The Need for a Universal Mandatory Experiential Methodology to Prepare Students for the Practice of Law in the 21st Century

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THE NEED FOR A UNIVERSAL MANDATORY EXPERIENTIAL METHODOLOGY TO PREPARE STUDENTS FOR THE PRACTICE OF LAW IN THE 21ST CENTURY

J. Damian Ortiz*

Introduction

Practical experience in legal education is too often at the periphery of law school curricula. Professional legal education aims to initiate novice practitioners to think, perform, and conduct themselves as professionals.1 The prevailing casebook driven method alone, however, falls short of these goals. Currently, the casebook teaching method employed by law schools immerses students in doctrinal legal theory while neglecting practical skills crucial to the practice of law. Further, the notion that students’ knowledge of legal theory and doctrine is enhanced if they encounter and engage with the range of human problems, everyday obstacles, and legal solutions that lawyers face when representing their clients is seldom actualized.

Recently, articles and studies alike have implored the need for a more comprehensive legal teaching model. However, current requirements are not adequate to provide students with the necessary tools to make them practice ready at the end of their law school careers.2 Therefore, an apprenticeship model movement toward needed to provide law students the opportunity to be practice ready and achieve their goals. It is encouraging that some law schools discuss experiential program additions to their curricula, but the American Bar Association (“ABA”), Association of American Law Schools (“AALS”), and state bars should mandate

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experiential programs as part of the school’s curriculum. Experiential legal education must be a greater component of a professionally responsible legal education. Experiential education integrates theory and practice by combining academic inquiry with actual experience by placing law students in one or more of the many roles that lawyers play in society: as a litigator, counselor, mediator, legislative lawyer, public policy advocate, and so on. Identifying issues from a role-based perspective provides a kind of learning that often is immediate and has a greater impact on the student than more traditional classroom-based learning.3

I. The Modern Law School

The current focus in legal education remains the teaching of substantive case law through the Socratic Method.4 The Socratic Method teaches students how to extract a legal rule and apply it to different fact patterns. This method is useful in the classroom setting: within [days] of the students’ arrival in law school, students demonstrate new capacities for understanding legal processes, for seeing both sides of legal arguments, and for understanding the applications and conflicts of legal rules.5 This method, however, is often employed “to demonstrate the complexity of the law without giving students a basic framework for understanding the law”.6

The casebook-centered method focuses on judicial opinions, but in practice, lawyers are often called upon to consult clients on the application of statutes and regulations that have not yet been interpreted.7 While the focus on the Socratic Method may teach legal analysis, it neglects other basic skills necessary to “law practice management and other aspects of the lawyer’s [everyday]

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4 Lauren Carasik, Renaissance or Retrenchment: Legal Education at a Crossroads, 44 IND. L. REV. 735, 748 (2011).
work,” such as “conflict checks, retainers, time keeping systems, and maintaining client accounts, files, and confidentiality matters.”

In explaining a story of teaching a third-year law student through clinical experience and relational framework, effective lawyering should have "much more than simply solid analytical reasoning." In order to prepare a future generation of lawyers to be "truly competent and caring professionals," law school should provide law students with "meaningful opportunities to simulate practice, to be mentees, and to sit in the first chair as an integrated, core component of their legal education."

For example, Christopher Langdell's revolution in law school curriculum and comparing to training method in medical education, said that the law of professional responsibility should "be taught by the broadest possible experiential education model." Using experiential education method to teach the law of professional responsibility, such as placing the student in the role of a lawyer, would "enhance the understanding and retention of the material by providing for its immediate use...and...modifies the reading material and the class discussion to reflect the nuances of law that are only apparent in the experience of its application."

By examining details of experiential coursework (clinic, field placement, and skill courses) of 2142 attorneys, "the experiential wing of the curriculum is considered the prime venue for law students to take on the mantle of the profession, to develop one's professional identity." The Carnegie Report, which recognized the gap between “learning how to think like a

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8 Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, Clinical Education for This Millennium: The Third Wave, 7 CLINICAL L. REV. 37, n.138 (2000).
9 Brooks Professional Identity supra n.3 at 339.
10 Id. at 440.
12 Id. at 101.
lawyer and being capable of acting like a lawyer,” also recommended “a greater emphasis on practice-oriented skills and values aimed at inculcating a sense of professional identity and purpose.”\textsuperscript{14} Lastly, through issues such as the social needs of the greater community or matters of justice involving the practice of law may gain traction in classrooms, these issues are most frequently treated as secondary—not central to the core message of the ongoing class discussion.\textsuperscript{15}

Upon graduation it is presumed that law students have acquired skills including the ability to problem solve, participate in legal analysis, identify legal issues, plan a client’s case, direct and participate in case investigation, communicate effectively, perform legal research, implement effective counseling negotiation, litigate, and most importantly, have a strong command of and the ability to practice legal ethics.\textsuperscript{16} However, the Socratic Method alone does not contemplate the necessity of incorporating these practical skills that are often expected of, but not ordinarily taught to new lawyers. Moreover, the Socratic Method rarely explores the relationship between client and attorney. Such relationship is often treated anecdotally and not incorporated into the classroom in a meaningful way. Consequently, the dominant use of the Socratic Method without the student exposure to an experiential program, will not allow a new lawyer to be prepared to undertake the responsibilities of practicing law.

The lack of attention to direct training in professional practice effectively prolongs and reinforces the habits of thinking like a student rather than as a practitioner. The inexperience and

\textsuperscript{15} \textit{Id.} at 14–15.
under-preparedness of newly licensed lawyers pose a real potential of harm to clients and to themselves.\textsuperscript{17} In response, several studies have been conducted to examine current legal education and propose recommendations for the future.\textsuperscript{18}

In 2007, the Carnegie Foundation studied the curricula of sixteen law schools, both private and public, in the United States and Canada.\textsuperscript{19} This study confirmed that the basic curriculum was identical.\textsuperscript{20} The Socratic Method was used to teach the 1L courses. For some, the 2L or 3L student had a wider choice of courses, such as moot court and law journals. The advantage of the Socratic Method is a rapid socialization into legal thinking.\textsuperscript{21} The disadvantage is that students learn to dehumanize the human subjects of cases since the focus is on achieving the correct legal analysis rather than on the effect of the law on human beings.\textsuperscript{22} Thus, the study recommended a more integrated approach to teaching law: one that decreases the emphasis on the Socratic Method and includes teaching ethics and client-serving skills.\textsuperscript{23} Additionally, the more integrated approach would emphasize knowledge, skills, and values necessary to successful practice as a lawyer, thereby bridging the gap between theory and practice. It would also help to bridge the gap if faculty members worked in tandem across the curriculum: the doctrinal faculty would concurrently teach lawyering skills courses and the clinical faculty would follow suit in

\textsuperscript{17} See Roy Stucky \textit{et al.}, \textit{Best Practices for Legal Education} 1 (2007) (noting “concern about the potential harm to consumers of legal services when new lawyers are not adequately prepared for practice” and “about helping law school graduates [succeed] in law practice”); \textit{See also} Talbot D’Alemberte, \textit{Talbot D’Alemberte on Legal Education}, ABA J., 52 (September 1990) (noting that neither the profession nor the students are benefiting from the current Socratic legal education system).


\textsuperscript{20} \textit{Id.} at 4 (“The curriculum at most [law] schools follows a fairly standard pattern.”).

\textsuperscript{21} \textit{Id.} at 5–6.

\textsuperscript{22} \textit{Id.} at 6.

\textsuperscript{23} \textit{Id.} at 8–10.
teaching doctrinal courses as well.  

Law Schools like Columbia University School of Law, DePaul University College of Law and Emory University School of Law [The John Marshall Law School, Chicago, “JMLS’”] allow current 2L and 3L curricula to participate in their clinics.  

However, the current required hours for the clinics lack substance.  

Clinics teach essential lawyering skills, which are necessary for young lawyers to be successful.  

Clinics benefit both clients whom are directly served by them as well as students.

“The law school clinic is a place where students should learn not only the techniques of advocacy, but also the importance of advocacy in helping individuals solve their problems, defend their rights, and achieve their goals. Students can learn from this experience that legal advocacy can make a real difference for real people and may learn . . . that they should become active participants in the struggle to extend the availability of legal services to the poor.”

Currently, few law schools have programs or resources to develop the full range of skills needed for law practice to the degree of proficiency expected of practicing lawyers. Significant improvements can be made to prepare students for the practice of law. These improvements to

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24 Id. at 9.
26 See Barry, supra n. 8 at 30 (finding that by the end of 1999, there were at least 183 U.S. law schools with clinical programs); See generally Id. at 5–18 (discussing the historical development of clinical legal education).
27 See Jeffrey M. Winters, A Legal Clinic Education, December 2000 Mich. B.J., 1692 (“Many clinics were developed throughout the nation by people trying to teach the information, skills, and values that are essential to professional development in legal education.”).
30 Best Practices, a six-year collaborative work, looked within the legal academy and across other professional disciplines in proposing a similar set of comprehensive recommendations for improving legal education. At the heart of those recommendations, the authors premised that the training of lawyers must make greater use of teaching methodologies that “integrate . . . theory and practice by combining academic inquiry with actual experience.” Nantiya Ruan, Student, Esquire? The Practice of Law in the Collaborative Classroom, 20 CLINICAL L. REV 429, 437 (2014) (quoting Best Practices, at n.14, at 165) (See also, Daniel M Schaffzin, So Why Not an Experiential Law School…Starting with Reflection in the First Year? 1 ELON L REV 383 (2015).
legal education need not significantly change the overall process to becoming a lawyer in the United States. There are innovative experiential programs that the American Bar Association (“ABA”), Association of American Law Schools (“AALS”), and state bars can consider for guidance in adopting and mandating the integration of these programs into the law school curricula.31 According to AALS, several law schools have been providing opportunities to law students to engage in clinical experience and expanding their clinical programs over the years.

For example, Penn State University has an Intellectual Property Clinic, which hosted 33 Girl Scouts in 2017. Cornell Law School launched a new clinical course called Technology, Innovation and the Law Clinic, in which law students wrote software applications for partner agencies helping low-income immigrants who cannot afford a lawyer. Suffolk Law School has an Innocence Project, which provides students opportunities to work closely with staff and attorneys at the New England Innocence Project on wrongful convictions matters and a Supreme Court Clinic, which provides students opportunities to draft and file amicus briefs in cases before the Supreme Judicial Court of the Commonwealth.32 The Startup Legal Garage at the University of California, Hastings College of the Law is one program reenergizing legal education, immersing more students in real-world experiences, capitalizing on the best that traditional law school pedagogy has to offer, and remaining cost-effective for law school budgets. The Startup Legal Garage is structured in a unique way. Professors guide students by teaching soft skills and doctrinal classes, and they set up fieldwork projects by matching students and early-stage tech startups with partners at top law firms. The practicing attorney supervises student work on basic

31 See infra Part III (discussing various experiential learning models).
32 JMLS has the Pro Bono Program & Clinic providing services to the Chicagoland community in a variety of legal matters like police brutality cases and prisoner’s rights cases in both federal district courts in Illinois. https://www.jmls.edu/clinics/pro-bono/
legal needs such as employee contracts, privacy policies, and entity formation — and the student is placed at the center of real-world law practice.\textsuperscript{33} Other law schools that have been providing opportunities to law students to engage in clinical experiences and have been expanding their clinical programs include University of Baltimore School of Law, Georgetown Law, William and Mary Law School, Harvard Law School, Concordia University School of Law and Loyola Law School, and Los Angeles, etc....\textsuperscript{34}

Seattle University School of Law started offering a new Trademark Clinic, where students represent clients in the selection and adoption of trademarks and work with them to file a federal trademark application with the USPTO. Seattle University School of Law has also begun a new and exciting program of pairing doctrinal faculty with clinical faculty to co-teach in the clinic, thereby expanding the number of clinic seats. Professor Lisa Brodoff, Director of the Clinical Law Program, and Professor Jack Kirkwood, Administrative Law faculty, have set up a three-year training program to integrate their clinical and doctrinal teaching in the Administrative Law Clinic.\textsuperscript{35}

\textbf{II. Demand and Cost}

A 2007–2008 survey conducted by the Center for the Study of Applied Legal Education (“CSALE”) found that slightly “over 2% of schools require students to enroll in an in-house, live client clinic before graduating.”\textsuperscript{36} The same survey indicated that only 41.2% of the responding

\begin{footnotesize}
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\item \textsuperscript{33} Alice Armitage Robin Feldman, \textit{A More Practical Model for Law Schools} https://hbr.org/2015/12/a-more-practical-model-for-law-schools
\item \textsuperscript{34} AALS Clinical Section Newsletter—Fall 2017 https://www.aals.org/wp-content/uploads/2017/12/AALS-Clinical-Section-Newsletter-FallWinter-2017.pdf.
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schools had more than 30% of its students enroll in a clinic;\textsuperscript{37} meaning approximately 65% of law students at the schools reporting were lacking in any experiential or practical legal experience.\textsuperscript{38} Similarly, on the upper end, only 0.7% of reporting law schools indicated that 76–80% of their students were enrolled in clinical programs.\textsuperscript{39} In 2007–2008, nearly 62% of the schools reported an increase in students’ demand for in-house, live client clinics.\textsuperscript{40} Two years later, in the 2010–2011 CSALE survey, nearly 80% schools, an increase of 18% from previous survey, reported a higher demand from students’ for more in-house clinics.\textsuperscript{41} Additionally, 58.9% of the schools reported greater than 30% enrollment in clinics. This is up from the 41.2% in the 2007-2008 survey.\textsuperscript{42}

In 2016-17, 187 schools in the Master Survey reported a total 1,433 distinct law clinics offered during the 2016-17 academic year (with clinics offered more than one term during the year counting as just one).\textsuperscript{43} All but four schools offered at least one law clinic. The median is 7 clinics per school, unchanged from the 2013-14 Survey.\textsuperscript{44} During academic year 2016-17, 33% of schools required or guaranteed J.D. student enrollment in a law clinic or field placement course before graduating — 20% required a clinical course (law clinic or externship) and 13% guaranteed a law clinic or externship to students who sought one. Respondent schools estimated the percentage of their students that participate in a law clinic or externship before graduation.

\begin{thebibliography}{9}
\item Id.
\item Id.
\item Id.
\item Id. at 11.
\item Id. at 9–10.
\item Id. at 8.
\end{thebibliography}
The median participation range for law clinics in the most recent Survey was 46-50% of graduating students. In the 2013-14, Survey the median was 41-45%, and in 2010-11, it was 31-35%.45 The median estimated percentage of students that graduated having participated in a law clinic or a field placement course in the 2016-17 Survey was 76-80%; in the 2013-14, Survey the median was 71-75%.46

It is often difficult to “understand the true financial costs of clinical courses versus other courses and other law school expenses.”47 Dean Joh Kramer analyzed 156 ABA-approved law school budgetary information from the 1977-1978 and 1987-1988 academic years and found that expenditures for clinical legal education rose at a slower rate than overall law school budgets.48 In other words, clinical education does not contribute majorly to the tuition increases when compared to other law school expenses. Moreover, “the argument that clinical education is too expensive to be feasible might not be true.”49 There is “no effect on the tuition and fees that students pay from requiring or guaranteeing every student a clinical experience and no difference in tuition between schools that already have sufficient capacity to provide a clinical experience to each student and those that do not.”50 “In analyzing data from the ABA-LSAC Official Guide to ABA-Approved Law Schools for 2013, Professor Robert Kuehn finds that most law schools currently have sufficient clinic or externship opportunities for students. He reports that ‘158 law schools (or 79 percent) already have a law clinic or externship course capacity to provide each of

45 Id. at 11.
46 Id. at 12.
48 Id. at 328-329
their J.D. students with experiential experience.51 Another 11 law schools already offer enough law clinic or externship course positions for 90 percent of its students.’ Combined, his data suggest that almost 85 percent of law schools already provide, or could easily ensure that all law students are provided, a clinic or externship experience.”52

CSALE conducted another survey for 2013–2014 and again its results were largely positive for clinical education. The 2013-2014 CSALE survey showed the median percentage of students that participated in a law clinic or externship before graduation, excluding schools that require a clinical experience, had grown to 41-45% from 31-35%.53 Furthermore, the median enrollment range for field placement courses had increased dramatically from 31-35% in 2010-11 to 51-55% in 2013-14.54 The 2013-14 survey showed that 54% of schools reported, in their last three years, more student demand for law-client clinics.55 On the other hand less than 12% of schools surveyed in 2013-14 reported a decrease in demand for law-client clinics.56 Moreover, the 2013-14 survey shows that among schools that reported an increase in demand for clinical courses 96% of students believed that clinics improve marketability and 92% of students believe clinic improve skills.57

With relation to field placement courses, the 2013-14 survey showed that 60% of schools surveyed found an increased demand for field placement programs in the last three years.58

52 Id.
54 Id. at 11.
55 Id. at 13.
56 Id.
57 Id.
58 Id. at 14.
Similar to clinic demand, field placement demand was driven by the fact that 91% of students believed that these programs improved marketability, and 74% believed that these programs improved their skills. Thus, it is clear that there is a great demand for experiential courses from students who wish to become more practice ready and more marketable in the workplace.

The 2013-14 Survey also asked respondents to identify the greatest challenges that clinics currently faced. Of the respondents, 64.1% cited a lack of hard money as a major challenge for their clinical programs, which was up from 46.0% in 2010-2011. However, respondents said that issues such as demands on clinical faculty time and insufficient number of clinical faculty had actually decreased since the 2010-2011 survey. Therefore, money is probably the greatest challenge facing experiential learning at law schools. In 2016-17 the stats showed that all the stats have gone down over the years. Students who believe that it makes them more marketable has gone down 14% to 77% in 2016-2017. Only 71% believe it helps their skills as opposed to 74% in 2013-14. The lack of hard money has gone down from 64% to 56% in 2017. It is still percentage wise the greatest factor that has been reported as a hindrance for clinics across schools. Conversely, students are now getting more experience in other programs such externships and internships. The numbers across the board look to be down on average about 10%-15.

However, the claim that experiential learning is too cost intensive is really without much empirical support. When comparing the average tuition at schools that require or guarantee

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59 Id. These percentages are of students from schools that reported increased demand for clinics.
60 Id.
61 Id. at 14.
62 Id.
63 Kuehn 16-17 supra n.43 at 14-20.
64 See Joy; Cost of Education supra n.47.
each student a law clinic or externship with tuition at schools that do not require clinics or externships, the chart below shows that tuition is not statistically higher at schools that have mandatory experiential education. Clearly, some schools have found a way to make this model work efficiently and financially for their students.\textsuperscript{65}

\textbf{Effect of Mandatory Clinical Experience on Tuition}

(prepared by Prof. Robert Kuehn, Washington Univ. School of Law (June 2013))


The chart below summarizes the faculty costs of experiential courses versus that of

\textsuperscript{65} Martin J. Katz, \textit{Understanding the Costs of Experiential Legal Education}, 1 \textit{Touro L. Rev.} 28, 44 tbl. 1 (2015) [hereinafter "Katz Costs of Experiential Education"].
This graph assumed that the average cost for a tenure track professor is approximately $199,400 and the cost for a non-tenure track professor is approximately $111,050. Combined with the previous chart, we see that the overall costs of experiential education are not disproportionate to traditional education. For example, the most expensive experiential

66 Id. The focus is on the labor costs for full-time faculty, as opposed to adjunct faculty. Some commentators have suggested that law schools’ labor costs could be drastically reduced by relying more on adjunct faculty members and less on full-time faculty members. See e.g., Kyle P. McEntee, Patrick J. Lynch & Derek M. Tokaz, *The Crisis in Legal Education: Dabbling in Disaster Planning*, 46 U. MICH. J. L. REV. 225 (2012). The above chart does not address this issue for three reasons. First, and most importantly, the purpose is to make an apples-to-apples comparison between different types of course offerings. Most traditional courses at ABA accredited law schools are currently offered by full-time faculty, which is used as the comparison. Second, and related, the ABA and AALS currently place limits on the use of adjunct faculty. See ABA Standard 402, Interpretation 402-1 (in calculating faculty size, adjuncts count as 0.2 faculty; and total adjunct faculty can count for no more than 20% of the total faculty size); AALS Bylaw 6-4(d) no more than 1/3 of instruction can be done by adjuncts. So, staffing large numbers of courses with adjunct faculty is not really an option for most schools. Finally, staffing courses with adjuncts is often more a form of cost shifting than a form of cost saving. This is because the pay offered to adjuncts at most law schools is well below the market value of the adjuncts’ services. (An extreme version is the partner at a big firm who commands $1,000 per hour for client work, but who teaches a course – which likely takes hundreds of hours – for an adjunct stipend of $3,000.) As a result, most adjunct teaching represents a donation to the school and its students. It does not mean that the adjunct-taught class is cheaper; it is merely cheaper to the school since the lion’s share of its cost is subsidized by the adjunct or her organization.

67 Id. at 40.

68 Katz Costs of Experiential Education *supra* at 65. See also the dynamic cost model to accompany the article https://www.law.du.edu/forms/katz-cost-analysis.php.
courses, in-house clinics, are only $178 more expensive per student credit hour than seminars; additionally, all other types of experiential courses are cheaper than seminars.\textsuperscript{69} Further, costs for experiential education could be further reduced by decreasing faculty compensation costs for in-house clinics. For example, if a non-tenure track professor were used instead of tenured professor to lead an in-house clinic, it would reduce cost by approximately $90,000 a year. While costs are always a concern, the empirical evidence suggests that there is no correlation between the cost of attendance and the cost of adding an experiential education program.\textsuperscript{70} There is a wide range of cost for different types of experiential offerings. For example, an in-house clinic is costlier than a simulation course, which in turn is costlier than an externship program. This means that, when a school wants to add capacity in experiential learning, the expense it incurs will depend on the type – or the mix – of experiential opportunities it decides to add. We also see from this model that comparisons with traditional courses need to be nuanced.\textsuperscript{71} Moreover, from this model, there are 4 primary drivers of the cost of experiential education: “student-faculty ratios, faculty compensation costs, credit hours offered per course, and the complexity of clinic for in-house clinics.”\textsuperscript{72} Moreover, the article did not explicitly suggest that the overall costs of experiential education are not disproportionate to traditional education. Instead, taking Professor Kuehn’s research into considerations, the article seems to suggest that “even if experiential education is in fact more expensive than traditional education, schools might be able to prioritize experiential education and make trade-offs in order to keep the overall costs of the

\textsuperscript{69} Id. at 31.

\textsuperscript{70} Kuehn; Pricing supra n. 50 (“[C]linical courses have not cost, and need not cost, students more in tuition.”).

\textsuperscript{71} Katz Costs of Experiential Education supra at 65.

\textsuperscript{72} Id. at 45.
enterprise, and thus tuition, at a rate that is similar to more traditional schools.”

Moreover, the costs of faculty as a factor in calculating cost per student-credit-hour for experiential legal education, seems to suggest that some hybrid approaches that the schools are experimenting have “significant potential for offering new forms of experiential learning at relatively low cost.” The hybrid approach generally has two components: teaching component that includes seminars or classes on the materials and supervision component that ensures the students represent the client adequately.

III. Beneficial Experiential Education Programs

A. Clinical Legal Education

The lawyering profession began as an apprenticeship. The profession’s roots are firmly grounded in the mentor-mentee relationship and in practicing lawyering skills. The focus of modern legal education has shifted to a case study approach in order to train lawyers in a more efficient manner. Certainly, this evolution addressed many of the shortfalls of the apprenticeship method such as: students’ training being limited to the guidance provided by the supervising lawyer, unrealistic and overwhelming expectations of students to learn substantive as well as legal theory, lack of instruction provided to students due to supervising attorneys’ need to attend to business, students acquiring bad habits, having these habits reinforced, and the student...
not recognizing great value for their time investment because the student may not be entrusted with continual engagement in cases or legal processes.\textsuperscript{78}

Although, labeled an apprenticeship, the master rarely taught his apprentice.\textsuperscript{79} The student was used to do clerical and secretarial work, while paying the master for accomplishing those services, and simultaneously reading literature and texts accessible from the master’s library.\textsuperscript{80}

While the eighteenth-century apprenticeship model may seem primitive and perhaps even contemptible to some, that pedagogical model is not far from what students receive from today’s apprenticeships—internships and externships. Some students work or volunteer at various firms or government agencies over the course of their law school careers. Even fewer students are fortunate enough to gain experience working with clients, seeing a case’s progression for more than a couple of months, let alone appearing in court.\textsuperscript{81} Regardless, students are exposed to varying levels of legal sophistication during their work experiences. Victor Fleischer, a law professor at the University of Illinois encourages the legal community to consider a typical student who applies for a job in a law firm.\textsuperscript{82} According to Prof. Fleischer, a typical law student spends:

    Perhaps [ninety-five] (95\%) percent of . . . the time in law school reading and discussing cases and law review articles. Once in practice, [the student] will go days or weeks at a time without picking up a case or a law review article. Instead, [the] days will be filled


\textsuperscript{80} Id.

\textsuperscript{81} Adam J. T.W. White, \textit{Upholding the Oath of Competency While Filling the Indigent Void: Why the Law School Curriculum Should Be Extended to A Fourth Year}, 11 Fla. Coastal L. Rev. 425, 432 (2010) (Discussing how law schools fail to provide students with practical experience).

with drafting, reviewing, and marking up transactional documents, negotiating language with opposing counsel . . . composing memos, emails, and letters to clients or [other attorneys].

Clinical legal education eliminates many of these deficiencies of both the traditional and modern-day apprenticeship models. For instance, clinical legal education provides an environment that incorporates the ability to gain practical experience with the structure and consistency of the classroom. In fact, every law school in the nation has recognized the importance of clinical legal education, with every school providing at least one clinic or externship experience to its students. The new Dean of New York Law School, Anthony Crowell, reported that he hopes to utilize his connections to expand the school’s clinical offerings, “launching 12 new clinics partnering with local nonprofit organizations.”

This goal comes primarily in response to the requirements of the New York Bar, now requiring each law student to satisfy 50-hours of pro bono work before graduation. Other schools have also begun to develop a more comprehensive clinical education for their students such as Georgetown University, The John Marshall Law School, and Chicago-Kent School of Law.

Other state bars also require certain courses, activities, or skills training during law

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83 Id. at 480.
84 See Barry, supra n. 8 at 8. In 1921, the Carnegie Foundation for the Advancement of Teaching funded a study on legal education, commonly called the “Reed Report” after its non-lawyer author, Alfred Z. Reed. The Reed Report identified three components necessary to prepare students for the practice of law: general education, theoretical knowledge of the law, and practical skills training. Subsequently, John Bradway and Jerome Frank pioneered the cause of clinical legal education methodology in the 1920's through the 1940's, advocating an in-house clinic as an essential component of sound legal education. Yet, despite the efforts of Bradway and Frank, only a handful of law schools instituted in-house clinical courses through the first half of the 1900's.
85 Id.
87 Id.
88https://www.americanbar.org/groups/probono_public_service/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/pb_faculty.html
Indiana requires completion of 2 semester-hours of legal ethics or professional responsibility in an approved law school. 89 New Jersey will accept a score of 75 or better on the MPRE. 90 In lieu thereof, applicants may present evidence of satisfactory performance in a law school course on ethics. 91 New York requires a minimum of 2 semester-hours of credit in a stand-alone course in professional responsibility. 92 Other state bars require certain courses, activities, or skills training prior to admission. 93 Finally, the trend is for states to require certain

89 Indiana Rules of Court: Rules for Admission to the Bar and the Discipline of Attorneys, Rule 13, §4(C) (2017) (requiring “[a] person [to] complete [] in an approved school of law two cumulative semester hours of legal ethics or professional responsibility.”)
91 Id. (requiring that an applicant “pass the Multistate Professional Responsibility Examination (MPRE) with a 75 or higher or pass an approved law school course on ethics with a ‘C-’ or better”).
93 Id. Alabama Online course on Alabama law is required for applicants seeking admission by examination or by UBE score transfer.
Alaska Applicant must attend presentation on attorney ethics as prescribed by the Board, currently a 1½-hour video course offered by the bar association.
Arizona Online course on Arizona law is required prior to admission for all applicants.
Colorado Exam applicants must complete the Colorado Supreme Court’s mandatory course Practicing with Professionalism. Newly admitted on motion or via transferred UBE score must complete the course within the first 6 months of admission as a CLE requirement.
Delaware 5-month clerkship and pre-admission session conducted by the Supreme Court and Board of Bar Examiners.
Maryland Rule requires applicants who are successful on the bar exam to complete an orientation program presented under the authority of the Court of Appeals between the time applicants exam results are released and the time of admission.
Montana Montana Law Seminar attendance is required prior to admission. The course is offered the day after the bar exam.
New York Applicants are required to perform 50 hours of pro bono service before they can be sworn in. (The requirement does not apply to lawyers licensed elsewhere who are seeking admission without examination.) Qualifying work may be performed at any time during law school and prior to filing an application for admission and can include pro bono work performed for a law school clinical program or during a summer job, internship, or externship. The work need not be completed before taking the bar examination. Online course (NYLC) and online exam (NYLE) on New York law is required prior to admission for applicants seeking admission by examination or by UBE score transfer. The New York Court of Appeals has added a new skills competency requirement for admission to the bar. Applicants may satisfy the new requirement by completing one of the five separate pathways contained in Section 520.18 of the Rules of the Court of Appeals. Applicants should review the requirements of the new rule to assist them in selecting a law school that provides a program that will allow them to meet the new requirement. The new skills competency requirement applies to all applicants who commence their law school studies after August 1, 2016, and to those foreign-educated applicants who commence their LL.M. program after August 1, 2018.
South Carolina Must complete online Course of Study on South Carolina Law prior to admission.
courses, activities, or skills training after admission to the bar. 94

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**Washington** Qualified applicants must complete a free 4-hour course. Available live or online.

94 Id.

**Arizona** Completion of professionalism course is required within the first year of admission.

**Arkansas** Each person admitted to the Bar of Arkansas by examination shall complete a mandatory course on maintaining an Arkansas law license required by the Arkansas Supreme Court. The course shall be completed within 2 years after the date an attorney is certified for admission by the Board of Law Examiners. The course will be offered various times throughout the year.

**District of Columbia** Mandatory course on D.C. Rules of Professional Conduct and D.C. Practice; requirement must be met within 12 months of admission.

**Florida** Mandatory basic skills course, including instruction on discipline, ethics, and responsibility to the public, must be completed within 12 months of admission.

**Georgia** Mandatory Transition into Law Practice Program must be completed in the year of admission or in the next calendar year. Program requires that newly admitted lawyers are subject to State Bar mandatory mentoring program for their first year of practice and must complete continuing legal education component. Certain classes of new lawyers are exempt (e.g., judicial law clerks).

**Hawaii** Completion of State Bar’s professionalism course no later than December 31 of the year following the year of election of active status.

**Idaho** Completion of 10 continuing legal education credits addressing Idaho law is required within 12 months of admission.

**Illinois** Newly admitted attorneys must complete the following two requirements. (1) A course accredited as a Basic Skills Course. In lieu of that course, an attorney may undertake a mentoring program approved by the Commission on Professionalism. (2) At least 9 other hours of Illinois-approved CLE credit, including any amount of professional responsibility (PR) credit. Participating in a mentoring program cited in Part 1 counts toward these 9 hours only if it was not completed in lieu of the Basic Skills course.

**Indiana** New admittees must complete 6 hours of applied professionalism in the first 3 years.

**Massachusetts** A course in professionalism is required within the first 18 months after admission to the Massachusetts Bar.

**Missouri** 2 hours of ethics required of all new admittees within 12 months of admission regardless of whether practicing in Missouri.

**New Hampshire** Practical skills course given by the State Bar must be completed during first 2 years of practice.

**New Jersey** Newly admitted lawyers must obtain 15 credit hours in 5 of 9 New Jersey subject areas during first full 2-year compliance period. The compliance period is deferred until January 1 of the year immediately following admission to the New Jersey Bar.

**New Mexico** New attorneys who are practicing in New Mexico and have practiced law for less than 2 years must participate in the 1-year Bridge the Gap Mentorship Program.

**New York** Newly admitted lawyers must complete 32 hours of continuing legal education credits within the first 2 years of admission to the bar.

**North Carolina** Active must complete the North Carolina State Bar Professionalism for New Admittees Program in the year the member is first required to meet CLE requirements. Those licensed in another state for 5 or more years at the time admitted are exempt from this requirement but must notify the North Carolina State Bar of their exemption.

**Ohio** New admittees must comply with New Lawyer Training requirements.

**Oregon** 15 credits in the first reporting period, including 10 practical skills, 1 legal ethics, 1 child abuse reporting, and 1 elimination of bias. All newly admitted attorneys are subject to the State Bar’s New Lawyer Mentoring Program for their first year of practice.

**Pennsylvania** The Supreme Court of Pennsylvania requires newly admitted lawyers to complete the Bridge the Gap program prior to their first CLE compliance deadline.

**Rhode Island** Completion of training course sponsored by the bar association and approved by the Supreme Court within 1 year of admission.
This shift in legal pedagogy signifies that now is the ideal time for transitioning to incorporating and mandating experiential programs into the standard legal curriculum. The legal profession has a sound foundation in apprenticeship, has learned from its shortfalls, has addressed those shortfalls by providing classroom structure, and has attempted to provide for the community at large as well as students by establishing clinics or clinical-like experiences. However, the current structure for legal education is still relatively lacking.

Notwithstanding, 113 ABA accredited law schools and legal services organizations currently comprise The Alliance for Experiential Learning (“Alliance”), a group aspiring to develop “transformative approaches and programs for curriculum reform.”95 Some of the goals of the Alliance include, “[creating] a framework for integrating experience-based educational components into the larger law school curriculum, while leaving flexibility for individual institutions to adopt their own approaches and chart their own unique courses” and more.96 While the Alliance works towards identifying effective models of experiential learning, it does not recommend or require school participation of such practical learning.97 Students seeking experiential learning as a critical part of their legal experience, however, need only make the effort to participate in a clinical experience. In a National Law Journal article from July 2013,  

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96 Id.
97 Id.
The Clinical Legal Education Association ("CLEA") disclosed its recommendations to the ABA to incorporate a requirement that students complete fifteen credit hours of real-world lawyering coursework.98 The article further discusses that naysayers of incorporating experiential learning need not be concerned about the cost.99 In fact, experiential programs “can be run in a cost-effective way.”100 Specifically, CLEA emphasized the low tuition cost of attending the City University of New York School of Law (“CUNY”) and the University of the District Columbia David A. Clarke School of Law, “Both of which have clinic requirements.”101 In its comment to the ABA Task Force on the future of legal education, CLEA sought guidance from the professional practice requirements in other disciplines such as medicine, veterinary, and pharmacy in reaching the conclusion that practical learning is an equal must in legal education.102 CLEA echoes, “these examples from other disciplines illustrate [that] law schools fall short of equipping our students and graduates with the practical skills training and exposure to professional culture needed in order to represent clients.”103 The legal pedagogy’s current failure, to require students to be well equipped with practical experience upon graduation, leaves a heavy burden and cost of preparation for practice on employers, clients, and graduates themselves.104 The disadvantage and cost of not being prepared is truly borne, though, by the

99 Id.
100 Id.
101 Id.
103 Id. at 3.
104 Id.
graduate himself who is “simply . . . not likely to get that preparation in the current rapidly evolving legal job market.” CLEA’s response to the ABA Task Force once again emphasizes the cost-effective nature of incorporating experiential learning into legal education. CLEA makes particular note of the three law schools — CUNY, University of District of Columbia and Washington & Lee—that have successfully thrived in their commitment to innovative, experiential learning legal models. 

Washington & Lee, for instance, is the leading pioneer in innovative experiential approach to legal education. Washington & Lee recently reinvented its third-year curriculum to now consist of four components that merge the “practical and the intellectual into a diverse range of simulated and real practice-oriented experiences.” This new curriculum boasts a two-week long skills session, each focusing on litigation and conflict resolution respectively; four elective courses, one real-client experience, forty (40) hours of service, and participation in a semester long professionalism program. In some ways, The John Marshall Law School (“JMLS”) has followed suit. For instance, now JMLS offers all first years a one-credit course called Expert Learning aka (“Ex L” which not only provides an overview of the court systems but also what it takes to succeed in law school. The Ex L course, is designed to give students a

105 Id.
106 Id. at 4; See also Michele Pistone, CLEA Calls on ABA to Require 15 Credits of Experiential Learning, A Place to Discuss Best Practices for Legal Education, (July 1, 2013). http://bestpracticeslegaled.albanylawblogs.org/2013/07/01/clea-calls-on-aba-to-require-15-credits-of-experiential-learning/.
107 CLEA at n.66.
109 Id.
foundational understanding of the courts and legal system, as well as what it takes to thrive in law school.\textsuperscript{111}

As CLEA concluded in its recommendation to the ABA Task Force, “professional skills training and experiential learning [should] be required as a foundational element of legal education.”\textsuperscript{112} Other law schools should follow suit and provide students with the training they need to be successful in the practice of law. Furthermore, with regards to the state of Illinois, in 2014, the Illinois Board of Admissions to the Bar sent letters to the dean of each Illinois law school encouraging them to consider making clinical programs mandatory to all senior law students.\textsuperscript{113} JMLS expeditiously moved on this recommendation by requiring students to participate in the school’s experiential programs. JMLS began with a three-hour mandatory experiential course requirement and recently increased it to a five-hour mandatory course to all new students.\textsuperscript{114} However, not all schools have followed this recommendation. Some schools are still in the planning stage of mandating experiential program as a requirement for graduation.\textsuperscript{115} Other state admission boards should make similar recommendations to their in-state schools.

\textbf{B. Apprenticeship Programs}

Not every law student possesses the skills necessary to enable the student to begin practicing law immediately upon graduation. Apprenticeship programs provide more depth and breadth than most work experience available to students. For example, the Honors Lawyering

\begin{thebibliography}{99}
\bibitem{111} Id.
\bibitem{112} Joy; Cost of Education \textit{supra} n.47.
\bibitem{115} Illinois Board of Admissions to the Bar, https://www.ilbaradmissions.org.
\end{thebibliography}
Program at Golden Gate University requires students to spend one semester each year after first year working full time under the supervision of a practicing attorney.\footnote{Golden Gate University School of Law, \textit{Special Programs: Honors Lawyering Program}, \url{http://law.ggu.edu/clinics-and-centers/special-programs/honors-lawyering/}, (last visited Jun. 7, 2017). [hereinafter “Special Programs”]} Similarly, Northeastern University offers a co-op program to its law students.\footnote{Northeastern University School of Law, \textit{The Incomparable Co-Op: Four Full-Time Work Experiences. Countless Opportunities}, \url{http://www.northeastern.edu/law/experience/co-op/index.html}, (last visited Jun. 7, 2017).} Every three months during the second and third years of law school, Northeastern law students alternate between working full time and taking classes full time.\footnote{Id.} The College of Law at Drexel University also has a co-op program.\footnote{Thomas R. Kline School of Law at Drexel University, \textit{Co-Op Program}, \url{http://drexel.edu/law/academics/kline-difference/co-op/} (last visited Jun. 7, 2017).} This program provides job placements for students during two quarters of their legal education.\footnote{Id.}

One of the major drawbacks of apprenticeship programs today is the limited numbers of students who take advantage of such programs or who are eligible to participate in such programs. For instance, under the Illinois Supreme Court Rule 711, and similar state statutes, only upper level law students are licensed to practice law with the supervision of a licensed attorney in limited circumstances.\footnote{I.L.L. S. C. T. R. 711.} Illinois and other states impose a minimum curriculum credit hour, which means that only the upper class can take advantage of working for government, ADR, or non-for-profit agencies that house experience attorneys.\footnote{Id.} Other programs limit the number of students who can participate by careful scrutiny of applications.\footnote{Id. The Illinois Supreme Court recently amended Rule 711 to reduce eligibility requirements from three-fifths to one-half credit hours and increased the type of services law students can provide. For example, the Golden Gate University Honors Lawyering program is quite competitive. See Special Programs, supra n.116 (“The [Admissions Committee] considers a variety of factors in the spring admission process, including students' demonstrated success in law school, professionalism, collegiality, volunteerism, high ethical standards, academic enthusiasm and ability to perform successfully in a professional setting. The

\footnote{For example, the Golden Gate University Honors Lawyering program is quite competitive. See Special Programs, supra n.116 (“The [Admissions Committee] considers a variety of factors in the spring admission process, including students' demonstrated success in law school, professionalism, collegiality, volunteerism, high ethical standards, academic enthusiasm and ability to perform successfully in a professional setting. The}}
**C. Legal Simulations Programs**

While some law schools attempt to bridge the gap between legal education and practice through traditional methods, other schools have embraced advancing technology as a tool to teach students the same. For example, Glasgow Graduate School of Law (“GGSL”) participated, amongst four other law schools, in a virtual reality legal community teaching model, the Simulated Professional Learning Environment (“SIMPLE”) project.\(^{124}\) GGSL’s goal was to engage in a model that would help the law schools replicate a form of professional authenticity.\(^{125}\) Each simulated environment consists of a fictional town on the web.\(^{126}\) In addition, students learn the civic history of the town and are given a map and online directory of several hundred institutions, name of businesses and virtual student law firms.\(^{127}\) GGSL’s virtual simulation provides a rich learning environment where students are immersed into the world of practice.\(^{128}\) The program helps students develop time management, teamwork, client care, and resource management skills.\(^{129}\) Overall, the virtual simulation aids students in the transition from student to lawyer.\(^{130}\)

The students who participate in the simulation are put into teams that make up the student

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\(^{125}\) Michael Huges ET AL., *Simulated Professional Learning Environment (SIMPLE)* 8–9 (Sep. 2008), https://pure.strath.ac.uk/portal/files/42651669/Hughes_etal_2008_simulated_professional_learning_environment_simple.pdf (noting that the purpose of SIMPLE was to “enhance the learning of law at the professional stages of legal education in Scotland, in particular the Diploma in Legal Practice”).


\(^{127}\) Id.

\(^{128}\) Id. at 183–85.

\(^{129}\) Id.

\(^{130}\) Id. at 184 (“This authentic immersion allows us to shift students from merely learning process . . . and this transition is clearly articulated by students in reflective reports. . . .”).
firms. Each student firm starts with a unique scenario. In order to make the simulation as realistic as possible, GGSL creates fictional clients and firms. The student firms make strategic choices unique to the problem they are confronted with. Each student is encouraged to take responsibility for a particular transaction and to delegate tasks to the firm members. The student firm is also required to respond to the other party’s claims and deal with new information or unknowns as the transaction progresses. The firms are able to communicate via e-mail, with faculty responding as the fictional firm.

Often student firms are met with unpredictable issues. For example, student firms occasionally take routes that were not anticipated by the faculty. When these issues arise the faculty must deal with them. Because the simulations are open ended and there is no correct way to pursue a case, students are given much flexibility in their decision-making. This flexibility is essential to student learning.

“Simulations that allows for such flexibility of response could easily drift in directions that practitioners would think inappropriate, incompetent or unethical and therefore levels of failsafe’s need to be built into the learning design. Yet at the same time, such openings are essential to student learning. If the student choices were restricted in the simulation to the point

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131 Id. at 164 (“In the GGSL, we create around 70 ‘virtual firms’ of four students, in which they carry out transactions using the virtual community.”).
132 Id. at 162 (“In order to create the background to the tasks, we created fictional clients and firms with which there would be interaction by the ‘real’ firm students.”).
133 Id.
134 Id. at 172 (“Each pair of firms start with a unique scenario and they will also progress their actions uniquely, since they will have to make strategic choices, respond to each other’s claims and deal with new information or unknowns as the transaction progresses.”).
135 Id. at 162 (“There [was] real-time messaging between the client, the other firm, the student firm, and [other] relevant institutions.”).
136 Id. at 172.
137 Id.
138 Id. at 173–174.
that they could only ever choose the right course of action, this would be a mimesis of correct procedural action. Students would not engage with the scenario, would not remember process or choices as well as when they are engaging directly in choosing a course of action. It would also be a misrepresentation of the complex actuality of choices facing lawyers, as well as an unethical representation of the process of justice. “139

To enhance the authenticity of the simulation, GGSL did not run the programs in complete isolation.140 For instance, student firms participating in the civil court transaction simulation were also dealing with other transactions not related to civil transactions.141 The civil transaction firms were asked to complete the purchase and sale of a house and to wind up an intestate estate, while concurrently completing their civil transactions.142 This is an ideal program and law schools should emulate and implement a similar program.

Simulated Practice: The City University of New York (CUNY)

At the City University of New York (“CUNY”), the lawyer program extends to all three years of law school.143 All first year law students are required to take a two semester series of classes called lawyering seminar.144 The lawyering seminar is geared towards teaching “legal reasoning, professional responsibility, legal writing, and other lawyering skills by integrating clinical methodology with substantive . . . material.”145 Students role-play lawyers, clients, judges faced with various legal issues that mirror the problems they analyze in their first-year

139 Barton Authentic Fictions supra n. 126, 174 (2007).
140 Id. at 179.
141 Id.
142 Id.
144 Id.
145 Id.
courses. After the successful completion of the two-year lawyering program, third-year students are required to participate in “one of six clinics” or elect one of the three “practice clinics.”

**Simulated Practice: New York University (NYU)**

New York University (“NYU”) also has a simulated practice program. While NYU students are required to take the typical first year courses in contracts and torts, they are also required to do course work in the area of lawyering. The first year lawyering program consists of a series of exercises in which students are given a lawyering problem, its related concepts, and vocabulary. Students are guided through the process of collaboratively planning and executing a response. Finally, students participate in intensive collaborative critique of their planning and execution. In addition, students are encouraged to participate in NYU’s legal clinic.

NYU’s lawyering requirement serves many goals. First, the overall aim of the lawyering program is to provide every student with the opportunity to think critically as they develop legal arguments, develop facts, interview and counsel clients, negotiate a transaction or a dispute, mediate a claim, and plead a motion before a simulated court. At NYU students are judged on

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146 Id.
149 Id.
150 Id.
151 Id.
their adherence to the program’s code of ethics.\textsuperscript{154} It is through the experience of actually making and criticizing legal arguments, in light of precedent and exemplary cases and under the constraints of uncertain outcomes, that beginners are able to grasp the fundamentals of legal reasoning.\textsuperscript{155}

Second, the program permits students to be introduced early to legal ethics. At NYU, students are confronted with ethical as well as technical problems in a setting that mimics a law office.\textsuperscript{156} In this mirrored real-world setting, the student is forced to learn to conquer the unpredictable challenges of actual practice. In 2012, as a way to further concretize and realize the overarching need for an apprenticeship model, Chief Justice Lippman unveiled the new 50-hour pro bono requirement taking effect January 1, 2015, which every applicant must satisfy before being admitted to the New York State Bar.\textsuperscript{157} In addition, while 113 schools are part of the Alliance in recognition of the importance of experiential learning in the law, not all the participating schools currently require a clinical experience.\textsuperscript{158}

**Benefits of Experiential Education**

**A. Practical Experiential Teaching Models Help Students Become Practice Ready**

Students require structure and hands-on work in law schools. As consumers of their own education, they are in the best position to evaluate their educational needs. For example, several


\textsuperscript{155} *Clinical Programs, supra* n. 152.

\textsuperscript{156} Id.


\textsuperscript{158} For example, Harvard University does not require a clinical experience to graduate. See Harvard Law School, J.D. Program, http://hls.harvard.edu/dept/academics/degree-programs/j-d-program/, (last visited Jun. 8, 2017).
law students shared their opinions and gave advice for those considering law school. When asked what students wished they could change about law school, one student responded:

I think more practical application . . . It is a lot easier to hone in and focus when I can see the real purpose. To me, getting a certain grade is not a purpose. That works for some folks, I guess. But [I’m motivated] when I know what the end result is going to be as opposed to just reading a railroad case in Torts from 1823 . . . There must be a little bit more of an interactive way to engage these students and help them see the practical purpose of [a] class.

Students, too, recognize the value of a more apprenticeship-like teaching method.

There is no question that students learn better and more effectively when they are active rather than passive participants in the legal process. All clinical teaching involves some form of experiential learning that can be described in a three-step process: 1) the student learns to formulate an action plan; 2) the student enacts that plan through a structured experience; and 3) the student reflects about the experience and modifies future action accordingly. The clinical process is thus a blueprint for professional growth and introduction to the practice of law.

As another student shared:

Two of my best experiences have been the externships I have had. Last summer I externed in the U.S. Attorney’s office. This spring I did an externship with Judge John W. Darrah. Now I have exceeded the credit hours that I can devote to those. If there is a way to increase the [number of credits allowed], because those have been some of the best learning experiences I have had. It is about being able to apply what you have learned.

160 Id.
161 Mary Jo Eyester, Designing and Teaching The Large Externship Clinic, 5 CLINICAL L. REV. 347, 401 (1999).
163 Id.
164 See Clarke, supra n.159; See also Colton, supra n.78.
Another student disclosed in response to the question regarding what his favorite classes were, “I liked Trial Advocacy and the reason is because it’s very practical. For me, that’s where I felt a part of the law.”

Jessica Roth, a law student, worked two days a week with an attorney in Fairfax, Virginia, conducting research, sitting in on client interviews, and going to court with her mentor through the Domestic Relations Legal Clinic. Jessica says, “I learned how to interact with clients. I was able to appear in front of a judge and actually help people get a divorce. And most importantly, to me, the clinic made me realize that family law is what I want to practice when I graduate.”

At Rutgers School of Law in Newark, New Jersey, Kelly Anne Targett was the keynote speaker at the 2009 commencement. Kelly is noted for her many accomplishments during her law school career: top grades, clerkship on the New Jersey Supreme Court, member of the Law Review and Moot Court, first place oralist in the appellate advocacy competition, semi-finalist with the appellate nationals team, summer associate position with an international law firm, Minority Student Program facilitator, and Legal Research & Writing teaching assistant. However, of all her experiences and accomplishments, Kelly says her experience in the criminal section of the school’s Urban Legal Clinic was her best overall experience. She recalls,

I was on my feet in a courtroom on the very first day and left the courthouse with two clients depending on me. It was overwhelming and at the same time exhilarating, and before the semester was finished I found myself dramatically

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165 Clarke, supra n. 159, at 71.
167 Id.
169 Id.
changed by the experience. A clinic inspires the kind of learning and self-confidence that simply cannot be taught in a traditional law school classroom.\textsuperscript{170}

It is not just the student testimonials that delineate why structured clinics are beneficial. There are numerous psychological, educational, and managerial studies on how adults and more specifically, professionals learn.\textsuperscript{171} While these studies are very complex, one significant finding and similarity is that adults learn best when faced with questions that arise in real-life experiences followed by opportunities to answer and reflect upon those questions.\textsuperscript{172} Donald A. Schon, a social scientist at the Massachusetts Institute of Technology (“M.I.T.”), has specifically applied learning theories to study how professionals can improve during their careers. Schon advocates a process he calls “reflection-in-action,” in which a student professional learns by engaging in ongoing dialogue and discussion with an experienced professional about the experiences the student undertakes.\textsuperscript{173} These and other learning theories form the theoretical justification for much of clinical law teaching.\textsuperscript{174}

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item See e.g., Studies of Learning to Learn: I-X, 3–9 J. OF VERBAL LEARNING AND VERBAL BEHAVIOR, (1964–1970). In the Carnegie Report, the author acknowledged, “developments in philosophy and in the learning, sciences have made increasing clear the reciprocal interpenetration of cognitive development and social interaction.” Id. at 8. Neil Hamilton, Fostering Professional Formation (Professionalism): Lessons from the Carnegie Foundation’s Five Studies on Educating Professionals, 45 CREIGHTON L. REV. 763 (2012) (summarizing that all five Carnegie Foundations studies found that “the following foster the reflective exploration of meaning: (1) reflecting on the responsibilities of the profession; (2) integrating the three apprenticeships; and (3) seeking feedback, reflection, and self-assessment”). American Bar Association, Section of Legal Education and Admissions to the Bar, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development - An Educational Continuum (1992) (discussing how clinical education help students to learn and think like a lawyer).
\item O’Leary, supra n.162, at 495.
\item Id. at 496; See generally, Donald A. Schon, The Reflective Practitioner: How Professionals Think in Action (1983).
\end{enumerate}
\end{footnotesize}
Indeed, even without the studies, students feel that what they are lacking from the law school experience is structured guidance. When asked, “what are you looking for from your first employer after law school?” a student responded,

I think mentorship is probably the best thing they can do. No matter what you learn in school . . . you’re still going to get to that firm, and I think you are going to feel a little lost. [You’re going to have a feeling like,] ‘Oh wow, I’m not sure if I ever really learned how to do this.’ Having someone there, having training and mentorship along the way, I think, really helps.175

When the legal community is aware that every student has participated in an experiential program, like a clinic, more experienced lawyers, may mentor young lawyers with a heightened level of sophistication. Instead of young professionals feeling “lost” in a wilderness of basic practicing tools, and experienced lawyers struggling to teach those basics when many were not taught to do so, experienced lawyers can then focus their guidance as to topics such as legal strategy, tactics, drafting, and arguing styles. Law school graduates across the board have agreed with this positive evaluation of clinical experiences.

Daniel Bond, graduate and former participant in the Death Penalty Clinic, said:

[F]rom a practical perspective, I got more training writing motions and other legal skills from my time at the law clinic than my entire three years in law school. To be honest, I don’t think there is any law school in America that has enough of a practical focus . . . 176

Another student stated:

He liked the clinic’s small-case style, which allows him to monitor the same case, from start to finish, throughout his several months in the program. Compared to how the prosecution and the public defenders work on sometimes 100 cases at a time; you can only imagine how much attention we were able to pay to our one case.177

175 See Clarke, supra n. 159, at 73.
176 See Colton, supra n. 78, at 79.
177 Id.
Portia Kaiser, participant in the Litigation Clinic, says that the Clinic was a pivotal experience: “there will be no other time in your career where your supervising attorney’s primary goal is truly to teach you how to be an attorney in such a practical and meaningful way.”178 Urging every law student to participate in an experiential program, via placement in curriculum may seem excessive to critics. However, it is important to note how a student responded when asked what he liked least about law school: “[t]he unwillingness of . . . old-school, the old guard, to change. People still seem a little resistant to change despite the fact that some of these time-proven methods are starting to show that it’s not the best way to teach or help students learn.”179 Sarah Orenstein stated “[n]o other law school clinic offers students as high a degree of independence, and the experience of working so closely with clients strengthened my sense of purpose and professionalism.”180 Earl Singleton, Director of the Community Legal Clinic at Indiana University School of Law-Bloomington, has tailored his approach to counter the pressures students face once they become fully engaged in their casework. Singleton states “[m]ost of the reservations that students have come from, 'Am I going to measure up emotionally? Am I going to be able to deal with the people?'”181 He further explained:

They learn the law over there (he gestures across the street to the law school building), and they learn how to do the research, how to do the writing, and how to apply the law to the facts. It’s the variable of throwing people into the mix. How do I deal with somebody who doesn’t listen? How do I deal with somebody who’s never grateful? How do I deal with telling somebody ‘we lost and here are the reasons why we lost.’ This is the bad news.182

179 See Clarke, supra n. 159.
182 Id.
Professor James A. Tanford of the Indiana University School of Law-Bloomington believes Singleton’s Legal Community Clinic puts the law into perspective for his students. "... when [Singleton’s] students returned to their regular classes, they brought with them a greater understanding of law and its complexities and an increased ability to think critically about the law and its application." The ABA, AALS, and state bars should pay heed to the current and future students’ needs for experiential programs.

**B. Clinical Education Fosters One of the Well-Established Goals of the Profession Public Service**

Cynthia Batt, Associate Professor and Director of Clinical Programs, Temple University Beasley School of Law, begins her analysis of the benefits of clinical programs by stating:

> When I was in law school, clients were rarely mentioned in class, attaining almost mythical status. I knew very little about what a lawyer did with a client. As a law student, I learned about plaintiffs and defendants, appellants and appellees, but people – who needed help from lawyers – seldom surfaced. In law school, I learned to love the elegance and fluidity of our legal system, but I saw it was separate and insulated from other social systems. I did not yet comprehend how the law piece fit into the societal puzzle. I learned how to think like a lawyer, but not how to be a lawyer.

It remains undisputed that one of the primary goals of the legal profession, and as a result, of law schools, is to provide services for the public interest. Nevertheless, because the current law school curricula narrowly focus on corporate law, they inherently devalue public interest tenets and deprive students the exposure and understanding of the necessity of serving the public. They forget that legal work involves real people who need real help. The clinical

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experience encourages students to develop an understanding of the impact the legal system has on people and the interface of that system with other systems, including healthcare, welfare, and education.\footnote{See Anzalone, supra n. 166, at 260; See Romantz, supra n. 79, at 260.}

Providing socio-cultural context and awareness would help students to view a client’s problems in the context of real circumstances. “Real disputes and problems are embedded in a network of cultural, social, economic, and political circumstances. Furthermore, there often are notable consequences for others, not only the immediate parties. The relevant context has personal and structural dimension.”\footnote{Mark Neal Aaronson, We Ask You To Consider: Learning About Practical Judgment In Lawyering, 4 Clinical L. Rev. 247, 256-57 (1998).} Truly, legal professionals must integrate as part of their practice and education, “bedside manner,” or more aptly, “desk-side manner.”\footnote{Molly Cooke, David M. Irb and Bridget C. O’Brien, A Summary of Educating Physicians: A Call for Reform of Medical School and Residency (2010). [hereinafter “Cooke”]}

Stephen Winzer describes the “awakening to a sense of social responsibility” that arises from students participating in clinics.\footnote{Steven Winzer, The Law School Clinic: Legal Education in the Interests of Justice, 70 FORDHAM L. REV. 1929, 1935 (2002).} Students learn from representing clients in the law school clinic that they would not otherwise learn from their regular academic courses.

First and foremost, they learn that many social problems, like poverty, can be seen and acted upon as legal problems. Second, they learn that legal representation is as necessary to the resolution of complex legal problems of the poor as it is to those of the affluent. Third, they learn to develop and apply legal theory through the actual representation of clients. Fourth, they learn to use the legal system to seek social change. And finally, they learn the limits of law in solving individual and social problems. Through this experience the students are required to confront social and economic injustice, and to act on the professional obligation of lawyers to engage in public service and to provide legal assistance to those who cannot afford [representation]. These are all important intellectual and ethical lessons for law students to learn.\footnote{Id.}
These are not lessons that should be left to chance or circumstance if the lawyer happens to work in that particular sector. These lessons are essential for enriching students’ legal experience. Given that law school is becoming more expensive and the pressure to work in the private sector exponentially mounts with student loan debt, every law student should have the opportunity to serve the public’s interest during law school. Indeed, this opportunity becomes a lawyer’s responsibility.

Clinical legal education contextualizes the legal experience of elite law students. It exposes them to both the deprivation that exists in communities and the satisfaction gained from helping alleviate the disadvantage. Furthermore, it undermines myths about poverty lawyering that are pervasive within the corporate legal community. Clinical professors and experiential program contributors can act as role models to students. They work openly towards the public good and can advise students how to tread alternate and perhaps more satisfying career paths.

Professor Singleton of Indiana University Bloomington condenses this sentiment to its simplest form, “[i]t’s important for the students to understand that not everyone can afford a lawyer, but everybody ought to have access to a lawyer.” Clinical teaching is best placed to

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194 Kirsten Edwards, Found! The Lost Lawyer, 70 Fordham L. Rev. 37, 61 (2001) (“Exposure to clinical work also tends to undermine pervasive myths, harbored within the legal profession, about the value of poverty lawyering.”).
195 Id.
196 Piurek, supra n.181.
cultivate practical wisdom and ethical professional ideals by integrating an understanding of ethical dilemmas and professional norms into a student's development as a professional and, just as significantly, a human being. Clinical legal education is therefore ideally suited to developing the three qualities of the lawyer-statesman: commitment to pro bono activity, practical wisdom, and ethical professional practice.\textsuperscript{197} Clinical education is an essential part of a law student’s law school experience.

\textbf{ABA Standard 303(a)(3)}

Many have accused the ABA of being slow to respond to the needs of students and educators alike.\textsuperscript{198} In 2014, the ABA instituted Standard 303(a)(3) which codified the shift towards a more practical hands-on legal education. ABA Standard 303(a)(3) notes that:

A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following . . .

(3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:

(i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302,

(ii) develop the concepts underlying the professional skills being taught,

(iii) provide multiple opportunities for performance, and

(iv) provide opportunities for self-evaluation.\textsuperscript{199}

The professional skills noted in Standard 302 include having a “knowledge and understanding of substantive and procedural law,” and exhibiting competency in “legal analysis

\textsuperscript{197}Id.


and reasoning, legal research, problem-solving, and written and oral communication in the legal context.”

Also, presenting competence in “exercising proper professional and ethical responsibilities to clients and the legal system,” and finally, developing “other professional skills needed for competent and ethical participation as a member of the legal profession.”

This standard states that law schools are not permitted to allow students to use a single course to satisfy all of the requirements to Standard 303. In other words, a student may not use a course that satisfies the upper-class writing requirement to also double as satisfying the experiential courses requirement.

The new standard also asks that a law school provide “substantial opportunities” for students to participate in law clinics, and field placements and to encourage student participation in pro bono legal services, which includes law-related public service activities. This is also noted by the fact that the ABA encourages law schools to provide law students the opportunity to provide at least 50 hours of pro bono service over their law school careers.

This standard deviates from the old “other professional skills” requirement in three fundamental ways. “First, Standard 303(a)(3) changes the focus from ‘substantial instruction’ to a focus on [an express] number of credit hours.” This helps to codify a number that must be

200 Id. at § 302.
201 Id. at § 302.
202 Id. at Interpretation § 303-1.
203 Id.
204 Id. at § 303(b).
205 Id. at Interpretation § 303-3.
206 Managing Director’s Guidance Memo: Standards 303(a)(3), 303(b), and 304, ABA, 2, (March 2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governance/documents/2015_standards_303_304_experiential_course_requirement_authcheckdam.pdf. Compare Id. at §303(a) (requiring 2 credit hours of professional responsibility, and 6 credit hours of experiential courses) with 2012-2013 ABA Standards and Rules of Procedure for Approval of Law Schools, ABA, § 302, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf, (“A law school shall require that each student receive substantial instruction in . . .”)
satisfied, rather than just providing nebulous instruction about providing an adequate amount of training.\(^{207}\) Second, the new standard prescribes a minimum amount of credits to be earned in “experiential courses.”\(^{208}\) Finally, the standard requires that “experiential courses” must be a simulation course, law clinic or field placement.\(^{209}\)

Moreover, the ABA added guidance recently noting that “experiential” or “simulation” courses require that experiential nature of the course must be the organizing principle of the course and the doctrinal material to be incidental.\(^{210}\) In essence, the ABA is saying that in order for a course to qualify as an experiential or simulation course the course must be easily identifiable as such and should not engage in activities such as “minute counting” in order to qualify as a particular course.\(^{211}\) Additionally, these courses are directed by the ABA to have faculty members providing direct supervision to the students.\(^{212}\)

The ABA has stated that mock trial, moot court and similar activities may not qualify as a “simulation course.”\(^{213}\) This is due to the fact that there is a classroom instructional component of many of these courses; the ABA places the burden of proving that the courses count toward

\(^{207}\) The adequacy number of hours depends on the allocation of educational goals and that “there should be enough credits and required hours of work for students to immerse themselves in clinical practice.” See Kele Stewart, How Much Clinic for How Many Students? Examining the Decision to Offer Clinics for One Semester or an Academic Year, 5 J. MARSHALL L.J. 1, 57-58 (2011). As cited in n. 230, “The most frequent number of credits per semester for the clinic (i.e., credits for combined classroom and casework components) is 4 per semester (25.7%), followed by 3 credits/semester (24.7%), 6 credits/semester (18.2%), 5 credits/semester (10.8%), 7 credits/semester (8.4%) and 2 credits/semester (5.1%), with all other responses 3.0% or less.” See also, David A. Santacroce & Robert R. Kuehn, Report on the 2007-2008 Survey, Ctr. for the Study of Applied Legal Education, 1, 14 (2008), available at http://www.csale.org/files/CSALE.07-08.Survey.Report.pdf.

\(^{208}\) Managing Director’s Guidance Memo, supra n. 206 at 2, Chapter 3, supra n. 206 at § 303(a) (requiring “one or more experiential course(s) totally at least six credit hours”).

\(^{209}\) Id. at § 303(a)(3).

\(^{210}\) Managing Director’s Guidance Memo, supra n. 206 at 2.

\(^{211}\) Id. at 3.

\(^{212}\) Id.

\(^{213}\) Id. at 4 (“Participation in [mock trial, moot court, and similar activities], in and of itself, does not qualify as completing a simulation course.”).
the six-credit experiential learning requirement on the individual law school and faculty.\textsuperscript{214} Further, the ABA has noted that traditional writing or seminar course(s) does not seem to fit the definition of “experiential course” or “simulation course.”\textsuperscript{215} However, a school can try to prove that these classes meet the burden created by the new ABA rule.\textsuperscript{216} The main reason given for not allowing intensive writing courses is because the ABA hoped that the simulation courses would “provide [...] experiences similar to those that a student would be encountering in a clinic or field placement program.”\textsuperscript{217}

Finally, the ABA has noted that their requirement that a school offer “substantial opportunities” to students for law clinics and field placements only means that a school must offer sufficient opportunities so that a student has a realistic chance of enrolling in such a course.\textsuperscript{218} In no way does it require that each student be guaranteed a position in courses of this nature.\textsuperscript{219}

While these are steps in the right direction, unfortunately, a requirement of six credit hours really does not put much of a dent in the issue that students just do not have enough experience when they enter practice.\textsuperscript{220} Almost all other major professional schools currently require large sums of time devoted to experiential education. In medicine, medical school education consists of two years of classes and then two years of professional experience in

\begin{footnotes}
\item[214] Id.
\item[215] Id. at 5, (“A traditional writing or seminar course that requires a substantial, traditional scholarly paper does not seem to fit the definition of “experiential course” or “simulation course.””).
\item[216] Id.
\item[217] Id.
\item[218] Id. at 6.
\item[219] Id.
\item[220] Kele Stewart, How Much Clinic for How Many Students?: Examining the Decision to Offer Clinics for One Semester or an Academic Year, 5 J. MARSHALL L.J. 1, 47 (2011) (making a persuasive argument for full-year clinics over one-semester ones and noting that some clinicians have described “challenges [in] trying to accomplish all of her goals in a one-semester, six-credit federal legislation clinic” id. at 57).
\end{footnotes}
clinical rotations. In veterinary schools, in order to graduate, students must have participated in a minimum of one academic year of hands-on clinical training. Pharmacy school students are required to spend no fewer than 300 hours in their first three years and at least 1440 hours in the last year in clinical settings. Even architectural school students must take at least 50 of their total 160 required semester credits in design studio courses. A requirement for only 6 hours of experiential learning amounts to less than 10% of an overall students’ required course load in law school. The ABA 6-hour requirement falls far short of the original recommendation of 15 hours CLEA requested.

**Conclusion**

Legal education in the United States requires modification in order to provide students with the experiential and practical learning needed for the practice of law. Practical legal education is essential because it helps ensure that students are prepared for the practice of law and teaches them to act ethically, competently, and responsibly. Programs like clinical education,

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221 Cooke, supra n. 189.
222 Accreditation Policies and Procedures of the American Veterinary Medical Association, Section 7.9, Standard 9.
224 National Council of Architectural Registration Boards, NCARB Education Standard.
226 See Sloan, supra n.98.
externships, internships, law clerking, and working part-time in a law firm, help achieve this goal. These programs play a crucial role in a legal education by offering students real-world experience and bridging the gap between theory and practice. However, the current requirements are very minor and do not really provide students with an opportunity to receive substantial experiential learning. By increasing the required hours for experiential programs like clinics, apprenticeships, and externships for all students, and integrating clinical methodology and goals into the core curriculum. Regulators and legal educators goal should be to ensure that students are prepared as practitioners upon graduation. The ABA, The AALS, state bars, and law schools must work together to introduce regulations mandating schools to provide students adequate experiential programs, clinics or other opportunities that will provide students the essential skills of the practice of law throughout their law school career.