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# Incubating Community Law Practices: Post-Graduate Models for Lawyer Training & Access to Law

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# INCUBATING COMMUNITY LAW PRACTICES: POST-GRADUATE MODELS FOR LAWYER TRAINING & ACCESS TO LAW

LUZ E. HERRERA\*

While the greatest number of lawyers practice in solo and small firms, law schools do not devote sufficient resources to preparing law students for the opportunities and challenges that these types of law firms present. The recent economic recession has highlighted the need to better train lawyers to launch law practices right out of law school. However, experienced lawyers, law professors and state bar policy makers worry that individuals who start their own practices are not sufficiently trained to practice and could irreparably harm a client. Many new lawyers share that concern but also worry about the financial instability that comes with starting a business.

A handful of U.S. law schools and bar associations are addressing the need for new lawyer training as an opportunity to also build legal service delivery models that address the needs of low and modest income individuals who need lawyers. Law schools have launched post-graduate programs that ask lawyer participants to provide free and reduced rate legal services to underserved populations in exchange for subject matter training and support for their law businesses during their start-up phase. This article describes post-graduate incubator programs, specifically lawyer incubators, that promote access to justice and offers recommendations for best practices in designing such programs.

## A.

### ACCESS TO LAWYERS

Media outlets, blogs and even dissenting legal educators have effectively conveyed the message that our country has too many lawyers. This assertion of an overpopulation of lawyers is perplexing, since there are millions of individuals who forego legal claims or who struggle through self-representation because they cannot find and access lawyers to help them. A national survey on civil legal services needs released by the ABA in 1994 found that financial status is a

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factor that impacts on whether or not individuals seek civil legal assistance.<sup>1</sup> Sixty-one percent of moderate-income households stated they did not seek assistance because the situation they were experiencing did not warrant intervention by a lawyer.<sup>2</sup> Seventy-one percent of low-income households said they did not access the civil justice system to address their legal problems as a result of cost or a belief that the civil justice system would not help.<sup>3</sup> Subsequent court surveys reveal that cost of legal services is not the only factor contributing to the rise of self-represented litigants but most report a high number of poor or near poor individuals accessing those services.<sup>4</sup>

Courts have responded to this need and preference for self-representation.<sup>5</sup> The Civil Justice Infrastructure Mapping Project of the American Bar Foundation found that every state in the U.S. has information online to help self-represented litigants and 98 percent of states have a selection of legal forms on those websites.<sup>6</sup> Further, more than 70 percent of states have at least one court-based self-help center that offers members of the public information and assistance to help them represent themselves.<sup>7</sup> The growing resources for legal services consumers provide options that are less costly than lawyers to sophisticated legal services consumers. Yet, these self-help resources are not always sufficient for individuals who face language barriers,

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<sup>1</sup> AM. BAR ASS'N, *Consortium on Legal Services and the Public, Legal Needs and Civil Justice: A Survey of Americans, Mayor Findings from the Comprehensive Legal Needs Study* (1994) (hereinafter *Legal Needs*), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.authcheckdam.pdf>.

<sup>2</sup> NATIONAL CENTER FOR STATE COURTS, *How the Public Views the State Courts: A 1999 National Study* (1999), available at <http://www.ncsc.org/~media/files/pdf/topics/gender%20and%20racial%20fairness/publicviewwrtspub.ashx> (survey respondents said they did not respond to the civil justice system because “the situation was not really a problem, that they could handle it on their own, and that a lawyer’s involvement would not help”). See also Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics A Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 *FORDHAM L. REV.* 1879, 1883-84 (1999).

<sup>3</sup> *Legal Needs*, *supra* note 1.

<sup>4</sup> John M. Greacen, *Self Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know*, 2-5 (July 20, 2002) available at <http://www.courts.ca.gov/partners/documents/SRLwhatweknow.pdf> (citing studies where majority of users earn incomes that classify them as poor or near poor); *but see* Swank, *infra* note 8, at 378-79.

<sup>5</sup> See Swank, *infra* note 8, at 376-378. See also Bonnie Rose Hough, *Description of California Court’s Programs for Self- Represented Litigants* (2003), available at <http://www.courts.ca.gov/partners/documents/harvard.pdf> (summarizing data on the rise of pro se litigants in California’s family law courts).

<sup>6</sup> Rebecca L. Sandefur, *Access Across America: First Report of the Civil Justice Infrastructure Mapping Project*, 12, ABA CIVIL INFRASTRUCTURE MAPPING PROJECT (October 2011).

<sup>7</sup> *Id.* Additionally, 59 percent of states have courthouses with computer terminals to assist self-represented litigants. These computers use software to that explains how to respond to a claim.

suffer through emotional trauma or quite simply are not sophisticated enough to overcome confusing procedural issues.<sup>8</sup> When legal services consumers encounter these obstacles, many seek affordable non-lawyer options for assistance. There are a number of lay assistants and paraprofessionals, such as those accredited to represent individuals in state and federal agency proceedings, able to competently address some of the eligible populations' legal needs. However, many legal issues faced by low-income individuals, often made more complex due to their financial reality, require attorney representation.

The Legal Services Corporation (LSC) reported that in 2014, 63.4 million Americans were eligible for their services.<sup>9</sup> In that year, 4,318 attorneys employed by LSC-funded organization assisted 757,350 clients.<sup>10</sup> Since 1991, less than one percent of all lawyers in the country have worked as public defenders or in legal aid offices.<sup>11</sup> Like government lawyers, public defenders and legal aid lawyers are restricted to representing clients who fit the parameters imposed by government or program regulations.<sup>12</sup> While not all individuals eligible for legal services need lawyers, there is significantly more demand for free legal services from the eligible population than what LSC-funded organizations can provide.<sup>13</sup> Answering the question about the value and rele-

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<sup>8</sup> See Drew A. Swank, *In Defense of Rules and Roles: The Need to Curb Extreme Forms of Per Se Assistance and Accommodation in Litigation*, 54 AM. U. L. REV. 1537, 1554-1558 (2005) (discussing the limitations of the resources for self-represented litigants). See also Rebecca Sandefur, *The Impact of Counsel, An Analysis of Empirical Evidence*, 9 SEATTLE J. FOR SOC. JUST. 51, 62-71 (2010) (summarizing studies showing that individuals represented by lawyers are more likely to win than those who represent themselves). See also D. James Greiner and Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118 (2012).

<sup>9</sup> See LEGAL SERVICES CORPORATION, *2014 LSC By The Numbers: The Data Underlying Legal Aid Programs 1, 23*, available at <http://www.lsc.gov/media-center/publications/2014-lsc-numbers>.

<sup>10</sup> *Id.*

<sup>11</sup> ABA MKT RESEARCH DEP'T, *LAWYER DEMOGRAPHICS* (2015) (hereinafter *Lawyer Demographics*) available at [http://www.americanbar.org/content/dam/aba/administrative/market\\_research/lawyer-demographics-tables-2015.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2015.authcheckdam.pdf). Sources that fund the provision of legal aid are so scarce that lawyers are finding it more difficult to find or stay in jobs that facilitate free or affordable legal services. See *Legal Aid Association of California Shaping the Future of Justice: Effective Recruitment and Retention of Civil Legal Aid Attorneys in California* (April 2010), available at <http://legalaidresearch.org/pub/1672/recruitment-retention-civil-legal-aid-attorneys-california/> (discussing the retention problem for legal aid organizations in California).

<sup>12</sup> For a detailed discussion of some of the principal restrictions on federally funded programs, see Alan W. Houseman, *Restrictions by Funders and the Ethical Practice of Law*, 67 FORDHAM L. REV. 2187, 2189-90 (1999). While some restrictions have been softened recently, the population eligible for free services has also grown.

<sup>13</sup> See also Rebecca Sandefur, *ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 3*, AMERICAN BAR

vancy of legal education, therefore, requires a better understanding about who has access to lawyers in this country.

Historically, most attorneys in the United States have created their own jobs by establishing solo and small law firms. The latest ABA market research indicates that about three-fourths of all attorneys work in private practice.<sup>14</sup> Of those attorneys, 49% identify themselves as solo practitioners and approximately 14% work in law offices with five or fewer lawyers.<sup>15</sup> Attorney demographics confirm that the majority of lawyers in private practice are self-employed but despite this reality few law graduates enter the profession understanding the opportunities and challenges of starting their own law firms.

The idea for post-graduate training of lawyers to serve individuals who do not have access to lawyers is not new. Clinical education and various post-graduate fellowship programs were established as early as the 1970s to help address the needs of the poor. Many attorney incubator programs also serve the same client base that is income eligible, but perhaps not service eligible, for legal aid services. However, participants in these programs are also trained and exposed to business practices that help them generate their income. These post-graduate programs focus on mentoring and training lawyers on business basics that facilitate the creation of sustainable business models. Incubator programs and post graduate residences are law schools' expression of their commitment to the career development of their graduates.

Lawyer incubators borrow the idea of entrepreneurial development from the business community. Business incubators have existed for decades but they did not formally become recognized in the legal profession until the early part of the 21st century. Lawyer incubators acknowledge that attorneys run law businesses. Like all business owners, lawyers who run their own law firms have a lot to gain from programs that support their entrepreneurial development. Law school teaches individuals how to think like lawyers but there are few law school courses focused on how to run a law firm as a business. A 2006 survey of U.S. law schools reveals that less than half of law schools

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FOUNDATION (2014) (discussing that many individuals do not naturally recognize their problems as legal even if resolution can be found in the law).

<sup>14</sup> The American Bar Foundation published THE LAWYER STATISTICAL REPORTS in 2012, 2004, and 1994. The reports respectively report that in 2005, 75% of all lawyers worked in private practice. Those figures were 75% in 2000 and 73% in 1991. The corresponding 1985 report also reports that 68% of all lawyers were in private practice in 1980. See LAWYER DEMOGRAPHICS, *supra* note 11.

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

offered law practice management classes in their curriculum.<sup>16</sup> The classes that exist are seen as appendices to core classes that explore substantive legal principals since they have small enrollments and are taught primarily by adjunct faculty.<sup>17</sup> Since understanding the business of law is not a central part of a legal education, lawyers graduate with a lack of training in business basics that are instrumental to lawyers with solo and small law firms. These skills are important to impart even for new lawyers involved in residency programs since these programs usually only provide support in the form of small salaries or stipends, for one or two years.

The post-graduate residency programs, like attorney incubators, are focused on training lawyers while increasing pro bono and low-bono legal services. Post-graduate residency programs are primarily modeled on residencies in the medical context. Law school graduates receive small stipends for their participation in a teaching law firm where they benefit from supervised training.

As the future of the legal profession takes a new path post the Great Recession, most anticipate fewer jobs in traditional sectors for lawyers.<sup>18</sup> The most consistent and largest opportunity to make a living for many lawyers will be self-employment. Law schools that understand this reality are taking steps to provide direction to their students and alumni about how to create viable law practices.

## B. LAW SCHOOLS AS COMMUNITY LAW PRACTICE INCUBATORS

Most law students do not see themselves as entrepreneurs or anticipate becoming small business owners. When they become lawyers, they generally lack a roadmap on how to use their professional training to generate their own salaries. In addition to helping law students think about creating their own businesses, law schools can offer

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<sup>16</sup> A.B.A. STANDING COMM. ON PROFESSIONALISM, REPORT ON A SURVEY OF LAW SCHOOL PROFESSIONALISM PROGRAMS 38 (2006) available at [http://www.abanet.org/cpr/reports/LawSchool\\_ProfSurvey.pdf](http://www.abanet.org/cpr/reports/LawSchool_ProfSurvey.pdf).

<sup>17</sup> William Hornsby, *Challenging the Academy to a Dual (Perspective): The Need to Embrace Lawyering for Personal Legal Services*, 70 MD. L. REV. 420 (2011).

<sup>18</sup> William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession—And It May Be a Sign of Lasting Change*, ABA JOURNAL (July 1, 2011) available at [http://www.abajournal.com/magazine/article/paradigm\\_shift](http://www.abajournal.com/magazine/article/paradigm_shift) (re-examining some long-standing assumptions about lawyers and the clients they serve within the context of the demands of a rapidly globalizing world); see also Maulik Shah, *The Legal Education Bubble: How Law Schools Should Respond to Changes in the Legal Market*, 23 GEO. J. LEGAL ETHICS 843, 845–52 (2010) (discussing how the legal market was impacted by the Great Recession).

post-graduate programs to support new lawyers who launch their law practices. For decades, law school alumni offices have offered continuing legal education programming and organized alumni networking events for their graduates. These programs help their alumni develop greater expertise and establish new contacts that help with business development.

The first effort to support solo and small firm lawyers providing low bono rates for Gap Clients was launched in 1997 as the Law School Consortium Project (LSCP).<sup>19</sup> The LSCP was formed by several law schools through a grant from the Open Society Institute to address the needs of Gap Clients and self-employed public-minded law graduates.<sup>20</sup> The most enduring projects to result from the LSCP program were Civil Justice, Inc. at University of Maryland Francis King Carey School of Law (Maryland School of Law) and the Community Legal Resource Network at City University of New York (CUNY) School of Law.

Maryland School of Law faculty developed the concept of Civil Justice, Inc. – an independent nonprofit entity that operates a referral service that pairs a network of solo and small firm lawyers committed to increasing access to low- and moderate-income individuals.<sup>21</sup> Civil Justice, Inc. has staff that facilitates mentoring and networking opportunities that include informal counseling by law school faculty and co-counseling arrangements with more experienced attorneys.<sup>22</sup> It also offers its attorney members assistance in managing their law practices to help them comply with ethical obligations.<sup>23</sup> Civil Justice, Inc. refers prospective clients to the solo and small firm bar who offer reduced rates. Maryland School of Law supports Civil Justice, Inc. by inte-

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<sup>19</sup> For a history of the founding and more detailed description of the Law School Consortium Project, see Deborah Howard, *The Law School Consortium Project: Law Schools Supporting Graduates to Increase Access to Justice for Low and Moderate-Income Individuals and Communities*, 29 *FORDHAM URB. L.J.* 1245, 1245–47 (2002); see also Kristin Booth Glen, *To Carry It On: A Decade of Deaning After Haywood Burns*, 10 *N.Y. CITY L. REV.* 7, 19–23 (describing how the Open Society Institute was used at CUNY School of Law).

<sup>20</sup> *Id.* The LSCP schools included: City University of New York (CUNY) School of Law, University of Maryland Francis King Carey School of Law (Maryland School of Law), Northeastern University School of Law, and St. Mary's University School of Law.

<sup>21</sup> Professors Michael Milleman and E. Clinton Bamberger worked with five alumni to create the concept of Civil Justice, Inc., [http://www.civiljusticenetwork.org/About/History\\_mission.aspx](http://www.civiljusticenetwork.org/About/History_mission.aspx).

<sup>22</sup> *Member Benefits*, CIVIL JUSTICE, INC., <http://www.civiljusticenetwork.org/ForAttorneys/Memberbenefits.aspx>.

<sup>23</sup> *Id.* See also Howard at 1249 (explaining that Civil Justice, Inc. offers its members “mentoring; networking and peer technical assistance; practice management assistance; substantive law training; access to a listserv; legal products and services at a reduced rate; a client referral service; marketing services and opportunities; and mediation training”).

grating into their curriculum instruction on the skills set needed to operate small law firms.<sup>24</sup>

CUNY School of Law also developed an active alumni support network and an incubator for self-employed graduates. The Community Legal Resource Network (CLRN), an attorney listserv that connects hundreds of attorneys who are otherwise isolated in solo and small firms is based at CUNY School of Law.<sup>25</sup> The community allows alumni to support and mentor each other while CUNY staff facilitates continuing legal education, discounts on law office management software and products, and opportunities for low bono work.

The work of CLRN led CUNY to develop its Incubator for Justice – a post-graduate program that houses self-employed graduates as they start their law practices and encourages low bono fees. CUNY’s Incubator, established in 2007, trained a segment of CLRN members in general law office management issues such as “billing, record-keeping, technology, bookkeeping and taxes and at the same time, facilitating Incubator participants’ involvement in larger justice initiatives and in subject-based training in immigration law, labor and employment and other topics that will arise continually as these attorneys build their practices.”<sup>26</sup>

The CUNY Incubator accommodated up to twelve attorneys who are solo and small law firms over an eighteen-month period.<sup>27</sup> The attorneys operated their law firms independently but CUNY supported these attorneys by facilitating the space at an affordable rate. CUNY alumni paid \$500 in monthly rent for office space in downtown Manhattan, which was shared with an adjunct faculty member and alumna, who served as a mentor for the program and taught law office management at CUNY.<sup>28</sup> Participants in CUNY’s Incubator for Justice received training to launch solo practices in underserved New York City communities.<sup>29</sup> CLRN and the CUNY Incubator use their network to provide low-cost legal services to individuals in New York

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<sup>24</sup> Michael Millemann, *The Symposium on the Profession and the Academy: Concluding Thoughts*, 70 MD. L. REV. 513, 524 (2011).

<sup>25</sup> *Id.*

<sup>26</sup> See *Community Legal Resource Network (CLRN)*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/clinics/JusticeInitiatives/Community.html>.

<sup>27</sup> Jonathan D. Glater, *Lawyers Learn How to Be Businesslike*, N.Y. TIMES, Jan. 9, 2008, at B6.

<sup>28</sup> Richard Zorza, *NewsMaker Interview—Fred Rooney on the CUNY Incubator*, RICHARD ZORZA’S ACCESS TO JUSTICE BLOG (Sept. 11, 2011), <http://accesstojustice.net/2011/09/22/newsmaker-interview-fred-rooney-on-the-cuny-incubator/>; see also Emily Sachar, *CUNY to Train Start-Up Lawyers in Business Basics to Enhance Justice*, CUNY LAW: A COMMUNITY OF JUSTICE 6(2007), available at <http://www.law.cuny.edu/magazine/archive/07-fall-cunylaw.pdf>.

<sup>29</sup> *Id.*



that would not otherwise have access to lawyers. CUNY's Incubator for Justice is no longer operating, however, the program served as a model that was replicated nationally by law schools interested in supporting their graduates' entrepreneurial development and supporting a pipeline to offer more affordable legal services.<sup>30</sup>

Today, the American Bar Association's Standing Committee for the Delivery of Legal Services (ABA Delivery Committee) lists approximately 50 law schools that have some post-graduate program whose mutual goals are to train new lawyers and provide more affordable legal services.<sup>31</sup> Some of these programs are incubators that have some semblance of the CUNY model, while others are developed as post-graduate residency programs where students are paid to work at a nonprofit entity or law firm for a modest salary, in exchange for training. The degree of entrepreneurial training offered in these programs and the incubators depend often on the philosophy of the institution and the program director.<sup>32</sup>

The attorney incubator models are borrowed from the business community's practice of providing support services for new businesses to increase the likelihood of success.<sup>33</sup> The information compiled by the ABA Delivery Committee reveals that these incubators offer lawyers the following start-up support:

- In-house Mentoring
- Organized Networking Opportunities
- Law Practice Management Training
- Client Development Skills & Tools
- Office Space
- Opportunities to Engage in Pro Bono & Low Bono

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<sup>30</sup> In its place, CUNY is launching CUNY Law Works – a program that offers graduates shared space to operate law offices. (Telephone interview with Liz, Director of the Community Legal Resource Network at CUNY, November 16, 2015.) For an account about replicating the CUNY for Justice model, see Fred Rooney & Justin Steele, *Exporting the Legal Incubator: A Conversation with Fred Rooney*, 9 U. MASS L. REV. 108 (2014) (documenting conversation with CUNY's former Incubator for Justice director, Fred Rooney, regarding his experience helping other law schools establish legal incubator programs).

<sup>31</sup> See AM. BAR ASS'N, *Incubator/Residency Programs Directory*, [www.americanbar.org/groups/delivery\\_legal\\_services/initiatives\\_awards/program\\_main.html](http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main.html). See also Ed Finkel, *Incubator-Style Programs Growing Among Law Schools*, 42 STUDENT LAWYER NO. 2, pp. 28-31 (discussing various post-graduate training programs including one at Rutgers University School of Law).

<sup>32</sup> Katie Dilks, *Law School Incubator Programs: Models and Best Practices*, NALP BULLETIN, October 2013.

<sup>33</sup> For more information about business incubators, see the National Business Incubator Association at <http://www.nbia.org>.

The programs vary in terms of how much or if they charge lawyers for office space costs but generally the law schools foot the bill for an in-house director who helps organize the training and mentoring of the lawyers in the program. This director facilitates the development of the law practice skills and connects new lawyers with experienced lawyers who can help them develop greater expertise in substantive areas of law. The program director is not co-counsel on cases nor is there any fee-sharing arrangement. However, in some of these programs the director is charged with helping the program participants find opportunities for low bono work.

Incubator programs require that their participants offer free and reduced fee legal services to underserved populations. Most of these programs have a dual mission to (1) support attorneys; and (2) to make an impact for those who are not eligible for free or cannot access affordable legal services. These programs make setting up a law office less daunting for lawyers without much experience in running their own businesses. At the same time, they help address the growing need for affordable legal services. A lawyer who is building a client base understands that a handful of clients at \$100 an hour is better than no clients at \$300. Getting paid a contract hourly wage of \$25-\$50 is helpful for new lawyers to get experience but many soon realize they can keep more money in their pockets by taking on their own clients at \$75-\$150 an hour. Ultimately, lawyers who establish low bono law practices are only able to respond to a community need if they can develop sustainable law practices.

There are also law schools that are either making a significant commitment to subsidize or to collaborate with other institutional funders to support post-graduate residency programs. Residency programs hire experienced attorneys to supervise, not just facilitate, the work of participants and most focus more on substantive training than client development. The participant stipends are low and they vary by school but the amounts are similar as those paid by law schools to fund other post-graduate fellowships. Law schools that are experimenting with post-graduate residency models include those at Arizona State University, CUNY, Georgetown, Pace and Rutgers. In developing these programs, organizers have had to consider how to organize their residencies to comply with local unauthorized practice of law issues and federal Internal Revenue Service regulations and rulings that can hamper the tax-exempt status of the nonprofit host. In

some jurisdictions and for some institutions, these issues are proving to be obstacles in creating these new legal service delivery models.<sup>34</sup>

### C.

#### BEST PRACTICES

Law school post-graduate programs are still relatively new and we have little data on their effectiveness. The specific structure of the program will vary based on its resources and the specific characteristics of the community and the law school where it resides. The following discussion addresses some of the best practices in establishing post-graduate programs in U.S. law schools.

##### *Alumni Network*

Attorney incubator programs work best for law schools that produce large numbers of solo and small firm lawyers. The characteristics of the alumni base may include individuals who sought a career in public services but started their own law practice due to the limited number of jobs in the public nonprofit and government sectors. Law schools that first develop alumni networks of solo and small firm lawyers can build a strong community of mentors to train and channel business to attorneys who start their own law practices. These alumni networks benefit incubator participants and also alumni who seek the additional support and camaraderie. Incubator programs are a good fit for law schools whose graduates do not work in practice settings that provide strong mentoring, continuing legal education, and support in ethical law practice management.

##### *Director*

The person hired to direct the incubator will be key to the program's success. An attorney incubator program requires the resources of at least a 50% full time lawyer. The director of the program should be licensed in the same jurisdiction as the incubator program and have strong ties to and a good reputation with the local bar. The main role of the director is to introduce the lawyer participants to the legal community. By selecting an individual who already has strong credibility in the local community of lawyers, the program's participants get immediate credibility based on the reputation of the director. Another important consideration for a director is to find someone who is comfortable with new technology and how it has changed law practice. A

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<sup>34</sup> See generally Adam Chodorow and Philip T. Hackney, *Post-Graduate Legal Training: The Case for Tax-Exempt Programs*, 65 *Journal of Legal Education* (forthcoming February 2016), available at <http://ssrn.com/abstract=2687549>.

good director will not know everything but he or she will know how to gather the necessary people and programs to properly mentor new lawyers.

### *Faculty Support*

Successful post-graduate incubator programs require support and interest from its alumni, staff and faculty. Obtaining faculty support is critical and can be achieved through a variety of ways. In some schools, post-graduate programs are fully advanced by clinical faculty. At other schools, faculty members are part of the committee that monitors these programs. At a minimum, faculty can be engaged by teaching in or supporting law school curriculum that facilitates law student transitions into these post-graduate programs. Whatever the role, some degree of faculty involvement in these programs signal a permanent institutional commitment to them.

### *Financing*

One of the most important questions law schools ask about starting post-graduate programs is how to finance the program and the attorney. A law school must commit to devoting resources to these programs but the amount varies depending on the type of program.

The attorney incubator programs are the least resource intensive post-graduate programs for law schools to build. A small attorney incubator program can function with a part-time director. The underlying concept of incubators is to support, not fully subsidize, the development of a business. A lawyer starting a law practice should be prepared to pay for rent, malpractice insurance and other law firm necessities. Incubator programs should focus on developing relationships and finding funding opportunities for lawyers to secure reduced fee payment as a way to subsidize the cost of starting law offices.

Residency programs usually cost more to launch than incubator programs because in addition to the experienced lawyer director, they also provide stipends for new lawyers. Some of these models are just being implemented and it is not yet clear that they can sustain themselves without considerable subsidy by either the attorneys in the program or the continuing subsidy by a law school, a foundation or a law firm. Residency programs often require greater collaboration and funding but most are structured as nonprofit law firms who employ the new lawyers. That nonprofit employer relationship allows participants to qualify for student loan forgiveness while they are in the pro-

gram.<sup>35</sup> Participants in incubator programs primarily qualify for income contingent plans.<sup>36</sup> As a result, there is a great deal of interest in creating more nonprofit residencies that incubate new attorneys. Despite their higher cost and the regulatory hurdles in establishing these post-graduate residencies, the hope is that once established they have the capacity to do well enough to be self-sustaining with smaller subsidies than required to launch them.

### *Innovation*

Today's law graduates are entering the profession at a time when technology is drastically changing all aspects of our society, including the business of law. In the last decade, thousands of legal jobs, primarily involving document preparation and legal research, have been sent abroad. The long-term impact of outsourcing is yet to be determined, but what is clear is that the delivery of legal services has drastically changed. These new post-graduate programs can be the legal profession's playground for innovation. Post-graduate programs should incorporate instruction on how attorneys can leverage technology to provide more affordable access to legal services consumers. These programs should also help participants understand the role of unbundled legal services and the use of paraprofessionals in creating new models of legal service delivery or building on existing ones. These post-graduate programs can help the legal profession articulate the new role of lawyers in a new era.

### *Law Student Counseling*

Starting solo and small firm law practices should be an integral part of career track conversation for law students. Regardless of whether students end up working in such practice settings, it is important for them to begin to think of themselves as managers and rainmakers of their law practices. Lawyers who know how to develop business are prized in law firms of any size. Individuals who show leadership will also have greater opportunities to advance to management positions within governmental and public interest organizations. Talking about the opportunities and challenges of running a law practice offers students greater transparency and exposes them to the additional skills they will need. Law schools should consider better integrating law practice management discussions into their profes-

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<sup>35</sup> For a discussion of the Public Service Loan Forgiveness Program and income contingent loan repayment programs see U.S. Dep't of Educ., Federal Student Aid at <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service>.

<sup>36</sup> *Id.*

sional responsibility classes. Also, greater exposure to the role of technology in the delivery of legal services and the impact that such technology has on the profession are important considerations for law students thinking about starting their own law businesses.

### *Public Service Component*

Law school based incubators offer an opportunity to instill a public service commitment in lawyers. The American Bar Association and many states agree that lawyers have “a professional responsibility to provide legal services to those unable to pay.”<sup>37</sup> These bodies encourage lawyers to donate at least 50 hours per year to help individuals of limited means or organizations “that are designed primarily to address the needs of persons of limited means.”<sup>38</sup> In addition, the ABA and states such as California, encourage the provision of reduced fees to individuals and groups with limited economic resources. Despite the strong position, public service is not required of most of its lawyers.<sup>39</sup> Law school incubator programs can help train lawyers by developing relationships with public interest organizations that can train lawyers in exchange for pro bono services. These programs can work with courts, affordable housing developers, government entities and elected officials to coordinate limited scope legal services for a reduced fee to their constituencies. The most important public service agreements law schools can forge with community partners on behalf of its graduates are ones that offer lawyers an opportunity to learn and grow professionally. Lawyers in incubator programs must learn to balance their professional call to engage in public service and their need to charge fees that facilitate their own sustainability.

### *Space*

There are various views about the best location for these post-graduate programs. Generally, these programs are located in bar associations, with legal aid organizations or in law office suites where some subsidy is available for the program and its participants. Some

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<sup>37</sup> *ABA Model Rule 6.1*, available at [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_6\\_1\\_voluntary\\_pro\\_bono\\_publico\\_service.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service.html),

<sup>38</sup> *Id.*

<sup>39</sup> The exceptions are New York and California who recently instituted new pro bono and reduced fee services requirements for lawyers seeking admission to their respective state bar associations. See New York State Unified Court System at <http://www.nycourts.gov/attorneys/probono/baradmissionreqs.shtml>; see also the CALIFORNIA STATE BAR TASK FORCE ON ADMISSIONS REGULATION at <http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx>.

programs are also located within law schools. When they are, to mitigate risk of liability for the law school it may be important to clearly indicate the boundaries between the law school's pro bono clinical program and the post-graduate program. Some programs will prefer to be located close to courts and other attorneys. Others prefer to be grounded in underserved communities. Regardless of location, structures and technology should be set up to preserve client confidentiality. Availability of parking or accessibility via public transportation is another factor that will be important for both participants and their clients. Ultimately, most programs determine spaced based on the opportunity presented.

### *Evaluation Mechanisms*

There is very little information available about the development of solo and small firm practitioners. As these programs evolve, it will be important to develop evaluation mechanisms to track these lawyers' successes and difficulties. Longitudinal studies of these programs and their lawyer participants will help us understand the type of support we need to provide members of the legal profession as they grow their practices or determine that another path is better for them. Any evaluation should also attempt to find out more about the types of clients they serve and the practice areas in which they work. Understanding the market for these new lawyers will help law schools and policy makers develop better products for legal services consumers.

### CONCLUSION

Law school post-graduate programs help prepare lawyers to confront the new legal marketplace which requires more affordable quality lawyers. These programs are important and necessary to incubate community law practices that innovate to create greater access to law.