of legal education. Whether due to the dictates of the American Bar Association (ABA)

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<sup>1</sup> NICCOLO MACHIAVELLI, *THE PRINCE* (1532). A unique perspective of entrepreneurship from the famed Italian political theorist. This definition will be contrasted with more modern conceptions of entrepreneurship later in the article.

or an entrenched adherence to precedent, the vast majority of law schools remain committed to a model of legal education that dictates three years of theory-based legal education with a secondary focus on lawyering skills and only ancillary attention to developing the business management skill set required to carry out the business of practicing law.<sup>2</sup> This would be bad enough if the industry was stable, but, given its current state of flux, an acute understanding of business innovation and adaptation is warranted. Add to this the fact approximately half of all law students enter law school with no full-time work experience, let alone any educational background in business, and, further, the vast majority of them emerge from law school with six figure educational loans.<sup>3</sup>

As a whole, the newly minted attorneys emerging from law school are likely to find themselves grossly ill-equipped for the epic and lasting change that has taken hold in the legal industry. The skill set required to navigate the current legal market is an entrepreneurial one—relying upon adaptability, opportunity assessment and execution, openness to change, and a more nuanced understanding of risk.<sup>4</sup> It requires thinking in a dramatically different way about the management and delivery of legal services while still preserving a traditional, precedent-based approach to the practice of law.<sup>5</sup> Law students with an education in entrepreneurship theory and practice specifically tailored to the context of legal practice will gain the aforementioned skill set and outlook.<sup>6</sup>

Peter Drucker, widely considered the father of management education, defines an entrepreneur as someone “who always searches for change, responds to it[,] and exploits it as an opportunity.”<sup>7</sup> In a succinct manner, he captures the essence of the entrepreneurial orientation required to successfully navigate the changing legal landscape. The attorneys who embrace this entrepreneurial outlook will actively engage the industry-wide change, as well as the concomitant opportunities, and not only succeed individually but also improve the practice of law as a whole.

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<sup>2</sup> There are, of course, exceptions to this broad statement, many of which will be highlighted in a later section of this article. *See infra* Part III and accompanying notes 35–47.

<sup>3</sup> *See generally* BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (Univ. of Chi. Press, 2012) (providing a rich description of the plight of law students during law school and beyond).

<sup>4</sup> *See generally* MICHAEL GERBER, ROBERT ARMSTRONG & SANFORD M. FISCH, *THE E-MYTH ATTORNEY: WHY MOST LEGAL PRACTICES DON'T WORK AND WHAT TO DO ABOUT IT* (John Wiley & Sons, Inc., 2010) (drawing a clear distinction between the skill set required to practice a certain trade, such as law, and the skill set required to manage a business that provides that trade, such as managing a law firm). Gerber, et al., make this claim broadly, but the premise takes on enhanced value in the context of an industry in transition.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> PETER F. DRUCKER, *INNOVATION AND ENTREPRENEURSHIP* 28 (1985).

In this article, I argue a broad infusion of entrepreneurship education within law school curriculums may provide attorneys of all career trajectories with an enhanced set of tools to engage the current and future legal market. I do so with full knowledge some threads of this argument have been made previously, and this sentiment has been effectuated through programmatic development at a number of forward-thinking legal institutions. However, in this article, I aim to not only reinforce the progress that has been made in this context but to extend the conversation by making one central claim—namely, all law students, regardless of their intended legal or non-legal career path, would benefit from a firm grounding in entrepreneurship, and, therefore, law schools should integrate entrepreneurship education within their curricula.

I begin with a brief overview of some of the key changes in the legal market since the great recession of 2007 and explain how the current climate, however bleak, is actually ripe for entrepreneurship and innovation.<sup>8</sup> I will then describe some of the current modes of integrating entrepreneurship education in law school and discern the students for whom those programs are targeted.<sup>9</sup> Finally, and most importantly, I will provide an explanation of how entrepreneurship education can provide benefits to additional stakeholders, such as “big law” and law schools, as well as all law students, regardless of their intended post-graduate path.<sup>10</sup>

## II. A DISRUPTED LEGAL INDUSTRY

### A. Continuous Un- and Underemployment in Legal Market

At present, the legal industry finds itself deeply entrenched in a phase of economic disruption. The malaise has been well documented. By any measure, unprecedented numbers of attorneys find themselves un- or under-employed due to two key trends. First, the demand for legal services declined sharply during the recession and has been slow to recover.<sup>11</sup> Second, law schools continue to graduate a surplus of new attorneys, which exceeds current and future demand for legal practitioners. One estimate suggests the supply of attorneys will so outstrip demand, if current trends continue, the next ten years will yield 176,000 more attorneys than legal jobs.<sup>12</sup> It bears noting these newly minted law

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<sup>8</sup> See *infra* Part II and accompanying notes 11–34.

<sup>9</sup> See *infra* Part III and accompanying notes 35–47.

<sup>10</sup> See *infra* Part IV and accompanying notes 48–74.

<sup>11</sup> GEORGETOWN LAW: CTR. FOR THE STUDY OF THE LEGAL PROFESSION, 2014 REPORT ON THE STATE OF THE LEGAL MARKET (Thomson Reuters, 2014).

<sup>12</sup> See Paul M. Barrett, *Howrey's Bankruptcy and Big Law Firms' Small Future*, BLOOMBERG BUSINESSWEEK (May 2, 2013), <http://www.businessweek.com/articles/2013-05-02/howreys->

graduates enter this daunting job market with an average of over \$100,000 of debt, a staggering sum incurred to pay for ever-increasing law school tuitions.<sup>13</sup>

### *B. The Legal Business Model is Changing*

The select few who obtain gainful employment as an attorney find themselves working within an industry in a state of flux. Law firms, large and small, have merged, downsized, or gone out of business altogether during the recession, and surviving law firms have struggled to adapt their business models to the new reality.<sup>14</sup> Two key forces are driving legal practitioners to change course. First, law firms face a newly emboldened clientele, most of whom were similarly grounded by the recent recession, demanding continually lower legal costs and pushing for alternative fee structures. Second, technological advances have enhanced client communication and information management systems to a point where new modes of legal service delivery, and pricing, have been made possible.<sup>15</sup>

These two pressures have forced law firms to contemplate change. In short order, law firms began to rethink the general business model that served as the core of legal partnerships for decades.<sup>16</sup> The prevailing business model relied upon by big law consisted of a pyramid of lawyers in which the partners at the top profited greatly from the work of the numerous associates at the bottom.<sup>17</sup> The firms with the widest pyramids, or those with the greatest number of associates per partner, were the firms with the greatest leverage. The firms with greater leverage historically enjoyed greater profit. The natural limitations of this model were brought into stark relief by the economic downturn, and the swift reaction by firms to trim their workforce and narrow the pyramid had a profound impact on the legal industry.

The waning demand for legal work, the outward pressure for lower fees, and the advent of technological change has driven large law firms to

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bankruptcy-and-big-law-firms-small-future; *see also*, STEVEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS*, (Basic Books, 2013).

<sup>13</sup> HARPER, *supra* note 12, at 4.

<sup>14</sup> *See* Bernard A. Burk & David McGowan, *Schumpeter, Coase and the Future of the (Law) Firm*, (Mar. 2010), available at <https://www.law.georgetown.edu/academics/centers-institutes/legal-profession/documents/upload/Conference-Papers-March-22-Burk-McGowan.pdf>; *see also*, BRUCE MACEWEN, *GROWTH IS DEAD, NOW WHAT? LAW FIRMS ON THE BRINK*, (Adam Smith, Esq. ed., 2012) (an inquiry into the economics of law firms).

<sup>15</sup> Burk & McGowan, *supra* note 14, at 69; *see also*, ROBERT SUSSKIND, *TOMORROW'S LAWYERS*, (Oxford Univ. Press, 2013).

<sup>16</sup> BRUCE MACEWEN, *A NEW TAXONOMY: THE SEVEN LAW FIRM BUSINESS MODELS*, (Adam Smith, Esq. ed., 2014).

<sup>17</sup> *Id.* at 15.

contemplate long term narrowing of their pyramids. Lower leverage translated into less demand for legal talent, and the already heavy surplus of unemployed attorneys expanded even further.<sup>18</sup>

### C. A Clearer View of the Chaos

Although the above conditions have been thoroughly chronicled, Richard Susskind, in his book *Tomorrow's Lawyers*, deftly organizes these disparate symptoms and clarifies an otherwise murky legal landscape by highlighting three main drivers of change in the legal industry.<sup>19</sup> First, legal practitioners have been challenged by business clientele to provide more for less, which has led to an increased pressure to reduce the costs or change the manner in which they deliver legal services. Second, liberalization of the legal industry has, or will, enable a broader array of businesses and practitioners to provide legal services. Third, information technology has advanced at a rate that has exceeded the legal community's capacity for utilizing it effectively. The advent of the internet, secure electronic communication, and social media have provided profound questions, as well as opportunities for the legal market. A key challenge with respect to information technology is for attorneys to use such technology to practice law in ways never thought of before. Viewed through the lens provided by Susskind, the numerous challenges faced by the legal industry in the United States may generally fall into the first and third categories of change.<sup>20</sup> The market pressures to provide more for less, coupled with the enhanced capacity of information technology, have led firms to downsize, cut overhead, and change their business models.

As a whole, the legal industry is still in the midst of coming to a long-term response to changes in the economic and technological landscape.<sup>21</sup> Susskind notes such change, especially with respect to information technology, may be viewed as disruptive because it does not support or neatly align with current methods of working.<sup>22</sup> The natural inclination when faced with new technology is to integrate it into the current system of production. Disruptive innovations, however, require adopters to abandon some, or all, of their current systems. For example, the adoption of certain alternative fee structures may potentially

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<sup>18</sup> See Burk & McGowan, *supra* note 14.

<sup>19</sup> See SUSSKIND, *supra* note 15 (providing an abridged distillation of some of the more detailed observations and analysis Susskind provides in some of his other works).

<sup>20</sup> *Id.* at 22. While this trend is important, Susskind notes presently this trend is primarily taking place in a handful of countries and has yet to take hold in the United States. For this reason, this particular driver of change in the legal industry will not be focused upon in this article.

<sup>21</sup> Or, as many have put it, "adjusting to a new normal." Michelle N. Harner, *Teaching Law Through an Entrepreneurial Lens*, 8 J. BUS. & TECH. L. 171, 171 (2013).

<sup>22</sup> SUSSKIND, *supra* note 15, at 13.

supplant, either wholly or in part, a firm's traditional billable hour method of client billing. Adopting such a plan, as many practitioners have discovered, produces untold ripple effects into the determination of how legal projects are broken down, assigned, completed, and managed.<sup>23</sup>

Characterizing the legal industry as one that has been disrupted by innovation taps into a core concept of entrepreneurship. Joseph Schumpeter, in his seminal work *Capitalism, Socialism and Democracy*, captured this notion of disruption with the term "creative destruction."<sup>24</sup> According to Schumpeter, disruptive innovations work to continually renew the economic cycle, "incessantly destroying the old one, incessantly creating the new one."<sup>25</sup> In short, the function of innovation, technological or otherwise, is to push the evolution of a production cycle forward.

Yet, Schumpeter went further. The advent of innovation within an industry may appear to many observers as a long, evolutionary process consisting of the gradual, linear infusion of constant innovation. However, this perception misrepresents the reality of innovative infusion within an economy, which instead is sparked by intensely concentrated periods of innovation, followed by long arcs of the integration of those innovations. Specifically, Schumpeter describes "discrete rushes" of innovative advancement that are then followed by long waves of absorption of that technology within the industry.<sup>26</sup> Instead of explaining economic downturns as mere ebbs in an otherwise normally functioning business cycle, such downturns may instead be characterized as a reflection of acute infusions of innovation and the resultant lag in the embracement and effective utilization.<sup>27</sup>

The process of creative destruction provides the foundation for

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<sup>23</sup> *Id.*

<sup>24</sup> See JOSEPH SCHUMPETER, *CAPITALISM, SOCIALISM AND DEMOCRACY* (George Allen & Unwin (Pubs.) Ltd, 1976).

<sup>25</sup> ROBERT D. ATKINSON, *THE PAST AND FUTURE OF AMERICA'S ECONOMY: LONG WAVES OF INNOVATION AND THE POWER CYCLES OF GROWTH* 20 (Edward Elgar Pub. et al. eds., 2005). Atkinson provides a deep treatment of the Austrian view of economics, and entrepreneurship, and juxtaposes Joseph Schumpeter's views with other notable economists, such as Keynes, at the turn of the Twentieth Century. Significantly, the discussion centers on popular perceptions of the cause of the Great Depression, and, while several economists agreed the depression was in some sense a part of an economic cycle, there was much disagreement about the causes of that arc in the cycle. Schumpeter stood out from his contemporaries by suggesting the market downturn was not the result of traditional conceptions of business cycles, but rather due to acute periods of technological advancement and the protracted arc of the infusion of that innovation. In Schumpeter's view, the economic downturn stemmed from businesses adapting to and integrating massively disruptive technology. His analysis of that situation appears particularly applicable to the current legal market's adaptation following the recent recession.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*



Schumpeter's definition of entrepreneurship<sup>28</sup> and also provides unique context for understanding the current state of the legal market. Susskind, in his thorough exploration of the technological innovations affronting the legal industry, describes a situation analogous to the one couched by Schumpeter.<sup>29</sup> Susskind specifically notes developments in information technology have been disruptive to the manner in which legal services are delivered, and as a whole they amount to a "technology tidal wave."<sup>30</sup> Unfortunately, an "irrational rejectionism"<sup>31</sup> pervades the legal industry, according to Susskind, and lawyers face the challenge, and opportunity, of transforming their practice of law through innovation.<sup>32</sup>

In essence, the depiction of the current state of the legal industry suggests lawyers find themselves firmly entrenched within the long wave of economic adjustment to innovations within the legal industry. Viewed in this manner, the industry as a whole appears to have yet to fully absorb the effects of this innovation—a fact that may be viewed as either a blanket rebuke against the industry as a whole, or a clarion call for attention to the opportunity that lies ahead.

I choose the latter interpretation. The defining feature of entrepreneurship, according to Drucker, Schumpeter, and even Machiavelli in the introductory quote, is the ability to find opportunity amid periods of change and challenge.<sup>33</sup> Due to technological innovation, shifting legal business models, and pressure from legal clientele, the legal industry finds itself in an acute state of profound change. The attorneys who succeed during this phase of innovation absorption will be the ones who embrace the oncoming change, respond to it, and exploit the opportunities before them.

In short, the conditions are ripe for entrepreneurial leaders at all levels, and within all areas of legal practice, to take the reins. Not only are conditions ripe for entrepreneurial initiative, they actually *depend upon* entrepreneurial action for survival. A return to prior practices is untenable.

A glaring problem, however, is the bulk of legal practitioners entering the legal market, and to some extent those currently populating it, possess inadequate training and experience in entrepreneurship.<sup>34</sup> This problem

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<sup>28</sup> Burk & McGowan, *supra* note 14.

<sup>29</sup> SUSSKIND, *supra* note 15, at 10–11.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 12 (describing this as a dogmatic and visceral dismissal of a technology with which the individual has no direct personal experience).

<sup>32</sup> *Id.*

<sup>33</sup> See *supra* notes 1, 7, 21, and the accompanying texts.

<sup>34</sup> This sweeping comment is bound to ruffle the feathers of many entrepreneurial attorneys who are successfully navigating this market. No umbrage is intended. *But cf.* DAVID GALBENSKI &

primarily stems from the relative dearth of attention paid to the topic of entrepreneurship within traditional law school curriculums.

The following sections discuss the current state of entrepreneurship education within U.S. law schools and provide an examination of the types of law students schools are targeting with such programs. This examination will support the proposition the constituencies for such programs are on the rise, and other, perhaps unexpected, stakeholders may benefit from entrepreneurship education in legal curriculums.

### III. THE LANDSCAPE OF ENTREPRENEURSHIP IN LEGAL EDUCATION

#### *A. Law Schools and Entrepreneurship Education*

The vast majority of law schools pay little to no attention to entrepreneurship. Despite the fact the rate of entrepreneurship continues to rise in the United States, along with positive attitudes regarding the possibilities and outcomes of entrepreneurship,<sup>35</sup> only a small percentage of law schools offer course work in entrepreneurship education during their three-year program.

Attitudes about the inclusion of entrepreneurship education in law schools vary widely. Depending upon one's view of legal education, the exclusion of this topic from the legal corpus may make perfect sense—entrepreneurship may be viewed as a peripheral topic only tangentially related to understanding legal theory and the legal system. Even from a private practitioner's standpoint, the notion of entrepreneurship may appear as nothing more than a niche area of focus that is adequately covered by a curriculum's business law tracks or some flavor of solo-practitioner practicums that populate many reputable law schools.

On the other hand, there are growing numbers of institutions that see a clear connection between entrepreneurship and the law. Many law schools have taken notice of the need for entrepreneurship education, and to varying degrees have responded to that need. Schools have done so in a myriad of ways, but, for the most part, their programs may be divided into three different categories: (1) joint degree or master of laws (LLM) programs, (2) clinical or experiential legal entrepreneurship programs, or (3) elective course offerings within the juris doctor (JD) curriculum. This categorization is not meant to imply these

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DAVID BARRINGER, *LEGAL VISIONARIES: HOW TO MAKE THEIR INNOVATIONS WORK FOR YOU* (2013).

<sup>35</sup> Many schools suggest they offer entrepreneurship education to students by allowing them to cross-register with affiliated institutions, such as business or engineering schools. While this does provide some opportunities for the motivated students, it does marginalize the topic and enforce the notion entrepreneurship education remains largely separate from the corpus of legal education. The central premise of this article is entrepreneurship education should be prioritized in law school because it uniquely responds to the changes within the legal industry.

offerings are mutually exclusive or of objectively equal value to one another. These programs are often coupled together and build off of one another. Yet, such classification is useful for the purposes of examining their role in delivering entrepreneurship education, as well as the scope of current offerings within the legal educational community.

### *B. Joint Degree or LLM Programs*

The first category consists of programs that offer a joint degree program or LLM program focused upon entrepreneurship. With respect to joint degree programs, there are a wide variety of different combinations of graduate degrees. The most common joint degree path for developing a general business acumen is the combination of the JD with the masters of business administration (MBA).<sup>36</sup> While obtaining a JD/MBA does not necessarily translate into an education of entrepreneurship, such a degree may be a legitimate avenue to understanding the nuances of an entrepreneur's skill set and may provide some of the tools necessary to be an entrepreneur. As of this writing there are approximately 202 ABA accredited law schools in the United States, of which approximately 168 have joint degree programs with affiliated business schools.<sup>37</sup> Of those offering joint degrees, approximately fifteen offer official concentrations in entrepreneurship to joint degree participants, while virtually all MBA programs offer at least a choice of electives in entrepreneurship.<sup>38</sup>

Pursuing a JD/MBA, especially one with an MBA concentration on entrepreneurship, would patently appear to perfectly prepare a student for the tenuous market conditions discussed in this article. It is difficult to argue with the benefits of such a rigorous and comprehensive course of study. It bears noting, however, such programs typically entail an extra year of study, and that extra year of study may cost as much as \$50,000 on top of the already

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<sup>36</sup> It is important to note there are significant differences between traditional business management education and entrepreneurship education. While overlap certainly exists, the former relates to the principles of efficiently managing an existing, established organization, whereas the latter focuses upon the often autonomous path of an individual in the planning, initiation, and launch of a venture.

<sup>37</sup> I obtained this data from personal research conducted through a review of the materials available online for the 202 accredited law schools listed by the ABA. The methodology was far from scientific, and any omissions were purely unintentional.

<sup>38</sup> The presence of entrepreneurship courses within MBA programs is simple to assess, but the degree to which students enrolled in JD/MBA programs can officially designate a specialty or concentration in entrepreneurship is difficult to gauge due to the nuances of most JD/MBA courses taking a total of four years and collapsing credit requirements for fulfillment of the degree. At some institutions the lower credit requirement may lead to faster graduation but rule out certain specializations. The purpose of this article is not to provide a comprehensive survey of the nuances of all such programs, but rather to provide a snapshot of the current state of joint degree offerings.

significant tuition investment required for three years of law school.

Another option that has only recently emerged is an LLM in law and entrepreneurship. Duke University School of Law pioneered this program to offer students an advanced law degree that gives graduates the unique skill set and perspectives to counsel leaders in the innovation economy.<sup>39</sup> This program appears to be available as a stand-alone LLM, for graduates from other law schools looking for post-graduate study, and as a joint degree for select students pursuing their JD at Duke. This program is relatively new, launched in 2012, and may be the only one of its kind.<sup>40</sup> Similar to the JD/MBA program discussed above, the LLM incurs a heavy price tag totaling over \$50,000 in tuition.<sup>41</sup>

### *C. Clinical or Experiential Legal Entrepreneurship Programs*

Another approach law schools have taken to engaging the topic of entrepreneurship is by developing legal clinics that enable law students to work with and assist entrepreneurs in various capacities. Law schools are increasingly turning to clinics as a means to connect their students with entrepreneurs and business leaders.<sup>42</sup> Examples of such programs are becoming more common and run the gamut from clinics devoted exclusively to entrepreneurship law, to clinics that combine entrepreneurship law with other related legal specialties, such as intellectual property.<sup>43</sup> These programs promise to offer hands-on experience with individual entrepreneurs, and, in doing so, provide practical knowledge of how to counsel and understand the needs of entrepreneurs.

Taking the traditional law clinic even further, a handful of programs appear to have moved even further in the direction of experiential entrepreneurship education. Michigan State University College of Law recently launched Reinvent Law Program, which takes the form of a “law laboratory” devoted to technology, innovation, and entrepreneurship in legal services.<sup>44</sup>

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<sup>39</sup> *Law and Entrepreneurship*, DUKE LAW <http://law.duke.edu/llmle/?q=llmle&gclid=CJuChuKXpLwCFUpk7AodJQUAuA> (last visited Sept. 22, 2014).

<sup>40</sup> Shawn P. O’Connor, *Law Schools Incorporate Entrepreneurship*, U.S. NEWS & WORLD REPORT (Apr. 16, 2010, 10:00 AM), <http://www.usnews.com/education/blogs/law-admissions-lowdown/2012/04/16/law-schools-incorporate-entrepreneurship>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> See *Intellectual Property & Entrepreneurship Law Clinic*, UNIVERSITY OF CONNECTICUT SCHOOL OF LAW, <http://www.law.uconn.edu/academics/clinics-experiential-learning/intellectual-property-entrepreneurship-law-clinic>.

<sup>44</sup> Renee Newman Knake, *Why Law Students Should Be Thinking About Entrepreneurship and Innovation in Legal Services*, BLOOMBERG BNA (Nov. 28, 2012), <http://about.bloomberglaw.com/practitioner-contributions/innovation/>.

Taking a somewhat different tact, the University of Missouri at Kansas City Law School has developed a Solo and Small Firm initiative as a companion to its course in Entrepreneurship and New Venture Creation.<sup>45</sup> This program functions as an accelerator for attorneys who wish to explore the possibility of becoming a solo practitioner.

Other programs abound,<sup>46</sup> yet the common thread to the aforementioned clinics is their commitment to connecting law students with entrepreneurs outside of the classroom. Through active engagement with entrepreneurs, law students are preparing themselves to better understand their unique legal needs and provide them with legal services.

#### *D. Entrepreneurship Course Offerings in Law Curriculums*

The final category of entrepreneurship education in law school consists of more traditional course offerings made available to law students. Courses in entrepreneurship generally offer theoretical frameworks for understanding the process of entrepreneurship along with a set of analytical tools with which to decipher and tackle key obstacles faced by entrepreneurs. The degree to which such courses are offered within law school curricula is difficult to measure because, rather than offering the courses directly through the law school, many schools offer such courses only implicitly by allowing students to cross-register in affiliated schools of business, economics, or entrepreneurship.

With this in mind, it seems reasonable to assume law schools affiliated with a companion business school may at least offer the *possibility* for law students to cross-register and take a course in entrepreneurship. Students enrolled in such programs who are whole-heartedly committed to integrating the study of entrepreneurship, and who are dedicated enough to evaluate course offerings outside of their law school curriculum, stand a reasonable chance of being able to enjoy some level of exposure to entrepreneurship in the classroom venue.

In sum, it appears the current state of entrepreneurship education in law school curricula is, much like the statistic of the legal industry, in a state of flux. The opportunity exists for law students to seek out at least an introductory course in entrepreneurship through business schools affiliated with their law school, but a deep treatment of entrepreneurship that is integrated with the

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<sup>45</sup> O'Connor, *supra* note 40; *see also Innovative*, UNIVERSITY OF MISSOURI-KANSAS CITY SCHOOL OF LAW, <http://law.umkc.edu/prospective-students/innovative.asp> (follow "Prospective Students" hyperlink; follow "Why UMKC?" hyperlink; follow "Read More" hyperlink under the "Innovative" subheading).

<sup>46</sup> For a deeper treatment of recent programs see Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 Denv. U.L. Rev. 887 (2012).

practice of law appears to be rare. Given recent events in the legal industry and the dynamic marketplace, there appears to be substantial room for improvement in the integration of entrepreneurship and legal education.<sup>47</sup>

#### IV. THE LIKELY AND UNLIKELY BENEFICIARIES

##### A. *Who Are Entrepreneurial Law Programs Currently Targeting?*

Despite the variety of programs mentioned above,<sup>48</sup> their target audience appears to fall within a narrow band of three distinct categories: (1) those who anticipate working with entrepreneurs as clients, (2) those interested in developing a solo practice of their own, and possibly (3) those who wish to develop an entrepreneurial venture of their own other than a law firm.<sup>49</sup>

This observation may appear unremarkable on its face, especially given current market trends. Luz Herrera notes “[t]he most consistent and largest employment sector for lawyers [has historically been, and] will continue to be[,] solo practice.”<sup>50</sup> It seems only natural a significant proportion of the legal community would seek out and benefit from some form of education in entrepreneurship.

Similarly, future business attorneys would be remiss were they not to develop at least some understanding of the unique challenges faced by entrepreneurs to better serve their clients. According to the most recent Global Entrepreneurship Monitor published by Babson and Baruch Colleges, U.S. rates of entrepreneurship, as well as optimism regarding entrepreneurship, have reached record highs.<sup>51</sup> Entrepreneurship has become a much more acceptable career track over recent years, and unpredictable economic conditions and employment trends suggest this trend will only increase.<sup>52</sup> Furthermore, entrepreneurial start-ups, especially those that are technology based, scale from nascent companies to large entities at an ever-increasing rate.<sup>53</sup> Thus, by cultivating an entrepreneurial skill set, a lawyer also develops his rainmaking

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<sup>47</sup> This summation begs the question, What exactly *is* the correct level of integration of entrepreneurship and law? This question is vitally important and deserves significant attention; however, it is beyond the scope of this current writing and may be considered as an avenue of future research and publication.

<sup>48</sup> See *supra* Part III and accompanying notes 35–47.

<sup>49</sup> *Id.*

<sup>50</sup> Herrera, *supra* note 46, at 891.

<sup>51</sup> Donna J. Kelley, Et Al., Global Entrepreneurship Monitor: 2012 United States Report 8 (2012).

<sup>52</sup> *Id.*

<sup>53</sup> Elaine Pofeldt, *U.S. Entrepreneurship Hits Record High*, Forbes (May 27, 2013, 6:45 PM), <http://www.forbes.com/sites/elainepofeldt/2013/05/27/u-s-entrepreneurship-hits-record-high/>.

skills; specifically, attorneys who develop expertise in counseling clients during the early stages of a business's trajectory may quickly realize a payoff in the form of a mature, sophisticated business client.

And, for law students who contemplate careers outside of law immediately upon graduation, the appeal of entrepreneurship education and training is relatively clear. Entrepreneurship education, at its core, is an exploration of the "pursu[it of] opportunit[y] without regard [for] the resources [one] . . . control[s]." <sup>54</sup> The unique experience of an entrepreneur pursuing his objective amidst a scarcity of necessary resources is a vital ingredient to embarking on a start-up, and this article has already noted this experience is relatively overlooked in legal education. Law students searching for business opportunities outside of the legal profession, sometimes referred to as "attorney-entrepreneurs," would benefit not only from the theoretical foundations provided from an academic program in entrepreneurship, but also from a deep understanding of the experience of entrepreneurs who have charted their own course.

The above discussion suggests current efforts at entrepreneurship education within the law are targeted at a substantial and increasing set of beneficiaries—namely, the growing proportion of solo-practitioners, small-business attorneys, and attorney-entrepreneurs. There are, however, additional audiences that would benefit from a deeper understanding of entrepreneurship and law. Furthermore, there is a unique way of conceptualizing the practice of law as it relates to entrepreneurship that may usher in even greater attention to such interdisciplinary training.

#### *B. Additional Beneficiaries of Entrepreneurship in Law*

The above discussion highlights perhaps the most intuitive beneficiaries of an integration of entrepreneurship education in law school. However, the widespread injection of entrepreneurship in law school may benefit other institutions and individuals as well. In particular, entrepreneurship education may provide untold benefits to the legal education industry and large law firms, commonly known as big law, as well as junior associates pursuing legal careers in big law or other legal arenas.

#### *C. Law Schools*

Law schools have played a central role in some of the challenges faced by the legal industry over recent years. Brian Z. Tamanaha, in his book *Failing*

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<sup>54</sup> Howard H. Stevenson & J. Carlos Jarillo, *A Paradigm of Entrepreneurship: Entrepreneurial Management*, 11 STRATEGIC MGMT. J. 17, 23 (1990).

*Law Schools*, provides a comprehensive look at the plight faced by law schools, as well as their contributing role in an overstocked legal market.<sup>55</sup> He notes law schools, which are often acting as central profit centers for the universities in which they are affiliated, have raised tuition and enrollments to support greater numbers of faculty and pursue other rankings-related metrics.<sup>56</sup> Tamanaha highlights the regrettable trend of law schools manipulating their graduate placement numbers to not only maintain rankings but also to induce students to enroll at their schools.<sup>57</sup> Although this activity has been brought to light and corrected at many schools, it has not been easy to repair the damage of this clear breach of trust.<sup>58</sup>

Large numbers of law schools have also suffered financially in recent years, driven primarily by a drop in enrollment numbers.<sup>59</sup> Students have taken note of the depleted placement numbers, even at the most reputable schools, along with the rising tuition and post-graduate debt levels of graduates.<sup>60</sup> Tamanaha posits students have begun to reconsider whether law school is a sound investment of time and money given the output.<sup>61</sup>

One way to remedy the fractured relationship between law schools and prospective students may be to enhance the schools' curricula, clinics, and skills-training programs to better prepare the students for the new reality of the legal market. Redesigning legal education in a manner that comports directly with the reality of the legal market law graduates will face may instill more confidence in a successful employment situation upon graduation. It provides students not only with an additional skill set to obtain jobs or become successfully self-employed, but also instills within them a skill set and mindset that may enable them to become leaders in a dynamic, yet perhaps fragile, future economic context.

#### *D. Big Law Partners and Firm Leaders*

At first glance, big law may seem anathema to the adaptability and risk tolerance commonly thought to undergird the entrepreneurial skill set. Larry Ripstein notes, in his prescient piece *The Death of Big Law*, how simultaneously intractable and irresistible the practices of large firms may be.<sup>62</sup> However, a

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<sup>55</sup> See TAMANAHA, *supra* note 3, at 107.

<sup>56</sup> *Id.* at 135.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 71–73.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749 (2010).



closer examination suggests big law may benefit from entrepreneurially-minded partners, as well as associates trained in entrepreneurship.

Over the past three decades, few industries have enjoyed the uniformly successful business model that has benefitted big law. The tournament-style hiring and partnership promotion system has dominated the largest law firms and served them well.<sup>63</sup> However, as discussed previously, this model is now beginning to change.<sup>64</sup> Those at the helm of large law firms may benefit from integrating the entrepreneurial skill set, experiences, and frameworks within their development of firm strategies. One manner in which they might aptly do so is through the integration of what Peter Drucker calls “corporate entrepreneurship,” which he describes as the act of initiating new ventures and creating value within an established organization.<sup>65</sup> This concept entails a constant eye towards innovation, strategic renewal, and new venture creation.<sup>66</sup> Law firm leaders who embrace such practices may find themselves more able to deftly navigate the choppy waters presented by recent economic downturns.

Furthermore, if such leaders not only embrace such an outlook but also find a way to disseminate that perspective to their followers, they may be able to establish a firm-wide entrepreneurial orientation—yielding a set of processes and strategies geared towards entering new markets.<sup>67</sup> Firms that develop an affinity for such market opportunism on the business side of their practice may find they can consistently adapt their legal services to their target clientele to preserve a sustainable advantage for their partnerships. The benefits of incorporating such a widespread outlook have been well-established in other business contexts,<sup>68</sup> and there is reason to believe firm-wide entrepreneurial predispositions may benefit firms in the legal industry as well.<sup>69</sup>

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<sup>63</sup> See Roy Suddaby, Royston Greenwood & Celeste Wilderom, *Introduction to the Journal of Organizational Behavior's Special Issue on Professional Service Firms: Where Organization Theory and Organizational Behavior Might Meet*, 29 J. ORGANIZATIONAL BEHAV. 989, 989–94 (2008) (discussing the professional services industry, which the legal industry is a significant part of, enjoyed double digit growth for more than two decades preceding the recent recession).

<sup>64</sup> See *supra* Part II and accompanying notes 11–34.

<sup>65</sup> See Drucker, *supra* note 7.

<sup>66</sup> See Shaker A. Zahra, *Governance, Ownership, and Corporate Entrepreneurship: The Moderating Impact of Industry Technological Opportunities*, 39 ACAD. MGMT. J. 1713, 1713–35 (1996); see also Jeffrey G. Covin & Dennis P. Slevan, *A Conceptual Model of Entrepreneurship as Firm Behavior*, 16 ENTREPRENEURSHIP THEORY & PRAC. 7, 7–24 (1999).

<sup>67</sup> See G.G. Dess & G.T. Lumpkin, *The Role of Entrepreneurial Orientation in Stimulating Effective Corporate Entrepreneurship*, 19 ACAD. MGMT. EXEC. 147, 147–56 (2005).

<sup>68</sup> See Andreas Rauch et al., *Entrepreneurial Orientation and Business Performance: An Assessment of Past Research and Suggestions for the Future*, 33 ENTREPRENEURSHIP THEORY & PRAC. 761, 761–87 (2009).

<sup>69</sup> J. Mark Phillips & Jake Messersmith, *Are Professional Service Firms Uniquely Suited for Corporate Entrepreneurship? A Theoretical Model Connecting Professional Service Firm Intensity*

### *E. Big Law Associates*

Associates, too, may benefit from a deep understanding of entrepreneurship, albeit in a different manner. First year associates starting their careers in big law find themselves in a challenging and fast-changing environment. Though all such associates may be prepared for long, hard hours of work, they may not be prepared for the unique nuances required to thrive within a large, unpredictable work environment. In the face of such an environment, an entrepreneurial mindset may provide distinct value.

A companion concept to corporate entrepreneurship is “intrapreneurship,” a term first coined by Gifford and Elizabeth Pinchot to denote individuals who independently develop new products or services within a large, established organization through assertive risk-taking innovation.<sup>70</sup> While it would be a far stretch to suggest junior associates take it upon themselves to independently develop new practices on their own, the concept of intrapreneurship does meld with the reality every attorney, in some sense, works as a solo practitioner—even attorneys that work in extraordinarily large partnerships. Attorneys are expected to develop their own distinctive area of expertise within practice areas and eventually use that expertise to build clientele with whom they themselves will nurture long-term relationships. As associates mature and develop within large law firms, they may eventually build teams of attorneys to work both with them and alongside them in servicing such clients. In essence, attorneys build small practice groups within a larger umbrella of practice groups, essentially creating a cohesive enterprise within the firm. In many ways, this process mirrors the experience of solo practitioners hanging out a shingle on their own.

If a parallel may be drawn, however faintly, between junior associates at big law and solo practitioners going at it alone, might there be a connection to be made between entrepreneurs and *all* attorneys regardless of their career path?

### *F. Entrepreneurship Education for All Attorneys?*

Every attorney is, in some sense, a solo practitioner. For support, one need only look to the reality of legal practice itself. First, consider the element of reputation. Without exception, reputation may be regarded as the most cherished asset—the most difficult to acquire and the easiest to lose—an attorney owns, and he owns it *individually*. An attorney thrives or fails based

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*and Corporate Entrepreneurship*, 24 J. OF BUS. & ENTREPRENEURSHIP 79 (2013). This article establishes a theoretical framework suggesting the distinguishing organizational features of professional services firms, such as law firms, make them uniquely suited for a firm-wide entrepreneurial outlook and behavior. *Id.*

<sup>70</sup> Norman McCrae, *Intrapreneurial Now*, ECONOMIST (April 17, 1982), available at <http://www.intrapreneur.com/MainPages/History/Economist.html>.

upon his reputation—a reputation that is, for the most part, attached exclusively to him.<sup>71</sup> While, to some extent, an attorney may benefit from the reputation of the firm at which he works, his relationship with his client is often an individual one based upon trust.

Secondly, consider the nature of the relationship between a client and an attorney. The attorney-client relationship is essentially one between individuals, not between the client and the firm where the attorney works. This is reflected by the fact a partner usually takes his clientele with him when he moves firms, as has come to be expected by destination firms.<sup>72</sup> Attorneys move between firms at a significantly increasing rate—a trend that has been exacerbated by the recent recession.<sup>73</sup> A client's allegiance is typically with his individual attorney, rather than the firm at which the attorney works.<sup>74</sup>

Furthermore, an attorney is legally bound to reciprocate this allegiance. He bears a fiduciary responsibility to his clients that forbids him from acting outside of his clients' interests or engaging in any activity that may open him to a conflict of interest. These duties are deeply ingrained into an attorney's professional ethos. Each attorney bears the responsibility for preserving these duties, and the penalty for breaching those duties range from civil lawsuit for damages to a revocation of his law license.

Regardless of where an attorney finds his current employment, be it in big law, solo practice, or at a government organization, he ultimately bears the risk and builds his individual reputation based upon the individual level of service he provides to clients. As such, he is required to develop an independent mindset about the best manner in which to serve his clients. This independent responsibility towards clients may run counter to the interests of the institution at which an attorney is employed. When conflicts exist, an attorney *must* err on

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<sup>71</sup> Jennifer Spellman & Jeanne Varrichio, *Bad Reputation?: The Potential Negative Impact of Outsourcing on the Legal Profession*, 29 HOFSTRA LAB. & EMP. L.J. 575. This note is cited primarily for its recognition, in the practice of law, "reputation matters," and that assertion is impressed upon law students throughout their schooling, as well as their professional lives. *Id.* Importantly, individual reputation is stressed, as well as an individual's role in supporting the overall reputation of the profession. *Id.*

<sup>72</sup> See Burk & McGowan, *supra* note 14.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* It bears noting technological advances pose challenges to this individual relationship, as well as provide opportunities for its enhancement. The advent of numerous means of electronic communication, via e-mail, text, and social media has enabled clients to have greater access to attorneys. Yet, such technology threatens the face-to-face nature of their relationship, bringing to mind issues of the quantity of communications versus the quality of the relationship. An additional threat to the relationship brought on by technology is the trend towards the outsourcing of legal work. While clients may object to highly paid junior associates working on their projects, they may be equally weary of their work being outsourced outside of the purview of their managing attorney. Such developments have contributed to an increasingly nuanced attorney client relationship.

the side of his client.

This commonly understood aspect of the attorney-client relationship invokes the quintessential entrepreneurial paradigm—an autonomous individual cultivating his core value proposition, his expertise and reputation, in the service of his clients. In this sense, each attorney works in the service of his client, and the attorney's place of employment may be viewed as nothing more than the context in which he provides those services to clients. His place of employment enables the attorney to provide a broader level of service to the client due to economies of scale, collaboration among other experts, and other advances, but that employment may also place burdens upon the attorney-client relationship, such as pressure to enhance billings and manage conflicts of interest with the firm's other clients. The attorney positions himself in the best context in which to serve his clients, whether that context takes the form of a large firm, a boutique firm, or as a sole practitioner.

Viewed from this perspective, the plight of the attorney appears to be a uniquely independent one, perhaps more so than any other profession, and the decisions an attorney makes with respect to his place of employment and practice development reflects a keen focus on the preservation of his individual reputation as it relates to his current and future clientele. He is, in essence, a solo practitioner, who serves his own clients from the vantage point of wherever he finds himself currently employed.

## V. CONCLUSION

The intent of this article is not to convince every attorney to become an entrepreneur, but rather to suggest there is an independent, entrepreneurial thread inherent in the practice of law that transcends the career path chosen by an attorney. In addition to the patent connections between law and entrepreneurship, which apply to solo practitioners or lawyers servicing entrepreneurial clientele, there also exist latent connections, which apply to all attorneys.

Currently, law schools are providing an uneven exposure to entrepreneurship education, despite evidence suggesting the target audience for such programs, including solo-practitioners, small business attorneys, and attorney-entrepreneurs, continues to grow. A broader view of the market suggests there may be more beneficiaries of entrepreneurship education within the law—beneficiaries such as leaders and associates within big law, as well as the law schools themselves. Thus, at the very least, there is a growing demand for the expansion of entrepreneurial education, and, at best, there is a vast, untapped market of demand for the thoughtful integration of these two vital fields of study.

The connections between the practice of law and the vocation of entrepreneurship have likely always existed, yet the present condition of the legal industry should compel legal practitioners and educators to take a new look at the relationship between these two seemingly disparate fields. Several law schools have taken the lead in this regard, and they have done so with markedly different approaches. It is perhaps too soon, and perhaps impossible altogether, to determine the ideal manner in which entrepreneurship education should be integrated with legal training, but this should not discourage individuals from attempting different modes of educational synthesis, however small those initial steps may seem at the outset.

Economic realities have cast doubt on the legal business model that has been relied upon for decades. Technological realities have opened pathways to new and markedly different ways to practice law going forward. The legal industry has departed from its comfortable perch and is journeying into the unknown. As such, a new type of attorney must ascend the ranks of the legal industry and lead. Those attorneys will possess an entrepreneurial mindset, and the time has come to inculcate that mindset in law school.