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## Designing a Solo and Small Practice Curriculum

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# DESIGNING A SOLO AND SMALL PRACTICE CURRICULUM

Meredith R. Miller\*

## I. INTRODUCTION

There is a reality commonly ignored by the curriculum in most law schools: the largest segment of law graduates will eventually be solo or small firm practitioners.<sup>1</sup> Even before the Great Recession, nearly two-thirds of lawyers in the United States practiced in solo or small firms.<sup>2</sup> Since 2008, trends show an increase in the number of recent law graduates that “hang a shingle.”<sup>3</sup> According to a 2012 report of the American Bar Association, about three-quarters of lawyers in the United States work in private practice.<sup>4</sup> Of those attorneys, about 70% are in solo or small firms.<sup>5</sup> Many find themselves in this practice setting soon after graduation. The National Association for Law Placement (NALP) statistics for the class of 2013 show that 42% of graduates in private practice are working in firms with two to ten lawyers; about 5% are already operating solo practices.<sup>6</sup>

In short, more than half of the attorneys in the United States are small business owners—they are operating, managing and growing a law practice. As framed by Professor Luz Herrera, they must become “lawyer-entrepreneurs.”<sup>7</sup> However, the law curriculum rarely presents students with opportunities to build the competencies necessary to operate a practice. As William Hornsby, staff

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<sup>1</sup> Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 DENV. U.L. REV. 887, 891 (2012).

<sup>2</sup> William Hornsby, *Challenging the Academy to a Dual (Perspective): The Need to Embrace Lawyering for Personal Legal Services*, 70 MD. L. REV. 420, 435 (2011) (defining small firms as five or fewer attorneys).

<sup>3</sup> Anika Anand, *Law Grads Going Solo and Loving It*, MSNBC (June 20, 2011, 12:22 PM), <http://www.nbcnews.com/id/43442917/ns/business-careers/t/law-grads-going-solo-loving-it-USLLFKXGfN4>. The article explains:

[T]he number of recent law graduates going solo increased from 3.5 percent in 2008 to 5.5 percent in 2009, the biggest one year jump since 1982, the National Association for Law Placement (NALP) reports. That percentage increased to 5.7 percent of all private practice jobs for the class of 2010, the highest it's seen since 1997.

<sup>4</sup> Press Release, Am. Bar Ass'n, *Serves Solo and Small-Firm Lawyers with New Online Resource Center* (Jan. 19, 2012), available at <http://www.abanow.org/2012/01/aba-serves-solo-and-small-firm-lawyers-with-new-online-resource-center/>. Small firms were defined as having twenty or fewer members. *Id.*

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

<sup>6</sup> NALP, CLASS OF 2103 NATIONAL SUMMARY REPORT (2013), available at <http://www.nalp.org/uploads/NatlSummaryChartClassof2013.pdf>.

<sup>7</sup> Herrera, *supra* note 1.

counsel at the American Bar Association (ABA), has written: "Simply put, law school graduates are ill-prepared for the future they are most likely to pursue."<sup>8</sup>

A confluence of factors have brought solo and small practice to the forefront, including: the lagging job market for recent law graduates; the contracting of "biglaw" firm practice; the hope that regional and community practices will begin to fill the "justice gap" for low and middle income individuals; the entrepreneurial spirit of recent college graduates ("Millenials"), who long to be free agents and care deeply about their communities and work-life balance; and technological advances that have increased the efficiencies and decreased the overhead of operating a solo or small firm.<sup>9</sup> Add to these factors that substantially decreasing law school enrollments have increased the pressure on law schools to innovate and recognize the realities of modern law practice.<sup>10</sup>

In law schools, from the "MacCrate Report"<sup>11</sup> to the "Carnegie Report"<sup>12</sup> to "Best Practices,"<sup>13</sup> to a number of familiar revisits to the "MacCrate Report,"<sup>14</sup>

<sup>8</sup> Hornsby, *supra* note 2, at 436; see also Richard S. Garant & Stephanie Kimbro, *The Teaching of Law Practice Management and Technology in Law Schools: a New Paradigm*, 88 CHI.-KENT L. REV. 757 (2013).

<sup>9</sup> Herrera, *supra* note 1, at 893-902 (citing RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* 27 (2008)); Stephen P. Gallagher, *Lawyers Join the Free Agent Nation*, 37 LAW PRAC. 4, 38 ("With the nature of the legal services market and the practice of law shifting in new directions, the traditional career options for lawyers are not only less-widely available—they are also less sought-after by many who want more control over what they can achieve in their work lives. Whether it's owing to a desire for greater flexibility, more income or the dream of following a particular passion, they are choosing to carve out their own career paths with a free agent mind-set."); Rob Asghar, *What Millenials Want in the Workplace (And Why You Should Start Giving It To Them)*, FORBES (Jan. 13, 2013, 4:41 PM), <http://www.forbes.com/sites/robasghar/2014/01/13/what-millennials-want-in-the-workplace-and-why-you-should-start-giving-it-to-them/>.

<sup>10</sup> Herrera, *supra* note 1, at 939; James G. Leipold, *The Changing Legal Employment Market for New Law School Graduates*, THE BAR EXAMINER, Nov. 2010, at 6-10; Bernard A. Burk & David McGowan, *Big But Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 28-40 (2011).

<sup>11</sup> See AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUC. AND PROF. DEV. – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (most commonly referred to as the "MacCrate Report").

<sup>12</sup> See THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

<sup>13</sup> See generally ROY STUCKEY ET AL., CLINICAL LEGAL EDUC. ASS'N, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007).

<sup>14</sup> See, e.g., Gerard J. Clark, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap by the American Bar Association Section of Legal Education and Admissions to the Bar*, 27 SUFFOLK U. L. REV. 1153, 1160 (1993); Helen Pratt Mickens, *The Column of the Legal Education Committee Professional – Responsibility: Bridging the Gap Between Law School and the Practice of Law*, CROSSING THE BAR, <http://www.michbar.org/journal/article.cfm?articleID=125&volumeID=11> (last visited Mar. 23, 2015); Russell Engler, *From 10 to 20: A Guide to Utilizing the MacCrate Report over the Next Decade*, 23 PACE L. REV. 519, 522 (2003); John Burwell Garvey, "Making Law Students Client-Ready" the Daniel Webster Scholar Honors Program: A Performance-Based Variant of the Bar

we have seen over twenty years of debate about the role of “practical skills training” in the law school curriculum. This Article is not meant to rehash those debates. To the extent that law schools have introduced more opportunities for practical training, it is a step toward building a solo practice curriculum, but it does not go far enough. A gap still exists between the doctrinal knowledge and practical competencies taught in law school and those necessary to successfully operate a solo practice.<sup>15</sup> While most law schools currently provide thorough instruction in doctrinal law, legal reasoning, and some exposure to “skills” training, they do not provide guidance in the “diverse set of business, legal, and interpersonal skills”<sup>16</sup> that operating a law practice requires.

There is a small but growing chorus urging law schools to do more to prepare graduates who will operate their own practices.<sup>17</sup> However, there have not yet been comprehensive or concrete proposals for the law school curriculum. To the extent law schools have responded to this need, they have done so by adding a Practice Management course and/or opening a post-graduate incubator or residency program. The Practice Management course is a key component of designing a solo practice curriculum, but its two or three credits are far from a comprehensive exposure to the necessary competencies. Moreover, while post-graduate programs are important steps in assisting attorneys in gaining the competencies to operate their own practices, this education should be more widely available to all students and it should begin before graduation. The post-graduate programs should inform and supplement the curriculum, but they cannot be the only answer to the disconnect between the curriculum and the way that law is actually practiced by such a great number of graduates.

It is the responsibility of law schools—especially those with a regional focus—to offer a suite of courses designed to position students to manage and operate their own practices. Borrowing from my experience designing a solo practice curriculum at the Touro Law Center, this Article will provide the contours of a suite of curricular offerings for those students interested in operating their own practices. At Touro, we have created a Solo and Small Practice Concentration (the “Concentration”). While still a work in progress, the core courses that make up the Concentration are consciously intended to build the business and interpersonal skills necessary to operate a solo practice. Students

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*Exam*, N.Y. ST. B.A., 44-45 (“In addition to seeking to create an alternative to the bar exam that would actually improve the quality of new lawyers, the committee was dedicated to “incorporat[ing] the MacCrate factors at every step along the way.”); John D. Hutson, *Preparing Law Students to Become Better Lawyers, Quicker: Franklin Pierce’s Webster Scholars Program*, 37 U. TOL. L. REV. 103, 105 (2005) (“The Webster Program seeks to add value and bridge the gap between education and practice by focusing upon the ten fundamental skills and four fundamental values described in the MacCrate report.”).

<sup>15</sup> HANOVER RESEARCH, *Solo Practice: Obstacles and Resources* (Sept. 2012); see also Bradley Borden & Robert J. Rhee, *The Law School Firm*, 63 S.C. L. REV. 1 (2011); William Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 499 (2013) (charting “competency based” curriculum in figure 9).

<sup>16</sup> HANOVER, *supra* note 15, at 3.

<sup>17</sup> See generally Gary A. Munneke, *Managing a Law Practice: What You Need to Learn in Law School*, 30 PACE L. REV. 1207 (2010); Herrera, *supra* note 1; Hornsby, *supra* note 2.

who opt to declare the Concentration and complete all of its requirements receive a notation on their transcript.

This Article will begin by detailing the nature and goals of the core courses that we have identified as making up a solo and small practice curriculum. After describing the courses and their educational objectives, this Article will identify some of the hurdles in building the curriculum. It will also identify potential synergies between the curriculum and post-graduate programs. Finally, the Article will conclude by briefly placing the solo and small practice curriculum within the current context: in light of a shifting legal landscape, law schools must recalibrate to better prepare graduates for the actual challenges of the legal market.

## II. THE CORE COURSES

On the whole, law schools excel in teaching doctrinal knowledge and, with the exception of the first year writing and research course, the required courses have traditionally been doctrinal in nature. The ABA has recently called for reform by revising Standard 303 to require law students to complete at least six credits of “experiential” coursework through clinics, externships or simulation courses.<sup>18</sup> Solo and small firm practice, however, requires more than doctrinal knowledge and a few opportunities to gain practical experience.

In creating the Concentration, we sought to identify curricular gaps and provide students with more opportunities to put doctrine to practice, build confidence, forge a professional identity, and gain valuable knowledge concerning the business of operating a practice. Having consulted with current and former solo and small firm practitioners about the things they wish they had learned in law school, we added three new courses, all described below. The new courses focus on practice-oriented instruction that begins with and deepens doctrinal knowledge.

The following courses make up the core of the Concentration (the three courses marked with an asterisk were added to the curriculum):

- Law Practice Management (2 credits)
- Law By the Numbers: Numerical Literacy (2 credits)\*
- Interviewing, Negotiating & Counseling (3 credits)
- Solo Survey I or Solo Survey II (3 credits)\*
- New York Legal Research (1 credit)
- Selected Topics in Ethics for Solo and Small Firm Practice (1 credit)\*

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<sup>18</sup> ABA 2014-2015 Standards and Rules of Procedure for Approval of Law Schools, *Chapter 3, Program of Legal Education*, § 303(a)(3), [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_chapter3.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf).

These core courses are required for the Concentration but are open to all students. In addition to the core courses, the students must take a minimum of eight credits of electives identified as satisfying the Concentration. These electives are a long list of “bread and butter” doctrinal courses that span the curriculum such as Family Law, Real Estate Transactions, Criminal Procedure or Immigration Law.<sup>19</sup> In addition, the students must take a minimum of two credits of a course identified as an “intermediate skills” course (a course centered around simulations), such as Trial Practice or Drafting Commercial Documents.<sup>20</sup> Finally, the students must satisfy an “experiential component” by taking a live-client clinic or externship.

The goal is that all students in the Concentration take the core courses during their studies. In addition, they are encouraged to identify electives, intermediate skills, and experiential opportunities that enable them to build depth in at least two practice areas. For example, a student could focus on Real Estate and Family Law and satisfy the Concentration requirements by, in addition to the core Concentration courses, taking Family Law, Real Estate Transactions, Cooperatives, Condominiums and Homeowners Associations, Landlord and Tenant Practice, Family Law Practice Module and the Family Law Clinic.

This Article will focus on the core courses that all Concentration students must take and why they are an important component of designing a solo and small practice curriculum.

### **A. Law Practice Management**

Law Practice Management is a required course for students who declare the Concentration and a key component of any solo and small practice

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<sup>19</sup> The full list of electives currently is: Family Law (3), Real Estate Transactions (2), Cooperatives, Condominiums & Homeowners Associations (2), Landlord & Tenant Practice (2), Land Use, Zoning & Planning (3), Environmental Law (3), Bankruptcy (3), Mortgage Foreclosure Law (2 or 3), Employment Law (3), Employment Discrimination (3), Employee Benefits/Pension Rights (2), Labor Law (3), Federal Income Tax (4), Corporate Taxation (3), Estate & Gift Taxation (3), Selected Topics: Garage to IPO (2), Business Planning (3), Entrepreneurship & the Law (2), Criminal Law II (3), Criminal Procedure (3), Selected Topics in Criminal Procedure (2), Selected Topics in Criminal Procedure: NY (2), Disability Law (2), Selected Topics in Torts (2), Products Liability (2), Sales (3), Secured Transactions (3), Education Law (3), Elder Law (2), Estate & Trust Administration (2), Estate Planning (2), Entertainment Law (3), Immigration Law (3), Patent Law (3), Intellectual Property (2). Note that students at Touro are already required to take Trusts & Estates as well as Business Organizations. See *Solo & Small Firm Practice Degrees*, TOURO LAW, <http://www.tourolaw.edu/Academics/solo-and-small-practice> (last visited Mar. 23, 2015).

<sup>20</sup> The full list of “intermediate skills” courses currently is: Trusts & Estates Practice Module (2), Trial Practice (3), Trial Practice: Civil (3), Trial Practice: Criminal (3), Advanced Trial Practice (3), Settling Legal Disputes, Negotiation, Mediation and Mediation Rep. (2 or 3), Business Organization Practice Module (2), Criminal Procedure Practice Module (2), Drafting Commercial Documents (2), Environmental Law Practice Module (2), Family Law Practice Module (2), Licensing in Intellectual Property (3 credit version only), International Sales Law & Arbitration (3), Appellate Advocacy (3). *Id.*

curriculum. This course is a central component of the Concentration because it introduces students to some of the fundamental business issues they will address in their practices.<sup>21</sup>

Indeed, where schools have made any effort to address solo practice competencies in the curriculum, they have added a Law Practice Management course. However, the number of schools that offer this course should not be overstated. Apparently, fewer than one-third of U.S. law schools offer a practice management course.<sup>22</sup> Not one law school requires the course of all students.

The practicing bar recognizes the need to fill this curricular gap, especially for students that will enter solo or small firm practice. A 2006 report conducted by the Standing Committee on Professionalism of the ABA concluded that, because a large percentage of lawyers in the United States maintain solo or small firm practices, training in law office management is essential. The report underscored the importance of this training before students graduate:

Many of these lawyers go into these practices straight out of law school and therefore do not have the luxury of on the job training before they find themselves in office management situations. In addition, even those new lawyers who start out in positions that do not require them to take the lead on office management issues will find themselves subject to the implications of those issues and thus would benefit from an educational background in the area.<sup>23</sup>

In a 2010 article, Professor Gary A. Munneke collected a list of management topics that were beginning to garner increased scholarly attention. While Professor Munneke noted that much of the scholarship in this area “addresses questions of personal failure, manifested in professional error leading

<sup>21</sup> At Touro Law, Law Practice Management is currently described in the course catalogue as follows:

This course provides an introduction to law practice management, with an emphasis on solo and small firm practice. Students explore the decision to start a law practice; affiliational arrangements and partnership agreements; compensation and benefits; paralegal and non-legal personnel; ethical and malpractice pitfalls and malpractice insurance; substantive and administrative systems; law library and other information resources; computer hard-ware and software; client development and client relations; fee setting, billing, and collection; and financial planning and budgets. (No prerequisite.)

The course is currently 2 credits but a 3-credit version will soon be proposed. *Course Description:* Law Practice Management, TOURO L., <https://www.tourolaw.edu/Academics/coursedetails.aspx?id=716> (last visited Mar. 23, 2015).

<sup>22</sup> Garant & Kimbro, *supra* note 8, at 758; R. Michael Cassidy, *Beyond Practical Skills: Nine Steps for Improving Legal Education Now*, 53 B.C. L. REV. 1515, 1528 (2012) (citing Debra Moss Curtis, *Teaching Law Office Management: Why Law Students Need to Know the Business of Being a Lawyer*, 71 ALB. L. REV. 201, 206 (2008)); Munneke, *supra* note 17, at 1233.

<sup>23</sup> ABA STANDING COMMITTEE ON PROFESSIONALISM, REPORT ON SURVEY OF LAW SCHOOL PROFESSIONALISM PROGRAMS, 38 (2006); *see also* Garant & Kimbro, *supra* note 8, at 759.

to either malpractice or discipline,”<sup>24</sup> the list of topics does intelligently inform the coverage of a course in practice management:

- Firm organization;
- Law firm mergers and breakups;
- Human resources;
- Office technology;
- Fees and billing;
- Compensation;
- Economics of law practice;
- Career issues;
- Management-related legal malpractice;
- Marketing legal services; and
- Trends in the profession affecting the practice of law.<sup>25</sup>

More recently, Richard Garant and Stephanie Kimbro, Co-Directors of Florida Coastal’s Center for Law Practice Technology, defined the subject of practice management as “the art and science of creating and operating a sustainable law firm that generates a reasonable income for law firm members after all costs have been paid.”<sup>26</sup> They identify topics such as:

- Workload and staff management;
- Financial management;
- Office management; and
- Marketing, including legal advertising.<sup>27</sup>

In their article, Garant and Kimbro call for coverage of practice management in the curriculum, but advocate for an updated version that addresses technological trends. They identify the technological components that should be part of the course—including social media tools and practices, firm websites, blogs, marketing applications, lead generation websites and payment systems, as well as the attendant ethical issues that these evolving technological advancements introduce.<sup>28</sup>

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<sup>24</sup> Munneke, *supra* note 17, at 1217.

<sup>25</sup> *Id.* at 1215-16. Professor Munneke also identified course content and format. *Id.* at 1228-33.

<sup>26</sup> Garant & Kimbro, *supra* note 8, at 758.

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

<sup>28</sup> Garant & Kimbro, *supra* note 8, at 777-82.



## B. Law By the Numbers: Numerical Literacy

Many law students say: “I came to law school because I’m not a numbers person.” They cringe at the mention of even the simplest application of the law that involves numbers.<sup>29</sup> Yet, the practice of law often involves numbers—and lawyers need to build numerical literacy to a significant extent. They need to gather facts, which often involves knowing how to read, understand, and interpret crucial documents that contain numbers. For this reason, a solo and small practice curriculum should include a numerical literacy course (here, I will call it “Numbers”).<sup>30</sup> Numbers should build students’ confidence as “numbers people,” ready for the documents they will invariably encounter in gathering the facts to which they will apply the relevant doctrinal law.

The subject matter of the course covers areas where lawyers are commonly required to have numerical literacy to adequately serve their clients. For example, the course might include but would not be limited to building an understanding of: personal and business tax returns, financial statements, brokerage and bank accounts, loans and mortgages, net worth statements, business and real estate appraisals, insurance, child support and maintenance calculations, commissions, royalties and profit sharing, and/or damages calculations.

After completing the course, the student should have a heightened understanding of the application of legal doctrine to a specific context, confidence to work with numbers in a practical legal context, and the competence to know what questions to ask in order to best serve clients.

The students will be graded based upon a series of take-home assignments and a final exam. The take-home assignments will require the students to answer a series of questions about a document that has legal significance and also contains numbers. For example, students could be given a set of financial statements and asked to answer a series of questions about the health of the company. As another example, they could be provided a business appraisal and asked to answer a series of questions about the purchase price

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<sup>29</sup> Numbers is inspired by some of the ideas presented by Professor Anthony Luppino at the incubator conference at Touro Law in 2014.

<sup>30</sup> It should be noted that Numbers is not duplicative of a course in accounting – some schools may have (as Touro does) a class in “Accounting for Lawyers.” Numbers is about more than interpreting financial statements. While Numbers might spend a few course hours on how to understand financial statements or the types of investments in a client’s brokerage account, these discussions are presented in the context of specific client problem and emphasize the fact gathering and legal conclusions that students might draw from these documents, among many others (e.g., net worth statements, support and maintenance calculations, etc). Students in Numbers do not learn to prepare tax returns or financial statements, but rather, how to read them with the specific purpose of appropriately counseling a client with a legal issue. Moreover, the issues extend beyond financial statements. For example: what amount of royalties has the client earned pursuant to a complex contract? Pursuant to a vesting schedule, as of a certain date, what percentage of the company does the client own? What are the tax consequences of a settlement?

being offered to a simulated client. As yet another example, they could be given tax returns and other important facts and documents and asked to perform a calculation of temporary spousal maintenance in a divorce proceeding. Each example requires an understanding of substantive law and business concepts at a level of depth that extends beyond most doctrinal courses. Moreover, the students are required to assess a set of facts which include numbers and calculations in order to apply the doctrinal law and provide advice to a client.

The final exam would be an in-class exercise where students are provided with a document and asked to answer a series of questions aimed at testing their understanding of the law and the basic information contained in the types of documents covered in class. For example, students might be given a business tax return and asked a series of questions based upon that document—questions that position them to counsel a client.

Numbers builds upon substantive topics that are addressed or only touched upon in a variety of courses across the curriculum. It provides the opportunity for students to develop fluency with numbers in applied legal context. The goal is not that students learn to prepare tax returns or balance sheets; rather, the goal is that students can read and understand these types of documents to assess what is in a client's best interests.

### **C. Interviewing, Negotiating and Counseling**

Interviewing, Negotiating and Counseling is a skills-centered course that is obviously essential to any practitioner in any area of law.<sup>31</sup> For a student who intends to operate his or her own practice, he or she should be making a conscious effort to cultivate strong interviewing, negotiating, and counseling skills while in school. For this reason, Interviewing, Negotiation and Counseling should be part of a solo and small practice curriculum.

### **D. Selected Topics in Ethics for Solo and Small Firm Practice**

Solo and small firm practitioners are often confronted with the pressure to bring in clients, cash flow problems, and a general lack of resources. This perfect storm positions solo and small firm practitioners to face a number of ethical dilemmas which are exacerbated by or unique to this practice setting.

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<sup>31</sup> At Touro, the course description for Interviewing, Negotiating and Counseling, is as follows:

In this course, students are introduced to the fundamentals of interviewing, negotiating, and counseling skills necessary for effective client representation. Topics covered include client-centered thinking; active listening; interview planning; question formulation and ordering; approaches to counseling; and techniques and styles of negotiation.

*Course Description: Interviewing, Negotiating, and Counseling*, TOURO L., <http://www.tourolaw.edu/Academics/coursedetails.aspx?id=696> (last visited Mar. 23, 2015).

Indeed, solo and small firm lawyers are more frequently the subject of disciplinary actions.<sup>32</sup>

Selected Topics in Ethics for Solo and Small Firm Practice ("Solo Ethics") is a one-credit course that aims to introduce students to a series of professional responsibility hypotheticals likely to arise in some variation if they operate their own law firms.

The objective of Solo Ethics is to draw upon the experiences of solo practitioners and present students with the common ethical challenges encountered in solo practice. The students should gain a heightened understanding about how to apply the Rules of Professional Conduct to the issues that arise, as well as an understanding about when to seek out guidance or counsel concerning ethical issues.

Possible topics include:

- Problems Created by Office Sharing and Affiliations
- Conflicts of Interest
- Escrow
- Advertising and New Media
- Fee Arrangements, Fee Splitting and Client Equity
- The "Bad" Client
- Problems Specific to the New Lawyer<sup>33</sup>

Ideally, the instruction will be problem based and students will come to class prepared to discuss particular hypotheticals and the relevant rules of professional conduct, as well as strategies for avoiding and handling challenging situations, including client grievances. Assessment will be in the discretion of the professor and may be based upon a final paper or in-class exam.

### **E. Legal Research**

Rather than propose an entirely new course in legal research practices for solo and small firm attorneys, at Touro we decided to require Concentration students to take an existing course entitled New York Legal Research.<sup>34</sup> The

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<sup>32</sup> See Leslie C. Levin, *The Ethical World of Solo and Small Law Firm Practitioners*, 41 HOUS. L. REV. 309, 310-11 (2004).

<sup>33</sup> See also *id.*

<sup>34</sup> The course description of New York Legal Research:

This is a practical legal research course focused on the myriad research sources available for New York law. Topics include New York State legislation and legislative history; New York State agencies and administrative/regulatory law; county, city, village and town codes, rules and regulations; and New York State secondary sources. The intention is to teach this course in a condensed format: two hours per week for the first seven weeks of the semester.

course is taught with a focus on the needs of smaller practices that are less likely to have ready access to costly fee-based resources like Westlaw and LexisNexis. A research course geared toward solo and small firm practice is an important part of building this curriculum and, if such course is not already available, it should be added as an offering.

The course encourages students to research in a cost-effective manner and aims to build their literacy using readily-available legal information. These are the goals identified by Joseph Lawson in a recent article about adding solo and small firm research skills to the curriculum.<sup>35</sup> In that article, concerning cost-effective research, Lawson writes:

A legal research curriculum that takes into account the needs of solo and small firm practitioners can employ two strategies that have already been discussed in the literature for improving overall legal research instruction: cost-effective legal research and legal information literacy. Deborah Hackerson suggests that law students develop a habit of using databases without considering the costs in law school because they have free access to expensive research tools. She argues that such habits “will not serve them well when they enter the professional law firm environment, where costs matter.” The need to limit legal research costs is very important for smaller firms because profit margins are tight and costs are not easily passed to clients. Incorporation of cost-effective strategies, including free and low-cost tools, into legal research coursework would help solo and small firm practitioners discover research tools that fit into their unique business plan.<sup>36</sup>

Lawson also identifies the concept of “legal information literacy,” which is defined as “the ability to find, retrieve, analyze and use legal information.”<sup>37</sup> Given the volume and variety of available legal information, the research course also aims to assist students in identifying and evaluating available resources.

The research course for solo and small firm practice should reference cost-effective research and legal information literacy. These competencies are of universal import for all law students, but of acute significance for those who will work in a solo or small firm setting.

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*Course Description: New York Legal Research, Touro L.,*  
<http://www.tourolaw.edu/Academics/course/details.aspx?id=614> (last visited Mar. 23, 2015).

<sup>35</sup> See Joseph Lawson, *What About the Majority? Considering the Legal Research Practices of Solo and Small Firm Attorneys*, 106 LAW LIBR. J. 377, 399 (2014).

<sup>36</sup> *Id.* (internal footnotes and citations omitted).

<sup>37</sup> *Id.* at 401 (quoting Catherine Lemmer, *A View from the Flip Side: Using the “Inverted Classroom” to Enhance the Legal Information Literacy of the International LL.M Student*, 105 LAW LIBR. J. 461, 462-63 (2013)).

### F. Survey Courses Geared to Solo Practice

One of the more difficult aspects of building a Concentration is ensuring that the students receive a meaningful introduction to substantive and practical training in some of the discrete areas of law that are likely to arise in the day-to-day operation of a community law practice in the relevant region (for Touro, suburban Long Island). The goal is to introduce the students to basic and routine client problems that are likely to “walk in the door” and provide the students with opportunities to simulate how they would apply the law in addressing the client’s needs. To address these goals, the Concentration should consist of at least one “Solo Survey” course.

By way of example, at Touro we slightly reconfigured an existing course called “American Trial Courts (State)” and gave it a subtitle as “Solo Survey I.” This existing course (referred to herein as “Solo Survey I”) already achieved a great deal of what we sought to accomplish with a survey of practice topics. The course includes court observations and all of its training is litigation-centered. We created a new course titled “Solo Survey II” which is also practice-oriented but includes some transactional projects. The students in the Concentration are encouraged to take both courses over the course of two semesters to ensure a breadth of exposure but they are only required to take one or the other.

Solo Survey I is a course in collaboration with nearby state courts. It immerses students in the work of the New York State District, Family, and Supreme courts. It includes approximately three hours per week of courtroom observation. During these sessions, the students focus on procedure and substance related to the type of courtroom being observed (e.g. Domestic Violence part, Drug Court, Mental Health Court, Landlord-Tenant Court, Child Support or Child Custody/Visitation parts, Model Guardianship Court, and Integrated Domestic Violence court). Students engage in discussions with judges and attorneys during the courtroom sessions. They are also required to actively participate in a three-hour seminar that meets once a week. In that seminar, judges, practitioners and faculty present students with issues that correlate closely with the substance of the courtroom observations. The students also discuss and work collaboratively with one another and with guest practitioners on simulated written submissions and oral arguments, which are presented before a state judge.

The students in Solo Survey I perform simulated exercises in criminal courts in the context of arraignments and DWI cases. In Family Court they address any number of the following: abuse and neglect, orders of protection, child support and/or custody and visitation. In Supreme Court they are exposed to the matrimonial part and the integrated domestic violence court.

Solo Survey II focuses on discrete substantive areas that are not part of Solo Survey I. Topics may include some of the following:

- Real Estate Transactions
- Landlord-Tenant – Negotiations and Settlements

- Mortgage Foreclosure Conferencing
- Predatory Lending/Unconscionable Contracts
- Wills and Trusts
- Power of Attorney
- Drafting a Will
- Preparing a Health Care Proxy/Living Will
- Creating Trusts
- Surrogate Court Conferencing
- Pre-Trial Litigation/ADR in Torts – Slip and Fall, Automobile Accident Cases
- Pleadings
- Bill of Particulars/Interrogatories/Demand Letters
- Discovery Conference
- Negotiation/Settlement

Unlike Solo Survey I, Solo Survey II does not include courtroom observation. Through lectures and simulations, the students learn the substantive law as well as the practice tools to confidently represent a client. The practical competencies are learned in the specific context of client problems. That said, many of those competencies are transferrable to any area of law.

The students in the Survey courses are graded based upon a series of practice-oriented assessments. For example, in Solo Survey II, after the class session on wills, the students might be given an assignment to draft a will. The assessments would include opportunities to strengthen drafting, interviewing and negotiating skills.

Both Solo Survey I and Solo Survey II build upon substantive topics that are only touched upon in many doctrinal courses across the curriculum. The students are introduced to the applicable law through assigned reading in statutes, cases, treatises, and practice guides; after gaining the background information on the law they are also required to research and answer specific questions. This task of finding the law after gaining a background is an important one—all too often the law school curriculum gives the students “the law” in a series of appellate cases but a large part of lawyering is actually culling through sources to find the law.

In sum, the survey courses aim to (1) build depth in substantive and practical knowledge in discrete and common topics and (2) assist the students in learning the critical skill of “getting up to speed” in new areas. In focusing on the “how to,” these courses place the doctrinal topics in a practice context and operationalize them for client representation.

### III. CONSIDERATIONS AND CHALLENGES

Developing a solo practice curriculum has presented challenges. The challenges roughly fall into three categories: (1) philosophical opposition, (2) substantive disagreement, and (3) resource allocation.

#### A. Philosophical Opposition

In terms of philosophical opposition, there are and will likely continue to be faculty who simply believe that these courses, with an emphasis on skills training, lack the intellectual rigor of traditional doctrinal courses.<sup>38</sup> This concern is misguided because the curriculum is tailored to cover the legal issues that most commonly arise in solo and small firm practice—which, of course, requires an understanding of the doctrine.

In a related and perhaps overlapping camp are the faculty that are concerned about whether these types of courses adequately prepare students in the doctrinal knowledge and test-taking skills they need to pass the bar exam. This camp will often say that we should not focus on preparing students to practice law if they cannot first pass the bar so that they can actually practice. To these faculty, the answer is simply that we must continue to do the best we can to train graduates to do both: pass the bar and practice law.

Additionally, there are faculty who believe that students should not “hang a shingle” upon graduation and we should not provide a program that suggests that they will be prepared to do so. This is a valid concern. In an ideal world, law graduates would gain experience practicing before taking on the challenges of operating their own practices. But we are not living in an ideal world. Indeed, almost 5% of the respondents to the 2013 NALP survey who were in private practice reported that they were operating their own firms within nine months of graduation.<sup>39</sup> The number is not that large (about 933 graduates of 45,592 nationwide), so perhaps the concern is overstated.<sup>40</sup> And the Concentration is not encouraging students to open their own practices immediately upon getting admitted to practice; rather, it is recognizing that there are skills they will need to consciously begin building if they want to do so at some point in the future. Indeed, one of the potential lessons of the Concentration is that solo practice is very challenging and may not be the right path for most students until they spend some time practicing law under the guidance of experienced mentors.

Finally, there is an issue of status and prestige. Law schools have been chasing the models of legal education at Harvard and Yale without much thought

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<sup>38</sup> Munneke, *supra* note 17, at 1223. Indeed, other concentrations at Touro are organized around a substantive area of law: criminal law, land use, and elder law.

<sup>39</sup> NALP, *supra* note 6.

<sup>40</sup> *Id.*

about what best equips their graduates to practice law.<sup>41</sup> This game has been geared to U.S. News Rankings, which do not reward innovation. Moreover, solo practice has not historically been thought of as the pinnacle of law practice.<sup>42</sup> For a law school to recognize that its graduates pursue this path in great numbers may be, in the short-term, to admit defeat in the prestige game; however, it may be that innovation and a curriculum that aligns with the actual practice of law will bring deserved recognition in the long-term. This may be especially the case given that the practice trends indicate increasing numbers of attorneys practicing in solo and small practice settings.

### B. Substantive Disagreements

There is some dispute about what should actually be required in a concentration focused on solo and small firm practice. One example was described above—many faculty members who supported the concept of the Concentration were trouble by the Solo Practice Surveys. They were concerned that the surveys could not achieve competency in very many discrete areas and/or should be taught by doctrinal faculty. There was a concern about lack of rigor and depth of coverage. Certainly, there is a challenge in ensuring that the survey courses have more depth than a “bridge the gap”-type continuing legal education course that is routinely offered to recent graduates. One way to address this concern is to have doctrinal faculty visit the courses to present on the substantive areas of law in coordination with practitioners or judges.

Another example of substantive disagreement is the topic of technology. Technology is a revolutionizing force and it is an important component of training future attorneys, especially those operating their own practices. There is no disagreement that technology needs to be part of a solo practice curriculum. The question is whether technology should be infused in all of the courses (e.g., Practice Management, Ethics, Research) or a stand-alone course. As we have currently configured the Concentration, technological advances are assumed to

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<sup>41</sup> Munneke, *supra* note 17, at 1224. In discussing the reluctance of law schools to offer courses in practice management, Prof. Munneke poignantly observed:

Another hurdle is the effect of status. All law schools in the United States today ultimately emulate the Harvard model introduced by Dean Langdell in the 1870's. They build a traditional curriculum; they try to place their students with prestigious firms; they hire faculty with traditional credentials. Because schools gain status from being recognized by traditional measures of quality, there is little incentive for the schools to invest in non-traditional, more experimental curricular innovations.

*Id.* (citations omitted).

<sup>42</sup> See Hornsby, *supra* note 2, at 438 (“How is it that we view the pinnacle of the legal profession to be the partner in a megasized international law firm who spends time defending corporations that discriminate against their employees, exploit child labor, pollute our water supply, and seek out tax loopholes?”).



be a critical component of all of the courses; technology is not taught as a separate, stand-alone subject.

### C. Resource Allocation

For any successful program, resource allocation is a critical issue. For this reason, we tried to build the Concentration using as many existing courses as possible, but, historically, not all of those existing courses have been regularly offered. The Concentration requires a firm commitment to regularly offer courses that have not before been considered a priority in scheduling. The new courses that were introduced as part of the Concentration will also require an allocation of teaching resources. In reality, effective teaching of these courses will require recent practice experience that all too many doctrinal faculty lack. Therefore, many of the courses will be taught by practicing lawyers, requiring an increased adjunct budget.<sup>43</sup>

While hiring more adjunct faculty introduces costs, it also presents many advantages. The attorneys that teach in the program will be familiar with the current practice issues and relevant technological advances. Their participation exposes the students to the practicing bar and begins network building early on. It also exposes the practicing bar to the law school, which should serve to build good will in the legal community. Many solo practitioners are excited about the Concentration and have expressed interest in teaching in the program.

## IV. SYNERGIES WITH POST-GRADUATE PROGRAMS

The focus on solo and small practice education has largely been post-graduate in the form of incubators and residency programs.<sup>44</sup> At Touro, we have an incubator that presently houses twelve attorneys who are in varying stages of building their own solo practices. There are numerous potential synergies between the incubator and the Concentration; this opportunity would be present at any school that has both a solo and small practice curriculum and a post-graduate program.

The incubator attorneys are invited and encouraged to attend the Solo Ethics, Numbers, and New York Research courses, which will ideally be approved for CLE credit. The intent is to offer the one-credit courses (Solo Ethics and New York Research) once a week for seven weeks in the evening so that the attorneys can plan to attend. The incubator attorneys will also be invited

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<sup>43</sup> This is not to say that the current configuration of full-time law faculty is the appropriate one. There is a strong argument that future law professor hiring should emphasize practical experience instead of prestige. Moreover, there is a strong argument that law faculty should continue to practice law, at least to some extent. This shift in priorities would likely yield a law faculty better equipped to teach the Concentration curriculum. That said, we did not have the luxury to build the Concentration from scratch; we had to design the curriculum with the resources actually available.

<sup>44</sup> See Herrera, *supra* note 1, at 920-30.

and encouraged to attend the sessions in the Solo Surveys that cover practice areas they are interested in learning more about.

This only serves to benefit both the incubator attorneys and the current students, who begin to build a professional network with practicing attorneys. Solo Ethics is likely to address many of the issues that the incubator attorneys face. Participation by incubator attorneys would also benefit current students, who would gain exposure to the ethical issues that arise in the incubator. It brings the “real world” into the classroom and should command the attention of students by providing a context for the problems and rules discussed.

In addition, a close relationship with the incubator attorneys and knowledge of their common areas of concern should serve to inform the Concentration. The subjects that the incubator attorneys wish they knew more about serve to guide what the Concentration should cover, which will evolve over time.

## V. CONCLUSION

The shifts in the legal job market reflect changes in the labor market more generally. The economy is moving away from the organization to the individual—the prevailing mode of work in all highly skilled fields will be free agency. Indeed, the dream of young Americans today is to create their own gig on their own terms. Law is often described as a staid profession but even within conservative legal structures, there is room for the solo practitioner to chart his or her own course. The solo practitioner is the free agent of the legal profession. Whether by circumstance or by choice, the expectation of most law graduates will shift from getting hired and moving up within an organization to building, operating, and growing their own practice while doing it on their own terms.<sup>45</sup>

This shift requires law schools to recalibrate their curricular offerings and provide opportunities for students to build the competencies they will need to launch their own practices. Law schools that dedicate themselves to preparing students who foresee a career in solo and small practice will emerge as leaders in the movement to improve legal education and make it more relevant to the actual practice of law. These schools will distinguish themselves to future students with an entrepreneurial spirit and a deep commitment to serving their communities. This Article presents a concrete framework for law schools who are ready to meet this challenge and emerge as leaders in improving legal education.

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<sup>45</sup> DANIEL H. PINK, *FREE AGENT NATION* (Warner Books 2001); Chris Lauer, *Free Agent Nation*, BUSINESSWEEK.COM, (June 10, 2008), <http://www.businessweek.com/stories/2008-06-10/free-agent-nationbusinessweek-business-news-stock-market-and-financial-advice>; Gallagher, *supra* note 9, at 38.

