

2015

## Experience the Future: Papers from the Second National Symposium on Experiential Education in Law: Alliance for Experiential Learning in Law

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### Recommended Citation

Christine N. Cimini, Roberto L. Corrada, Myra Berman, Christine E. Cerniglia, and Katherine R. Kruse, *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 (2015), <https://digitalcommons.law.uw.edu/faculty-articles/602>

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## ARTICLES

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EXPERIENCE THE FUTURE:  
PAPERS FROM THE SECOND NATIONAL  
SYMPOSIUM ON EXPERIENTIAL EDUCATION IN LAW

ALLIANCE FOR EXPERIENTIAL LEARNING IN LAW

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### ABSTRACT

*On June 13-15, 2014, the Second National Symposium on Experiential Education in Law took place in Greensboro, North Carolina. The Alliance for Experiential Learning in Law and Elon University School of Law hosted the symposium, with the support of Northeastern University School of Law. Presenters included professors and practitioners across multiple disciplines, including business, medicine, and architecture, and they shared their insights about the value of experiential education in their fields. Working groups from the Alliance for Experiential Learning in Law also presented their findings and distributed a set of working papers, which eventually culminated into this report. The report covers research in six areas of experiential learning, including defining a vision and mission for the experiential education movement, tracking the developing rhetoric of experiential education, studying cost and sustainability measures for experiential legal education, integrating experiential learning into the law school curriculum, establishing creative initiatives at law schools, and integrating with the profession.*

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I. A BLUEPRINT FOR EXPERIENTIAL EDUCATION REFORM  
*Report of the Working Group on Vision and Mission Subcommittee\**

INTRODUCTION

In recent years, law schools have experienced enormous pressure to engage in serious introspection about how well they are serving their students and to make meaningful curricular and pedagogical changes, particularly in terms of providing opportunities for experiential learning and ensuring that graduates are prepared for practice. In 2007, the Carnegie Foundation for the Advancement of Education published its highly influential report, *Educating Lawyers: Preparation for the Profession of Law* (“The Carnegie Report”).<sup>1</sup> In the words of Lee S. Shulman, a co-author of the report and then-Executive Director of the Carnegie Foundation, “[t]he gap between learning how to think like a lawyer and being capable of acting like a lawyer, both clinically and morally is, if anything, greater than it has ever been before.”<sup>2</sup> In response to this gap, The Carnegie Report recommends a greater emphasis on practice-oriented skills and values aimed at inculcating a sense of professional identity and purpose.<sup>3</sup> It concludes that legal ed-

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<sup>1</sup> WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007) [hereinafter *CARNEGIE REPORT*].

<sup>2</sup> Elizabeth Redden, *More Moral and Practical Law Schools*, *INSIDE HIGHER ED* (Jan. 5, 2007), <http://app3.insidehighered.com/news/2007/01/05/carnegie> (quoting Lee S. Shulman, former president of the Carnegie Foundation and one of the authors of the Carnegie Report).

<sup>3</sup> See generally *CARNEGIE REPORT*, *supra* note 1, at 87–125.

ucation should seek to unite “in a single educational framework, the two sides of legal knowledge: (1) formal knowledge and (2) the experience of practice.”<sup>4</sup>

A second important publication that emerged simultaneously, *Best Practices for Legal Education: A Vision and a Roadmap* (“*Best Practices*”), called for similar reforms.<sup>5</sup> *Best Practices* further details the curricular and pedagogical components that contribute most significantly toward preparing graduates to be competent and caring professionals. Principal among these key ingredients are clinical and other forms of experiential legal education.<sup>6</sup>

Similar themes also have sounded in numerous articles published in the *New York Times*<sup>7</sup> as well as an outpouring of blog posts about the future of legal education.<sup>8</sup> In the aftermath of these exhortations, there is a growing national consensus that the law school curriculum is in need of reform, perhaps most substantially in the area of experientially based course offerings.

While this is a welcome development and this initiative should be viewed as a positive movement in legal education, it also raises significant concerns. In contrast to the extensive discussions that legal educators have had about *whether* experientially based learning opportunities should be expanded, there has been relatively little discussion about *how* that objective should be accomplished. This report outlines ways to expand and improve experiential learning courses in American law schools. Its primary purpose is to encourage law schools to focus from the outset on the learning outcomes and structural ele-

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<sup>4</sup> *Id.* at 12.

<sup>5</sup> See generally ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP* (2007).

<sup>6</sup> *Id.* at 165–206.

<sup>7</sup> See, e.g., David Segal, *A Possible New Curriculum*, N.Y. TIMES, Nov. 20, 2011, at N23; David Segal, *For Law Schools, a Price To Play the A.B.A.’s Way*, N.Y. TIMES, Dec. 17, 2011, at BU1; David Segal, *For 2nd Year, a Sharp Drop in Law School Entrance Tests*, N.Y. TIMES, Mar. 20, 2012, at B1; David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1; David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011.

<sup>8</sup> See, e.g., Kate Galloway, *The Future of Legal Education*, CURL (June 6, 2014), <http://katgalloway.blogspot.com/2014/06/the-future-of-legal-education.html>; Janelle Orsi, *The Future of Legal Education and the Profession—in Ten Minutes!*, LIKE LINCOLN (July 26, 2014), <http://likelincoln.org/thefuture/>; James Silkenat, *The Future of Legal Education*, ACS BLOG (Oct. 27, 2013), <http://www.acslaw.org/acsblog/the-future-of-legal-education>.

ments of any new program, so that they are most likely to accomplish their educational goals.

As any institution considers meaningful curricular expansion, the following questions need to be considered:

- What are our goals? Have we carefully thought through concrete pedagogical student learning objectives for any new experiential programs? Have we considered knowledge, skills, and values?
- What structural elements will be most effective? Once we have student learning goals firmly in mind, we need to consider how any new program should be designed to best meet those goals.
- How can we identify and strategically plan for potential challenges? It is essential to anticipate expected obstacles up front, before embarking on implementation, in order to either avoid or successfully overcome them.
- How can we ensure quality and accountability? These issues are important for all schools, particularly those considering large-scale or highly novel program expansions.

#### A. *Deciding on Program Goals*

Experientially based learning can be designed to support a wide variety of student learning goals. At an institutional level, an important first step is to assess the school's existing curriculum. The law school administration may not be fully aware of some of the creative teaching approaches its full-time and adjunct faculty members use. Similarly, faculty members may not be fully aware of the creative pedagogical approaches their peers deploy in the classroom.<sup>9</sup> By obtaining a solid sense of the learning opportunities already amply afforded to students, an institution can determine where expansion of these opportunities is most needed.

A law school might conduct a faculty survey or another information-gathering process, asking colleagues to share, for example, which habits of mind, competencies, and skills they believe students gain from their courses and which pedagogical methods they use in their

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<sup>9</sup> Unless these faculty members discuss their approaches informally with colleagues or are being evaluated by senior colleagues reviewing their classes for tenure and promotion purposes, what goes on in the classroom tends to stay in the classroom.

teaching. Even at relatively small schools, such a process can unearth information about the scope and quality of creative teaching already taking place, as well as areas in which students who would benefit from the use of experiential and other creative teaching approaches are not being reached.<sup>10</sup>

Once data has been gathered to determine areas of limited learning opportunities, an institution can develop a solid list of student learning goals to serve as the basis for curricular expansion. Many schools either have recently undertaken or are planning to pursue this type of process, often referred to as “curricular mapping.” At one school that recently conducted such an exercise, the list of learning goals that needed to be strengthened included helping students to:

- exercise judgment;
- deal with factual chaos;
- understand the meaning of professionalism in the legal field;
- use collaborative approaches to strategic problem solving across practice areas and contexts;
- recognize injustice and appreciate the ability as well as the responsibility of lawyers to respond to it; and
- understand how to exercise power, as well as the consequences of doing so.<sup>11</sup>

Other possible student learning goals for an experiential curriculum might include helping students to:

- develop the habits of mind of a self-reflective practitioner;
- develop relational (intrapersonal and interpersonal) skills and values;

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<sup>10</sup> It can be critical to phrase the inquiry to colleagues in a manner that is sensitive to local faculty and institutional culture. For example, with some faculties, asking faculty to report on creative pedagogical approaches may lead them to exaggerate the creativity of relatively mundane efforts. At others, faculty may be inclined to understate the significance of their approaches, not wanting to defend the label “creative” with their peers. Inquiring about specific approaches in the survey, as well as providing opportunities for open-ended responses so as to capture approaches not imagined, can mitigate these potential difficulties.

<sup>11</sup> This list of learning goals is borrowed from the work of an *ad hoc* Committee on Experiential Learning at Georgetown University Law Center, chaired by co-author Deborah Epstein.

- obtain other essential understandings about lawyering in context, and then transfer those understandings to other, different contexts;
- understand legal theory and/or doctrine by testing it against real-world realities;
- understand the role of indeterminacy and uncertainty in law, fact, and lawyering; and
- obtain and refine a set of fundamental lawyering skills.

### B. *Designing a Course Structure to Meet Program Goals*

The particular set of goals selected will help determine the most effective experiential learning course structure. Suppose, for example, a law school decides that it offers too few courses that focus outside of the traditional law school paradigm, where “facts” exist solely in pre-packaged form, whether in casebook-excerpted appellate cases or role-play assignments. That law school might decide that an important goal is to ensure that its students understand the reality in which lawyers live, dealing with facts that are messy, incomplete, internally inconsistent, and frequently changing.<sup>12</sup> This learning goal can be explored in depth in the context of clinical courses involving real-world clients and legal matters.<sup>13</sup> Students who have multiple opportunities to interview clients are likely to see that clients’ stories develop and change over time. Similarly, students who engage in formal and informal fact investigation are likely to uncover inconsistencies. In a clinic in which students are responsible for representing the client, each student will be forced to grapple with the need to resolve or otherwise strategically cope with such change and inconsistency. Some externship placements might also provide a site for such learning, although perhaps most student externs have less responsibility for consolidating a client’s overall story and thus have fewer opportunities to discover factual in-

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<sup>12</sup> See, e.g., Robert D. Dinerstein & Elliott S. Milstein, *Learning to Be a Lawyer: Embracing Indeterminacy and Uncertainty*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 327, 332 (Susan Bryant et al., eds., 2014) [hereinafter TRANSFORMING THE EDUCATION OF LAWYERS] (indeterminacy of facts); see also CARNEGIE REPORT, *supra* note 1, at 8–9, 22, 42, 69–71, 107 (discussing the role of indeterminacy and uncertainty in professional practice).

<sup>13</sup> For textbooks presenting sophisticated approaches to teaching the clinic seminar in a variety of kinds of lawyering experiences, see TRANSFORMING THE EDUCATION OF LAWYERS, *supra* note 12, at 33–113 and DEBORAH EPSTEIN ET AL., THE CLINIC SEMINAR (2014).

consistencies. A typical simulation-based course, however, with predetermined facts distributed to the students in writing, would not offer support for this particular learning goal.

Strategies for advancing this goal would include sustaining and expanding in-house clinical opportunities, as well as ensuring the availability of externship placements that provide client contact. In the simulation context, perhaps support could be given to a creative teacher who could design the course using an unfolding set of changing or inconsistent facts.

In contrast, virtually any experiential course can readily support the learning goal of obtaining and refining a set of fundamental lawyering skills. Students can enhance their abilities and progress toward this goal in the full range of experience-based learning environments, as long as a low student-faculty ratio is maintained and many opportunities for participatory exercises exist. Simulation courses may have the advantage of assuring that certain specific skills will be introduced, performed, and critiqued, whereas with in-house clinics and externship courses (if they do not include a simulated component), it may be more difficult to assure that a specific skill (e.g., cross examination) will arise in the actual cases or matters on which the students work.

As an institution considers possible structures for experiential learning courses, it needs to consider a number of variables, including:

*Who should serve as the fieldwork supervisor?*

Factors to consider here include:

- Where is the supervisor's primary base: in the academy, in practice, or both?
- Does the supervisor have security of position?
- What is the primary source of the supervisor's income?
- What implications do these factors have for student learning?

*What should be the relationship between the classroom teacher and the fieldwork supervisor?*

Factors to consider here include:

- Are the teacher and the supervisor the same person or different people?
- If these roles are divided, what is the nature of the collaboration? Will the two be entirely independent, will there be



some degree of joint planning, or will there be intensive, active collaboration?

*What role does fieldwork play in the overall course?*

Factors to consider here include:

- Is fieldwork the primary source of course content?
- Is it used to illustrate or test against theory/doctrine?
- Is it a source of ethical problems and opportunities for resolution?
- Is it used as a source of student performance for feedback and skill improvement?

*What is the primary goal of feedback on student experiential work?*

Factors to consider here include whether the goals aim toward:

- Improving a product for client use/service?
- Improving student learning about how to approach similar situations in the future?
- Improving student ability to become self-reflective and internalize a system of learning from experience?

*What role are students expected to assume?<sup>14</sup>*

Factors to consider here include whether students are expected to serve as:

- primary lawyer, responsible for making strategic decisions on behalf of clients;
- mentee, playing an active role in support of attorneys, assigned pieces of a larger legal project;
- observer; or
- practitioner in a simulated setting.

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<sup>14</sup> For a detailed description of student roles, see Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education Through a Relationship-Centered Experiential Curriculum*, 41 U. BALT. L. REV. 395 (2012).

C. *Choosing the Pedagogical Focus That Best Supports Particular Learning Outcomes*

The institutional self-assessment described earlier might help determine the preferred pedagogical focus of new experiential learning courses. This focus might range from:

- encouraging the internalization of systematic reflection on the lawyering experience;
- encouraging the transfer of learning across contexts;
- encouraging a focus on all aspects of fieldwork as the central site of learning for the course;
- providing targeted feedback on skills and performance;
- employing the Socratic method or facilitating seminar discussion, with occasional or regular incorporation of fieldwork experiences into the discussion; and
- encouraging students to reflect on experience in ways that are focused particularly on what it means to become a professional, including ethical, intrapersonal and interpersonal dimensions.

Some of these teaching methods can be adapted to fit any experiential learning model. For example, any model can be carefully structured to ensure that students receive targeted feedback on their performance. The essential requirement here is that the teacher observing the student performance is trained to do so in ways that are constructive and meaningful and promote positive growth and improvement.

Encouraging the transfer of learning across contexts, in contrast, is likely better suited to a course with a substantial credit load attached. To achieve this goal, a teacher needs to ensure that students can engage with the same concept in multiple and varied contexts.

D. *Potential Institutional Challenges to the Expansion of Experiential Learning*

An effort to expand experiential learning opportunities could be met with faculty resistance. Although this resistance would likely take different forms across institutions, two possible issues are worth considering in advance.

First, members of the non-clinical faculty might oppose devoting additional resources to experiential learning rather than some other initiative. Most schools operate within a relatively fixed budget, engendering competition for limited resources. It may be important to include non-clinical opinion leaders on the initial goal-setting committee, so that from the outset they can appreciate and support the value of experientially based learning and the need for curricular expansion. Similarly, it might be useful to encourage and perhaps offer incentives to non-clinical opinion leaders so that they will teach some of these new courses. This goal could be accomplished by providing them with assistance in course design and connecting them with practitioners who could co-teach and complement their academic expertise.

Second, in-house clinical faculty members might be concerned that additional experiential courses would reduce student interest in their clinics or might even weaken the institution's commitment to in-house clinics by creating a watered-down, cheaper model in competition with the existing program. The most important step toward addressing this concern is for institutions to demonstrate their commitment to the sustainability, and even the expansion, of their in-house clinical programs. Such a commitment constitutes an essential recognition of clinical programs' unique and important contribution toward the learning outcomes identified throughout this article. Other efforts to reduce these concerns might include implementing structures and processes to ensure frequent sharing and open communication between in-house clinicians and other faculty and administrators teaching experiential courses.

Such measures also could include the development of informational sessions for students. These sessions would be designed to better educate students about the variety of experiential learning opportunities available to them, as well as the different learning opportunities inherent in each offering. Such sessions could help students appreciate how learning in a simulation-based course is different from, yet complementary to, learning in a clinic or externship.

#### *E. How an Institution Might Ensure Quality Control in the Context of a Major Program Expansion*

As a law school decides to venture into a significant curricular expansion, it is crucial to ensure quality control and accountability. Here, an institution must consider how to ensure that students' learning experiences in a range of new courses will meet the focused curric-

ular goals that motivated the expansion. This issue is particularly important where new courses will be taught primarily or largely through adjunct professors, rather than members of the full-time faculty.

Efforts to ensure quality control and accountability can be adopted at several different stages of the course development process. First, faculty, and/or senior administrators could meet with interested teachers to discuss program goals and brainstorm course development ideas. This process could be initiated through a committee and/or a faculty retreat.

Second, the school could create a specialized course proposal form that requires each instructor to think through and describe in detail questions such as:

- the proposed specific learning outcomes;
- the exact nature of the proposed teaching methods and experiential opportunities;
- the exact nature of the teacher's role in supervising student fieldwork, if fieldwork is a component; and
- concrete plans for integrating reflective learning alongside student field experiences, ideally in a substantive classroom component or seminar.

Third, the law school could develop a teacher-training program for all those embarking on an experiential learning course. Such a training program might cover the basics of how to design effective classroom learning activities that integrate fieldwork and hands-on exercises where teachers:

- identify a series of fundamental, practice-based insights they hope to impart to students;
- focus in on one of those insights and think through a variety of ways it might arise in student fieldwork;
- design one class session where students would explore that insight through the combined lenses of theory and practice; and
- share the class design with other participants for feedback and critique.

Additionally, an institution would need specialized end-of-semester course evaluation forms in which students are asked about issues such as:

- quality of experiential opportunities, including fieldwork where appropriate;
- extent of faculty supervision; and
- where relevant, success at integrating fieldwork into the substantive classroom component.

Finally, at the end of each semester, faculty and/or senior administrators could bring teachers of experiential learning courses together and ask them to reflect on and share with colleagues their most successful and most challenging efforts to integrate theory and practice in their courses.

#### CONCLUSION

The expansion of experiential learning opportunities is a welcome and long overdue development in legal education. As law schools move forward with these changes, it is critically important that they take the time to make well-informed and intentional choices. These choices need to be guided first and foremost by the goals and the learning outcomes they hope their students will achieve. In addition, they need to think carefully about optimal structural elements, which include considerations related to programs, pedagogy, and personnel. Every school also will need to anticipate challenges and build in measures of quality control and accountability. This blueprint will hopefully pave the way for meaningful and constructive reform.

#### II. A GLOSSARY FOR EXPERIENTIAL EDUCATION IN LAW SCHOOLS

##### *Report of the Working Group on Vocabulary and Collaboration\**

#### INTRODUCTION

The twenty-first century has witnessed a seismic shift in legal education. The decades-old call for law schools to teach students not only

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how to think like a lawyer, but how to be one, seems to have finally been answered. In response to pressures from students, practitioners, education experts, and education regulators,<sup>15</sup> law schools across the country have added a wide range of “experiential” courses to their curricular offerings. A large number have also added a position at the decanal level dedicated to experiential education.

This sudden shift in favor of experiential education gave rise, in 2011, to the Alliance for Experiential Education in Law.<sup>16</sup> Members—all leaders in legal education—began meeting to discuss the implications and meaning of the shift. Conversations repeatedly returned to the same questions: what is experiential education in the law school context, and which courses count as experiential? There was no consensus.

Without a consensus on nomenclature, comparisons and even conversations have been difficult. Institutions use different terms when referring to the same types of learning experiences and use the same terms—such as “practicum” or even “clinic”—inconsistently. The increasing proliferation of inconsistent terminology for experiential education offerings makes it difficult for prospective students comparing law schools, for regulators evaluating law schools, for legal employers assessing prospective hires, and for law schools engaging in self-assessment and redesign.

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School of Law; Katherine R. Kruse, Professor & Associate Dean of Experiential Education and Curriculum, Hamline University School of Law; Susan Maze-Rothstein, Senior Academic Specialist, Northeastern University School of Law; and Ruth Anne Robbins, Clinical Professor, Rutgers School of Law.

<sup>15</sup> The ABA recently adopted Standard 303(a)(3), requiring each student to complete six semester credits of experiential courses. ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 303(a)(3) (2014), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_of\\_law\\_schools\\_bookmarked.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.authcheckdam.pdf). The recently adopted Section 520.16(a) of New York’s Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law requires bar applicants to complete, prior to application, fifty hours of supervised practice experience in pro bono service. N.Y. CT. APP. R. 520.16. A pre-admission experiential training requirement is also pending in California. Memorandum from the State Bar of California Task Force on Admissions Regulations Reform to All Interested Parties (Aug. 14, 2014), available at [https://www.acbanet.org/UserFiles/files/TFARR\\_Phase%20II%20Implementing%20Recommendations\\_rev081114.pdf](https://www.acbanet.org/UserFiles/files/TFARR_Phase%20II%20Implementing%20Recommendations_rev081114.pdf).

<sup>16</sup> For more information on the Alliance, see *Alliance for Experiential Learning in Law*, NE. U. SCH. L., <http://www.northeastern.edu/law/experience/leadership/alliance.html> (last visited Nov. 12, 2014).

This Glossary is the product of a collaboration among law teachers from a range of law schools who teach using a range of methodologies. This group's goal has been to create a common vocabulary to help bring clarity to the nomenclature chaos. It has worked on the Glossary for over a year, with feedback from colleagues formally and informally.

It is not expected that every law school will define each experiential course consistently with this Glossary. Having a glossary available, however, can help legal educators better communicate the nature and extent of their experiential offerings inside and outside the academy, preventing misunderstandings in which parties mistakenly assume that they are talking about a course or learning experience with certain characteristics. Having a common vocabulary can also provide a common conceptual framework for law schools to use in organizing experiential course offerings.

There are many dimensions to experiential education offerings, including who teaches the classroom offerings; who supervises the real practice opportunities; what type of work the students do; whether the students get academic credit; and who the clients are, if any.<sup>17</sup> The specifics of particular courses and programs, however, are not the focus of this Glossary. Rather, its focus is on foundational definitions and delineations.

Terms are organized into three categories: pedagogy, program design, and course design. Significant delineations include *experiential education pedagogy*, which includes education through supervised practice experiences, as well as simulated practice experiences, and *clinical legal education*, which is limited to education through supervised practice experiences, whether taught solely by faculty or by faculty in partnership with legal professionals external to the law school. Significant inclusions are programs not always considered experiential education: *Cooperative Education Program*, *Lawyering Skills Competition Program*, *Legal Analysis, Writing and Research Program*, and *Pro Bono Program*.

This Glossary does not set forth evaluative criteria for experiential offerings, leaving that task to regulatory and other legal education groups. It does, however, provide a definition for the ideal experiential education program: an *integrated lawyering program*.

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<sup>17</sup> For a presentation of a more complex framework of experiential courses involving real lawyering, see Deborah Maranville et al., *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517 (2011-12).

*A. Pedagogy*

**Experiential Learning** is simply learning from experience. It is “nature’s way of learning.”<sup>18</sup> Humans depend on experiences, or observations of the experiences of others, to understand the world. We learn from experience on our own, and sometimes, we enlist teachers to help us engage in more directed learning from experience.

**Experiential Education** is an active method of teaching<sup>19</sup> that “integrates theory and practice by combining academic inquiry with actual experience.”<sup>20</sup> It encompasses “many methodologies in which educators purposefully engage with learners in direct experience and focused reflection in order to increase knowledge, develop skills, clarify values, and develop people’s capacity to contribute to their communities.”<sup>21</sup> Experiential education methodologies in legal education include both simulated practice experiences,<sup>22</sup> in which students assume the role of a lawyer in a simulated setting, and supervised practice experiences, in which students assume the role of a lawyer, either in sup-

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<sup>18</sup> James Neill, *What is Experiential Learning?*, WILDERDOM, [www.wilderdom.com/experiential/ExperientialLearningWhats.html](http://www.wilderdom.com/experiential/ExperientialLearningWhats.html) (last updated Jan. 31, 2005). For a discussion on the difference between “experiential learning” and “experiential education” in the law school context, see STUCKEY ET AL., *supra* note 5, at 165 (citing James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 78 (1996)).

<sup>19</sup> The distinction between active and passive methods of teaching “is the degree to which the students can be said to be primarily observers of what is occurring as opposed to actively engaged participants and performers.” David Barnhizer, *The Purposes and Methods of American Education*, 36 J. LEGAL PROF. 1, 42 (2011).

<sup>20</sup> STUCKEY ET AL., *supra* note 5, at 165. This definition is consistent with ABA Standard 303(a)(3) that states for a course to meet its experiential course requirement, it must “integrate doctrine, theory, skills and legal ethics, and engage students in performance of one or more professional skills identified in Standard 302.” ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 303(a)(3).

<sup>21</sup> *What is Experiential Education?*, ASS’N FOR EXPERIENTIAL EDUC., <http://www.aee.org/what-is-ee> (last visited Sept. 30, 2014).

<sup>22</sup> The inclusion of simulated practice experiences in the definition of “experiential education” in the law school context is consistent with ABA Standard 303(a)(3) that requires all law schools to offer a curriculum that requires one or more experiential courses. ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 303(a)(3)(i) (“An experiential course must be a simulation course, a law clinic, or a field placement.”).



port of others as a mentee or as a student lawyer with a high level of direct responsibility as lead counsel<sup>23</sup> or member of a lawyer team.<sup>24</sup>

**Clinical Legal Education** is experiential education that engages students in addressing real-world legal matters in interaction with others through supervised practice experience.<sup>25</sup> Under the supervision of either a faculty member or a field supervisor who is accountable to the law school, students assume the role of a lawyer either in support of others as a mentee or as a student lawyer with a high level of direct responsibility as lead counsel<sup>26</sup> or a member of a lawyer team.<sup>27</sup>

**Service-Learning** is a “teaching and learning strategy that integrates meaningful community service with instruction and reflection to enrich the learning experience, teach civic responsibility, and strengthen communities.”<sup>28</sup>

**Social Justice Education** is a teaching and learning strategy that focuses on the critical analytical skills necessary for students to identify injustices in society and the laws, policies, and practices in institutions and

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<sup>23</sup> See Brooks, *supra* note 14 at 413. Brooks identifies three roles that law students assume in experiential education in law school: simulated practice, the mentee role, and the “first-chair” role. As mentee, the student does tasks in support of a lawyer, such as research and writing, interviewing witnesses, and attending professional meetings. As “first-chair,” the student takes “on a high level of direct responsibility for the legal matter at hand.” *Id.*

<sup>24</sup> See, e.g., Catherine Gage O’Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485 (1998) (making the case for autonomous development of lawyering skills in hierarchical teams); Mary Twitchell, *The Ethical Dilemmas of Lawyers on Teams*, 72 MINN. L. REV. 697 (1988) (analyzing task-sharing among lawyer teams and concluding that lawyer teams sufficiently divide work and responsibilities).

<sup>25</sup> Limiting clinical legal education to supervised practice experiences is a departure from the Report of the Committee on the Future of the In-House Clinic, which includes simulation-based courses. *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511 (1992); see also Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984); James E. Moliterno, *On the Future of Integration between Skills and Ethics Training: Clinical Legal Education in the Year 2010*, 46 J. LEGAL EDUC. 67, 68 n.6 (1996).

<sup>26</sup> See Brooks, *supra* note 14, at 413.

<sup>27</sup> See sources cited *supra* note 24 and accompanying text.

<sup>28</sup> *Explanation of Terms*, UNDERGRADUATE J. SERVICE LEARNING & COMMUNITY-BASED RES., <http://www.bk.psu.edu/academics/33706.htm> (last visited Sept. 30, 2014). For discussion of service-learning in the law school context, see Laurie Morin & Susan Waysdorf, *The Service-Learning Model in the Law School Curriculum: Expanding Opportunities for the Ethical-Social Apprenticeship*, 56 N.Y.L. SCH. L. REV. 561 (2011–12).

in communities, as well as their own behaviors, that further the injustices. Within experiential education, social justice education incorporates the development of skills necessary for students to challenge subordination of, and create systemic change<sup>29</sup> for, underserved populations, often in partnership with the affected communities.<sup>30</sup>

### B. Programs

**Clinical Legal Education Program.** The collection of courses offered by a school in which a significant part of the learning involves supervised practice experiences in which students assume the role of a lawyer, either in support of others as a mentee or as a student lawyer with a high level of direct responsibility as lead counsel<sup>31</sup> or a member of a lawyer team.<sup>32</sup> The shape and size of these programs vary greatly in response “to many influences: social justice, client and community need, clinician interest and motivation, funding, and teaching goals.”<sup>33</sup> Some law schools require all students to take one or more courses in the school’s clinical legal education program. The most common courses are law clinics and externship courses.

**Cooperative Education Program.** A structured educational strategy integrating classroom studies with learning through productive work experiences in a field related to a student’s academic or career goals.<sup>34</sup> Unlike in an externship program, students in a Cooperative Education Program, also called Co-op Program, typically do not receive academic credit for the fieldwork. Law schools enhance learning from fieldwork in Co-op Programs in a variety of ways, such as course/fieldwork sequencing, vetting of field supervisors, assessments of student work, student journals, and pre- or co-requisite companion courses.

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<sup>29</sup> Artika R. Tyner, *Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering*, 10 HASTINGS RACE & POVERTY L.J. 219, 219–20 (2013).

<sup>30</sup> *Id.* at 223–25; Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic’s Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 44 (2006); Spencer Rand, *Papers at the UCLA/IALS Conference on “Enriching Clinical Education”: Conference Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help through Social Work’s Empowerment Approach*, 13 CLINICAL L. REV. 459, 475–485 (2006).

<sup>31</sup> See Brooks, *supra* note 14, at 403, 413.

<sup>32</sup> See sources cited *supra* note 24 and accompanying text.

<sup>33</sup> CLINICAL LEGAL EDUCATION ASSOCIATION, HANDBOOK FOR NEW CLINICAL TEACHERS 10 (6th ed. 2013), available at <http://www.cleaweb.org/new-clinicians>.

<sup>34</sup> THOMAS GROENEWALD ET AL., *Towards a Definition for Cooperative and Work-Integrated Education*, in INTERNATIONAL HANDBOOK FOR COOPERATIVE AND WORK-INTEGRATED EDUCATION: INTERNATIONAL PERSPECTIVES OF THEORY, RESEARCH AND PRACTICE 17 (Richard K. Coll & Karsten E. Zegwaard, eds., 2d ed. 2004).

**Externship Program.**<sup>35</sup> The collection of courses within a school's clinical legal education program that provides students with the opportunity to integrate academic inquiry with work experiences in the law for academic credit. Students are immersed in legal practice settings external to the law school, and supervision of students is shared by faculty and field supervisors.<sup>36</sup> The field supervisors, who are "not employed by the law school,"<sup>37</sup> have ultimate responsibility for the client or legal matter. They also provide direct feedback and guidance to the students, while faculty have overall responsibility for assuring the educational value of the learning in the field and the academic inquiry at the law school. Many externship programs organize externships into specialties, which then may have topic-specific companion courses, such as criminal, civil, and judicial practice.

**Integrated Lawyering Program.** A sequence of required experiential courses or activities integrated into the curriculum and coordinated to progressively teach students lawyering skills and values. The program may be required of all students or of students in a specialized field of study. Ideally, the student moves through a continuum of roles: from simulated practitioner, to supporting mentee, to student lawyer with a high level of direct responsibility as lead counsel<sup>38</sup> or member of a lawyer team.<sup>39</sup>

**Lawyering Skills Competition Program.** A set of opportunities, not otherwise categorized as an academic course, arranged and approved by the law school in which students assume the role of the lawyer in simulated professional skills exercises culminating in intramural or intermural competitions. Common opportunities include appellate ad-

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<sup>35</sup> A few schools refer to this type of program as a Field Placement Program, as does the ABA. See ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 305.

<sup>36</sup> Typically, field supervisors are lawyers, judges, mediators, or legislators, but this list is not exhaustive.

<sup>37</sup> 2014 Annual Questionnaire Instructions, A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS B. 6, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2014\\_aq\\_part1.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_aq_part1.authcheckdam.pdf) (last updated June 18, 2014). The ABA distinguishes externships from "faculty-supervised law clinics" by emphasizing the fact that externships involve field supervision by non-employees of the law school. This glossary distinguishes externships from law clinics by highlighting the fact that externships involve *shared* student supervision by field supervisors and faculty, while law clinics involve *unitary* student supervision by faculty. *Id.*

<sup>38</sup> See Brooks, *supra* note 14, at 403, 413.

<sup>39</sup> See sources cited *supra* note 24.

vocacy, mock trial, negotiations, client interviewing and counseling, and topic-specific writing competitions. Depending on the competition, students may receive feedback and coaching from peers, practicing lawyers, faculty, or judges.

**Legal Analysis, Writing, and Research Program.** A sequence of required courses in the introductory law school curriculum<sup>40</sup> coordinated to teach students the first steps of role-assumption: the analytical, research, and writing processes lawyers use in the context of a client's legal problem or question. These courses expose students to the process of legal writing through assignments associated with aspects of a lawyer's role as counselor (typically in the first semester) and advocate (typically in the second semester), as well as to some types of documents lawyers write in practice.<sup>41</sup> They also introduce students to the type of oral advocacy that a lawyer might make on behalf of a client. Many programs also include optional upper-division writing courses that either deepen the students' client-centered written communication skills in a vertical fashion or offer students the opportunity to write other types of lawyering documents that were not included in the mandatory introductory courses.

**Pro Bono Program.** A program

designed to inspire and to enable students to engage in pro bono service,<sup>42</sup> uncompensated by credit or pay, while in law school. The primary purpose of these programs is to teach all students why pro bono service is

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<sup>40</sup> In the 2014 ALWD/LWI Survey, forty-seven schools reported a mandatory third semester of coursework in the fall semester of the second year. *2014 ALWD/LWI Survey, LEGAL WRITING INST.*, <http://lwionline.org/uploads/FileUpload/2014SurveyReportFinal.pdf> (last visited Nov. 16, 2014) (Question 12).

<sup>41</sup> These courses satisfy Standard 303(a)(2). ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 303(a)(2).

<sup>42</sup> The American Bar Association, drawing from Rule 6.1 of the Model Rules of Professional Conduct, provides a useful definition of pro bono service, dividing it into two tiers or categories.

*Category 1* pro bono is defined as direct legal representation provided to persons of limited means or organizations that support the needs of persons of limited means for which no compensation was received or expected. *Category 2* pro bono is defined as any other law-related service provided for a reduced fee or no cost (without expectation of fee) to any type of client, not including activities performed to develop a paying client or anything that is part of paying job responsibilities.

A.B.A. STANDING COMM. ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS vi (Mar. 2013), available at [http://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/ls\\_pb\\_Supporting\\_Justice\\_III\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf).

an important professional value and to introduce them to the ways in which they can contribute in their practice as attorneys.<sup>43</sup>

### C. Courses

**Experiential Education Course.**<sup>44</sup> A course that “integrates theory and practice by combining academic inquiry with actual experience.”<sup>45</sup> A significant part of the learning involves either simulated practice experiences, in which students assume the role of a lawyer in a simulated setting, or supervised practice experiences, in which students assume the role of a lawyer in support of others as a mentee or as a student lawyer with a high level of direct responsibility as lead counsel<sup>46</sup> or member of a lawyer team.<sup>47</sup>

**Externship Course.** A course “in which a significant part of the learning relies on students either representing clients or performing other lawyering roles under the supervision of practicing lawyers”<sup>48</sup> or other qualified legal professionals, such as judges, mediators, and legislators. These field supervisors share supervision of students with faculty. The field supervisors agree to provide direct feedback and guidance to the students, while faculty provide the guided reflection that is a defining characteristic of externships. Faculty may also teach a classroom component, either required as part of the course or as a separate companion course.

**Law Clinic.** A course in which a significant part of the learning involves students assuming the role of a lawyer representing actual clients, or performing other lawyering roles,<sup>49</sup> under the supervision of

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<sup>43</sup> *Definitions of Terms Used*, AM. B. ASS'N, <http://apps.americanbar.org/legalservices/probono/lawschools/definitions.html> (last visited Sept. 30, 2014).

<sup>44</sup> This definition is broader than that adopted by the ABA in 2014. ABA Standard 303(a)(3) states for a course to meet its experiential course requirement, it must be a simulation course, a law clinic, or a field placement . . . be primarily experiential in nature and . . . (i) integrate doctrine, theory, skills and legal ethics, and engage students in performance of one or more 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.

ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 303(a)(3).

<sup>45</sup> STUCKEY ET AL., *supra* note 5, at 165.

<sup>46</sup> *See* Brooks, *supra* note 14, at 413.

<sup>47</sup> *See* sources cited *supra* note 24 and accompanying text.

<sup>48</sup> STUCKEY ET AL., *supra* note 5, at 198.

<sup>49</sup> To qualify as a law clinic under ABA Standard 304(b), the course must provide “substantial lawyering experience that (1) involves one or more actual clients, and (2)

an attorney who is employed by the law school as faculty (full-time, part-time, or adjunct), fellow, or staff attorney. Law clinics may operate out of the law school or in the community, with or without community partners.

**In-House Clinic.** A law clinic operated exclusively by the law school in which faculty members supervise students to provide law-related services.<sup>50</sup>

**External Clinic.** A law clinic operated within a law office, typically a legal services, public defender's, or prosecutor's office, in which students are supervised by one or more attorneys who are employed by the law school. The clients are those of the supervising attorneys and may or may not become the clients of the law school.

**Hybrid Clinical Education Course.** A law clinic that incorporates elements of an externship course by immersing students in a working law office, while involving both faculty and non-faculty practitioners in supervision, mentoring, and teaching.

**Simulation Course.** A course providing students with "substantial experience not involving an actual client, that is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member."<sup>51</sup>

**Legal Analysis, Writing, and Research Course.**<sup>52</sup> A course that is part of a sequence of required courses in the introductory law school curriculum that introduces students to the first steps of role-assumption: the analytical, research, and writing processes

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includes the following: (i) advising or representing a client; (ii) direct supervision of the student's performance by a faculty member; (iii) opportunities for performance, feedback from a faculty member, and self-evaluation; and (iv) a classroom instructional component." ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 304(b).

<sup>50</sup> An in-house clinic may be physically located at a satellite site of the law school.

<sup>51</sup> ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 304(a)(1). To qualify as a simulation course under this Standard, the course must also include: (i) direct supervision of the student's performance by the faculty member; (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and (iii) a classroom instructional component. *Id.*

<sup>52</sup> These courses, while often similar in learning outcome goals, often carry different monikers. Examples of other names include "Legal Research & Writing," "Legal Communication," "Legal Analysis & Communication," or "Lawyering Process."

lawyers use in the context of a client's legal problem or question.<sup>53</sup> The hallmark of these courses is multiple drafts of documents on which students receive significant individual feedback from faculty. Some of these courses also introduce students to the type of oral advocacy that a lawyer might make on behalf of a client. Although these courses are primarily based on simulations, some courses may incorporate elements of a hybrid clinical education experience.<sup>54</sup>

**Advanced Legal Writing Course.** A course marked by significant teacher feedback on individual student drafts that hones the analytical and writing skills gained in the first year either *vertically*, by exploring previously covered subjects—such as brief writing—in greater depth and detail, or *horizontally*, by exposing students to additional forms and purposes of client-centered legal writing, such as pleadings, contracts, or legislation.<sup>55</sup> Both types of Advanced Legal Writing courses may also expose students to rhetoric or interdisciplinary studies of persuasion in communication.<sup>56</sup>

**Advanced Research Course.** A course that reinforces research skills, develops advanced research strategies and techniques, and exposes students to a broader range of source materials. Advanced *Legal Research* courses may be tied to a particular doctrinal area of law or may be generalized.

**Law Lab.** A course in which students work with faculty on real world projects with either actual or simulated clients to deepen student learning through application of knowledge gained in a related nonexperiential course, which is either a pre- or co-requisite. The lab may or may not be taught by the professor of the nonexperiential course.

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<sup>53</sup> This course satisfies Standard 303(a)(2). ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 303(a)(2).

<sup>54</sup> Pamela Edwards & Sheila Vance, *Teaching Social Justice Through Legal Writing*, 7 LEGAL WRITING 63 (2001); Nantiya Ruan, *Experiential Learning in the First Year Curriculum: The Public Interest Partnership*, 8 LEG. COMM. & RHETORIC: JALWD 191 (2011).

<sup>55</sup> Based on the article by Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. LEGAL EDUC. 119 (2004).

<sup>56</sup> MICHAEL R. SMITH, *ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING* (3d ed. 2013); KRISTEN KONRAD TISCIONE, *RHETORIC FOR LEGAL WRITERS: THE THEORY AND PRACTICE OF ANALYSIS AND PERSUASION* (2009).

**Law Practicum.** A course focused on a discrete area of law that integrates a requirement that students engage in practical fieldwork or complex simulations on the topic of study. Experiential education is an integral part of the class but a secondary method of instruction.

**Capstone Course.** A course that provides students with the opportunity to apply accumulated learning from across the curriculum, enhancing student learning by integrating doctrinal knowledge with experiential application. Ideally, a capstone course also establishes and cultivates connections within the larger legal community, allowing students to develop strategies for analyzing and addressing legal matters. Although “capstone” implies a culminating experience, capstone courses can be designed to be at the end of any component of legal training.

**Experiential Module.** A self-contained experiential education activity that can be inserted into any law school course. The activity is used to enhance learning of substantive material and to introduce students to real world lawyering experiences. Examples include role-plays, drafting exercises, and field trips with reflection.

### III. MEASURING THE VALUES AND COSTS OF EXPERIENTIAL EDUCATION

#### *Report of the Working Group on Cost and Sustainability\**

#### INTRODUCTION

What experiential education costs and the value that various types of experiential education models provide provoke much comment within legal education. There is little dispute about the value of experiential education. Experiential education manifestly furthers and deepens the practical skills training that the Carnegie Foundation has identified as one of the three foundational apprenticeships of all pro-

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fessional education, but it also contributes to the other two apprenticeships in “the knowledge and way of thinking of the profession” and in the “purposes and attitudes that are guided by the values for which the professional community is responsible.”<sup>57</sup> Studies of recent law school graduates demonstrate the relatively high value they place on practice-based experiences when compared with other classroom-based education they received in law school.<sup>58</sup>

However, experiential education is sometimes written off unthinkingly as being valuable but too costly without a careful assessment of what the costs are.<sup>59</sup> Moreover, different modes of experiential education—simulations, externships, and clinics—are often clumped together, suggesting that they are interchangeable.<sup>60</sup> What is often lacking is a careful analysis of what each mode of experiential education uniquely brings to an integrated lawyering program, which creates a “sequence of required experiential courses or activities integrated into the curriculum and coordinated to progressively teach students lawyering skills and values.”<sup>61</sup>

This report seeks to provide a basis for more thoughtful analysis and discussion of both the values and the costs of legal education by breaking those values and costs down into their component parts. The way these component parts are arranged will vary from school to school, and this report does not attempt to catalogue every possible combination. Our aim is to categorize the *types* of value that education adds to experience and the *types* of costs that need to be assessed, providing a basis for more nuanced discussion of the cost and sustainability of experiential educational programming in law schools.

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<sup>57</sup> CARNEGIE REPORT, *supra* note 1, at 28.

<sup>58</sup> NALP FOUND. FOR LAW CAREER RESEARCH & EDUC. & AM. BAR FOUND., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 79–81 (2004) [hereinafter AJD], available at <http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf> (ranking employment, clinical courses, legal writing, and internships as the most valuable law school experiences); Margaret Reuter, Experiential Teaching: The Value Proposition for Public and Private Lawyers (Sept. 27, 2014) (unpublished manuscript) (on file with the author).

<sup>59</sup> For examples of recent and careful assessments see Martin J. Katz, *Understanding the Costs of Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING 28 (2014); Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENVER U. L. REV. 1 (2014).

<sup>60</sup> See, e.g., ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 303(a)(3) (requiring “one or more experiential course(s)” that “must be a simulation course, a law clinic, or a field placement”).

<sup>61</sup> See *supra* Part II.B. (defining the Integrated Lawyering Program); Reuter, *supra* note 58, at 5–6.

### A. *The Value That Education Brings to Experience*

Everyone learns from experience; hence experience itself has inherent educational value. However, experiential learning is not the same thing as experiential education, in which instructors purposefully engage with learners, providing structure and meaning to the experience and accelerating the learning that occurs through experience.<sup>62</sup> The question for experiential educators is how to *add* value to the education that experience itself provides.

Much of traditional legal education is devoted to helping law students internalize frameworks of doctrinal knowledge that permit them to “spot the legal issues” from a given set of facts.<sup>63</sup> Over time and through experience, professionals develop tacit knowledge—a set of internalized frameworks formed by expertise—that helps them process new information.<sup>64</sup> Legal education is geared toward speeding the process of internalizing the doctrinal frameworks that help lawyers analyze the law and apply it to new factual situations.<sup>65</sup> Legal education’s “signature pedagogy” of appellate case dialogue instills the foundational skills of “thinking like a lawyer” through modeling, coaching, and scaffolding, which make explicit the structural elements of the case or doctrine under scrutiny in the classroom.<sup>66</sup>

The explosion of experiential education in law schools is built on the premise that legal educators can similarly speed the natural process of developing other kinds of tacit knowledge by providing a pedagogical structure for students’ experiences in real or simulated law practice.<sup>67</sup> In the past forty years, legal education has greatly expanded its reach into teaching lawyering skills other than legal analysis and issue-spotting. Lawyering skills literature articulates the frameworks, structures, and underlying value commitments implicit in a wide range of professional skills, permitting explicit instruction in the theory and practice of lawyering tasks once considered intuitive and unteachable,

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<sup>62</sup> See *supra* Part II.

<sup>63</sup> Katherine R. Kruse, *Legal Education and Professional Skills: Myths and Misconceptions About Theory and Practice*, 45 MCGEORGE L. REV. 7, 13 (2013).

<sup>64</sup> See generally Ian Weinstein, *Lawyering in the State of Nature: Instinct and Automaticity in Legal Problem-Solving*, 23 VT. L. REV. 1 (1998).

<sup>65</sup> CARNEGIE REPORT, *supra* note 1, at 54–55.

<sup>66</sup> *Id.* at 60–63.

<sup>67</sup> Kruse, *supra* note 63, at 23–28.

such as client interviewing, client counseling, factual investigation, negotiation, problem solving, advocacy, and cross-cultural awareness.<sup>68</sup>

Educators can add value to the students' experiences in several ways, and the opportunities in clinics, externships, and simulation courses to add each type of value are assessed below.

### 1. Designing the Experience

By choosing a student's practice experiences, educators can focus and sequence students' learning. The extent to which the educator can exercise control over the general content of practice-based experience varies with the learning method. Simulations provide the most direct control over what the students' experience will be. For example, a case file in a Trial Advocacy class will build in certain pre-planned opportunities for students to develop competing theories of a case and to argue evidentiary issues.

During in-house law clinics or real-practice modules, educators choose, limit, and control the cases or practice experiences that students will encounter. Most in-house clinics structure the legal work that students do with the students' educational experience in mind, limiting both the type and number of cases that students will be asked to handle. Because the aim of in-house clinics is to put students into the primary role of attorneys, clinicians look for cases that will be "good clinic cases"—challenging enough to provide students with a good learning experience but not so challenging that they will overwhelm the clinic students.

In externships, the primary control over the type of legal experience that students will get is controlled by on-site field supervisors. Law schools exercise control of on-site field placement work by choosing or vetting the sites that will count as field placements in an externship or co-op program. Well-designed externship programs will set expectations as to the level of supervision and feedback students will receive and will monitor the students' experiences through accompanying classroom components or student reflective journals. Externship teachers will also help students set appropriate learning goals that create a structure to the learning that the students will accomplish in the externship.

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<sup>68</sup> *Id.* at 32.

## 2. Complexity and Verisimilitude

On the other side of control is the value of student learning in unstructured settings, where students encounter the multiple layers of complexity that inhere in law practice.

Teachers can create simpler or richer simulations that add more or less complexity and uncertainty. Yet simulations are inherently limited in their ability to expose students to the complexities of real practice and lack the verisimilitude of real practice interactions. Canned facts are limited in scope and complexity, and simulated interactions with persons playing the role of clients or judges lack the full emotional and psychological depth of actual lawyering. Largely missing from simulated practice is the richness of how legal issues interact with the non-legal issues that motivate and inhibit clients. Also missing, except from the most complex and sustained simulations, is the uncertainty of how real-life facts develop through investigation and unfold over time. And simulations are often set in generic jurisdictions and do not engage students in learning local law, rules, or practice.

In-house clinics expose students to the complexities of real client interactions in uncertain and evolving factual contexts. Students interact with actual clients, appear in real cases, and investigate facts in the real world. They must learn to navigate the personalities and peculiarities of real clients, judges, and opposing lawyers and are faced with factual and legal uncertainty, ambiguity, and inconsistency. However, the intentionally controlled practice environment shields students from some of the factors that shape real-life law practice, such as time, caseload, and financial pressures.

Externships provide exposure to a more realistic legal practice setting. Students are placed in functioning law offices or agencies and have the opportunity to observe the practice of law in these less sheltered settings. However, the actual legal work assigned to the students may be limited to discrete tasks within a larger case or matter of legal representation, such as writing research memos, preparing documents, or interviewing witnesses.

## 3. Explicit Instruction on the Conceptual Frameworks Underlying Practice

Law student experiences in legal employment or volunteer opportunities provide inherent opportunities for learning. Through repetition, students gain confidence and facility in the specific tasks they

have undertaken and can transfer that learning fairly easily to experiences that bear surface similarity.<sup>69</sup> By helping students understand and internalize the foundational concepts that underlie generalized lawyering skills, educators “enable students to transfer the concepts, strategies and techniques they begin to use while in clinical courses to the many and varied practice settings they are almost certain to encounter after graduation.”<sup>70</sup> Much of legal skills pedagogy involves teaching the basic concepts that underlie legal practice, which combine instruction on *what* to do with an explanation of *why* to do it that way. By making these conceptual frameworks explicit, educators can equip students to transfer their learning from one experience to future experiences.

Simulations are good vehicles for isolating particular aspects of practice and helping tie the choices that you make in practice to the conceptual frameworks that underlie particular lawyering skills. For example, negotiation simulations can be constructed to illustrate the conceptual difference between positions and interests, the influence of parties’ best alternatives to a negotiated agreement (BATNAs), or the interplay between distributive and integrative approaches within the parties’ zone of possible agreement.

In clinics, professors supervise the students’ casework directly; hence, clinicians are well positioned to tie students’ case-specific experiences to the general conceptual frameworks that underlie lawyering skills, using the students’ clinic work as the raw material for instruction in generalized lessons about lawyering. In-house clinics often teach the conceptual frameworks for lawyering skills like interviewing, counseling, factual investigation, negotiation, and persuasion.

In externships, the ability to tie the conceptual frameworks of practice directly to students’ practice experience is more difficult to accomplish due to the shared supervision model that divides responsibility between a law school externship instructor and an on-site field supervisor. While externship faculty can teach practice skills in an accompanying classroom component, they lack full information about the students’ field experiences. Field supervisors see the students in the day-to-day interactions in the practice settings, but may lack the time to fully debrief and contextualize the students’ practice exper-

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<sup>69</sup> David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191, 197–99 (2003).

<sup>70</sup> *Id.* at 198.

iences. Even expert practitioners may also lack full awareness of the conceptual frameworks that they apply in practice. Expert knowledge is largely tacit; it is largely a teaching function to tease out and generalize what practitioners are actually doing.

#### 4. Feedback on Student Performance

Student learning is accelerated when the students receive specific, individualized, and constructive feedback on their performance.

Simulations provide the easiest settings in which to offer specific and individualized feedback on student performance. The simplicity of simulations allows the instructor to isolate particular points of practice for instruction (e.g., how to appropriately frame questions on direct or cross examination). Simulations also provide the opportunity for replication, allowing students to observe and compare their approach with approaches that other students have chosen in an identical simulated practice problem. Students can measure their performance against the performance of other students.

Clinics provide many opportunities for clear and immediate feedback based on direct observation, as well as more generalized feedback in the form of mid-semester and/or final evaluations of the student's overall clinic work. However, it may be more difficult to isolate a particular aspect of a student's performance because of the multiplicity of factors that come into play in one interaction. Moreover, clinic professors may intentionally remove themselves from some aspects of the direct work of a case, such as client interviews, telephone calls, or case investigations, to enhance student ownership and responsibility for the casework.

In externships, the professor is not able to observe the student's performance on legal work directly and must rely on the field supervisor to provide direct and specific feedback to the student. Externship programs sometimes provide a structure for students to get formalized feedback, such as a mid-semester or final evaluation process. Externship professors may also teach students how to recognize and ask for effective feedback from their field supervisors through building the students' workplace skills. Additionally, externship programs provide guidance to field supervisors on how to give effective feedback, either in written materials or periodic training programs.

### 5. Level of Responsibility and Engagement

The more responsibility a student has for practice-based work, the more engaged and motivated the student is likely to be and the more the student is likely to be challenged by and learn from the experience.

Simulations can put performance pressure on students, particularly if they are going to be taped and critiqued or perform in front of other students. However, when done as breakout exercises in a large group, it is possible for students to “slide” in their performance and sense of responsibility and not be fully engaged.

The signature features of clinical pedagogy depend on putting students in the primary role of lawyers and coaching them as they fulfill the full range of responsibilities of a lawyer in role. Clinic cases and projects are chosen for their capacity to provide students with this full lawyering experience, so the levels of responsibility and student engagement are very high. The close supervision by the clinic faculty member can be used to ensure that each student’s practice experience is appropriately tailored to his or her skill level.

In externships, the level of responsibility and engagement will largely depend on the work that is assigned at the placement site. Student engagement will depend on whether there is a good fit between the assigned work and the student’s skill level and learning goals. Many externship programs facilitate this fit by requiring students to articulate their learning goals and communicate these goals to their field supervisor. However, the level of engagement will depend largely on the student’s self-direction and the field supervisor’s motivation to engage and challenge the student.

### 6. Facilitation of Student Reflection

Reflection is a key component for experiential learning and can be facilitated to different degrees in various experiential learning environments. Many real-practice experiential learning programs include developing students’ capacity for self-reflective lawyering as an explicit goal to help the student develop the habit of life-long learning from experience. In simulations, students can be assigned to reflect on the experience of role-playing a lawyering task. However, the relative simplicity of the simulation may provide limited material for reflection.

In clinics, student reflection is facilitated in a variety of ways. Because the clinic professor supervises the students’ legal work, he or she

has the opportunity to target shared experiences from the case and to draw out and deepen students' reflection on those experiences by pointing out aspects that the student has not chosen to highlight. Clinic professors also have the opportunity to observe common experiences that clinic students are having in their casework and develop them as topics for group reflection and discussion in case rounds. Most clinics also have a component of formalized reflective writing in journals or in a mid-semester or final evaluation process.

Student reflection is a key pedagogical component of externship programs. Because the externship professor is removed from the placement, he or she must often rely on student reflective writing as a primary source of information about what the student is learning from the placement. Externship classroom components bring together students in a variety of placement sites, which provides opportunities for students to bring in a range of different types of experiences to reflect on common themes relating to legal practice.

#### 7. Opportunities to Integrate Skills with Professional Values

In addition to teaching practical skills, experiential education provides opportunities for students to internalize values of the profession and to develop a sense of professional identity. In particular, experiential education can expose students to issues of access to justice and intercultural experience and help them develop an understanding of their unique professional role in society.

Simulations can be specifically designed to incorporate issues of access to justice or intercultural interaction. However, simulations most often rely on students, instructors, or other actors to play the roles of clients, witnesses, or opposing parties. To the extent that role-playing actors are drawn from a similar cultural background, the opportunities for deeply intercultural encounters will be limited. Being asked to play the role of a client or party in poverty or from another racial, ethnic, or socioeconomic background can help students gain empathy toward others who are situated differently in society. However, if the persons playing the roles do not fully appreciate the culture they are simulating, the opportunities to gain deep understanding of issues of poverty or cultural difference—or even the gap between professional culture and layperson perspective—may be lacking.

Clinics are very often structured to provide free legal services to indigent or otherwise disadvantaged clients and thus provide natural opportunities for students to confront issues of access to justice and



unmet legal needs, as well as to experience interactions with persons from a different racial, ethnic, or socioeconomic background. However, without opportunities to reflect on these experiences, students may simply reinforce their preexisting biases. Clinic instruction can counteract these tendencies by providing explicit instruction on systemic issues of poverty, the frameworks that shape cultural identity, and techniques for promoting intercultural understanding. Clinic professors can also coach students in one-on-one supervision or in case rounds to uncover their own culturally shaped biases and challenge their assumptions about persons from other backgrounds or cultures.

In externships, students may be placed in a variety of settings, including government, public interest, judicial, business, or private practice. Externship programs can promote exposure to access to justice and intercultural lawyering by choosing placements that are likely to present those types of experiences for students. Externships can also promote reflection on the access to justice and intercultural issues that do arise through reflective writing assignments or in-class instruction and discussion. Externship classes also provide a venue for students to compare their experiences across placement sites, providing a broader view on the systemic issues of access to justice from a variety of different perspectives.

As the foregoing analysis suggests, there are many ways that teaching adds value to the natural learning that is inherent as students engage in professional experience. Most involve the careful design of an experience ahead of time, the explicit articulation of the theory and underlying framework of the skills being performed, and guided reflection following the student experience.

#### B. *The Costs of Experiential Education*

Does experiential legal education cost more than traditional legal education? The math is familiar. If we focus on live-client clinics and we assume that clinical and doctrinal faculty earn equal salaries, it is clear that a full-time teacher responsible for eight students in a clinic costs more per student credit hour than a full-time teacher responsible for 150 students in a Socratic class on securities law.<sup>71</sup> At the same time, it now seems clear that schools can offer extensive clinical educa-

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<sup>71</sup> For careful calculation of the actual differences, and of the changes in those differences depending on factors such as class size, credit hours, and teacher salary, see Katz, *supra* note 59.

tion programs without actually raising their tuition levels compared to otherwise comparable schools<sup>72</sup>—no doubt at least partly because the schools have made choices about where to spend their resources.<sup>73</sup>

This report will not retrace that ground. Instead, it will undertake two tasks: first, to highlight what is missing in the cost-per-credit hour analysis and how what is missing might be measured; second, to explore in several ways the cost implications of considering clinical and experiential education as a program, rather than focusing on a hypothetical single course.

### 1. The Basic Measure: Cost-per-Credit Hour or Cost-per-Something Else?

This report is about both values and costs, and clearly what law schools should be doing is measuring the cost against the value. But cost-per-credit hour is at best an imperfect way of doing that. The attraction of this more or less quantifiable measure may be irresistible, but in addition to declaring that counting credit hours does not fully account for value, law schools should think about what measures might actually reflect value better. Here are three possible alternatives, presented not as ideal substitutes but as the starting point for reconceptualizing the measurement of cost:

*Contact hours per student:* Small clinics obviously feature more actual contact with each individual student in any given class hour than large doctrinal classes can manage. More importantly, clinics feature a lot of out-of-class contact. Other forms of experiential education may not feature as much one-on-one contact with students as clinics, but most surely feature more than large doctrinal classes. One could plausibly guess that each clinic teacher spends an hour with each student each week outside of class, while the teacher of 150 students in two large doctrinal classes might well spend an average of no more than one minute with each of her students outside of class per week. Measured by contact hours per student, it seems likely that clinical teachers are considerably less costly than the teachers of large doctrinal courses.

*Student engagement hours:* Schools might also compare the number of hours per week that experiential and nonexperiential courses engage students' effort. How many hours do students put in to carry out their work as clinical/experiential students, compared to how many

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<sup>72</sup> See Kuehn, *supra* note 59, at 6–7.

<sup>73</sup> Katz, *supra* note 59, at 32–33.

hours they put in to carry out their work as students in doctrinal classrooms? There is good reason to think that many upper-year students pay painfully little attention to their classroom courses.<sup>74</sup> On the other hand, students in experiential courses, probably clinical students most of all, often throw themselves into the work, and it might well be expected that experiential courses in fact elicit more intense student engagement and, with that engagement, more learning.

*Faculty hours spent in teaching or preparation for teaching.* It seems quite likely that credit for credit, clinical/experiential teachers expend more time on teaching. As already noted, clinical teachers have more weekly contact hours with students outside of class. Doctrinal teachers can spend a lot of time preparing to teach a class for the first time, but class preparation time diminishes with repetition, making classroom teaching more efficient over time. The nature of clinical teaching does not similarly diminish with repetition, as each semester brings a fresh slate of clinic supervision and casework, which require a relatively stable investment of time. Doctrinal professors see a similarly stable demand on their time grading assignments and exams. Whether, in aggregate, clinical and experiential teachers devote more time to teaching than their doctrinal colleagues do is a question that deserves exploration, since it would measure an aspect of the value that clinical teachers are providing.

There may well be other measures that could be imagined and even implemented. The basic point is a straightforward one: if cost and value are to be effectively compared, it cannot simply be assumed that comparing cost and credit hours has told us all we need to know.

## 2. Considering the Cost of Experiential Programs as Programs

The reality of experiential programs is far more complex than the hypothetical single clinic with which cost comparisons often begin.<sup>75</sup> To understand costs one must consider those complexities. This report focuses on four: (1) who actually teaches what; (2) where they teach and with what administrative support; (3) what the counter-vailing revenue implications of experiential programs may be; and (4)

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<sup>74</sup> Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235 (2001).

<sup>75</sup> Katz focuses on this question, too. He introduces his cost measurements with the observation that “[i]f other schools want to try to increase their experiential offerings, what are the trade-offs they must make to avoid significant cost increases?” Katz, *supra* note 59, at 33.

what the impact of experiential programs is on the curricular choices students make.

*Who teaches what:*

It is somewhat artificial to divide faculties into doctrinal and experiential categories. Many clinical faculty members teach more than one course per semester, and some teach large-section doctrinal courses. Some experiential teachers also teach quite large classes, such as simulation courses. A simulation course can provide individualized instruction to quite a large number of students if it employs adjunct faculty to teach small sections as part of the course, and adjunct faculty are not expensive. Meanwhile, some doctrinal teachers in fact teach experiential courses as part of their load. Moreover, as is well known, doctrinal teachers do not exclusively teach large classes; some may teach a ten-person, two-credit seminar, for instance, or a twenty-five person, three-credit course.<sup>76</sup>

Teachers, to be sure, are not fungible. It may not be desirable to have teachers “crossover” willy-nilly, and it should be expected that making such transitions effective would call for collegial training and feedback. But one lesson of thinking about experiential programs is to remind institutions and their stakeholders that all of law school is about preparing students for their years to come, and so in principle this kind of cross-fertilization of the faculty seems desirable. The more it takes place, the more the difference in the number of student credits per faculty member between experiential teachers and doctrinal teachers must be less than the dramatic contrast that is sometimes imagined.

In addition, many experiential teachers are not full-time faculty members but adjuncts. Adjunct faculty salaries generally are very small; some adjuncts, in fact, may literally work for no cash at all, though they potentially get something of monetary value from the Continuing Legal Education (CLE) credits that their teaching earns them. A major concern raised by critics of requiring expanded experiential education is that administrations will be tempted to use low-cost adjuncts even more than is proper. That temptation may well exist, but it should not be overstated—at least not if the “proper” domain of adjunct faculty members may be quite substantial.

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<sup>76</sup> See, e.g., *id.* at 33 (critiquing the assumption “that doctrinal teachers teach only one type of course (for example, seminars or large lecture courses), as opposed to a mix of courses”).

If adjunct faculty can rightly play a larger role in experiential education than in doctrinal teaching—“rightly,” that is, in terms of their educational value and impact—then the relative cost of well-designed experiential education vis-à-vis well-designed doctrinal teaching is further decreased. The same is true to the extent that “fellows” or other short-term contract employees may play a larger role in experiential education than in classroom teaching, though classroom teaching has its “visiting assistant professors” occupying similar impermanent niches.

It is worth pausing on the question of *why* it might be proper to use adjuncts more in experiential education than in doctrinal teaching. The answer would be that, broadly speaking, what practitioners are experts at is practice, or skills. Some practicing lawyers are also experts in specific areas of law that full-time faculty may lack knowledge or time to teach, and there are, of course, adjunct faculty members teaching specialized doctrinal courses. Yet it seems plausible to think that the main advantage adjuncts have compared to regular faculty is that the adjuncts possess knowledge and skill in the practice of law. Along with that comes a related advantage: since adjuncts are in fact in practice, they can teach and supervise students in their own practice settings.

But the use of adjunct faculty, or non-faculty members, to provide supervision and instruction also has potential educational costs. The more a program relies on adjuncts, or non-faculty members, the more full-time faculty members must take on training, mentoring, and supervision roles for these other instructors. Even with this safeguard in place, it seems likely that practitioner-faculty, though they may bring many benefits in terms of areas of expertise and ability to expose students to real practice settings, will not be as skilled in teaching as full-time faculty become over time. Designing a program that takes these considerations into account requires care, but the possibilities of programs embracing the expertise that practicing lawyers offer make the effort potentially well worth undertaking.<sup>77</sup>

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<sup>77</sup> Katz observes that programs of this sort “essentially split the work of educating students between faculty members and members of the community” and have “the potential to provide not just lower cost, but also added value.” *Id.* at 136.

*Where they teach and with what support:*

There are costs to mounting a program of experiential education that doctrinal teaching does not generate. A comprehensive experiential program will need resources such as the following:

- Classrooms configured, or configurable, to serve as courtrooms for trial simulations
- Classrooms to be used for other simulations, such as negotiations or interviews
- Information Technology (IT) resources to enable recording of simulations and easy access to the recordings for students and faculty
- In programs using actors to role-play in simulations, fees for the actors
- Spaces for meeting with clients (these may be the same spaces as those used for small-group simulations—but even so those spaces are likely to be unutilized a lot of the time)
- Clinic workrooms with access limited to clinic students
- Computer networks with confidentiality assurances
- Malpractice insurance
- Case handling costs, some of them minimal, some not (such as discovery costs or expert witness fees)
- Administrative staff: in particular, for handling of simulations, which can involve the scheduled movement of many students and actors (in programs using them)

These costs should not be ignored—and a program that did so would suffer as a result.

At the same time, it is a mistake to take the costs of nonexperiential education as automatic and to see the costs of experiential teaching as simply add-ons. A space designed to accommodate 125 person classes is a space that will not work well for smaller classes—several of which might have taken place in rooms located in the square footage now committed, more or less permanently (that is, short of major renovation work), to large-class functions. Similarly, the costs of actors may be unique to experiential courses—but the many costs of exam administration are largely unique to nonexperiential ones.

*Countervailing revenue implications.*

This point will not be explored at length, but it should not go unmade. One of the striking comparative insights generated at the Second National Symposium on Experiential Education in Law held during the summer of 2014 at Elon University School of Law was that medical education is largely funded from the revenues earned through patient care delivered by medical school faculty. Law schools should not forget the possibility of similar revenues being generated by clinical programs.<sup>78</sup> Quite aside from the possibility that clinics and experiential courses may contribute powerfully to a school's ability to recruit and retain students, clinics may directly generate revenue as a result of their operations. Clinics may win attorneys' fee awards for successful representation. They may be funded by government grants meant to generate representation for people who could not afford to pay for it. It is possible to imagine clinics that are largely or entirely self-sustaining; it is not likely that doctrinal courses will generate comparable income.

### 3. Experiential Programs and Students' Curricular Choices

For ease of discussion, assume that law schools choose to require of their students the number of experiential credits that the Clinical Legal Education Association proposal to the American Bar Association (ABA) had urged: fifteen credits in the upper years of each student's education.<sup>79</sup> There are many benefits that such a requirement could generate for students and many creative ways that experiential components might be integrated into the overall educational program of each school. Indeed, conceiving experiential courses as components of integrated programs is an essential step towards maximizing the benefits such courses can produce. But what costs would be incurred?

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<sup>78</sup> Simulation courses, to be sure, do not have this potential. Nor do externships, though it remains possible that ABA accreditation rules will be revised to allow students to be paid by their externship placements for their work. That change would not add to law school revenues, but it would add to law *student* revenues and, in effect, reduce the net cost of their education. Whether this change should be made, however, involves a number of profound pedagogical design issues that are beyond the scope of this report.

<sup>79</sup> CLINICAL LEGAL EDUC. ASS'N, CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA) COMMENT ON DRAFT STANDARD 303(A)(3) & PROPOSAL FOR AMENDMENT TO EXISTING STANDARD 302(A)(4) TO REQUIRE 15 CREDITS IN EXPERIENTIAL COURSES I (2013) [hereinafter CLEA COMMENT ON DRAFT STANDARDS], available at <http://www.cleaweb.org/Resources/Documents/2013-01-07%20CLEA%2015%20credits.pdf>.

First, it seems likely that less time would be available for students to study doctrinal subjects. Certainly those courses that are purely skills-focused, such as courses in trial advocacy or in interviewing and counseling, would not be likely to enhance substantially the students' doctrinal knowledge. Even courses that systematically combine skills with doctrine—clinics, above all, but also practice-oriented courses in substantive law fields such as, say, corporate finance—will need to reduce the amount of time devoted to substantive law instruction to make room for skills instruction. A six-credit Securities Arbitration clinic quite likely will not provide as much instruction in securities law doctrine as a three-credit doctrinal course on that subject.

There is reason to believe, however, that students will learn the doctrinal law they do encounter more deeply when they engage with it in the context of real cases or even simulated ones rather than only through books and classroom study. Similarly, students may well learn more profoundly how to *use* law in general, how to work with ambiguous law and uncertain facts as lawyers often must, from the experience of employing some particular bits of law in experiential contexts, and so in the end students may learn legal reasoning more deeply as a result of experiential education. It must be acknowledged, however, that these points are not easy to prove.

Even if experiential courses actually propel students' understanding of doctrine, a number of costs may result if students simply have less time or fewer credits to allot to doctrinal study. One such possible consequence is that students will have less opportunity to explore the curriculum, either by taking a broad range of substantive courses (arguably helpful to them as they contemplate an uncertain practice future) or by doing advanced study in particular areas (also arguably helpful to them as they prepare for a challenging job market). These costs, however, may not be great; few students can acquire true doctrinal expertise on any subject from law school classes, and students who understand how to study law can pick up new areas of doctrine in practice as they need to (and as they almost inevitably will have to, anyway). And even these modest costs may not actually be incurred if students, in fact, do not take their classroom courses very seriously by the third year anyway—the loss of a few of these courses may then be no loss at all, especially if students are instead taking experiential classes that engage their attention.

A second possible consequence might be more serious: that students who need additional training simply to pass the bar exam may



not be able to get it. The bar exam, of course, is a fact, and it is a fact that most of it tests the ability to memorize and utilize legal doctrine and to express one's understanding cogently in exam formats. Students who have not learned how to do those things well will face grave difficulty entering the profession, however valuable they could be as practitioners. Again, one might doubt that students really need more than five semesters out of their six to be in classroom study, and one might wonder whether students would actually do better with a semester's worth of credits in which they use law in a different way than in the artificial context of the classroom. But this worry remains. One response to it is to try to modify the "fact" of the bar exam—and the recent proposal in New York to adopt the Uniform Bar Examination, and in the process substantially cut back on examining students on distinctive New York law subjects—suggests the potential of this response.<sup>80</sup> But another is to think carefully about what students actually need in order to prepare for this exam; one result of such thinking might be the offering of courses that are designed and taught as bar preparation courses (courses that might look quite different from traditional Socratic courses in the same subjects). The need to think through issues like this serves again as a reminder that the whole law school curriculum should be one curriculum, not several.

A third possible consequence might be limitation on student choice. In principle, choice is probably good, and something is lost by each restriction on it. Put so abstractly, however, this concern does not seem terribly powerful, since law school restricts choice in a range of ways already (beginning with the first-year curriculum, largely prescribed at perhaps almost every school in the nation). But there may be more concrete costs. *Some* students will wind up taking experiential courses not because they want to but because they are compelled to take them. It is reasonable to anticipate that part of what makes many experiential courses, particularly clinics, special will be lost if some of the students enrolled in them do not want to be there. And some other students may be required to take particular prerequisite courses that do not deeply engage them rather than being allowed to throw themselves into a clinic that they are passionate about and from which they might best learn.

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<sup>80</sup> Joel Stashenko, *Court System Seeks Comment on Adopting Uniform Bar Exam*, N.Y. L.J. (Oct. 7, 2014), <http://www.newyorklawjournal.com/id=1202672451929/Court-System-Seeks-Comment-on-Adopting-Uniform-Bar-Exam?slreturn=20141009195054>.

As that last example reflects, a fourth possible consequence, quite paradoxically, might be a solidification of experiential opportunities. If students must take fifteen credits of experiential coursework,<sup>81</sup> the obvious next question is: which fifteen credits? There may be many creative and fruitful answers to this question. One answer might be “any fifteen,” and that might indeed be a good answer, at least if it is accompanied by careful and accessible advice to students as they make their choices. But that also might not be the best answer or at least might not be seen as the best answer at some schools.

Another plausible approach would be to create a structured experiential curriculum. Naturally this could take many forms, but it is useful to consider the pitfalls that might arise from fully embracing one possible model, in which students’ progress from simpler, introductory tasks to more intensive simulation study followed at the end by the comprehensive experience of a clinic, can be illustrated. There is a lot to recommend such a program, even though developing it and taking advantage of its potential for step-by-step, cumulative learning will certainly entail some real coordination costs, as faculty in different classes try to ensure that their approaches complement each other over time.

Yet there is also something potentially lost: if it really is true that the best time for a student to take a clinic is after substantial preparatory class work, then it would arguably make sense to block students from taking clinics before they have had those preparatory classes. But then students with a passion for practice in a particular substantive area might have to slog through the preparatory classes when what would be best for them educationally would be to pursue their passion in a clinic as quickly as possible.

Of course, this might not be the best model. Even if it is the best model, it could be administered with more individualized sensitivity than the above illustration imagined. But there are important issues to be reckoned with here. A program that is too inflexible will in some ways interfere with students’ learning; a program that relies extensively on individualized sensitivity will take time from faculty or administrators; and a program that simply says “any fifteen” will run the risk that some students will use their fifteen poorly.

A fifth possible consequence is a ripple effect on the rest of the curriculum. To take fifteen credits in the upper years and assign them

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<sup>81</sup> See CLEA COMMENT ON DRAFT STANDARDS, *supra* note 79, at 1.

to experiential coursework will inevitably and proportionally reduce the enrollment in nonexperiential classes and credit-bearing extracurricular activities. To do the math, assuming a law school with a three year JD program, rather than a four year evening program takes fifteen credits, or about one-fourth of the upper-year total, and assigns them to experiential courses will diminish the nonexperiential courses' enrollment, on average, by about the same one-fourth. Some faculty teaching nonexperiential courses may be delighted, but some may find that their courses, for example their small seminars, become too small to be offered. Programs such as Law Review may be affected, if students see the time commitments for those programs as hard to meet while doing their experiential work. In practice, of course, some nonexperiential courses will likely remain very popular, but to the extent that some courses avoid losing enrollment, the remaining nonexperiential classes will lose even more.

To lose a course, even a course on a relatively obscure doctrinal subject, is a loss—to its teacher and to the students who might have taken it and perhaps to others who would have benefited from the generation of knowledge that the school's attention to that subject would have fostered. This loss should be acknowledged but not overestimated; no law school remotely approaches teaching every subject, and choices of coverage have always been part of curriculum design. Moreover, there are ways that these effects can be mitigated; ideally, experiential courses and components will be married with nonexperiential classes and components to the ultimate benefit of both. That may not always be possible and will involve costs as faculty reshape their courses and learn new approaches, but the results may often be very positive.

#### CONCLUSION

In the end, our response to the costs question boils down to this: clinical and experiential education entails costs. The most important issue, however, is not the hypothetical comparison of one clinic and one doctrinal course, but the shaping of programs in which the benefits of experiential education can be realized as fully as possible while the costs are recognized and effectively managed.

#### IV. INTEGRATING EXPERIENTIAL LEARNING INTO THE LAW SCHOOL CURRICULUM

##### *Report of the Working Group on Integrating Curricular Goals\**

##### INTRODUCTION

The amount and configuration of experiential education varies greatly across law schools. At many schools, experiential courses have developed in an ad hoc fashion. Too often, they do not form a coherent curriculum in themselves and they are disconnected from the traditional doctrinal curriculum. The purpose of this report is to sketch out a conceptual framework for developing a coherent experiential education program and integrating that program into the broader law school curriculum in a way that contributes to a more balanced and thorough professional formation.<sup>82</sup> This report does not purport to be a comprehensive guide to curriculum design. Rather, it suggests some basic principles that a faculty might apply in an effort to visualize and achieve an integrated curriculum. It also identifies some illustrative courses, curricula, and resources that might help a faculty envision how to implement those principles.<sup>83</sup>

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<sup>82</sup> Other working group reports address the importance of experiential learning and provide concrete examples of innovative courses and curricula. See *supra* Part I; *infra* Part V. In order to avoid duplication, this report is narrowly focused on the principles that might guide a faculty's efforts to fashion an integrated curriculum.

<sup>83</sup> The examples cited herein are by no means exhaustive, nor are they intended to be a "best practices" guide. The Working Group does not endorse or recommend any particular configuration of a course or curriculum. The Working Group's aim is simply

For purposes of this report, the Working Group adopts the definition of experiential education that was developed by the Vocabulary Working Group of the Alliance and is included in that working group's report:

Experiential Education is an active method of teaching that "integrates theory and practice by combining academic inquiry with actual experience." It encompasses "many methodologies in which educators purposefully engage with learners in direct experience and focused reflection in order to increase knowledge, develop skills, clarify values, and develop people's capacity to contribute to their communities." Experiential education methodologies in legal education include both simulated practice experiences, in which students assume the role of a lawyer in a simulated setting, and supervised practice experiences, in which students assume the role of a lawyer, either in support of others as a mentee or as a student lawyer with a high level of direct responsibility as lead counsel or member of a lawyer team.<sup>84</sup>

Experiential education thus encompasses clinics, externships, and simulations.

Working Group members believe that experiential education is such an important component of professional formation that each law school should develop a curricular plan that identifies its pedagogical goals and considers the amount, the types, and the sequence of experiential education that will be provided to its students. There is, however, no one-size-fits-all experiential education program. Each law school must develop its own approach, including the number, mix, and sequence of experiential education opportunities. An increasing number of law schools have created either an associate deanship for experiential education, a chair in experiential education, or a center for experiential education.<sup>85</sup> Such structures can help foster a coherent and well-integrated experiential curriculum.

In developing curricular plans for experiential education, law schools should address five central questions:

1. What are the core skills and competencies that graduates should possess, and which of those skills and competencies are best taught through experiential methods?
2. How many experiential courses and opportunities should the school offer to its students?

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to provide concrete examples of efforts to integrate experiential learning in order to spur creative thought.

<sup>84</sup> See *supra* Part II.A.

<sup>85</sup> See *infra* Part V.D.

3. How should experiential education be sequenced through the multi-year curriculum?
4. To what extent can experiential education methods be incorporated into traditional doctrinal classes?
5. How can the law school ensure that students are sufficiently informed about experiential opportunities that they can shape a thoughtful, personalized curricular plan?

A well-integrated law school curriculum would provide experiential opportunities, including supervised live-client opportunities, to all students. It would introduce students to experiential education in the first year and sequence experiential opportunities over all three years. Finally, it would break down the barriers between traditional doctrinal courses and experiential courses by incorporating experiential elements into doctrinal courses.

*A. Identifying Core Skills and Competencies That Lend Themselves to  
Experiential Education*

Under the ABA's newly revised Standards and Rules of Procedure for Approval of Law Schools, each law school must establish learning outcomes including competency in a variety of lawyering skills.<sup>86</sup> Having identified proposed learning outcomes, a faculty should then identify the skills and competencies that are best developed through

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<sup>86</sup> ABA Standard 301 requires that each law school "establish and publish learning outcomes" designed to prepare its students "for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession." ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 301. The outcomes should encompass a wide range of legal skills and competencies. *Id.* 302. The curriculum must include substantial opportunities for clinics and externships and must provide each student with at least six credits of experiential education. *Id.* 303. The competencies include problem solving, written and oral communication, exercise of proper professional and ethical responsibilities, and "other professional skills needed for competent and ethical participation as a member of the legal profession," which may include "interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation." *Id.* 302. Some law school faculties have already engaged in a process of identifying competencies their graduates should possess. See *Competencies We Seek in Our Graduates*, U. NOTRE DAME L. SCH., <http://law.nd.edu/about/educational-goals/> (last visited Dec. 27, 2014); *Learning Outcomes*, U. PAC. MCGEORGE SCH. L., [http://www.mcgeorge.edu/Students/Academics/Learning\\_Outcomes.htm](http://www.mcgeorge.edu/Students/Academics/Learning_Outcomes.htm) (last visited Dec. 27, 2014).

experiential methods.<sup>87</sup> Among the lawyering competencies commonly identified as important by the bar and the academy,<sup>88</sup> some clearly require experiential methods of instruction: oral and written communication, litigation skills, drafting legal documents (both for litigation and transactions), interviewing, counseling, negotiating, collaborating, and developing a professional relationship with a client, among others. Other important professional skills and competencies that lend themselves to experiential education may be less obvious. Problem solving, for example, is commonly identified as a core lawyering skill.<sup>89</sup> Problem solving can be consciously taught by confronting students, in role, with the complexities and uncertainties of live client problems in a clinic or externship course, or even in a well-crafted simulation.

Another commonly identified core lawyering skill is the ability to identify and resolve ethical issues.<sup>90</sup> While the doctrinal study of Professional Responsibility is an essential foundation, students can best learn the practical skills of recognizing and resolving ethical issues through supervised exposure to the uncertainties and complexities of actual clients and practice situations. Similarly, live-client clinics and field placements provide unparalleled opportunities for the develop-

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<sup>87</sup> Northeastern University School of Law has embarked on an ambitious Outcomes Assessment Project to examine whether and how experiential education, including cooperative placements, enhances the development of lawyering competencies. See *Outcomes Assessment Project*, NE. U. SCH. L., <http://www.northeastern.edu/law/experience/leadership/oap/> (last visited Nov. 9, 2014).

<sup>88</sup> The most frequently cited lists of attorney competencies are those contained in the ABA's so-called MacCrate Report. A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 138–40 (1992) [hereinafter MACCRATE REPORT]. The Carnegie Report is also frequently cited. CARNEGIE REPORT, *supra* note 1; see also MARJORIE SCHULTZ & STEPHEN ZEDECK, IDENTIFICATION, DEVELOPMENT, AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING 18–19 (2008), available at <http://ssrn.com/abstract=1442118> (noting that effective lawyering requires a range of both cognitive and non-cognitive competencies). A number of law firms have also established lists of competencies they use in hiring and promotion. See Neil Hamilton, *Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism* 5–8 (Univ. of St. Thomas, Legal Studies Research Paper No. 3-22, 2013), available at <http://ssrn.com/abstract=2271410>.

<sup>89</sup> See MACCRATE REPORT, *supra* note 88, at 141–51; CARNEGIE REPORT, *supra* note 1; HAMILTON, *supra* note 88, at 5.

<sup>90</sup> MACCRATE REPORT, *supra* note 88, at 140.

ment of a student's professional identity and the discernment of an appropriate career path.<sup>91</sup>

### B. *Elements of Integration*

Once a faculty has identified the skills and competencies that lend themselves to experiential education, the faculty should address the form, quantity, and sequencing in which those experiential opportunities are offered, as well as a strategy for advising students how to take full advantage of them. Core elements of integration are addressed below.

#### 1. Sufficiently Numerous and Diverse Opportunities

A well-integrated curriculum must provide sufficient experiential opportunities to allow students to develop the skills and competencies identified in the law school's curricular plan. To be sufficient, the opportunities should be of high quality in terms of both the opportunity to perform substantial lawyering tasks and the opportunity for instruction, feedback, and reflection.

Sufficiency also encompasses both breadth and quantity of opportunities. Different types of experiential courses—simulations, clinics, and externships—have different pedagogical strengths. Simulations allow faculty to control the skills to be performed and to provide opportunities for repetition of skills performances. Simulations may therefore be ideal to train students in basic lawyering techniques such as cross-examination, client interviewing, or negotiation, to name a few. In-house clinics generally offer the most thoroughly supervised guidance and instruction in client representation, and they normally allow students to play a first chair role in client representation,<sup>92</sup> but they are also subject to the inherent unpredictability of cases and clients. Clinics therefore do not always provide reliable opportunities to practice specific lawyering skills, but they provide excellent opportunities for training in problem solving, developing client relationships, investigating facts, developing case theory, and identifying and resolving

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<sup>91</sup> This report does not address the benefits of experiential learning for job placement. While such benefits can be considerable, this report is limited to the pedagogical considerations informing curriculum development.

<sup>92</sup> Some, but not all, externships also allow opportunities for first-chair client representation.



ethical issues, among other skills. Externships and co-ops<sup>93</sup> offer a unique exposure to real-world workplace dynamics and therefore provide a perspective on practice that is not typically available in clinics and simulation courses. Externships also typically allow students to explore a broader variety of practice areas than a school's in-house clinics.

Given the different pedagogical strengths of different types of experiential courses, law schools should strive to offer a variety of course types. Moreover, given the variety of skills and competencies required in different practice areas, law schools should also strive for a variety of subject matters in experiential courses. For example, experiential courses should encompass both litigation and transactional opportunities in order to provide students with training in the type of lawyering of greatest interest to them.

As discussed above, certain core lawyering competencies are best developed through live client work in role as an attorney. It follows that every law student should have the opportunity to engage in at least one well-supervised live client course before graduating. Many students may benefit from the opportunity to take more than one live client course. Nonetheless, fewer than twenty law schools require that students complete either a clinic or externship before graduation, and only fourteen additional schools formally guarantee students an opportunity to take a clinic or an externship course.<sup>94</sup> The implication is that many if not most law schools lack the capacity to provide each student with even one such opportunity. In an era of shrinking resources to assure access to justice, expanded live-client opportunities, if carefully developed, can provide both essential pedagogical benefits for law students and a new and valuable resource to the profession.

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<sup>93</sup> Emphasizing immersion, iteration and integration, a Cooperative Education Program is

[a] structured educational strategy integrating classroom studies with learning through productive work experiences in a field related to a student's academic or career goals. Unlike in an externship program, students in a Cooperative Education Program, also called Co-op Program, typically do not receive academic credit for the fieldwork. Law schools enhance learning from fieldwork in Co-op Programs in a variety of ways, such as course/fieldwork sequencing, vetting of field supervisors, assessments of student work, student journals, and pre or co-requisite companion courses.

See *supra* Part II.B.

<sup>94</sup> See *infra* Part V.A.; see also Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL'Y 11, 47-48 (2013).

A separate issue for law schools to consider is whether to impose requirements on their students, apart from ABA skills requirements, with respect to live client experiential courses. The ABA's newly revised Standard 303 requires that all students complete six credits of experiential education, but that requirement can be satisfied entirely through simulation courses.<sup>95</sup> Standard 303, therefore, does not ensure live client experiences.<sup>96</sup> Moreover, while Standard 303 requires that each school provide "substantial opportunities for law clinics and field placements," it does not require that every student be provided with such an opportunity or required to take it.<sup>97</sup> Even at schools that guarantee a clinic or externship, a student may still opt out of such experiences. Given those limitations of Standard 303 and the "clinical guarantee," a law school faculty that is convinced of the importance of a guided live client experience may therefore decide to impose an independent requirement that each student complete a clinic or externship as part of a student's six credits of experiential education. Approximately nineteen law schools have chosen to do so.<sup>98</sup> While the trend in recent years has been to reduce upper level course requirements generally, the growing awareness of the importance of experiential education, together with evolving ABA and state bar<sup>99</sup> requirements, may lead more schools to impose such additional experiential course requirements.

## 2. Sequencing

With the exception of legal research and writing, experiential education has long been confined to the second and third years and has been approached in a somewhat ad hoc fashion. Upper-level students at many law schools are able to enroll in simulations, externships, or

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<sup>95</sup> See ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 303.

<sup>96</sup> See *id.*

<sup>97</sup> *Id.*

<sup>98</sup> See *infra* Part V.A.

<sup>99</sup> State bars are beginning to pressure law schools to offer more experiential education opportunities by imposing experiential requirements for admission to the bar. New York now requires that applicants for bar admission have completed at least fifty hours of pro bono work, which can be satisfied through a law school clinic or externship. See N.Y. CT. APP. R. FOR ADMISSION OF ATT'YS & COUNSELORS AT LAW, 22 N.Y.C.R.R. § 520.16. The State Bar of California is currently developing a proposal to impose a competency training requirement for admission to the California bar that would include at least fifteen units of practice-based, experiential course work. See *Task Force on Admissions Regulation Reform (TFARR)*, ST. B. CAL., <http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx> (last visited Nov. 12, 2014).

clinics in any order or combination they choose. Attention to the sequencing of experiential education may lead to more effective student formation by ensuring that students are exposed to practice skills earlier in the curriculum and that students' experiential opportunities build on one another effectively.

*i. Including Experiential Education in All Three Years of Law School*

While traditional doctrinal courses continue to be the heart of the first-year curriculum, many law schools are beginning to introduce lawyering skills requirements beyond legal research and writing into the first year. Those innovations may take the form of either stand-alone lawyering skills courses or experiential modules incorporated into traditional courses.<sup>100</sup> Such skills courses and modules may range from simple simulations in doctrinal classes (e.g., drafting a contract during a contracts course), to enhancement of legal research and writing courses, to year-long social justice lawyering projects employing team pedagogy on behalf of live organizational clients.<sup>101</sup> Some law

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<sup>100</sup> For example, Stanford Law School requires first-year students, in addition to the traditional research and writing course, to take a Federal Litigation class that requires them to “plan litigation strategy, draft pleadings, conduct discovery, write short briefs, and orally argue major motions for dismissal, class action certification, and preliminary injunctive relief.” *Courses*, STAN. L. SCH., <http://www.law.stanford.edu/courses/1st-year-program> (last visited Nov. 12, 2014). Hamline University School of Law requires first-year students to take both a legal research and writing course and a separate three-credit course entitled Practice, Problem-Solving, and Professional Responsibility (P3) that covers ethical rules and foundational lawyering skills such as client interviewing, counseling, negotiation, and advocacy. *See The Hamline Experiential Progression*, HAMLINE U. SCH. L., <http://www.hamline.edu/law/experiential-learning/experiential-progression/> (last visited Nov. 12, 2014). Similarly, Boston University School of Law requires that first-year students enroll in a Lawyering Lab that “provides intensive introduction to lawyering skills, including contract drafting, client counseling, and negotiation” in addition to the traditional first-year legal research and writing course. *Curriculum*, B. U. SCH. L., <http://www.bu.edu/law/prospective/jd/first/curriculum.html> (last visited Nov. 12, 2014). The University of California Irvine School of Law combines legal research and writing, fact investigation, interviewing, negotiation, and oral advocacy into a single required first-year Lawyering Skills course that is three-credits per semester. *Training for the Practice of Law*, U. CAL. IRVINE SCH. L., <http://www.law.uci.edu/academics/curriculum.html> (last visited Nov. 12, 2014). UC Irvine also requires a two-credit per semester Legal Profession course during the first year, which includes simulations and study of field practice settings. *Course Catalogue*, U. CAL. IRVINE SCH. L., <http://apps.law.uci.edu/CourseCatalog/Detail.aspx?id=747> (last visited Nov. 12, 2014). For other examples, see *infra* Part V.

<sup>101</sup> Examples of such courses and techniques are listed in the Creative Initiatives Working Group report and on the website of the ABA's Legal Education, ADR, and Practical Problem Solving Project (LEAPS). *See infra* Part V; *see Legal Education, ADR*

schools have also created space in the first year curriculum for elective courses that might include skills simulations.<sup>102</sup> At least one law school has created a for-credit mentoring program that pairs first year students with practicing attorneys to introduce the students to practice settings.<sup>103</sup> Those options are not mutually exclusive, of course. A school might choose to incorporate multiple experiential components in the first-year curriculum. Such courses and modules introduce students to broader dimensions of lawyering practice, such as fact investigation, interaction with clients, and problem solving.

The pedagogical rationale for introducing broader lawyering skills in the first year is that under more traditional first-year curricula, students can develop an incomplete and inaccurate impression of lawyering through an emphasis on appellate opinions in which facts are a given, all legal matters are litigated to a conclusion, and the primary observable lawyering skills are doctrinal analysis and argument. Exposure to the broader dimensions of lawyering, including both litigation and transactional practice, puts appellate cases into context, contributes to students' understanding of the doctrinal material, better prepares students for their first-year summer experiences, initiates reflection on professional identity, and facilitates ethical reflection, among other benefits. Additionally, offering multiple experiential opportunities helps students to see the transferability of lawyering skills to multiple areas of practice.

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*and Practical Problem Solving (LEAPS) Project*, A.B.A., <http://leaps.uoregon.edu> (last visited Nov. 12, 2014) [hereinafter *LEAPS Project*]. One example of a course that connects first-year students with organizational clients is Northeastern University School of Law's Legal Skills in Social Context Social Justice course, which divides the entire first-year class into "student law offices" of up to fourteen students to carry out legal projects for nonprofit domestic and international organizational clients. See *Legal Skills in Social Context*, NE. U. SCH. OF L., <http://www.northeastern.edu/law/experience/lssc/index.html> (last visited Nov. 12, 2014) (offering a student view); *Information for LSSC Community Partners*, NE. U. SCH. L., <http://www.northeastern.edu/law/experience/lssc/partners.html> (last viewed Nov. 12, 2014) (offering a community partner view).

<sup>102</sup> See, e.g., *Courses*, *supra* note 100 (allowing first year students at Stanford Law School to take electives that include Negotiation); see also *First Year Elective*, VAND. L. SCH., <http://law.vanderbilt.edu/academics/curriculum/first-year-elective/> (last visited Nov. 12, 2014) (allowing first-year students to take a wide range of upper level elective courses); *Winter Quarter 1L Electives*, STAN. L. SCH., <http://www.law.stanford.edu/courses/1ljdopen/20142015> (last visited Nov. 12, 2014).

<sup>103</sup> See *Mentor Externship*, U. ST. THOMAS SCH. L., <http://www.stthomas.edu/law/currentstudents/mentorexternship/> (last visited Nov. 12, 2014).

ii. *Sequencing Upper-Level Simulations, Externships, and Clinics*

Law schools should carefully consider the sequencing of upper-level experiential course offerings. During the second year, students' experiential coursework might focus most significantly on simulation courses (e.g., trial advocacy, interviewing and counseling, negotiation, and drafting) and externships.<sup>104</sup> Simulation courses are a useful foundation for live client field experiences. Simulation courses, such as trial practice, negotiation, and interviewing and counseling, allow students to learn the theory and technique of core practice skills with repetition and feedback in controlled settings.<sup>105</sup> Students may be better prepared to deal with the complexities and unpredictability of live client field experiences if they have a foundation of structured skills training.

Externships are well suited to the second year for several reasons. First, they allow students to put skills into practice in real world settings and are thus an appropriate introduction to practice. Second, externships allow students to "try on" a particular type of law practice at a time when students are still discerning their career paths. Finally, some states' student practice rules prohibit students from playing "first chair" clinical practice roles until the second semester of their second year or even their third year.<sup>106</sup> Many externships do not require student practice certification and are thus available during both semesters of the second year.

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<sup>104</sup> For example, Hamline University School of Law features second-year Skills Labs, which are subject-specific courses taught through simulation methods incorporating client interviewing, analyzing facts, negotiating, and advocating. See *The Hamline Experiential Progression*, HAMLINE U. SCH. L.,] <http://www.hamline.edu/law/experiential-learning/experiential-progression/> (last visited Nov. 12, 2014).

<sup>105</sup> Upper-level simulation courses can be designed and sequenced to dovetail with first-year legal skills courses. See *Curriculum*, U. MASS. SCH. L., <http://www.umassd.edu/law/academics/curriculum/> (last visited Nov 13, 2014). For example, the University of Massachusetts School of Law has a three-semester integrated legal skills program that begins in the first year and continues into the second year, covering a range of skills including fact-gathering, legal research and writing, interviewing, counseling, oral advocacy, and negotiation. *Id.* The third semester of the program also progresses into live client settings by assigning students to write advisory memos for attorneys practicing in a public interest setting, such as child protective services or public defenders. *Id.*

<sup>106</sup> See, e.g., ILL. R. ON ADMISSION & DISCIPLINE OF ATT'YS 711 (requiring that students have completed half of their law school studies before representing clients). For a compilation of student practice rules, see *Student Practice Rules—Clinical Research Guide*, GEO. L., <http://www.law.georgetown.edu/library/research/guides/StudentPractice.cfm> (last visited Nov. 16, 2014).

During the third year, students might participate in clinics as a capstone experience in which they put their skills into practice in a “first chair” capacity. Some externships also offer “first chair” opportunities and might likewise be viewed as capstone experiences.<sup>107</sup> Certain law schools take this progression even further, treating the entire third year as primarily a time for clinical and skills training.<sup>108</sup>

Finally, a law school may decide that a particular skill or competency is so important that it should be taught pervasively throughout the three-year curriculum rather than just once in the sequence. For example, advanced legal writing, including both litigation and contract drafting, might be incorporated into both years of the upper level curriculum.<sup>109</sup>

The progressions suggested above are not intended to be rigid or limiting. There may be good reasons to allow students to participate in simulations, externships, and clinics during both their second and third years. The appropriate sequence of learning for an individual

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<sup>107</sup> Schools might specifically identify for students those externships that require student practice certification or otherwise assure a first chair experience.

<sup>108</sup> For example, Washington & Lee University School of Law redesigned its curriculum so that the third year is an entirely experiential year, consisting of a clinic or externship, three practicum courses, a two-week skills immersion, and yearlong professionalism course. See *Washington and Lee's Third Year Reform*, WASH. & LEE U. SCH. L., <http://law.wlu.edu/thirdyear/> (last visited Nov. 13, 2014). Beginning in the 2013–2014 school year, New York Law School has offered third year students the opportunity to take a “Clinical Year,” consisting of three full-time, ten-week clinical rotations. *Clinics, Externships, and Experiential Learning*, N.Y. L. SCH., [http://www.nyls.edu/academics/office\\_of\\_clinical\\_and\\_experiential\\_learning/](http://www.nyls.edu/academics/office_of_clinical_and_experiential_learning/) (last visited Nov. 13, 2014). Hamline University School of Law will offer an optional Experiential Third Year beginning in the 2015–2016 school year. *The Hamline Experiential Progression*, HAMLINE U. SCH. L., <http://www.hamline.edu/law/experiential-learning/experiential-progression/> (last visited Nov. 13, 2014).

<sup>109</sup> For example, in 2004, the faculty at Southern Illinois University School of Law instituted a *Writing Across the Curriculum* (WAC) requirement in all classes, including first-year courses. See *Writing Across the Curriculum*, S. ILL. U. SCH. L., <http://www.law.siu.edu/about/writing.html> (last visited Nov. 16, 2014). The WAC requirement mandates that every course have a written exercise, which involves individual feedback to the student. *Id.* Many faculty use this requirement to introduce a lawyering skill, such as the drafting and/or analysis of a pleading or legal document. For more information about the development of the WAC requirement, as well as the collaborative process developed by the IL faculty to sequence their individual WAC assignments by level of difficulty to help students systematically build their writing and analysis skills over the course of a semester, see Suzanne Schmitz & Alice M. Noble-Allgire, *Reinvigorating the IL Curriculum: Sequenced “Writing Across the Curriculum” Assignments as the Foundation for Producing Practice-Ready Law Graduates*, 36 S. ILL. U. L.J. 287 (2012).

student will depend on a variety of factors, including the student's professional background and interests, the availability and timing of experiential offerings, and the student's professional development objectives. The point is to have a logical sequence of experiential and related doctrinal courses available to students and an advising function, as discussed below, that will help students determine the sequencing that is most suited to their individual professional development.

iii. *Sequencing Experiential and Doctrinal Courses*

A final dimension of curriculum sequencing is ensuring appropriate synergies between doctrinal and experiential courses. At the most basic level, law schools may consider whether students enrolling in clinical courses or externships might be required to take related doctrinal courses as prerequisites or co-requisites (e.g., Immigration Law before Immigration Clinic; Bankruptcy Law before Bankruptcy Clinic; Evidence and Trial Advocacy before litigation clinics and externships; or Professional Responsibility before any live client clinic). At a more advanced level, a law school might identify a comprehensively sequenced upper level curriculum that aims to develop core lawyering skills and competencies through an integrated sequence of doctrinal and experiential courses.<sup>110</sup> Separate sequences may be appropriate for transactional skills and litigation skills.

C. *Integrating Experiential Methods into Doctrinal Courses*

A final dimension of integration is breaking down the barrier between experiential education and the traditional doctrinal classroom. Many law schools and individual professors have broken down this barrier by incorporating experiential elements into their first-year or upper-level doctrinal courses. Numerous textbooks in fields including accounting, bankruptcy, civil procedure, contracts, business law, evidence, family law, property, torts, tax, and others now incorporate

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<sup>110</sup> One such example is the Daniel Webster Scholar Program at the University of New Hampshire, which has a carefully sequenced set of upper level doctrinal and experiential courses during the second and third years paired with a sequenced assessment of competencies that leads directly to bar admission in New Hampshire without taking the bar examination. See *Daniel Webster Scholar Program Curriculum*, U. N.H. SCH. L., <http://law.unh.edu/academics/jd-degree/daniel-webster-scholars/curriculum> (last visited Dec. 3, 2014).

practical problem solving and professional skills exercises into courses traditionally taught only through the Socratic or lecture method.<sup>111</sup>

There are many strategies for incorporating experiential education into traditional doctrinal courses.<sup>112</sup> Such techniques may include simulations, role playing, team problem solving in the classroom, or out-of-class assignments, such as drafting contracts or pleadings. Some doctrinal courses are taught as extended simulations that last throughout the semester.<sup>113</sup> Some professors have their students interact with actual clients—often nonprofit organizations—in the classroom or go into the community to meet with clients.<sup>114</sup> Some schools have also introduced optional add-on components (sometimes styled as “practicums” or “labs”) to traditional courses, allowing students to perform an additional one-credit component of experiential work in that particular subject area.<sup>115</sup> Such add-ons may be taught and supervised by the

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<sup>111</sup> Carolina Academic Press, Lexis/Nexis, West Academic, and Wolters Kluwer/Aspen all produce texts that incorporate experiential components with standard doctrinal material. Many such texts and related resources are listed on the web page of the ABA’s Legal Education, ADR and Practical Problem Solving Project (LEAPS). See *LEAPS Project*, *supra* note 101.

<sup>112</sup> Many experiential teaching strategies and resources are collected on the websites of the ABA’s Legal Education, ADR and Practical Problem Solving Project (LEAPS) and Educating Tomorrow’s Lawyers. See *id.*; *Educating Tomorrow’s Lawyer’s*, U. DENV., <http://educatingtomorrowlawyers.du.edu> (last visited Dec. 3, 2014).

<sup>113</sup> For example, Professor Mark McKenna’s Trade Dress and Design course at Notre Dame Law School “explores the legal protection available for various types of design, such as industrial design and architectural design, by having teams of students interview and develop legal advice for design students on how to protect their creations.” *Lawyer-ing Skills*, U. NOTRE DAME L. SCH., <http://law.nd.edu/academics/clinics-and-experiential-learning/lawyer-ing-skills> (last visited Dec. 3, 2014). Professor Roberto Corrada teaches both Labor Law and Administrative Law at the University of Denver’s Sturm College of Law through extended simulations. Professor Corrada’s Labor Law students, for example, vote whether to form a union and, if they do, negotiate aspects of the course with Professor Corrada, file and arbitrate unfair labor practice complaints, and perform other labor law practice activities during the course. See *Innovative Learning at Sturm College of Law*, NERDWALLET (Jan. 8, 2013), <http://www.nerdwallet.com/blog/nerdscholar/2013/innovative-learning-sturm-college-law>. Likewise, the University of the Pacific McGeorge School of Law teaches business transactions through a simulation course titled Business Transactions: The Art of the Deal. *Course Descriptions*, U. PAC. MCGEORGE SCH. L., [http://www.mcgeorge.edu/Students/Academics/Courses/Course\\_Descriptions.htm?257](http://www.mcgeorge.edu/Students/Academics/Courses/Course_Descriptions.htm?257) (last visited Dec. 3, 2014).

<sup>114</sup> A wide range of sample assignments and resources are listed on the webpage of the ABA’s Legal Education, ADR and Practical Problem Solving (LEAPS) Project. See *LEAPS Project*, *supra* note 101.

<sup>115</sup> The Creative Initiative Working Group’s report cites a number of such add-on labs or practicums. See *infra* Part V. Other examples not cited in that report include Georgetown Law’s multiple practicum courses and the University of Massachusetts School



same faculty member who teaches the core basic doctrinal course, by a clinical faculty member, or by an adjunct professor who works in the field.

Some doctrinal faculty are concerned that they do not have the time or expertise to plan and execute experiential components. There is a variety of ways to support faculty in developing such innovations. Some schools hold faculty workshops or convene faculty-learning communities to explore possibilities for incorporating experiential opportunities into doctrinal courses. Virtually every law school has a professor who has incorporated some form of practical or problem-solving exercise into a traditional course. Such professors might be invited to present those techniques at a faculty colloquium in lieu of a research paper. A law school may also consider providing summer stipends to professors proposing to develop more innovative teaching methods for their traditional courses. Finally, adjunct faculty members may be able to provide ideas and support in developing experiential components.

The point here is not that every single doctrinal course in a law school curriculum must have an experiential component. Nonetheless, in developing strategies for delivering a range of experiential opportunities to its students and ensuring a well-rounded professional formation, a law school should carefully consider such opportunities and should support faculty members who are interested in modifying their courses to incorporate such opportunities. A law school might allow such opportunities to develop organically, or it might consider ensuring that all students are exposed to experiential methods by inserting experiential components into one or more required courses.

#### D. *Advising*

A typical law school's array of experiential courses may seem perplexing or even overwhelming to a student trying to map out a curricular plan. Students faced with a range of clinics, externships, and simulation courses may not understand the differences among those categories of courses, the pedagogical benefits of each course, or how the courses might build on one another. As law schools offer an in-

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of Law's Coordinated Field Placement Program. See *Field Placement Programs*, U. MASS. SCH. L., <http://www.umassd.edu/law/academics/clinicalprogramsexperientiallearning/fieldplacementprograms> (last visited Dec. 3, 2014); *Practicum Courses*, GEO. L., <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/practicum> (last visited Dec. 3, 2014).

creasing number and variety of experiential offerings, students have an ever-greater need for guidance in choosing a combination and sequence of offerings tailored to their individual developmental needs and interests. Law schools can foster more effective utilization of experiential offerings by developing written guidance for students and, ideally, by providing adequate in-person advising resources (whether faculty or staff) to assist students in crafting individualized development plans. Written guidance may take the form of memos or webpages outlining courses of study in particular subject areas, providing advice on constructing a comprehensive curriculum, or listing courses that would help a student develop a particular competency. Some schools have developed extensive, interactive websites that allow students to navigate the curriculum by looking at it from a variety of perspectives.<sup>116</sup>

#### CONCLUSION

Integration is a continuum. Each school will choose its methods of experiential education, the amount of experiential opportunities it will offer, and the methods of integrating those opportunities with the traditional doctrinal curriculum. What is essential is that law schools approach experiential education deliberately, constructing a coherent curriculum and communicating it to students with sufficient clarity so that students can take full advantage of their professional development opportunities.

#### V. CREATIVE INITIATIVES AT U.S. LAW SCHOOLS

##### *Report of the Working Group on Creative Initiatives\**

#### INTRODUCTION

Creative initiatives and programs that address problems in legal education are underway at many law schools. Some initiatives are en-

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<sup>116</sup> Some law schools have begun to develop interactive online guides for constructing a personal law school curriculum. See, e.g., *Pathways to the Profession of Law*, WM. MITCHELL C. L., <http://web.wmitchell.edu/pathways> (last visited Dec. 3, 2014); *SLSNavigator*, STAN. L. SCH., <http://slsnavigator.law.stanford.edu> (last visited Dec. 3, 2014). Such guides provide curricular advice by legal subject area and by type of practice, e.g., litigation versus transactional work. That type of web-based tool could be used to educate students about how to use experiential courses to develop both core lawyering competencies and subject-specific skills and how to sequence or integrate experiential courses with traditional doctrinal courses.

\* Christine Cimini (Co-chair), Roberto Corrada (Co-chair), Mulligan Burtleson Chair in Modern Learning, University of Denver Sturm College of Law; Myra Berman,

tirely new in design and aim. These run the gamut from full programs to singular examples, such as an innovative course. Some initiatives build on or give new direction to existing programs, such as clinics and externships. Other initiatives are designed to address the costs and time commitment associated with a traditional three-year JD. Taken as a whole, the breadth and variety of these many efforts signal that law schools hear, take seriously, and are responding to criticisms being leveled at legal education.

This report begins the process of identifying and cataloging creative programmatic initiatives in law schools. It organizes these sundry efforts into seven categories: requirements or guarantees of experiential education opportunities; simulation/observation courses; structured experiential programs; the establishment of Deans/Directors/Chairs and/or Centers/Programs focused on experiential education; pro bono and public interest initiatives with experiential components; post-graduation innovations; and multi-disciplinary approaches. The report further defines initiatives within each category and provides relevant links so the reader may access information about programs online.

The authors of this report faced several challenges in drafting this section. The first challenge relates to the organization of topics. Organization was difficult because law schools often put different labels on similar efforts and similar labels on efforts that are actually distinct. While these efforts were categorized as best they could be, this report represents only one of many ways to organize the information. The second challenge involves the scope of the project. The specific examples cited surely underrepresent the total efforts underway in each of these categories. Despite this very real caveat, this report will hopefully initiate an exchange of information about creative initiatives throughout the country. To that end, those who review this report are invited to provide additional information about creative initiatives that were overlooked or about which the authors of this report are unaware.

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A. *Law Schools That Require or Guarantee Experiential Education Opportunities*

An ever growing number of law schools have adopted requirements or guarantees of experiential education opportunities.

Current ABA Accreditation Standard 302(b) requires that law schools offer substantial opportunities for, among other things, “[l]egal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context.”<sup>117</sup> ABA Standard 301(a) requires in part that a law school prepare its students for “effective, ethical, and responsible participation as members of the legal profession.”<sup>118</sup> Standard 302(a) (Curriculum) requires that each student receive instruction in, among other things, the “[k]nowledge and understanding of substantive and procedural law.”<sup>119</sup> In other words, schools must provide substantial *instruction* in professional skills and must provide substantial *opportunities* for real-life practice experiences. However, schools have flexibility in how they choose to meet these requirements.

In March of 2014, the ABA Council, which regulates law schools, adopted a recommendation that every law student receive at least six credits of experiential education.<sup>120</sup> The ABA House of Delegates concurred with the measure in August of 2014.<sup>121</sup>

Some schools are already in compliance with the six-credit experiential education recommendation.<sup>122</sup> Other schools will need to make curricular changes to bring their programs into compliance. Cur-

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<sup>117</sup> ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 302(b).

<sup>118</sup> *Id.* 301(a).

<sup>119</sup> *Id.* 302(a).

<sup>120</sup> Mary Lynch, *Council on Legal Education Maintains Tenure and 405, Adds Requirement of Six Experiential Credits and Calls for Notice and Comment on Paid Externships*, BEST PRACTICES FOR LEGAL EDUC. (Mar. 16, 2014), <http://bestpracticeslegaled.albanylawblogs.org/2014/03/16>.

<sup>121</sup> *American Bar Association House of Delegates Adopts Resolutions on Cybersecurity, Domestic Violence*, A.B.A. (Aug. 12, 2014), [http://www.americanbar.org/news/abanews/abanews-archives/2014/08/american\\_bar\\_associa.html](http://www.americanbar.org/news/abanews/abanews-archives/2014/08/american_bar_associa.html) (“The House concurred with a package of changes to the ABA’s law school approval standards, including increased requirements for practical-skills training, allowance of more distance-learning credits and a move toward outcome-based evaluations of J.D. programs based on factors such as bar-passage and employment rates.”).

<sup>122</sup> See *Schools Requiring Experiential Courses*, ALB. L. SCH. CENTER FOR EXCELLENCE TEACHING (CELT), <http://www.albanylaw.edu/celt/reform/Pages/Schools-Requiring-Experiential-Courses.aspx> (last visited Dec. 3, 2014).

rently, some schools require a certain number of experiential credits to graduate while others guarantee a number of credits (or a full year) to interested students.<sup>123</sup> The number of experiential credits required or guaranteed varies among schools. And some schools have a year-long experiential requirement.<sup>124</sup> Schools differ on the scope of the requirement with some defining the requirement narrowly to include only live-client clinics while others include clinics and/or externships opportunities.<sup>125</sup> Whether mandated or guaranteed, or narrowly or broadly defined, the number of schools providing these opportunities is increasing.

A couple of surveys illustrate that the number of schools requiring or guaranteeing clinical or externship experiences for students is growing. In 2010–2011, the Center for the Study of Applied Legal Education conducted a survey of ABA-accredited law schools regarding the schools' applied legal education programs (clinics and field placements).<sup>126</sup> One hundred sixty-three of one hundred ninety-four schools responded (84%).<sup>127</sup> Approximately 3.2% of those schools require students to enroll in a live-client clinic before graduating (5.2 schools).<sup>128</sup> Approximately 2.6% require students to complete a field placement program before graduating (4.2 schools).<sup>129</sup> Then, approximately 4.5% of the remaining schools require students to enroll in a live-client clinic *or* a field placement program before graduating (6.9 schools).<sup>130</sup> Thus, in all, approximately sixteen of one hundred sixty-three schools require a clinic or a field placement before graduation.<sup>131</sup> The authors of this report are not aware of any data that has been collected on the number of schools that either require simulation-

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<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Many schools have an experiential requirement that is broadly defined to include simulated courses or other experiential integrated teaching. These courses are designed to ensure compliance with the current ABA standard that requires "substantial opportunity" for "law clinics or field placement(s); and student participation in pro bono legal services, including law-related public service activities." ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 303(b).

<sup>126</sup> David A. Santacroce & Robert R. Kuehn, *The 2010-11 Survey of Applied Legal Education*, CENTER FOR STUDY OF APPLIED LEGAL EDUC. (2012), <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf>.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

based courses or include simulation-based courses as one option for fulfilling an experiential requirement.

A more recent collection of data reports that nineteen law schools require a credit-bearing clinic, externship, or practicum experience for graduation.<sup>132</sup> The schools vary in the number of credits required, whether clinics, externships, practicums, or some variation of the three count. The most common model, adopted by six schools, is a minimum of three credits of clinic or externship in order to graduate.<sup>133</sup> Two schools require four credits,<sup>134</sup> and two different schools require six credits of clinic or externship.<sup>135</sup> A few schools have minimum credit requirements, ranging from two to six, for clinic enrollment only.<sup>136</sup> Several schools have a large experiential course credit requirement, some credits of which must be clinic or externship credit.<sup>137</sup> One school has a mandatory four co-op experiences in which students are placed in legal settings and work full-time, but do not pay tuition and do not receive academic credit.<sup>138</sup> There are also fourteen schools

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<sup>132</sup> For a description of the schools that had this requirement prior to 2013, see Tokarz et.al., *supra* note 94, at 45 n.154.

<sup>133</sup> *Id.* (listing the requirements at the following schools: Appalachian School of Law – minimum three credits externship (1997); Cleveland-Marshall College of Law – minimum three credits clinic or externship (2013); Gonzaga University – minimum three credits clinic or externship (2008); John Marshall Law School – minimum three credits clinic or externship (2013); University of Connecticut – minimum three credits clinic or externship (2013); Thomas Cooley University – minimum three credits clinic or externship; and University of Massachusetts School of Law – minimum three credits clinic or externship).

<sup>134</sup> *Id.* (noting that both University of Dayton (2007) and University of Montana (1995) require four credits of a clinic or externship).

<sup>135</sup> *Id.* at 45 n.154, 49 (noting Vermont Law School (2014) and University of California-Irvine (2008) require a minimum of six credits of clinic or externships, while the University of Maryland requires a minimum of five credits of clinic or “legal theory and practice” courses (1998)).

<sup>136</sup> *Id.* at 45 n.154 (listing the minimum credit requirements for the following schools: University of Detroit Mercy – minimum three credits clinic (2012); University of New Mexico – minimum six credits clinic (1970); and University of Puerto Rico – minimum six credits clinic (1965)).

<sup>137</sup> *Id.* (noting the experiential requirements at the following schools: City University of New York (CUNY) – minimum twelve credits clinic or externship out of sixteen to twenty required experiential course credits (1983); University of District of Columbia (UDC-DCSL) – minimum fourteen credits clinic out of sixteen required experiential course credits (1972, 1986); Washington & Lee University – minimum five credits of clinic, externship, or practicum as part of overall twenty required experiential course credits (2009)).

<sup>138</sup> *Id.* at 47 n.157 (detailing that since 1968, Northeastern University has required second and third year students to spend four quarters of their legal studies in legal work

that provide a written guarantee that all students who choose to take a clinic or externship course (or real-client/real-case practicum) will be provided one.<sup>139</sup>

Other schools comply with the ABA requirement for “substantial instruction” in problem solving, oral communication, “other professional skills generally regarded as necessary for effective and responsible participation in the legal profession,” and “the history, goals, structure, values, rules and responsibilities of the legal profession and its members,” by broadly defining graduation requirements to include simulated courses.<sup>140</sup> Simulation courses are not the only way to meet this ABA accreditation requirement; other schools use upper level writing courses to meet this requirement.<sup>141</sup>

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experiences, for which students are not charged and do not receive credit, although some students receive stipends).

<sup>139</sup> *Id.* at 46 n.155 (stating that guarantees for admission into the following programs were provided at the following schools: American University – clinic, externship, or real-client/case practicum (2013); California Western School of Law – externship (2013); Case Western Reserve University – clinic, externship, or real-client/case practicum (2002); Charlotte School of Law – clinic or externship (2013); Nova Southeastern University – clinic or externship (2006); Roger Williams University – clinic or externship (2013); Rutgers University-Newark – clinic or externship (1999); St. Louis University – clinic or externship (2009); Temple University – clinic or externship (1985); University of Alabama – clinic (2008); University of Denver – clinic or externship (2013); University of New Hampshire – clinic or externship (2005); Vermont Law School – guarantee thirteen credits of clinic and/or externship (2014); and Washington University-St. Louis – clinic or externship (1998)).

<sup>140</sup> *E.g.*, *Elective Skills Courses*, U. CAL. BERKELEY SCH. L., <http://www.law.berkeley.edu/178.htm> (last visited Nov. 16, 2014) (“Beginning with the 2010 fall entering class, all students must take a professional skills course, a live-client clinic, or a field placement, in their second or third year.”); *CharlotteLaw Edge – The Third Year*, CHARLOTTE SCH. L., [http://www.charlottelaw.edu/sites/default/files/academics/Edge\\_the%20third%20year.pdf](http://www.charlottelaw.edu/sites/default/files/academics/Edge_the%20third%20year.pdf) (last visited Nov. 16, 2014) (“Each third-year student will complete a full-time or part-time real world placement.”); *The Office of Skills and Experiential Learning*, LOY. U. NEW ORLEANS C. L., <http://law.loyno.edu/skills-curriculum> (last visited Nov. 16, 2014) (noting that students are required to complete eight skills courses); *Experiential Learning*, WHITTIER L. SCH., <https://www.law.whittier.edu/index/build/experiential-learning/> (last visited Nov. 16, 2014) (stating that twenty-nine units of the curriculum are devoted to experiential learning).

<sup>141</sup> *E.g.*, *Academic Policies*, U. VA. SCH. L., [http://www.law.virginia.edu/html/academics/policies/policies\\_procedures\\_6.htm](http://www.law.virginia.edu/html/academics/policies/policies_procedures_6.htm) (last visited Nov. 16, 2014); *Curriculum Guide*, B.C. L. SCH., <http://www.bc.edu/schools/law/services/academic/programs/curriculum/guide.html> (last visited Nov. 16, 2014).

## B. *Simulation/Observation Courses*

Many law schools are engaged in innovative simulation work. Simulation courses provide an opportunity to practice the skills of lawyering in a controlled setting in which exercises can be shaped to provide students with challenging tasks from which they can learn without the risk of affecting an actual client's well being. The manner in which simulations are incorporated into curricular offerings varies. The lawyering tasks might include client counseling, legal research and writing, advocacy, mediation, litigation, legislative drafting, problem solving, or policy work. These courses typically have smaller class sizes to ensure effective student supervision and feedback and opportunities for reflection. This section highlights the range of simulation programs; experiential enhancement courses often referred to as labs or practicums; observation learning programs; and simulation resources for faculty.

### 1. Range of Simulation Programs

Simulation programs vary in length, substantive scope, and whether the courses are required or elective. These programs help students understand what lawyers actually do, what range of activities lawyers actually perform, and the skills they bring to bear. Simulation programs provide an alternative for those students who learn best in a hands-on manner and help prepare students to be practitioners able to provide a range of legal services. Some schools require students to participate in a one-year, simulation-based course that incorporates legal research and writing, legal analysis, client interviewing, counseling, negotiation, discovery, appellate skills, and oral advocacy.<sup>142</sup> Other schools expand upon that and offer two-year simulation programs.<sup>143</sup> One school offers this opportunity to second- and third-year students.<sup>144</sup> The program “meshes substantive law with professional skills. Classes are structured to simulate a law firm, with professors acting as senior partners who oversee the student ‘associates’ as they perform a

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<sup>142</sup> E.g., *Lawyering Program*, ALB. L. SCH., <http://www.albanylaw.edu/academics/lawyering/Pages/default.aspx> (last visited June 4, 2014); *Lawyering Process Program*, U. NEV. LAS VEGAS WILLIAM S. BOYD SCH. L., <http://www.law.unlv.edu/lawyering-process-program.html> (last visited June 4, 2014).

<sup>143</sup> E.g., *Curriculum & Course Descriptions: Lawyering Seminars*, CITY U. N.Y. SCH. L., <http://www.law.cuny.edu/academics/courses/curriculum.html> (last visited Nov. 16, 2014).

<sup>144</sup> *General Practice Program*, VT. L. SCH., [http://www.vermontlaw.edu/Academics/General\\_Practice\\_Program.htm](http://www.vermontlaw.edu/Academics/General_Practice_Program.htm) (last visited Nov. 16, 2014).



broad range of legal activities.”<sup>145</sup> Another school requires two years of simulated work for first- and second-year law students.<sup>146</sup> This program is a four-semester series of classes in which students research and write memos and briefs, interview and counsel clients, draft and negotiate contracts and make deals, and give advice to clients and presentations to courts.<sup>147</sup>

Other simulation offerings are substance specific and can be offered for either a semester or for a progressive full year.<sup>148</sup> For example, in one course, students work in the business and entrepreneurship area and start by drafting agreements, documents, and client memos.<sup>149</sup> The second semester builds upon the work of the first semester and has students working in teams as simulated mock law firms to address the legal issues involved in the startup companies the teams develop.<sup>150</sup> Another semester-long, full-course simulation class focuses on litigation.<sup>151</sup> This program is designed “to provide enhanced skills-related training; to broaden exposure to specialized areas of legal practice; to orient students to the global legal market; and to facilitate connections between students, alumni, and prospective employers.”<sup>152</sup>

Another model for simulations is to offer intensive simulation courses that are short in length but time-consuming for that limited period of time. For example, at one law school, all second-year law students take part in an intensive two-week trial practicum.<sup>153</sup> The two-week workshop focuses on integrating the second-year law student’s knowledge of substantive evidence with practical trial skills through a

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<sup>145</sup> *Id.*

<sup>146</sup> 2014–15 *General Bulletin: Juris Doctor*, CASE W. RES. U. SCH. L., <http://bulletin.case.edu/schooloflaw/jd/> (last visited Nov. 16, 2014).

<sup>147</sup> *Id.*

<sup>148</sup> *E.g., Simulations*, PACE L. SCH., <http://www.law.pace.edu/simulations> (last visited Nov. 16, 2014); *Simulation Courses*, N.Y. L. SCH., [http://www.nyls.edu/academics/office\\_of\\_clinical\\_and\\_experiential\\_learning/simulations/](http://www.nyls.edu/academics/office_of_clinical_and_experiential_learning/simulations/) (last visited Nov. 16, 2014).

<sup>149</sup> *Course Description*, U. ARIZ. JAMES E. ROGERS C. L., [http://www.law.arizona.edu/current\\_students/academic\\_programs/courses\\_master\\_description.cfm?courseid=146](http://www.law.arizona.edu/current_students/academic_programs/courses_master_description.cfm?courseid=146) (last visited Nov. 16, 2014).

<sup>150</sup> *Course Description*, U. ARIZ. JAMES E. ROGERS C. L., [http://www.law.arizona.edu/current\\_students/academic\\_programs/courses\\_master\\_description.cfm?courseid=147](http://www.law.arizona.edu/current_students/academic_programs/courses_master_description.cfm?courseid=147) (last visited Nov. 16, 2014).

<sup>151</sup> *Chicago Program*, U. ILL. C. L., <http://www.law.illinois.edu/academics/chicago-program> (last visited Nov. 16, 2014).

<sup>152</sup> *Id.*

<sup>153</sup> *Kessler-Eidson Program for Trial Techniques*, EMORY L. SCH., <http://law.emory.edu/academics/academic-programs/trial-techniques.html> (last visited Nov. 17, 2014).

“learn-by-doing” format.<sup>154</sup> Trial experience is supplemented by textbook, lectures, and discussions.<sup>155</sup> Students must develop theories for particular witness examinations, decide on appropriate approaches to bring out the facts consistent with their theories, prepare witnesses, and conduct direct and cross examinations using current courtroom technology in the use of exhibits.<sup>156</sup>

Finally, many law schools embed simulations into doctrinal courses to augment the theoretical learning. Most law schools have such classes, but some law schools offer a series of simulation courses in a particular substantive field<sup>157</sup> or specifically identify for students the array of simulation courses offered at the school.<sup>158</sup>

## 2. Experiential Enhancers (Labs/Practicums)

Labs or practicums are offered at many law schools. Some labs take the form of an add-on to an existing doctrinal course. The labs are designed to offer students an opportunity to focus on application of doctrine and to solve legal problems in small group breakout sessions conducive to hands-on, active learning. The learning setting facilitates frequent formative assessments of each student’s progress in adjusting to law school and in learning legal concepts.<sup>159</sup>

At other schools, the skills lab offerings are more structured and are required of all students. Again, in this context, the skills lab is appended to a core course and requires students to do hands-on exercises for which they receive feedback from the instructor.<sup>160</sup> The Skills

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> Columbia Law School offers a series of seminar classes that are substantively related to transactional law and that use simulation technique as part of the teaching. Classes integrate Socratic teaching with experiential learning—drafting, negotiating, and analyzing real-world business transactions—to help students better understand what a business lawyer does. For more information, see *The Charles Evans Gerber Transactional Studies Center*, COLUM. L. SCH., <http://web.law.columbia.edu/transactional-studies> (last visited Nov. 15, 2014).

<sup>158</sup> New York Law School identifies all of the simulation options available for students in the curriculum. See *Simulation Courses*, N.Y.L. SCH., [http://www.nyls.edu/academics/office\\_of\\_clinical\\_and\\_experiential\\_learning/simulations/](http://www.nyls.edu/academics/office_of_clinical_and_experiential_learning/simulations/) (last visited Nov. 15, 2014).

<sup>159</sup> See, e.g., *Academic Catalogs*, VT. L. SCH., <http://www.vermontlaw.edu/academics/academic-catalogs> (last visited Feb. 7, 2015); Widener Law School, Applied Learning Laboratory (information on file with authors).

<sup>160</sup> Hamline University School of Law (information on file with authors); Widener Law School, Applied Learning Laboratory (information on file with authors).

Labs are designed as an intermediate level of skills development in the second year of law school with the objectives of: (1) reinforcing the lessons taught in the required first-year lawyering course that legal issues are not disembodied but arise in the context of clients' multidimensional situations and require problem solving as well as analysis; (2) requiring students to use and develop facts gathered from mock client interviews and gleaned from documents rather than having facts spoon-fed to them; and (3) giving students exposure to how legal doctrine plays out in practice from the perspective of lawyers in that practice area.<sup>161</sup>

Another school allows students to design and execute their own simulation experience.<sup>162</sup> Known as the Advanced Course Related Experience (ACRE), this program allows

students to earn academic credit for experiential learning done in conjunction with a classroom course that they have taken, or are taking, for credit. Students work in conjunction with full-time faculty members to design and execute proposals for learning how law and theory learned in the classroom operates externally. Some projects may present opportunities for collaboration between faculty teaching clinical and classroom courses. ACRE also may be used to provide opportunities for students to assist faculty with pro bono representation of community groups or clients.<sup>163</sup>

### 3. Observation Learning

Some law schools offer classes that focus on observation and reflection as a vehicle for learning. For example, one school has

all first year classes shift to a campus courtroom for a week, enabling students to view an actual state or federal trial as if in an educational laboratory. The trial practicum dissects every phase of a trial, from jury selection to jury verdict, incorporating small group discussions, lectures, practice panels and debriefings with attorneys, judge and jurors.<sup>164</sup>

Another law school offers students a unique opportunity to shadow attorneys from "private firms, public interest law offices, and governmental law departments at trial, evidentiary hearings, motion hearings, and depositions as well as at non-litigation proceedings such as media-

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<sup>161</sup> *Id.*

<sup>162</sup> *Advanced Course-Related Experience (ACRE)*, IND. U. MAUER SCH. L., <http://mckinney-law.iu.edu/practice/ACRE.html> (last visited Nov. 15, 2014).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

tions, closings and settlements.”<sup>165</sup> One law school offers a one-credit elective for first-year students who form small groups and spend three days over winter break engaged in public interest or public service immersions in cities of their choice.<sup>166</sup> Students visit public interest and government law offices, visit courts and prisons, do service projects, and visit pro bono departments of private firms to learn about the work of public interest and public service attorneys.<sup>167</sup>

#### 4. Simulation Resources

One law school created a resource of simulated case studies based on real case examples that can be used by faculty at other schools.<sup>168</sup> The case studies are currently in the environmental field, but the school plans to expand to the business field next.<sup>169</sup> As described, the Case Studies Collection is an

innovation in law school teaching designed to hone students’ problem solving skills and stimulate creativity. The Collection includes situational case studies and interactive simulations (collectively referred to as “Case Materials”) that place students in the roles of lawyers and policy makers and teach fundamental lawyering skills such as investigating facts, counseling, and resolving ethical dilemmas.<sup>170</sup>

The case studies present narratives of real-life events and ask students to identify and analyze the relevant legal, social, business, ethical, and scientific issues involved. Playing the role of protagonist in each case study—such as a private attorney counseling a biotechnology company facing hazardous waste issues or a federal official seeking to develop an effective fishery management plan—students formulate appropriate strategies for achieving workable solutions to conflicts then discuss and debate their recommendations in class. This interactive approach to learning bolsters students’ acquisition of skills in critical areas: factual investigation, legal research, counseling, persuasive oral communica-

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<sup>165</sup> *Shadow Program*, COASTAL L., <http://www.fcsl.edu/shadow-program> (last visited Nov. 15, 2014).

<sup>166</sup> *Galilee*, U. NOTRE DAME L. SCH., <http://law.nd.edu/academics/clinics-and-experiential-learning/immersion-courses/galilee/> (last visited Nov. 15, 2014).

<sup>167</sup> *Id.*

<sup>168</sup> *Stanford Law School Case Studies Collection*, STAN. L. SCH., <https://www.law.stanford.edu/organizations/programs-and-centers/environmental-and-natural-resources-law-policy-program-enrlp/case-studies/stanford-law-school> (last visited Nov. 15, 2014).

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

tion, and recognition and resolution of ethical dilemmas, to name a few.<sup>171</sup>

### C. Structured Experiential Programs

A number of law schools require or allow students to fill their third year entirely with experiential learning or otherwise offer substantially structured experiential education. This section highlights four types of programs: experiential third year programs; semester-in-practice programs; programs that are linked to early or alternative bar passage; and project-based learning programs.

#### 1. Experiential Third Year and Other Structured Experiential Programs

In 2008, Washington & Lee Law School launched a program that entirely restructured the third year of law school as experiential teaching.<sup>172</sup> The Experiential Third Year begins each semester with a two-week skills immersion course (litigation one semester and transactional practice the other), followed by clinic, externship, or practicum modules.<sup>173</sup> The practicum modules teach substantive law through the methodology of extended simulation, modeling the practice of law in diverse areas, such as family law, entertainment law, banking law, and criminal law.<sup>174</sup>

Other schools have developed optional structured experiential programs, which guide students in self-designing an experiential third year;<sup>175</sup> create a substantial experiential track throughout law school;<sup>176</sup> or provide a series of rotations through different clinical experiences

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<sup>171</sup> *Stanford Law School Case Studies Collection: Frequently Asked Questions*, STAN. L. SCH., <https://www.law.stanford.edu/organizations/programs-and-centers/environmental-and-natural-resources-law-policy-program-enrlp/case-studies/stanford-law-scho-0> (last visited Nov. 15, 2014).

<sup>172</sup> *Washington and Lee School of Law Announces Dramatic Third Year Reform*, WASH. & LEE U. SCH. L., <http://law.wlu.edu/news/storydetail.asp?id=376> (last visited Nov. 11, 2014).

<sup>173</sup> *Washington and Lee's Third Year Reform Leading the Way in Legal Education Reform*, WASH. & LEE U. SCH. L., <http://law.wlu.edu/thirdyear/> (last visited Nov. 11, 2014).

<sup>174</sup> *Third Year Component Descriptions*, WASH. & LEE U. SCH. L., <http://law.wlu.edu/thirdyear/page.asp?pageid=652> (last visited Nov. 11, 2014).

<sup>175</sup> *The Hamline Experiential Progression*, HAMLIN U. SCH. L., <http://www.hamline.edu/law/experiential-learning/experiential-progression/> (last visited Nov. 11, 2014).

<sup>176</sup> *Experiential Advantage*, U. DENV. STURM C. L., <http://www.law.du.edu/index.php/experiential-advantage> (last visited Nov. 11, 2014).

throughout the third year of law school.<sup>177</sup> Additionally, there are schools that have a selective process to identify qualified applicants for a three-year integrated, modern version of the traditional apprenticeship.<sup>178</sup> Once accepted into the program, students attend a regular first-year curriculum, participate in an intensive skills-focused summer session, and work at a full-time apprenticeship in the fall.<sup>179</sup> In the spring of the second year, students return to full-time classes.<sup>180</sup> In the third year, students complete a second apprenticeship and have the option to enroll in additional practice-based courses.<sup>181</sup>

Another school offers a collaborative courts program, a three-year curricular option for students designed to incrementally merge their classroom learning with the practical work of the courts.<sup>182</sup> In the first year, students visit state and federal courts to observe proceedings and meet with judges, attorneys, and court personnel.<sup>183</sup> Students discuss observations with faculty.<sup>184</sup> In the second year, known as the integration year, students enroll in classes specifically designed to integrate theory and practice.<sup>185</sup> Finally, in the third year, students specialize and get hands-on practical experience through externships, pro bono projects, or other special courses.<sup>186</sup>

## 2. Semester-in-Practice Programs

Many schools have responded to the call for more experiential programs by launching Semester-in-Practice programs, which provide students with a full-semester immersion in a real practice setting. Some of these programs utilize the school's existing externship structure to permit students to spend the entire semester in what would otherwise be a limited-credit externship.<sup>187</sup> Although these programs

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<sup>177</sup> *Clinics, Externships, and Experiential Learning*, N.Y. L. SCH., [http://www.nyls.edu/academics/office\\_of\\_clinical\\_and\\_experiential\\_learning/](http://www.nyls.edu/academics/office_of_clinical_and_experiential_learning/) (last visited Nov. 11, 2014).

<sup>178</sup> *Special Programs: Honors Lawyering Program*, GOLDEN GATE U. SCH. L., <http://law.ggu.edu/law/clinics-and-centers/special-programs/honors-lawyering> (last visited Nov. 11, 2014).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Collaborative Court Programs*, TOURO L. CENTER, <http://www.tourolaw.edu/Academics/?pageid=68#VGJjib7tW4J> (last visited Nov. 11, 2014).

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Earn Credit Through Practice*, IND. TECH L. SCH., <http://law.indianatech.edu/academics/experiential-learning/externships/> (last visited Nov. 11, 2014); *Experiential*

include remote placements, the faculty supervision and reflective component is often conducted in the form of a tutorial or online course.<sup>188</sup> Other schools offer remote programs in a particular geographic area that offers special opportunities—most commonly Washington, D.C.—and create on-location educational components taught in-person to students taking part in the program.<sup>189</sup>

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*Learning: Learn While Doing*, Hamline U. Sch. of L., <http://www.hamline.edu/law/experiential-learning/> (last visited Nov. 11, 2014); *Externship Program, The Semester in Practice Program*, U.N.C. Sch. L., <http://www.law.unc.edu/academics/externship/> (last visited Nov. 11, 2014); *JD Externships*, Vt. L. Sch., <http://www.vermontlaw.edu/academics/clinics-and-externships/jd-externships> (last visited Nov. 11, 2014); *Semester in Practice*, U. Denv. Sturm C. L., <http://www.law.du.edu/index.php/legal-externship-program/specific-externship-programs/semester-in-practice> (last visited Nov. 11, 2014); *Semester in Practice*, U. Idaho C. L., <http://www.uidaho.edu/law/academics/clinicsprofessionalskills/semesterinpractice> (last visited Nov. 11, 2014); *Semester-in-Practice Externship*, Loy. L.A. L. Sch., <http://www.lls.edu/academics/advocacyinstitute/semester-in-practiceexternship/> (last visited Nov. 11, 2014); *Semester-in-Practice Externship*, Wash. U. St. Louis L. Sch. <http://law.wustl.edu/clinicaled/pages.aspx?id=9658> (last visited Nov. 11, 2014); *Semester-in-Practice Externships*, Elon U. Sch. L., <http://www.elon.edu/e-web/law/academics/semesterinpractice.xhtml> (last visited Nov. 11, 2014); *Semester in Practices Field Placement Course 961*, U. Pac. McGeorge Sch. L., [http://www.mcgeorge.edu/Students/Academics/Experiential\\_Learning/Externships\\_and\\_Field\\_Placement\\_Program/Semester\\_In\\_Practice\\_Field\\_Placement.htm](http://www.mcgeorge.edu/Students/Academics/Experiential_Learning/Externships_and_Field_Placement_Program/Semester_In_Practice_Field_Placement.htm) (last visited Nov. 11, 2014); *Semester-in-Practice Program*, B. U. Sch. L., <http://www.bu.edu/law/central/jd/programs/clinics/externship-programs/semester-in-practice/> (last visited Nov. 11, 2014); *Semester-In-Practice Programs*, S. Ill. U. Sch. L., <http://www.law.siu.edu/academics/field-experiences/semester-in-practice.html> (last visited Nov. 11, 2014); *Semester-In-Practice (SIP)*, Roger Williams U. L. Sch. <http://law.rwu.edu/feinsteincenter/experiential-learning/sip> (last visited Nov. 11, 2014).

<sup>188</sup> See sources cited *supra* note 187.

<sup>189</sup> D.C. Semester in Practice Program, U. Ga. L., <http://www.law.uga.edu/dc-semester-practice-program> (last visited Nov. 11, 2014); *Employment Law Semester in Washington, D.C.*, St. Louis U. Sch. L., <http://www.slu.edu/school-of-law-home/centers-of-excellence/center-for-employment-law/employment-law-semester-in-washington-d-c> (last visited Nov. 11, 2014); *Externship Clinical Programs*, B.C. L., <http://www.bc.edu/schools/law/services/academic/programs/clinical/externship.html#london> (last visited November 11, 2014); *Government Lawyer: Semester in Washington*, Harv. L. Sch., <http://www.law.harvard.edu/academics/clinical/clinics/washington.html> (last visited Nov. 11, 2014); *Miami Launches New Semester in Practice in Washington D.C.*, U. of Miami Sch. of L., <http://www.law.miami.edu/news/2013/december/2698.php> (last visited Nov. 11, 2014); *Notre Dame Law in Chicago*, U. Notre Dame L. Sch., <http://law.nd.edu/academics/clinics-and-experiential-learning/externships/the-chicago-program/> (last visited Nov. 11, 2014); *Program In Washington*, Wake Forest U. Sch. L., <http://dc-externship.law.wfu.edu> (last visited Nov. 11, 2014); *Semester in D.C. Externship Program*, Syracuse L., <https://law.syr.edu/academics/clinical-experiential/dc-externship-program/> (last visited Nov. 11, 2014); *Semester in D.C. Program*, Pitt. L., <http://www.law.pitt.edu/academics/juris-doctor/dc/> (last visited Nov. 11, 2014); *Semester in Washington*, Penn St. L.,

### 3. Experiential Program Incorporating Bar Passage

Some law schools have taken advantage of special bar passage programs offered in their states to create unique experiential programs that bridge students to practice.

In operation since 2005, New Hampshire Law School created a special track during the second and third year of law school, called the Daniel Webster Scholar Honors Program, during which students engage in experiential learning that accompanies New Hampshire's alternative bar admission program.<sup>190</sup> At its conclusion, these students are recognized as passing the bar in New Hampshire, as well as being qualified to take the bar in other jurisdictions.<sup>191</sup>

More recently, the University of Arizona Law School took advantage of Arizona's new pilot program that permits third-year students to take the bar examination in February, prior to their graduation from law school, to create an experientially focused bridge-to-practice program.<sup>192</sup> In this program, students take two credits of a general lawyering skills course as they study for the bar in January and February, followed by an eight-credit intensive experiential semester from which they can elect to take clinics, externships, or simulation courses.<sup>193</sup>

The New York Bar recently passed the Pro Bono Scholars Program, which will similarly permit students at participating law schools to take the New York Bar in the February of their third year in exchange for doing five hundred hours of pro bono work in a law school program—including clinics and externships—between March 1 and June 25. Schools both inside and outside of New York are invited to participate in the program.<sup>194</sup>

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<https://pennstatelaw.psu.edu/practice-skills/externships/semester-washington> (last visited Nov. 11, 2014).

<sup>190</sup> *Daniel Webster Scholar Honors Program*, U.N.H. SCH. L., <http://law.unh.edu/academics/jd-degree/daniel-webster-scholars> (last visited Nov. 11, 2014).

<sup>191</sup> *Id.*

<sup>192</sup> *A Student's Guide to the February Arizona Bar Exam*, U. ARIZ. JAMES E. ROGERS C. L., [https://www.law.arizona.edu/Current\\_Students/documents/Student\\_Guide\\_AZ\\_Feb\\_Bar\\_aug\\_2014.pdf](https://www.law.arizona.edu/Current_Students/documents/Student_Guide_AZ_Feb_Bar_aug_2014.pdf) (last visited Nov. 11, 2014).

<sup>193</sup> For a briefing by University of Arizona administrators and professors who have been involved in this pilot during its inaugural season, see *3L Bar Briefing*, U. ARIZ. JAMES E. ROGERS C. L. (May 12, 2014), <http://mediasite.law.arizona.edu/mediasite/Viewer/?peid=1e1f3b5cc2294658851e13faeb7e98271d>.

<sup>194</sup> Jonathan Lippman, *The State of the Judiciary, Vision and Action in our Modern Courts*, N.Y. ST. UNIFIED CT. SYS. (Feb. 11, 2014), available at <https://www.nycourts.gov/whatsnew/pdf/2014-SOJ.pdf>.



#### 4. Project-Based Learning Programs

There are a number of schools that offer project-based learning opportunities for students. These classes aim to combine legal theory and practice in the context of real-world problems. Distinct from in-house clinical opportunities, project-based learning opportunities collaborate with outside providers of legal services so that students can participate as part of a team on real-life problems without forming the direct attorney-client relationship. These project-based learning opportunities often have smaller class sizes that provide students close guidance from a faculty member as they work together on a project with concrete, real world significance. Some of the project-based learning opportunities are mandatory and yearlong,<sup>195</sup> while others are optional for either a semester or a year.<sup>196</sup> A number of these project-based learning opportunities are litigation based,<sup>197</sup> while others are

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<sup>195</sup> At Northeastern University School of Law, all first-year students participate in a yearlong, project-based course that introduces students to the core skills of effective team lawyering and provides students an opportunity to put them into practice through an extensive legal research project on behalf of a community-based or public service organization. See *Practicing Law Takes Practice*, NE. U. SCH. L., <http://www.northeastern.edu/law/experience/lssc/> (last visited Nov. 18, 2014).

<sup>196</sup> In Vermont Law School's Applied Human Rights Seminar, students engage in research on cutting-edge issues in human rights law and policy for non-governmental organizations and inter-governmental organizations under the supervision of faculty. See *Center for Applied Human Rights*, VT. L. SCH., <http://www.vermontlaw.edu/center-for-applied-human-rights> (last visited Nov. 18 2014). New York Law School offers project-based learning opportunities through yearlong courses for two, three, or four credits on a pass-fail or graded basis, as decided by the professor. See *Project-Based Learning Courses*, N.Y.L. SCH., [http://www.nyls.edu/academics/office\\_of\\_clinical\\_and\\_experiential\\_learning/project\\_based\\_learning\\_courses/](http://www.nyls.edu/academics/office_of_clinical_and_experiential_learning/project_based_learning_courses/) (last visited Nov. 18 2014). The classes cover a range of subjects and challenge students to develop their legal knowledge. *Id.* The Transactional Lab at the University of Michigan Law School is establishing relationships with a handful of blue-chip corporate clients who will work with law students on actual transactional projects. *The Transactional Lab*, U. MICH. L. SCH., <http://www.law.umich.edu/clinical/transactionallab/Pages/default.aspx> (last visited Nov. 18 2014). The companies get high-quality work that adds value without the hassle of administering their own externship programs. *Id.* And the students learn the skills they need to excel as summer and junior associates at law firms, as well as develop relationships with in-house counsel that can serve them well later as their careers develop. *Id.* Students selected for the four-credit course will meet once a week for a two-hour class period concentrating on transactional lawyering skills and current issues with the projects they are working on. *Id.* Outside of class, students will spend several more hours each week under faculty supervision, working as members of smaller teams on client projects. *Id.*

<sup>197</sup> Case Western Reserve University School of Law offers a number of labs in different substantive fields, including: intellectual property; the arts and entrepreneurship; international law; and the death penalty. *Kramer Law Clinic—Real Practice*, CASE W. RES. U.

transactional<sup>198</sup> or focused on policy work.<sup>199</sup> Another school offers a project-based learning opportunity as part of the first-year curriculum, using live clients as teaching vehicles.<sup>200</sup> In one urban area, the four local law schools have collaborated to create a project-based course, the teaching of which rotates among the schools.<sup>201</sup> Each spring, the course enrolls students from all four schools, who work on projects referred from the local legal services community while studying the process of problem solving in the policy context.<sup>202</sup>

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SCH. L., <http://law.case.edu/Academics/KramerLawClinicRealPractice/Labs.aspx> (last visited Nov. 18, 2014). In these courses, students do research and writing for real clients. *Id.*

<sup>198</sup> *Tribal Wills Project*, U. DEN. STURM C. L., <http://www.law.du.edu/index.php/tribal-wills-project> (last visited Nov. 18, 2014).

<sup>199</sup> *Law and Policy Lab*, STAN. L. SCH., <https://www.law.stanford.edu/policy-lab> (last visited Nov. 18, 2014) (“The Law and Policy Lab contributes to a core mission of Stanford Law School by helping students acquire the rigorous analytical skills needed to develop policy solutions to pressing social and environmental issues. It serves as a policy incubator, allowing students to work under the supervision of faculty advisers to advise real-world clients on policy issues ranging from equity in education to copyright and patent reform, from reducing children’s obesity to protecting international human rights and preventing wildlife trafficking. The Policy Lab reflects the belief that the systematic examination of societal problems informed by rigorous data analysis can improve policy decisions and outcomes. In addition to the methods of policy analysis, students learn regulatory drafting and communications skills necessary to translate their findings into actionable measures for policy leaders and the communities they serve.”).

<sup>200</sup> The University of Maryland School of Law formerly offered a six-credit, first-year course that combined basic Criminal Law (three credits) with legal practice (three credits). Actual legal work was used to help students to understand and evaluate criminal law and, conversely, use the criminal law principles, rules, and theories to help students understand and evaluate practice. First-year students worked on actual cases, helped to interview clients, conducted factual investigations, and prepared legal memoranda and/or other legal pleadings. They worked under the supervision of faculty and cooperating lawyers. Although first-year students are not eligible to practice in court, they worked as part of a team that was responsible for the representation of the client.

<sup>201</sup> *Legal Scholarship for Equal Justice*, MINN. JUST. FOUND., [http://www.mnjustice.org/index.asp?Type=B\\_BASIC&SEC=%7B2747729C-777B-4BCE-BB14-8E9674E9626C%7D](http://www.mnjustice.org/index.asp?Type=B_BASIC&SEC=%7B2747729C-777B-4BCE-BB14-8E9674E9626C%7D) (last visited Nov. 11, 2014).

<sup>202</sup> The Legal Scholarship for Equal Justice class is a collaborative effort between the University of Minnesota, William Mitchell, Hamline, and St. Thomas law schools in the Twin Cities. It works with the nonprofit Minnesota Justice Foundation, which also coordinates law student pro bono opportunities at all four schools, to identify projects in the local community. At the end of the semester, students in the course present a daylong CLE with the results of their research. Marie A. Failinger, *Legal Scholarship for Equal Justice Course Syllabus* (Spring 2013), available at <http://webcache.googleusercontent.com/search?q=cache:IQ8YDBquHeEJ:law.hamline.edu/WorkArea/DownloadAsset.aspx%3Fid%3D4294983305+&cd=3&hl=en&ct=clnk&gl=US>.

D. *Law School with Deans/Directors/Chairs or Centers/Programs Focused on Experiential Education*

As the call for increased experiential opportunities grows, a number of law schools have created dedicated Associate Dean positions, named Directors, or created Chairs focused on experiential education. The scope of responsibility of these positions, as well as their resources, varies widely.

1. Schools with Associate Deans for Experiential Education

Sixteen law schools have created an Associate Dean for Experiential Learning.<sup>203</sup> Eleven of these individuals teach clinical courses; two teach lawyering skills or trial advocacy, and three teach doctrinal classes.<sup>204</sup>

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<sup>203</sup> American University, Robert Dinerstein, Associate Dean for Experiential Education; Case Western Reserve, Kenneth Margolis, Associate Dean for Experiential Education; Drexel, Susan Brooks, Associate Dean for Experiential Learning; Elon Law, Faith Rivers James, Associate Dean for Experiential Learning and Leadership; Georgetown Law, Jane Aiken, Associate Dean for Experiential Education; Hamline University, Katherine Kruse, Associate Dean for Experiential Education and Curriculum; Hofstra University, Jennifer Gundlach, Senior Associate Dean for Experiential Education; John Marshall (Chicago), Anthony Niedwiecki, Associate Dean for Skills, Experiential Learning & Assessment; Loyola Los Angeles, Jean Boylan, Associate Dean for Clinical Programs and Experiential Learning; Syracuse University, Deborah S. Kenn, Associate Dean of Clinical and Experiential Learning; Touro College (Fuchsberg), Myra Berman, Associate Dean for Experiential Learning and Assistant Professor; University of Connecticut, Paul Chill, Associate Dean for Clinical and Experiential Learning; University of Notre Dame, Robert Jones, Associate Dean for Experiential Programs and Clinical Professor of Law; University of Wisconsin, Martha Gaines, Associate Dean for Academic Affairs and Experiential Learning; Vermont Law School, Margaret Martin Barry, Associate Dean for Clinical and Experiential Programs; and Whittier, Martin Pritikin, Associate Dean for Experiential Learning.

<sup>204</sup> The following individuals teach clinical courses: Robert Dinerstein, American University; Kenneth Margolis, Case Western Reserve; Susan Brooks, Drexel; Katherine Kruse, Hamline University; Jennifer Gundlach, Hofstra University; Jean Boylan, Loyola Los Angeles; Deborah S. Kenn, Syracuse University; Myra Berman, Touro College (Fuchsberg); Paul Chill, University of Connecticut; Robert Jones, University of Notre Dame; and Martha Gaines, University of Wisconsin. The following individuals teach lawyering skills or trial advocacy: Anthony Niedwiecki, John Marshall (Chicago) and Martin Pritikin, Whittier. The following individuals teach doctrinal classes: Faith Rivers James, Elon Law; Jane Aiken, Georgetown Law; and Margaret Martin Barry, Vermont Law School.

## 2. Schools with Directors of or Chairs in Experiential Education

There are sixteen schools with Director or Chair positions in the area of experiential learning.<sup>205</sup> One school has one of each.<sup>206</sup> Five of these individuals teach clinical courses; two teach lawyering skills or trial advocacy; and eight teach doctrinal classes.<sup>207</sup>

## 3. Schools with Programs and Centers Promoting Innovation in Legal Education

Law schools, acting alone and cooperatively, have created various vehicles—a program, an institute, a center, a consortium, or some equivalent—devoted to, supporting the development of, and providing faculty resources relating to innovative practices in legal education. The consortium approach creates a platform for a group of schools to gather, showcase, and share new and best practices.<sup>208</sup> These two

<sup>205</sup> Albany Law School, Mary Lynch, Director, Center for Excellence in Law Teaching; Boston College, Paul Tremblay, Faculty Director of Experiential Learning; Elon University, Steven Friedland, Director, Center for Engaged Learning; Georgia State University, Lisa Bliss, Director of Experiential Education; Loyola Chicago, Josie Gough, Director, Experiential Learning; Loyola New Orleans, Christine Cerniglia Brown, Coordinator of Skills and Experiential Learning; Mercer Law, Daisy Floyd, University Professor of Law and Ethical Formation; New York University, Peggy Cooper, Director, Experiential Learning Lab; Regent University, Ben Madison, Director, Center for Ethical Formation; University of Colorado, Sarah Krakoff, Schaden Chair in Experiential Learning; University of Denver, Roberto Corrada, Mulligan Burleson Chair in Modern Learning; University of Denver, David Thomson, Director, Experiential Advantage; University of Massachusetts School of Law, Margaret Drew, Director of Clinics and Experiential Learning; University of New Hampshire, John Garvey, Director, Daniel Webster Scholar Honors Program; University of St. Thomas, Neil Hamilton, Director, Holloran Center for Ethical Formation; and Washington & Lee, Jim Moliterno, Vincent Bradford Professor of Law.

<sup>206</sup> Specifically, the University of Denver's Sturm College of Law has both a Chair in Experiential Learning and a Chair in Modern Learning.

<sup>207</sup> The following individuals teach clinical courses: Lisa Bliss, Georgia State University; Christine Cerniglia Brown, Loyola New Orleans; Margaret Drew, University of Massachusetts School of Law; Josie Gough, Loyola Chicago; and Paul R. Tremblay, Boston College. The following individuals teach lawyering skills or trial advocacy: John Garvey, University of New Hampshire and David Thomson, University of Denver. The following individuals teach doctrinal classes: Roberto Corrada, University of Denver; Peggy Cooper, NYU; Daisy Floyd, Mercer Law; Steven Friedland, Elon University; Neil W. Hamilton, University of St. Thomas; Sarah Krakoff, University of Colorado; Ben Madison, Regent University; and Jim Moliterno, Washington & Lee.

<sup>208</sup> *About Our Consortium*, EDUCATING TOMORROW'S LAW., <http://educatingtomorrow-lawyers.du.edu/schools/> (last visited Nov. 13, 2014); *Consortium for Legal Education*, CAL. W. SCH. L., [http://www.cwsl.edu/main/default.asp?nav=academic\\_programs.asp&body=academic\\_programs/consortium\\_legal\\_education.asp](http://www.cwsl.edu/main/default.asp?nav=academic_programs.asp&body=academic_programs/consortium_legal_education.asp) (last visited Nov. 13,

schools connect to other schools by offering to be a “clearinghouse” of ideas.<sup>209</sup> Several schools publicize their support for and share their own contributions to innovative developments.<sup>210</sup> And many law schools describe particular innovations—e.g., technological innovation in the teaching and practice of law;<sup>211</sup> embedding skills learning across the first-year curriculum<sup>212</sup> or profoundly reshaping that year;<sup>213</sup> developing distance learning;<sup>214</sup> and creating a Ph.D. degree for law teachers.<sup>215</sup>

#### E. *Pro Bono and Public Interest Initiatives with Experiential Components*

During the past few years, particularly since the publication of *Best Practices for Legal Education* in 2007,<sup>216</sup> numerous U.S. law schools have developed public interest initiatives that provide experiential education opportunities for their students.<sup>217</sup> The vast majority of these initiatives are predicated on partnerships or collaborations with alumni

2014); CENTER FOR THE STUDY OF APPLIED LEGAL EDUC., <http://www.csale.org/> (last visited Nov. 13, 2014).

<sup>209</sup> *Center for Excellence in Law Teaching (CELT)*, ALB. L. SCH., <http://www.albanylaw.edu/celt/Pages/default.aspx> (last visited Nov. 13, 2014); *Center for Engaged Learning in the Law*, ELON U. SCH. L., <http://www.elon.edu/e-web/law/cell/> (last visited Nov. 13, 2014).

<sup>210</sup> *Institute for Law Teaching and Learning*, GONZ. U. SCH. L., <http://www.law.gonzaga.edu/centers-programs/law-teaching-learning/> (last visited Nov. 13, 2014); *Experiential Learning Lab*, N.Y.U. SCH. L., <http://www.law.nyu.edu/experiential-learninglab/> (last visited Nov. 13, 2014).

<sup>211</sup> Michele DeStefano Beardslee, *Law Without Walls, Evolving Legal Education and Practice* (Oct. 1, 2010) (unpublished draft) (on file with *Elon Law Review*); *Center for Applied Legal Reasoning*, HOFSTRA L., <http://law.hofstra.edu/centers/calr/index.html> (last visited Nov. 13, 2014); *Center for Legal Innovation*, VT. L. SCH., [http://www.vermontlaw.edu/Academics/Focused\\_Studies/Center\\_for\\_Legal\\_Innovation.htm](http://www.vermontlaw.edu/Academics/Focused_Studies/Center_for_Legal_Innovation.htm) (last visited Nov. 13, 2014); ; *Law, Logic & Technology Research Laboratory*, HOFSTRA L., <http://law.hofstra.edu/centers/lltlab/index.html> (last visited Nov. 13, 2014).

<sup>212</sup> *Phoenix School of Law Launches Its “FIRSTClass” Program for Incoming Fall 2013 Students*, ARIZ. SUMMIT L. SCH., <http://www.azsummitlaw.edu/news-events/phoenix-school-law-launches-its-firstclass-program-incoming-fall-2013-students> (last visited Nov. 13, 2014).

<sup>213</sup> *Traditional First-Year Curriculum Enhancements*, SW. L. SCH., <http://www.swlaw.edu/academics/jd/newcurriculum1> (last visited Nov. 13, 2014).

<sup>214</sup> HARV. L. SCH. CENTER ON LEGAL PROF., [http://www.law.harvard.edu/programs/plp/pages/distance\\_learning\\_working\\_group.php](http://www.law.harvard.edu/programs/plp/pages/distance_learning_working_group.php) (last visited Nov. 13, 2014).

<sup>215</sup> *Yale Law School Introduces Innovative New Program – Ph.D. in Law*, YALE L. SCH. (July 11, 2012), <http://www.law.yale.edu/news/15782.htm>.

<sup>216</sup> STUCKEY ET AL., *supra* note 5.

<sup>217</sup> See *Directory of Law School Public Interest and Pro Bono Programs, Chart of Law School Pro Bono Programs*, A.B.A., [http://apps.americanbar.org/legalservices/probono/law-schools/pb\\_programs\\_chart.html](http://apps.americanbar.org/legalservices/probono/law-schools/pb_programs_chart.html) (last visited June 2, 2014).

practitioners, law firms, government agencies, bar associations, or other nonprofit organizations.<sup>218</sup> The initiatives are typically categorized by law schools as scholarships, fellowships, specialized clinics usually offering unbundled legal services, externships, public service centers, community service projects, and student-driven pro bono programs that target populations who lack access to justice.<sup>219</sup>

Experiential education is an inherent component of public interest and pro bono programs. Virtually all such programs involve direct client contact; some incorporate policy and community development work, as well. These programs help students develop lawyering skills and knowledge of substantive law, and further, they encourage students to accept responsibility, as lawyers, to the larger community and to form professional identities that comport with legal ethics and professionalism. By involving students in public interest programs, often serving indigent clients or clients of modest means, law schools also facilitate an ongoing commitment in their students to serving needy populations. By utilizing members of the practicing bar as partners and mentors, law schools provide their students with exposure to real world lawyering, including the provision of legal services to unrepresented litigants. To support all of these objectives, many law schools and even state courts now require that students complete pro bono hours or public interest field placements prior to graduation and bar admission.

Although the primary purpose of this report is to identify especially innovative experiential programs, it must be noted that virtually all American law schools now have relatively new public interest or pro bono initiatives that are offered to their students, some mandatory and others elective.<sup>220</sup> The ABA Standing Committee on Pro Bono and Public Service has created a comprehensive website that compiles lists and charts of these types of offerings, often with specificity regarding the pedagogical and practice objectives, the structure of diverse programs, the types of field placements, and the place of such programs in the law school curriculum.<sup>221</sup>

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<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* The ABA website offers information about law school pro bono programs, resources for starting new programs, and publications related to public interest and pro bono programs. *Id.* The Directory of Law Schools Public Interest and Pro Bono Programs contains up-to-date information from 203 law schools, describing student-run pro bono projects and law school operated public interest offerings. *Id.* These pro-

### 1. Pro Bono Initiatives

In 1999, after conducting an extensive survey of law schools and their pro bono programs, the American Association of Law Schools (AALS) Commission on Pro Bono and Public Service Opportunities concluded that “at some American law schools, no students participate in law-related pro bono projects and, at most American law schools, only a minority of the student body participate in such a project during their law school years. . . . [L]aw schools should do more.”<sup>222</sup> The ABA and the law schools have heeded the advice of the AALS Commission and are now doing far more than would have been anticipated a dozen years ago, partly because of the growing ABA commitment to pro bono service and partly because of the experiential value of pro bono work.

The ABA defines “pro bono” as the responsibility of lawyers to practice for the public good and to assume the responsibility to make justice accessible to all persons regardless of their ability to pay for legal services.<sup>223</sup> Law schools bear responsibility for instilling in their students a commitment to pro bono service. The ABA makes clear that, while in law school, students should be engaged in providing voluntary legal services either directly to persons in need or through not-for-

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grams include curricular options like clinics and externships as well as public interest centers, journals, and classes with public interest components. *See id.* (showing the distinctions that are made between the offices that run the pro bono programs, such as Student Services or an Administrator responsible for Pro Bono, the nature of the work itself—whether it is focused on individual clients or communities in need, and whether the hours are voluntary or required, for graduation or for bar admission). For information about law schools that require pro bono or public interest service hours for graduation, including the type of service required, see *id.* This chart was originally created in 2001 but has been updated regularly since then, most recently in September 2013. At that time, thirty-nine law schools required pro bono or public interest hours as a graduation requirement.

<sup>222</sup> *Learning to Serve*, ASS’N AM. L. SCH. COMMISSION ON PRO BONO & PUB. SERVICE OPPORTUNITIES, <http://aalsfar.com/probono/report2.html#findings> (last visited June 2, 2014) (identifying many of the issues still being discussed with respect to pro bono work, such as whether it is mandatory or voluntary for law students, the benefits to law students particularly in terms of professional responsibility and in reconnecting them to the idealism they may have brought to law school, the types of projects the law school should approve and whether they should be integrated into the clinical programs or remain extracurricular, and whether they should be inside or outside projects).

<sup>223</sup> MODEL RULES OF PROF’L CONDUCT R. 6.1 (2006), available at [http://www.americanbar.org/groups/probono\\_public\\_service/policy/aba\\_model\\_rule\\_6\\_1.html](http://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1.html).

profit community organizations.<sup>224</sup> Students should not receive either pay or academic credit for their pro bono work.<sup>225</sup> Given the ABA's commitment to pro bono service programs within the law schools combined with the emphasis on experiential opportunities to help students become practice-ready, it is no surprise that there has been a proliferation in pro bono programming.

i. *Student-Initiated Projects*

Pro bono projects initiated and operated by student organizations exist in most law schools and typically focus on specific subject areas, such as civil rights, domestic violence, criminal law (e.g., Innocence Project and prisoner's issues), immigration matters, housing, tax assistance (e.g., VITA), Unemployment Action programs, and Street Law (community education projects).<sup>226</sup>

ii. *Pro Bono Directors*

Many law schools have pro bono directors or coordinators who link students to unpaid, no credit, voluntary internships with outside organizations, usually by creating partnerships with practitioners through alumni contacts, community-based law firms, and government entities.<sup>227</sup>

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<sup>224</sup> *Directory of Law School Public Interest and Pro Bono Programs, Definitions of Terms Used*, A.B.A., <http://apps.americanbar.org/legalservices/probono/lawschools/definitions.html> (last visited June 2, 2014).

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* (containing a section for "Student Run Pro Bono Groups and Law Education Projects," which features a list of the most common pro bono projects run by student organizations and links to data from law schools).

<sup>227</sup> See *Pro Bono and Community Service Programs*, CHARLOTTE SCH. L., <http://www.charlottelaw.edu/academics/pro-bono-and-community-service-programs> (last visited June 2, 2014) (providing students with hands-on service experience with community lawyers as partners in pro bono projects, which offer students opportunities to satisfy an Access to Justice graduation requirement); see also *Access to Justice Partnership*, U. VA. SCH. L., [http://www.law.virginia.edu/html/news/2013\\_spr/access\\_to\\_justice.htm](http://www.law.virginia.edu/html/news/2013_spr/access_to_justice.htm) (last visited June 2, 2014) (describing how the school pairs law students with local attorneys to provide free legal services to low-income Charlottesville-area residents and how students engage in pro bono service projects that allow for direct interaction with clients while working side-by-side with an experienced practitioner); *Lawyering Together*, VILL. U. SCH. L., <http://www1.villanova.edu/villanova/law/alumni/getinvolved/lawyering-together.html> (last visited June 2, 2014) (blending learning through experience and service by partnering Villanova students with alumni mentors to work on pro bono cases together).



iii. *Bar Association and Collaborative Programs*

Many bar associations sponsor pro bono projects for which attorneys volunteer, but the Washington State Bar Association has forged a connection with the state's law schools in order to provide much-needed legal assistance to residents of moderate means.<sup>228</sup> This unique joint venture partners the practicing bar with three Washington law schools for the purpose of increasing access to civil legal services for a large proportion of the state population.<sup>229</sup>

The four law schools in Minnesota collaborate with a nonprofit organization dedicated to linking volunteer law students with opportunities to assist attorneys in meeting the legal needs of the low-income community.<sup>230</sup> Funded through contributions from the law schools and the community, the Minnesota Justice Foundation's Law School Public Service Program provides a staff liaison at each school to coordinate law student pro bono activities, and the organization also funds twenty clerkships each summer in public interest agencies.<sup>231</sup>

On a smaller scale, some bar associations have pro bono collaborations with specific law schools on specific substantive topics. For example, one school has a collaborative Small Business Pro Bono Project that is a partnership of the local bar association, the law school, and the business school.<sup>232</sup>

iv. *Internal Pro Bono Programming*

Some American law schools have institution-based programs where students may fulfill pro bono requirements or volunteer for pro bono service. These programs commonly are specialized clinics, but

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<sup>228</sup> *Moderate Means Program*, GONZ. U. SCH. L., <http://www.law.gonzaga.edu/centers-programs/clips/moderate-means-program/> (last visited June 2, 2014).

<sup>229</sup> *Id.* (describing how Moderate Means Program student volunteers, from Gonzaga University Law School, Seattle University Law School, and the University of Washington Law School, work with bar association staff attorneys and other volunteer attorneys who supervise them in direct client interactions, for a minimum of five hours per week).

<sup>230</sup> *Law School Public Service Program*, MINN. JUST. FOUND., [http://www.mnjustice.org/index.asp?Type=B\\_BASIC&SEC=%7B09FF652B-89C5-4526-A7F6-46A139E799FE%7D](http://www.mnjustice.org/index.asp?Type=B_BASIC&SEC=%7B09FF652B-89C5-4526-A7F6-46A139E799FE%7D) (last visited Nov. 12, 2014).

<sup>231</sup> *MJF's Programs*, MINN. JUST. FOUND., [http://www.mnjustice.org/index.asp?Type=B\\_PRGSRV&SEC={0519403B-4BC2-482E-BB61-9BDB95A84094}](http://www.mnjustice.org/index.asp?Type=B_PRGSRV&SEC={0519403B-4BC2-482E-BB61-9BDB95A84094}) (last visited Nov. 11, 2014).

<sup>232</sup> *Small Business Pro Bono Project*, U. NOTRE DAME L. SCH., <http://law.nd.edu/academics/clinics-and-experiential-learning/pro-bono/> (last visited Nov. 11, 2014).

there are also innovative ways of incorporating the work of nonprofit legal services organizations into the fabric of the curriculum.<sup>233</sup>

*v. Access to Justice Court Requirements and Initiatives*

To promote pro bono service and provide underserved populations with greater access to justice, in 2012, the New York Court of Appeals established a fifty-hour pro bono service requirement that must be completed by all candidates prior to bar admission.<sup>234</sup> The ABA is currently considering recommendations for incorporating New York's requirement into its own rules.<sup>235</sup> This New York court rule has led to the expansion of pro bono opportunities in all New York law schools, including programs established by the courts themselves, often volunteer lawyer programs with law students participating in the work of those volunteer attorneys.<sup>236</sup> In early 2014, the Chief Judge of the State of New York announced the establishment of the Pro Bono Scholars Program, an additional opportunity for students to gain experience in practice, on a full-time basis, during their final semester of law school, after taking the New York Bar Examination.<sup>237</sup>

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<sup>233</sup> See *William Randolph Hearst Public Advocacy Center*, TOURO L. TOURO C. JACOB D. FUCHSBERG L. CENTER, [http://www.tourolaw.edu/PublicServiceInitiatives/?pageid=150#VGKRQPnF\\_nk](http://www.tourolaw.edu/PublicServiceInitiatives/?pageid=150#VGKRQPnF_nk) (last visited June 6, 2014) (describing how, with offices located in a designated area of the law school, ten public service legal organizations representing diverse areas of practice provide students with opportunities to fulfill pro bono requirements or engage in volunteer activities, as well as engage in direct client services, develop policy initiatives, and promote community education and advocacy); see also *Public Interest Law Center*, PACE L., <http://www.law.pace.edu/public-interest-law-center> (last visited Nov. 13, 2014) (showing public interest centers and institutes within law schools that offer pro bono opportunities).

<sup>234</sup> A.B.A. STANDING COMM. ON PRO BONO & PUB. SERV., NEW YORK'S 50-HOUR PREADMISSION PRO BONO RULE: WEIGHING THE POTENTIAL PROS AND CONS (2013), available at [http://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/ls\\_pb\\_preadmission\\_pro\\_bono\\_requirement\\_white\\_paper.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_preadmission_pro_bono_requirement_white_paper.authcheckdam.pdf).

<sup>235</sup> *Id.*

<sup>236</sup> See *Pro Bono and Volunteer Opportunities*, CARDOZO L., <https://cardozo.yu.edu/academics/public-service-law/pro-bono-and-volunteer-opportunities> (last visited Nov. 12, 2014); *Pro Bono Initiatives*, N.Y. L. SCH., [http://www.nyls.edu/career\\_planning/for-students/pro\\_bono\\_initiatives/](http://www.nyls.edu/career_planning/for-students/pro_bono_initiatives/) (last visited Nov. 12, 2014); *Pro Bono Opportunities*, N.Y. U. SCH. L., <http://www.law.nyu.edu/publicinterestlawcenter/llmstudents/probono> (last visited Nov. 12, 2014).

<sup>237</sup> *Pro Bono Scholars Program—A Legal Education Initiative*, N.Y. ST. UNIFIED CT. SYS., <http://www.nycourts.gov/ATTORNEYS/probonoscholars/index.shtml> (last visited June 2, 2014). This program will begin on March 2, 2015. The Office of Court Administration is currently securing pro bono internship placements for approximately 150

## 2. Public Interest Initiatives

While pro bono programs may offer students neither pay nor academic credit, public interest programs that offer students experiential learning opportunities are generally for-credit or paid with funds from fellowships or scholarships. The ABA separates pro bono and public interest by the categories of offerings and by program descriptions, along with other significant but nonexperiential terms.<sup>238</sup> Among the categories for law school public interest opportunities are: certificate and curriculum programs, public interest centers, externships, classes with a public service component, public interest journals, summer fellowships, and student public interest groups.<sup>239</sup> Virtually all of the 203 law schools included in ABA data have public interest offerings, so what follows are merely a few examples of programs at U.S. law schools.

### i. *Summer Stipends, Fellowships, Scholarships*

Many American law schools offer summer funding for their students to engage in public interest work, either from grants, privately raised funds, or federal work-study funds. Some law schools have created internally based funding programs to support students pursuing public interest law who are working with public interest firms in underserved communities. These programs enable students to accept jobs in sectors where they might not otherwise be paid for their work.<sup>240</sup> Other law schools participate in national programs offered by public interest organizations, such as AmeriCorps J.D. of Equal Justice Works.<sup>241</sup>

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students from all fifteen New York law schools. For additional information, a "Program Guide" published in April 2014, is available on the court website.

<sup>238</sup> *Directory of Law School Public Interest and Pro Bono Programs*, A.B.A., <http://apps.americanbar.org/legalservices/probono/lawschools/definitions.html> (last visited June 2, 2014). Categories for pro bono include funding, program's location, faculty pro bono, and community service, while categories for public interest are overwhelmingly programmatic and curricular. *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> The University of Arkansas School of Law has established an endowment to support students committed to public interest law and rural sustainability by subsidizing student experiential learning for students working for nonprofit organizations; federal, state, or tribal government agencies; or private law firms in small towns in Arkansas and within the Cherokee Nation. *Law School Dean Establishes Public Interest and Rural Community Sustainability Fund*, U. ARK. SCH. L. (May 20, 2013), <http://law.uark.edu/2013/05/law-school-dean-establishes-public-interest-and-rural-community-sustainability-fund/>.

<sup>241</sup> *AmeriCorps JD, EQUAL JUST. WORKS*, <http://www.equaljusticeworks.org/ameri-corpsjd> (last visited June 2, 2014). Over 200 law schools are members of Equal Justice

ii. *Public Interest Centers*

A small number of law schools have established public interest centers (as opposed to public interest legal clinics, which exist at most American law schools) where all of their non-clinic experiential programs are based. Although there are a few exceptions, the vast majority of the programs offered by these centers are categorized as public interest.<sup>242</sup>

iii. *Externships*

Nearly all U.S. law schools have externships in public interest law firms and organizations. These are field placement programs, ranging from a minimum of sixty hours per semester to full semesters-in-practice and, at present, such programs offer either academic credit or pay to law students.<sup>243</sup> Externships are primarily experiential education opportunities that focus on professional development by placing students

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Works, an organization that collaborates with law schools to create public interest programs nationwide. *Equal Justice Works Law School Membership*, EQUAL JUST. WORKS, <http://equaljusticeworks.org/law-school/membership> (last visited Nov. 8, 2014). One such program is AmeriCorps J.D., which offers law students the opportunity to earn a stipend and simultaneously gain invaluable lawyering experience by helping lawyers deliver critically needed services in low-income and underserved communities, particularly in the most vulnerable populations, including veterans, disaster victims, victims of domestic violence, and others. *Id.*

<sup>242</sup> See *Center for Community Engagement*, U.N.D., <http://und.edu/centers/community-engagement/index.cfm> (last visited June 2, 2014) (describing a university-wide initiative that links academic resources—faculty and students—with community organizations and other public partners to serve community needs within the state); *Ribbon Cutting for Center for Experiential Education and Entrepreneurship*, CHARLOTTE SCH. L. (Jan. 18, 2013), <http://www.charlottelaw.edu/about/ribbon-cutting-center-experiential-education-entrepreneurship> (describing Charlotte School of Law's Center for Experiential Education and Entrepreneurship, which houses the school's clinics as well as a Neighborhood Advocacy Center, and offers students the opportunity to work with and learn from both faculty and practitioners to help fill the access to justice gap for underrepresented populations); *RWU Law's 'One-Stop Shop' for Experiential Learning*, ROGER WILLIAMS U. SCH. L., <http://law.rwu.edu/feinsteincenter> (last visited June 2, 2014) (describing RWU Law's Feinstein Center for Pro Bono and Experiential Education, which is the hub of public interest law, offering a variety of in-house and external programs to their students so that they can satisfy a fifty-hour hands-on learning graduation requirement); *William Randolph Hearst Public Advocacy Center*, *supra* note 233 (describing Touro Law Center's Public Advocacy Center, which provides furnished offices to non-profit agencies in exchange for the agencies' use of law students to perform research work and advocacy services).

<sup>243</sup> See, e.g., *Field Placement Program Supervisor Handbook*, GEO. WASH. U. L. SCH. 3–4 (July 13, 2013), <http://www.law.gwu.edu/Academics/EL/FP/Documents/Supervisor%20Handbook.pdf>; see also Karen Sloan, *ABA Council Says No to Paid Law Student*

in real world settings, supervised by practitioners rather than faculty, and engaging in the daily activities of a lawyer.<sup>244</sup> Public interest externships also have the objective of serving the public and training prospective lawyers to embrace the commitment to equal justice and access to justice.<sup>245</sup> The most recent trends in public interest externships include: creating collaborative relationships with a range of organizations and agencies that work in similar practice areas to address common issues or to focus on a particular legal problem; to create hybrid externships that combine aspects of clinical education but utilize external practitioners rather than clinical faculty;<sup>246</sup> and to offer a public interest externship course with placements in federal and state courts, nonprofit organizations, and government offices.<sup>247</sup>

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*Externships*, NAT'L L.J. (June 10, 2014), <http://www.nationallawjournal.com/id=1202658812905/ABA-Council-Says-No-to-Paid-Law-Student-Externships>.

<sup>244</sup> *Directory of Law School Public Interest and Pro Bono Programs*, *supra* note 238.

<sup>245</sup> See, e.g., *Externships*, U. CAL. IRVINE SCH. L., <http://www.law.uci.edu/academics/real-life-learning/externships/> (last visited Nov. 12, 2014).

<sup>246</sup> Examples include: Vermont Law School's Criminal Law Clinic, in which four clinical adjunct faculty co-teach the classroom component and supervise students in their defense and prosecution offices; its Land Use Clinic, in which the adjunct faculty member teaches the classroom component and supervises students in the state's Agency of Natural Resources where she is a general counsel; and its Dispute Resolution Clinic, in which students are trained as mediators and gain experience shadowing and then conducting small claims mediations. *Clinics and Externships*, VT. L. SCH., <http://www.vermontlaw.edu/academics/clinics-and-externships> (last visited Nov. 8, 2014).

<sup>247</sup> See *Externships in the Public Interest*, TUL. U. L. SCH., <http://www.law.tulane.edu/PublicInterest/index.aspx?id=11862> (last visited June 2, 2014) (describing Tulane's public interest externship program, in which all public interest placements are grouped by courts, government, or nonprofit and are offered as both a summer school program, which includes international placements, and a yearlong program); *Hybrid Immigration Externship Program*, U. DENV. STURM C. L., <http://www.law.du.edu/documents/legal-externship-program/types/Hybrid-immigration.pdf> (last visited June 2, 2014) (describing the Hybrid Immigration Externship Program, also initiated by University of Denver Sturm College of Law in Spring 2014, which includes a typical clinic three-hour classroom component taught by law school faculty but places students outside the law school with practitioner supervisors by partnering with a particular agency or organization to serve a specific population of clients and addresses not only the students' direct work with clients but also policy and community education issues); *Racial, Social and Economic Justice Externship Program*, U. DENV. STURM C. L., <http://www.law.du.edu/documents/legal-externship-program/types/RSEJ.pdf> (last visited June 2, 2014) (describing the program, launched in Fall 2014, which places students in organizations that deal with racial, social and economic justice issues by externing at nonprofit organizations, plaintiff's firms, and government agencies and taking a one-credit seminar to discuss how these issues arise in different practice settings).

### F. *Post-Graduation Innovation*

A couple of post-graduation models, designed to assist recent graduates with the transition from law school to practice, are emerging.

#### 1. Incubator/Residency Programs

Law firm incubator and residency programs are emerging as models that enable newly admitted lawyers to acquire the range of skills necessary to launch successful practices. The alpha incubator was established at the City University of New York over a decade ago.<sup>248</sup> Recent changes in the economy have led to the creation of similar models by both law schools and bar associations.<sup>249</sup> Program designs vary, as does the involvement of law schools and the local bar.<sup>250</sup>

#### 2. Lawyers for America

The Lawyers for America program provides a different kind of bridge-to-practice program by combining an entirely experiential third year with a subsidized job for one year after graduation.<sup>251</sup> Lawyers for America is a California nonprofit organization that works with law schools to develop fellowships in collaboration with local government or nonprofit legal services offices.<sup>252</sup> Lawyers for America Fellows spend their third year of law school immersed in the government or nonprofit organization for law school credit and attend an accompanying classroom course offered by the participating law school.<sup>253</sup> At the end of their third year, they take a three-month break to study for the bar examination and then return to the placement for a full year after graduation on a fellowship stipend.<sup>254</sup> Lawyers for America launched

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<sup>248</sup> *Incubator/Residency Programs*, A.B.A., [http://www.americanbar.org/groups/delivery\\_legal\\_services/initiatives\\_awards/program\\_main.html](http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main.html) (last visited Nov. 9, 2014).

<sup>249</sup> For a list of current incubator/residency programs, see *Incubator/Residency Programs Directory*, A.B.A., [http://www.americanbar.org/groups/delivery\\_legal\\_services/initiatives\\_awards/program\\_main/program\\_directory.html](http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_directory.html) (last visited Nov. 9, 2014).

<sup>250</sup> For a detailed description of current incubator/residency programs, see *Incubator/Residency Program Profiles*, A.B.A., [http://www.americanbar.org/groups/delivery\\_legal\\_services/initiatives\\_awards/program\\_main/program\\_profiles.html](http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_profiles.html) (last visited Nov. 9, 2014).

<sup>251</sup> *About Lawyers for America*, U. CAL. HASTINGS C. L., <http://www.uchastings.edu/academics/clinical-programs/lawyers-for-america/index.php> (last visited Nov. 9, 2014).

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

its first program with the University of Hastings Class of 2014 but will partner with any interested law school.<sup>255</sup>

### G. Innovative Multidisciplinary Programs

Law schools recognize legal practice does not exist in a vacuum, and therefore schools are modernizing curricula to include diverse multidisciplinary study. Such curricula foster collaboration among faculty in various disciplines, including law, business, and college or graduate professors. The hallmark at each school is an identified field or area of legal practice where such an approach best prepares students to practice in a certain field. The integration ranges from technology, arts, cultural heritage, entrepreneurship, intellectual property, and business.

The below list is not exhaustive; however, the research does identify common key components to modern integration:

#### 1. Technology, Innovation, Entrepreneurship, and Intellectual Property

The question of whether technology will impact the legal market is answered. However, further study is necessary to determine how best to prepare students for the modern practice of law, focusing on incorporating technology into the delivery of legal services and advising clients on modern technologic and entrepreneurial innovations.<sup>256</sup>

Some schools have recognized interdisciplinary approaches to address technological innovation, offering certificates, centers, highly concentrated experiences, and courses.<sup>257</sup> Other schools recognize the need to go beyond the boundaries of their own law school and allow students to enroll in upper-level graduate courses on their main cam-

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<sup>255</sup> *Id.*

<sup>256</sup> See William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 501–06 (2013).

<sup>257</sup> See *Center for Law, Entrepreneurship, and Innovation*, VILL. U. SCH. L., <http://www1.villanova.edu/villanova/law/academics/CLEI.html> (last visited June 3, 2014); *Certificate in Law, Technology, and Entrepreneurship*, LOY. U. NEW ORLEANS C. L., <http://law.loyno.edu/certificate-law-technology-and-entrepreneurship> (last visited June 3, 2014); *High Tech Law Certificate*, SANTA CLARA U. SCH. L., <http://law.scu.edu/hightech/high-tech-law-certificate-requirements/> (last visited June 3, 2014); *Semester in Silicon Valley*, SANTA CLARA U. SCH. L., <http://law.scu.edu/academics/semester-in-silicon-valley/> (last visited June 3, 2014) (describing the opportunity for transfer students to study Intellectual Property in Silicon Valley).

pus.<sup>258</sup> Still, other schools stretch further to create curricular networks beyond the boundaries of their own institution.<sup>259</sup>

## 2. Social Work and Legal Partnerships

Another initiative underway includes common fields of practice and fostering a team approach to treatment. Social work and law are many times intertwined, and literature suggests increased confidence in our judicial systems through collaborative therapeutic justice as one of the best practices.<sup>260</sup> While many schools offer a combined JD/MSW degree, this working group's research highlights courses offering an

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<sup>258</sup> See *Center for Art, Museum & Cultural Heritage Law*, DEPAUL U. C. L., [http://www.law.depaul.edu/centers\\_institutes/art\\_museum/](http://www.law.depaul.edu/centers_institutes/art_museum/) (last visited June 3, 2014); *Center for Policy Studies*, CASE W. RES. U. SCH. L., <http://policy.case.edu/policy-programs/public-policy-resources-at-case/> (last visited June 3, 2014) (describing the Center for Law, Technology, and the Arts, which "was created with the understanding that technologic and artistic expression are both part of the human creative enterprise," and allows students to delve into Intellectual Property as well as a one year graduate level certificate program to study complex scientific discovery); *Fashion Law Institute*, FORDHAM U. SCH. L., <http://fashionlawinsitute.com/curriculumfaculty> (last visited on June 4, 2014) (describing a unique summer boot camp course taught by industry leaders for students from design schools and other law schools who want to study fashion law); *Immersion Courses*, U. NOTRE DAME, <http://law.nd.edu/academics/clinics-and-experiential-learning/immersion-courses/> (last visited Nov. 9, 2014) (describing how the college allows students to enroll in a course offered through the Mendoza College of Business through which law students and M.B.A. students spend two weeks working on economic development issues in countries around the world that have experienced significant conflict).

<sup>259</sup> See *TI:GER® Program*, EMORY L., <http://law.emory.edu/academics/academic-programs/ti-ger.html> (last visited June 3, 2014) (describing a collaboration between the law school and Georgia Institute of Technology which "brings together graduate students in law, business, science, and engineering to work on start-up projects"); see also *About LawWithoutWalls*, LAWWITHOUTWALLS, <http://www.lawwithoutwalls.org/about/> (last visited June 3, 2014) (describing a part-virtual collaboration among thirty elite law and business schools around the world to "develop skills needed to meet the challenges posed by the economic pressures, technologization, and globalization of the international legal market."); *Cornell eRulemaking Initiative (CeRI)*, CORNELL U. L. SCH., <http://www.lawschool.cornell.edu/cei/index.cfm> (last visited June 3, 2014); *Resource Center for Separating and Divorcing Families*, U. DENV. STURM C. L., <http://iaals.du.edu/initiatives/honoring-families-initiative/implementation/resource-center-for-separating-and-divorcing-families> (last visited Nov. 8, 2014).

<sup>260</sup> See Carolyn Copps Hartley & Carrie J. Petrucci, *Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and Law*, 14 WASH. U. J.L. & POL'Y 133, 135 (2004), available at <http://digitalcommons.law.wustl.edu/wujlp/vol14/iss1/6>.



interdisciplinary approach either through team treatment or fostering collaboration with social work students and faculty.<sup>261</sup>

### 3. Medical and Legal Partnerships

Additionally, the medical and legal partnership model is not new to legal education, and many schools collaborate between medical, public health, nursing, and law students.<sup>262</sup> The most innovative approaches, however, include team treatment and multidisciplinary programs introducing students to health care issues through a myriad of perspectives.<sup>263</sup>

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<sup>261</sup> See *Juvenile Justice Center*, SUFFOLK U. L. SCH., <http://www.suffolk.edu/law/academics/experiential-learning/19158.php> (last visited on June 4, 2014) (describing a center where law students work closely with a Social Work Supervisor and social work students on cases involving shared clients); see also *Family Law Professors Launch Innovative Program*, HOFSTRA L., <http://lawnews.hofstra.edu/2008/10/22/family-law-professors-launch-innovative-program/> (last visited on June 4, 2014) (describing a program in which “[l]aw students and social worker students . . . play[ ] the role of attorneys in a child abuse case . . . in a full-day trial preparation workshop”); *Interdisciplinary Center for Family and Child Advocacy*, FORDHAM U. SCH. L., <http://law.fordham.edu/interdisciplinary.htm> (last visited on June 4, 2014) (explaining how the school is working to “increase interdisciplinary collaboration in advocacy and service delivery”).

<sup>262</sup> See Beazley Institute for Health Law and Policy, *Degrees and Certificates*, LOY. U. CHI., <http://www.luc.edu/law/centers/healthlaw/degrees/index.html> (last visited Nov. 8, 2014) (describing the institute founded in 1984, which offers diverse programs from masters in health law to certificate programs); see also *Center for Law, Health & Society, Health Law Courses*, GA. ST. L. SCH., <http://clhs.law.gsu.edu/about/> (last visited Nov. 8, 2014) (describing a free legal service clinic, “HeLP,” for low-income children and their families through a community medical-legal partnership); *Health Law Concentration Track*, U. WASH. SCH. L., <http://www.law.washington.edu/Students/Academics/Concentration/Health.aspx> (last visited June 3, 2014) (requiring students to enroll in twelve elective credits from various colleges within the university); *Health Law Focus Area*, SEATTLE U. SCH. L., <http://www.law.seattleu.edu/academics/curriculum/focus-areas/health-law> (last visited June 3, 2014) (describing how students are required to work in a health care clinic or externship).

<sup>263</sup> See *The Idea of the Hospital: An Interdisciplinary Inquiry*, U. MIAMI, <http://www.law.miami.edu/hospital-course/> (last visited June 3, 2014) (describing how seven distinct disciplines across UM provide a unique opportunity for students to study various perspectives in the health care industry); see also *Center for Health Law and Policy*, S. ILL. U. SCH. OF L., <http://www.law.siu.edu/academics/center-programs/health-law-policy/index.html> (last visited June 3, 2014) (describing collaborative efforts with the School of Medicine, Public Policy Institute, Journal of Legal Medicine, Elder Law and Domestic Violence Clinic); Villanova University School of Law Launches Center for Law, Entrepreneurship and Innovation and Interdisciplinary Mental and Physical Health Law Clinic, VILL. U. SCH. L., <http://www1.villanova.edu/villanova/law/newsroom/pressreleases/2013/0716.html> (last visited July 16, 2014) (describing a collaboration between law and nursing students to offer a multidisciplinary approach to team treatment).

## CONCLUSION

This report is a work in progress at the beginning stage. Undoubtedly, exciting initiatives that are underway at law schools across the country were overlooked, and the authors of this report are interested in hearing about programs that were missed so that they can be included in future versions of this report.

## VI. THE ROLE OF PRACTITIONERS IN EXPERIENTIAL EDUCATION

*Report of the Working Group on Integration with the Profession\**

*[I]s it not plain that . . . our law schools should once more bring themselves into close contact with what clients need and what courts and lawyers actually do?*<sup>264</sup>

## INTRODUCTION

The report of the Working Group on Integration with the Profession is based on the premise that law schools benefit from including practicing attorneys in the planning of law school curricula and the teaching of law. Should you accept this premise? Intuitively, it makes sense, and report after report has suggested that law schools would benefit from greater connection with the bar.<sup>265</sup> However, legal practi-

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<sup>264</sup> JEROME FRANK, *COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE* 231 (1949).

<sup>265</sup> See, e.g., Deborah B. Luyster, *Practitioners and Law School Faculty: Who's the Real Lawyer?*, MICH. B. J., Nov. 2002, at 46, available at <https://www.michbar.org/journal/pdf/pdf4article505.pdf>.

tioners are not able to give the same attention to educating as professional law teachers. Academics are expected to step back, probe and provoke new thinking about the law as part of the preparation provided. The problem has been that in a social enterprise like lawyering, there needs to be considerable integration of the academic's analysis with the realities of application in order for the student to gain sufficient insight.

Consider the lawyer who is asked to teach Evidence. She selects a textbook but plans to expand upon the text based on her own litigation experiences. She tells stories meant to illustrate how the rules actually play out in practice. The students have mixed feelings about the emphasis on "war stories." Meanwhile, in another section of the same course, a law professor is teaching Evidence using a version of the traditional Socratic exchange. Experimentation has shown him that, by inserting a few role-plays, he can achieve some of his goals for broader engagement of the subject without disappointing student expectations for the Kingsfield-like abuse they equate with rigor.

Both of these teachers have given thought to their roles. If they are like others before them, they will have drawn on what they liked and did not like about the teaching styles they experienced in law school. The faculty member has the advantage of focusing on teaching and the many resources that support teaching. The practitioner has the benefit of regularly using evidentiary law in the course of handling cases and thus is able to bring the law to life. Each teacher can benefit from the insight the other brings to the teaching task. Students want to know the substance and want it delivered as efficiently as possible; they also want the substance to be relevant to what they will need to know as lawyers. They are not sure what they will need to know for legal practice, and often the professor is not certain either. The faculty member can gain by understanding how the substantive course is applied in practice—adding depth and relevance to her teaching. The practitioner can gain insight into teaching resources and methods that may be difficult to identify—adding efficiencies and structure that might otherwise be overlooked. Both may gain from exchanging substantive perspectives. Whether they are collaborating in one course or assisting each other in planning separate courses, the benefits are apparent.

There are, of course, practitioners who teach brilliantly, seeking out the best resources and weaving the subject taught into a clear and accessible whole. And there are professors who are current with re-

gard to practice in their fields and who gather stories and insights to share. This does not diminish the fact that for most there is much to learn by cross-fertilization, drawing on the expertise the practitioner and the professor each bring to the process of preparing students to be lawyers.

This working group report will explore the existing relationship between law schools and the bar and will describe what law schools are doing to strengthen that relationship in order to prepare students effectively. The report begins with an articulation of our working group's mission, followed by a definition of "integration with the profession." The report explains how integration relates to experiential learning; describes some of the current efforts at integration; catalogs some of the more innovative efforts underway; and describes ways to foster more effective integration.

In preparing this report, our notion that there is significant inclusion of the bar in legal education was affirmed, as was our sense that there is increased reliance on the bar for animating courses by connecting the doctrine taught to practice. Based on that assessment, the report includes recommendations for improved integration.

#### A. *The Working Group's Goals*

The Working Group began its work by articulating its mission:

*Legal education can benefit from thoughtful integration with the legal profession. If legal educators better understand current and emerging needs and expectations of the legal profession along with trends in the business and practice of law, the academy will be better able to prepare students for successful entry into the profession. If practicing lawyers better understand current pedagogies and trends in legal education, along with the challenges and constraints faced by law schools, the profession will be better able to advise and partner with legal educators to ensure that the profession's reasonable needs and expectations are met.*

*The Integration with the Profession Working Group will strive to facilitate meaningful and substantive interaction with the profession, and will develop methodologies for collaboration among the academy and the profession to prepare students for entry into the profession and for navigating current and future trends. The working group will investigate trends in the profession, analyze innovations in the academy that address the trends and identify gaps. The working group membership is a collaboration of legal educators and practitioners. This group will identify shared priorities and develop menus of ways for*

*law schools to collaborate with members of the profession both to exchange ideas and to incorporate more direct assistance with students' educational experience.*

That remains this group's mission. This report reflects its initial step towards the goals it has identified.

### B. *Defining Integration with the Legal Profession*

At its core, integrating the legal profession with legal education is about breaking down the wall between law schools and the bar. It involves providing more opportunities for law students, legal educators, and working professionals to interact with and learn from one another. It means creating the integrated experiences that will allow law students to move from an abstract understanding of legal concepts to the ability to perform as legal professionals.<sup>266</sup> These elements provide the basis for a working definition of integration of legal education with the legal profession which can be defined as *substantively and seamlessly incorporating legal practitioners and their understanding of the practice of law into the academic, professional, social, and curricular life of the law school.*<sup>267</sup> The benefits of this type of integration are numerous and move in both directions.

Law faculties bring teaching resources and experience, along with the benefit of scholarly analysis, to the classroom. Practitioners bring current practice expertise to the classroom and fill curricular goals in ways the regular faculty cannot. They help provide faculty with stories and insight about the law as applied that faculty can use to animate concepts or cases at hand. They also help students to see themselves as lawyers and help many establish connections that will benefit their legal careers.

### C. *How Does Integration with the Legal Profession Relate to Experiential Learning?*

In the wake of the Carnegie Report,<sup>268</sup> the economic downturn of the past decade, and increasing challenges faced by law schools, there

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<sup>266</sup> See *supra* Part II.B.

<sup>267</sup> See *supra* Part II.A.

<sup>268</sup> One of the important findings of the Carnegie Report was the following: Most law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual law practice. Unlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice. The result is to prolong and reinforce the habits of thinking like a student rather than

has been much discussion and effort put into understanding how law schools can best prepare students to be competent practitioners in what is now a changed and changing environment. The legal education model that evolved in the twentieth century created a tacit partnership in which law schools introduced students to legal concepts, and firms and practitioners taught their newly hired law school graduates the skills and business aspects of practicing law.<sup>269</sup> Increasingly, the academy is realizing that such a model is based on a premise that no longer reflects the realities of today's employment landscape and the expectations of today's employers. The academy's response has been to identify experiential learning as a way to fill the breach, but identifying experiential opportunities to meet these expectations is not always connected effectively to other institutional learning goals.<sup>270</sup>

Practitioners have long played a role in law schools, working on the periphery as adjunct faculty to provide coverage in certain areas of the curriculum. As experiential learning becomes an increasingly critical component of legal education, collaboration with practitioners also becomes increasingly critical. While most law professors have practiced law for some period of time, the typical path takes them to academia well before they become truly expert practitioners. Even those who have obtained a recognized level of practice expertise soon immerse themselves in the world of teaching and scholarly writing and consequently become increasingly stale in relation to the demands and evolution of practice. Through strategic, purposeful collaboration with practicing lawyers, schools can increase their ability to provide students with relevant, authentic, and substantive learning opportunities that have greater potential to increase the depth of their understand-

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an apprentice practitioner, conveying the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of clients. Neither understanding of the law is exhaustive, of course, but law school's typically unbalanced emphasis on the one perspective can create problems as the students move into practice.

CARNEGIE REPORT, *supra* note 1, at 6.

<sup>269</sup> AM. BAR ASS'N TASK FORCE ON THE FUTURE OF LEGAL EDUC., REPORT AND RECOMMENDATIONS 16 (2014), available at [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf).

<sup>270</sup> The American Bar Association recently revised its Standards for Approval of Law Schools to now require law schools to establish learning outcomes. Establishment of the learning outcomes requirement may encourage a more deliberate and cohesive approach to the design and incorporation of experiential opportunities in the curriculum. See ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 301(b), 302.

ing, give them a working knowledge of how concepts apply in practice, and improve their ability to practice law upon graduation.

#### D. *Integration: The Current Landscape*

A useful catalogue of current examples of experiential education can be found in “Creative Initiatives at U.S. Law Schools.”<sup>271</sup> This report focuses on efforts that explicitly involve integration with the profession.

Any look at integration of the profession with legal education must start with clinical education. The clinical legal education movement brought practitioners into law school faculties and consequently brought significant attention to the theoretical underpinnings of effective practice and methods for teaching it. While many clinics have a preference for use of full-time clinic professors, clinicians will be the first to say that connection with the bar is needed in developing doctrinal priorities, pedagogy, and overall curricular design in clinic courses. Of course, unlike many of their colleagues, clinical faculty are also practicing members of the bar.<sup>272</sup> However, they are largely insulated from the pressures of running an office, focusing more on student learning and practice theory. Thus, there are benefits to working with lawyers who are immersed in practice, and in many clinics, lawyers who are not faculty members co-supervise students. An innovative way that the University of California Hastings College of the Law (UC Hastings) further connects practitioners to the clinic experience is to use them as experts in support of clinic work.<sup>273</sup> Students can consult with one of the lawyer-experts when that lawyer’s expertise may prove helpful.<sup>274</sup> Through this partnership, students learn to collaborate, build networks in practice, and navigate confidentiality in context.<sup>275</sup>

Within the clinical movement, lawyers and judges also have served as placement supervisors in externship courses. These are field placements in which students spend most of their time in practice settings

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<sup>271</sup> See *supra* Part V.

<sup>272</sup> O’Grady, *supra* note 24, at 515.

<sup>273</sup> See *Clinics*, U. CAL. HASTINGS C. L., <http://www.uchastings.edu/academics/clinical-programs/clinics/index.php> (last visited Nov. 9, 2014).

<sup>274</sup> E-mail from Nancy M. Stuart, Clinical Professor of Law & Assoc. Dean for Experiential Learning, UC-Hastings Coll. of the Law, to Margaret M. Barry, Professor of Law & Assoc. Dean for Clinical and Experiential Programs, Vt. Law Sch. (Mar. 31, 2014, 17:17 EST) (on file with authors).

<sup>275</sup> See generally Nantiya Ruan, *Student, Esquire?: The Practice of Law in the Collaborative Classroom*, 20 CLINICAL L. REV. 429 (2014).

outside of law school, generally supplemented by a classroom component. The law school faculty member's role focuses on ensuring the quality of and the student's processing of the experience while the practitioner provides and oversees the experiential opportunity the externship is designed to provide.<sup>276</sup> If the educational goals are explicit and the faculty member works with both the student and the practitioner to assure a rich experience, the resulting learning significantly enhances student preparation.

Law school clinics and most externship experiences emphasize an important aspect of professional development: access to justice. The Center for the Study of Applied Legal Education (CSALE) reported that most law schools do not allow students to extern at for-profit criminal defense firms (3.0% allow), for-profit law offices (6.1% allow), or as corporate/in-house counsel (17.6% allow).<sup>277</sup> In 2009–2010, “[t]wo hundred sixty-seven clinics reported a total of 789,361 hours of *civil* legal services provided by [ ] students” (an average of 2,956 per clinic).<sup>278</sup> “One hundred nineteen clinics reported a total of 165,922 estimated hours of *criminal* legal” work (an average of 1,394 hours per clinic).<sup>279</sup> The emphasis on access to justice comes at a cost in that students who want to continue to work in nonprofits compete for very limited post-graduation opportunities. Nonetheless, a significant benefit comes in understanding the breadth of unmet legal need and the lawyer's obligation, whether in private or nonprofit practice, to affirmatively and creatively meet it.

Clinics, externships, and hybrids are not the entire thrust of efforts to link legal education to the profession. As noted above, law schools have relied for years on members of the bar to serve as adjunct professors to teach specialty courses that the schools otherwise lack the capacity or expertise to offer. Some schools also rely on adjuncts to teach selected core courses, which helps to bring a practice perspective into the learning process. The ABA, recognizing the benefits of incor-

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<sup>276</sup> Externships have a long history as part of the experiential offerings in law schools. Externship faculty are active members of the AALS Section on Clinical Legal Education and have written extensively about externship pedagogy, with many pieces published in the *Clinical Law Review*. See also ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 305, interpretation 305-1.

<sup>277</sup> DAVID A. SANTACROCE & ROBERT R. KUEHN, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION: THE 2010-11 SURVEY OF APPLIED LEGAL EDUCATION 23 (2012), available at <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf>.

<sup>278</sup> *Id.* at 20.

<sup>279</sup> *Id.*



porating adjuncts into the classroom but wary of the risk of overreliance, has both encouraged and placed limits on the use of adjuncts.<sup>280</sup> Accreditation standards encourage teaching by lawyers and judges while limiting reliance on adjuncts primarily to upper level courses.<sup>281</sup> The accreditation standards additionally require supervision of their teaching and limit the overall number of courses in the curriculum that can be taught by adjuncts.<sup>282</sup>

In addition to serving as adjunct professors, members of the bench and bar also have long served as judges in appellate arguments in legal writing courses; judges for moot court competitions; trial team coaches and trial practice teachers; guest speakers; orientation speakers; career panel presenters; mock interviewers; and teachers of introductory mini-courses. Many law schools also invite lawyers to serve as mentors for students, particularly those who have identified a particular specialty.

Schools rely on members of the bar in increasingly creative ways. A driving force behind this interest in broader collaboration is the desire to provide students with a more direct picture of the practice of law and to better prepare them for entry into a profession whose landscape continues to change. Georgetown Law recently added a set of practicum courses in which students can either do fieldwork or work on a project with a teacher who is a practicing lawyer in the field.<sup>283</sup> The practicum is a hybrid of the traditional classroom experience and off-campus learning. For example, the Poverty Law and Policy Seminar requires students to participate in weekly seminar classes and in fieldwork at an outside public interest law organization.<sup>284</sup> Similarly, the University of North Carolina Law School's Transition-to-Practice program offers nearly thirty courses that give students an opportunity

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<sup>280</sup> See ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 402.

<sup>281</sup> See *id.* 403(a), 404.

<sup>282</sup> ABA Standards for Approval of Law Schools 403(a) requires that full-time faculty teach the major portion of the curriculum, including “substantially all of the first one-third of each student’s coursework,” and “either (1) more than half of all of the credit hours actually offered by the law school, or (2) two-thirds of the student contact hours generated by student enrollment at the law school.” *Id.* 403(a). It goes on to say in interpretation 403-1 that law schools should include practicing lawyers and judges, provided the school provides them with “orientation, guidance and mentoring.” *Id.* 403, interpretation 403-1.

<sup>283</sup> *Practicum Courses*, GEO. L., <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/practicum/> (last visited Mar. 26, 2014).

<sup>284</sup> *Curriculum Guide—Courses*, GEO. L., [http://apps.law.georgetown.edu/curriculum/tab\\_courses.cfm?Status=course&Detail=1038](http://apps.law.georgetown.edu/curriculum/tab_courses.cfm?Status=course&Detail=1038) (last visited Mar. 26, 2014).

to apply theory to real-world problems.<sup>285</sup> For example, their Family Law course requires observing local court proceedings, and the Criminal Law/Indigent Defense lab<sup>286</sup> brings in a new practitioner each week to brainstorm solutions to legal issues with students.

UC Hastings partners with lawyers in the Bay Area in its Startup Legal Garage program.<sup>287</sup> Students in the program provide corporate and intellectual property work to early stage startup companies under the supervision of local attorneys.<sup>288</sup> This partnership gives students an understanding of the incentive structures that drive businesses and helps clients obtain valuable legal services.<sup>289</sup>

Vermont Law School's General Practice Program (GPP) has been in existence for over twenty-five years.<sup>290</sup> It is a two-year, four-semester certificate program for second- and third-year students.<sup>291</sup> Each semester students must take at least four GPP credit hours.<sup>292</sup> *A mix of regular faculty members and experienced practitioners teach the GPP courses, and all GPP classes are limited in size and designed to approach the material from a practice perspective.*<sup>293</sup> The goal is to give students a solid foundation for small firm general practice, although the results prepare students for most practice settings.<sup>294</sup> The law school is considering ways in which the approach taken in the smaller GPP courses can be made available to more students. Vermont Law also has two clinics, Criminal Law and Land Use, in which practitioners are hired as adjuncts to teach the classroom component of the course, and then students are placed in their offices for the practicum component.<sup>295</sup> Two other clinics, Dis-

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<sup>285</sup> *Transition-to-Practice Program*, U.N.C. SCH. L., <http://www.law.unc.edu/academics/transitiontopractice/> (last visited Oct. 6, 2014).

<sup>286</sup> *See supra* Part II.C.

<sup>287</sup> *Startup Legal Garage*, U. CAL. HASTINGS C. L., <http://innovation.uchastings.edu/focus-areas/startup-legal-garage/> (last visited Oct. 6, 2014).

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> *General Practice Program*, VT. L. SCH., <http://www.vermontlaw.edu/general-practice-program> (last visited Nov. 8, 2014).

<sup>291</sup> *Id.*

<sup>292</sup> *How to Apply*, VT. L. SCH., <http://www.vermontlaw.edu/academics/centers-and-programs/general-practice-program/how-to-apply> (last visited Nov. 8, 2014). Visitors may click on the "Application Information" link at bottom of page for more information.

<sup>293</sup> *General Practice Program*, *supra* note 290.

<sup>294</sup> *Id.*

<sup>295</sup> *Clinics & Externships*, VT. L. SCH., <http://www.vermontlaw.edu/academics/clinics-and-externships> (last visited Nov. 8, 2014).

pute Resolution and Legislative, similarly rely on adjunct faculty.<sup>296</sup> Not unlike other law school clinics, the school's traditional, in-house clinics both provide to and benefit from expert advice within the practicing bar.<sup>297</sup>

Schools also are bringing practicing lawyers and an infusion of practical experience into the first year. At the University of Minnesota Law School, all first-year students participate, with the assistance of practicing lawyers, in a "Law in Practice" class. Law in Practice is a semester-long, three-credit class that employs a series of simulation experiences related to two case files—one litigation case and one transactional matter.<sup>298</sup> Students attend "Law Firm" classes taught by faculty that explore the doctrinal and strategic issues in the simulated cases.<sup>299</sup> Then students perform simulations in "Practice Groups" of eight students led by local practicing attorneys.<sup>300</sup> Each student individually takes and defends a deposition, groups of two students engage in client or witness interviews, students participate in client counseling and negotiation simulations, and each student completes either a simulated conference in the chambers of a local judge or engages in a simulated mediation conducted by a qualified neutral.<sup>301</sup> This is similar to the Skills Training for Ethical and Preventive Practice and career Satisfaction (STEPPS) program that California Western School of Law requires in its second year<sup>302</sup> and Drexel University School of Law's reliance on practicing lawyers to teach small sections of a one-week,

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<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> For a description of the program, see *Law in Practice*, U. MINN. L. SCH., [www.law.umn.edu/prospective/lawinpractice.html](http://www.law.umn.edu/prospective/lawinpractice.html) (last visited Oct. 6, 2014) and Kathy Graves, *1L Course Brings Doctrine and Theory to Life*, PERSPECTIVES, Fall 2013, at 4, available at <http://www.law.umn.edu/uploads/b0/ff/b0ffff2695600fcccd59f99eec194388/Law-in-Practice.pdf>.

<sup>299</sup> *Law in Practice*, U. MINN. L. SCH., [www.law.umn.edu/prospective/lawinpractice.html](http://www.law.umn.edu/prospective/lawinpractice.html) (last visited Oct. 6, 2014).

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> Professor Tim Casey, director of the STEPPS program, meets weekly with the adjunct professors who serve as supervising attorneys in the simulated law offices that provide the robust experiential component of a course, required in the second year, that focuses on professional responsibility, ethical norms and professionalism, as well as building legal writing skills introduced in the first year and introducing interviewing, counseling and negotiation skills. For program description, see *STEPPS Program*, CAL. W. SCH. L., <https://www.cwsl.edu/academics/academic-initiatives/stepps-program> (last visited Oct. 4, 2014) and Sabrina C. Narain, *A Failure to Instill Realistic Ethical Values in New Lawyers: The ABA and Law School's Duty to Better Prepare Lawyers for Real Life Practice*, 41 W. ST. U. L. REV. 411, 425–26 (2014).

one-credit course in interviewing, counseling, and negotiation that first-year students take before the start of second semester.<sup>303</sup>

Stanford Law School's innovative Law and Policy Lab, while led by faculty, relies on continuing collaboration with practitioners.<sup>304</sup> Students learn, practice, and apply problem-solving skills to find solutions to real social, legal, and environmental issues.<sup>305</sup> In Stanford's policy practicums, students work in teams with faculty, lawyers, economists, policymakers, and courts to engage in the kind of policy analysis to which lawyers contribute but law schools largely ignore.<sup>306</sup> The Policy Lab operates in a similar way to law clinics, providing students with assignments for real clients who are seeking solutions to current problems.<sup>307</sup> The school looked to alumni with policy expertise in creating and shaping the program and continues to rely on practicing alumni to help supply potential projects.<sup>308</sup>

Another example of close collaboration in the classroom, utilized by the University of Minnesota and other law schools, is a proseminar course for upper-level students interested in a particular substantive area of the law.<sup>309</sup> The proseminar is led by a faculty member but engages a different expert practitioner as a guest presenter and discussion leader each week. The weekly sessions can provide valuable insights regarding evolving areas of the law and of practice, as well as networking and mentoring opportunities for students. Such courses, along with specialized upper-level adjunct-taught courses, expose students to specific cutting-edge issues and to the variety of ways in which lawyers engage with a substantive area of law. They provide low-cost, high-reward ways for faculty and practicing lawyers to collaborate, to learn from each other, and to provide students with a dynamic and in-depth learning experience. They also provide low-barrier ways for a practitioner to be introduced to teaching and may promote the practi-

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<sup>303</sup> *JD Degree and Graduation Requirements*, DREXEL U. THOMAS R. KLINE SCH. L., [http://drexel.edu/law/studentLife/studentAffairs/graduation\\_requirements/](http://drexel.edu/law/studentLife/studentAffairs/graduation_requirements/) (last visited Nov. 11, 2014).

<sup>304</sup> See Joan O'C. Hamilton, *Law and Policy Lab: Tackling Timely Policy Challenges*, STAN. LAW. (May 28, 2014), <http://stanfordlawyer.law.stanford.edu/2014/05/law-and-policy-lab-tackling-timely-policy-challenges/>.

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> *Joint Degree Program in Law, Science & Technology*, U. MINN. L. SCH., <http://www.jointdegree.umn.edu/current/proseminar/home.html> (last visited Nov. 20, 2014).

tioner's increased engagement with the law school and the school's students.

Due in part to ABA and, more recently, certain bar requirements, schools also are turning to the bar to provide opportunities for pro bono work outside of the curriculum.<sup>310</sup> For example, the University of Notre Dame Law School's Small Business Pro Bono Project is a partnership between the Law School, the Gigot Center of the Mendoza College of Business, and the Pro Bono Committee of the St. Joseph County Bar Association.<sup>311</sup> The students work under the supervision of local attorneys providing representation to modest-income entrepreneurs in South Bend, Indiana.<sup>312</sup> Some schools, like Drexel University School of Law, now have mandatory pro bono requirements for their students and use partnerships with the local bar to help students meet those requirements outside the clinic and externship context.<sup>313</sup>

Law schools also are increasingly turning to or creating advisory boards made up of lawyers and judges from whom they seek substantive guidance on course development and curricular goals. Santa Clara University School of Law, for example, relies on practitioner advisory boards for special programs, such as its High Tech Law Institute.<sup>314</sup> At the University of Minnesota, faculty and adjuncts meet annually in groups determined by their mutual subject-area expertise.<sup>315</sup> The resulting exchange benefits both law faculty and adjuncts, and demonstrates that the requirement for oversight of teaching should flow in both directions. The ultimate beneficiary is the student.

A survey of associate deans by the Integration with the Profession Working Group confirms the wide-ranging efforts of schools to utilize practicing attorneys both for the value to students of fostering oppor-

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<sup>310</sup> ABA Standard for Approval of Law Schools 303(b)(2) requires substantial opportunities for participation in pro bono activities, identifying this provision apart from the requirement for substantial real-life practice courses. ABA STAND. & R. P. APPROV. L. SCH. 2014–2015 303(b)(2). There also is movement in state bars to require pro bono hours as a condition for admission, e.g., New York and California. For a definition and description of pro bono programs and pro bono service, see *supra* Part II.C.

<sup>311</sup> *Small Business Pro Bono Project*, U. NOTRE DAME L. SCH., <https://law.nd.edu/academics/clinics-and-experiential-learning/pro-bono/> (last visited Mar. 26, 2014).

<sup>312</sup> *Id.*

<sup>313</sup> *Pro Bono Service Program*, DREXEL U. THOMAS R. KLINE SCH. L., <http://drexel.edu/law/academics/pro-bono/> (last visited Oct. 6, 2014).

<sup>314</sup> *About the High Tech Law Institute*, SANTA CLARA U. SCH. L., <http://law.scu.edu/hightech/about-the-institute> (last visited Oct. 6, 2014).

<sup>315</sup> *Faculty by Expertise*, U. MINN. L. SCH., <http://www.law.umn.edu/faculty/expertise.html> (last visited Nov. 20, 2014).

tunities for direct interaction and for the value to law schools in a broader and more reflective sense, as schools endeavor to mold the curriculum to the changing demands and expectations of the profession.<sup>316</sup> The survey revealed examples of integration that fall into several distinct areas: coaching, indoctrination, simulation, mentoring, teaching, clinical supervision, and advising law school administration. The table below summarizes the integration examples offered by the survey respondents.

(LOW) ↓ DEPTH OF INTEGRATION OF THE PROFESSION ↓ (HIGH)	<b>Simulation</b>	Conducting mock job interviews
		Judging client counseling competitions
	<b>Coaching</b>	Moot Court
		Mock Trial
	<b>Indoctrination</b>	Participation in student orientation
		Participation on career panels and other speaking opportunities
	<b>Clinical Supervision</b>	Pro bono supervision
		Supervision of selected clinics
	<b>Advising Law School Administration</b>	Serving on clinical boards
		Serving on alumni boards
		Serving on program advisory boards
	<b>Mentoring</b>	Providing career advice
		Hosting job shadowing opportunities
		Externship supervision
<b>Teaching</b>	School-sponsored CLE presenters	
	Guest classroom speakers	
	Legal writing instructors	
	Small section leaders in multi-section, faculty-designed experiential classes	
	Practicum co-instructor	
	Skills program instructors	
Adjunct faculty in specialized courses		

TABLE 1. Answer to Question, “[i]n what ways does your school incorporate members of the profession into the law school’s program?” Integration with the Profession Working Group Survey of Law School Associate Deans (2014).

<sup>316</sup> *National Symposium Advances Experiential Education in Law*, ELON U. SCH. L. (June 16, 2014), <http://www.elon.edu/e-net/Article/96062>.

With few exceptions, these examples are familiar to all law schools and represent the typical ways that practicing attorneys add to the life of the law school and the education of law students. The table is roughly structured to represent the “depth” of integration generally achieved by each activity, that is, how substantively the legal practitioner is incorporated into the academic, professional, social, and curricular life of the law school. This can be helpful for providing a deeper understanding of the level of integration achieved by a school.

The survey also provided other helpful feedback. When asked to describe a successful curricular innovation that makes use of practitioners at their law school, the most common responses included mentoring, skills training, and simulation-related activities. When asked to identify obstacles or concerns relating to increased use of practitioners, responses included concerns about the difficulty of monitoring teaching quality and questions about whether practitioners had the necessary teaching skills. This reflects the gap that still exists in integrating professional perspective into curricular design, despite the innovations we have discussed.

#### E. *Innovative Ideas and Rising Trends*

There were several innovative ideas raised in the survey that demonstrate ways to more fully integrate practitioners into the life of the law school and enhance the student experience. One of these included utilizing a team of adjuncts to develop “skill labs” to incorporate into upper level bar courses.<sup>317</sup> These labs differ from Stanford’s Law and Policy Lab in that they are designed to add a skills component to doctrinal courses.<sup>318</sup> They have been used primarily to supplement core upper level courses, for example, Vermont Law School’s Evidence Lab is a one-credit simulation course that supplements the doctrinal course.<sup>319</sup> However, broader application throughout the curriculum would further connect theory to practice.

A rising trend that many schools are finding valuable is utilizing large and formal mentoring programs, sometimes referred to as pre-

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<sup>317</sup> See *supra* Table 1.

<sup>318</sup> *Law and Policy Lab*, STAN. L. SCH., <https://www.law.stanford.edu/policy-lab> (last visited Nov. 13, 2014).

<sup>319</sup> Margaret Martin Barry, *Vermont Law School Experiential Program Highlights*, in SECOND NATIONAL SYMPOSIUM ON EXPERIENTIAL EDUCATION IN LAW ROUNDTABLE 7, 9 (2014), available at [http://www.elon.edu/docs/e-web/law/aell\\_symposium/Roundtable\\_Summaries.pdf](http://www.elon.edu/docs/e-web/law/aell_symposium/Roundtable_Summaries.pdf).

ceptor programs. Students are paired with a mentor lawyer in their first year of law school and frequently maintain that relationship through formal and informal events throughout their time in law school. Schools are finding that the most successful mentoring programs are resource-intensive, requiring a substantial amount of effort to recruit committed mentors, to plan and coordinate opportunities for ongoing interaction, and to monitor the extent and success of those interactions.<sup>320</sup> As an example, one school dedicates three full-time staff to a mentoring program that relies on 450 practicing lawyers to serve as mentors.<sup>321</sup>

While not new, Northeastern Law School has a tradition of requiring students to complete four full quarters of legal placement before graduation.<sup>322</sup> Although required, these experiences, called “co-ops,” are in addition to credit-bearing courses.<sup>323</sup> After their first year, students alternate between credit-bearing courses and a co-op each quarter until graduation.<sup>324</sup> While these co-op courses are not credit-bearing, the commitment to co-ops reflects the value the school places on students bringing their practice experiences into their classroom learning.

In one of the most far-reaching efforts to incorporate experiential learning into the curriculum, Washington and Lee University School of Law decided in 2010 to devote its entire third year of law school to experiential education.<sup>325</sup> Students spend most of their third year in “two-week litigation and transactional skill immersions, a client contact clinic, service learning, and a series of courses built around complex simulations.”<sup>326</sup> For this program, the school relies on an Advisory Board composed of members of the bench and the bar, members of its

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<sup>320</sup> E.g., *The Preceptor Program at Elon Law*, ELON U. SCH. L., <http://www.elon.edu/e-web/law/academics/PreceptorProgram.xhtml> (last visited Nov. 14, 2014).

<sup>321</sup> Leary Davis, *Building Legal Talent: Mentors, Coaches, Preceptors and Gurus in the Legal Profession*, N.C. CR. SYS. 3, <http://www.nccourts.org/Courts/CRS/Councils/Professionalism/Documents/BuildingLegalTalent.pdf>. (last visited Feb. 8, 2015).

<sup>322</sup> See *The Incomparable Co-op: Four Full-Time Work Experiences. Countless Opportunities.*, NE. U. SCH. L., <http://www.northeastern.edu/law/experience/co-op/index.html> (last visited Oct. 6, 2014).

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> Katherine Mangan, *Law Schools Revamp Their Curricula to Teach Practical Skills*, CHRON. HIGHER EDUC. (Mar. 4, 2011), <http://law.wlu.edu/deptimages/news/thirdyearchronicle.pdf>.

<sup>326</sup> Leary Davis, *Competence as Situationally Appropriate Conduct: An Overarching Concept for Lawyering, Leadership, and Professionalism*, 52 SANTA CLARA L. REV. 725, 747 (2012); see



faculty, and faculty members from other law schools.<sup>327</sup> Similarly, New York University School of Law recently approved a “Clinical Year Program,” that will permit students to spend their third year in three full-time clinical rotations.<sup>328</sup>

In addition to providing opportunities for students to work in practice settings, schools have created other opportunities for developing points of interaction with the profession. Drexel, for example, obtains memberships for all students in the Philadelphia Bar Association, the Pennsylvania Bar Association, and the ABA as a means of encouraging students to attend bar association events.<sup>329</sup> Vermont Law School students are offered free membership in the Joan Loring Wing Inn of Court and present at and host at least one event per year.<sup>330</sup> Neither is unusual, as many schools have similar connections to their bar and local Inns.

#### F. Post-Law School Efforts

A development that is gaining traction is the array of incubator programs sponsored primarily by law schools but also gaining support or sponsorship by local bars. They reflect the recognition by the academy and bar associations that additional training and support beyond law school is important for the increasing number of graduates who need or want to enter into solo or small firm practice.<sup>331</sup> Almost two decades ago, City University of New York Law School (CUNY) launched the incubator or residency idea in the form of the Community Legal Resources Network (CLRN).<sup>332</sup> Currently, fifteen states offer an incubator, residency, or similar program as part of a law school or

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also *Educating Tomorrow's Lawyers*, WASH. & LEE U. SCH. L., <http://law.wlu.edu/thirdyear/page.asp?pageid=1235> (last visited Oct. 4, 2014).

<sup>327</sup> *Third Year Advisory Board*, WASH. & LEE U. SCH. L., <http://law.wlu.edu/thirdyear/page.asp?pageid=660> (last visited Nov. 15, 2014).

<sup>328</sup> *Clinical Year*, N.Y.L. SCH., [http://www.nyls.edu/academics/j\\_d\\_course\\_of\\_study/curriculum/course-detail/?course=659](http://www.nyls.edu/academics/j_d_course_of_study/curriculum/course-detail/?course=659) (last visited Oct. 6, 2014).

<sup>329</sup> See *Weekly Newsletter*, DREXEL U. THOMAS R. KLINE SCH. L. (Sept. 15, 2014), [http://drexel.edu/law/studentLife/newsletter/archived\\_newsletters/AY-2014-2015/09152014/](http://drexel.edu/law/studentLife/newsletter/archived_newsletters/AY-2014-2015/09152014/).

<sup>330</sup> Am. Inns of Court, *Joan Loring Wing American Inn of Court*, THE BENCHER 4 (July/Aug. 2012), [http://www.innsforcourt.org/ebencher/Bencher\\_JulAug2012.pdf](http://www.innsforcourt.org/ebencher/Bencher_JulAug2012.pdf).

<sup>331</sup> See Christina Thomas, *Help for the Solo Practitioner*, NAT'L JURIST, January 2013, at 18–19.

<sup>332</sup> *Community Legal Resources Network*, CITY U. N.Y. SCH. L., <http://www.law.cuny.edu/clrn.html> (last visited Nov. 15, 2014).

bar association initiative.<sup>333</sup> Eight of these programs started in 2014, doubling the number offered at the end of 2013.<sup>334</sup> Rutgers-Newark Law School is an example of a school that recently has recognized the potential of such a program.<sup>335</sup> Andy Rothman, a former private practice attorney turned educator, designed Rutgers's program, but it stayed dormant for over ten years.<sup>336</sup> The program is currently underway.<sup>337</sup> In the summer of 2013, Touro Law School hired Fred Rooney, who was previously at CUNY and, along with Sue Bryant, developed its CLRN program, to run its new International Center for Post-Graduate Development & Justice.<sup>338</sup> The Center serves as a clearinghouse in this country and abroad for what is now described as an "incubator and legal residency movement."<sup>339</sup> Vermont Law School partnered with the Vermont Bar Association to sponsor a pilot incubator project, launched in May 2014, which benefitted from Rooney's input.<sup>340</sup>

#### *G. Recommendations for Enhancing the Effectiveness of Integration Efforts*

In addition to inviting practitioners to teach selected courses, supervise externs, mentor students, and serve on advisory boards, law schools need to seek more opportunities to weave practitioners into

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<sup>333</sup> *Incubator/Residency Programs Directory*, *supra* note 248.

<sup>334</sup> *Id.*; Deborah Cohen, *Growing Justice: Law Schools Hop on the Incubator Trend*, A.B.A. J., (Oct. 1, 2012), [http://www.abajournal.com/magazine/article/growing\\_justice\\_law\\_schools\\_hop\\_on\\_the\\_incubator\\_trend/](http://www.abajournal.com/magazine/article/growing_justice_law_schools_hop_on_the_incubator_trend/).

<sup>335</sup> *Rutgers Law Associates Fellowship Program*, RUTGERS SCH. L. NEWARK, <https://law.newark.rutgers.edu/rutgers-law-associates-fellowship-program> (last visited Nov. 21, 2014).

<sup>336</sup> Jim Vassallo, *Rutgers-Newark Law School Creates Fellowship for Graduates*, JD J., <http://www.jdjournal.com/2014/03/24/rutgers-newark-law-school-creates-fellowship-for-graduates/#sthash.v6vXM5bG.dpuf> (last visited Nov. 13, 2014).

<sup>337</sup> Kelly Heyboer, *Rutgers-Newark Law School Starts Unique Fellowship Offering Low-Cost Legal Help*, NJ.COM (Mar. 23, 2014, 11:16 AM), <http://www.nj.com/education/2014/03/rutgers-newark-law-school-first-of-its-kind-fellowship-offering-low-cost-legal-help.html>.

<sup>338</sup> *Touro Law Announces New International Center for Post-Graduate Development & Justice*, TOURO L. SCH. (June 24, 2013), <http://www.tourolaw.edu/News/NewsDetails.aspx?id=185> (announcing Touro Law School's hiring of Fred Rooney); Fred Rooney & Justin Steele, *Exporting the Legal Incubator: A Conversation with Fred Rooney*, 9 U. MASS. L. REV. 108, 133 (2014) (explaining Rooney's collaboration with Sue Bryant in developing the CLRN program at CUNY).

<sup>339</sup> See sources cited *supra* note 338; see also *International Justice Center for Post-Graduate Development*, TOURO L. SCH., <http://www.tourolaw.edu/justiceCenter/?pageid=857> (last visited, Oct. 4, 2014).

<sup>340</sup> Jim Vassallo, *Vermont Law School Launches Lawyer Incubator Pilot Project*, JD J., <http://www.jdjournal.com/2014/06/27/vermont-law-school-launches-lawyer-incubator-pilot-project/?hvid=5aDXpm> (last visited Nov. 13, 2014).

the fabric of curricular goals. As has been discussed, the mechanisms for integration are significant. However, faculties still view practitioners as guests who enter, unnoticed by anyone outside of their course or mentoring relationship. There are a number of ways to accomplish integration that is seamless and thereby more successful for the training of legal professionals, something that the academy and the profession have a vested interest in achieving.

On one side, the academy has an obligation to support members of the profession who take on teaching responsibilities. A law school that uses members of the profession as adjuncts to teach courses should assist those adjuncts by providing annual orientation and training sessions that include information about how to identify and assess teaching goals, craft a syllabus, choose a text, compile teaching materials, conduct a class, and evaluate student performance. There should be information about different learning styles, inclusion and sensitivity to cross cultural competency, and alertness to potential mental health issues. Technology in the classroom and class management software should be demonstrated and supported. Academic calendar issues and deadlines should be explained, and strategies for effective communication adopted.

Additional support is necessary to help ensure the success of practitioners who step in to teach one section of a multi-section course that follows a common syllabus, such as in a legal writing program or a multi-section experiential class. In such a class, it is helpful both for the students and for the practitioners to have “turn-key materials.” In other words, each practitioner should not only have a common syllabus from which to work but also common lesson plans, assignments, evaluation tips, and deadlines. The goal should be to equip each practitioner to provide a similar experience to students, regardless of the section to which the student is assigned.<sup>341</sup> This has the benefit of ensuring that all students are receiving the experience the law school wants them to receive and has the additional benefit of relieving the student anxiety that results when different sections of the same course seem to be receiving different information in class or seem to be subject to different deadlines.

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<sup>341</sup> See Sharon Reich & Eric Easton, *Legal Research & Writing Taught by Supervised Adjuncts*, in *THE POLITICS OF LEGAL WRITING: PROCEEDINGS OF A CONFERENCE FOR LEGAL RESEARCH AND WRITING PROGRAM DIRECTORS* 116 (Jan Levine et al. eds., 1995), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=993266](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=993266).

Furthermore, members of the bench and bar who contribute to the classroom should be recognized and treated as colleagues. The more they get to know the school, the faculty, and the students, and the more they become part of the life of the law school, the more connected they will feel and the more likely it will be that they will be successful in the classroom and will feel fulfilled by the teaching experience. Schools often address this by having a reception once a year. This is a beginning, but it is insufficient. Schools need to find ways for adjuncts and other contributing practitioners to regularly mingle with faculty in small and large gatherings, and they should do more to encourage attendance at lectures and special events at the law school, especially in relevant areas of teaching and practice.

Returning to the advisory role, law schools should find consistent ways to meaningfully consult with the bench and the bar regarding trends in the profession, trends in their practice areas, and expectations they have of new law graduates. The result should be an integration that enriches the academy and the students being trained—as well as the members of the profession who are assisting the academy to better meet its educational mission.

#### CONCLUSION

There already is significant and growing reliance upon lawyers and judges to meet the curricular goals of our law schools and to enhance the education provided to students in ways faculty alone cannot. However, law schools could benefit from a more strategic and purposeful collaboration with the profession. As a starting point, law schools should consider conducting an inventory to assess the level and effectiveness of current integration with the bar. Schools need to involve thoughtful members of the profession in this assessment. The goal should be to identify and then adopt means for achieving curricular goals through ongoing inclusion of practitioners in teaching and design. Making all students “practice ready” within three years may not be a realistic or even appropriate goal; making them “practice aware” and capable of effectively building their expertise as practitioners should be. Integration is the foundation for understanding what this should mean.<sup>342</sup> This Working Group sees identifying with particu-

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<sup>342</sup> Jay G. Finkelstein, *From Practitioner to Professor: Transferring Your Experience into the Law School Classroom*, 2014 A.B.A. BUS. L. SEC. SPRING MEETING 75.

larity effective models for such curricular design as appropriate for the next phase of exploration.