

Legal Education in Transition: Trends and Their Implications

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INTRODUCTION

This is a pivotal moment in the history of legal education. Revisions in American Bar Association accreditation standards, approved by the ABA House of Delegates in August, 2014, both impose new requirements and provide law schools with greater flexibility in how they educate their students.¹ ABA and state and local bar association task forces are pushing for significant changes in legal education, and some jurisdictions, such as New York and California, are beginning to mandate changes in licensing requirements that will have direct implications for law schools. Equally important, the legal profession in this country is in the throes of market-mandated change.

Unbeknown to many, a number of law schools throughout the country are making important reforms in the interrelated ways in which they prepare law students for practice, teach about professionalism, and introduce students to the extraordinary access to justice problems in this country and the legal profession's role in addressing them. Changes like these belie the oft-quoted skeptics of legal education, who said over twenty-five years ago that "[i]nnovation in legal education comes hard, is limited in scope and permission, and generally dies young."² Innovation is breaking out all over, and the pace of change is accelerating.

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¹ See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS (2014) (redline copy), *available at* http://www.americanbar.org/content/dam/aba/images/abanews/2014am_hodres/103a.pdf. [hereinafter 2014 ABA STANDARDS].

² THOMAS L. SHAFFER & ROBERT S. REDMOUNT, LAWYERS, LAW STUDENTS, AND PEOPLE 24 (1977).

Thus, our goal in writing this article is not to add our voice to the “cottage industry of criticism [that] has grown up about legal education.”³ We have different purposes in mind—to describe the new courses and initiatives that law schools are developing; to suggest how law schools might take advantage of and build upon such developments; and to propose ways that law schools and the profession can better coordinate their efforts to prepare lawyers for practice.

We recommend retaining the current three-year model—in spite of calls by President Obama and others to reduce legal education to two, but with some modifications that differ from those of traditionalists like Justice Antonin Scalia, who argues that the third year is needed “to study systematically and comprehensively entire areas of the law.”⁴ We also endorse a nascent movement by some law schools, state and local bar associations, and at least one court system, to create transitional post-JD programs, typically referred to as “incubator” programs.⁵ These programs provide expanded employment opportunities and needed training for recent graduates and provide some help addressing the access to justice crisis. In the aggregate, they are ad hoc steps toward potentially more substantial post-graduate apprenticeship programs.

It is impossible to generalize about the precise reasons for this period of innovation other than to observe that it is happening against a background that includes the recession in law business, a declining job market for recent graduates, a downturn in law school applications, a resulting budget crisis for the schools, critical studies and task force reports, the intervention of

³ Don LeDuc, *Enough About the Ills and Evils of Legal Education*, T.M. COOLEY SCHOOL OF LAW (Aug. 15, 2012), http://www.cooley.edu/commentary/enough_about_the_ills_and_evils_of_legal_education.html.

⁴ Peter Lattman, *Obama Says Law School Should Be Two, Not Three, Years*, DEALBOOK (Aug. 23, 2013, 5:31 PM), <http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/> (reporting that President Obama believes law school should be shortened to only two years). To review Justice Scalia’s perspective on the third year of law school, see Tony Mauro, *Scalia’s Remarks on Law School Renew Legal Education Debate*, NAT’L L.J. (May 23, 2014), <http://nationallawjournal.com/legaltimes/id=1202656574527/Scalias-Remarks-o> (with link to Justice Scalia’s commencement address at William & Mary Law School).

⁵ See generally *Incubator/Residency Programs Directory*, A.B.A., http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_directory.html (last visited Sept. 2, 2014) (describing and listing incubator programs).

regulators, the pervasive impact of the *U.S. News & World Report* rankings, and increased competition for applicants among law schools. In this article, we recommend a process for thinking about reforms more strategically building upon positive developments already underway.

In Part I, we briefly describe what the critics are saying about legal education and steps the regulators are taking to stimulate what they perceive to be needed reforms. In Part II, we provide an overview of reforms now underway or in development in the first year; developments in experiential courses and programs in upper-level curricula; the emergence of some programs of specialization; the movement to add practice-based courses to the third year; and the creation of post-JD transition programs. In Part III, we propose an agenda for law faculties in the strategic planning that law schools should now be undertaking in light of developments underway, the just approved revisions in ABA accreditation standards, and, in our view, the general need to add more practice-based experiences to most law schools' curricula.⁶ We believe this agenda should include, among other things, rebalancing the curriculum to: 1) accomplish the traditional goals of legal education, 2) more effectively prepare law students for practice, and 3) more effectively introduce them to the importance of professionalism and the profession's essential role in promoting equal access to justice.

⁶ We recognize that the issue of the role that online education should play in professional schools is an important topic. The ongoing debate within the Harvard Business School about how to proceed in this area is an example of that. See Jerry Useem, *Business School, Disrupted*, N.Y. TIMES, May 31, 2014, http://www.nytimes.com/2014/06/01/business/business-school-disrupted.html?_r=0. This topic is beyond the scope of this article.

I. WHAT THE CRITICS ARE SAYING ABOUT LEGAL EDUCATION AND STEPS THE REGULATORS ARE TAKING TO STIMULATE REFORM

There is no lack of critics of contemporary legal education.⁷ The Carnegie Foundation for the Advancement of Teaching, for example, concluded that law schools generally “give only casual attention to teaching law students how to use legal thinking in the complexity of actual law practice” and “fail to complement the focus on skill in legal analyses with effective support for developing ethical and social skills.”⁸

Two years later, the American Law Institute, the American Bar Association and the Association for Continuing Legal Education sponsored a Legal Education Critical Issues Summit.⁹ Participants included lawyers, bar leaders, judges, law school deans, and faculty, and law firm and continuing legal education professionals.¹⁰ The Summit concluded that law schools must better ensure that “their graduates are capable of serving as effective beginning

⁷ See A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949 (2012) (arguing that law schools must reform from the traditional “law in books” model to a “law in action” model whereby students learn from practice); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992) (suggesting law schools fail to prepare students to understand how to practice as a professional and that there is a growing disjunction between legal education and the legal profession); David Lat, *Bring Back Apprenticeships in Legal Education*, N.Y. TIMES (Feb. 2, 2012, 11:55 AM), <http://www.nytimes.com/roomfordebate/2011/07/21/the-case-against-law-school/bring-back-apprenticeships-in-legal-education> (contending that legal education must reform and the introduction of apprenticeships may help make legal education shorter, more cost-effective, and more practical); Elie Mystal, *Outsiders Criticize Law Schools, but Will Change Ever Come?*, ABOVE THE LAW (Jan. 9, 2012, 11:57 AM), <http://abovethelaw.com/2012/01/outside-criticize-law-schools-but-will-change-ever-come/> (discussing a recent Association of American Law Schools meeting where law school administrators critiqued the legal education system); BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012) (asserting that the law school system is unsustainable unless the economic demands and competitive pressures on law school are reformed).

⁸ WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 6 (2007). See also ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007) (criticizing the legal education model and suggesting what it could become if best practices were implemented)

⁹ See ALI/ABA CONTINUING PROF'L EDUC. & ASS'N FOR CONTINUING LEGAL EDUC., *EQUIPPING OUR LAWYERS, THE FINAL REPORT OF THE CRITICAL ISSUES SUMMIT* 5 (2010), available at <http://lawprofessors.typepad.com/files/finalreport.pdf> (noting the conference took place on Oct. 15-17, 2009).

¹⁰ See *id.* at xv–xxi (listing the conference participants).

professionals.”¹¹ More specifically, the Summit recommended that law schools better integrate “core practice competencies”—such as factual research skills, oral and written communication and counseling client skills—into their curriculum.¹²

In the fall of 2013, the New York City Bar added its voice.¹³ In a report by its Task Force on New Lawyers in a Changing Profession, the City Bar Association concluded that “[i]n light of the changing professional environment, we believe it is imperative for law schools to offer a broad range of curricular initiatives in addition to traditional casebook offerings.”¹⁴ The Task Force specifically recommended that the following become part of the core of new lawyer education:

- Substantial training and experience in complex problem-solving exercises, project management, working in teams and exercising professional judgment, in litigation and transactional settings.
- Exposure to and participation in negotiation, alternative dispute resolution processes, client and witness interviewing, counseling, and oral advocacy.
- Participation in hands-on clinical or other experiential training—at least one such experience during the law school years for every law student and, optimally, more than one experience or a defined period of working full time in a highly supervised training environment.
- Exposure to well-structured teaching by experienced practitioners, provided in coordination with academics.

¹¹ ALI/ABA CONTINUING PROF’L EDUC. & ASS’N FOR CONTINUING LEGAL EDUC., EQUIPPING OUR LAWYERS: LAW SCHOOL EDUCATION, CONTINUING LEGAL EDUCATION, AND LEGAL PRACTICE IN THE 21ST CENTURY—FINAL RECOMMENDATIONS 2 (Charles C. Bingaman ed., 2009), *available at* http://www.equippingourlawyers.org/documents/summit_final09.pdf.

¹² *Id.*

¹³ *See* TASK FORCE ON NEW LAWYERS IN A CHANGING PROFESSION, N.Y.C. BAR ASS’N, DEVELOPING LEGAL CAREERS AND DELIVERING JUSTICE IN THE 21ST CENTURY (2013), *available at* <http://www2.nycbar.org/pdf/developing-legal-careers-and-delivering-justice-in-the-21st-century.pdf> (reporting on the findings of the New York City Bar Association task force).

¹⁴ *Id.* at 49.

- Instruction in the profession’s ethics and commitment to providing community and public service, including the promotion of access to justice through the provision of assistance to indigent clients.¹⁵

Law schools are not the only professional schools being criticized in this way. A 2010 Carnegie study of medical schools criticized “the lack of connection between book learning and clinical experience (students read about diseased hearts and broken bones for a full two years before ever seeing a patient with such conditions).”¹⁶ And a 2013 study by the National Council on Teacher Quality determined that the vast majority of 1,430 education programs that prepare K-12 teachers are mediocre and that there is no connection between clinical work and academic work.¹⁷ That they are not alone in being criticized should not, however, give legal educators any comfort. The assessments are far too informed and specific for that.

There have been criticisms of legal education for almost one hundred years.¹⁸ It is not a new phenomenon. The Carnegie Foundation published a report on legal education in 1921, referred to as the Reed Report, which raised similar concerns to those being raised today—such as dissatisfaction with the pervasive use of the case method, particularly in the second and third year.¹⁹ In 1971, the Association of American Law Schools released its own study of the legal profession and legal education—the Carrington Report.²⁰ The report urged law schools to adapt

¹⁵ *Id.* at 49–50.

¹⁶ Meryl Davids Landau, *Reforming Medical School: Significant Changes in Medical Education May Be on the Horizon*, U.S. NEWS & WORLD REP., Mar. 22, 2011, <http://www.usnews.com/education/best-graduate-schools/articles/2011/03/22/reforming-medical-school>.

¹⁷ See Lyndsey Layton, *University Programs that Train U.S. Teachers Get Mediocre Marks in First-Ever Ratings*, WASH. POST, June 18, 2013, http://articles.washingtonpost.com/2013-06-18/local/40032964_1_k-12-teachers-teacher-preparation-many-education-schools (reporting on the failures of universities to prepare students for work as teachers).

¹⁸ For an excellent and comprehensive review of the criticism of law schools over time, see Spencer, *supra* note 7.

¹⁹ See ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921) (studying the problems of contemporary legal education).

²⁰ Paul D. Carrington, *Training for the Public Professions of the Law: 1971*, in HERBERT L. PACKER & THOMAS EHRlich, NEW DIRECTIONS IN LEGAL EDUCATION 93 (1972).

their curricula to adjust to “the varied needs of the public for legal services” and to “break free of offerings and approaches that have nothing but longevity to commend them.”²¹ Interestingly, it also recommended that law students be given the opportunity to complete law school in two years followed by specialized post-JD study and training.²² The ABA then became very active in critiquing legal education during the 1970s, 80s, and 90s.²³ But this wave of reports by the ABA and others did not substantially alter law school curricula.²⁴

That is no longer true. Key regulators are beginning to take action. Chief New York Judge Jonathan Lippman announced a new program in February 2014 under which third year law students can take the state bar exam in February in return for providing legal services to the poor during their last semester of law school “under the supervision of a legal services provider, law firm, or corporation in partnership with their law school.”²⁵ And California, the state with the largest population of lawyers, is in the final stages of requiring that as a precondition of

²¹ *Id.* at 95.

²² *See id.* at 97 (recommending changes to the law school curriculum, including shortening the length of law school and adding post-graduation training).

²³ TASK FORCE ON LAWYER COMPETENCY, A.B.A., REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 9 (1979) (referred to as the Cramton Report) (advocating for law schools to reform coursework to let students develop a greater number of skills relevant to the practice of law); SPECIAL COMM. FOR A STUDY OF LEGAL EDUC., A.B.A., LAW SCHOOLS AND PROFESSIONAL EDUCATION: REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION (1980) (referred to as the Foulis Report) (recommending that law schools invest in the effective teaching of legal skills); TASK FORCE ON PROF'L COMPETENCE, A.B.A., FINAL REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON PROFESSIONAL COMPETENCE (1983) (referred to as the Friday Report) (suggesting that clinical teachers should receive greater support to achieve success in the clinical setting); SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A.B.A., LONG-RANGE PLANNING FOR LEGAL EDUCATION IN THE UNITED STATES: A REPORT (1987) (referred to as the McKay Report) (advocating for the equal treatment of clinical faculty as traditional tenured faculty); TASK FORCE ON LAW SCH. AND THE PROFESSION, A.B.A., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM (1992) (referred to as the MacCrate Report) (calling for reform to a practice-oriented approach to legal education).

²⁴ *See* COMM. ON THE PROF'L EDUC. CONTINUUM, A.B.A., TWENTY YEARS AFTER THE MACCRATE REPORT: A REVIEW OF THE CURRENT STATE OF THE LEGAL EDUCATION CONTINUUM AND THE CHALLENGES FACING THE ACADEMY, BAR, AND JUDICIARY 1-2 (2013) (noting that public perception of a gap between legal education and legal practice persists twenty years after the MacCrate Report).

²⁵ JONATHAN LIPPMAN, THE STATE OF THE JUDICIARY 2014: VISION AND ACTION IN OUR MODERN COURTS 3 (2014), available at <https://www.nycourts.gov/whatsnew/pdf/2014-SOJ.pdf>.

licensing, bar applicants must complete fifteen units of practice-based, experiential course work or an apprenticeship during law school starting in 2017.²⁶

In August 2008, the ABA's Council of the Section on Legal Education and Admissions directed its Standards Review Committee to undertake a comprehensive review of ABA accreditation standards.²⁷ After twenty-three meetings and numerous other outreach efforts, the Council, in April 2014, approved significant changes to the standards. These changes were adopted by the ABA House of Delegates in August 2014.²⁸ These revisions place new responsibilities on law schools to better prepare students for practice.

Revised Standard 302, for example, requires law schools to establish "learning outcomes" that, "at a minimum, include competency" in three sets of listed capacities and skills, as well as "[o]ther professional skills needed for competent and ethical participation as a member of the legal profession."²⁹ Interpretation 302-1 states that law schools may determine which "other" skills to teach, and lists a range of skills that include: "interviewing, counseling,

²⁶ See TASK FORCE ON ADMISSIONS REGULATION REFORM, STATE BAR OF CAL., PHASE I FINAL REPORT 1 (2013), available at [http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_\(FINAL_AS_APPROVED_6_11_13\)_062413.pdf](http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_(FINAL_AS_APPROVED_6_11_13)_062413.pdf) (explaining the new competency training requirement for admission to the bar).

²⁷ See Section of Legal Education and Admissions to the Bar Report attached to the ABA House of Delegates Resolution, *supra* note 1, at 1.

²⁸ *Id.* By way of background, see Memorandum from Section of Legal Educ. & Admissions to the Bar, A.B.A. to Interested Persons and Entities 1 (Sept. 6, 2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20130906_notice_comment_chs_1_3_4_s203b_s603d.authcheckdam.pdf (noting the approval for notice and comment on the comprehensive review of the standards in August 2013); Standards Review Comm., A.B.A., April 2014 SRC Meeting Materials 1 (Apr. 2014), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/201404_src_meeting_materials.authcheckdam.pdf (listing the agenda for an April 2014 meeting to discuss revisions to the proposed standards).

²⁹ See 2014 ABA STANDARDS, *supra* note 1, §§ 302, 302(d). Prior to the revisions, Standard 301 required a law school to "maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession." The revisions add that the preparation must be for "ethical" participation, as well as "effective and responsible participation," not for "the legal profession" generally, but "as members of" the legal profession, and must be done "upon graduation." See *id.* at 22.

negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.”³⁰ The revised standards also require law students to “satisfactorily complete . . . one or more experiential course(s) totaling at least six credit hours.”³¹ These revised standards, are “effective immediately,” but “there will be a phase-in period for some standards.”³²

At the same time that the ABA accreditation standards were under review, an ABA Task Force on the Future of Legal Education issued a report—in January 2014—recommending that law schools more effectively teach “core competencies needed by people who will deliver legal services to clients.”³³ The Task Force also recommended that the ABA Section on Legal Education and Admissions to the Bar revise its standards to encourage law schools to engage in more experimentation and innovation, which the Section has done.³⁴

We do not uncritically accept all of the recommendations and externally imposed requirements, although we believe, in the aggregate, they generally are moving legal education in the right direction. The many goals of legal education can be both mutually reinforcing and competitive. Recent events suggest that key external regulators and other external constituents are losing confidence in our ability and willingness to make necessary changes. We need to demonstrate that they are wrong if we wish to avoid a reactive role in the decisions that are affecting legal education. To be clear, we believe legal educators should oppose externally generated proposals that they believe are ill-advised. One of our major goals in writing this

³⁰ 2014 ABA STANDARDS, *supra* note 1, § 302 interpretation 1.

³¹ *Id.* § 303(a)(3).

³² Standards Review Committee, *supra* note 28. “A timeline and more detailed information about the implementation of the revised Standards and Rules of Procedure will be available this fall.” *Id.*

³³ TASK FORCE ON THE FUTURE OF LEGAL EDUC., A.B.A., REPORTS AND RECOMMENDATIONS 26-27.

³⁴ *Id.* at 27.

article, however, is to urge law schools to assert leadership in both proposing and making necessary changes.

II. RECENT INNOVATIONS IN LEGAL EDUCATION THAT MAY HELP TO SHAPE ITS FUTURE

Many law schools likely will not have to make substantial revisions to satisfy the revised ABA accreditation standards. A number of schools, however, are taking more ambitious steps that are consistent with the recommendations of the Task Force Report on the Future of Legal Education. They are doing so for a mixture of reasons, including, primarily we assume, because they believe these reforms will benefit their students, but also because they believe these reforms will make them more competitive in attracting applicants.³⁵

A. *First Year of Legal Education*

The pedagogical goals many first-year teachers have are ambitious. Depending on the teacher, they may include, among others: to teach students how to read cases and interpret statutes; to understand the common law method of developing legal principles and rules; to appreciate the impact of other forces—for example, economics, politics, history, and culture (including race and class)—on the development of legal principles and rules; to understand and critique legal doctrine; to teach students how to conduct legal research and write objectively and

³⁵ We note that many of the descriptions of courses and other projects in this Part II are self-descriptions. We offer them understanding the sometimes limited reliability of self-descriptions to show patterns in the development of courses and projects. Part of the strategic planning exercises that we recommend, would be to conduct deeper assessments of any course or project that a law school is potentially interested in replicating. For a recent article on the results of a survey of law schools on their innovations, see Stephen Daniels et al., *Analyzing Carnegie's Reach: The Contingent Nature of Innovation*, 63 J. LEGAL EDUC. 585 (2014). The University of Denver Sturm College of Law is also leading a consortium of thirty law schools which are promoting innovations in legal education. See *About Our Consortium*, EDUCATING TOMORROW'S LAWYERS, <http://educatingtomorrowlawyers.du.edu/schools/> (last visited Sept. 2, 2014) (listing the schools participating). The University of Denver's Institute for the Advancement of the American Legal System has also created an Educating Tomorrow's Lawyers initiative to identify and promote reforms in this area. See *About ETL*, EDUCATING TOMORROW'S LAWYERS, <http://educatingtomorrowlawyers.du.edu/about-etl/> (last visited Sept. 2, 2014) (describing the program).

persuasively; and to help students begin to “think like a lawyer.” This is a formidable first year agenda and one that we share.

Our colleague Robert Condlin argues that the constituent skills embodied in the capacity to “think like a lawyer” are essential practice skills:

Both in presenting their own work and evaluating the work of others, lawyers use a set of skills they refined (and sometimes learned for the first time) in law school: reasoning analytically, spotting and analyzing issues, synthesizing principles, devising ends-means strategies, interpreting texts, marshaling reasons and evidence to support arguments, and the like.³⁶

We fully agree that these are *some* of the basic skills that lawyers need and to which law students should be introduced in the first year. There are others, however, that are not traditionally taught in the first year, especially with the case/Socratic method. We believe, for many reasons, that we need to broaden what is taught in the first year and diversify the methods we use to teach first-year students.

First of all, most students enter law school with little understanding about the legal profession and what lawyers do. While a dean might make a brief hortatory speech about “entering the profession” on orientation day, very quickly thereafter, students are dropped into the thicket of appellate case analysis, which is at the core of typical Socratic teaching. We

³⁶ Robert Condlin, “*Practice Ready Graduates*”: *A Millennialist Fantasy* 20–21 (Univ. of Md. Legal Studies Research Paper No. 2013-48), available at <http://ssrn.com/abstract=2316093>. We, like Professor Condlin, do not accept the current external mantra that law schools must seek to produce “practice ready” graduates. We agree with him that there is no uniform meaning to “practice-ready,” *id.* at 12-13, that mentors and experience are essential to develop competency, which requires judgment as well as technical skill, and that this takes more than one or two semesters to develop. *Id.* at 12-17. We believe that clinical courses, in which students have supervision and significant responsibility for actual clients, are an essential step in developing practice competency, that there are some core skills that most lawyers need to be competent, and that law schools generally should do more to both teach them and offer students additional experiential experiences. We also believe that some form of post-JD education and training is essential, which is why we find the development of “incubators”, *see infra* Part II.B.5., intriguing. So far, however, relatively few graduates are participating in such post-JD projects, and the capacities of most law schools to fund them are limited. *Id.* The challenge will be whether legal educators, in partnership with alumni, the bar, and charitable foundations (funding access to justice projects), can take these projects to scale, creating the partial equivalent for law of post-M.D. medical education, and find funding sources for them that do not increase student debt.

believe students need to be exposed early on to fundamental questions about what it means to be in a profession; what obligations flow from that status; how a lawyer's personal values relate to his or her professional obligations; what types of moral, ethical and potential malpractice and criminal problems lawyers may confront; and what problems the profession faces now, and why.³⁷

We know that law professors do mention some of these matters in their first year courses, and that schools that offer courses on legal ethics in the first year do more. But many law students begin and end their first year courses largely with doctrinal/legal reasoning assignments that preclude serious consideration of the professionalism issues. There are ways of more significantly integrating these issues into the first year curriculum, which we discuss below.

In addition, current first year courses—and to a significant extent, law school classroom courses generally, largely ignore clients and how attorneys interact with them. In first year courses especially, clients are missing in action. As former Maryland Law School Dean Michael Kelly noted, “[T]he narrowness of present law school goals—can perhaps best be perceived by imagining medical school training without patients.”³⁸

Casebook clients appear in one-dimensional forms.³⁹ Students rarely learn who the clients are, why they sued or were sued, or why they, or someone on their behalf, took the

³⁷ Law students need to know, for example, that the numbers of malpractice and disciplinary claims against lawyers has been rising steadily and the areas in which these claims most often arise. *See, e.g., Sara Randazzo, As Spring Fades, a Fresh Law Firm Lawsuit-Palooza*, AM. LAW. (June 20, 2013), <http://www.americanlawyer.com/PubArticleALD.jsp?id=1202607519175&slreturn=20131002173403> (discussing the rise of malpractice claims against attorneys).

³⁸ MICHAEL KELLEY, *THE SCANDAL OF AMERICAN LEGAL EDUCATION* 14 (1979).

³⁹ Ann Shalleck argues that many professors either ignore or dehumanize clients in recitations of the facts of cases and analysis of legal arguments. *See Ann Shalleck, Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731, 1733–37 (1993). Where clients are acknowledged, they usually are “cardboard clients.” *Id.* at 1732. This excludes from the classroom “the very people whose lives and work, whose problems and desires, bring them into contact with the legal system.” *Id.* She argues that “the classroom treatment of legal ethics replicates and reinforces the construction of the client carried out in the rest of legal education.” *Id.*

appeal. Thus, they begin developing professional identities from the first day of classes with little professional grounding rooted in the needs and behaviors of clients to support it. With a handful of exceptions, first year students also have no contact with actual clients, including those who cannot obtain the legal help they need.

Most first year courses lack factual depth as well. This significantly limits first-year legal education. For example, it precludes or at least significantly limits application of the basic method lawyers use to develop a “theory of the case” as part of preparing for litigation, including the litigation that produced the appellate opinions the students are reading. This “theory,” as legal educators and lawyers know, matches elements of claims and defenses and facts to identify the strongest arguments. This is done best with an open-ended dialectical process by which the theory of the case evolves from tentative matches of elements and facts until the strongest combination is created. Facts are necessary to teach this method. The theory of the case method also is an excellent way to analyze appellate opinions and to learn and organize (by elements) the bodies of law in the first-year curriculum.

Many first year students also are not presented with relevant legal documents or assigned responsibility, other than for legal analysis, for actual professional tasks such as interviewing a prospective client, conducting part of a factual investigation, or drafting a contract.

There are a number of examples of courses and teaching aids that add some of these dimensions to the first year curriculum.

Beginning with classroom courses, we note, for example, that Harvard Law School has added a required Problem Solving Workshop for all 1Ls which is taught during winter term. The course is described in this way:

What sorts of problems do lawyers have? How do they solve them? What practical judgments? This workshop-style course will answer these questions by

giving you a chance to practice confronting client problems the way lawyers do, from the very beginning, before the facts are all known, before the client's goals are clarified, before the full range of options is explored, and before a course of conduct is chosen. You will undertake these tasks by working in teams on a number of different problems in different lawyering settings. You will be writing short memos of the kind written by practicing lawyers, identifying facts that need to be gathered, questions the client needs to answer, and options that should be considered as well as writing memos interpreting laws that impinge on the problem and recommending a course of action. You will also engage in simulated interviews of clients.⁴⁰

A classic example of a good teaching aid is Richard Danzig and Geoffrey R. Watson's *The Capability Problem in Contract Law: Further Readings on Well-Known Cases*. It contains background information on the clients, lawyers, judges, and negotiations in key cases in first year Contracts courses.⁴¹ (There ought to be such a supplement for every first year course, and preparing it should be scholarship that law schools value.)

There also are skills-based course materials that include simulated client interaction exercises for both first year and upper level courses. West, for example, has Business Association, Civil Procedure, Contracts, and Property course materials in its Developing Professional Skills Series, and LexisNexis has similar materials in its Skills and Values Series.

Law professors can also construct their own case studies from cases that they, other lawyers, or their law school clinics have handled.⁴² Case studies serve many pedagogical purposes:

⁴⁰ *Problem Solving Workshop E*, HARV. LAW SCHOOL, <http://www.law.harvard.edu/academics/curriculum/catalog/index.html?o=67461> (last visited Aug. 25, 2014).

⁴¹ Debora L. Thredy refers to this method as "legal archeology." See Debora L. Thredy, *Legal Archaeology: Excavating Cases, Reconstructing Context*, 80 TUL. L. REV. 1197, 1197 (2006) (explaining that legal archaeology "refers to a type of legal history that makes use of case studies" in which one develops an "in-depth study of an individual case by reconstructing its historical, economic, and social context").

⁴² The clinics in most law schools have closed cases that, with a little tweaking, can be converted into case studies. This would present wonderful opportunities for clinical-podium faculty collaboration. For examples, see Michael Millemann, *Case Studies and the Classroom: Enriching the Study of Law through Real Client Stories*, 12 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 219 (2012).

They bring forgotten clients into the classroom; reaffirm the idealistic reasons many students come to law school; use practice to organize and critique theory and theory to organize and critique practice; introduce students to the work of lawyers, with examples of both good and bad legal work and good and bad lawyers and, thus, teach professional responsibility; provide several dimensions of critical legal theory to evaluate legal doctrine and process; and explore both the potential and limits of law.⁴³

There are other approaches that can be used as well. Ex-clients, themselves, can “appear” through videotaped interviews, press clips, or in other multimedia forms.⁴⁴ Or, ex-clients can come to class in the flesh to talk about their perspectives of past cases.⁴⁵

The University of New Hampshire uses another novel approach. In both litigation-related as well as transactional courses, it pays actors to play standardized client roles, similar to standardized patient programs used in some medical schools.⁴⁶

There are other ways to add actual practice, access to justice issues, and pro bono responsibilities into the first year. For example, for a number of years (and thus it is not a recent innovation), Maryland Carey School of Law provided clinical-type experiences in its first year courses, called “legal theory and practice” courses, and it is returning to that model in 2015.⁴⁷ This primarily is done through a three-credit legal theory and practice component added to a

⁴³ *Id.* at 268 (discussing author’s use of a Florida death penalty case in which he was counsel in Criminal Law and legal research and writing courses).

⁴⁴ *Id.* at 263 (referring to the use of a videotaped interview with a former client for in-class use).

⁴⁵ *Id.* at 269 (noting that former clients were able to visit a class and communicate directly with students).

⁴⁶ See John Burwell Garvey, “*Making Law Students Client-Ready*” *The Daniel Webster Scholar Honors Program: A Performance-Based Variant of the Bar Exam*, N.Y. ST. B.J., Sept. 2013, at 44, 49.

⁴⁷ For a description of legal theory and practice courses, see Michael Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year*, 12 CLINICAL L. REV. 441 (2006); Barbara Bezdek, *Reconstructing a Pedagogy of Responsibility*, 43 HASTINGS L.J. 1159 (1992); Richard Boldt & Marc Feldman, *The Faces of Law in Theory and Practice: Doctrine, Rhetoric, and Social Context*, 43 HASTINGS L.J. 1111 (1992); Theresa Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43 HASTINGS L.J. 1175 (1992); Homer C. La Rue, *Developing an Identity of Responsible Lawyering Through Experimental Learning*, 43 HASTINGS L.J. 1147 (1992).

required first year course.⁴⁸ (Yale Law School takes this a step further, admitting first year students to its clinical program.⁴⁹) The legal theory and practice component gives students “substantial responsibility for providing legal assistance” to poor clients, shows them “how the law operates in practice,” uses the practice experiences to help students “understand, apply, and critique theory and practice,” has a “professional responsibility component,” and requires “substantial writing in connection with their practice.”⁵⁰

The experiential component enhances the traditional parts of the course. For example, in developing a theory of the case for use in practice, students must first deconstruct the legal rule into elements and apply it in practice. This inevitably helps them understand and critique legal rules. To develop the case theory, students also must identify facts that prove or disprove elements, emphasizing the importance of facts. In the end, by teaching how to incorporate the theory of the case into a persuasive story that is consistent with the facts, students learn about the importance of “story-telling” in practice and obtain new insights into the appellate opinions they are reading.⁵¹

There are other more recent examples of innovative first year courses. Chicago-Kent Law School offers its 1Ls opportunities to participate in the school’s in-house law firm working under

⁴⁸ See Michael A. Millemann, *Using Actual Legal Work to Teach Legal Research and Writing*, 4 J. ASS’N LEGAL WRITING DIRECTORS 9, 11 (2007) (describing the addition of a three-credit “Legal Theory and Practice” component to a two-credit legal writing course).

⁴⁹ See *Clinics & Experiential Learning*, YALE L. SCH., <http://www.law.yale.edu/academics/clinicalopportunities.htm> (last visited May 20, 2014) (noting the ability of first-year law students to enroll in clinic programs).

⁵⁰ *The Cardin Requirement*, U. MD. FRANCIS KING CAREY SCH. L., <http://www.law.umaryland.edu/publicservice/cardin.html> (last visited Sept. 2, 2014). For example, students and faculty members have represented tenants in Baltimore’s Rent Court in Property; lead-poisoned children and their families in Torts; primary and secondary school students in special education and school discipline cases in Civil Procedure; elderly clients who had been defrauded in a refinancing scam in Contracts; and defendants in district court (lower court) prosecutions in Criminal Law. In all of these courses, the legal work was an integrated part of the course study.

⁵¹ See *supra* notes 47 and 48.

faculty supervision on matters relating to criminal defense, employment discrimination, immigration and tax.⁵²

The University of California, Irvine School of Law has first year students observe and conduct interviews of clients in legal aid, public defender and public interest organizations; prepare reports of the interviews; and present the information to the partner agency's supervising attorney in a two semester (six credits), lawyering skills course.⁵³

The University of Montana School of Law offers a two-semester, first year course (nine credits) in *Lawyering Fundamentals: Theory and Practice*. Students begin course work in the fall by developing "fundamental skills," including in "legal research, and legal analysis."⁵⁴ In the spring, seven or eight student "law firms" are constituted and each firm represents one client who is referred by the Montana Legal Services Association.⁵⁵ There are twelve or so firms.⁵⁶ Students, working under faculty supervision, interview the client, conduct required legal research and fact investigations, counsel the client and collectively draft a memo for a prospective pro bono attorney.⁵⁷ Teams of faculty, including legal research and writing, skills and clinical faculty members, teach the course.⁵⁸

⁵² See Ed Finkel, *Chicago Law School Adds Clinical Rotation for 1Ls*, A.B.A. J. (Mar. 1, 2014, 5:30 AM), http://www.abajournal.com/magazine/article/chicago_law_school_adds_clinical_rotation_for_1ls/ (describing the addition of clinical programs as a course option for first year students).

⁵³ Telephone Conversation with Professor Carrie Hempel, Clinical Professor of Law & Assoc. Dean for Clinical Educ. & Service Learning, Univ. of Cal., Irvine, Sch. of Law (Feb. 2014). See also *Focus on Clients from Year One*, UNIV. OF CAL. AT IRVINE SCHOOL OF LAW, <http://www.law.uci.edu/academics/real-life-learning/> (last visited Sept. 2, 2014).

⁵⁴ *Lawyering Fundamentals: Theory and Practice*, UNIV. OF MONT. SCHOOL OF LAW, <http://www.umt.edu/law/students/academicprogram/courseofferings/lawyrfuntheorypractice.php> (last visited Sept. 2, 2014).

⁵⁵ Information provided by Professor Eduardo Capulong, Professor of Law and Director, Mediation Clinic, Univ. of Mont. School of Law.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* For another example of this approach, the University of Denver Sturm College of Law, in its Lawyering Process I and II course (six credits), has students in the first semester focus on "the legal system, legal research, and

Opportunities like these introduce students to the cross-cultural competence they will need in any future practice.⁵⁹ They also expose students early on to the serious access to justice problems in our society, and invite analysis of the obligations (including pro bono) of lawyers in responding to these problems.⁶⁰ Adding these components to the first year curriculum also allows students at the beginning of their legal education to provide legal help to those who would not otherwise receive it.⁶¹

And, when teachers and students work together collaboratively early on, it mitigates the hierarchical structure of legal education and allows professors to teach professional responsibility by modeling it. By demonstrating that law is a helping profession, these courses also reinforce the idealistic reasons that prompted many students to apply to law school. This may be their most important contribution.

providing client advice through written analysis,” and in second semester, apply these skills in working on a major case, e.g., researching and writing a legal memorandum, under the joint supervision of the classroom teacher and outside public interest lawyers. *Lawyering Process II*, UNIV. OF DENVER STURM COLLEGE OF LAW, <http://www.law.du.edu/forms/registrar/course-description.cfm?ID=316> (last visited Sept. 2, 2014). *See also* Nantiya Ruan, *Experiential Learning in the First Year Curriculum: The Public-Interest Partnership*, 8 J. ASS’N LEGAL WRITING DIRECTORS 191 (2011) (arguing that the courses are a model “for integrating the three pillars of legal education (doctrine, skills, and professional identity) into the first year curriculum” through “public interest partnership.” *Id.* at 193. Seattle University School of Law offers a first year Legal Writing Collaborative, in which clinical and legal research and writing professors work together to identify issues in clinical cases that need research, and then to assign them to second semester students and to supervise those students as they prepare memoranda. *See* Mary Nicol Bowman, *Engaging First-Year Law Students Through Pro Bono Collaborations in Legal Writing*, 62 J. LEGAL EDUC. 586, 590–93 (2013) (describing the Collaborative at Seattle University School of Law).

⁵⁹ Gaining cultural competency is one of the core competencies identified as an important learning outcome in the revisions to the ABA Standards. *See* 2014 ABA STANDARDS, *supra* note 1, § 302 interpretation 1.

⁶⁰ Interpretation 303-2 of ABA Accreditation Standard 303 stresses the importance of this for law students: “Rule 6.1 of the ABA Model Rules of Professional Conduct encourages lawyers to provide pro bono legal services primarily to persons of limited means or to organizations that serve such persons. . . . In meeting the requirement of Standard 303(b)(2), law schools are encouraged to promote opportunities for law student pro bono service that incorporates the priorities established in Model Rule 6.1.” *Id.* § 303 interpretation 2.

⁶¹ Legal education can occur in orientation programs prior to law school as well. For example, the University of the District of Columbia David A. Clarke School of Law requires all of its 1Ls take a two-week Law and Justice course before the first semester begins. At the conclusion of the course, faculty members are assigned responsibility for guiding each of the students through forty hours of pro bono service in the community that is performed during the first year. *Law & Justice*, U.D.C. DAVID A. CLARKE SCHOOL OF LAW, <http://www.law.udc.edu/?page-LawandJustice> (last visited Sept. 2, 2014) (describing the Law and Justice course and pro bono service component).

A few of the courses described above are taught by a podium faculty member alone. More often, they are co-taught, usually by combinations of podium, clinical and legal research and writing professors, adjuncts, and outside lawyers. Sometimes, the clinical teacher or adjunct was the lawyer responsible for the legal work. Other times, the outside lawyer—most often from a public interest organization or legal services program, but sometimes from a private law firm—was responsible for the legal work. Usually, there were partnership arrangements with some forms of shared responsibility.

Teaching with simulations is particularly appropriate in the first year. It is not difficult, for example, to introduce students to transactional legal skills through simulations, including drafting exercises. A Property professor could provide students with deeds and other conveyances, a Contracts professor, with a contract, and a Civil Procedure professor with a variety of pleadings, and all could engage students in drafting exercises. If they are unfamiliar with these documents or drafting assignments, faculty can invite lawyers who specialize in these areas of law to help them make these presentations.

Many of these models utilize clinical and simulation teaching methods alongside appellate case analysis, the Socratic technique, and lectures.⁶² Some of these courses require additional resources, but many can be taught or co-taught without additional resources simply by diversifying teaching methods and making limited use (for selected classes) of co-teaching relationships.

B. The Upper Level Curriculum

⁶² On the virtues of adding the clinical methodology to non-clinical courses, see Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 46 (2000) (arguing that “the most effective approach to clinical studies is to integrate clinical methodology throughout the law school’s course offerings while at the same time constructing a series of progressive clinical experiences”). Professor Barry succinctly summarizes our theory of integrated and progressive experiential education.

In a traditional law school curriculum, many of the upper class courses follow the same pattern used in the first year—concentrating on doctrine and legal reasoning and using case/Socratic dialogue and lecture teaching methods. But many schools are now making major changes in course options in the second and third years.

1. Expanding and diversifying experiential education

a. An overview

Many think about experiential education with a bilateral world in mind. There are “in-house clinics,” for which there is a generally understood model (or models), and “externships,” for which there is (are) the same.⁶³

In recent years, there have been substantial variations in the forms of experiential education.⁶⁴ In this expanding continuum, there are varying degrees of experience, student responsibilities (or not) for clients, exposure (or not) to access to justice and professional responsibility problems, types of supervision and teachers, forms of specialized education, and links to jobs and service. We have described, or will, a range of courses like these that have experiential components for law students. These include first year courses that could be replicated in the second and third years, e.g., those that integrate theory and practice (including in upper level writing courses);⁶⁵ skills-professionalism courses;⁶⁶ and two-semester sequences

⁶³ Robert Dinerstein, *Methods of Experiential Education: Context, Transferability and Resources*, INT’L LAW CONFERENCE ON EXPERIENTIAL EDUC. IN CHINA 1 (Jan. 25, 2008), available at <http://www.mcgeorge.edu/Documents/BD.Methods%20of%20Experiential%20Education.pdf> (listing in-house clinical education and externships as the conventional understanding of experiential education).

⁶⁴ See Barbara L. Bezdek, *To Forge New Hammers of Justice: Deep-Six the Doing-Teaching Dichotomy and Embrace the Dialectic of “Doing Theory,”* 4 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 301, 304 (2004) (noting the “proliferation” of the “clinical legal education movement,” producing clinics focused on technology, health care, and land use law).

⁶⁵ See *supra* Part II.A. (explaining the structure of LTP courses and describing various models of LTP courses in place for first year students at different law schools).

⁶⁶ See *supra* Part II.A. (discussing the numerous skills that students can learn from experiential components in their first year that would otherwise be overlooked in the traditional first year curriculum).

that have a second semester actual client component.⁶⁷ There also are upper level courses that combine professional responsibility and clinical education;⁶⁸ technology clinics;⁶⁹ and courses that integrate JD and post-JD education.⁷⁰ We add here “practicums.”

Before we turn to practicums, however, we offer an essential caveat. Not all of the courses we call “experiential” in Part II are equally good in preparing students for practice. Indeed, they have differing goals and pedagogical methods. They may or may not give students direct responsibility, with good mentors and individualized feedback, for a client’s matter. In our view, this remains an essential, but certainly not exclusive, part of preparing students for practice. There are many other important things students can learn in courses that do not offer this dimension.

b. Practicums

In the last few years, law schools have diversified their upper level experiential courses by adding “practicums” to traditional in-house clinics and externships. Georgetown Law Center likely has the most ambitious program, offering 17 clinics, 33 practicum courses (seminars with field placements) and up to 300 externship opportunities.⁷¹

The practicum courses take one of several forms: students are placed in fieldwork consistent with the subject matter of the course, they work on projects with their professors, who

⁶⁷ See *supra* Part II.A. (noting that the natural sequence of a first year curriculum where an LTP method is used in the first semester would be actual client interactions and ongoing legal work and describing courses with this sequence).

⁶⁸ See, e.g., *infra* Part II.B.1.c. (considering the unique ethical problems posed by technology in law practice, and explaining that technology clinics allow students to tackle these professional responsibility issues).

⁶⁹ See *infra id.* (outlining developments in technology clinics and the unique value they add to clinical education).

⁷⁰ See *infra* Part III.B.5. (examining law school post-JD programs, some of which are beginning to combine JD and post-JD opportunities for students and recent graduates).

⁷¹ See Ann W. Parks, *From Theory to Practice*, RES IPSA LOQUITUR, Fall 2013, at 28, 29 (describing Georgetown Law’s clinical offerings).

are practicing lawyers in the field or there is some combination of these two models, e.g., a classroom teacher and practicing lawyer combine to integrate theory and practice.⁷²

At Georgetown, for example, the “practicum” options range from a ten-credit “Law and War,” year-long course taught by a single law professor, the description of which includes “research, interviews, and a series of roundtables”⁷³ (which sounds to us like an enhanced seminar), to a five-credit “Prison Litigation and Advocacy” practicum, taught by a lawyer who is the Director of the DC Prisoners’ Rights Project, now part of the Washington Lawyers’ Committee (which sounds to us like an excellent internship.) In this course, the field work component includes placements “at various non-profits and agencies that deal with prison reform issues,” and “[d]epending on the agency and its needs,” work in “litigation, individual advocacy, policy development, or legislative advocacy.”⁷⁴ Depending on the relationship between the professor, the students, and those external supervisors, this could be an externship or what we call a “midternship.”⁷⁵

In Part III, we recommend a planning process that, as skeptical as we are about what law schools have called “strategic planning” in the past, we believe is warranted—indeed, essential—today. On the agenda ought to be how, consistent with the seemingly paradoxical “more practice education” and “cost containment” demands of today, we can responsibly expand the numbers

⁷² See, e.g., *Our Clinics*, GEORGETOWN LAW, <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/> (last visited Sept. 2, 2014) (discussing the clinical program and the available clinical offerings for students).

⁷³ *Law and War (Project Based Practicum)*, GEORGETOWN LAW, http://apps.law.georgetown.edu/curriculum/tab_courses.cfm?Status=Course&Detail=2514 (last visited Sept. 2, 2014). This course is described as a year-long, project-based course where students participate in a weekly seminar and do fifteen hours of work per week on a project to “map the gaps in existing international norms relating to warfare.” *Id.*

⁷⁴ *Prison Litigation and Advocacy (Fieldwork Practicum)*, GEORGETOWN LAW, http://apps.law.georgetown.edu/curriculum/tab_courses.cfm?Status=Course&Detail=2320 (last visited Sept. 2, 2014).

⁷⁵ See text accompanying notes 206-208 (describing and explaining the midternship model).

and variety of experiential courses that we offer our students and sequence them with clinics and externships.

We are not completely agnostic, however. Among other new clinics, we recommend that law schools develop those that address the uses of technology in the practice of law with an access to justice goal. We now turn to that multipurpose educational and service goal.

c. Technology clinics

It is apparent that understanding and harnessing technology have become basic practice competencies in the legal profession. Ronald Staudt has been the national leader in the field of legal technology education.⁷⁶ He and Andrew P. Medeiros have proposed “that law schools add a new type of clinical course that teaches law students how to use and deploy technology to assist law practice.”⁷⁷

The technology changes triggered by the economic shock [Recession of 2008] have changed the tools lawyers used to deliver legal services. New lawyers entering the profession must be ready to practice in today’s more efficient and more technology-driven workplace. For the most part, law schools are not currently equipped to teach these new skills and technologies.⁷⁸

Seven law schools are now participating in a national technology project, called the Access to Justice Clinical Course Project, which offers excellent models of law-related technology education. This project was initially developed by the Center for Computer-Assisted Legal Instruction (CALI), in partnership with IIT Chicago-Kent College of Law.⁷⁹ Each school has created or “will create a new course (or modify a current one) to teach core technical

⁷⁶ Tanina Rostain et al., *Thinking Like a Lawyer, Designing Like an Architect: Preparing Students for the 21st Century Practice*, 88 CHI.-KENT L. REV. 743, 744-45 (2013) (“Since 2010, Professor Ron Staudt, a pioneer in the field, has taught a Justice and Technology Practicum at Chicago–Kent College of Law.”). Staudt’s course, described *infra* at notes 77–81, has been a model for the more recent technology courses that we describe herein.

⁷⁷ Ronald W. Staudt & Andrew P. Medeiros, *Access to Justice and Technology Clinics: A 4% Solution*, 88 CHI.-KENT L. REV. 695, 698 (2013). For a list of faculty members teaching such courses, see *id.* at 698 n.18.

⁷⁸ *Id.* at 697.

⁷⁹ *Id.* at 698.

competencies using A2J Author,” a self-help assistance software package, “while simultaneously developing self-help resources for legal aid organizations.”⁸⁰

The technology clinics which have been created have demonstrated how lawyers can deliver services online to otherwise unserved clients and how lawyers can use technology to cut costs, improve the quality of their legal services, and compete in the marketplace. There are several good examples of technology clinics and programs in place. They include:

- The Justice and Technology Practicum at IY Chicago-Kent College of Law, in which students identify access to justice problems and “use document assembly and the A2J Author software to solve the problem for low-income people who face that problem every day;”⁸¹
- The Technology, Innovation and Law Practice at Georgetown Law Center, in which students build web-based applications that help people identify and understand legal problems they may face and assess their legal options;⁸²
- The ReInvent Law Laboratory at Michigan State University College of Law, through which students create business plans and develop “better delivery models that match appropriately qualified lawyers with the clients who need them;”⁸³ and

⁸⁰ See *id.* at 723 (discussing the origins of the A2J project). A2J Author “allows non-programmers, such as lawyers and court personnel, to build A2J Guided Interviews for use by the low-income public.” *Id.* at 708. The interviews “feature an easy-to-use front end interface that can be used with HotDocs Templates to create automated court forms more easily.” *Id.* at 708–09.

⁸¹ *Id.* at 711. In the course, students work to “develop the ability to write plain language for the public,” have “direct contact with self-represented litigants . . . [i]n local courts,” help these litigants “complete A2J Guided Interviews,” and construct their own guided interview and “parallel HotDocs template, that provides information and customized documents needed by self-represented, low-income people to solve a specific justice problem.” *Id.* at 712–13.

⁸² Rostain et al., *supra* note 76, at 743–45 (describing the Technology, Innovation and Law Practice at Georgetown Law). The applications describe the body of legal rules relevant to a legal problem, offer users an automated interview tool, provide a user who completes the interview online a “brief overall assessment statement,” and “a customized full report” that contains the information the user has provided as well as “more specific detailed guidance based on this information.” *Id.* at 743. Students in the course constructed applications for same— sex couples who want to know their legal rights. *Id.* Other applications addressed issues in “copyright, criminal procedure, citizenship law, and business law.” *Id.* at 744. The students who designed these applications were not required to know how to write software packages. *Id.* at 745. Rather, “with minimal training,” “non-technical” students used established software packages, or “authoring environments,” to construct the applications. *Id.* at 745.

⁸³ William E. Hornsby, Jr., *Gaming the System: Approaching 100 % Access to Legal Services Through Online Games*, 88 CHI.-KENT L. REV. 917, 943 (2013).

- The Lawyering in the Digital Age Clinic at Columbia University School of Law, which is organized around “gathering, managing and presenting information.”⁸⁴

These clinics teach students how to use technology to represent clients generally and have special significance in narrowing the access to justice gap. They introduce students to delivering legal services to clients online. There are “virtual law offices” and “virtual law practices” through which lawyers deliver legal services online—helping clients identify legal problems and provide information, advice, and documents to help them resolve those problems.⁸⁵ Of primary interest to us, solo and small firm practices are using “computer technologies” and “automated document assembly” to provide legal information and limited representation to low-income and moderate-income clients.⁸⁶ Through these “unbundled legal services,” clients can “determine how much attorney involvement they want, need, or can afford.”⁸⁷ In these ways, lawyers are “battling back” against “[v]enture-funded legal websites like LegalZoom and RocketLawyer.”⁸⁸ Online lawyers must honor the same client-centered

⁸⁴ Conrad Johnson & Brian Donnelly, *If Only We knew What We Know*, 88 CHI-KENT L. REV. 729, 731 (2013).

⁸⁵ Hornsby, Jr., *supra* note 83, at 931. Hornsby explains that “a virtual office is one that aggregates lawyers from various practice areas online rather than through brick and mortar office locations,” while “a virtual law practice” is one “that exists online through a secure portal and is accessible to both the client and the lawyer anywhere the parties may access the Internet.” *Id.* at 931–32 (quoting STEPHANIE L. KIMBRO, VIRTUAL LAW PRACTICE: HOW TO DELIVER LEGAL SERVICES ONLINE 4 (2011)).

⁸⁶ *Id.* at 932–42. Legal Aid offices have traditionally provided limited services to clients and many now are using technology to do so. The Legal Services Corporation’s Technology Initiative Grants (“TIG”) Program has helped to create “a national network of legal aid websites,” a “national hosting service for automated document templates,” the development of a legal services software tool called “A2J Author,” and “dozens of online legal aid intake projects.” Staudt & Medeiros, *supra* note 77, at 708. A2J Author “allows non-programmers, such as lawyers and court personnel, to build A2J Guided Interviews for use by the low-income public.” *Id.* The interviews “feature an easy-to-use front end interface that can be used with HotDocs Templates to create automated court forms more easily.” *Id.* at 708–09.

⁸⁷ Staudt & Medeiros, *supra* note 77, at 706.

⁸⁸ *Id.* Major fields of competition include real estate, family law, estate/wills, bankruptcy, entitlements and small business practices. *Id.* Automated document production, particularly, is a growing phenomenon. *See, e.g., Fill Out Legal Forms Faster*, LAW HELP INTERACTIVE, <https://lawhelpinteractive.org> (last visited Sept. 2, 2014). A2J Author offers visuals to help facilitate the automated document production function. “[A]n avatar asks the user (who also becomes an avatar) a series of questions. The questions can be written, in bubbles like those found in cartoons, or audio, offered in many languages. The user answers the questions and proceeds down a path to a courthouse. By the

principles of good practice that in-person lawyers follow: “(1) build the reputation of your online practice as a secure, efficient, and affordable site to receive legal services, and (2) build your reputation as a responsive lawyer who pays attention to the individual online clients’ needs.”⁸⁹

The technology clinics can also introduce students to “technology–assisted review (also known as ‘predictive coding’) which allows litigation support teams quickly and effectively to sort through the massive quantities of documents, emails and other potentially relevant material in the discovery phase of civil litigation.”⁹⁰ Electronic discovery (e-discovery) is discovery of electronically stored information, such as computer documents and electronic mail (email). Yet it is substantially more difficult and time-consuming than discovery of paper documents due to the sheer volume of electronically stored information. Firms now use technology-assisted review, such as software that sorts the thousands of electronic materials which may be responsive to a discovery request. Predictive coding is an advanced form of technology-assisted review. Predictive coding takes a sample of the pool of documents, along with keywords and human input, to categorize the full set of electronic material and expedite the e-discovery process. Even so, this process relies on software to determine some documents that will never be reviewed by a human for responsiveness. Practicing attorneys must choose e-discovery software and be familiar with the process. This is especially important as courts decide the validity of e-discovery.

Technology can also improve the way lawyers and law offices manage themselves as a business, handle recurring types of legal work through the use of technology-driven templates,⁹¹ and market their services. Even casual users of the Internet know that law firms of all types

time the avatars have arrived at the courthouse, the program has asked and received the answers to all of the information necessary to create the document. The program then piggybacks on a document assembly platform to seamlessly create the documents necessary for the particular legal matter.” Hornsby, Jr., *supra* note 83, at 933.

⁸⁹ KIMBRO, *supra* note 85, at 91.

⁹⁰ Staudt & Medeiros, *supra* note 77, at 704.

⁹¹ *Id.* at 705.

market their services on the web. Many do so through individual websites. But, there also “are scores of branded networks that promote the services of participating lawyers.”⁹² These include “nationally and vertically branded networks” through which small firms come together “to aggregate their marketing resources.”⁹³

Finally, many lawyers and *pro se* parties are now submitting disputes for decision or mediation online. The website of the National Center for Technology and Dispute Resolution contains information about the proliferating resources for online dispute resolution and has links to over sixty ODR entities.⁹⁴

This is a very incomplete list of the uses of technology, but it indicates that the nation’s law schools need to become players in both teaching the application of technology to the work of the legal profession and engaging in research and development to advance these applications. This is so for several reasons.

First, by “studying—or better yet, *building*—software systems that perform some of the tasks that lawyers and judges do,” the next generation of lawyers can “gain insight into emerging technologies at the center of modern law practice and also develop core competencies across a range of new and traditional lawyering skills.”⁹⁵ Understanding the modern day uses of legal

⁹² Hornsby, Jr., *supra* note 83, at 930.

⁹³ *Id.* (quoting Richard S. Granat & Mark Lauritsen, *The Next Five Years—Predictions for the Future of eLawyering*, L. PRAC. MAG., Sept. 2011, http://www.americanbar.org/publications/law_practice_magazine/2011/september_october/the_next_five_years.htm). Besides marketing, branded networks often offer “libraries of documents that enable people to become familiar with their legal issues before speaking with a lawyer,” “matching services” that allow users to post information and lawyers to respond to the posts, and “ratings of lawyers and feedback from prior clients.” Some networks also “are up the beginning to explore methods of integration with social networks,” the combining the user’s “search for a lawyer with his or her social media contacts.” Hornsby, Jr., *supra* note 83, at 931.

⁹⁴ Hornsby, Jr., *supra* note 83, at 932.

⁹⁵ Ronald W. Staudt & Mark Lauritsen, *Introduction: Justice, Lawyering and Legal Education in the Digital Age*, 88 CHI.-KENT L. REV. 687, 687 (2013). In 2012, the ABA House of Delegates revised Comment 8 to Rule 1.1, Model Rules of Professional conduct (competency) to include knowledge of “the benefits and risks associated with relevant technology” as a general obligation of competence. MODEL RULES OF PROF’L CONDUCT R. 1.1 cmt. 8 (2012).

technology also increases the potential of employment and success in practice.⁹⁶ Michael Kelly argues that the failure of law schools to teach students about the “organizational dynamics” of law firms and “the business of law” is “a gaping hole in American legal education.”⁹⁷ In today’s world, a central part of that education is about technology.

Second, clinical experience in delivering legal services through technology helps students think about and participate in important access to justice reforms.⁹⁸ Technology, by itself, will not solve the huge access to justice problem in this country, but it is an important tool of change and reform.⁹⁹

Third, law professors and students working together are uniquely equipped to create clinical laboratories that can test and evaluate different uses of technology in delivering legal services. They are not constrained by market forces and can be honest about the limitations and risks, as well as the potential, of legal technology.¹⁰⁰ We believe it is important to include a social scientist in such an experiment and to build serious evaluation into the design of the projects. Such experiments, and the scholarship they produce, would provide independent justification for technology clinics.

⁹⁶ See Staudt & Lauritsen, *supra* note 95, at 687 (noting that information systems have become central to legal work and that students must give more attention to these systems).

⁹⁷ Michael Kelly, *A Gaping Hole in American Legal Education*, 70 MD. L. REV. 440, 444 (2011). It is striking that as late as 2010, two-thirds of American law schools did not offer a course “that focused in a significant way on the basic principles of law office management.” SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, AM. BAR. ASS’N, A SURVEY OF LAW SCHOOL CURRICULA 2002-2010, 72. (2012). That survey stated that only seven law schools offer a course in law and technology. *Id.* at 72.

⁹⁸ See Staudt & Medeiros, *supra* note 77, at 698 (proposing that a clinic that teaches students core competencies needed in legal technology can also be used to help students think about the access to justice crisis and how to fix it).

⁹⁹ See Staudt & Lauritsen, *supra* note 95, at 721 (stating that teaching students about the technological aspects of law can help accelerate the expansion of access to justice).

¹⁰⁰ See Vern R. Walker et al., *Law Schools as Knowledge Centers in the Digital Age*, 88 CHI.-KENT L. REV. 879, 879–80 (2013) (proposing that law schools can critique the legal system and become knowledge centers by effectively using digital technology).

We do not accept unquestioningly that all new uses of technology are good for the public. Legal educators have a leadership role to play in protecting the public from overreaching and exploitation that inevitably come with rapid development of new commercial products, and from mistakes that come from the impersonal nature of this source of legal help. As Marc Lauritsen points out, “Software applications lack common sense. They cannot hear what is not being said. They do not detect nuance or emotion. Moreover, as with people, they can operate on unspoken assumptions, create the illusion of expertise, and engender unwarranted trust.”¹⁰¹ Using estate planning as an example, Lauritsen adds:

People may not know what they really want, or the implications of the choices they make. Documents can end up with missing or contradictory information. Users may not be properly informed of formalities required to validly execute documents. Defects of these sorts may not surface for years, and cause havoc for loved ones and beneficiaries. Online systems typically do not keep track of a consumer’s circumstances and issue an alert when the law changes in ways that might require updating an estate plan.¹⁰²

These inherent problems make the careful evaluation of technology experiments essential, including to help determine how technology and personal assistance can be mixed and matched to create successful legal services delivery models.

Fourth, the developing uses of technology in law practice pose many professional responsibility issues and challenges. “The Ethics 20/20 Commission has recognized this by releasing a set of Working Papers that deal with the impact of new technology on the legal profession’s rules structure.”¹⁰³ The papers discuss issues relating to technology and client confidentiality and the uses of the Internet in client development. With respect to client confidentiality, there are issues related to the uses of both third party technology (including

¹⁰¹ Marc Lauritsen, *Liberty, Justice and Legal Automata*, 88 CHI.-KENT L. REV. 945, 953 (2013).

¹⁰² *Id.* at 954.

¹⁰³ Richard S. Granat & Stephanie Kimbro, *The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm*, 88 CHI.-KENT L. REV. 757, 764 (2013).

“cloud computing”) and lawyer-controlled technology, and include issues related to unauthorized access to confidential client information and client information storage and retrieval.¹⁰⁴

With respect to client development, there are “ethics issues arising out of four online methods of client development: (1) social and professional networking services (such as Facebook, LinkedIn, and Twitter), (2) blogging, (3) ‘pay-per-click’ advertising, and (4) lawyer websites.”¹⁰⁵ There are a number of other issues too, e.g., whether “interactive online services for legal self-helpers can be prohibited as the unauthorized practice of law;”¹⁰⁶ whether what is provided is “legal information,” which does not trigger an attorney-client relationship, or “legal advice,” which may;¹⁰⁷ and whether the provision of services requires compliance with conflicts rules.¹⁰⁸

Experiential technology projects, and empirical bases to evaluate them, within law schools, give legal educators an additional source of information to inform these debates.

Fifth, these new law school courses advance “many of the teaching goals associated with a more traditional law school curriculum and, in particular, clinical legal education.”¹⁰⁹ They “teach relevant practice technology within rich intellectual contexts of doctrine, ethics, history,

¹⁰⁴ See Memorandum from the ABA Comm. on Ethics 20/20 Working Group on the Implications of New Technologies (Sept. 20, 2010).

¹⁰⁵ *Id.*

¹⁰⁶ Lauritsen, *supra* note 101, at 945. This issue arises when a commercial entity uses automated systems that produce “customer-specific documents over the Internet, using interactive software, without purporting to be engaged in the practice of law,” e.g., programs like LegalZoom, RocketLawyer, SmartLegalForms, and WhichDraft. *Id.* at 946. There are First Amendment and substantive due process issues as well when states seek to enforce UPL rules to such entities. *Id.*

¹⁰⁷ See Memorandum, *supra* note 104 (discussing the concern regarding lawyers creating inadvertent attorney-client relationships through use of networking and lawyer websites).

¹⁰⁸ See Abigail S. Crouse & Michael C. Flom, *Social Media for Lawyers*, BENCH & BAR OF MINN. (Nov. 10, 2010), <http://mnbenchbar.com/2010/11/social-media-for-lawyers/> (commenting on the possible problem of conflicts of interest for lawyers that use social media).

¹⁰⁹ Rostain et al., *supra* note 76, at 746.

and theory.”¹¹⁰ To draft the “design document,” the first step in building an application, a law student must learn the applicable body of law (principles and rules), describe these legal rules in clear, plain English (or some other language), identify and draft recurrent factual scenarios, anticipate “the range of concerns a typical user might have,” and structure the information so that it “respond[s] appropriately to the personal information provided by the user” and provides accurate assessments of the user’s situation.¹¹¹ These tasks are client-centered and engage students in research, legal analysis, learning and applying doctrine, writing, interviewing and counseling.¹¹² These are among the basic goals of legal education and comprise much of the fundamental work of lawyers.

In sum, these courses demonstrate that law schools can and should be at the forefront of developing and evaluating the best legal uses of artificial intelligence, both to narrow the access to justice gap and to train students in the uses of technology that will help them succeed as lawyers.

2. Using simulation to teach transactional lawyering skills

Litigation simulation courses have been around for decades.¹¹³ What is different today is the degree to which podium professors are offering seminars and courses that integrate simulations to teach transactional drafting skills. We offer the following courses as examples.

Loyola Law School in Los Angeles offers a course in Business Planning that gives students an opportunity to identify and deal with the issues arising in creating and financing a

¹¹⁰ Staudt & Lauritsen, *supra* note 95, at 687.

¹¹¹ See Rostain et al., *supra* note 76, at 747–48 (discussing best practices in designing a legal app).

¹¹² See *id.* at 749 (noting that designing a successful legal app requires a panoply of skills taught in the typical law school curriculum).

¹¹³ For excellent examples of various approaches to take, see Neil J. Dilloff, *Law School Training: Bridging the Gap Between Legal Education and the Practice of Law*, 24 STAN. L. & POL’Y REV. 425 (2013).

start-up business.¹¹⁴ Our colleague at Maryland, Professor Martha Ertman, teaches a Contract Drafting Seminar in which students learn the basics of contract drafting by acting as lawyers and clients in a hypothetical transaction in which they research governing law on LLC creation, sales of goods, and financing through secured transactions and then negotiate and draft documents in the transaction.¹¹⁵ Stanford offers a course on the Role of the Modern General Counsel to business and law school students in which practitioners place the students into real-world crisis scenarios as preparation for practicing corporate law.¹¹⁶ Former Harvard Law School Dean Robert Clark has changed the way he teaches his Mergers and Acquisition course. No longer simply assigning cases, he now co-teaches the course with Leo E. Strine, Jr., chancellor of the Delaware Court of Chancery, and provides lessons to be learned from real-life deal-making, contract negotiations, hostile takeovers and leveraged buy-outs.¹¹⁷ Jay Finkelstein, a partner at DLA Piper, teaches a seminar in which he involves students from two different law schools, one a school from outside the U.S., in which the student simulate the negotiation of international contracts.¹¹⁸ These are just a few of many more examples of the uses of simulations to invigorate and diversify classroom instruction.

¹¹⁴ Therese H. Maynard, *Educating Transactional Lawyers*, 2009 TRANSACTIONS: TENN. J. BUS. L. 23 (discussing the Business Planning Course at Loyola Law School).

¹¹⁵ See *Contract Drafting*, U. MD. FRANCIS KING CAREY SCHOOL OF LAW, http://www.law.umaryland.edu/academics/program/curriculum/catalog/course_details.html?coursenum=554Q (last visited May 22, 2014) (providing the course description for the Contract Drafting course).

¹¹⁶ See Rene Ciria-Cruz, *Educating Tomorrow's GCs*, CAL. LAW., Dec. 2011, at 27 (describing the Role of the Modern General Counsel class).

¹¹⁷ See Elaine McArdle, *Bridging Theory and Practice in Corporate Law*, HARV. L. BULL., Winter 2012, at 32 (explaining the structure of the new Mergers and Acquisition course).

¹¹⁸ See *International Business Negotiations*, EDUCATING TOMORROW'S LAWYERS, <http://educatingtomorrowlawyers.du.edu/course-portfolios/detail/international-business-negotiations> (last visited Sept. 2, 2014) (detailing the structure of the course, including the collaboration with the University of Dundee, Scotland). The University of Colorado Law School offers a number of simulation courses, including legal negotiation, transactional drafting, IP, and technology contracting, and advanced legal research and writing for practice. See *Experiential Learning*, COLO. LAW, <http://www.colorado.edu/law/academics/experiential-learning> (last visited Sept. 2, 2014) (listing experiential learning courses emphasizing transactional skills).

3. Offering areas of concentration of study or specialization as part of law studies

Medical students develop specialties while in school that shape their career options. That has not generally been true for law students because they have far less control over what their career options will be. But some schools are beginning to identify areas of specialization or concentrated studies to give added credentials to students and to allow them to pursue areas of particular interest to them.

New York University Law School initiated a Professional Pathways program in 2013 to give students the chance to build a specialty, primarily in their third year of study.¹¹⁹ Designed to guide students in focused areas of study and skills development in areas such as tax, criminal practice, and civil litigation, the goal of Pathways is “to help students who have developed interest in a particular career area and make them highly competitive in the job market for that field.”¹²⁰

In the same vein, the University of Nebraska College of Law offers programs in concentrated study in business transactions, litigation skills, intellectual property, and solo/small practice as well as individualized programs of concentration in a number of other areas—including alternative dispute resolution, environmental law, family law, health law, labor and employment law and real estate law.¹²¹ In its business transactions concentration, students take

¹¹⁹ See *Professional Pathways*, N.Y.U. LAW, <http://www.law.nyu.edu/academics/professionalpathways> (last visited Sept. 2, 2014) (giving an overview of the program as related to specific practice areas).

¹²⁰ The University of the District of Columbia David A. Clarke School of Law has eight Pathways practice areas including Public Service/Public Policy. As a part of that program, students can spend a semester working with a number of federal and state agencies and nonprofits—such as the DC Office of the Deputy Mayor for Health and Human Services, the U.S. Department of Homeland Security and the ABA Governmental Affairs Office. See *Public Service and Public Policy Pathway*, UDC DAVID A. CLARKE SCHOOL OF LAW, <http://www.law.udc.edu/page/publicservicepathways> (last visited Sept. 2, 2014) (describing the Pathway as a curriculum that prepares students for careers in public service and public policy).

¹²¹ See *Individualized*, NEB. COLLEGE OF LAW, <http://law.unl.edu/individualized/> (last visited Aug. 29, 2014) (explaining the programs of concentrated study at UNL).

both doctrinal and simulation courses and provide live-client experience through an Entrepreneurial Clinic.

The University of Tennessee College of Law also has concentrations in advocacy and business. In its Concentration in Business Transactions, after students take basic business law subjects, they take “capstone” courses which “feature simulations of sophisticated transactions in which third-year law students practice as lawyers to negotiate and document the deals, drawing on the substance and skills they have studied in their earlier coursework.”¹²²

More schools are undoubtedly now exploring initiatives like these, particularly those whose students are less likely to be hired by bigger firms.¹²³ They are well aware that a substantial majority of law graduates who go into private practice go into smaller firms or become solo practitioners. A national survey conducted in 2005 found that 75% of lawyers were in private practice and 63% of these lawyers were practicing in firms of five lawyers or fewer.¹²⁴ Almost half of the lawyers in private practice were solo practitioners.¹²⁵ These lawyers provide the bulk of personal legal services in this country.

The majority of the American population who addresses their legal problems will therefore look to self-employed lawyers or less expensive non-lawyer alternatives to address their legal needs. Solo lawyers are key players in delivering legal services to the majority of the U.S. population. As a result, solo practice is more than a career path of last resort. It is the most enduring segment of the bar that has

¹²² George W. Kunej & Joseph Watson, *Addressing Shortfalls in Traditional Legal Education: UT's Concentrations and Capstones and Waller Lansden's Schola2Juris Program*, 15 *TRANSACTIONS: TENN. J. BUS. L.* 33, 37 (2013).

¹²³ See SHELDON KRANTZ, *THE LEGAL PROFESSION: WHAT IS WRONG AND HOW TO FIX IT* 31 (2013).

¹²⁴ *Lawyer Demographics*, A.B.A. (2012), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf.

¹²⁵ See CLARA N. CARSON, AM. BAR FOUND., *THE LAWYER STATISTICAL REPORT 29* (2004), available at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf (noting that 48.3% of the lawyers in private practice surveyed were solo practitioners). Of the 75% in private practice, 49% were solo practitioners and “an additional fourteen percent were in firms of two to five lawyers.” Granat & Kimbro, *supra* note 99, at 761.

consistently helped individuals in our society navigate the democratic legal system we live in.¹²⁶

But recent changes created by the recession and rise of commercial online service providers, pose formidable challenges to these lawyers and their forms of practice.

Entities such as LegalZoom, Rocket Lawyer, Nolo Press, and similar entities not licensed to practice law, have already identified the legal market as the next industry ripe for disruption by commoditization. LegalZoom alone reported more than two million customers and revenue of more than \$100 million in 2011.¹²⁷

The “disruption by commoditization,” however, is not a future threat; it is well under way.

The eLawyering Task Force of the Law Practice Management Section of the ABA has become the bar’s most important link to connecting solo lawyers to the technology they need to become lawyer-entrepreneurs. Bill Paul, former ABA president responsible for forming the eLawyering Task Force, described eLawyering as “the utilization of the Internet and e-mail networks for the delivery of legal services.” The eLawyering Task Force is well aware of the impact that the hundreds of legal information websites are having on the solo bar providing personal legal services. They estimate that in an eighteen month period more than 50,000 no-fault divorces were processed by online services, translating into approximately \$100,000,000 in lost revenue to family law attorneys nationwide.¹²⁸

Many of the growing number of law schools that now support and teach about solo practice are doing so in post-JD programs that we discuss in Part II.B.5. Other schools considering moving in this direction will need to recognize the importance of exposing their students to courses relating to technology, marketing, and law office management. Students

¹²⁶ Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 DENV. U. L. REV. 887, 896 (2012).

¹²⁷ *Id.*

¹²⁸ *Id.* at 898–99. Herrera describes the online law practices of two lawyers, Richard Granat and Stephanie Kimbro, which successfully compete with the unlicensed online providers. *See id.* at 899–900 (discussing the method of virtual practice employed by both attorneys).

going into these practices directly out of law school, especially those going into solo practice, will likely find themselves in desperate need of guidance in these areas.¹²⁹

More specifically, they will benefit from guidance through courses that give attention to fee-shifting statutes and other ways to convert unmet legal need into new private practice opportunities; new forms of delivering legal services—such as unbundled representation and collaborative lawyering; new roles lawyers can play upon graduation—such as e-discovery and predictive coding; and compliance work. It is likely that today’s law students will be eager and receptive learners. Professor Luz Herrera argues that “[m]embers of the Millennial generation, born between approximately 1980 and 2000, are well-positioned to become lawyer-entrepreneurs.”¹³⁰

The Millennial generation is not the first to live through difficult economic times but they are entering the profession at a time of transition in the legal profession. The ‘pure chaos’ that many Millennial lawyers are experiencing opens the door to transformative innovation.¹³¹

In sum, many law schools are recognizing that they have a special obligation to prepare their students for the realities of the marketplaces they will be entering. It is also in a law school’s best interest to develop and pursue its own distinctiveness.¹³² In a highly competitive market, law schools can benefit from being known for their emphasis on certain areas of focus and specialties.

¹²⁹ STANDING COMM. ON PROFESSIONALISM, A.B.A., REPORT ON A SURVEY OF LAW SCHOOL PROFESSIONAL PROGRAMS 38 (2006), available at http://www.americanbar.org/content/dam/aba/migrated/cpr/reports/LawSchool_ProfSurvey.authcheckdam.pdf.

¹³⁰ Herrera, *supra* note 126, at 915.

¹³¹ *Id.*

¹³² E. Thomas Sullivan, *The Transformation of the Legal Profession and Legal Education*, 46 IND. L. REV. 145 (2013).

4. Using the third year of law school as one of transition from law school into practice

At least one law school, Washington & Lee, has converted its entire third year into practice-based simulations, real-client experiences, and extensive concentration on legal ethics and professionalism issues.¹³³ The much-publicized, revamped third-year curriculum requires twenty academic credits in simulated or real-practice experiences that include one law clinic or externship, three problems-based electives, and two skills immersion courses.

New York University Law School now provides opportunities for students during their third year to devote a whole semester of study abroad to learn about cross-border practice or as interns with federal agencies.¹³⁴ And, as we noted previously, New York Chief Judge Jonathan Lippman announced in February 2014 that third-year law students can take the New York bar examination in February in return for their providing legal services to the poor during their last semester of law school under the supervision of a legal services provider, law firm or corporation in partnership with their law school.¹³⁵

Under a partnership with Cisco, the University of Colorado Law School gives students the opportunity to be paid interns with the company's legal department for seven months from

¹³³ See *Washington and Lee's New Third Year Reform*, WASH. & LEE U. SCHOOL OF LAW, <http://law.wlu.edu/thirdyear/> (last visited Sept. 2, 2014) (expanding on Washington and Lee's goal, purpose, and means in its new third-year curriculum). The professor who oversees the program recently explained that a review of the first few years showed that "the new curriculum is not more expensive to run than the prior third year curriculum, nor the current first or second year curricula." Clinical Legal Educ. Ass'n, Comment on Draft Standard 303(a)(3) & Proposal for Amendment to Existing Standard 302(a)(4) to Require 15 Credits in Experiential Courses 4 (July 1, 2013), available at <http://cleaweb.org/Resources/Documents/2013-01-07%20CLEA%2015%20credits.pdf>.

¹³⁴ See Christine Simmons, *With Eyes on Jobs, NYU Law Launches New 3L Programs*, N.Y. L.J. (Oct. 18, 2012), http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202575390793&With_Eyes_on_Jobs_NYU_Law_Launches_New_3L_Programs&slreturn=20130108005427 (explaining the new NYU programs).

¹³⁵ See LIPPMAN, *supra* note 25 (discussing the changes to the New York bar exam qualifications).

June 1 after their second year until the following January.¹³⁶ In addition to paying the students intern rates, Cisco also pays the student's fall tuition.

The University of New Hampshire Law School, in its Daniel Webster Scholar Honors Program, offers students the opportunity to participate in a special program during their last two years of law school. Upon successful completion of the program, students are licensed in New Hampshire without having to take the state bar examination. During each semester, in addition to electives:

[S]tudents must take specially designed DWS courses which generally involve substantial simulation—including Pretrial Advocacy, Trial Advocacy, Negotiations, and Business Transactions. Students also take a miniseries that exposes them to Client Counseling, Commercial Paper (Articles 3 and 9), Conflicts of Law, and Family Law, which includes eight hours of training to be qualified as pro bono domestic violence lawyers who then volunteer in New Hampshire's Domestic Violence Emergency (DOVE) Project.¹³⁷

5. Integrating JD and post-JD education

Some law schools are going one step further by creating post-JD opportunities for their graduates.¹³⁸ Different terms have been used for these programs—including “incubator,” “fellowship,” “residency,” “apprenticeship,” and “job corps”.¹³⁹ William Hornsby, Jr., Staff Counsel to the ABA's Standing Committee on the Delivery of Legal Services, is a national expert on this movement. He says:

¹³⁶ See *The New Normal and the Challenge to Legal Education Roundtable*, COLO. LAW (Nov. 7, 2013), <http://www.colorado.edu/law/2013/11/07/new-normal-and-challenge-legal-education-roundtable> (explaining the partnership between Cisco and Colorado Law that provides work experience for students).

¹³⁷ Garvey, *supra* note 46, at 45.

¹³⁸ See Amy Yarbrough, *Incubator Workshop Shines Spotlight on Need for Affordable Legal Aid*, CAL. B.J., May 2014, <http://calbarjournal.com/May2014/TopHeadlines/TH3.aspx> (noting that there are now over two dozen incubator or law school residency programs nationwide).

¹³⁹ See *generally Incubator/Residency Programs Directory*, *supra* note 5 (using all of these terms to describe the programs in its directory).

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. Recent changes in the economy have led to the creation of similar models by both law schools and bar associations.¹⁴⁰

The Standing Committee has a directory of “incubator/residency” programs that in July 2014 listed twenty-six programs, twenty-one of which are affiliated with law schools.¹⁴¹ These programs are driven by three goals: 1) to help graduates obtain the practice experiences and training they need to make the transition from student to lawyer, 2) to bolster employment data, and 3) to provide legal services to unserved low and moderate-income people.¹⁴²

There are critics who emphasize the second purpose above, claiming that these short-term efforts are largely cynical attempts by law schools to inflate their employment data.¹⁴³ There is factual support for this criticism. In 2011, the top fourteen law schools in the *U.S. News & World Report* rankings employed from 3.2% to 17% of their graduates, including in incubator and similar programs.¹⁴⁴ Even if this is one of the motivating factors, these types of programs can potentially have beneficial results and experimentation with them should definitely continue.

A prototype is the “Incubator for Justice” Program of City University of New York, created in 2007. It has a “Community for Legal Resource Network,” which provides participants training “over an 18-month period, in basic business issues such as billing, record-keeping,

¹⁴⁰ *Id.*

¹⁴¹ *Id.* In June 2014, Vermont law school became the latest law school to create an incubator project doing so in conjunction with the Vermont Bar Association. See Karen Loan, *Vermont Incubator to Place Lawyers in Underserved Areas*, NAT'L L.J. (July 1, 2014), <http://www.nationallawjournal.com/home/id=1202661593832/Vermont-Incubator-to-Place>.

¹⁴² See *Incubator/Residency Program Profiles*, *supra* note 5 for the listing the mission of each of the programs.

¹⁴³ See, e.g., LST Team, *Breaking: Class Action Suits Filed Against Cooley and NYLS*, LAW SCHOOL TRANSPARENCY (Aug. 10, 2011, 11:06 AM), <http://www.lawschooltransparency.com/2011/08/breaking-class-action-suits-filed-against-cooley-and-nyls/> (discussing the suits filed by current and former students alleging that two law schools knowingly inflate reported rates of employment by creating “job programs” where law schools hire their own graduates).

¹⁴⁴ David Lat, *In Defense of Law Schools Hiring Their Own Graduates*, ABOVE THE LAW (Mar. 28, 2013, 6:06 PM), <http://abovethelaw.com/2013/03/in-defense-of-law-schools-hiring-their-own-graduates/>.

technology, bookkeeping and taxes, while at the same time, facilitating Incubator participants' involvement in larger justice initiatives and in subject-based training in immigration law, labor and employment," among other fields.¹⁴⁵

Another leading incubator program, developed more recently, is the Thomas Jefferson School of Law Center for Solo Practitioners. The Center provides "support [to] new solo practitioners as they establish their own law offices" to help them develop "the skills necessary to run a successful law firm business."¹⁴⁶ It has the integrated goals of "provid[ing] reasonably-priced legal services to low and middle income individuals," and thereby helping to "bridge the 'justice gap' in our community."¹⁴⁷

At the encouragement of Arizona State Law School, its alumni have created a law firm for recent ASU graduates "modeled after a teaching hospital" that began operation in 2014.¹⁴⁸ The ASU Alumni Law Group ("ASUALG") offers new lawyers the opportunity to continue their education while beginning practice for a year or more following bar exam passage, with reasonable compensation, much as young doctors pursue interest-based residency programs.¹⁴⁹ ASUALG treats the young lawyers like associates and bills their time at reasonable rates typically ranging from \$75–\$150 per hour for referrals that primarily come from the Phoenix Bar

¹⁴⁵ *Community Legal Resource Network*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/clrn/incubator.html> (last visited Feb. 12, 2014).

¹⁴⁶ *The Center for Solo Practitioners – A Lawyer Incubator Program*, T. JEFFERSON SCHOOL OF LAW SAN DIEGO, <http://www.tjssl.edu/tjssl-alumni/incubator-program> (last visited Sept. 2, 2014).

¹⁴⁷ THOMAS JEFFERSON SCHOOL OF LAW SAN DIEGO, *THE CENTER FOR SOLO PRACTITIONERS 2* (Aug. 7, 2013), <http://www.tjssl.edu/sites/default/files/publications/solo-practitioners-brochure-872013.pdf>.

¹⁴⁸ For an earlier story about this incubator project, see *College of Law to Launch Teaching Law Firm in Summer*, ASU NEWS (Mar. 7, 2013), https://asunews.asu.edu/20130307_lawteachingfirm (reporting on the approval of the launch of the Law Group that will hire and mentor recent ASU graduates).

¹⁴⁹ See *ASU Alumni Law Group Curriculum Proposal*, ASU ALUMNI LAW GROUP, <http://asualumnilawgroup.org/assets/docs/curriculum.pdf> (last visited June 3, 2014).

Association referral program and from other lawyers in the community.¹⁵⁰ Ideally, ASUALG would like to split the lawyers' time between 1200 billable hours and professional development.¹⁵¹ During the first ten months of their affiliation, the lawyers receive skills-based training on basic general practice and litigation skills; writing and research skills; and skills on business development.¹⁵² They also receive ongoing mentoring and are taken on field trips to become more familiar with the legal system in Phoenix and potential practice opportunities.¹⁵³ These are but a few of the programs that are law school-based and supported.¹⁵⁴

¹⁵⁰ *Id.*

¹⁵¹ Telephone Interview with Kelly Flood, Supervising Attorney, ASU Alumni Law Group (Feb. 2014).

¹⁵² *Id.*

¹⁵³ See *ASU Alumni Law Group Curriculum Proposal*, *supra* note 149 (discussing the program and its goals).

¹⁵⁴ Other law school post-JD programs listed in the ABA Directory are California Western Law School's "Access to Law Initiative" (in which the participants operate their own independent law firms); Cardozo Law School's "Resident Associate Mentor Program" (which places graduates as associates in small and medium-size law firms and corporate legal departments); Cleveland Marshall Law School's "Solo Practice Incubator" (which operates as a landlord for a collection of independent, solo practitioners, with the offices located in the law school library); Florida International Law School's "Lawbridge Legal Residency Program" (collection of independent law firms); ITT Chicago-Kent Law School's "Solo and Small Practice Incubator" (collection of independent law firms); University of Missouri (Kansas City) Law School's "Solo and Small Firm Incubator" (collection of independent law firms); and University of Utah S.J. Quinney College of Law's "University Law Group" (collection of independent law firms). *Incubator/Residency Programs Directory*, *supra* note 5 (listing these programs as a part of the directory). Law school programs that are not listed in the ABA Directory include:

- Albany Law School's "Fellowship and Incubator Initiative," a joint project of the law school's Clinic and Justice Center and The Legal Project (which will combine students from the in-house clinic, recent graduates in a one year post-graduate fellowship, and a second year incubator program). For more information, see <http://www.albanylaw.edu/academics/partnerships/Pages/Fellowship-and-Incubator-Initiative-with-The-Legal-Project.aspx>;
- American University Law School's "JD Distinguished Fellowship Program" (which funds "legal work performed by 2013 graduates for either external employers or WCL centers and programs"), see <http://www.wcl.american.edu/fellowship/> for more information;
- Charlotte Law School's Center for Experiential Education & Entrepreneurship (which houses some of the law school's clinics, a legal services advocacy center, and a "small practice center" that "provides office space for eight attorneys and two mentors" and a "support structure needed to launch a solo practice or small firm"), see <http://www.charlottelaw.edu/about/ribbon-cutting-center-experiential-education-entrepreneurship> for more information;
- Fordham law school's post-graduate public interest fellowships (for one or two years in public interest organizations), see <http://law.fordham.edu/public-interest-resource-center/6923.htm> for more information;
- Harvard Law School's Public Service Venture Fund (which provides grants to graduates who pursue careers in public interest), see <http://www.law.harvard.edu/current/careers/psvf/index.html> for more information;

The programs vary in structure (including many that are collections of solo and small firm practices); financial arrangements (ranging from usually modest annual stipends for the participating lawyers to participation fees paid by them); sources of funding (law school, foundation grants, and practice revenues); services provided (for those programs supporting solo and small firm practices, support often includes subsidized office space, in-person and online networks, mentoring, training in practice management and client development, and client referrals); and relationships of the participating institutions (ranging from stand-alone models to multi-partner models).

Civil Justice, Inc., which was developed as part of the same initiative that spawned CUNY's project, provides a no-cost model of post-JD education and job opportunities.¹⁵⁵ It is a nonprofit law office that supports an online network of solo and small-firm lawyers. It is affiliated with the University of Maryland Carey School of Law. Its purposes are to increase "the delivery of legal services to clients of low and moderate income while promoting a statewide network of solo, small firm and community based lawyers who share a common commitment to increasing access to justice through traditional and non-traditional means."¹⁵⁶ It was designed not only to support idealistic solo and small-firm lawyers, but also to increase the number of lawyers in Maryland doing consumer litigation and to help them support their practices with attorneys'

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- Stanford Law School's Post Graduate Public Interest Fellowships (in which recipients work for a year in "a law-related endeavor designed to further the public interest"), see <https://www.law.stanford.edu/organizations/programs-and-centers/john-and-terry-levin-center-for-public-service-and-public-interest-law/postgraduate-fellows-0> for more information; and

Suffolk Law School's Public Service Fellowships & Scholarships (for public interest work).

¹⁵⁵ Brenda Bratton Blom & Phillip Robinson, *A New Legal Services Hybrid: Increasing Access to Justice Through a Network of Low Bono Attorneys*, in REINVENTING THE PRACTICE OF LAW: EMERGING MODELS TO ENHANCE AFFORDABLE LEGAL SERVICES 113, 113 (Luz Herrera ed., 2014). Initially, the Consortium included three other schools in addition to Maryland School of Law: City University of New York School of Law, Northeastern University School of Law, and St. Mary's School of Law. *Id.* Eventually, the Consortium grew to seventeen schools, with the Northern California Collaborative cooperating to support solo and small-firm practitioners across Northern California. *Id.* at 114 n.1.

¹⁵⁶ CIVIL JUSTICE, <http://www.civiljusticenetwork.org/> (last visited Sept. 2, 2014).

fees recoveries under fee-shifting statutes. Over the years, major parts of Civil Justice’s budget have come from such awards. Recently, Civil Justice “has been at the forefront of Maryland’s efforts to help homeowners facing foreclosure.”¹⁵⁷

This online network gives solo and small firm lawyers the advantages of large-firm organizational structures, e.g., specialized departments and ready access to management and administrative consultants, in-specialty and out-of-specialty advice, co-counseling relationships, mentors, pooled resources (accounting services, bulk buying, common employees, contract and matter-specific arrangements, etc.), national expertise centers, case referrals, and reinforcing legal friendships.

Ideally, projects like Civil Justice ought to have law student clinical components.¹⁵⁸ Through such experiences, we can begin to teach students, with young lawyers, the economics of law practice, including principles of marketing, business planning, office management, and accounting. These competencies are essential to both economic survival and professionalism. Solo and small firm lawyers can get in ethical trouble by not understanding these issues and the applicable ethics rules.¹⁵⁹

There is a parallel but equally important initiative in which law schools partner with other organizations or government agencies to place their students in public interest positions. An excellent example is the University of California, Hastings College of the Law Lawyers for America Fellowship Program (LfA). LfA’s mission is threefold: to improve the lawyering skills

¹⁵⁷ Blom & Robinson, *supra* note 155, at 116.

¹⁵⁸ In the past, students in Maryland Law School’s General Practice Clinic have been placed in some of the solo and small firms and worked under the joint supervision of the private lawyer and a clinical professor. See *infra* text accompanying notes 206-208 (discussion of “midternship” clinical teaching model).

¹⁵⁹ See William Peacock, *Illinois State Bar: Solos More Likely to be Unethical, Sanctioned*, STRATEGIST (Apr. 25, 2013, 11:09 AM), <http://blogs.findlaw.com/strategist/2013/04/illinois-state-bar-solos-more-likely-to-be-unethical-sanctioned.html>.

of new lawyers; expand the availability of legal services for those who cannot afford to hire lawyers; and provide externship and public service employment opportunities for law students. To accomplish its mission, LfA works with law schools and agencies in the public and nonprofit sectors—such as the Contra Costa County Public Defender Program—to create two year fellowships encompassing law students’ final year of law school and their first year as new attorneys.¹⁶⁰

Brooklyn Law School announced a similar program, the Public Interest/Public Service Fellowships (PipS) it will be launching during 2014. During their last year of law school, those selected for the program work full-time in entry-level positions at agencies such as the New York Legal Aid Society, Brooklyn Public Defenders, and the American Society for the Prevention of Cruelty to Animals, as well as take evening courses at the Law School.¹⁶¹ After nine months of work, graduation and passage of the bar, the students return to their Fellowship placement for one year.¹⁶²

Gideon’s Promise, a nonprofit dedicated to public defense reform, has also entered into a partnership with five law schools, the University of California at Los Angeles, American University Washington College of Law, New York University, the University of Chicago, and Northwestern to provide added support to southern public defender agencies.¹⁶³ Under the partnership, the law schools will provide one year funding for a post-graduate fellowship and the

¹⁶⁰ For additional information about this program, see *Lawyers for America*, U.C. HASTINGS COLLEGE OF THE LAW, <http://www.uchastings.edu/academics/clinical-programs/lawyers-for-america/index.php> (last visited Sept. 2, 2014).

¹⁶¹ See *PipS Fellowship*, BROOK. LAW SCHOOL, <http://www.brooklaw.edu/careers/pips/overview.aspx> (last visited Sept. 2, 2014) (describing the PipS Fellowship program).

¹⁶² See *id.* (explaining the structure of the program for students).

¹⁶³ See *Gideon’s Promise Launches Law School Partnership Project with Three Prominent Universities*, WORLDNEWS (Nov. 27, 2013), http://article.wn.com/view/2013/11/27/Gideons_Promise_Launches_Law_School_Partnership_Project_with_r/ (describing the launch and purpose of Gideon’s Promise).

public defender agencies, in turn, will commit to hiring the graduates on a permanent basis after the fellowship year is completed.¹⁶⁴ Gideon’s Promise’s goal is to expand the program to include at least twenty law schools, twenty defender offices and place twenty students in their public service careers by 2016.

There are also some emerging state and local bar association-related projects that bear watching because they will also have potential implications for law schools. The Chicago Bar Foundation began the Justice Entrepreneurs Project (JEP) in June 2013. JEP was created as an incubator for recent law school graduates to help them “establish successful solo and small firm law practice that meet community need”—more specifically to provide services to persons of modest means.¹⁶⁵ It is similar in structure to many of the law school projects we just described. Ten lawyers are selected every six months on a competitive basis to participate in an eighteen-month program. It is anticipated that once it is operating at capacity there will be thirty lawyers in place at any given time.

Priority is given to selecting “public interest-minded and entrepreneurial lawyers who want to build innovative practices that ‘break the mold’ to provide cost-effective service.” Those chosen receive shared office space, training and experienced lawyer mentoring, and access to law practice management technology. For the first six months, the lawyers are required to provide approximately twenty hours of pro bono service with placement with legal aid organizations. Lawyers only receive stipends for their first six months if their law schools are willing to provide them. They are expected to pay modest fees—in the range of \$300-\$500 per

¹⁶⁴ Karen Sloan, *Program Designed to Place Grads in Southern Public Defender Offices*, NAT’L L.J. (Dec. 3, 2013), <http://www.nationallawjournal.com/id=1202630384975/Program-Designed-to-Place-Grads-in-Southern-Public-Defender-Offices?slreturn=20140422212454>.

¹⁶⁵ *Justice Entrepreneurs Project*, CHI. BAR FOUND., <http://chicagobarfoundation.org/jep/> (last visited Sept. 2, 2014).
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month after the initial six-month period. The program currently operates under the guidance of a Steering Committee consisting of leaders in the legal community.

In November 2013, the City Bar of New York indicated that it was planning to create a pilot new law firm with goals similar to those of the Chicago Bar Foundation: “to enable new lawyers to address the unmet civil legal needs of the middle class while developing their own sustainable professional practices.”¹⁶⁶ The City Bar in its announcement said that not only did the profession have an obligation to help new lawyers, but that law schools need to adjust their orientation to support new lawyers and to encourage them to meet unmet legal needs.¹⁶⁷

The Young Lawyers Section of the Connecticut Bar Association in January 2014, in a similar vein, proposed that its Section establish a Modest Means Initiative under which it, in conjunction with a Connecticut law schools, create a modest means law firm to respond to two growing problems: “an increasing number of pro se (or self-represented) parties who cannot afford classic legal services and who correspondingly, often do not have acceptable access to justice; and also, an increasing population of lawyers (particularly new attorneys) who are unable to find suitable employment.”¹⁶⁸ Under the proposal, the firm would employ a small number of law school graduates each year as employees or through fellowships with each working at the firm for a three-year period. During this term, the attorneys would be exposed to traditional legal

¹⁶⁶ *New York City Bar Association Task Force Calls for Changes in Education and Career Focus for New Lawyers – Report Announces Pilot Programs and Urges Focus on Unmet Middle Class Legal Needs*, N.Y.C. BAR 44TH ST. BLOG, (Nov. 14, 2013 9:43 AM), <http://www.nycbar.org/44th-street-blog/2013/11/14/new-york-city-bar-association-task-force-calls-for-changes-in-education-and-career-focus-for-new-lawYERS-report-announces-pilot-programs-and-urges-focus-on-unmet-middle-class-legal-needs/>.

¹⁶⁷ TASK FORCE ON NEW LAWYERS IN A CHANGING PROFESSION, *supra* note 13, at 99.

¹⁶⁸ Memorandum from Conn. Bar Ass’n, Young Lawyers Section Officers to the Section entitled “Proposal to Establish a Modest Means Initiative” (Jan. 6, 2014) (on file with the authors).

training with the anticipation that at the end of the three years the attorneys could establish their own firms or be attractive to prospective employees.¹⁶⁹

A collateral and important benefit of bar-affiliated programs, if replicated, is that they could stimulate greater collaboration between law schools and the profession in transitional practice-based education and practice not often existing today.

III. A POSSIBLE AGENDA FOR LAW FACULTIES BUILDING ON DEVELOPMENTS TO DATE

What we have just described clearly indicates that there have been substantial developments in legal education, far more than the law school critics and cynics have suggested. That being said, we offer several important caveats. First, we describe the innovations in Part II, not to suggest they all are good or pedagogically equal, but rather to demonstrate the extent and dimensions of recent changes and trends in legal education. Second, we acknowledge that the reforms do not represent the norm today and are, if not at the periphery of legal education anymore, also not at its core. Third, in many instances the new courses and projects have been ad hoc in nature and not the result of strategic planning.

We know from our own experiences that strategic planning has a bad reputation in most law schools, deserved or not. Because, however, we are in such a dynamic period, especially with revisions in ABA accreditation standards and initiatives by state and local bar regulators that will significantly affect legal education, we believe there is an enhanced role for strategic planning by law schools today. We do not seek to prescribe a single planning process. The process by which it is done depends heavily on particular law school cultures and the best judgments of deans. We do recommend, however, that the process include fair representation from all of the faculty

¹⁶⁹ *Id.*

(including clinical, legal research and writing, and adjunct faculty), and direct input from thoughtful members of the public and private bars. Everything should be on the table, including traditionally accepted curricula and reforms like those in Part II. In the latter respect, we understand that rapid change can produce unintended consequences. A careful planning process and a commitment to evaluation are steps to minimize this risk.

We believe strategic planning should give immediate and fresh attention to:

- A. ABA accreditation standards and the curriculum, assuring that it is adequate to meet the needs of today's students;
- B. The law school's role in the students' transition from law school to practice and in increasing the employment opportunities that are available to graduates; and
- C. The law school's responsibility to better address professionalism issues and more particularly the need for lawyers to provide legal services to otherwise unrepresented people and organizations.

What follows are some specific suggestions on priority areas of concern within each of these categories.

A. ABA accreditation standards and bar admission requirements, striking the proper balance among the goals of legal education

As we have noted, there have been important debates about curricula before the ABA's Section on Legal Education and Admission to the Bar and its Standards Review Committee as part of the revisions of accreditation standards. There have been similar debates within ABA task forces and committees, within state bars and regulatory bodies, and in a broad segment of the public and public media. A number of deans and law professors, and several associations of law professors, have engaged in these debates. Undoubtedly, some faculty councils have engaged in discussions like this as well. We believe law faculties should lead this process of change and engage on the issues raised before ABA's Section on Legal Education and Admission to the Bar and its Standards Review Committee in a systemic planning process.

Some law schools are recognizing that they can no longer blindly follow what the top tier schools are doing. We think this is a healthy development, although we accept that there also are some essential components that all law school curricula should have, and there are good models for these in many law schools, including top tier ones. E. Thomas Sullivan, the president of the University of Vermont and former dean of two law schools, agrees that law schools are better served if they find and pursue their own distinctiveness and shape their missions based upon their own histories, cultures, and unique strengths and opportunities.¹⁷⁰ Edward Snyder, the Dean of the Yale School of Management, has made the same point about business schools. He has argued that it is foolish for business schools in all tiers to copy the dominant leaders in the field or simply continue to do things the way they have been done in the past.¹⁷¹

Among common issues, we suggest that through strategic planning processes, law schools consider core competencies, experiential course requirements, evaluation of legal education and learning outcomes, faculty status, and the role of practitioners.

1. Core competencies

As we noted in the Introduction, revisions to ABA accreditation standards will require that schools establish learning outcomes that will include competency in professional skills other than the traditional ones like acquisition of knowledge and legal analysis and reasoning.¹⁷² Although law schools have flexibility in determining what these skills should be, suggested skills include interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work,

¹⁷⁰ E. Thomas Sullivan, *The Transformation of the Legal Profession and Legal Education*, 46 IND. L. REV. 145 (2013).

¹⁷¹ See Adam Davidson, *Is Michigan State Really Better Than Yale?*, N.Y. TIMES, Aug. 12, 2012, <http://nytimes.com/2012/08/12/magazine/is-michigan-state-really-better-than-yale.html?pagewanted=all>.

¹⁷² See Standards Review Comm., *supra* note 28, at 6–7 (discussing the revisions to Standard 302).

collaboration, cultural competency, and self-evaluation. It is now up to individual law faculties to make their own assessments of which skills to emphasize and how to maintain a proper balance between teaching these skills and achieving the other goals of legal education.

Although no timetable has yet been set to implement this requirement, there should be some urgency in undertaking an appropriate planning process for the core competency requirement.

2. Experiential course requirements

In establishing core competencies that will be incorporated into a law school's curriculum, a faculty will have to factor in a new requirement that there be one or more experiential courses totaling at least six credit hours. This requirement can be met through simulation courses, law clinics, or field placements. However the requirement is met, the course must be "primarily experiential in nature" and must:

- (i) integrate doctrine, theory, skills, and legal ethics, and engage students in the performance of one or more of the professional skills [set forth as core competencies];
- (ii) develop the concepts underlying the professional skills being taught;
- (iii) provide multiple opportunities for performance; and
- (iv) provide opportunities for self-evaluation.¹⁷³

Simulation courses must provide "substantial experience 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."¹⁷⁴ A law clinic option must provide a substantial lawyering experience that involves one or more actual clients,¹⁷⁵ and a field

¹⁷³ *Id.* at 7.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 8.

placement must meet the law school's experiential and quality control requirements and involve both faculty and site supervisor oversight.¹⁷⁶

This requirement is good, in our view, insofar as it requires all students to have at least one of these three experiences, but it is significantly too limited. For example, it does not require that students engage in some form of supervised law practice—*actual practice*—in which they have substantial responsibility for client matters. That is an essential part of learning how to practice law and is the educational core of clinical courses in law schools and in some externships. We believe this is a serious deficiency.

Few law schools require students to enroll in clinical courses or externships, and many students now graduate without ever taking one.¹⁷⁷ In a 2010 National Association of Law Placement Survey, only 30% of the respondents reported having taken at least one clinic during law school (although 63% of those who took a clinic reported it as “very useful”).¹⁷⁸ Thirty-six percent of the respondents reported having participated in one or more “externships or field placements” (which 60% found to be “very useful”).¹⁷⁹ We assume some students took both a clinic and externship, so we do not know the total percentage of students who had some form of either one or the other.¹⁸⁰

We also think the required six credits are not adequate. The Clinical Legal Education Association (CLEA), an association of more than 1,000 law teachers, recommended to the

¹⁷⁶ *Id.* at 8–9.

¹⁷⁷ There are seventeen law schools that do require a clinic as a condition of graduation. *See* Clinical Legal Educ. Ass’n, *supra* note 133, at 5 (citing Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL’Y 11 (2013)).

¹⁷⁸ NALP & NALP FOUND., 2010 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS 9 (2011), *available at* <http://www.nalp.org/uploads/2010ExperientialLearningStudy.pdf>.

¹⁷⁹ *Id.* at 26.

¹⁸⁰ The terms “externships” and “field placements” cover an extraordinarily diverse variety of experiences, making it impossible to even roughly assess the presumptive quality of the included experiences.

Standards Review Committee of the Section of Legal Education and Admissions to the Bar that the ABA amend accreditation standard 302(a)(4) to require “every J.D. student to complete the equivalent of at least 15 semester credit hours after the first year of law school in practice-based, experiential courses, such as law clinics, field placements, or skills simulation courses, *with at least one course in a law clinic or externship.*”¹⁸¹ In support of its proposal, CLEA said:

Fifteen hours of professional experience (representing about one-sixth of a law student’s total credit hours) are certainly the minimum necessary to ensure that law school graduates are competent to begin practicing law. Other professions require that at least one quarter, and up to more than one half, of a graduate’s pre-licensing education be in role in supervised professional practice. Law, in contrast, requires only a single credit of experiential learning out of an average of 89 total credits—a dismal 1% of a law student’s preparation for practice.¹⁸²

CLEA pointed out that in the other professions—referring to medicine, veterinary, pharmacy, dentistry, social work, architecture, and nursing—“at least one quarter, and in some cases over one half, of a student’s required education must be in professional skills or clinical courses.”¹⁸³ It argued that “83% of law schools either already are or are easily capable of

¹⁸¹ Clinical Legal Educ. Ass’n, *supra* note 133, at 1 (emphasis added). See also Mark Hansen, *Clinic Law Profs Solicit ABA Legal Ed Council to Require 15 Credit Hours in Practice-Based Courses*, A.B.A. J. (July 2, 2013, 3:56 PM), http://www.abajournal.com/news/article/CLEA_15_credit_hours_accreditation_aba_section/.

¹⁸² Clinical Legal Educ. Ass’n, *supra* note 133, at 1. CLEA explained that “[c]urrent ABA Standard 302(a)(4) requires that schools require each law student to receive ‘substantial instruction in . . . other professional skills generally regarded as necessary for effective and responsible participation in the legal profession.’ Yet . . . students can still graduate from an ABA approved law school and sit for the bar having met this professional skills requirement through merely one credit of skills training.” *Id.* at 2. In support of its “one credit” point, CLEA quoted from ABA Consultant’s Memo # 3 (Mar. 2010): “What is ‘*substantial instruction*’ in other professional skills? . . . At least one solid credit (or the equivalent) of skills training is necessary.” (emphasis in original). *Id.* at n.4.

¹⁸³ *Id.* at 4. CLEA set forth the specific skills and practice requirements for each of these seven professions. *Id.* Medicine requires “two years of professional experience (one-half of each student’s medical education) in clinical rotations”; Veterinary requires that “a minimum of one academic year (or at least one-quarter of a student’s veterinary medical education) [be] hands-on clinical education”; Pharmacy requires that students “spend no fewer than 300 hours in the first three years of their education and at least 1,440 hours (36 weeks) in the last year in clinical settings”; Dentistry students “spend over 57% of their time in actual patient care over the course of their four-year education”; Masters of Social Work students “must accrue at least 900 hours, or 18 of their required 60 academic credit hours (approximately one-third), in field education courses”; Architectural school students “must take at least 50 of their 160 total required semester credit hours (approximately one-third) in design studio courses”; and Nursing educational requirements “vary by state,” but the range of required clinical practice courses in

ensuring that every student have a clinical experience . . . so implementing a clinical requirement is immediately feasible,”¹⁸⁴ and said the claim that clinical education is more expensive is “without empirical support.”¹⁸⁵

Although the ABA Council on Legal Education and Admission to the Bar decided to limit the requirement in revised Standard 303 to 6 credit hours,¹⁸⁶ we believe, with one important caveat, which we discuss below, CLEA’s 15-credit proposal makes better sense and would be an appropriate goal for the future.

For us, the most interesting testimony on revised Standard 303 came from the Illinois State Bar Association’s Standing Committee on Legal Education, Admissions and Competence. It summarized the findings of a special committee that held five public hearings across the State of Illinois. That special committee described a “mismatch between the skills [law graduates] need in the workplace and the skills [law students] learn in law school.”¹⁸⁷ Young lawyers testified that they should have had more “simulation courses, live-client clinics, and other courses that give students the opportunity to learn and apply legal principles in the context of real life problems.”¹⁸⁸

California and Texas, for example, is from “approximately one-third” (California) to approximately three-quarters (Texas) of the course of study. *Id.* at 3.

¹⁸⁴ *Id.* at 5.

¹⁸⁵ *Id.*

¹⁸⁶ 2014 ABA STANDARDS, *supra* note 1, § 303(a)(3).

¹⁸⁷ Letter from the Ill. State Bar Ass’n Standing Comm. on Legal Educ., Admissions, & Competence, to Hon. Solomon Oliver, Jr. & Barry A. Currier 2 (Jan. 28, 2014), *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/201401_comment_s303a3_members_isba_standing_committee_legal_education_admissions_competence.authcheckdam.pdf.

¹⁸⁸ *Id.* at 3.

The Standing Committee described special needs for “instruction in drafting documents, including contracts, client letters, discovery requests and responses, and wills.”¹⁸⁹ The committee found that the “inadequacies of law school training are particularly acute for young attorneys attempting to start their own practices.”¹⁹⁰ In addition to the failures to provide adequate experiential education, there was little education about the business of law. The committee recommended that law schools “integrate skills training with the traditional doctrinal curriculum.”¹⁹¹

Our caveat about the 15-credit proposal is that the practice-focused portions of integrated courses, whether in the upper level curriculum or first year, should count. The most serious criticism of the 15-credit requirement is that it envisions a curriculum that is separated into theoretical classroom, simulation, and clinical courses. This is the way much of legal education has operated, but not how it should operate, as the Carnegie Report concludes. This, however, is not a reason to reject the proposal, but rather why a proposed amendment offered by CLEA makes sense. It recommended that “‘practice-based’ experiential coursework in courses that are not primarily experiential in nature” should count toward the 15 credits “in proportion to the amount of practice-based work in that course.”¹⁹² CLEA points out that “[a]s currently drafted, the Council’s proposal limits the experiential education requirement to law clinics, field placements, and simulation courses.”¹⁹³

¹⁸⁹ ILL. STATE BAR ASS’N, FINAL REPORT, FINDINGS, & RECOMMENDATIONS ON THE IMPACT OF LAW SCHOOL DEBT ON THE DELIVERY OF LEGAL SERVICES 37 (June 22, 2013).

¹⁹⁰ Letter from the Ill. State Bar Ass’n, *supra* note 187, at 2.

¹⁹¹ *Id.*

¹⁹² Clinical Legal Educ. Ass’n, Comment of Clinical Legal Education Association on Proposed Standard 303 2 (Jan. 30, 2014), *available at* <http://cleaweb.org/Resources/Documents/2014-01-14%20CLEA%20Chapter%203%20comment.pdf>.

¹⁹³ *Id.*

We have identified many ways that law schools are now integrating theory and practice in the full range of law school courses, which we call the “integrated approach.” CLEA confirms that “[s]chools are experimenting with a wide range of experiential educational choices, including substantial practice-based components of courses that also focus on teaching legal doctrine.”¹⁹⁴ It notes that “[w]hen the Standards Review Committee was developing its proposed definitions of the coursework that would count toward its professional skills requirement, it was debating a far more limited 3- or 6-credit requirement.”¹⁹⁵ It said that “[w]hile strict definitions are appropriate in the context of a 6-credit requirement, as the number of required credits expands from six to fifteen a more expansive definition of coursework is appropriate.”¹⁹⁶ We fully agree.

Adopting CLEA’s proposed amendment that would give credit for experiential components of integrated courses would respond to a number of criticisms of the proposed 15 credit experiential requirement. It would preserve flexibility and encourage heterogeneity, two goals of critics. Law schools that wanted to meet the proposed requirement, at least in part through integrated courses, could do so. Those, like Washington and Lee, that preferred a sequential approach could comply with the requirement in this way.

The integrated approach responds to the “it’s too expensive” criticism as well. At the threshold, we note that several scholars have responded to this criticism, by demonstrating, with studies, that schools that provide substantial clinical opportunities to their students do not have

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* CLEA points out that “the Final Report of the California Task Force clarifies that its 15-credit ‘practice-based experiential course work’ requirement can be completed either in stand-alone courses or in practice-based components of existing doctrinal classes.” *Id.*

higher tuitions.¹⁹⁷ The integrated approach creates co-teaching partnerships among full-time faculty, adjunct professors and volunteer lawyers, in courses that can accommodate more students than in the normal clinical professor/student relationship.

We warn, however, that the integrated courses, especially the first year course models that we describe, are not substitutes for the more substantial set of experiences and student responsibility for clients that clinics offer. In the integrated courses, which seek to teach a number of different things than clinics, students likely will not have clients or primary responsibilities for the legal problems of people or organizations. These courses should be the first step in a sequence that culminates with a clinic.

3. Evaluation of legal education and learning outcomes

A new ABA accreditation standard requires that law schools conduct ongoing evaluation of their legal education programs and learning outcomes and use the evaluation to measure “the degree of student attainment in the learning outcomes and to make appropriate changes to improve the curriculum.”¹⁹⁸ This will be a challenging undertaking because there has been so little experience in legal education in these types of evaluations. The ABA Council on Legal Education and Admissions to the Bar recognizes the difficulty in meeting this requirement and gave law schools up to five years to meet this requirement.¹⁹⁹ In undertaking the necessary planning for implementing this requirement, law schools will likely have to seek guidance from experts in learning theory.

¹⁹⁷ See Letter from Katherine Kruse, Clinical Legal Educ. Ass’n President, to Teri Greenman, State Bar of Cal. 2 (Sept. 4, 2013), available at <http://www.cleaweb.org/Resources/Documents/2013-0-9-05%20CLEA%20Ltr%20to%20CA%20State%20Bar.pdf> (noting that the implementation of mandatory clinical programs have not increased tuition at law schools).

¹⁹⁸ Section of Legal Educ. & Admissions to the Bar Program, *supra* note 32, at 30.

¹⁹⁹ *Id.* at 33. [Footnote citation to be added when Section of Legal Education and Admissions to the Bar formalizes the five year requirement.]

4. Faculty status and the role of practitioners in legal education

The proposed revised standard that generated the most controversy was the one dealing with existing faculty tenure requirements. Current Standard 405 requires that law schools have an established policy with respect to academic freedom and tenure.²⁰⁰ As alternatives to this current requirement, the ABA Legal Education Standards Review Committee made two proposals that would have eliminated the requirement of tenure. One alternative would have required law schools to provide some form of security of position short of tenure to all full-time faculty members, including clinical professors and legal writing instructors.²⁰¹ The other alternative would simply require a law school to be able to demonstrate that it has established sufficient conditions to attract and retain competent faculty and provide sufficient protection for academic freedom.²⁰²

Needless to say, the alternative proposals created a storm of controversy,²⁰³ and the Council decided to defer consideration of them. It is important to note that considerable concern was expressed at the hearings that elimination of tenure going forward, while grandfathering in current tenured faculty members—who overwhelmingly teach podium courses, would further discriminate against clinical and legal writing faculty who, up to this point, have had mixed success in achieving tenure and comparable job security. In the planning process, given the

²⁰⁰ SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A.B.A., ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2013-2014 34 (2013).

²⁰¹ Section of Legal Educ. & Admissions to the Bar Program, *supra* note, at 37.

²⁰² *Id.* at 40.

²⁰³ See, e.g., Mark Hansen, *500 Law Profs Urge ABA Legal Ed Council to Keep Faculty Tenure as an Accreditation Requirement*, A.B.A. J. (Oct. 22, 2013, 1:41 PM), http://www.abajournal.com/news/article/public_has_its_say_on_proposed_changes_in_law_school_accreditation_standard/; Mark Hansen, *Legal Ed Section's Council Deadlocks Over Tenure Requirement in Law School Accreditation Standards*, A.B.A. J. (Mar. 17, 2014, 5:20 PM), http://www.abajournal.com/news/article/legal_ed_sections_council_deadlocks_over_tenure_requirement_in_law_school/.

importance of the new core competency and experiential course requirements, law faculties should recognize a basic principle that a law school should accord all of its full-time faculty, whether podium, clinical, or legal research and writing professors, at least equivalent rights with respect to security of position, participation in law school governance, and other rights or privileges.²⁰⁴ In our view, it will be difficult to meet the requirements of the revised ABA accreditation standards without having the full and equal participation of all faculty who teach core competencies.

We believe it also is important, as part of a planning process, to identify ways to expand the involvement of practitioners in law school teaching. Without question, it will be difficult for law professors with little or no practice experience to teach practice-based core competencies on their own. As in other professional schools, law schools should make use of skilled practitioners not only in skills and clinical courses but in theory-focused courses as well. We gave a number of examples earlier where this is already being done while preserving the important principle that full-time faculty members remain the center of the educational process. Changes made to Section 403 of the ABA accreditation standards may give law schools more flexibility on the use of practitioners in legal education.²⁰⁵

We believe there are creative and cost-effective ways to use practitioners in clinical teaching as well. There is a hybrid teaching model, midpoint between in-house clinics and

²⁰⁴ See Standards Review Comm., July '13 SRC Meeting Materials 7 (Apr. 2013), available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/july_2013_meeting/201307_src_meeting_materials.authcheckdam.pdf (suggesting these changes in proposing Alternative C to Standard 405).

²⁰⁵ There is revised language in accreditation standard 403 that recognizes the important role of adjunct professors. The revised standards remove the language that stated that the full-time faculty shall teach the major portion of the law school's curriculum. The new standard is: "The full-time faculty shall teach substantially all of the first one-third of each student's coursework. The full-time faculty shall also teach during the academic year either (1) more than one-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." This would seem to allow substantial use of adjuncts, particularly when adjuncts are co-teaching with full-time faculty.

externships, that has educational benefits and is cost-effective. We call this model a “midternship,” and we have used it at Maryland Law School to develop several new clinics.²⁰⁶ Many clinical teachers use this model and are familiar with it, although not perhaps by our nickname. Under it, the full-time faculty member is the educational solicitor; the practicing lawyer is the barrister. Specifically, in the way in which we used this model to develop the new clinics, the outside lawyer had primary responsibility for supervising the students’ legal work (in court or other formal setting), and the faculty member had primary responsibility for designing and teaching the course. We emphasize the word “primary,” because there was shared responsibility in important respects.

The practicing lawyer, who usually was an adjunct professor, consulted on the design of the clinical course (including selection of legal work); and taught or co-taught selected classes. The full-time clinical faculty member used the students’ work experiences to teach “recurring professional responsibility issues as well as skills, substantive law, public policy and other issues. The faculty member also taught a concentrated skills component early in the semester.”²⁰⁷ In addition, the full-time clinical faculty member, working with the practicing lawyer, should help the students prepare for their performances by mooted and evaluating simulated performances.

These teaching partnerships depend heavily on mutual respect and close communication. When two lawyers discuss legal work there often are differences of opinion as well as agreements. Indeed, conversations in which lawyers share their disagreements and explore them,

²⁰⁶ Joan L. O’Sullivan et al., *Ethical Decisionmaking and Ethics Instruction in Clinical Law Practice*, 3 CLINICAL L. REV. 109, 150–56 (1996) (describing Economic, Housing and Community Development, Child Abuse and Domestic Violence Prosecution, Family Law Assisted Pro Se, and Immigration projects). We appreciate the recent social science research that demonstrates that schools with substantial clinical programs, and mandatory clinical requirements.

²⁰⁷ *Id.* at 152 n.117.

in developing a theory of the case or work plan for example, are essential parts of good lawyering. Clinical teachers and their students engage in these conversations, but when clinical teachers and co-teaching external lawyers model these behaviors, students see the importance of this dialectical process and why and how they can engage in it. This is especially important in identifying and resolving ethical issues. “By modeling pluralistic inquiry, we give students a method of ethical analysis that they can use as lawyers to develop ethical judgment. This is a distinctive component of a good legal ethics education, which even the best legal ethics courses often fail to include.”²⁰⁸ As important, this hub-in-the-wheel method allows clinical teachers to be the leaders in connecting students to the private and public practice of law beyond the law school.

We understand fully that there is a nuanced continuum of clinics and externships, and that many use a teaching model much like the midternship model we describe.²⁰⁹ This is consistent with the requirement of new Standard 305, for externships, that faculty supervisors continue to play a key role in them.²¹⁰ Our midternship model, however, goes several steps beyond Standard 305 by engaging the faculty member more deeply in the student’s education.

This approach does not need to be limited to clinical courses. Adjuncts and practitioners can also be brought in to teach individual theory-based classes—such as torts or contracts—to illustrate how other competencies apply to issues being discussed. A practitioner or adjunct with

²⁰⁸ *Id.* at 172.

²⁰⁹ See, e.g., *Lexternweb*, CATHOLIC UNIV. OF AM., <http://lexternweb.law.edu/> (last visited Sept. 2, 2014).

²¹⁰ Captioned “Study Outside the Classroom,” it provides that a “field placement” satisfies the Standard if it has goals and connects them to the placement, has a faculty supervisor, explains how it evaluates students (with both the faculty member and field supervisor “involved”), provides for physical or virtual on-site visits by the faculty member, and provides “opportunity for student reflection” on the experience. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 1, at 28–29.

expertise in ethics, for example, can talk about how ethics-related issues arise when contract provisions are being drafted or negotiated.

In our experience, experienced practitioners virtually everywhere in this country are willing to co-teach courses or individual classes at little or no fee. They just need to be asked.

B. The law school's role in the transition process from education to practice

As part of the strategic planning process, law faculties must confront the questions being raised about the need for the third year. There is some pressure building to reduce law school training to two years as a way of reducing law student debt and because, the argument goes, there is limited value in what the third year, as currently structured, provides.²¹¹ Even President Obama has expressed this view:

The third year, they'd be better off clerking or practicing in a firm even if they weren't getting paid that much, but that step alone would reduce the cost for the student.²¹²

We agree with Georgetown Law Professor Philip Schrag's assessment of this proposal:

President Obama's suggestion to cut law school education from three years to two has surface appeal. But the result would be that new lawyers would be exposed only to basic survey courses and would receive little of the specialized training that their future clients will need.

It is virtually impossible to construct a four semester curriculum that would include the basic subjects such as corporations law, criminal law and procedure, the introductory tax course and evidence along with more advanced subjects such as corporate taxation, the law of government, international trade law and negotiation.

Small seminars to teach research and writing would vanish. Education in ethics would be threatened. Clinical education, which best prepares students for the real practice of law, is expensive because of its hands-on approach. It is taught mainly in the third year, and it might be the first to go.²¹³

²¹¹ The pressure to reduce the length of study is not limited to legal education. See Sandra G. Boodman, *Fast Track Through Medical School*, WASH. POST, Jan. 14, 2014, at E1.

²¹¹ Lattman, *supra* note 4.

²¹² *Id.*

²¹³ Philip G. Schrag, *Letter to the Editor*, N.Y. TIMES, Sept. 3, 2013, at A18. Justice Antonin Scalia made a similar point in this way: "Most of all, it is good to be learned in the law because that is what makes you members of a

The New York City Bar also urged that the third year be retained in a report it released in the fall of 2013:

[T]he Task Force has considered the calls to eliminate the third year of law school, which are motivated primarily by a desire to reduce cost. With due respect, we think the proposal is too simple a solution to a complex problem. While we agree that controlling the cost of legal education is an important goal, we fundamentally believe that, at least at this time, eliminating the third year is not the right instrument to accomplish it. Indeed, the need for better-prepared lawyers suggest the need for more training, not less.

That said, . . . the current third-year curriculum should not be used solely for traditional casebook courses or preparing subjects tested on the bar exam but used little thereafter. It should continue to be the subject of creative and energetic innovation in order to help new lawyers graduate with the skills and experiences needed to be “practice-ready” in the modern legal environment. Thus, we encourage law schools to use the third year of law school to innovate, providing students with substantive expertise and practical experiences that will better prepare them for modern practice. In our view, if the third year is used in this way, it would be quite worthwhile.²¹⁴

The New York City Bar’s position gains further support now that experiential and core competency requirements have been added to the ABA accreditation standards. There is no doubt that it will be a challenge for some law faculties to incorporate practice-based requirements into a three year curriculum. But they really have no choice. And as we have shown throughout this article, a number of law schools have already done it without doing harm to the traditional core curriculum. Pressures to eliminate a year of law school or dictate third-year practice options—such as New York has done—will not diminish unless or until law faculties respond to the legitimate needs for more practice-based education.

profession rather than a trade. It is a goal worthy to be achieved . . . for itself. To say you are a lawyer is to say you are learned in the law. And, to return to the point, you can’t do that in two years.” Anton Scalia, Reflection on the Future of the Legal Academy, 2014 William & Mary Commencement Address 6 (May 11, 2014), *available at* <http://law.wm.edu/news/stories/2014/documents-2014/2014WMCommencementSpeech.pdf>.

²¹⁴ TASK FORCE ON NEW LAWYERS IN A CHANGING PROFESSION, *supra* note 13, at 52–53.

There are two different job markets for law school graduates: the job market for graduates of top tier law schools; and the market for graduates of most other law schools. Whereas schools like Columbia place over 85% of their 2013 graduates in full-time, long-term positions that require bar passage, more than three-quarters of ABA-accredited law schools—163—had underemployment rates nine months after graduation—unemployed, or in part-time, temporary or non-professional jobs—in excess of 20%.²¹⁵ And only 57% of all 2013 graduates found full-time jobs that require bar passage.²¹⁶

Law faculties have to decide if these statistics and those specifically relating to them matter in how they structure their curriculum and overall educational program. If they do, then strategic planning must assess what steps need to be taken to enhance the prospects of students who are paying dearly for their legal education and incurring significant student debt. We have identified initiatives that a number of schools are taking or should be considering to address this problem, for example:

- Creating post-JD incubator projects—with special emphasis on those undertaken in partnership with potential employers;
- Offering concentrated areas of study in areas relevant to employment opportunities for their students such as solo and small firm practice; and
- Developing courses which identify potential new markets for legal services—especially those emphasize creative uses of technology.

This is new territory for law schools but it is one they ignore at their peril.

²¹⁵ Karen Sloan, *Bright Spots Amid Glim Jobs Outlook: Top Law Schools Place Their Graduates, but Elsewhere “the Future Remains Grim.”*, NAT’L L.J. (Apr. 21, 2014), <http://www.nationallawjournal.com/id=1202651684724/Bright-Spots-Amid-Glum-Jobs-Outlook?slreturn=20140423103702>.

²¹⁶ *Id.*

C. *The law school's responsibility to address professionalism responsibilities and obligations relating to the access to justice crisis.*

In our view, law schools need to recognize the critical importance of expanding focus on: 1) how professionalism and ethical responsibilities apply in practice situations; and 2) what a lawyer's obligations are to address access to justice concerns.

Lawyers have a poor reputation for ethical conduct. In a 2010 Gallup poll, lawyers ranked sixteenth among twenty-two professions with respect to their honesty and ethical behavior.²¹⁷ Thousands of legal malpractice claims, disciplinary complaints, and criminal prosecutions are filed annually alleging lawyer misconduct.²¹⁸ And judges are complaining about flagrant abuses by lawyers in civil discovery. In July 2014, for example Mark W. Bennett, a federal judge in the Northern District of Iowa, had this to say in an opinion in which he sanctioned a lawyer for misconduct during depositions:

Discovery—a process intended to facilitate the free flow of information between parties—is now too often mired in obstructionism. Today's "litigators" are quick to dispute discovery requests, slow to produce information, and all-too-eager to object at every stage of the process. They often object using boilerplate language containing every objection imaginable, despite the fact that courts have resoundingly disapproved of such boilerplate objections. Some litigators do this to grandstand for their client, to intentionally obstruct the flow of clearly discoverable information, to try and win a war of attrition, or to intimidate and harass the opposing party. Others do it simply because it's how they were taught.²¹⁹

Even though new A.B.A. Standard 302 requires law schools to develop competency in the exercise of proper professional and ethical responsibilities to clients and the legal system, it

²¹⁷ *Gallup's 2010 Ethics Poll: Little Trust Where We Need It Most*, ETHICS ALARM (Dec. 9, 2010), <http://ethicsalarm.com/2010/12/09/gallups-2010-ethics-poll-little-trust-where-we-need-it-most/>.

²¹⁸ Over 42,000 legal malpractice claims were filed against lawyers during the 2004-2007 time period. *See* Dan Pinnington, *The Most Common Legal Malpractice Claims by Types of Alleged Error*, L. PRAC. (July/Aug 2010), http://www.americanbar.org/publications/law_practice_home/law_practice_archive/lpm_magazine_webonly_webonly07101.html.

²¹⁹ *Sec. Nat'l Bank of Sioux City, Iowa v. Abbott Labs.*, 299 F.R.D. 595, 596 (N.D. Iowa 2014) (footnote omitted).

only mandates that students take one course of at least two credit hours in professional responsibility.²²⁰

When the ABA Task Force on the Future of Legal Education issued its Draft Report and Recommendations in September 2013, it did not emphasize, in the way it should have, the importance of expanding law school curriculum on professionalism issues.²²¹ This was noted in an October 28, 2013 letter to the Task Force submitted by Frederick S. Ury, the Chair of the ABA Standing Committee on Professionalism:

We are stuck, however, by the Report's omission of any reference to the centrality of professionalism education, focused on principled formation of professional identity, to effective law school instruction. The omission is a discordant note given the wide and growing recognition that professional formation is critical not only to preservation of core values of the profession such as civility, a service ethic, and integrity, but to the development of personal resilience as a professional—an essential attribute for lawyers facing turbulent times for the profession.²²²

Expanding curricular offerings to address the application of ethical rules in actual practice settings are particularly needed. This will not be as difficult as it once was because a number of law professors are now undertaking and writing about creative ways to teach ethics in a variety of course offerings.²²³

²²⁰ See 2014 ABA STANDARDS, *supra* note 1, §§ 302(c), 303(a)(1).

²²¹ TASK FORCE ON THE FUTURE OF LEGAL EDUC., A.B.A., DRAFT REPORT AND RECOMMENDATIONS (Sept. 20, 2013), *available at* http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/task_force_on_legaleducation_draft_report_september2013.authcheckdam.pdf.

²²² Letter from Frederick S. Ury, Chair, Standing Comm. on Professionalism, to Randall T. Shepard (retired), Chair, ABA Task Force on the Future of Legal Educ. (Oct. 28, 2013) (on file with the ABA Task Force on the Future of Legal Education).

²²³ See Art Hinshaw, *Teaching Negotiation Ethics*, 63 J. LEGAL EDUC. 82 (2013) (suggesting new methods to teach negotiation ethics in law school); Earl Martin & Gerald Hess, *Developing a Skills and Professionalism Curriculum—Process and Product*, 41 U. TOL. L. REV. 327 (2010) (discussing the revised Gonzaga Law School's professionalism curriculum using professionalism labs); Stephen Gerst & Gerald Hess, *Professional Skills and Values in Legal Education: The GPS Model*, 43 VAL. U. L. REV. 513 (2009) (noting that professional skills and values education is starting to receive serious attention and offering a model of professional skills education); Patrick E. Longan, *Teaching Professionalism*, 60 MERCER L. REV. 659 (2008) (chronicling Mercer Law School's efforts to teach professionalism by requiring an additional legal profession course). One of the authors has been

We believe law schools also have a responsibility to address the access to justice crisis that exists in this country.²²⁴ We acknowledge that “crisis” is an overused descriptive term, but it fairly describes the current delivery of legal services in this country. Studies document the extraordinary unmet legal needs of low- and middle-income people.²²⁵ To appreciate this, visit the housing court of any metropolitan area, or observe a docket of debt-collection cases, or attend a child custody hearing, where parents fight for their children. The overwhelming majority of these litigants are representing themselves, sometimes against lawyers.²²⁶

New ABA accreditation standard 303(b)(2) specifies that law schools shall provide substantial opportunities for “student participation in pro bono legal services.”²²⁷ An interpretation of this Standard elaborates on what this requirement might entail:

Rule 6.1 of the ABA Model Rules of Professional Conduct encourages lawyers to provide pro bono legal services primarily to persons of limited means or to organizations that serve such persons. . . . In meeting the requirement of Standard 303(b)(2), law schools are encouraged to promote opportunities for law student pro bono service that incorporates the priorities established in Model Rule 6.1. In addition, law schools are encouraged to promote opportunities for law students to provide over their law school career at least 50 hours of pro bono service that complies with Standard 303(b)(2).²²⁸

The standards also specify that full-time professors have a responsibility to provide service to the public, including participation in pro bono activities.²²⁹ In deciding how best to fulfill these obligations, law faculties should confer with legal services providers and access to

teaching a three hour professional responsibility simulation class in which students play roles in interacting with clients and opposing counsel in situations which raise difficult ethics issues.

²²⁴ KRANTZ, *supra* note 123, at 69.

²²⁵ *Id.* at 70.

²²⁶ *Id.*

²²⁷ *See* 2014 ABA STANDARDS, *supra* note 1, § 303(b)(2).

²²⁸ *See id.* § 303 interpretation 3.

²²⁹ *See id.* § 404(a)(6).

justice commissions in their jurisdictions.²³⁰ The more significant contributions law schools can make to equal justice, however, will likely occur through their clinical curricula. In many jurisdictions, these programs are an essential part of the legal services delivery systems.

CONCLUSION

We began this article by stating that this is a pivotal moment in legal education and explaining why. The issue whether legal education will change is passé. The many critics of legal education have failed to note just how much innovation is now underway or planned. We see several implications for at least the immediate future of the phenomena that we have described in this article.

We must begin by acknowledging what all know: that it is impossible to accurately predict any future, including the future of legal education, or even to disentangle the interrelated components of the perhaps perfect storm that is now driving legal educational changes, e.g., the continuing effects of the 2007-2009 recession, the tough job market for graduates, reductions in law school applicants, budget crises and downsizing of law schools, actions of outside regulators, sustained criticism of legal education, the *U.S. News & World Report* rankings, and the increased competition among law schools (which may be the most important factor). Despite these imponderables, we make several predictions.

First, we believe that law schools will increasingly come to understand that they need to do more to prepare their students for practice. Legal education remains an outlier among professional schools in this respect. The good news, in our view, is that, for whatever mixture of reasons, there is growing recognition within the ranks of legal educators that we must do more to

²³⁰ The National Center for Access to Justice at Cardozo Law School is tabulating information of what various law schools are doing to promote law student pro bono programs. See *Law Student Pro Bono*, NAT'L CENTER FOR ACCESS TO JUST. AT CARDOZO LAW SCHOOL, <http://www.ncforaj.org/law-student-pro-bono/> (last visited Sept. 2, 2014).

adequately prepare our students for practice. We expect that this view will continue to gain strength in the future for several reasons.

There is no reason to believe that the external forces that are pushing this “more practice education” point—e.g., the ABA Section Council on Legal Education and Admissions to the Bar, state bar admission bodies and supreme courts, ABA, state and local bar committees, and national educational bodies (like the Carnegie Foundation)—will recede.

More important probably, has been the enhanced competition among law schools, both for students (and thus tuitions) and the school’s *U.S. News & World Report* ranking, the latter of which directly affects the former. This will not change in the future.

Also, there is no reason to believe that post-JD employment opportunities will quickly and substantially improve, or that, based on this, applications to law school will increase. According to the 2014 National Association for Law Placement data, while there has been some growth in the number of available jobs for the 2013 graduating class, “the overall employment rate fell for the sixth year in a row and the number of graduates who were unemployed and still seeking work nine months after graduation from law school was the highest since the mid-1990s.”²³¹

Finally, we think the “more practice education” argument simply is right, and now its time has come. Students incur debts—many substantial debts, and some extraordinary debts (the cost of a nice home)—to go to law school. They should receive not only the best parts of a traditional legal education, but as much practice-focused education as is possible in three years.

Second, to prepare students for practice, law schools will continue to diversify their curricula and develop pedagogical hybrids, e.g., first-year courses that include experiential

²³¹ NAT’L ASS’N FOR LAW PLACEMENT, EMPLOYMENT FOR THE CLASS OF 2013 — SELECTED FINDINGS 1 (2014), available at <http://www.nalp.org/uploads/Classof2013SelectedFindings.pdf>.

components, upper level traditional courses that include transactional simulations, experiential practicums, and “midternships” that are a bridge between in-house clinics and externships. This “let a thousand flowers bloom” phase, which we now are in, enhances the need for both strategic planning and careful evaluation. Because we believe that the best preparation for practice occurs with guided forms of actual practice, and the best education for professional responsibility occurs when students are asked to act (as well as think) professionally, we believe that clinics are and should remain the anchors of practice-based education, and we are confident they will in any rational planning process.

Third, law schools will continue to develop technology clinics in which students apply and create applications that give low- and moderate-income people more effective access to justice. These clinics also offer opportunities to connect clinical teachers to classroom IT teachers and scholars, in this still largely uncharted world.

Fourth, law schools, in partnership with the bar and foundations funding access to justice projects, will continue to develop post-JD apprenticeship, incubator, fellowship, residency, and job corps programs that will engage post-JD students in a fourth year of transitional legal education. This must not be at the expense of post-graduates, who already are choking on educational debt. These ad hoc efforts, five to ten years from now, may morph into a more coherent and broader based post-JD program of education. We hope this occurs.

Fifth, the substantial majority of law schools will come to understand that they must provide their students with a comprehensive education about how to participate in or establish a solo or small firm practice. This should happen in the second and third year of law school and in post-JD apprenticeships. It should include JD classroom courses, e.g., courses containing law practice management, fee-shifting, and “unbundled” components, as well as post-JD programs in

which law students and young lawyers learn together how to establish and maintain successful solo and small firm practices.

Solo and small firms throughout this country provide economic survival options for our graduates, and are important parts of the national legal services delivery system for moderate-income clients. We must teach our students how to engage in these practices profitably and how to harness technology to make these practices successful.

All of which is to repeat, that legal education is in, will continue to be in, and should be in, an extended period of innovation and change.