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The Need to Make Clinical Teaching Mandatory as Part of the Experiential Methodology to Prepare Students for the Practice of Law in the Twenty-First Century

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THE NEED TO MAKE CLINICAL TEACHING MANDATORY AS PART OF THE EXPERIENTIAL METHODOLOGY TO PREPARE STUDENTS FOR THE PRACTICE OF LAW IN THE TWENTY-FIRST CENTURY

J. DAMIAN ORTIZ*

I.	INTRODUCTION	697
II.	THE MODERN LAW SCHOOL	699
III.	DEMAND AND COST	705
IV.	BENEFICIAL EXPERIENTIAL EDUCATION PROGRAMS	712
	A. Clinical Legal Education.....	712
	B. Apprenticeship Programs	720
	C. Legal Simulations Programs	721
	1. Simulated Practice: The City University of New York (CUNY).....	723
	2. Simulated Practice: New York University (NYU)	724
V.	BENEFITS OF EXPERIENTIAL EDUCATION	725
	A. Practical Experiential Teaching Models Help Students Become Practice Ready	725
	B. Clinical Education Fosters One of the Well- Established Goals of the Profession: Public Service	730
	C. Law Graduates and Employer Outcry for Change in Law School Curriculum	732
VI.	ABA STANDARD 303(A)(3).....	735
VII.	CONCLUSION	740

I. 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 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.² Further, there is a notion that students' knowledge

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1. Neil W. Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, 5 *ST. THOMAS L.J.* 101, 103-04 (2008).

2. Raleigh Hannah Levine, *Of Learning Civil Procedure, Practicing Civil Practice, and Studying a Civil Action: A Low-Cost Proposal to Introduce First-Year Law Students to the Neglected MacCrate Skills*, 31 *SETON HALL L. REV.*

of legal theory and doctrine is enhanced if they encounter and engage in a similar manner to what lawyers face when representing their clients. However, this engagement is seldom actualized.³

Recently, articles and studies alike have implored the need for a more comprehensive legal teaching model.⁴ 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.⁵ Therefore, a clinical experience mandates an apprenticeship model movement to provide law students the opportunity to be practice-ready and achieve their employer's needs. The American Bar Association ("ABA") now requires law schools to offer students experiential programs in their curricula, but the ABA,⁶ the legal community and state bars must mandate student participation in clinical programs as part of the school's experiential curricula.⁷ Experiential legal education must be a greater component of a professionally responsible legal education. Experiential legal 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 litigators, counselors, mediators, legislative lawyers, public policy advocates, 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 approaches.⁸ Mandating students to participate in a clinical program achieves both goals: improving the student experience to produce more practice-ready

479, 490 (2000); see also Heather K. Gerken, *Resisting the Theory/Practice Divide: Why The "Theory School" is Ambitious About Practice*, 132 HARV. L. REV. ASS'N 134 (2019).

3. Martha Minow & Todd D. Rakoff, "A Case for Another Case Method," 60 VANDERBILT L. REV. 597, 597-607 (2007).

4. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, 89 (2007); see also Rachel Reed, *Moving Legal Teaching into the Future*, HARV. L. TODAY (Oct 11, 2022), hls.harvard.edu/today/moving-legal-teaching-into-the-future/ [perma.cc/RD7G-YD7M].

5. Symposium, James E. Moliterno, Panelist, *Can Law Schools Prepare Students to be Practice Ready?*, Chapman Law Review Symposium (Feb. 1, 2013).

6. To a certain extent, the Association of American Law Schools (AALS) which has the dual responsibility of serving law schools as an institutional membership organization, and individual law school faculty, as their learned society, should join in. See *About AALS*, ASS'N OF AM. L. SCHS., www.aals.org/about/ [perma.cc/W9SQ-WLV5] (last visited Apr. 20, 2024).

7. Karen Sloan, *ABA Eyes Increasing Hands-on Learning Requirement for Law Schools*, REUTERS (Nov. 21, 2023, 1:53 PM), www.reuters.com/legal/legalindustry/aba-eyes-increasing-hands-on-learning-requirement-law-schools-2023-11-21/ (last visited Apr. 20, 2024).

8. Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education Through A Relationship-Centered Experiential Curriculum*, 41 BALT. L. REV. 395, 403 (2012) [hereinafter *Brooks Professional Identity*].

students and addressing the employer outcry for competent and knowledgeable associates.

II. THE MODERN LAW SCHOOL

Even after the ABA's six credit increase from one credit⁹ in the experiential training requirement, the increase is an improvement over the previous instruction in professional skills requirement. However, "data from the initial implementation of the new experiential training requirement suggest its effect has been more of a whimper than the bang some hoped for, with little evidence it has spurred legal education to enhance the ability of students to get hands-on training in professional skills."¹⁰

The current focus in legal education remains on teaching substantive case law through the Socratic Method.¹¹ The Socratic Method teaches students how to extract a legal rule and apply it to different fact patterns.¹² This method is useful in the classroom setting: within [days] of the student's 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.¹³ This method, however, is often employed "to demonstrate the complexity of the law without giving students a basic framework for understanding the law."¹⁴ The casebook-centered method focuses on judicial opinions, but in practice, lawyers are often called upon to counsel clients on the application of statutes, rules, and regulations that have not yet been interpreted.¹⁵ While the focus on the Socratic Method may teach

9. Am. Bar Ass'n Consultant on Legal Educ., *Consultant's Memo 3 Standard 302(a), Standard 304, Standard 504, Standard 509*, in ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 2012-2013 (Mar. 2010) [hereinafter *ABA Consultant's Memo 3*], at www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf; DAVID A. SANTACROCE & ROBERT R. KUEHN, CSALE, THE 2016-17 SURVEY OF APPLIED EDUCATION 11 (2017) [hereinafter *Kuehn Survey*], assets-global.website-files.com/5d8cde48c96867b8ea8c6720/628457da3c8fe346a0508cee_Report%20on%202016-17%20CSALE%20Survey.REV.5.2022.pdf [perma.cc/J8ZG-8DVG] (last visited April 23, 2024).

10. Robert Kuehn, *Implementation of the ABA's New Experiential Training Requirement: More Whimper Than Bang*, CLEA NEWSL. 10 (Apr. 27, 2021), papers.ssrn.com/sol3/papers.cfm?abstract_id=3837606 [perma.cc/WTQ4-7NK3].

11. Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 748 (2011).

12. *Basic Instinct: Case Theory and Courtroom Performance*, 66 TEMP. L. REV. 1, 9 (1993).

13. WILLIAM M. SULLIVAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, 186 (2007).

14. Eric Chaffee, *Deposition Techniques and the Socratic Method*, 15 THE LAW TEACHER 11 (2008).

15. Jonathon D. Glater, *Training Law Students for Real-Life Careers*, N.Y.

legal analysis, it neglects other basic skills necessary to “law practice management and other aspects of the lawyer’s [everyday] work,” such as “conflict checks, client retainers, timekeeping systems, and maintaining client accounts, files, and confidentiality matters.”¹⁶ As a third-year law student explained, a thorough clinical experience, a relational framework, and an effective lawyer should have “much more than simply solid analytical reasoning.”¹⁷ In order to prepare a future generation of lawyers to be truly competent and knowledgeable professionals, law schools must 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.¹⁸ For example, Harvard Professor & Dean Christopher Langdell’s¹⁹ revolution in law school curriculum comparing the study of law to the training method in medical education, said that the law of professional responsibility should “be taught by the broadest possible experiential education model.”²⁰ Using the experiential education method to teach the law of professional responsibility, such as placing the student in the role of a lawyer, “enhances 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.”²¹

Examining details of experiential coursework (clinic, field placement, and skill courses) of 2,142 attorneys reveals that “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.”²² The Carnegie Report, recognized the gap between “learning how to think like a lawyer and being capable of acting like a lawyer,” also recommended “a greater emphasis on

TIMES (Oct. 31, 2007), www.nytimes.com/2007/10/31/education/31lawschool.html?pagewanted=print&_r=0 [perma.cc/4PUT-Q3SA].

16. Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 37, 138 (2000).

17. Brooks Professional Identity, *supra* note 8, at 339.

18. *Id.* at 440. See also Symposium, *Meeting the Professional Identity Challenge in Legal Education Through a Relationship-Centered Experiential Curriculum*, 41 U. BALT. L. REV. 395, 440 (2012).

19. The fame of Professor Langdell rests mainly upon his work as a professor of law. His most remarkable achievement as a professor was the change that he introduced in the method of legal education by substituting for lectures and textbooks the study of cases in schools of law. This system, commonly spoken of as the Case System might well be called the Langdell System. Christopher C. Langell, *The American Law Register*, 55 UNIV. OF PENN. L. REV. 273, 273-96 (May 1907).

20. James E. Moliterno, *Legal Education, Experiential Education and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 100 (1996-1997).

21. *Id.* at 101.

22. Margaret E. Reuter & Joanne Ingham, *The Practice Value of Experiential Legal Education: An Examination of Enrollment Patterns, Course Intensity, and Career Relevance*, 22 CLINICAL L. REV. 181, 232 (2015).

practice-oriented skills and values aimed at inculcating a sense of professional identity and purpose.”²³ Lastly, though 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.²⁴

Upon graduation, it is presumed that law students have acquired skills necessary for the practice of law, 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.²⁵ 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.²⁶ Moreover, the Socratic Method rarely explores the relationship between the client and the attorney.²⁷ Such relationships are often treated anecdotally and not incorporated into the classroom in a meaningful way.²⁸ Consequently, the dominant use of the Socratic Method without the student’s exposure to an experiential program will often leave the new lawyer ill-prepared to undertake the responsibilities of practicing law.²⁹

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 under-preparedness of newly licensed lawyers poses a real potential of harm to clients and to the attorneys themselves.³⁰ In response,

23. Susan L. Brooks, Robert D. Dinerstein & Deborah Epstein, *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law Alliance for Experiential Learning in Law*, 7 ELON L. REV. 1, 2 (2015).

24. *Id.* at 14–15.

25. ROBERT MACCRATE ET AL. LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 138-140 (Am. Bar Ass’n 1992) [hereinafter *MacCrate Report*] (listing the “fundamental lawyering skills”).

26. Symposium, *A Heretical View of Teaching: A Contrarian Looks at Teaching, the Carnegie Report, and Best Practices*, 28 TOURO L. REV. 1239, 1261-62 (2012).

27. *Id.* at 1247.

28. *Id.* at 1252.

29. Steven K. Homer, *From Langdell to Lab: The Opportunities and Challenges of Experiential Learning in the First Semester*, 48 MITCHELL HAMLINE L. REV. 265, 270 (2022).

30. See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND ROADMAP 1 (Clinical Leg. Educ. Ass’n 2007) [hereinafter BEST PRACTICES] (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”); see also Talbot

several studies have been conducted to examine current legal education and propose recommendations for the future.³¹

In 2007, the MacCrate Report studied the curricula of sixteen law schools, both private and public, in the United States and Canada.³² This study confirmed that the basic curriculum was identical across all the schools.³³ The Socratic Method was used to teach the 1L courses.³⁴ At some schools, the 2L or 3L students 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.³⁵ 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.³⁶ 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.³⁷ Additionally, the more integrated approach would emphasize the knowledge, skills, and values necessary to successfully practice as a lawyer, thereby bridging the gap between theory and practice.³⁸ 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 teaching doctrinal courses as well.³⁹

Law Schools like Columbia University School of Law, DePaul University College of Law, Emory University School of Law, and the University of Illinois Chicago School of Law (“UIC Law School”)⁴⁰ allow current 2L and 3L curricula to participate in their clinics.⁴¹

D'Alemberte, *Talbot D'Alemberte on Legal Education*, ABA J. 52 (Sept. 1990) (noting that neither the profession nor the students are benefiting from the current Socratic legal education system).

31. *MacCrate Report*, *supra* note 25. See generally WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (Jossey-Bass, 2007) [hereinafter *Carnegie Report*].

32. *Id.* at 3.

33. *Id.* at 4 (“The curriculum at most [law] schools follows a fairly standard pattern.”).

34. Ilana Kowarski, *What Is the Socratic Method That Law Schools Use?*, U.S. NEWS (Apr. 4, 2019, 10:57 AM) www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2019-04-04/what-is-the-socratic-method-and-why-do-law-schools-use-it [perma.cc/WN68-BW8S].

35. *Carnegie Report*, *supra* note 31, at 5–6.

36. *Id.* at 6.

37. *Id.* at 8–10.

38. Richard A. Matasar, *Skills and Values Education: Debate About the Continuum Continues*, 22 N.Y.L. SCH. J. INT'L & COMP. L. 25, 28 (2003).

39. *Id.* at 9.

40. Formerly known as the UIC John Marshall School of Law and, previously, as the John Marshall Law School.

41. *Directory of Law School Public Interest and Pro Bono*, AM. BAR ASS'N (2017), www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/ [perma.cc/Y9Q6-HCD8].

However, the current required hours for the clinics lack substance.⁴² Clinics teach essential lawyering skills, which are necessary for young lawyers to be successful.⁴³ Clinics benefit both clients who are directly served by them as well as the 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.”⁴⁴

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.⁴⁵ Significant improvements can be made to prepare students for the practice of law.⁴⁶ These improvements to legal education need not significantly change the overall process of becoming a lawyer in the United States. There are innovative experiential programs that the ABA, AALS, and state bars can consider for guidance in adopting and mandating the integration of these programs into the law school curricula.⁴⁷ 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.⁴⁸

For example, Penn State University Intellectual Property Clinic, in conjunction with three student groups (Woman’s Law

42. See Barry et al., *supra* note 16, 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).

43. See Jeffrey M. Winters, *A Legal Clinic Education*, 79 MICH. B.J. 1692, 1692 (2000) (“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.”).

44. Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 328 (2001).

45. Rodney J. Uphoff, et al., *Preparing the New Law Graduate to Practice Law: A View from the Trenches*, 65 U. CIN. L. REV. 381, 382 (1997) (stating that law schools generally do not prepare their graduates “adequately for law practice”).

46. A six-year best practices for a collaborative work program, 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, *supra* note 30, at 165 n.14); 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).

47. See *infra* Part IV (discussing various experiential learning models).

48. *Id.*

Caucus, Sports Law and Entertainment, and Student Intellectual Property), hosted thirty-three Girl Scouts. The program (IP Patch) was developed as a partnership between the Girl Scout Council of the Nation's Capital and the USPTO and in collaboration with the Intellectual Property Owners (IPO) Education Foundation to teach the Girl Scouts about patents, copyrights, and trademarks at the school's incubator for early-stage start-ups.⁴⁹

Cornell Law School launched a clinical course called Technology, Innovation, and the Law Clinic, in which law students write software applications for partner agencies to help low-income immigrants who cannot afford a lawyer.⁵⁰ 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 conviction 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.⁵¹ The Startup Legal Garage at the University of California, Hastings College of the Law (now known as UC Law SF) 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.⁵² 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.⁵³ The practicing attorney supervises student work on basic legal needs such as employee contracts, privacy policies, and entity formation — and the student is placed at the center of real-world law practice.⁵⁴ Other law schools that have been providing opportunities to law students to engage in clinical

49. *AALS Clinical Section Newsl.*, ASS'N OF AM. L. SCH. 4 (Fall/Winter 2017), www.aals.org/app/uploads/2017/12/AALS-Clinical-Section-Newsletter-FallWinter-2017.pdf [perma.cc/T3MP-ZVD8] [hereinafter *AALS Newsletter Fall/Winter 2017*].

50. *Intellectual Property, Technology, and Information*, CORNELL L. SCH., www.lawschool.cornell.edu/academics/areas-of-study/intellectual-property-technology-and-information/ [perma.cc/562U-66W8] (last visited Mar. 21, 2024).

51. UIC Law School's Pro Bono Litigation Clinic provides services to the Chicagoland community in a variety of legal matters like police brutality cases and prisoner's rights cases in both federal district court and state court in Illinois. *Pro Bono Litigation Clinic*, UIC SCH. OF L., www.law.uic.edu/experiential-education/clinics/pro-bono/ [perma.cc/NC76-35RZ] (last visited Mar. 21, 2024).

52. Robin Feldman et al., *Startups and Unmet Legal Needs*, 67 UTAH L. REV. 575, 578 (2016).

53. *Id.*

54. Alice Armitage & Robin Feldman, *A More Practical Model for Law Schools*, HARV. BUS. REV. (Dec. 14, 2015), www.hbr.org/2015/12/a-more-practical-model-for-law-schools [perma.cc/2VU7-YZ7A].

experiences and have been expanding their clinical programs include the 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, to name just a few.⁵⁵

Seattle University School of Law started offering a 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.⁵⁶ Seattle University School of Law has also begun an exciting program of pairing doctrinal faculty with clinical faculty to co-teach in the clinic, thereby expanding the number of clinic seats.⁵⁷ 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.⁵⁸ Schools are trying to give their students the clinical experiences needed to succeed in the work place. But what about the students that do not participate in a clinical program? Making clinical participation mandatory will ensure that all students are competent, knowledgeable, and practice ready.

III. DEMAND AND COST

Since the 2014 ABA amendment to the experiential requirement, there has been hesitation to increase clinical programs due to unfounded beliefs that it is costly. However, the claim that it is too cost-intensive is without merit, as the studies below indicate. A 2007–2008 survey conducted by the Center for the Study of Applied Legal Education (“CSALE”) found that in the USA, slightly “over 2% of schools require students to enroll in an in-house, live client clinic before graduating.”⁵⁹ The same survey indicated that only 41.2% of the responding schools had more than 30% of its

55. *AALS Newsletter Fall/Winter 2017*, *supra* note 49.

56. *Upper Level Course Descriptions*, SEATTLE UNIV. SCH. OF L., www.law.seattleu.edu/academics/degree-programs/jd/curriculum/upper-level-course-descriptions/#d.en.2245372 [perma.cc/F63G-BEH9] (last visited Mar. 18, 2024).

57. *About the Clinic Program*, SEATTLE UNIV. SCH. OF L., www.law.seattleu.edu/academics/lawyering-skills-training/live-client-experiences/ronald-a-peterson-law-clinic/about-the-clinic-program/ [perma.cc/C2UE-VUJT] (last visited Mar. 18, 2024).

58. *See AALS Clinical Section Newsl.*, ASS’N OF AM. L. SCHOOLS 4 (Spring 2017), www.aals.org/app/uploads/2017/05/AALS-Clinical-Section-Newsletter-Spring-2017.pdf [perma.cc/4FSF-2HXQ]. [hereinafter *AALS Newsletter Spring 2017*].

59. David A. Santacrose & Robert R. Kuehn, *Report on the 2007-2008 Survey*, CSALE 10 (2008), www.repository.law.umich.edu/cgi/viewcontent.cgi?article=1063&context=other [perma.cc/Z9E2-GAZS].

students enroll in a clinic;⁶⁰ meaning approximately 65% of law students at the schools reporting were lacking in *any* experiential or practical legal experience upon graduation.⁶¹

Similarly, on the upper end, only 0.7% of reporting law schools indicated that 76–80% of their students were enrolled in clinical programs.⁶² In 2007–2008, nearly 62% of the schools reported an increase in students' demand for in-house, live client clinics.⁶³ Two years later, in the 2010–2011 CSALE survey, nearly 80% of schools – had an increase of 18% from the previous survey - reported a higher demand from students for more in-house clinics.⁶⁴ Additionally, 58.9% of the schools reported greater than 30% enrollment in clinics. This is up from 41.2% in the 2007-2008 survey.⁶⁵

In 2016-17, 187 schools in the Master Survey reported a total of 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).⁶⁶ All but four schools offered at least one law clinic.⁶⁷ The median number of clinics offered is seven per school, unchanged from the 2013-14 Survey.⁶⁸ During the 2016-2017 academic year, 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.⁶⁹ Respondent schools estimated the percentage of their students that participate in a law clinic or externship before graduation. The median participation rate for law clinics in the most recent survey was 46-50% of graduating students.⁷⁰ In the 2013-14, survey, the median was 41-45%, and in 2010-11, it was 31-35%.⁷¹ The median estimated percentage of students that graduated having participated in a law clinic or a field

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 11.

64. David A. Santacroce & Robert R. Kuehn, *Report on the 2010-2011 Survey*, CSALE 11 (2012), www.repository.law.umich.edu/cgi/viewcontent.cgi?article=1062&context=other [perma.cc/2AYB-EGZR].

65. *Id.* at 9–10.

66. David A. Santacroce & Robert R. Kuehn, *Report on the 2016-2017 Survey*, CSALE www.repository.law.umich.edu/cgi/viewcontent.cgi?article=1139&context=other [perma.cc/GLX8-HA4M] [hereinafter *Santacroce & Kuehn 16-17*].

67. *Id.*

68. *Id.* at 8.

69. *Id.*

70. Steven B. Dow & Louise E. Fontaine, *Acquiring Lawyering Skills in the United States and France: A Comparative Study*, 28 TUL. J. INT'L & COMP. L. 259, 278 (2019-2020).

71. *See also Kuehn Survey*, *supra* note 9, at 11.

placement course in the 2016-17 survey was 76-80%; in the 2013-14 survey, the median was 71-75%.⁷²

It is often difficult to “understand the true financial costs of clinical courses versus other courses and other law school expenses.”⁷³ 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.⁷⁴ In other words, clinical education does not contribute to tuition increases when compared to other law school expenses.⁷⁵ Moreover, “the argument that clinical education is too expensive to be feasible might not be true.”⁷⁶ 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.”⁷⁷ “In analyzing data from the ABA-LSAC Official Guide to ABA-Approved Law Schools for 2013, Professor Robert Kuehn found that most law schools currently have sufficient clinic or externship opportunities for students.⁷⁸ He reported that ‘158 law schools (or 79%) already have a law clinic or externship course capacity to provide each of their J.D. students with experiential experience.⁷⁹ Another eleven law schools already offer enough law clinic or externship course positions for 90% of its students. Combined, his data suggest that almost 85% of law schools already provide or could easily ensure that all law students are provided a clinic or externship experience.”⁸⁰

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%.⁸¹ Furthermore, the median enrollment range

72. *Id.* at 12.

73. Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C.J.L. & SOC. JUST. 309, 328 (2012) [hereinafter *Joy; Cost of Education*].

74. *Id.* at 328-29.

75. Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. 1, 6 (2014) [hereinafter *Kuehn; Pricing*], at www.papers.ssrn.com/sol3/papers.cfm?abstract_id=2318042 [perma.cc/87A2-2B27].

76. *Id.*

77. *Id.*

78. *Id.* at 32.

79. Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J. L. & POL'Y 11, 52 (2013).

80. *Id.*

81. David A. Santacroce & Robert R. Kuehn, *2013-2014 Survey of Applied Legal Education*, CSALE 10 (2015), papers.ssrn.com/sol3/papers.cfm?abstract_id=2566484 [perma.cc/ZVE8-2YK4] [hereinafter *Santacroce & Kuehn 13-14*].

for field placement courses had increased dramatically from 31-35% in 2010-11 to 51-55% in 2013-14.⁸² The 2013-14 survey showed that 54% of schools reported, in their last three years, more student demand for law-client clinics.⁸³ On the other hand, less than 12% of schools surveyed in 2013-14 reported a decrease in demand for law-client clinics.⁸⁴ 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 clinics improve skills.⁸⁵

With relation to field placement courses, the 2013-2014 survey showed that 60% of schools surveyed found an increased demand for field placement programs in the last three years.⁸⁶ 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.⁸⁷ Thus, it is clear that there is a great demand for experiential courses from students who wish to become more practice ready and marketable in the workplace. The 2013-2014 survey also asked respondents to identify the greatest challenges that clinics currently faced.⁸⁸ 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 2010-2011.⁸⁹ 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.⁹⁰ Therefore, money is probably the greatest challenge facing experiential learning at law schools.⁹¹

In 2016-2017 the statistics showed that all these measurements have gone down over the years. Students who believe that clinical education makes them more marketable have gone down 14% to 77% in 2016-2017.⁹² Only 71% believe it helps their skills as opposed to 74% in 2013-2014.⁹³ The lack of hard money has gone down from 64% to 56% in 2017. Percentage-wise, lack of hard money remains the greatest hindrance for clinics across schools. Conversely, students are now getting more experience in

82. *Id.* at 11.

83. *Id.* at 13.

84. *Id.*

85. *Id.*

86. *Id.* at 14.

87. *Id.* These percentages are of students from schools that reported increased demand for clinics.

88. *Id.*

89. *Id.* at 14.

90. *Id.*

91. See *Joy; Cost of Education*, *supra* note 73, at 209-10 (discussing the cost criticism of law clinics).

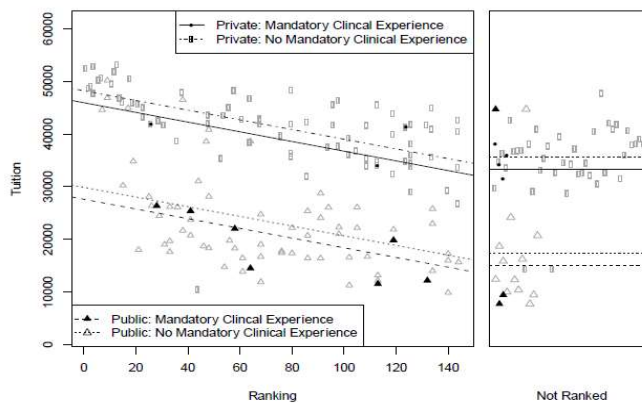
92. *Kuehn Survey*, *supra* note 9, at 13.

93. *Id.* at 14.

other programs such as externships and internships.⁹⁴

However, the claim that experiential learning is too cost intensive is really without much empirical support.⁹⁵ When comparing the average tuition at schools that require or guarantee each student a law clinic or externship with tuition at schools that do not require clinics or externships, there is not a substantial difference. The data from the chart below, prepared by Washington University School of Law, 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.⁹⁶

Effect of Mandatory Clinical Experience on Tuition



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

sources: ABA-LSAC Official Guide to ABA-Approved Law Schools (2013); Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert Seibel, *Legal Education and the Legal Profession in Crisis: The Need for Expanded Experiential Legal Education and Required Clinical Education for All Law Students*, 43 Wash. U. J.L. & Pol’y (forthcoming fall 2013).

94. *Id.* at 10 (A more recent survey indicates that “twenty-four percent of schools now require J.D. students to participate in a law clinic or field placement course as a condition of graduation. Among these schools, 11% require a clinic, 2% require a field placement course, and 86% require a clinic or field placement course. In the table below, schools estimated the percentage of their J.D. students that will participate in a law clinic before graduation. The median estimated participation rate for clinics is 31-40%. In the 2019-20 survey, the median participation rate was 41-50%; in the 2016-17 survey, 46-50%; and in the 2013-14 survey, 41-45%.” *Id.* at 12-13).

95. See *Joy; Cost of Education*, *supra* note 73.

96. Martin J. Katz, *Understanding the Costs of Experiential Legal Education*, 1 J. OF EXPERIENTIAL LEARNING 28, 44 (2015) [hereinafter *Katz; Costs of Experiential Education*].

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
Experiential							
In-House Clinic	199,450	2.0	6	8	2,078	439	2,517
Externship	111,050	3.0	3	33	374	93	467
Simulation	199,450	3.5	3	20	950	—	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
Traditional Courses							
Large Podium	199,450	3.5	3	75	253	—	253
Medium Podium	199,450	3.5	3	50	380	—	380
Small Podium	199,450	3.5	3	20	950	—	950
Seminar	199,450	3.5	3	10	1,900	—	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	—	490

The chart above summarizes the faculty costs of experiential courses versus that of traditional courses.⁹⁷

This graph assumes that the average cost for a tenure track professor is approximately \$199,400, and the cost for a non-tenure

97. *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. REFORM 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 of 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." *Katz; Costs of Experiential Education*, *supra* note 96, at 40.

track professor is approximately \$111,050.⁹⁸ Combined with the previous chart, we see that the overall cost of experiential education is not disproportionate to traditional education.⁹⁹ For example, the most expensive experiential 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.¹⁰⁰

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.¹⁰¹ There is a wide range of costs 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.”¹⁰² Moreover, from this model, there are four 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.”¹⁰³ 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 consideration, 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 enterprise, and thus tuition, at a rate that is similar to more traditional schools.”¹⁰⁴

Moreover, faculty expenses as a factor in calculating cost per student-credit-hour for experiential legal education seem to suggest that some hybrid approaches that the schools are experimenting with have “significant potential for offering new forms of experiential learning at relatively low cost.” The hybrid approach

98. *Directory of Law School Public Interest and Pro Bono*, AM. BAR ASS’N (2017), www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/ [perma.cc/Y9Q6-HCD8].

99. *Katz; Costs of Experiential Education*, *supra* note 96.

100. *Id.* at 31.

101. *Kuehn; Pricing*, *supra* note 75 (“[C]linical courses have not cost, and need not cost, students more in tuition.”).

102. *Katz; Costs of Experiential Education*, *supra* note 96.

103. *Id.* at 45.

104. *Id.* at 32.

generally has two components: a teaching component that includes seminars or classes on the materials and a supervision component that ensures the students represent the client adequately.¹⁰⁵

IV. BENEFICIAL EXPERIENTIAL EDUCATION PROGRAMS

A. *Clinical Legal Education*

The lawyering profession began as an apprenticeship.¹⁰⁶ The profession's roots are firmly grounded in the mentor-mentee relationship and in practicing lawyering skills.¹⁰⁷ The focus of modern legal education has shifted to a case study approach in order to train lawyers in a more efficient manner.¹⁰⁸ 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 procedures 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.¹⁰⁹

Although labeled an apprenticeship, the master rarely taught his apprentice.¹¹⁰ 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.¹¹¹

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

105. *Id.* at 53.

106. See Leo P. Martinez, *Legal Education in A Modern World: Evolution at Work*, 9 CHARLESTON L. REV. 267, 269–72 (2015).

107. *Id.*

108. Mary Beth Beazley, *Better Writing, Better Thinking; Using Legal Writing Pedagogy in the "Casebook" Classroom (Without Grading Papers)*, 10 LEGAL WRITING 23 (2004). Christopher Columbus Langdell is often credited with creating the "revolution" in American legal education when he moved to the case study method and used the "scientific" method, distancing himself and other law professors from the trade school methods of apprentice-based legal education.

109. Amy M. Colton, *Eyes to the Future, Yet Remembering the Past: Reconciling Tradition with the Future of Legal Education*, 27 U. MICH. J.L. REFORM 963, 966 (1994).

110. David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and The Law School Curriculum*, 52 U. KAN. L. REV. 105, 109 (2003).

111. *Id.*

or volunteer at various firms or government agencies over the course of their law school careers. Very few of these students are fortunate enough to gain experience working directly with clients, seeing a case's progression for more than a couple of months, or experience appearing in court.¹¹² 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.¹¹³ According to Professor 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 with drafting, reviewing, and marking up transactional documents, negotiating language with opposing counsel . . . composing memos, emails, and letters to clients or [other attorneys].¹¹⁴

Clinical legal education eliminates many of these deficiencies of both the traditional and modern-day apprenticeship models.¹¹⁵ 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 offering at least one clinic or externship experience.¹¹⁶ The 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 clinics partnering with local nonprofit organizations."¹¹⁷ This goal comes primarily in

112. Adam J. T.W. White, *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).

113. Victor Fleischer, *Deals: Bringing Corporate Transactions into the Law School Classroom*, 2002 COLUM. BUS. L. REV. 475, 480-81.

114. *Id.* at 480.

115. See Barry *et al.*, *supra* note 16, 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.

116. *Id.*

117. Daniel June, *New York Law School's Dean has the Connections for 26 Clinics for Students*, JD J. (Apr. 11, 2013), www.jdjournal.com/2013/04/11/new-york-law-schools-dean-has-the-connections-for-26-clinics-for-students/ [perma.cc/EZG3-CR2K].

response to the requirements of the New York Bar, now requiring each law student to satisfy 50-hours of pro bono work before graduation.¹¹⁸ Other schools have also begun to develop a more comprehensive clinical education programs¹¹⁹ for their students such as Georgetown University, UIC Law School, and Chicago-Kent School of Law.¹²⁰

Other state bars also require certain courses, activities, or skills training during law school. Indiana requires completion of two semester-hours of legal ethics or professional responsibility in an approved law school.¹²¹ New Jersey will accept a score of seventy-five or better on the MPRE.¹²² In lieu thereof, applicants may present evidence of satisfactory performance in a law school course on ethics.¹²³ New York requires a minimum of two semester-hours of credit in a stand-alone course in professional responsibility.¹²⁴ Other state bars require certain courses, activities, or skills training prior to admission.¹²⁵ Finally, the trend is for states to require

118. *Id.*

119. The University of Denver's Sturm College of Law announced what it calls the "Experiential Advantage Curriculum," an optional program in which students will spend the equivalent of a full year of law school in a combination of live client clinics, externships and legal simulation courses (twenty-four units during the second and third years and six units in the first year). *See* Clinical Programs, UNIV. OF DENVER STRUM COLL. OF L., www.law.du.edu/academics/practical-experience/clinical-programs [perma.cc/SA4F-6DDF] (last visited Apr. 20, 2024). The University of the District Columbia David A. Clarke School of Law also requires all students to take sixteen experiential credits, with a minimum of fourteen credits in clinics. *See Welcome to the UDC Law Clinical Program*, UDC/DICSL, law.udc.edu/clinicintro/ [perma.cc/A3MA-TJFV] (last visited Apr. 20, 2024).

120. *Definitions of Terms Used*, AM. BAR ASS'N, www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/ [perma.cc/F49X-YECT] (last visited Oct. 27, 2020).

121. 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").

122. *Information for Bar Exam Applicants*, N.J. BD. OF BAR EXAMINERS (2017), www.njbarexams.org/appinfo.action?id=1 [perma.cc/2QZH-HX2K].

123. *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").

124. *Bar Exam Eligibility*, N.Y. STATE BD. OF L. EXAMINERS (2017), www.nybarexam.org/Eligible/Eligibility.htm [perma.cc/JYM6-TUPS].

125. *Bar Exam Resources – Requirements for Bar Admission in U.S. States*, EMORY L., HUGH F. MACMILLAN L. LIBR., guides.libraries.emory.edu/c.php?g=1341126&p=9886809#s-lg-box-31237385 [perma.cc/G4M5-NB4Q] (last visited Apr. 27, 2024).

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 one-and-a-half-hour video course offered by the bar association.

certain courses, activities, or skills training after admission to the bar.¹²⁶

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 six months of admission as a CLE requirement.

Delaware: Requires five-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 fifty 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 LLM program after August 1, 2018.

South Carolina: Must complete online Course of Study on South Carolina Law prior to admission.

Washington: Qualified applicants must complete a free four-hour course. Available live or online.

¹²⁶ Jason C., *What Are My Newly Admitted CLE Requirements*, MLCE BLOG (Dec. 18, 2023), blog.attorneycredits.com/what-are-my-newly-admitted-cle-requirements/.

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

Arkansas: Each person admitted to the Arkansas Bar 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 two 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 twelve months of admission.

Florida: Mandatory basic skills course, including instruction on discipline, ethics, and responsibility to the public, must be completed within twelve 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 ten continuing legal education credits addressing Idaho law is required within twelve 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 the Basic Skills Course, an attorney may undertake a mentoring program approved by the Commission on Professionalism. (2) At least nine 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 nine hours only if it was not completed in lieu of the Basic Skills Course.

Indiana: New admittees must complete six hours of applied professionalism in the first three years.

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

Missouri: Two hours of ethics required of all new admittees within twelve months of admission regardless of whether practicing in Missouri.

Nevada: Mandatory new lawyer training program during first year of admission.

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

New Jersey: Newly admitted lawyers must obtain fifteen credit hours in five of nine New Jersey subject areas during first full two-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 two years must participate in the one-year Bridge the Gap Mentorship Program.

New York: Newly admitted lawyers must complete thirty-two hours of continuing legal education credits within the first two years of admission to the bar.

North Carolina: Active, new admittees 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 five 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: Requires fifteen credits in the first reporting period, including ten practical skills, one legal ethics, one child abuse reporting, and one 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 one year of admission.

Texas: Mandatory seminar within one year of admission.

Utah: Active, new admittees with less than two years of legal practice must complete mandatory new lawyer training program within the first year of practice.

Vermont: Applicants admitted by examination or transferred UBE score must complete a mentorship and fifteen hours of specific CLE within one 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. Without a mandate for a clinical program experience, the ABA's experiential education amendment is insufficient for a student to be competent, knowledgeable, and grasp the practice of law. Although the six-hour experiential requirement is a major change, many have noted the change as "modest" and have called for a higher credit requirement, or that clinic credits be specifically mandated.¹²⁷ 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.¹²⁸ 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."¹²⁹ 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.¹³⁰ While the Alliance works towards identifying effective models of experiential learning, it does not recommend or require school participation of such practical learning.¹³¹ Students seeking experiential learning as a critical part of their legal experience, however, need only make the effort to participate in a clinical program experience. In a National

West Virginia: Within one year of admission, must complete bridge-the-gap seminar.

Wyoming: New admittees by examination or by UBE score transfer must complete a six-hour Wyoming State Bar Continuing Legal Education course on professional practice within 1 year of admission.

127. *Joy; Cost of Education*, *supra* note 73, at 580; Clinical Legal Educ. Ass'n, Comment On Draft Standard 303(A)(3) & Proposal For Amendment To Existing Standard 302(A)(4) To Require 15 Credits In Experiential Courses 3 (July 1, 2013), www.clea.wildapricot.org/Resources/Documents/2013-01-07%20CLEA%2015%20credits.pdf [perma.cc/NRA4-W56Q]; Robert Kuehn, *If 6 Turned out to be 9, I Don't Mind (But 3? or 2!): The Uneven Implementation of Mandatory Experiential Credits*, Best Practice for Legal Educ. (Jan. 1, 2019), www.bestpracticeslegaled.com/2019/01/01/if-6-turned-out-to-be-9-i-dont-mind-but-3-or-2-the-uneven-implementation-of-mandatory-experiential-credits/ [perma.cc/SZH6-8CGF] [hereinafter *If 6 Turned out to be 9*].

128. BEST PRACTICES, *supra* note 30, at 91.

129. *Alliance for Experiential Learning in Law*, NE. UNIV. SCH. OF L., www.northeastern.edu/law/experience/leadership/alliance.html (last visited June 7, 2020).

130. *Id.*

131. *Id.*

Law Journal article from July 2013, 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.¹³² The article further discusses that naysayers of incorporating experiential learning need not be concerned about the cost.¹³³ In fact, experiential programs “can be run in a cost-effective way.”¹³⁴ 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.”¹³⁵ 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.¹³⁶ 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.”¹³⁷

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.¹³⁸ The disadvantage and cost of not being prepared is truly borne, though, by the graduate himself, who is “simply . . . not likely to get that preparation in the current rapidly evolving legal job market.”¹³⁹ CLEA’s response to the ABA Task Force once again emphasizes the cost-effective nature of incorporating experiential learning into legal education.¹⁴⁰ 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.¹⁴¹ Student preparation will likely meet the

132. Karen Sloan, *ABA Pressed to Boost Law Students’ Practical Training*, THE NAT’L L. J. (July 2, 2013), www.nationallawjournal.com/id=1202609435530/ABA-Pressed-to-Boost-Law-Students-Practical-Training [perma.cc/ZJ5V-VSXL] [hereinafter Sloan].

133. *Id.*

134. *Id.*

135. *Id.*

136. *Clinical Legal Education Association (“CLEA”) comment to ABA Task Force on the Future of Legal Education*, CLEA 2–3 (June 19, 2013), www.cleaweb.org/Resources/Documents/CLEA%20COMMENT%20TO%20ABA%20TASK%20FORCE.pdf [perma.cc/Q5QA-RY7V] [hereinafter *CLEA*].

137. *Id.* at 3.

138. *Id.*

139. *Id.*

140. *Id.* at 2.

141. Adam Lamparello & Charles E. Maclean, *A Proposal to the ABA: Integrating Legal Writing and Experiential Learning Into a Required Six-Semester Curriculum that Trains Students in Core Competencies, ‘Soft’ Skills,*

needs and expectations of employers, and they would be further empowered to consider employment opportunities that are ideally suited for their interests and skill sets.¹⁴²

Washington & Lee, for instance, is the leading pioneer in innovative experiential approach to legal education.¹⁴³ 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.”¹⁴⁴ The 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.¹⁴⁵ In some ways, UIC Law School has followed suit. For instance, now UIC Law School offers all first years a one-credit course called Expert Learning (“Ex L”) which not only provides an overview of the court systems but also what it takes to succeed in law school.¹⁴⁶ The Ex L course, is designed to give students a foundational understanding of the courts and legal system, as well as assist students in developing the tools necessary to thrive in law school.¹⁴⁷

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.”¹⁴⁸ Other law schools should follow suit and provide students with the training they need to be successful in the practice of law. Furthermore, 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

and Real-World Judgment, 43 CAP. UNIV. L. REV. 60 (2015); *see also* Michele Pistone, *CLEA calls on ABA to require 15 credits of experiential learning*, A PLACE TO DISCUSS BEST PRACTICES FOR LEGAL EDUC. (July 1, 2013), bestpracticeslegaled.com/2013/07/01/clea-calls-on-aba-to-require-15-credits-of-experiential-learning/ [perma.cc/332W-NLXR].

142. Katy Montgomery & Neda Khatamee, *What Law Firms Want in New Recruits; Business Acumen, A Greater Focus on Global Issues, Management Skills and the Ability to Write Well*, LAW.COM (May 28, 2009), www.law.com/almID/1202431018433/ [perma.cc/8W9M-ZEXY] (reporting a hiring partner's comment that current economic conditions "make it more imperative that new associates hit the ground running, and operate efficiently and effectively from day one").

143. CLEA, *supra* note 136.

144. Lyman Johnson et al., *Reforming the Third Year of Law School*, in REFORMING LEGAL EDUCATION 11-40 (2012).

145. *Id.*

146. Jenn Ballard, *Building a Law School: John Marshall Launches Course to Prepare Students for Next Three Years*, CHI. DAILY L. BULL., (August 14, 2013), www.news.jmls.edu/wp-content/uploads/2013/08/Green-and-Niedwiecki-Aug-16.pdf [perma.cc/KC4K-N8HP].

147. *Id.*

148. *Joy; Cost of Education*, *supra* note 73

law students.¹⁴⁹ UIC Law School expeditiously moved on this recommendation by mandating students to participate in the school's experiential program.¹⁵⁰ UIC Law School began with a three-hour mandatory experiential course requirement and recently increased it to five hours as a requisite for graduation. Students that select a clinic program have a five-hour mandatory course consisting of three fieldwork credit hours and a two-hour seminar course.¹⁵¹ However, like the ABA armament, it does not mandate the students to participate in a clinical program; the five-hour requirement can be satisfied by another experiential program.¹⁵² However, not all schools have followed this recommendation. Some schools are still in the planning stages of mandating experiential programs as a requirement for graduation.¹⁵³ Other state admission boards should mandate similar recommendations to their in-state schools.

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 Program at Golden Gate University requires students to spend one semester each year after the first year working full time under the supervision of a practicing attorney.¹⁵⁴ Similarly, Northeastern University offers a co-op program to its law students.¹⁵⁵ Every three months during the second and third years

149. Release Statement, Report and Recommendations of the Special Committee on the Impact of Current Law School Curriculum on the Future of the Practice of Law in Illinois, Illinois State Bar Association, www.isba.org/sites/default/files/committees/Impact%20of%20Current%20Law%20School%20Curriculum%20on%20the%20Future%20of%20the%20Practice%20of%20Law%20in%20Illinois.pdf [perma.cc/5HNM-GQ5D] (last visited June 7, 2020).

150. *Academic Catalog: Experiential Learning Requirements*, UNIV. OF ILL. CHI. SCH. OF L., www.catalog.uic.edu/search/?search=experiential+learning (last visited June 7, 2023); *Experiential Education*, UNIV. OF ILL. CHI. SCH. OF L., www.law.uic.edu/experiential-education/ (last visited June 7, 2023).

151. *Id.*

152. *Id.*

153. *General Information*, ILL. BD OF ADMISSIONS TO THE BAR, www.ilbaradmissions.org [perma.cc/4JLP-KE49] (last visited April 20, 2024).

154. *Special Programs: Honors Lawyering Program*, GOLDEN GATE UNIV. SCH. OF L., law.ggu.edu/clinics-and-centers/special-programs/honors-lawyering/ [perma.cc/ZXX6-CCLK] (last visited June 7, 2020) [hereinafter *Special Programs*].

155. Northeastern University School of Law, *The Incomparable Co-Op: Four Full-Time Work Experiences. Countless Opportunities*, www.northeastern.edu/law/experience/co-op/index.html [perma.cc/9CYZ-BRGV] (last visited June 7, 2020).

of law school, Northeastern law students alternate between working full time and taking classes full time.¹⁵⁶ The College of Law at Drexel University also has a co-op program.¹⁵⁷ This program provides job placements for students during two-quarters of their legal education.¹⁵⁸

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 under the supervision of a licensed attorney in limited circumstances.¹⁵⁹ Illinois and other states impose a minimum curriculum credit hour, which means that only the upper class can take advantage of working for government, Alternative Dispute Resolution (ADR), or not-for-profit agencies that house experienced attorneys.¹⁶⁰ Other programs limit the number of students who can participate by careful scrutiny of applications.¹⁶¹

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”) and four other law schools participated in a virtual reality legal community teaching model, the Simulated Professional Learning Environment (“SIMPLE”) project.¹⁶² GGSL’s goal was to engage in a model that would help the law schools replicate a form of professional authenticity.¹⁶³ Each simulated environment

156. *Id.*

157. *Law Co-Op Program*, DREXEL UNIV. THOMAS R. KLINE SCH. OF L., drexel.edu/law/academics/kline-difference/co-op/ (last visited Apr. 20, 2024).

158. *Id.*

159. Ill. Sup. Ct. R. 711.

160. *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.

161. For example, the Golden Gate University Honors Lawyering program is quite competitive. See *Special Programs*, *supra* note 154 (“The [Admissions Committee] consider 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 Committee evaluates each applicant’s School of Law admissions materials, as well as fall semester grades, a recommendation from a School of Law professor, and a personal essay.”).

162. Karen Barton et al., *Authentic Fictions: Simulation, Professionalism And Legal Learning*, 14 CLINICAL L. REV. 143, 160 (2007) [hereinafter *Barton; Authentic Fictions*].

163. Michael Hughes et al., *Simulated Professional Learning Environment*

consisted of a fictional town on the web.¹⁶⁴ In addition, students learn the civic history of the town and are given a map and online directory of several hundred institutions, names of businesses and virtual student law firms.¹⁶⁵ GGSL's virtual simulation provides a rich learning environment where students are immersed into the world of practice.¹⁶⁶ The program helps students develop time management, teamwork, client care, and resource management skills.¹⁶⁷ Overall, the virtual simulation aids students in the transition from student to lawyer.¹⁶⁸

The students who participate in the simulation are put into teams that make up the student firms.¹⁶⁹ Each student firm starts with a unique scenario. In order to make the simulation as realistic as possible, GGSL creates fictional clients and firms.¹⁷⁰ 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.¹⁷¹ 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.¹⁷² The firms are able to communicate via e-mail, with faculty responding as the fictional firm.¹⁷³

Often student firms are met with unpredictable issues. For example, student firms occasionally take routes that were not anticipated by the faculty.¹⁷⁴ 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

(SIMPLE): *Program Final Report*, SIMPLE 8–9 (Sep. 2008), www.pure.strath.ac.uk/portal/files/42651669/Hughes_etal_2008_simulated_professional_learning_environment_simple.pdf [perma.cc/TYK5-ZXH2] (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”).

164. *Barton; Authentic Fictions*, *supra* note 162, at 161.

165. *Id.*

166. *Id.* at 183–85.

167. *Id.*

168. *Id.* at 184 (stating, “[t]his authentic immersion allows us to shift students from merely learning process . . . and this transition is clearly articulated by students in reflective reports. . .”).

169. *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.”).

170. *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.”).

171. *Id.*

172. *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.”).

173. *Id.* at 162 (“There [was] real-time messaging between the client, the other firm, the student firm, and [other] relevant institutions.”).

174. *Id.* at 172.

flexibility in their decision-making. This flexibility is essential to student learning.¹⁷⁵

A simulation 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 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 justice¹⁷⁶

To enhance the authenticity of the simulation, GGSL did not run the programs in complete isolation.¹⁷⁷ For instance, student firms participating in the civil court transaction simulation were also dealing with other transactions not related to civil transactions.¹⁷⁸ 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.¹⁷⁹ Simulations are useful in teaching students important aspects of lawyering. Simulations require students to role play into a key role as a lawyer. This allows the student to interact with a client based on a set of facts and legal issues. The benefit to the professor and the student is that in simulations, there is no risk of harming a client and making mistakes leads to a learning experience.¹⁸⁰

Thus, simulations are ideal in teaching practice and clinical programs. Students will benefit from other law school classes by implementing simulations in their syllabus.

1. *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.¹⁸¹ All first year law students are required to take a two semester series of classes called

175. *Id.* at 173–74.

176. *Barton; Authentic Fictions*, *supra* note 162, at 174.

177. *Id.* at 179.

178. *Id.*

179. *Id.*

180. John Lande, *Suggestions for Using Multi-Stage Simulations in Law School Courses 2-3* (Univ. of Mo. Sch. of L., Research Paper No. 2013-08, 2014), at ssrn.com/abstract=2236244 [perma.cc/JFJ6-2UW9].

181. *The Writing Curriculum at the CUNY School of Law*, CUNY SCH. OF L., www.law.cuny.edu/academics/courses/curriculum.html [perma.cc/ZB4V-PE84] (last visited June 7, 2020).

lawyering seminar.¹⁸² The lawyering seminar is geared towards teaching “legal reasoning, professional responsibility, legal writing, and other lawyering skills by integrating clinical methodology with substantive . . . material.”¹⁸³ Students role-play lawyers, clients, and judges faced with various legal issues that mirror the problems they analyze in their first-year courses.¹⁸⁴ 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.”¹⁸⁵ Every student participates in clinical education, a capstone of public interest lawyering education built on unique experiential, hands-on learning for advocates.¹⁸⁶

2. *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.¹⁸⁷ The first year lawyering program consists of a series of exercises in which students are given a lawyering problem, its related concepts, and vocabulary.¹⁸⁸ Students are guided through the process of collaboratively planning and executing a response.¹⁸⁹ Finally, students participate in intensive collaborative critique of their planning and execution.¹⁹⁰ In addition to this program, students are encouraged to participate in NYU’s legal clinic.¹⁹¹

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.¹⁹² At NYU, students are judged on their

182. *Id.*

183. *Id.*

184. *Id.*

185. *Clinics & Concentrations*, CUNY SCH. OF L., www.law.cuny.edu/academics/clinics.html (last visited June 7, 2020).

186. *Clinical Programs*, CUNY SCH. OF L., www.law.cuny.edu/academics/clinical-programs/ [perma.cc/4PW9-6NY5] (last visited June 7, 2020).

187. *Curriculum*, NYU L., www.law.nyu.edu/academics/lawyeringprogram/curriculum/ [perma.cc/BS7S-YNZM] (last visited June 7, 2020).

188. *Id.*

189. *Id.*

190. *Id.*

191. *Clinical Programs*, NYU L., www.law.nyu.edu/academics/clinics [perma.cc/PD5A-FDUC] (last visited June 7, 2020); see also Peter Lattman, *N.Y.U. Law Plans Overhaul of Students’ Third Year*, N.Y. Times (Oct. 16, 2012), www.dealbook.nytimes.com/2012/10/16/n-y-u-law-plans-overhaul-of-students-third-year/ [perma.cc/PF7R-FC7N] [hereinafter *Clinical Programs*].

192. NYU Law, *Clinical Programs*, NYU www.law.nyu.edu/academics/clinics [perma.cc/UXJ9-5LL8] (last visited Mar.

adherence to the program's code of ethics.¹⁹³ 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.¹⁹⁴ 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.¹⁹⁵ In this mirrored real-world setting, the students are forced to learn to conquer the unpredictable challenges of actual practice.

In 2012, to further concretize and realize the overarching need for an apprenticeship model in New York, Chief Justice Lippman unveiled the new 50-hour pro bono requirement which took effect January 1, 2015. It requires every applicant to satisfy before being admitted to the New York State Bar.¹⁹⁶ 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.¹⁹⁷

V. BENEFITS OF EXPERIENTIAL EDUCATION

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

Students require structure, practice, and hands-on experience in law school. As consumers of their own education, they are in the best position to evaluate their educational needs. For example, several law students shared their opinions and gave advice to individuals considering law school.¹⁹⁸ 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 home in and focus when I can see the real purpose. To me, getting a certain grade

29, 2024).

193. *Clinical Law Program Fall 2017-Spring 2018*, NYU L. 3 (Apr. 13, 2017), www.law.nyu.edu/sites/default/files/ClinPak%2017-18%20Apr%2013.pdf [perma.cc/A2RZ-7RJY] (“Legal ethics and professional responsibility in the practice of law are emphasized throughout . . .”).

194. *Clinical Programs*, *supra* note 191.

195. *Id.*

196. Joel Stashenko & Christine Simmons, *Lippman Unveils Rule Detailing Bar Admission Pro Bono Mandate*, N.Y. L. J. (Sept. 20, 2012), www.law.nyu.edu/news/NY_CHIEF_JUDGE_JONATHAN_LIPPMAN_UNVEILS_PRO_BONO_REQUIREMENT [perma.cc/34ZX-55RN].

197. For example, Harvard University does not require a clinical experience to graduate. See J.D. Program, HARV. L. SCH., hls.harvard.edu/dept/academics/degree-programs/j-d-program/ [perma.cc/QC3S-EQCW] (last visited June 8, 2020).

198. Olivia Clarke, *Feature: Student Roundtable*, 31 CHI. LAW. 9, 71–72 (Sept. 2008).

is not [the] 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.¹⁹⁹

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.²⁰⁰ 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.²⁰¹ The clinical process is thus a blueprint for professional growth and introduction to the practice of law.²⁰²

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.²⁰³

Another student disclosed in response to the question regarding what his favorite classes were, "I liked Trial Advocacy and the reason is because it is very practical. For me, that is where I felt a part of the law."²⁰⁴

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.²⁰⁵ 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

199. *Id.*

200. Mary Jo Eyester, *Designing and Teaching The Large Externship Clinic*, 5 CLINICAL L. REV. 347, 401 (1999).

201. Kimberly E. O'Leary, *Evaluating Clinical Law Teaching—Suggestions For Law Professors Who Have Never Used the Clinical Teaching Method*, 29 N. KY. L. REV. 491, 494–95 (2002).

202. *Id.*

203. See Clarke, *supra* note 198; see also Colton, *supra* note 109.

204. Clarke, *supra* note 198, at 71.

205. Christopher Anzalone, *Domestic Relations Legal Clinic Helps Community, Offers Hands-on Experience*, THE MASON GAZETTE, (Feb. 25, 2005), web.archive.org/web/20100603171234/http://gazette.gmu.edu/articles/6530 [perma.cc/D5F2-4XGY].

when I graduate.”²⁰⁶

At Rutgers School of Law in Newark, New Jersey, Kelly Anne Targett was the keynote speaker at the 2009 commencement.²⁰⁷ 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.²⁰⁸ 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 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.²⁰⁹

Students engaged in experiential learning are taught how to be effective lawyers and advocates.²¹⁰ Whereas the classroom setting may provide several days for working on a memo or developing theories in cases that are not feasible, practice settings teach students how to utilize their time to develop work product that is succinct, time-efficient, and digestible for the client.²¹¹

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.²¹² While these studies are very

206. *Id.*

207. *Spotlight on: Kelly Anne Targett, Class of 2009*, RUTGERS SCH. OF L., www.web.archive.org/web/20100619152804/http://law.newark.rutgers.edu/print/node/1586 [perma.cc/RL3L-SDHG] (last visited June 8, 2020).

208. *Id.*

209. *Id.*

210. See Martin J. Katz, *Teaching Professional Identity in Law School*, 42 *COLO. LAW.* 45, 47 (2013).

211. *Id.*

212. See e.g., *Studies of Learning to Learn: I-X*, 3–9 *J. OF VERBAL LEARNING AND VERBAL BEHAV.* (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; see also 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”); E. EUGENE CLARK, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL*

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.²¹³ 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.²¹⁴ 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.²¹⁵ These and other learning theories form the theoretical justification for much of clinical law teaching.²¹⁶

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.²¹⁷

When the legal community is aware that every student has participated in a clinical program, more experienced lawyers may be willing to 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 the basics because many were not taught to do so, experienced lawyers can focus their guidance on 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.²¹⁸

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

[F]rom a practical perspective, I got more training in writing motions

CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (Ill. Am. Bar Ass’n 1992) (discussing how clinical education help students to learn and think like a lawyer).

213. O’Leary, *supra* note 201, at 495.

214. Donald Schon, *The Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 CLINICAL L. REV. 401, 402 (2000).

215. *Id.* at 406; see generally DONALD A. SCHON, THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION (1983) [hereinafter *Schon; The Reflective Practitioner*].

216. *Schon; The Reflective Practitioner*, *supra* note 211, at 404.

217. See Clarke, *supra* note 198, at 73.

218. *First Impressions*, CTR. OF LEGAL PRO. (Jan./Feb. 2020), www.clp.law.harvard.edu/knowledge-hub/magazine/issues/clinical-legal-education/first-impressions/ [perma.cc/MT3W-8T2D].

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 . . .²¹⁹

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.²²⁰

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."²²¹

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."²²² 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."²²³ 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?'"²²⁴ 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.²²⁵

219. See Colton, *supra* note 109, at 79.

220. *Id.*

221. *Student Reflections, Clinic News*, ST. LOUIS U. SCH. OF L. 6 (2010).

222. See Clarke, *supra* note 198.

223. *Fair Housing Legal Support Center & Clinic*, J. MARSHALL L. SCH., www.law.uic.edu/experiential-education/clinics/fairhousing/ [perma.cc/RP5V-HRNN] (last visited June 8, 2020).

224. Ryan Piurek, *Gaining Trust*, IND. U. TEACHING & LEARNING 2 (Aug. 6, 2010).

225. *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."²²⁶ 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.²²⁷

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.²²⁸ Nevertheless, because the current law school curricula narrowly focus on corporate law, they inherently devalue public interest tenets and deprive students of the exposure and understanding of the necessity of serving the public.²²⁹ They forget that legal work involves real people who need real help. The clinical 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.²³⁰

226. See generally Earl R. C. Singleton, *Thomas Ehrlich Awards for Excellence in Service Learning*, IU NEWS ROOM (Mar. 24, 2008), www.newsinfo.iu.edu/news/page/normal/7797.html [perma.cc/EUU3-37SW].

227. Cynthia Batt, *Learning to Lawyer: Context, Clients, and Clinics*, 12 TEMP. POL. & CIV. RTS. L. REV. 259 (2003).

228. See generally Robert MaCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099 (1997).

229. Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 STAN. L. REV. 1695 (1993).

230. See Anzalone, *supra* note 205, at 260; see Romantz, *supra* note 110, at 260.

Providing sociocultural 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."²³¹ Truly, legal professionals must integrate as part of their practice and education "bedside manner," or more aptly, "desk-side manner."²³²

Stephen Winzer describes the "awakening to a sense of social responsibility" that arises from students participating in clinics.²³³ 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.²³⁴

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.²³⁵

231. Mark Neal Aaronson, *We Ask You To Consider: Learning About Practical Judgment In Lawyering*, 4 CLINICAL L. REV. 247, 256-57 (1998).

232. David Fleischman & Oscar Imaz-Marial, *Going "Old School": From Bedside Manner to Deskside Manner*, 6 STUDENT SUCCESS 81,82 (2015).

233. Steven Winzer, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1935 (2002).

234. *Id.*

235. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 78 (1992) ("Indeed, many of these graduates feel constrained by student debt to enter private practice in the first place."); Amelia J. Uelmen, *An Explicit Connection Between Faith and Justice in Catholic Legal Education: Why Rock the Boat?*, 81 U. DET. MERCY L. REV. 921, 938 (2004) ("Some feel pushed into [pursuing private sector jobs] by the reality of now-staggering student debt."). But see Christa McGill, *Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear*, 31 LAW & SOC. INQUIRY 677, 704 (2006)

Indeed, this opportunity becomes a lawyer's responsibility.²³⁶

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.²³⁷ Clinical professors and experiential program contributors can act as role models to students. They work openly towards the public good and can advise students on how to tread alternate and perhaps more satisfying career paths.²³⁸

Professor Singleton 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.”²³⁹ Clinical teaching is best placed to 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.²⁴⁰ Clinical education is an essential part of a law student's law school experience—let us give it to them.

C. *Law Graduates and Employer Outcry for Change in Law School Curriculum*

A 2015 study found that only 23% of legal practitioners surveyed believe that recent graduates and new lawyers have “the right skills to enter the profession.”²⁴¹ The gap in understanding how to practice as an attorney versus what skills are developed and taught in law schools is vast and leaves many employers and clients wanting more from recent graduates. For quite some time now, the skills and attributes students are lacking have been studied as law schools shift from the case book method to a more experiential style

(“Does educational debt keep students from taking government or public interest jobs? On average, no.”).

236. See *ABA Consultant's Memo 3*, *supra* note 9.

237. Kirsten Edwards, *Found! The Lost Lawyer*, 70 *FORDHAM L. REV.* 37, 61 (2001) (stating, “[e]xposure to clinical work also tends to undermine pervasive myths, harbored within the legal profession, about the value of poverty lawyering”).

238. *Id.*

239. Piurek, *supra* note 224.

240. *Id.*

241. Dianne Molvig, *The Right Mix: What Legal Employers Want in New Hires*, STATE BAR OF WIS. (Dec. 1, 2017), www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=90&Issue=11&ArticleID=26036 [perma.cc/GE5N-H3RW] (citing BARBRI Grp., *State of the Legal Field Survey*).

of teaching.

In an opening session of the Educating Tomorrow's Lawyers Initiative in June 2016, Alli Gerkman presented a report entitled "Foundations for Practice."²⁴² The project received survey feedback from over 24,000 lawyers from all fifty states, which included insightful data as to professional expectations for new graduates.²⁴³ The study found that:

Professional values were also seen as imperative for proper professional development, with the following considered the most important: taking individual responsibility for actions and results (82%), understanding when to seek advice or engage a supervisor (75%), seeking and being responsive to feedback (72%), and adapting work habits to meet demands and expectations (71%). In the area of professionalism, the most important foundations were keeping confidentiality (96%), being on time for meetings, appointments, and hearings (95%), and honoring commitments (94%). Finally, with regard to the qualities and talents necessary for a new lawyer, the responses rated integrity and trustworthiness the highest (92%), followed by diligence (88%), attention to detail (88%), common sense (85%), intelligence (84%), and a strong moral compass (79%).²⁴⁴

For the past decade, clients have looked down on paying first or second year associates at big law firms for their time spent learning how to practice the law.²⁴⁵ Some firms have even developed several month-long training programs – where newly hired associates cannot bill their hours of education – devoted to teaching recent graduates how to practice in their field.²⁴⁶ As legal work has evolved, the tools needed to succeed now include “entrepreneurial skills, management ability and some expertise in landing clients.”²⁴⁷

In a survey published in the Ohio Northern University Law Review, the top attribute of a recent graduate sought was professionalism.²⁴⁸ One professional said, “they need to have some

242. John Erbes & Rebecca J. O'Neill, *Assessment of Professional Values in Experiential Education in Law: Becoming Who We Are Through Practice*, 62 N.Y.L. SCH. L. REV. 103, 104-05 (2017-2018), [hereinafter *Assessment of Professional Values*].

243. ALLI GERKMAN & LOGAN CORNETT, INST. FOR THE ADV. OF THE AM. LEGAL SYS., FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT (2016), at www.iaals.du.edu/sites/default/files/report_s/foundations_for_practice_whole_lawyer_character_quotient.pdf [perma.cc/RSU2-UEM6] [hereinafter FOUNDATIONS FOR PRACTICE].

244. *Assessment of Professional Values*, *supra* note 242, at 105 (citing FOUNDATIONS FOR PRACTICE, *supra* note 243, at 14-16).

245. David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html [perma.cc/SB6F-6NE4] (citing a survey by American Lawyer finding that 47% of law firms experienced clients stating they “don't want to see the names of first- or second-year associates” on bills).

246. *Id.* (discussing then-Drinker, Biddle, & Reath's first year primer program).

247. *Id.*

248. Susan Wawrose, *What Do Legal Employers Want to See in New*

general sense about how to . . . interact in a professional setting' without the 'need for hand holding, . . . constant stroking, [or] reaffirmation . . .'"²⁴⁹ Other important factors included strong work ethic, ability to step up and "own the case," ability to work with others, and flexibility.²⁵⁰ As for expected skills, recent graduates are expected to be experts at researching and summarizing information in ways that are strategic and fit within the scope of the type of law (i.e., litigation) in order to reduce the amount of time other attorneys need to do in order to understand the research.²⁵¹

Employers regularly rate the ability to conduct legal research effectively and efficiently among the top skills they look for when hiring new lawyers.²⁵² Graduates must be proficient and be excellent writers.²⁵³ Employers seek out students who are comfortable writing in formats beyond the typical objectionable analysis research memo.²⁵⁴ Writing in a concise manner and producing results quickly is an important skill that often times comes from more practice and experience.²⁵⁵ One law firm partner stated that "[e]fficiency is important, but it is more important to get it right."²⁵⁶ Getting it right without prior experience is a daunting task.

Thus, given the outcry and expectations set out above by employers, graduates and students cannot acquire the necessary skills to practice law without a robust clinical experience.²⁵⁷ Many writing classes require students to write various types of memos, and briefs, but will not require a student to learn the steps to filing such pleadings. For example, courses that teach about areas such as mergers and acquisitions may teach about high-level concepts to think about when putting together a contract for a merger but likely will not delve into the complexities of drafting a certificate of merger to be filed with the secretary of state.²⁵⁸

Employers in this competitive market are pulling from a pool of students who may be bright, critical thinkers, but do not learn

Graduates? Using Focus Groups to Find Out, 95 U. DAYTON SCH. L. FACULTY PUBS. 505 (2013).

249. *Id.* at 522.

250. *See generally id.*

251. *Id.* at 531-33.

252. Mavrova Heinrich et al., *Legal Research Just in Time: A New Approach to Integrating Legal Research into the Law School Curriculum*, 88 TENN. L. REV. 469, 471 (2021).

253. Adam Lamparello & Charles MacLean, *Experiential Legal Writing: The New Approach to Practicing Like a Lawyer*, 39 J. LEGAL PROF. 135, 143 (2015).

254. Wawrose, *supra* note 248, at 545-47.

255. *Id.*

256. *Id.* at 553.

257. For decades, reports have called for more clinical training in law school so that graduates, in addition to learning to think like a lawyer, would be prepared to carry on the day-to-day tasks of lawyers upon graduation." Robert Kuehn, *Pricing Clinical Legal Education*, DENV. U. L. REV. 1, 2 (2014).

258. Segal, *supra* note 245.

the necessary functions of the job that will make them successful from the first day.²⁵⁹ Law firms and other legal organizations are having to sacrifice billable hours and revenue in order to train students on the very subjects they just spent three or more years studying.²⁶⁰ Judges and lawyers alike have suggested ideas such as adjusting legal writing curricula to include assignments that resemble first year attorney assignments, such as e-mail versions of objective memoranda or client letters.²⁶¹ The model of having more hands-on clinical approaches or classroom syllabi adjustments are needed in order to align students with the job market they seek to enter into. This is what graduates and employers are urging the ABA and law schools to start implementing.²⁶² Is no secret that employers and current professionals have weighed in on the issue of practice-readiness amongst recent graduates and have overwhelmingly found that law students are not adequately prepared for the practice of law.²⁶³ They proposed adjustments to the current curriculum and traditional model of teaching.²⁶⁴ An increase of experiential classes and requirements are needed to provide students with actual case experience.²⁶⁵ Currently, neither law students nor practicing legal professionals can fully benefit from the outcome of law school teaching practices.

VI. ABA STANDARD 303(a)(3)

Many have accused the ABA of being slow to respond to the

259. Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 529 (1991).

260. Segal, *supra* note 245.

261. Wawrose, *supra* note 248, at 548.

262. Sandra Simpson, *Law Students Left Behind: Law Schools' Role in Remediating the Devastating Effects of Federal Education Policy*, 107 MINN. L. REV. 2561, 2567 (2023); *see also* SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AM. BAR. ASS'N, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 17 (1979).

263. TASK FORCE ON THE LAW, THE ECONOMY AND UNDEREMPLOYMENT, MASS. BAR ASS'N REPORT 5 (2012); *see also* STATE BAR OF CAL., TASK FORCE ON ADMISSIONS REGULATION REFORM: PHASE I FINAL REPORT 15–16 (2013) (“Big law firms and government agencies had in the past done trainings to provide that sophisticated knowledge [necessary for successful transition into practice]. Now, clients no longer want to pay for that training and are refusing to do so.”).

264. Andrew Shepard & Peter Salem, *Foreword to the Special Issue on the Family Law Education Reform Project*, 44 FAM. CT. REV. 513 (2006) (proposing curriculum change towards a more practice-oriented approach).

265. Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 88 (2009) (observing that new lawyers in the survey “were significantly more likely to say that clinical training was ‘extremely helpful’ for making the transition to practice than they were to make the same assessment of legal writing training, upper-year lecture courses, course concentrations, pro bono service, the first year curriculum and legal ethics training”).

needs of students and educators alike.²⁶⁶ 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) 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.²⁶⁷

The professional skills noted in Standard 302 include having a “knowledge and understanding of substantive and procedural law,” and exhibiting competency in “legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context.”²⁶⁸ 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.”²⁶⁹

These standards state that law schools are not permitted to allow students to use a single course to satisfy all of the requirements of Standard 303.²⁷⁰ 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.²⁷¹

The new standard also asks that a law school provide “substantial opportunities” for students to participate in law clinics, field placements and to encourage student participation in pro bono legal services, which includes law-related public service

266. Andrew Kreighbaum, *ABA Tightens Up, Inside Higher Ed*, INSIDE HIGHER ED (Aug. 31, 2016), www.insidehighered.com/news/2016/08/31/aba-taken-task-feds-and-critics-law-school-student-outcomes [perma.cc/K4KW-8K7A] (discussing criticism of the ABA and noting that they are acting a “little bit slowly”).

267. AM. BAR ASS’N, STANDARD 303, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2014-15).

268. *Id.* at STANDARD 302.

269. *Id.*

270. AM. BAR ASS’N, INTERPRETATION 303-1, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2017-18).

271. *Id.*

activities.²⁷² 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.²⁷³

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.”²⁷⁴ This helps to codify a number that must be satisfied, rather than just providing nebulous instruction about providing an adequate amount of training.²⁷⁵ Second, the new standard prescribes a minimum amount of credits to be earned in “experiential courses.”²⁷⁶ Finally, the standard requires that “experiential courses” must be a simulation course, law clinic or field placement.²⁷⁷

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 be incidental.²⁷⁸ In essence, the ABA is saying that for a course to qualify as experiential or simulation, it must be easily identifiable as such and should not engage in activities such as “minute counting” in order to qualify.²⁷⁹

272. *Id.* at STANDARD 303(b).

273. *Id.* at INTERPRETATION 303-3.

274. *Managing Director’s Guidance Memo: Standards 303(a)(3), 303(b), and 304*, AM. BAR ASS’N 2 (March 2015), www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_standards_303_304_experiential_course_requirement_authcheckdam.pdf. Compare *id.* at § 303(a) (requiring two credit hours of professional responsibility, and six credit hours of experiential courses), with *ABA Consultant’s Memo 3*, *supra* note 9, at § 302 (“A law school shall require that each student receive substantial instruction in . . .”).

275. The adequacy number of hours depends on the allocation of educational goals and whether “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). “The most frequent number of credits per semester for the clinic (*i.e.*, credits for combined classroom and casework components) are 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.” *Id.* See also DAVID A. SANTACROCE & ROBERT R. KUEHN, REPORT ON THE 2007-2008 SURVEY, CTR. FOR THE STUDY OF APPLIED LEGAL EDUCATION 14 (2008), at assets-global.website-files.com/5d8cde48c96867b8ea8c6720/5da859d2990d0a932118b8b6_CSALe.07-08.Survey.Report.pdf (last visited Apr. 20, 2024).

276. *Managing Director’s Guidance Memo*, *supra* note 274, at 2, Chapter 3, *supra* note 268, at STANDARD 303(a) (requiring “one or more experiential course(s) totally at least six credit hours”).

277. *Id.* at STANDARD 303(a)(3).

278. *Managing Director’s Guidance Memo*, *supra* note 274, at 2.

279. *Id.* at 3.

Additionally, these courses are directed by the ABA to have faculty members providing direct supervision to the students.²⁸⁰

The ABA has stated that mock trial, moot court and similar activities may not qualify as a “simulation course.”²⁸¹ 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 the six-credit experiential learning requirement on the individual law school and faculty.²⁸² Further, the ABA has noted that traditional writing or seminar courses do not seem to fit the definition of an “experiential course” or “simulation course.”²⁸³ However, a school can try to prove that these classes meet the burden created by the new ABA rule.²⁸⁴ 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.”²⁸⁵

Finally, the ABA has noted that its 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.²⁸⁶ In no way does it require that each student be guaranteed a position in courses of this nature.²⁸⁷

While these are steps in the right direction, unfortunately, a requirement of six credit hours does not put much of a dent in the issue that students just do not have enough experience when they enter practice.²⁸⁸ 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 clinical rotations.²⁸⁹ In veterinary schools, in order to graduate, students must have participated in a minimum of one academic

280. *Id.*

281. *Id.* at 4 (“Participation in [mock trial, moot court, and similar activities], in and of itself, does not qualify as completing a simulation course.”).

282. *Id.*

283. *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.”).

284. *Id.*

285. *Id.*

286. *Id.* at 6.

287. *Id.*

288. 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 clinics 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).

289. COOKE ET AL., *supra* note 232.

year of hands-on clinical training.²⁹⁰ 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.²⁹¹ Even architectural school students must take at least fifty of their total 160 required semester credits in design studio courses.²⁹² A requirement for only six credit hours of experiential learning amounts to less than 10% of an overall students' required course load in law school.²⁹³ Many legal practitioners have endorsed a universal clinical education, such as where the State Bar of California's Task Force on Admissions Regulation Reform promoted requiring third year California law students to take part in externships or legal clinics that allow students to actually represent clients or work with legal professionals, rather than simply observe.²⁹⁴ The ABA six-hour requirement falls far short of the

290. Accreditation Policies and Procedures of the American Veterinary Medical Association, Section 7.9, Standard 9.

291. Accreditation Council for Pharmacy Education, Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree, Guidelines 14.4 & 14.6.

292. National Council of Architectural Registration Boards, NCARB Education Standard.

293. To date, some schools do not require the ABA recommendation of at least six credit hours of experiential courses. For example, at the Antonin Scalia Law School, students are "required to complete at least 2 credit hours of experiential coursework." *Antonin Scalia Law School At George Mason University Academic Regulations (Juris Doctor Students)*, GEORGE MASON UNIV. (Aug. 23, 2018). www.law.gmu.edu/assets/files/academics/academic_regulations.pdf [perma.cc/ZY5J-BKG9]. At Liberty University School of Law, students are required to take two to three credits in Lawyering Skills. *Liberty University School of Law, Juris Doctor (J.D.) 2018-2019 Degree Completion Plan*, LIBERTY UNIV. SCH. OF L. (Aug. 1, 2018), www.liberty.edu/media/1191/LAWS-JD-R.pdf. The Appalachian School of Law requires "2 hours of academic credit by spending at least 200 hours working under the supervision of an experienced attorney." *2018-2019 Catalog & Student Handbook*, APPALACHIAN SCH. OF L. (Aug. 6, 2018). www.asl.edu/wp-content/uploads/2015/08/2018-2019-Student-Catalog-and-Handbook-ASL.pdf. At J. Reuben Clark Law School, Brigham Young University, students must take at least six hours of professional lawyering skills. *Policies and Procedures*, BRIGHAM YOUNG UNIV. J. REUBEN CLARK L. SCH. (Nov. 30, 2018), www.law.byu.edu/wp-content/uploads/2018/11/Policies-and-Procedures-Nov-30-2018-1.pdf. The Southern Texas College of Law requires that each student "take at least 6 credit hours of lawyering skills coursework." *South Texas College of Law Houston Student Handbook*, S. TEX. COLL. OF L. (Nov. 27, 2018), www.stcl.edu/stanley/pdf/StudentHandbook.pdf [perma.cc/HA5D-UKV6].

294. JON B. STREETER, STATE BAR OF CALIFORNIA TASK FORCE ON ADMISSIONS REGULATION REFORM: PHASE I FINAL REPORT (2013), at www.calbar.ca.gov/portals/0/documents/publiccomment/2013/2013_StateBarTaskForceReportFINALAPPROVED6-11-13.pdf [perma.cc/A32P-A4FA].

295. See Sloan, *supra* note 132; see also Robert Kuehn, *Implementation of the ABA's New Experiential Training Requirement: More Whimper Than Bang*, CLEA NEWSL. 10 (Spring 2021),

original recommendation of fifteen hours CLEA requested.²⁹⁵

VII. CONCLUSION

Legal education in the 21st Century requires modification to provide students with the immediate need for basic practical experience. Clinical teaching should be a prerequisite of the experiential law school requirement, not an option. Clinical practice is essential to the methodology and practical learning needed for the practice of law. Practical legal education is vital because it helps ensure that students are prepared to practice law after graduation. A practical clinical experience provides students with the ability to act ethically, competently, and responsibly. Programs like clinical education, externships, internships, law clerking, and working part-time in a law firm, help achieve this goal. However, clinical experience plays a crucial role in legal education by offering students real-world hands-on experience and bridging the gap between theory and practice.²⁹⁶

Therefore, the current ABA experiential requirements are minimal and do not provide students with an opportunity to receive substantial practical experience. The experience gap will be filled by increasing the required hours for experiential programs like clinics and externships for all students with a mandatory clinical

papers.ssrn.com/sol3/papers.cfm?abstract_id=3837606 [perma.cc/86MV-2FV3] (noting that the ABA's six credit experiential requirement remains far below the skills training other professional schools require for their students). Two recent studies on legal education have highlighted the need for greatly enhanced skills training, including mandatory clinical training before bar licensing. *Id.* The ABA should heed these calls for reform and revisit the proposals for fifteen credits of experiential coursework and a mandatory, live-client clinical experience for all J.D. students. *Id.*

296. See, e.g., Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL'Y 11, 11, 14-15 (2013) (“[C]linical education (in-house clinics, hybrid clinics, and externships) is crucial to the preparation of competent, ethical law graduates who are ‘ready to become professionals’”); Robert R. Kuehn, *Universal Clinic Legal Education: Necessary and Feasible*, 53 WASH. U. J.L. AND POL'Y 89, 92 (2017) (demonstrating “empirically that a mandated clinical experience for all students is both not costly to obtain and feasible to immediately implement”); see generally Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551, 581 (2018) (“Only through clinics and externships structured so that law students have primary responsibility for client representation can students grapple with the real-life demands they are going to face as practitioners.”); Kuehn; *Pricing*, *supra* note 75, at 43 (“For decades, reports have called for more clinical training in law school so that graduates, in addition to learning to think like a lawyer, would be prepared to carry on the day-to-day tasks of lawyers upon graduation.”); Gary S. Laser, *Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI. KENT L. REV. 243, 244 (1992) (advocating for “reflective, live-client clinical education in a realistic setting under the close supervision of experienced clinical professors”).

participation as part of the experiential curriculum.

Generally, the goals of regulators and legal educators should be to ensure that students are prepared as practitioners upon graduation. The ABA's current standard, requiring each student to satisfactorily complete at least six credit hours by completing one or more experiential courses, is insufficient to prepare students for the practice of law. Although the ABA standard was amended, it does not mandate student participation in a clinical program as part of the six-hour minimum. As a result, students continue graduating without basic practice training, client interaction, case procedures, and court presence. To provide students with practical legal practice experience, the six-credit hour must mandate clinical student experience.

There has been discussion among law students and educators recommending doubling the experiential requirement.²⁹⁷ Others recommend up to a third of the ABA-required graduation hours to be devoted to experiential learning.²⁹⁸ Students stated that working in practice settings informed their understanding of respect and cooperation, real-world demands, and legal values.²⁹⁹ Getting state bars, law schools, and students more involved in pushing for experiential legal learning is a must for the future of this profession.³⁰⁰ Mandating that all students participate in a clinical program before graduation would be a good start.

297. *Kuehn; Pricing*, *supra* note 75, at 4.

298. John Louros, *Why we need experiential training to ensure civility*, AM. BAR ASS'N (Oct. 12, 2016), www.abaforlawstudents.com/2016/10/12/experiential-training-ensures-civility/.

299. *Id.*

300. *Id.*

